

## **A comparative analysis of Filial Responsibility: Italy and United States.**

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### **I. Introduction**

It is a global conventional rule that parents must provide basic necessities for their children, including food, shelter, clothing, medical care and child education<sup>1</sup>, but it is not the same for the reciprocal duty of children to support their parents.

The rules requiring children support their parents have existed for thousands of years. In the third century A. D., there were statutory mutual obligations of support and maintenance between children and parents in Roman society<sup>2</sup>. In medieval Europe, ethics dictated support of relatives. This ethical standard developed by custom and usage into support laws from parent to child and, ultimately, from child to parent<sup>3</sup>. Later, a law imposing a duty of parental support on children was incorporated in the *Code Napoleon*<sup>4</sup>. In 1601, a relative responsibility statute enacted by English Parliament in 1597, which applied only to parents and children, was extended to additional collateral relatives. Respectively, Italian and American responsibility laws emerged from these provisions.

Most Civil Law Systems and almost all Common Law States have rules and statutes that define parental and filial responsibility, but filial responsibility obligations and rules are controversial and often hard to enforce.

Parental responsibility can be defined as the group of functional powers conferred by the Law to both parents on an equal basis in order to care for their children and including their

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<sup>1</sup> See generally, *S. F. Edelstone*, Filial Responsibility: Can the Legal Duty to Support Our Parents Be Effectively Enforced?, 36 Fam. L. Q., 2002-2003, 501.

<sup>2</sup> See *M. Marrone*, Lineamenti di Diritto Romano, Giappichelli, 2001, 132.

<sup>3</sup> See *C. Doscher Byrd*, Relative Responsibility Extended: Requirement of Adult Children to pay for their Indigent Parent's Medical Needs, in Fam. L. Q., 1988-1989, 88.

<sup>4</sup> See art. 205.1 of Code Napoleon: "Children are liable for the maintenance of their parents and other ascendants in need".

property<sup>5</sup>. These powers must not be exercised in an authoritarian way but in such a way as to grant children gradual autonomy in the way that they lead their lives: “*according to their age, capabilities and maturity*”<sup>6</sup>.

The legal nature of parental care is no longer an issue for Scholars. Most of them consider parental responsibility as all the duties and all the rights given to parents by the Law in order to defend and promote the best interest of their children<sup>7</sup>.

The powers-duties which are included in parental responsibility in most of legal systems are: 1. ensure the child’s security; 2. maintain the child; 3. care for the child’s health; 4. determine and direct the child’s upbringing; 5. represent the child, 6. administer the child’s property<sup>8</sup>.

In the past, until the 19<sup>th</sup> century, the family care-giving was one of the main elements of society, but at the present time, the assumption of familial responsibility has been declining for a variety of reasons. First of all, the shift from a rural and agrarian society, characterized by the extended family, to an urban and industrial society, characterized by the nuclear family, has resulted in numerous changes to the traditional family unit.<sup>9</sup> It becomes more difficult to assist the elderly when they no longer live with or near their adult children. Today, in a society where the family has been “nucleated”, it is the community at large that has assumed the duty of guaranteeing a minimum standard of living to every citizen<sup>10</sup>. So, the maintenance obligation statutes not only regulates certain aspects of family relations, but also affects the social allocation of resources. Familial responsibility statutes have the potential to provide an effective supplement to Social Security and other governmental aid program. All of the filial responsibility statutes, like the parental responsibility statutes, impose upon able children the duty to provide necessities<sup>11</sup> for members of the family that are in need, but only from the second an enforceable group of rules comes.

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<sup>5</sup> See *T. Auletta*, *Il Diritto di Famiglia*, in *Diritto e Famiglia Trattato di Diritto Civile a cura di M. Bessone*, vol IV, tomo III, Giappichelli, 1999, 334.

<sup>6</sup> See art. 147 Italian Civil Code (1942).

<sup>7</sup> See *T. Auletta*, *supra* note 5 at 334.

<sup>8</sup> See *R. Martins*, *Parental Responsibility versus the Progressive Autonomy of the Child and the Adolescent*, in *Perspectives for the Unification and Harmonisation of Family Law in Europe*, *K. Boele-Woelki*, Intersentia, 2003, 269.

<sup>9</sup> See *U. Narayanan*, *The Government's Role in Fostering the Relationship Between Adult Children and Their Elder Parents: From Filial Responsibility Law to... What?, A Cross-Cultural Perspective*, 4 *ELDER LJ.*, 1996, 369.

<sup>10</sup> See *S. F. Edelstone*, *supra* note 1 at 501.

<sup>11</sup> See *id.* at 503.

## II. Filial Responsibility

### 1. Italy

In the Italian legal system, we can find a detailed legislation that regulates filial responsibility. It was after the Family Reformation Act of 1975 that three new articles in the Italian Civil Code (315, 324 and 433) were introduced. It is through the analysis of those articles that it will be possible find how the rules of filial responsibility work and how they can be enforced.

Article 315 of the Italian Civil Code provides that *“the child has to respect his parents and has to contribute, according to his substances and to his income, at the maintenance of the family until he lives with it”*.

This article states two duties for children, one patrimonial and one that could be considered “personal”.

According to some Italian Scholars, the personal duty to respect parents today consists of a empty “declamation”, a moral duty, that in practice cannot be enforced nor indicted.

This duty does not have any possibility to be enforced or to be punished in case of default, anyway the duty to respect parents cannot be considered only like a moral and social element because it is legally relevant based on a relation legally relevant: the family<sup>12</sup>. Which is the real meaning of this duty, considering that already exists a common duty to respect every persons<sup>13</sup>?

Furthermore, after the Family Law Reform Act of 1975 was removed from this article, the duty to honor parents, according to the general perception of parental power, longer no considered such power, but instead like a duty that must be exercised in the best interest of the child. Generally the personal rights of the family’s members and the idea of the family as the natural society where every member expresses his personality and where the fundamental rights are protected dominated the reform<sup>14</sup>.

Nevertheless at the present time the interpretation of the new article 315 mostly focuses on the patrimonial aspect of the filial relation for two different reasons: the lack of possibility to

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<sup>12</sup> See *F. Ruscello*, *Il dovere di rispetto dei figli: doveri etici, rapporto familiare e obbligo di collaborazione*, in *Studium Iuris*, Cedam, 1997, 895.

<sup>13</sup> Art. 2 Italian Constitution (1948).

<sup>14</sup> Art. 2 and 29 Italian Constitution (1948).

enforce the moral duty to respect parents<sup>15</sup> and the decrease of the paternal power on the children. Children must not honor their parents in a relation based on the awe physical and physiological, they should be considered in a relationship of equality. Collaboration replaces awe and decreases the distance between parents and children<sup>16</sup>.

From this point of view the duty to contribute to the maintenance of the family subsists until the child lives with it and it is the material expression of the collaboration's principle between the family's members. To calculate the amount of this duty are considered, according to the written rule, the substances, the income and the real patrimonial capacity of the child<sup>17</sup>. In addition, the paramount to quantify contribution must be not only income and assets of the child but also income and assets of the other members of the family who cohabit<sup>18</sup>.

The family, as considered by this article of the Civil Code, is not like an authoritative and hierarchical institution, dominated by the *pater familias*, but rather an equal community whose members have to contribute by themselves<sup>19</sup>.

Article 324 of the Italian Civil Code provides that "*Parents, enjoying parental authority, have the usufruct of the assets of the child. The fruits perceived are intended at the maintenance of the family and at the instruction and education of the children*".

The *ratio* of this declamation was individuated in the principle of family solidarity among consanguineous, in that it denied a child the use of a part of his assets. This part is used by the parents to meet the needs of the family.

The legal usufruct finds its basis on the membership of the family and the principle of collaboration. It also exists if the child does not live with the family and, unlike the duty to contribute, expires when the child comes full of age, even if he continues living with his family<sup>20</sup>. After that moment, the last article applies and the child full of age continues to support his family.

The legal usufruct of parents influences the conditions of execution of contribution from the duty. Indeed, before achieving of majority, the duty of contribution (art. 315 C.C.) is

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<sup>15</sup> See A. Cavanna, Onora il padre, in Studi in onore di Luigi Mengoni, Giuffrè, 1995, 254.

<sup>16</sup> See M. Bessone, G. Alpa, A. D'Angelo, G. Ferrando, La famiglia nel nuovo diritto, Zanichelli, 1977, 33.

<sup>17</sup> See B. Lena, Della potestà dei genitori, in Codice della famiglia, tomo I, Giuffrè a cura di M. Sesta, 2007, 1182.

<sup>18</sup> See A. Anceschi, Rapporti tra genitori e figli, Profili di responsabilità, Giuffrè, 2007, 81.

<sup>19</sup> See M. Dogliotti, La potestà dei genitori e l'autonomia del minore, in Trattato di Diritto civile e commerciale, a cura di A. Cicu, F. Messineo, L. Mengoni e continuato da P. Schlesinger, Giuffrè 2007, 198.

<sup>20</sup> See B. Lena, supra note 17 at 1216.

exercised in great part through the utilization by parents of income and utilities from the assets under legal usufruct<sup>21</sup>.

Some problems arise when there are elderly parents that do not cohabit with their children and are in financial need. In those cases, they have the right to benefit from a particular kind of maintenance obligation called alimony.

According to Article 433 of the Civil Code, children can maintain their parents in two ways: 1. Paying periodical contribution in favor of them ; 2. Housing them<sup>22</sup>.

Alimony, unlike the maintenance obligation that reflects relationship in the nuclear family, is the assumption of material needs by the younger family's members, according to the operational principle of family solidarity. Indeed, it is not necessary that it be a filial relation between those who provide and those who receive the benefit.

According to article 433, the duty to provide maintenance (alimony) is exercised by: the spouse, children, and in lacking of them the descendants.

In the Italian Civil Code there is a detailed statute in which alimony is requested by those who have insufficient income and are not able to provide for their maintenance. Alimony is assigned in proportion to the needs of the person who benefits and in proportion to the economic condition of the person who has to provide this support.

According to some Scholars<sup>23</sup>, the statement that the alimony is payable by a great number of relatives is an expression of a society very different from the reality. Indeed, the society considered in the Civil Code was based on the patriarchal family, characterized by an enlarged solidarity when the welfare state and the intervention by the State were almost non-existent. In some cases, the discipline of maintenance obligation seems contrary to the actual system of the welfare state, but in reality it is due to the coexistence of two different perspectives: one of the private family (alimony) and the other of the public that concerns the State.

One of the main problems that Italian Judges have to deal with is determining the entity who should provide the support child and the quantity of this support because of the lack of a specific statute in this sense.

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<sup>21</sup> See *G. Cian A. Trabucchi*, Della potestà dei genitori, art. 315, in *Commentario breve al codice civile*, Cedam 2007, 400.

<sup>22</sup> See also *A. Anceschi*, supra note 18 at 183.

<sup>23</sup> See *M. Dogliotti*, supra note 19.

In cases of controversy, a great numbers of elements have been considered by the Italian courts. The most important are: 1. substances of child, 2. the income that child receives, 3. the assets of child subject at legal usufruct, and the economic condition of the family's members. However, as we have said before, most of those principles are not easy to enforce and they are self-regulated.

## 2. United State of America

The American system of supporting the elderly evolved through a gradual merging of two different ideas. The original American system, based as it was on the model of the English Poor Law, combined two kinds of support. First was the responsibility of the old person's family, written clearly into the colonial and later the state laws and enforced by local and state governments. Second, was the responsibility of the government itself, to be discharged through a separate administrative apparatus, but less clearly defined and delineated and very unevenly enforced<sup>24</sup>. According to this system an elderly needy person, unable to work and having no property or visible means of support, would apply for public poor relief to the local authorities. The system worked until the end of 19<sup>th</sup> century, when it began to fail. Demographic changes in the American population, the increased industrialization and urbanization of the economy and society, the consequent undercutting of the importance and relevance of the rural economy and closing frontier, the arrival of indigent immigrants meant that the family and the old poor law system of caring for the indigent elderly were less and less responsive to current social needs<sup>25</sup>.

For the next two decades, this problem was not openly faced by many legislators or administrators, and it remained unresolved. After the First World War, various categories of indigents<sup>26</sup> except the aged were removed from the control of the local relief authorities and placed in state supervised programs.

In 1935, in results of these conditions and the political pressures there was the assumption of a measure of federal responsibility with the Social Security Act.

In 1992, ....

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<sup>24</sup> See *D. Hirshfield*, Who Cares for the Elderly, Family or State? The Origins of Shared Legal Responsibility in the Support of America's Erderly, in *Fam. L. Q.*, 1969, 222.

<sup>25</sup> See *E. A. Friedmann*, Impact of Aging on the Social Structure, in *Handbook of Social Gerontology*, Clark Tibbitts (ed.), 1960., 124-139.

<sup>26</sup> insane, blind, widows, orphans and sick.

In the United States of America, the family is the “*central unit of social and political life.*”<sup>27</sup> Despite recent fluidity in the family structure, many elderly persons living in non-institutionalized settings receive assistance from a family member or the family caregiver. Although the modern notion of a family is difficult to define, the family caregiver includes anyone who provides unpaid care and has a personal connection with the care recipient, such as blood relatives, friends and neighbors.<sup>28</sup>

Observing the Common Law jurisdictions<sup>29</sup> and in particular that of the United States, it is possible to find four methods used by courts to support the non-working aged: social insurance, public assistance, family responsibility, and personal assets<sup>30</sup>. Like in the Italian legal system, assistance provisions for the population of needy elderly people in the United States are dual: public and private.

Historically, the Common Law private system of responsibility for parental support originated in England with the Elizabethan Poor Law, which also marked the advent of public responsibility to care for the worthy poor. At Common Law, there was no duty on a child to provide for the needs of the indigent parent. Common Law provided for the enforcement of an adult child's promise to pay for future support of the parent, for necessities furnished to the parent at the child's request, and allowed recovery on implied contracts among children for support furnished by one child at the request of another. In the exercising of equitable powers, a court could pay the funeral expenses of a destitute parent from the estate of a minor child of the deceased.

The Poor Law of 1601 was the first act to establish a mutual duty of support between the parent and the legitimate child in the event of destitution. That law mandated that parents and grandparents support their children and grandchildren, and thus, all poor, old, blind, or lame persons “*ought in return to be supported by their offspring who owe them honor and reverence*” regardless of misbehavior by parents or of other factors.<sup>31</sup> This legal mandate remained in place in England until the significant reforms enacted after World War II.

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<sup>27</sup> S. Staicovici, Respite Care for All Family Caregivers: The Lifespan Respite Care Act, 20 J. Contemp. Health L. & Pol'y, 2003, 243.

<sup>28</sup> See id.

<sup>29</sup> See generally S. Moskowitz, Adult Children and Indigent Parents: Intergenerational Responsibilities in International Perspective, 86 Marq. L. Rev., 2002, 401.

<sup>30</sup> See also W. Walton Garrett, Filial Responsibility Laws, 18 J. FAM. L., 1979.

<sup>31</sup> D. Thompson, I Am not My Father's Keeper: Families and the Elderly in Nineteenth Century England, 2 Law & Hist. Rev., 1984, 265.

Later, the duty was expanded by the same statute to include other family members. After the expropriation of the monasteries by Henry VIII, there was a serious shortage of private funds to aid the poor. The Act of 1601 therefore established public responsibility for the support of the poor. An essential feature of the Elizabethan Poor Law was the principle of primary family responsibility. The primary liability for support was personal, but if the individual was not able to provide self-support, then the liability was on the family. Only after exhausting private responsibility were public funds expended to support the poor. The goal of primary family responsibility was to protect the public from the burden of supporting persons who had family able to provide assistance. This goal remains the principal purpose of today's filial support laws.

At the present time, the Courts, which may use mediation or hearings to determine if support is necessary, employs five factors to determine eligibility for, and the amount of, support: *“(1) the financial needs of the applicant [necessary to meet] reasonable expenses for housing and medical costs; (2) the income, earning capacity, property and other financial resources of the applicant; (3) any physical or mental disability of the applicant; (4) the adult child's financial responsibility to support a spouse or children; and (5) allegations by the adult child of the parent's abandonment, abuse, or neglect.”*<sup>32</sup>

The Elizabethan system for dealing with elderly poverty was transported across the ocean and transplanted as the prototype for early welfare systems in the American colonies.

Until the New Deal legislative reforms in the 1930s, most legal provisions granting relief to the poor, including family responsibility provisions, were initiated by state and local governments and largely based on the English model outlined above.

In modern times, state and local provisions for the indigent elderly are no longer the only responses to their need. The advent of Social Security in the 1930s, health service payments through Medicare in the 1960s, and the growth of private pension plans have all created substantial support for the elderly separate from state and local welfare laws<sup>33</sup>.

Today, thirty states have filial responsibility laws in the form of statutes<sup>34</sup> which create a legal duty to support elderly, indigent parents. Although these state statutes are diverse and their

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<sup>32</sup> W. Walton Garrett, *supra* note 30.

<sup>33</sup> See generally S. Moskowitz, *supra* note 29 at 7.

<sup>34</sup> See, e.g., Alaska, California, Delaware, Georgia, Indiana, Los Angeles, Mississippi, Montana, Nevada, New Hampshire, New Jersey, North Dakota, Tennessee, Utah and West Virginia.

rationales, triggering mechanisms, and enforcement procedures vary enormously, most statutes reflect a seemingly reciprocal contract obligation because parents have provided support in the past, the adult children now owe support to needy parents. Throughout the country, courts have interpreted filial responsibility laws to require children to provide financial support for their indigent parents, an obligation that would relieve state and local authorities from the burden of supporting with public funds those poor persons whose relatives could provide private support for them. Indeed, state appellate courts have upheld filial responsibility statutes against constitutional challenges alleging a violation of the Equal Protection Clause, an illegal “*taking*” of property and double taxation of relatives<sup>35</sup>.

In some statutes, the financial need of a parent that triggers the legal duty is described in general terms, e.g., the aged person is “*unable to maintain*” himself. With other statutes, financial need is identified in terms of “*necessary food, clothing, shelter and medical attention*”, or as the need to provide “*necessaries*”, “*medical expenses*”, or “*burial expenses*”<sup>36</sup>.

If state or local welfare authorities have provided assistance to an indigent parent, many states require adult children or other relatives to reimburse the public treasury. This is similar to the original 1601 Poor Law that gave English parishes the power to claim back from relatives the cost of supporting paupers. Similarly, parents are commonly obligated to reimburse welfare authorities for public assistance provided to their children.<sup>37</sup>

Although these statutes are found in many states, the 1965 enactment of the federal Medicaid statute initially resulted in decreased reliance on filial responsibility laws. The federal law prohibits states from considering the financial responsibility “of any individual for any applicant or recipient of assistance under the [Medicaid] plan unless such applicant or recipient is such individual's spouse or such individual's child who is under the age of 21”<sup>38</sup>. However, this prohibition applies only to eligibility for Medicaid, and not to other benefits; and it does not rule out normal enforcement of state statutes. After the advent of Medicaid, some states repealed their filial responsibility laws, but the vast majority have remained in effect.

Because relatively few cases invoking these laws are reported in appellate court decisions,

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<sup>35</sup> See *S. Moskowitz*, supra note 29 at 8.

<sup>36</sup> See *id.*

<sup>37</sup> See *id.* at 9.

<sup>38</sup> Title 42, U.S. Code, section 1369a (1994).

and trial court cases are rarely printed and reported, enforcement of these state statutes is difficult to gauge. Even so, state courts have uniformly upheld filial responsibility statutes against constitutional attacks. As the South Dakota Supreme Court noted in a relatively recent case, challenging its filial responsibility law on equal protection grounds: “*The fact that an indigent parent has supported and cared for a child during that child’s minority provides an adequate basis for imposing a [legal] duty on the child to support that parent ... . It logically follows that the adult child should bear the burden of reciprocating on that benefit in the event a parent needs support in their [sic] later years*”<sup>39</sup>.

### **III. Parental responsibility versus Filial Responsibility**

Parental responsibility is the “new” term used by the Scholars<sup>40</sup> to speak about the original concept of *patria potestas* considered no longer like the relationship between parents and children where the father was in a position of supremacy in front of the children.

The historical perspective of the parental power-responsibility in the Civil Law Systems was divided in three fases: 1. the origin in the Roman Law; 2. the consolidation in the Napoleon’s period; 3. the modernization in Italian Legal System (1975).

After the Italian Family Law reformation Act of 1975 at the social change of the relationship between parents and children followed a legal change in the Civil Code. The main principles that aimed the Reform were in addition the principle of equality, solidarity and of the interest of the children<sup>41</sup>.

The modernization and the new role enjoyed by the minor of age, begun by the legislator and continued by judges<sup>42</sup>, consist on the affirmation that the child is no longer a part of the asset of the parents, but he is a person having rights and duties.

According to the articles of the Italian Civil Code Parental responsibility includes personal and patrimonial duties. At the first aspect belong the duty to educate and to care child, and at the second the duty to administrate and manage the asset of the child. This distinction is inferred from the reading of the article 147 of the Italian Civil Code that states: “*The wedding*

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<sup>39</sup> *Americana Healthcare Ctr. v. Randall*, 531 N.W.2d 566 (S.D. 1994).

<sup>40</sup> See generally *N. V. Lowe, G. Douglas*, Bromley’s Family Law, Oxford University Press, 10th ed, 2007, 373.

<sup>41</sup> See *A. Miranda*, Scelte Esistenziali ed Educative dei Minori in Diritto Inglese ed Italiano, in *Rassegna di Diritto Civile*, 1986, 1022.

<sup>42</sup> See Tribunale Minorile di Genova, 5 dicembre 1978, in *Giur. Merito*, 1980, 305.

*imposes on both spouses the obligation to maintain, instruct and educate their children keeping in mind their capacities and natural inclinations and aspirations*". The article, focusing on *capacities and natural inclinations and aspirations of the child*, gives to the parents the duty to lead the child through his personal wishes<sup>43</sup>.

In the same article it is affirmed the patrimonial duty of the parents to maintain their children. The maintenance obligation includes not only the financial care that allow the cohabitation and the meeting of the natural needs, but also all the costs for the implementation of the children.

The duty to maintain the children is attributed to both parents and it depends on the income, earning capacity, property and other financial resources of them, including also the housework. The obligation does not expire when the child becomes full of age and subsists<sup>44</sup>. The duty to maintain is follow the duty to educate that is a concept very hard to be defined. The main issue addressed by the Italian Case Law<sup>45</sup> concerned the parent's duty to respect the choices of the children in front of the education, professional training, political and religious orientation.

For most Common Law System it is not a novel idea that parents are expected to provide for their children's needs. A father had only a non-enforceable moral duty to support his children in the English Common Law tradition, from which the American Laws have basically derived<sup>46</sup>. It was not until the 19<sup>th</sup> century that a legally enforceable child support duty was created in American Law. American Courts found it necessary to depart from English legal precedent to create the duty in order to address the increasing numbers of single mothers living in poverty and depending on the relief from others to help them survive in the absence of their husband.

Initially, this duty was civil one, designed to conserve the resources of charitable groups upon whom many of the single mothers came to depend. Subsequently, society began to recognize

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<sup>43</sup> See *M. Sesta*, *Dei Diritti e dei Doveri che nascono dal Matrimonio*, in *Codice della Famiglia* a cura di *M. Sesta*, Giuffrè, 2007, 475.

<sup>44</sup> For the earlier discussion on this subject see *A. Anceschi*, *Rapporti tra Genitori e Figli, Profili di Responsabilità*, Giuffrè, 2007; *G. Autorino Stanzione*, *La Filiazione. La Potestà dei Genitori. Gli Istituti di Protezione del Minore*, Giappichelli, 2007; *M. Giorgianni*, *Della Potestà dei Genitori*, in *Commentario breve al Codice Civile*, *G. Cian*, *A. Oppo*, *A. Trabucchi*, 8th ed., Cedam, 2007.

<sup>45</sup> See Tribunale Minorile di Genova, 9 febbraio 1959; Tribunale Minorile di Bologna, 13 maggio 1972; Tribunale Minorile di Bologna, 26 ottobre 1973.

<sup>46</sup> See *K. E. Cary*, *The Deadbeat Daddy Dilemma: An Investigation of Parental Responsibility and Fundamental Rights in State v. Oakley*, 629 N.W.2d 200 (Wis. 2001), 22 *Child. Legal Rts J.*, 2002-2003, 10.

childhood as a distinct stage of life, which should be valued for more than the ability to contribute to the household economy. As a result, the duty evolved such that private individuals, including mothers and other family members, could be reimbursed for providing support in lieu of the fathers. However, criminal non-support statutes were not developed until the late-19<sup>th</sup> century to punish the fathers who were avoiding their civil obligation, resulting in the mothers and children's dependence on state aid for support<sup>47</sup>.

The desire to reduce the dependency continue to dominate current child support policy on national and state levels. Beginning with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), the modern welfare system was reformed in order to reduce dependency upon the State by children and families in poverty.

In USA there is also an increase demand upon States to aggressively enforce child support orders in an effort to recoup the costs spent on supporting the children. Consequently, in order to enforce this civil obligation of child support, there has been an increased effort by policymakers to criminalize failure to support<sup>48</sup>.

It is important that children are well educated, and although it has been established that there is no federally mandated fundamental right to receive education, some States give the children (like citizens) a fundamental right to receive education by their parents.

The primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition, and also in this system seems clear that the interests of the children to receive an education should be superior to those of their parents to control them. Parents have great freedom to raise their children, but they have to respect certain boundaries<sup>49</sup>.

#### **IV. Conclusion**

In Common Law and Civil Law systems the main justification for filial responsibility laws rests upon a moral duty existing between parents and children. Since parents provide food, clothing, shelter, and education for their children, children are said to have a reciprocal moral

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<sup>47</sup> See *id* at 11.

<sup>48</sup> See *L. Kellman*, *Chil-Support Enforcement Moves Online; Clinton Wants Failure to Pay to be Felony*, *Wash. Times*, July 23 1996, A6.

<sup>49</sup> See *J. C. Cox*, *Parental Rights and Responsibilities of Control over Children's Education*, *Journal of Law and Education*, January 1997.

duty to provide the same necessities when their parents require such assistance. Several studies have shown that many children do provide meaningful non-financial personal care for indigent parents who might otherwise require expensive, government-funded nursing home care<sup>50</sup>.

Filial responsibility statutes need to become enforceable like the parental responsibility rules. Today it is a universal rule that parents have to provide the basic necessities of their children. But, until adult children who do not support their parents in need are not punished by the State, those rules will remain an empty declamations, laws in books.

As we have seen, the most relevant and problematic aspect of filial responsibility involves the patrimonial duties of children towards their relatives. How can the authorities enforce that duty without increasing costs?

First, if the authorities wish to prosecute an adult child, they will need to know about his income, his bank account and any other source that could be used to support his parents. This requires more cost for the society. Secondly, it is very difficult to assess the exact amount of the elder's need. In addition, there is the risk of discrimination on the basis of wealth.

When faced with this situation, when the State and the Public Organs do not themselves provide and when they are not able to enforce this kind of duty it is possible to find that there are family members, in particular the adult children, that can provide care for their relatives in need, not because the state impose them to do so, but because of their personal sense of moral obligation to their first caregivers. In this situation, the state should continue to work in this direction, but following another view: encouraging family caregiving with benefits, protection and any kind of government action that would support the family caregiving.

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<sup>50</sup> See *T. A. Kline, A rational Role for Filial Responsibility Laws in Modern Society?*, in *Fam. L. Q.*, 1992-1993, 205.