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**Legislation Requiring Child To Support Mother
in State Asylum Is a Denial of Equal
Protection—*Department of Mental
Hygiene v. Kirchner***

The California Department of Mental Hygiene brought suit under section 6650 of the state's Welfare and Institutions Code,¹ a provision commonly known as a relative support statute, against the administratrix to recover 7,500 dollars from the intestate's estate. This amount represented the cost of food, housing, and treatment

1. Section 6650 reads in pertinent part:

"The husband, wife, father, mother or children of a mentally ill person or inebriate . . . and the estate of such mentally ill person or inebriate, shall be liable for his care, support, and maintenance in a state institution of which he is an inmate. The liability of such persons and estates shall be a joint and several liability . . ."

Two other provisions are relevant for a full understanding of the case. Section 6651 authorizes the Director of Mental Hygiene to reduce, cancel, or remit the amount due from the patient or his relatives on satisfactory proof that they are unable to pay all or part. Section 6655 directs that the inmate's estate be left intact if there is a probability that he may later be released and would become a burden to the community if his assets were used to pay for his current treatment. Neither of these appears to have played a direct part in this decision, although the court felt it was inconsistent to protect the inmate's assets under § 6655 while possibly depleting those of his relatives.

received by intestate's mother in a state mental hospital during the four years she had been confined there following a civil sanity hearing. Plaintiff was granted judgment on the pleadings. On appeal to the California Supreme Court, *held*, reversed. Since mental hospitals serve a proper public function, it is a denial of equal protection of the law within the meaning of the fourteenth amendment to burden arbitrarily one class of society, *e.g.*, an incompetent's children, with a patient's expenses.² *Department of Mental Hygiene v. Kirchner*, 60 Cal. 2d 716, 388 P.2d 720, *cert. granted*, 85 Sup. Ct. 39 (1964).

Despite its incorporation into other legal systems as far back as Hammurabi,³ the natural law precept that men must assist less fortunate relatives has not been unequivocally accepted as a part of common law. English judges were reluctant to require persons of ability even to maintain their wives and minor children much less their parents.⁴ However, some American courts, without the aid of legislation, have bound husbands and fathers to provide for spouses and offspring (including offspring who have become handicapped adults) and have explicitly refused to let this responsibility pass to

2. To appreciate the significance of the court's holding, additional information is necessary. Since intestate's mother had about \$5,500 worth of unencumbered assets of her own at the time suit was filed, defendant challenged only the Department's right to seek the full \$7,500 maintenance cost from decedent's estate. (See generally note 1 *supra*.) When defendant appealed to the California Supreme Court, he raised two issues for hearing: (1) does § 6650 impose unconditional liability upon an adult child for the care of an incompetent mother when the mother has funds of her own, and (2) if it does impose such liability, does it not then deny due process and equal protection? Petition for Hearing, pp. 2-3. Defendant actually admitted the constitutionality of the statute apart from its application in a situation where the parent can still support himself. Petition for Hearing, p. 9. The court gave little attention to the questions raised but proceeded to "the fundamental issue tendered by the case" and invalidated the entire concept of requiring a child to support a parent patient. In asking the United States Supreme Court to review the decision, the Department contended it was denied due process in not being given an opportunity to brief and argue the broader question upon which the case was decided. Petition for Certiorari, pp. 19-23.

Although the opinion makes no reference to the fourteenth amendment of the federal constitution, the court speaks of "equal protection" whereas the California Constitution uses the phrase "uniform operation" of the law. In addition, the court relied upon United States Supreme Court cases to support its conclusion.

3. The Babylonian king (c. 2000 B.C.) provided that a woman afflicted with disease should be kept at the house of her husband and supported by him. CODE OF HAMMURABI § 148 (Harper ed. 1904). The concept of intra-family assistance for unfortunate members is also observed in ancient Hebrew law. Eisenstadt, *Early History and Principles of Jewish Family Law*, 60 JURM. REV. 48 (1948). The Napoleonic and Japanese Codes specifically provide that destitute parents be maintained by children. CIVIL CODE OF JAPAN art. 955 (Sebald 1934); AMOS & WALTON, INTRODUCTION TO FRENCH LAW 85-86 (1963).

4. The judges in *Manby v. Scott*, 1 Sid. 109, 82 Eng. Rep. 1000 (Ex. 1663), felt that, while a wife might starve at the hands of an inconsiderate husband, the Divine precept decreeing the mastery of the husband over his spouse was not easily to be circumvented. They preferred that the Chancellor or local bishop find a remedy for the unfortunate spouse. The refusal of English courts to require support of children and other relatives is shown in *Mortimore v. Wright*, 6 M. & W. 482, 151 Eng. Rep. 502 (Ex. 1840) and *Rex v. Munden*, 1 Str. 190, 93 Eng. Rep. 465 (K.B. 1718).

the state merely because these dependents became insane.⁵ On the whole, however, the duty to support relatives has been statutory in Anglo-American jurisdictions, beginning with the Parliamentary enactment of 1601 and extending to modern times in various forms, including section 6650 and its counterparts in the majority of states.⁶ It is uncertain whether the principal case meant to invalidate section 6650 as it obligates husbands and fathers to maintain incompetent wives and children and, thereby, to question the constitutionality of established common-law authority.⁷ Nevertheless, the ruling that children are denied equal protection in having to assist their parents challenges a deeply rooted custom, if not common-law authority. Although the weight to be given past custom in deciding present constitutional issues is a much debated point, it is apparent "the Fourteenth Amendment did not tear history up by the roots."⁸

The equal protection clause does not prohibit every type of class legislation. Rather, it allows broad discretion to promulgate laws affecting selected individuals provided there is a reasonable difference between them and the rest of the community that is significant in light of the purpose the statute is designed to achieve. The rationality of a given classification may be tested by reference to everyday experience.⁹ Thus, it is permissible to license only male bartenders if

5. *Inhabitants of Brookfield v. Allen*, 88 Mass. (6 Allen) 585 (1863); *Rowell v. Town of Vershire*, 62 Vt. 405, 19 Atl. 990 (1890); cf. *Wells v. Wells*, 227 N.C. 614, 44 S.E.2d 31 (1947). *Contra*, *Richardson v. Stuesser*, 125 Wis. 66, 103 N.W. 261 (1905).

6. The Poor Relief Act, 1601, 43 Eliz. 1, c. 2, § 7, provided that parents, grandparents, and children should support the poor and incapacitated according to their ability.

A large majority of American jurisdictions have passed statutes requiring relatives to contribute to the maintenance of family members confined to state mental institutions. Most are similar to the provision under consideration in that they obligate capable parents, spouses, and adult children to reimburse the government. Texas does not require compensation from capable adult children. TEX. REV. CIV. STAT. ANN. art. 3196(a) (1952). Illinois limits the total amount expected from all responsible relatives to fifty dollars a month and terminates an individual's obligation after his twelfth year's payment. ILL. REV. STAT. ch. 91, §§ 1-15, 12-21 (1963).

Analogous legislation usually requires relatives to lighten the public burden by assisting their relatives in need of medical treatment or regular county welfare grants. See, e.g., MICH. COMP. LAWS §§ 400.77, 401.2 (1948).

7. The opinion specifically refers to the issue presented as the right of the legislature to require one adult to support another adult. Principal case at 718. It also hints that a husband, whose "basic obligation [of supporting his wife arose] from the marriage contract," may not be able to rely upon the present decision. *Id.* at 719.

8. *Goesaert v. Cleary*, 335 U.S. 464, 465 (1948); see *State v. Griffiths*, 203 A.2d 144, 148 (Conn. 1964). Mr. Justice Holmes once wrote: "If a thing has been practiced for two hundred years by common consent, it will need a strong case for the Fourteenth Amendment to affect it" *Jackman v. Rosenbaum Co.*, 260 U.S. 22, 31 (1922). Of course, too much reliance can be placed on history. However, jurists and authors agree that tradition must play some role in deciding contemporary questions. Wofford, *The Blinding Light: The Uses of History in Constitutional Interpretation*, 31 U. CHI. L. REV. 502 (1964).

9. *Walters v. City of St. Louis*, 347 U.S. 231, 237 (1954); *Skinner v. Oklahoma*, 316 U.S. 535, 540 (1942).

the legislature believes women have less ability to keep order in a tavern, or to exempt certain amusement centers from the provisions of a Sunday closing law if there is reason to feel this will facilitate the community's enjoyment of its day of rest.¹⁰ Furthermore, each statutory classification is presumed constitutional. When it is questioned, the challenger bears the burden of proving that no reasonable state of facts can be conceived to sustain it. The court's function is limited to disapproving only those legislative categories that the complainant has shown to be essentially arbitrary or invidious.¹¹

Section 6650 serves three purposes. In regard to each, relatives stand in a position distinct from that of the general public. First, the legislation exacts some return from a patient's loved ones for the unique satisfaction they experience in seeing him well cared for at a state hospital.¹² Second, the provision fosters a sense of intra-family dependence and togetherness, which is vital to the success of any mental health program and which many feel is jeopardized when state aid replaces relative assistance.¹³ The desire to preserve family ties is a proper motive for enacting selective legislation.¹⁴ Finally, section 6650 finances the treatment of indigent incompetents. For centuries, courts have recognized that the natural law obliges men to supply necessities to certain relatives unable to provide for themselves and that the legislature may give statutory sanction to these natural law precepts.¹⁵ When the court in the principal case suggests there is no rational basis under the equal protection clause for choos-

10. *McGowan v. Maryland*, 366 U.S. 420 (1961); *Fitzpatrick v. Liquor Control Comm'n*, 316 Mich. 83, 25 N.W.2d 118 (1946).

11. *Morey v. Doud*, 354 U.S. 457, 463-64 (1957); *McGowan v. Maryland*, *supra* note 10, at 426. It has been suggested that the Court is more sympathetic to an equal protection argument asserted against a statute restricting civil rights than against one affecting economic liberty. A plaintiff seeking to invalidate legislation of the latter type undertakes an unusually difficult task. See McKay, *Political Thickets and Crazy Quilts: Reapportionment and Equal Protection*, 61 MICH. L. REV. 645, 665-69 (1963).

12. This purpose is similar to that behind the extra tax on public utilities that forces them to repay the government for granting monopoly privileges. Compare *New York Rapid Transit Corp. v. City of New York*, 303 U.S. 573, 580 (1938). Nebraska has given judicial attention to the question of whether a relative derives a benefit from the patient's hospitalization and has concluded that he does. Compare *Baldwin v. Douglas County*, 37 Neb. 283, 55 N.W. 875 (1893), with *Kearney County v. Elsam*, 81 Neb. 490, 116 N.W. 270 (1908) and *State v. Heupel*, 114 Neb. 797, 210 N.W. 275 (1926).

13. Recent controversy over federal medical assistance to the elderly focused attention on this point. *Hearings on the King Bill Before the House Committee on Ways and Means*, 87th Cong., 1st Sess. *passim* (1961). The trend in our society away from the traditional notion of a close relationship between family members of different generations is partially responsible for the present increased incidence of mental breakdowns among older people. Compare Hsiao-T'ung Fei, *Peasant Life in China* 74-75 (1939), with Dunham, *Sociological Aspects of Mental Disorders in Later Life*, in *MENTAL DISORDERS IN LATER LIFE* 165-68 (Kaplan ed. 1956).

14. *Meredith v. Ray*, 292 Ky. 326, 166 S.W.2d 437 (1942).

15. *People v. Hill*, 163 Ill. 186, 46 N.E. 796 (1896); *Rex v. Munden*, 1 Str. 190, 93 Eng. Rep. 465 (K.B. 1718) (stating quite confidently that there is no natural law duty to support mothers-in-law).

ing relatives over the general public to maintain patients, it implies that this natural law tenet is one the legislature cannot enforce. When it says a classification founded on consanguinity is arbitrary, it disregards much judicial precedent as well as statistical evidence indicating that the bulk of Americans believe it only proper for the less fortunate to rely upon their relatives rather than the state.¹⁶

The court sought support for its result in *Department of Mental Hygiene v. Hawley*,¹⁷ which had held section 6650 unconstitutional as applied to a father whose son was hospitalized in a mental institution by a criminal court to await trial for matricide. However, the difference in theory and practice between civil and criminal commitment makes *Hawley* inapposite to the facts of the instant case. A civil patient like intestate's mother need not manifest antisocial tendencies to be hospitalized.¹⁸ The code provisions relating to the two types of confinement underscore the distinction between them. While the criminal patient comes to the attention of the court only after his arrest in connection with a violation of the law, the civil patient is most often referred to the state for treatment in a confidential manner by a close friend or relative. Whereas the former must be committed to a state facility and restricted there until released by a court, the latter is encouraged to avoid confinement by seeking help on his own. Should hospitalization appear necessary, it may often be in a private sanitarium if the incompetent so desires.¹⁹ Because so much weight was placed on *Hawley*, it might be thought the justices, unmindful of these realities, looked upon civil commitment as a mere alternative to imprisonment and felt relatives should not be forced to maintain patients because they need not support convicts. Yet other portions of the opinion make it apparent the court was not ignorant of the dissimilarity; for it emphasized that, unlike prisoners,

16. State Comm'n in *Lunacy v. Eldridge*, 7 Cal. App. 298, 94 Pac. 597 (1908). (This case was not mentioned by the court in the principal case.) *Beach v. District of Columbia*, 320 F.2d 790 (D.C. Cir.), cert. denied, 375 U.S. 943 (1963).

A recent survey indicates two-thirds of American householders feel that, apart from Social Security, the duty of relatives to assist one another in times of distress takes precedence over the state's responsibility. MORGAN, DAVID, COHEN & BRAZER, *INCOME AND WELFARE IN THE UNITED STATES* 275 (1962). It might be noted that in 1959 an estimated seven billion dollars was given as charity to individuals compared with six billion dollars to churches and two billion dollars to such causes as the Community Chest. In addition, another 4.5 billion dollars is presumed to have been spent on food and other necessities for adult relatives living with younger family members. *Id.* at 259-60.

17. 59 Cal. 2d 247, 379 P.2d 22 (1963).

18. One may be classified as mentally ill and may be hospitalized if he is of such mental condition as to require supervision, care, treatment, or restraint or is likely to be dangerous to himself or others. CAL. WELFARE & INST'NS CODE §§ 5040, 5100.

19. Compare CAL. PEN. CODE § 1026, with CAL. WELFARE & INST'NS CODE § 5047, 5100, 6725-26. See Comment, *Commitment of the Mentally Ill—Superior Court of Los Angeles County*, 36 So. CAL. L. REV. 109 (1962).

civil patients must continue to pay their own expenses if they are able to do so.²⁰

Precisely because a hospital is not a prison, this decision may give rise to a number of undesirable consequences. Whereas the law provides fairly specific guidelines for determining which persons are criminals, it often is difficult to distinguish the mentally ill from the elderly senile. The court's ruling encourages the inconsiderate child to attempt to place a feeble-minded parent in a mental institution to be cared for at state expense.²¹ Unlike prisoners, who are confined for a definite minimum term, many mental patients are permitted lengthy periods of home leave provided relatives are willing to care for them. This therapeutic practice is likely to suffer if relatives no longer need bear the cost of support while the patient remains in the hospital.²² Undoubtedly, pressure will mount upon hospital superintendents to exercise their prerogative of discharging those patients²³ who, although uncured, are not threats to society, often forcing them to seek unhappy refuge with relatives who do not welcome their release. Furthermore, when the Victorian analogy between asylums and penitentiaries cannot be relied upon to isolate the decision of the principal case to its own facts, the result may reverberate throughout the entire Welfare Code, voiding other sections that impose a duty similar to that of section 6650 to support relatives.²⁴ Indeed, if these similar provisions are not invalidated, an anomaly would result; while the medical bills of an indigent cardiac patient could be required to be paid by his children,²⁵ the children of an impoverished victim of a mental disease could not be required to reimburse the

20. Principal case at 720. Prisoners may be paid up to thirty-five cents an hour for their productive services. This amount is held in trust for them until their release. CAL. PEN. CODE § 2700.

21. The distinction between senility, which is not considered a mental illness, and senile brain disease, which is considered a mental illness, is almost imperceptible. Compare Rothschild, *Senile Psychoses and Psychoses with Cerebral Arteriosclerosis*, in MENTAL DISORDERS IN LATER LIFE 307 (Kaplan ed. 1956), with 34 Ops. CAL. ATT'Y GEN. 313 (1959).

22. Petition for Rehearing, app. F. In July of 1964 there were 32,506 residents in California hospitals for the mentally ill. There were 15,745 additional patients away on some form of leave. CALIFORNIA DEP'T OF MENTAL HYGIENE, MONTHLY STATISTICAL SUMMARY, table 1 (July 1964).

23. CAL. WELFARE & INST'NS CODE § 6730. See also CAL. WELFARE & INST'NS CODE § 5100. Already, since the principal case was decided, one relative has brought suit to enjoin the Department from releasing a patient. Guardianship of Owens, No. 28456, San Mateo, Cal., Super. Ct., Aug. 1964.

24. Suits are now pending in California trial courts attacking statutes requiring support for the aged, juveniles in youth homes, mentally disordered not committed to institutions, and CAL. WELFARE & INST'NS CODE § 2576 which provides for relative assistance in general. Petition for Certiorari, p. 18, n.30. One trial court, relying on the principal case, held unconstitutional the parent's liability for support of mentally retarded children in state hospitals. In the Matter of Dudley, No. 2160, Alameda County, Cal., Super. Ct., April 1964.

25. CAL. WELFARE & INST'NS CODE §§ 2500, 2576.

state for his expenses. However, it does not appear that the court intends to permit this peculiarity, for in concluding in the principal case, Justice Schauer noted that the whole concept of legislation requiring support of relatives is ripe for re-examination in light of the "social evolution" of the past fifty years.²⁶

As disturbing as the social and economic implications of the principal case may be,²⁷ its rationale is more so. The underlying theme of the entire opinion suggests the legislature overstepped its authority in imposing a special burden on a few citizens to support a humanitarian mental health service that benefits the whole community. One cannot escape the uneasy feeling that the Supreme Court of California accomplished in one opinion what the Congress of the United States has found impossible to achieve through sessions of debate on medical care for the aged. Considering its rejection of tradition, popular sentiment, and analogous case law precedent construing the equal protection clause, it can only be said that the court obscured the distinction between the *wisdom* of the legislature's policy decision to tax on the basis of consanguinity and its *power* to enact a law to carry that determination into effect. It ruled against the lawmakers on the latter point because it disagreed with them on the former—a judicial undertaking wholly inconsistent with the teachings of the Supreme Court on interpretation of the fourteenth amendment.²⁸

26. Principal case at 722.

27. The Department estimates its annual collections from parents for maintenance of adult offspring at \$1,080,054; from children for maintenance of parents at \$893,272, and from spouses for maintenance of their husbands and wives at \$1,509,272. In addition, more than two million dollars is received annually in benefits from insurance covering spouses and children. Petition for Rehearing, app. E. New York estimates relatives contribute some ten million dollars annually to finance its mental health program. N.Y. Times, Oct. 13, 1964, p. 21, col. 1 (city ed.).

28. "We have returned to the original constitutional proposition that courts do not substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws." *Ferguson v. Skrupa*, 372 U.S. 726, 730 (1963). See also note 11 *supra* and accompanying text. That the California legislature is exercising its judgment is apparent from the fact its 1961 session discontinued relative assistance for the blind and physically disabled. CAL. WELFARE & INST'NS CODE §§ 3011, 3411, 4011.