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Filial Support and Family Solidarity

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Honor thy father and thy mother that thy days may be long in the land that the Lord thy God giveth thee. Exodus 20:12.

The concept of filial responsibility has existed for many centuries. Although the origins of this moral tenet will probably never be identified with any degree of precision, the origin of the legal responsibility to provide for one's parents is more readily traceable. Statutes which presently exist in a majority of American states are essentially identical to the "responsible relatives" statute found in the seventeenth century Elizabethan Poor Law. Prior to the enactment of this comprehensive statutory scheme to deal with the problems of the poor, there was no legal duty imposed on children to provide for their indigent parents' support.

The responsible relatives statutes embrace more than merely the child-parent relationship. They are concerned also with the duties of parent to child, husband to wife, and wife to husband. Additionally, some impose duties beyond this immediate family sphere, extending the obligation of support to grandparents and grandchildren and even brothers and sisters of the indigent. The focus of this article, however, is on the legal responsibility of children to contribute to the support of their parents and the wisdom of the imposition of this duty.

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At the outset, a brief history of the advent of the responsible relatives statute, as contained in the Elizabethan Poor Law, is set forth. Discussion then turns to an examination of the historical context of the origin of this statute, as well as the adoption of its prototype in America. Present state and federal law will also be reviewed to determine the current impact of these statutes. Next, an attempt is made to answer the obvious question of why these responsible relatives statutes have remained in existence, with little change, for close to four hundred years. This will entail an analysis of various economic, social, and cultural factors which existed in American society and which led to the perpetuation of these laws. The author concludes that these laws were perpetuated, not so much because of public acceptance, but because there was little reason or motivation to challenge these laws due to the economic and societal structure of the eighteenth and nineteenth centuries. Recent changes in many of these same social and economic factors are then used as a basis to challenge the continued application of filial support laws.

Additionally, an analysis of these statutes will be made in light of their sociological, psychological, and economic effects on family members and family relationships. Whether such laws hinder or help family relationships will be examined as well as whether or not these laws help to perpetuate poverty. Also to be examined are the administrative problems relating to the enforcement of these statutes and the costs of such administration balanced against income produced by the program.

Finally, various constitutional arguments that have been asserted in opposition to these laws will be addressed. Many challenges have been raised over the years, running from arguments based on procedural due process, double taxation, and an unconstitutional taking, to more recent arguments based on a denial of equal protection. All but one challenge has been unsuccessful, and the one success turned out to be very limited.

HISTORY OF FILIAL SUPPORT LAWS

The Elizabethan Poor Law of 16011 was not the result of creative genius on the part of its authors but rather the culmination of almost three centuries of governmental efforts to deal effectively with the problems of the poor.2 One seeking a starting point for the study of

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1. 43 Eliz. 1, c. 2 (1601).
public assistance as we know it today would logically begin with the Statute of Labourers, which was enacted in 1349; with it begins a chain of related circumstances which leads to our present system. The traditional approach of government to the problems of poverty was negative, both in attitude and action. Statutes were punitive and repressive and sought generally to solve the problems relating to the supply of labor by discouraging idleness and punishing beggars. A positive approach was not provided by the government, but instead actual financial assistance was provided solely by religious and private philanthropy. The church was the primary source of aid to the poor. Secondary assistance was forthcoming from guilds and private foundations. The growing inability of these private sources to cope with the changing conditions gave rise to greater and greater need for public financial assistance. The need became critical in the last half of the sixteenth century when Henry VIII expropriated the monasteries and gave this property to his followers, thus eliminating what had been a major source of assistance to the poor.

Finally an affirmative approach to public financial assistance was provided for in the 1601 Act. Nevertheless, the punitive approach to dealing with poverty was retained. The nature and cause of the 1601 Act has been described by tenBroek:

Historically it may be viewed as all of the following, whatever the apparent contradictions: the outcome of the inadequacy and disruption of nongovernmental sources of charitable aid; an economic, social, and political necessity in the century of the Tudors;

4. Standard works on the development of the English Poor Law include E. Leon-ard, The Early History of English Poor Relief (1900); K. de Schweinitz, England's Road to Social Security (1943); B. Tierney, Medieval Poor Law (1959); and 1 B. Webb, English Local Government: English Poor Law History (1927). The California Welfare and Institutions Code contains extensive provisions for the public support of families with dependent children, Cal. Welf. & Inst. Code ch. 2 (commencing with §11200), as well as the aged, blind, and disabled, Cal. Welf. & Inst. Code ch. 3 (commencing with §12000). In the context of familial support for such persons, section 206 of the Civil Code imposes a general duty of support upon the children of a person in need who is unable to maintain himself by work. In addition, the Welfare and Institutions Code provides that each adult child shall contribute to the support of a needy parent in an amount determined by an income-graduated scale; if there is more than one adult child the statutory requirement is prorated among them. The responsible relative's contribution is paid directly to the state, which thereupon transmits such payments to the recipient. If an adult child living within the state fails to contribute to the support of his parent, the state may proceed civilly against such child. Upon request, the Attorney General may bring the action in the superior court of the county of residence of the responsible relative to recover that portion of aid granted to the parent that the child is held liable to pay and to secure an order for payment of future sums. Cal. Welf. & Inst. Code art. 8 (commencing with §12350). See also Beilenson & Agran, The Welfare Reform Act of 1971, 3 Pac. L.J. 475 (1972).
6. 43 Eliz. 1, c. 2 (1601).
aimed more at civil disorder than at economic distress; oriented toward the fading agrarian age rather than the urban industrial poverty that was its principal instigating cause; overemphasized the personal causes of poverty and sought to solve them by excessive doses of criminal law; recognized the economic causes of poverty and sought to overcome them by providing work through government made or sheltered employment; a great code of social legislation and a landmark of social progress.\textsuperscript{7}

The legal responsibility of relatives did not appear until 1597,\textsuperscript{8} but became an integral part of the legislation of 1601.

The father and grandfather, the mother and grandmother, and the children of every poor old blind lame and impotent person, or other person not able to work, being of sufficient ability, shall at their own charges relieve and maintain every such poor person, in that manner and according to that rate, as by the Justices of the Peace of that county where such sufficient persons dwell, or the greater number of them, at their general Quarter Sessions shall be assessed; upon pain that every one of them shall forfeit twenty shillings for every month which they shall fail therein.\textsuperscript{9}

Although no explicit statement of legislative purpose accompanied the enactment of the responsible relatives statute, commentators and the judiciary have agreed that the purpose of the statute was to relieve the public from some of the expense of public assistance by introducing liability on the part of certain relatives for support.\textsuperscript{10} Although Blackstone referred to the statute as if it were declaratory of existing principles of law,\textsuperscript{11} Kent later surmised that its primary purpose was protection of the public purse,\textsuperscript{12} and the American courts have followed this view.\textsuperscript{13}

The enactment of poor laws in the American states was idiosyncratic, and no attempt will be made to explore the various paths that were taken.\textsuperscript{14} Suffice it to say that most states adopted, with very little change, the principle of relatives' responsibility found in the Eliza-
A few contracted the sphere of liability to eliminate grandparents or children, while others extended the scope of liability to include grandchildren or brothers and sisters of the poor person.  

Various economic and social forces were responsible for a minimum use of filial support laws in the eighteenth and nineteenth centuries. With the coming of the twentieth century, the usage of these statutes began to rise. The depression of the 1930's gave rise to the enactment of the Old Age Assistance Program (hereinafter referred to as OAA), a joint federal-state project administered by the states under broad guidelines imposed by the federal government. The OAA would have seemingly given the 36 states which had filial support laws at that time a systematic manner in which to apply these laws. However, at the time, these statutes were under substantial professional attack, and, being difficult to administer besides, their enforcement was generally neglected. At the close of the Second World War there was renewed interest in the enforcement of filial support laws, stimulated by sharply rising public assistance costs. The postwar period was characterized by clarification of the law and policy to facilitate enforcement. Although there was an increased interest in the enforcement of filial support statutes during the last two decades in states where they

15. The California statute provides that it is the duty of the father, the mother, and the children of any person in need who is unable to maintain himself by work, to maintain such person to the extent of their ability. The promise of an adult child to pay for necessaries previously furnished to such person is binding. A person who is receiving aid to the aged shall be deemed to be a person in need who is unable to maintain himself by work.


17. See text accompanying notes 31-69 infra.


19. A listing of these states appears in Abbott, Abolish the Pauper Laws, 8 Soc. Serv. Rev. 1, 15 n.17 (1934).


21. Id.
existed, there was also a gradual decline in the number of states in which these laws remained. Presently, twenty-seven states require children to contribute to the support of their needy parents.\footnote{See note 15 supra.} It would seem that a significant increase in political influence of groups sympathetic to the plight of the elderly, coupled with a growing recognition of the strain such laws have on family relations, led to the repeal of these statutes in several states.

Recent federal legislation has had a significant impact on the importance of filial support laws. Supplemental Security Income for the Aged, Blind and Disabled (hereinafter referred to as SSI) became effective on January 1, 1974.\footnote{42 U.S.C. §1381 \textit{et seq.} (1974).} SSI supplants OAA, the former federal-state program for the aged.\footnote{The OAA provisions were repealed by the enactment of SSI. \textit{Act of Oct. 30, 1972, Pub. L. No. 92-603, §303(a), 86 Stat. 1484.}} Under the state administered OAA program, the states were able to apply their filial support statutes to require contributions from children of those receiving OAA grants. In contrast, SSI is federally administered and has no provision for filial recoveries.\footnote{Callison, \textit{Early Experience Under the Supplemental Security Income Program}, 37 Soc. Security Bull. 3, 6 (June 1974).} The enactment of SSI and repeal of OAA will significantly diminish the opportunity for state application of filial support laws. However, there will still remain some opportunity for use of these statutes.

SSI provides only for a national minimum level of assistance for the aged. Consequently, over one-half of the states will supplement the SSI payments.\footnote{See Rigby, \textit{State Supplementation Under Federal SSI Program}, 37 Soc. Security Bull. 21 (Nov. 1974).} These supplementary payments can be administered by the federal government or by the state, at the state's option.\footnote{Id.} Presently, sixteen states have chosen to administer their own supplementary payments\footnote{See for example California Welfare and Institutions Code Section 12001, which provides that the state aid program for the support of the aged, blind, and disabled is designed to supplement the federal social security program.} and hence are free to apply their filial support laws. Additionally, the filial support laws will be applicable, still, to other forms of state and local public assistance.

Considering its seventeenth century English origins and the American reverence for early English law, one might wonder whether the longevity of these statutes may be attributed, in part, to their antiquity. When filial support laws are viewed in the context of other provisions of the early poor laws—settlement and removal, poorhouses, whipping,
maiming, and branding vagrants and beggars—and the stratified society of Elizabethan England, it is easily concluded that these provisions are more in harmony with the social and political theories of the seventeenth century than with modern American life. Other than the inertia of their lengthy history, there would appear to be little basis for the continued existence of filial support laws. Although speaking in another context, Holmes might well have been referring to filial support statutes when he stated,

> It is revolting to have no better reason for a rule of law than that it was laid down in the time of Henry VI. It is still more revolting if the grounds upon which it was laid down have vanished long since, and the rule simply persists from blind imitation of the past.\(^3\)

**FILIAL SUPPORT AND FAMILY STRUCTURE**

Evidence indicates that in eighteenth and nineteenth century America filial support laws were accepted by the public without incident.\(^2\) Why does this seeming public acceptance appear to wane in the twentieth century?\(^2\) A facile explanation would place the blame on declining values and a diminishment of family solidarity which existed in earlier times. A much more adequate explanation is found if one looks at the social and economic conditions which existed in the eighteenth and nineteenth centuries and notes the effects of changes in these conditions on the twentieth century family. In fact, one can easily conclude that the earliest Americans held strong beliefs which were antithetical to the tenets of filial support, but social and economic conditions postponed the conflict between these ideas and the concept of filial support until twentieth century changes in these conditions forced the conflict into the open.

By far the most significant change has been the shift from an agrarian to an industrial society and its impact on family structure. Essentially, this change has brought an end to the extended family in America and has led to the isolation of the nuclear family.\(^3\) In our former agrarian

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29. These violent aspects of the English Poor Law are discussed in tenBrook, *supra* note 2, at 258-91.
32. Several factors support the inference that public support for federal support laws has diminished. These factors include: (1) the gradual decline in the number of states having filial support laws, see text accompanying note 18 *supra*; (2) the reluctance on the part of district attorneys to prosecute violations of these laws, see text accompanying note 77 *infra*; and (3) the increasing incidence of constitutional attack on filial support laws, see text accompanying notes 132-167 *infra*.
society the older person usually owned the family property and retained economic power and control over the family, even after his productivity had declined. Family, rather than individual, activities prevailed in this rural world. The production of raw materials, the provision of shelter, the processing of food products, the manufacturing of clothing, and almost all other essential economic activities were carried on by the family on a household basis. As industrialization took place, the prospect of factory employment freed young adults from direct dependence on families. The resultant spatial and social mobility tended to loosen family ties. In short, the shift from an agrarian to an industrial society and the concomitant shift from a rural to an urban population eroded the economic forces which had held the extended family together. The nuclear family structure which resulted was less able to provide many of the services performed in the past by the extended family.

Another highly relevant change that has occurred over the years is the ever increasing numbers, both absolutely and relatively, of older people in the American population. In 1900, there were approximately 3 million persons over 65 in America, and by 1970 there were over 20 million in this group. This represents a six fold increase, double the increase for the general population. In 1850 only 2.1 percent of the American population was over 65; by 1900 this figure had risen to 4.1 percent. Today, those over 65 represent 9.8 percent of the population of the United States, and it is estimated that the figure will reach 11.1 percent by the year 2000. In fact, this estimated figure may be significantly higher if the marked birth rate decline which began in 1958 continues.

A combination of factors is responsible for the changing structure

34. 2 INDUSTRIAL RELATIONS RESEARCH ASSOCIATION, THE AGED AND SOCIETY 48 (1950). In view of the common tendency to idyllize the rural American family, it is worthwhile to note in passing that in the "old days" family relations were often based on tyranny rather than affection, and the power and influence of older people were not always cheerfully accepted by adult children. R. ATCHLEY, THE SOCIAL FORCES IN LATER LIFE 13 (1972) [hereinafter cited as ATCHLEY].
35. ATCHLEY, supra note 34, at 45.
37. E. BURNS, SOCIAL SECURITY AND PUBLIC POLICY 84 (1956).
39. ATCHLEY, supra note 34, at 9.
40. Id.
41. UNITED NATIONS, DEMOGRAPHIC YEARBOOK, Table 4 (1956).
42. Id.
44. Id.
45. ATCHLEY, supra note 34, at 10.
of the American population. The primary reason for the aging of the population is the decline in birth rates that accompanied industrialization. The increasing life expectancy of American citizens, although of lesser importance than the birth rate decline, is also a significant contributing factor to the growth of an older population. In 1900 the life expectancy of a person born in the United States was only 49 years; by 1965, the figure was 70 years. This significant lengthening of life expectancy can be attributed to the large decrease in infant and child mortality and the reduction in the death rate from communicable and other diseases of early and middle adulthood.

A third factor which has had some recent significance in the United States is migration. Generally, the effects of migration on the aging of the population are relatively unimportant when compared with the effects of declining birth rates and mortality. However, large numbers of young people who migrated to the United States in the early twentieth century have contributed to the aging of the population in the last several decades.

Whatever the causes, there is no doubt that the number of older people, both absolutely and relatively, has increased significantly in the last two centuries. The impact of this increase on the application of filial support laws is obvious. When the numbers and percentage of older people in society were minimal, there was little occasion to test the willingness or ability of children to support their parents. As more and more of the population became faced with the problem of supporting an older member of the family, the concept of filial support came under closer scrutiny.

There are several less important changes which have contributed to a diminishing acceptance of filial support laws in America. One of these is the decreasing size of families. An old German proverb states that one father takes better care of ten children than ten children take care of one father. As the number of children in families decreases, each child's proportionate share of the financial burden of caring for a needy parent is increased, leading to an increasing inability

47. Aging in Western Societies 29 (E. Burgess ed. 1960) [hereinafter cited as Burgess].
48. Atchley, supra note 34, at 10.
49. Id.
51. Id. at 30.
52. Atchley, supra note 34, at 9.
53. In 1910, the average family contained 4.5 children, in 1960, only 2.5 children. Atchley, supra note 34, at 309.
or reluctance to carry out this responsibility. Another contributing factor is the trend toward early marriage. Because of earlier marriage, children leave the family home long before their parents are old and in need of help. After years of being free from any necessity to support their parents, they will often be psychologically unready to accept such responsibility, even though they might have readily accepted it had there not been a long period of freedom.

Another factor worthy of mention is the declining importance of religion in America. With respect to children, religious affiliation has been shown to be an important determinant in attitudes toward parental support. Although its impact is uncertain, the decline in religious affiliation has likely contributed to the changed attitudes of children toward filial support. Additionally, the church has traditionally felt a responsibility toward its older members. The older person's religion helped him in a practical as well as spiritual way. With the declining role of the church, fewer elderly have this support available to them.

Finally, the replacement of an earlier societal misconception of the problems of the poor aged with a growing understanding and sympathy for these problems of the elderly have led to a more concerned societal attitude. Well into the twentieth century the idea existed that the problem of poverty in old age was primarily the result of ill-spent years, ill-spent earnings, or ill-spent savings. However, recognition of the societal causes of poverty of the aged and the lack of control so many of the elderly have over their circumstances is becoming more prevalent. As this realization grows, there is less reluctance to provide for the support of the elderly out of the public purse.

Despite the waning public acceptance of filial support laws, they

54. F. Bond, R. Baber, J. Vieg, L. Perry, A. Scaff & L. Lee, Our Needy Aged 296 (1954) [hereinafter cited as Bond].
55. Id.
56. In 1973, for example, only three of the fourteen largest christian churches in America reported increased membership; Roman Catholics, Southern Baptists, and Mormons. Major denominations reporting decreased membership included the United Methodist Church, the Lutheran Church-Missouri Synod, the Episcopal Church, the Lutheran Church in America, the United Presbyterian Church, the United Church of Christ, and the American Lutheran Church. Further, statistics indicated a continuing decline in the percentage of the population actually attending church services. 1974 Britannica Book of the Year 585.
61. See note 32 supra.
have, of course, continued to exist. The perpetuation of these laws is due in significant part to the historical lack of a cohesive political bloc to oppose the laws. The two groups which would oppose the imposition of these statutes are the old and their children, usually tied together by the common bond of poverty. In his book on American Legal History, Professor Lawrence M. Friedman, commenting on the nineteenth century, stated that

[t]he basis of politics, and law, was the pressure of interest groups; the loudest, most powerful voices won the most. Old people, transients, the feebleminded, dirt-poor and crippled families—all these stayed at the bottom of the social pit. Tort law blossomed, corporation law swelled in pride; the poor laws were local, haphazard, backward, and cruel.62

Although there has been an ever increasing awareness of the plight of the poor and the aged, and a continuing effort to humanize the laws relating to these groups, lack of an effective interest group certainly contributes even today to the perpetuation of filial support laws.

It seems obvious that the cohesiveness and homogeneity necessary to form an effective interest group do not exist with respect to children who are liable for parental support. This lack of political power was a point of judicial concern in a recent California case upholding the legal duty of children to contribute to the support of their parents.63 Commenting on the possible abuse of majoritarian power, a dissenting justice stated that “[t]he state may be unfairly shifting the burden of public expenses onto a small segment of the citizenry . . . a small minority . . . with no cohesive characteristics that would permit effective political representation.”64

The political power of older people is a more complex question. Although studies have shown a higher degree of political participation as a person ages,65 it has been concluded that the older person views politics more as a means of personal fulfillment and less as a means of attaining some political goal.66 With respect to the capability of the elderly to form an effective political pressure group, it would seem that their inability to deliver votes in a bloc would seriously impede any effort to become a viable interest group. Such capability is further les-

64. Id. at 518, 516 P.2d at 859-60, 111 Cal. Rptr. at 155-56 (Tobriner & Mosk, JJ., dissenting).
66. Id. at 564.
sened by the lack of a homogeneity of characteristics which is necessary for the formation and continuance of an effective interest group. "An effective interest group . . . should have more in common than just age. . . . Lacking similarity beyond age (and perhaps the state of retirement), the old age political movements were handicapped from their very inception."67

Despite the fact that older people lack effective interest groups, in recent years much legislation favorable to their interests has been passed. Political scientists have attributed this result to the fact that although old age political organizations were not effective as pressure groups, they were effective in making visible the plight of the elderly, and subsequently their cause has been picked up by non-age-based groups.68 Although the legislators are now more responsive to the problems of the aged, there can be little doubt that lack of an effective opposition group helped perpetuate the responsible relatives statutes, and even today presents a formidable stumbling block to repeal of these laws.

Viewing filial support laws in light of the economic and social context of the last three centuries, one is led to the conclusion that the perpetuation and acceptance of these laws, and the more recent discontent with them, must be blamed primarily on social and economic conditions and to a lesser extent on the former existence and subsequent decline of certain beliefs and values which led to family solidarity. As one commentator pointed out,69 two important ideas of the earliest Americans were antithetical to the strictest concepts of filial responsibility: (1) in a new world, men face the future and worship, not ancestors, but posterity; and (2) in an equalitarian atmosphere every person is important unto himself. However, the conflict of these ethics and the concepts of filial responsibility was postponed until the twentieth century because family structure of early America was not inimical to filial support laws. It was not until economic and social changes restructured the family that the conflict became apparent.

THE ECONOMICS OF FILIAL SUPPORT LAWS

Since the primary justification for application of filial support laws is the protection of the public purse,70 it is important to consider the

68. ATCHLEY, supra note 34, at 247.
69. SCHORR, supra note 20, at 2-3.
70. See text accompanying notes 10-13 supra.
economic benefits obtained from the application of such laws. Such
an analysis must take into account two ways in which a state's public
assistance outlays may be lessened by filial support laws. The first
means of public financial gain is the direct revenues produced by the
application of these laws, balanced against the administrative costs in-
volved in making these collections. The second form of financial
benefit is the indirect lessening of public assistance costs brought about
by the failure of many elderly people to apply for assistance due to
the inhibitory presence of these statutes.

With respect to the net revenues obtained from the enforcement of
filial support laws, evidence is scanty and contradictory. California,
which in recent years has raised support requirements and made a zeal-
ous effort to reduce welfare costs,71 estimated that for the 1973-74 fis-
cal year $8,000,000 was collected under the Responsible Relatives Pro-
gram at an administrative cost of $2,500,000.72 Under the current re-
duced support requirements,73 estimated revenues are $3,500,000 to
$5,000,000 annually, with no estimate given for administrative costs.74
These figures should be put into context by noting that total expendi-
tures for the California Old Age Assistance Program are in the vicinity
of $400,000,000.75

Several years ago, the Moreland Commission Report on welfare costs
in the state of New York estimated that $7,250,000 was recovered
from responsible relatives at an administrative cost of $1,250,000.76
The Community Service Society of New York subsequently challenged
these figures as incorrect in its report on family responsibility and pub-
lic welfare, arguing that the income was over-estimated and the ad-
ministrative costs were underestimated.77 Federal studies found that
the cost of investigation of filial support in New Jersey represented
13.5 percent78 and in New York 11.8 percent79 of the total cost of ad-

71. See Beilenson & Agran, The Welfare Reform Act of 1971, 3 PAC. L.J. 475
(1972); Zumbrun, Monboisse & Findley, Welfare Reform: California Meets the Chal-
lenge, 4 PAC. L.J. 739 (1973).
72. Letter from John H. Sullivan, Assistant to the Director, Public Information,
73. Although California substantially increased parental support requirements in
1971, CAL. Stats. 1971, c. 578, §33, at 1167, legislation enacted in 1973 returned Cal-
ifornia to the graduated income scale in effect prior to the 1971 amendment. See CAL.
74. Letter from John H. Sullivan, Assistant to the Director, Public Information,
75. Rosenbaum, Are Family Responsibility Laws Constitutional?, 1 FAM. L.Q. 55,
60 (Dec. 1967).
76. Community Service Society of New York, Familial Responsibility and
77. U.S. Dep't of Health, Education & Welfare, Region II, Administrative
ministering the Old Age Assistance Program. Alvin Schorr, in a study done for the Department of Health, Education, and Welfare, concluded that “savings might be balanced by the cost of administration.”\textsuperscript{80} In a survey of California welfare administrators, two-thirds were of the opinion that the relatives’ responsibility laws of that state cost more to administer than they actually brought in.\textsuperscript{81} Although the evidence is scanty, it seems safe to conclude that net revenues, if any, produced by the direct application of filial support statutes are not very substantial. There seems to be little doubt that this small return can be traced to the high administrative costs involved in the enforcement of the relative’s obligation.

In the recent past many states avoided the difficult enforcement problems connected with the filial support laws by the use of a simple, if rather harsh scheme. If the state determined that a child was obligated to contribute to his parent’s support, this amount was deducted from the public assistance payment to the parent whether the parent received the child’s contribution or not.\textsuperscript{82} This tactic was premised on the hope that the responsible child would carry out his obligation rather than see his needy parent starve. Fortunately, this drastic sanction is no longer used, but the administrative difficulties inherent in the enforcement of filial support laws remain.

Several factors are responsible for the high costs involved in administering the filial support laws. Many offspring of those applying for public assistance are themselves at or near the poverty level.\textsuperscript{83} It follows that in many cases the cost of investigating an applicant’s relatives will lead to no offsetting revenues. The reluctance of the responsible child to cooperate and of administrators to enforce the filial support laws are additional stumbling blocks to the effective application of these statutes. Because of the family tensions which are present in a case in which support is compelled, many persons forced into payment will either default or be kept current only at continued and expensive public vigilance.\textsuperscript{84} Additionally, in many cases a caseworker will feel that requiring a child to contribute is unjust and neglect to press the

\textsuperscript{80} U.S. DEP’T OF HEALTH, EDUCATION & WELFARE, REGION II, ADMINISTRATIVE COST STUDY, STATE OF NEW YORK, DEPARTMENT OF SOCIAL WELFARE (1959).

\textsuperscript{81} SCHORR, supra note 20, at 25.

\textsuperscript{82} SCHORR, supra note 20, at 24.

\textsuperscript{83} UNIVERSITY OF CONNECTICUT SCHOOL OF SOCIAL WORK, STATEMENT OF RELATIVE RESPONSIBILITY (1951).
Even when the welfare agency turns a case over to the district attorney, there may be a reluctance on his part to enforce this law. Being an elected official, he has little desire to engage in the unpopular practice of forcing people to support their aged relatives against their will. A final administrative difficulty is the problem of out-of-state responsible children. The filial support laws apply with equal force to relatives within or outside the state, but because of the administrative costs involved, out-of-state relatives are generally left undisturbed. An additional question has been raised as to whether a state which does not have a filial support statute might refuse to enforce the filial support statute of another state since it could be viewed as violative of the positive policy of the forum.

By far the most important cost saving aspect of filial support laws lies in their inhibitory effect on applications for public assistance. In states where filial support provisions have been repealed, there has been a subsequent increase in the number of applicants for public assistance. In states where filial support laws have been instituted or revived, the result has been a substantial decrease in the public assistance rolls. There seems to be little question that filial support laws do dissuade large numbers of elderly persons from applying for public assistance. To view these indirect savings as a positive effect of the filial support laws is to embrace a contradiction with the very purpose of providing public support. If it is in fact desirable to reduce the costs of public support by deterring the use of the program, the logical goal would be to deter the use of the program by all potential recipients—to eliminate the program. It makes little sense to provide public support and to simultaneously discourage its use, and for this reason the indirect savings cannot reasonably be viewed as a justification of the filial support laws.

SOCIAL COSTS OF FILIAL SUPPORT LAWS

To determine the desirability of the application of filial support laws, one must necessarily look, in addition to the economic costs and benefits, to the social costs and benefits. The issues that must be examined

85. SCHORR, supra note 20, at 24.
86. BOND, supra note 54, at 200.
88. Id.
91. See text accompanying notes 127-133 infra.
in this regard are the effects of filial support laws on family relationships and the individuals concerned, and the contention that filial support laws aid in the perpetuation of poverty.

A. The Effect of Filial Support Laws on the Family

No doubt the most critical issue involved in the question of application of the filial support laws, and the most controversial, is the effect of such laws on intrafamily relationships. Opinions on this issue run the gamut from the view that such laws are highly destructive of family relationships to the view that they are supportive of such relationships. In addition to the effect on the family relationships, the effect on those involved must also be examined.

The person most vulnerable in this situation is the parent. Although there might be disagreement about the effect of filial support laws, there is little disagreement about the physical, social, and psychological problems that accompany the aging process. Both the physical and the mental health of the older person deteriorate rapidly. As a group the elderly show a greater occurrence of chronic illnesses, physical impairment, and disability than the general population. Old age is also accompanied by a decline in the sensory processes, psychomotor performance, and mental functioning generally. Additionally, the incidence of psychosis is far greater in older people, as is suicide. Sociologists have noted that the social and economic changes that have occurred in recent years have fallen with greatest force on the older person and have imprisoned him in a "roleless role" and tainted him with the "stigma" of old age.

An ever present fear of older people is the fear of dependence, of becoming a burden to others. This phobia exists in the minds of the elderly because entailed in becoming a burden is the threat of social rejection and loss of self-respect. The socialization process in America teaches one to admire and strive for independence; dependence is disfavored. The older person who becomes dependent must not

93. Id. at 203-70.
94. Atchley, supra note 34, at 114-16.
95. Id. at 121-23.
96. Id. at 51-72.
97. 1 M. Riley & A. Foner, Aging and Society 370 (1968).
98. Id. at 393.
100. Id. at 20.
103. Atchley, supra note 34, at 190-91.
only cope with society’s disapproval but also with his own fear and disapproval of the dependent role.\textsuperscript{104}

If an older person is unable to maintain financial independence, he must either seek support from the state, or if a filial support statute exists, first turn to his children for assistance. At first glance one might see little difference since in either case he is not independent. However, upon closer scrutiny important differences are apparent. First, there is a growing acceptance of the notions that the receipt of socially provided income involves no stigma,\textsuperscript{105} and that the aging parent should accept an old-age pension rather than claim support from adult children.\textsuperscript{106} Public assistance is viewed more as a right than as charity, and acceptance does not create the same feelings of dependence in the older person. More importantly, though, detrimental collateral effects on the family are present when economic support is required from offspring that are not present when the support flows from the state.

When an older person is financially dependent on his children, a great strain is put on their relationship. Both the parent and the child resent the dependence, both feel guilt as a result of this resentment, and both tend to become hostile toward the source of their guilt.\textsuperscript{107} This kind of relationship is a vicious circle of resentment, guilt, and hostility that tends to grow increasingly worse—often to the point of breakdown of the relationship between parent and child.\textsuperscript{108} Filial support laws also have a tendency to make the poor or near-poor live together rather than establish independent households. This results when the children are unable to discharge their support requirement in cash and instead satisfy it by furnishing room and board to their parent.\textsuperscript{109} This situation can lead to an even greater feeling of dependency on the part of the parent whose presence is tolerated rather than welcomed. Many psychologists have noted the crisis of authority between a parent and his young child, but as one commentator pointed out, “[t]his crisis may be a mere shadow in comparison to the authority crisis an older person goes through if he must become dependent on his child.”\textsuperscript{110}


\textsuperscript{105} E. Burnes, \textit{Social Security and Public Policy} 85 (1956).


\textsuperscript{107} Atchley, \textit{supra} note 34, at 195.

\textsuperscript{108} \textit{Id.} at 195-96.


\textsuperscript{110} Atchley, \textit{supra} note 34, at 195.
From the child's perspective different problems exist. Forcing a child to forego an advanced education, to curtail spending for his own family, or in the case of an older child, to inhibit preparation for his own retirement, is bound to foster resentment on the part of the child and possible guilt on the part of the parent. This situation is further aggravated for the child who has never been close to his parent, yet is expected to contribute to his support. Although a few states which have filial support statutes exempt from liability those offspring who were abandoned during their childhood, most do not. Additionally, psychologists have maintained that the demand for support may raise serious problems for the liable child since it symbolizes to him the personal inadequacy of his needy parent.

Older people generally, and to a greater extent those receiving public assistance, are opposed to a legal requirement compelling filial support. A survey of older Californians showed that only 36 percent favored a law requiring children to contribute to the support of their parents, and only 29 percent of those receiving public assistance favored such a law. In 1961 the White House Conference on Aging concluded that

laws and practices which enforce or assume support from adult children, and in many places with little or no regard for the needs and responsibilities of adult children and their young, weaken family relationships and family responsibility, and are destructive to older persons and the families of their adult children. Such requirements should be removed from State laws and practice.

Those who favor retention of filial support laws speak of "strengthening family bonds," the "obvious fairness" of such a requirement, or the "moral responsibility" involved. Yet logically and factually the filial support laws can be seen to create and increase family dissension and to destroy family ties at the very time and in the very

111. For example, California's statute provides that an adult child may seek a decree releasing him from obligations of parental support if such child alleges that he was abandoned by his parent for a period of two or more years prior to attaining the age of 18 years. The section further provides that if these allegations are determined to be true, a decree shall issue releasing such child from all parental support obligations imposed by state law. CAL. CIV. CODE §206.5. See also CONN. GEN. STAT. ANN. §17-320 (1974); ORE. REV. STAT. §416.030(2)(c) (1973); PA. STAT. ANN. tit. 62 §1973 (1968).


113. Bond, supra note 54, at 320.


115. Bond, supra note 54, at 353.

116. 4 C. VERNIER, AMERICAN FAMILY LAWS, Parent and Child 95 (1936).

circumstances they are needed most. There is indeed no "obvious fairness" in filial support laws.

B. The Perpetuation of Poverty

A further argument that can be raised against the application of filial support laws is that their effect is to perpetuate poverty. Although the immediate victims of such a perpetuation are those required to contribute and their families, the ultimate victim is society as a whole. The imposition of liability, in many cases, actively interferes with whatever potentialities for self-advancement "responsible" children may have and helps to assure poverty for generations to come.

Some feel that the purpose of filial support statutes is to "catch" well-to-do children who are shirking their responsibility to support their parents and shifting this burden to the public. However, scholars, social workers, experts in the field of public welfare, and judges have taken a contrary position, finding instead that

[the enforcement of the 'duty to support' is not an attempt to make the well-to-do support their poor relatives, but an order requiring those who have very little to help their relatives who have less, and who frequently have nothing at all.]

Forcing an older responsible child to contribute to the support of his parents, foregoing his own economic security when looking toward an impending retirement, or asking a younger child to support a parent rather than pursue an advanced education, only shifts economic desolation from one generation to the next. Disregarding for the moment the human costs involved in the application of filial support laws and looking to the policy goals of the poor and welfare laws and the economic ramifications involved, one must conclude that the filial

118. tenBroek, California's Dual System of Family Law: Its Origin, Development, and Present Status, 17 STAN. L. REV. 614, 645-46 (1964); see, e.g., B. YOBURG, THE FUTURE OF THE AMERICAN FAMILY (1975); Abbott, Abolish the Pauper Laws, 8 SOC. SERV. REV. 1 (1934); Dinkel, Attitudes of Children Toward Supporting Aged Parents, 9 AM. SOCIO. REV. 370 (1944); Hitrovo, Responsibility of Relatives in the Old-Age Assistance Program in Pennsylvania, 18 SOC. SERV. REV. 67 (1944). In a survey of older people with modest financial means, the elderly ranked filial affection as most important to them while material help was a distant second. Rosenbaum, Are Family Responsibility Laws Constitutional?, 1 FAM. L.Q. 55, 68 (Dec. 1967).

119. Bond, supra note 54, at 320.

120. Hitrovo, Responsibility of Relatives in the Old-Age Assistance Program in Pennsylvania, 18 SOC. SERV. REV. 67 (1944).

121. O. POLLAK, SOCIAL ADJUSTMENT IN OLD AGE, Bull. No. 59 (Published by the Social Science Research Council, N.Y.) (1948).

122. 1 E. ABBOTT, PUBLIC ASSISTANCE 164 (1940).


124. 1 E. ABBOTT, PUBLIC ASSISTANCE 164 (1940).

125. Children of indigent parents may be required to forego advanced education by reason of their obligation to support their parents. ORS. ATT'y GEN. 292 (Vt. 1940).
support laws are ill suited to the goals. The overriding governmental concern is to eradicate poverty. Yet, if in fact the filial support laws make it more likely that succeeding generations of persons will be forced into poverty, the folly of such laws is apparent. Any short-run economic gains are more than offset by the long-run costs generated by these laws. If the poor of today are most likely to become the poor of tomorrow, positive social intervention is needed to break the cycle of hopelessness that links one generation to the next.\(^\text{126}\)

A related aspect of this problem results from the unwillingness of many parents to apply for public assistance at all, even if this means a substandard existence. Legislators and administrators acknowledge that one of the important reasons for the application of filial support laws is that they act "to keep aged persons from applying for assistance or result in the denial or withdrawal of their applications,"\(^\text{127}\) and this constitutes "one of the most effective means for preventing an assistance program from becoming so large as to place an impossible burden upon the financial resources of the community."\(^\text{128}\) The effect of these statutes is to inhibit applications for public assistance. This effect has been illustrated by large increases in caseloads in states which have repealed responsible relatives provisions.\(^\text{129}\) The important point is that many fail to apply because they genuinely do not wish to deprive their children, or they hesitate to risk their anger.\(^\text{130}\) These parents continue to exist on less than a public assistance budget.\(^\text{131}\) The magnitude of this reluctance to apply has been evidenced by the experience of Maine. In 1948 Maine revived its responsible relatives statutes, requiring all children of those receiving public assistance to submit detailed financial data. Although over 2,000 cases were closed as a result of this action, 40 percent of those cases were closed because of a failure to submit financial statements.\(^\text{132}\) The continuation of filial support laws should not be at the expense of the older person who refuses to apply, thus protecting his children but denying himself a decent standard of living.

Filial support laws must be considered in relation to poverty. Granted that this type of law might be only one of many handicaps

\(^{128}\) Id. pt. 1, at 8.
\(^{130}\) Schorr, supra note 20, at 29.
\(^{131}\) Id.
that surround a poor family, it may, on occasion, be the crucial one, the one that persuades a person that improvement for him is not destined to be.

We have had the vision from time to time of so organizing public welfare, and our society, that we shall wipe out poverty as we know it today. Eliminating the support requirement in public assistance is only one element in this program, but it is an element. 133

LEGAL CHALLENGES TO FILIAL SUPPORT LAWS

There has not been a great deal of appellate litigation challenging filial support statutes. One possible explanation, discussed earlier, is the reluctance of district attorneys to prosecute these cases. 134 Another explanation which has been proffered is that the persons against whom such actions are brought are often too poor to carry an appeal to a higher court in case of an adverse decision in the lower courts. 135 Probably the most likely explanation is the singular lack of success of the challenges that were made.

In the earlier cases that were appealed, a variety of constitutional arguments were made. These included arguments that the filial support laws violated due process, 136 were a form of double taxation, 137 constituted a taking without just compensation, 138 and violated the supremacy clause. 139 None of these challenges were successful. Most recently filial support statutes have been subjected to the argument that the imposition of liability pursuant to such statutes is violative of the equal protection clause.

The most exhaustive litigation of filial support laws has taken place in California courts. Because of the continuity of that examination and the scarcity of cases in other jurisdictions, the balance of this section will analyze recent California decisions in which the constitutionality of filial support laws has been challenged.

The first case to suggest that the California Supreme Court might find filial support laws violative of the equal protection clause was Department of Mental Hygiene v. Hawley. 140 In this case the state

133. COMMUNITY SERVICE SOCIETY OF NEW YORK, FAMILY RESPONSIBILITY AND PUBLIC WELFARE 122 (1964).
134. See text accompanying note 86 supra.
sought payment of the costs of confinement in a state mental institution from the son of a person who was committed after being adjudged insane and unable to stand trial for the murder of his wife. This payment was sought pursuant to a statute which made certain relatives of inmates of state mental institutions responsible for the costs of their care. The court held that the requirement that the son pay these costs was a denial of equal protection. Because of the criminal nature of the underlying proceedings, it was thought that the decision would have little practical effect on the broader question of the constitutionality of relatives responsibility statutes in general.

A year later, however, the court applied Hawley in Department of Mental Hygiene v. Kirchner, a decision that was to serve as the springboard for future attacks on the responsible relatives statutes. The facts of Kirchner were essentially the same as Hawley except that in this case the commitment to the state mental institution was the result of civil rather than criminal proceedings. The court, however, found this distinction to be of no legal significance and found that the liability sought to be enforced in Kirchner was subject to the same constitutional infirmity as was found in Hawley. Additionally, the court intimated that the use of responsible relatives statutes in other contexts might be subject to the same challenge.

The equal protection analysis undertaken by the court in Kirchner and Hawley is not well articulated and seems faulty in several respects. The court reasoned that the "enactment and administration of laws providing for sequestration and treatment of persons in appropriate state institutions ... is a proper state function ... [and] that the expense of providing, operating and maintaining such institutions should ... be borne by the state." Based on this assessment the court leapfrogged to the conclusion that a statute which charged any class of individuals with the cost of maintaining such institutions, excepting perhaps a charge to the inmate himself, was arbitrary and violative of the equal protection clause.

Modern judicial analysis of an equal protection question first defines the purpose of the statute under attack, then defines the classification established by the statute, and finally attempts to determine whether there is a reasonable relation between the purpose and the classifica-

142. Id. at 720, 388 P.2d at 722-23, 36 Cal. Rptr. at 490-91.
143. Id. at 719-20, 388 P.2d at 722, 36 Cal. Rptr. at 490.
144. Id. at 720, 388 P.2d at 722, 36 Cal. Rptr. at 490.
In Kirchner and Hawley the court found the purpose of the statute invalid—no law could impose private liability for support of mental patients in state institutions—and in so doing applied the equal protection analysis which prevailed in the early part of the century but which has long since been discarded. This is evidenced by reliance in Hawley on Coppage v. Kansas and Smith v. Texas, which were founded on the doctrinal concept that the court may find the equal protection clause violated when it believes that the statute in question represents an unwise expression of debatable social policy.

An inconsistency in the Hawley and Kirchner reasoning is found in the court's apparent willingness to except from its broad sweep a statute aimed at obtaining costs of care in a state institution from the inmate himself. Although implicit in the court's reasoning is the notion that a proper state function is necessary an exclusive state function, it has carved this exception. Yet if this exception is to be allowed, it should be explained why another exception cannot be allowed. This unanswered question lies at the heart of the equal protection analysis which the court skirted in its opinion. So it seems that the court in Kirchner and Hawley was misguided in its doctrinal approach as well as inconsistent in the approach it did use.

Despite the broad terms in which the Kirchner decision was written, the lower appellate courts in California subsequently limited Kirchner's application to its particular factual situation. In challenges to other statutes which imposed some type of liability on certain relatives, these courts held that three factors must be present before the statute under attack will be struck down: (1) the person sought to be charged must not be liable for reasons other than the given statute (no preexisting duty); (2) the state must have initiated the proceedings for which recovery is sought; and (3) the expenditure in question must be primarily for the benefit of the public.

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146. 236 U.S. 1 (1914).
147. 233 U.S. 630 (1914).
148. "The doctrine that prevailed in Lochner, Coppage, Adkins, Burns, and like cases—that due process [or equal protection] authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely—has long since been discarded." Ferguson v. Skrupa, 372 U.S. 726, 730 (1963).
150. Id. at 863.
152. Department of Mental Hygiene v. O'Connor, 246 Cal. App. 2d 24, 54 Cal.
Looking to the language of *Kirchner*, it is easy to see how the decision could be used to attack filial support laws as they are applied to the children of those receiving old age assistance. Care of the poor aged is a proper state function; hence it is arbitrary to charge any class of individuals with the cost of this care. Filial support statutes do just this and are therefore violative of the equal protection clause.\(^{183}\) In 1971 the defendant in *County of San Mateo v. Boss*\(^{164}\) presented this very argument to the California Supreme Court.

In *Boss* the County of San Mateo was seeking to collect from the defendant unpaid monthly contributions toward the support of his mother, who was receiving public assistance, as well as an order requiring defendant to make such monthly contributions in the future. In its opinion the court reaffirmed the viability of *Kirchner* and expanded the limited application which the lower courts had attributed to it. It specifically rejected the limitation that the aid in question must primarily benefit the public\(^ {185}\) and implicitly rejected the limitation based on whether the state or the individual initiated the proceedings for which the defendant was sought to be charged. The court did, however, affirm that a responsible relative could, consistent with equal protection, be made liable if he had a preexisting duty to support the person in question.\(^ {158}\) The court said that this preexisting duty could be present if a similar duty was found at common law, but concluded that this was not the case here since at common law there was no liability on a child to support his parents.\(^ {167}\) Although intimating that it might refuse to find that the California responsible relatives statute\(^ {158}\) entails a rational classification as to those who are required to pay a larger portion of the expense of providing welfare assistance,\(^ {169}\) the court expressly declined to decide this issue.\(^ {160}\) Instead the court was able to reach a decision based on the facts of the case and construction of the statutes involved.

Under California law public assistance was granted to one who was
"in need," yet filial support was only required if a person was "poor." In this case, although defendant's mother owned a $31,800 home, she was deemed "in need" for purposes of public assistance, but the court determined that she was not "poor" for purposes of the filial support statute, and hence liability could not be imposed on the defendant.

The precise issue of the constitutionality of filial support laws was not to be decided until three years later in *Swoap v. Superior Court*.

In 1971 a class action was filed in the Superior Court of Sacramento County by plaintiffs representing two classes—elderly persons receiving public assistance who have children liable under the state's responsible relatives statute and the children of such parents. The Department of Social Welfare and its Director were defendants. The superior court issued a statewide restraining order enjoining defendants from enforcing the filial support laws of the state. Defendants appealed, seeking a writ of prohibition to prevent the court from enforcing its restraining order. Since the loophole which was the basis for the *Boss* decision had been closed by the state legislature, the question squarely facing the court was whether the statute requiring filial support from children whose parents are receiving public assistance is constitutional.

In *Swoap* the supreme court rejected the analysis it had used in *Kirchner* and *Boss* and, using accepted equal protection analysis, concluded that the filial support statute in question was not violative of the equal protection clause. In reaching this conclusion the court found that the classification in question was rational in that the parents who are now in need supported and cared for their children during the latter's minority and "[s]ince these children received special benefits from the class of 'parents in need', it is entirely rational that the children bear a special burden with respect to that class."

Additionally, the court disposed of an argument by the plaintiffs that stricter scrutiny must be used by the court in examining this statute since it creates a "suspect" classification. This argument was advanced on two separate theories: (1) the classification distinguished between people on the basis of wealth; and (2) the classification distinguished between people on the basis of ancestry.

With respect to the argument that the classification was based on

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161. *Id.* at 970-71, 479 P.2d at 659, 92 Cal. Rptr. at 299.
162. *Id.*
165. 10 Cal. 3d at 506, 516 P.2d at 851, 111 Cal. Rptr. at 147.
wealth, the court found that although such an argument had surface plausibility, closer examination exposed the argument as "pure sophistry."\textsuperscript{166} Regarding the class of "parents in need," the state interest advanced, minimization of the cost of public assistance, only comes into play when the needy are involved. However, insofar as the state acts toward this class of people it is conferring a benefit upon them, either by direct aid or by providing them with a remedy to secure support from their adult children.\textsuperscript{167} With respect to the correlative duty imposed on the adult children of the "parents in need," the classification is not based on wealth, but on parentage.\textsuperscript{168}

The court went on to find that ancestry is not a suspect classification. Plaintiffs contended that \textit{Hirabayashi v. United States}\textsuperscript{169} was supportive of the principle that a classification based on ancestry was suspect. The California court pointed out that a later Supreme Court case\textsuperscript{170} made clear that ancestry, when used in \textit{Hirabayashi}, denoted racial classification and not parentage.\textsuperscript{171}

It seems clear that \textit{Swoap} substantially overruled \textit{Kirchner} and its progeny \textit{Boss}. At the same time it seems clear that the prior decisions were the result of faulty equal protection analysis and that the \textit{Swoap} decision represents presently accepted judicial analysis of equal protection questions. Although some might argue that filial support laws are indeed violative of equal protection,\textsuperscript{172} it seems their analysis is heavily swayed by their dislike for the underlying social consequences. The majority opinion was "not unmindful that these provisions may involve harsh results in certain instances,"\textsuperscript{173} but recognized that "the amelioration of any harsh results must rest in the hands of the administering authorities, since these provisions are constitutional."\textsuperscript{174}

\textbf{CONCLUSION}

On balance there seems to be little to recommend the use of filial support statutes, other than the fact that they are constitutional under

\begin{footnotesize}
\begin{enumerate}
  \item Id. at 505, 516 P.2d at 850, 111 Cal. Rptr. at 146.
  \item Id.
  \item Id. 320 U.S. 81 (1943).
  \item Oyama v. California, 332 U.S. 633 (1948).
  \item Swoap v. Superior Court, 10 Cal. 3d 490, 507, 516 P.2d 840, 851, 111 Cal. Rptr. 136, 147 (1973).
  \item 10 Cal. 3d at 507, 516 P.2d at 852, 111 Cal. Rptr. at 148.
  \item Id. at 507-08, 516 P.2d at 852, 111 Cal. Rptr. at 148.
\end{enumerate}
\end{footnotesize}
present standards of judicial analysis. Historically they arose as part of a pervasive statutory scheme which was designed not to solve the causes and problems of the poor, but to minimize the cost to the public of maintaining the destitute. Although such statutes have a long history in America, much of this longevity can be attributed to social and economic conditions and not to public acceptance of these laws. Their impact on familial relations and family members, particularly the elderly, can be devastating. Although some economic gains can be attributed to the existence of these statutes, such gains are, to some extent at the expense of needy elderly who are unwilling to apply for assistance because of the desire to protect their children from what they feel to be an unwarranted burden.

In light of the historical context in which filial support laws came into being, their detrimental effect on the family, and the source of their economic savings, this writer suggests that state legislatures repeal all such statutes and that in the future both state and federal governing bodies refrain from using this device as a method of trying to reduce ever rising welfare costs. These recommendations do not imply a disagreement with the moral underpinnings of such statutes but simply a recognition of the difficulties of prescribing moral standards through usage of the legal process.

A final point worthy of mention concerns the problems of the elderly in our society. The manner in which a state cares for its elderly is an important measure of its civilization. In recent times there has been much to indicate that the elderly in America are not cared for in a manner which reflects a concerned society. The maintenance and imposition of filial support laws is certainly not as serious a manifestation of societal neglect and disregard of the aged as are other abuses to which the elderly are subjected. Yet the filial support laws do contribute to the disturbing plight of the elderly in America, and unlike many other problems of the aged, this problem is easily remedied with little, if any, cost.

Admittedly, the social costs of filial support are difficult to quantify, but their impact cannot be denied or ignored. Admitting the difficulty of measurement, perhaps the best indication of the social impact of these laws can be found by listening to those who are most affected by them. It seems apt to conclude with a most eloquent statement by an elderly Californian, obviously deeply distressed by the filial support laws:

No one is born into this world with a debt to their parents for their birth and contributions until their maturity. That is the parent's
contribution to life and society. When the child reaches maturity, he starts a new separate unit and in turn makes his contribution to life and society as did his parents, carrying on the generation cycle on through eternity. The children should not be saddled with unjust demands that keep them at or near the poverty level with no hope to escape it, just because a parent still breathes. And aged parents should not have to live their remaining lives facing the heartbreaking experience of being such a burden to their children. Many would prefer death but are afraid of retribution for taking their own lives. Their grief—a living death.\textsuperscript{175}

\textsuperscript{175} Carleson v. Superior Court, 23 Cal. App. 3d 1068, 100 Cal. Rptr. 635 (1972).