I. INTRODUCTION

Bara Swain’s monologue Safety Pin\(^1\) demonstrates the strong bond between parent and child, as well as the emotional strain that comes from watching that relationship deteriorate due to the ravages of the aging process. The United States senior citizen population is increasing due to the large size of the Baby Boomer Generation.\(^2\) The 2000 U.S. Census indicated that the number of people living in the United States over the age of sixty-five constitutes 12.4% of the population, a number that is likely to increase to 20% by the year 2030.\(^3\) The average life expectancy is currently 77.6 years,\(^4\) and is consistently on the rise.\(^5\) The rapid growth of the senior population, ever-increasing life expectancy, and a decreasing birth rate—along with instability of government programs like Medicaid, Medicare, and Social Security—place the United States on the verge of having more indigent seniors than ever.\(^6\) More rigidly enforced laws that provide for the care of the elderly from sources other than the government can counter these developments.\(^7\) Prime examples of such legislation are filial responsibility statutes, which impose a duty on children to support their parents.\(^8\) First, this Note will summarize the background and current status of filial responsibility in the United States. It will then discuss the Constitutionality of filial responsibility statutes with

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\(^{1}\) Barbara Swain, Monologue, Safety Pin, 11 J.L. & FAM. STUD. 531 (2009); 2009 UTAH L. REV. 579.


\(^{3}\) Id.


\(^{5}\) Id. at 182.


\(^{7}\) Id.

\(^{8}\) Ross, supra note 4, at 174–75.
the landmark case Swoop v. Superior Court of Sacramento County serving as an example of the legality of such statutes. States have the authority to use these statutes, and should consider how best to implement them in order to effectively cope with the financial burdens they face. The enforcement of such statutes would be beneficial to our society, and provide desperately needed relief for our strained public treasury.

II. BACKGROUND AND STATUS OF FILIAL RESPONSIBILITY LAWS

A filial responsibility statute is simply a law that “create[s] a statutory duty for adult children to financially support their parents who are unable to provide for themselves.” Typically, such support includes an obligation to pay for “food, clothing, shelter, and medical attention.” The rationale behind such laws arises from the reciprocal duty that parents have to care for their children; because parents extended voluntary care to their minor children, it is the filial responsibility of children to return that support to their parents. Supporters of such statutes emphasize the economic advantages of these laws and their ability to improve family relationships. Although filial responsibility was not recognized under common law, states have historically imposed this duty by statute.

The obligation to watch over one’s parents is centuries-old. It is found in philosophies such as Judeo-Christian theology, which states that children should “honour thy father and thy mother,” and ancient Eastern and Roman laws. In 1601, filial responsibility was put into statutory form with the enactment of the Elizabethan Poor Relief Act, from which most modern statutes are derived. The statute mandated that “father and grandfather and the mother and grandmother, and the children of every poor, blind, lame, and impotent person” must provide as much support as they could to that individual.

Carrying on the historical tradition of supporting indigent parents, the United States was once replete with statutes enforcing this duty. In fact, during the 1950s,
forty-five states had filial responsibility statutes, and, prior to the 1960s, federal legislation recognized this obligation as well. However, with the passage of Medicaid, states began to repeal their filial responsibility statutes. Subsequently, the establishment of Medicare in the 1960s led to the repeal of the federal statute. Today, there are twenty-eight states with filial responsibility statutes, and few—if any—of the states currently enforce these laws. While Utah has a filial responsibility statute, it is one of eleven states that have never enforced the law.

Utah’s current statute is relatively short and simple when compared to its contemporaries. Nonetheless, at least one writer, Matthew Pakula, suggested that it should be a starting point for a new federal filial responsibility statute. The Utah statute was originally in two parts. The first part provided that “every poor person who shall be unable to earn a livelihood in consequence of any bodily infirmity, idiocy, lunacy or other unavoidable cause, shall be supported by the father, grandfathers, mother, grandmothers, children, grandchildren, brothers and sisters of such poor person.” Under this section of the statute, failure to provide support would require reimbursing the board of county commissioners in the offender’s home county for any payment of support to the indigent person. Although the Utah legislature repealed this section in 1975, the second portion of the statute is still in effect, albeit never enforced. This provision lists the order in which relatives are liable for the support of the poor person, stating that “children shall first be called upon to support their parents, if they are of sufficient ability.” The statute indicates that after children, responsibility next goes to the parents of the poor person, then the siblings, the grandchildren, and finally the grandparents.

Even though the section covering liability is no longer good law, hypothetically the state could still hold citizens of Utah liable for failure to support

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20 Pakula, *supra* note 2, at 870.
21 *Id.* at 861–62.
22 *Id.* at 870.
24 *Id.* at 174.
25 *Id.* at 174 n.51 (listing Alaska, Delaware, Idaho, Mississippi, Montana, Nevada, New Hampshire, North Carolina, Tennessee, Utah and Vermont).
26 Pakula, *supra* note 2, at 871.
28 *Id.*
29 1975 Utah Laws 270.
31 *Id.*
their indigent parents if the children have means of supporting them. The current statute uses the imperative form, shall, to indicate that it is still the responsibility of a son or daughter to support his or her parent. However, notice that the statute also has an escape clause for the child, one that is common in most filial responsibility statutes: children are only required to support their parents so long as “they are of sufficient ability.” The justification for such a measure is clear—if a child of insufficient economic ability is forced to provide for her indigent parents, it would result in the state creating a new indigent person to replace the formerly-indigent senior. Therefore, children should be excused from their filial responsibility if they have no economic means of supporting their parents. This is one of three typical ways for children to avoid filial responsibility.

Children can also avoid filial responsibility if they can demonstrate the parent abandoned them. Usually, in order to claim this defense, a child must show that the abandonment occurred and lasted for at least two years while she was still a minor, and that the parent could have supported the child. Again, there is a valid justification for this waiver of the duty of filial responsibility. As previously noted, the rationale for the filial duty is based on the fiduciary care that a parent provided to their child. If the parent did not give the necessary financial support to their child, then it stands to reason that the state should not force the child to give financial support to the parent.

Finally, other states have applied various legal doctrines to reduce the amount a child is required to pay. For example, under the “unclean hands” doctrine, courts can consider a parent’s prior bad acts when considering the amount of support the child must pay. Other states also take into account temporary abandonment when determining the requisite amount.

There are, of course, criticisms of filial responsibility statutes. Among the most prevalent are: the administrative difficulties associated with enforcement; concerns that the laws will reinforce gender, economic, and racial imbalances; and the laws’ apparent contradiction of America’s culture of self reliance. These criticisms often serve as barriers to enforcement. Nonetheless, in recent years, various commentators have advocated the establishment of either a model filial

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32 Id.
33 Ross, supra note 4, at 169.
34 Pakula, supra note 2, at 866.
35 Ross, supra note 4, at 170.
36 See supra note 10 and accompanying text.
37 Ross, supra note 4, at 171.
38 Pakula, supra note 2, at 866.
39 See generally Ross, supra note 4, at 189–93 (discussing various reasons why states do not enforce filial responsibility statutes).
40 Id.
responsibility law that would make state laws more uniform, or a reenactment of the federal filial responsibility law.42

In sum, filial responsibility statutes are beginning to disappear from state codes despite their long historical tradition. Although there may be several potential explanations for this trend, such statutes are clearly constitutionally available as a tool for state legislatures, as the next section indicates.

III. THE CONSTITUTIONALITY OF FILIAL RESPONSIBILITY STATUTES

Throughout the years, filial responsibility laws have done remarkably well at withstanding legal challenges brought against them. In all cases the constitutionality of these laws has been upheld.43 Swoap v. Superior Court of Sacramento County44 is a prime example of the basis for upholding a filial responsibility statute. Swoap involved “two recipients of aid to the aged, Ila Huntley and Bieuky Dykstra.”45 Ila and Bieuky, along with their respective children, Howard Huntley and Julius Dykstra, brought a class action seeking to prevent state officials from requiring Howard and Julius to reimburse the state for aid it had extended to Ila and Bieuky.46 Howard and Julius each claimed that they were unable to pay their respective fees of $70 and $75 per month and still provide for their own families and pay their own bills.47 “The Superior Court of Sacramento County issued a statewide restraining order,” enjoining the state from requiring payment, which prompted the state to “seek a writ of prohibition to prevent the Sacramento Superior Court from enforcing the restraining order.”48

The statute that the Huntleys and Dykstras challenged was California’s Welfare Reform Act of 1971, which required children of persons receiving public assistance to contribute to the recipient’s support. If children failed to contribute, the statute allowed the county to proceed with legal action. The court was faced with the question of whether the filial responsibility duty “provides a rational basis for upholding the [Welfare Reform Act of 1971] against the challenge that such statutes are impermissibly discriminating.”49 Noting that “a long tradition of law” and “a measureless history of societal customs [have] singled out adult children to

41 Id. at 207.
42 Pakula, supra note 2, at 877.
43 Ross, supra note 4, at 193.
45 Id. at 842.
46 Id.
47 Id.
48 Id.
49 Id. at 843.
50 Id.
51 Id.
52 Id. at 848.
bear the burden of supporting their parents" the court determined that the challenged provisions of the Welfare Reform Act of 1971 “did not touch upon a fundamental interest and did not create any suspect classifications.” Rather, “these provisions [of the relatives responsibility statutes] were developed to relieve the public treasury of part of the burden cast upon it by public assumption of responsibility to maintain the destitute,” which the court found was a “legitimate state purpose.”

Since the statute had a legitimate state purpose, the court only needed to determine that the statute was rationally related to the accomplishment of that purpose. The court bluntly determined that there was a rational relationship, and that children were the obvious choice from which to draw funds that would relieve strain on the public treasury: “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 their parents to the extent to which they are capable.” Based on these determinations, the court held that the Welfare Reform Act of 1971 was “entitled to enforcement” and that the “respondent court [acted] in excess of its jurisdiction in restraining and enjoining [the county] from enforcing [it] against” the Huntleys and the Dykstras. Swoap stands as an excellent example of the constitutionality of filial responsibility laws.

Swoap, and other cases of its kind, demonstrate not only the legality of filial responsibility laws, but their practicality as well. These cases uphold filial responsibility laws for the simple reason that they accomplish the goal that they seek—to provide for the indigent elderly and to prevent a strain on our public funds. State legislatures should consider the possibilities and practicalities of reinstating filial responsibility statutes in order to reallocate badly needed funds to other areas.

IV. CONCLUSION

The United States, deeply influenced by early sources such as Judeo-Christian theology, as well as Eastern, Roman, and British law, enacted statutes requiring

53 Id. at 849.
54 Id. at 851.
55 Id. at 851 (internal citations omitted).
56 Id. at 851.
57 Id.
58 Id. at 852.
59 See generally John Walters, Note, Pay Unto Others as They Have Paid Unto You: An Economic Analysis of the Adult Child’s Duty to Support an Indigent Parent, 11 J. CONTEMP. LEGAL ISSUES 376 (2000) (proposing that a federal filial support statute that is stringently enforced would be more economically efficient than relying on welfare or other forms of public care).
children to provide support for the indigent elderly. The rationale for these laws was based mainly on the filial relationship between parent and child. However, due to the enactment of several welfare statutes following the 1950s, many states have repealed filial responsibility statutes or do not enforce them, despite continual support from the judiciary and critics who are concerned with the stability of Medicare, Medicaid, and Social Security. The enforcement of such statutes would be beneficial to our society and provide desperately needed relief for our strained public treasury. Legislatures should give serious consideration to their reinstatement.