MAINTENANCE OF THE AGED BY THEIR ADULT CHILDREN: THE FAMILY AS A RESIDUAL AGENCY IN THE SOLUTION OF POVERTY IN BELGIUM

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Most Western European legal systems contain a rule obligating adult children to support their parents, which derives from a Roman statute promulgated at the time that the extended family system was disintegrating and the nuclear family emerging. Such maintenance does not appear to be inconsistent with contemporary social circumstances and kinship relationships. But those for whom it is invoked are highly vulnerable people excluded from the social security system. Although the amounts of maintenance ordered under this rule are small, such orders create problems for the aged, their children, the responsible agencies and their employees. The result is a social paradox: the rule purports to motivate families to care for their aged parents, but the families upon whom the obligation is imposed actually suffer from such imposition.

Any study of a concrete legal institution should pay attention to its substantive rules, its relations to other institutions, and its translation into procedures and structures.[1] The institution imposing mutual obligations of financial support on parents and their adult children has hitherto received little attention from sociologists of law. Yet this institution is rendered "socially problematic" in a society where the family has been "nucleated" and the community at large has assumed the duty of guaranteeing a minimum standard of living to every citizen.

The maintenance obligation not only regulates certain aspects of family relations but also affects the social allocation of resources. Parents with insufficient income must turn to their descendants for assistance; they are given a legal right, and their children placed under a legal duty. Although asking for and rendering assistance is a socially accepted practice quite apart from these legal rules, the burden of financial assistance in fact has largely been assumed by other social agencies.

This contribution is based on Van Houtte and Breda (1976).

1. In the Center for the Sociology of Law (University Faculties St. Ignatius, University of Antwerp, Prinsstraat 13, 2000 Antwerp, Belgium), a number of legal institutions are being studied from this viewpoint. One field of research is family law, including financial support between spouses (Van Houtte *et al.*, 1978), and adoption. Another is legal aid and the administration of justice (Van Houtte and Langerwerf, 1977).

It is our purpose to examine the implications of the maintenance rule in its institutional and social context. To understand how the institution is embedded in contemporary society it is necessary to review its historical origins. Furthermore, present rules have been translated into specific agencies that have developed their own "rationality," i.e., their own procedures and values. All this results in an institutional structure creating a very specific reality for a well-defined category of claimants.

I. METHODOLOGY

In order to construct an empirical picture of all of these aspects of financial support in contemporary Belgium, we employed various sources of information. For historical perspective, we inquired into changes in the content of substantive rules, their origin, the intention of the legislators, and the cultural context in which they were enacted. We also studied how the *Code Napoléon* had been interpreted by analyzing published judgments. We examined the current application of these rules by analyzing records and judgments and interviewing officials. We were thus able to discover both procedural patterns and the characteristics of the population involved. By presenting responsible administrators with hypothetical cases we learned something about their attitudes and opinions.

II. A BRIEF HISTORY OF CHANGES IN THE MEANS OF SUBSISTENCE, FAMILY SOLIDARITY, AND MAINTENANCE OBLIGATION

A study of the present implementation of the maintenance obligation cannot ignore the origins and transformations of this institution over time. Because the sociology of the family has not focused upon the role of family solidarity in guaranteeing subsistence it will be necessary to reexamine and reinterpret that literature. Legal historical data will also be collected and related to its social context.

A. Family Solidarity and the Maintenance Obligation in Ancient Rome

Because of the parallels between the evolution of society, law, and especially the family in both Rome and the West, we will pay special attention to the transformations of family solidarity and the maintenance obligation in the former. Comparison should permit generalizations about how family law

interacts with sociocultural reality. Furthermore, it must be remembered that Roman law significantly influenced the concrete shape of the family law provisions of the *Code Civil.*

Roman society experienced a dramatic shift from an agricultural to a mercantile economy, a development with far-reaching cultural and structural changes. The extended family is particularly fitted to, and tends to predominate in, an agricultural economy (Hill and König, 1970:606-7). Roman kinship was structured in terms of the *gens*,[2] the *consortium*,[3] and the *familia*,[4] a series of concentric circles of which the innermost and smallest—the *familia*—was to survive the longest. These kinship structures supported, and were supported by, a system of rigid stratification, inflexible property relations, and a sense of sacredness pervading all social life.[5]

The *gens* and the *consortium* declined fairly early as important means of support but the *familia* continued to guarantee subsistence to its members. The *paterfamilias* felt obliged to provide a livelihood for the members of his *familia*, whose activities simultaneously contributed to the preservation and growth of the patrimony. Similarly, it was customary for the wife to bring a *dos* from her father, thus increasing her hus-

2. The *gens* was the largest kinship unit, a political and economic entity consisting of a large number of persons who considered themselves descendants of a common male ancestor. The structural and functional characteristics of the *gens* are uncertain. See Kaser (1955:44); Gaudemet (1963:53-63); Johnston (1969:73-81).

3. Gaius defines the *consortium* as a "*societas naturalis*" (a natural community) which was automatically created among the heirs when the *paterfamilias* died. It is more than joint ownership, which arises from inheritance and may not be permanent (Gaudemet, 1963:63-83). Kaser argues that it is not only a community of goods ("*Vermögensgemeinschaft*") but also an association of persons on a family basis ("*Familienrechtliches Verband*") (1955:44).

4. The *familia* can be considered a household consisting of a number of persons and goods under the authority of the *paterfamilias.* Its members include his legitimate children, and his wife if he has acquired authority over her by a *conventio in manu* (in which case she left her natal family completely, and even her *gens*, and was accepted "filiae loco" in the wider kinship structures of her husband, in which she even acquired certain hereditary rights). Adopted persons were also full members. Finally, there were the slaves. The basis of the *familia* was thus quite clearly the *patria potestas.* Its members were those under that authority, not those related by blood or marriage. See Kaser (1955:44).

5. In the absence of other data, anyone wishing to understand traditional Roman family structures is compelled to use Roman law as his starting point. But such reliance can be justified on other grounds as well. Roman law was preeminently a common law, reflecting contemporary mores. It is therefore legitimate, following Durkheim (1947) to take law as the crystallization of social relations, and thus a proper basis for social analysis. At a later period a discrepancy developed between the "mores," fixed in the rules of law, and changing familial and social reality; this discrepancy is related to the adaptation and extension of the legal structures. Because Roman law was the law of and for the patricians, the *beati possidentes* (just as the *Code Civil* is the law of and for the bourgeoisie), the structures and developments described are mainly those of the patrician family.

band's property and the latter's ability to provide for his wife and children (Lebras, 1959:420-21).

Although maintenance was guaranteed only by the mores, this was a solid basis. Legal claims were not common at first because Romans preferred to keep family matters out of the courtroom.

> The Roman's strongly marked sense of dignity and decency keeps him from taking the privacy of marital and familial life into court: a modern divorce suit would seem disgraceful to him. He does not, therefore, like having "the privacy of family life" made transparent in law: as little law as possible is his watchword in this field. [Schulz, 1934:15]

But social developments soon changed all this. In the course of extraordinary military and mercantile expansion the Roman autarchy was destroyed, the rigid class structure dominated by patricians dissolved, and the power of the sacred to legitimate social institutions gravely weakened. The *familia* as an extended family structure was endangered—eroded from within and crumbling from without (Lebras, 1959:421-29; Kirkpatrick, 1963; Piganiol, 1954; Zimmerman, 1947).

The erosion of the *familia* tended to undermine family solidarity, with the result that the *paterfamilias* felt less obliged to provide assistance to all its members, some of whom had ceased to participate effectively in the household. Mores alone no longer possessed sufficient authority to secure the performance of family obligations and thus counteract the economic insecurity of family members. Eventually the emperor tried to restore family solidarity by permitting legal claims for maintenance. Customary law was thus transformed into State law.

The oldest rescripts,[6] from approximately A.D. 100, relate to a son's legal claim against his father. Because a young man could acquire independence and be granted his own *peculium*,[7] through his activities as a soldier, tradesman, or manufacturer, some fathers may have thought that they were no longer obliged to pay maintenance for a son in need. The first rescript in favor of a daughter is found in the time of Antoninus Pius (A.D. 138-161). That this appeared later than maintenance claims by sons may be explained by the daughter's greater integration in the *familia*: if she was not married, she remained active in her father's household and received what she needed;

6. A rescript is a reply by a Roman emperor to a magistrate's query about a point of law. There is little systematic information on the maintenance obligation in handbooks and articles on Roman law. The first author to treat the matter thoroughly was E. Albertario (1925). E. Sachers (1951) has written the most recent study, critically synthesizing the others.

7. *Peculium* is the capital that the *paterfamilias* provides to the *filii*; it remains the property of the *paterfamilias* but the *filii* administer it and collect the proceeds.

when she did marry, she received a dowry intended to ensure her subsistence. In the second half of the second century A.D. all legitimate children *(liberi)* of either sex were recognized to have claims for maintenance against their father, though this was restricted to those *sub potestate*, who belonged to the *familia* proper.

At the same time the *familia* was crumbling and had fewer members *sub potestate*. More women married *sine manu*[8] and thus did not come under the authority of their husbands, the *paterfamilias*, or belong to the *familia*. And more adult sons were emancipated. This had two possible consequences. First, persons who were emancipated could subsequently become needy. And second, if they prospered on their own, this did not augment the patrimony of their original *familia*, with the result that the *paterfamilias* and other members of the *familia* might become needy. The question thus arose whether family solidarity persisted between members and former members of a *familia*.

Rescripts were an attempt to counteract the crumbling of the *familia* and its adverse effects on subsistence. Thus by the time of Ulpianus (third century A.D.) the father was responsible for emancipated children, the mother became legally obligated to support her children, and at the same time both parents were granted legal claims against their children. In this way mutual obligations of maintenance, originating in the sacred mores regulating all Roman society, were translated into a statute that helped to preserve the *familia* not only during the Roman Empire, but even after its fall.

B. Means of Subsistence, Family, and Relatives in Western Society

1. *From the Middle Ages to Modern Times*

In the Middle Ages, there were also extended families composed of two or more related families, their servants and apprentices, integrated by their economic functions in agriculture or handicrafts. The strongest guarantee of subsistence for an individual was to be a member of such a household. But membership was voluntary, and persons were free to leave (Gaudemet, 1963:89). Obligations to relatives outside the household varied regionally. Roman law applied in southern

8. The earlier form was the marriage *cum manu*, in which the woman leaves her own family and enters that of her husband. A woman married *sine manu* still belongs to her natal family and does not live under the authority of her husband; this form became dominant at the beginning of the Christian era.

Europe. In the north, ethical values expressed in *costuymen* (usage, custom) encouraged family solidarity, but their partial failure is apparent in the role of other institutions—the church, religious orders, and public authorities—in caring for the poor.

Starting in the fifteenth century the number of households containing more than one adult couple began to decrease (Kooy, 1967:40-41), and by the eighteenth century the nuclear family had come to predominate. This progressive nuclearization probably occurred more smoothly in northern Europe (northern France, the Netherlands, and the Germanic empire), where the legal superstructure was more compatible because paternal authority in the Germanic *mundium* was less extensive and less absolute than the *patria potestas* (Gaudemet, 1963:120). As a result, both individuals and families were thrown back upon their own resources and could not, as in southern Europe, look to the Roman law regarding the *familia* as a basis for obligation.

Initially, the maintenance obligation between members of a family who lived in different households was probably ethical and supported by severe informal sanctions. But it soon came to be regulated by custom and usage, extending beyond parent and child to include the obligation of a natural grandson to support his grandfather, and sometimes even subsisting between siblings. The particular rule varied from one *costuym* to another. Thus the usages of Santhover and Gelderland gave children *de plano*[9] a right to subsistence, whereas other relatives could only ask for it ("soo d'alders dat versuecken") (Defacqz, 1873:370-75).

But even in "le pays coutumier" Roman law constituted a "raison écrite" for custom (Domat, 1695:4) and, when confirmed by usage and adopted by legislation, became the basis for substantive law. Thus Pothier, a "national" jurist, discusses the institution of maintenance in ancient French law almost entirely by reference to Roman law (1830:83). In proportion to their means, parents were obligated to support their adult children in need, even if the latter had reached an age when they would normally be able to provide for themselves; if parental support was not forthcoming, grandparents were similarly obligated. This obligation could be nullified if the law permitted the parent to disinherit the child for gross disrespect. The obligation was also mutual: adult children were required to main-

9. The judge is required to order the maintenance of needy children; the claims of other needy relatives are judged individually, guided by principles of equity.

tain needy parents and, where children failed to do so, adult grandchildren were so obligated. (Apparently, it was not possible for a child to reject this duty because of disrespect by a parent.) As will be seen below, these rules have significantly influenced the civil law.

Pothier also offers some evidence of family nucleation. He notes that judges preferred to order children to make a financial contribution to parental maintenance and only if this was difficult would they order that the parent be admitted to the child's household. That adult children were leaving the parental household and were less willing to assume obligations of support voluntarily can be seen in Pothier's observation: "The corruption of morals, which has constantly been growing, and which today has reached its peak, makes these claims, unheard of in the past, very frequent in the courtroom, to mankind's shame." (1830:83).

2. *The Nineteenth and Twentieth Centuries*

There are signs that the contemporary family is evolving toward even greater nucleation, which has repercussions for the social security of individuals, and is likely to render problematic the present application of the institution of maintenance. But before analyzing these developments it will be useful to set forth the laws governing maintenance which were incorporated in the *Code Napoléon* and are still in force in Belgium. These give shape to family solidarity, and seek to ensure a minimum subsistence for the whole family. Adult children and their parents, other ascendants, and parents-in-law, are bound by mutual obligations of maintenance, in proportion to the needs of the claimant and the means of the obligor.[10]

10. *Art. 205, § 1*
Children are liable for the maintenance of their parents and other ascendants in need.
Art. 206
Sons-in-law and daughters-in-law are likewise and in the same circumstances liable for the maintenance of their parents-in-law, but this obligation comes to an end:
1. when the mother-in-law enters into a second marriage;
2. when the one spouse who caused the relationship and the children by his marriage with the other spouse are deceased.
Art. 207
The obligations resulting from these provisions are mutual.
Art. 208
Subsistence is only granted in proportion to the needs of the one who claims it and the wealth of the one who owes it.
Art. 209
When the one who provides subsistence or the one who receives it, finds himself in such a position that the former can no longer provide it or the latter no longer needs it, either in whole or in part, exemption or reduction of it can be claimed.

The reciprocity of the maintenance obligation gave rise to controversy (Locré, 1836:342). Some argued that the justifications for maintenance of an aged person could hardly apply to a son or son-in-law old enough to support himself. Others favored mutuality. Napoleon cut the knot:

> The first consul says that it would be outrageous to give a rich father the right to expel his children from his house after having reared them, and to have them provide for themselves, even if they are physically handicapped. Such is, however, the idea presented in the draft. If it were to be adopted, one should also forbid fathers to give an education to their children, because nothing would be more unfortunate for the latter than to have to break away from the habits of opulence and the tastes their education would have given them, in order to devote themselves to difficult or mechanical labor they would not be accustomed to. If the father does not owe them anything as soon as he has reared them, why not deprive them of the right of succession as well? The maintenance money is not only measured by physical needs, but also by habits; it must be proportionate to the wealth of the father liable for it, and to the education of the child needing it. . . . The son has, indeed, a legal right to his father's property, and though this right is suspended as long as the father lives, even then it is effected in the provision for the son's needs. However, if the law stipulates that maintenance is no longer due to a son who is of age, it makes it impossible for the courts to grant any. [Locré, 1836:342]

It appears from this debate that issues of status played a part in shaping the maintenance obligation in the *Code Civil*. Such considerations would not have carried as much weight with Pothier, even though he belonged to the *ancien régime*; for him, children were only entitled to maintenance if they were incapable of working. Thus the concrete features of the maintenance obligation could not be deduced from the nature of man alone.

a. *The administration of justice and the maintenance obligation.* The question thus arises whether this bourgeois interest in "status preservation" was also reflected in the actual administration of the maintenance obligation. We sought to answer this by analyzing published judgments (Jamar *et al.*, 1814–1965; van Reepinghen, 1949–1970). Our study revealed that until 1880 courts did not award simply the minimum necessary for survival, but an amount influenced by "status-related need." Sometimes the judge even stated explicitly that he had taken "status" into account. After 1880 the awards were closer to subsistence level, though some were so far below it that they probably had only symbolic value. Awards proportioned to the status of the claimant appear sporadically. Finally, after the Second World War, in addition to subsistence awards, there appears a new type of legal proceeding in which the Public Assistance Agency (*Commissie van Openbare Onderstand*), having provided maintenance to the elderly, seeks redress from

those liable for support. Although the published cases are not necessarily representative of the universe of proceedings, they do suggest that the initial interest in status preservation has largely disappeared, either because the claimants have changed or because of a change in public opinion concerning what is just maintenance.

b. *The maintenance obligation and the present sociocultural system.* The nucleation of the family, which began in the fifteenth century and greatly accelerated in the nineteenth and twentieth centuries, is often said to have led to the isolation of families and the disvalue of family solidarity, especially the sense of financial obligation. As a result, it is said, the community assumed this role, rendering obsolete the maintenance obligation in the *Code Civil.* Both sociologists of the family and gerontologists studying the plight of older couples in urban environments have contributed to the view that the extended family and wider kinship groups have been totally extinguished, leaving the nuclear family entirely isolated (e.g., Schwägler, 1970:152).

In fact, however, such isolation does not occur. Recent empirical studies have shown that although the family has been nucleated as a result of industrialization, it is not isolated from relatives but embedded in a modified extended family (e.g., Hoffmann, 1970:91). Demographic factors, particularly shifts in birthrate and mortality, an increasing number of marriages, and a lowering of the age at marriage, have all altered the structure of the kinship group. Its vertical span has increased (there are more three and four generation families) and age differences between generations are diminishing (Shanas and Townsend, 1968:171).

In the contemporary "verticalized" family there is typically frequent contact between parents, whether or not they are elderly, and their adult children. When a sample of the aged (65 years and older) who had living children were asked whether they had seen one or more of those children on that or the previous day, more than three-quarters responded affirmatively; 89.2 percent had seen a child within the previous week; and only 4.8 percent had not seen any of their children for over a month (Centrum voor Bevolkings- en Gezinsstudien, 1969:23). This confirms that contact among the members of these altered extended families is certainly not absent (cf. Shanas and Townsend, 1968:196). Other studies have shown that extreme isolation is a problem for only 5 percent of the elderly, caused by

the death of a partner and geographic mobility of the children (see Rosemayr, 1968:674).

There is more than mere contact, however. In the inquiry mentioned above, 30.6 percent of the elderly declared that they gave financial support to their children or grandchildren, and almost twice as many (55 percent) acknowledged receiving aid from them. Such assistance includes household help, medical care, gifts in money or kind, and lodging (Dooghe, 1970:216). But regular financial support of the elderly by their children or relatives is rare: 2 percent in Denmark and 4 percent in both Great Britain and the United States (Shanas and Townsend, 1968:205). In Belgium, 5.8 percent of the elderly with living children receive regular assistance, and another 4.7 percent are given sporadic support. Women receive support more frequently than men, frequency increases with age, need, and degree of disability, and persons who had been self-employed are given assistance more often (because they are incompletely incorporated in the social security system). That the child may give financial support instead of taking the elderly parent into his or her home is suggested by the fact that it is more frequent in large cities than in rural areas. Parents also assist their adult children, but this is less common and more irregular (Dooghe, 1970:202).

Attitude toward the financial obligation of descendants for their parents is also important. In the "National Inquiry among the Aged," conducted by the Center for Population and Family Research, persons were asked: "Who must render assistance to parents in financial need?" Nearly a third (30.1 percent) thought that the obligation rested with society. Only a slightly smaller proportion (19.7 percent) felt that both children and society were obligated, of whom 11.4 percent placed the primary obligation upon children, and 6 percent placed it upon society (2.3 percent gave neither priority). Almost a quarter (23.9 percent) believed that children alone were obligated, and an equal proportion had no opinion. More elderly respondents, professional persons, and the self-employed, placed less obligation upon the State. This might indicate that the elderly and those who were incorporated last into the National Social Security system (professionals and self-employed) have a more skeptical attitude toward the State (Dooghe, 1970:225). Another study has disclosed that when demands for financial assistance from their children interfere with emotional ties, the elderly feel that those ties are more important. Thus many are reluctant to ask for assistance for fear

that this would harm relations with their children and also damage their own independence (Streib, 1963).

There appears to be no fundamental inconsistency between the family relationships just described and the maintenance obligation. Indeed, mutual solidarity between parents and children is still both a behavioral and an attitudinal reality. The legal institution seems simply to give it shape. On closer investigation, however, the integration of legal institution and social reality is not without problems. Because it expresses a basic value and thus performs the symbolic function, the maintenance obligation is phrased in general terms. When it is applied concretely it may not always be customary, or socially acceptable. We have observed above, for instance, that regular financial assistance is rare, and that most people believe that the State should share the obligation. Furthermore, the children who are liable to fulfill the obligation may themselves be needy. Because the maintenance obligation thus may be inadequate to guarantee subsistence to elderly persons in need, the next section will focus upon problems that arise when it is coercively applied.

III. ELDERLY PERSONS IN NEED AND CHILDREN LIABLE FOR THEIR MAINTENANCE BEFORE PUBLIC ASSISTANCE AGENCIES (PAA) AND JUSTICE OF THE PEACE (JP) COURTS [11]

Thus far we have described the general relationship between the maintenance obligation and social structure. What are the specific repercussions of subsistence difficulties on family solidarity? Under what circumstances does need produce conflicts between parent and adult child, in which the coercion of legal obligation is invoked? At the beginning of our research justices of the peace suggested to us that it is rare for ascendants to seek to enforce the obligation in court. But our exploratory research also revealed that liability is imposed within the framework of the PAA. These two institutions adhere to different principles, and consequently reach different client populations. We have sought to ascertain these differences by analyzing records and judgments. The response of legal officials is explained not only by the problems they

11. The JP court is the lowest court. Parties can apply to it without legal assistance. The JP can often act quickly, and has therefore been given a conciliatory role. The PAA is authorized to deal with individual medical and financial problems. It is municipally organized and thus enjoys a certain autonomy.

encounter but also by regulations embedded in a national framework. We therefore interviewed key officials at various levels of the PAA and the JP courts. In order to increase the comparability of their preferences and decisions we sought their reactions to a series of hypothetical cases, which also permitted us to inquire about a wide variety of problems.

The meaning of a rule of law can only be understood in the context of the institutional framework in which it is applied. The judicial institution in which the maintenance obligation of the *Code Civil* is applied is the JP court, in which the person seeking maintenance claims it from the one who is liable to pay it. The number of such claims heard by judges does in fact appear to be small; in the Antwerp district, for instance, there were only 73 in 1969. In that year the district had 917,559 inhabitants, of whom 152,647 were aged.

The PAA is a municipal agency that provides support to those in need. It operates on a case-by-case basis, without fixed rules. It has the legal right to ask descendants to support needy ascendants at a level fixed by the agency, and can sue those descendants in the JP court to enforce that obligation if they do not pay, although the court will make its own judgment on both need and ability. Nevertheless, in 1969 the PAAs in the Antwerp district supported more than 3,000 people, 1,200 of whom had descendants who were asked to contribute; in only 25 cases were those descendants sued in court. Thus the PAA dominates this area. But the PAA itself should be seen as simply one of many agencies intercepting persons slipping through the net of the overall social security system.

There are other differences between the two institutions. The PAA provides immediate support to the needy elderly applicant, out of its own funds; only at a later stage are the descendants involved. The court has no funds from which it can furnish support; all it can do is relate the claim of the ascendant to the liability of the descendant. Thus it is only able to reallocate money among the parties involved, and even this it can only do at the end of the proceedings. The PAA employs qualified personnel who obtain objective data by standardized methods. They apply fixed financial norms concerning both the ascendant's needs and the financial means of the descendants. The court's only informants are the parties themselves. It is completely adverse to fixed norms, using flexible substantive standards and following individualized procedures.[12]

12. These procedures and methods of data collection are similar to the differ-

The two institutions operate autonomously, and also in isolation from each other. Where a descendant is unwilling to support an ascendant who has applied to the PAA for assistance, the PAA refers the matter to court;[13] judges and lawyers mentioned the PAA as the most important channel of cases. But that is where relations between the two institutions end: judges were quite ignorant of the method the PAA uses in handling the cases. Clients, on the other hand, appear to be aware of the different functions of the two institutions, and use them accordingly. Interviews with social workers revealed that it is mainly the ascendants who go to the PAA, where they seek assistance with the entire range of their problems, not just their financial needs. Descendants air conflicts in court.[14]

As a consequence of these differences concrete decision-making also varies between the institutions. The PAAs distinguish between those clients who only need financial assistance and those who require institutional care. The latter group are further divided into those who do and those who do not need medical help. Each of these three categories is deemed to require a particular level of support. If the elderly person cannot afford this support, the PAA assumes the burden of paying the difference and then seeks to recoup it from relatives. Some of the PAAs, especially the larger ones, have developed objective schedules. The descendants are allowed to deduct certain other obligations from gross income and are then required to contribute a maximum of 10 percent of the remainder, up to the amount that the ascendant was unable to pay. The smaller PAAs make ad hoc decisions on the basis of "what the descendant can afford." They also seek a contribution from descendants less often, overlooking it in situations where a larger PAA would ask it, or approaching the descendants only when the ascendant is placed in a home. From this we can conclude that PAAs act differently, and tend to invoke the maintenance obligation only when their own financial contribution is substantial, in instances of institutional care.

We can explore these patterns further through a case study of the largest PAA. The rules governing contributions by de-

ences between courts and administrative agencies observed by Selznick (1969), Aubert (1963), and others.

13. Our data indicate that at least 25 of the 73 court cases were referred by the PAA, but many of the remaining cases probably derived from there also. The PAA can itself sue the descendants, or place pressure upon the ascendant to do so.

14. As stated above (note 13), 25 lawsuits were actually initiated by the PAA. Of the remainder, most were not brought by ascendants but by the descendants, who could not agree among themselves how the ascendant should be treated.

scendants appeared to be merely theoretical; the records revealed that the actual amounts obtained were considerably lower. This discrepancy was greatest where the ascendant's need was lowest. In cases where the ascendant requires both institutional care and financial help, descendants must make a larger contribution than in cases where the ascendant requires only financial help, even if the PAA's support is equal because the ascendant himself has some resources.

TABLE 1

DISPARITY BETWEEN SCHEDULED AND ACTUAL CONTRIBUTION BY DESCENDANTS TO MAINTENANCE OF ASCENDANTS

	Ascendant's need		
Descendants' contribution	Financial assistance	Placement without help	Placement with help
Theoretical (BF/month) [a]	413	767	981
Actual (BF/month) [a]	225	692	918
Actual as a percentage of theoretical	54.7%	90%	93.6%

a. The exchange rate at that time was 40 BF = $1.

When asked to explain this policy, the PAA responded that "otherwise no children would still lodge their parents." In other words, the maintenance obligation is imposed upon descendants in order to discourage too many from shifting the burden of support to the State. Indeed, this social control argument is the prevailing justification offered by the PAA for the existence of the maintenance obligation.

The application of the obligation by the PAA also requires a lower contribution from those descendants who are so "fortunate" as to belong to a large family. The only child of an ascendant paid an average of 300 BF per month, but if there were four children then each paid only 161 BF. Since the total amount of support required by the ascendant is fixed, the shares diminish as the size of the family increases.

TABLE 2

RELATIVE CONTRIBUTIONS OF ASCENDANT, PAA, AND DESCENDANTS TO MAINTENANCE OF ASCENDANT

	Ascendant's need		
Relative contribution	Financial assistance	Placement without help	Placement with help
Ascendant	61%	63%	49%
PAA	30	25	38
Descendants	9%	12%	13%

In general, however, the contribution by descendants remains much smaller than the amount paid by the PAA. Thus ascendants rely more on the PAA than on their own families. But the obligation to contribute a small fraction toward maintenance still may influence descendants to contribute voluntarily. For the obligation to serve such a deterrent function the PAA must threaten to use it as such. In our case study 147 families fulfilled the obligation promptly, whereas 106 descendants had to be given an exhortation or threat of some kind before they paid. Although the PAA is authorized to sue the descendants in court if they refuse to contribute, the threat was not always judicial action. Often the descendants could be convinced by arguments, which sometimes included such warnings as "otherwise your parents are not going to get anything."

What is the importance of the maintenance obligation for support of the aged? On the basis of earlier research (Dooghe, 1970) we estimate that within Antwerp district 9,000 elderly persons receive regular financial assistance from their descendants. Between 25 and 30 percent of these only receive such aid after the intervention of the PAA, certainly not an insignificant proportion. As we will show below, most of these are elderly persons in very difficult circumstances. Indeed, social workers emphasize that requests to PAA commonly are made when one or more descendants no longer can cope with the support of an ascendant by themselves and seek the intervention of the agency partly in order to compel other descendants to contribute.

Decisionmaking in the courts, in addition to respecting the traditional ideals of impartiality and publicity, is guided by ad hoc criteria of "wealth" and "need." The concrete situation presented by the parties is handled on a case-by-case basis. But here too certain patterns emerge. By statute the descendant is only relieved of the maintenance obligation if the ascendant has so failed to fulfill his own responsibilities that he has been deprived of parental rights. Analysis of the judgments, however, reveals that lesser forms of parental misconduct (divorce, child neglect) tend to reduce the amount of maintenance awarded, when compared with those elderly who are stricken with disease. Thus "unworthy" parents (N=17) receive an average of 519 BF, 29 percent of what they claim, whereas those who are ill (N=24) receive 2,300 BF, 70 percent of their claims.

An elderly person receives significantly more maintenance from the court if he has more descendants, a logical consequence of the redistributive purpose of maintenance in the

courts. He also receives more if his children are wealthy: descendants who hold an executive position (N=12) pay an average of 1,000 BF per month, whereas the lowest category of wage earners (N=52) pay only 428 BF. The PAA also makes wealthier descendants pay more, but still uses more objective criteria. The court, on the other hand, tends to impose a general obligation of support on the entire family, and though the wealthier members do pay more, their contribution nevertheless decreases as family size increases: descendants from families with more than five children (N=30) pay an average of 267 BF compared with sole descendants (N=79), who pay 882 BF. Court awards, of which 62 percent are higher than 1,000 BF per month, are both larger and more varied than PAA awards, of which 75 percent are lower than 1,000 BF per month. As we will see later, this can only partly be attributed to the different population of clients in the two institutions.

It is now abundantly clear that the institutions each give a different interpretation of eligibility, liability, and the amounts of the maintenance obligation. We have already seen these differences reflected in attitudes toward protecting the public fisc, and in concepts of unworthiness. In order to inventory the most significant policy differences we asked personnel in both agencies to respond to cases that faithfully reflected the kinds of facts we had found in records and judgments. In this way we were able systematically to alter critical variables and obtain comparable reactions. We interviewed all judges and lawyers who had handled at least two maintenance cases in 1969. Eleven judges and thirteen lawyers felt that the official norms of the PAA were too harsh on descendants, although obligations imposed by the court were greater. Furthermore, those ascendants who had had the highest incomes were awarded the highest maintenance (and in our cases also had the wealthiest descendants). Consistent with their ideology of status preservation, judges were prepared to award maintenance to a person who was poor but not needy. In general, all three categories preferred to rely on objective evidence, such as income and family structure. Judges were also strongly influenced by a prior decision of the PAA, and almost always adopted it; lawyers did not accord the norms of the PAA the same weight. Finally, we asked our respondents to estimate their awards in a variety of cases. Where both ascendants and descendants were poor, judges awarded an amount that would not be sufficient to meet the needs of the elderly person; but where both were wealthier, these same judges ordered maintenance con-

siderably in excess of need. Judges thus saw maintenance as a redistribution of family wealth. Consequently, their awards were only adequate when the family was relatively prosperous; but such families are almost never subject to state coercion in matters of maintenance.

Deciding the question of maintenance is one thing, enforcing the award quite another. According to social workers, payment is often problematic. Inequality in the liability of family members creates resistance. Descendants rarely appreciate the initiative of the PAA, and in order to evade their obligation point to parental neglect, the inadequacy of their own income, or hidden income of the ascendant. After the order of the PAA descendants may reallocate contributions among themselves, and even then not fulfill the new understanding. And because ascendants fear these consequences, they often do not claim the maintenance to which they are entitled under law.

Social workers emphasized that ascendants are reluctant to appeal to the PAA. Indeed, the administrative process causes some to withdraw their applications. Furthermore, almost all of the elderly believe that their children cannot afford to pay maintenance. These attitudes must be viewed in conjunction with the objective situation of the applicants. They tend to be the older of the elderly: 65 percent of this population is over 75, compared with 35 percent of the total population over 65. A much higher proportion of this population is single: 71 percent of the women (compared with 52 percent), and 52 percent of the men (compared with 23 percent). Their average incomes ranged from 2,788 BF (for those receiving financial assistance) to 3,823 BF and 4,128 BF for claimants in the two placement categories, whereas the national average for that age group was 6,808 BF at the time of the survey. More than half are physically handicapped. In short, the population of applicants live in very precarious circumstances. The small group of ascendants who appeared in the JP court differ from the above profile only in being 10 years younger, on average.

The descendants of these applicants belong to the middle income group in Belgium: above average incomes for workers, below average incomes for white-collar employees. They are forty to fifty-five years old on average, and heads of families with minor dependents. Therefore, according to the official norms of the PAA, they are unable to bear the full burden of the ascendant's need, most of which must be shifted to the State. Indeed, 265 of the 587 descendants in our study paid no maintenance whatsoever. Nevertheless, the deterrent effect

sought by the PAA through requiring descendants to shoulder a progressively larger share of the maintenance obligation as it increases in amount has been successful. Only when a family is totally unable to support an ascendant does that person appeal to the PAA. Despite this, the problem of maintenance of the elderly cannot be considered solved. By far the greater proportion of applicants (75 percent) were persons who had been or had to be placed in an institution. The aging of the population and the rising costs of institutional care ensure that this burden will always be more than the pensions of most elderly persons.

Given this dilemma, what alternatives are suggested by those involved in administering these laws? Only social workers reject the norms as they are applied by the PAA, and only they would abolish the maintenance obligation or restrict it to exceptional situations. They categorically reject the threat of the obligation as a means of restricting access to assistance, or as a condition of assistance. The social workers believe that if descendants are to make a significant contribution they must do so voluntarily; for the contribution will usually be too small to relieve the financial burden significantly.

Judges and lawyers, on the other hand, invoke traditional justifications for preserving the right of maintenance between ascendants and descendants. Judges feel that the gratitude of descendants should be sufficient to elicit maintenance, though lawyers are less convinced. But both reject the notion that the government should be responsible for support of the elderly. Judges also see the liability of descendants as a device for checking unnecessary reliance on the State, and as an assertion of family duty. They reject the criticisms that it is ineffective in providing support for the needy, that it subverts family harmony, or that it places too harsh a financial burden on the descendants.

The administrators in the PAA advocate inconsistent policies. They are primarily interested in limiting the financial responsibility of the municipality, and fear that if the potential liability of descendants were abolished there would be a substantial increase in the number of applicants. The administrators also prefer flexible norms for the granting or denial of assistance, and tend to offer ascendants services rather than financial assistance to avoid making the PAA claim maintenance from descendants. Finally, there are other movements to reform the overall system of social security in a way that would further diminish the maintenance obligation.

IV. CONCLUSION

The extended kinship system was adequate to guarantee survival to members of a traditional society dominated by an autarchic economy. The whole family lived on the farm, contributed labor, and cared for every sick or old member. But the progressive division of labor and the growth of individualistic behavior created a nuclear form of family life. In the absence of public or private charity, the family remained the only source of support; as a result a statutory rule was promulgated obliging adult children to maintain aged ascendants.

Today, the community has acknowledged a duty to its members and provides numerous social services. But even the welfare state overlooks some of the most vulnerable citizens, such as the handicapped elderly who need institutional care. The Public Assistance Agencies provide financial assistance and domestic services on a case-by-case basis to those who have not yet been incorporated within the social security system. At present, the maintenance obligation is primarily enforced by these social welfare agencies, who use it as a means of social control. The courts are no longer the principal mechanism of enforcement, but rather an adjunct to the administrative agency. The administration of maintenance in the Public Assistance Agencies accentuates the problems of the elderly and interferes with the efforts of the social workers. Moreover, it maintains the image of welfare as being inescapably linked with poverty.

We advocate abolition of the maintenance obligation. Should not the State ensure that the most destitute obtain a living? We argue that this will not injure family solidarity. Many surveys demonstrate that adult children still care for their parents. We are convinced that they will continue to do so, because State support will never provide more than the minimum, and additional financial support and care will always be necessary.

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