Western New England Law Review

Volume 26 *26 (2004)*
Issue 1

Article 3

12-17-2009

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INTRODUCTION

Poverty is an embarrassing and, for some, irritating problem in America. Poverty's growth in the context of societal affluence led President Lyndon Johnson in the 1960s to launch a "War on Poverty," a loose gaggle of social and educational programs designed to help the urban poor.[1] The war ended, but poverty lived on.[2] In recent decades, commitments to end poverty have been replaced by attempts to understand it – attempts that have sometimes blamed the poor for their poverty. Commentators have pointed to the subculture of the urban ghetto, to a disabling dependence on governmental largess, and to American deindustrialization in a global economy.[3] Two scholars have even argued that genetically determined low intelligence is the root cause of poverty.[4]

The Wisconsin courts' decisions regarding David Oakley and his failure to pay child support afford an opportunity to reflect on the nature, causes, and potential responses to American poverty. Part I of this article considers the impoverished life of David Oakley himself and the attempts of the Wisconsin trial courts to make sense of that life. Part II critiques the decision of the Supreme Court of Wisconsin in *State v. Oakley*,[5] underscoring the

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1. *See* HELENE SLESSAREV, THE BETRAYAL OF THE URBAN POOR 534-38 (1997).

2. As of 1996, more children were poor in the United States than at any time since the start of the War on Poverty. *See* WILLIAM JULIUS WILSON, WHEN WORK DISAPPEARS: THE WORLD OF THE NEW URBAN POOR 91-92 (1996).

3. For a review of these perspectives, see Paul E. Peterson, *The Urban Underclass and the Poverty Paradox*, in THE URBAN UNDERCLASS 9-16 (Christopher Jencks & Paul E. Peterson eds., 1991).

4. *See* RICHARD J. HERRNSTEIN & CHARLES MURRAY, THE BELL CURVE: INTELLIGENCE AND CLASS STRUCTURE IN AMERICAN LIFE (1994).

5. State v. Oakley, 629 N.W.2d 200 (Wis. 2001).

Court's assumption that Oakley is an agent rather than a victim of poverty. Part III places the decision into the context of current legislative and popular hostility toward "deadbeat dads" as primary causes of American poverty. The conclusion suggests deeper reasons for the Oakley decisions and the emphasis on "deadbeat dads." Stated simply, there are more thoughtful modes of analysis and policy steps than those focusing on Oakley and his ilk.

I. DAVID OAKLEY'S IMPOVERISHED LIFE

The media and the courts tended to portray David Oakley as the cause of the poverty of his nine children and their four mothers, but Oakley himself was born into, and entangled by, a life of poverty. Like others who are poor, Oakley had some degree of freedom to make his own choices, but he made his decisions within a set of constraints different from those for middle and upper-class Americans. Recognition of Oakley's poverty and its consequences might engender some degree of sympathy for the man and, more importantly, alert us to the ways we think about poverty and the poor. In particular, we want to avoid assuming that Oakley and the poor somehow want to be poor.

The site and circumstances of Oakley's birth augured badly for the life that would follow. He was born in 1966 in the Taycheedah Correctional Institution, a women's prison in Fond du Lac, Wisconsin.[6] Sharon Oakley, his mother, remained incarcerated until 1974, but authorities, of course, removed Oakley from the prison. After a period in state care, he was raised primarily by his maternal grandparents.[7] Run-ins with law enforcement officials marked his youth, and while in his teens Oakley was sent to Lincoln Hills School, a home for delinquent boys located near Wausau, Wisconsin. A deprived youth does not justify young Oakley's misconduct, but impoverished teens often begin to recognize the limitations on their futures and internalize a concomitant sense of powerlessness. Unlike members of the middle and upper class who might routinely "take charge" of their affairs, the poor are more likely to assume that life is acting on them and that there is little they can do about it. Sometimes deviant behavior has its roots in this frustration and sense of powerlessness.[8] According to Cheri Pasdo, mother of a

6. Nahal Toosi & Jessica McBride, *Ruling on Prolific Dad Divides His Family*, MILW. J. SENTINEL, July 15, 2001, at A1.

7. *Id.*

8. SLESSAREV, *supra* note 1, at 2.

boy Oakley fathered, "He always used to say his life was doomed from the day he was born."[9]

After completing his sentences in juvenile facilities, Oakley lived largely in an area on the western shore of Lake Michigan in central Wisconsin. To say he "settled" there would perhaps convey the wrong impression because, like many of the poor, he moved frequently from one home to another. Most of his residences were in or near Sheboygan and Manitowoc, Wisconsin. With populations of 50,792 and 34,053 respectively,[10] Sheboygan and Manitowoc are something other than idyllic Wisconsin small towns. Like other small cities in the rust belt, both at one point had an industrial base. They were known for, among other things, ship and even submarine-building. In more recent years Sheboygan and Manitowoc lost industrial jobs as factories closed. As a result, both cities have significant unemployment.

The demographic characteristics of Manitowoc are perhaps particularly relevant because, in the end, it was the Manitowoc County criminal justice system that put Oakley into the news. According to census data, Manitowoc County in 2000 had 82,887 residents, 95.9% of whom were white.[11] In 1999, the annual per capita income in the county was $20,285, and median household income was $43,286.[12] An estimated 6.1% of the county population lives in poverty.[13] In keeping with national patterns showing that poverty is "particularly rampant among children living in mother-only households,"[14] poverty in Manitowoc County is especially pronounced among families with a female family-head and no husband present. Census figures show that 22.2% of these families with children under eighteen live in poverty, and the figure jumps to 26.4% for such families with children under five.[15]

With a limited formal education and virtually no skills, Oakley was unable to find or hold meaningful jobs. He worked for a while as a sandblaster, but his absenteeism became an issue. After four

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9. Toosi & McBride, *supra* note 6.

10. Wisconsin Census 2000 *at* www.doa.state.wi.us/demographic/mcdonly.asp (last visited Mar. 1, 2004).

11. U.S. Census Bureau Website, *at* //quickfacts.census.gov/qfd/states/55/55071.html (last modified July 15, 2003).

12. *Id.*

13. *Id.*

14. Marsha Garrison, *Child Support and Children's Poverty*, 28 FAM. L.Q. 475, 480 (1994).

15. U.S. Census Bureau, *available at* factfinder.census.gov/bf/lang=en_vt_name=Dec_2000_sf3_u_dp3_geo_id=0500 (last visited July 1, 2004).

formal warnings, Musical Paint Finishers LLC released him.[16] Oakley also worked for Manpower Temporary services, but the company eventually stopped placing him because he was unreliable.[17] As with many of the poor, Oakley's ability to find and get to work was limited by his lack of a motor vehicle. An uncle, also named David Oakley, said, "The biggest thing about having a job is that Dave really doesn't have the transportation. He doesn't own a car. To me he's being violated."[18] More generally, Oakley, like many others living in poverty, to some extent lost what the scholar William Julius Wilson calls a "feeling of connectedness to work in the formal economy."[19] That is, without genuine and meaningful work opportunities, some cease to assume work is a regular and regulating factor in their daily lives.

Oakley's lengthy criminal record also without doubt made him less than an ideal hire in the minds of some employers. By the time of the Wisconsin Supreme Court's decision in 2001, Oakley had amassed nearly 200 formal contacts with the Manitowoc Police and Manitowoc County Sheriff's Department.[20] He had been convicted of disorderly conduct, receiving stolen property, illegal possession of a firearm, and intimidating a witness.[21] Crimes and the prosecutions for those crimes blended together, and, in his conviction for witness intimidation, Oakley received probation on the condition that he pay fines from earlier criminal convictions. Somehow, Oakley managed to appeal that sentence and even before his more famous case Oakley actually had an appeal heard by the Supreme Court of Wisconsin.[22] Speaking through Chief Justice Shirley S. Abrahamson, the Court held for Oakley stating:

> We thus conclude that the circuit court erred as a matter of law, and thus erroneously exercised its discretion, by setting forth as a condition of probation the payment of an old, unpaid fine when the defendant would be exposed to more than six months in county jail for failure to pay the fine.[23]

Oakley's relationships with women were as scrambled and

16. Toosi & McBride, *supra* note 6.
17. *Id.*
18. *Id.*
19. WILSON, *supra* note 2, at 52.
20. Dennis Chaptman, *Top Court Refuses Case of State Dad*, MILW. J. SENTINEL, Oct. 8, 2002, at A1.
21. Toosi and McBride, *supra* note 6.
22. State v. Oakley, 609 N.W.2d 786 (Wis. 2000).
23. *Id.* at 792.

troubling as his relationships with employers and law enforcement officials. As the popular press delighted in reporting, he fathered nine children with four women and he was briefly married to two of the women; all four live in Manitowoc County.[24] Don Vogt, the Corrections Field Supervisor in Manitowoc County, thinks that a father of one of Oakley's lovers became a substitute for the actual father he had never met. In addition, the other fathers of Oakley's lovers (in two cases Oakley's short-lived fathers-in-law) were generally Oakley's friends and supporters.[25]

The mothers of Oakley's children, themselves among Manitowoc County's poor, do not unanimously condemn Oakley. On the one side, the previously mentioned Cheri Pasdo, who gave birth to one of Oakley's sons but never married Oakley, considers him dangerously bewitching. "He could talk an Eskimo into buying an ice cube," she said.[26] Jill Cochrane, mother of four of Oakley's children, thinks he never understood the seriousness of parenthood. "He likes having the kids but once they're there to him that's a punishment. He doesn't like them once he's got them," Cochrane said.[27]

On the other side, Lucretia Thompson-Smith and Rachel Ward remain sympathetic to Oakley. Thompson-Smith, mother of Oakley's fourteen year-old daughter, does not see much difference between Oakley and the two other fathers of her children when it comes to paying child support faithfully. Even if Oakley had a minimum-wage job, his child support would eat it up. "How could he live?" she asked. "They don't pay very much in Manitowoc County."[28] Ward, mother of three of Oakley's children, professes to still love him. "Years ago, yeah, he was bad, I was bad," she said. "He's had a hard life. He's more or less used to everybody leaving him. That's why I can understand how he's been leaving the women."[29]

The four women and their children survived on an unpredictable combination of welfare payments, earnings from various jobs, and occasional support from Oakley. Among the poor, income does

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24. Toosi and McBride, *supra* note 6.

25. Telephone Interview by Paula Lorfield with Don Vogt, Manitowoc County Probation and Parole Department, Manitowoc, WI (Mar. 3, 2003).

26. Chaptman, *supra* note 20.

27. Glenda Cooper, *Wisconsin Deadbeat Dad Case Tests the Rights to Parenthood, Ruling Sets Conditions on Having More Children, Stirs Debate*, WASH. POST, July 15, 2001, at A2, *available at* LEXIS, News Library, Wpost File.

28. Toosi & McBride, *supra* note 6.

29. *Id.*

not necessarily increase annually. Oakley scraped enough together to get by from his off-and-on employment and, to a lesser extent, from criminal activity. The mothers of his children also lived from week to week, trying and sometimes failing to make ends meet.

For what it's worth, Oakley claimed that he paid over seventy percent of his child support to the mothers of his children, and courtroom records confirm that he did at least pay some child support.[30] This contrasts with the image of Oakley presented in the popular press. Reading newspaper reports, one could garner the impression that he was simply $25,000 in arrears and never paid a penny of child support.[31]

Regardless of his record of payment, Oakley, at thirty-four years of age, found himself charged in 1999 with intentional refusal to pay child support in the Manitowoc County Circuit Court, Judge Fred Hazlewood presiding.[32] How familiar the setting must have seemed to Oakley, and how familiar Oakley must have seemed to Hazlewood as well as the other courthouse regulars. Overwhelmingly concerned with crimes allegedly committed by poor defendants and relying on plea bargains and admissions of guilt, the criminal justice system processes cases in a grinding, tedious way. Rare would be the stirring courtroom drama so engaging in prime-time televisions shows such as *Law & Order* or *The Practice*.[33] And indeed, Oakley entered into an agreement through which he pleaded no contest to three counts of intentionally refusing to support his children and also allowed four other comparable counts to be read-in for sentencing.[34] The state, in turn, agreed to limit its sentencing recommendation to six years in exchange for the no contest plea.[35]

At sentencing, Judge Hazlewood reminded Oakley that if he pleaded no contest, the state would not have to prove the offense, and Judge Hazlewood also alerted the prosecutor that the six-year

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30. State v. Oakley, 635 N.W.2d 760, 761 (Wis. 2001), *cert. denied*, 537 U.S. 813 (2002)).

31. *See, e.g.*, Joan Biskupic, *"Deadbeat dad" told: No More Kids*, USA TODAY, July 11, 2001, at 1A.

32. State v. Oakley, 629 N.W.2d 200 (Wis. 2001), *cert. denied*, 537 U.S. 813 (2002)).

33. For a consideration of the contrast between pop cultural and actual criminal proceedings, see generally David Ray Papke, *The American Courtroom Trial: Pop Culture, Courthouse Realities, and the Dream World of Justice*, 40 S. TEX. L. REV. 919 (1999).

34. *Oakley*, 629 N.W.2d at 202.

35. *Id.*

sentencing recommendation need not be accepted. Hazlewood then sentenced Oakley to three years in prison on one count, imposed and stayed an eight-year term on two other counts, and ordered a five-year probation on the condition that Oakley have no more children unless he demonstrated that he could support them and also that he was supporting the children he already had. "If you think I'm trampling over your constitutional rights, so be it," Hazlewood told Oakley at sentencing.[36]

The community in general seconded Hazlewood's palpably irritated decision regarding and irritation with Oakley. Hazlewood was a highly respected man in the community, and most felt something drastic had to be done in Oakley's case because nothing else has worked.[37] In the words of the *Manitowoc Herald Times Reporter*, the local daily newspaper, Oakley was a "serial father" and "Hazlewood did us all a favor . . . ."[38]

These sentiments rest on an acceptance of the dominant culture's values: hard work, law-abidingness, respect for family obligations, and sexual relations primarily within marriage. Disdain or mere disregard for the values is common in the so-called "culture of poverty," which conservatives sometimes deplore.[39] To those who accept the dominant culture's ethic, "obeying it entitles one to worldly success; violating it endangers the fabric of American society."[40] Looking down from the bench like Fred Hazlewood or merely conversing in family rooms and staff lounges, middle and upper-class Americans might even feel the need to punish the "Oakleys" of our society for being poor and for failing to live the way we do.

Oakley, of course, was hardly equipped to contemplate his subscription, conscious or otherwise, to a "culture of poverty" and his stigmatization as a representative thereof. Born in prison, unable to find a steady job, constantly in trouble with the law, and unsuc-

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36. *See No-kids Appeal to be Heard*, BELOIT DAILY NEWS, Apr. 30, 2001, at 1, *available at* www.beloitdailynews.com/401/kids30.htm; *Judge Gives Birth to Bad Precedent*, DETROIT FREE PRESS, July 18, 2001, at D2, *available at* www.freep.com/voices/columnists/pitts18_20010718.htm (characterizing Judge Hazelwood's reaction as "judicial pique").

37. Interview with Don Vogt, *supra* note 25.

38. These characterizations and comments appeared in an editorial after the United States Supreme Court refused to hear a further appeal in the case. *Court Makes Right Call on Oakley*, MANITOWOC HERALD TIMES REP., Oct. 9, 2002, at 1.

39. Peterson, *supra* note 3, at 12-14.

40. J. David Greenstone, *Culture, Rationality, and the Underclass in* THE URBAN UNDERCLASS 400 (Christopher Jencks and Paul E. Peterson eds. 1991).

cessful in his relationships with wives and lovers, Oakley was just a poor American making his way through life. Lives spent in poverty are not necessarily irrational or morally flawed, but they are what affluent America affords for millions of its citizens.

II. THE SUPREME COURT OF WISCONSIN ON THE BEHAVIOR AND SIGNIFICANCE OF DAVID OAKLEY

The Supreme Court of Wisconsin split 4-3 regarding the constitutionality of David Oakley's terms of probation, but the Court was not divided regarding what to make of David Oakley and his conduct. From one end of the bench to the other, the justices thought Oakley a deplorable man and his behavior illustrative of the way poverty is fostered. The Court's opinion in this regard was strikingly similar to that of Judge Fred Hazlewood and the good citizens of Manitowoc.

In the lead opinion Justice Jon P. Wilcox vigorously deplored Oakley's attitude regarding his children and the laws of his state. Oakley, after all, had an "abysmal history"[41] and had engaged in an "intentional refusal to pay child support, denying his nine children assistance for their basic needs . . . ."[42] Others who have contemplated Oakley's conduct have reached similar conclusions, and Wilcox cited them to buttress his own conclusions. The prosecutor at trial, for example, thought Oakley should be sentenced to six years in prison, "[h]ighlighting Oakley's consistent and willful disregard for the law and his obligations to his children."[43] Judge Hazlewood had seconded this appraisal, and, as quoted by Wilcox, said that "'If Mr. Oakley had paid something, had made an earnest effort to pay anything within his remote ability to pay, we wouldn't be sitting here.'"[44] Wilcox even invoked the Wisconsin Court of Appeals, albeit in the earlier witness intimidation case involving Oakley. The Court of Appeals, Wilcox said, had noted "Oakley's cavalier attitude toward the justice system"[45] and said he "needs to be rehabilitated from his perception that one may flout valid court orders and the judicial process with impunity and suffer no real consequences."[46] Oakley, in Wilcox's opinion, "attempts to confuse the financial ability to support his children with the intention of making

41. State v. Oakley, 629 N.W.2d 200, 206 (Wis. 2001).
42. *Id.* at 209.
43. *Id.* at 202.
44. *Id.* at 202-03.
45. *Id.* at 206 (citing State v. Oakley, 594 N.W.2d 827, 829 (Wis. Ct. App. 1999)).
46. *Id.*

any effort to do so."[47] We should reject not only Oakley's rationalizations but also Oakley himself.

Concurring Justices N. Patrick Crooks and William A. Bablitch were even more opprobrious. For Crooks, "What is at issue here is Oakley's wanton refusal to pay support for his nine children."[48] Bablitch offered a more extended and totally *ad hoc* sketch:

> Here is a man who has shown himself time and again to be totally and completely irresponsible. He lives only for himself and the moment, with no regard to the consequences of his actions and taking no responsibility for them. He intentionally refuses to pay support and has been convicted of that felony. The harm that he has done to his nine living children by failing to support them is patent and egregious.[49]

Oblivious to the fact that Oakley was born in prison and virtually assigned from the start to a life of poverty, Bablitch suggested that any child Oakley fathers in the future is doomed. "That as yet unborn child is a victim from the day it is born."[50]

The majority reproached Oakley in part because they saw him as representative of a larger problem, and the lead opinion by Justice Wilcox segued from Oakley himself to questions of social policy back to Oakley again. In essence, the majority linked delinquency in child support payments to childhood poverty and poverty in general. "Inadequate child support," Wilcox said, "is a direct contributor to childhood poverty. And childhood poverty is all too pervasive in our society . . . . There is little doubt that the payment of child support benefits poverty-stricken children the most. Enforcing child support orders thus has surfaced as a major policy directive in our society."[51]

Unfortunately, the law review articles which the court cited to support its policy pronouncements are neither truly on point nor necessarily in agreement with the court. For example, the court cited an entire article by Karen Rothschild Cavanaugh and Daniel Pollack to support the proposition that child support payments collected nationally "represent only a portion of the child support obligations that could be collected if every custodial parent had a

47. *Id.* at 213 n.30.

48. *Id.* at 216 n.1 (Crooks J., concurring).

49. *Id.* at 215 (Bablitch, J., concurring).

50. *Id.*

51. *Id.* at 204.

support order established."[52] In fact, the cited article is a fairly narrow call for more "cohesive policy" regarding support payments from incarcerated parents.[53] The Court also cites to Drew D. Hansen for the proposition that "[S]ingle mothers disproportionately bear the burden of nonpayment as the custodial parent."[54] While this is obviously true, the pages cited in Hansen's note point instead to the eagerness of contemporary politicians to condemn "deadbeat dads" and critique the "dependency-punishment framework" which has dominated American child support policy since the nineteenth century.[55] More generally, the Hansen note is not aligned with the Wilcox opinion. In Hansen's view, "America lacks a serious national commitment to ensuring that all children receive adequate economic support."[56] He thinks that:

> relying exclusively on private sources of child support when it is not economically realistic for some noncustodial fathers to pay it might satisfy politicians' desires to do something about the nonpayment of child support, but it does little to ensure that children are provided with an adequate standard of living . . . . Instead, most industrialized nations have some kind of child allowances financed by the public or by employers that go to all families.[57]

Hansen might want to ask the Wisconsin Supreme Court for a correction, but David Oakley has even better grounds for a complaint related to negative stereotyping. The Court was eager to cast Oakley as one of those "deadbeat dads" whose supposed refusal to pay child support "has fostered a crisis with devastating ramifications for our children."[58] Before Justice Wilcox and his majority had finished their work, David Oakley had come to personify the cause of poverty for children living with single mothers and, by implication, of poverty in general.

What is perhaps most surprising is that the dissenting members of the Wisconsin Supreme Court subscribed to largely the same appraisal of Oakley and to the same "analysis" of the causes of poverty. True, these dissenting members of the court differed with the

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52. *Id.* at 203 (citing Karen Rothschild Cavanaugh & Daniel Pollack, *Child Support Obligations of Incarcerated Parents*, 7 CORNELL J.L. & PUB. POL'Y 531 (1998)).

53. Cavanaugh & Pollack, *supra* note 52, at 533.

54. State v. Oakley, 629 N.W.2d 200, 204-05 (Wis. 2001) (citing Drew D. Hansen, Note, *The American Invention of Child Support: Dependency and Punishment in Early American Child Support Law*, 108 YALE L.J. 1123, 1125-26 (1999)).

55. Hansen, *supra* note 54, at 1125-26.

56. *Id.* at 1125.

57. *Id.* at 1152.

58. *Oakley*, 629 N.W.2d at 203.

majority regarding the constitutionality of Judge Hazlewood's terms of probation. These terms, the dissenters argued, unduly violated Oakley's right to procreate.[59] And yes, it was striking that all of those in the majority were men, while all of the dissenters were women. The Wisconsin Supreme Court, the mainstream media noted, had "split along gender lines."[60] At first glance, the women on the Court seemed less concerned than the men with Oakley's "victimization" of his children and their mothers. But perhaps, one newspaper speculated, "the female justices recognized that jailing a man for fathering a child puts the court on a slippery slope that includes the arrest of moms for giving birth or even the forced sterilization of women."[61]

But when it came to opinions of Oakley and discussions of social policy related to poverty, the dissenters did not differ from the majority. Justice Ann Walsh Bradley, writing in a dissent joined by Chief Justice Shirley S. Abrahamson and Justice Diane S. Sykes, said, "Let there be no question that I agree with the majority that David Oakley's conduct cannot be condoned. It is irresponsible and criminal."[62] Justice Bradley states in another section of her dissent that "[t]he state has an interest in requiring parents such as Oakley to support their children. As the majority amply demonstrates, the lack of adequate support for children affects not only the lives of individual children, but also has created a widespread societal problem."[63] Justice Sykes, in a dissent joined by Chief Justice Abrahamson and Justice Bradley, saw Oakley as "an abysmally irresponsible parent."[64] Justice Sykes expressed her sympathy with the trial court's "understandable exasperation with this chronic 'deadbeat dad.'"[65] "Illegitimacy and child poverty, abuse, and neglect are among our society's most serious and intractable problems."[66]

Differences between the majority and the dissenting justices regarding points of constitutional law are hardly trivial, but the justices' fundamental agreement with regard to Oakley and the causes of poverty is equally important. To wit, Oakley did not seem to the

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59. *Id.* at 216-17.
60. Cooper, *supra* note 27.
61. *A Perilous Ruling for American Dads*, N.W. FLORIDA DAILY NEWS, July 17, 2001, at A6.
62. State v. Oakley, 629 N.W.2d 200, 221 (Wis. 2001) (Bradley, J., dissenting).
63. *Id.* at 216.
64. *Id.* at 222 (Sykes, J., dissenting).
65. *Id.* at 221.
66. *Id.* at 222.

members of the Wisconsin Supreme Court to be a sad product of poverty nor a man tangled up in the debilitating web of poverty. Instead, he was a deplorably active agent of poverty. Furthermore, he represented other men who collectively were an identifiable cause of poverty. Some of the justices felt the United States Constitution precluded Judge Hazlewood's probation order, but more generally the justices agreed that if we could only get the Oakleys of America to make their support payments and live up to their responsibilities, our society could be free of an immense social problem.

III. THE DEMONIZATION OF THE "DEADBEAT DAD"

Although the specifics of David Oakley's life and the Constitutional issues considered in *State v. Oakley* are unique, the ultimate decision in the case and the attitudes which buoyed that decision are part of a larger trend. Since at least the mid-1980s, men like Oakley have been demonized. They are, in the popular parlance, "deadbeat dads." Courts, legislatures, and average taxpayers have increasingly come to see these delinquent child support obligors as primary causes of poverty and also a drain on the public purse. Oakley is a premier member of this nefarious crowd. Just as Oakley needs to be policed, some would argue others of the same ilk require firm and forceful treatment.

Pronounced concerns with "deadbeat dads" are relatively recent, but more general efforts to require child support payments from the unmarried fathers of children are not. State welfare systems, some of which date back to the nineteenth century, have long included processes for collecting child support and for prosecuting those who fail to pay for or desert their children.[67] In 1950, the National Conference of Commissioners on Uniform State Laws attempted to streamline procedures for those trying to collect child support from parents outside the home state with the so-called Uniform Reciprocal Enforcement of Support Act (URESA).[68] By 1955 almost every state had enacted some form of the proposed legislation.[69] In 1975 the United States Congress also amended the Social Security Act in hopes of garnering increased and more relia-

67. *See* Ann Laquer Estin, *Moving Beyond the Child Support Revolution*, 26 LAW & SOC. INQUIRY 505, 508-509 (2001); *see also* Hansen, *supra* note 54, at 1127-50.

68. Catherine Wimberly, *Deadbeat Dads, Welfare Moms, and Uncle Sam: How the Child Support Recovery Act Punishes Single-Mother Families*, 53 STAN. L. REV. 729, 735 (2000).

69. *Id.*

ble child support payments.[70] The resulting Title IV-D encouraged states to be more aggressive in establishing paternity, enforcing child support orders, and locating fugitive parents.[71] In addition, custodial mothers were required to assign rights to unpaid child support to the state as a condition for receiving payments under the since-eliminated Aid to Families with Dependent Children (AFDC). State agencies could then pursue delinquent obligors and direct any money the agencies recouped to state coffers.[72]

But these older efforts notwithstanding, it was during the mid-1980s – the peak of the neoconservative Reagan years – that the modern emphasis on collecting child support emerged. The notion of "deadbeat dads" found a place in the public consciousness.[73] Blessed with an alliterative lilt, the phrase connoted lazy, irresponsible fathers who could but would not pay their child support and who probably should not have fathered children in the first place.[74] Cracking down on "deadbeat" dads seemed to many a way to address a raft of social ills. Ambitious politicians such as Joseph Lieberman authored books on child support, sensing in the topic a vehicle which could be maneuvered to desired destinations.[75] Unlikely combinations of liberals and conservatives in state legislatures and in the United States Congress could flaunt their bipartisanship with regard to efforts to collect from "deadbeats."[76] "Conservatives saw it as a way to get tough on the fathers in welfare cases. Liberals and moderates saw it as a way to increase the economic security of custodial parents, usually mothers."[77]

New programs appeared in most of the states and ranged from

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70. *See* Social Security Act, Pub. L. No. 93-647 (codified at 42 U.S.C. §§651-87 (1990)).

71. *See* Tonya L. Brito, *The Welfarization of Family Law*, 48 U. KAN. L. REV. 229, 262 (2000).

72. Wimberly, *supra* note 68, at 736.

73. Brito, *supra* note 71, at 263-64; Estin, *supra* note 67, at 505; and Ronald K. Henry, *Child Support at a Crossroads: When the Real World Intrudes Upon Academics and Advocates*, 33 FAM. L.Q. 235, 240 (1999).

74. The term "deadbeat" originally referred to a gauge in which the pointer showed little or no oscillation. WEBSTER'S NEW COLLEGIATE DICTIONARY 327 (9th ed. 1983).

75. *See* JOSEPH I. LIEBERMAN, CHILD SUPPORT IN AMERICA (1986).

76. *See* Roger J.R. Levesque, *Targeting "Deadbeat" Dads: The Problem with the Direction of Welfare Reform*, 15 HAMLINE J. PUB. L. & POL'Y 1, 2 (1994). One example of bipartisanship involved Democrat Charles Schumer and Republican Henry Hyde working together in the United States House of Representatives to pass the 1992 Child Support Recovery Act. *See also* Wimberly, *supra* note 68, at 738.

77. Paul K. Legler, *The Coming Revolution in Child Support Policy: Implications of the 1996 Welfare Act*, 30 FAM. L.Q. 519, 526-27 n.42 (1996).

the benign to the sinister. The states, for example, developed new paternity identification systems, including not only more insistent demands that mothers identify the likely fathers of their children but also genetic as opposed to blood-testing of the identified parties. Child-support enforcement processes have also been strengthened through new inter-agency cooperation and statewide databases.[78] With the exception of those being pursued for support, members of the public liked to hear of these efforts to locate and require payments from disagreeable "deadbeats." Furthermore, state-sponsored sexual abstinence programs hoped to prevent the fathering of unwanted children by potential "deadbeats" in the first place.

While the states increased their efforts to collect child support, efforts on the part of the federal government were even more striking. Exceptions exist, but in general the laws of marriage, divorce, and child support had traditionally been left to the states. When the federal government became active in the area of child support collection in the mid-1980s, the development was truly noteworthy. One scholar even wrote of "the federalization of child support."[79] The perception of "a shift in the paradigm" even led to speculation about national child support guidelines.[80]

The first major acts of Congress came in 1984 in the form of amendments to the previously mentioned Title IV-D.[81] The earlier Congressional action had been general, but the new amendments were more specific. If the states wanted federal monies, they had to be prepared to use employer withholding of child support for employees who were delinquent in their payments. States were also to make available, through their courts, liens against the property of "deadbeats" and deductions from "deadbeats," state and federal tax refunds.[82] The effectiveness of these steps was dubious, but the idea of doing something about "deadbeats" played well on both sides of the Congressional aisle.

Furthermore, Congress showed a willingness to criminalize child support delinquency. The Child Support Recovery Act of

78. Levesque, *supra* note 76, at 17-19; *see also* Anna Marie Smith, *The Sexual Regulation Dimension of Contemporary Welfare Law: A Fifty State Overview*, 8 MICH. J. GENDER & L. 121, 210 (2002).

79. *See* Laura W. Morgan, *The Federalization of Child Support: A Shift in the Ruling Paradigm: Child Support as Outside the Contours of "Family Law"*, 16 J. AM. ACAD. MATRIM. LAW. 195 (1999).

80. *Id.* at 216.

81. *Id.* at 203.

82. *Id.*

1992 authorized the prosecution of "deadbeats" who fled their home states in order to avoid making child support payments.[83] Under the Act, it was a federal crime for an obligor with the wherewithal to pay to owe $5000 or more or to fail to make payments for a year or more.[84] Nothing suggested this criminalization had any impact, but imbued with a determination to "get tough" with "deadbeats," Congress decided that even more severe criminalization was needed. In 1998 Congress amended the Child Support Recovery Act with the Deadbeat Parents Punishment Act.[85] This menacingly titled legislation made first-time offenses a felony and also provided for up to two years in prison for an offender owing $10,000 or more or having failed to pay support for at least two years. The Deadbeat Parents Punishment Act also creates the remarkable presumption, at least for the poor, that a delinquent father is able to pay.[86]

Most importantly, Congress paid particular attention to child support payments in the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996.[87] This legislation was for most the embodiment of President Clinton's promise to "end welfare as we know it,"[88] and it did in fact replace the federal AFDC entitlement with Temporary Assistance for Needy Families (TANF). The latter comes through block grants received by the states, which have in turn imposed strict time limits for receipt of payments and developed assorted "welfare-to-work" schemes.[89] Commentary in the mainstream media has been limited regarding the matter, but scholars have noted that TANF has brought with it significant provisions related to child support and its collection.[90]

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83. Wimberly, *supra* note 68, at 729.

84. Morgan, *supra* note 79, at 212.

85. Wimberly, *supra* note 68, at 746.

86. *Id.* at 747.

87. Morgan, *supra* note 79, at 208.

88. Presidential candidate William Clinton promised to "end welfare as we know it" during his 1992 campaign, and he also repeated the popular phrase in his first State of the Union Address. *See* Stephen D. Sugarman, *Financial Support of Children and the End of Welfare as We Know It*, 81 VA. L. REV. 2523 (1995).

89. Smith, *supra* note 78, at 123.

90. *See* Legler, *supra* note 77, at 574, and Samuel V. Schoonmaker IV, *Consequences and Validity of Family Law Provisions in the "Welfare Reform Act"*, 14 J. AM. ACAD. MATRIM. LAW 1 (1997). President Clinton eagerly linked welfare reform and child support collection when signing PRWORA into law. "For a lot of women and children," he said, "the only reason they're on welfare today – the only reason – is that the father up and walked away when he could have made a contribution of the welfare of the children." *Remarks on Signing the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and an Exchange with Reporters, II Pub. Papers: Bill*

In order to qualify for block grants, states must undertake a range of measures designed to increase child support collection. These include, but are not limited to, expanded in-hospital paternity identification, streamlined judicial establishment of paternity, state registries of delinquents, reporting of new hires to a federal registry, and the denial of drivers' licenses, professional licenses, occupational licenses, and hunting and fishing licenses for "deadbeats."[91]

The policing and punishing of David Oakley sanctioned by the Wisconsin trial and appellate courts had much the same animus as the national legislative and popular campaigns against "deadbeat dads." "Enough is enough," the judges and legislators want to shout. But has anything really been accomplished for Oakley, his children, and the mothers of those children? Does the national campaign have the capacity to affect significantly the conduct of transient, uneducated, and impoverished men or to reduce the poverty of their children and their children's mothers?[92]

CONCLUSION

The tale of David Oakley, his conduct, and the attempts of the Wisconsin trial and appellate courts to understand and direct matters is sad and also disconcerting. Oakley and most of his children, ex-wives, and one-time lovers live in poverty. This does not mean they are necessarily unhappy, destined to remain forever poor and deprived of all self-determination in their lives. Oakley himself, for example, mustered a degree of assertiveness and returned to court after the *State v. Oakley* decision was handed down in hopes, primarily, of correcting the record on which the decision was based.[93] However, being entangled by poverty often results in a multi-faceted social disability. For Oakley and for many others living in poverty, unemployment, lawbreaking, and the inability to develop and sustain interpersonal relationships are common.

The courts, as noted, do not think of poverty in this way. For

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Clinton 1325, 1326 (Aug. 22 1996). PUBLIC PAPERS OF THE PRESIDENTS, 32 WEEKLY COMP. PRES. DOC. 1484 (1996).

91. Brito, *supra* note 73, at 257-59; and Morgan, *supra* note 79, at 210-11.

92. *Squeezing Blood From a Stone*, the subtitle of Amy E. Watkins' article concerning the Child Support Recovery Act (1992), is apt for many of the developments of the last fifteen years. Amy E. Watkins, *The Child Support Recovery Act of 1992: Squeezing Blood from a Stone*, 6 SETON HALL CONST. L.J. 845 (1996).

93. Oakley contended that the Court had made mistakes in its statement of the facts of his case. The Court agreed to withdraw a handful of clauses and sentences in keeping with Oakley's request, but the Court also denied Oakley's motion that his entire case be reconsidered. *See* State v. Oakley, 635 N.W.2d. 760 (Wis. 2001).

various Wisconsin judges Oakley seemed a flawed, irresponsible man, who villainously caused the poverty of his children and also contributed to the poverty of the mothers of those children. Oakley in this regard emerged as a veritable poster child for the contemporary "deadbeat dad." Few stereotypes rival that of the "deadbeat dad" in negative connotations. These men, mainstream thinking holds, could and should pay their child support. If only they did, the poverty of their children and perhaps societal poverty in general could be relieved.

This "analysis" might be best critiqued as a variety of ideological pronouncement, that is, normative prescription. Some of the most powerful ideology registers on those who accept it as "common sense." Why have middle and upper-class Americans taken so eagerly to the characterization and condemnation of the "deadbeat dad"? To which values and presumptions does the notion of the "deadbeat dad" speak?

Answering these questions is not impossible. Poverty, as suggested at the very beginning of this article, is an embarrassing reality in the context of affluent America. The majority of citizens do not think long and hard about poverty and its causes, but those who do can easily stumble into simple understandings and solutions. Hence, the "deadbeat dad" rises to the surface as an explanation for poverty. Getting him to pay would have the added effect of saving money for those of us who are not in poverty. The vilification of the "deadbeat dad," after all, emerged along with an energetic neo-conservatism. Instead of relying on government for funding and services, we should rely on ourselves. This "self-reliance" includes having parents take responsibility and pay for their children. Why should we tap the assets and income of average citizens for welfare payments and other social programs? It is cheaper for the rest of us if the "deadbeat dads" make payments to the mothers of their children for the benefit of those children.

On an even more fundamental level, the emphasis on "deadbeat dads" relates to the presumption in the dominant culture that individuals are responsible for their own choices and acts. In more specific terms, studies have shown that a solid majority of Americans is disposed to the idea that individuals are responsible for their economic situations and that poverty results from a lack of effort by the poor themselves.[94] This attitudinal predisposition overpowers a more structural analysis, which would point to a shortage of em-

94. WILSON, *supra* note 2, at 159-61.

ployment opportunities, low wages, poor schools, racial discrimination, and so on. In Europe, studies have shown that citizens tend to favor structural explanations of poverty over individual ones.[95] If governments were to attempt to reduce poverty, dominant European thinking holds, governments would have to address societal inequities rather than individual failures and weaknesses.

The ideological emphasis on the "deadbeat dad" is less "wrong" than it is "wrong-headed." If an employed professional or an industrial worker with a steady job disregards child support obligations, surely he should be pursued and required to make payments. But men living in poverty have neither the financial nor the personal wherewithal to make substantial and regular child support payments. What's more, potential direct and indirect recipients of child support payments actually need more than the payments themselves to escape their own impoverished condition. "Poverty," after all, is only partially a matter of money.

Only a progressive Pollyanna might think Americans are about to recognize a societal responsibility for its poor and undertake significant redistribution of wealth to eliminate poverty. Regardless, a more prudent approach to reducing poverty than pursuing "deadbeat dads" can nevertheless be imagined. With an eye to just child poverty, the approach would include income support for single-mother families; expanded public child-care; and new education, training and even public employment programs. More generally, the government would have to continue working for gender pay equity and an end to racism.

None of these steps will come quickly enough to affect Oakley, his children, and his children's mothers. Furthermore, Fred Hazlewood of the Manitowoc County bench and the members of the Supreme Court of Wisconsin are not likely to become more sophisticated in their understanding of poverty. However, we might at least hope that *State v. Oakley* will prompt others to reflect on the realities of poverty in the midst of affluence and on public policy regarding poverty. The emphasis on "deadbeat dads" is symptomatic of the sterility of the contemporary discourse related to poverty. We can surely do better.

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95. *Id.*