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Article

Parental Support of Adult Children with Disabilities

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† Clinical Professor, Loyola Law School. I would like to thank Professor Theodore Seto for his encouragement. Also, I would like to thank Loyola Law School for its generous support and the many research assistants, particularly Heather M. Shearer, who helped with this Article. Finally, I would like to express my admiration for the wonderful editing process by the Minnesota Law Review, led by Megan Healy. Of course, any errors are mine alone. Copyright © 2007 by Sande L. Buhai.

It is generally agreed that parents should (morally) and must (legally) support their children until they reach the age of majority. But, in what circumstances must parents support their children thereafter? This question becomes further complicated when the children are—or become—disabled. Are parents indefinitely obligated to provide financial support for their disabled children? If so, is this a purely moral duty or should it be legally enforceable as well? This Article examines these questions and posits an answer.

Consider two scenarios. In the first, a nineteen-year-old boy suffers injuries in a plane crash on his way home for Christmas. He is left a quadriplegic and is unable to support himself for the rest of his life. In the second, doctors diagnose a fifty-five-year-old woman as manic depressive, a condition that similarly incapacitates her for an indefinite period. Someone must care for these individuals. The most likely candidates are their parents or the State. Which individuals or institutions, however, must ultimately take responsibility? Should the answer depend on the nature of the disability or on whether the disability developed prior to the age of majority?

A recent California case pointedly raised these issues. David Culp, a fifty-year-old Stanford Law School graduate who practiced family law for nineteen years, filed suit against his parents. Culp claimed to suffer from depression and bipolar disorder, conditions which made him incapable of supporting himself.[1] Section 3910(a) of the California Family Code states that "the father and mother have an equal responsibility to maintain, to the extent of their ability, a child of whatever age

1. *See* Petition to Enforce Parental Duty to Support Adult Indigent Child, Culp v. Culp, D279304, (Ventura Super. Ct. Dec. 29, 2000).

who is incapacitated from earning a living and without sufficient means."[2] Concluding that Culp was in fact disabled and incapable of supporting himself, the California Superior Court ordered Culp's parents, James and Bertha Culp, to pay their son $3,500 a month indefinitely for living expenses.[3]

The decision astounds many parents, who are stunned by the possibility that they might have to support their adult children indefinitely.[4] One family law expert referred to the court's holding as a "landmark decision."[5] Clearly, the *Culp* decision raises difficult issues. We naturally expect parents to care for their minor children until they are able to care for themselves. However, our reactions may change when the state forces parents to pay cash to apparently estranged adult children who become disabled in middle age.

In Part I, I explore the historical background of legally mandated parental duties to adult disabled children. Part II surveys the positions of the fifty states with regard to whether and in what circumstances parents should be required to support their adult children with disabilities. Parts III and IV then turn to normative questions. Part III explores the moral dimensions of the problem: from a religious or philosophical perspective, should parents support their adult children with disabilities indefinitely? I argue that although a parental moral duty often exists, society shares this duty, and therefore it is not absolute. The many difficult and personal considerations to which this duty is subject complicate the decision whether to support a disabled child. Part IV explores the problem from a normative legal perspective: should courts recognize a legally enforceable requirement that parents support their adult children with disabilities indefinitely regardless of the type of disability, the age of onset, or the family relationship? Section IV considers several theoretical and practical justifications that weigh heavily against the imposition of such a legal duty. For

2. CAL. FAM. CODE § 3910 (West 2004).

3. *See* Petition to Enforce Parental Duty to Support Adult Indigent Child, *supra* note 1, at 2.

4. *See* Leslie Parrilla, *Judge Orders Parents to Support 50-year-old Son*, VENTURA COUNTY STAR, Aug. 3, 2001, at B01. Even David Culp's own lawyer, Jeff Jennings, stated, "[E]very parent I talk to gets shivers when they hear about it." *Id.*

5. *See* Robert J. Meadows, Editorial, *Court Role Expanded*, VENTURA COUNTY STAR, Aug. 19, 2001, at B10 (stating that the decision sets a "dangerous precedent" that "expands the court's role in dictating parental care obligations for adult children").

the foregoing reasons, I argue that the law should not impose an unqualified legally enforceable parental duty to support adult disabled children.

I. HISTORICAL BACKGROUND

A. PARENTAL DUTIES TOWARD CHILDREN

Prior to the Poor Relief Act of 1601, the common law did not address whether parents had a legally enforceable duty to provide support for their children, even when their children were minors. The family was a single unit, with all income and property vested in the husband. Since neither the wife nor the children had any ownership rights, they were entitled only to that which the husband provided them at his uncontrolled discretion.[6] A legal guarantee of parental support was deemed unnecessary since the law presumed that parents regarded their children with the highest possible degree of affection.[7] Furthermore, since society expected children to work, as Blackstone reasoned, "the policy of our laws which are ever watchful to promote industry, did not mean to compel a father to maintain his idle and lazy children in ease and indolence . . . ."[8]

In England, the Poor Relief Act of 1601 revised the common law to deter individual reliance on various forms of public assistance.[9] Although these so-called Poor Laws established limited and localized forms of public aid, the theory underlying the laws was that poverty was an individual problem, not a social or economic one.[10] All able-bodied poor adults and children

6. *See* 1 HOMER H. CLARK, JR., THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES 498–501 (2d ed. 1987).

7. 1 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 435 (Univ. of Chi. Press 1979) (1765) ("By begetting them, therefore they have entered into a voluntary obligation . . . that the life which they have bestowed shall be supported and preserved.").

8. *See id.* at 437; Drew D. Hansen, *The American Invention of Child Support: Dependency and Punishment in Early Child Support Law*, 108 YALE L.J. 1123, 1145–46 (1999) (stating that children were expected to work so they would not be poor).

9. *See* Marsha Garrison, *Anatomy or Community? An Evaluation of Two Models of Parental Obligation*, 86 CAL. L. REV. 41, 49 (1998).

10. *See* William P. Quigley, *Backwards into the Future: How Welfare Changes in the Millenium* [sic] *Resemble English Poor Law of the Middle Ages*, 9 STAN. L. & POL'Y REV. 101, 103 (1998). The poor were generally divided into two categories, the aged and impotent poor, who were seen as "worthy" and deserving of help, and the able-bodied poor, who were unworthy of help and punished if they refused to work. *Id.*

over the age of five had a duty to work.[11] The state removed destitute children from their homes and apprenticed them if their parents could not maintain them.[12] Most importantly for purposes of this Article, the Elizabethan Poor Laws imposed the first statutory child support obligations, allowing local parishes and other sources of community support to recover from fathers the costs of providing aid to destitute single mothers and their children.[13]

The system in colonial America addressed the poor individually, often by sheltering them in private homes.[14] A parent's duty to support his children received little formal attention prior to the 1800s.[15] Until then, "children were seen as small adults, valued mainly for their ability to contribute to the household economy."[16] Attitudes toward child labor stiffened in the nineteenth century, as the "view of children as economic assets began to give way to a more romantic, idealized view of childhood among the middle and upper classes."[17]

As the American economy shifted from agriculture to industry, social changes threatened to overwhelm the colonial relief system.[18] With population increases and urban growth, a new class of mobile laborers highly vulnerable to cyclical depressions emerged.[19] In addition, desertion became a widespread problem, as men who abandoned their families could relocate and find work in relative anonymity.[20] Relaxation of

11. *See id.* at 103–04.

12. *See id.* at 105 ("Children under fourteen years of age, and above five, that live in idleness, and be taken [to] begging, may be put to service by the governors of cities, towns [and] to husbandry, or other crafts or labours.").

13. *See* Garrison, *supra* note 9, at 48.

14. Shannon Bettis Nakabayashi, *A "Dual System" of Family Law Revisited: Current Inequities in California's Child Support Law*, 35 U.S.F. L. REV. 593, 597 (2001). ("Puritan Calvinism considered economic rewards to be a sign of predestined grace, and class hierarchies provided an opportunity for the well-to-do to serve society and God by caring for those with less.").

15. *Id.* at 598.

16. *See* Hansen, *supra* note 8, at 1129.

17. *Id.* The fact that fourteen states passed child labor restrictions between the late 1830s and 1850s demonstrates growing social disdain for child labor. *Id.* at 1130. Indeed, "between the 1820s and the 1840s, most middle-class families withdrew their children from the labor force and kept them in schools, even though most children from working-class families still needed to work to supplement their families' income." *Id.*

18. *Id.* at 1132–33.

19. *See id.* at 1133.

20. *See id.* at 1131–32.

divorce laws also led to a steady increase in the divorce rate, leaving newly divorced mothers to fall into poverty.[21]

With the increasing number of single mothers and children in need, courts began to challenge common law tradition, finding an affirmative legal duty that parents keep their children "off public assistance."[22] In *Stanton v. Wilson*, one of America's earliest child support cases, the court imposed a duty on a father to support his children after divorce, and held further that that duty did not cease by virtue of his former wife's remarriage.[23] In another early decision, *Van Valkinburgh v. Watson*, the court stated:

> [a] parent is under a natural obligation to furnish necessaries for his infant children; and if the parents neglect that duty, any other person who supplies such necessaries is deemed to have conferred a benefit on the delinquent parent, for which the law raises an implied promise to pay on the part of the parent.[24]

Stanton and *Van Valkinburgh* thereby began to delineate factual situations in which courts would recognize child support obligations.[25]

The Elizabethan Poor Laws provided the foundation necessary to craft new U.S. desertion and nonsupport laws in the 1870s and 1880s.[26] By 1886, eleven states had created a criminal offense for a father to abandon or refuse to support his minor children.[27] These statutes sought to address a social problem—the poverty plaguing single mothers and their children—while simultaneously limiting public welfare expenses.[28] Ultimately, state legislatures used these statutes to articulate their

21. *See id.* at 1137.

22. *See id.* at 1142.

23. 3 Day 37, 56 (Conn. 1808) (holding that Eunice Stanton could recover from her ex-husband, the father of her three children, after her second husband died); *see id.* ("By the divorce the relation of husband and wife was destroyed; but not the relation between [the husband] and his children. His duty and liability, as to them, remained the same . . . .").

24. 13 Johns. Ch. 480, 480 (N.Y. Ch. 1816). The court held that a father had no duty to reimburse a shopkeeper for a coat which his son purchased using his father's credit and without his permission. *Id.* The father had not neglected his duties to provide "necessaries" for his son. *Id.* Therefore, the shopkeeper had extended credit at his own peril. *Id.*

25. *See* Hansen, *supra* note 8, at 1136.

26. *See id.* at 1147.

27. *See id.*

28. *See id.* at 1135.

strong desire to prevent women and children's dependency on the welfare state.[29]

B. CHILDREN DISABLED BEFORE REACHING THE AGE OF MAJORITY

English common law placed no duty on parents to provide continuing support to their adult children, regardless of disability. Blackstone, however, argued that "no person is bound to provide [a] maintenance for his issue," "unless where the children are impotent, either through infancy, disease or accident."[30] The Elizabethan Poor Laws reflected his views, obligating families to accept responsibility for their disabled relatives for three generations.[31]

Although historically most states did not require parents to provide for their disabled children into adulthood, some jurisdictions began to recognize such a duty in the early twentieth century.[32] In *Crain v. Mallone*, the court reasoned that since an adult disabled child was as helpless and dependent upon his parents as an infant, his parents had an obligation to continue providing for his care.[33] In subsequent decisions, courts invoked natural law to designate parents as best suited to maintain the "wants and weaknesses" of their children.[34]

Courts relied on statutes criminalizing a parent's failure to support his child to extend a parent's duty beyond the disabled

29. *See id.* at 1148–49.

30. Stanton v. Wilson, 3 Day 37, 58 (Conn. 1808) (quoting 1 BLACKSTONE, *supra* note 7, at 437).

31. *See* Quigley, *supra* note 10 ("'[T]he father and grandfather, and the mother and grandmother, and the children of every poor, old, blind, lame and impotent person, or other poor person not able to work . . . [were to] relieve and maintain' their relatives." (quoting Relief of the Poor Act, 1601, 43 Eliz., c. 2, § 7 (Eng.), *reprinted in* 7 Stat. 30 (1762)) (alteration in original)).

32. *See* Amy P. Hauser, Note, *Child Custody for Disabled Adults: What Kentucky Families Need*, 91 KY. L.J. 667, 669 (2002); Noralyn O. Harlow, Annotation, *Postmajority Disability as Reviving Parental Duty to Support Child*, 48 A.L.R. 4th 919 *passim* (2003).

33. 113 S.W. 67 (Ky. 1908); *see also id.* at 68 ("[W]e see no difference in principle between the duty imposed upon the parent to support the infant and the obligation to care for the adult, who is equally, if not more, dependant upon the parent.").

34. *See* Hauser, *supra* note 32, at 670 ("[T]he wants and weaknesses of children render it necessary that some person maintains them, and the voice of nature has pointed out the parent as the most fit and proper person." (quoting 2 JAMES KENT, COMMENTARIES ON AMERICAN LAW 190 (13th ed. 1884))).

child's minority.[35] Under these statutes, courts generally measured the duty of continuing support by assessing each party's financial conditions.[36] If a child was totally without resources, the parents' obligation to provide support depended upon their own financial circumstances.[37] Courts expected parents to contribute only the amount necessary to keep the child from destitution and excused from their legal duty parents who did not have the ability to pay.[38]

In the absence of statutory support, courts found a continuing duty of parental support in case law.[39] In *Borchert v. Borchert*, the court noted this trend, observing that "[t]he doctrine of liability in a father to support an incapacitated adult child seems to have permeated the courts of this country, in many cases without any statutory enactment to support it."[40] To find such a duty, courts often employed statutes applicable to minor children under the theory that continuing disability prevented the child from becoming emancipated and that the disabled adult therefore remained a child in the eyes of the law.[41]

C. CHILDREN DISABLED POST MAJORITY

Courts split on the question of whether a parent was obligated to support an adult disabled child if the disability arose after he or she reached the legal age of emancipation. In *Kruvant v. Kruvant*, for example, the court noted that "[n]ormal instincts of humanity and plain common sense" dictated an obligation of parental support, which should continue until the need terminated.[42] The *Kruvant* court then concluded that this

35. *See id.* at 669–70.

36. *See* Harlow, *supra* note 32, at 922.

37. *See id.* (citing Anderson v. Anderson, 124 Cal. 48, 56 (1899)).

38. *See id.*

39. *See* Hauser, *supra* note 32, at 670 (noting that it became a "trend" for courts to find a parental duty to adult disabled children).

40. 45 A.2d 463, 465 (Md. 1946) ("The obligation is set out in a great many cases . . . . In some cases the basis of the liability is lack of emancipation. In others it is stated to be the moral duty and it is indicated that the legal duty follows the moral duty . . . . [I]n view of the many decisions so holding . . . there is now a tendency in this country . . . to recognize a duty imposed upon a parent to support his incapacitated child."), *superseded by statute*, MD. CODE ANN., FAM. LAW § 13-101 (West 2006), *as recognized in* Freeburger v. Bichell, 763 A.2d 1226 (2000).

41. *See* Harlow, *supra* note 32, at 921 (citing Plaster v. Plaster, 47 Ill. 290 (1868)).

42. 241 A.2d 259 (N.J. 1968); *see also id.* at 265–66 (holding that a father did not have a duty to provide continuing support for his son, who after reach-

duty did not extend to children who were not disabled or were capable of supporting themselves at the time they reached majority.[43] In *Mount Pleasant v. Wilcox*, the court similarly held that a father's legal duty to support his daughter ended once she reached the age of majority without disability and that a subsequent change in her condition did not restore his duty.[44]

Other courts, however, concluded that parents were morally and therefore legally obligated to support such children. In *Burrill v. Sermini*, for example, the court held a father liable to the state for support of his daughter, who was committed to a mental hospital as an adult.[45] The court held that a poor law statute, applying to "kindred bound by law," obliged the father to provide support, even though his daughter was a married adult at the time her disability arose.[46] Similarly, in *Commonwealth ex rel. O'Malley v. O'Malley*, the Court held that a general child support statute that did not distinguish between disabled adult or minor children applied to a parent whose child became disabled after reaching majority.[47]

D. RECENT HISTORY

In 1966, New York became one of the first states to repeal its statute imposing parental liability for support of disabled individuals over the age of majority.[48] The change reflected an emerging recognition of a more generalized interdependence among society's members.[49] In the late 1960s through the

ing majority had his own apartment, traveled to Europe, and held at least two jobs before developing a mental disability).

43. *Id.*

44. 2 Pa. D. 628 (D. & C. 1893) (holding that a father was not liable to support his adult daughter who suffered a mental breakdown); *see also* Harlow, *supra* note 32, at 926 (citing *Wilcox*).

45. 118 N.E. 331, 332 (Mass. 1918).

46. *See id.* ("It is not probable that the legislature intended the liability of parents should terminate on the marriage of their children when they were made liable for the support of the grandchildren.").

47. 161 A. 883, 884–85 (Pa. Super. Ct. 1932) ("The presumption undoubtedly is that when the child comes of age, the reciprocal duties between father and child are at an end, but such presumption is overcome where conditions show that either party is incapable of self-support.").

48. *See* Julianne Sartain, *Probate Code Section 15306: Discretionary Trusts as a Financial Solution for the Disabled*, 37 UCLA L. REV. 595, 606 (1990) (referring to a California statute imposing familial liability for the support of the adult disabled as being an "especially outdated notion of financial responsibility").

49. *See id.* at 606–07 ("These far reaching limitations on the financial responsibility of relatives for support of the needy will lift an often heavy burden

1970s, Congress also began to recognize the right of disabled citizens to participate in society and passed federal legislation that mobilized social, as opposed to familial, resources to effectuate that right.[50] The United Nations even declared 1983 through 1992 the "Decade of Disabled Persons."[51]

This apparent commitment to the societal care and protection for the disabled, however, did not fully displace prior notions of familial responsibility. More recently, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) mandated "sweeping changes in several of the laws regulating the poor,"[52] aimed in part at reducing societal responsibility for supporting dependent children.[53] Reminiscent of the Elizabethan Poor Laws, PRWORA reform left government responsibility for the poor at the local level and reintro-

on those obligated to pay for assistance under existing State laws. Experience has shown that the financial responsibility of a broad class of relatives, imposed by statute, is more often a destructive rather than cohesive, factor in family unity." (citing Jones v. Jones, 51 Misc. 2d 610, 613 (N.Y. Fam. Ct. 1966))).

50. *See* Charles D. Siegal, *Fifty Years of Disability Law: The Relevance of the Universal Declaration*, 5 ILSA J. INT'L & COMP. L. 267, 271 (1999) (discussing the following three acts at the national level: "(1) The Architectural Barriers Act of 1968: Requires new federal buildings and those constructed with federal funds to be accessible; (2) Rehabilitation Act of 1973: Makes it illegal to discriminate on the basis of disability in any US government-funded program or activity; and (3) Education of All Handicapped Children Act of 1975" (citation omitted)).

51. *See id.* at 272–73 ("¶ D. 1983–1992: United Nations Decade of Disabled Persons. The United Nations began a significant effort directed to a range of projects involving disabilities. It culminated in several significant documents in the area; ¶ E. 1984: Special Rapporteur for Human Rights and Disability; ¶ F. 1987: United Nations rejected proposed Convention on the Elimination of All Forms of Discrimination Against Disabled Persons; ¶ G. 1989: Convention on the Rights of the Child; ¶ H. 1989: Tallinn Guidelines for Action on Human Resources Development in the Field of Disability were set into place as well; and ¶ I. 1991: General Assembly adopted the Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care." (citation omitted)).

52. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 111 Stat. 2105 (codified as amended in 42 U.S.C. (West 1997)); *see* Quigley, *supra* note 10, at 101–02.

53. Personal Responsibility and Work Opportunity Reconciliation Act; *see also* Hansen, *supra* note 8, at 1123 (demonstrating bipartisan support for the PRWORA, stating, "Representative Jennifer Dunn pointed out that nonpayment of child support was a major cause of welfare dependency" and asking, "What happens when that money is not paid? The children and the mother go on welfare. And so the taxpayer becomes in effect the parent of those children" (quoting *The Welfare Bill: The Republicans' View*, N.Y. TIMES, Aug. 1, 1996, at A25)).

duced the concept of multi-generational family responsibility.[54] Because society viewed non-payment of child support as a major cause of welfare dependency, states strengthened child support enforcement. Congress emphasized familial responsibility by giving states the option to bring an action for support against a child's grandparents in limited circumstances.[55]

In August 1996 Congress began to restrict access to Supplemental Security Income (SSI). The definition of disability for SSI purposes was changed to make it "much more difficult for disabled children to qualify for benefits."[56] To save federal funds, the PRWORA relied on the private family as the social institution capable of rectifying inevitable dependency. The Act treated resort to the state as a failure. PRWORA's apparent acceptance of the principle that society should not be financially responsible for individuals who have relatives to support them reversed an earlier acceptance of collective responsibility for the disabled.

Consistent with PRWORA, many state courts continue to recognize a duty of parents to support mentally or physically disabled adult children. Jurisdictions base liability for an adult child incapable of self-maintenance on common law, statute, or contractual duties.[57] Frequently, courts will imply this duty as a means to reimburse the state for the cost of hospitalization. Courts also commonly employ this duty in child support proceedings, in which the custodial parent seeks continued payments for a disabled adult from the non-custodial parent. The next section examines the current state of the law across the United States in greater detail.

II. CURRENT STATE LAW

Laws that impose a duty to support adult disabled children are potentially relevant to a broad class of Americans, as nearly

54. *See* Quigley, *supra* note 10, at 106.

55. *See id.* at 102 (citing 42 U.S.C. § 666(a)(18) (West 1997)).

56. *See id.* ("The Act changes eligibility from the lenient 'comparable severity' standard . . . to the more narrow standard where an individual under the age of 18 shall be considered disabled for purposes of this title if that individual has a medically determinable physical or mental impairment, which results in marked and severe functional limitations, and which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." (quoting 42 U.S.C. § 1382c(a)(3)(C)(i) (West 1997))).

57. *See* M.C. Dransfield, Annotation, *Parent's Obligation to Support Adult Child*, 1 A.L.R.2d 910, § 5 (1948).

one-third of families include at least one disabled member.[58] States use three very different approaches to determine whether parents have a duty to support their adult disabled children. Not surprisingly, all states have statutes requiring parents to support their children until they reach the age of majority (eighteen or nineteen) or graduate from high school, whichever comes first.[59] Beyond this basic requirement, however, states differ. The first group follows the common law rule that does not extend a parent's duty beyond the child's minority, regardless of existing or subsequent disabilities. A second group holds parents liable for their adult child's support if the disability arose before the child's majority. Finally, a third group dictates that parents have a duty to support their adult disabled child regardless of whether the disability arose prior or subsequent to the age of majority.

A. STATES NOT RECOGNIZING A DUTY TO SUPPORT AFTER MAJORITY OR EMANCIPATION

Many parents are likely unaware of the possibility that the state may legally obligate them to support their children throughout adulthood. Surprisingly, however, only nine states follow the traditional common law rule that a parent's duty to support his or her child ends once that child reaches majority or is otherwise emancipated.[60] In these nine states, families decide whether and on what conditions they should continue to support their disabled child beyond majority or, in cases where disability arises post-majority, whether support should resume. The statutes and common law of these states reflect a purposeful "hands-off" approach.[61] Most of these states' laws clearly

58. Michelle T. Friedland, Note, *Not Disabled Enough: The ADA's "Major Life Activity" Definition of Disability,* 52 STAN. L. REV. 171, 188 (1999) (explaining that 29.2% of American families have at least one disabled family member).

59. Laura Wish Morgan, *The Duty to Support Adult Disabled Children*, DIVORCE LITIG., Oct. 1997, at 185, *available at* http://www.childsupportguidelines.com/articles/art200003.html.

60. The nine states are: Georgia, Kansas, Mississippi, Montana, Nebraska, New York, North Dakota, Rhode Island, and Wisconsin. *See infra* note 61.

61. GA. CODE ANN. § 19-6-15 (2004); KAN. STAT. ANN. § 59-2006 (2003); MISS. CODE ANN. § 93-5-23 (2006); MONT. CODE ANN. § 40-4-208(5) (2005); NEB. REV. STAT. § 42-364(6) (2004); N.Y. FAM. CT. ACT § 415 (Gould 1999); N.D. CENT. CODE § 14-09-08.2 (2004); R.I. GEN. LAWS § 15-5-16.2 (2003); WIS. STAT. ANN. § 767.25(4) (West 2001).

and concisely terminate parents' legal duty to their child, regardless of disability, once that child reaches majority.[62]

As mentioned, New York specifically amended its child support laws in 1966 to relieve parents of legal support obligations beyond a child's twenty-first birthday, even if the child is disabled.[63] The New York legislature made this change out of the perception that the prior law had a destructive effect on the family unit by placing a heavy and sometimes unmanageable burden on families.[64] Following the 1966 amendment, the New York Supreme Court confirmed that absent an agreement to the contrary, no statutory authority legally compels a parent to provide financial support to a physically or mentally disabled child over the age of twenty-one years, no matter when the disability arises.[65] The court emphasized that the amended statutes no longer provide any exception for disabled children, and, in fact, specifically eliminated any such exception so as to transfer the parental burden to the state.[66]

In absence of a statute explicitly on point, Nebraska courts have interpreted related statutory provisions in a manner consistent with the common law. While Nebraska's statutes give courts power to compel parents to support minors, they are silent as to children who have reached the age of majority. The Nebraska Supreme Court has reasoned that this silence just as clearly confers *no* authority to compel direct support of adult children. As a result, Nebraska law, thus construed, does not compel support of an adult child who is disabled.[67]

States following this approach are:

Georgia: Parents have no duty to support an adult disabled child beyond the age of majority.[68]

Kansas: Parents have no statutory or common law duty to support their adult children.[69]

Montana: A parent is not obligated to support an eighteen-year-old or otherwise emancipated child.[70]

62. *See supra* note 61.

63. N.Y. FAM. CT. ACT § 415.

64. *Id.*

65. Beiter v. Beiter, 539 N.Y.S.2d 271, 271 (Sup. Ct. 1989).

66. *Id.* at 272–73.

67. NEB. REV. STAT. § 42-364(6) (2004); Meyers v. Meyers, 383 N.W.2d 784, 789 (Neb. 1986).

68. GA. CODE ANN. § 19-6-15 (2004).

69. KAN. STAT. ANN. § 59-2006 (2003).

70. MONT. CODE ANN. § 40-4-208(5) (2005).

Nebraska: According to common law, parents are not obligated to support their adult disabled children.[71]

New York: The New York legislature specifically amended child support laws in 1966 to eliminate parental obligation to support children, including those who are disabled, after the child's twenty-first birthday.[72] The legislature changed the laws because such support often placed a heavy burden on families, and this burden was more often destructive to the family unit than cohesive.[73]

North Dakota: Any order requiring parents to support children ends when the child graduates high school or reaches majority, whichever occurs first.[74]

Rhode Island: Courts may order support until the child's twenty-first birthday, regardless of disability.[75]

Wisconsin: Parents have no duty to support any child who has reached majority.[76]

B. STATES REQUIRING A CONTINUING SUPPORT DUTY IF DISABILITY ONSET WAS PRIOR TO MAJORITY OR EMANCIPATION

When a child becomes disabled prior to emancipation, his parents may expect that he will not be able to support himself as an adult. As a result, parents may be willing and prepared to continue their support into adulthood. However, the second groups of states—nearly half of all states—make the duty to provide continuing support to an adult disabled child legally compulsory.[77] The laws of these states compel parents with dis-

71. NEB. REV. STAT. § 42-664(6).

72. *See* Jones v. Jones, 51 Misc. 2d 610, 615 (N.Y. Fam. Ct. 1966) ("I find that under the new law, the father of a child over the age of 21 has no continuing responsibility for support of that child, regardless of the circumstances or of the fact that there is or was an existing order of this court for such support.").

73. *See* N.Y. FAM. CT. ACT § 415 (Gould 1999) ("[T]here are and probably always will be many other cases in which continued support by a parent may be a very taxing and sometimes relationship-destroying experience. It is not the function of this court to decide upon what the public policy of the State shall be. That is the function and prerogative of the Legislature, which in its wisdom, adopted this change.").

74. N.D. CENT. CODE § 14-09-08.2 (2004).

75. R.I. GEN. LAWS § 15-5-16.2 (2003).

76. WIS. STAT. ANN. § 767.25(4) (West 2001).

77. The twenty-four states are: Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Florida, Indiana, Kentucky, Massachusetts, Michigan, Nevada, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Pennsyl-

abled children incapable of self-support to continue their support post-majority. In these states, this duty only applies when children are disabled prior to the age of emancipation. Children who have reached majority become fully emancipated from their parents, and a subsequent disability will not resurrect a parental duty.

These states contend that duties growing out of the relation between parents and their minor children should not automatically terminate at the child's majority, when such duty still exists in the forum of conscience.[78] The presumption that a parent's duties end when the child reaches majority is overcome if (a) the child is incapable of earning a livelihood, and (b) the parent has the ability to provide assistance. Humanity recognizes that this duty should exist; therefore, these states impose a legal duty by statute or common law.[79] By having parents maintain responsibilities they have already undertaken, these states expect to prevent the public from being saddled with the financial burden of supporting these people with disabilities.

The state statutes addressing a parent's continuing duty apply only when the courts extend a current order or when the disability arose prior to the child's majority.[80] For example, Colorado's statute mandates that, "If a child is physically or mentally incapable of self-support when he attains the age of majority, emancipation does not occur, and the duty of parental support continues for the duration of the child's disability."[81]

vania, Texas, Vermont, Virginia, Washington, West Virginia, and Wyoming. *See infra* note 80.

78. *E.g.*, Monmouth County Div. of Soc. Servs. v. C.R., 720 A.2d 1004, 1012–13 (N.J. Super. Ct. Ch. Div. 1998).

79. *See, e.g.*, *id.*

80. ALA. CODE § 30-3-1 (LexisNexis 1998); ALASKA STAT. § 25.24.140(a)(3) (2004); ARIZ. REV. STAT. ANN. § 25-320B (2002); ARK. CODE ANN. § 9-12-312(a)(5)(B) (2002); COLO. REV. STAT. § 14-10-115(1.5)(a)(II) (2005); CONN. GEN. STAT. § 46b-215a (2004); FLA. STAT. ANN. § 743.07 (West 2005); IND. CODE ANN. § 31-14-11-18 (LexisNexis 2004); KY. REV. STAT. ANN. § 405.020 (LexisNexis 2004); NEV. REV. STAT. ANN. § 125B.110 (LexisNexis 2004); N.J. STAT. ANN. § 9:17B-3 (West 2002); N.C. GEN. STAT. § 50-13.8 (2005); OHIO REV. CODE ANN. § 3119.86 (LexisNexis 2003); OKLA. STAT. ANN. tit. 45, § 112.1A (West 2006); 23 PA. CONS. STAT. ANN. § 4321(3) (West 2001); TEX. FAM. CODE ANN. § 154.001 (Vernon 2002 & Supp. 2006); VA. CODE ANN. § 20-61 (2004); W. VA. CODE ANN. §§ 2-3-1, 48-11-103 (West 2006); WYO. STAT. ANN. § 14-2-204(a) (2005).

81. *In re* Marriage of Cropper, 895 P.2d 1158, 1160 (Colo. Ct. App. 1995) ("[Section 14-10-115(1.5)(a)(II)] provides that emancipation occurs and an order for child support terminates when a child attains nineteen years of age,

The Colorado court in *Koltay v. Koltay* held that, under this law, if the child is incapable of self-support, the child is not "emancipated," despite the presumption that twenty-one is the age of emancipation.[82] A different interpretation would be wholly inconsistent with the independence that the word emancipation connotes.[83] Thus, if a child is physically or mentally incapable of self-support when he attains the age of majority, emancipation does not occur, and the duty of parental support continues for the duration of the child's disability.[84] Further, the Colorado court in *In re Marriage of Cropper* ordered ongoing support for a mentally disabled child who could maintain a job at a supermarket, but required ongoing assistance and thus the child could not be emancipated.[85]

A similar Pennsylvania statute imposes a parental duty of support if the disability prevents the child from achieving self-sufficiency and the child's disability arose prior to attaining majority.[86] In line with the Colorado statute, the inability to self-support prevents the child's emancipation.[87] The parent's moral duty to care for the child forms the basis for the continuing duty.[88] The test to determine a parent's obligation considers whether the child is physically and mentally able to engage in profitable employment and whether employment is available to that child at a supporting wage.[89] Thus, even if a mentally or physically disabled child is employable, she is still entitled to support if she is incapable of complete self-support.[90]

Florida's statute allows the court to require "support for a dependant person beyond the age of 18 years when such dependency is because of a mental or physical incapacity which began prior to such person reaching majority."[91] Florida's courts have strictly maintained the "prior to reaching majority"

unless the child is then mentally or physically disabled. And, if a child is physically or mentally incapable of self-support upon attaining majority at age twenty-one, the duty of parental support continues for the duration of the disability." (citing Koltay v. Koltay, 667 P.2d 1374 (Colo. 1983))).

82. *Koltay*, 667 P.2d at 1375–76.
83. *Id.* at 1376.
84. *Id.*
85. *In re Marriage of Cropper*, 895 P.2d at 1158.
86. 23 PA. CONS. STAT. ANN. § 4321(3) (West 2001).
87. Hanson v. Hanson, 625 A.2d 1212, 1214 (Pa. Super. Ct. 1993).
88. *Id.*
89. *Id.* at 1214–15.
90. *Id.*
91. FLA. STAT. ANN. § 743.07 (West 2005).

provision in the statute. In one case, the court denied a mother's request to obtain child support for her mentally disabled child because she did not file the request before her child achieved majority.[92] The court found that it had no jurisdiction to allow the mother's request,[93] but the legislature did allow the disabled child to request support from his father directly, and the statute permitted the disabled child to bring a claim against his parents at any time, so long as the disability existed prior to majority.[94]

Along these same lines, the plain language of Alabama's statute does not expressly exclude adult disabled children from receiving support.[95] The applicable case law has interpreted "child" to include adult disabled children who are unable to support themselves,[96] and the Alabama Supreme Court has established a parent's "duty . . . to support [his or her] children who continue to be disabled beyond their minority."[97]

Other statutes, including Indiana's, use slightly different wording and require parents to support their children until age twenty-one,[98] but provide exceptions for equitable reasons or for reasons in the best interest of the child.[99] These types of statutes provide the court with more discretion when determining whether to extend support beyond the date of majority.

Still more states recognize the duty to support adult disabled children only at common law.[100] Following a common law exception, these states recognize that a duty to support a child continues into the child's adulthood if that child was disabled prior to reaching majority. New Mexico courts, for example, imposed a common law duty to continue support for adult dis-

92. Brown v. Brown, 714 So. 2d 475, 476 (Fla. Dist. Ct. App. 1998).

93. *Id.* at 476.

94. Hastings v. Hastings, 841 So. 2d 484, 486 (Fla. Dist. Ct. App. 2003).

95. ALA. CODE § 30-3-1 (LexisNexis 1998).

96. *See, e.g.*, DeMo v. DeMo, 679 So. 2d 265 (Ala. Civ. App. 1996).

97. *Ex parte* Brewington, 445 So. 2d 294, 297 (Ala. 1983).

98. IND. CODE ANN. § 31-14-11-18 (LexisNexis 2003).

99. *Id.* § 32-14-11-18(2) ("[The duty to support continues until the age of twenty-one unless the] child is incapacitated. If this occurs, the child support continues during the incapacity or until further order of the court."); *id.* § 31-16-6-2 (describing the contents of a child support and educational support order).

100. Feinberg v. Diamant, 389 N.E.2d 998, 999 (Mass. 1979); Blakley v. Blakley, 549 N.W.2d 575 (Mich. 1996), *rev'g* 534 N.W.2d 147 (Mich. Ct. App. 1995); Cohn v. Cohn, 934 P.2d 279, 281 (N.M. 1996); Rowell v. Town of Vershire, 19 A. 990, 990 (Vt. 1890); Childers v. Childers, 575 P.2d 201, 204 (Wash. Ct. App. 1978).

abled children until the need for support ceases. The appellate court in *Cohn v. Cohn* remarked that "evolving common law [holds] that where a child is of weak body or mind, unable to care for himself after coming of age, the parent's duty to support the child continues as before and ceases only when the necessity for support ceases."[101] The theory "that the continuing 'disability prevents the child from becoming emancipated' forms the basis of this exception, and because he is incapable of emancipation, he remains a minor in the eyes of the law."[102] Further, the court determined that there is nothing in the statutory scheme to indicate any legislative intent to eliminate this common law rule.[103]

Massachusetts also recognizes the duty to support adult disabled children only at common law. The Massachusetts Supreme Court in *Feinberg v. Diamant* held that "a financially able divorced parent may be required to contribute to the support of an adult child who by reason of mental or physical infirmity incurs expenses that he or she is unable to meet."[104] However, because Massachusetts' statutory law does not impose this burden,[105] the court imposes the duty only under its general equity powers and in cases concerning the guardianship of incompetents.[106]

Operating under the theory that a child disabled prior to reaching majority cannot become emancipated, these states require a parent's duty to his or her adult child to continue only when the disability arose prior to the child's majority. Whether governed by statute or common law, these states recognize that this duty should continue for both humanitarian and equitable reasons. As such, these states expect a parent to continue supporting an adult disabled child since the parent already undertook that duty during the child's minority.

States following this approach are:

Alabama: The laws of Alabama do not expressly exclude adult disabled children from receiving support.[107] The Alabama

101. 934 P.2d at 280 (quoting 59 AM. JUR. 2D *Parent and Child* § 103 (1987)).

102. *Id.* at 280 (quoting Harlow, *supra* note 32, at 923) (citing N.M. STAT. ANN. § 40-4-7(B)(3)).

103. *Id.* at 281.

104. *Feinberg*, 389 N.E.2d at 1001.

105. *See* MASS. GEN. LAWS. ANN. ch. 208, § 28 (West 2006).

106. *Feinberg*, 389 N.E.2d at 1002.

107. ALA. CODE § 30-3-1 (LexisNexis 1998).

Supreme Court has established that it is a parent's "duty. . . to support [his or her] children who continue to be disabled beyond their minority."[108]

Alaska: The Alaska Supreme Court held that the parental duty of support to continue beyond the age of majority where an adult child is incapable of supporting him- or herself by reason of a physical or mental disability.[109]

Arizona: Courts may order support to continue past the age of majority in the case of a mentally or physically disabled child.[110]

Arkansas: Courts may order continuation of support even after a disabled child reaches majority.[111]

Colorado: "If a child is physically or mentally incapable of self-support when he attains the age of majority, emancipation does not occur, and the duty of parental support continues for the duration of the child's disability."[112]

Connecticut: State statutory law requires parents to support their children until the children reach age of majority (eighteen years of age).[113]

Florida: Under state statute, both parents have the duty of support when the disability began prior to child's majority.[114]

Indiana: The child must be disabled at the time the child reaches the age of majority for a support duty to be imposed.[115]

Kentucky: The support duty extends only to those children who are mentally or physically incapacitated upon reaching the age of majority.[116]

Massachusetts: Massachusetts recognizes the continuing duty to support adult disabled children only at common law.[117]

Michigan: The Supreme Court of Michigan appears to have recognized a common law continuing duty of support in excep-

108. *Ex parte* Brewington, 445 So. 2d 294, 297 (Ala. 1983).

109. Streb v. Streb, 774 P.2d 798, 800 (Alaska 1989).

110. ARIZ. REV. STAT. ANN. § 25-320E3 (2004).

111. ARK. CODE ANN. § 9-12-312(a)(5)(B) (2002).

112. Koltay v. Koltay, 667 P.2d 1374, 1376 (Colo. 1983); *see* COLO. REV. STAT. § 14-10-115(1.5)(a) (2005).

113. CONN. GEN. STAT. § 1-1d (2004).

114. FLA. STAT. ANN. § 743.07(2) (West 2005).

115. IND. CODE ANN. § 31-14-11-18 (LexisNexis 2003).

116. KY. REV. STAT. ANN. § 405.020 (LexisNexis 2004).

117. Feinberg v. Diamant, 389 N.E.2d 998, 999 (Mass. 1979).

tional circumstances, but the language of the opinion on point is not specific.[118]

Nevada: "The handicap of the child must have occurred before the age of majority for this duty to apply."[119]

New Jersey: The New Jersey Supreme Court held: A parent is required to support his or her children until they are emancipated. When the child suffers from a disability, emancipation does not occur automatically upon reaching the age of majority. The court must determine that the fundamental parent and child relationship has concluded.[120]

New Mexico: The court recognizes the common law duty to continue support for an adult disabled child until the need for support ceases.[121]

North Carolina: Parents are required to support their children only if the children are disabled upon reaching majority.[122]

Ohio: The Supreme Court of Ohio has held that that "a domestic relations court has jurisdiction to order a noncustodial parent to continue to provide support after the age of majority if the child is physically or mentally disabled to the extent of being incapable of maintaining himself or herself."[123]

Oklahoma: A court may order support for an adult disabled child if the disability exists, or the cause of the disability is known to exist, on or before the child's eighteenth birthday.[124]

Pennsylvania: "Parents may be liable for the support of their children who are 18 years of age or older."[125] The Pennsylvania Superior Court has construed the statute to require parents to support their child if the child's physical or mental

118. *See* Blakley v. Blakley, 549 N.W.2d 575 (Mich. 1996).

119. NEV. REV. STAT. ANN. § 125B.110 (LexisNexis 2004).

120. Monmouth County Div. of Soc. Servs. v. C.R., 720 A.2d 1004, 1013–14 (N.J. Super. Ct. Ch. Div. 1998) ("Defendant's limited, but voluntary, financial involvements in meeting his son's need is really the affirmative of what was always his fundamental duty, even in the presence of a concurrent role required or permitted of public authorities.").

121. Cohn v. Cohn, 934 P.2d 279, 281 (N.M. 1996) ("We join the majority of jurisdictions that hold that parents have a common-law continuing duty to support a severely disabled child if, as in this case, the child was so disabled before reaching the age of majority.").

122. N.C. GEN. STAT. § 50-13.8 (2005).

123. Castle v. Castle, 473 N.E.2d 803, 807 (Ohio 1984).

124. OKLA. STAT. ANN. tit. 45, § 112.1A (West 2006).

125. 23 PA. CONS. STAT. ANN. § 4321(3) (West 2001).

disability existed when he reached majority and prevents him from being self-supporting.[126]

Texas: Parents are obligated to support their adult disabled children who were disabled prior to attaining majority.[127]

Vermont: The court in *Rowell v. Town of Vershire* stated that at common law, parents owe a duty of support that terminates when a child reaches majority. However, an exception exists for those children who are disabled and unable to support themselves. For those children, the parents' duty of support continues beyond the child's minority.[128]

Virginia: A court may order continued support for a disabled child who is unable to support himself, unable to live independently, and resides with his parent.[129]

Washington: Statutory language suggests that a court may order continued support of an adult disabled child if the court determines that the child is dependent on the parents, taking into consideration the child's disability.[130]

West Virginia: A court may order support for an adult disabled child, provided that the child is unmarried, insolvent, and residing with a parent, so long as the child was not emancipated at the time the disability occurred, and regardless of whether the disability occurred before or after the age of majority.[131]

Wyoming: Parents have a duty to support a disabled child when the disability prevents the child from becoming emancipated, regardless of the age of the child.[132]

C. STATES RECOGNIZING A SUPPORT DUTY NO MATTER WHEN THE DISABILITY ARISES

Parents of children with no known disability generally assume their children will support themselves as adults. Many parents may not be aware of what may happen if their children become disabled as adults. For this reason, learning that over one-third of all states recognize a parental legal duty to support

126. Hanson v. Hanson, 625 A.2d 1212, 1214 (Pa. Super. Ct. 1993).
127. TEX. FAM. CODE ANN. § 154.001 (Vernon 2002 & Supp. 2006).
128. Rowell v. Town of Vershire, 19 A. 990, 990 (Vt. 1890).
129. VA. CODE ANN. § 20-61 (2004); § 20-124.2(C) (2004 & Supp. 2006).
130. WASH. REV. CODE §§ 26.09.002, 26.08.004 (West 2006).
131. W. VA. CODE ANN. §§ 48-11-103(a)–(b), 2-3-1 (West 2006).
132. WYO. STAT. ANN. § 14-2-204(a) (2005).

an adult disabled child,[133] regardless of the timing of the disability's onset, shocks most parents. In other words, once a child reaches majority and becomes emancipated, a subsequently arising disability can revive the parental duty of support. Courts upholding this revived duty note that parents have a compelling moral duty to care for their adult disabled children and conclude, as a matter of public policy, that society should not be financially responsible for individuals with relatives capable of supporting them. On this basis, courts impose a continuing and revived duty on parents to support their adult disabled children.[134]

Support requirements and justifications vary somewhat within this group. A majority of these states have passed statutes confirming a parent's duty to support an adult disabled child, while other states impose the duty via an existing Poor Person Statute. These statutes tend to have very clear, concise language that leaves little room for judicial discretion to negate the duty to support adult disabled children.[135]

For example, California's statute mandates that "parents have a duty to maintain . . . a child of whatever age who is incapacitated from earning a living and without sufficient means."[136] In *Woolams v. Woolams*, a California appellate court held that a father had a duty to support his adult child who became physically disabled after majority.[137] Though the adult child's mother devoted all her time and resources to caring for the child, the court determined that the father was "capable of

133. The eighteen states are: California, Delaware, Hawaii, Idaho, Illinois, Iowa, Louisiana, Maine, Maryland, Minnesota, Mississippi, Missouri, New Hampshire, Oregon, South Carolina, South Dakota, Tennessee, and Utah. *See infra* note 135. The District of Columbia also recognizes this duty. *Id.*

134. Woolams v. Woolams, 251 P.2d 392, 395 (Cal. Dist. Ct. App. 1952); Sayne v. Sayne, 284 S.W.2d 309, 310–12 (Tenn. 1955).

135. CAL. FAM. CODE § 3910 (West 2004); DEL. CODE ANN. tit. 13, § 503 (1999); HAW. REV. STAT. § 580-47 (1993 & Supp. 2005); 750 ILL. COMP. STAT. ANN. 5/513 (West 2004 & Supp. 2006); IOWA CODE ANN. § 598.1(9) (West 2001); LA. CIV. CODE ANN. art. 229 (1993); MD. CODE ANN., FAM. LAW § 13-102(b) (LexisNexis 2003); MINN. STAT. § 518.57 (2004); Act of May 31, 2006, ch. 280, § 518.54, 2006 Minn. Sess. Law Serv. 15 (West) (to be codified at MINN. STAT. § 518.54); MO. ANN. STAT. § 452.340 (West 2003 & Supp. 2006); N.H. REV. STAT. ANN. § 546-A:2 (LexisNexis 2006); OR. REV. STAT. ANN. § 109.010 (West 2003); S.C. CODE ANN. § 20-7-420(17) (1985 & Supp. 2005); UTAH CODE ANN. §§ 78-45-2, 78-45-3(1), 78-45-4(1) (2002).

136. CAL. FAM. CODE § 3910(a).

137. Woolams v. Woolams, 251 P.2d 392, 395–96 (Cal. Dist. Ct. App. 1952).

earning an income sufficient to enable himself to pay."[138] The court determined that the father could and should be compelled to aid in his daughter's care, thus reviving his parental care duty.[139]

The court ultimately based its decision on a reference to section of 206 of the California Civil Code—now section 3910 of the California Family Code—requiring a parent to maintain a child who cannot maintain himself.[140] This section "provides that it is the duty of the parent to support the child *to the extent of his* ability" in order to protect the public from the burden of supporting a person who has a parent able to support him.[141] When considering the parents' ability to pay, the court acknowledged the danger of "the end result [being] two persons for the people to support rather than one," and remarked that, "It seems harsh that a man 63 years of age should be required to use up his life's earnings, if necessary to support his child, and thereby leave himself no cushion to fall back upon, for the years not too distant when he will have very little, if any, earning ability. Before that cushion should be reduced substantially, however, it would seem that the needs of the child must be pared down to a minimum."[142]

The court further stated that under this type of support order, like any child support order, the court retains jurisdiction.[143] Thus, if the parent's circumstances change such that he or she faces an intolerable burden in maintaining the support, the court can modify the order accordingly. There is nothing final about the award.[144] Ultimately, the resurrected duty places the burden of support on the parents in order to protect the public, but it is not meant to impose an undue hardship on the parents if they cannot afford the burden themselves.

Case law in other states interpreting statutes like California's is consistent with this public policy theory. New Hampshire has a statute that mandates that "[e]very person whose income or other resources are more than sufficient to provide for his or her reasonable subsistence compatible with decency or health owes a duty to support or contribute to the support of

138. *Id.* at 395 (citation omitted).
139. *Id.* at 396.
140. CAL. FAM. CODE § 3910.
141. *Woolams*, 251 P.2d at 396.
142. *Id.* at 395.
143. *Id.* at 395–96.
144. *See* Paxton v. Paxton, 89 P. 1083, 1085 (Cal. 1907).

his or her wife, husband, child, father or mother when in need."[145] In Delaware's Poor Person Statute, a parent may be ordered to provide support for an adult child who is unable to provide for himself.[146] The legislative purpose of this statute is "to make designated relatives liable for an indigent's support to avoid the use of public funds."[147]

Courts also tend to look to the legislative intent of the statute, reasoning that where no reference to the time of the occurrence of the disability is made in the statute, no distinction exists. In *Sininger v. Sininger*, a Maryland court held that a parent who has the means also has the duty to support an adult disabled child regardless of the time of the onset of the disability.[148] The court reasoned that the statute itself makes no distinction based on emancipation, and therefore concluding that the duty applied only when the disability began prior to emancipation would frustrate the legislative intent. The court found any distinction based on the timing of the disability's onset is irrelevant.[149]

Further, some states follow the humanitarian rule that parents should support their adult disabled children because the need for support exists and the dictates of humanity requiring parents to support their children before majority should also continue thereafter. Tennessee and South Dakota courts provide that parents owe a duty of support to their adult disabled children because these children are as helpless as infants.[150] If the children have the same needs for support after attaining majority as they did before, the parent's rights and duties to the child should not change.[151] This approach suggests that, although Tennessee has no statute mandating that a parent support his or her adult disabled child, the discretion of the court clearly leans in that direction, allowing resurrection of a parent's duty even after the child has reached majority.[152] And, although South Dakota's statutes do not provide the court with authority or discretion to extend support beyond the child's age

145. N.H. REV. STAT. ANN. § 546-A:2 (LexisNexis 2006).

146. DEL. CODE ANN. tit. 13, § 503 (1999).

147. Helen B.M. v. Samuel F.D., 479 A.2d 852, 855 (Del. Fam. Ct. 1984).

148. 479 A.2d 1354, 1358 (Md. 1984).

149. *Id.* at 1357.

150. Mower v. Mower, 199 N.W. 42, 42 (S.D. 1924); Sayne v. Sayne, 284 S.W.2d 309, 312 (Tenn. 1955).

151. *Mower*, 199 N.W. at 42; *Sayne*, 284 S.W.2d at 311.

152. *Sayne*, 284 S.W.2d at 311–12.

of majority,[153] the court has chosen to extend the duty nonetheless.[154]

In yet another approach, Idaho and the District of Columbia impose a statutory duty on living relatives to pay for the costs of care when a mentally ill relative has been committed to a state facility.[155] These laws recognize a duty to support adult disabled children only at common law, but add the statutory burden for such limited circumstances in order to reduce the financial burden on society.

Thus these states resurrect the parental duty of support even when the disability arises long after the child has passed the age of majority. This final group of states, imposing a duty on parents regardless of the onset of disability, consists of:

California: Parents have a duty to maintain a child of any age who is incapacitated from earning a living and without sufficient means.[156]

Delaware: Under Delaware's Poor Person Statute, a parent may be ordered to provide child support for an adult child who is unable to provide for himself.[157] The purpose of this statute is to avoid using state resources to support the child.

District of Columbia: The District of Columbia recognizes a duty to support adult disabled children only at common law.[158] However, relatives (the "father, mother, husband, wife and adult children") have a statutory obligation to support a mentally ill person hospitalized in a state facility.[159]

Hawaii: A statute imposes an obligation on parents to support an adult disabled child.[160]

Idaho: Common law imposes a duty on parents to care for their adult disabled children only if the children are already suffering from a mental or physical disability when they achieve majority. However, if a relative is hospitalized in a state facility, parents have a statutory obligation to support the child.[161]

153. S.D. CODIFIED LAWS § 25-7-6.1 (2004).

154. *Mower*, 199 N.W. at 42.

155. D.C. CODE ANN. §§ 21-586, 16-916 (LexisNexis 2005 & Supp. 2006); IDAHO CODE ANN. § 66-354 (2000).

156. CAL. FAM. CODE § 3910 (West 2004).

157. DEL. CODE ANN. tit. 13, § 503 (1999).

158. Nelson v. Nelson, 548 A.2d 109, 111 (D.C. 1988).

159. D.C. CODE ANN. § 16-916.

160. HAW. REV. STAT. § 580-47 (1993 & Supp. 2005).

161. IDAHO CODE ANN. § 66-354 (2000).

Illinois: Parents have a duty to support their adult children suffering from a mental or physical incapacity.[162]

Iowa: Iowa imposes a statutory duty on parents to support their adult disabled children.[163]

Louisiana: Louisiana imposes a statutory duty on parents to support their adult disabled children.[164]

Maine: *Baril v. Baril*, a 1976 case relying on a repealed statute, states that a parent is obligated to support his or her adult disabled child.[165] Though that case appears to be good law, the current statutes are somewhat unclear as to this issue.

Maryland: Maryland common law and statutory law impose a duty on parents to support their adult disabled children.[166]

Minnesota: Minnesota imposes a statutory duty on parents to support their adult disabled children, and acknowledges a common law duty to do so.[167]

Mississippi: Statutory law does not impose a legal obligation on parents to support their adult disabled children, but common law recognizes an enforceable duty to do so.[168]

Missouri: There is no reason to impose a legal obligation to support one's infant child but not an adult disabled child who is just as helpless and dependent on the parent for care.[169] If the child is physically or mentally incapacitated from supporting himself, and if the child is also insolvent and unmarried, the court may extend the parental support obligation past the child's eighteenth birthday.[170]

New Hampshire: The court may order support past the age of majority for a disabled child if it is extending a current order.[171] However, the state's Poor Person Statute, which requires that, if a person has sufficient means, he or she must support "his or her wife, husband, child, father or mother when

162. 750 ILL. COMP. STAT. ANN. § 5/513 (West 2004 & Supp. 2006).

163. IOWA CODE ANN. § 598.1(9) (West 2001).

164. LA. CIV. CODE ANN. art. 229 (1993).

165. 354 A.2d 392 (Me. 1976); ME. REV. STAT. ANN. tit. 19-A, § 1504 (1998).

166. MD. CODE ANN., FAM. LAW § 13-102(b) (LexisNexis 2003).

167. MINN. STAT. § 518.57 (2004); Act of May 31, 2006, ch. 280, § 518.54, 2006 Minn. Sess. Law Serv. 15 (West) (to be codified at MINN. STAT. § 518.54).

168. Watkins v. Watkins, 337 So. 2d 723, 724–25 (Miss. 1976).

169. Kramer v. Carroll, 309 S.W.2d 654, 660 (Mo. App. 1958).

170. MO. ANN. STAT. § 452.340 (West 2003 & Supp. 2006).

171. Smith v. Stilphen, 344 F. Supp. 2d 794, 797–98 (D.N.H. 2004).

in need," would compel a revival of support duties for an adult disabled child.[172]

Oregon: "Parents are bound to maintain their children who are poor and unable to work to maintain themselves."[173] Nature imposes a duty of child support for adult disabled children.

South Carolina: Courts may order parents to support their adult disabled children because such support is in the best interest of the children and the state, and it is conducive to the welfare of the family.[174]

South Dakota: Statutes do not provide the court with authority or discretion to extend support beyond the age of majority.[175] However, courts may order parents to support their adult disabled children because the children are as helpless and incapable as infants.[176]

Tennessee: Parents owe a duty of support to their adult disabled children because the children are as helpless as infants and because the children may have the same needs of support after attaining majority as before. Therefore, a parent's rights and duties to the child should not change.[177]

Utah: Parents may be ordered to support their adult disabled children so as not to burden the public.[178]

III. MORAL DUTIES

Our general intuition tells us that parents should support their adult disabled children in many, if not most, situations. This section examines this intuition and where it comes from. Moral duties are the set of duties we owe to others and "are designed to check our merely self-interested, emotional, or sentimental reactions to serious questions of human conduct."[179] Society has transformed moral duties into rules as a means of encouraging people to cooperate.[180] Given the diversity of American culture and its varied religious and philosophical traditions, many forces interconnect to instill moral duties in par-

172. N.H. REV. STAT. ANN. § 546-A:2 (LexisNexis 2006).
173. OR. REV. STAT. ANN. § 109.010 (West 2003).
174. S.C. CODE ANN. § 20-7-420(17) (1985 & Supp. 2005).
175. S.D. CODIFIED LAWS § 25-7-6.1 (2004).
176. Mower v. Mower, 199 N.W. 42, 42 (S.D. 1924).
177. Sayne v. Sayne, 284 S.W.2d 309, 311–12 (Tenn. 1955).
178. UTAH CODE ANN. §§ 78-45-2, -3(1), -4(1) (2002).
179. *See* Richard Posner, *1997 Oliver Wendell Holmes Lectures: The Problematics of Moral and Legal Theory*, 111 HARV. L. REV. 1637, 1639 (1998).
180. *Id.* at 1687.

ents to care for their children. Even basic social structures, such as the American inheritance system, perform social welfare functions by encouraging "those with means to provide for their dependents."[181]

Some social groups encourage extended family members to care for children when the parents are unable to do so themselves; demonstrating the presence and importance of this moral obligation towards children. "Kinship care giving," present in the African-American, Asian-American, Latino, and Native-American cultures, is one such example.[182] Through this cultural practice, sometimes called a hidden safety net,[183] "hundreds of thousands of American children are now raised by extended family members and non-relatives rather than their 'legal' parents."[184] Furthermore, the basic structure of the family unit and child support is "based on faith that individual parents' goodwill and love will motivate them to provide as well as possible for their children."[185] Scholars have alternatively described parents' moral obligation as a "natural law duty to support their children . . . stemming from the responsibility of bringing the child into the world."[186]

Additionally, courts themselves have articulated

> two public policy rationales for extending the obligation of child support to mentally or physically disabled children beyond the age of majority: (1) the natural obligation of parents to support their children,

181. Frances H. Foster, *The Family Paradigm of Inheritance Law*, 80 N.C. L. REV. 199, 205 (2001); Edward C. Halbach, Jr., *An Introduction to Chapters 1–4*, *in* DEATH, TAXES AND PROPERTY 3, 5 (Edward C. Halbach, Jr. ed., 1977) ("[Inheritance law] encourage[es] those who can to make provision . . . for those who are or may be dependents.").

182. Joyce E. McConnell, *Securing the Care of Children in Diverse Families: Building on Trends in Guardianship Reform*, 10 YALE J.L. & FEMINISM 29, 51–56 (1988); *see* Foster, *supra* note 181, at 245–46.

183. Foster, *supra* note 181, at 246 n.236 (citing Randi S. Mandelbaum & Susan L. Waysdorf, *The D.C. Medical Consent Law: Moving Towards Legal Recognition of Kinship Caring*, 2 D.C. L. REV. 279, 285 (1994)).

184. *Id.* at 246.

185. Leslie J. Harris et al., *Making and Breaking Connections Between Parents' Duty to Support and Right to Control Their Children*, 69 OR. L. REV. 689, 715–16 (1990).

186. Deborah H. Bell, *Child Support Orders: The Common Law Framework—Part II*, 69 MISS. L.J. 1063, 1064 (2000); *see also* 1 BLACKSTONE, *supra* note 7, at 435 ("By begetting [children] therefore they have entered into a voluntary obligation, to endeavor . . . that the life which they have bestowed shall be supported and preserved.").

> and (2) the need to "protect the public from the burden of supporting a person who has a parent . . . able to support him."[187]

This policy stems from an apparent natural law principle that a duty to provide for the maintenance of children falls on the parents, and that this obligation continues until the children can provide for themselves.[188]

Society has come to accept that a parent owes his or her child certain moral duties of care. These accepted moral duties have stemmed from a combination of various religious perspectives on the parent/child relationship, as well as a multitude of philosophical ideals that have developed over time. It is not possible in a paper of this length to give a complete account of the various religious and philosophical perspectives that might bear on the problem. A simplified—perhaps even a profoundly oversimplified—account may nevertheless be useful.

A. RELIGIOUS PERSPECTIVE

Religion in its many forms has "exercised a profound influence on the development of human culture . . . [and] it has offered powerful motives to right conduct."[189] This section explores the manner in which the three major religions most widely practiced in the United States treat issues of parental support of children, and how that treatment fosters a moral duty of care towards adult disabled children. All three religions recognize parental obligations to a disabled child.

1. Christianity

Christianity is the "most widely distributed of the world religions, having substantial representation in all the populated continents of the globe and a total membership that may exceed a billion people."[190] As one author noted, "the inherent worth of every person as one who has been created in the image of God, the sanctity of human life and thus marriage and the family, the imperative to strive for justice even in a fallen world—all of

187. Jeffrey W. Childers, Hendricks v. Sanks*: One Small Step for the Continued Parental Support of Disabled Children Beyond the Age of Majority in North Carolina*, 80 N.C. L. REV. 2094, 2100 (2002) (quoting Chun v. Chun, 235 Cal. Rptr. 553, 556 (Cal. Ct. App. 1987)).

188. *Id.*

189. 12 THE CATHOLIC ENCYCLOPEDIA 746 (Charles G. Herbermann et al. eds., 1911).

190. 6 FUNK & WAGNALLS NEW ENCYCLOPEDIA 250–51 (Norma H. Dickey ed., 1986).

these are dynamic moral commitments that Christians would accept."[191] These virtues also "require[s] parents diligently to care for the proper rearing of their children, that is, to provide for their bodily, mental, and spiritual well-being . . . in a manner commensurate with their social condition until these latter can support themselves."[192] Furthermore, the Christian Bible teaches that parents' duty to their children is to provide for them.[193] The emphasis on both the importance of family and the contention that God created every child whether disabled or not, combined with the obligation of parents to care for their children, all are consistent with the notion that Christian parents have a moral duty to care for their adult disabled children until those children are able to support themselves.

Some theologians have said that Christianity has not only influenced but also elevated society through the "fundamental principle that we are all children of the same heavenly Father and hence bound to treat our fellow-men not only with justice but with mercy and charity, the spirit of generous, self-sacrificing service, springing from personal devotion to the Divine Saviour and prompting the practice of heroic virtues."[194] These ideals of charity and goodwill and the spirit of generosity towards others further enhance the idea that parents have a moral duty or obligation to care for their adult disabled children. Since Christianity as a whole encourages each individual Christian to assist others less fortunate than him or herself, it follows naturally that a parent, who is already under an obligation to care for his or her own children, should also provide for his or her adult disabled children who are unable to support themselves.[195]

Christians believe their "feelings of love, gratitude, dependence, repentance, and obligation" towards God also require them to act morally.[196] And this exact feeling of a sense of duty

191. *Id.* at 253.

192. 11 THE CATHOLIC ENCYCLOPEDIA, *supra* note 189, at 479.

193. *E.g.*, 2 *Corinthians* 12:14; *Job* 42:15; 1 *Timothy* 5:8.

194. 12 THE CATHOLIC ENCYCLOPEDIA, *supra* note 189, at 747.

195. THE OXFORD DICTIONARY OF THE CHRISTIAN CHURCH 321 (F.L. Cross & E.A. Livingstone, eds., 3d ed. 1997); *Matthew* 25:34–46 (parable of the sheep and the goats); *Luke* 10:30–37 (parable of the good Samaritan); 1 *Corinthians* 13.

196. Joseph G. Allegretti, *Can Legal Ethics Be Christian*, *in* CHRISTIAN PERSPECTIVES ON LEGAL THOUGHT 453, 459 (Michael W. McConnell et al. eds., 2001).

to act morally encourages, if not requires, that Christian parents support their adult disabled children indefinitely.

2. Judaism

The Talmud contains the systematic amplifications and analysis of the Mishnah and other teachings used to interpret the Jewish law.[197] The Talmud never expressly imposes an obligation of parental support for disabled children—in fact, the Talmud imposes only a minimal obligation of parental support for children at all.[198] One interpretation of the Talmud regarding a father's duty to his children is that a father has an indirect duty to care for his daughter past the age of minority based on the concept of charity.[199] However, a father's duty of parental support continues in an indirect manner for minors and disabled children incapable of self support.

Jewish law imposes an obligation on a man to support his wife both during marriage and divorce, specifying that a man must provide at least a minimum of care for his wife or ex-wife, including food, shelter, and clothing.[200] This minimum standard of support functions on a sliding scale so that a man with meager means must provide only a bare minimum, while a man in a better financial condition must provide more than that bare minimum for his wife or ex-wife.[201] This obligation toward a wife or ex-wife is the basis for a man's indirect obligation of parental support his for children.

Jewish law views the child as an extension of his or her mother. Hence, Jewish law presumes that a Jewish mother will not turn her back on her children. The father in turn is required to provide supplemental support to his wife or ex-wife if

197. JACOB NEUSNER & TAMARA SONN, COMPARING RELIGIONS THROUGH LAW 18–38 (1999). The Jewish religion relies on three different tiers to decipher its law: the Torah, the Talmud, and Shulkhan Aruch. The Talmud is used to answer many questions on Jewish law and other relevant issues. *Id.* at 32.

198. *See* Eliav Shochetman, *On Nature of the Rules Governing Custody of Children in Jewish Law*, *in* 10 JEW. L. ANN. 115, 120. In the Jewish religion, the financial responsibility of parental support falls on the father only. The mother of the child is presumed to provide care for her child. *Id.*

199. *Id.*

200. *See Exodus* 21:10–11.

201. *See id.* A woman's quality of life is not to change due to divorce, therefore, the husband is to provide financial support to maintain her condition in life. *Id.*

they have children.[202] The Jewish tradition presumes that the mother will use this supplemental support to provide care for her minor children.[203] In this manner, Jewish law provides parental support for minor children beyond the age of six.[204]

The remaining issue is whether a father's duty of parental support continues beyond the age of majority, or, phrased differently, whether Jewish law presumes that a Jewish mother cares for her children after minority. The Talmud's express teachings have been qualified by commentators and codifiers of the Talmud to answer this question.[205] Rabbi Yitzchok Laderstein, a Professor at Loyola Law School, explains that Moshe Fienstein, a leading commentator on Jewish law, was posed with a question based on observations of familial relationships within a contemporary Jewish Community: do parents have a legal duty to provide for their children until they are capable of self-support, or is support merely a charity? [206] To understand the question fully, he says, we must know two facts. First, most Jewish parents today provide financial support for their children until they are able to care for themselves, regardless of their age.[207] Second, members of the Jewish community traditionally contribute ten percent of net profits to the community as a form of charity.[208] Thus, the issue is whether the support of children can be deducted from that ten percent of that customary charitable contribution.

Fienstein states that Jewish law develops and adapts to changes in society, and under that law parents have a legal duty to provide support for their children.[209] Since Jewish parents today provide support for their children beyond the age of majority, Jewish law continues to presume that the mother will not turn her back on her adult child.[210] Consequently, the father has an affirmative duty to provide financial support to his

202. A father must provide for a child born out of wedlock as well. *Id.*

203. Shochetman, *supra* note 198, at 120.

204. *Id.*

205. *Id.* at 117.

206. Interview with Rabbi Yitzchok Laderstien, Law Professor, Loyola Law Sch., in L.A., Cal. (Nov. 22, 2002).

207. *Id.*

208. *Id.*

209. *Id.*

210. *Id.*

wife or ex-wife that is sufficient to care for any adult children as well.[211]

This same duty logically extends to the support of disabled children. Since parental support for disabled children is common,[212] presumably the mother of a disabled child will want to care for her child until the disability is removed or the child can care for him- or herself. Thus, the father will have an indirect duty to provide support for the disabled child.

In addition, the Supreme Court of Israel has indicated the importance of parental support under Jewish law. The court has held that parents do not have the right to rely on someone else to perform their parental obligations as long as they have the financial ability to do so themselves.[213] This observation suggests that parents of disabled children do not have the right to shift their natural obligations onto the State if they have the ability to provide the necessary care. The Talmud's focus on the welfare of the child further supports the proposition that parents of disabled children have an affirmative duty to provide support even in the absence of a written law or command.[214] Jewish law views the child "as a precious loan from God [who is] to be guarded with love and care."[215]

3. Islam

Islamic law, in contrast to Christian and Jewish law, speaks clearly about parental obligations for disabled adult children. Islamic law holds that "the blood relationship between the child and his parents, combined with his neediness, entitle him to maintenance from them."[216] As in Judaism, in Islam the father alone bears a direct obligation of support to the child. The Hanafi school (one of four major schools of Islamic law) goes further and draws a distinction between a female and

211. *Id.*

212. *E.g.*, CAL. FAM. CODE § 3910 (West 2004); DEL. CODE ANN. tit. 13, § 503 (1999); *see also* Morgan, *supra* note 59 (referencing other states that do not have a statute but nevertheless impose an obligation by common law, including the District of Columbia, Kansas, Massachusetts, Montana, and Wisconsin).

213. *See* Pinhas Shiftman, *The Welfare of the Child and Religious Considerations,* 10 JEWISH L. ANN. 159, 162 (1992).

214. Shlomo Nahmias, *The Law and the Relationship Between Parents and Children,* 10 JEWISH L. ANN. 57, 66–67 (1992).

215. *Id.* at 65, 68.

216. Ya'Akov Meron, *Parents and Children Under Moslem Law,* 10 JEWISH L. ANN. 213, 215 (1992).

male child, and states that a male child has the right to parental support until the age at which he is able to care for himself,[217] while a father's support obligation to his daughter terminates upon her marriage.[218] In either case, a mentally or physically disabled child, irrespective of age or the time at which the disability developed, is entitled to parental support.[219]

While not all formal religious traditions specifically address the issue of a parent's duty to care for his or her child past the age of majority, the virtues, tenets, and traditions that religion promotes tend to support a moral obligation for parents to care for their adult disabled children indefinitely. As one author has noted, "religion affects the reasons for being moral; . . . religion affects the character of human agents; . . . religion affects what . . . a person looks to for guidance when confronting a moral problem."[220] We can expect that these religious traditions may be reflected in the obligations embraced by our legal systems.

B. PHILOSOPHICAL PERSPECTIVE

Moral philosophy is "the science of human acts in their bearing on human happiness and human duty."[221] Throughout history, many philosophers and intellectuals have developed theories of morality and ethics. These theories have all contributed, some more than others, to the overall moral intuitions that underlie American society. This section will examine three major theories and how they understand parents' moral obligation to support adult disabled children.

1. Deontology

Deontology emphasizes moral duties and moral rights or permissions.[222] It is the "study of moral obligation,"[223] that "ex-

217. *Cf.* DAVID PEARL & WERNER MENSKI, MUSLIM FAMILY LAW 430 (3d ed. 1998) (stating that a father has an obligation to care for his daughter until she is married and has an obligation to care for his son until he reaches puberty).

218. *Id.*

219. *Id.* at 430 n.83.

220. Allegretti, *supra* note 196, at 459.

221. JOSEPH RICKABY, MORAL PHILOSOPHY: ETHICS, DEONTOLOGY AND NATURAL LAW 1 (1919).

222. Lawrence B. Solum, *To Our Children's Children's Children: The Problems of Intergenerational Ethics*, 35 LOY. L.A. L. REV. 163, 211 (2001).

223. RICKABY, *supra* note 221, at 2.

pounds and vindicates the idea, *I ought*."[224] Deontology is the "science of ethics,"[225] and the "science of Duty."[226] It is an approach to ethics that posits that we have a duty or obligation to treat other human beings in particular ways simply because they are human and we must therefore respect their rights and dignity.[227] A deontologist believes that actions are intrinsically right or wrong—if you violate someone's rights, you commit a moral wrong, regardless of the consequences.[228]

The standard example of deontological moral theory is Immanuel Kant's theory of categorical imperatives.[229] According to Kant, a categorical imperative is a "command (imperative) that holds with no exceptions or qualifications (categorically)."[230] Kant believed that everyone knows the difference between right and wrong. In order to determine the rightness or wrongness of an action, one must decide if the action conforms to or obeys that known moral law.[231] Kant wrote that morality requires that everyone "[a]ct in such a way that you treat humanity, whether in your own person or in the person of any other, always at the same time as an end and never simply as a means"—in other words, to treat them with all respect due to a human being.[232] Kant argued that one should "act on the basis of principles that you would want everyone else to act upon."[233]

Deontological ethics would likely hold that parents should care for their adult disabled children indefinitely because it is the right thing to do.[234] Parents "have brought a Being into the world who becomes in fact a Citizen of the world, and they have placed that Being in a state which they cannot be left to treat with indifference."[235] According to Kant, "duties of justice are

224. *Id.* at viii.

225. 4 ENCYCLOPEDIA OF RELIGION AND ETHICS (James Hastings ed.).

226. RICKABY, *supra* note 221, at viii.

227. THOMAS I. WHITE, RIGHT AND WRONG: A BRIEF GUIDE TO UNDERSTANDING ETHICS 62 (1988).

228. *Id.*

229. Solum, *supra* note 222, at 211.

230. WHITE, *supra* note 227, at 69.

231. *Id.*

232. *Id.*

233. Solum, *supra* note 222, at 211.

234. *See* H.A. PRICHARD, MORAL OBLIGATION AND DUTY AND INTEREST 10 (1968).

235. IMMANUEL KANT, THE PHILOSOPHY OF LAW 115 (Edinburgh: T. & T. Clark) (1887).

external duties," and the duty is "just to *do*" or "perform" the act.[236] Caring for children, regardless of age, who are unable to care for themselves, reflects the basic respect for humanity that Kant discussed in his theories. Parents should care for their own children as they would have wanted their parents to care for them, and as they will want their children to care for their grandchildren in turn. For as Kant himself wrote:

> Children, as Persons, have, at the same time, an original congenital Right—distinguished from mere hereditary Right—to be reared by the care of their Parents till they are capable of maintaining themselves; and this provision becomes immediately theirs by Law, without any particular juridical Act being required to determine it.[237]

The things that people *ought* to do, and what they feel is correct or moral, are these ideas that Kant established that respect the basic rights and freedoms of humanity. Thus, deontology supports the contention that parents *should* care for their adult disabled children indefinitely.

2. Virtue Ethics

Virtue ethics is most often associated with Aristotle and his theory of virtues as acquired dispositional qualities.[238] These virtues are characteristics of mind and will that constitute a good life, where happiness consists of a life lived in accord with the virtues.[239] Accordingly, a "society composed of such persons will also flourish," while a person who possesses the corresponding vices "cannot be happy and will not contribute to the happiness of others."[240] Thus, these "virtue-centered theories focus on character rather than action."[241] Virtue ethics does not focus on the motives of an individual, but rather "identifies particular traits as more or less worthy" and then examines specific acts to determine if "they are of the kind a person possessed of worthy character traits would perform."[242]

Since virtue ethicists place such emphasis on the virtues of the individual and what he or she can or will add to society, they would most likely support parents caring for their adult

236. Christine M. Korsgaard, *Taking the Law into Our Own Hands: Kant on the Right to Revolution*, *in* RECLAIMING THE HISTORY OF ETHICS ESSAYS FOR JOHN RAWLS 297, 300 (Andrews Reath et al. eds., 1997).

237. KANT, *supra* note 235, at 114.

238. Solum, *supra* note 222, at 212.

239. *Id.*

240. *Id.*

241. *Id.* at 214.

242. Heidi Li Feldman, *Prudence, Benevolence, and Negligence: Virtue Ethics and Tort Law*, 74 CHI.-KENT L. REV. 1431, 1432 (2000).

they would most likely support parents caring for their adult disabled children. The focus on the particular character of an individual would lead parents to question how other parents would handle the same situation. Society as a whole would prefer "parents to care for their children," and other members of their family "out of love" instead of a particular duty dictated by justice.[243] "Virtue ethics expands morality to . . . [include a variety of values] that figure into human life," including both individual and social decisions concerning the enhancement of "overall quality of human lives."[244] One can see virtue ethics in practice in many areas such as family law, where the interests of the child and the child's well-being are more prevalent than the needs or concerns of the parents.[245] Thus, followers of Aristotle and other more modern theories of virtue ethics would support the moral obligation of parents to care for their adult disabled children until they are able to care for themselves.

3. Utilitarianism

Utilitarianism signifies that "the ultimate end is and ought to be general happiness, and that those actions are right which bring the greatest happiness to the greatest number."[246] This theory, first distinctly formulated by Jeremy Bentham, prioritizes the general happiness of the greatest number of people, not just that of an individual.[247] Later, J. S. Mill emphasized that "the happiness which forms the utilitarian standard of what is right in conduct, is not the agent's own happiness, but that of all concerned. As between his own happiness and that of others, utilitarianism requires him to be as strictly impartial as a disinterested and benevolent spectator."[248] As a moral theory, utilitarianism says that "utility should be used as the guide to individual moral choice."[249] Thus, using this theory, we answer such moral questions as should I care for my child affirmatively because such care will enhance utility.[250] Utilitarianism does not establish specific duties other than the principle that one must perform an act if that act will produce

243. Solum, *supra* note 222, at 215.
244. Feldman, *supra* note 242, at 1437.
245. *See, e.g.*, CAL. WELF. & INST. CODE § 361 (West Supp. 2006).
246. 12 ENCYCLOPEDIA OF RELIGION AND ETHICS 558 (2003).
247. *See id.* at 558–66.
248. *Id.* at 562.
249. Solum, *supra* note 222, at 209.
250. *Id.* at 210.

greater utility.[251] Therefore, under normal or usual circumstances, parents are in the best position to care for their children because "parents prefer to do this, because parents can do it at a lower cost than others, and because children derive greater benefits from parental care than care in orphanages or foster homes."[252]

As Thomas White stated, "Bentham tells us that if we want to determine the moral character of an action, we should see how much pleasure it produces."[253] Modern American society and its current views on morality have stemmed from a variety of European philosophers.[254] Although differing in their views on people, character, and actions, most of these philosophers would support the contention that parents do in fact have a moral obligation to care for their adult disabled children indefinitely. The philosophical approach addresses more about how people can be rather than how most of us are and displays the best qualities and possibilities of humanity, which are the characteristics of people that are positive and uniquely human.[255]

C. MORAL DUTIES OF SOCIETY

The foregoing religious and philosophical perspectives illustrate the strong moral obligations placed on parents to care for their adult disabled children past the age of majority. These moral obligations, however, do not end with parents. In fact, many of the best known political, philosophical, and religious thinkers have contemplated society's moral duty to care for the destitute and disabled. Aristotle, for example, recognized the right of the disabled to obtain subsistence from public funds.[256] John Locke's "'first and fundamental natural Law'" was "'the preservation of the Society, and . . . of every person in it.'"[257]

251. *See id.*

252. *Id.*

253. WHITE, *supra* note 227, at 43.

254. *See id.*

255. *See id.*

256. Peter B. Edelman, *The Next Century of Our Constitution: Rethinking Our Duty to the Poor*, 39 HASTINGS L.J. 1, 22–23 (1987) (quoting Aristotle, *The Constitution of Athens*, *in* ARISTOTLE AND XENOPHON ON DEMOCRACY AND OLIGARCHY 190 (J. Moore trans., 1975)).

257. Samuel Freeman, *Criminal Liability and the Duty to Aid the Distressed,* 142 U. PA. L. REV. 1455, 1465 (1994) (quoting JOHN LOCKE, TWO TREATISES OF GOVERNMENT (Peter Laslett ed., Cambridge Univ. Press, student ed. 1988) (3d ed. 1698)).

With this most basic political principle, he argued that individuals have a natural right to the material necessities for survival thereby entitling them to obtain necessities in the form of charity from the government, if needed.[258] Hobbes's prudential social contract doctrine also acknowledged "public assistance [programs] as a legitimate and necessary government function."[259] Authorizing such assistance, Hobbes commented, "'And whereas many men, by accident inevitable, become unable to maintain themselves by their labour; they ought not to be left to the Charity of private persons; but to be provided for . . . by the Laws of the Commonwealth.'"[260] Like Locke, Hobbes recognized the dangers of relying on private charity, further commenting: "'[f]or as it is uncharitableness text in any man, to neglect the impotent; so it is in the Sovereign of a Commonwealth, to expose them to the hazard of such uncertain charity.'"[261] Similarly, Kant required governments to put into place public institutions to help the destitute, charging citizens with "the perfect duty to support them."[262]

Christian, Jewish, and Islamic religious traditions all acknowledge man's unique moral worth, as derived from the possession of a soul.[263] This recognition of inherent worth necessarily exhibits concern for man's material welfare.[264] Universal modern values embrace society's obligation to provide for human welfare. For example, Article 25 of the United Nations' Universal Declaration of Human Rights states: "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services . . . ."[265]

258. *See* Joan L. McGregor, *This Land Is Your Land, This Land Is My Land: A Philosophical Reflection on Natural Rights to Property and Environmental Regulations*, 12 J. ENVTL. L. & LITIG. 87, 94 (1997).

259. Freeman, *supra* note 257, at 1468.

260. *See id.* (quoting THOMAS HOBBES, LEVIATHAN 239 (Richard Tuck ed., Cambridge Univ. 1991) (1651)).

261. *See id.* (quoting THOMAS HOBBES, LEVIATHAN 239 (Richard Tuck ed., Cambridge Univ. 1991) (1651)).

262. *See id.*

263. Bobby Jindal, *Relativism, Neutrality and Transcendentalism: Beyond Autonomy,* 57 LA. L. REV. 1253, 1263 (1997).

264. *See id.*

265. Universal Declaration of Human Rights, art. 25, G.A. Res. 217A, at 71, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc A/810 (Dec. 12, 1984); *see also* Edelman, *supra* note 256, at 20.

Exactly which social services our government should provide is the subject of much debate. Ronald Dworkin, a contemporary Anglo-American legal scholar, has asserted that since society has a moral responsibility to accommodate individuals with disabilities, the government should act to fulfill this duty by providing the equivalent of an insurance system for the disabled.[266] Dworkin premises his argument on Rawls's "veil of ignorance" theory, in which principles of justice are abstracted from an "'original position of equality,'" in which "'no one knows . . . his fortune in the distribution of natural assets and abilities, his intelligence, strength and the like.'"[267] Since people "in the original position must consider whether they . . . may be members of the least advantaged class in society[,] . . . [they] will choose principles of justice that maximize the life prospects of a disadvantaged class."[268] Dworkin believes that prior to birth, individuals would be willing to pay into an insurance system capable of compensating them, should they be born disabled.[269] Under this maxim, justice requires support of the disabled. Implying that support obligations should not fall on the parents alone, Dworkin further argues that the government is in the best position to establish such a system.[270]

While parents have a moral duty to support their disabled children, our religious and philosophical traditions suggest that society shares this obligation. There is a consensus that a just society will not abandon human beings in need. A parent's natural duty to help his adult disabled child merges with society's moral duty to provide public assistance to the disabled, and when such institutions do not exist, society has the added duty to bring them into existence.[271] One final question, then, remains: Does the existence of a moral duty necessarily imply that the state should impose a legal duty as well?

266. Friedland, *supra* note 58, at 191–92.

267. JOHN RAWLS, A THEORY OF JUSTICE 12 (1971); *see* Mark S. Stein, *Rawls on Redistribution to the Disabled,* 6 GEO. MASON L. REV. 997, 998 (1998).

268. STEIN, *supra* note 267, at 998.

269. Friedland, *supra* note 58, at 191–92.

270. *Id.* at 192 (arguing that "market-based insurance cannot remedy the contingency of disability" and that the government is in the best position to spread the costs of accommodating those with disability widely).

271. *See* Freeman, *supra* note 257, at 1468–69.

IV. LEGAL DUTIES

The problem of the relationship between law and morality is a thorny one. At least some basic aspects of that relationship, however, are clear. On one hand, "many moral principles have no backing from the law," and in general, the law does not enforce morality.[272] On the other, there are significant overlaps between our moral and legal obligations.[273] For example, tort law recognizes a moral duty of care to prevent foreseeable harm to others.[274] Criminal law deals with responsibility for harmful acts, employing moral judgments to ascertain the culpability of the criminal's mental state.[275] Even contract law has a moral dimension when considering whether promises made as part of contract should be legally binding.[276]

Nevertheless, American law does not recognize any overarching duty to assist.[277] As a general rule, "'one has no legal duty to aid another person in peril, even when that aid can be rendered without danger or inconvenience to himself.'"[278] There is no such duty even if the one in peril is the adult child of the one whose duty is at issue. We may condemn a parent morally for failing to come to the aid of his adult child, but in general we do not render him legally liable for such failure.

While this "no duty" rule may occasionally offend our moral sensibilities and defy our natural inclinations, several theoretical and practical considerations arguably justify it. Submitting

272. Posner, *supra* note 179, at 1694–95.

273. *Id.* at 1694.

274. RESTATEMENT (SECOND) OF TORTS § 314 (1965).

275. 21 AM. JUR. 2D *Criminal Law* § 49 (2006).

276. RESTATEMENT (SECOND) OF CONTRACTS § 86 cl. 1 (1981).

277. David C. Biggs, *"The Good Samaritan Is Packing": An Overview of the Broadened Duty to Aid Your Fellowman, with the Modern Desire to Possess Concealed Weapons*, 22 U. DAYTON L. REV. 226, 227 (1997). *But see* Justin T. King, *Criminal Law: "Am I My Brother's Keeper?" Sherrice's Law: A Balance of American Notions of Duty and Liberty*, 52 OKLA. L. REV. 613, 621–22 (1999) (stating that eight states have enacted "Good Samaritan statutes" that prescribe an affirmative duty to assist, and every state (including the District of Columbia) has passed statutes to relieve rescuer liability); John T. Pardun, *Good Samaritan Laws: A Global Perspective*, 20 LOY. L.A. INT'L & COMP. L.J. 591, 594 n.18 (1998) (recognizing that there is a common law exception to the "no duty" rule that arises in the context of "special relationships" between the victim and would-be rescuer). "Certain people have a duty of care toward others because of their relationship, usually one of dependency: the physician toward his patient, the shopkeeper toward his customer, the employer-employee, parent-child." Pardun, *supra*, at 594 n.18 (citation omitted).

278. Biggs, *supra* note 277, at 619 (quoting WAYNE R. LAFAVE & AUSTIN W. SCOTT, JR., CRIMINAL LAW 203 (2d ed. 1986)).

these justifications to exacting scrutiny, the following analysis supports the conclusion that the state should not compel familial support of disabled adult children, but should instead take that duty upon itself.

A. THEORETICAL CONSIDERATIONS

Several theoretical considerations support the argument that the state should not legislate a legally enforceable family support duty in this context. First, many commentators assert that we should not legislate morality.[279] Second, helping a person in distress is recognized to be an altruistic act, worthy of encouragement. True altruism is "not motivated by the promise of reward or the threat of punishment"; it is motivated instead by love, compassion, or sympathy.[280] A third theoretical approach that justifies a "no duty" approach is that our country is founded on the principle of individual liberty, under which no person has any positive, enforceable legal obligation to others except for those obligations that the person has voluntarily accepted.[281]

The first argument used to support this approach is that legislating morality is problematic.[282] Every person is considered a "free moral agent," and morally bankrupt behavior is not always punishable as a crime.[283] For example, lying or adultery may be considered morally bankrupt, but those actions are not typically criminal.[284]

279. Suzanne B. Goldberg, *Morals Based Justifications for Lawmaking: Before and After* Lawrence v. Texas, 88 MINN. L. REV. 1233, 1236 (2004); King, *supra* note 277, at 619; *see* Posner, *supra* note 179, at 1658.

280. Posner, *supra* note 179, at 1658.

281. Pardun, *supra* note 277, at 603.

282. Mario J. Rizzo, *The Problem of Moral Dirigisme: A New Argument Against Moralistic Legislation*, 3 N.Y.U. J. L. & LIBERTY 789, 799 (2005) (arguing that the State should not legislate morality because even when society can agree on a moral framework, specific moral choices require knowledge of specific circumstances that are not foreseeable at the time the legislation is passed).

283. *See* King, *supra* note 277, at 638 n.178 ("Every United States citizen is considered a 'free moral agent,' unless he or she is imprisoned or otherwise lawfully constrained.").

284. Rob Atkinson, *Lucifer's Fiasco: Lawyers, Liars, and* L'Affaire *Lewinsky*, 68 FORDHAM L. REV. 567, 596 (1999) (observing that "[l]ying is not perse," but pointing out exceptions for fraud and perjury); Sarah Catherine Mowchan, Note, *A Supreme Court that Is "Willing to Start Down That Road": The Slippery Slope of* Lawrence v. Texas, 17 REGENT U. L. REV. 125, 133–36 (2004) (discussing the current constitutional status of adultery statutes).

A second argument holds that when the government imposes an affirmative legal duty, conduct that might otherwise have been altruistic becomes forced, and that change undermines the give and take of the true altruistic relationship.[285]

Applied in the intrafamilial context, this argument seems plausible. We expect financially capable parents to want to help their adult disabled children for genuinely altruistic reasons—out of love and compassion for them—and we expect the adult child to reciprocate to the extent she is able.[286] When such aid occurs in the context of a loving interpersonal relationship, reciprocal affection creates a healthy interdependence.[287] We expect both parties, parent and child, to work toward the day when the child attains some greater measure of self-sufficiency.[288] However, when aid becomes a legal entitlement, loving interdependence risks becoming an antagonistic exaction. Now the adult child has an incentive to remain disabled and dependent for as long as possible.[289] Not only is the parent less likely to think well of the child—and, as a consequence, less likely to provide the non-monetary support and aid parents commonly provide their adult children—but the child is also less likely to think well of herself.[290] Whereas a democratic ma-

285. Sheldon Richman, Op-Ed., *You Can't Legislate Goodwill*, CHRISTIAN SCI. MONITOR, Oct. 2, 1997, at 19 ("People might find Good Samaritan laws reasonable because they believe people should help others in distress. But where individual rights are respected and government power is limited, good will cannot be enshrined in the law. It would undermine freedom."); *see* Pardun, *supra* note 277, at 604 n.84.

286. *See* Catharine H. Stein et al., *"Because They're My Parents": An Intergenerational Study of Felt Obligation and Parental Caregiving*, 60 J. MARRIAGE & FAM. 611, 612 (1998) (addressing societal ideals for the relationship between adult children and their parents).

287. Allan V. Horwitz et al., *Caregiving as Reciprocal Exchange in Families with Seriously Mentally Ill Members*, 37 J. HEALTH & SOC. BEHAV. 149, 159 (1996).

288. *See* Stein et al., *supra* note 286, at 612 ("Strong social norms that encourage independence from the family enhance expectations of appropriate levels of self-sufficiency between adults and their parents.").

289. *Cf.* Jack Robles, *Paternal Altruism or Smart Parent Altruism?* 2–3 (Univ. of Colo. Ctr. for Econ. Analysis, Working Paper No. 98-10, 1998), *available at* http://www.colorado.edu/econ/CEA/papers98/wp98-10.pdf (observing that in an altruistic relationship in which wealth is regularly transferred from a donor to a recipient, the recipient is not incentivized to invest in self-improvement, but instead to overconsume, and advocating a model in which gifts of education are used to counter this trend and promote self-sufficiency).

290. *Cf.* Robin M. Jacobson, Americana Healthcare Center v. Randall*: The Renaissance of Filial Responsibility*, 40 S.D. L. REV. 518, 539 (1995) Filial responsibility laws, holding children responsible for their elderly parents, have

jority might willingly grant support in the form of welfare payments, imposing the equivalent of such payments upon an unwilling family causes interfamilial strain that undermines the loving, altruistic foundation of family life.[291]

The third argument holds that legally requiring persons to do everything they ought to do could understandably restrict the scope of individual decision making. Leaving moral choices to the individual preserves individual autonomy, and if we want to retain this freedom for ourselves, we must take the risk that others will make moral choices we consider to be wrong.[292] Furthermore, situations exist in which a popular consensus would relieve parents of the moral duty to support their child.[293] This feeling is evident in cases where individuals do not become disabled until they are well into their adult years. As an adult, a child is capable of abandoning and abusing her parents, and if she does so, her parents may no longer be morally obligated to provide for her, even if she should later become disabled.[294] The law is ill-equipped to consider all the moral and ethical dimensions that arise when we derive affirmative legal duties from moral obligations.[295]

been criticized for causing social rejection and loss of self-respect among the elderly, and "it is believed that dependence by the elderly on their children for their well-being may lead to depression and, ultimately, suicide." *Id.* These same consequences would seem to apply to responsibility laws holding parents responsible for their adult disabled children. *Id.*

291. *Id.*; *cf.* Julie A. Ruth et al., *Gift Receipt and the Reformation of Interpersonal Relationships*, 25 J. CONSUMER RES. 385, 395 (1999) (observing that gifts unaccompanied by "symbols of caring" can lead to the deterioration of interpersonal relationships).

292. *See* Goldberg, *supra* note 279, at 1283–84 (arguing that lawmaking based purely on "moral rationales" is illegitimate because people have divergent ideas as to what is moral); Posner, *supra* note 179, at 1681–82 (arguing that moral pluralism is important to society, and that having the laws strictly follow one moral philosophy or another would be "a national disaster").

293. In the case of alcohol or drug addiction, requiring parents to support their adult child may mean that the child never seeks help for his or her addiction.

294. *Cf.* Jacobson, *supra* note 290, at 544 (observing that filial responsibility laws have several common law exceptions that prevent an adult child from being required to support their parents and noting that these exceptions apply to cases where children were abandoned, have inadequate financial ability to pay support, or were poorly treated by their parents).

295. Rizzo, *supra* note 282, at 842.

B. PRACTICAL ISSUES

In addition to the foregoing theoretical considerations, there are four serious practical problems with imposing a legally enforceable duty on parents to provide specified amounts of financial support to their adult children with disabilities. First, courts are not well-suited to adjudicate intrafamily relationships. In divorce, spousal support is typically temporary, and disappears when the ex-spouse can get back on her feet.[296] Lawsuits between adult children with disabilities and their parents, by contrast, require courts to mediate intrafamily squabbles indefinitely.

A second problem is consistency. If we believe that parents should forever bear the burden of their child's disability, there is no obvious reason this burden should end when the parents die. The logic underlying statutes that require parents to support their adult children with disabilities is enforced by statutes that provide for preferential inheritance for such adult children as well.[297] In addition, it is not obvious why the duty to support should be restricted to parents. If the purpose of imposing the duty is to protect the public fisc,[298] the law could better serve that purpose by imposing the same duty on siblings, grandparents, and other family members, as in the case with Poor Person Statutes

A third problem is fairness. If we are going to legislate morality in the context of adult disabled children, our laws need to match our moral intuitions in this context. Our moral intuitions, in turn, are likely to be finely nuanced. Whether we believe a parent has a moral duty to support may turn on how the child has treated the parent, on the genuineness of the child's efforts to become self-sufficient, or on competing claims to the parent's resources. No blanket legal rule of support is likely to be able to capture those nuances, and any blanket legal rule that cannot do so is confiscatory.

296. Charlotte K. Goldberg, *If It Ain't Broke, Don't Fix It: Premarital Agreements and Spousalsupport Waivers in California*, 33 LOY. L.A. L. REV. 1245, 1261 (2000) (noting that California has a "policy of assisting a spouse to become self-supporting" by awarding temporary spousal support).

297. *See, e.g.*, CAL. PROB. CODE § 6540(a)(3) (West 1991) ("Adult children of the decedent who are physically or mentally incapacitated from earning a living and were actually dependent . . . upon the decedent for support [are entitled to such reasonable family allowance out of the estate as is necessary for their maintenance according to their circumstances during administration of the estate].").

298. *See* Childers, *supra* note 187, at 2100.

Finally, allowing family members to file lawsuits against each other is an inherently problematic solution to which we should turn only as a last resort. In many respects, family is a bedrock institution of our society.[299] Allowing family members to sue each other for money risks damaging that institution.[300] Saving the public fisc is not a sufficient reason to take that risk.

Each of these practical reasons, as well as the theoretical issues discussed above, combine to make clear that imposing a legal duty on parents to support their adult disabled children would be unwise.

1. The Inability of the Court System to Adjudicate Parent/Adult Child Support Cases

Courts can determine with relative ease whether parents should support their minor children. If the parental relationship has not been terminated, courts only ordinarily need to pose two questions: the age of the child and the amount of the parent's income.[301] This simple approach applies regardless of whether the parent retains custody and the power to order the child's life.[302]

Determining whether to order a parent to support her adult disabled child, by contrast, requires much more difficult factual determination on the part of a court. An obvious preliminary question is whether the child is "disabled." In states that require parental support of children with disabilities, the term "disability" remains largely undefined. In federal law, two very different definitions are used for very different purposes. Under the Americans with Disabilities Act (ADA), an "individual's disability is (A) physical or mental impairment that substantially limits one or more of the major life activities; (B) a record of such an impairment; or (C) being regarded as having such an impairment."[303] The Social Security system, by

299. Bowen v. Gilliard, 483 U.S. 587, 611 (1987).

300. Katie Wise, *Caring for Our Parents in an Aging World: Sharing Public and Private Responsibility for the Elderly*, 5 N.Y.U. J. LEGIS. & PUB. POL'Y 563, 757 (2002) ("In some states, children who fail to support their indigent parents may be found guilty of a misdemeanor or a felony under the state's criminal law. A finding that an adult child has refused or neglected to support her parent or parents could result in a fine or imprisonment.").

301. *See* UNIF. MARRIAGE & DIVORCE ACT § 309 (amended 1971 and 1973), 9A U.L.A. 400 (1987).

302. *Id.*

303. 42 U.S.C. § 12,102(2)(C) (2000).

contrast, defines disability as "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months."[304] The purpose of the ADA is to prohibit discrimination against a group historically subject to significant discrimination and to help that group integrate into the mainstream.[305] The purpose of the Social Security system, by contrast, is to provide support for those unable to support themselves. The Social Security definition of "disability" is therefore more relevant to state rules requiring the support of adult children with disabilities.[306]

Regardless of the definition a state chooses to adopt, whether relying on federal law or otherwise, the determination of whether someone is "disabled" is expensive and complex. For example, the ADA definition requires expert testimony concerning (1) the physical or mental impairment; (2) the substantial nature of the impairment including the effects of any mitigating measures; (3) a comparison with the "normal" population; and (4) the major life activity allegedly limited.[307] Likewise, the Social Security Administration uses a complex procedure to determine whether an individual meets the statutory criteria for assistance.[308] A claimant must establish that she is not engaging in any substantial and gainful activity. She must also show that she meets the statutory severity requirement by showing either that she has an impairment the Act deems so severe as to automatically preclude substantial gainful activity; or that she is in fact unable to perform her prior occupation.[309] Once these showings are made, the claimant is deemed disabled and entitled to benefits unless the Social Security Administration can demonstrate that she has the ability to "perform other work in the national economy."[310] Application of the Social Security definition also commonly requires extensive expert testimony, not merely with respect to the nature of the individual's problems, but also with respect to the availabil-

304. *Id.* § 423(d)(1)(A).

305. Theodore P. Seto & Sande Buhai, *Tax and Disability: Ability to Pay and the Taxation of Difference*, 154 U. PA. L. REV. 1053, 1061, 1070 (2006).

306. *Id.*

307. Sutton v. United Air Lines, Inc., 527 U.S. 471, 473–74 (1999).

308. Bowen v. Yuckert, 482 U.S. 137, 140–42 (1987).

309. *Id.* at 141.

310. *Id.* at 142.

ity of gainful work for which the individual might nevertheless be suited.[311] The Social Security Administration has the necessary resources readily available to litigate such cases; parents typically do not.

Having decided that an adult child is disabled, the court faces sometimes intractable problems in the intrafamilial context in determining whether it would be appropriate to order financial support—problems that do not arise in the ADA or Social Security context. What if the family is trying to encourage the alcoholic adult disabled child to get sober? Which side should the court take? What if the family is trying to ensure that the adult disabled child with mental illness takes her medication? What if the parents are trying to save financial resources against a genetically probable onset of Alzheimer's? What if they believe that a more productive use of their limited resources would be to fund another child's college education? It seems unlikely that any state would require an order of financial support regardless of the answers to these questions. Adjudicating such questions is well beyond a court's institutional competence.[312]

2. Consistency

State rules requiring the support of adults with disabilities are internally inconsistent in at least three regards. If the purpose of a law requiring parents to support their adult disabled children is to transfer the responsibility from society to the parent, and if there are many ways in which this transfer can be accomplished, then the lack of reliance on these solutions creates inconsistency within the statutory regimes. Because laws recognizing a duty of support do so inconsistently, states should either reform their statutory frameworks to achieve consistency or abandon these laws as a matter of public policy.[313]

311. *Id.*

312. *Cf., e.g.*, Kevin Randall McMillan, Note, *The Turning Tide: The Emerging Fourth Wave of School Finance Reform Litigation and the Courts' Lingering Institutional Concerns*, 58 OHIO ST. L.J. 1867, 1893–94 (1998) ("Competency questions ask whether the judicial response is appropriate for the desired results. Because education is governed by a plethora of complex issues, the judiciary has been deemed the least capable institution to determine policy within this social institution.").

313. *Compare* KAN. STAT. ANN. § 59-2006 (2003) (stating that there is no duty to support adult children), *with* ARIZ. REV. STAT. ANN. § 25-320B (2002) (stating that parents must provide continuing support for adult disabled chil-

The requirement that parents support their adult children with disabilities terminates upon the parents' deaths. A consistently applied support requirement would extend to intestacy and inheritance rules, requiring parents to devise sufficient resources to support the adult child with disabilities for the remainder of that child's life. Only one state, Louisiana, has any such protection for children. In other states, however, the rules of inheritance work differently:

> Modern American rules governing inheritance . . . are largely based on the right of a person to dispose of her own property in any way she sees fit. Potential beneficiaries, including children and other direct descendants, generally have no ownership rights in property during the owner's lifetime and have no absolute right to receive the property of any decedent. This freedom of testation is somewhat restricted by statutorily imposed requirements that the testator provide for the surviving spouse.[314]

If a duty of support is imposed as a matter of principle and not merely as a convenient way of saving public funds, inheritance rules should require parental support after death as well. Because Black Letter Law dictates otherwise, statutory schemes that require parents to support their adult disabled

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dren if disability occurred before he or she reaches age of majority), *and* CAL. FAM. CODE § 3910(a) (West 2004) (stating that parents must provide support for adult children with disability regardless of when the disability occurred).

314. Layton v. Layton, 139 S.E.2d 732, 734 (N.C. 1965) ("The common law obligation of a father to support his child is not 'a debt' in the legal sense, but an obligation imposed by law. It is not a property right of the child but is a personal duty of the father which is *terminated by his death*."); *id.* ("The support of a child by a parent may be the subject of contract and a father may by contract create an obligation to support his child which will survive his death and constitute a charge against his estate, in which case the ordinary rules of contract law are applicable." (citation omitted)); Ralph C. Brashier, *Disinheritance and the Modern Family*, 45 CASE W. RES. L. REV. 83, 84–85 (1994) ("In the United States, only [Louisiana] currently provides direct, systematic protection to a child intentionally disinherited by a parent. In all other states, the testator is free to disinherit even needy, *minor* children, regardless of the size of the estate." (citation omitted)); Judith G. McMullen, *Family Support of the Disabled: A Legislative Proposal to Create Incentives to Support Disabled Family Members*, 23 U. MICH. J.L. REFORM 439, 443 (1990); *see also* Melanie B. Leslie, *The Myth of Testamentary Freedom,* 38 ARIZ. L. REV. 235, 235 (1996) (responding to court manipulation of testamentary formalities in preference of family members with the argument that "'[t]he first principle of the law of wills is freedom of testation.' One has a right to distribute property upon death solely according to the dictates of one's own desires, unfettered by the constraints of society's moral code or the claims of others" (quoting John H. Langbein, *Substantial Compliance with the Wills Act*, 88 HARV. L. REV. 489, 491 (1975))).

children should be rejected as a matter of public policy for inconsistency.[315]

Additionally, if the parent-child relationship is the source of the support duty, it is unclear why the support requirement should flow only one way. If states impose onto parents a legal duty to support their adult disabled children, they should also impose a duty on children to support their disabled parents. Civil filial support laws are currently in effect in twenty states, and they range widely in scope and are rarely enforced.[316] Relatively few cases invoking these laws are reported in appellate court decisions, and trial cases are rarely reported.[317] Thus, enforcement of these statutes is difficult to measure.[318] Although the enforcement of filial support laws has declined,[319] state courts have upheld filial responsibility statutes against constitutional attacks.[320] In *Swoap v. Superior Court*, the California Supreme Court upheld a statute that required children to reimburse the state for public assistance provided to their indi-

315. *See supra* note 314.

316. *See* ALASKA STAT. §§ 25.20.030, 47.25.230 (2004); ARK CODE ANN. § 20-47-106 (2001); CAL. FAM. CODE §§ 4400, 4401, 4403, 4410–14 (West 2004); CAL. WELF. & INST. CODE § 12350 (West 2001); DEL. CODE ANN. tit. 13, § 503 (1999); GA. CODE ANN. § 36-12-3 (2006); IND. CODE ANN. §§ 31-16-17-1 to -12 (LexisNexis 2003); IOWA CODE ANN. §§ 252.1,.2, .5, .6, .13 (West 2000); LA. REV. STAT. ANN. § 13:4731 (2006); MISS. CODE ANN. § 43-31-25 (2004); MONT. CODE ANN. § 40-6-214 (2005); NEV. REV. STAT. ANN. § 428.070 (LexisNexis 2006); NEV. REV. STAT. ANN. § 439B.310 (LexisNexis 2005); N.H. REV. STAT. ANN. §§ 167:2, 546-A:2 (LexisNexis 2006); N.J. STAT. ANN. §§ 44:1-139 to 141, 44:4-100 (West 1993); N.D. CENT. CODE § 14-09-10 (2004); OR. REV. STAT. ANN. § 109.010 (West 2003); 23 PA. CONS. STAT. ANN. § 4603 (West Supp. 2006); S.D. CODIFIED LAWS §§ 25-7-25, 25-7-27, 28-13-1.1 (2004); TENN. CODE ANN. §§ 71-5-103, -115 (2004); UTAH CODE ANN. § 17-14-2 (2005); W. VA. CODE ANN. 9-5-9 (LexisNexis 2003); Wise, *supra* note 300, at 574.

317. Matthew Pakula, *A Federal Filial Responsibility Statute: A Uniform Tool to Help Combat the Wave of Indigent Elderly*, 39 FAM. L.Q. 859, 862 (2005) ("Today, thirty states have a civil or criminal filial responsibility statute. Few of those states are actively enforcing their filial responsibility statutes. In fact, eleven states have filial responsibility statutes that have never been enforced.").

318. *See* Seymour Moskowitz, *Adult Children and Indigent Parents: Intergenerational Responsibilities in International Perspective*, 86 MARQ. L. REV. 401, 428 n.146 (2002) ("California and New York appellate courts reported the greatest number of cases requiring children to support their aging parents; California courts reported eight cases, and New York courts reported three cases.").

319. Seymour Moskowitz, *Filial Responsibility Statutes: Legal and Policy Considerations*, 9 J.L. & POL'Y 709, 714–15 (2001).

320. *See*, *e.g.*, Swoap v. Superior Court, 516 P.2d 840, 852 (Cal. 1973).

gent parents.[321] The court found that the statute did not discriminate on the basis of wealth, but rather selected children to bear the financial burden of their elderly parents.[322] Consequently, the court held the statute did not violate the Equal Protection Clause.[323] The court explained its rationale:

> It seems eminently clear that the selection of the adult children is rational on the ground that the parents, who are now in need, supported and cared for their children during their minority and that such children should in return now support to their parents to the extent to which they are capable. Since 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.[324]

The loss of support for these laws has been attributed to the social and economic changes that occurred in the twentieth century, which influenced the structure and substance of the family relationships.[325] However, there is some evidence of continuing public support for filial support laws. For example, Pennsylvania updated and recodified its filial support law in 2005.[326]

Finally, it is unclear why a legal duty of support should extend only to parents. Most would conclude that brothers and sisters have a moral duty to support their adult disabled siblings if they are financially capable of doing so.[327] The same is probably true of grandparents.[328] Imposing such an extended legal duty would clearly help preserve the public fisc. If we are going to impose a legal duty on parents to support their adult

321. *Id.*

322. *Id.* at 850.

323. *Id.* at 852.

324. *Id.* at 851.

325. Art Lee*, Singapore's Maintenance of Parents Act: A Lesson to Be Learned from the United States*, 17 LOY. L.A. INT'L & COMP. L.J. 671, 681 (1995) ("[I]ndustrialization and modernization have led to the decline of filial support laws is grounded on the theory that industrialization and modernization have caused the gradual erosion of traditional notions of filial piety, as well as the replacement of the extended family with the nuclear family.").

326. *See* Katherine C. Pearson, *Re-Thinking Filial Support Laws in a Time of Medicaid Cutbacks—Effect of Pennsylvania's Recodification of Colonial-Era Poor Laws*, 76 PA. B. ASS'N Q. 162 (2005).

327. Janet B. Korins, Curran v. Bosze*: Toward a Clear Standard for Authorizing Kidney and Bone Marrow Transplants Between Minor Siblings*, 16 VT. L. REV. 499, 531 (1992) ("Members of a family are more than a set of individuals who inhabit the same house; they are defined in part, and they define themselves in part, by the relationships they share with each other. This network of relationships helps to define the moral duties of parents to children, and the moral duties between siblings.").

328. *Id.*

disabled children, consistency may require that we extend that duty to other family members, both before and after the parents' deaths. The fact that we do not do so suggests, again, that the duty of support is not necessarily imposed on parents as a matter of principle.

Because of pervasive inconsistencies within these statutory regimes, public policy requires states to reject this legal duty of support as the preferential method of supporting disabled adults.

3. Fairness

Third, if we are going to legislate morality in the context of parental duties to support their adult disabled children, our laws need to match our moral intuitions. Otherwise, any legally imposed duty of support becomes confiscatory.

In the intrafamily context, our moral intuitions are likely to be finely nuanced. For example, although most would agree that parents are morally obliged to care for their children, in a legal and practical sense such a law or obligation would be unfair toward parents. To require that a parent care for an adult child would force the parent to do something he or she may not want to do or may lack the ability to do. Such a requirement would threaten autonomous moral decision making and undermine individualized self-determination. While from a moral perspective it seems obvious that parents will want to care for their child, it is illogical in a legal sense to force them to do so. "In some instances, such as the assertion that a restraint is justified to preserve the morals of the regulated person, the individual claim easily prevails on its own autonomy basis. Even against a justification based on the moral sense of others, the claim for autonomy is exceedingly strong."[329]

In some cases, the specific disability of the child may compel parents not to support a child, not because they do not love her, but because they feel it is in the child's best interest to be independent and attempt to help herself. Our moral intuitions might well support the parents' decision. A blanket support requirement cannot accommodate these nuanced situations. An adult child possibly capable of self-sufficiency may take advantage of a legal duty of support to avoid work or independence. Courts administering a blanket legal support requirement are

329. Wayne McCormack, *Property and Liberty—Institutional Competence and the Functions of Rights*, 51 WASH. & LEE. L. REV. 1, 6 (1994).

unlikely to be able to determine the adult child plaintiff's motivations with any accuracy; nor do current state support requirements take such motivations into account.[330]

Our moral intuitions may also be finely nuanced in terms of competing demands on the parents' resources. Parents may wish to help another child financially—perhaps even a minor child or a child still in school. Or the parents may correctly predict that they will need savings to support themselves in the not-too-distant future. Our moral intuitions may well balance the net equities in the parents' favor. In such circumstances, therefore, a blanket legal support requirement would be morally unfair.

What if parents are unable (but willing to sacrifice), and parents are morally inclined to assist? However, in the absence of the moral will or financial means, there should be a uniform system of government support in place, which will provide for the adult disabled population in this country. From a fairness standpoint, there should be no law mandating parental support, and instead there should be programs available to all families and all adult disabled children equally.

4. Family Discord

In general, the law is extremely reluctant to create intrafamily causes of action.[331] Where there is no other alternative—for example, in the context of divorce—it does so.[332] By and large, however, lawsuits are not viewed as a suitable method for resolving intrafamily disagreements.[333] Where the principal justification for creating a cause of action is to

330. *Cf.* McMillan, *supra* note 312, at 1893–94 (noting that in the context of education policy, where many complex issues arise, judges have been deemed "the least capable institution" to make policy decisions).

331. Leonard Karp, *Civil Relief for Victims of "Uncivilized Behavior*,*"* 17 FAM. ADVOC. 77 (1995) ("For many years, courts and legislatures have used the doctrines of inter-spousal and parental tort immunity to preserve 'domestic harmony' by refusing to allow an injured person to bring a cause of action against a family member.").

332. CAL. FAM. CODE ANN. § 3109 (West 2004).

333. Kathy A. Hunt, *Using Mediation In Family Law Cases*, 27 WYO. L. REV. 32, 34 (2004) ("While the court system is the best alternative for conflict resolution when all else fails, it is particularly important for attorneys in family law matters to thoughtfully consider the option of mediation. The adversarial method and the imposition of court authority are poor substitutes for the family itself as the decision-making unit about matters that are of the most private and important nature to clients.").

conserve financial resources, creation of such an intrafamily cause of action seems particularly inappropriate.

There is a further problem with causes of action for support: in theory, at least, the litigation never ends. Family courts generally have authority to reevaluate support awards every time there is a "change in condition."[334] The resulting court orders often modify or reinstitute support obligations imposed under the terms of a prior decree.[335] Any time an adult child's disability status changes, further adversarial court proceedings are required.[336] Any time a parent's financial situation changes, parent and child, again, speak to each other only through their lawyers and court pronouncements.[337] Family relations are naturally strained, as family members entangle themselves in ongoing and messy litigation.

The stated purpose, of course, is to protect public resources.[338] Burdening the state courts with perpetual intrafamily litigation, however, will not necessarily achieve this purpose. It may reduce the public assistance roles,[339] but it substitutes a formal support structure with much greater administrative overhead, wasting resources of state courts that are already overburdened.[340]

In re Marriage of Drake illustrates this problem. The Drakes were divorced in 1961. Ten years later, in 1971, David Drake, their twenty-one-year-old adult son, was diagnosed with paranoid-schizophrenia.[341] Twelve years later, in 1983, he moved in with his mother. Five years after that, she sued his father on his behalf for support.[342] Initially, the court issued an order requiring support in the amount of $1350 per month.[343] Six years later, in 1994, the mother's deteriorating health led

334. 24A AM. JUR. 2D *Divorce and Separation* § 1079 (2006) ("At any time after the entry of a divorce decree, a court may annul, modify, or vary a child support award upon an application by either of the parties pursuant to a statute, or pursuant to a court's own authority.").

335. *Id.*

336. *Id.*

337. *Id.*

338. Childers, *supra* note 187, at 2100.

339. *Id.*

340. *See* Catherine J. Ross, *United Family Courts: Good Sense, Good Justice*, 35 TRIAL 30 (Jan. 1999).

341. *In re* Marriage of Drake, 62 Cal. Rptr. 2d 466, 472 (Cal. Ct. App. 1997).

342. *Id.* at 472–73.

343. *Id.* at 473.

her to hire a live-in housekeeper. As a result, the costs she claimed as attributable to David's care increased to $5584 per month.[344] In the meantime, she had set up a trust fund for her son.[345] She died while her request for increased support for her son was pending.[346] Notwithstanding her death, the court denied the father's motion to terminate the child support order proceeding and ordered the father to increase his support payments.[347] At no time during this process was there ever any indication that the adult disabled child was at risk of destitution or lack of adequate care. One can only imagine the effect this had on the relationship between father and son.

In *Corby v. McCarthy*, the court ordered Daniel McCarthy to pay $634 a month to his ex-wife for the continuing support of their disabled adult daughter, Kelly.[348] A few months later, Kelly's mother sought to increase the father's court-ordered

344. *Id.*

345. *Id.* at 472.

346. *Id.* at 473.

347. *Id.* at 478–479. The court held that the cause of action did not abate on the mother's death, because a parent's duty to support an incapacitated child ran to the child. *Id.* at 475. The trustees could maintain the action as the mother's successors in interest. *Id.* at 475–76. The trust did not discharge appellant's support obligation under CAL. FAM. CODE § 3910 (West 2004) because the son could not earn a living if the trust ran dry. *In re Marriage of Drake*, 62 Cal. Rptr. 2d at 476–77. On appeal, the court affirmed the trial court's calculation of James's child support order and affirmed that the Family Code sections applied to adult disabled children. *Id.* at 477–78. His payment calculation was based on the following guideline formula provided by CAL. FAM. CODE § 4055(a):

> CS = K [HN (H) (TN)].
>
> The components of the formula are as follows:
>
> CS = child support amount.
>
> K = amount of both parents income to be allocated for child support as set forth [below].
>
> HN = high earner's net monthly disposable income.
>
> H% = approximate percentage of time that the high earner has or will have primary physical responsibility for the children compared to the other parents . . . .
>
> TN = total net monthly disposable income of both parties.

CAL. FAM. CODE § 4055. The trial court also determined under sections 4061 and 4062 the amount James should pay for medical costs. *In re Marriage of Drake*, 62 Cal. Rptr. 2d at 477. The appellate court determined that although a trial court may reduce the amount due under the formula if the disabled child has independent income, the trial court in this case did not abuse its discretion by not reducing the support in light of the trust. *Id.* at 479.

348. 840 A.2d 188, 194 (Md. Ct. Spec. App. 2003). This was based on Kelly's need, which amounted to about $1000 a month, her mother's annual income of $20,000, and Daniel's annual income of about $60,000. *Id.*

support payments when the father's income rose from about $60,000 to $63,228 per year and her income declined.[349] Four months later, the mother obtained full-time employment; the father filed a motion to terminate support altogether.[350] The trial court reduced the father's support payments to $100 per month, but both parties filed exceptions.[351] The state appeals court remanded the case for a new calculation, which was to include reasonable costs of health insurance and housing.[352] There were three trials, an appeal, and a remand for further proceedings in the space of less than a year, all to save the state less than $10,000. Again, one has to wonder how the repeated trips to court affected ongoing intrafamily relations. Unfortunately, the complexity of this case is not unusual. When an adult child with a disability seeks an order compelling support from one or more of her parents, the ensuing litigation cannot but lead to a disruption of the family. This is a very real cost—nonfinancial, but real nevertheless.

Therefore, the disruption to the family relationship and the other costs that would be incurred further support the argument that our legal system should not impose a legal duty to support adult children with disabilities.

CONCLUSION

States differ radically in their answer to the question of whether parents should be subject to an ongoing legal duty to support adult children whose disabilities prevent them from supporting themselves. Nine recognize no such duty. Twenty-four recognize such a duty only if the child becomes disabled prior to majority or emancipation. The remaining eighteen, plus the District of Columbia, impose a duty of support regardless of when disability occurs.

Morally there appears to be consensus that parents should support their adult disabled children to the extent they are

349. *Id.*

350. *Id.* Kelly was working full-time for the Veterans Affairs hospital, earning a gross income of $16,590 per year. *Id.*

351. *Id.* at 195–96 (noting that the master found Kelly could meet most of her monthly needs and recommended a downward reduction in the support amount owed).

352. *Id.* at 219–20. During this trial, both Kelly and Bonnie had separate apartments in the same apartment complex, although Bonnie spent all her time at Kelly's. Since Kelly could not live on her own reasonably, the cost of a larger apartment or alternative housing arrangement was to be included in the calculation on remand. *Id.* at 218–19.

able. Whether that moral duty should give rise to a legal cause of action is a difficult question. But for a desire to save state resources, the answer would probably be no. The desire to save state resources does not, however, outweigh arguments against recognizing such a cause of action.

I do not mean to suggest that the public resources we have devoted to caring for adults with disabilities are adequate. Nothing could be further from the truth. In fact, ten million adults have disabilities requiring personal assistance to carry out everyday activities, such as getting around the home, getting in or out of bed, bathing, dressing, and eating.[353] Among those aged seventy-five to seventy-nine, more than half have some disability, and thirty-eight percent have a severe disability.[354] As a given generation ages, the ratio of disabled adults to the entire adult population in that generation increases dramatically, as shown by statistics compiled by the U.S. Census Bureau.[355] According to the 2000 census, individuals aged seventy-five to eighty-four numbered 12.4 million, and those over eighty-five accounted for 4.2 million of the total population.[356] Those age eighty-five and over constituted the fastest growing subgroup within the group of individuals aged sixty-five and over, and those aged seventy-five to eighty-five constituted the second fastest growing subgroup.[357]

These statistics illustrate the urgency with which we must address issues of care for adult disabled persons.[358] While it is reassuring to know that eighty percent of primary helpers are relatives of the disabled,[359] governments must address how to

353. U.S. CENSUS BUREAU, POPULATION PROFILE OF THE UNITED STATES 19-1 (2000), http://www.census.gov/population/pop-profile/2000/profile2000.pdf.

354. *Id.* at 19-2.

355. Each successive age group, from the fifteen to twenty-four group to the eighty and older group, shows an increase in the incidence of disability of any kind, including severe disability resulting in the need for personal assistance. The only exception to this trend is a slight decrease in the incidence of severe disability between the sixty-five to sixty-nine age group and the seventy to seventy-four age group (30.7% to 28.3% respectively). *Id.* at 19-2 fig.19-2.

356. LISA HETZEL & ANNETTA SMITH, U.S. CENSUS BUREAU, THE 65 YEARS AND OVER POPULATION 2 (2001), http://www.census.gov/prod/2001pubs/c2kbr01-10.pdf.

357. *Id.*

358. While I use the term "adult disabled person," I also describe statistics relating to population growth among the older segments of the population because the incidence of disability is more prevalent as we age.

359. U.S. DEP'T OF COMMERCE, CENSUS BRIEF 1 (1997), http://www.census

provide care for the remaining twenty percent. Inviting that twenty percent to sue their parents is not the answer.

The question ultimately is who should provide such care. As discussed above, historically, courts and legislatures have employed a burden-shifting argument to justify the existence of parental support laws. This policy—that the state should not have to care for individuals who have family who could support them—has existed since Elizabethan times. Since then, however, society's recognition of our collective responsibilities has expanded.[360] In addition, it is not clear that legally enforceable parental support rules actually protect the public fisc.

Compelling theoretical and practical justifications weigh heavily against legally enforceable parental support duties. The theoretical justifications—that we should not legislate morality; that true altruism is motivated by love, compassion, or sympathy, not by state mandate; and that our nation is founded upon the principle of individual liberty, under which each person has no positive legal obligations to others enforceable by the government except those that are voluntarily accepted—compel the conclusion that the state should not require familial support of adult disabled children. The practical considerations—that courts are not well suited to adjudicate intrafamilial relations of this kind, that legislatures would have to amend laws governing family relations, that a blanket duty of support is likely, in many situations, to violate our intuitive notions of fairness, and that the recognition of legal causes of action between family members are inherently problematic—also compel this conclusion.

Most parents love and care for their children. Even if the children have reached adulthood, most parents do all they can to provide support. Both religion and moral philosophy support the idea that parents should, in most cases, do what they can to

.gov/prod/3/97pubs/cenbr975.pdf.

360. Even a century before the rise of the disability rights movement, the federal government created the world's largest and most generously funded social insurance scheme with its pension program for disabled Union veterans. In 1890, Congress passed the Disability Pension Act, allowing veterans to claim benefits for disabilities unrelated to their military service. The Social Security Act of 1935 was a response to problems faced by those forced out of the workforce by disabilities resulting from an increase in industrialized accidents or old age. While burden-shifting may be an attractive prospect for taxpayers, the need for programs to assist the disabled will always exist. Such federal programs have existed with success since the end of the Civil War. This suggests that society is in the best position to assume collective responsibility for our nation's disabled.

support their adult disabled children. Nevertheless, this moral duty should not be legally enforceable. Familial support is best left to the conscience of individual members. It cannot and should not substitute for institutions, governmental or otherwise, that provide support for persons with disabilities even-handedly, without regard to the wealth or status of their parents.