PennState Dickinson Law

DICKINSON LAW REVIEW
PUBLISHED SINCE 1897

Volume 77
Issue 2 *Dickinson Law Review - Volume 77, 1972-1973*

1-1-1973

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Recommended Citation

Paul R. Ober, *Pennsylvania's Family Responsibility Statute-Corruption of Blood and Denial of Equal Protection*, 77 DICK. L. REV. 331 (1973).
Available at: https://ideas.dickinsonlaw.psu.edu/dlra/vol77/iss2/7

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PENNSYLVANIA'S FAMILY RESPONSIBILITY STATUTE—CORRUPTION OF BLOOD AND DENIAL OF EQUAL PROTECTION

I. INTRODUCTION

Under the Pennsylvania Public Assistance Act,[1] the Pennsylvania Department of Public Welfare is required to grant assistance to those persons within the state who are without sufficient resources to maintain themselves.[2] The Pennsylvania Support Act,[3] designed to mesh with the above provision,[4] provides in part that:

> The husband, wife, child, (except as hereinafter provided), father and mother of every indigent person, whether a public charge or not, shall, if of sufficient financial ability, care for and maintain, or financially assist, such indigent person at such rate as the court of the county, where such indigent person resides shall order or direct . . . .[5]

Thus, each member of this statutorily delineated class[6] is considered by the Department of Public Assistance as "a potential resource to persons applying for or receiving assistance,"[7] and it is mandatory that an "assistance client explore and develop the resource that this LRR may represent to him."[8] If the LRR proves unwilling to voluntarily provide such care and maintenance for his indigent kinsman, statutory enforcement procedures are provided.[9]

Upon petition by the indigent person, or by any other person or public body or agency with an interest in the case, the courts of the Commonwealth are empowered to "hear, determine and make orders and decrees"[10] that the amount determined as pos-

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1. PA. STAT. ANN. tit. 62, §§ 401-1501 (1967).
2. An indigent person is one who does not have sufficient means to pay for his care and maintenance himself, and is not necessarily one who is completely destitute and helpless. Commonwealth *ex rel.* Home for the Jewish Aged v. Kotzker, 179 Pa. Super. 521, 118 A.2d 271 (1955).
3. PA. STAT. ANN. tit. 62, § 1973 (1963).
4. Pennsylvania Welfare Manual § 3237 (1969) [hereinafter cited as PA. WEL. MAN.].
5. PA. STAT. ANN. tit. 62, § 1973 (1963).
6. The persons named by the statute as being legally responsible are generally known as Legally Responsible Relatives [hereinafter referred to as LRRs].
7. PA. WEL. MAN. § 3237 (1969).
8. *Id.*
9. PA. STAT. ANN. tit. 62, § 1973(b), (c) (1963).
10. *Id.* at (b).

sible[11] and necessary[12] for the support of the indigent shall be made available[13] to the indigent by whichever member of the listed class is being sued.[14]

Provision for enforcement of the court's order is also established by statute. Upon filing of a petition stating that the order has not been complied with, the court must issue an attachment directing the recalcitrant LRR to appear.[15] A hearing is held to determine whether the noncompliance is willful.[16] Following a finding of willful noncompliance, the LRR may be found in contempt and sentenced to the county jail for a period of up to six months. In addition, the support order is a debt of record, the order being in the nature of a regular judgment[17] thus making available all of the normal civil actions for enforcement.[18]

No statutory guidelines have been provided for the determination of either the amount of each LRR's liability or the order in which the LRR's will be responsible for payment. Further, a more remote relative may be held liable without proof of exhaustion of remedies against a closer relative.[19] Although final determination of the LRR's monetary responsibility is in the courts, the decision in practice devolves to the Department of Public Welfare.[20] The DPW determines the LRR's expected contribution by means of subtracting the "Minimum Requirements for an Adequate Standard of Living"[21] for the LRR's family from his gross monthly income. The remainder is then divided by the total number in the LRR's family, plus one, resulting in the expected contribution.[22]

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11. *See* note 22 and accompanying text *infra.*

12. The amount of support necessary is determined by the "Minimum Requirements for an Adequate Standard of Living" established by City Worker's Budget, a study conducted by the United States Bureau of Labor Statistics. The figure is increased if extraordinary expenses such as medical or hospital costs are shown.

13. The LRR's payments are either made directly to the court making the support order, or to the Pennsylvania Department of Welfare [hereinafter referred to as DPW], who then pay the indigent.

14. This class of LRRs, although including spouses, will hereinafter be referred to as either consanguinal or blood relatives.

15. PA. STAT. ANN. tit. 62, § 1973(c) (1963). An attachment is a procedural method, based upon a contempt charge, for bringing the LRR before the court. Commonwealth v. Horwitz, 78 Pa. Super. 383 (1922).

16. *Id.*

17. Henry's Estate, 28 Pa. Super. 541 (1905).

18. *Id.*

19. *In re* Stoner's Estate, 50 Lanc. L.R. 347 (Pa. C.P. 1946), *aff'd*, 358 Pa. 252, 56 A.2d 250 (1947).

20. *See, e.g.*, PA. WEL. MAN. § 3237 and appendix (1969).

21. *See* note 12 *supra.*

22. For example, an LRR with a gross monthly income of $500.00, with four dependents including himself, subtracts $455.00, the Minimum Requirement for an Adequate Standard of Living. The resulting $45.00 figure is the amount available for expenses above minimum requirements. This figure is then divided by five (the number in the LRR's family plus one), giving $9.00 per month as the expected contribution. This figure can be waived or decreased by administrative action of DPW, although no formal guidelines have been established by them.

The indigent is then expected to make arrangements with the LRR for this payment,[23] and if secured, that amount is considered as income available to the indigent, thereby reducing his allotment from DPW.[24] If the LRR refuses to make the determined contribution, the indigent is urged to bring an action against him;[25] failing this, an action may be brought by the DPW.[26] The DPW's finding as to availability of resources is submitted to the court at the determination of liability hearing, and is generally followed.[27]

Thus, in Pennsylvania every adult citizen of sufficient means is required by statute to provide care and maintenance for his indigent relatives. This Comment will analyze the constitutionality of the Pennsylvania statute in light of the equal protection clause of the Federal Constitution and the uniformity of taxation clause of the Pennsylvania Constitution. Although the conclusions reached by this Comment are the result of an analysis of the Pennsylvania family responsibility statute, the conclusions reached and the discussion on which they rest are equally applicable to the family responsibility statutes of other states.[28]

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23. PA. WEL. MAN. § 3237, at 29 (1969). Previously, if the LRR refused, the indigent was required to institute action against him as a condition of eligibility. This requirement was ruled unconstitutional in Woods v. Miller, 318 F. Supp. 510 (W.D. Pa. 1970).

24. PA. WEL. MAN. § 3237, at 19 (1969).

25. *Id.*

26. *Id.*

27. *See* PA. WEL. MAN. § 3237 (1969).

28. *See* ALA. CODE tit. 44, § 8 (1940); ALASKA STAT. 25.20.030 (1962); ARIZ. REV. STAT., § 46-236 (1952); ARK. STAT. ANN., § 83-607 (Supp. 1953) (repealed ARK. STAT. ANN., § 83-607 (1955)); CAL. CIV. CODE, § 206 (West 1971); CAL. WELFARE & INST'NS CODE, § 17300 (West 1965); COLO. REV. STAT. ANN., § 36-10-70; CONN. GEN. STAT. ANN., § 17-320; DEL. CODE ANN. tit. 13, § 501 (1953); GA. CODE ANN., § 23-2302 (1936); HAWAII REV. LAWS, § 31-577-5 (1965); IDAHO CODE ANN., § 32-1002 (1948); ILL. REV. STAT., ch. 23, § 10-1; IND. ANN. STAT., § 3-3001 (1955); IOWA CODE ANN., § 252.1 (1949); LA. REV. STAT., § 13.4731 (1950); LA. CIV. CODE ANN. art. 229 (West 1970); ME. REV. STAT. ANN. tit. 22, § 3452 (1963); MASS. ANN. LAWS, ch. 117, § 6 (1949); MICH. STAT. ANN., § 16.121 (1970); MINN. STAT. ANN., § 261.01 (1947); MISS. CODE ANN., § 7357 (1952); MO. ANN. STAT., § 208.010 (1952); MONT. REV. CODE ANN., § 71-233 (1953); NEB. REV. STAT., § 68-101 (Supp. 1953); NEV. REV. STAT., § 428.070 (1969); N.H. REV. STAT. ANN., § 167.2 (1964); N.J. REV. STAT., § 44:1-139 (1940); N.Y. SOCIAL WELFARE LAW, § 101 (Supp. 1955); N.Y. CRIMINAL CODE, § 914 (1945); N.Y. CITY DOMESTIC RELATIONS COURT ACT, §§ 92,101; N.D. CENT. CODE, § 14-09-10, § 50-01-19 (1958); OHIO REV. CODE ANN., § 2901.40 (Page 1954); OKLA. STAT. ANN. tit. 10, §§ 11, 12 (1951); ORE. REV. STAT., § 109.010, § 411.410 (1953); PA. STAT. ANN. tit. 62, § 1971 et seq. (1963); R.I. GEN. LAWS ANN., § 15-11-7 (1936); S.C. CODE ANN., § 71-131 (1952); S.D. CODE, § 25-7-27 (1963); UTAH CODE ANN., § 17-14-1 (1953); VT. STAT. ANN. tit. 33, § 931 (1953); VA. CODE ANN., § 20-88 (1954); W. VA. CODE ANN., § 626(150) (1949); WIS. STAT., § 52.01 (1963). Family responsibility statutes do not appear to exist in Florida, Kansas, Kentucky,

II. The Conceptual Antecedents

Neither the above described techniques of implementation nor the concept that an individual is responsible for the support and maintenance of another individual solely because of the happenstance of consanguinity are unique to Pennsylvania. There are presently similar family responsibility laws in at least thirty-two other states.[29] Nor is the concept itself new; the concept and various implementing statutes date from the sixteenth century.[30]

Shortly after the first English blood responsibility law, the concept of family responsibility became statutorily linked with the public relief of the poor:

> And be it further enacted, That the father and the grandfather, the mother and grandmother, and the children of every poor, old, blind, lame and impotent person, or other poor person not able to work, being of a sufficient ability, shall, at their own charges, relieve and maintain every such poor person. . . .[31]

Although the humane intent of the act appears to be clear on its face, the Elizabethean rationale went beyond humane considerations. Poverty, it was reasoned, was a labor problem, one of putting unemployed manpower to productive use, either in jobs of their own selection or in houses of correction or other projects under an "overseer of the poor."[32] In such manner, the unemployed could provide for their own support.[33] Physically handicapped poor were a burden which the laboring class having created, was required to support.[34] Of course, the incidental side effect of forced acceptance of this social burden by the laboring class was to relieve the landed class of a major financial drain.[35] Placing this responsibility, where possible, on the limited class of blood relatives was an appropriate further step in laying the burden of the indigent more precisely where it supposedly belonged—on the

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New Mexico, North Carolina, Tennessee, Texas, Washington and Wyoming. Arkansas repealed its family responsibility law in its entirety in 1955. Ark. Stat. Ann. § 83-607 (1955).

29. *Id.*

30. 18 Eliz. 1, ch. 3 (1575). The act provided for the support of illegitimate children by their parents. The act lists as its purpose the reduction of costs of poor relief to the parishes.

31. 43 Eliz. 1, ch. 2, § 7 (1601). Passed as part of the original Elizabethean Poor Law, the section was based on an even earlier provision virtually identical in context. 39 Eliz. 1, ch. 3 (1597).

32. Ordinance and Statute of Laborers, 23 Edw. 3, ch. I-VII C (1349). *See* Ten Broeck, *California's Dual System of Family Law: Its Origin, Development, and Present Status*, 16 Stan. L. Rev. 257, 276-86 (1964). [Mr. Ten Broeck's article was published in two parts, the first in 1964 and the second in 1965, Ten Broeck, *California's Dual System of Family Law: Its Origin, Development and Present Status*, 17 Stan. L. Rev. 614 (1965). For clarity, the first will hereinafter be cited as Ten Broeck I and the second as Ten Broeck II].

33. Ten Broeck I, *supra* note 32, at 278.

34. *Id.*

35. *Id.* at 258-91.

broad backs of the laborers who either brought the indigent into the world or were the products of the indigent's presence there.[36] Remnants of this rationale have been carried over into American legislative policies and judicial interpretations: it is widely recognized by modern courts that the primary purpose of the family responsibility statutes is to protect the public purse.[37]

III. Pennsylvania Antecedents

Pennsylvania adopted the concept of responsibility based on consanguinity in one of its first poor laws.[38] That act, ratified in 1771, contained a provision substantially identical to Pennsylvania's current family responsibility statute:

> And be it further enacted, that the 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, being of sufficient ability, shall at their own charge relieve and maintain every such poor person, as the Magistrates or the Justices of the Peace, at their next General Quarter Sessions for the city or county where such poor persons reside, shall order and direct, on pain of forfeiting forty shillings for every month they shall fail therein.[39]

Only minor changes have been made in the provision during the past 200 years.[40]

While the statutory language remained unchanged, however, society underwent vast changes. Public acceptance of the family responsibility statutes was without incident in the eighteenth and

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36. *Id.*

37. *E.g.*, People v. Hill, 163 Ill. 186, 46 N.E. 796 (1896); Ketcham v. Ketcham, 176 Misc. 993, 29 N.Y.S.2d 773 (1941).

38. Act of March 9, 1771, No. 635, 1 Smith L. 332 [1771] Pa. Laws 507 (repealed 1937).

39. *Id.*

40. In 1945, grandparents were excluded by statutory amendment. Act of May 23, 1945, No. 352, § 1 [1945] Pa. Laws 864 (repealed). The lengthy description of persons to be supported was changed in 1937 to the word "indigent." Act of June 24, 1937, No. 396, § 3 [1937] Pa. Laws 2045 (repealed). That term in turn was qualified by the phrase "whether a public charge or not" by another 1945 amendment. Act of May 23, 1945, No. 353, § 1 [1945] Pa. Laws 865 (repealed). And of course, as the state's judicial system became more structured, other courts were substituted for magistrates and justices of the peace. Act of March 29, 1803, No. 2368, § 29, 4 Smith L. 50 [1803] Pa. Laws 507 (repealed 1941); Act of June 24, 1937, No. 396 [1937] Pa. Laws 2045 (repealed). In 1771 monetary sanction was replaced by a penal sanction, and provision was made for reduction in obligation under certain circumstances. Act of June 24, 1937, No. 396 [1937] Pa. Laws 2045 (repealed).

nineteenth centuries.[41] The family unit was still the central element in a largely agrarian economy, so that indigent family members were readily incorporated into the family economic unit.[42] But as time passed, society's emphasis on the family unit began to weaken, a phenomenon which paralleled the state and national transition into an urban industrial society.[43] In the new society the old, sick, and infirm were no longer of any use to the family economic unit. Periodic industrial recessions caused simultaneous lowering of the employment rate, thereby increasing the number of able bodied indigents.[44] Concurrently, increasing reluctance to comply with the family responsibility laws became evident as reflected in increasing litigation.

The Pennsylvania statute was first attacked in 1847 when the Pennsylvania Supreme Court held that, where the father of poor and destitute children is outside the jurisdiction of the court, a grandfather will be held liable.[45] This holding was followed by a flurry of activity contesting the liability of grandparents for support of indigent relatives, and in every instance the grandparents were held liable.[46] In 1876, children began judicially contesting their liability for support of indigent parents.[47] Again, more activity followed, increasing in frequency during the twentieth century, and again in every instance, the basic liability for support was upheld.[48]

In 1885, the meaning of sufficient financial ability was questioned,[49] followed in 1889 by judicial resolution of a dispute regarding the meaning of indigency.[50] During the nineteenth century, no attacks were made on the constitutionality of the statutes, but in 1916 two related attacks were made. In *Mansley's Estate*,[51] it

41. P. CALHOUN, A SOCIAL HISTORY OF THE AMERICAN FAMILY, 51-68 (1917).

42. J. SCHARR, FILIAL RESPONSIBILITY IN THE MODERN AMERICAN FAMILY, U.S. DEPT. OF H.E.W., SOCIAL SECURITY DIVISION OF PROGRAM RESEARCH, 1-4 (1960) [hereinafter cited as SCHARR].

43. *Id.*

44. *Id.*

45. Guardians of the Poor of Philadelphia v. Smith, 4 Clark 60 (Pa. 1847).

46. *See, e.g.*, Duffey v. Duffey, 44 Pa. 399 (1863); Appeal of Seibert, 19 Pa. 49 (1852); *In re* Hadsall, 13 Luz. L.R. 237 (Pa. C.P. 1884); Application of Whiting, 16 Pitts. L.J. 272 (Pa. C.P. 1869).

47. Reserve Mut. Life Ins. Co. v. Kaul, 81 Pa. 154 (1876).

48. Appeal of Werner, 91 Pa. 222 (1879); Poor Directors v. Schultz, 2 Lanc. R. 405 (Pa. C.P. 1882). As to twentieth century activity, *see, e.g.*, Commonwealth *ex rel.* Sharpe v. Sharpe, 193 Pa. Super. 161, 163 A.2d 923 (1960); Commonwealth *ex rel.* Price v. Campbell, 180 Pa. Super. 518, 119 A.2d 816 (1956); Commonwealth v. Ruckle, 1 Pa. D. & C.2d 51 (C.P. Columb. 1955); Commonwealth v. Chiara, 60 Pa. D. & C. 547 (C.P.Perry 1947); *In re* Bauer, 29 Pa. D. & C. 372 (C.P. Montg. 1937); Commonwealth v. Gross, 35 York 93 (Pa. C.P. 1921); Commonwealth v. Redman, 18 York 163 (Pa. C.P. 1905).

49. Moore v. Marsh, 16 Weekly Notes of Cases 239 (Pa. 1885).

50. Luzerne County Cent. Poor Dist. v. Hirner, 5 Kulp 265 (Pa. 1889).

51. 253 Pa. 527, 98 A. 702 (1916). Article III, Section 7 of the Pennsyl-

was argued that a statute requiring financial maintenance by relatives of insane persons in a state institution was unconstitutional as local or special legislation. The court held the statute valid, because the act applied equally to the entire state, not being limited to any locality.[52] *In re Duerr*[53] involved an attack on a similar statute. The defendant postulated that the statute deprived him of the right of trial by jury as the support judgment was authorized to be by court order; the court held this procedure to be a valid exercise of legislative power.[54] Subsequent constitutional attacks in Pennsylvania have met with a similar lack of success.[55]

While these early attacks on Pennsylvania's family support statutes were being launched and defeated, other states, having adopted similar legislation,[56] were experiencing similar litigation, with similar results.[57] In no instance did an attack on family re-

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vania Constitution provides:

> No local or special bill shall be passed unless notice of the intention to apply therefor shall have been published in the locality where the matter or the thing to be effected may be situated, which notice shall be at least thirty days prior to the introduction into the General Assembly of such bill and in the manner to be provided by law; the evidence of such notice having been published, shall be exhibited in the General Assembly, before such bill shall be passed.

52. *Id.* at 524, 98 A. at 703.

53. 25 Pa. Dist. 406 (1916).

54. *Id.* at 409.

55. *Cf.* Pennsylvania Dept. of Pub. Assist. v. Allison, 19 Cambria 117 (Pa. C.P. 1959), holding the current statutes [PA. STAT. ANN. tit. 62, § 1973 (1963)] not to violate any section of the Pennsylvania Constitution.

56. *See* note 28 *supra*.

57. In 1922 a Kansas statute imposing liability for the support and maintenance of insane kindred in state asylums on named relatives was challenged as violative of the fourteenth amendment of the United States Constitution. The Kansas Supreme Court ruled that the statute did not constitute a deprivation of property without due process of law. State v. Bateman, 110 Kan. 546, 204 P. 682 (1922). In 1900 and 1901, South Dakota and California, faced with a statute similar to that upheld in *Mansley's Estate*, concurred with Pennsylvania in finding that their respective statutes did not constitute special legislation. Bon Homme County v. Berndt, 13 S.D. 309, 83 N.W. 333 (1900); *In re* Yturburru, 134 Cal. 567, 66 P. 729 (1901). A California court in 1908 considered the contention that requiring an LRR to support an individual personally, where the LRR was also required to pay general taxes devoted to the same purpose, constituted double taxation. That court turned to public policy reasons in refuting the contention:

> If such a proposition could be maintained, there would be nothing to interfere with the filling of the county hospitals and almshouses with persons well able to pay for their own care, who would thus, without cost to themselves, be maintained at public expense,—at the expense of many other taxpayers having no interest in such institutions. . . . State Comm. in Lunacy v. Eldridge, 7 Cal. App. 298, 299, 94 P. 597, 600 (1908).

The double taxation argument was also raised in South Dakota on the second appeal of Bon Homme County v. Berndt, 15 S.D. 494, 90 N.W. 147

sponsibility statutes receive judicial acceptance until 1964 when the California Supreme Court considered *Department of Mental Hygiene v. Kirchner.*[58]

IV. Family Responsibility and the Equal Protection Clause of the Federal Constitution

A. *Department of Mental Hygiene v. Kirchner*

In 1964, the California Supreme Court in *Kirchner*, held unconstitutional a California statute which made certain named relatives financially responsible for expenses incident to the maintenance of the insane in state hospitals.[59] Application of the statute, reasoned the court, would constitute the imposition of a species of taxation on a class of citizens—the relatives of insane persons—selected in a manner that had no rational basis.[60] That court held that such a statute "obviously violates the equal protection clause."[61]

The *Kirchner* rationale was threefold: (1) The enactment and administration of laws providing for treatment of persons in state institutions is "a proper state function."[62] (2) The cost of such a proper state function conducted for the benefit of the entire public "cannot be arbitrarily charged to one class in the society; . . . such assessment violates the equal protection clause."[63] (3) In order for the selection of a particular class for the imposition of such charges to avoid being arbitrary, it must be rationally selected; here "no rational basis supports such classification."[64] Employing consanguinity as "a concept for the state's taking of a free man's property manifestly denies him equal protection of the law."[65]

(1902). The South Dakota Supreme Court held the contention "more specious than real," reasoning that payment to the state by an LRR was merely a return of tax money borrowed by the LRR for support of his indigent relative.

58. 60 Cal. 2d 716, 36 Cal. Rptr. 488, 388 P.2d 720 (1964).

59. Cal. Welf. Inst'ns Code § 6650 (West 1952).

60. Department of Mental Hygiene v. Kirchner, 60 Cal. 2d 716-18, 36 Cal. Rptr. 488, 490-91, 388 P.2d 720, 724 (1964). The case was appealed to the United States Supreme Court, which remanded for determination of whether the decision rested on the federal or California equal protection clause. The California court subsequently attributed its holding to the state clause:

> It has been and is our understanding that the Fourteenth Amendment to the federal Constitution, and sections 11 and 21 of the California Constitution, provide generally equivalent but independent protections in their respective jurisdictions.

62 Cal. 2d 586, 587, 43 Cal. Rptr. 329, 330, 400 P.2d 321, 322 (1965).

61. Department of Mental Hygiene v. Kirchner, 60 Cal. 2d 716, 718, 36 Cal. Rptr. 488, 490, 388 P.2d 720, 723 (1964). And *see* Ten Broeck, *California's Dual System of Family Law: Its Origin, Development, and Present Status*, 17 Stan. L. Rev. 614, 639 (1965) [hereinafter cited as Ten Broeck II].

62. Department of Mental Hygiene v. Kirchner, 60 Cal. 2d 719-20, 36 Cal. Rptr. 490, 388 P.2d 722 (1964).

63. *Id.* at 720, 36 Cal. Rptr. at 490, 388 P.2d at 722.

64. *Id.* at 722-23, 36 Cal. Rptr. at 492, 388 P.2d at 724.

65. *Id.*

Justice Schauer's opinion in this case gave clear indication that defendant's federal right to equal protection of the laws was being denied. The decision was appealed to the United States Supreme Court, which vacated and remanded for a determination of whether the California court had based its decision on federal or state grounds.[66] In a brief opinion,[67] the California Supreme Court stated that it had relied on the California constitution's equal protection clause, noting however that it considered the implications of the federal and state provisions to be equivalent.[68]

Following the California Supreme Court's limitation, that state's lower courts immediately commenced construing *Kirchner* as narrowly as possible.[69] *Kirchner's* reasoning has since been found applicable only in the rare instance when the peculiar facts of *Kirchner* were present: (1) that the LRR would not otherwise be liable for the support of the incompetent, but for the mental health statute; (2) that initiation of commitment proceedings must have been by the state, and not the LRR, and (3) that the commitment must be primarily for public protection rather than for the rehabilitation of the incompetent.[70] In narrowly interpreting *Kirchner,* these courts completely eliminated the LRR from the group of persons protected by *Kirchner,* for California has a statute similar to Pennsylvania's family responsibility statute making named relatives of indigents "otherwise . . . liable." Such a con-

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66. Department of Mental Hygiene v. Kirchner, 380 U.S. 194 (1965).

67. Department of Mental Hygiene v. Kirchner, 62 Cal. 2d 586, 43 Cal. Rptr. 329, 400 P.2d 321 (1965).

68. The California Constitution, article I, section 11, requires that "All laws of a general nature shall have a uniform operation." Section 21 of the same article specifies that:

> [N]o special privileges or immunities shall ever be granted which may not be altered, revoked, or repealed by the Legislature; nor shall any citizen, or class of citizens, be granted privileges or immunities which, upon the same terms, shall not be granted to all citizens.

Construing these sections of their Constitution, the California Supreme Court stated:

> These provisions of our state constitution have been generally thought in California to be substantially equivalent of the fourteenth amendment to the United States Constitution.

Department of Mental Hygiene v. Kirchner, 62 Cal. 2d 586, 587, 43 Cal. Rptr. 329, 330, 400 P.2d 321, 322 (1965).

69. *See* Dept. of Mental Hygiene v. O'Connor, 246 Cal. App. 2d 12, 54 Cal. Rptr. 432 (1968); Estate of Preston, 243 Cal. App. 2d 803, 52 Cal. Rptr. 790 (1966); Alameda v. Espinosa, 243 Cal. App. 2d 534, 52 Cal. Rptr. 480 (1966); *In re* Dudley, 239 Cal. App. 2d 401, 48 Cal. Rptr. 790 (1966); Alameda v. Kaiser, 238 Cal. App. 2d 815, 48 Cal. Rptr. 343 (1965); Dept. of Mental Hygiene v. Schumpert, 228 Cal. App. 2d 698, 39 Cal. Rptr. 698 (1964).

70. *Id.*

struction, as discussed below, is contrary to the clear meaning of the decision.[71]

Underlying the entire rationale of the *Kirchner* decision is a concept referred to by that court as the "*parens patriae* principle."[72] Traditionally, this concept was considered to stem from the sovereign power of guardianship over persons under disability, such as minors, incompetents, and the insane. *Kirchner* however places a different meaning on this traditional concept—that the state has assumed a duty to help the needy citizen, a duty which creates a relationship more direct as to the matter of support than the relationship between the incompetent and his LRR's. "[F]ormer concepts which have been suggested to uphold the imposition of support liability upon a person selected by an administrative agent from classes of relatives designated by the Legislature may well be re-examined."[73] The state legislature, in short, has been held to have decided that, for the good of all of the people, they must care for and maintain that part of the populace which is unable to maintain and care for itself. This assumed responsibility is administered through "divers . . . public welfare programs to which all citizens are contributing through presumptively duly apportioned taxes."[74] It is the *parens patriae* principle which *Kirchner* views as rendering not rational the selection of named relatives as the class responsible for the cost of caring for mental incompetents;[75] the state as a whole, rather than statutorily named LRR's, should bear the responsibility for persons suffering from a disability. The *Kirchner* rationale would, however, appear to possess a broader base than mere judicial recognition that the term "*parens patriae*" has been redefined by sociological change. Further justification for the *parens patriae* concept, and simultaneously, a logical basis for recognizing its inclusion of all indigents can be found in the legislative language used in the California law.

The California Legislature declared its purpose in enacting its Welfare Code to be:

> . . . to provide for the protection, care and assistance to the people of the state in need thereof, and *to promote the welfare and happiness of all of the people of the state* by providing appropriate public assistance and services to all of its needy and distressed.[76]

It would be difficult indeed for the California Legislature to have more clearly expressed its intent to assume responsibility for the state's indigents and thereby benefit its entire populace. The

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71. *Cf.* Ten Broeck II, *supra* note 61, at 638-39.
72. Department of Mental Hygiene v. Kirchner, 60 Cal. 2d at 720-21, 36 Cal. Rptr. at 491, 388 P.2d at 723-24 (1964).
73. *Id.*
74. *Id.*
75. *Id.*
76. CAL. WELF. INST'NS CODE § 19 (West 1952) [emphasis supplied].

clear intent is to serve and protect the interests of the general public, the well-being of the entire populace and the "welfare and happiness of all of the people." *Kirchner's* acceptance of this and other statements of legislative intent[77] provides a solid basis for its recognition of the modified *parens partiae* concept.

Once the validity of the *parens patriae* concept is accepted, the court's rationale falls easily into place: (1) *Parens patriae* imposes a duty upon the state as a whole to care for its physically, mentally, emotionally and financially handicapped citizens. (2) Express legislative intent reinforces this duty. (3) The judicially recognized and legislatively explicit purpose of assuming such a duty is to promote the welfare and happiness of all of the people of the state. (4) Being in the interest of all the people of the state, the expenses incurred in fulfilling this responsibility falls properly on all of the people of the state. (5) Selection of a particular class from all of the people of the state to bear these expenses necessarily violates the equal protection clause.

In this light, the lower California court's limitation of the decision shows itself to be artificial. It would appear to fly in the face of logic to recognize a state duty to support mental incompetents committed for public protection to state institutions by state action on the one hand, and simultaneously deny the existence of such a duty where, for example, commitment proceedings have been instituted by concerned relatives,[78] on the other. Nor is the above discussed broad language of the *Kirchner* court indicative of such an intent.

Kirchner's recognition of *parens patriae*, it is submitted, is no more than a proper judicial recognition of stated legislative policy: promotion of the welfare of all of the people through state care and maintenance of its mentally and financially deprived citizens. And where the care of indigents is accepted as the responsibility of the various governments, raising money through taxes and applying it to that end is certainly "a proper state function."[79]

B. *Federal Constitutional Requisites to Permissible Discriminatory Classification*

Assuming the theoretical soundness of the *Kirchner* rationale,

77. *See, e.g.*, CAL. WELF. INST'NS. CODE, § 6655 (West 1952), discussed by the court in *Kirchner*, 60 Cal. 2d 720-21, 36 Cal. Rptr. 491, 388 P.2d 723-24 (1964).

78. *See*, note 69 *supra*.

79. Department of Mental Hygiene v. Kirchner, 60 Cal. 2d 719-20, 36 Cal. Rptr. 490, 388 P.2d 722 (1964).

the constitutional validity of Pennsylvania's family responsibility statute must be reexamined. Where a state chooses to finance the exercise of a proper state function by placing the financial burden of such a function on one class of citizens, and not on others, its selection of the class to be charged must satisfy certain constitutional principles announced by the United States Supreme Court, or be found to violate the federal equal protection clause. Two distinct tests have evolved for making this determination. The first of these is the "compelling interest" test, employed where the rights affected are considered fundamental and constitutionally based.[80] Where such rights are found, the state must show a compelling interest and need for the statute being challenged.[81] In applying the compelling interest test, the court inquiry is whether the state interests advanced by the classification are sufficient to outweigh the injury done to the individual or class of individuals by the unequal treatment to which he or it is subjected.[82] The courts tend to review the classification carefully and demand a convincing demonstration that the discrimination bears "a definite and close relationship" to the statutory objective.[83]

Although the rights involved in family responsibility statutes may be fundamental, they do not appear to be constitutionally based. Where such non-constitutionally based rights are involved, the second or "rational basis" test is employed. Under this test, the reasonableness or wisdom of the state's discriminatory classification scheme is not closely scrutinized, rather, if a rationally supportable reason for the regulation is found, the scheme is deemed sufficient.[84] It is not enough that the measure results incidentally in some inequality, or that it is not drawn with mathematical nicety.[85] The identity of treatment,

> only requires that classification rest on real and not feigned differences, that the distinction have some relevance to the purpose for which the classification is made, and that the

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80. *See, e.g.*, Levy v. Louisiana, 391 U.S. 68 (1968) (rights of illegitimates); Loving v. Virginia, 388 U.S. 1 (1967) (right to marry and right against discrimination based on race); United States v. Guest, 383 U.S. 745 (1966) (right to travel); Carrington v. Rash, 380 U.S. 89 (1965) (right to vote); Skinner v. Oklahoma, 316 U.S. 535 (1942) (right to procreate).

81. Mr. Justice Harlan describes this test in his dissenting opinion in Shapiro v. Thompson, 394 U.S. 618, 655 (1969).

82. *See, e.g.*, Shapiro v. Thompson, 394 U.S. 618, 633 (1969). For a discussion of the balancing of these interests *see* Morey v. Doud, 354 U.S. 457, 465 (1965); Note, 84 HARV. L. REV. 612 (1970).

83. Korematsu v. United States, 323 U.S. 214, 218 (1944); 82 HARV. L. REV. 1065, 1122 (1969). Note however that a possibility of some rationality may be enough for courts to uphold the classification; *e.g.*, Kramer v. Union Free School Dist., 395 U.S. 631 (1969).

84. Morey v. Doud, 34 U.S. 457 (1951); Kotch v. Board of River Port Pilot Comm'rs, 330 U.S. 552 (1947); Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61 (1911).

85. Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61 (1911).

> different treatments be not so disparate, relative to the difference in classification, as to be wholly arbitrary.[86]

A two part formulation of this test has evolved: (1) the classification must bear a reasonable relationship to the purpose of the statute,[87] and (2) the classification must include and similarly treat all citizens who are similarly situated.[88]

Pennsylvania's family responsibility statute places the financial burden of care and maintenance of Pennsylvania indigents upon a class of citizens selected from the general populace only by its members' blood or marital kinship to the indigent. For that statute to meet the test of constitutionality, (1) the class selected must be reasonably related to the stated legislative purpose for enacting the Public Assistance Act, and (2) the financial burden must be placed equally on all persons standing in a similar relationship to the indigent. Both parts of this test must be fulfilled in order for the classification to be constitutionally acceptable.

1. *Does the Class Selected by the Pennsylvania Statute for Imposition of the Financial Burden of Support Bear a Reasonable Relationship to the Purpose of the Statute?*

The Pennsylvania Legislature declared its intent in enacting the Pennsylvania Assistance Act to be:

> [T]o promote the welfare and happiness of *all of the People of the Commonwealth,* by providing public assistance to all of its needy and distressed; . . . administered in such a way and manner as to encourage . . . the desire to be a good citizen and useful to society.[89]

An additional, judicially recognized purpose of family responsibility statutes generally is to protect the public purse.[90]

The legislative statement of purpose evidences an intent to confer upon the general population a "benefit"—the promotion of the health and welfare of all of the people by aiding the state's needy and distressed citizens in such a manner as to make them better citizens and useful to society. This benefit is one intended to be shared equally by all members of the state's populace.

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86. Walters v. St. Louis, 347 U.S. 231, 237 (1954).

87. Gulf, Col. Santa Fe Ry. v. Ellis, 165 U.S. 150 (1897); Ten Broeck II, *supra* note 61, at 640.

88. Ten Broeck II, *supra* note 61 at 640; Walters v. St. Louis, 347 U.S. 231 (1954); *cf.* Hoyt v. Florida, 368 U.S. 57 (1961); Carrington v. Rash, 380 U.S. 89 (1956); Hernandez v. Texas, 347 U.S. 375 (1954).

89. PA. STAT. ANN. tit. 62, § 401 (1967).

90. *See, e.g.,* Ketcham v. Ketcham, 176 Misc. 993, 29 N.Y.S.2d 773 (1941); People v. Hill, 163 Ill. 186, 46 N.E. 796 (1896).

Certainly, if it could be found that one of the purposes of the statute was to confer a special benefit upon the blood relatives, a reasonable relationship could be established for their selection to bear the cost of indigent support. There is undoubtedly some benefit intended to this class of citizens: their health and welfare, of course, also will be promoted through expanded societal usefulness of the indigent. But the benefit is not demonstrably larger than that intended for the populace as a whole.[91] It cannot be shown that a special benefit is realized by the class,[92] nor, indeed, has the Legislature stated an intent to specially benefit the LRR.[93] This class is subjected to general taxation from which is derived the monies employed to ease the plight of the indigent;[94] thus, their "share" of the intended benefit is financed in the same manner and to the same extent as the remainder of the general populace. All taxpayers pay for the benefit received through their normal tax contributions; LRR's, as part of the general populace, contribute in the same manner and to the same degree as the remainder of the taxpaying populace. Thus, since no special benefits accrue, the statute provides no reasonable basis for separate classification of legally responsible relatives.

Consanguinity itself, often cited as a moral basis for family responsibility statutes,[95] offers no rational basis for the classification.[96] Governmental support of indigent citizens provides no discernible special benefit—either direct or indirect—to the blood relatives: their benefit is identical to that of the remainder of the general public—happiness and well-being inspired by increased societal usefulness of the indigent.

Operation of the Public Assistance Act resulting in aid being given to an indigent individual may at first blush appear to confer upon that indigent's blood relative a "special benefit" by relieving him of the need to support his kinsman. Closer inspection, however, reveals this "special benefit" to be one not of purpose[97] but of happenstance, and in this the relatives are in no different position than the mother of a potential victim of rape saved by a policeman paid from the public treasury, or the father of an individual whose house or business is saved from flames by publicly funded fire-

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91. *Cf.* Rosenbaum, *Are Family Responsibility Laws Constitutional?*, 1 FAM. L.Q. 55, 75 (1967); Ten Broeck II, *supra* note 61, at 641.

92. *See* note 91 *supra.*

93. *See* PA. STAT. ANN. tit. 62, § 401 (1967).

94. This situation clearly points to the question of double taxation: *see* note 57 *supra.*

95. *E.g.*, 1 BLACKSTONE, COMMENTARIES 448. The act of begetting implies a voluntary assumption of liability for all who "descend from his loins."

96. *See* text accompanying notes 97-101 *infra.*

97. There is evident no legislative intent to confer such a "benefit." Such a result is simply not contemplated by the Public Assistance Act as being a relevant factor.

men. Few would assert that these "special benefit" recipients should be held financially responsible for the salary of the policeman, or the fair market value of the services rendered by the firemen and their equipment. Yet the parallel appears to be exact.[98]

In final analysis, what the family responsibility statutes are doing is visiting the sins of the father on his children, or those of the children on their parents; the concept may be justifiable Biblically,[99] but certainly not legally.[100]

It has frequently been argued that a prime justification behind a family responsibility statute is that by placing the financial responsibility for the maintenance of indigents on relatives the public purse is protected.[101] Such an argument has never been recognized legislatively but is rooted in a type of logical expediency. As discussed above, in order to protect the public purse, the Pennsylvania support statute—like all other family responsibility statutes—creates a class of persons consisting of named consanguinal relative of indigent persons.[102] The selection of one class of persons from the general populace, for whatever purpose, is by definition discriminatory. However, discrimination, despite its common connotation, is in many instances permissible, and frequently occurs. The United States Supreme Court has held that discrimination may be acceptable if the interest to be promoted thereby is constitutionally permissible.[103] Although never delineating a list of what interests are constitutionally permissible, the Court has mentioned some that are not:

> We recognize that a state has a valid interest in preserving the fiscal integrity of its programs. It may legiti-

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98. *Cf.* Ten Broeck II, *supra* note 61.

99. DEUTERONOMY 5, 6 "[F]or I the Lord thy God am a jealous God, visiting the iniquity of the fathers upon the children unto the third and fourth generation. . . ." *Cf.* EXODUS 20, 5; 34, 7.

100. The philosophers of Elizabeth I's England had another theory similar to their blood-responsibility concept whereby the sins of a parent were visited on his child and those of the child on the parent—this second theory and practice was that if an individual were to commit treason, his blood became "attainted." On the basis of this attainting, blood and marital relatives were divested of property, status, and privilege. This concept of corruption of blood was so abhorred by the Founding Fathers that they were moved to specifically forbid it. *See* CONSTITUTION OF PENNSYLVANIA, art. I, §§ 18 and 19, and UNITED STATES CONSTITUTION, art. III, § 3. Those prohibitive constitutional mandates as to treason are no less applicable where the concept is applied to the infinitely lesser stigma of being indigent. The message is clear: The Legislature shall not work corruption of blood. To do so is to discriminate.

101. *See* note 36 *supra.*

102. *See* notes 1-28 and accompanying text *supra.*

103. Shapiro v. Thompson, 394 U.S. 618, 627 (1969).

> mately attempt to limit its expenditures, whether for public assistance, public education, or any other program. But a state may not accomplish such a purpose by invidious distinctions between its citizens. . . . The saving of welfare costs cannot justify an otherwise invidious classification.[104]

In other words, the mere fact that a state can save money by placing the primary financial burden for maintaining indigents on the indigent's blood relatives does not provide a constitutionally permissible rational basis for such a practice.

There fore, the final determination of whether family responsibility statutes in general, and Pennsylvania's statute in particular bears a reasonable relationship to the purpose of the statute—promotion of the health and welfare of all of the people through the increased usefulness of the indigent—depends on the presence or absence of a reasonable relationship between the statutorily stated purpose of benefiting the entire populace and the assignment of the expense of this benefit to the class of LRR's. As discussed above, such a reasonable relationship cannot be shown. It is submitted that, on this basis, Pennsylvania's family responsibility statute is unconstitutional.

2. *Is the Financial Burden of Support of the Indigent Placed Equally on All Persons Standing in a Similar Relationship to the Indigent?*

Both aspects of the test established by the United States Supreme Court must be met in order for a questioned classification to be constitutionally acceptable. As discussed, the classification fails to satisfy the first requirement of the test, that of having a reasonable relationship to the statutory purpose. On this basis alone, the classification, and thus the statute, is unconstitutional. However, the constitutional weakness of the classification is further demonstrated through consideration of its failure to meet the second requirement.

To pass the second portion of the test, the classification of blood relatives as a separate source of monies must be shown to include all who are similarly situated in relationship to the indigent. Initially, once a determination of need on the part of the indigent and ability to contribute on the part of an LRR has been made, the statutes do not look to the LRR's as a group for contribution.[105] In Pennsylvania, for instance, the named relatives are in practice liable severally.[106] Thus, in a situation where there exist several

104. *Id.* at 633-34. *See also* Sailer v. Leger, 403 U.S. 365 (1971); Goldberg v. Kelly, 397 U.S. 254 (1970).

105. *In re* Stoner's Estate, 50 Lanc. R. 347 (Pa. C.P. 1947), *aff'd*, 358 Pa. 252, 56 A.2d 250 (1947).

106. *In re* Stoner's Estate, 50 Lanc. R. 347 (Pa. C.P. 1947), *aff'd*, 358 Pa. 252, 56 A.2d 250 (1947); Commonwealth *ex rel.* Kindrick, 9 Chest. 400 (Pa. C.P. 1962).

persons within the statutorily delineated class of LRR's, one may be chosen to assume the full support responsibility. There is not even a designation of the order in which the named LRR's are liable,[107] so that a more distant relative may be compelled to pay even though a closer relative with ability to contribute is available.[108] In theory, all of the named relatives are included within the class and thus can be made to contribute; in practice, all but one may be excluded from honoring this statutory duty.

There are further instances of inequities in application of the statute. Although Pennsylvania includes children within its class of LRR's,[109] illegitimate children[110] and children who have been abandoned for a period of ten years during their minority are relieved of the support duty.[111] Married daughters are in practice almost totally eliminated,[112] as are sons-in-law[113] and aged children.[114] In no family responsibility statute are brothers and sisters liable for each other. Thus the class theoretically includes all children, but upon closer examination, certain children are seen to be excluded. Furthermore, relatives of blind indigents are relieved of all support duties,[115] whereas relatives of deaf, crippled, and otherwise handicapped indigents are not relieved of support duties. Thus the class theoretically includes relatives of all indigents; in reality it excludes relatives of some indigents.

To reiterate, the second part of the constitutional test requires that all relatives similarly situated be included in the designated class. In practice, however, the Pennsylvania statute permits (1) one relative to be held completely responsible to the exclusion of other relatives equally able to contribute; (2) some children to be held liable whereas others are held not liable, despite an equal financial ability; and (3) all relatives of some indigents to be com-

107. *In re* Stoner's Estate, 50 Lanc. R. 347 (Pa. C.P. 1947), *aff'd*, 358 Pa. 225, 56 A.2d 250 (1947).
108. *Id.*
109. PA. STAT. ANN. tit. 62, § 1973 (1963).
110. Commonwealth v. Clayton, 42 Pa. D. & C. 317 (C.P. Del. 1941).
111. Commonwealth v. Capagna, 40 Pa. D. & C. 478 (C.D. Alleg. 1941); Miller v. Watt, 11 Dist. 439 (Pa. C.P. 1901).
112. Commonwealth v. Brown, 22 D. & C.2d 509 (C.P. Columb. 1962); Glowsky v. Gitlin, 25 N.Y.S.2d 957 (1941); Gleason v. Boston, 144 Mass. 25, 10 N.E. 476 (1887) (step mother).
113. *Id.*
114. Commonwealth v. Emerick, 57 Sch. L.R. 106 (Pa. C.P. 1962).
115. PA. STAT. ANN. tit. 62, § 432(5)(ii) (1967); "notwithstanding any other provisions of law, no relative shall be required to make monetary or any other payments or contributions for the support or maintenance of a blind person. . . ."

pletely excluded from liability, despite their presence within the statutorily named class and despite their financial ability to pay. Such distinctions might be justified from a political viewpoint, but in no manner can they be justified on constitutional grounds. The classification clearly does not include "all persons similarly situated in relationship to the indigent."

Pennsylvania's family responsibility statute must be deemed unconstitutional because its designated class of LRRs does not include all persons similarly situated in relationship to the indigent. Coupled with the statute's failure of the first part of the test, a finding of unconstitutionality becomes doubly apparent.

V. Family Responsibility and the Uniformity Clause of the Pennsylvania Constitution

The Pennsylvania Constitution contains no exact parallel to the federal equal protection clause. There are, however, several Pennsylvania constitutional provisions which have been employed by the Pennsylvania courts to arrive at ends similar to those reached by the federal courts in interpreting the federal equal protection provision. Chief among these is article 8, section 1 of the Pennsylvania Constitution:

> All taxes shall be uniform, upon the same classes of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws.[116]

Initially, the Pennsylvania courts have declared that questions of uniformity of taxation under this section and denial of equal protection, as to taxation, under the United States Constitution are fundamentally the same, and that which would violate one would violate the other.[117] Thus all of the above discussion concerning violation of the federal equal protection clause by the Pennsylvania family responsibility statute would apply with equal force in relation to the uniformity of taxation clause.

The initial question to be considered is whether the family responsibility statute does indeed impose a "tax" on the LRR. Without this, the question will not come within the purview of the uniformity clause. Pennsylvania defines tax as being "burdens or charges imposed by the legislative power upon persons or property to raise money for public purposes and to defray the necessary expenses of government.[118] In view of the earlier discussion regarding indigent support as being a proper state function and thus a

116. Pa. Const. art. 8, § 1.

117. *In re* Pennsylvania Co. for Ins., 345 Pa. 130, 27 A.2d 57 (1942); Commonwealth v. Life Assurance Co. of Pa., 35 Pa. D. & C.2d 370 (C.P. Dauph. 1965), *aff'd*, 419 Pa. 370, 214 A.2d 209 (1965).

118. Woodward v. City of Philadelphia, 333 Pa. 80, 85, 3 A.2d 167, 170 (1938).

public expense, the peculiar monetary imposition of the family responsibility law would appear to fall by definition, within the meaning of the word "tax."

The principle tests for uniformity of taxation employed by the Pennsylvania courts are: (1) that the classification have a reasonable basis,[119] and (2) that all taxes operate alike on the classes of things or property subject to it, with substantial equality of tax burden on all members of the same class.[120]

The first requirement, that the classification have a reasonable basis, is not discernibly different from the federal requirement that the classification bear a reasonable relationship to its purpose.[121] Again, the purpose of the statute is to defray public expenses, and in the words of the Pennsylvania Legislature, "to promote the welfare and happiness of all of the people of the Commonwealth."[122] Both of these are benefits which inure to the populace as a whole. The statute creates two classes, one composed of persons who have indigent relatives and are financially able to support them, and the other consisting of persons who do not have indigent relatives, or who have such relatives, but are not financially able to support them. The statute then seeks to compel the members of the first class to finance a benefit which is intended to be identical for all members of the populace. It has been seen that such a classification has no reasonable basis under federal law.[123] Under the Pennsylvania Constitution, the same reasoning applies; no reasonable basis exists for such a classification.

The second Pennsylvania requirement, that all taxes operate alike on the members of the classes subject to it, is also substantially identical to the federal requirement that the tax fall equally on all persons standing in a similar relationship to the indigent. The Pennsylvania statute creates a class consisting of the husband, wife, child, father, and mother of every indigent, who is financially capable of supporting the indigent. Under the second Penn-

119. Commonwealth v. Girard Ins. Co., 305 Pa. 558, 158 A. 262 (1932), *aff'd*, 287 U.S. 570 (1933); Philadelphia Coca-Cola Bottling Co. v. Harrig, 63 Dauph. 205 (Pa. C.P. 1953).

120. Hammermill Paper Co. v. City of Erie, 372 Pa. 85, 92 A.2d 422 (1953), *cert. denied*, 345 U.S. 940 (1953); Commonwealth v. Ripplier Coal Co., 348 Pa. 372, 35 A.2d 319 (1944); Appeal of Jackson, 56 Lanc. R. 543 (Pa. C.P. 1960), *vacated on other grounds*, 400 Pa. 473, 262 A.2d 189 (1961).

121. "Though the [federal] test has been variously stated, the end result is whether the line drawn [in establishing the classification] is a reasonable one." Levy v. Louisiana, 391 U.S. 68, 91 (1968).

122. PA. STAT. ANN. tit. 62, § 401 (1967).

123. *See* notes 78-115 and accompanying text *supra*.

sylvania test, the tax must operate alike on all members of this class to be constitutionally acceptable. Again it should be emphasized that the Pennsylvania statute permits (1) one relative to be held completely liable for support whereas other named relatives, also financially able, are ignored;[124] (2) some children to be held responsible whereas others are held not liable, despite an equal financial ability;[125] and (3) all relatives of some indigents to be totally excluded from liability, despite their presence within the named class and despite their ability to pay.[126] A statute which permits such discrepancies in the imposition of a tax clearly does not "operate alike on all members of the class subject to it."[127] Pennsylvania's family responsibility statute, it is submitted—in addition to failing the federal equal protection standard—cannot withstand the test of the state's own uniformity clause.

VI. Family Responsibility and Public Policy

The one justification repeatedly raised in support of the family responsibility statutes, indeed the moving factor behind the original concept,[128] is protection of the public purse.[129] Although as discussed above, this is not acceptable as a rationale for discriminatory classification, it is ironic that family responsibility statutes no longer serve even to save money.

In a 1960 study by the Department of Health, Education and Welfare, the surprising fact emerged that monies received from contributing relatives outweigh only slightly that spent on the administrative costs involved in their collection—and these monies received included voluntary contributions.[130] In 1948, for example, Maine reinstated family responsibility and enforced it with great strictness. Maine's annual savings were $800,000,[131] or about $1.00 per person.[132] Alabama had a similar experience in 1951, saving only one million dollars,[133] or about fifty cents per person.[134] In New York and New Jersey, administrative costs were higher than LRR receipts.[135] A recent California study revealed that three of four directors of welfare agencies found costs of administration were higher than receipts in the family responsibility field.[136] To

124. *See* notes 106-115 and accompanying text *supra*.
125. *Id.*
126. *Id.*
127. *See* note 120 and accompanying text *supra*.
128. *See* notes 31-37 and accompanying text *supra*.
129. *See* note 37 and accompanying text *supra*.
130. Scharr, *supra* note 42, at 25-26.
131. *Id.* at 26.
132. Maine's 1960 population was 913,774. Encycl. Amer., vol. 18, p. 143a (1970).
133. Scharr, *supra* note 42, at 26.
134. Alabama's 1960 population was 2,038,070 (Encycl. Amer., vol. 1, p. 437 (1970).
135. Scharr, *supra* note 42 at 25.
136. R. Bond, Our Needy Aged, 136 (1954). *See also* Rosenbaum, *Are*

these figures, of course, must be added the time involved in hearing and deciding cases in court systems already vastly overcrowded, and the fact that welfare workers whose skills could more productively be used elsewhere are forced to spend at least some of their time researching and prosecuting family responsibility cases, and all of these factors are multiplied when the responsible relative is outside the jurisdiction of the state and resort must be made to the Uniform Reciprocal Enforcement of Support Law provisions.[137]

Although no receipt expenditure figures are available for Pennsylvania, it is reasonable to assume that the Pennsylvania situation is no different from that of the remainder of the nation. In consideration of this fact, it is suggested that the oldest of justifications for family support statutes—conserving state resources—is no longer a viable argument.

VII. Conclusion

Pennsylvania's family responsibility statute cannot be constitutionally justified. Of the reasons advanced as justification for the classification on which it rests, promotion of the general welfare and protection of the public purse, the first assumes an unjustifiable denial of the equal protection of the laws, both federal and state, and the second is constitutionally unacceptable and nonfunctional. In addition, the statute acts to defeat its own legislative intent.

Although this Comment has been limited to a discussion of Pennsylvania's statute, the discussion is equally applicable to all family responsibility statutes. The concept of corruption of blood inherent in such statutes has long been discarded by society. Its application in the instance of family responsibility has no rational basis. In light of these considerations, and in the absence of some overriding state interest served by the family responsibility statutes, it is submitted that all such statutes should be either legislatively repealed[138] or judicially invalidated.

Paul R. Ober

Family Responsibility Laws Constitutional, 1 Fam. L.Q. 55 (1967); Tully, *Family Responsibility Laws: An Unwise and Unconstitutional Imposition*, 5 Fam. L.Q. 32 (1971).

137. Pa. Stat. Ann. tit. 62, § 2043 (1953).

138. Three states have already taken this step: Ark. Stat. Ann. § 83-607 (1955); Kan. Stat. Ann. § 22-4452 (1971); and Neb. Rev. Ann. § 68-101 and 102 (1969).