FOCUS

AGING POPULATIONS AND THE LAW: A COMPARATIVE APPROACH

FILIAL SUPPORT OBLIGATIONS UNDER SINGAPORE, UNITED STATES, AND CHINESE LAW: A COMPARATIVE STUDY

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Abstract   The increase in aging populations is one of the most important issues facing the world today. This article considers how the legal systems in three jurisdictions — China, Singapore, and the United States — with different legal, political, and ethical regimes, impose and then enforce obligations on adult children to care for their parents. For Singapore, this article considers the content and operation of the Maintenance of Parents Act 1996 and the use of mediation and tribunals for the enforcement of its provisions. For the United States, where more than half the states have some forms of filial support legislation, this article mainly focuses on the experience in Pennsylvania and North and South Dakota and considers cases interpreting the legislation from these states; it also considers the interplay between the legislation and federal social security and healthcare programs. For China, this article mainly considers the obligations imposed by the Law of the People’s Republic of China on the Protection of the Rights and Interests of the Elderly (amended in 2009, 2012, 2015 and 2018) with examples of recent cases decided in 2017 and the encouragement given to children to support their parents through two agreements (the Separation of Family Assets and the Family Support Agreement) and increased inheritance rights under the Law of Succession 1985. China is unusual in imposing a legal obligation on children to visit their elderly parents, and the article considers recent cases on this. Through a comparative approach, this article also assesses the strengths and weaknesses of the approaches in each jurisdiction.

Keywords   Maintenance of Parents Act (MPA), Tribunal for the Maintenance of Parents, federal programs, nursing home fee recovery, Elderly Law, Separation of Family Assets (SFA), Family Support Agreement (FSA), obligation to visit

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INTRODUCTION

In the next 20 to 30 years, the majority of the world’s nations will face not only rapidly aging populations but also significant increases in the costs of looking after the elderly. The figures are extraordinarily large. According to the United Nations, in 2017 there were around 962 million people aged 60 or over in the world, comprising 13% of the global population. With the number of over-60s increasing at a rate of around 3% per year, by 2050 all regions of the world except Africa will have nearly a quarter or more of their populations aged 60 or above.\(^1\) This is a particularly significant issue for the Asia Pacific region as, according to research from the Asia Pacific Risk Center in 2016, it is “the fastest aging region in the world. Between 2015 and 2030, the number of elderly people (aged 65 years and above) who call the region home will increase by at least 200 million. This represents an increase of 71 percent in the number of elderly people, compared to increases of 55 percent in North America and 31 percent in Europe over the same period.”\(^2\)

This will result in many countries facing an increasingly heavy fiscal and political burden “in relation to public systems of health care, pensions and social protections for a growing older population.”\(^3\) For example, the Asia Pacific Risk Center estimates that for the 14 economies\(^4\) it assessed from 2015 to 2030, the annual elderly healthcare expenditure will increase five times from the 2015 expenditure of 500 billion USD to 2.5 trillion USD by 2030. It also estimates that “the cumulative elderly healthcare

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3 See fn. 1.
4 These are China’s mainland, Hong Kong Special Administrative Region, Singapore, Vietnam, Japan, South Korea, Thailand, New Zealand, Australia, Chinese Taiwan, Malaysia, India, Indonesia, and the Philippines.
expenditure from 2015 to 2030 will reach 20 trillion USD, which represents approximately half of region’s healthcare expenditure during that period. To put this into perspective, this amount is equivalent to the combined GDP of the 14 markets in 2015.5

There will also be increases in housing, pensions, and social security budgets.

An equally important issue is who will be responsible for funding the increased costs of an aging population. In 2018, Swiss Re produced a report analyzing the current sources of funding for costs associated with the over-65s in 13 jurisdictions, including the United States, Japan, the People’s Republic of China, Australia, Germany, and the United Kingdom.6 The report showed that these costs were (on average) paid from savings (25%), insurance (5%), family members (10%), and the government (60%).7 However, there were significant differences in the percentage splits among the various countries. China had the second-highest percentage of family support (21%) with the United States had the second-lowest (7%);8 the United States had the third-highest reliance on savings (32%) with Japan and Germany had the lowest (11%); and France had the highest reliance on the government (74%) with Germany at 71%, Japan at 70%, China at 51%, and the United States at 50%.

As the number of over-65s rises, together with the costs of looking after them, it will become increasingly important for families to provide ever-greater support and care for their parents. There are already powerful forces urging such support, with the major religious and secular traditions imposing some form of moral obligation on adult children to care for and show respect for their parents.9 But what happens when this support is not sufficient or is not provided voluntarily? And what happens when some children provide support but others do not? A surprisingly large number of countries/regions already impose legal obligations on family members to care for their parents, with legislation not limited to particular regions or legal systems. For example, there are obligations of support imposed by the civil codes in Italy,10 Germany,11 Japan,12 and Canadian Quebec,13 as well as legislation in Nova Scotia,14

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5 See Asia Pacific Risk Center, fn. 2 at 6.
7 Id. at 6.
8 Id. at 17 & 27. Poland has the highest level of family support (24%) and the Netherlands the lowest (5%).
10 Art. 315 of the Italian Civil Code.
11 Ss. 1601 and 1605 of the German Civil Code.
12 Arts. 877, 878, and 879 of the Japanese Civil Code.
13 Arts. 585 and 587 of the Civil Code of Quebec.
14 See Parenting and Support Act 2015 (Ss. 15–16).
India, Bangladesh, and Ukraine.

This article considers the different ways in which the laws in Singapore, the United States, and the People’s Republic of China impose obligations on family members to care for the elderly — in particular, on adult children to care for their elderly parents. These three countries have differing legal, ethical, and political traditions, but for all three, the aging population will be of great significance in the coming years. This article addresses, for each jurisdiction, these particular questions: Who is entitled to make a claim and against whom? What can be claimed? And what mechanisms can be used to adjudicate disputes and enforce obligations? The article concludes with a critical assessment of the approaches of each jurisdiction, with a consideration of the key advantages and disadvantages of each to see what lessons can be learned.

I. SINGAPORE

Singapore’s Maintenance of Parents Act 1996 (MPA) is legislation that imposes a legal obligation on adult children to support their parents. There are three important demographic, political, and cultural issues that provide important contextual background for the operation and content of the MPA.

A. Character of the MPA: Practical Concerns and the Tradition of Filial Piety

First, there is a rapidly aging population in Singapore. In 2018, the total population of Singapore was 5.638 million, of which just under 4 million were residents. Of these residents, around 547,900 were over 65 years old. In September 2018, the Singapore Department of Statistics produced Population Trends 2018, which said, “the proportion of the resident population aged 65 years and over also increased to 13.7% in 2018, compared to 13% in 2017…The old-age support ratio of residents continued to fall. As at end June 2018, there were 4.8 residents aged 20–64 years for each resident aged 65 years and over, compared to 5.1 in 2017.” It is estimated that by 2030, the percentage of

15 See Maintenance and Welfare of Parents and Senior Citizens Act 2007 (Ss. 4–6. The obligations are also imposed on Indian citizens outside India, S. 1(2).
16 See Parents Care Act 2013.
21 See Singapore Department of Statistics, fn. 19.
over-65s will have risen to 27% of the resident population.\footnote{According to the Report of the United Overseas Bank (UOB) (published on Dec. 6, 2017), “In relative terms, our demographic situation in 2030 will put us in nearly the same condition as Japan today…Japan is the oldest society in the world today, with 26.6% of her population above 65 years of age.” At 2–3, available at http://www.uobgroup.com/assets/pdfs/research/MN_171206.pdf (last visited Jan. 18, 2019).}

Second, with an aging population come additional health and welfare costs. For example, the Asia Pacific Risk Center estimates that in Singapore the annual per-capita healthcare cost for the over-65s between 2015 to 2030 will increase from 8,200 USD to 37,400 USD.\footnote{See Asia Pacific Risk Center, fn. 2 at 6.} However, traditionally and politically, Singapore has had low taxes and low spending on public welfare,\footnote{The 2017 report by the World Economic Forum placed Singapore last of 30 advanced economies for “total spending on social protection” and 25th out of 30 for “social safety-net protection.” See The Inclusive Growth and the Development Report 2017 (World Economic Forum), available at http://reports.weforum.org/pdf/ig-2017/WEF_Inclusive_Growth_2017_Profile_SGP.pdf (last visited Jan. 18, 2019).} placing the emphasis on families being the primary providers for the needs of the elderly.\footnote{However, in recent years there have been increases in the amount spent on welfare programs for the elderly, including the “Pioneer Generation Package,” designed to help around 450,000 elderly Singapore residents with their healthcare and disability payments. See https://www.pioneers.sg/en-sg/Pages/Home.aspx (last visited Jan. 18, 2019).}

This leads to the third point. There is a strong tradition of filial piety in Singapore\footnote{This is probably a result of the ethnic make-up of the resident population. As at the end of Jun. 2018, 74.3% were Chinese with 13.4% Malays and 9% Indian. See Singapore Department of Statistics, fn. 22 at 5.} that (currently) leads to the overwhelming number of elderly being cared for and supported by their families, usually by their adult children, rather than by the government.\footnote{See Chan, fn. 18 at 576.} A report produced by the Ministry of Social and Family Development called Ageing Families in Singapore (issued in November 2015)\footnote{See https://www.msf.gov.sg/mediaroom/Pages/Family-remains-key-source-of-support-for-elderly-as-aged-households-evolve.aspx (last visited Jan. 18, 2019).} referred to 2013 research that showed the following: (a) 95.1% of younger married residents planned to take care of their parents in their old age; (b) 74.9% of younger married residents provided regular financial support to their parents (a finding corroborated by elderly residents with children, 77.5% of whom reported receiving such financial support); and (c) one in three elderly residents aged 65 years and above would rely on their children to pay their medical bills.

This tradition is reflected in the position of the Singapore government, which views the family as the proper primary source of care and support for the elderly and encourages this through, for example, tax relief for adult children who support their parents or

\[\text{\footnote{See Chan, fn. 18 at 576.}}\]
contribute to their parents’ retirement funds.\textsuperscript{30}

In two ways, filial piety exerts a strong influence on the content and operation of the MPA. First, and as will be seen below, the MPA primarily acts as a safety net or “a legal avenue of last resort”\textsuperscript{31} for the small percentage of elderly parents who are not voluntarily provided for by their children. It, therefore, is additional to the moral obligation of filial piety rather than an attempt to impose it through a legally enforceable obligation.

Second, the mechanism for the enforcement of the legal obligations in the MPA seeks to preserve, to the extent possible, positive family relationships. The main way of achieving this is by taking disputes and dispute resolution completely out of the adversarial common law court process.\textsuperscript{32} Under Section 3(2A) of the MPA, disputes must first be referred to the Commissioner for the Maintenance of Parents,\textsuperscript{33} who “believes that families should be the first line of support” and “helps parents who are unable to support themselves secure monetary contribution from their children through conciliation.”\textsuperscript{34} The process is informal and seeks to reach consensual agreement between the parties. If conciliation is not successful, then the parent can file an application with the Tribunal for the Maintenance of Parents specially set up by Section 13 of the MPA.\textsuperscript{35} There are no application fees, and hearings are held in private\textsuperscript{36} and without lawyers.\textsuperscript{37} Likewise, if any publication is made of the Tribunal’s decisions, the identity of the parties is removed.\textsuperscript{38} Usually, after parents file a formal application, the Tribunal requires all parties to see whether their differences can be resolved through mediation.\textsuperscript{39} All of this is aimed at helping the parties to resolve their disputes quickly, preferably outside the adversarial process.

\textsuperscript{30} Singapore Ministry of Finance, Tax Reliefs and Rebates, Reliefs 7 and 14; the “objective” given for Relief 7 is “to promote filial piety.” Available at http://www.mof.gov.sg/MOF-For/Individuals/Tax-Reliefs-and-Rebates (last visited Jan. 18, 2019).

\textsuperscript{31} See Chan, fn. 18 at 552–553 & 578.

\textsuperscript{32} As a former British colony, Singapore has a legal system influenced by the English common law system. For more, see https://www.singaporelawwatch.sg/About-Singapore-Law/Singapore-Legal-System (last visited Jan. 18, 2019).

\textsuperscript{33} Set up by S. 12 of the MPA and appointed by the Minister of Social and Family Development.

\textsuperscript{34} See The Office of the Commissioner for the Maintenance of Parents, available at https://app.maintenanceofparents.gov.sg/Pages/AboutUs.aspx (last visited Jan. 18, 2019). Also see S. 12(5) of the MPA.

\textsuperscript{35} There will be a president and up to four deputy presidents (S. 13(1)). Each must have the same qualifications required for a District Judge (S. 13(3)), and this usually means a person who has been qualified as a lawyer for at least seven years (S. 9(3) of the State Courts Act.) Three members hear applications (S. 13(4)), and the Tribunal has powers to seek the attendance of witnesses to give evidence and the production of documents and records (S. 14(7)).

\textsuperscript{36} S. 19(1) of the MPA.

\textsuperscript{37} S. 14(4) of the MPA. The parent can be represented by the Commissioner if necessary (S. 14(3)(b) of the MPA).

\textsuperscript{38} S. 19(3) of the MPA.

\textsuperscript{39} S. 14(7)(b) of the MPA. See also https://app.maintenanceofparents.gov.sg/pages/Mediation.aspx (last visited Jan. 18, 2019).
confidentially, and constructively and to reduce, if possible, any intra-family hostility and emotion. The Tribunal does operate with legally enforceable powers to (among other things) compel witnesses to attend and give evidence under oath and to produce documents and records “necessary for the purpose of the proceedings.” 40 There is a limited right of appeal to the Singapore High Court. 41

B. How the Elderly Seek Support from Their Children

The MPA applies to “any person domiciled and resident in Singapore who is of or above 60 years of age 42 and who is unable to maintain adequately (referred to in this section as the parent).” 43 The test for “the inability to maintain” focuses only on material and financial resources and is satisfied if the parent’s “total or expected income and other financial resources are inadequate to provide for basic amenities and basic physical needs including (but not limited to) shelter, food, medical costs, and clothing.” 44 It is important to note that it is the inability to provide “basic” amenities and needs that is relevant and not the inability to have a comfortable or previously enjoyed standard of living. Consistent with this, in assessing parents’ financial needs, the Tribunal takes into account “reasonable (emphasis added) expenses for housing and medical costs.” 45

If these conditions are satisfied, then parents can seek “an order that one or more of his children pay...a monthly allowance or any other periodical payment or a lump sum for...maintenance.” 46 The obligation is imposed on all children irrespective of gender and whether married or not, and “child” is defined to include “an illegitimate or adopted child and a stepchild.” The obligation does not extend to sons- or daughters-in-law. 47

Section 11 of the MPA also recognizes that sometimes the parent may be unable to bring an application “whether by reason of physical or mental infirmity or for any other reason,” and in these circumstances, an application may be made on behalf of the parent by (a) any member of his family; (b) any person in whose care he resides and (c) any other person whom the applicant has authorized to make such an application. In addition,

40 S. 14(7) of the MPA.  
41 S. 18 of the MPA. This does not apply to any maintenance order made with the consent of the parties “unless it is alleged that the consent was obtained by means of fraud, duress, threat, or misrepresentation” (S. 18(2)).  
42 S. 3(5) of the MPA provides that a person below 60 may qualify if “he is suffering from infirmity of mind or body that prevents him from maintaining or makes it difficult for him to maintain himself or that there is any other special reason.”  
43 S. 3(1) of the MPA.  
44 S. 3(4) of the MPA.  
45 S. 5(2)(a) of the MPA.  
46 S. 3(1) of the MPA.  
47 S. 2 of the MPA, also see Chan, fn. 18 at 555, 556.
Section 3(2) gives “an approved person or organization in whose care a parent resides” the power to seek an order that “one or more of [the] children pay the approved person or organization a monthly allowance or any other periodical payment or a lump sum for the purpose of defraying the costs and expenses of maintaining the parent.” These are not academic issues, as a significant number of applicants for 2016 were living either in an institution (13%) or with a relative or friend (19%).

However, the parent has no absolute right to be awarded a maintenance payment, even if there is financial need. In deciding whether to order a payment, the Tribunal must assess three matters. First, there is a general consideration of fairness, and the Tribunal must conclude that “it is just and equitable that the respondent should maintain the applicant.” Second, the behavior of the parent toward the child is considered; if there is evidence that the parent “abandoned, abused, or neglected” the child, the application may be dismissed or the amount ordered may be reduced. Finally, the amount of maintenance involves an assessment of all the circumstances of the case, including an assessment of the financial position of the parent (including the manner in which the applicant has spent his/her savings or dissipated his/her financial resources) and the children (including their income and assets and the expenses incurred in supporting their own spouse and children and any contributions, whether financial or otherwise already made to the parent’s maintenance). If the Tribunal does order a maintenance payment and this is not voluntarily paid, then the parent can enforce this as if it is an order of the Singapore family court.

C. Recent Statistics for Support Cases

As regards disputes referred to the Commissioner, the available statistics show a relatively small number of disputes, with a higher number of fathers than mothers.

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48 For example, a clinic or nursing home. The Maintenance of Parents Rules (revised edition 2009) provides forms to apply for approval to the Ministry of Social and Family Development (see S. 2).
49 In addition, 21% were living alone. From 1996–2017, there were 2,321 applicants with 265 living in institutions, 467 living alone, 293 living with a relative or friend, and 280 living with one of their children. See Living Arrangements for Applicants 2017, available at https://app.maintenanceofparents.gov.sg/pages/LivingArrangementsofElderlyApplicants.aspx (last visited Jan. 18, 2019).
50 S. 5(1) of the MPA.
51 S. 5(3) and (4) of the MPA. See also Chan, fn. 18 at 556–559 for a summary of some cases on this.
52 S. 5 of the MPA.
53 S. 5(2)(b) of the MPA.
54 S. 5(1)(a) of the MPA.
55 S. 5(2)(d)(e) and (f) of the MPA.
56 S. 10 of the MPA.
claiming nonpayment by their children:\(^{58}\)

2015: 221 (84 mothers, 137 fathers);
2016: 216 (86 mothers, 130 fathers);
2017: 176 (72 mothers, 104 fathers).

For each year, the highest percentage of claimants was among those who were either divorced or separated (45% for 2015, 46% for 2016, and 43% for 2017).\(^ {59}\) About nine out of ten of the cases dealt with by the Commissioner between 2015 and 2017 resulted in settlements through conciliation.\(^ {60}\)

New applications for maintenance orders have steadily decreased over the years.\(^ {61}\) In 2009, there were 199 new applications; in 2010, 183; in 2011, 110; in 2012, 84; in 2013, 63; in 2014, 55; in 2015, 36; in 2016, 70, and in 2017, 38. Of the new applications in 2017, 53% made a maintenance order, 2% made no order, 29% of the applications were dismissed, and 16% withdrawn.\(^ {62}\) From 1996 to 2017, around 53% of the applicants were men.\(^ {63}\) There are no current public details of the amounts ordered, but in the past the amounts ordered by the Tribunal were “generally small, between 20 SGD and 2,700 SGD a month.”\(^ {64}\)

These cases involve a very small percentage of the families in Singapore. The impression that the cases give is that the Tribunal and the Commissioner deal with problems that are not so much legal disputes but involve much deeper relationship issues. As already mentioned, almost half of the claimants before the Commissioner are divorced or separated and around 20% live by themselves.\(^ {65}\) The Singapore government recognizes this and actively seeks to deal with such personal issues before they develop into more formal disputes as shown by a written answer from the Minister of Social and Family Development to a parliamentary question in October 2016:


\(^{59}\) See Cases by Marital Status 2015 to 2017, available at https://app.maintenanceofparents.gov.sg/Pages/CasesbyMaritalStatusfrom2015to2017.aspx (last visited Jan. 18, 2019). In 2015, 26% were widowed; in 2017, 30% were widowed.


\(^{63}\) There were 2,321 applicants, of whom 1,227 were men. Available at https://app.maintenanceofparents.gov.sg/pages/AgeandGenderofElderlyApplicants.aspx (last visited Jan. 18, 2019).

\(^{64}\) See Chan, fn. 18 at 566.

\(^{65}\) See fn. 49.
At the heart of most cases is poor family relations. This could be caused by irresponsible parenting, deep-rooted conflict in the family, or a lack of filial piety. The Ministry will continue to promote filial piety and responsible parenting, and in particular, encourage fathers to be actively involved in raising their children. Such efforts aim to strengthen family bonds and reduce the need for elderly parents to resort to legal recourse for maintenance.  

II. THE UNITED STATES  

The United States is also facing an increase in the proportion of elderly people. According to statistics from the U.S. Census Bureau, “residents aged 65 and over grew from 35.0 million in 2000 to 49.2 million in 2016, accounting for 12.4% and 15.2% of the total population, respectively.” The Population Reference Bureau estimates that this trend will continue: “The number of Americans aged 65 and older is projected to more than double from 46 million today to over 98 million by 2060, and the 65-and-older age group’s share of the total population will rise to nearly 24% from 15%.” By the year 2035, the U.S. Census Bureau estimates that there will be 78 million people 65 years and older, compared to 76.4 million under the age of 18. This will be the first time in U.S. history that older people will outnumber younger. And healthcare in the United States is expensive. A recent survey shows that on average, other wealthy countries spend around half as much per person than in the United States.  

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71 For 2016, the average per capita health costs in the United States were 10,348 USD with the comparable country average of 5,169 USD. See Health Consumption Expenditures Per Capita, available at https://www.healthsystemtracker.org/chart-collection/health-spending-u-s-compare-countries/#item-average-wealthy-countries-spend-half-much-per-person-health-u-s-spends (last visited Jan. 18, 2019).
A. An Overview of Filial Support Legislation

Currently more than half of all U.S. states have legislation that imposes civil liability on adult children to provide for their parents’ welfare or support and with a smaller number of states having legislation that imposes criminal sanctions. As will be seen below, there are differences among the states in the content of these laws and their enforcement and operation. The current situation in the United States is largely the product of the clash of two powerful forces: colonial legal history and federal law and policy. In the past, 45 of the U.S. states had filial support legislation, and this was a product of the country’s colonial past; the legislation was, to a large extent, a holdover of England’s laws for poor relief, originally passed during the reign of Elizabeth I and subsequently transported to the North American colonies. However, the most important factor that has led to the reduction in the number of states that retain legislation (as well, as we shall see, to the limited use of the legislation that does remain) was the development in the 20th century of federal social welfare and medical programs and in particular Medicare and Medicaid. As an example, in 2017, 702 billion USD in Medicare benefit payments were made to patients aged 65 or over, up from 425 billion USD in 2007. Not only can the elderly usually look to the federal programs for payment of their medical costs, but in determining patients’ eligibility for Medicaid, the federal legislation does not take into account the parents’ adult children’s financial situation. In addition, the federal legislation stops any nursing homes funded by Medicare or Medicaid from making admissions and treatments conditional on third-party guarantees of payment. Such is

72 See Pearson, fn. 67 at 304; Harkness, fn. 67 at 321. However, two states have subsequently repealed their legislation: Iowa in 2015 and Maryland in 2017.

73 See Pearson, fn. 67 at 271.

74 The current filial responsibility legislation in the United States can be traced back to the Act for the Relief of the Poor passed in England in 1601, which contained a tax system to provide funds for poor relief and provided “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 a sufficient Ability, shall, at their own Charges, relieve and maintain every such poor Person…” See Pearson, fn. 67 at 271; Moskowitz, Adult Children and Indigent Parents: Intergenerational Responsibilities in International Perspective, fn. 67 at 421.

75 See Pearson, fn. 67 at 285; Harkness, fn. 67 at 325. Medicare is a federal health insurance program for nearly 60 million people aged 65 and over and younger people with permanent disabilities. It helps to pay for hospital and physician visits, prescription drugs, and other acute and post-acute care services. For more, see https://www.medicare.gov/index.html (last visited Jan. 18, 2019). Medicaid is a joint federal and state program that helps with some of the medical costs for people with limited income and resources. For more, see https://www.medicaid.gov/ (last visited Jan. 18, 2019).


77 See Pearson, fn. 67 at 288 and fn. 115 of that article refers to the relevant statutes: 42 U.S.C. S. 1396A(a)(17)(D), 42 C.F.R. S. 435.602(a)(1); see also 42 U.S.C. Ss. 1395i-3(c)(5)(A)(ii) and 1396r(c)(5)(A)(ii) (prohibiting Medicare/Medicaid certified nursing homes from requiring third-party guarantees of payment as condition of admission).
the current influence of the federal programs that one law professor specializing in elder law argues that the role of the state courts in interpreting state filial responsibility legislation is, to a large extent, limited to filling in the “gaps” in Medicare or Medicaid coverage.78

In addition, some states have passed their own legislation to reinforce the precedence of the federal programs over the states’ filial responsibility legislation. An important example is California, whose Section 4400 of the Family Code is shown here:79

Except as otherwise provided by law, an adult child shall, to the extent of his or her ability, support a parent who is in need and unable to maintain himself or herself by work.

In _Swoap v. Superior Court of Sacramento County_,80 the California Supreme Court held in 1973 that adult children were obliged to reimburse the state for aid given to their parents under this statute.81 In so deciding, the court referred to the long history of such obligations, starting with the Elizabethan Poor Law, and was also impressed by the obligation being firmly based on reciprocity:

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 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.

However, in 1975, the California legislature amended the Welfare Code82 such that if a parent applies for or receives any public funding, then relatives cannot be liable to support the parent or reimburse any payments made by the state. This greatly undercutsthe practical usefulness of California’s filial support legislation and, according to Pearson, “research reveals no appellate cases addressing enforcement of California’s filial support law since 1975.”83

Before considering the content and operation of this legislation in more detail, it is important to understand that there is a vigorous debate (or “rancorous debate,” according to Moskowitz)84 in the United States about not just the operation of these laws but about

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78 See Pearson, fn. 67 at 298.
79 For a more detailed analysis, see Pearson, fn. 67 at 286.
80 _Swoap v. Superior Court_, 10 Cal. 3d 490 (1973); Sac. No. 7948. Supreme Court of California; 516 P.2d 840.
81 S. 4403 of the Family Code provides that both the parent and “the county” (i.e. the state) can enforce the obligation and “if the county furnishes support to a parent, the county has the same right as the parent to whom the support was furnished to secure reimbursement and obtain continuing support.”
82 California Welfare & Institutions Codes, S. 12350.
83 See Pearson, fn. 67 at 288. A search of the Westlaw database for California state court decisions on Jul. 31, 2018, confirms that this is still the case.
84 See Moskowitz, _Filial Responsibility Statutes: Legal and Policy Considerations_, fn. 67 at 720, where he summarizes the key arguments for and against the continued use of these laws.
whether they should exist at all. This is not an academic debate, as in March 2015, the state legislature of Iowa85 passed legislation to repeal its filial support legislation, and Maryland did the same in May 2017.86 So, rather than the statutes gaining scope and effectiveness as the number of the elderly increases, they appear to be losing influence.

The arguments in favor of repeal include that these laws are old-fashioned and not suited to modern family life and they are of limited practical use in the light of the federal Medicaid, Medicare and Social Security. In Maryland, the law was not used for the payment of nursing home fees because Maryland law prohibited nursing homes from holding adult children responsible for their parents’ nursing home bills unless the child consented in writing to be financially responsible.87 But there are also deeper philosophical objections. Jason Frank, one of the attorneys behind the recent Maryland repeal, said, “…it’s unfair, and possibly unconstitutional, to force a child who didn’t agree to be liable to pay a parent’s care bills…How can you be civilly liable for money owed just because you were born?…The country doesn’t need filial support laws, but rather a solution to long-term care.”88 These arguments against filial support legislation often focus on the rights and freedoms of children89 and concepts of fairness.90

Currently, despite their long history, there appears to be limited use of filial support statutes in the states where they do still exist. Although there are no statistics available for their use, such action “is rare in modern times”91 and the statutes “remain largely unenforced”92 and “utilization of filial responsibility laws is infrequent.”93 We have already seen that one reason for this is the existence of social security programs. Another reason is cumbersome and expensive enforcement mechanism, which involves the court system of the relevant states. This will usually have to involve attorneys and is expensive (especially in comparison to the modest amounts that may be the subject of claims), slow and time-consuming, adversarial (and so worsen any existing poor relationship between

89 See Harkness, fn. 67 at 326. The dissenting opinion in the California Supreme Court’s Swoap decision said that the majority’s decision was “more fundamentally, a dangerous inroad into basic principles of individual freedom and minority rights which have long flourished in this state.”
90 See Harkness, fn. 67 at 331.
91 See Pearson, fn. 67 at 272.
92 See Harkness, fn. 67 at 325.
93 See Moskowitz, Filial Responsibility Statutes: Legal and Policy Considerations, fn. 67 at 716.
the adult child and parent) and in public. Unlike the Singapore legislation, which avoids these problems by taking enforcement and disputes completely out of the court system, in the US system encouraging a parent to sue a child in court may end up causing more problems than it solves. This current lack of any widespread or coherent application of the filial support statutes across the United States makes it difficult to provide a comprehensive overview of their practical operation. However, some states are more active than others, and to get some idea of the content and use of the filial support legislation we will consider three states: Pennsylvania, North Dakota, and South Dakota.

B. Legislation in Pennsylvania, North Dakota, and South Dakota

Pennsylvania is currently perhaps the most active state for the enforcement of filial support legislation. This was given greater impetus by the passage in 2005 of two acts seeking to encourage a shift in responsibility for financing long-term care (especially for the elderly) from the state to the family. First, the Public Welfare Code was amended to limit public funding for home and nursing home care. Then, the state’s filial support law was incorporated into the Domestic Relations Code, consolidating all the support laws into one place. Pennsylvania’s filial support legislation provides that “a child of the indigent person” has “the responsibility to care for and maintain or financially assist an indigent person regardless of whether the indigent person is in a public charge.” There is an assessment of the child’s financial status and thus there is no liability to the parent if the child “does not have sufficient financial ability to support the indigent person.” “An indigent person” or “any other person or public body having any interest in the care, maintenance, or assistance” of such a person can make an application under the legislation. In determining the amount to be ordered for support, the behavior of the parent may give the child a defense, as the child has no liability to support a parent “who abandoned the child and persisted in the abandonment for a period of ten years during the

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94 See Moskowitz, Filial Responsibility Statutes: Legal and Policy Considerations, fn. 67 at 726.
95 See Pearson, fn. 67 at 289; Harkness, fn. 67 at 307.
96 23 Pa. C.S.A. Ss. 4601 through 4606.
98 S. 4603(a)(1)(ii) of 23 Pa. C.S.A. “Indigent” is not defined in the statute but is in Pennsylvania case law: “Indigent persons are those [lacking] sufficient means to pay for their own care and maintenance. Indigent includes, but is not limited to, those who are completely destitute and helpless. Indigent encompasses those [with] limited means, but whose means are not sufficient to adequately provide for their maintenance and support.” Savoy v. Savoy, 641 A.2d 596, 599 (Pa. Super. 1994).
99 S. 4603(a)(1) of 23 Pa. C.S.A.
100 S. 4603(a)(2)(i) of 23 Pa. C.S.A.
101 S. 4603(c) of 23 Pa. C.S.A.
child’s minority.”

The South Dakota statute provides that “any adult child, having the financial ability to do so, shall provide necessary food, clothing, shelter, or medical attendance for a parent who is unable to provide for oneself.” Under this legislation, “the parent or someone acting on behalf of the parent” can seek enforcement against an adult child. This statute, unlike Pennsylvania’s, has no defense for parental abandonment but does provide that a child has a right to demand contribution from any adult brothers and sisters who are financially able to contribute. In comparison to South Dakota and Pennsylvania, the North Dakota statue, found at Chapter 14-09-10 of North Dakota’s Century Code, is short and to the point:

It is the duty of the father, the mother, and every child of any person who is unable to support oneself, to maintain that person to the extent of the ability of each. This liability may be enforced by any person furnishing necessaries to the person. The promise of an adult child to pay for necessaries furnished to the child’s parent is binding.

C. Enforcement in the Pennsylvania and North and South Dakota Courts

The following (relatively) recent cases decided by the Superior Court of Pennsylvania show the operation of the Pennsylvania legislation. In Presbyterian Medical Center v. Budd, a mother died owing a nursing home (“PMC”) 96,000 USD in medical and care costs. The Superior Court held that a nursing home has standing to bring a direct claim against the mother’s child under the legislation for payment of its charges. This was the case even though the nursing home started its action two years after the mother’s death:

That Mother died prior to the initiation of PMC’s support action does not prejudice its ability to seek reimbursement from Ms. Budd for any support she was obligated to provide under the applicable support provisions while Mother was alive and in PMC’s care. On the facts alleged in this case, we conclude PMC has established a cause of action against Ms. Budd sounding in Pennsylvania’s support law.

This decision is perhaps not surprising as it appears that the reason that the mother became “indigent” and so unable to pay the nursing home’s costs was because of the daughter misusing a power of attorney and transferring 100,000 USD to her own bank

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102 S. 4603(a)(2)(ii) of 23 Pa. C.S.A.
103 Chs. 25-7-27 and 25-7-28 of the South Dakota Codified Law (“SDCL”). Under this legislation, it is necessary to provide evidence establishing that the parent is indigent. For a case where this did not happen, see Accounts Management Inc. v. Nelson, 663 N.W.2d 237 (2003).
104 Ch. 25-7-27 of SCDL.
105 832 A.2d 1066, 1076 (Pa. Super. Ct. 2003); also see Pearson, fn. 67 at 292; Harkness, fn. 67 at 308.
106 Para. 24 of the judgment says, “A nursing home providing an indigent parent with shelter, sustenance, and care has sufficient ‘interest’ under 62 P. S. §1973 to bring a support action against the parent’s child.”
account from her mother’s. This also shows that there was no unfairness as the daughter’s payment to the nursing home could be covered by the amount she took from her mother’s account in the first place.

However, in the next case (Health Care & Retirement Corporation of America v. Pittas\(^\text{107}\)), the Superior Court made it clear that the obligation to pay was not triggered by any need for wrongdoing by the child, nor was it dependent on any sense of fairness. In this case, a mother incurred costs of 93,000 USD following a car accident and then left the United States without paying to live in Greece. The nursing home sued one of her sons for payment. The mother had two other adult children and a husband.\(^\text{108}\) The Superior Court held that the son was liable to pay the full amount to the nursing home under the Pennsylvania filial support statute as the evidence showed that the mother was “indigent” and the son had sufficient financial resources to support the mother (his net annual income was in excess of 85,000 USD). The court further decided that it did not have to consider any possible contributions from the mother’s other children or husband or an outstanding appeal by the mother to have the costs paid by Medicaid:

*Nothing in that statute requires a movant or a court to consider other sources of income or to stay its determination pending the resolution of a claim for medical assistance. See 23 Pa. C.S.A. § 4603. Consequently, we decline to read such requirements into the plain language or legislative intent for the statute.*

The court held that if the son wished others to share in the support burden, he should have joined them to the litigation. As he failed to do so, it was not for the court just to assess the son’s portion of the support obligation.

*Indeed, while sympathetic with Appellant’s obligation to support his mother without the assistance of his mother’s husband or her other children, we note that if Appellant had desired to share his support-burden, he was permitted to do so by joining those individuals in this case. However, Appellant took no such action.*

The effect of these cases is to turn the legislation into a powerful debt-collection tool and so gives priority, provided a child can be found with sufficient assets, to the financial protection of innocent medical and other service providers.

The Pennsylvania courts have also used the legislation in cases for much smaller amounts to allocate the support benefit between a parent and the child. For example, in Savoy v. Savoy\(^\text{109}\) the Superior Court ordered a son to pay 125 USD a month to cover unpaid medical costs incurred by his mother that were in excess of 10,000 USD. This was despite the fact that the Court recognized the son’s monthly income of 2,237 USD as

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\(^{108}\) S. 4603(a)(1)(i) of the Pennsylvania statute also imposes an obligation of support on the spouse of an indigent person, as well as their children.

being less than his expenses of 2,583 USD. In Eori v. Eori, the Superior Court upheld a lower court’s decision that ordered a son of a 90-year-old mother (cared for by another son) to pay 400 USD a month toward her care; his sister had voluntarily agreed to a similar payment after she was also named in the lawsuit.

The courts in North Dakota and South Dakota have also been sympathetic to actions by hospitals and nursing homes for the recovery of parents’ unpaid costs from adult children. In Americana Healthcare Center v. Randall, a mother died owing 36,772.3 USD to a healthcare center for the care it had provided. The mother had previously set up a trust, and her son was the trustee. Upon his mother’s death, the son received around 100,000 USD of mutual funds from the trust. The son had failed to use the trust assets to pay the mother’s medical expenses, but the Supreme Court of South Dakota held that he was liable to pay the mother’s unpaid costs under the South Dakota statute and rejected his argument that the statute was unconstitutional. In doing so, the South Dakota Court, among other things, quoted with approval the comments from the California judgment in Swoap v. Superior Court of Sacramento County set out above. Several years later, the same court ruled in Prairie Lakes Health Care System Inc. v. Wookey, that a hospital could recover substantial unpaid medical costs from a son for his father’s care under the state’s filial support statute. This was so even though the son did not have sufficient assets to pay the outstanding costs in one go:

We recognize that Dwight has a compelling moral and legal duty to also support his wife and children, but the trial court reasoned, and we think correctly, that even if Dwight cannot pay the entire medical bill at one time, he could pay it in installments.

The Supreme Court of North Dakota in Four Seasons Healthcare Center, Inc. v. Lindenkamp confirmed that, under the North Dakota statute, children were potentially liable for medical costs incurred by their parents who were unable to support themselves.

The language of N.D.C.C. § 140910 imposes a duty on children of parents who are unable to support themselves to maintain their parents to the extent of the ability of each child, which may be enforced by any person furnishing necessaries to the parents.

In this case, a nursing home was owed 104,276 USD in unpaid costs incurred in caring for a mother and father who subsequently died. The parents had five adult children, but the lower court had held that just one of them was liable to pay the nursing home debt. Taking a different approach from that of the Pennsylvania Superior Court in the Pittas case, the North Dakota Supreme Court reversed this judgment and remanded the case for further hearing on whether the other children were also liable for the debt under the statute.

111 The court also held that a property transfer from the father and his wife to the son could be set aside on the grounds that it was a fraudulent transfer.
From this brief summary, it is clear that there are differences among the states both in
the content of the legislation and in its enforcement. The overall impression is of a
fragmented approach that lacks coherence and consistency throughout the United States.
This is a result of the lack of any underlying philosophy that shapes the legislation and its
operation. Historically, the legislation was based on 17th century English legislation
whose purpose was the alleviation of poverty, but that purpose has largely disappeared in
modern America with its reliance on federal social security and healthcare programs.
However, it is perhaps premature to completely dismiss the relevance of the legislation
that still exists. For example, most beneficiaries of the Medicare program still have
significant out-of-pocket costs; in a 2005 policy brief, the National Center for Policy
Analysis recommended that states begin “to more systematically enforce” filial
responsibility laws to help defray and reduce costs now being borne by Medicaid. If
there is any reduction in funding of federal and state programs in the coming years, there
may be an increase in the influence and use of the states’ filial support legislation.

III. THE PEOPLE’S REPUBLIC OF CHINA

According to Office of the National Bureau of Aging (全国老龄工作委员会办公室), at
the end of 2017 there were 241 million people over 60 in China, accounting for 17.3% of
the total population. It is estimated that by 2050 the number of over-60s will peak at 487
million (34.9% of the population).

A. The Moral Requirement of Filial Piety

As set out further below, the most recent Chinese legislation on this is the Law of the
2018, and referred to below as “the Elderly Law.” Unless noted otherwise, quotes are
from the 2015 version. Its major emphasis is to put the primary responsibility for looking
after the elderly (defined in Article 2 as “citizens at or above the age of 60”) on their
families: “The elderly shall be provided for mainly by their families and their family
members shall respect, care for, and look after them” (Article 13). The government’s role
is secondary and is to support and encourage: The state shall establish and improve the
policies supporting family-based care for the elderly, and encourage family members to
live together with or near the elderly, provide conditions for the elderly to move with their

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112 See Moskowitz, Filial Responsibility Statutes: Legal and Policy Considerations, fn. 67 at 720. It
refers to Medicare paying only around 50 percent of seniors’ total medical costs.
113 See Harkness, fn. 67 at 306.
114 See 我国 60 岁及以上老年人口数量达 2.41 亿 占总人口 17.3% (The Number of Elderly People Aged 60
and Over in China Reached 241 Million, Accounting for 17.3% of the Total Population), available at
spouses or supporters, and help family members care for the elderly (Article 27).

This general approach is similar to Singapore’s and it is consistent with and reflects a strong traditional ethic of filial piety in China. This can be traced back to Confucius and to the influence that Confucian ideas continues to have in modern China. Its importance is shown at the very start of the Elderly Law that states in Article 1 that one of the law’s purposes is to “promote the Chinese people’s virtues of respecting, providing for, and helping the elderly.” The order is significant, as in traditional Confucian thought the material support of the elderly is not as important as honoring them. For example, in the Book of Rites (礼记) Zengzi (曾子), Confucius’s pupil said this:

There are three degrees of filial piety, the highest is the honouring of your parents; the second is the not disgracing them; and the lowest is being able to support them.\(^{115}\)

However, reliance on families for support in modern-day China is complicated by two largely economic factors. First, there is the fragmentation of families (especially in rural and poorer areas) due to the large numbers of working-age adults who often move to the cities to find work. According to the National Bureau of Statistics, in 2017 there were 285.52 million migrant workers, an increase of 4.81 million, from the previous year.\(^{116}\) In 2016, migrant workers made up around 41% of China’s total urban workforce.\(^{117}\) Numerically, there are more migrant workers than elderly. This often means that elderly parents are left in their rural homes while their adult children leave to find work. Second, the proportion of the elderly living in the countryside is growing. In its 2015 report, the World Health Organization estimated that more elderly people are expected to live in China’s countryside than in its major cities, with rural areas aging more rapidly than urban areas. It is estimated that by 2030 the proportion of people aged 60 years or over in rural and urban areas will be 21.8% and 14.8%, respectively.\(^{118}\)

Not only are the elderly in the countryside increasingly isolated from their adult children but they may also lack the financial resources to support themselves and pay for adequate healthcare. It is estimated that 31% of the rural population is unable to afford proper medical services (compared to 14% in urban areas).\(^{119}\) And only 74% of the population that has reached pensionable age receives a pension — and pensions, if they

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\(^{119}\) Id. at 23.
exist, may be lower in rural areas.\textsuperscript{120}

The Elderly Law has a number of general references to the government seeking to improve the social security provision for the elderly,\textsuperscript{121} but this will take time.

\textbf{B. Legislation and Agreements among Family Members}

There are four main elements to the current approach of providing for the elderly in China through the legal system. First, and in contrast to Singapore and the United States, the Constitution of the People’s Republic of China expressly recognizes the duty of children to support their parents: “Parents have the duty to rear and educate their children who are minors, and children who have come of age have the duty to support and assist their parents” (Article 49),\textsuperscript{122} although this deals just with the physical support of the parents and not the traditional Confucian requirement that children respect and honor their parents.

Second, the Law of Succession of the People’s Republic of China (中华人民共和国继承法), issued in 1985, seeks to encourage children to care for their parents by giving preferential treatment to such children when dividing the deceased parents’ assets. Article 13 provides if a decedent has no valid will, then “at the time of distributing the estate, successors who have made the predominant contributions in maintaining the decedent or have lived with the decedent may be given a larger share.” However, “…successors who had the ability and were in a position to maintain the decedent but failed to fulfill their duties shall be given no share or a smaller share of the estate.” So, there are two different elements to this: The potential reward to filial children is discretionary (“may be given a larger share”) whereas the punishment for unfilial behavior is mandatory (“shall be given no share”). A recent example of a first-instance decision from Beijing concerns the operation of this provision.\textsuperscript{123} In this case, a father died, aged 90, leaving four sons, with the mother having predeceased the father. One of the sons had lived with the father and looked after him for 20 years, and as a result the court ordered this son to receive a 40% share of the father’s Beijing apartment and other assets, with the rest of the sons each receiving a 20% share of the assets.

\textsuperscript{120} International Monetary Fund, Working Paper, \textit{Inequality in China: Trends, Drivers and Policy Remedies} (issued in Jun. 2018) at 7, Fig. 9. “Yet, the benefits an individual receives in case they did not contribute towards their pension is comparatively very low, implying a weak safety net for the elderly.” Available at https://www.imf.org/en/Publications/WP/Issues/2018/06/05/Inequality-in-China-Trends-Drivers-and-Policy-Remedies-45878 (last visited Jan. 18, 2019).

\textsuperscript{121} For example, Art. 5 and Ch. III (Social Security) of the Elderly Law.

\textsuperscript{122} First introduced in the 1982 version, this has remained in the subsequent amendments of 2004 and 2018.

China is not alone in using inheritance law to influence children’s behavior. For example, Article 904-2 of Japan’s Civil Code provides that if an heir provides a “special contribution” to a deceased parent (including, among other things, medical treatment or nursing) then the amount of this contribution is calculated and then recovered by the heir from the deceased’s estate in addition to any other bequest.

Third, in recent years, families (particularly in rural areas) have been encouraged by the central and local governments to enter into two types of agreements with the aim of allocating the parents’ assets and their children’s support obligations. The Separation of Family Assets (“SFA,” 分家协议) is a form of agreement in which the parents and the children agree to divide the parents’ assets among their children now, before the parents’ death. This is often entered into by the same parties with a Family Support Agreement (“FSA,” 家庭赡养协议).124 The FSA allocates the support obligations of the adult children to their parents. The Chinese government has promoted the use of FSAs, which aim to give the rural elderly guaranteed support from their children as they get older.125 Usually it is signed by the parents and their children and witnessed and supervised by the Communist Party of China committee at the village level.126 The Chinese government estimates that around 13 million FSAs had been signed in the rural areas by 2005.127 When entered into at the same time with an SFA, the practical effect is usually similar to the provision of the Law of Succession mentioned above. Thus, the parents and the children agree that identified children (usually a son or sons) will receive a greater share of the parents’ assets in return for providing more support to their parents. The parents, particularly those in rural areas, tend to look to the sons to provide support (who then get the greater share of their assets), as their daughters, when married, are traditionally regarded as being a part of their husbands’ families.128

Three further points are worth mentioning concerning these agreements. First, the agreements are (obviously) voluntary and are signed after consideration by the parents and the children. Second, the rationale of these agreements is to divide assets and support burdens among the parents’ children; therefore, they are usually used in families where there is more than one child. Third, the aim of these agreements is to put the welfare of the parents first and to ensure that there are no disputes among the children about

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126 See Chou, fn. 124 at 7.


128 See Chou, fn. 124 at 7.
supporting the parents. Doubtless the majority of these agreements work well in practice, with any disputes resolved amicably. However, if there are formal disputes, either among the children or between the parents and the children, that cannot be resolved amicably, the courts are not bound to give effect to any agreement exchanging a reduced inheritance for a reduced level of support in deciding the children’s obligations to the parents. This is expressly contained in Article 19 of the Elderly Law: “The supporters shall not refuse to fulfill their obligations of providing for the elderly with the excuse that they will give up their right of inheritance or for any other reason.” A recent example of a first-instance trial decision from Shandong Province concerns this provision. A husband and wife (both aged 70) had two sons and one daughter. In February 2016, the parents and their two sons signed an SFA and an FSA in a single document, with the two sons (but not the daughter) dividing their assets as well as the support burden (including living expenses and medical costs). The parents subsequently sued one of the sons and the daughter seeking from each 2,100 CNY a year plus a third of their medical costs. The court rejected the daughter’s argument that as a result of this agreement she received none of her parents’ assets and so had none or, at least, less of the support burden. The daughter and the son were each ordered to pay 2,000 CNY a year to the parents, together with a one-third share of their medical costs.

This leads to the fourth point. If there are disputes, then the courts are guided by the obligations legally imposed on adult children in China’s legislation, and these obligations cannot be altered by any agreement between the parents and their children. There are two sources for these obligations. First, Article 21 of the Marriage Law of the People’s Republic of China (first introduced in 1980, with the current version in 2001) provides that “children shall have the duty to support and assist their parents…If children fail to perform their duty, parents who are unable to work or have difficulty in providing for themselves shall have the right to demand support payments from their children.” Unlike the Elderly Law that applies to parents at or over 60 years old, there is no age qualification on parents to enforce this obligation. Thus, it is possible for parents in their late 40s or early 50s to sue an adult child who fails to support them if, for example, the parents cannot work because of ill health. Second, there are the obligations that are set out in the Elderly Law. This is now the main source of the obligations imposed on adult children, and it is much more detailed than the legislation in Singapore and the United States in identifying the specific areas where the children have legal responsibilities to their parents. It also significantly differs from the legislation in Singapore and the United

129 The supporters are defined in the Elderly Law as “the children of the elderly and other persons who are under the legal obligation to provide for the elderly” (Art. 14).

States in addressing not only the parents’ material well-being but also their spiritual care, and it obliges the children to visit their parents.

The Elderly Law imposes the following legal obligations on the children concerning their elderly parents: (a) to take care of them and comfort them mentally and cater to their special needs (Article 14); (b) to ensure, if the parents are ill, that they receive timely treatment and care and to pay the medical expenses if the parents have “financial hardship” (Article 15); (c) to take care of the elderly who cannot care for themselves (Article 15); (d) to arrange for the housing of their parents, and this includes repairing their parents’ dwelling (Article 16); (e) to farm any land contracted by the parents and take care of trees, livestock, etc. (Article 17); (f) to care for the mental needs of their parents and not to “ignore or cold-shoulder” them (Article 18); and (g) if not living with their parents, to “frequently visit or greet the elderly” (and employers should allow the children to have the necessary leave) (Article 18). The legislation contains no express provision that the obligations on the children are dependent on an assessment either of the children’s financial ability to pay or the parent behaving properly when the child was growing up. As such, the Chinese legislation is on its face wider in scope than Singapore’s and any of the U.S. states’ legislation.

As regards enforcement, if the children fail to perform their duties, then “the grassroots self-governing organizations, the organizations of the elderly, or the employers of the supporters shall urge them to perform their duties” (Article 24). If this does not produce results, the elderly parents have the right to ask the supporters for payment of support and other rights (Article 19). If there are disputes that cannot be resolved amicably, then, unlike in Singapore, the matter is dealt with in the court system (Articles 72 and 74), although Article 74 also provides that the parent can seek mediation. There appear to be no reported cases where a hospital or nursing home has sued children under the Elderly Law. In recent cases where children have been sued, hospitals have relied on contract theories to seek recovery.

C. Examples: Judicial Allocation of Support Burdens and the Obligation to Visit

To get some idea of the number of cases decided by the courts throughout China concerning support disputes under the Elderly Law, a review of first-instance case decisions for 2017 published on the website of China Judgements Online (中国裁判文书网) as of January 18, 2019, turned up 2,645 reported decisions. These include the cases

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131 The obligations are imposed on “supporters” who are defined in Art. 14 of the Elderly Law and this also says that “the spouses of the supporters shall assist them in fulfilling their obligations…”

132 For example, see (2017) 浙0784民初7742号 (Nov. 17, 2017); (2018) 豫0183民初479号 (Feb. 12, 2018).
already referred to above. Three points can be made from these case decisions.

First, this is obviously a very small number of cases in the context of both China’s population and numbers of elderly. It seems, therefore, that if there are support disputes between parents and their children, the overwhelming majority are resolved either amicably within the families or perhaps using some form of mediation, with court action as a last resort.

Second, courts and tribunals in the common law systems in Singapore and the United States usually resolve disputes with an order for the payment of money, either for a parent’s living expenses or payment of medical or nursing costs. The Chinese courts can also do this, as seen in the cases noted above, but they are much more flexible in what they can order to resolve disputes. Sometimes, money is not enough. Hence, for example, the Chinese courts can order that children either provide an actual place for the parent to live or care for a parent in rotation. Four cases from first-instance decisions in 2017 give some idea of what the Chinese courts can do. In the first case, an 81-year-old mother of three sons could not look after herself and had nowhere to live. The court ordered that the sons should each look after their mother in rotation (a month at a time for each son) and also provide a dwelling for their mother at the same time. In the second case, a 90-year-old widowed mother had six children (five sons and one daughter). The court ordered that each son should look after the mother in rotation (a month at a time) and also provide a dwelling. The sons were also ordered to share their mother’s medical costs, but all six children were ordered to share her living expenses. In the third case, a 74-year-old widowed father had two sons and two daughters and lived by himself. He sued only his two sons concerning provision of his accommodations, and the court ordered that just the eldest son should provide him with a two-room dwelling. In the

133 This is an official website designed to make publicly available as many Chinese court decisions as possible. To do so, follow these steps: Click the slot of advanced research (高级检索). Enter “Elderly Law of the People’s Republic of China” in the bar of “full-text” (全文检索). Select “supporting disputes” (赡养纠纷) from the bar of “case brief” (案由) and “first instance” (一审) from the bar of “court proceeding” (审判程序) and “judicial decision” (判决书) from the bar of “type of document” (文书类型). Then, in the slot of “time of judgment” (裁判日期), enter from “Jan. 1, 2017 to Dec. 31, 2017.” This comes up with 2,645 trial court decisions (up to Jan. 18, 2019). New cases are added to the database at regular intervals.


fourth case, a mother and father (76 and 77 years old, respectively) had four daughters and one son. There was an SFA between the parents and the son, under which the parents gave their dwelling to the son, who rebuilt it and then would not let the parents continue to live there. The parents then had to live with a daughter; they sued the son to provide a dwelling. The court ordered that the son must provide a one-room dwelling for his parents, and all the children must provide for the parents’ food and living expenses.

Third, in 2012, the Elderly Law was amended to add a specific obligation on children who do not live with their parents to “frequently” visit their parents. This caused a lot of comment in China and also in the West as this obligation seemed to be unique to Chinese law and Chinese culture. Our review of the Elderly Law support cases, decided in 2017, shows that the courts have made orders under this provision, with 83 decisions that included a requirement for visiting parents. Most of these cases also included claims for payment of support or medical expenses. Of these 83 cases, 37 involved parents in the wealthier cities and provinces of China, with 22 in total from Beijing, Tianjin, and Shanghai; seven from Guangdong; and eight from Jiangsu. Four cases will give a flavor of the sort of issues the Chinese courts are dealing with. In the first case, a wealthy retired father had three children. The eldest son, a medical doctor, had not visited for around ten years following a series of family arguments. The father sued the son and claimed living expenses, visits, and an apology. The son claimed he was too busy to visit but made sure that the father had proper medical care if ill. He also refused to apologize. The court ordered the son to pay nominal living expenses of 300 CNY per month, with a monthly visit of not less than two hours. In the second case, an 83-year-old widowed mother lived with her three children in rotation and then lived just with her second son for a number of years, who refused to send her to hospital when she fell ill. She was eventually sent by her other children, but the second son made no calls or visits to the mother. The mother sued the second son for 1 CNY living expenses a month and a daily visit for one minute per day! The mother’s claims seem to indicate a more deep-seated dispute, and the second son’s behavior appears to have been motivated by unhappiness with the separation of the family assets after his father’s death, although he also alleged in his pleadings that the mother was being manipulated by a third party. The court ended up

139 For example, see WANG Jiaguo, “精神赡养”与中国法制的亲情伦理回归 (“Spiritual Care” and the Revival of Family Ethics in Chinese Law), 1 法学 (Law Science), 81–83 (2015); SU Dan, “孝道”视角下我国养老立法的要求及完善路径——以“精神赡养”条款为中心 (The Requirement and Improvement of the China’s Elderly Law from the Perspective of “Filial Piety”: On the Clause of “Spiritual Care”), 2 浙江学刊 (Zhejiang Academic Journal), 216–224 (2017).
140 For example, see a report from the British Broadcasting Corporation, available at https://www.bbc.co.uk/news/world-asia-china-23124345 (last visited Apr. 1, 2019).
ordering the second son to pay 1 CNY living expenses a month, with a weekly visit to his mother. In the third one, it is another case where the real issue appears to be a dispute about money. The claimant was an 83-year-old widowed mother who was married twice. She had a son and a daughter with her first husband and a daughter with her second husband. The relationship with the son was not good and this seems to have resulted from the mother giving a property inherited from her second husband to her two daughters and ignoring the son. The mother claimed living expenses and visits from the son. The court made no order for living expenses but did order the son to visit his mother twice a month.

In the fourth one, a 72-year-old father divorced his daughter’s mother when the child was seven. According to the divorce order, the father paid maintenance for the daughter, who continued to live with the mother. The relationship between the daughter and the father was not good; the daughter claimed he was bad tempered and did not adequately support her when she was young. The father claimed from the daughter nominal living expenses of 1 CNY per month, together with a minimum of three visits a month, each lasting for at least six hours. The court ordered the nominal living expenses of 1 CNY per month plus one visit a month.

From these examples, we can see that many of the cases involve deep relationship issues that are often triggered by divorce, death, or unhappiness over the split of family assets. In these cases, the courts are often faced with complicated and long-standing family disputes in which it may be difficult to know with certainty who is behaving improperly. Two common threads run through the approach of the Chinese courts to these disputes. First, they put the welfare of the parent first (and in this they act in a way similar to the courts in the United States and the Tribunal in Singapore). Second, they act with flexibility and pragmatism, giving decisions that protect the interests of the parents in ways that differ from in the United States and Singapore (e.g. ordering children to provide a dwelling or to look after a parent in rotation). Ordering visitation is another aspect of this pragmatism. The Elderly Law contains no details about the enforcement of a visiting order if a child refuses to comply. However, a review of these cases suggests that the orders eventually made by the court usually reflect the agreement reached by the parties before the judge and so the courts are seeking to restore a degree of harmony to an otherwise fraught family relationship.

**CONCLUSION**

As has been seen, the approach of these three jurisdictions (two common law and one civil) take different approaches to the issue of imposing (and enforcing) legal obligations on adult children to support their elderly parents. The only common theme is that, at

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144 See (2017) 皖 1203 民初 1613 号 (Sep. 11, 2017).
present, the legal regimes in each jurisdiction are not (it appears) widely used. Legal action by parents against their adult children for support is still very much the exception rather than the rule. However, the reasons for this differ in the three jurisdictions. In Singapore and China, the family is not only the main provider for elderly parents but is actively encouraged to be the provider by the Singapore and Chinese governments. In this, there is a strong tradition of filial piety in both jurisdictions (again encouraged by both governments) that gives a coherent and powerful moral underpinning to the system of supporting the elderly. Although, for the reasons already discussed, the situation in the United States is, from a legal viewpoint, fragmented, there is a much greater role for federal and state social security and healthcare programs as the first place for the elderly to seek payment and support.

This highlights a deeper divide between whether the central role in supporting the elderly should fall to the state or to the family. If state or federal funding of welfare and healthcare plays a significant role, then the role for filial support legislation diminishes. This may explain why the influence of the filial support legislation in the United States has weakened, with two states having repealed their statutes in recent years. If the family is to remain the dominant source of support, then there is a continuing need for filial support legislation to set out precisely what the obligations and duties of the adult children are, along with the rights of the parents. Therefore, Singapore and China have introduced modern, carefully drafted and detailed legislation that shows not only the seriousness of the issues they face from an aging population but also the political will to address them. The United States has no equivalent of such self-contained legislation that comprehensively deals with filial support but instead these obligations are usually contained in other legislation. For example, in Pennsylvania\textsuperscript{145} between 1937 and 2005, the support obligations were part of that state’s public welfare laws; since 2005, the statute was moved by the state legislature to the domestic relations code.

In practical terms, the law in each jurisdiction currently operates very much as a safety net and is often used when family relationships have deteriorated because of external factors such as divorce, the death of a parent, or arguments over inheritance. The enforcement mechanisms in each jurisdiction should, therefore, recognize that these disputes are often relationship-driven rather than purely legal. As we have seen, the reliance in the United States on the state courts to resolve disputes is far from satisfactory. The common law courts in the United States (as in other common law jurisdictions) are

\textsuperscript{145} See Pearson, fn. 67 at 290. She comments that “despite structural changes, Pennsylvania’s filial support language setting forth the obligation of the child (interpreted practically as the “adult” child) remained largely intact since first enacted.” This can be contrasted with the active development of the Elderly Law in China. The original version was passed in 1996 (49 Articles in six chapters) and then revised in 2009, 2012, 2015 and 2018. The 2012 revision was particularly significant with the Law increasing to 85 Articles in nine chapters.
adversarial, costly, slow, public, and can often only provide financial remedies (e.g. money for support or payment for medical or nursing services).\footnote{See Moskowitz, \textit{Filial Responsibility Statutes: Legal and Policy Considerations}, fn. 67 at 726–727. For a more general analysis, see Rebecca Love Kourlis, \textit{Ten Ways to Reform the Civil Justice System by Changing the Culture of the Courts}, available at \url{http://www.abajournal.com/legalrebels/article/to_reform_the_civil_justice_system_we_need_more_than_rule_changes} (last visited Jan. 18, 2019).}

At the other extreme, the system in Singapore has much to recommend it. The disputes are taken completely out of the court system, with an emphasis on mediation and conciliation and confidentiality, with specialist Tribunal members and no lawyers involved. Unlike in the United States, it aims to create an enforcement mechanism that seeks to rebuild relationships rather than destroy them. Singapore’s weakness is perhaps that the legal regime focuses only on providing financial and material support to the elderly parents.

The current enforcement system in China is somewhere in the middle. Its civil court system, and the role of its judges, tends to be less adversarial (and costly) than the common law system, with a greater emphasis on mediation,\footnote{For an overview of civil litigation in China in English, see HE Xin & Kwai Hang Ng, \textit{Inquisitorial Adjudication and Institutional Constraints in China’s Civil Justice}, 35(4) Law & Policy, 290–317 (2013).} and the judges can provide remedies that seek to address the real needs of parents, such as the need for a dwelling, shared care, or human company. There are, however, two areas where the Chinese system might learn from Singapore. First, in the court decisions that are available online, it is possible to discover the identities of the parties, and this fear of publicly airing family disputes may discourage some parents with legitimate claims from pursuing them. Second, as in the United States, in China the cases are not heard by specialist judges who have expertise in such family and support disputes. However, unlike in Singapore and the United States, a major advantage is that China does not just rely on the law to impose legal obligations on children but actively encourages the children to support their parents through the SFAs and FSAs and the possible inheritance benefits for filial children. The Chinese system recognizes that the law is only part (and often a minor part) of the solution to the problem.

It is not possible to predict whether the current reliance on families in Singapore and China and the state in the United States will be able to support the increased financial burden that will result from the growing numbers of the elderly. This uncertainty is increased by the number of single children who will be responsible for supporting parents (and maybe even grandparents) in China in the future\footnote{ZHANG Wenli & YU Yan, \textit{How the One-Child Policy Heightens China’s Aging Crisis}, available at \url{http://www.sixthtone.com/news/1000528/how-the-one-child-policy-heightens-chinas-aging-crisis} (last visited Jan. 18, 2019).} and the effect of recent
significant cuts to social security and healthcare in the United States.\textsuperscript{149} If all this produces future strains in governmental or family budgets, there may well be a need for an increased reliance on the legal obligations imposed on children through legislation. At present, the only certainty is that, in each jurisdiction, the future will bring a greater number of elderly who will need to be cared for and supported, and legislation, by itself, cannot provide a complete solution.