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Excerpt
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Introduction

Much of contemporary discourse surrounding family support obligations has long centered on parents' financial contributions to their minor children. "Deadbeat Dads" who failed to meet parental support obligations, and whose children required public assistance, were central targets in the 1996 welfare reforms, the culmination of years of policies directed at non-supporting parents. Largely absent in these debates was the responsibility of other family members – adult children, grandparents, siblings, and grandchildren – to support family members in need. Known as responsible relative or filial responsibility laws, such requirements have a long history in American social policy dating to colonial America. In 2016, twenty-nine states still had laws requiring adult children to support needy parents, although enforcement of such obligations had waned a generation earlier.[1]

In the face of rising health-care costs, third-party providers, such as nursing homes, are using laws requiring relative support to recover unpaid bills. In 2017, Elnora Thomas of Florida and her sister were sued by her mother's nursing home for unpaid bills totaling $50,000. The suit threatened to place a lien on Thomas' home, her only major asset. Attorneys helped her mother qualify for Medicaid to pay for the nursing home, and the suit was dropped.[2] Two years later, fifty lawsuits were filed by long-term care facilities in Pennsylvania seeking payment from adult children

[1] Sylvia Macon, "Grow Up Virginia: Time to Change Our Filial Responsibility Law." *University of Richmond Law Review*. 51.1 (2016): 265.

[2] Beth Baker, "Paying for Mom: Little-Known Laws Force Families to Fund Parents' Care." *AARP Bulletin Today*. January 10, 2009. Electronic.

for parents' medical bills. John Pittas was the target of one such lawsuit. In 2007, Pittas' mother was seriously injured in a car accident and received nursing home care for six months while she recovered. When able, she returned to Greece, and the nursing home sued her son for the $92,000 she owed for care. The Pennsylvania Superior Court ruled in 2012 that, under the state's filial responsibility laws, Pittas was legally responsible for the unpaid balance. He had an annual net income of $85,000, according to the court decision.[3] Three siblings in North Dakota were sued by their father's nursing home for $45,000 in unpaid bills after his death. Their experience prompted the North Dakota legislature to pass a law changing the filial responsibility law to prevent such cases.[4]

Pennsylvania, South Dakota, and California are among the states turning to filial responsible laws to address the high medical costs the elderly often face in their later years. Escalating costs of nursing home care are prompting providers to use the laws to enforce the legal obligation of adult children to contribute to their parents' medical care. The Pennsylvania legislature revitalized its law in 2005 to enable nursing homes to sue family members for unpaid bills under filial responsibility statutes.[5] One legal scholar calls these laws "America's best kept secret," and some argue that enforcing such responsibility will lessen the burden of medical costs on Medicaid and encourage individuals to better plan for health-care costs with long-term care insurance.[6]

Demographic changes are fueling the problem of rising health-care costs for older Americans – and who will pay for that care. Elderly

[3] W. Wade Scott and Erica L. Sharp, "The Wolf at the Door: Filial Responsibility under Delaware Law." *Widener Law Review*. 20 (2014): 244–245; *Health Care & Ret. Corp of Am.* v. *Pittas,* 46A.3d 719, May 7, 2012 (Supreme Court, Pennsylvania).

[4] Blair Emerson, "Little-Known Law Allows Nursing Homes to Sue Adult Children for Unpaid Bills." *Bismarck Tribune*. July 28, 2018, Electronic; Blair Emerson, "Bill to Amend North Dakota's Filial Statue Sent to Burgum." *Grand Forks Herald*. March 14, 2019, Electronic; Jerilyn Klein Bier, "Parents' Long-Term Care Remains a Potential Liability for Children." *Financial Advisor*. March 26, 2019, Electronic. www.fa-mag.com/news/parents-long-term-care-remains-a-potential-liability-for-children-43986.html

[5] Katherine C. Pearson, "Re-Thinking Filial Support Laws in a Time of Medicaid Cutbacks: Effect of Pennsylvania's Recodification of Colonial-Era Poor Laws," *Pennsylvania Bar Association Quarterly*. 76 (2005): 162, 166.

[6] Ann Britton. "America's Best Kept Secret: An Adult Child's Duty to Support Aged Parents." *Western Law Review*. 26 (1989–1990): 351; Matthew Pakula, "A Federal Filial Responsibility Statute: A Uniform Tool to Help Combat the Wave of Indigent Elderly," *Family Law Quarterly*. 39.3 (2005–2006): 859–877; Allison E. Ross, "Taking Care of Our Caretakers: Using Filial Responsibility Laws to Support the Elderly beyond the Government's Assistance," *Elder Law Journal*. 16 (2008): 167–209.

Americans' share of the nation's population increased from 35 million in 2000 to 52 million in 2018. Senior citizens – those aged sixty-five or older – were 12.4 percent of the nation's population in 2000, rising to 16 percent in 2020.[7] Health-care spending continues to increase, accounting for 19.7 percent of the Gross Domestic Product in 2020 at $4.1 trillion. Medicare spending that year totaled $829.5 billion, 20 percent of all health-care expenditures. Medicaid spending, up 9.2 percent, totaled $671.2 billion, 16 percent of total health-care expenditures. Prescription drug costs were $384.4 billion. Spending for Medicare and Medicaid accounts for 36 percent of the nation's health-care costs, and the aged are central to both programs.[8] A growing elderly population indicates that these trends will continue.

Social security, including Old Age, Survivors, and Disability Insurance (OASDI) and Supplemental Security Income (SSI), are critical sources of income for aged Americans, and scholars agree that these programs have provided some measure of economic security and reduced poverty among the aged.[9] Poverty rates among senior citizens were 35.2 percent in 1959, higher than the rates for both children (27.3 percent) and adults younger than sixty-five (17 percent). In 2021, 5.8 million senior citizens (10.3 percent) lived in poverty using the official poverty measure, while 6 million (10.7 percent) were categorized in poverty under the supplemental poverty measure, which includes consideration of both cash and noncash government benefits.[10] Incomes remain low for many senior citizens: nearly 15 million Americans over sixty-five (30.4 percent) lived on incomes less than 200 percent of the official poverty measure in 2016. Poverty rates among the elderly were even higher for women and people of color; under the supplemental poverty measure 16.2 percent of women versus 12.5 percent of men and nearly a quarter of all people of color over sixty-five compared to about 10 percent of all elderly white adults lived in

[7] US Census Bureau, "2020 Census Will Help Policymakers Prepare for the Incoming Wave of Aging Boomers." December 10, 2019. *US Census*. www.census.gov/library/stories/2019/12/by-2030-all-baby-boomers-will-be-age-65-or-older.html

[8] "NHE Fact Sheet." *Center for Medicare and Medicaid Services*. August 9, 2018. www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/NHE-Fact-Sheet

[9] John Iceland, *Poverty in America: A Handbook*, 3rd ed. (Berkeley: University of California Press, 2013): 40–41; Michael B. Katz, *The Price of Citizenship: Redefining the American Welfare State* (Philadelphia, PA: University of Pennsylvania Press, 2011): 12.

[10] Creamer, John, Emily A. Shrider, Kalee Burns, and Frances Chen. "Poverty in the United States: 2021." *US Census*. Table A-1 and Table B-3. www.census.gov/library/publications/2022/demo/p60-277.html

poverty.[11] These statistics all point to gaps in financial resources for aging Americans. The questions raised include where additional resources for aging Americans might be found, and who should shoulder the responsibility to ensure that older Americans have the economic security they need.

Historically parent dependency policies were one answer to these questions. Parent dependency policies date to the colonial era and expanded across the policy spectrum in the nineteenth and twentieth centuries. These policies sought either to require or encourage the support of aging parents by adult children; they were designed to alleviate poverty among the aged while minimizing dependence on public funds. I define dependent parents as aged Americans who had too few financial resources to meet their needs and thus relied not only on public benefits but also on the willingness of family, often adult children, to contribute to their support. Adult children were defined as individuals over the age of eighteen who had the financial means to provide support. Parent dependency policies, as I term them, prioritized support by family members via responsible relative laws before needy parents turned to public assistance; by the mid-twentieth century, the scope of these policies expanded to include survivor benefits and federal tax incentives. Parent dependency policies transcended the different tracks of the American welfare state – means-tested, contributory, and tax expenditures – and at times included features of both means-tested and contributory programs.

This book analyzes the history of parent dependency policies across the spectrum of American social policy throughout the twentieth century, particularly after the Social Security Act of 1935: responsible relative laws in Old Age Assistance (OAA); survivor benefits in the Old Age and Survivors Insurance (OASI) program and the US military provided to parents as a result of adult children's payroll contributions or military service; and federal tax expenditures available to adult children providing a specific level of support to aging parents. Parent dependency policies varied in their definition of dependency and how dependency was measured. The programs available to the elderly were shaped by race, gender, and citizenship, replicating exclusions found in these programs more

[11] The official poverty measure for people over 65 was $11,511 in 2016 and $13,590 in 2022. The Supplemental Poverty Measure considers expenditures and resources, as well as differences due to cost of living. "How Many Seniors Are Living in Poverty?" *Henry K. Kaiser Family Foundation.* March 2, 2018.

widely. I argue that consideration of parent dependency policies prompts a reevaluation of the effects the Social Security Act's provisions on family obligations and the relationship of the family to state and federal governments. Instead of entirely replacing family support, some policies either required or encouraged family members to provide support. Measures of dependency often inhibited aging Americans' access to benefits they sorely needed, focusing instead on ensuring that they were, in fact, dependent and that other family resources were not available.

PARENT DEPENDENCY POLICIES

Parent dependency policies are found in numerous areas of America's "divided welfare state" or what Jacob Hacker terms "America's unique 'welfare regime'."[12] My focus is on public benefits, or those available via government-enacted programs, rather than benefits earned from private employment. This book addresses those parents who did not have private retirement benefits earned through employment or a family member's employment, or did not have enough to provide for their needs or their spouses' needs as they aged. The range of programs and services for aged Americans with financial need is significant, and some – such as Meals on Wheels – reduce the burden on other family members. An analysis of all programs serving the aged with financial need is beyond the scope of this study. This book analyzes three parent dependency policies through the lens of adult children's responsibility to support. The book also considers the families of aging parents, particularly their adult children, who helped to fill those financial gaps, either voluntarily or involuntarily. Hearing the voices of those who needed the aid, those who sought to provide it or faced intense scrutiny in the determination of potential support, or who advocated for more generous public benefits is a key goal of this project.

The relationship between OAA and OASI under the Social Security Act of 1935 is critical in the analysis of parent dependency; the two programs developed in tandem and the expansion of OASI directly affected the numbers of elderly receiving OAA.[13] The 1935 Social Security Act – and

[12] Hacker's argument focuses on the mix of public and private benefits that comprise America's welfare state, but his concept also applies to parent dependency policies as they transcend the different tracks of the nation's public welfare state. Jacob S. Hacker, *The Divided Welfare State: The Battle over Public and Private Social Benefits in the United States* (New York: Cambridge University Press, 2005): 7.

[13] Old Age Insurance was created under the original 1935 Social Security Act, and is the program commonly referred to as social security today. The 1939 amendments expanded

its subsequent amendments – is fundamental to discussions of economic assistance and security (or insecurity) for older Americans. OASI and OAA were intended to address economic security for the elderly via both social insurance and public assistance. The Social Security Act reinforced the two-track system of benefits in America's federal welfare policy – contributory in OASI and means-tested in the public assistance programs (OAA, Aid to the Blind and Aid to Dependent Children). OASI was a contributory program funded in part by payroll taxes from both employees and employers; the goal was to provide retired workers, at the age of sixty-five, with a monthly benefit based on their earnings and contributions. Under the 1939 amendments, widows, children, and dependent parents were eligible for survivor benefits based on the earnings of the deceased worker, and the program was renamed OASI.[14] OAA, funded by general tax revenues, targeted Americans over sixty-five who were ineligible for OASI, or whose OASI benefits and other income were insufficient for their basic needs.[15]

Taxation links all three policies but funds the policies via different tax mechanisms. Architects of the Social Security Act framed OASI as a contributory program – a type of insurance premium that would be funded by contributions from workers, in contrast to OAA which had no dedicated tax revenue. The long-term goal, several scholars argue, was to expand OASI to more workers and to make public assistance unnecessary. Molly Michelmore argues that OASI was positioned in contrast to public assistance in its design and cost, in part to address taxpayer resistance to the program: "The [Roosevelt] administration's reliance on the payroll tax to finance its most significant welfare policy initiatives – and its commitment to the annuity fiction – successfully muted taxpayer resistance to these programs and to the dollars used to fund them by

benefits to include survivors, and the name changed to Old Age Survivor Insurance. I will use OASI unless specifically referencing the earlier program (OAI) or the later program: Old Age, Survivors, and Disability Insurance (OASDI).

[14] Katz, *The Price of Citizenship*, 236–237; Alice Kessler-Harris, *In Pursuit of Equity: Women, Men and the Quest for Economic Citizenship in 20th-Century America* (New York: Oxford University Press, 2001): 126–128; Edward Berkowitz, *America's Welfare State: From Roosevelt to Reagan* (Baltimore, MD: Johns Hopkins University Press, 1991): 20–28; Hacker, *The Divided Welfare State*, 108–111; and W. Andrew Achenbaum, *Social Security: Visions and Revisions* (New York: Cambridge University Press, 1986): 21–22.

[15] Katz, *The Price of Citizenship*, 234–235; Ira Katznelson, *When Affirmative Action Was White: An Untold History of Racial Inequality in Twentieth-Century America* (New York: W. W. Norton, 2005): 46–47; Jill Quadagno, *The Color of Welfare* (New York: Oxford University Press, 1994): 19–21.

distinguishing between social insurances *premiums* and the *taxes* that financed other forms of public welfare."[16] In the process such arguments "called into question the legitimacy of other forms of public spending," including public assistance.[17] Michael Brown argues that taxation is central to the development of social policy, as debates over taxation and spending determine social policy choices: "These political leaders seeking to build welfare states face conflicting demands for economic stabilization and growth (capital accumulation), on the one hand, and for creation of social rights and economic security, on the other."[18] Support for social policies hinges on who benefits, or is believed to benefit, from those policies. Expansion of OASI eligibility meant that most Americans were covered by the 1960s. That trend, in conjunction with increases in benefits, meant OASI had far more support than means-tested programs such as OAA, ADC, and AB by the post-World War II era.[19]

Tax policymakers, and priorities among those crafting tax policy, played a significant role in which programs expanded and which did not. Termed the "tax community" by Julian Zelizer, the group included legislators, such as Wilbur Mills, chair of the House Ways and Means Committee from 1958 to 1975, Ways and Means committee members, Department of Treasury officials, academics, and Congressional staff members.[20] The Ways and Means Committee was a powerful force in parent dependency programs as it had jurisdiction over the social security programs, including public assistance and OASI, and wider tax policy. By the early 1970s the committee members "would be responsible for 40 percent of federal spending."[21] Zelizer identifies three different factions in this policy community: "Social Security, Growth Manipulation, and Tax Reform." The first is most relevant to OASI and public assistance, and support for the former often came at the expense of public assistance programs throughout the post-World War II era. The other two categories relate to the larger goals of taxation, and to the final policy analyzed in the

[16] Molly C. Michelmore, *Tax and Spend: The Welfare State, Tax Politics, and the Limits of American Liberalism* (Philadelphia: University of Pennsylvania Press, 2012): 7; Julian Zelizer, *Taxing America: Wilbur D. Mills, Congress and the State, 1945–1975* (New York: Cambridge University Press, 1998): 12–14; Michael K. Brown, *Race, Money and the American Welfare State* (Ithaca, NY: Cornell University, 1999): 6–7.
[17] Michelmore, *Tax and Spend*, 13.
[18] Brown, *Race, Money and the American Welfare State*, 6–7.
[19] Ibid.; Zelizer, *Taxing America*, 14–15.
[20] Zelizer analyzes taxation and the career of Wilbur Mills, who was chair of the Ways and Means committee from 1958 to 1974. Zelizer, *Taxing America*, 9.
[21] Zelizer, *Taxing America*, 40–41.

book – federal tax benefits directed at adult children who provided significant support for aging parents. Tax expenditures can be either tax credits, taken directly off the federal taxes owed, or a tax deduction, which reduces the taxpayer's gross income. Zelizer argues that tax expenditures, directed at specific individuals and groups, became key targets in tax reform efforts in the 1950s and 1960s, as taxation as a tool of economic growth gained traction within the tax community.[22] Patricia Strach argues that tax expenditures were part of a shift in tax policy to include family in tax administration. Her analysis focuses on higher education tax benefits, often gained via a parent or grandparent taxpayer on behalf of their child or grandchild, but her argument also applies to taxpayers seeking dependency credits for their support of aging parents. Strach argues that family played an increasing role in tax policy and administration after World War II.[23] Gender and marriage also played critical roles in tax policy, via both survivor benefits under OASI and tax expenditures for dependent parents. As Brown argues, analysis of policies that transcend different areas of American social policy requires attention to taxation and spending to understand their design and implementation. Opposition to taxation, concerns about protecting "the taxpayer," and claims for benefits by taxpayers are key themes in this book's analysis of the three policies.

Support for and opposition to the expansion of both OASI and OAA were bound with who benefited – or was perceived to benefit – from the two programs; such beliefs and perceptions fostered racial and gender inequities in social policy that persist to this day. As the demographics of public recipients shifted over the twentieth century, support for the programs, particularly ADC (later Aid to Families with Dependent Children), waned and became intertwined with racist stereotypes. This fueled opposition to increased funding for public assistance.[24] Exclusionary practices grounded in racism and sexism were central to the demographics of the OAI program and other programs under the Social Security Act. OAI benefits did not begin until 1940, even with the 1939 amendments creating survivors benefits under the renamed OASI. Occupational exclusions also limited access; scholars estimate that initial coverage provided

[22] Ibid., 166–168.
[23] Patricia Strach, *All in the Family: The Private Roots of American Public Policy* (Stanford, CA: Stanford University Press, 2007): 96, 103.
[24] Michael Brown argues that race and money are inextricably linked in the development of the American welfare state, and the welfare state's racial stratification mirrored the larger racism in American society. Brown, *Race, Money and the American Welfare State*.

benefits for about half of all workers, or 26 million people. Domestic and agricultural workers were excluded, as well as public employees and those employed by nonprofits. These exclusions eliminated coverage for 65 percent of all black workers, 60 percent of all women, and 85 percent of black women. Latino and Asian workers also were largely excluded from the program. Occupational exclusions prevented nearly half of all workers from contributing to or drawing payments from the system in its first decades, resulting in long-term effects on asset and wealth accumulation among those groups.[25] The limitations of OAI coverage relegated many people of color and women to OAA when they could no longer work, as they were not eligible for social insurance benefits under the Social Security Administration (SSA) until the 1950s.[26]

In the first decades of the SSA, OAA was the major program addressing the elderly poor, and the number of OAA recipients outpaced OASI beneficiaries until the 1950s.[27] Because of the limited benefits under OASI, some elderly received both OAA and OASI, speaking further to the interconnected nature of the two programs. In 1949, the average OASI benefit was $25, while the average OAA grant was $42 ($308 and $518 in 2022 dollars, respectively).[28] Recipients of OAA numbered 1.738 million in September 1938, or about 21.6 percent of all Americans over age sixty-five.[29] In 1954, more than half of all elderly were not eligible for OASI,

[25] Achenbaum, *Social Security*, 23; Brown, *Race, Money and the American Welfare State*, 71; Katznelson, *When Affirmative Action Was White*, 42–43; Kessler-Harris, *In Pursuit of Equity*, 130–131; Cybelle Fox, *Three Worlds of Relief: Race, Immigration, and the American Welfare State from the Progressive Era to the New Deal* (Princeton, NJ: Princeton University Press, 2012): 252–256; Suzanne Mettler, *Dividing Citizens: Gender and Federalism in New Deal Public Policy* (Syracuse, NY: Cornell University Press, 1998): 72–74; Melvin L. Oliver and Thomas M. Shapiro, *Black Wealth/White Wealth: A New Perspective on Racial Inequality*, 2nd ed. (New York: Routledge, 2006); Mary Poole, *The Segregated Origins of Social Security: African Americans and the Welfare State* (Chapel Hill, NC: University of North Carolina Press, 2006): 38–45, 176–178.

[26] Achenbuam, *Social Security: Visions and Revisions*, 45; Edward Berkowitz and Kim McQuaid, *Creating the Welfare State: The Political Economy of Twentieth-Century Reform* (Lawrence, MA: University Press of Kansas, 1992): 177–178.

[27] Brian Gratton, "The New Welfare State: Social Security and Retirement in 1950." *Social Science History*. 12.2 (Summer 1988): 173–174.

[28] Achenbaum, *Social Security: Visions and Revisions*, 42. OAA benefits varied greatly by state. Mississippi's average grant was $25 in 1948 while California averaged more than $60. Berkowitz, *America's Welfare State*, 56–57.

[29] OAA operated in all states, as well as Washington, DC and the territories of Alaska and Hawaii, in 1938. The percentage varied by states, from a low of 7.2 percent in New Hampshire to a high of 54.5 percent in Oklahoma. *Final Report of the Advisory Council on Social Security*. December 10, 1938, 16.

and most relied at least in part on OAA.[30] Amendments in 1950, 1954, and 1956 greatly expanded coverage of OASI but did not eliminate the need for OAA. In 1960, OASI recipients outnumbered OAA recipients four to one, but 2.4 million aged still relied on OAA for support.[31] OASI benefits were also limited, and some beneficiaries relied either on other sources of income or received OAA as well as their social insurance benefits. A 1953 national survey by the Bureau of Public Assistance found that 17 percent of OAA recipients also received OASI benefits.[32] That percentage dropped to 6.7 by 1960, but the number of recipients receiving both remained significant: 675,000 aged received both OAA and OASDI in 1960.[33] The trend continued; more than two-thirds (69 percent) of those added to the OAA program in mid-1964 to mid-1965 also received OASI. Authors attribute this trend to expansion of those covered, and more relaxed regulations in eligibility for insured status. That trend also indicates that social insurance benefits were low enough to make many elderly receiving OASI benefits still eligible for public assistance thirty years after the Social Security Act was enacted, and just seven years before the SSI program was created.[34]

Scholars argue that the Social Security Act of 1935, which brought public assistance and social insurance programs into federal American social policy, profoundly affected family relations and responsibility. In this view, the SSA was part of an ongoing trend of shifting responsibilities once held by the family to the state. It reshaped the role of the federal government and families in promoting the security of Americans by instituting a national social insurance program, albeit on a limited scale in the first decades, and brought federal funds into the categorical public assistance programs, including OAA, ADC, and AB. OAI, and subsequently OASI, required citizens to save for their retirement, provided the

30 Floyd A. Bond, Ray E. Baber, John A. Vieg, et al., *Our Needy Aged: A California Study of a National Problem*. (New York: Henry Holt and Company, 1954): xviii.

31 Achenbuam, *Social Security: Visions and Revisions*, 39, 45, Alvin L. Schorr, *Filial Responsibility in the Modern American Family* (Washington, DC: Social Security Administration, 1960): 22; Berkowitz and McQuaid, *Creating the Welfare State*, 177–178; Robert H. Mugge, "Concurrent Receipt of Public Assistance and Old-Age, Survivors, and Disability Insurance," *Social Security Bulletin*. 23.12 (1960): 12, 14.

32 Lenore A. Epstein, "Economic Resources of Persons Aged 65 or Over," *Social Security Bulletin*. 18.6 (1955): 9.

33 Mugge, "Concurrent Receipt," 14.

34 In 1965, the program was now Old Age, Survivors, and Disability Insurance (OASDI). "Notes and Brief Reports: Characteristics of New, Old-Age Assistance Recipients, 1965," *Social Security Bulletin*. 31.7 (1968): 16.