Michigan Law Review

Volume 54 | Issue 4

1956

Family Responsibilty Under the American Poor Laws: I

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FAMILY RESPONSIBILITY UNDER THE AMERICAN POOR LAWS: I*

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

43 Eliz. 1, c. 2, § 7 (1601)

I. INTRODUCTION

EVER since the enactment of the statute quoted above, first passed in 1597 as part of the original Elizabethan Poor Law, the concept of family responsibility has been linked with the public relief of the poor. Today, more than three-and-a-half centuries later, the basic, residual program of poor relief has survived in the statutes of every American jurisdiction, and practically all the states still have family responsibility provisions based on the English model.[1] Although some jurisdictions have abandoned the

* This paper consists of a chapter, with some revisions, of a thesis submitted to the Law School of Yale University in partial satisfaction of the requirement for the J.S.D. degree. Work on this thesis was undertaken by the author during his tenure of a fellowship granted by the Fund for the Advancement of Education. However, it represents the independent work of the author, and he is solely responsible for it.

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[1] The program of poor relief, general relief, or general assistance, which is the subject of this paper, should be distinguished from categorical public assistance. Categorical assistance comprehends the programs of Old Age Assistance, Aid to the Blind, Aid to Dependent Children, and Aid to the Permanently and Totally Disabled. These programs are financed by the states and local governments with federal financial help, are state-administered or state-supervised, and must conform to minimum standards prescribed by state statute in order to qualify for federal aid. See Geddes, "Programs of Public Assistance in the United States," 70 MONTHLY LAB. REV. 132 (1950). Family responsibility provisions, it should be noted, may also be frequently found in these programs.

It is the function of general assistance to furnish aid to persons not covered by categorical assistance or other programs of social insurance, and, in some areas, to supplement grants and awards under any of these other programs. General assistance remains the financial and administrative responsibility of the state and local governments, and is not subject to state supervision in every jurisdiction. For a brief review of general assistance see Mandelker, "The American Poor Laws: A Legislative Backwater," 41 A.B.A.J. 567 (1955). Many of the American family responsibility statutes have not been substantially changed since the date of their original adoption as long as 260 years ago. See, e.g., Plymouth v. Hey, 285 Mass. 357, 189 N.E. 100 (1934); McGarr v. National & Providence Worsted Mills, 24 R.I. 447, 53 A. 320 (1902). Citations to the American family responsibility laws follow. If there is a series of provisions relating to family responsibility, only the first section has been cited. Ala. Code (1940) tit. 44, §8; Alaska Laws (1953) c. 110, §13; Ariz. Code Ann. (Supp. 1952) §70-605; Ark. Stat. Ann. (Supp. 1953) §83-607 [repealed Ark. Laws of 1955, c. 37]; Cal. Civ. Code (1949) §206; Cal. Welfare & Inst. Code (1952) §2576; Colo. Stat. Ann. (1949) c. 124, §1; Conn. Gen. Stat. (Supp. 1953) §1111c; Del. Code

family responsibility requirement, the tendency in recent years seems to be toward strengthening the law where it exists.

In spite of their historic antecedents, and their place in the statutory framework of poor relief since colonial times, the American family responsibility laws have never been comprehensively reviewed. Yet, their importance in the administration of poor relief, or general assistance as it is now more commonly called, cannot be underestimated. As the discussion of legislative purpose will show, these laws, by authorizing court actions in which support may be sought from responsible relatives, provide an alternative to public assistance. The assumption is that when an individual falls into need, his first recourse is to his family.

To understand the nature of the family responsibility laws it is first necessary to differentiate them from those family support duties imposed at common law or by other statutory provisions. One common law duty of support which does not appear to be questioned is that of a husband to support his wife.[2] In England,

Ann. (1953) tit. 13, §501; Ga. Code Ann. (1936) §23-2302; Hawaii Rev. Laws (1945) c. 298, §12,290; Idaho Code Ann. (1948) §32-1002; Ill. Stat. Ann. (Supp. 1955) c. 23, §§436-12, 439-2; Ind. Stat. Ann. (Burns, Supp. 1955) §3-3001 (domestic relations law); Iowa Code Ann. (1949) §252.1; La. Rev. Stat. (1950) §13:4731; La. Civ. Code (Dart, 1945) art. 229; Me. Laws (1953) c. 308, §97 (general assistance law); Me. Laws (1953) c. 163 (hospital care); Me. Laws (1953) c. 386 (domestic relations law); Mass. Laws Ann. (1949) c. 117, §6; Mich. Stat. Ann. (Supp. 1953) §16.121; Minn. Stat. Ann. (1947) §261.01; Miss. Code Ann. (1952) §7357; Mo. Ann. Stat. (Vernon, 1952) §205.590; Mont. Rev. Code Ann. (1953) §71-233; Neb. Rev. Stat. (Supp. 1953) §68-101; Nev. Comp. Laws (Supp. 1949) §5140 (general assistance); Nev. Comp. Laws (Supp. 1949) §5140.01 (hospital care); N.H. Rev. Laws (1942) c. 124, §18; N.J. Rev. Stat. (1940) §44:1-139; N.Y. Social Welfare Law (Supp. 1955) §101; N.Y. Criminal Code (1945) §914; N.Y. City Domestic Relations Court Act §§92, 101; N.D. Rev. Code (1943) §14-0910 (domestic relations law); N.D. Rev. Code (1943) §50-0119 (general assistance law); Ohio Rev. Code Ann. (Page, 1954) tit. 51, §5113.04; Okla. Stat. Ann. (1951) tit. 10, §§11, 12 (domestic relations law); Ore. Rev. Stat. (1953) §109.010 (domestic relations law); Ore. Rev. Stat. (1953) §411.410 (general assistance law); Pa. Stat. Ann. (1941) tit. 62, §1971; R.I. Gen. Laws (1938) c. 69, §5; S.C. Code (1952) §71-131; S.D. Code (1939) §14.0312 (domestic relations law); Utah Code Ann. (1953) §17-14-1; Vt. Laws (1953) No. 196, §2; Va. Code (Supp. 1954) §20-88 (domestic relations law); W.Va. Code Ann. (1949) §626 (150); Wis. Stat. (1953) §52.01.

Unless the contrary is indicated, all of these statutes are found in the general assistance law, or in the public assistance law if that statute covers general assistance as well as the categorical programs. In practically every case, a civil remedy is provided; none of these statutes are criminal statutes. Citations to statutory supplements and to session laws have been given only where the first section of the statute has been amended. For a chart showing family responsibility provisions for all welfare programs for all states, as of July 1, 1952, see the Tax Foundation, Improving Public Assistance Table 7 (1953). See the recent survey made by an Alabama legislative committee, THE RESPONSIBILITY OF A CHILD TO SUPPORT INDIGENT PARENT (Alabama Legislative Reference Service 1950). Family responsibility statutes do not appear to exist in Florida, Kansas, Kentucky, New Mexico, North Carolina, Tennessee, Texas, Washington, and Wyoming. Arkansas repealed its family responsibility law in its entirety in 1955. Ark. Laws, c. 37.

[2] 1 BLACKST. COMM. *442; PECK, DOMESTIC RELATIONS, 3d ed., §78 (1930). For an early case see Manby v. Scott, 1 Sid. 109, 82 Eng. Rep. 1000 (1659). Most courts now

no other family duties of support appear to have existed, and a minority of the American courts follow the English view.[3] A majority of the American jurisdictions, however, have also found a common law duty of a father to support his minor child.[4]

Statutes in almost every jurisdiction now compel the support of the spouse and minor children. Most of these are criminal statutes penalizing nonsupport[5] or the abandonment of a wife and children likely to become public charges.[6] In addition, some statutes have been enacted which impose criminal penalties on adult children who fail to support their indigent parents,[7] and which compel the support of illegitimate children by putative fathers.[8] In contrast to these common law and statutory support duties, the family responsibility statutes are non-criminal statutes

allow the wife to sue the husband directly for support. Brown, "The Duty of the Husband to Support the Wife," 18 Va. L. REV. 823 (1932).

3 See the discussion by Cockburn, J., in Bazeley v. Forder, [1868] 3 Q.B. 559 at 565; PECK, DOMESTIC RELATIONS, 3d ed., §126 (1930). For an American case taking this view see Hollingsworth v. Swedenborg, 49 Ind. 378 (1875). Although New Hampshire is listed with the American minority, see Hillsborough v. Deering, 4 N.H. 86 (1827).

4 PECK, DOMESTIC RELATIONS, 3d ed., §126 (1930); comment, 32 YALE L.J. 825 (1923). For an early case asserting this proposition see Edwards v. Davis, 16 Johns. (N.Y.) 281 (1819). People v. Hill, 163 Ill. 186, 46 N.E. 796 (1896), holding constitutional the Illinois family responsibility law, assumes the existence of the common law duty. There was, apparently, no common law duty of the minor child to support his parent. Waterbury v. Hurlburt, 1 Root (Conn.) 60 (1773). See In re Erickson, 104 Kan. 521, 180 P. 263 (1919) (dictum); 15 COL. L. REV. 281 (1915). Traditionally, the duty of the parent was not enforceable in a direct action by the child but in an action against the parent by a third party who had furnished necessaries. This limits the effectiveness of the rule. HARPER, PROBLEMS OF THE FAMILY 503 (1952). The common law support duties are also enforceable, of course, in divorce actions.

5 4 VERNIER, AMERICAN FAMILY LAWS §234 (1936).

6 See 3 VERNIER, AMERICAN FAMILY LAWS §162 (1935). The following statutes are typical: Iowa Code Ann. (1949) §252.10; Mich. Stat. Ann. (1950) §16.130; N.J. Rev. Stat. (Supp. 1954) §44:1-143. Typically, these statutes also provide that the property of the deserter may be seized for the support of his dependents. For a case discussing problems of interpretation arising under such a statute, see People v. Triangle, 23 Barb. (N.Y.) 236 (1956).

7 E.g., Ind. Stat. Ann. (Burns, 1942) §10-1410; Ky. Rev. Stat. (1953) §405.080; Md. Ann. Code Gen. Laws (Supp. 1955) art. 27, §112; Ohio Rev. Code Ann. (Page, 1954) tit. 29, §2901.40. For cases indicating the nature of the support obligation under statutes of this type, see, e.g., State v. Hoffman, 213 Ind. 125, 11 N.E. (2d) 698 (1937); Lundy v. State, 195 Ind. 368, 145 N.E. 485 (1924); Beutel v. State, 36 Ohio App. 73, 172 N.E. 838 (1930).

An Ohio court, in Gardner v. Hines, (Ohio C.P. 1946) 68 N.E. (2d) 397, has held that the criminal statute cannot serve as the basis for a civil action. But cf. Craig v. Shea, 102 Neb. 575, 168 N.W. 135 (1918) (illegitimate child may bring civil action under criminal statute penalizing father who does not support his illegitimate child). Sometimes the family responsibility law compelling civil support in connection with general assistance will carry a criminal penalty. E.g., Va. Code (Supp. 1954) §20-88. Of course, the criminal statutes may have the effect of compelling support.

8 4 VERNIER, AMERICAN FAMILY LAWS §250 (1936). The American support statutes are exceedingly complex and overlapping, but the text furnishes a rough outline of their general provisions.

which provide that dependent persons in need may secure aid from responsible relatives who are able to contribute to their support.

A. *Purpose and History of Family Responsibility Legislation*

A consideration of the reasons behind a given piece of legislation is often essential to its interpretation. This is particularly necessary in the case of family responsibility laws, whose generalized provisions leave many specific problems of interpretation unresolved. In the case of family responsibility the problem is to determine the reasons for the adoption of the original English provision, from which the American laws were taken.

Unfortunately, the available historical material does not appear to disclose these reasons.[9] Furthermore, neither the 1597 nor the 1601 poor relief acts contain preambles, so recourse may not even be had to that source of legislative intent. Nevertheless, inferences may be drawn regarding the apparent purpose of the statute from several items of legislative history.

In 1575 Parliament passed a law providing for the support of illegitimate children by their parents. Really the first family responsibility law, this statute recited that its purpose was to reduce the cost of poor relief to the parishes.[10] In view of this legislative background, the inference seems to be that Parliament also had the reduction of relief costs in mind when it passed the family responsibility laws of 1597 and 1601. This conclusion is borne out by noting one significant change in the latter statute. While it first applied only to parents and children,[11] in 1601 it was extended to additional collateral relatives.

The problem of statutory interpretation is further complicated by the fact that the common law support duties in England were limited to that of a husband to his wife. For this reason, the primary or coordinate purpose of the 1597 statutes may have been to provide a legal remedy where none existed before, with perhaps secondary consideration to the problem of relief costs. In any

9 See Riesenfeld, "The Formative Era of American Public Assistance Law," 43 CALIF. L. REV. 175 at 199 (1955). It is of interest that both poor relief and family responsibility were established by law in Iceland by the fourteenth century. FREEDOM AND WELFARE, Nelson ed., 446 at 456 (1953).

10 The statute recited that, ". . . the said bastards [are] being now left to be kept as the charges of the parish where they be born, to the great burden of the same parish, and in defrauding of the relief of the impotent and aged true poor of the same parish. . . ." 18 Eliz. 1, c. 3 (1575).

11 39 Eliz. 1, c. 3 (1597).

event, the courts, without going into the problems of historical evidence, have adopted the position that the English law was enacted with the aim of reducing the cost of public relief[12] and have not given consideration to other possible motivations.

This assumption regarding the origins of family responsibility laws is not specific enough to afford guidance in the resolution of the many problems of interpretation that will arise. For example, it does not indicate whether the family responsibility law was intended to be primary or secondary to public responsibility. However, the importance even of this assumption first becomes apparent when the question of the constitutionality of family responsibility laws is examined. The courts have had to consider the argument that these laws are unconstitutional on the ground that they merely authorize the transfer of money from one individual to another. Relying on the antiquity of the statute and on the existence of at least a moral obligation to provide support at common law, the courts have upheld family responsibility as a proper exercise of the police power to protect the public purse.[13]

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

[13] People v. Hill, 163 Ill. 186, 46 N.E. 796 (1896); Stark v. Fagan, 89 N.J.L. 29, 97 A. 778 (1916), revd. on other grounds sub nom. Stark v. Jersey City, 90 N.J.L. 187, 100 A. 340 (1917). See also Atkins v. Curtis, 259 Ala. 311, 66 S. (2d) 455 (1953), holding constitutional the family responsibility provisions in Alabama's categorical assistance statute. The Alabama court took the question-begging position that the statute merely fixes a liability which private persons then enforce against other private persons. For an analysis of the transfer of property argument as used to oppose the exercise of the eminent domain power see Mandelker, "Public Purpose in Urban Redevelopment," 28 TULANE L. REV. 96 (1953).

The argument, that the family responsibility statute unreasonably classifies the persons to whom it applies, e.g., because it excuses relatives without means, has also been rejected by the courts. See the cases cited and Wood v. Wheat, 226 Ky. 762, 11 S.W. (2d) 916 (1928). While a New Jersey court has indicated that a statute which extended to sisters and brothers would be unconstitutional, In re Roger's Estate, 96 N.J. Eq. 6, 125 A. 318 (1924), the statute held constitutional in the Illinois case cited above so provided and the case involved an action by a sister to compel support from her brother. In Polk County v. Owen, 187 Iowa 220, 174 N.W. 99 (1919), the Iowa court reserved judgment on the constitutional question.

While the cases holding the statute constitutional relied in part on the existence of the moral duty at common law, it should be pointed out that the creation of a new duty not even existing at common law would not be unconstitutional provided the statute otherwise meets the test of substantive due process. See LARSON, WORKMEN'S COMPENSATION LAW §5.20 (1952) (citing cases holding workmen's compensation statutes constitutional). Another approach to the problem would be to view the family responsibility law as an exaction in the nature of a tax, levied uniformly on all who come within the enumerated classes.

Some states have constitutional provisions providing for the support of "indigents" or of "paupers." The Alabama court indicated that the presence of such a provision in its constitution did not invalidate the family responsibility law, which could be upheld simply as a definition of the word "pauper."

B. *A Social Policy Toward Family Responsibility*

Whatever the original reasons for adopting the family responsibility provision, it would seem important to make a contemporary evaluation of general assistance and family responsibility. Unfortunately, the evidence as to the uses and effects of family responsibility laws, upon which such an evaluation must be based, is not satisfactory. What evidence there is regarding their use indicates that, while court actions under the statute may be infrequent, agencies do their best to enforce the support duties through administrative action.[14] How fairly or efficiently the statute has worked out in practice, however, is not clear.[15] While it has often been stated that those charged with administering public assistance are opposed to family responsibility, one recent survey reports to the contrary,[16] so that there appears to be no clearcut opinion of the program on the part of those who administer it. Another survey, made in Illinois, did find that court orders for support were often ignored and that the law has fallen into disuse in some areas. Whether the administration of the law resulted in increased or decreased costs for the public was a question.[17]

The enforcement of family responsibility may well work a hardship on the relatives called on for support. Compelling an unmarried adult child to support aging parents may keep him in the parental home and prevent him from establishing a home

14 See the following comment in GENTILE AND HOWARD, GENERAL ASSISTANCE 7 (1949), summarizing the results of a recent survey of general assistance practices. "Although few agencies used the courts to compel a legally responsible relative to support a client, aid was sometimes denied when the relative was unwilling, though able, to do so." The authors also comment that every effort was made to secure contributions.

15 New Mexico has no family responsibility law relating to indigents, although in that state a father is responsible for the care of his minor child irrespective of need. A survey in one county in that state indicated that the officials did not insist on the father meeting this responsibility, and contacted only those relatives believed to be interested or concerned in the applicant's welfare. PINO, PUBLIC WELFARE IN NEW MEXICO 25 (unpublished manuscript of thesis, N.Y. School of Social Work, Columbia University 1948).

16 See THE TAX FOUNDATION, IMPROVING PUBLIC ASSISTANCE 31 (1953). It is of interest that a recent survey of public opinion in Illinois revealed overwhelming public support for the retention of the family responsibility provision. A Proposed Public Assistance Code of Illinois 122, 123 (Report of the Illinois Public Assistance Laws Commission 1947).

17 ABBOTT, PUBLIC ASSISTANCE: AMERICAN PRINCIPLES AND POLICIES 155 et seq. (1940). The survey, which was made in the 1930's, indicated that the law was enforced primarily in urban communities. Significantly, the relationship between the burden of support and the cost of litigation was noted by the court in Howard Co. v. Enevoldsen, 118 Neb. 222, 224 N.W. 280 (1929). See also the comments in Von Otterstedt, "Reciprocal Support Legislation," CURRENT TRENDS IN STATE LEGISLATION 164 (1952) (University of Michigan Law School Legislative Research Center).

of his own.[18] If the relative is married and has a family of his own, the burden of support may materially affect his own standard of living.[19] Some of the responsible relatives may be outside the state and thus not as easily held to account as relatives who have remained in the state.[20] Although the available evidence is far from adequate, the facts seem to indicate that family responsibility does not always work efficiently. Whether it is a desirable part of the assistance program will depend, however, on the standards by which such data is evaluated. New administrative devices, for example, might remedy existing enforcement problems.

Before discussing policy, it should be pointed out that the family responsibility laws are not used, as a matter of practice, to enforce the support duties recognized at common law. These common law duties exist between members of a family who constitute an interdependent unit, ordinarily living under one roof. Instead, the family responsibility laws appear to be used primarily to enforce the duty of an adult child to support his dependent parents, or to secure the support of one collateral relative by another.[21] These support obligations, therefore, involve independent families, or independent members of a family. A typical case might be that of a parent who makes a claim on a grown son, the latter having established a family and home of his own. The writer is not ready to challenge the proposition that society must enforce the support obligation of members of an immediate, interdependent family, e.g., of the husband to the wife. Critical examination will be made here of the extension of this support duty beyond this group, by means of the family responsibility laws, to members of a family who are independent of the person seeking support.

18 Persons over 65 may be covered by Old Age Assistance, to which the same or separate family responsibility statutes may be applicable. However, persons near but under 65 may, although not disabled, have difficulty in finding employment. These people would then have to depend on general assistance or, in the alternative, on support by relatives.

19 ABBOTT, PUBLIC ASSISTANCE: AMERICAN PRINCIPLES AND POLICIES 164 (1940); Bigge, "Looking Ahead in Public Assistance," 7 SOCIAL SEC. BUL. 4 (1944). For similar comments with reference to the enforcement of relative responsibility in Old Age Assistance programs, see Griffin, "The Standard Budget and Children's Responsibility in the Massachusetts Old Age Assistance Program," 18 SOCIAL SERV. REV. 333 (1944); Hitrovo, "Responsibility of Relatives in the Old Age Assistance Program in Pennsylvania," 18 SOCIAL SERV. REV. 67 (1944). The latter article reviews a statute which is also applicable to general assistance.

20 Out-of-state responsible relatives may now be reached in most jurisdictions through the procedures authorized by reciprocal enforcement of support legislation, but this is cumbersome as compared with the remedies available to reach in-state relatives. No doubt the latter will be contacted first. See the discussion in the continuation of this article.

21 ABBOTT, PUBLIC ASSISTANCE: AMERICAN PRINCIPLES AND POLICIES 154-193 (1940).

There is a widespread agreement on the necessity of preserving "the family,"[22] and both the proponents and opponents of family responsibility start with this assumption.[23] The question is whether family relationships are in fact strengthened by insistence on the support obligation in the general assistance setting. This in turn will depend on how one evaluates a support demand made on a relative on the basis of economic need. It could be contended that a refusal to meet such a demand is immoral, being motivated by a desire to avoid one's responsibilities by casting them on the public.

However, the demand for support may raise serious emotional problems for the person called upon because it symbolizes to him the personal inadequacy of the needy individual. This point may be illustrated by the parent's demand on his adult child for support. The child's reaction will depend upon his past relationship with his family. If the child has not developed his own sense of security and has a need for acceptance by the family group, he may well be overgenerous. But the child who has separated himself from his family with difficulty will resent the financial and personal ties that the statute compels and will exaggerate the reasons why he cannot afford to give.[24] Indeed, in any family relationship characterized by tension, the relative called on for support may deny the call for help in order to punish the relative who makes the demand.

Emotional difficulties on the other side of the support relationship should also be considered. A parent who must accept support from the child may find the receipt of aid damaging to his self-respect.[25] The tension which is engendered if the relative is forced to furnish support, or which naturally results in any situation where one person is financially dependent on another,[26] certainly is not conducive to a satisfactory adjustment of the dependent individual to his new status.

22 See, in this connection, the following declaration of policy in the Illinois public assistance code, Ill. Stat. Ann. (Supp. 1955) c. 23, §436-1: "The maintenance of the family unit shall be a principal consideration in the administration of this Code, and all public assistance policies shall be formulated and administered with the purpose of strengthening the family unit."

23 See the comments in A PROPOSED PUBLIC ASSISTANCE CODE OF ILLINOIS 125 (1947) (Report of the Illinois Public Assistance Laws Commission).

24 This approach to family responsibility was suggested in TOWLE, COMMON HUMAN NEEDS 83 (1952).

25 The comments in Griffin, "The Standard Budget and Children's Responsibility in the Massachusetts Old Age Assistance Program," 18 SOCIAL SERV. REV. 333 (1944), are applicable to this situation. See also MERIAM, RELIEF AND SOCIAL SECURITY 589 (1946); Heavin, "Recipients and/or Versus Responsible Relatives," 55 PUBLIC WELFARE IN INDIANA, No. 5, p. 9 (May 1945).

26 See the analysis in PEYSER, THE STRONG AND THE WEAK 8-10 (1951).

Financial difficulties encountered by the relative who is forced to give support may well compound the emotional problems. To enable the relative to meet the statutory obligation, for example, a mother-in-law may be forced to live in her son-in-law's home. Personal and financial stresses and strains in the home of the relative called on for support may then lead to feelings of insecurity on the part of the members of that family. Or an adolescent may be frustrated in his need to establish himself on his own if he is forced to remain in his home in order to support his parents. Some writers[27] and judges[28] have remarked that family responsibility litigation is merely a symptom and not the cause of the impairment of family integrity.

If general assistance is to be evaluated in terms of its effects on family relationships, it would seem possible to draw some rather adverse conclusions about the present operation of the family responsibility laws. It might be argued that the law should not compel responsible relatives to support dependent persons who are in need—that where the family relationship is good the support will be forthcoming. Where it is not, to compel support will merely aggravate an already difficult situation with results that are ultimately more harmful than helpful to the family structure.[29] Whether society is ready to take a step which will relieve relatives entirely of the support of dependents, and place it wholly on the public, is another question. In view of the increasing urbanization of the United States, and the disappearance of the large family homestead in which three generations could comfortably live under one roof, it may well be that this step will have to be taken.

This writer, however, sees no objection to the retention of the family responsibility laws, provided that some revisions in the statutory framework are made. In the remaining portion of this

27 ABBOTT, PUBLIC ASSISTANCE: AMERICAN PRINCIPLES AND POLICIES 168 (1940); BISNO, THE PHILOSOPHY OF SOCIAL WORK 43 (1952); GELLHORN, CHILDREN AND FAMILIES IN THE COURTS OF NEW YORK CITY 178, 179 (1954); TOWLE, COMMON HUMAN NEEDS 82 (1952).

28 E.g., Sicher, J., in Neuerstein v. Newburger, 55 N.Y.S. (2d) 906 at 908 (1945); Panken, J., in Hommel v. Hommel, 22 N.Y.S. (2d) 977 at 979 (1940).

29 See the comment of Crane, J., in Field v. Field, 79 Misc. 557, 139 N.Y.S. 673 at 673 (1913) (divorce case): "Society and the home [are] preserved, not by law, but by an instinctive as well as educated regard for the moral rights of others." The writer would agree with the qualification that fulfillment of the support obligation is dependent upon the maintenance of healthy family relationships, which will in turn prevent family breakdowns. See also University of Connecticut School of Social Work, Statement of Relative Responsibility (April 1, 1951). Because of the family tensions that are present in a case in which support is compelled, it would appear that any person forced into payment may ultimately default, or could be kept current only at continued and expensive public vigilance.

article, the present law of family responsibility will be surveyed with reference to the principal problems presented by the statutes, and changes in the existing laws will be suggested.

II. PERSONS COVERED BY FAMILY RESPONSIBILITY LAWS

A. *Relationship to Common Law Duties*

Most of the family responsibility statutes are presently limited to the reciprocal liabilities of one spouse to another, and to the parent-child relationship. However, something over one-third of these statutes also extend the support duty to grandparents and, in some instances, to grandchildren also. There are a few statutes which extend the duty, in addition, to brothers and sisters.[30] The statutes do not seem to preclude reliance by the locality extending aid on the support duties which existed at common law,[31] and, presumably, on any other statutes authorizing civil actions for support. At the same time the family responsibility statutes have been limited to the specific relatives named and have not been extended along the lines of ascent or descent.[32]

It might be expected that the common law status of infants (minors) and married women would qualify the support duties existing under the family responsibility statutes. With reference

30 For a tabulation of the relatives held responsible under the various general assistance and family responsibility statutes, as of July 1, 1951, see PUBLIC ASSISTANCE POLICIES AMONG THE STATES Table 41 (47 Minnesota Legislative Research Committee 1951). Some of the statutes, in addition to providing for an action against living relatives, also provide for the support of the dependent person from the relative's estate. E.g., Conn. Gen. Stat. (1949) §2611 (support of spouse); Okla. Stat. Ann. (1951) tit. 10, §11 (support of parent); S.D. Code (1939) §14.0315 (same). Cf. Rawlings v. Goldfrap, 5 Ves. Jr. 440, 31 Eng. Rep. 671 (1800).

31 E.g., Sturbridge v. Franklin, 160 Mass. 149, 35 N.E. 669 (1893); Hanover v. Turner, 14 Mass. 227 (1817); Brown Co. v. Siebert, 175 Minn. 39, 220 N.W. 156 (1926); Chester v. Underhill, 16 N.H. 64 (1844); Rumney v. Keyes, 7 N.H. 571 (1835); Goodale v. Lawrence, 88 N.Y. 513 (1882); Howard v. Whetstone Tp., 10 Ohio 365 (1841). In all of these cases the locality recovered against the husband for relief given to his wife. Where the common law duty of the husband is relied on, he may not take advantage of any defenses available under the family responsibility statute. In re Aspenleiter's Estate, 203 Misc. 109, 114 N.Y.S. (2d) 486 (1952). To the effect that the parent's duty of support under the statute continues even after a divorce, see Marconi v. Delviso, 117 N.Y.S. (2d) 412 (1952). For a discussion of a similar problem arising with reference to the duty of a parent to support his minor child see PECK, DOMESTIC RELATIONS, 3d ed., § 127 (1930).

32 See, e.g., Sharum v. Sharum, 101 Okla. 273, 225 P. 682 (1924). A grandson sued his grandfather for support, although the local statute applied only to parents and children. He claimed that, since the grandfather was liable under the statute to support his son, he had what might be called a derivative duty to support any children dependent on his son. This contention was rejected by the court, which pointed out that if the duty to support were so construed it could be continued ad infinitum. The statute is limited, therefore, to the persons it names. In re Roger's Estate, 98 N.J. Eq. 6, 125 A. 318 (1924) (brothers and sisters not covered unless expressly included).

to the infant, the obligation of support is one that may also be assumed by contract. Because at common law the infant could disaffirm his contracts, it might be expected that the duty to support under the family responsibility statute would not be applied to him. Yet, the common law support duties were also imposed upon the infant, as he was held liable for necessaries purchased to support his wife and minor children.[33] For this reason, the infant might be held subject to the duties imposed by the family responsibility statute. The purpose of giving the infant the privilege to disaffirm contracts was to protect him from imposition. Where a duty is placed upon him by statute, however, no such opportunity is present. For all or some of these reasons, courts have held that, under the statute, infants have the duty to support their parents.[34]

Because the minor child has the right to be supported under the common law or other statutes, it could be argued that the family responsibility statute creates no right to support in his favor. Yet, because the purpose of the family responsibility statutes is to reduce relief costs, they may be found to provide a complementary remedy. In one case which discussed this problem the court took the view that the statute "refers only to their poor adult children."[35] Some of the statutes apply specifically to the support of adult children.[36]

With reference to the support duty of the wife, and other female members of the family unit, the intent of the first English statute to change the common law, and its specific reference to the mother and grandmother of the person claiming support, would indicate that the duty to provide support is imposed upon female relatives. The cases which have considered this problem have dealt solely with the duty of a married woman to provide support. Relying on the disabilities of a married woman under common law, and the merger of her legal existence with that of her husband, they have held that a married woman, as distinguished from a mother

33 PECK, DOMESTIC RELATIONS, 3d ed., §§4, 5 (1930).

34 Bradley v. Fenn, 103 Conn. 1, 130 A. 126 (1925); Tolley v. Karcher, 196 La. 686, 200 S. 4 (1941) (support duty under the civil code); Chesterfield v. Hart, Smith (N.H.) 350 (1814). Cf. Tobin v. Bruce, 39 S.D. 64, 162 N.W. 933 (1917), cert. den. 245 U.S. 18, 38 S.Ct. 7 (1917) (dictum).

35 Haakon County v. Staley, 60 S.D. 87 at 89, 243 N.W. 671 (1932). In most cases the duty to provide support to minors seems to be assumed. E.g., Tulin v. Tulin, 124 Conn. 518, 200 A. 819 (1938); Howard County v. Enevoldsen, 118 Neb. 222, 224 N.W. 280 (1929); Huffman v. Huffman, 311 Pa. 123, 166 A. 570 (1933) (dictum).

36 See, e.g., N.Y. City Domestic Relations Court Act §101 (4) (Supp. 1955), authorizing the support of "dependent person[s] over seventeen years of age."

or grandmother not under coverture, is not liable to furnish support under the statute.[37] Whether these holdings would be altered by statutory changes in the married woman's position is open to conjecture.[38] Some of the American statutes have been made expressly applicable to wives, sisters, grandmothers, and other female members of the family.[39]

The best solution to this problem would seem to be statutory revision which would remove all persons entitled to support at common law from the ambit of the family responsibility laws. There seems to be no reason why family responsibility statutes should also cover the obligations of support, existing among the members of the immediate interdependent family living together as a unit, which were generally recognized at common law. These can be adequately covered under other statutes, which impose the duty of support irrespective of the need of the person seeking it.[40]

Family responsibility laws ought not to extend the liability for support to collateral or distant relatives, such as brothers, sisters, and grandparents, where the family relationship is more tenuous and where the difficulties of compelling support are likely to multiply. These changes should result in the retention, principally, of the reciprocal duties of support existing between parents and adult male children. However, assuming they have the ability to provide it, there should be no objection to making minors and female members of the family liable for the support of related dependent persons.

[37] Gleason v. Boston, 144 Mass. 25, 10 N.E. 476 (1887) (wife not liable for support of minor children); Coleman v. Birmingham, 6 Q.B. 615 (1881). See also Glowsky v. Gitlin, 25 N.Y.S. (2d) 957 (1941), refusing on grounds of "natural justice" to extend the New York statutes imposing the support duty on stepparents to stepmothers. But cf. Commonwealth v. Moyer, 58 Montg. (Pa.) 155 (1941), and the statutes cited in note 53, infra. A Massachusetts statute now requires both parents to support their minor children. Mass. Laws Ann. (1955) c. 201, §40. The legal capacity of a married woman at common law is discussed in PECK, DOMESTIC RELATIONS, 3d ed., §82 et seq. (1930).

[38] On the other hand, one New York case held that the support duty was owing to female as well as male dependent persons, and while the case involved a dependent daughter, its language is broad enough to include married women. Frankel v. Goldstein, 155 Misc. 531, 280 N.Y.S. 191 (1935). This result has been assumed in other cases arising under this statute. Cf. Ex parte Hunt, 5 Cow. (N.Y.) 284 (1826) (grandson held liable to support his maternal grandparents).

[39] See, e.g., Kinsey v. Kinsey, 200 Misc. 760, 107 N.Y.S. (2d) 212 (1951), applying the New York City law expressly extending the duty of support to the wife; Okla. Stat. Ann. (1951) tit. 10, §12 (1951) (mother); Pa. Stat. Ann. (Supp. 1954) tit. 62, §1972 (masculine pronoun to include feminine); Vt. Laws (1953) No. 196, §2 (reciprocal duty between husband and wife).

[40] It might be argued that the common law is deficient in that it does not usually allow a minor child to sue his parent for support. This deficiency could be remedied by a statute directed to this problem.

B. *Nature of Family Relationships Covered*

Most of the family responsibility statutes list the relatives who are responsible for support but usually indicate the individuals entitled to support only as "dependent" or "poor" persons. By inference, of course, the person entitled to support is defined by listing the persons who must give it. For example, if a parent is liable to provide support then his child may claim support from him. Still, the statutes generally leave open the question of what is needed to create the particular relationship in question, whether, for example, it must be a natural relationship, or whether it can be one created by law, as in the case of an individual who becomes a child by adoption.

As a rule, it may be said that courts decide these cases by making reference to the legal status of the individuals involved, as determined in other contexts. This approach often ignores the real nature of the particular relationship in question. It might be helpful to start instead with the postulate that it is preferable to impose the duties and rights of support in those family situations which are voluntarily assumed and not in situations where the family relationship has been discontinued. For example, it seems best to hold an adoptive father liable to support his adopted child, since this legal relationship was assumed voluntarily by the adoptive father. On the other hand, it would not seem desirable to hold the natural father liable for the child's support in these cases, since he has voluntarily relinquished the family relationship. Such an approach recognizes the basic assumptions made earlier—that family strength depends on mutually satisfactory relationships; this would seem to be lacking where there is in fact no real family tie. In cases where the family tie has been relinquished, furthermore, as in the adoptive situation, it is usually considered preferable to center the child's relationship in the new family to the exclusion of the old,[41] and the law ought to further this objective.

The first group of cases that might be considered are those in which there is an absence of a natural relationship between the parties involved. The discussion might start with the adoptive situation where, presumedly, the affectional ties are the closest, and proceed to a consideration of other relationships where they are less strong.

41 Caseworkers in adoption agencies have indicated that this is standard casework practice. Cf. Martire and McCandless, "Psychological Aspects of the Adoption Process," 40 IOWA L. REV. 350 (1955).

In the few cases found which were concerned with the support rights and duties of adopted children, no unanimity among the decisions was discovered. The cases are split as to whether there is a duty on the part of the adoptive child to support his adoptive parent,[42] but the New York Court of Appeals did hold that a natural parent is not bound to support his natural child under the family responsibility law after its adoption by another.[43] Some of these cases rely on the effect of the adoption statutes, which usually declare that, after the adoption, the child becomes the child of the adoptive parents.[44] On this basis they find that the natural parent has been relieved of the rights and duties of support. In some of the cases, however, there is no discussion beyond the citation of general construction statutes[45] and decisions indicating, in other contexts, how the word child is to be defined.

Any one case, of course, does not deal with both sides of the support obligation, although it should seem clear that if the adoptive child has the duty to support his adoptive parent, he also has the right to expect support from him. In other words, the duty should be reciprocal.[46] To the extent that these decisions shift reciprocal duties of support to the adoptive relationship, they would seem to reach a desirable result.

Another situation where the relationship is an assumed and not a natural one is that between the stepparent and the stepchild. Since the decision to assume the duties of parenthood in this case is indirect rather than direct, arising out of the decision to marry the parent of the child rather than a decision to accept the child itself, the affectional ties between the stepparent and stepchild could be expected to be lacking or present in a lesser degree than in the case of a natural child. Because of the rule, under the English law, that the statute extended only to natural relationships,[47] the American courts have assumed that a stepparent is under no duty to support his stepchild under the family

[42] That there is a duty to support, see Couteau v. Couteau, 192 Misc. 736, 77 N.Y.S. (2d) 113 (1948); Commonwealth v. Chiara, 60 Pa. D. & C. 547 (1947). *Contra,* Parshall v. Parshall, 56 Cal. App. 553, 205 P. 1083 (1922).

[43] Betz v. Horr, 276 N.Y. 83, 11 N.E. (2d) 548 (1937). But cf. Dwyer v. Dwyer, 366 Ill. 630, 10 N.E. (2d) 344 (1937) (divorce, court may enter support order against natural parent), noted in 16 CHI-KENT L. REV. 198 (1938); 36 MICH. L. REV. 1028 (1938).

[44] E.g., N.Y. Domestic Relations Law §115.

[45] A statute defining a child as an adopted child for all purposes under the statutes may well be decisive of this question. See, e.g., S.D. Code (1939) §65.0201 (3).

[46] This appears to be the basis for the decision in Couteau v. Couteau, 192 Misc. 736, 77 N.Y.S. (2d) 113 (1948).

[47] Rex v. Mundon, 1 Str. 190, 93 Eng. Rep. 465 (1719).

responsibility laws.[48] The decisions in these cases do not seem desirable, as they do not reinforce the voluntarily formed family unit. Should one or more members of the family require support, a division of the support duty within the family would seem to have a harmful rather than an ameliorative effect.[49] Statutes in two states have extended the duty of support of needy relatives to the stepparents.[50]

Because of the rule given above, that the statute does not extend to relatives by affinity, the courts have also held that a person in need may not secure support from his in-laws.[51] Here the courts seem on sounder ground, since the in-law sought to be held has himself done nothing to establish an affective relationship with the person seeking aid. The mother-in-law, for example, is not a party to the marriage of her daughter.

One situation in which this rule may bring about an inequitable result, however, is that in which a parent seeks support from his married daughter. Following the usual rule as to in-laws, the courts generally do not compel the son-in-law to support his mother-in-law or father-in-law.[52] In addition, even if the daughter has money or property of her own, she may be excused from the support duty if the rule as to married women is applied. While excusing the son-in-law from the duty of support may be defended

[48] See Bradley v. Zimmerman, 13 N.J. Misc. 580, 180 A. 241 (1935) (dictum); Manchester v. Rupert, 6 Vt. 291 (1834) (dictum). In St. Johnsbury v. Sutton, 102 Vt. 451, 150 A. 133 (1930), the Vermont court, following the Manchester case, held that a statute making a town responsible for the support of a poor person and his "family" did not obligate the town to support the children by a wife's former husband. The same result has been reached regarding the duty of a stepparent to support his minor stepchildren, even though they are not in need. PECK, DOMESTIC RELATIONS, 3d ed., 247 (1930). And cf. Brookfield v. Warren, 128 Mass. 287 (1880).

[49] See the comments of Panken, J., in D. G. v. Hermanez, 204 Misc. 650, 123 N.Y.S. (2d) 234 (1953).

[50] A statute in New Hampshire provides that stepmothers and stepfathers shall support stepchildren when in need. N.H. Rev. Laws (1942) c. 124, §18. Statutes in New York provide that the stepparent shall support minor stepchildren in need. N.Y. Social Welfare Law (Supp. 1955) §101 (1); N.Y. City Domestic Relations Court Act §101 (5). For a decision applying the statewide statute see People v. Williams, 161 Misc. 573, 292 N.Y.S. 458 (1936). The New York City act is limited to stepparents who "had knowledge of the child's existence" at the time of the marriage. For a decision applying that statute see Jones v. Jones, 161 Misc. 660, 292 N.Y.S. 221 (1937). For a full discussion of the stepparent relationship see MERIAM, THE STEPFATHER IN THE FAMILY (1940). See the case of D. G. v. Hermanez, 204 Misc. 650, 123 N.Y.S. (2d) 234 (1953), for a discussion of inequities arising under the New York City provision.

[51] E.g., Newtown v. Danbury, 3 Conn. 553 (1821); Mack v. Parsons, Kirby Conn. 155 (1785); Doyle's Petition, 38 Pa. D. & C. 476 (1940); Commissioners v. Gansett, 2 Bailey (S.C.) 320 (1831). Cf. Barnet v. Norton, 90 Vt. 544, 99 A. 238 (1916).

[52] Grace v. Carpenter, 42 Cal. App. (2d) 301, 108 P. (2d) 701 (1941); Mangin v. Mangin, 164 La. 326, 113 S. 864 (1927); Alessandro v. Camelli, 47 N.Y.S. (2d) 237 (1944); Commonwealth v. Parrish, 19 Luz. L. Reg. Rep. (Pa.) 465 (1917).

on the grounds stated above, the cumulative effect of the rules applicable in this situation will be to shift the duty to support parents entirely to the sons and unmarried daughters, which does not seem just.

This result does not seem inevitable, however. To apply the rule excusing married women from the support duty under the statute in a case where the husband does not have a duty to support the dependent seeking aid seems to subvert the intent of the family responsibility law. Furthermore, even if the daughter does not have independent means, it might be well to recognize that, in many American homes, she shares in the management and disposition of the family assets and therefore has a "right," practically speaking, to her share in her husband's earnings. There is judicial support for both of these propositions.[53]

An even more difficult problem to cope with is the position of the illegitimate child under the statute. Here, though the parent-child relationship is a natural one, it is complicated by the fact that society does not sanction illegitimate births, and the fact that the child, from the start, is not part of a family unit. Where the illegitimate child has been placed for adoption he ought to be given the same status as any adopted child. If the illegitimate child has not been adopted, however, the question remains as to the liability of his natural parents for his support under the family responsibility laws. Most courts which have passed on the question have held that an illegitimate child is not entitled to support from

53 Cf. Vincenza v. Vincenza, 197 Misc. 1027, 98 N.Y.S. (2d) 470 (1950) (dictum, married daughter not chargeable except out of her personal earnings or individual property). See Neb. Rev. Stat. (1950) §68-102: ". . . married females, while they live with their husbands, shall not be liable to a suit for maintenance beyond the interest or income of the estate of such married female held in her own right." See also Utah Code Ann. (1953) §17-14-2 (similar provision). But cf. Colo. Stat. Ann. (1949) c. 124, §2 (married women not liable to suit).

In Commonwealth v. Moyer, 58 Montg. (Pa.) 155 (1941), where the married daughter had no independent means, the court entered a support award against her nonetheless, stating that the husband, apparently a man of means, ought to give his wife enough money to support her father. Perhaps the smallness of the award ($1.00 per week) was a factor. The court, however, denied that it was making a son-in-law legally liable to support his father-in-law. See, however, Kullman v. Wyrtzen, 266 App. Div. 802, 41 N.Y.S. (2d) 682 (1943). A mother claimed that her daughter was of sufficient ability to support her on the ground that she was the owner of real property as tenant by the entirety with her husband, and that therefore he should account to her for one-half of its rental value. The court found for the daughter on the property rule that one co-tenant need not account to the other unless he occupies the property exclusively. If a basis be sought for the Pennsylvania decision it might be found in the common law duty of a husband to support his wife. A father being entitled to support from his natural child, it could be held that he was subrogated to his share of what the daughter was entitled to receive by way of support from her husband.

responsible relatives named in the statute,[54] nor is he, on the other hand, liable to support dependent relatives seeking aid from him.[55]

Various grounds are relied on for this holding, particularly the rule regarding the status of the illegitimate under the early common law, which treated him as nullius fillius, nobody's child, and therefore legally without blood relatives. Pointing to statutes in a few states removing entirely the disability of illegitimacy, the court may also note the absence of such a provision in the local statutes to sustain its holding. However, the illegitimate's position is not quite the same as it was at common law, most states having passed, in addition to support statutes based on the poor law provision of 1575, statutes enabling the illegitimate to inherit, at least through the maternal line.[56] These legislative changes may be viewed in various ways.

The courts holding that the illegitimate is not covered by the family responsibility law cite the presence of such statutes as an indication that the legislature intended nothing further. Some of the courts in Pennsylvania, however, have relied on the presence of a statute authorizing illegitimates to inherit through the maternal line as an indication of legislative intent that there are reciprocal support duties between the illegitimate child and the maternal side of his parentage.[57] One New York trial court judge has relied on these statutory modifications to extend the provisions of the family support statute to the illegitimate without qualification.[58]

The continued application of ancient common law concepts to this problem seems unfortunate. After all, the parent of an illegitimate child could have chosen to place him out for adoption.[59] As to the parent who has kept the child and with whom the

54 Hiram v. Pierce, 45 Me. 367 (1858); Plymouth v. Hey, 285 Mass. 357, 189 N.E. 100 (1934); Hillsborough v. Deering, 4 N.H. 86 (1827); Anon. v. Anon., 174 Misc. 906, 22 N.Y.S. (2d) 598 (1940); Commonwealth v. Clayton, 42 Pa. D. & C. 317 (1941); Commonwealth v. Campagna, 40 Pa. D. & C. 478 (1940); Directors of the Poor v. Hickman, 4 Pa. Dist. 494 (1895).

55 Castellani v. Castellani, 176 Misc. 763, 28 N.Y.S. (2d) 879 (1941), affd. per curiam sub nom. Capaldo v. Capaldo, 263 App. Div. 984, 34 N.Y.S. (2d) 400 (1942), motion for appeal den. 264 App. Div. 755, 35 N.Y.S. (2d) 267 (1942).

56 See 4 VERNIER, AMERICAN FAMILY LAWS §249 (1936); Robbins and Deák, "The Familial Rights of Illegitimate Children: A Comparative Study," 30 COL. L. REV. 308 (1930). For an outline of laws providing for the support of illegitimates, see Legislation, 6 BAYLOR L. REV. 520 (1954).

57 See, e.g., In re McAllister, 31 Pa. D. & C. 4 (1936).

58 Jones v. Jones, 161 Misc. 660, 292 N.Y.S. 221 (1937); Lee v. Smith, 161 Misc. 43, 291 N.Y.S. 47 (1936), noted, 46 YALE L.J. 875 (1937). Cf. Craig v. Shea, 102 Neb. 575, 168 N.W. 133 (1918) (semble).

59 None of the cases involving illegitimates under the family responsibility laws appear to involve children adopted into other homes.

child is living, there seems to be no reason for not imposing the support duty. While the putative father, the parent with whom the child usually does not stay, will ordinarily resent the imposition of a support obligation on him, perhaps he ought not to be allowed to escape the consequences of his own actions in this particular context.

Still, the presence in most jurisdictions of statutory remedies specifically aimed at providing for the support of illegitimates raises real problems of legislative intent. In the absence of legislative histories in most jurisdictions, a court can only speculate on an answer to this problem. Under the circumstances, perhaps it might be best to indicate specifically in the family responsibility law whether it is to apply to illegitimates. A few states have so extended their statutes.[60] Another approach might be to recognize the status of the illegitimate as unique, in view of the family problems this situation gives rise to, and exempt both natural parents from the support duty for this reason.

In any event statutory clarifications, with consideration of the problems that are involved, might be advisable for all of the situations discussed in this section. A well-drafted definition of the persons covered by the family responsibility law, particularly with reference to the parent-child relationship, would clarify legislative intent and save much speculative litigation.[61]

III. NATURE OF THE SUPPORT DUTY

A. *The Dependent's Eligibility for Support*

A duty of support will be found to exist under the family responsibility laws if there is a dependent person eligible for support and a responsible relative who is able to furnish the support required by the statute. Most of the family responsibility statutes provide that the dependent who is eligible for support must be a "needy" or "poor" person.[62] The test for family responsibility and the test for public assistance, then, correspond,

[60] Iowa Code Ann. (1949) §252.3; La. Civ. Code (Dart, 1945) art. 241, applied in Drouet v. Succession of Drouet, 26 La. Ann. 323 (1874); Collins v. Hallier, 12 La. Ann. 678 (1856); N.D. Rev. Code (1943) §32-3601; S.D. Code (1939) §37.2101.

[61] The Illinois statute extends the duty of support to anybody "in loco parentis" to a child. This phrase has not yet been interpreted by the courts. The Rhode Island law extends to "children by adoption," and is limited to relatives "by consanguinity." R.I. Gen. Laws (1938) c. 69, §5. See Me. Laws (1953) c. 308, §97 (relatives "by consanguinity"). Cf. N.Y. Consol. Laws (McKinney, 1944, Supp. 1954) §2112 (definition of persons covered by support duties stated in reciprocal enforcement law).

[62] Alaska Laws (1953) c. 110, §13 (needy person); Cal. Civ. Code Ann. (Deering, 1949) §206 (poor person); La. Rev. Stat. (1950) §13:4731 (necessitous circumstances); La.

since the individual eligible for public assistance must be one who is in need. Some of the statutes expressly provide that the eligibility test is the same in both contexts,[63] and some courts have so held even where this has not been made explicit.[64] The problem of eligibility, then, becomes one of determining whether the dependent is in need of public assistance. This approach seems consistent with the logic of including the family responsibility law in a general assistance statute, since presumably the persons for whom the responsible relatives are liable are those to whom the locality also owes a duty of support.

The alternative position would be to assume that, because the support duty grows out of the family relationship, it attaches in circumstances something less compelling than need and destitution. This rule appears to have been adopted by the Minnesota court, which, without detailing the standard to be applied in such cases, held that a "poor person" under its family responsibility

Civ. Code (Dart, 1945) art. 229 (need); Mass. Laws Ann. (1949) c. 117, §6 (poor persons); N.H. Rev. Laws (1942) c. 124, §18 (same); Pa. Stat. Ann. (Supp. 1954) tit. 62, §1973 (a) (indigent person); R.I. Gen. Laws (1938) c. 69, §5 (poor person); Vt. Laws (1953) No. 196, §2 (destitute and necessitous circumstances); Va. Code (Supp. 1954) §20-88 (necessitous circumstances); W.Va. Code Ann. (1949) §626 (150) (indigent person). The dependent's need must be proved as a matter of fact. An allegation to this effect is not enough. Bannock Co. v. Coffin, 46 Idaho 631, 269 P. 90 (1928); Brown v. Van Keuren, 340 Ill. 118, 172 N.E. 1 (1930). For a case noting the effect of a change in the need requirement in the Pennsylvania law, see Montgomery v. Wick, (Pa. Super. 1941) 22 A. (2d) 95.

[63] Ariz. Code Ann. (Supp. 1951) §70-605; Cal. Welfare & Inst. Code (1952) §2576; Ga. Code Ann. (1936) §23-2302; Iowa Code Ann. (1949) §§252.1, 252.2; Me. Laws (1953) c. 308, §97; Mich. Stat. Ann. (Supp. 1953) §16.121; Mont. Rev. Code Ann. (1953) §71-235; Nev. Comp. Laws (Supp. 1949) §5140; N.Y. Social Welfare Law (Supp. 1955) §101 (1); Ore. Rev. Stat. (1953) §411.425 (2) (a); S.C. Code (1952) §71-131; Wis. Stat. (1953) §52.01 (1).

[64] Koniak v. Koniak, 123 Conn. 338, 195 A. 189 (1937); Moss v. Moss, 163 Wash. 444, 1 P. (2d) 916 (1931) (under prior law). See Mitchell-Powers Hardware Co. v. Eaton, 171 Va. 255, 198 S.E. 496 (1938). Under the New York City statute the dependent, in order to be entitled to support, must be a person "likely to become a public charge." For cases under this statute indicating the necessity of making a calculation of probable future need see Hommel v. Hommel, 22 N.Y.S. (2d) 977 (1940); Anon. v. Four Anon., 173 Misc. 623, 18 N.Y.S. (2d) 578 (1940). The statewide provision in the Social Welfare Law is similar. Interestingly enough, an identical provision appears in some statutes as the grounds for which a nonresident may be compulsorily removed to his place of settlement. Of course, a dependent person presently in need of public aid is eligible under the New York statutes.

Where, by statute or decision, the need of the dependent seeking support from relatives is equated with the need for assistance, the need for aid and not the receipt of aid is all that must be proved. Hutchings v. Thompson, 64 Mass. 238 (1852); Walbridge v. Walbridge, 46 Vt. 617 (1874). See Pa. Stat. Ann. (Supp. 1954) tit. 62, §1973 (a) (person entitled to support need not be a public charge). A dependent relative does not forfeit her claim to support by supporting herself as best she can while the support action is pending. Rogers v. Kinnie, 134 Conn. 58, 54 A. (2d) 487 (1947). The court indicated that otherwise the statute would cause undue hardship. In Nebraska, although the statutes are somewhat ambiguous, the definition of a dependent relative entitled to family support has apparently been adopted as the standard under which eligibility for assistance is determined. Miller v. Banner Co., 127 Neb. 690, 256 N.W. 639 (1934).

statute does not have to be a person entitled to public support.[65] These distinctions may not be as important as they might seem at first glance. The question of the dependent's eligibility is one of fact,[66] and the fact-finder will have considerable discretion. Still, if the public support need test were adopted, perhaps the dependent would be entitled to submit evidence, such as local regulations, which would indicate whom the local agency considers to be a needy person. This would help the problem of proof in these cases.

Aside from the question as to the nature of the economic need that must be shown by the dependent, however, questions arise as to the possible exclusion of individuals from the right to be supported by their families for other reasons. One problem is presented by the able-bodied person whose need is created by his lack of employment. Statutes defining the persons eligible for support, e.g., simply as "poor persons," leave open the question of whether the need of the individual must result from mental or physical incapacity and not from social conditions causing unemployment. This limitation may even more plausibly be urged under family responsibility statutes extending only to persons "unable to maintain themselves by work,"[67] or to persons who are in need because of some "unavoidable cause."[68]

Those few cases which have considered the problem, under statutes of the type just described, have indicated that the cause of the need for support is not controlling and would imply that these statutes are not restricted to persons whose need results from incapacity.[69] Some family responsibility statutes, however, are restricted to persons who are in need because of incapacity, or

65 Howie v. Gangloff, 165 Minn. 346, 206 N.W. 441 (1925). A Pennsylvania court has given the same interpretation to a criminal statute. It appeared to be aimed, however, at enforcing the obligation to support arising out of the family situation rather than affording a remedy to reduce the public assistance burden. Commonwealth v. Schaffer, 38 Pa. D. & C. 217 (1940).

66 This seems to be assumed by the cases. See, e.g., Howie v. Gangloff, 165 Minn. 346, 206 N.W. 441 (1925). In a jury trial, the fact question is for the jury.

67 This appears to be the substance of statutes in Alabama, Connecticut, Delaware, Hawaii, Idaho, Indiana, Minnesota, New Jersey, North Dakota, Oklahoma, Oregon (domestic relations law), and South Dakota.

68 See the statutes in Arkansas, Colorado, Illinois, Nebraska, and Utah.

69 Under statutes applying, without qualification, to persons in need, it has been held that a physically fit person who needs support because he can't find work is, nevertheless, entitled to family support. Hommel v. Hommel, 22 N.Y.S. (2d) 977 (1940); Commonwealth v. Wright, 28 Del. (Pa.) 522 (1939). The Minnesota statute defines the person in need of support as a "poor person who for any reason is unable to earn a livelihood." Compare Howie v. Gangloff, 165 Minn. 346, 206 N.W. 441 (1925), where the person found to be poor was physically incapacitated, with Brabec v. Boedigheimer, 132 Minn.

adopt as a definition of the persons entitled to support the section of the statute relating to need for assistance, which so provides.[70] Where the statute does not clearly deal with the problem, it would seem preferable to take the more impersonal, objective position, that dependency due to incapacity is not required for eligibility.

More difficult problems are presented, however, by situations in which the dependent person has engaged in some form of active misconduct in his relations with those members of the family from whom he now seeks support. Some of the cases involve parents who have deserted their families and now, having come upon hard times, seek support from their children. Another case might be that of the child who marries without her mother's consent and then sues her for support. It appears that at common law both a wife and a minor child who left the husband and father without cause forfeited the right to support.[71] Most courts have not so construed the family responsibility law and have held that the support duty continues in spite of the misconduct of the dependent.[72]

370, 157 N.W. 508 (1916), where the question was seemingly treated as one of the dependent's financial inability to support himself.

The Nebraska statute applies to persons unable to earn a livelihood because of an "unavoidable cause." In Howard Co. v. Enevoldsen, 118 Neb. 222, 224 N.W. 280 (1929), a divorced mother needed support because she had to stay at home to care for four children ranging in age from one to ten. The court found that the care of the children was an unavoidable cause which brought about her need. But cf. Monroe Co. v. Abegglen, 129 Iowa 53, 105 N.W. 350 (1905). Under the Elizabethan law it was held that the dependent had to be unable to work and not merely out of work before he could claim support. Rex v. Gully, 10 Mod. 307, 88 Eng. Rep. 740 (1715).

70 Statutes defining the need for family support as the need for general assistance are cited in note 63 supra. In some jurisdictions this results in limiting the duty of family support to persons who are needy because they are incapacitated, due to the fact that need for general assistance is so defined. See, e.g., the Iowa and South Carolina laws. In Mississippi, eligibility for support under the family responsibility law is limited to incapacitated persons irrespective of need for general assistance. Miss. Code Ann. (1952) §7357.

Some courts appear to have found a common law duty of a parent to support an adult child who is in need because of incapacity. The cases seem to be based upon a misapprehension. There was no such duty at common law, and these holdings appear to have tacitly converted the statutory duty imposed by the Elizabethan law of 1601 into a common law duty. See, e.g., Mt. Pleasant v. Wilcox, 2 Pa. Dist. 628 (1893).

71 MADDEN, DOMESTIC RELATIONS 192, 386 (1931).

72 Polk Co. v. Owen, 187 Iowa 220, 174 N.W. 99 (1919); Tolley v. Karcher, 196 La. 686, 200 S. 4 (1941) (liability under the Civil Code); Mendelsohn v. Mendelsohn, 192 Misc. 1014, 80 N.Y.S. (2d) 913 (1948); Ketcham v. Ketcham, 176 Misc. 993, 29 N.Y.S. (2d) 773 (1941); Hodson v. Holmes, 162 Misc. 226, 294 N.Y.S. 537 (1937); Commonwealth v. Auman, 39 Pa. D. & C. 448 (1940). The view adopted in these cases appears to be the law in England. Allen v. Coster, 1 Beav. 202, 48 Eng. Rep. 917 (1839). Cf. Bremer Co. v. Schroeder, 200 Iowa 1285, 206 N.W. 303 (1925); Jasper Co. v. Osborn, 59 Iowa 208, 13 N.W. 104 (1882). But cf. State v. Jordan, (Conn. 1955) 114 A. (2d) 694 (husband not liable for support of wife who ordered him out of the home).

These decisions seem to be prompted by the fact that the family responsibility law is tied in with the assistance program, and the courts seem to look with disfavor at placing the burden of support on the public in this instance solely because of the dependent's misconduct. Some New York trial courts, however, have excused relatives from supporting persons who have been guilty of conduct deviating substantially from the social norm, one judge stating that to decree support in such a case would do violence "to decent instincts, conscience and justice."[73]

In a few states there is statutory authorization for denying family support, except from parent or child, to any person whose need has been caused by "intemperance or other bad conduct."[74] The Minnesota court, in *Mower County v. Robertson*,[75] interpreting such a provision, refused to excuse a brother from supporting a sister who had, considerably before her application for support, conceived an illegitimate child, willfully deserted her husband, and, for an inadequate consideration, released a third person from a contract to support her. The court felt that the dependent's conduct in this case was not causally related to the subsequent poverty and that it did not involve the necessary element of moral wrongdoing. Perhaps the court intended to limit application of this provision of the statute to cases where the dependent had committed some morally reprehensible crime which had adversely affected his ability to support himself. Another situation which might fit the court's definition is that of the irresponsible and spendthrift profligate whose dissipations eventually caused him to be placed on the public rolls. But one difficulty with tests such as

[73] Houg v. Houg, 159 Misc. 894 at 895, 289 N.Y.S. 27 (1936); In re Garrison, 171 Misc. 983, 14 N.Y.S. (2d) 803 (1939). In the Houg case, for example, the wife, who sought support from her husband, had been convicted of prostitution, had contracted a bigamous marriage, and had a venereal disease. But cf. Hommel v. Hommel, 22 N.Y.S. (2d) 977 (1940), where the conduct of the father, who drank and was hard to get along with, was found not shocking enough to forfeit his right to support. The extreme nature of the conduct in some of these cases may distinguish them from other trial court cases in New York where support was decreed in spite of the dependent's misconduct. See the cases cited in note 72 supra. Cf. McGlothan v. Pennsylvania R. Co., (D.C. Pa. 1947) 72 F. Supp. 176 (dictum; spouse need not support dependent spouse whose conduct gives grounds for divorce).

[74] Colo. Rev. Stat. Ann. (1949) c. 124, §1; Minn. Stat. Ann. (1947) §261.01; Neb. Rev. Stat. (Supp. 1953) §68-101; Utah Code Ann. (1953) §17-14-1. There is a similar provision in the Montana statutes providing for a locally-supervised general assistance program. Mont. Rev. Code Ann. (1953) §71-103. These statutes are presently inoperative. The Vermont statute excuses each spouse from the reciprocal duty of support for "just cause," and for "lawful excuse" relieves parents and adult children from the reciprocal duties imposed on them. Vt. Laws (1953) No. 196, §2. Conceivably, the exceptions might be held to cover misconduct of the dependent.

[75] 79 Minn. 357, 82 N.W. 666 (1900).

"bad conduct" and conduct that shocks "decent instincts" is that the standards of good and bad, right and wrong, are subject to great variance, and it hardly could be expected that the courts would be able to give enough content to such phrases to make them helpful guides for administrative judgment.

A similar exception in other statutes excuses or mitigates the duty of the child to support his parents in cases where the child has not been supported up to an age at which he can take care of himself,[76] or has been abandoned and deserted by the parent during his minority.[77] Inequities could arise under a statute of this type. For example, if the statute requires support until the age of twenty-one, a child who leaves the family domicile and embarks on his own after graduation from high school would be completely excused from support, although there is no wrongdoing on the part of the parents. This problem, of course, is obviated if the age up to which support must be given is set more realistically.

Problems also arise under such a law if the support of the child by the parent has been interrupted at any time during the period of support prescribed by the statute. What if a father abandoned his family when a child was five but returned one year later and thereafter led an exemplary life? It might be necessary for the courts to adopt the rule that the provision by the parent of the child's support during substantially all of the period required by law is sufficient, but such a rule might only start rather than end the difficulties.[78]

[76] Ind. Stat. Ann. (Supp. 1955) §3-3001 (male, 16; female, 17).

[77] Cal. Civ. Code (Deering, Supp. 1955) §206.5; N.J. Rev. Stat. (Supp. 1954) §44:1-141. There is a similar provision in the Michigan criminal statute penalizing children who do not support their indigent parents. Mich. Stat. Ann. (Supp. 1953) §16.139. This provision was before the state supreme court at a time when it also provided for civil liability. In re Shassberger, 257 Mich. 1, 239 N.W. 862 (1932). The facts of the case were found not to warrant the application of the statutory exception.

[78] Other difficulties might be imagined. The children might be excused from the support duty if the father's failure to support resulted from loss of employment in a period of economic depression. The courts, however, might make the statutory exception inapplicable if the parent's failure to support was not his fault. But what is fault?

The Indiana criminal statute penalizing children who do not support their parents contains a similar clause. Any children "who have not lived with or who have not been supported by their parents when such children were minors" are excused from the penalties imposed by the act. Ind. Stat. Ann. (Burns, 1942) §10-1410. The Indiana Supreme Court has held that the statute requires children to be supported throughout their minority. Hindman v. State, 221 Ind. 611, 50 N.E. (2d) 913 (1943); Lanham v. State, 208 Ind. 79, 194 N.E. 625, 195 N.E. 73 (1935). After these decisions were rendered it was the opinion of administrative officials in Indiana that the support duty under the statute had in fact been eliminated, on the ground that most children had been self-supporting, at one time or another, during their minority. Heavin, "Recipients and/or Versus Responsible Relatives," 55 PUBLIC WELFARE IN INDIANA, No. 5, p. 9 (May 1945). The statute imposing civil liability was enacted in 1947. See note 76 supra.

The real difficulty with cases and statutes which suspend the support duty in the event of the dependent's misconduct is that they attempt to relate the support duty to the concept of fault. But the difficulty is that of trying to assess fault in the family situation. Social work theory emphasizes the interdependent nature of family relationships.[79] The child, for example, who rebels against his parents, leaves home, and embarks on an irresponsible existence might well be considered to have forfeited his claim for aid from his parents. But it should be recognized that in cases such as this it is the parent-child relationship that is faulty, and not necessarily the individuals in question.

The statutory bad conduct exception is sensible, nevertheless, since its effect is to relieve the relative of support in a situation which is fraught with tension. In such cases, either the family circle has been broken by a permanent abandonment, or the dependent person has perpetrated some real or alleged misdeed that makes it difficult for the relative to meet his obligations.[80] Problems of this kind might better be handled by a frank recognition of the necessity of excusing from the duty of support any individuals who face real emotional difficulties in trying to comply with it.[81] The statute might authorize the court to suspend the support duty in any case where to enforce it might harm further an already ruptured family relationship.[82] Were this suggestion adopted, no further exceptions would have to be made for the "bad" person who seeks support.

B. *The Relative's Ability to Pay*

Vagueness in the statutory standard for determining what relatives are liable to give family support has produced some of the most difficult problems of interpretation under the family responsibility laws. Most of the contemporary American statutes have

79 See, e.g., HAMILTON, THE THEORY AND PRACTICE OF SOCIAL CASEWORK, 2d ed., 276 (1951). This interdependence seems to have been sensed by one judge who remarked that the reluctance of a son to support his father may be due to the fact that the parent had not provided his children "with a basis for a moral sense." Hommel v. Hommel, 22 N.Y.S. (2d) 977 at 979 (1940).

80 In one case, for example, it was claimed that the parent seeking support had favored some of the children over the others. Mendelsohn v. Mendelsohn, 192 Misc. 1014, 80 N.Y.S. (2d) 913 (1948). Apparently, family tension was the result of sibling rivalries.

81 See the discussion in BISNO, THE PHILOSOPHY OF SOCIAL WORK 43 (1952); TOWLE, COMMON HUMAN NEEDS 83 (1952).

82 A start in this direction has been made by the Indiana statute. In assessing the child's duty to support his parents, the court is to consider the "treatment given such child or children by the parent or parents when obligated to support such child or children." Ind. Stat. Ann. (Supp. 1955) §3-3005.

adopted the generalized prescription of the English law and apply to any relative of "sufficient ability." Sometimes the statutory language has been modified slightly, requiring, for example, contribution from the relative who is "financially able" to pay.[83] Two states, Montana and Oregon, have solved the problems of interpretation raised by statutes based on the English model by enacting a statutory scale to determine the contributions to be made by responsible relatives.[84] However, this type of law, while giving definiteness to the statutory requirement, is somewhat inflexible because the amount of the contribution is fixed for each income category,[85] and such a law may become obsolete because of changes in the cost of living index.

Under the typical family responsibility act, therefore, it is up to the courts to give more specific content to the ability-to-pay requirement by providing more specific standards by which the finding of fact as to ability to pay can be made.[86] While not much

[83] The following are examples of statutes that have modified the English definition while not altering it substantially: Ariz. Code Ann. (Supp. 1951) §70-605 ("reasonably able" to give support); Hawaii Rev. Laws (1945) c. 298, §12, 290 ("financial ability"); Pa. Stat. Ann. (Supp. 1954) tit. 62, §1973(a) ("sufficient financial ability"). There are some statutes which merely provide that the relative must have the "ability" to pay. Idaho Code Ann. (1948) §32-1002; La. Rev. Stat. (1950) §13:4731.

On the other hand there are two jurisdictions where the responsibility for support of relatives in need does not seem to be based upon the relative's ability to pay. Miss. Code Ann. (1952) §7357; Ore. Rev. Stat. (1953) §109.010 (statute limited to reciprocal duty of parent and child). There is some indication, however, that a court will import the ability-to-pay requirement even if it is not specifically included. See Cherokee Co. v. Smith, 219 Iowa 490, 258 N.W. 182 (1935), importing an ability-to-pay requirement into a statute authorizing the recovery of past assistance expenditures, although it was omitted from this provision. The section authorizing the assessment of prospective liability contained such a requirement, and the court pointed out that the failure to read it into the other section would allow the locality to sue parents who were not of sufficient ability by withholding suit until aid had been given. For a case indicating that ability to pay will be interpreted differently under the Aid to Dependent Children statute, see Commonwealth v. Hornacek, 347 Pa. 596, 32 A. (2d) 761 (1943).

[84] Mont. Rev. Code Ann. (1953) §71-235; Ore. Rev. Stat. (1953) §411.425. Contributions under these statutes are based on income as reported for state income taxation purposes, and vary with the number of dependents.

[85] Both statutes, however, authorize the welfare department to require less than the prescribed statutory amount if the circumstances of the case warrant. Mont. Rev. Code Ann. (1953) §71-234; Ore. Rev. Stat. (1953) §411.420.

[86] The question of ability to pay is for the trier of fact under all of the circumstances of the case. Bradley v. Fenn, 103 Conn. 1, 130 A. 126 (1925); Kane v. Brown, 23 N.Y.S. (2d) 968 (1940); In re Conklin, 78 Misc. 269, 139 N.Y.S. 449 (1912). The burden to prove ability to support is on the dependent. Nixon v. McCoy, 155 Minn. 175, 193 N.W. 40 (1923). For a case indicating the particularized character of decisions on the question of ability to pay, see Winchester v. Burlington, 128 Conn. 185, 21 A. (2d) 371 (1941) (whether ownership of property indicates sufficient ability depends on circumstances). Could a transfer of property by a responsible relative, made to evade his support duty, be set aside as fraudulent? In Commonwealth v. Wright, 28 Del. (Pa.) 522 (1939), the relative had property which produced income sufficient to support his needy daughter. However, prior to the daughter's application for support he had transferred

in the way of authoritative precedent can be derived from family support cases, since all of them are so dependent on their particular facts, it is still possible to ascertain what the courts consider the lower and upper limits of the ability principle. With reference to the lower limits, there is authority to the effect that a relative cannot be called upon for support if, as a result, he in turn would be "pauperized," i.e., forced to rely on assistance. In many of these cases the relatives sought to be held is an older person, and the courts seem to be conscious of the fact that, since his earning capacity is limited, depriving him of savings or income from investments would only have the effect of creating another public assistance client.[87] This rule has the effect of prescribing a minimum level of existence for the allegedly responsible relative, since the meaning of these opinions can be taken to be that one who himself is near the subsistence level is excused from support.[88]

Another inference from these cases is that the responsible relative is entitled to a standard of living over and beyond what is required for subsistence without being responsible for the support of needy relatives. This level of living might be considered the upper limit of the ability principle, the point beyond which the responsible relative must contribute to the support of the dependent person. How the courts define this upper limit is summed up by those cases which have held that the phrase "sufficient ability" means that a responsible relative may have

all of the property to his second wife. Although the court admitted that the conveyance was probably not fraudulent, because the transfer was made when the daughter could support herself, it held that it could "look behind fiction" and determine the "actual status" of the parties.

87 Barcelo v. Barcelo, 175 La. 398, 143 S. 354 (1932) (older person); Rotina v. Rotina, 204 Misc. 291, 124 N.Y.S. (2d) 66 (1953) (same); In re Diele's Estate, 187 Misc. 196, 61 N.Y.S. (2d) 397 (1946); In re Tarantino's Estate, 183 Misc. 288, 51 N.Y.S. (2d) 546 (1944), affd. 271 App. Div. 780, 66 N.Y.S. (2d) 410 (1946) (older person); In re Claiborn's Estate, 51 N.Y.S. (2d) 543 (1944) (semble); Application of Bauer, 266 App. Div. 816, 41 N.Y.S. (2d) 626 (1943), affd. per curiam 291 N.Y. 711, 52 N.E. (2d) 597 (1943); Montgomery County Poor Directors v. Boorse, 10 Pa. D. & C. 745 (1927); Commonwealth v. Spaar, 8 Pa. Dist. 380 (1899) (older person); Bradford Co. Poor District v. Case, 2 Pa. Co. Ct. Rep. 644 (1886) (same). In Anon. v. Anon., 20 N.Y.S. (2d) 30 (1940), the deciding factor in a decision that the allegedly responsible relative was not able to pay seemed to be the fact that he was an older person who merely was provided for in a comfortable way for his old age. See, however, Kane v. Brown, 23 N.Y.S. (2d) 968 (1940). There, because the grandparents would probably be on the relief rolls eventually anyway, the court held that they had to share what they had left with their grandchildren who were claiming support.

88 Indeed, this seems to be the rule in New Hampshire, where the court applies to the relative sought to be held responsible the same test it applies to a needy person seeking assistance, that resources needed for a bare subsistence cannot be reached. Litchfield v. Londonderry, 39 N.H. 247 (1859).

enough for his own needs and "something over."[89] It is the "something" over the "something over," then, to which the dependent person is entitled.

A similar approach has been taken by other cases, which have held that the dependent's claim must be rejected if it reduces the "comfortable support" of the responsible relative,[90] and this latter standard has been enacted into statute in a few states.[91] Unfortunately, these statutory provisions have not been judicially interpreted.

Even these somewhat more specific judicial and statutory standards, therefore, are not too helpful, since their components have not been separated for definition by the courts. A simple solution would be available if ability to pay under the statute were defined by the debtors' exemption laws, the dependent person being entitled to anything over what these laws would allow to the responsible relative in the way of assets and income. But this position was rejected by the only court which appears to have considered it.[92] For one thing, it runs counter to the intimation in the cases that a relative is entitled to something more than a minimum existence, which the exemption laws generally contemplate.

Consequently, the content of the ability-to-pay concept remains substantially undefined. All that may be added to these general rules are the decisions of some courts that seem to have frowned on a level of conspicuous consumption by the relative sought to be charged, and the fact that the relative was buying a new car or television set has counted against him.[93] Further, there have been

[89] In re Miller's Estate, 64 N.Y.S. (2d) 258 (1946); Copeland v. Weber, 175 Misc. 403, 24 N.Y.S. (2d) 590 (1940).

[90] Templeton v. Stratton, 128 Mass. 137 (1880); Colebrook v. Stewartstown, 30 N.H. 9 (1854). Cf. Bradley v. Fenn, 103 Conn. 1, 130 A. 126 (1925) (reasonable support).

[91] N.H. Rev. Laws (1942) c. 124, §18 ("reasonable subsistence compatible with decency and health"); Va. Code (Supp. 1954) §20-88 ("of sufficient earning capacity or income, after reasonably providing for his own immediate family"). The New Hampshire provision seems to be an attempt to codify the rule of the case cited in note 90 supra. At the time of that decision the statute in that state was a copy of the English statute (relatives of "sufficient ability"). New York has enacted a provision of this type to govern the support obligations of infants. N.Y. Social Welfare Law (Supp. 1955) §101 (4). See also Ark. Stat. Ann. (Supp. 1953) §§83-608, 83-610 (state department of welfare to determine relative's ability to pay).

[92] Copeland v. Weber, 175 Misc. 403, 24 N.Y.S. (2d) 590 (1940).

[93] Tolley v. Karcher, 196 La. 686, 200 S. 4 (1941) (new car); Application of Machabee, 205 Misc. 85, 127 N.Y.S. (2d) 634 (1954) (car and television set); Application of Rickey, 126 N.Y.S. (2d) 261 (1953) (new car). Cf. Application of Burg, 136 N.Y.S. (2d) 94 (1954).

decisions which, without saying why, have held that certain resources are not subject to support claims, such as the cash reserves of life insurance policies.[94]

The courts have not been too explicit, either, as to the particular assets that are available to support the dependent person. This problem seems to revolve around the question of whether the relative's capital accumulation is available to support the dependent or whether the dependent may seek support out of the relative's net income only. The cases are divided on this point. Some courts take the position that the savings of the relative may be taken into consideration. Some of these cases reason that the court making an award for present support cannot take future contingencies into consideration, and that the court is always open to the relative who claims that the decree should be modified in light of changed circumstances.[95]

Other cases, to the contrary, recognizing the need for savings against the perils of sickness and old age, have held that a dependent person may claim support only out of the responsible relative's net income.[96] Which is the better approach is hard to judge.

[94] In re Claiborn's Estate, 51 N.Y.S. (2d) 543 (1944) (cash value of life insurance); Application of Dunaway, 174 Misc. 735, 22 N.Y.S. (2d) 69 (1940) (alimony, because it is a resource earmarked only for the support of the mother and her children); Anon. v. Anon., 173 Misc. 679, 18 N.Y.S. (2d) 806 (1940) (contingent remainderman's interest in real property). In Barcelo v. Barcelo, 175 La. 398, 143 S. 354 (1932), the court held that the responsible relative did not have to dispose of residential property in a depressed market at a sacrifice price.

[95] Bradley v. Fenn, 103 Conn. 1, 130 A. 126 (1925); Sussex Co. v. Jacobs, 11 Del. 330 (1881); Chapin v. McCurdy, 196 Mass. 63, 81 N.E. 653 (1907); Templeton v. Stratton, 128 Mass. 137 (1880); In re Modafferi's Estate, 174 Misc. 789, 22 N.Y.S. (2d) 88 (1940); In re Whitesell, 18 Pa. Dist. 520 (1909). The Pennsylvania court placed its decision on the ground that the income from manual labor was too uncertain. See also Ind. Stat. Ann. (Supp. 1955) §3-3001 (ability depends on "property, income or earnings"); Iowa Code Ann. (1949) §252.5 (grandparents liable for support only "if of ability without personal labor").

[96] Colebrook v. Stewartstown, 30 N.H. 9 (1854); Dover v. McMurphy, 4 N.H. 158 (1827); In re Miller's Estate, 64 N.Y.S. (2d) 258 (1946); In re Diele's Estate, 187 Misc. 196, 61 N.Y.S. (2d) 397 (1946). This seems to be the purpose of the Wisconsin statute. Wis. Stat. (1953) §52.01 (4) places the support duty on relatives, "if of sufficient ability (having due regard for their own future maintenance and making reasonable allowance for the protection of the property and investments from which they derive their living and their care and protection in old age)."

The cases cited above do not mean, however, that the dependent person may compel the responsible relative to labor if this would be a hardship for him. See Rosen v. Rosen, 91 N.Y.S. (2d) 208 (1949); Alessandro v. Camelli, 47 N.Y.S. (2d) 237 (1944). In each case the court held that a mother kept at home with children does not have to leave them without maternal care when the only way in which she could meet her support obligation would be to seek employment. Compare these cases with Monroe Co. v. Abegglen, 129 Iowa 53, 105 N.W. 350 (1905). But cf. Howard Co. v. Enevoldsen, 118 Neb. 222, 224 N.W. 280 (1929).

While it seems desirable to allow the responsible relative to keep intact a modest savings account, the latter decisions seem wrong if they mean that even extensive capital accumulations cannot be reached to satisfy the support obligation. However, requiring the payment of support out of one's income may work a real hardship in some cases.

It would seem possible to treat the concept of ability to pay more intelligently if it were recognized that the payment of support by any family of moderate means will usually result in hardship. Where the line should be drawn as to what is "moderate" is a problem, but in today's high cost of living society any family of usual size, with an income of less than $5,000, will be hard put to provide in the customary manner for its own needs and yet meet the needs of dependent relatives. If the family is forced to do so it will be compelled to sacrifice some other objective, such as the education of children, which the family considers essential to its growth and progress. This has been recognized in some early cases, which point out that taking all of the surplus income or capital of a family of moderate means will have the effect of killing initiative, incentive and the desire for self-betterment.[97] Any law which has this effect would appear to be undesirable.

One way to avoid these difficulties would be to set up a standard that would allow the family of the relative called upon for support to devote its income to those expenditures it considers necessary. But a test of this nature is difficult to administer, since it must veer between giving full credit to a family's subjective decision as to its wants and an outsider's imposition of his own notions of what is required. A more workable suggestion would be the enactment of a flat exemption into the support law, all families earning less than this amount being excused from the support duty.

Where to set this figure is hard to determine, but it would seem fair to set a figure somewhat above the minimum budget for a family of four which has been estimated by the United States Department of Labor. This would put the figure at about $5,000.[98]

[97] See Dover v. McMurphy, 4 N.H. 158 (1827); Colebrook v. Stewartstown, 30 N.H. 9 (1854). But cf. Application of Machabee, 205 Misc. 85, 127 N.Y.S. (2d) 634 (1954), where the court disregarded the fact that the debts of the relative claimed to be responsible had been incurred in the expansion of his business. This court felt that relieving the county of its relief expense took precedence over a debt of this nature.

[98] Shortly after the end of World War II the Bureau of Labor Statistics undertook a survey to determine how much annual income was needed, including an allowance for

The Oregon income scale approximates this figure since a family of four with a gross income bordering on $5,000 has to make only a slight contribution. If a method were found to revise the exemption as needed, then this form of statute would avoid the inflexibility inherent in a statutory scale.[99]

The liability of those families not within the exemption could then be handled on a case by case basis. The only difficult problems will arise with regard to relatives whose income is so close to the exemption that, while some contribution is expected, less than the full amount seems equitable in the particular case. The present family responsibility statutes assume, and most expressly provide,[100] that partial support of the dependent person may be ordered in cases where the responsible relative does not have the means adequate to provide full support. These provisions could be retained.

What would be difficult to find, however, would be some way to reduce the contribution without adopting an inflexible scale or without leaving the decision to be made on an ad hoc basis. One possibility would be to list those factors which could serve as the basis for a reduction in the amount of the contribution. For example, the statute might provide that if, under the circumstances,

insurances and taxes, to support a family of four. The study group, on the basis of technical advice, formulated a standard of living which was neither at the subsistence nor the luxury level, but at a point midway between. One of those who helped plan the project stated, "The point selected for measurement is in general the point where the struggle for 'more and more' things gives way to the desire for 'better and better' quality." Hinrichs, "The Budget in Perspective," 66 MONTHLY LAB. REV. 131 (1948).

The study group found that this budget of goods and services would have cost an average of $3200 in most cities in June 1947. For a discussion of the methods followed in developing the budget see Kellogg and Brady, "The City Worker's Family Budget," 66 MONTHLY LAB. REV. 133 (1948). The most recent estimate places the cost of the budget at an average of $4100. "City Worker's Family Budget for October, 1951," 74 MONTHLY LAB. REV. 520 (1952).

99 Where general assistance is supervised at the state level, it would be possible to authorize the state department of welfare to set the exemption yearly with reference to the Labor Department figure and other relevant cost of living data. The exemption might then be varied depending on the number of dependents in the family, the $5,000 exemption, for example, being given only to a family of four.

100 See Ariz. Code Ann. (Supp. 1951) §70-605; Conn. Gen. Stat. (Supp. 1953) §1111c; Ill. Ann. Stat. (Supp. 1955) c. 23, §436-12; Ind. Stat. Ann. (Supp. 1955) §3-3005; Iowa Code Ann. (1949) §252.8; La. Civ. Code (Dart, 1945) arts. 231, 232; Me. Laws (1953) c. 308, §99; Mass. Laws Ann. (1949) c. 117, §7; Mich. Stat. Ann. (Supp. 1953) §16.126; Mont. Rev. Code Ann. (1953) §71-234; N.J. Rev. Stat. (Supp. 1954) §44:1-141; N.Y. Crim. Code (1945) §917; N.Y. City Domestic Relations Court Act (Supp. 1954) §101 (4); Ore. Rev. Stat. (1953) §411.420; R.I. Gen. Laws (1938) c. 69, §5; Vt. Laws (1953) No. 196, §§2, 3; Va. Code (Supp. 1954) §20-88; W. Va. Code Ann. (1949) §626(153); Wis. Stat. (1953) §52.01(4). For cases awarding partial support, see Succession of Lyons, 22 La. Ann. 627 (1870); East Greenwich v. Card, 1 R.I. 409 (1850).

the exemption did not provide enough for the medical needs of the family, or for shelter, the contribution might be reduced accordingly. Perhaps this is all the statutory guidance that can be expected in such cases. There should, however, be no difficulty with reference to the particular resources, savings or income, which are available to pay support, provided the exemption level is set high enough to allow for reasonable savings and the purchase of adequate insurance.

One other question remains to be considered in connection with the relative's liability for support. Some of the statutes provide that the duty to support attaches upon the relative's neglect to furnish support.[101] The phrase appears to mean simply that the action for support may be brought if the relative does not in fact provide it. The Connecticut court, however, has given it a different meaning and has held that the mere fact of nonsupport is not enough, that the responsible relative must in addition have been guilty of some form of wrongdoing in withholding support. The content of this requirement is not too clear from the cases, although the court has said that the relative must have unreasonably withheld support, and that, apparently, withholding aid in good faith would not amount to neglect under the statute.[102] This approach, however, appears to be based on a misconception. The concept of culpability, while it may be an element of proof of responsibility under the desertion laws,[103] does not seem to be an ingredient of the family responsibility provisions, as the latter seem to be aimed at imposing a duty of support irrespective of fault.

101 E.g., Alaska Laws (1953) c. 110, §13 (failure to support); Ariz. Code Ann. (Supp. 1951) §70-605 (same); Colo. Stat. Ann. (1949) c. 124, §1 (failure or refusal); Conn. Stat. (Supp. 1953) §1111c (neglect to provide); Del. Code Ann. (1953) tit. 13, §501 (same); Iowa Code Ann. (1949) §252.6 (failure); Mich. Stat. Ann. (Supp. 1953) §16.123 (same); Minn. Stat. Ann. (1947) §261.01 (failure or refusal); Neb. Rev. Stat. (Supp. 1953) §68-101 (refusal); N.H. Rev. Laws (1942) c. 124, §18 (same); N.J. Rev. Stat. (Supp. 1954) §44:1-141 (refusal).

102 In Rogers v. Kinnie, 134 Conn. 58, 54 A. (2d) 487 (1947), the court found that the children had acted unreasonably in not inquiring into the condition of their mother, who was in bad physical condition and in need of support. But cf. Tulin v. Tulin, 124 Conn. 518, 200 A. 819 (1938), where the relative had already been providing support, but in a lesser amount than that demanded in the suit. Because no demand for a larger amount had been made, no neglect was found under the statute. *Accord,* Lathrop v. Lathrop, 78 Conn. 650, 63 A. 514 (1906).

103 Compare, with the cases cited in the previous footnote, Milton v. Bruso, 111 Vt. 82, 10 A. (2d) 203 (1940), construing the Vermont statute imposing on a husband liability for assistance rendered to a wife who has been abandoned. Vt. Laws (1953) No. 196, §1.

C. *Nature of Support Furnished*

Once the court has determined that the dependent person in question is entitled to support, and that the relative alleged to be responsible is able to pay something toward it, the question next arises as to the degree of support that is to be given. As a rule, the statutes are not too helpful on this problem. Usually they leave the question unresolved, providing only that the relative shall "support" or "maintain" the person seeking aid.[104] In some instances, they solve the problem by inflexibly fixing the monthly contribution for all cases,[105] or by setting a monthly maximum on the contribution.[106]

Where the statute does not attempt to set the amount of support, but leaves the question open, it could be said that the relative need provide no more than would have been provided by way of relief, the purpose of the statute being simply to relieve the public of the support burden. There is authority to this effect.[107] But there is authority holding the other way, that the relative is entitled to be supported according to his needs, as determined by his requirements and his station in life.[108]

[104] E.g., Del. Code Ann. (1953) tit. 13, §501 ("reasonable monthly sum"); Hawaii Rev. Laws (1945) c. 298; §12,290 (sum necessary for "maintenance and support"); Ill. Stat. Ann. (Supp. 1955) c. 23, §439-2 (similar); Ind. Ann. Stat. (Supp. 1955) §3-3005 (similar, needs of dependent persons also to be considered); N.J. Rev. Stat. (Supp. 1954) §44:1-141 (sum sufficient to maintain dependent and relieve public of the burden). The last-cited provision seems subject to conflicting interpretations.

See, for a variation in this pattern, N.Y. City Domestic Relations Court Act (Supp. 1954) §101 (4). After providing that the relatives named are liable to support persons unable to maintain themselves and likely to become public charges, the statute states that the support award is to be determined "in view of the needs of the petitioner and the other circumstances of the case and their respective means." For interpretations of this provision see the cases cited in note 107 infra.

[105] This is the effect of the contribution scale fixed by the Montana and Oregon statutes. Under the Oregon statute the relative is liable in some cases for "total cost," and this is defined as the cost of public assistance. Ore. Rev. Stat. (1953) §411.425 (2) (c). See also Ala. Code (1940) tit. 44, §8 ($20); Colo. Stat. Ann. (1949) c. 124, §1 (same); Miss. Code Ann. (1952) §7357 ($10). These are all statutes providing for the payment of a sum of money to the locality to compensate it for aid given.

[106] Minn. Stat. Ann. (1947) §261.01 ($25); Neb. Rev. Stat. (Supp. 1953) §68-101 (same); Utah Code Ann. (1953) §17-14-1 ($20). These statutes also provide for the payment of a sum of money to the locality to compensate it for aid previously given.

[107] Monson v. Williams, 72 Mass. 416 (1856); Anon. v. Anon., 20 N.Y.S. (2d) 514 (1940), construing N.Y. City Domestic Relations Court Act §137 (4), making the liability of a spouse for the support of the other dependent on the likelihood of the latter's becoming a public charge. Since the need for assistance is the basis for the liability, the court held that support is to be given on this basis. Apparently, the liability of a stepparent under this statute is likewise so limited for the same reason. D.G. v. Hermanez, 204 Misc. 650, 123 N.Y.S. (2d) 234 (1953). Cf. Clinton v. Laning, 61 Mich. 355, 28 N.W. 125 (1886).

[108] Tulin v. Tulin, 124 Conn. 518, 200 A. 819 (1938); Rosen v. Rosen, 91 N.Y.S. (2d)

To the extent that the family responsibility laws impose a support liability on the members of the interdependent family living together as a unit, e.g., of the husband to the wife, support may well be awarded on a station-in-life basis.[109] To the extent that family responsibility statutes cover the relatives who are independent of the person seeking support, however, the logic of the cases that require only a support on a public assistance budget basis seems justified. An exception might be made in cases involving a parent and adult child, where one is seeking support from the other, since there the closeness of the relationship would seem to justify support at a higher level.

Of course, the amount of the support award will depend in large part on the relative's means. It is only where the relative is fairly well-to-do that the problem just discussed would seem to be acute. From this perspective the position taken still seems justified, since there would seem to be no reason for allowing a dependent person to share in the relative's affluence unless the closeness of the relationship would make it fair that he be allowed to do so.

Probably of more common occurrence is the relative of moderate means, who, although liable for some contribution under the statute, is hard put to make it. There, the more important question that will arise regarding the nature of the support given will be whether the responsible relative can support the dependent in his own home. There are some statutes which authorize the court, in its discretion, to order support in the home,[110] and even

208 (1949); Panzo v. Panzo, 192 Misc. 989, 82 N.Y.S. (2d) 228 (1948); Caplan v. Caplan, 177 Misc. 847, 32 N.Y.S. (2d) 43 (1942); Dooley v. Dooley, 174 Misc. 10, 19 N.Y.S. (2d) 562 (1940); Szilagyi v. Szilagyi, 170 Misc. 1009, 11 N.Y.S. (2d) 469 (1939), affd. on other grounds 257 App. Div. 630, 15 N.Y.S. (2d) 107 (1939); Mitchell-Powers Hardware Co. v. Eaton, 171 Va. 255, 198 S.E. 496 (1936). But cf. Belden v. Belden, 82 Conn. 611, 74 A. 896 (1909), where the court seemed to adopt a vague standard between the public assistance level and what the claimant was accustomed to expect.

The New York cases construed N. Y. City Domestic Relations Court Act (Supp. 1954) §101 (4), making the parents, grandparents, and children liable for the support of dependent persons unable to maintain themselves and likely to become a public charge. See, however, D. G. v. Hermanez, 204 Misc. 650, 123 N.Y.S. (2d) 234 (1953), where the judge indicates that some cases have held that grandparents need support grandchildren only on a public assistance basis. See also Whitney v. Harrison, 127 N.Y.S. (2d) 227 (1953) (dictum, public charge basis). The Louisiana Civil Code appears to require support on the station-in-life basis. La. Civ. Code (Dart, 1945) arts. 230, 231.

[109] The cases do not seem to make this distinction. In Monson v. Williams, 72 Mass. 416 (1856), for example, where the relationship was that of husband and wife, support was awarded on a public assistance basis.

[110] Iowa Code Ann. (1949) §252.8; La. Civ. Code (Dart, 1945) art. 233; Me. Laws (1953) c. 308, §97; Mass. Ann. Laws (1949) c. 117, §9; R.I. Gen. Laws (1938) c. 69, §5;

in the absence of an explicit provision the court might well be found to have implied authority to make such an order. But the more serious question is raised by the relative who claims that he has satisfied his support obligation by offering to support the dependent in his own home although this offer is refused and that the court therefore is without authority to order financial support. On this question the cases seem to hold that support in the home will excuse the relative from a financial contribution only if the home offers both physically adequate and personally congenial surroundings to the dependent.

In what is perhaps the leading case on this subject, *Condon v. Pomroy-Grace*,[111] the Connecticut court found that an offer to support an aged mother in the home of the daughter did not relieve the daughter of her duty to support. Although the home was materially adequate and apparently quite comfortable, the court found that the daughter had made the situation so uncomfortable to her mother in a personal way that the house had become "hateful" to the older woman. In a later case the same court rejected an offer of a husband to support his wife in his home on the ground that not even the physical necessities were offered to her.[112]

There are decisions, on the other hand, in which the offer of support in the home has been found to satisfy the support obligation. Because most of them involve situations where the relative has provided a congenial and suitable environment, they are not in fact inconsistent with the Connecticut decisions.[113] Most of those cases also deal with the obligation of a child to support his aging dependent parent.

Wis. Stat. (1953) §52.01 (7) (reasonable amount may be deducted for expected contribution in exchange for care in home). The Louisiana provision was applied in Schmidt v. Schmidt, 39 La. Ann. 982, 3 S. 225 (1887). But cf. W.Va. Code Ann. (1949) §626 (150) ("a relative shall not be compelled to receive the indigent person in his own home").

N.Y. City Domestic Relations Court Act §92 (6) provides that a wife may be entitled to support though living away from her home, if she had to leave because of her husband's cruel and inhuman treatment. This has been interpreted to relieve the husband of his support duty if he has made a bona fide offer to support the wife in the home, and is able to support her, provided that the conduct of the husband does not constitute grounds for separation. Jokai v. Jokai, 121 N.Y.S. (2d) 517 (1953); Salvatore v. Salvatore, 185 Misc. 309, 57 N.Y.S. (2d) 564 (1945).

111 73 Conn. 607, 48 A. 756 (1901). The court commented (at 757), "The law does not force a parent to become the unhappy prisoner of a thankless child, as the only alternative of starvation." The relative in In re O'Donnell, 126 Pa. 155, 19 A. 42 (1889), raised the same defense made by the relative in the Condon case, but it was dismissed as not timely.

112 Belden v. Belden, 82 Conn. 611, 74 A. 896 (1909).

113 Most of these are early New York cases. Duel v. Lamb, 1 Thomp. & Cook (N.Y.) 66 (1873); Converse v. McArthur, 17 Barb. (N.Y.) 410 (1854). These cases appear to be

What attitude the courts should adopt toward defenses of this type would seem to vary with the relationship that is involved. In view of the size of the typical urban dwelling, for example, it may be expecting too much for three generations to live under one roof, so that a court might be justified in refusing an offer by a married son or daughter to take in a parent where the parent objects. Even though the offer is voluntarily made, the fact that one party to the arrangement is not willing is indicative of potential difficulties in adjustment.[114] Where the relationship between the parties is strained, the court that compels the dependent person to accept the relative's offer is merely forcing the creation of an unhealthy home environment. These considerations are particularly important when children are involved.

However, if the persons involved can live under one roof, without psycho-social damage to other parties, then there would seem to be no objection to allowing support in the home in fulfillment of the obligation. Again this approach subordinates the aim of relieving the public of expense to that of furthering good family relationships. For if the relative who offers support in his home is compelled to make a financial contribution, the chances of his defaulting in meeting the support order, and of the community's having to assume the relief burden, would seem considerable.

This discussion of the nature of the support duty has revealed what may well be unavoidable ambiguities in the family responsibility laws. That there will have to be a considerable amount of leeway in fixing responsibility for support under the statute seems

based in part on a provision existing in the statute at that time which authorized the overseer of the poor, then the official in charge of general assistance, to approve the manner of support that was offered. See Aldridge v. Walker, 151 N.Y. 527, 45 N.E. 950 (1897). No such provision appears in the present New York family support laws.

For this reason, these cases may no longer be good law. See Hodson v. Holmes, 162 Misc. 226, 294 N.Y.S. 537 (1937), holding, without discussion, that an offer to support in the home is not a good defense to a support action. See also Neuerstein v. Newburger, 53 N.Y.S. (2d) 906 (1945), implying that the earlier cases may no longer be controlling in view of modern living conditions. This case limited its decision, however, to a holding that the early cases did not sanction a son's placing his aging father in a home for old people, in satisfaction of his support obligation.

The Colorado court, in a brief opinion in Phillips Co. v. Kohrell, 100 Colo. 445, 68 P. (2d) 32 (1937), held that it was for the jury to decide whether a son's offer to support his father in his home satisfied the support obligation. But no standards were given for jury guidance in future cases. Cf. Commonwealth v. Spaar, 8 Pa. Dist. 380 (1899).

114 See the discussion in Neuerstein v. Newburger, 53 N.Y.S. (2d) 906 (1945). Cf. Field v. Field, 79 Misc. 557, 139 N.Y.S. 673 (1913) (wife entitled to separation because mother-in-law interfered with management of household).

inevitable. What is needed is an attempt to give as much objectivity to the statute as is possible without creating inflexibility. If the ability of responsible relatives to contribute is viewed realistically, and if support is decreed on a public assistance basis except where the family relationship is close, then, assuming there are no severe family tensions, enforcement of the family responsibility law should not work an undue hardship.

[To be concluded]