



6-1-1972

## Relatives' Responsibility Law Requiring Financially Able Adult Children to Contribute to the Support of Their Needy Parents Has a Rational Relation to a Conceivably Legitimate State Purpose and Does Not Transgress the Constitutional Equal Protection Guarantee.

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### Recommended Citation

Garvin P. Stryker, *Relatives' Responsibility Law Requiring Financially Able Adult Children to Contribute to the Support of Their Needy Parents Has a Rational Relation to a Conceivably Legitimate State Purpose and Does Not Transgress the Constitutional Equal Protection Guarantee.*, 4 ST. MARY'S L.J. (1972). Available at: <https://commons.stmarytx.edu/thestmaryslawjournal/vol4/iss2/11>

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**EQUAL PROTECTION GUARANTEE—RELATIVES' RESPONSIBILITY LAW—CONTRIBUTION—RELATIVES' RESPONSIBILITY LAW REQUIRING FINANCIALLY ABLE ADULT CHILDREN TO CONTRIBUTE TO THE SUPPORT OF THEIR "NEEDY" PARENTS HAS A RATIONAL RELATION TO A CONCEIVABLY LEGITIMATE STATE PURPOSE AND DOES NOT TRANSGRESS THE CONSTITUTIONAL EQUAL PROTECTION GUARANTEE.** *Carleson v. Superior Court*, 100 Cal. Rptr. 635 (Dist. Ct. App.—1972, writ granted).

Recipients of Old Age Security Act (hereinafter OAS) aid and their adult children instituted a class action seeking to enjoin state officials from enforcing state statutes which require adult children to make financial contributions to their parents' support. The Superior Court of Sacramento County issued a temporary restraining order and the Director of State Welfare and others sought a writ of prohibition. Held—*Reversed*. A relatives' responsibility law requiring financially able adult children to contribute to the support of their "needy" parents has a rational relation to a conceivably legitimate state purpose and does not transgress the constitutional equal protection guarantee.

In making laws, legislatures necessarily create classifications of citizens and, for the purposes of any given law, one citizen may be included and another excluded.<sup>1</sup> The equal protection clause of the fourteenth amendment prohibits a legislature from creating classifications that discriminate between activities which are fundamentally the same.<sup>2</sup> "In determining whether or not a state law violates the Equal Protection Clause," the court considers "the facts and circumstances behind the law, the interest which the state claims to be behind the law, and the interests of those who are disadvantaged by the classification."<sup>3</sup>

For the purpose of reviewing a classification which allegedly violates that clause, the Supreme Court of the United States has employed two distinguishable tests.<sup>4</sup> One test, which can be called the conventional

<sup>1</sup> See *Allied Stores, Inc. v. Bowers*, 358 U.S. 522, 79 S. Ct. 437, 3 L. Ed.2d 480 (1959); *Williamson v. Lee Optical Co.*, 348 U.S. 483, 75 S. Ct. 461, 99 L. Ed. 563 (1955); *Developments in the Law—Equal Protection*, 82 HARV. L. REV. 1065 (1969).

<sup>2</sup> *Hartford Steam Boiler Inspect. & Ins. Co. v. Harrison*, 301 U.S. 459, 57 S. Ct. 838, 81 L. Ed. 1223 (1937); *Colgate v. Harvey*, 296 U.S. 404, 56 S. Ct. 252, 80 L. Ed. 299 (1935). Though this view has been discarded as a test, *McLaughlin v. Florida*, 379 U.S. 184, 85 S. Ct. 283, 13 L. Ed.2d 222 (1964), it is used here as a basis upon which to introduce the present approaches.

<sup>3</sup> *Williams v. Rhodes*, 393 U.S. 23, 30, 89 S. Ct. 5, 10, 21 L. Ed.2d 24, 31 (1968).

<sup>4</sup> Recognizing two distinguishable tests rather than modifications of the same test eliminates any problems which may arise due to "degrees" of constitutionality. Additionally, this makes an equal protection analysis simpler because it creates a threshold question of which test, leaving the question of constitutionality clear. See, e.g., *Van Duzart v. Hatfield*, 334 F. Supp. 870, 874 (D. Minn. 1971) (distinct approaches); *Serrano v. Priest*, 487 P.2d 1241, 1249 (Cal. 1971) (two levels); *Developments in the Law—Equal Protection*, 82 HARV. L. REV. 1065, 1076 (1969) (restrained review) and 82 HARV. L. REV. 1065, 1087

test,<sup>5</sup> is that a classification is permissible under the equal protection clause unless it is arbitrary and without a reasonable basis.<sup>6</sup> Reasonable basis means that the difference which creates the classification is related to the object to be achieved by the legislation.<sup>7</sup> The issue becomes: Is the classification reasonable in light of the purpose of the statute?<sup>8</sup> It is not necessary that the weight of the legislation be distributed evenly; equal application is not equal protection.<sup>9</sup> The second test is the fundamental activity test. When the legislation affects some fundamental interest, it is permissible under the equal protection clause only if the state can show a compelling interest of its own which is to be served by that legislation.<sup>10</sup> This test is rigorous and a call for its application is given by the presence of a fundamental right<sup>11</sup> or a suspect classification.<sup>12</sup> Generally, when dealing with economic and social legislation the courts use the "reasonability" test.<sup>13</sup>

The Supreme Court of California has held that when a statute is attacked as discriminatory, the test<sup>14</sup> of validity is substantially the same under the equal protection clause of the fourteenth amendment and under the California Constitution.<sup>15</sup> Further, the California Supreme Court has recognized the standards of review used by the United States

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(1969) (active review); 36 Mo. L. REV. 117, 119 (1971) (trichotomy). See 39 N.Y.U.L. REV. 858, 861 (1964).

<sup>5</sup> Reinstein, *The Welfare Cases: Fundamental Rights, the Poor and the Burden of Proof in Constitutional Litigation*, 44 TEMPLE L.Q. 1, 6 (1970). See, e.g., *Flemming v. Nestor*, 363 U.S. 603, 80 S. Ct. 1367, 4 L. Ed.2d 1435 (1960).

<sup>6</sup> *Allied Stores, Inc. v. Bowers*, 358 U.S. 522, 79 S. Ct. 437, 3 L. Ed.2d 480 (1959); *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 31 S. Ct. 337, 55 L. Ed. 369 (1911).

<sup>7</sup> See *Hernandez v. Texas*, 347 U.S. 475, 74 S. Ct. 667, 98 L. Ed. 866 (1954); *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535, 62 S. Ct. 1110, 86 L. Ed. 1655 (1942); *New York Rapid Transit Corp. v. City of New York*, 303 U.S. 573, 58 S. Ct. 721, 82 L. Ed. 1024 (1938).

<sup>8</sup> *McLaughlin v. Florida*, 379 U.S. 184, 191, 85 S. Ct. 283, 288, 13 L. Ed.2d 222, 228 (1964); *United States ex rel. Buonoraba v. Commissioner of Corrections*, 316 F. Supp. 556 (S.D.N.Y. 1970).

<sup>9</sup> *McLaughlin v. Florida*, 379 U.S. 184, 191, 85 S. Ct. 283, 288, 13 L. Ed.2d 222, 228 (1964).

<sup>10</sup> *Sherbert v. Verner*, 374 U.S. 398, 406, 83 S. Ct. 1790, 1795, 10 L. Ed.2d 965, 972 (1963); *Van Duzart v. Hatfield*, 334 F. Supp. 870, 875 (D. Minn. 1971); *Serrano v. Priest*, 487 P.2d 1241, 1249 (Cal. 1971).

<sup>11</sup> *Van Duzart v. Hatfield*, 334 F. Supp. 870 (D. Minn. 1971); 36 Mo. L. REV. 117 (1971). See, e.g., *McDonald v. Board of Election Comm'rs*, 394 U.S. 802, 89 S. Ct. 1404, 22 L. Ed.2d 739 (1969) (voting rights); *Shapiro v. Thompson*, 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed.2d 600 (1969) (interstate travel).

<sup>12</sup> See, e.g., *McLaughlin v. Florida*, 379 U.S. 184, 85 S. Ct. 283, 13 L. Ed.2d 222 (1964) (race); *Douglas v. California*, 372 U.S. 353, 83 S. Ct. 814, 9 L. Ed.2d 811 (1963) (wealth).

<sup>13</sup> *Dandridge v. Williams*, 397 U.S. 471, 485, 90 S. Ct. 1153, 1161, 25 L. Ed.2d 491, 501 (1970); 36 Mo. L. REV. 117 (1971).

<sup>14</sup> The California Supreme Court recognizes "two level[s]" of the same test rather than two different tests. *Serrano v. Priest*, 487 P.2d 1241, 1249 (Cal. 1971); *Sail'er Inn, Inc. v. Kirby*, 485 P.2d 529, 538 (Cal. 1971).

<sup>15</sup> *City of Los Angeles v. Southern Cal. Tel. Co.*, 196 P.2d 773, 781 (Cal. 1948). See also "All laws of a general nature shall have a uniform operation." CAL. CONST. art. I § 11. "No special privileges or immunities shall ever be granted which may not be altered, revoked, or repealed by the Legislature; nor shall any citizen, or class of citizens, be granted privileges or immunities which, upon the same terms, shall not be granted to all citizens." CAL. CONST. art. I § 21.

Supreme Court.<sup>16</sup> In reviewing legislation the California court has held that the legislature has wide discretion in creating classifications<sup>17</sup> and presumes those classifications to be constitutionally valid.<sup>18</sup>

The statutes which this case passed upon originated in the Elizabethan Poor Law of 1601.<sup>19</sup> The poor law was not just a law about the poor but a law of the poor.<sup>20</sup> It was an accumulation of the legal provisions<sup>21</sup> which monitored and guided all facets of the lives of that particular class of people.<sup>22</sup> The provisions were special and are distinguishable from the common law under which all others in England lived.<sup>23</sup> They were designed not to solve the causes and problems of destitution but to minimize the cost to the public of maintaining the destitute.<sup>24</sup> The blood relationship was one of the means used to find resources, other than public, for the support of the poor.<sup>25</sup>

The English poor law system came to California through New York.<sup>26</sup> It transferred to New York nearly intact but with adaptations due to the different economic and geographical circumstances.<sup>27</sup> When the codification of New York law was made in 1865, the Civil Code contained the following: "It is the duty of the father, the mother, and the children, of any poor person who is unable to maintain himself by work to maintain such persons to the extent of their ability."<sup>28</sup> California adopted the Civil Code almost verbatim,<sup>29</sup> and that sentence remains in the present code altered only by addition.<sup>30</sup>

The OAS program began in 1937. From the beginning it included

<sup>16</sup> *Serrano v. Priest*, 487 P.2d 1241, 1249 (Cal. 1971).

<sup>17</sup> *O'Donnell v. Mullaney*, 429 P.2d 160 (Cal. 1967). See also *Williamson v. Lee Optical Co.*, 348 U.S. 459, 75 S. Ct. 461, 99 L. Ed. 563 (1955).

<sup>18</sup> *Whittaker v. Superior Court*, 438 P.2d 358 (Cal. 1968). See also *Williamson v. Lee Optical Co.*, 348 U.S. 459, 75 S. Ct. 461, 99 L. Ed. 563 (1955).

<sup>19</sup> tenBroek, *California's Dual System of Family Law: Its Origin, Development, and Present Status, Part I*, 16 STAN. L. REV. 257, 257 (1964). See also Rosenbaum, *Are Family Responsibility Laws Constitutional?*, 1 FAM. L.Q. 55 (1967).

<sup>20</sup> tenBroek, *California's Dual System of Family Law: Its Origin, Development, and Present Status, Part I*, 16 STAN. L. REV. 257, 286 (1964).

<sup>21</sup> *Id.* at 258.

<sup>22</sup> *Id.* at 286.

<sup>23</sup> *Id.* at 287.

<sup>24</sup> *Id.* at 286.

<sup>25</sup> *Id.* at 283.

<sup>26</sup> *Id.* at 291.

<sup>27</sup> *Id.* at 291.

<sup>28</sup> Draft N.Y. Civ. Code § 97 as quoted in tenBroek, *California's Dual System of Family Law: Its Origin, Development, and Present Status, Part I*, 16 STAN. L. REV. 257, 312 (1964).

<sup>29</sup> tenBroek, *California's Dual System of Family Law: Its Origin, Development, and Present Status, Part I*, 16 STAN. L. REV. 257, 312 n.258 (1964).

<sup>30</sup> "It is the duty of the father, the mother, and the children of any person in need who is unable to maintain himself by work, to maintain such person to the extent of their ability. The promise of an adult child to pay for necessities previously furnished to such parent is binding. A person who is receiving aid to the aged shall be deemed to be a person in need who is unable to maintain himself by work." CAL. CIV. CODE § 206 (West Supp. 1972).

Similar statutory expressions of the policy of filial support are found in two other sections: CAL. PENAL CODE § 270c (West Supp. 1972); CAL. CIV. CODE § 242 (West Supp. 1972).

responsibility for filial support and gave the county granting the aid a right of contribution from the children.<sup>31</sup> The sections of primary concern are § 12100 and § 12101 of the Welfare and Institutions Code [hereinafter W&I].<sup>32</sup> The first gives a cause of action against the adult child who fails to contribute support according to the scale given in the second. In that scale the amount of contribution is cross indexed with the adult child's net income and number of dependents.<sup>33</sup> Though filial responsibility is nowhere expressed, the California Supreme Court has held that the provisions of the W&I Code are "complete in themselves and the liability of responsible relatives to the county is thereby established."<sup>34</sup>

The first case to address itself to the issue of whether or not family responsibility laws are in violation of the equal protection clause was *Department of Mental Hygiene v. Kirchner*.<sup>35</sup> There the hospital was attempting to collect contributions for the support of an inmate from her adult child's estate, pursuant to the W&I Code<sup>36</sup> and Civil Code section 206. A year earlier the supreme court held that providing and maintaining institutions was a proper state function and the resulting expenses should be borne by the state.<sup>37</sup> Based on that holding, the court found that "the cost of maintaining the state institution, including provision of adequate care for its inmates, cannot arbitrarily be charged to one class of society; such assessment violates the equal protection clause."<sup>38</sup>

<sup>31</sup> CAL. WELF. & INST'NS CODE § 2224 (West 1937), as amended CAL. WELF. & INST'NS CODE § 12100 (West 1972).

<sup>32</sup> CAL. WELF. & INST'NS CODE §§ 12100, 12101 (West 1972).

<sup>33</sup> . . . .

A. Net Monthly Income	B. Number of persons dependent upon income					
	1	2	3	4	5	6 or more
\$350 or under	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
351 - 375	20	0	0	0	0	0
376 - 400	25	0	0	0	0	0
401 - 425	30	20	0	0	0	0
426 - 450	35	25	0	0	0	0
... - ...						
901 - 925	130	120	110	100	90	80
926 - 950	135	125	115	105	95	85
951 - 975	140	130	120	110	100	90
... - ...						

CAL. WELF. & INST'NS CODE § 12101 (West 1972).

<sup>34</sup> County of Contra Costa v. Lasky, 275 P.2d 452, 454 (Cal. 1954).

<sup>35</sup> 388 P.2d 720 (Cal. 1964). An appeal to the Supreme Court was remanded, 380 U.S. 194, 85 S. Ct. 871, 13 L. Ed.2d 753 (1965), for determination as to whether the support statute in question was held unconstitutional by reason of the California equal protection measures or the federal equal protection clause. The California Supreme Court found the decision to have been based solely upon the California Constitution, 400 P.2d 321 (Cal. 1965).

<sup>36</sup> CAL. WELF. & INST'NS CODE § 6651 (West 1964), as amended CAL. WELF. & INST'NS CODE § 7276 (West 1972).

<sup>37</sup> Department of Mental Hygiene v. Hawley, 379 P.2d 22, 27 (Cal. 1963).

<sup>38</sup> Department of Mental Hygiene v. Kirchner, 388 P.2d 720, 722 (Cal. 1964). For a criti-

Six years later the California Supreme Court placed in question the liability imposed by the W&I Code. In *County of San Mateo v. Boss*<sup>39</sup> the county, which had been providing assistance to a woman under the OAS program, was attempting to compel her adult son to contribute to her support. The court stated:

The effect of imposition of liability under sections 12100 and 12101 is to charge the adult children of recipients of aid to the aged with a disproportionate share of the costs of providing for such aid. Therefore, the imposition of liability under those sections is constitutional only to the extent that there is a rational basis supporting the classification thereby established.<sup>40</sup>

The county argued that a preexisting duty was created by section 206 and served as a rational basis to require support. The court reasoned that under section 206 Boss did not have a duty because his mother was not "poor" or "unable to support himself by work" though she was "needy" under the requirements for W&I aid. Since there was no rational basis, the state could not, consistent with equal protection, require him to contribute to her support.

In the present case, the plaintiffs rely upon the *Boss* and *Kirchner* decisions to assert that the relatives' responsibility law violates equal protection because they had no preexisting duty. The court found that neither of those cases is dispositive of this one and there are two sources of duty.

This case differed from *Kirchner* in that the state here was not supporting OAS completely with public funds as it was with mental institutions. *Kirchner* stands only for the proposition that relatives have no duty to contribute to the support of persons in mental institutions. The *Boss* decision was dismissed on the basis of its unique facts and circumstances, *i.e.*, the unfortunate mismatch of the laws.

The California Supreme Court had held that adult children had no duty at common law.<sup>41</sup> This court reasoned that there is little difference between common law and a parliamentary statute because both reflect the social policy of the period. A duty also existed as a result of the correction of the discrepancy which allowed the *Boss* decision.

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cal comment on the court's reasoning, especially in regard to equal protection concepts, see 39 N.Y.U.L. REV. 858 (1964).

<sup>39</sup> 479 P.2d 654 (Cal. 1971).

<sup>40</sup> *Id.* at 658.

<sup>41</sup> See *Department of Mental Hygiene v. Kirchner*, 388 P.2d 720, 721 n.4 (Cal. 1964). A strong argument supporting the duty in *Kirchner* as having a "reasonable relation" to the purpose is given in 39 N.Y.U.L. REV. 858 (1964). The author also equates the duty at common law with a strong moral obligation. The duty of filial support has been consistently upheld against due process attacks. See, *e.g.*, *Beach v. District of Columbia*, 320 F.2d 790 (D.C. Cir. 1963); *Department of Mental Hygiene v. McGilvery*, 329 P.2d 689 (Cal. 1958).

The dissent's first response was to the preexisting duty problem. Because the W&I Code sections were amended in the same act as the Civil Code section, the duty imposed by section 206 could not preexist the W&I sections and could not thereby make contributions constitutional. The second criticism was that the court failed in its stare decisis responsibility by ignoring the implication of the *Boss* and *Kirchner* decisions. Finally, the dissent asserted that the law violated equal protection because it is rigid, making no allowance for special situations.<sup>42</sup>

The dissent's arguments do not stand up under scrutiny. First, the catch-words "preexisting duty" have no special significance. Their source appears to be *Kelley v. State Board of Social Welfare*.<sup>43</sup> The issue there was basically the same as here but the court's reaction to the unconstitutional discrimination argument was quite different. Calling the argument "fallacious" and rejecting it on the basis of the duty owed under the Civil Code, the court in an addendum to its argument wrote: "The obligation of support owed by these relatives is pre-existent to and independent of the aid granted to the needy aged by public authorities."<sup>44</sup> The common bond between the series of cases which were decided following *Kirchner* was that in each case the defendant had a preexisting (common law) duty to support the relative.<sup>45</sup> But, as the majority here notes, there is nothing magical about those words, the duty existed by statute,<sup>46</sup> and there is no requirement that it preexist. The issue is whether that duty violates the equal protection guarantees. The *Boss* opinion does not require a preexisting duty to provide a rational basis. Rather it recognizes that the county's allegations of a preexisting duty are sufficient if proved.<sup>47</sup> The majority did not fail in its stare decisis responsibility because *Boss* and *Kirchner* did not provide a precedent. The dissent raised a valid criticism in that the statutes

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<sup>42</sup> Obviously, abilities cannot be measured or an equitable judgment made without a comparison of the net resources respectively of each child to be charged. It is equally obvious that the extent of the liability of the children (individually or collectively) cannot be fixed equitably without weighing the extent of ability against the extent of the parent's needs. A further factor must be taken into consideration. To what extent does the parent have a call morally upon his child by past treatment and not just by consanguinity? *Carleson v. Superior Court*, 100 Cal. Rptr. 635, 648 (Dist. Ct. App.—1972, writ granted).

<sup>43</sup> 186 P.2d 429, 432 (Cal. Dist. Ct. App. 1947).

<sup>44</sup> *Id.* at 432.

<sup>45</sup> *County of San Mateo v. Boss*, 479 P.2d 654 (Cal. 1971). The eminence of preexisting duty is due to doubt cast on the *Kelley* decision by the California Supreme Court regarding the relationship between the statutes in the W&I Code to those in the Civil Code. *San Bernardino v. Simmons*, 296 P.2d 329, 331 (Cal. 1956). A discussion of this comes later.

<sup>46</sup> *Accord*, *County of San Mateo v. Boss*, 479 P.2d 654 (Cal. 1971); see *In re Ricky H.*, 468 P.2d 204 (Cal. 1970); *In re Shaieb*, 58 Cal. Rptr. 631 (Dist. Ct. App. 1967).

<sup>47</sup> "Under the principles discussed above, such a preexisting duty of support would provide a rational basis for the imposition of liability under sections 12100 and 12101." *County of San Mateo v. Boss*, 479 P.2d 654, 658 (Cal. 1971). "Such a preexisting duty of support provides a rational ground for classification of those who must bear a disproportionate amount of the cost of the welfare program." *Id.* at 657.

fail to make allowance for special situations, but obviously this issue could be raised with regard to any law. If the legislature could obviate such problems the courts would have far less to do.

The majority in this opinion occupies a strong position, although at first glance it would appear that time and tide are against them. The public attitude seems to be increasingly receptive to welfare legislation as both the breadth and depth of such legislation are becoming greater. The statute at issue originated 370 years ago in circumstances far different from the present. However, age alone does not make a policy obsolete and neither may word games be employed to retire it.

The holding in *Boss* and its use of the phrase "preexisting duty" are the controlling factors in this decision. The majority soundly reasoned that *Boss* stands on its facts and cannot be generalized. The language of the court in the case itself supports that.

We do not hold, however, that the imposition of liability pursuant to sections 12100 and 12101 is in all instances a denial of equal protection. What we here say is that at least where the adult child owes the recipient of welfare assistance no duty of support under Civil Code section 206 the state may not, consistent with equal protection, charge the adult child with an unequally large portion of the costs of providing such welfare assistance.<sup>48</sup>

This says that the liability under the W&I Code draws its authority from section 206. Thus its liability cannot exceed that of section 206. This, reconciled with the earlier finding that the W&I stands alone, means that the W&I Code assigns liability under its own provisions but it cannot be greater than that created by section 206. The supreme court acknowledged the same discrepancy fifteen years earlier in *County of San Bernardino v. Simmons*.<sup>49</sup> "The payment of Old Age Security, therefore, cannot be considered to be the performance of a duty to support a poor person unable to maintain himself by work . . ."<sup>50</sup> Finally, there is the fact that no generalization could be made. The determining factor in *Boss* was the discrepancy in the law, not a legal concept.

The *Kirchner* decision is intellectually more difficult to deal with. The holding itself is very clear, but the opinion revealed a willingness to go further.<sup>51</sup> However, the court has not done so in the seven years since

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<sup>48</sup> *County of San Mateo v. Boss*, 479 P.2d 654, 659 (Cal. 1971).

<sup>49</sup> 296 P.2d 329 (Cal. 1956).

<sup>50</sup> *Id.* at 332.

<sup>51</sup> Lastly, in resolving the issue now before us, we need not blind ourselves to the social evolution which has been developing during the past half century; it has brought expanded recognition of the *parens patriae* principle and other social responsibilities, including The California Rehabilitation Center Act and divers other public welfare programs to which all citizens are contributing through presumptively duly apportioned taxes. From all of this it appears that former concepts which have been suggested to uphold the imposition of support liability upon a person selected by an administra-



that decision.<sup>52</sup> The will was directed more at inequities in the family responsibility laws than at the laws themselves.<sup>53</sup> The court in *Kirchner* spoke of a publicly financed program created for the general benefit under the *parens patriae* principle. State mental institutions are a fitting governmental incursion on private responsibility because ordinary private resources cannot meet the expense of specialized help and equipment. The same cannot be said for persons receiving OAS aid. There, the problem is a shortage of funds to continue procuring life's necessities. Most families should be able to contribute but many are not required to.<sup>54</sup>

The final argument is one based purely upon equal protection concepts. The first inquiry is, which test to use in reviewing the statute. The more rigorous test cannot be used because it is not applicable. First, there is no fundamental right involved.<sup>55</sup> Though there is much discussion that welfare assistance should be a right, it has not been so held.<sup>56</sup> Even if OAS is held to be a right, the operation of the sections under review do not affect the dispensing of aid.<sup>57</sup> Second, the classifica-

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tive agent from classes of relatives designated by the Legislature may well be re-examined. *Department of Mental Hygiene v. Kirchner*, 388 P.2d 720, 724 (Cal. 1964) (citations omitted).

<sup>52</sup> See *County of San Mateo v. Boss*, 479 P.2d 654 (Cal. 1971).

<sup>53</sup> Thus, the state evidences concern that its committed patient shall not "become a burden on the community in the event of his discharge from the hospital," but at the same time its advocacy of the case at bench would seem to indicate that it cares not at all that relatives of the patient, selected by a department head, be denuded of their assets in order to reimburse the state for its maintenance of the patient in a tax supported institution. Section 6650 by its terms imposes absolute liability upon, and does not even purport to vest in, the servient relatives any right of control over, or to recoup from, the assets of the patient.

*Department of Mental Hygiene v. Kirchner*, 388 P.2d 720, 724 (Cal. 1964) (court's emphasis).

<sup>54</sup> Apparently the scale in the W&I Code section was constructed with the federal standards for "low income" in mind. *Carleson v. Superior Court*, 100 Cal. Rptr. 635, 638 n.6 (Dist. Ct. App.—1972, writ granted). Therefore, persons who are slightly above or below that level are not required to contribute. However, as the Supreme Court in *Kelley* noted: "Under our Old Age Security Law the State aids the needy aged only to the extent their legally responsible relatives are unable to support them . . ." *Kelley v. State Bd. of Social Welfare*, 186 P.2d 429, 432 (Cal. Dist. Ct. App. 1947). OAS was meant to supplement family aid rather than provide the bulk or replace it.

<sup>55</sup> See *Dandridge v. Williams*, 397 U.S. 471, 90 S. Ct. 1153, 25 L. Ed.2d 491 (1970) (the court was well aware that its holding would have critical effect on the lives of some poor people but restrained itself from interfering with state economic legislation); Harvith, *Federal Equal Protection and Welfare Assistance*, 31 ALBANY L. REV. 210 (1967); 38 S. CAL. L. REV. 355 (1965).

<sup>56</sup> Cowan, *The Impact of Social Security on the Philosophy of Law: The Protection of Interests Based on Group Membership*, 11 RUTGERS L. REV. 688 (1957); Reich, *Individual Rights and Social Welfare: The Emerging Legal Issues*, 74 YALE L.J. 1245 (1965); Reich, *The New Property*, 73 YALE L.J. 733 (1964); *Developments in the Law—Equal Protection*, 82 HARV. L. REV. 1065 (1969); Comment, *Welfare—Historically and Prospectively*, 16 LOYOLA L. REV. 116 (1970); Note, *Social Welfare—An Emerging Doctrine of Statutory Entitlement*, 44 NOTRE DAME LAW. 603 (1969).

<sup>57</sup> CAL. WELF. & INST'NS CODE § 12100 (West 1972):

....  
 "The granting of or continued receipt of aid shall not be held to be contingent upon any court action or order of the child's compliance with provisions of Section 12101."  
 ....

tion is not suspect. It depends upon two concurring conditions: (1) a person within the definition of the W&I Code and (2) a filial relationship with that person. Wealth has been held to be a suspect classification,<sup>58</sup> but it is an essential classification for welfare laws.<sup>59</sup> The issue is the constitutionality of the use of blood relationship as the basis for requiring contribution. Since blood relatives are assessed liability in order to minimize the public contribution, the purpose of such legislation is economic. Therefore, the second inquiry is whether the classification is reasonable in light of this purpose. Generally, any sensible purpose has been found to be reasonable.<sup>60</sup> The United States Supreme Court has recognized that conserving welfare funds is a reasonable purpose.<sup>61</sup>

In *Carleson v. Superior Court*<sup>62</sup> the California Supreme Court recognized that a duty is a reasonable basis upon which to require one person to contribute to another's support, and that such a duty is created by section 206 of the Civil Code. The amending article, which now includes needy persons as classified in the W&I Code, successfully compels contribution from adult children of those persons without violating equal protection guarantees. Further, a review of equal protection laws reveals that economic legislation, particularly welfare legislation, is an area where the courts are reluctant to enter. In instances where the United States Supreme Court has entered, it has recognized that conserving state funds is a purpose which is reasonable within the scope of equal protection. Therefore, a relatives' responsibility law requiring financially able adult children to contribute to the support of their "needy" parents has a rational relation to a conceivably legitimate state purpose and does not transgress the constitutional equal protection guarantee.

*Garvin P. Stryker*

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<sup>58</sup> This holding has been dependent on the presence of a fundamental interest. Such interests which may be affected by wealth include the fundamental fairness of a judicial proceeding, education, and the right to vote. *See, e.g., Douglas v. California*, 372 U.S. 353, 83 S. Ct. 814, 9 L. Ed.2d 811 (1963) (criminal appeal proceeding); *Gideon v. Wainwright*, 372 U.S. 335, 83 S. Ct. 792, 9 L. Ed.2d 799 (1963) (criminal proceeding); *Cleaver v. Wilcox*, 40 U.S.L.W. 2658 (N.D. Cal. March 22, 1972) (child custody proceeding); *Serrano v. Priest*, 487 P.2d 1241 (Cal. 1971) (education); *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 86 S. Ct. 1079, 16 L. Ed.2d 169 (1966) (right to vote).

<sup>59</sup> The complaint is not about the "needy" classification but about the duty imposed upon the children of such persons.

<sup>60</sup> *Dandridge v. Williams*, 397 U.S. 471, 90 S. Ct. 1153, 25 L. Ed.2d 491 (1970); *McGowan v. Maryland*, 366 U.S. 420, 81 S. Ct. 1101, 6 L. Ed.2d 393 (1961); *Allied Stores, Inc. v. Bowers*, 358 U.S. 522, 79 S. Ct. 437, 3 L. Ed.2d 480 (1959). *See generally Developments in the Law—Equal Protection*, 82 HARV. L. REV. 1065 (1969).

<sup>61</sup> *Shapiro v. Thompson*, 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed.2d 600 (1969). However, conservation of state funds will not support an invidious discrimination, which has been defined as "a classification which is arbitrary, irrational and not reasonably related to a legitimate purpose." *United States ex rel. Buonoraba v. Commissioner of Corrections*, 316 F. Supp. 556, 564 (S.D.N.Y. 1970). That language makes reasonability the applicable test.

<sup>62</sup> 100 Cal. Rptr. 635 (Dist. Ct. App.—1972, writ granted).