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# FILIAL RESPONSIBILITY: A SURVEY ACROSS TIME AND OCEANS

Andrea Rickles-Jordan\*

In the United States, Medicare and Medicaid are helping fund the cost of caring for the elderly. However, long before these programs existed, several states enacted statutes requiring children to care for their elderly parents. These filial responsibility statutes still exist in many states today, although their effectiveness and use has been called into question by opponents. In order to understand the current need for these statutes, it is first important to look at the reasons they were created. Then it will be possible to follow their growth throughout the history of the world and the United States. As further means for comparison, it is useful to examine the view of other cultures and nations with regard to filial responsibility and the decisions to implement laws that require children to help shoulder the responsibility of caring for their older parents.

## THE AGING WORLD

In 2000, the number of individuals age sixty-five or older composed over 420 million of the world's population.<sup>1</sup> Not only has the number of persons living to the age of sixty-five and over continued to increase, but the average life expectancy is

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1. KEVIN KINSELLA & VICTORIA A. VELKOFF, U.S. CENSUS BUREAU, SER. P95/01-1, AN AGING WORLD: 2001 7 (2001), <http://www.census.gov/prod/2001pubs/p95-01-1.pdf> (last visited Oct. 13, 2007) [hereinafter AN AGING WORLD: 2001].

continuing to increase as well.<sup>2</sup> This growth in the elderly population is challenging the social structures that exist throughout the world, and requiring countries to find new ways to adapt.

### *THE INTERNATIONAL SCENE*

As of 1990, twenty-six nations had elderly populations of at least 2 million.<sup>3</sup> By 2000, thirty-one countries reached the 2 million mark.<sup>4</sup> Projections for the future indicate that by the year 2030, sixty nations will have 2 million or more people aged sixty-five and over.<sup>5</sup> Despite the fact that the growth of the elderly population in developed countries slowed in the early 1980s, those countries still have relatively high proportions of people aged sixty-five and over today.<sup>6</sup> The most rapid increases in elderly population, however, are in the developing world.<sup>7</sup> 77% percent of the world's net gain of elderly individuals from July 1999 to July 2000 — 615,000 people monthly — occurred in developing countries.<sup>8</sup>

Based on these statistics and the trends in the developing countries, the elderly growth rate in those countries is expected to rise to and remain above 3.5% annually from 2015 through 2030 before declining in later decades.<sup>9</sup> In Europe, 12% of all residents are expected to be over the age of seventy-four and 7% are expected to be over the age of seventy-nine by the year 2030.<sup>10</sup> In Asia, Latin America and the Caribbean, the older population is expected to more than double by that time.<sup>11</sup> Similarly, the elder population in Sub-Saharan Africa is expected

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2. *Id.* at 23.

3. *Id.* at 7.

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.* at 9.

11. *Id.*

to increase by 50%, or from 19.3 million to 28.9 million people.<sup>12</sup>

### *THE UNITED STATES*

The same demographic trends as those in Europe, Japan, and China exist in the United States.<sup>13</sup> Although growth of the older population in the United States slowed in the 1990s as a result of fewer births during the Great Depression, the growth is expected to increase significantly during the early part of the 21<sup>st</sup> century.<sup>14</sup> In the United States, the number of Americans over the age of sixty-five has increased by 3.1 million or 9.3% since 1994.<sup>15</sup> In the last study conducted by the National Center for Health Statistics in 2004, it was determined that 12.4% of the population, or roughly one in every eight citizens in the United States, were over the age of sixty-five.<sup>16</sup> With the results of these studies and recognition of the fact that the baby boom generation is reaching the age of 65, the older population will explode between the years 2010 and 2030.<sup>17</sup>

While the number of elderly Americans continues to grow, the question of where they should live and how to best provide them with the care they require continues to be debated. More than half of married elderly Americans, who do not require hospitalization or other institutionalization, lived with their spouses in 2004.<sup>18</sup> As of 2004, approximately 10.7 million or 72.4% of older men, and 8.2 million or 41.6% of older women lived with their spouse.<sup>19</sup> As of 2003, the life expectancy for women reaching age sixty-five is an additional 19.8 years, while

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12. *Id.*

13. Seymour Moskowitz, *Adult Children and Indigent Parents: Intergenerational Responsibilities in International Perspective*, 86 MARQ. L. REV. 401, 402 (2002).

14. ADMIN. ON AGING, U.S. DEP'T OF HEALTH AND HUMAN SERVICES, A PROFILE OF OLDER AMERICANS: 2005 3 (2005), <http://www.aoa.gov/PROF/Statistics/profile/2005/2005profile.doc> (last visited Oct. 10, 2007) [hereinafter A PROFILE OF OLDER AMERICANS: 2005].

15. *Id.* at 2.

16. *Id.*

17. *Id.* at 3.

18. *Id.* at 5.

19. *Id.*

for men reaching the age of sixty-five is only 16.8 years, thus many women who are married are likely to outlive their spouses.<sup>20</sup>

While the additional three years may not seem significant, it has had a tremendous effect on the ratio of older women to older men living today. The most recent figures, from 2004, show that in the United States there were 21.1 million older women and 15.2 million older men, resulting in a ratio of 139 women for every 100 men.<sup>21</sup> As a result, many older individuals, particularly women, are left alone. Many of these individuals are among the 30.8% of older people in the United States, as of 2004, that live alone.<sup>22</sup> A much smaller group, only 4.5% of the older population (age sixty-five and older), lived in nursing homes in 2000, although the number tends to increase dramatically with age.<sup>23</sup>

### *DEALING WITH POVERTY*

As the older segment of our population continues to live longer, issues of poverty have become greater as well. As of 2004, about 3.6 million elderly persons were below the poverty level.<sup>24</sup> An additional 2.3 million or 6.7% of the elderly were classified as "near poor" in 2004.<sup>25</sup> While one out of every twelve elderly whites were considered poor in 2004, the numbers of poor elderly minorities was substantially greater.<sup>26</sup> The number of poor elderly African Americans was 23.9%, the number of poor elderly Asians was 13.6%, and the number of

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20. *Id.* at 2.

21. *Id.*

22. *Id.* at 5.

23. Percentages of those living in nursing homes ranged from 1.1% for persons sixty-five to seventy-four years to 4.7% for persons 75-84 and 18.2% for persons 85+. Additionally, approximately 5% of the elderly lived in self-described senior housing. *Id.*

24. *Id.* at 11.

25. *Id.* (defining "near poor" as those elderly with income between the poverty level and 125% of the poverty level).

26. *Id.*

poor elderly Hispanics was 18.7%.<sup>27</sup> Additionally, the number of impoverished women, at 12%, was much higher than that of older men, at 7%.<sup>28</sup> Of particular importance is the fact that the oldest Americans have the most serious problems with poverty.<sup>29</sup> In fact, the poverty rate for the very old, those age eighty-five and older, is 18.4%, more than twice the 8.8% rate of persons age sixty-five to seventy-four.<sup>30</sup> Since women statistically lead longer lives, they are impacted by poverty the most.<sup>31</sup>

### *INCREASE IN GOVERNMENT SUPPORT*

In order to help deal with the financial and healthcare needs of the elderly, the United States government began adopting numerous assistance-based programs in the 1930s.<sup>32</sup> As part of the New Deal, the government enacted the Social Security Act of 1935 which provided monthly cash benefits to the elderly.<sup>33</sup> Other programs that soon followed included the Food Stamp program in 1961,<sup>34</sup> Medicare<sup>35</sup> and Medicaid in 1965,<sup>36</sup> Supplemental Security Income in 1972,<sup>37</sup> and Low Income Home Energy Assistance.<sup>38</sup> In addition to these federal programs, state governments also increased state welfare spending and created new programs to provide the indigent elderly with benefits, including property tax assistance or relief, free prescription drugs, and free transportation.<sup>39</sup> While not completely solving

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27. *Id.*

28. *Id.*

29. Terrance A. Kline, *A Rational Role for Filial Responsibility Laws in Modern Society?*, 26 FAM. L.Q. 195, 202 (1992).

30. *Id.*

31. A PROFILE OF OLDER AMERICANS: 2005, *supra* note 14, at 11.

32. Kline, *supra* note 29, at 199.

33. 42 U.S.C. § 401 (Westlaw current through Sept. 26, 2007).

34. 7 U.S.C. § 2011 (Westlaw current through Sept. 26, 2007).

35. 42 U.S.C. § 1394 (Westlaw current through Sept. 26, 2007).

36. 42 U.S.C. § 1396 (Westlaw current through Sept. 26, 2007).

37. 42 U.S.C. § 1382 (Westlaw current through Sept. 26, 2007).

38. 42 U.S.C. § 8621 (Westlaw current through Sept. 26, 2007).

39. *Id.*

the problem "[t]his rapid growth of state and federal programs for the elderly has reduced the financial burdens on children to assist their indigent parents."<sup>40</sup>

### TRACING FILIAL RESPONSIBILITY ACROSS TIME

Throughout the world there is general agreement that the needs of the older population are growing and that "the graying of these nations intersects with various social and economic factors to significantly impact the law."<sup>41</sup> The controversy revolves around what should be done to meet the needs of the older generation. One of the ideas that influenced several states in the United States and other nations of the world, that younger generations in a family owe a duty to care and comfort their older ancestors, has roots that extend far back into history.<sup>42</sup>

### HISTORY OF ELDER SUPPORT

The notion that adult children ought to be responsible to care for their parents existed long before states in the United States began enacting filial responsibility statutes. In fact, this duty can be traced back to early Roman law<sup>43</sup> and found in several religious scriptures.<sup>44</sup> Beyond basic moral duties, the three predominant world religions: Judaism, Christianity, and Islam obligate children to care, both legally and financially, for their parents.<sup>45</sup>

In Judaism, this duty of support can be found in several places. The New Revised Standard Version of Exodus 20:12 instructs Jews to "[h]onor your father and your mother, so that days may be long in the land that the Lord your God is giving

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40. *Id.*

41. Moskowitz, *supra* note 13, at 403.

42. *Id.* at 406.

43. Catherine Doscher Byrd, *Relative Responsibility Extended: Requirement of Adult Children to Pay for Their Indigent Parent's Medical Needs*, 22 FAM. L.Q. 87, 88 (1988).

44. Moskowitz, *supra* note 13, at 406.

45. *Id.*

you.”<sup>46</sup> Similarly the New Revised Standard Version of Leviticus 19:3 states, “[y]ou shall each revere your mother and father. . . .”<sup>47</sup> A Jewish medieval philosopher and theologian, Maimonides, further suggested that that the verse in Exodus 20:12 should be analogized to Proverbs 3:9, and the verse in Leviticus 19:3 should be analogized to Deuteronomy 6:13.<sup>48</sup> Through his comparison of these verses, Maimonides concludes that the obligation children owe to their parents is equal to the obligation to honor and revere God.<sup>49</sup>

Christians on the other hand are guided by the Christian Bible which supplemented the Fifth Commandment.<sup>50</sup> Not only do Christian verses oblige children to care for their parents,<sup>51</sup> but additionally the verses threaten that failure to provide such care will cause the children to incur the wrath of God.<sup>52</sup>

Similar to Judaism and Christianity, the Muslim faith incorporates:

[e]xhortations demanding strict adherence to Monotheism, the most fundamental tenant of Islam, in the Qur’an by stern warnings and directives that one must be extremely respectful, dutiful, and helpful to

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.* at 407.

51. “Thou oughtest to show thy honour to thy parents, by a willingness to help them with such necessities and accommodations which they need. ‘If any have children or nephews, let them learn to show piety at home, and to requite their parents:’ saith Paul, ‘for that is good and acceptable before God’ (1 Timothy 5:4). And this rule Joseph observed to his poor father, though he himself was next the king in Egypt (Genesis 47:12; 41:39-44).” John Bunyan, *Christian Behavior; Duties of Children to Parents*, ACACIA JOHN BUNYAN ONLINE LIBRARY (1674), <http://acacia.pair.com/Acacia.John.Bunyan/Sermons.Allegories/Christian.Behavior/8.html> (last visited Oct. 10, 2007).

52. “Thou hast also the severe judgments of God upon those that have been disobedient, to awe thee. As, (1.) Ishmael, for but mocking at one good carriage of his father and mother, was both thrust out of his father’s inheritance and the kingdom of heaven, and that with God’s approbation (Genesis 21:9-14; Galatians 4:30). (2.) Hophni and Phinehas, for refusing the good counsel of their father, provoked the great God to be their enemy: ‘They hearkened not unto the voice of their father, because the Lord would slay them’ (1 Samuel 2:23-25). (3.) Absalom was hanged, as I may say, by God himself, for rebelling against his father (2 Samuel 18:9).” *Id.*

one's father and mother both materially and otherwise, particularly if either of them is elderly."<sup>53</sup>

It specifically states:

Thy Lord decrees that ye worship none but him and be nice to the parents, if either or both of them become aged in my lifetime, say not a word of disrespect to them nor revile them; and speak to them kind words; behave with them with utmost humility and seek for them thy Lord's protection as they sought it for thee.<sup>54</sup>

Thus, all three major religions impose duties on younger generations and analogize the relationship between children and their parents to that of the individual's relationship with God.<sup>55</sup>

### *ELIZABETHAN POOR RELIEF ACT*

England's Elizabethan Poor Relief Act (Poor Act) of 1601 inspired the creation of filial responsibility statutes in the United States.<sup>56</sup> The Poor Act provided in part that "[t]he children of every poor, old, lame, and impotent person" was to support the "poor, old, lame, and impotent" person to the best of the children's abilities.<sup>57</sup> The law mandated that since parents and grandparents were required to support their children and grandchildren, these children owed a returning duty of care.<sup>58</sup> Under the Poor Act, however, this legal obligation of support did not require a son-in-law to support his mother-in-law, a brother to support another brother, or a grandchild to support his grandfather.<sup>59</sup> While the Elizabethan system only remained in England until the great reforms enacted after World War II, the Elizabethan ideas were transported across the ocean to the

53. Moskowitz, *supra* note 13, at 408.

54. *Id.*

55. *Id.* at 406.

56. Usha Narayanan, *The Government's Role in Fostering the Relationship Between Adult Children and Their Elder Parents: From Filial Responsibility Laws to... What?, A Cross-Cultural Perspective*, 4 *ELDER L.J.* 369, 373 (1996).

57. *Id.*

58. Moskowitz, *supra* note 13, at 421.

59. Wing-Cheong Chan, *The Duty to Support an Aged Parent in Singapore*, 13 *PAC. RIM L. & POL'Y J.* 547, 548 (2004).

American colonies and served as a prototype for their early welfare systems.<sup>60</sup>

### THE NAPOLEONIC CODE

In determining who amongst the younger generations in a family should be held responsible for the care of their elders, many countries in Europe followed the Napoleonic Code (Code).<sup>61</sup> Under the Code it is not only the direct descendents of the parent's blood-line that are responsible for their care, but also the sons and daughters-in-law.<sup>62</sup> The Code states that the maintenance these children must supply should be accorded only in proportion to the necessity of the parent who claims it, and to the fortune of the children owing the duty of care.<sup>63</sup> Additionally, the Code provides that discharges or reductions of this duty may be allowed when the children who owe the duty of care have nothing to give.<sup>64</sup>

### THE CONTINUING CONTROVERSY

As nations have recognized that the elderly population has needs that are not being met, there is controversy over the best way to meet these needs. In the mid-twentieth century Aristotle wrote of his belief that children owe a duty of support to their elder parents.<sup>65</sup>

It would seem that a son does not have the right to disown his father, whereas a father has the right to disown his son. A debtor must pay his debt, but nothing a son may have done (to repay his father) is a worthy return for everything his father has provided

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60. Moskowitz, *supra* note 13, at 422.

61. Chan, *supra* note 59, at 548.

62. *Id.*

63. NAPOLEONIC CODES, bk. 1, tit. V, ch. V, art. 208 (1803) (Fr.), available at [http://www.napoleon-series.org/research/government/code/book1/c\\_title05.html](http://www.napoleon-series.org/research/government/code/book1/c_title05.html).

64. *Id.* at art. 209.

65. Seymour Moskowitz, *Filial Responsibility Statutes: Legal and Policy Considerations*, 9 J.L. & POL'Y 709, 710 (2001).

for him, and therefore he will always be in his debt.<sup>66</sup>

There are many proponents of filial responsibility statutes who believe, as Aristotle did, that children owe a duty of care to their parents, with only rare exceptions.<sup>67</sup> They tend to offer three primary arguments in support of these laws.<sup>68</sup> First, the older population is increasing substantially, and their economic situation is getting worse.<sup>69</sup> Second, filial responsibility laws simply enforce contracts that are implicitly created when parents give birth to their children and support them during their youth.<sup>70</sup> Finally, supporters argue that because adult children do not take responsibility, society takes on the children's burden.<sup>71</sup>

Others such as John Locke disagreed with Aristotle and opposed the use of filial responsibility statutes as a means to address the needs of the elder population.<sup>72</sup> John Locke focused on the difference between the parents' decision to bring children into the world and the lack of choice children have in being born.<sup>73</sup> "Without an explicit and voluntary agreement on the part of children to be bound to parents after their majority, the former infants are at liberty to govern themselves and to unite with parents or others as they wish."<sup>74</sup>

Today, those that oppose filial responsibility statutes, as Locke did, tend to make five arguments.<sup>75</sup> Opponents first maintain that families voluntarily provide a great deal of support for their adult members.<sup>76</sup> Second, many opponents assert that the 'reciprocal contract' argument is overbroad because not all parents provide proper support for their

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66. ARISTOTLE, NICOMACHEAN ETHICS § 1163b, 244 (Martin Oswald ed. and trans., 1962).

67. Moskowitz, *supra* note 65, at 720.

68. *Id.*

69. *Id.*

70. *Id.* at 721.

71. *Id.* at 722.

72. *See id.* at 723.

73. *See id.*

74. JOHN LOCKE, SECOND TREATISE ON GOVERNMENT 119 (Gateway 1964) (1690).

75. *Id.* at 722-726.

76. *Id.* at 722.

children, and the legal duty to provide for parents would have no defined end.<sup>77</sup> Third, opponents contend that although not apparent on their faces, these filial responsibility statutes implicate important gender issues because women are typically the ones who are providing care for aging parents, while simultaneously caring for children and possibly working for income outside of the home.<sup>78</sup> Fourth, they argue that the statistical decrease in the number of children born to each family substantially increases the financial and emotional burden each of them must shoulder.<sup>79</sup> Opponents suggest that many parents would prefer to live in poverty than force assistance from children that do not have the means to provide for them financially.<sup>80</sup> The final argument is that imposing support obligations upon adult children for indigent elderly parents is a violation of Equal Protection.<sup>81</sup>

#### FILIAL RESPONSIBILITY RECOGNITION AROUND THE WORLD

Similar demographic trends to those in the United States exist in several nations in Europe, as well as Japan, China, and elsewhere.<sup>82</sup> In an attempt to cope with the problems arising from their rapidly expanding elderly population, many of these nations have chosen to enact filial responsibility statutes.<sup>83</sup> The modern state of Israel, for example, has a statute that requires children to support their parents if they are unable to support themselves.<sup>84</sup> Several other nations have gone so far as to incorporate the legal principal of filial responsibility into their constitutions.<sup>85</sup> Others, such as Singapore and Canada, have enacted laws that require children to help provide for the

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77. *Id.* at 723.

78. *Id.* at 724.

79. *Id.* at 725.

80. *Id.*

81. *Id.*

82. Moskowitz, *supra* note 13, at 402.

83. *Id.* at 403.

84. *Id.* at 406.

85. *Id.* at 403.

maintenance of their older parents.<sup>86</sup> Additionally, Poland adopted the Polish Family and Welfare Code, which has been in effect since January 1, 1965, and obliges children to support their parents.<sup>87</sup> Finally some states including Germany and Japan use positive programs and inheritance laws to promote filial responsibilities.<sup>88</sup>

### SINGAPORE

In Singapore, legislation originating from a Private Member's Bill in 1994 came into force in June 1996 and was named The Maintenance of Parents Act (MPA).<sup>89</sup> The first of two rights of action created by the MPA is a right of direct action by the parent claiming support from his or her children.<sup>90</sup> In the event that the parent is unable or unwilling to bring the action personally, provisions are made for other persons to act on the parent's behalf.<sup>91</sup> The second type of action allowed under the MPA is an indirect action by a third party, such as a nursing home or hospital, to claim reimbursement from a parent's children for expenses incurred in supporting the aged person.<sup>92</sup> For this action, only an approved person or organization in whose care a parent resides may apply.<sup>93</sup>

Similar to many state filial responsibility statutes in the United States, the MPA also provides that the maintenance a parent is entitled to from their children extends only as far as the degree of care that the parent provided for those children.<sup>94</sup> The

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86. *Id.* at 404.

87. Wanda Stojanowska, *Support Payments by Children to their Parents and Welfare Provisions in Poland*, in AN AGING WORLD 281 (John M. Eekelaar & David Pearl eds., 1989).

88. Moskowitz, *supra* note 13, at 404.

89. Locknie Hsu, *The Law and the Elderly in Singapore-The Law on Income and Maintenance for the Elderly*, SING. J. LEGAL STUD. 398, 414 (2003).

90. Maintenance of Parents Act, ch. 167B, § 3(1) (1997) (Sing.), available at <http://statutes.agc.gov.sg>.

91. *Id.* at §§ 11 & 12(2).

92. *Id.* at § 3(2).

93. *Id.*

94. *Id.* at § 5(3).

Tribunal in Singapore is required to consider several factors including: the financial needs of the applicant; the income, earning capacity, property of the children; the manner in which the children have spent their savings and resources; any physical or mental disability of the children; existing expenses of the children for other dependents; and contributions which the parent made for the maintenance of the children.<sup>95</sup>

#### CANADA

In 2001, 13% of the Canadian population was sixty-five years old or older.<sup>96</sup> Between 1922 and 1958, all Canadian provinces enacted and codified filial responsibility laws.<sup>97</sup> Although these statutes require parental support, they have chosen to use civil rather than criminal processes to enforce the laws.<sup>98</sup> While Ontario was the first province to enact such a law,<sup>99</sup> the remaining provinces quickly followed by enacting similar laws that oblige adult children to support those parents meeting certain need-based conditions.<sup>100</sup> These statutes differ, however, as to who is eligible for support, who can be required to pay support, what amount they may be required to pay, and whether third parties may bring a claim.<sup>101</sup> Factors that the Canadian courts consider when making filial responsibility determinations include whether the applicant has provided support for the defendant children, whether the parent provided care, and whether the applicant is in financial need.<sup>102</sup>

#### GERMANY

In Germany, the elderly population comprises 16.2% of the

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95. *Id.* at § 5(2).

96. Moskowitz, *supra* note 13, at 429.

97. *Id.*

98. *Id.* at 430.

99. *Id.* at 429.

100. *Id.* at 430.

101. *Id.*

102. *Id.*

population and is having a tremendous impact on Germany's existing social systems.<sup>103</sup> Unlike the United States, Germany created a public pension plan with the intention that it would serve as a near-total substitute for earnings for the nation's citizens upon retirement rather than simply a supplement to their private income.<sup>104</sup> Currently, public pensions are the main source of income for those in retirement and provide recipients with 70% of what they earned before retirement.<sup>105</sup> As the population expands, the amount that workers will have to contribute to the public pension plan increases.<sup>106</sup> In fact, because of the growth in the elderly population, workers will soon have to contribute 37% instead of the current 18.7% in order to keep benefits from being reduced by 50%.<sup>107</sup>

Additionally, Germany's Constitution incorporates the principal of "Subsidiarity," which "requires larger collectives to assume responsibility for tasks only when smaller units cannot perform them."<sup>108</sup> Thus, the primary responsibility for indigent parents lies on adult children and families, while the local state and federal governments are only secondarily responsible.<sup>109</sup> Germany's Civil Code additionally obligates relatives in the direct line of descent to care for one another.<sup>110</sup>

Finally, in the 1990s following an economic crisis, the German government created a new national health insurance law to encourage familial and community support of indigent elders in place of institutionalization.<sup>111</sup> Under this law, the government provides direct payments for community-based services and for family caregivers to provide in-home care.<sup>112</sup> While this law has been controversial, advocates argue that the

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103. *Id.* at 441.

104. *Id.* at 442.

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.* at 442-443.

109. *Id.* at 443.

110. *Id.*

111. *Id.* at 444.

112. *Id.*

law is socially positive because it strengthens emotional family bonds and addresses a distributive justice issue by paying women for work that was previously unrecognized and uncompensated.<sup>113</sup>

### JAPAN

Caring for aging parents has been a long-time family tradition in Japan.<sup>114</sup> Prior to World War II, the Meiji Civil Code specifically required adult children to care for their elder parents, even at the expense of their own family.<sup>115</sup> In 1948, Japan's Constitution eliminated the policy of favoring the elderly by making both generations responsible for each other.<sup>116</sup> In addition to the 1948 Constitution, Article 877 of the Japanese Civil Code<sup>117</sup> and the Law for the Welfare of Elderly Persons<sup>118</sup> require parents and children to support and care for one another.<sup>119</sup>

Currently however, the population in Japan has the highest life expectancy in the world and is aging faster than any other industrialized country.<sup>120</sup> Thus despite the laws designed to help ensure support, traditional support that once was guaranteed is no longer assured today.<sup>121</sup> Unlike the United States, the Japanese have chosen to use government policies and non-coercive methods to affirmatively support adult children who care for their elder parents.<sup>122</sup> Some of the national policies adopted include tax deductions or exemptions, institutional

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113. *Id.* at 445.

114. Narayanan, *supra* note 56, at 389.

115. Moskowitz, *supra* note 13, at 440.

116. *Id.*

117. Erin E. Lynch, *Late-Life Crisis: A Comparative Analysis of the Social Insurance Schemes for Retirees of Japan, Germany, and the United States*, 14 COMP. LAB. L.J. 339, 344-45 (1993).

118. Narayanan, *supra* note 56, at 390.

119. Moskowitz, *supra* note 13, at 440.

120. Lynch, *supra* note 118, at 342.

121. Moskowitz, *supra* note 13, at 439.

122. Lynch, *supra* note 118, at 345.

care, and support for institutions interacting with families.<sup>123</sup>

Japan has also created "Japan Efficiencies," or rental families that provide a surrogate son, daughter-in-law, and a grandchild who spend several hours with elders whose biological children have moved away or are too busy to visit.<sup>124</sup> In addition, a new pension plan has been suggested for women to help alleviate the pressure on them to leave work to care for their children or elders, and new jobs have been created to accommodate older citizens with declining abilities.<sup>125</sup>

### FILIAL RESPONSIBILITY IN THE UNITED STATES

Many people began to question the need for filial responsibility laws in the United States following the establishment of the federal Medicare and Medicaid programs, along with other federal programs providing assistance to the elderly.<sup>126</sup> In fact, shortly after these programs were created, several states repealed or amended their filial responsibility statutes either to limit their applicability in order to conform to federal Medicaid regulations, or to avoid the loss of federal Medicaid funds altogether.<sup>127</sup> Still other states chose to leave the statutes as they were when they were created.<sup>128</sup> When the issue of what to do with California's filial responsibility statute was brought before the California supreme court, the court upheld the state's filial responsibility statute.<sup>129</sup> In *Swoap v. Superior Court*, the court observed that a "long tradition of law, not to mention a measureless history of societal customs, has singled out adult children to bear the burden of supporting their poor parents, [and][t]his duty existed prior to, and independent of, any duties arising out of the state assistance to the aged."<sup>130</sup>

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123. Narayanan, *supra* note 56, at 392.

124. Moskowitz, *supra* note 13, at 394.

125. *Id.* at 394-95.

126. Kline, *supra* note 29, at 200.

127. *Id.*

128. Moskowitz, *supra* note 13, at 428.

129. *Id.*

130. 516 P.2d 840, 849 (Cal. 1973).

Currently, filial responsibility statutes exist in thirty states in the United States.<sup>131</sup> Twenty-one states have civil filial responsibility statutes.<sup>132</sup> Standing to bring a civil action under any of these statutes varies greatly by state. In California, Indiana, and Pennsylvania, indigent parents can bring civil claims.<sup>133</sup> California, along with a several other states, also allow public bodies or agencies to bring civil claims.<sup>134</sup> Connecticut and New Jersey have granted standing to welfare authorities, while in states such as North Carolina creditors furnishing the indigent parents with necessities have standing in civil courts.<sup>135</sup>

Twelve states currently impose a criminal penalty on those convicted of failure to support an indigent parent.<sup>136</sup> In Rhode Island, Kentucky, and Maryland, and adult child's failure to support their indigent parent when they are financially able to

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131. Matthew Pakula, *A Federal Filial Responsibility Statute: A Uniform Tool to Help Combat the Wave of Indigent Elderly*, 39 FAM. L.Q. 859, 860 (2005).

132. *Id.* at 863. These states include Alaska (*see* ALASKA STAT. §§ 25.20.030 (2006)); Arkansas (*see* ARK. CODE ANN. § 20-47-106 (2001 & Supp. 2007)); California (*see* CAL. FAM. CODE §§ 4400, 4401, 4403, 4410-14 (West 2007), and CAL. WELF. & INST. CODE § 12350 (West 2007)); Connecticut (*see* CONN. GEN. STAT. ANN. § 46b-215 (West 2007)); Delaware (*see* DEL. CODE ANN. tit. 13, § 503 (1999 & Supp. 2006)); Georgia (*see* GA. CODE ANN. § 36-12-3 (2006)); Idaho (*see* IDAHO CODE § 32-1008A (2007)); Indiana (*see* IND. CODE ANN. §§ 31-16-17-1 (LexisNexis 2003)); Mississippi (*see* MISS. CODE ANN. § 43-31-25 (2004 & Supp. 2007)); Montana (*see* MONT. CODE ANN. § 40-6-214 (2007)); Nevada (*see* NEV. REV. STAT. § 428.070 (2006)); New Hampshire (*see* N.H. REV. STAT. ANN. § 167:2 (2002 & Supp. 2006)); North Dakota (*see* N.D. CENT. CODE § 14-09-10 (2007)); Oregon (*see* OR. REV. STAT. § 109.010 (2005)); Pennsylvania (*see* PA. STAT. ANN. § 1973 (West 2007)); South Dakota (*see* S.D. CODIFIED LAWS § 25-7-27 & 28 (2007)); Tennessee (*see* TENN. CODE ANN. § 71-5-115; § 71-5-103 (2004)); Utah (*see* UTAH CODE ANN. § 17-14-2 (2005)); West Virginia (*see* W. VA. CODE ANN. § 9-5-9 (LexisNexis 2003)).

133. Pakula, *supra* note 131, at 863.

134. *Id.* at 864.

135. *Id.* at 863.

136. *Id.* at 864 (citing Moskowitz, *supra* note 65, at 717). *See* California (*see* CAL. PENAL CODE § 270C (West 1999)); Connecticut (*see* CONN. GEN. STAT. ANN. § 53a- 4 (West 2007)); Indiana (*see* IND. CODE ANN. §35- 46-1-7 (LexisNexis 2004)); Kentucky (*see* KY. REV. STAT. ANN. § 530.050 (LexisNexis 2007)); Maryland (*see* MD. CODE, FAM. LAW §§ 13-101, 13-102, 13-103 (LexisNexis 2006)); Massachusetts (*see* MASS. GEN. LAWS ch. 273, § 20 (West 2000)); Montana (*see* MONT. CODE ANN. § 40- 6-301 (2007)); North Carolina (*see* N.C. GEN. STAT. § 14-326.1 (2005)); Ohio (*see* OHIO REV. CODE § 2919.21 (LexisNexis 2003)); Rhode Island (*see* R.I. GEN. LAWS §§ 15-1- 1, 15-10-7 (2006), R.I. GEN. LAWS §§ 40-5-13 (2006)); Vermont (*see* VT. STAT. ANN. tit. 15, §§ 202, 203 (2006)); Virginia (*see* VA. CODE ANN. § 20- 88 (2007)).

do so constitutes a misdemeanor.<sup>137</sup> Kentucky and Rhode Island increase the penalty if the adult children are convicted of a flagrant violation of the law.<sup>138</sup> While many states allow the public prosecutor to bring these criminal actions,<sup>139</sup> some states allow the court itself to be the initiator.<sup>140</sup> Because imposing a financial penalty on those convicted of these crimes can inhibit the ability of adult children to support their indigent parents, many legislatures have sought to enforce violations under these statutes with liberty penalties instead of financial penalties.<sup>141</sup>

Although the filial responsibility laws are different in each state, they all generally impose upon able children the obligation to provide necessities for an indigent parent, requiring the courts to balance [the children's ability to pay against a parent's needs].<sup>142</sup> However, in order for these statutes to apply, a parent must first qualify as indigent under the terms of the statute, and the children must have sufficient income and assets to be able to support their indigent parent.<sup>143</sup> Courts, such as that in *Commonwealth ex rel Goldman v. Goldman*, have held specifically that where adult children can only afford to support their spouse and children, the spouse and children are their primary responsibilities.<sup>144</sup> In these cases, the courts have declined to impose a duty on children to support their indigent parents.<sup>145</sup>

Each of these statutes provides different specific obligations on adult children regarding care for their indigent parents. In Maryland, the adult children are required to provide support including "food, shelter, care, and clothing."<sup>146</sup> By comparison, Indiana's statute requires support for "food, clothing, shelter

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137. Pakula, *supra* note 131, at 863.

138. *Id.*

139. Moskowitz, *supra* note 65, at 717.

140. *Id.*

141. Pakula, *supra* note 131, at 864.

142. Kline, *supra* note 29, at 201.

143. *Id.*

144. 119 A.2d 631, 633 (Pa. Super. 1956).

145. Kline, *supra* note 29, at 201.

146. *Id.* (citing MD. CODE ANN., FAM. LAW § 13-102 (1991)).

and medical attention,"<sup>147</sup> while Louisiana's statute limits support requirements to "life's basic necessities of food, clothing, shelter, and health care."<sup>148</sup>

Many state statutes also provide different definitions for "indigent," "poor," or "pauper." In most states "[i]ndigence has not been limited to persons who are completely destitute and helpless, but includes those with limited means that are not sufficient to adequately provide for their maintenance and support."<sup>149</sup> The New Jersey Superior Court addressed this issue in the matter of *Pavlick v. Teresinski*, where a mother sought support from her two sons even though she had a house and furniture.<sup>150</sup> Interpreting the state's filial responsibility statute, the court held that because the mother would become a public charge if she did not receive the amount she was seeking from her sons, she qualified as a poor person within the statute.<sup>151</sup> The Superior Court in Pennsylvania came to a similar decision in *Savoy v. Savoy* where an elderly parent whose monthly income from Social Security was insufficient to cover the costs of reasonable care and maintenance expenses.<sup>152</sup> The court held the woman qualified as indigent and her relatives were therefore liable for her support.<sup>153</sup>

If under such schemes adult children are found to have sufficient finances to support an indigent parent, it is then up to the courts to determine the amount of support.<sup>154</sup> When determining whether adult children have the financial ability to pay, courts have considered various factors including "a consideration of the actual income, the property, assets and earning ability, as well as other attendant circumstances."<sup>155</sup>

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147. IND. CODE ANN. §31-2-9-1 (Burns 1987), rev. § 31-16-17-1 (LexisNexis 2003).

148. LA. CIV. CODE ANN. art. 229 (1973 & Supp. 1991)).

149. Pakula, *supra* note 132, at 863.

150. 149 A.2d 300 (N.J. Super. Ct. 1959).

151. *Pavlick*, 149 A. 2d at 302.

152. 641 A.2d 596 (Pa. Super. Ct 1994).

153. *Id.*

154. Kline, *supra* note 29, at 201.

155. Commonwealth *ex rel.* Goldman, 119 A.2d 631 at 633 (citing *Dauidsen v. Dauidsen*, 103 A. 2d 296, 298 (Pa. Super. 1954)).

## CONCLUSION

It is clear that continuing population expansion means continuing growth of the older population throughout the world. While the United States has instituted several programs to help alleviate the problems of poverty and lack of health care faced by that population, the problem continues to grow. Despite oppositional arguments posited against filial responsibility statutes, the fact is that millions of the elderly are poor, and millions more are suffering under intolerable conditions.<sup>156</sup> Aside from poverty, other issues that require significant consideration including recognition that different groups in the population have different needs and require different responses<sup>157</sup> and further governmental aid is lacking due to increasing federal budget constraints.<sup>158</sup>

As the problem continues to worsen, several different solutions have been suggested. Some look to the success of other nations in meeting the needs of their aging populations, and believe that when effectively enforced, filial responsibility laws achieve the desirable public policy objective of ensuring that the indigent elderly have at least a minimal standard of living if their children are able to provide support.<sup>159</sup>

Additional benefits of these laws include a potential reduction in government expenditures and a strengthening of family ties. Another suggestion posits that more federal and state tax deductions for payments made to support elderly parents would decrease the burden upon the 'sandwich generation'.<sup>160</sup> Along with these deductions, low interest loan programs, such as those provided in Germany and Japan, for those children caring for their parents and a universal coverage of basic medical services could go a long way to eradicating

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156. Kline, *supra* note 29, at 203 (citing Families, USA Foundation, *The Elderly are Poor*, THE ELDERLY: OPPOSING VIEWPOINTS 65, 66 (Karin Swisher, ed., 1990)).

157. Moskowitz, *supra* note 65, at 729.

158. Kline, *supra* note 29, at 203.

159. *Id.*

160. Moskowitz, *supra* note 65, at 730.

elder poverty and problems in health care.<sup>161</sup> Finally, some suggest that having a federal filial responsibility statute would be much more effective than letting states create and enforce their own.<sup>162</sup> Whichever path is chosen, it is clear that what we have now is not enough.

While government requirements for support would help alleviate the needs of impoverished elderly, the reality that the United States is founded in large part on the right of individuals to choose stands in clear opposition. Thus, effective enforcement of the filial responsibility statutes that currently exist in many states in the United States, while helping achieve the public policy objective of ensuring a minimum standard of living for the indigent elderly, ignores oppositional arguments that such requirements violate equal protection. Similarly, a federal filial responsibility statute, while synchronizing currently distinct state law and providing a single, more easily enforceable statute to work from, imposes an obligation on adult children without allowing them to have the element of choice their parents had in giving birth to them.

Perhaps the best answer is to create a system in the United States, similar to that in Japan, which uses positive programs and incentives including tax deductions or exemptions, institutional care, and support for institutions interacting with families to encourage familial support.<sup>163</sup> By providing tax reductions for those that voluntarily accept the responsibilities of caring for their parents, the government could encourage the adoption of such responsibilities by children without forcibly infringing on their right to choose or their right to equal protection. As opponents of filial responsibility statutes further suggest, many adult children who received parental support throughout their childhood will be naturally inclined to step up and offer similar supportive assistance to their parents later in their lives.

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161. *Id.*

162. Pakula, *supra* note 132, at 871.

163. Narayanan, *supra* note 56, at 392.

By providing adult children with the option to provide support for their parents, women, as the traditional caretakers, would not be forcibly overburdened. The amount of the tax benefits could be based on the percentage of care adult children provide compared to the total cost of the parents' care. Using such a formula would further help compensate adult children with few or no siblings facing a much greater financial and emotional burden in caring for their parents.

By proportioning the benefit received by such participating adult children to the support provided by them to their parents, adult children's contributions could be recognized. Ideally, such a program would be enticing enough to draw the participation of large numbers of adult children resulting in the alleviation of some of the burden placed on society as a whole for the indigent elderly and helping to build a secular tradition of child-parent support.