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## Liability of Relatives for Support of the Mentally Ill in State Institutions

Edward A. Weiner

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tion without thereafter being subjected to the inevitable air of uncertainty which dominates such migratory divorces.

But even if the act is representative of public policy, its ultimate utility is dependent upon what the courts do with its language. Although there is little authority as of yet, the California courts have given no indication that they intend to adopt the philosophy of the act (at least, as to section 150.1), which apparently would involve a departure from certain policies developed under the common law.<sup>42</sup> Also, there seems to be a lack of confidence in the feasibility of the act evidenced by the sparse reliance upon it since its adoption fifteen years ago. In the few times the statute has been attacked as being invalid, the courts have failed to rule on its validity, always deciding that it was unnecessary to rely on the statute to find lack of bona fide domicile in the rendering state.<sup>43</sup>

As of today, the total impact of the act appears to be practically nil. This is probably because the attacking party is afforded an adequate remedy under the California common law in these situations, whereas reliance upon the act would subject a successful litigant to the possibility of reversal on the grounds that the act is unconstitutional. Whatever the reason, one thing is clear; the act has served no useful purpose since its adoption by the legislature. In the fifteen years that the act has been embodied in the Civil Code not one case has been found where the application of the act has brought about a result different from that which would be reached under the common law, and there is no reason to believe that this will change in the near future.

*Donald F. Powell\**

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<sup>42</sup> The California courts have shown no indication of dispensing with the doctrine of estoppel in cases involving validity of foreign divorce decrees. See authorities cited note 20 *supra*.

<sup>43</sup> See *Dietrich v. Dietrich*, 41 Cal. 2d 497, 261 P.2d 269 (1953); *Carmichael v. Carmichael*, 216 Cal. App. 2d 674, 31 Cal. Rptr. 514 (1963); *Estate of Vinson* 212 Cal. App. 2d 543, 28 Cal. Rptr. 94 (1963).

\* Member, Second Year Class.

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## LIABILITY OF RELATIVES FOR SUPPORT OF THE MENTALLY ILL IN STATE INSTITUTIONS

In January 1964, the Supreme Court of the State of California handed down its opinion in *Department of Mental Hygiene v. Kirchner*.<sup>1</sup> The decision declared section 6650 of the Welfare and Institutions Code to be invalid as violative of the basic constitutional guaranty of equal protection of the law.<sup>2</sup> The case received notice in news publications<sup>3</sup> which is understandable in view of the significant

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<sup>1</sup> 60 Cal. 2d 716, 388 P.2d 720, 36 Cal. Rptr. 488 (1964), 77 HARV. L. REV. 1523.

<sup>2</sup> *Id.* at 717, 388 P.2d at 720, 36 Cal. Rptr. at 488.

<sup>3</sup> *Time*, Feb. 14, 1964, p. 76; *San Francisco Chronicle*, Feb. 2, 1964, p. 21, col. 5; *San Francisco Examiner*, Jan. 31, 1964, p. 14, col. 8.

impact it is likely to have on the mental health programs of this State<sup>4</sup> and possibly of other states as well.<sup>5</sup>

Section 6650 provides, *inter alia*,

The husband, wife, father, mother, or children of a mentally ill person or inebriate, and the administrators of their estates, and the estate of such mentally ill person or inebriate, shall be liable for his care, support, and maintenance in a state-institution of which he is an inmate.<sup>6</sup>

Through this statute, the legislature has classified certain persons for a special assessment based on the fact that the persons so classified bear a specified relationship to another who is deriving the benefits of State supported care for the mentally ill. By declaring this statute unconstitutional, the court has determined that a classification based on family relationship is arbitrary and invidious for the purpose of relieving the State of the burden of caring for the mentally ill. It stated that a statute obviously violates the equal protection clause if it selects one particular class of persons for a species of taxation and no rational basis supports such classification.<sup>7</sup>

There can be no argument with the statement of the court that a classification based on an irrational basis is unconstitutional. The decision that the classification in question was irrational is very doubtful. The generally accepted criterion used to determine whether a particular statute is within the limits set out by the equal protection clause is that the basis for classification must be reasonable in light of the purpose of the legislation.<sup>8</sup> The ultimate conclusion a court must make before striking down a statute as violative of the equal protection guaranty then, is that the discrimination rests on no reasonable basis and is essentially arbitrary.<sup>9</sup> Is there no reasonable basis supporting the classification of persons made by section 6650?

The court held *Department of Mental Hygiene v. Hawley*<sup>10</sup> to be dispositive of the issue before it in *Kirchner*. In order to justify that conclusion, it was necessary to declare that for civil commitments as well as for commitments pursuant to sections of the penal code, the purposes of confinement and treatment or care encompass the protection of society from the confined person.<sup>11</sup> This conclusion seems irreconcilable with twentieth century ideas about the nature of mental illness.

<sup>4</sup> Estimated decrease in annual revenue is in excess of five million dollars. See Respondent's Petition for Rehearing, app. E, *Department of Mental Hygiene v. Kirchner*, 60 Cal. 2d 716, 723, 388 P.2d 720, 36 Cal. Rptr. 488 (1964) (rehearing denied). The economic advantage gained through absence of legal financial responsibility will impair the utilization of certain family social and psychological resources in achieving the most appropriate treatment and care for the patient. See Respondent's Petition for Rehearing, app. F, *Department of Mental Hygiene v. Kirchner*, *supra*.

<sup>5</sup> Forty-two states presently have similar statutes. See Respondent's Petition for Rehearing, app. C, *Department of Mental Hygiene v. Kirchner*, *supra* note 4.

<sup>6</sup> CAL. WELFARE & INST'NS CODE § 6650.

<sup>7</sup> 60 Cal. 2d at 722, 388 P.2d at 724, 36 Cal. Rptr. at 492.

<sup>8</sup> *Colgate v. Harvey*, 296 U.S. 404 (1935); *State Bd. of Tax Comm'rs v. Jackson*, 283 U.S. 527 (1931); *Whitney v. California*, 274 U.S. 357 (1927); *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61 (1911).

<sup>9</sup> *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 79 (1911).

<sup>10</sup> 59 Cal. 2d 247, 379 P.2d 22, 28 Cal. Rptr. 718 (1963).

<sup>11</sup> 60 Cal. 2d at 720, 388 P.2d at 722, 36 Cal. Rptr. at 490. See Note, 77 HARV.

The present attitude of those charged with the care of mentally ill persons encompasses rehabilitation rather than restraint. The locked door policies of the past have given way to a policy of care for the sick. In a letter on this subject Dr. Walter Rapaport declared, "With the trend away from custody toward treatment, there has also developed the realization that by and large the mentally ill cannot be considered as dangerous to society." He went on further to state, "[T]he traditional concept that the mentally ill must be isolated and secluded in hospitals for the protection of society must be re-examined, and when it is carefully and thoroughly re-examined I am sure that it will be concluded that we are no longer justified in retaining that concept."<sup>12</sup>

The fact that persons charged with a crime are not similarly situated with persons who are institutionalized pursuant to a civil commitment was recognized in *Hawley* in the court's reiteration of the following words from an older case.

Persons charged with crime who are or become insane naturally belong to a class distinct and different from insane persons who are not so charged with crime. Under the general law, the expense of capture, detention, and prosecution of persons charged with crime is to be borne by the county. The party, though insane, is still detained under the law to answer for his crime when he shall become sane. If he were not charged with crime, though he were insane, he might not be sent to the asylum. His insanity might be of a nature not requiring that he be restrained, or his friends, relatives, or guardian might take care of him or consign him to a private institution. If, however, he is charged with crime, he must be committed to the asylum, if found insane, whatever the nature of his insanity may be.<sup>13</sup>

Hence, the decision in *Hawley* can not be dispositive of *Kirchner*. A civil commitment to a state institution is far different from the commitment of a person after indictment for a crime. A commitment pursuant to the criminal law may be for the protection of society and upon that determination the *Hawley* decision is justified. The primary purpose of a civil commitment is not the protection of society but is rather the rehabilitation of the individual. Thus, *Kirchner* is distinguishable from *Hawley* and must stand or fall on the application of the fourteenth amendment to a different factual situation.

Family relationship has long been honored as a basis for imposing a duty of support. The Bible is filled with references to situations where morality dictates that one adult should honor or support another due to the bonds of marriage or

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L. REV. 1523 (1964), where it is noted that the court's view in this regard led to the application of a "benefit test." The court reasoned that the entire public benefits from the care dispensed by state institutions and therefore the entire public should pay for the care and no class should be singled out.

<sup>12</sup> Letter of Walter Rapaport, M.D., Superintendent and Medical Director of Agnews State Hospital to Stanley Mosk, Attorney General, February 6, 1964. See Respondent's Petition for Rehearing, app. B, Department of Mental Hygiene v. Kirchner, 60 Cal. 2d 716, 723, 388 P.2d 720, 36 Cal. Rptr. 488 (1964) (rehearing denied). See also President Kennedy's message to Congress, H.R. Doc. No. 58, 88th Cong., 1st Sess., 10-14 (1963); Loeb, *Mental Health New Frontiers*, Nation, May 18, 1963, p. 418; *Mental Illness a New Classification and a Greater Hope*, Time, Nov. 29, 1963, p. 53; *Unlocking Our Mental Hospitals*, Look, Feb. 26, 1963, p. 34.

<sup>13</sup> Napa State Hospital v. Yuba County, 138 Cal. 378, 381-82, 71 Pac. 450, 451-52 (1903).

consanguinity.<sup>14</sup> The story of Joseph found in the Old Testament<sup>15</sup> is a well-known example of the deeply rooted emphasis placed upon family ties in our Judeo-Christian heritage. Religious scholars have interpreted the word "honor" as used in the Fifth Commandment to include the duty of support.<sup>16</sup> The works of such great philosophers as Aristotle,<sup>17</sup> Plato,<sup>18</sup> and John Locke<sup>19</sup> contain similar thoughts.

It would seem that these authorities alone would be sufficient evidence that there is nothing unreasonable about a classification on the basis of family relationship for the purpose of care, support, and maintenance. But we need not stop there. In 1601, England enacted a poor relief statute placing the burden of maintaining the poor on able relatives.<sup>20</sup> Of this statute it was said that Parliament had merely made into law what was already the natural obligation of man.<sup>21</sup>

Until the *Kirchner* decision, this rationale has been the basis for judicial analysis of the type of statute in question.<sup>22</sup> In *People v. Hill* the court declared:

that the primary duty of affording support to a poor and helpless person rested on those upon whom, because of consanguinity, was imposed a natural and moral, though imperfect, duty to relieve and maintain, and that, so long as such primary duty existed and could be enforced the public should be exonerated from the burden.<sup>23</sup>

In *State Comm'n in Lunacy v. Eldridge* the court declared:

And, as to the proposition of the alleged unequal burden imposed upon one class, thus, as contended, discriminating in favor of another upon whom the burden is not cast, the answer is, we think, that the so-called unequal burden is only one springing from a natural duty which as to its performance the legislature has recognized by positive enactment.<sup>24</sup>

In *Beach v. District of Columbia*:

Placing a secondary obligation upon the father finds its validity in the reasonableness of attaching legal significance to the natural bonds of consanguinity. It is not unreasonable, it is not a denial of due process, for the law to attach an enforceable obligation to the moral obligation which exists in the usual family relationship of father and daughter. Recognition by statute of this obligation is

<sup>14</sup> *Genesis* 43-47; *Exodus* 20:12, 21:15, 21:17; *Leviticus* 19:3, 20:9; *Deuteronomy* 5:16, 27:16; *Proverbs* 1:8-9, 20:20, 23:22.

<sup>15</sup> *Genesis* 43-47.

<sup>16</sup> CODE OF JEWISH LAW (KITZUR SHULBAN ARUH) \*c. 143 § 1.

<sup>17</sup> VIII ARISTOTLE, NICOMACHEAN ETHICS \*c. 12, expressing the idea that family members have a unique identity with each other setting them apart from others.

<sup>18</sup> IV PLATO, LAWS \*717, "Next comes the honour of living parents to whom, as is meet, we have to pay the first and greatest and oldest of all debts . . ."

<sup>19</sup> LOCKE, CONCERNING CIVIL GOVERNMENT, SECOND ESSAY \*66, relating the natural obligations between parents and children.

<sup>20</sup> An Act for the Relief of the Poor, 1601, 43 Eliz., c. 2, § 7.

<sup>21</sup> *Rex v. Munden*, 1 Str. 190, 93 Eng. Rep. 465 (K.B. 1719).

<sup>22</sup> *Beach v. District of Columbia*, 320 F.2d 790 (D.C. Cir.), cert. denied, 375 U.S. 943 (1963); *People v. Hill*, 163 Ill. 186, 46 N.E. 797 (1896); *State v. Bateman*, 110 Kan. 546, 204 Pac. 682 (1922); *In re Idleman's Commitment*, 146 Ore. 13, 27 P.2d 305 (1933).

<sup>23</sup> 163 Ill. 186, 190, 46 N.E. 797, 798 (1896).

<sup>24</sup> 7 Cal. App. 298, 304, 94 Pac. 597, 599 (1908).

not at odds with recognition that the public in many cases is called upon to supply total support for such individuals . . . .<sup>25</sup>

It is apparent from the above quotations and citations that there is a firm foundation in our society for recognizing that between family members a special relationship exists that is not present in ordinary relationships between persons. It is upon this special relationship and moral obligation that the classification made by section 6650 and statutes like it is based. The classification hardly seems unreasonable for the purpose of the statute, which is to provide funds to be used in the support of persons in State institutions.

The California court in its opinion took notice of the social evolution of the past half century, which has seen an expansion of public welfare programs to which all citizens contribute through presumptively duly apportioned taxes.<sup>26</sup> This is hardly acceptable, though, as a basis for the decision. The court's function is not to make law in response to changing public policy where the legislature has left no void as to what the law shall be.<sup>27</sup>

The equal protection limitation has the purpose of preventing legislatures from enacting laws which discriminate amongst persons similarly situated<sup>28</sup> and it does not forbid discrimination in respect to things that are different.<sup>29</sup> As already shown, the well-recognized natural obligation to support a member of one's family creates a special relationship which makes the persons classified by section 6650 different from all others.

The Supreme Court of California has declared that the discrimination or inequality produced, in order to conflict with the constitutional provisions, must be actually and palpably unreasonable and arbitrary, or the legislative determination as to what is a sufficient distinction to warrant classification will not be overthrown.<sup>30</sup> If this be true, then that court has held that classification of section 6650 to be actually and palpably unreasonable and arbitrary. This hardly seems correct in view of the authorities cited above.

Just last year, the Supreme Court of the United States reaffirmed its refusal to sit as a "superlegislature to weigh the wisdom of legislation."<sup>31</sup> In doing so it cited the dictum of a great jurist, Mr. Justice Holmes, who stated,

I think the proper course is to recognize that a state legislature can do whatever it sees fit to do unless it is restrained by some express prohibition in the Constitution of the United States or of the state, and that courts should be careful not to extend such prohibitions beyond their obvious meaning by reading into them conceptions of public policy that the particular court may happen to entertain.<sup>32</sup>

The existence of a social evolution then is not really at issue when a court

<sup>25</sup> 320 F.2d 790, 793 (D.C. Cir.), *cert. denied*, 375 U.S. 943 (1963).

<sup>26</sup> 60 Cal. 2d at 722, 388 P.2d at 723, 36 Cal. Rptr. at 491.

<sup>27</sup> *Old Dearborn Distrib. Co. v. Seagram-Distillers Corp.*, 299 U.S. 183, 196 (1936).

<sup>28</sup> *South Carolina ex rel. Phoenix Mut. Life Ins. Co. v. McMaster*, 237 U.S. 63, 72-73 (1915).

<sup>29</sup> *Puget Sound Power & Light Co. v. City of Seattle*, 291 U.S. 619, 624 (1934).

<sup>30</sup> *Department of Mental Hygiene v. McGilvery*, 50 Cal. 2d 742, 760, 329 P.2d 689, 698 (1958).

<sup>31</sup> *Ferguson v. Skrupa*, 372 U.S. 726, 731 (1963).

<sup>32</sup> *Tyson & Brother-United Theatre Ticket Officers, Inc. v. Banton*, 273 U.S. 418, 446 (1927) (dissenting opinion).

passes upon the validity of a statute under the guarantee of equal protection. There is only one real issue, and that is whether there is any reasonable basis upon which the discrimination rests in light of the purpose of the statute.<sup>33</sup> Family relationship is a reasonable basis for imposing an obligation upon one adult to support another. This precise obligation the legislature has sought to impose, and for the court to declare the legislature lacks the power to do so amounts to "superlegislation" and nothing more.

*Edward A. Weiner\**

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<sup>33</sup> *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61 (1911).

\* Member, Second Year Class.