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# In the "Best Interests" of the Disabled: Legislating Morality and the Power to Initiate Support Orders for Disabled Adults in Ohio

Kalynne Proctor  
*Cleveland-Marshall College of Law*

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# IN THE “BEST INTERESTS” OF THE DISABLED: LEGISLATING MORALITY AND THE POWER TO INITIATE SUPPORT ORDERS FOR DISABLED ADULTS IN OHIO

KALYNNE PROCTOR\*

## ABSTRACT

Today’s reality is that many families have children who are faced with disabling conditions that prevent them from relinquishing their dependency on others. Often, the need for specialized treatment and care does not terminate once a severely disabled child reaches adulthood. While typically parents are relieved of their legal parental obligations to their adult-aged children, this is not the same case for parents with severely disabled children. In some respects, Ohio has recognized the financial difficulties divorced parents face when they are the sole caregivers of disabled, adult children. Although Ohio law requires that the noncustodial parent in a divorce pay child support for their disabled adult children if the disability arose prior to the child reaching eighteen, ambiguity in the law gives Ohio courts discretion to circumvent their jurisdiction in these particular situations. Currently, Ohio courts differ in how they interpret whether they retain jurisdiction to initiate support orders for disabled children after the disabled child has reached the age of majority. This discretion is problematic, and this type of arbitrary power punishes disabled adults for something beyond their control—namely, the timing of their caregivers’ divorce. This Note attempts to resolve the current ambiguity in Ohio law by arguing that Ohio law should be interpreted to reflect the inevitable overlap between a parent’s moral and legal duties and recognize the courts’ powers to initiate support orders for disabled adults.

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## I. INTRODUCTION

The familiar saying that “it takes a village to raise a child” is currently a reality for most parents. This phrase is based on the premise that it takes more than one caregiver to successfully provide for all the needs and direction required to raise a child.<sup>1</sup> Through historical transformations and leading moral views, family has ultimately been designated as the origin of such support. Many parents would tend to agree that family is often the best resource to shape children into productive members of society capable of self-support through nurturing and financial care. Of course, however, this conclusion is based on the presumption that all children will eventually “graduate” from their dependency on caregivers and become adults who are capable of providing for themselves, both physically and economically.

But in reality, many families have children who will never be able to support themselves in their adult life.<sup>2</sup> Many children, because of circumstances beyond their control, are faced with disabling conditions that prevent them from relinquishing their dependency on others.<sup>3</sup> More often than not, the need for specialized care does

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<sup>1</sup> See Joseph G. Healey, *African Proverb of the Month: It Takes a Whole Village to Raise a Child*, AFRIPROV.ORG (Nov. 1998), <http://www.afriprov.org/african-proverb-of-the-month/23-1998proverbs/137-november-1998-proverb.html>.

<sup>2</sup> In 2010, there were roughly 38.3 million people in the United States suffering from a severe disabling condition. MATTHEW W. BRAULT, U.S. CENSUS BUREAU, AMERICANS WITH DISABILITIES: 2010 4 (2012).

<sup>3</sup> This Note focuses on the population that have “severely disabling conditions.” Severe disability, for purposes of this Note, is defined as an individual with a disability who has a

not terminate once a severely disabled child reaches adulthood, resulting in their continual reliance on family support.<sup>4</sup> There are larger legal implications when a child reaches adult status; while typically parents are relieved of parental obligations to their adult aged children, this is not the case for parents with severely disabled children.<sup>5</sup> As a result, divorce court dockets now contain child support cases involving custodial parents with unique burdens due to difficulties related to lifelong care for their disabled adult children.<sup>6</sup>

Ohio has recognized the financial difficulties divorced parents face when they are the sole caregivers of disabled, adult children.<sup>7</sup> Ohio law generally requires the noncustodial parent in the divorce to pay child support for their disabled adult children if the onset of the disability arose prior to the child reaching the age of eighteen.<sup>8</sup> However, due to ambiguity in the law, Ohio courts retain discretion to circumvent their jurisdiction within these particular situations. Currently, Ohio courts differ in how they interpret whether they retain jurisdiction to *initiate* support orders for disabled children *after* the disabled child has reached the age of majority.<sup>9</sup>

This discretion is problematic. It gives Ohio courts the power to circumvent their jurisdiction over a case involving the support of disabled adults solely because the parents’ marriage ended in divorce *after* the disabled child reached adulthood.<sup>10</sup> This type of arbitrary power punishes disabled adults for something beyond their control—namely, the timing of their caregivers’ divorce. As a result, custodial parents are often left with the financial responsibility of supporting their disabled adult child while the noncustodial parent escapes with a “get out of jail free” card.

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severe physical or mental impairment which seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of employment outcome, whose rehabilitation can be expected to require multiple rehabilitation services over an extended period of time. *Individual with a Severe Disability*, LECTRIC LAW LIBRARY, <http://www.lectlaw.com/def/i033.htm> (last visited Feb. 5, 2017).

<sup>4</sup> See Jeffrey W. Childers, Hendricks v. Sanks: *One Small Step for the Continued Parental Support of Disabled Children Beyond the Age of Majority in North Carolina*, 80 N.C. L. REV. 2094, 2094-95 (2002).

<sup>5</sup> *Id.*

<sup>6</sup> Laura W. Morgan, *Termination of Child Support- Exception for Adult Children with Disabilities*, NCSL.ORG (May 6, 2015), <http://www.ncsl.org/research/human-services/termination-of-child-support-exception-for-adult.aspx>.

<sup>7</sup> *Id.*

<sup>8</sup> OHIO REV. CODE ANN. § 3119.86 (West 2016) (“The duty of support to a child imposed pursuant to a child support order shall continue beyond the child’s eighteenth birthday . . . [if] [t]he child is mentally or physically disabled and is incapable of supporting or maintaining himself or herself.”).

<sup>9</sup> See Donohoo v. Donohoo, 2012-Ohio-4105 (12th Dist.); *In re Edgel*, 2010-Ohio-6435 (11th Dist.); Wiczynski v. Wiczynski, 2006-Ohio-867 (6th Dist.); Abbas v. Abbas, 715 N.E.2d 613 (Ohio Ct. App. 1998); *cf.* Geygan v. Geygan, 973 N.E.2d 276 (Ohio Ct. App. 1965) (demonstrating that a court does not have jurisdiction to initiate support order when child has already reached the age of majority).

<sup>10</sup> See *Donohoo*, 2012-Ohio-4105 ¶¶ 17-19 (discussing *Castle v. Castle*, 473 N.E. 2d 803 (1984)).

This unfortunate circumstance became a reality for a divorced, single mother in the 2012 Ohio case, *Geygan v. Geygan*.<sup>11</sup> In *Geygan*, the marriage between parents of two children began to deteriorate after thirty-eight years, ultimately resulting in divorce.<sup>12</sup> One of their children, over the age of eighteen at the time of divorce, had severe physical and developmental disabilities since birth and was unable to accomplish self-support.<sup>13</sup> Prior to the divorce, both parents shared the burdensome responsibility of supporting their disabled child financially.<sup>14</sup> However, the divorce proceedings deemed the mother the custodial parent, responsible for the daily care and support of her disabled adult child.<sup>15</sup> Due to the need for continued care, coupled with the economic hardships involved in raising a disabled adult, the mother sought court assistance to obtain financial support from her ex-husband.<sup>16</sup>

Upon review by the Tenth District Court of Appeals, the court refused to help the mother obtain the financial assistance she desperately sought and denied her request accordingly. Instead, the court decided that it lacked jurisdiction to *initiate* a support order for a disabled adult, despite the fact that it retained power to continue child support for an adult child when such authority was first exercised *before* the child's eighteenth birthday.<sup>17</sup> In other words, the court held that a support order must already be in place prior to the disabled child reaching the age of majority in order to receive support from a non-custodial parent in the child's adult life.<sup>18</sup> According to *Geygan*, timing is essential in determining the outcome of these cases.<sup>19</sup>

However, the court fails to acknowledge the underlying morality behind the legal obligation to support disabled adults. How can parents predict the timing of their divorce? What about the morality concerns for disabled adult children that triggered legal intervention in the first place? According to some Ohio courts, these inquiries are irrelevant.<sup>20</sup>

Most people would generally agree that moral, noncustodial parents in a divorce should bear the duty of supporting their disabled adult child. Although some scholars attribute the legal duty of support to legislative efforts to eliminate resource dependency, this Note contends that evolving moral views towards the traditionally oppressed ultimately trigger legislative action. Accordingly, this Note argues that Section 3119.86 of the Ohio Revised Code<sup>21</sup> should be interpreted to reflect the overlap between a parent's moral and legal duties and recognize the courts' power to initiate support orders for disabled adults.

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<sup>11</sup> *Geygan*, 2012-Ohio-1965.

<sup>12</sup> *Id.* at 277.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 279.

<sup>18</sup> *Id.* at 280-81.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 279.

<sup>21</sup> OHIO REV. CODE ANN. § 3119.86 (West 2016).

Section II of this Note provides background insight into the inevitable overlap between law and morality in American society. In doing so, this Note illustrates specific areas of law that supplement moral duties with legislation, focusing mainly on judicial and legislative dependence on morality in family law and support obligations. Section III of this Note begins to analyze why it is necessary to legislate morality in order to establish the authority for courts to *initiate* support orders for the disabled. To that end, this Note discusses how the moral duty to support disabled children throughout adulthood triggered legislative action in the first place. In light of the foregoing, this Note argues that courts should follow precedent and rely on morality concerns to establish jurisdiction and justify their power to initiate support under Section 3119.86 of the Ohio Revised Code. Because of the current ambiguity in Ohio law, this Note ultimately proposes that Section 3119.86 should be amended to expressly provide for the mandated support of severely disabled children beyond the age of majority, regardless of whether the support order is initiated in domestic relations courts prior to or after the disabled child reaches the age of majority.

In further support of this proposal, Section III-B of this Note presents a compelling approach to the idea of legislating morality and notes that optimized results will occur if the Ohio legislature supplements moral obligations with legislation and expressly grant courts the authority to initiate support orders for disabled adults. This Note supplements these arguments by analyzing the various stances of the Ohio district courts of appeals on this particular issue, favoring those decisions that overlap with moral principles. Finally, this Note examines how other states approach the issue of support orders for adult disabled dependents.

## II. BACKGROUND

### A. "Legislating Morality": Review of Judicial and Legislative Dependence on Morality in American Law

Society cannot thrive in an orderly fashion without morality. While some commentators may argue against legislating morality into codified law,<sup>22</sup> it cannot be denied that in many areas of our legal system the two concepts are virtually inseparable.<sup>23</sup> Despite unrealistic views that legislating morality is deficient, the reality is that the majority of successful regulations today legislate by directly mimicking underlying moral principles.<sup>24</sup> The concept of morality itself involves a particular system of values and principles that create a doctrine of appropriate conduct held by society.<sup>25</sup> It is, therefore, cognizable that our laws often stem from a system of such values and beliefs in determining what behaviors to regulate.<sup>26</sup> Because law and morality both aim to control the undesirable conduct of individuals,

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<sup>22</sup> See Sarah Braasch, *Morality Has No Place in the Law*, PATHEOS: DAYLIGHT ATHEISM (Jan. 14, 2011), <http://www.patheos.com/blogs/daylightatheism/2011/01/morality-has-no-place-in-the-law/>.

<sup>23</sup> Michael Bauman, *Law and Morality*, CHRISTIAN RES. INST. (Apr. 17, 2009), <http://www.equip.org/article/law-and-morality/>.

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

<sup>25</sup> *Morality*, MERRIAM-WEBSTER DICTIONARY, <http://www.merriam-webster.com/dictionary/morality> (last visited Jan. 27, 2017)

<sup>26</sup> Bauman, *supra* note 23.

in certain circumstances, it is necessary for morality to serve as the foundation for legal or political systems.<sup>27</sup>

A prime example of morality placed at the core of legal and political jurisprudence comes from the U.S. Constitution.<sup>28</sup> When drafting the Constitution, the Founding Fathers exemplified the importance of aggregating moral norms with law.<sup>29</sup> In light of the oppressive, monarchical atmosphere surrounding its creation, the Founding Fathers wrote the Constitution recognizing that political figures' actions could deviate from morality and eventually become unjust.<sup>30</sup> Moreover, because the Constitution was based on concepts of liberty and justice, morality inevitably played a crucial role in the formulation of the "Law of the Land."<sup>31</sup> Therefore, at the time of its creation, the Constitution symbolized a roadmap for creating a nation grounded in morality and order through the establishment of binding assertions on how a model society should operate.<sup>32</sup>

Morality continues to have the power of influence over laws today because it provides the rationale behind making *immoral* actions unlawful.<sup>33</sup> It is now widely accepted that morality serves as the public expression behind laws "which [codify] in a public way the basic principles of conduct which a society accepts."<sup>34</sup> It is virtually inevitable that every legislative enactment speaks to moral values and judgments, helping society differentiate right from wrong, innocence from guilt, and justice from injustice.<sup>35</sup> As scholar Jane C. Murphy suggests, "Each time the Government, through its lawmakers, decides to regulate or refrains from regulating, a choice in values is made."<sup>36</sup>

Although there are several technical distinctions between American law and morality, it is evident that—in certain areas of law—the overlap between the two is necessary to successfully regulate societal conduct and promote fairness and justice.<sup>37</sup> While morality alone may not shape the behavior of those too stubborn to conform, laws grounded in morality counter this issue, not only by distinguishing right from wrong, but also by penalizing those individuals who refuse to learn from

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<sup>27</sup> Braasch, *supra* note 22.

<sup>28</sup> See U.S. CONST.

<sup>29</sup> Bauman, *supra* note 23.

<sup>30</sup> See *id.* (discussing how the "founding fathers understood the actions of King George were morally evil and politically unjust").

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> See Ira H. Peak, Jr., *Dworkin and Hart on the Law: A Polanyian Reconsideration*, 18 TRADITION & DISCOVERY: THE POLANYI SOCIETY PERIODICAL 22, 25 (1991-92) (discussing how legal rules have a connection to morals in both origin and interpretation).

<sup>34</sup> See Jan Edward Garrett, *Basic Observations on Law and Morality* (Sept. 10, 2001), <http://people.wku.edu/jan.garrett/320/320lawmo.htm>.

<sup>35</sup> *Id.*

<sup>36</sup> Jane C. Murphy, *Rules, Responsibility and Commitment to Children: The New Language of Morality in Family Law*, 60 U. PITT. L. REV. 1111, 1133 (1999).

<sup>37</sup> See Leslie Green, *Positivism and the Inseparability of Law and Morals*, 83 N.Y.U. L. REV. 1035, 1036 (2008).

the repercussions of their harmful actions.<sup>38</sup> This makes it clear that law is sometimes needed to replace moral obligations in order to enhance a uniform and orderly nation.<sup>39</sup> Therefore, laws are maximized when the legal system places a duty on its citizens in the interests of the public by legally imposing legitimate moral obligations.<sup>40</sup>

## 1. Brief Overview of Areas of Law that Regulate Morality

### *a. Legislating Morality in Criminal Law*

Some scholars of philosophy suggest, "It is a proper function of the criminal law to promote good character, and to restrain or discourage people from engaging in activities that cause moral harm to themselves or others."<sup>41</sup> With that being said, it is generally accepted that morality and law regulate most behaviors that are criminal in nature.<sup>42</sup> Societal values and beliefs regarding certain acts often trigger legislative action in the field of criminal law.<sup>43</sup> In determining the behaviors that warrant criminalization, the necessary preconditions focus on identifying the objects of moral concern.<sup>44</sup>

Despite the fact that not all behaviors considered *immoral* or unethical justify criminal penalties, moral and legal sanctions often result when private gains and utility from undesirable conduct are particularly significant.<sup>45</sup> Take, for example, the criminal outlaw of prostitution, rape, murder, and theft. Most would agree that these actions are not only illegal but also immoral. Without legal intervention against these immoral acts, criminals stand to gain insurmountable private benefits, both in economic terms and their power and control over the livelihood of others.<sup>46</sup>

### *b. Legislating Morality in Contract Law*

In the history of contract law, it was once believed that "contracts were made in the presence of God and consequently certain moral standards were implicit in creating and executing the agreement."<sup>47</sup> In present day, evidence of these implicit

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<sup>38</sup> See Steven Shavell, *Law Versus Morality as Regulators of Conduct*, 4 AM. L. ECON. REV. 227, 246-51 (2001), [http://www.law.harvard.edu/faculty/shavell/pdf/4\\_Amer\\_Law\\_Econ\\_Rev\\_227.pdf](http://www.law.harvard.edu/faculty/shavell/pdf/4_Amer_Law_Econ_Rev_227.pdf).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 248-49.

<sup>41</sup> John Danaher, *Enforcing Morality Through Criminal Law*, PHILOSOPHICAL DISQUISITIONS (May 10, 2014), <http://philosophicaldisquisitions.blogspot.com/2014/05/enforcing-morality-through-criminal-law.html>.

<sup>42</sup> Richard C. Fuller, *Morals and the Criminal Law*, 32 J. CRIM. L. CRIMINOLOGY 624, 628 (1942).

<sup>43</sup> *Id.*

<sup>44</sup> Danaher, *supra* note 41, at 1.

<sup>45</sup> Shavell, *supra* note 38, at 246-47.

<sup>46</sup> *Id.*

<sup>47</sup> Brad Reid, *Morality Is Part of Contract Law*, HUFFINGTON POST (Mar. 10, 2012), [http://www.huffingtonpost.com/brad-reid/morality-is-part-of-contr\\_b\\_1195172.html](http://www.huffingtonpost.com/brad-reid/morality-is-part-of-contr_b_1195172.html).



moral standards are still embedded in the obligations of this legal doctrine,<sup>48</sup> and it is unlikely that they will fade. Legal duties created in the field of contract law are often justified by their relationship to the moral obligations imposed on every agent.<sup>49</sup> Specifically, many scholars claim that contract law is justifiable through the enforcement of moral commitments to keep one's promises.<sup>50</sup> Because the enforcement of contracts is interchangeable with the notion of promises, morality plays a central role in shaping the possible remedies for the breach of such promises. In the event of a breach of contract, one party may suffer significant loss, which invokes the notion of unfairness.<sup>51</sup> In determining what is fair and unfair regarding the subsequent execution and outcome of agreements, moral beliefs and values are echoed as a result.<sup>52</sup>

Morality also plays a vital part in how courts interpret agreements that are ambiguous in nature.<sup>53</sup> In the context of contractual interpretation, the doctrine of the implied covenant of good faith and fair dealing is a specific example of the interplay between morality and the law.<sup>54</sup> Courts consider the doctrine to be the "backstop" that "requires a party in a contractual relationship to refrain from arbitrary or unreasonable conduct which has the effect of preventing the other party to the contract from receiving the fruits of the bargain."<sup>55</sup> Court reliance on the doctrine of the implied covenant of good faith and fair dealing reflects moral views in determining which types of behaviors constitute arbitrariness and unreasonableness, which bears on the legality and enforcement of an agreement.<sup>56</sup>

### *c. Legislating Morality in Civil Rights Law*

Undoubtedly, American civil rights laws have moral-based origins.<sup>57</sup> With promotion of fairness and equality as the underlying objective behind civil rights laws, the concepts are categorically equivalent to morality.<sup>58</sup> The emergence of America's civil rights laws would not have come into existence without the gradual

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<sup>48</sup> *Id.*

<sup>49</sup> Jody S. Kraus, *The Correspondence of Contract and Promise*, 109 COLUM. L. REV. 1603, 1612-14 (2009).

<sup>50</sup> *Id.* at 1613.

<sup>51</sup> Reid, *supra* note 47.

<sup>52</sup> *Id.* (quoting *Clean Harbors, Inc. v. Safety-Kleen, Inc.* (citing *Alliance Data Systems Corp. v. Blackstone Capital*) ("The Court noted approvingly that this covenant is a 'backstop' that 'requires a party in a contractual relationship to refrain from arbitrary or unreasonable conduct which has the effect of preventing the other party to the contract from receiving the fruits of the bargain.'")).

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* (quoting *Alliance Data Systems Corp. v. Blackstone Capital*).

<sup>56</sup> *Id.*

<sup>57</sup> Christopher Beem, *A Symposium on Legislating Morality: Can Legislation Solve our Moral Problems*, COMM. NETWORK, [https://www2.gwu.edu/~ccps/rcq/legislating\\_morality.html](https://www2.gwu.edu/~ccps/rcq/legislating_morality.html) (last visited Jan. 28, 2017).

<sup>58</sup> Green, *supra* note 37, at 1046.

evolution of society's moral views that all citizens deserve equal treatment. This notion—that fairness and equality in our civil protections result from morality—is arguably corroborated by the historical outlawing of behaviors once viewed as acceptable but subsequently deemed immoral.<sup>59</sup>

One of the earliest examples of this evolution is the abolition of slavery in the United States. Once viewed as acceptable, slavery gradually became immoral.<sup>60</sup> Once society's moral views regarding slavery changed, legislation soon followed.<sup>61</sup> Similarly, civil rights laws prohibiting discrimination of historically oppressed groups also delineate moral norms that all citizens should be protected from unjust and prejudicial treatment, regardless of race, age, gender, sex, or capabilities.<sup>62</sup>

### *B. Review of Judicial and Legislative Dependence on Morality in Family Law Jurisprudence*

#### 1. Correlation between Moral and Legal Duties in Family Law

Similar to how morals are basic to the everyday function of families, morality has also played a central role in the development of family law.<sup>63</sup> Generally, law typically intervenes in family life when urgent moral issues arise.<sup>64</sup> When such issues arise, it is especially true in the field of family law that society and legislators believe the law should be based on moral principles.<sup>65</sup> The emphasis on morality in family jurisprudence results in the deliberate incorporation of moral principles into statutes and case law.<sup>66</sup> Whereas in other areas of law courts may be more hesitant to rely entirely on morality in justifying their decisions, it has generally been the norm for family law courts and statutes to do so explicitly.<sup>67</sup> In fact, in family law jurisprudence, it is common for courts to waive requirements of fact-based justifications that fail to incorporate morality into their decisions.<sup>68</sup>

The reality is that law and morality are essentially interchangeable in the field of family law. As scholar Katharine Bartlett notes, "Family law is soaked in moral judgments that both reinforce the law and are reinforced by it. At some level, the question is not whether family law should reflect moral principles but what those

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<sup>59</sup> Bauman, *supra* note 23, at 3 (discussing the abolition of slavery).

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 3-4.

<sup>63</sup> Carl E. Schneider, *Moral Discourse and the Transformation of American Family Law*, 83 MICH. L. REV. 1803, 1806 (1985).

<sup>64</sup> *Id.* at 1806.

<sup>65</sup> *Id.*

<sup>66</sup> For instance, marriage and divorce law reflects moral beliefs. *See id.* at 1809, 1811. Child support laws and social security regulations reflect moral beliefs as well. *Id.* at 1812-1813.

<sup>67</sup> Murphy, *supra* note 36, at 1115-16.

<sup>68</sup> *See, e.g.,* Stanton v. Stanton, 3 Day 37, 41-42, 50-51 (Conn. 1808); Castle v. Castle, 473 N.E.2d 803, 806 (Ohio 1984).

principles will be.”<sup>69</sup> With regard to which moral principles family law should consider, some scholars assert that family law should aim to promote “a substantive moral vision of commitment and responsibility.”<sup>70</sup> Meanwhile, others envision family law as an opportunity to emphasize issues of obligation and moral responsibility.<sup>71</sup>

In recent trends, however, this reliance on morality has begun to shift, as morality maintains its significance in some aspects of family law and diminishes in other areas.<sup>72</sup> Some scholars contend that this new shift in the placement of moral concerns in family law should be “grounded in equality, fairness, commitment, and nurturance.”<sup>73</sup> Despite the decreasing significance of morality in some areas of family law, what has remained consistent is that the support of dependents still has meaning.<sup>74</sup> From a philosophical standpoint, scholars contend, “[T]he nurturing of children out to be included in our list of the central or the cardinal virtues. Indeed even one wishes to distinguish between public virtues and private virtues, the virtue of nurturing children belongs high on both lists.”<sup>75</sup> It was these types of moral concerns and beliefs that led to the importance of maintaining and supporting vulnerable dependents.<sup>76</sup>

*a. Correlation between Moral and Legal Duty to Support “Dependents”: Child Support*

Courts have uniformly reiterated that “we see no difference in principle between the duty imposed upon the parent to support the [minor] child and the obligation to care for the [disabled] adult, who is equally, if not more, dependent upon the parent.”<sup>77</sup> Because the principles amongst these two types of support obligations are related, it is essential to first examine the evolution of the duty to support minor children.

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<sup>69</sup> Katharine T. Bartlett, *Saving the Family from the Reformers*, 31 U.C. DAVIS L. REV. 809, 816 (1998). See generally Jennifer Wriggins, *Marriage Law and Family Law: Autonomy, Interdependence and Couples of the Same Gender*, 41 B.C. L. REV. 265, 287-88 (2000) (discussing different scholars’ views on the role of morality in family law).

<sup>70</sup> Wriggins, *supra* note 69, at 289. Milton C. Regan argues that family law should not be based on a model of individual private ordering but should “promote a substantive moral vision of commitment and responsibility.” MILTON C. REGAN, JR., *FAMILY LAW AND THE PURSUIT OF INTIMACY* 4 (1993).

<sup>71</sup> See Wriggins, *supra* note 69, at 289 (quoting Martha L. Minow, *All in the Family and in all Families: Membership, Loving and Owning*, 95 W. VA. L. REV. 275, 306 (1992-93)).

<sup>72</sup> See *id.* at 289 (quoting Naomi R. Cahn, *Review Essay: The Moral Complexities of Family Law*, 50 STAN. L. REV. 225, 238 (1997)).

<sup>73</sup> *Id.* at 289 (quoting Cahn, *supra* note 73, at 238)).

<sup>74</sup> See Murphy, *supra* note 35 at 1128.

<sup>75</sup> *Id.* at 1129 (quoting Michael J. Meyer, *Family Virtues and the Common Good*, 36 SANTA CLARA L. REV. 409, 413-14 (1996)).

<sup>76</sup> See *id.* at 1129-30.

<sup>77</sup> *Crain v. Mallone*, 113 S.W. 67, 68 (Ky. 1908) (discussing rationale for imposing financial obligation on parents to support disabled adult beyond the age of majority).

Our laws regulate “dependents” and their support through policies reinforced by morality; the policies are also aimed at governing the social and material environments the dependents inhabit and the resources to which they have access.<sup>78</sup> Social policy, by its very definition, can have a cause-and-effect type influence on the welfare of dependents.<sup>79</sup> As a result, one cannot merely disregard the impact that morally driven policies derived from religious, racial, ideological, scientific, and philosophical ideas have had on the legal emergence of support obligations.<sup>80</sup>

*b. Historical Views of Children: From Child Labor to Fairytale View*

In order to understand the role morality played in the development of the legal obligation to support dependent children, it is first critical to examine the evolving perceptions of children. The concept of “childhood” has historically been the product of social construction, which has continued to change and evolve.<sup>81</sup> Prior to the commencement of the nineteenth century, legal and societal views of “childhood,” as we perceive it today, were nonexistent.<sup>82</sup> During this period, familial roles involved utilizing children as economic devices, allowing caregivers the autonomy to be *dependent*, in part, on their children as a means for financial sustainability.<sup>83</sup> As early as the medieval era, historians began identifying society’s lack of recognition of “childhood” as a distinct stage of life.<sup>84</sup> During the medieval era, children were virtually indistinguishable from their adult counterparts and deemed fully integrated members of the community.<sup>85</sup> Symbolized socially as young adults, children as young as seven years old were apprenticed and used as tools for acquiring earnings.<sup>86</sup>

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<sup>78</sup> For purposes of this Note, “dependents” refers to children and the severely disabled. Annette Ruth Appell, *Child-Centered Jurisprudence and Feminist Jurisprudence Exploring the Connections and Tensions: The Pre-Political Child of Child-Centered Jurisprudence*, 46 HOUS. L. REV. 703, 708 (2009) (quoting Allison James et al., *Care and Control in the Construction of Children’s Citizenship*, in CHILDREN AND CITIZENSHIP 85, 88 (Antonella Invernizzi & Jane Williams eds., 2008)).

<sup>79</sup> The Department of Social Policy at the London School of Economics defines social policy as “an interdisciplinary and applied subject concerned with the analysis of societies’ responses to social need.” *About Us*, LONDON SCH. OF ECON., <http://www.lse.ac.uk/socialPolicy/AboutUs/introduction.aspx> (last updated Sept. 28, 2016).

<sup>80</sup> See Appell, *supra* note 78, at 708-11.

<sup>81</sup> See Janet E. Ainsworth, *Re-Imagining Childhood and Reconstructing the Legal Order: The Case for Abolishing the Juvenile Court*, 69 N.C. L. REV. 1083, 1085-86 (1991).

<sup>82</sup> *Id.* at 1093-94.

<sup>83</sup> See Appell, *supra* note 78, at 745-46.

<sup>84</sup> PHILIPPE. ARIÈS, CENTURIES OF CHILDHOOD: A SOCIAL HISTORY OF FAMILY LIFE 20–32 (Robert Baldick, trans.) (1970) (discussing stages of life in other civilizations and cultures).

<sup>85</sup> See Ainsworth, *supra* note 81, at 1092-93 (discussing that the primary age-based boundary was drawn at infancy and that a time of physical dependence ended roughly at age seven during this era).

<sup>86</sup> Jim Vandergriff, *Factors Influencing The Development of The Idea of Childhood in Europe and America*, [http://faculty.knox.edu/jvandergr/201\\_Website\\_S\\_08/HistoryofChildhood.html](http://faculty.knox.edu/jvandergr/201_Website_S_08/HistoryofChildhood.html) (last visited January 29, 2017).

For much of the eighteenth century, families valued children mainly because the child was able to contribute to the household economy.<sup>87</sup> This often meant that children were subjected to agricultural labor for the sole purpose of raising revenue for the family unit.<sup>88</sup> One historian notes, “[T]he services or wages of a child over ten was one of the most valuable assets a man could have.”<sup>89</sup>

The ideology of children as “economic tools” continued to progress into the era when the U.S. economy transitioned from agriculture to industry.<sup>90</sup> Consequently, the rise in the Industrial Revolution continued to profoundly affect the historical views of children.<sup>91</sup> As early as 1870 through World War I, the Industrial Revolution brought a rise in factories, coupled with a new demand for abled laborers.<sup>92</sup> The sudden growth of “factory towns” was, therefore, accompanied by urbanization, which relocated families from rural to urban America.<sup>93</sup> The influx of urbanization incidentally led to the need for families to achieve more money as opposed to commodities.<sup>94</sup> The demand for more cash meant that lower-income families were faced with the reality that the entire family, including children, were crucial economic assets for meeting the needs of the family unit.<sup>95</sup> Factory employers even preferred child labor because employers viewed children, compared to adults, as easier to manage, cheaper, and less likely to strike.<sup>96</sup>

Prior to the nineteenth century, there was a presumption that able-bodied children must work.<sup>97</sup> Thus, during this time frame, there was no legislation to support the interest of working children.<sup>98</sup> This lack of regulation stemmed from the belief that “the policy of our laws which are ever watchful to promote industry, did not mean to compel a father to maintain his idle and lazy children in ease and indolence.”<sup>99</sup>

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<sup>87</sup> Drew D. Hansen, *The American Invention of Child Support: Dependency and Punishment in Early American Child Support Law*, 108 *YALE L. J.* 1123, 1129 (1999).

<sup>88</sup> See generally Appell, *supra* note 77, at 745-46 (discussing the transition from children working in the fields to factory laborers).

<sup>89</sup> MARY ANN MASON, *FROM FATHER’S PROPERTY TO CHILDREN’S RIGHTS* 6 (1994).

<sup>90</sup> Marie A. Failing, *“Too Cheap Work for Anybody but Us”: Toward a Theory and Practice of Good Child Labor*, 35 *RUTGERS L. J.* 1035, 1082 (2004).

<sup>91</sup> E. Ill. Univ., *Childhood Lost: Child Labor During the Industrial Revolution*, EIU.EDU, <http://www.eiu.edu/eiutps/childhood.php> (last visited Jan. 29, 2017).

<sup>92</sup> *Id.*

<sup>93</sup> Failing, *supra* note 90, at 1048.

<sup>94</sup> See Hansen, *supra* note 87, at 1053, 1131-32.

<sup>95</sup> See E. Ill. Univ., *supra* note 91.

<sup>96</sup> *Child Labor in U.S. History*, CHILD LABOR PUB. EDUC. PROJECT, [http://www.continuetolearn.uiowa.edu/laborctr/child\\_labor/about/us\\_history.html](http://www.continuetolearn.uiowa.edu/laborctr/child_labor/about/us_history.html) (last visited Jan. 29 2017).

<sup>97</sup> See Hansen, *supra* note 87, at 1129-30.

<sup>98</sup> *Id.*

<sup>99</sup> Sande L. Buhai, *Parental Support of Adult Children with Disabilities*, 91 *MINN L. REV.* 710, 713 (2007) (quoting WILLIAM BLACKSTONE, *COMMENTARIES ON THE LAWS OF ENGLAND* 437 (Univ. of Chi. Press 1979) (1765)).

It was not until the turn of the nineteenth century that the burdens of financial dependency shifted from children to their caregivers.<sup>100</sup> Historians have noticed the progression of societal conceptions of children as society began to recognize our modern views of "childhood."<sup>101</sup> During the Enlightenment and Romantic Era, "the view of children as economic assets began to give way to a more romantic, idealized view of childhood among the middle and upper classes."<sup>102</sup> Childhood symbolized a distinct stage of life that required special effort to care for a child's needs.<sup>103</sup>

*c. Changing Views Led to Emergence of Moral Duty to Support Dependent Children*

The societal change in viewing children at the onset of the nineteenth century brought forth new moral notions of parental responsibility.<sup>104</sup> With the emergence of child labor laws, the presumption that children were economic tools was replaced by beliefs that children are vulnerable and wholly dependent on adult guidance, making the child's care the leading interest.<sup>105</sup> From a philosophical standpoint, childhood was completely redefined, and children were deemed prospectively different from adults.<sup>106</sup> This newly idealized view of childhood subsequently led to the emergence of a moral obligation to support children.<sup>107</sup> From this point forward, society regarded parents as the source of guidance and care for their dependent children.

There have been competing justifications behind the gradual emergence of the moral duty that parents have to support their children.<sup>108</sup> One justification for such a duty can be traced to religious beliefs and views regarding the relationship between parents and their children.<sup>109</sup> Because "[t]he United States is one of the most religious countries in the world,"<sup>110</sup> it is fathomable that views embedded within certain religions have played a significant role in guiding parental commitments to their children.

Specifically, there are roots of parents' moral duties to support their children ingrained in Christian beliefs.<sup>111</sup> From beginning to end, the Christian Bible not only

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<sup>100</sup> *Id.* at 713-15.

<sup>101</sup> John Clarke, *Histories of Childhood*, in CHILDHOOD STUDIES: AN INTRODUCTION 5, (Dominic Wyse, ed. 2004), [http://www.blackwellpublishing.com/content/bpl\\_images/content\\_store/sample\\_chapter/0631233962/wyse%2002chap01.pdf](http://www.blackwellpublishing.com/content/bpl_images/content_store/sample_chapter/0631233962/wyse%2002chap01.pdf).

<sup>102</sup> Hansen, *supra* note 87, at 1129.

<sup>103</sup> *Id.*

<sup>104</sup> *See* Clarke, *supra* note 101, at 9-10.

<sup>105</sup> *Id.* at 9.

<sup>106</sup> Arlene Skolnick, *Children's Rights, Children's Development*, in THE FUTURE OF CHILDHOOD AND JUVENILE JUSTICE 138, 150 (Lamar T. Empey ed., 1979).

<sup>107</sup> *Id.* at 151.

<sup>108</sup> *See* Buhai, *supra* note 99, at 737-38.

<sup>109</sup> *See id.* at 738.

<sup>110</sup> Susan D. Holloway, *The Role of Religious Beliefs in Early Childhood Education: Christian and Buddhist Preschools in Japan*, EARLY CHILDHOOD RESEARCH AND PRACTICE, Fall 1999. <http://ecrp.uiuc.edu/v1n2/holloway.html>.

<sup>111</sup> *See* Buhai, *supra* note 99, at 738-39.

references the importance of children, but also speaks to parents' duties to support them.<sup>112</sup> Christian scripture teaches, "Children are a heritage from the Lord, offspring a reward from him. Like arrows in the hands of a warrior are children born in one's youth. Blessed is the man whose quiver is full of them"<sup>113</sup> With the underlying view that children are an important gift from God, the Bible repeatedly places great emphasis on a parent's duty to provide for them.<sup>114</sup> Christian beliefs even go so far as to deem parents immoral and infidel if they fail to provide for their own children.<sup>115</sup>

Although morality does not necessarily implicate religious origins, another leading justification behind the moral obligation of dependent support stems from natural law principles.<sup>116</sup> According to English jurist William Blackstone, "The duty of parents to provide for the maintenance of their children . . . is an obligation laid on them not only by nature herself, but by their own proper act, in bringing them into the world."<sup>117</sup> Blackstone reasoned, "By begetting them, therefore, they have entered into a voluntary obligation to endeavor, as far as in them lies, that the life which they have bestowed shall be supported and preserved."<sup>118</sup>

The natural law theory that parents must support children stems from the belief that children do not have the ability to provide for themselves.<sup>119</sup> It has been continually contemplated and agreed that "[t]he wants and weaknesses of children render it necessary that some person maintains them, and the voice of nature has pointed out the parents as the most fit and proper persons."<sup>120</sup> Furthermore, natural law theory provides, "The obligation on the part of the parent to maintain the child continues until the latter is in a condition to provide for its own maintenance."<sup>121</sup> Thus, Blackstone believed that the "insuperable degree of affection between parents and their children was sufficient evidence of parental support to obviate the need for legal sanctions."<sup>122</sup>

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<sup>112</sup> *See id.* at 738.

<sup>113</sup> *Psalms* 127:3-5 (New Int'l).

<sup>114</sup> "Behold, the third time I am ready to come to you; and I will not be burdensome to you: for I seek not yours, but you: for the children ought not to lay up for the parents, but the parents for the children." *2 Corinthians* 12:14 (King James). "And in all the land were no women found *so* fair as the daughters of Job: and their father gave them inheritance among their brethren." *Job* 42:15 (King James). "A good person leaves an inheritance for their children's children, but a sinner's wealth is stored up for the righteous." *Proverbs* 13:22 (King James).

<sup>115</sup> "But if any provide not for his own, and specially for those of his own house, he hath denied the faith, and is worse than an infidel." *1 Timothy* 5:8 (King James).

<sup>116</sup> Buhai, *supra* note 99, at 737, 747.

<sup>117</sup> *Wells v. Wells*, 227 N.C. 614, 616 (N.C. 1947) (quoting 1 BLACKSTONE'S COMMENTARIES 419 (Lewis ed. 1897)).

<sup>118</sup> *Id.* at 616-17.

<sup>119</sup> *Id.* at 616.

<sup>120</sup> *Id.* at 617 (quoting C. JAMES KENT, 2 COMMENTARIES ON AMERICAN LAW 190 (Lecture 29)).

<sup>121</sup> *Id.*

<sup>122</sup> 1 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND \*424, \*448.

*d. Noncustodial Parents' Legal Duties to Support Dependent Children Rely on Morality*

Moral concern for the welfare of dependent children and the societal issues related to their care transgressed into family law's focus on noncustodial support obligations.<sup>123</sup> Child support laws have progressed and evolved significantly throughout American history.<sup>124</sup> In understanding the courts' reliance on morality in justifying support obligations, it is critical to view the reasoning provided in three of the earliest and leading child support cases.<sup>125</sup> Although it has been argued that the purpose of these early child support cases was to curtail the problem of single parent and child dependency on the public, this Note argues that the courts' reasoning for the payment of child support directly reflects the courts' reliance on moral values as leading justifications.

In 1808, the supreme court of Connecticut, in *Stanton v. Stanton*, allowed a wife to recover from her ex-husband for the support provided to their children.<sup>126</sup> The *Stanton* court authorized recovery for the support of two of the children covered by the custody decree on the grounds that "[p]arents are bound by law to maintain, protect, and educate their legitimate children, during their infancy, or nonage."<sup>127</sup> The court allowed recovery for support of the third child on the basis that "[t]he infant cast on the world must seek protection and safety where it can be found; and where, with more propriety can it apply, than to the next friend, nearest relative, and such as are most interested in its safety and happiness?"<sup>128</sup> The court's decision lacked justifications independent of the moral values relied on in reaching their conclusion.<sup>129</sup>

In 1816, a New York trial court, in *Van Valkinburgh v. Watson*, considered a claim to recover the cost of a coat sold to a son on his father's credit.<sup>130</sup> In resolving the issue, the court relied solely on the notion that:

A parent is under a natural obligation to furnish necessaries for his infant children; and if the parent neglect that duty, any other person who supplies such necessaries is deemed to have conferred a benefit on the delinquent parent, for which the law raises an implied promise to pay on the part of the parent.<sup>131</sup>

Lastly, in the 1858 case of *Tomkins v. Tomkins*, a father abandoned his young child and wife. Because of the mother's destitute state, the young child was sent to

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<sup>123</sup> Murphy, *supra* note 67, at 1190.

<sup>124</sup> Hansen, *supra* note 87, at 1125-26.

<sup>125</sup> See, e.g., *Stanton v. Stanton*, 3 Day 37 (Conn. 1808); *Tomkins v. Tomkins*, 11 N.J. Eq. 512 (Ch. 1858); *Van Valkinburgh v. Watson*, 13 Johns. 480 (N.Y. Sup. Ct. 1816).

<sup>126</sup> *Stanton*, 3 Day 37.

<sup>127</sup> *Id.* at 55.

<sup>128</sup> *Id.* at 57-58.

<sup>129</sup> *Id.* at 41.

<sup>130</sup> *Van Valkinburgh*, 13 Johns. 480.

<sup>131</sup> *Id.*



stay with her grandmother, who took on the responsibility of caring for the child.<sup>132</sup> In finding an obligation for the father to pay support for the expenses covered by another caregiver, the New Jersey Court of Chancery reasoned, “If a case can be suggested where the moral obligation of a father to provide for his offspring can be enforced as a legal one, it would be difficult to find one more apposite than this.”<sup>133</sup> The court further rationalized that “[t]here is no evidence that for the fifteen years the child was under the care of its grandmother, the father ever made any inquiry as to its whereabouts or welfare.”<sup>134</sup> The court declared:

Now, in view of all these facts, if there was any doubt as to the legal obligation of the father to provide for his child, and of his legal liability to such as should supply that child with the necessaries of life, the moral obligation is so strong that a court of equity would feel but little inclined to grant relief, on any such ground as that the moral obligation had been converted into a legal one.<sup>135</sup>

### III. ANALYSIS

#### *A. The Necessity of Legislating Morality for Support of Disabled Adult Children: Why Ohio Domestic Relations Courts Should Have Power to Initiate Support for Disabled Adults*

##### 1. Connection between Moral and Legal Duty to Support “Dependents”: Disabled Adult Support

Generally, the obligation to support children until they have obtained the age of majority is imposed on parents by law.<sup>136</sup> However, in many jurisdictions today, court decisions and legislative enactments go beyond the recognition of a mere duty to support children and also recognize the duty of parental support of disabled adult children as a matter of family law.<sup>137</sup> Nevertheless, how did courts and legislators come to establish this new arena of family law jurisprudence when parents originally only had a moral and legal obligation to support their minor children? From a careful examination of historical views of the severely disabled, coupled with societal values and beliefs about their indefinite dependence on others for support and care, the answer to this question undoubtedly originates from morality.

When reviewing Ohio court decisions and laws,<sup>138</sup> as well as other jurisdictions’ stances on the duty to support disabled children through adulthood, it is evident that courts and legislators began to recognize the rise of moral concerns relating to the continued need for care and support of disabled children once they reach adult status.

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<sup>132</sup> *Tomkins v. Tomkins*, 11 N.J. Eq. 512 (Ch. 1858).

<sup>133</sup> *Id.* at 512.

<sup>134</sup> *Id.*

<sup>135</sup> *Id.* at 517-18.

<sup>136</sup> *The Duty to Support Adult Disabled Children*, NAT’L LEGAL RES. GRP. INC. (1997), <http://www.divorcesource.com/research/dl/childsupport/97oct188.shtml> (citing 59 Am. Jur. 2d Parent and Child § 89 (1987); 67A C.J.S. Parent and Child § 62 (1978)).

<sup>137</sup> *Id.*

<sup>138</sup> *See infra* Section III.A.1.c.

These moral concerns ultimately demonstrated that legal intervention was necessary to resolve the problem of what should be done for the aid of disabled adult children. As a resolution, courts and lawmakers began to rely heavily on morality in deeming parents the responsible source for the aid of these individuals.<sup>139</sup>

*a. Historical View of Disabled Adults: From Dehumanized to Deinstitutionalized*

In examining the intermingling between morality and the subsequent obligation to support disabled adults, a basic understanding of the development of views towards the disabled is key. While today there is a general acceptance of empathy and special attention afforded to this group of individuals, from a historical perspective, this empathy has not always been present.<sup>140</sup>

As early as the latter half of the twelfth century when religion was the main authority in guiding everyday life, negative views towards the disabled were the norm.<sup>141</sup> There existed a general belief that the disabled—specifically, the mentally ill—were possessed by the devil or evil spirits.<sup>142</sup> Consequently, individuals who fit within this category were often whipped, tortured, and burned at the stake.<sup>143</sup> Similarly, during early history, there was virtually no aid and financial support afforded to the disabled.<sup>144</sup> Individuals suffering from an array of disabling conditions were often ejected from hospitals and poor shelters, having to rely on the humiliation of displaying their disabilities as a form of entertainment in return for food and shelter.<sup>145</sup>

Beginning in the early nineteenth century when science began to substitute religious authority, societal views changed from perceiving the disabled as having spiritual defects to an understanding that disabilities resulted of genetic deficits.<sup>146</sup> With this change in view, society began to believe that support and care of disabled adults shifted to the public, with reliance solely on doctors, educators, and social workers as their custodians.<sup>147</sup> State mental hospitals began to emerge as the first formal system of care for the intellectually disabled in the United States.<sup>148</sup> While it may have been thought that the emergence of these institutions was to curtail prior inhumane treatment of the disabled, in reality, such negative views and treatment of this group became exacerbated.<sup>149</sup>

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<sup>139</sup> Buhai, *supra* note 99, at 716-17.

<sup>140</sup> See TEACHING FOR DIVERSITY AND SOCIAL JUSTICE app. 14C (Maurianne Adams, Lee Anne Bell, & Pat Griffin eds., 2nd ed. 2007).

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> Catherine K. Harbour & Pallab K. Maulik, *History of Intellectual Disabilities*, INT'L ENCYC. REHABILITATION (2010), <http://cirrie.buffalo.edu/encyclopedia/en/article/143/>.

<sup>149</sup> *Id.*

Starting in the late 1800s and early 1900s, people with disabilities were segregated from the rest of the population into isolated institutions.<sup>150</sup> The conditions in these institutions, however, were far from humane, and this period of institutionalization became characterized as a “cruel and oppressive period.”<sup>151</sup> During the institutionalization era, a eugenics movement surfaced.<sup>152</sup> The goal of segregating the disabled was to protect the rest of the population from them while simultaneously limiting the disabled persons’ chances of reproduction.<sup>153</sup> Because the disabled were perceived as carrying characteristics that weakened the human race, thousands of disabled individuals were sterilized to prevent passing undesirable genes on to future generations.<sup>154</sup> Some eugenics advocates even went so far as supporting the euthanasia of disabled children to avoid passing on their genes.<sup>155</sup>

Sterilization, however, was not the only startling practice used on the disabled during this period. In unwarranted efforts to rid the intellectually disabled from undesirable mental symptoms, professionals implemented several inhumane and torturous methods of therapy.<sup>156</sup> One method involved the implementation of the “malarial therapy.”<sup>157</sup> This method consisted of injecting malarial blood into intellectually disabled individuals, based on beliefs that mental symptoms sometimes disappeared in mental patients suffering from typhoid fever.<sup>158</sup> Another method of ridding mental symptoms involved the “insulin coma therapy,” which was designed to place patients in a hypoglycemic state that caused comatose in an effort to rewire the brain and prevent characteristics associated with mental illness.<sup>159</sup>

The injection of metrazol was also used on institutionalized patients to induce convulsions because it was believed that epileptics rarely suffered from such mental illnesses.<sup>160</sup> In addition, institutions experimented with the use of “electroshock therapy,” which sent electric currents through the brain, in hopes of quickly reversing symptoms of certain mental illness.<sup>161</sup> Professionals in these institutions even went so far as performing surgical procedures, which have been referred to as a

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<sup>150</sup> *Id.*

<sup>151</sup> Luana Olivas, *Helping Them Rest in Peace: Confronting the Hidden Crisis Facing Aging Parents of Disabled Children*, 10 *ELDER L.J.* 393, 399 (2002) (quoting DAVID L. BRADDOCK, *THE STATE OF THE STATES IN DEVELOPMENTAL DISABILITIES* 16 (5th ed. 1998)).

<sup>152</sup> Savanna Logsdon-Breakstone, *Disability History 101: The Rise of the Institution* (Apr. 23, 2012), <https://disabilityrightnow.wordpress.com/2012/04/23/dis-hist-101-institutions/>.

<sup>153</sup> Harbour & Maulik, *supra* note 148.

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> See generally Renato M.E. Sabbatiri, BRAIN & Mind, *The History of Shock Therapy in Psychiatry*, [http://www.cerebromente.org.br/n04/historia/shock\\_i.htm](http://www.cerebromente.org.br/n04/historia/shock_i.htm) (last visited Feb. 5, 2017).

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

lobotomy.<sup>162</sup> Lobotomy involved severing the nerve fibers of the frontal lobe of the brain to completely prevent the reemergence of symptoms associated with mental disabilities.<sup>163</sup>

Not only were nineteenth-century therapy treatments brutal, but the everyday conditions within the institutions were also substandard.<sup>164</sup> The disabled were often punished severely for resisting the control of strait jackets and mechanical restraints as well as being placed in isolation for days on end.<sup>165</sup> The dehumanized view of the disabled, along with a push for institutionalization in poor-conditioned facilities, remained the norm until views began to change, and pushes for deinstitutionalization began to arise, in the late twentieth century.<sup>166</sup>

*b. Changing Views Led to Emergence of Moral Duty to Support Disabled Adults*

Starting in the early 1970s, society's views toward the disabled began to change.<sup>167</sup> From this point forward, there has been a significant decline in the institutionalization of disabled patients.<sup>168</sup> For the past four decades, there has now emerged the universal trend in the United States for individuals with disabilities to live in inclusive settings as opposed to exclusive settings, which were the norm prior to the late twentieth century.<sup>169</sup> Specifically, "Whereas before, families were pressured to [send the disabled away to be isolated in institutions], they are now expected to be substantially involved in their care, if not directly responsible for it."<sup>170</sup> The mass deinstitutionalization, coupled with the evolved view that the family should support and care for the disabled in the least restrictive environment, directly reflects the emergence of the moral duty to support disabled adults.

Many states ultimately began to recognize that a moral duty existed for a parent to continue to support children post-minority if the children were unable to support themselves due to a disabling condition.<sup>171</sup> This moral duty found its roots in part from statutory provisions that assigned criminal penalties for not supporting minor children.<sup>172</sup> However, there is also compelling evidence that this new rise in the

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<sup>162</sup> Eds. of Encyc. Britannica, *Lobotomy*, ENCYC. BRITANNICA, <https://www.britannica.com/topic/lobotomy> (last updated Dec. 17, 2012).

<sup>163</sup> *Id.*

<sup>164</sup> Dennis Felty, *A Brief History: As Remembered by Dennis Felty*, KEYSTONE HUM. SERVS., <https://www.keystonehumanservices.org/about-us/history> (last visited Feb 5, 2017).

<sup>165</sup> *Id.*

<sup>166</sup> TEACHING FOR DIVERSITY AND SOCIAL JUSTICE app. 14C, *supra* note 140.

<sup>167</sup> Olivas, *supra* note 151, at 398-99.

<sup>168</sup> CLAIRE LAVIN & KENNETH J. DOKA, OLDER ADULTS WITH DEVELOPMENTAL DISABILITIES 15 (Jon Hendricks ed., 1999).

<sup>169</sup> Harbour & Maulik, *supra* note 148; *see also* Wyatt v. Stickney, 325 F. Supp. 781, 785 (M.D. Ala. 1971) (articulating a right of residents in state mental institutions to live in the least restrictive environment); *see also* Horacek v. Exon, 357 F. Supp. 71 (D. Neb. 1973).

<sup>170</sup> Olivas, *supra* note 151, at 398-99.

<sup>171</sup> *Id.*

<sup>172</sup> Hansen, *supra* note 87, at 1150.

recognition of a moral duty for parents to support their disabled adult children also can be traced to principles of natural law, humanitarian perspectives, and religious views.<sup>173</sup>

i. Moral Duties to Support Disabled Adults Stemmed from Natural Law

Just as natural law played a role in the morality underpinning a parent's duty to support minor children, natural law also influenced the moral obligation of parents to support disabled adult dependents.<sup>174</sup> The theory of natural law involves "the unwritten body of universal moral principles that underlie the ethical and legal norms by which human conduct is sometimes evaluated and governed."<sup>175</sup> Proponents of natural law theory believe that the government must incorporate universal, moral principles within natural law into legal systems before justice can be achieved.<sup>176</sup> Therefore, scholars subsequently have described a parent's moral obligation to his or her disabled adult children as an obligation of "natural law," originating from the responsibility of bringing the child into the world.<sup>177</sup>

Blackstone similarly characterized a parent's duty to support disabled adult children as "a principle of natural law."<sup>178</sup> Specifically, he argued that as a matter of natural law, necessities must be supplied for those who are incompetent and not capable of working.<sup>179</sup> Accordingly, philosopher John Locke also believed that as a matter of natural law, all individuals in society, including the disabled, have the right of preservation.<sup>180</sup> He argued that individuals have a natural right to the material necessities for survival.<sup>181</sup> Under the theory of natural law, the voice of nature has deemed the parent the person fit to provide such material necessities.<sup>182</sup> The moral duty of parents to provide for the maintenance of their children continues indefinitely until the child can provide for herself under this principle.<sup>183</sup> According to natural law theorists, if the child never reaches the point where she is able to care for herself, the moral obligation continues.<sup>184</sup>

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<sup>173</sup> Buhai, *supra* note 99, at 720, 727, 733, 737.

<sup>174</sup> *Id.* at 737.

<sup>175</sup> *Natural Law, THE FREE DICTIONARY*, <http://legal-dictionary.thefreedictionary.com/Natural+Law+Theory> (last visited Feb. 5, 2017).

<sup>176</sup> *See generally* Buhai, *supra* note 99, at 716.

<sup>177</sup> *Id.* at 737.

<sup>178</sup> BLACKSTONE, *supra* note 122, at 435.

<sup>179</sup> *Id.* at 437.

<sup>180</sup> JOHN LOCKE, *TWO TREATISES OF GOVERNMENT* (Rod Hay ed., London 1823).

<sup>181</sup> *Id.*

<sup>182</sup> 2 CHANCELLOR JAMES KENT, *COMMENTARIES ON AMERICAN LAW*, Lecture 29, 189, 190 (1826-30).

<sup>183</sup> Childers, *supra* note 4, at 2100.

<sup>184</sup> *Id.*

ii. Moral Duties to Support Disabled Adults Stemmed from Humanitarian Rules

The emergence of societal views that parents are morally responsible for the support and maintenance of their disabled adult children also originates from humanitarian principles.<sup>185</sup> Under theories of humanity, all citizens have moral obligations to treat others with kindness and benevolence.<sup>186</sup> From a humanitarian perspective, there also exists a moral imperative to assist those in need.<sup>187</sup> Scholars often have attributed a parent's moral obligation to support disabled adult children to the humanitarian perspective that it is the right thing to do.<sup>188</sup>

For example, philosopher Immanuel Kant characterized such a moral duty from the humanitarian point of view.<sup>189</sup> According to Kant:

Children, as persons, have, at the same time, an original congenital right, distinguished from mere hereditary right, to be reared by the care of their parents till they are capable of maintaining themselves; and this provision becomes immediately theirs by law, without any particular juridical Act being required to determine it.<sup>190</sup>

Kant also believed that parents "have brought a Being into the world who becomes in fact a Citizen of the world, and they have placed that Being in a state which they cannot be left to treat with indifference."<sup>191</sup> As discussed in the following section, morality that evolved from both natural law and humanitarian principles is heavily relied upon when justifying the legal duty of parents to support their disabled adult children.<sup>192</sup>

*c. Noncustodial Parents' Legal Duties to Support Disabled Adults Rely on Morality*

Both natural law and humanitarian perspectives played a significant role in the emergence of parents' legal obligations to support their disabled adult children. It is evident from courts' analysis that reliance on these morality concerns justified their decisions to provide an exception that disabled adults warrant continued support. Courts even go so far as to rely solely on moral justifications in creating mandated

<sup>185</sup> Public Library of Science, *Why Do We Love Babies? Parental Instinct Region Found in The Brain*, SCIEDAILY (Feb. 27, 2008), <https://www.sciencedaily.com/releases/2008/02/080226213448.htm> (summarizing Anukka Lehtonen, et al., A Specific and Rapid Neural Signature for Parental Instinct, PLOS (Feb. 27, 2008), <http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0001664>).

<sup>186</sup> Kuangfei Xie, *Kindness Ethics: A Possible Approach to Virtue Ethics*, 4 EDUC. J. 189 (2015), <http://article.sciencepublishinggroup.com/pdf/10.11648.j.edu.20150405.11.pdf>.

<sup>187</sup> Regina A. Nockerts & Peter W. Van Arsdale, *A Theory of Obligation*, J. HUMAN. ASSISTANCE (May 12, 2008), <https://sites.tufts.edu/jha/archives/138>.

<sup>188</sup> Lawrence B. Solum, *To Our Children's Children's Children: The Problems of Intergenerational Ethics*, 35 LOY. L.A. L. REV. 163, 211-12 (2001).

<sup>189</sup> *Id.*

<sup>190</sup> IMMANUEL KANT, *Rights of the Family as a Domestic Society*, THE PHIL. OF LAW: AN EXPOSITION OF THE FUNDAMENTAL PRINCIPLES OF JURIS. AS THE SCI. OF RT. 3, 114 (Edinburgh: T. & T. Clark 1887) (1796).

<sup>191</sup> *Id.* at 115.

<sup>192</sup> See *infra* text accompanying notes 194-205.

disabled adult support duties.<sup>193</sup> Although most of the common law principles focusing on morality were subsequently codified, this should not change the courts' underlying rationale and justifications. Because most statutes regarding the support of disabled adult children, including Section 3119.86 of the Ohio Revised Code, codify common law principles, this Note argues that courts should adhere to such underlying moral principles when interpreting whether they have jurisdiction over such matters rather than focusing on technicalities.

Originally, most states did not impose a legal duty to continue supporting disabled children post-majority.<sup>194</sup> However, new legislation in the area of family law began to surface when society adopted a new moral image of the family.<sup>195</sup> The gradual appearance of societal concerns for the care of disabled adults created a new moral image of family in terms of parents supporting their disabled adult children. A general acceptance of a moral duty eventually transformed into a legal obligation to support disabled adult children.

In 1984, the Ohio Supreme Court considered a parent's continuing legal obligation to support a disabled child once the child has reached adulthood.<sup>196</sup> The case before the Ohio Supreme Court presented a common-law question of first impression.<sup>197</sup> The court held that, in the case of mentally or physically disabled children, there is both a moral and legal duty for parents to support and maintain disabled children through their adult life.<sup>198</sup> Specifically, the court's decision provided, "[But] where a child is of weak body or mind, unable to care for itself after coming of age, and remains unmarried and in the parent's home, it has been held that the . . . parent's duty to support the child continues."<sup>199</sup> In reaching this conclusion and creating a new common law principle, the court relied heavily on morality.<sup>200</sup> In justifying the decision, the court did not mention any independent fact-justifications; instead, it cited only to moral principles derived from the theory of natural law.<sup>201</sup> The decision in *Castle* later triggered the General Assembly to take action on the issue, and the Assembly subsequently codified the holding from this landmark case in 2001.<sup>202</sup>

Today, family law cases and statutes continue to rely on parents' moral obligations to support their disabled adult children when justifying this duty. In fact, it is agreed that this moral obligation comprises the "theoretical underpinnings" of the various common law and statutory authority holding parents responsible for the

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<sup>193</sup> See Buhai, *supra* note 99, at 718.

<sup>194</sup> Amy P. Hauser, Note, *Child Custody for Disabled Adults: What Kentucky Families Need*, 91 Ky. L.J. 667, 669 (2002/2003).

<sup>195</sup> Murphy, *supra* note 67.

<sup>196</sup> *Castle v. Castle*, 15 Ohio St.3d 279 (1984).

<sup>197</sup> *Id.*

<sup>198</sup> *Id.* at 283.

<sup>199</sup> *Id.* at 282.

<sup>200</sup> See generally *id.*

<sup>201</sup> *Id.*

<sup>202</sup> OHIO REV. CODE ANN. § 3119.86 (West 2016).

support of disabled adults.<sup>203</sup> Like Ohio, other jurisdictions also rely on moral obligations to support disabled adults derived from natural law, humanitarian perspectives, and equitable reasons.<sup>204</sup>

*B. “Shavell Approach”: Optimizing Desired Results by Supplementing Moral Obligations with Legislation*

Despite this trend of reliance on morality, Ohio courts are split as to whether they have jurisdiction to initiate support after a disabled child turns eighteen.<sup>205</sup> In sum, Ohio courts disagree as to whether they can rely on these morality concerns to justify their jurisdiction to initiate support or whether they must disregard such concerns and focus instead on technicalities. Because of the heavy reliance on morality in the area of family law—particularly in the realm of support obligations to dependents—this Note argues that courts should follow precedent and rely on morality concerns to justify the jurisdiction and power to initiate support for disabled adults.

While the question of whether morality should be legislated is still a highly debated topic, there are definite advantages in supplementing moral duties with legal obligations. Although it may be true that not all moral norms need legal reinforcement, and that regulating every aspect of morality is practically impossible, there are certain occasions where the interplay between these two methods of molding conduct are necessary. Notwithstanding the fact that society has the right to condemn certain acts or omissions as immoral, special circumstances are required to justify the intervention of the law.<sup>206</sup> These special circumstances are described as the provision of “sufficient safeguards against exploitation . . . particularly those who are especially vulnerable because they are . . . weak in body or mind . . . or in a state of special physical . . . or economic dependence.”<sup>207</sup>

Harvard Law School professor Steven Shavell accurately identifies the circumstances under which morality and law are necessary for optimal results regarding societal conduct.<sup>208</sup> Under the “Shavell Approach,” it is essential to use law in supplement of moral obligations when the larger picture justifies doing so. In this case, the moral obligations extend to social benefits.<sup>209</sup> The intertwining of law and morality are mandated under this approach when “the expected private gain

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<sup>203</sup> 48 A.L.R. 4TH 919, *Postmajority Disability as Reviving Parental Duty to Support Child*, Westlaw (current).

<sup>204</sup> See Buhai, *supra* note 99, at 728-30. Those states that rely on either morality derived from natural law or humanity theories are: Alabama, New Jersey, Alaska, Arkansas, Colorado, Connecticut, Florida, Indiana, Kentucky, Massachusetts, Michigan, Oklahoma, Pennsylvania, and North Carolina. *Id.*

<sup>205</sup> JUDGE DIANE M. PALOS, BALDWIN'S OH. PRAC. DOM. REL. L. § 19:5 (4TH ED.), Westlaw (database updated Dec. 2016).

<sup>206</sup> Lord Patrick Devlin, *Morals and the Criminal Law* 24, 34, [http://fs2.american.edu/dfagel/www/Class%20Readings/Devlin/Devlin\\_Morals%20and%20the%20Criminal%20Law.pdf](http://fs2.american.edu/dfagel/www/Class%20Readings/Devlin/Devlin_Morals%20and%20the%20Criminal%20Law.pdf).

<sup>207</sup> *Id.* at 35 (quoting The Wolfenden Report).

<sup>208</sup> Shavell, *supra* note 38, at 246. For purposes of this Note, this author’s conclusions relating to the overlap of law and morality are referred to as the “Shavell Approach.”

<sup>209</sup> *Id.*



from undesirable conduct is not too great, and the expected harm due to such conduct is also not too great.<sup>210</sup>

One underlying rationale behind such an approach to the intermingling of these realms of shaping behaviors is based on the notion that moral ramifications alone are insufficient to deter undesirable conduct when economic gains are high.<sup>211</sup> When an individual stands to reap significant financial benefits, such enrichment often supersedes the guilt behind the negative conduct, causing the individual to choose economic incentives over moral conduct. Another justification for supplementing morality with legality focuses on how the failures to prevent certain immoral actions bear substantial consequences on society as whole.<sup>212</sup> Under this circumstance, Shavell rightfully believes that the greater good afforded to society in averting unwanted behavior outweighs the extra expense of supplementing morality with legislation.<sup>213</sup>

Shavell's approach to law and morality is favorable for several reasons. First, adherence to this approach is advantageous because it recognizes the distinctions between morality and the law.<sup>214</sup> Second, utilizing this approach is also beneficial because it recognizes that meshing these two concepts is sometimes inessential.<sup>215</sup> Lastly, the Shavell Approach is critical in analyzing which moral aspects warrant regulation because the theory creates a clear and compelling formula for identifying which moral domains to pursue legally.

#### 1. Application of "Shavell Approach": Initiation of Noncustodial Support of Disabled Adult Children Requires Moral and Legal Overlap

In light of current legislation based on morals, issues relating to whether morality should be legislated are beginning to dissolve. Instead, the focus shifts directly to which moral aspects should be regulated.<sup>216</sup> Despite evidence supporting the moral domain behind family law, it is generally agreed that not every moral avenue within family law justifies legal intervention.<sup>217</sup> With this reality in mind, the issue now becomes whether the moral obligation behind the support of disabled children through adulthood requires legal pursuit in giving Ohio courts the authority to *initiate* support for disabled adults. Viewing the issue in light of the compelling

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<sup>210</sup> *Id.* at 247.

<sup>211</sup> *Id.*

<sup>212</sup> *Id.*

<sup>213</sup> *Id.*

<sup>214</sup> *Id.* Such distinctions include crimes where the actor escapes punishment or is not noticed. Supplementing morality with legislation is advantageous because moral incentives alone will not control this. *Id.*

<sup>215</sup> *Id.* Morality alone is enough to shape behavior for things like keeping promises or lending a helping hand. *Id.* at 244-45. Laws do not need to be grounded in morality in situations where "expected private gains from bad conduct are large and the expected harms due to such conduct are also large." *Id.* at 251.

<sup>216</sup> Bauman, *supra* note 23.

<sup>217</sup> Courtney G. Joslin, *Not Equal Yet: Building Upon Foundations of Relationship Equality: The Perils of Family Law Localism*, 48 U.C. DAVIS L. REV. 623, 645-46 (Dec. 2014).

Shavell Approach, the answer must be yes. Despite the current decline in reliance on morality in various areas of family law,<sup>218</sup> Ohio legislators and courts should not deviate from the adherence to moral norms with regard to justification for the initiation of support for disabled adults.

In determining whether law is required to supplement the moral obligation of such a duty, it is critical to carefully examine whether supplementing this moral duty is justified by its social benefits under the Shavell Approach. In doing so, it is also imperative to examine whether the expected harms resulting from the failure of noncustodial parents to support their disabled adult children are also significant. Then, it is necessary to determine whether these harms will afford the noncustodial parent significant expected private gains associated with the undesirable conduct of failing to support his or her disabled adult child.

After applying this approach, this Note concludes that legislating morality is necessary to give courts the power to initiate disabled adult support.<sup>219</sup> When interpreting whether Ohio courts have jurisdiction to initiate such support pursuant to Ohio Revised Code Section 3119.86, courts should focus on the moral concerns underlying the enactment of this legislation, including the possibility that the noncustodial parent may reap unjust economic gains for failing to provide such support as well as the immense societal harm that would result from this conduct.

*a. Unjust Economic Gains and Immense Societal Harm as a Result of Financially Absent Noncustodial Parents*

*i. Harm to Custodial Parents: Financial Struggles and Limited Work Participation*

Marital strain often results from the financial tension and stress levels increased from the challenges of raising disabled children into adulthood, and this tension increases the probability of divorce.<sup>220</sup> Beginning in the nineteenth century and continuing to modern day, the trend toward maternal preference has become the norm, and custody of "dependents" after a divorce is almost always awarded to the mother.<sup>221</sup> An increase in divorce rates, paired with maternal preference in custody cases, creates a rise in single mothers who are forced into dealing with the high demands of caring for their disabled child into adulthood.<sup>222</sup> In fact, more than one-third of all households containing a disabled child are single-mother households.<sup>223</sup>

Typically, disabled children needing continued care as adults often live at home with their custodial parent as their main source of support.<sup>224</sup> As a result, such care

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<sup>218</sup> *Id.* at 637-42.

<sup>219</sup> *See infra* notes 220-52 and accompanying text.

<sup>220</sup> ANTHONY GOUDIE ET AL., CARING FOR CHILDREN WITH DISABILITIES IN OHIO: THE IMPACT ON FAMILIES 3, 5, <http://ddc.ohio.gov/Portals/0/OHFamImpStudyWhitePaper-FINAL.pdf>.

<sup>221</sup> Hansen, *supra* note 87, at 1131 nn.40-41.

<sup>222</sup> *Id.* at 1133.

<sup>223</sup> GOUDIE ET. AL., *supra* note 220, at 7.

<sup>224</sup> *See* Deborah Elbaum, *Special Needs Care for Adult Children: Care Options*, CARE.COM, <http://www.care.com/special-needs-care-options-p1145-q5906.html>.

comes at a substantial cost to custodial parents, placing the burden of determining how to cover the costs incurred from medical and other related expenses solely on his or her caregiver.<sup>225</sup> Despite instinctual adaptations to the challenges associated with caring for a disabled adult, the reality is that single custodial parents of disabled adult children experience extreme financial hardship due to caregiving.<sup>226</sup>

It is undisputed that the cost of raising and caring for children as a divorced custodial parent without noncustodial support creates substantial economic adversity. However, the cost of caring for severely disabled children through adulthood exacerbates economic hardships tremendously because severely disabled children continue to need care throughout the entirety of their lives.<sup>227</sup> In 2009, about sixty-one million family caregivers in the United States provided care to an adult with a disability.<sup>228</sup> In 2011, the estimated economic value of the informal care provided by family members was an astounding \$234 billion.<sup>229</sup>

While many options for care may be helpful and available to dependent disabled children and adults, these combined services can be extremely expensive.<sup>230</sup> These expenses often force custodial parents to juggle multiple roles in relation to caring for their disabled adult children in lieu of professional aid.<sup>231</sup> Some of these roles include handling medical bills and dealing with insurance claims, being responsible for nursing procedures performed at home, providing transportation to medical appointments and community services, and implementing care plans.<sup>232</sup> More often

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<sup>225</sup> *Id.*

<sup>226</sup> “In 2009, more than one in four (27 percent) caregivers of adults reported a moderate to high degree of financial hardship as a result.” Lynn Feinberg, et al., *Valuing the Invaluable: 2011 Update, The Growing Cost and Contribution of Family Caregiving*, AARP PUB. POLICY INST. (2016), <http://www.aarp.org/ppi/info-2015/valuing-the-invaluable-2015-update.html>; see also CAREGIVING IN THE U.S. 2009, NATIONAL ALLIANCE FOR CAREGIVING AND AARP (Nov. 2009), [http://www.caregiving.org/data/Caregiving\\_in\\_the\\_US\\_2009\\_full\\_report.pdf](http://www.caregiving.org/data/Caregiving_in_the_US_2009_full_report.pdf) (discussing one in four caregivers had cut back on care-related spending because of economic downturn).

<sup>227</sup> See, e.g., Jiyeon Park et al., *Impacts of Poverty on Quality of Life in Families of Children with Disabilities*, 68 EXCEPTIONAL CHILD., 151-52 (2002), [https://kuscholarworks.ku.edu/bitstream/handle/1808/6058/FQL1\\_Impacts\\_of\\_poverty\\_on\\_Quality\\_8\\_07.pdf?sequence=1](https://kuscholarworks.ku.edu/bitstream/handle/1808/6058/FQL1_Impacts_of_poverty_on_Quality_8_07.pdf?sequence=1) (noting that 28% of disabled children, ages three to twenty-one, are living in families whose total income is below the poverty threshold set by the U.S. Census Bureau, whereas only 16% of children without disabilities in the same age group live in poverty.).

<sup>228</sup> Feinberg, et al., *supra* note 226, at 1.

<sup>229</sup> Elizabeth Shell, *The \$234 Billion Job That Goes Unpaid*, PBS NEWSHOUR (Nov. 25, 2013), <http://www.pbs.org/newshour/rundown/the-234-billion-job-that-goes-unpaid/>.

<sup>230</sup> Deborah Elbaum, M.D., *Special Needs Care for Adult Children: Cost of Care*, CARE.COM, <http://www.care.com/special-needs-cost-of-care-p1145-q11809.html>. The cost of home health care aids and adult day care centers vary widely from state to state. *Id.* The following figures provide a general guide for these costs: On average, the cost for a home health care aid is \$19/hour for a caregiver from a licensed agency. *Id.* The average cost per day for an adult day care center is \$61, or \$15,250 per year based on five days a week for 50 weeks. *Id.*

<sup>231</sup> Feinberg, et al., *supra* note 226, 4-5.

<sup>232</sup> *Id.*

than not, single custodial parents of the disabled willingly take on these sometimes daunting tasks, but they do so at the cost of restricting the time the parent has to devote to work.<sup>233</sup> This sacrifice creates a "tug-of-war" effect between the custodial parent's need for employment due to the financial strains of caring for disabled adult children and the limited time available for employment due to the amount of care and attention that is required.<sup>234</sup>

Similarly, single custodial parents can face astronomical financial adversity if they must leave the workforce entirely to meet their caregiver demands. Leaving the workforce due to these high demands can consequently result in not only the loss of earnings and social security benefits, but also the loss of career mobility and employment benefits like health insurance and retirement savings.<sup>235</sup> As a result, without the financial support of the noncustodial parent, both single parents and society suffer immense harm. Absent noncustodial support, the single parent must rely heavily on public welfare assistance to aid in the support of his or her disabled adult child.

#### ii. Harm to Society: Dependency on State and Federal Welfare Assistance

When noncustodial parents fail to provide financial support, it is inevitable that the custodial parent and disabled adult child utilize forms of public assistance, resulting in welfare dependency and depletion.<sup>236</sup> Adults with severe disabilities are more likely to receive government benefits and other forms of cash assistance than adults with non-severe disabilities or no disabilities, directing a large portion of society's tax dollars to the aid and benefit of this specific population.<sup>237</sup> Expansive government, local entities, and programs have been implemented to provide aid to the disabled adult population.<sup>238</sup> The states and federal governments provide an array of cash and benefits to alleviate the poverty and material hardship experienced by

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<sup>233</sup> Sunhwa Lee, et al., *The Impact of Disabilities on Mothers' Work Participation: Examining Differences between Single and Married Mothers*, INST. FOR WOMEN'S POLICY RES. 5 (February 2004).

<sup>234</sup> *Id.*

<sup>235</sup> Feinberg et al., *supra* note 226, at 6.

<sup>236</sup> Phillip K. Robins, *Child Support, Welfare Dependency, and Poverty*, 76 THE AM. ECON. REV. 768, 768 (1986) ("[R]esults suggest that child support enforcement may represent an effective means for reducing welfare program costs, but is unlikely to have a dramatic effect on reducing . . . welfare dependency.").

<sup>237</sup> See Brault, *supra* note 2, at 12.

Adults with severe disabilities were also more likely to receive SSI benefits (19.5 percent) and other forms of cash assistance (3.4 percent) than adults with non-severe or no disabilities. Adults with severe disabilities were more than 3 times as likely to receive SNAP benefits as those with no disabilities (28.1 percent compared with 8.3 percent). About 10.5 percent of adults aged 15 to 64 with severe disabilities received public housing assistance compared with 2.6 percent of those with no disability. Among those aged 65 and older, 8.5 percent of those with severe disabilities received housing assistance compared to 2.3 percent of those with no disability.

*Id.*

<sup>238</sup> Olivas, *supra* note 151, at 394.

single parents caring for their disabled adult children.<sup>239</sup> In addition to income support, the federal government and the states provide health insurance to eligible individuals with disabilities.<sup>240</sup>

Some scholars suggest that legislators creating support obligations were ultimately concerned with single mothers' and their dependents' reliance on welfare assistance.<sup>241</sup> Evidence of this legislative concern appeared when English law began to recognize the social and economic problem associated with single mothers raising children by enacting "Poor Laws" in 1601.<sup>242</sup> The Poor Laws imposed a duty on fathers to reimburse local community resources for the costs of providing aid and care to his indigent children and their single mothers.<sup>243</sup> The Poor Laws only allotted local community resources the privilege of recovering financially on behalf of the

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<sup>239</sup> Brault, *supra* note 2, at 12-13. These benefits include:

Social Security Income (SSI): Supplemental Security Income is a needs-based program for the aged, blind, and disabled which is authorized by Title XVI of the Social Security Act and administered by the Social Security Administration. To qualify for SSI, a child or adult must have limited income and assets. SSI may be an individual's only form of income, or SSI can supplement other income, such as SSDI or wages. It is possible to receive both SSI and SSDI.

Social Security Disability (SSDI): A benefit available to people who have paid taxes to the Social Security Administration, a child may be eligible for this benefit if they child became disabled before his or her 22<sup>nd</sup> birthday, is 18 years of age or older, is not married, or has a parent who begins to get Social Security retirement or disability benefits or has a parent with a qualifying work history who dies.

Temporary Assistance for Needy Families (TANF): The Temporary Assistance to Needy Families program, also referred to as TANF, is an economic assistance program that is operated by the federal government. Individuals who qualify for TANF can receive a monthly cash benefit from the United States Department of Health and Human Services. The TANF program is operated at the state level and each state is given a block grant to design and administer the TANF program as they see fit. The amount of assistance available to a family through this program will depend on the family's household income and how many people are living in the household.

Supplemental Nutrition Assistance Program (SNAP): SNAP benefits are available to almost all low-income households. People receiving Supplemental Security Income (SSI) are automatically eligible for SNAP benefits.

*Id.*

<sup>240</sup> "Medicare, traditionally viewed as a benefit for the 65 and older population, is available to nonelderly adults with disabilities who receive Social Security Disability Income. Many state medical assistance/Medicaid programs also provide benefits to adults with disabilities who might not otherwise qualify." *Id.*

<sup>241</sup> Marsha Garrison, *Anatomy or Community? An Evaluation of Two Models of Parental Obligation*, 86 CAL. L. REV. 41, 42-43 (1998).

<sup>242</sup> *History of Child Support: Child Support Laws State by State*, <http://www.child-support-laws-state-by-state.com/child-support.html> (last visited Feb. 5, 2017).

<sup>243</sup> Garrison, *supra* note 241, at 49.

child.<sup>244</sup> Some argue that this is indicative of legislators' concerns about unnecessary depletion of welfare resources by the rise in single mothers and their dependents.<sup>245</sup> Without question, the concern about the unnecessary depletion of welfare resources, which is still present today, was justified.

Currently, there are more than eighty federal welfare programs serving low-income residents through cash, food, housing, medical care, and social services.<sup>246</sup> The nonpartisan Congressional Research Service indicates that as of 2011,

federal spending on these programs had reached \$746 billion per year—more than expenditures for Medicare (\$480 billion), Social Security (\$725 billion), or the military (\$540 billion). In addition, state contributions into federal welfare programs amounted to \$201 billion annually, while independent state programs contributed another \$9 billion. All told, means-tested welfare spending from federal and state sources (combined) was \$956 billion. America's \$956 billion in annual welfare spending is distributed among approximately 100 million people—i.e., one-third of the U.S. population—who each month receive aid from at least one of the country's 80+ welfare programs. Average benefits amount to approximately \$9,500 per recipient.<sup>247</sup>

Without noncustodial parents' support of disabled dependents, taxpayers will continue to bear the financial burden, and welfare resources will continue to deplete.

*C. Ohio Courts Interpretations Regarding Jurisdiction to Initiate Support for Disabled Adults Should Adhere to Moral Principles*

Commonly, state legislatures codify legal decisions in response to the courts' rationale.<sup>248</sup> In Ohio, state legislators codified the Ohio Supreme Court's decision in *Castle* in order to properly address the societal issue of support for disabled adults.<sup>249</sup> When the General Assembly adopts a common law decision, transforming it into state law, the legislature often adopts the underlying principles and justifications behind the court's rulings. However, if the wording of a statute is ambiguous, the courts often employ the underlying common-law principles to interpret the statute.<sup>250</sup> Because the language of Ohio Revised Code Section 3119.86 is unclear as to whether family law courts have jurisdiction to initiate support orders for disabled children post-majority, Ohio courts should utilize common-law principles from *Castle*.

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<sup>244</sup> *Id.*

<sup>245</sup> *Id.* at 43.

<sup>246</sup> CONG. RESEARCH SERV., 7-5700, MEMORANDUM: SPENDING FOR FEDERAL BENEFITS AND SERVICES FOR PEOPLE WITH LOW INCOME, FY2008-FY2011: AN UPDATE OF TABLE B-1 FROM CRS REPORT R41625, MODIFIED TO REMOVE PROGRAMS FOR VETERANS 4-11 (2012).

<sup>247</sup> *Id.*

<sup>248</sup> *See, e.g.*, OHIO REV. CODE ANN. § 3119.86 (West 2016).

<sup>249</sup> *Id.*

<sup>250</sup> Katherine Clark & Matthew Connolly, *A Guide to Reading, Interpreting, and Applying Statutes*, THE WRITING CTR. (Geo. Univ. L. Ctr., D.C.), Apr. 2006, at 2, <https://www.law.georgetown.edu/academics/academic-programs/legal-writing-scholarship/writing-center/upload/statutoryinterpretation.pdf>.

Per an analysis of the Ohio courts' stances on the issue of support initiation for disabled adults, only the Sixth, Seventh, Eleventh, and Twelfth District Courts of Appeals accurately reflect the principles underlying *Castle*.<sup>251</sup> The interpretations cast by these four districts should prevail, and Section 3119.86 should be interpreted to allow domestic relations courts to have jurisdiction over support matters initiated after the disabled child reaches the age of majority.

### 1. Sixth, Seventh, and Eleventh Appellate Districts' View: Disabled Adult Never "Reaches Age of Majority"

In analyzing the issue of whether domestic relations courts could exercise jurisdiction over support cases initiated after the disabled child has reached the age of majority, the Sixth District Court of Appeals in *Wiczynski* allowed for the support of a disabled child in adulthood, despite no support order being in place prior to the child turning eighteen.<sup>252</sup>

In reaching its conclusion, the *Wiczynski* court relied heavily on the legal principles and justifications in the *Castle* decision.<sup>253</sup> Although the decision in *Castle* did not directly address the present question before the Sixth District Court of Appeals, the court reasoned that the analysis and ultimate holding in *Castle* provides instruction on how the court should resolve the issue in the present case.<sup>254</sup> In particular, the *Wiczynski* court was guided by *Castle*'s interpretation that disabled adults are exempt from the strict "age of majority" limitation on support orders.<sup>255</sup> The *Wiczynski* court even saw this interpretation reiterated in Section 3109.01 of the Ohio Revised Code.<sup>256</sup> Using these foregoing interpretations as a guide, the court ultimately determined that the disabled child, who was unable to support himself had never reached the "age of majority," was still a minor in the law's eyes because of his mental condition.<sup>257</sup> Because the disabled adult had never reached the "age of majority" as interpreted under *Castle* and Section 3109.01, the *Wiczynski* court held that it could retain jurisdiction to issue support for the disabled adult.<sup>258</sup>

The Seventh District Court of Appeals in *Abbas* took a similar approach in resolving the issue of whether the domestic relations court exercises jurisdiction over

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<sup>251</sup> See *Donohoo v. Donohoo*, 2012-Ohio-4105 (12th Dist.); *In re Edgell*, 2010-Ohio-6435 (11th Dist.); *Wiczynski v. Wiczynski*, 2006-Ohio-867, at \*23 (6th Dist.); *Abbas v. Abbas*, 715 N.E.2d 613, 615-16 (Ohio Ct. App. 1998).

<sup>252</sup> See *Wiczynski*, 2006-Ohio-867, at \*23.

<sup>253</sup> *Id.* at \*15-21.

<sup>254</sup> *Id.* at \*17.

<sup>255</sup> *Id.* at \*16.

[T]he domestic relations court retains jurisdiction over parties in a divorce, dissolution or separation proceeding to continue or to modify support payments for a mentally or physically disabled child who was so disabled before he or she attained the statutory age of majority, *as if the child were still an infant*.

*Id.* (quoting *Castle v. Castle*, 473 N.E.2d 803, 804 (Ohio 1984) (emphasis in original).

<sup>256</sup> *Id.* at \*21.

<sup>257</sup> *Id.* at \*23.

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

support cases initiated for disabled adults. In relying on legal principles from *Castle*, the *Abbas* court determined that, although the trial court did not initially order child support payments, it was able to do so later because of its retention of jurisdiction over the parties.<sup>259</sup> The *Abbas* court reasoned that pursuant to *Castle*, it retained jurisdiction over the support order of the disabled adult because, by granting to the mother custody of the twenty-five year old, the court was asserting that James had not reached the age of majority.<sup>260</sup> Therefore, the *Abbas* court maintained continuing jurisdiction over all parties.<sup>261</sup>

The Eleventh District Court of Appeals in *In re Edgell* also adopted the "lack of age of majority" view shared by the Sixth and Seventh districts in addressing jurisdictional issues when the marriage terminates after the mentally or physically disabled child has reached the age of majority.<sup>262</sup> Also relying on legal principles codified from *Castle*, the Eleventh District determined that the court had power to exercise jurisdiction over the support of the disabled adult.<sup>263</sup>

## 2. Alternative Eleventh District's View: *Castle* Requires Parental "Duty of Support" to Continue, Not the Continuance of a Pre-Existing Support Order

The Eleventh District Court of Appeals in *In re Palcisco* took a slightly different approach (while still adhering to principles in *Castle*) in resolving the issue of whether the domestic relations court has jurisdiction to initiate a support order for a disabled child who has already reached the age of majority at the time of the parents' divorce.<sup>264</sup> In reaching its conclusion that jurisdiction existed, the court reasoned that the statute addressing this matter merely codified the Ohio Supreme Court's decision that the moral and legal obligation to support disabled children *does not stop* simply because the disabled child turns eighteen, unlike traditional support orders regarding children with no disabilities.<sup>265</sup>

The court, therefore, reasoned that the text of Section 3119.86(A) does not support the contention that a support order must be in existence to continue beyond the child's eighteenth birthday.<sup>266</sup> Rather, the statute states that it is the duty of support, not the support order itself, that shall continue where the child is mentally or physically disabled, and this specific language came directly from *Castle*.<sup>267</sup> This duty to support exists irrespective of a child support order under *Castle*. Thus, the Eleventh District found, "[T]he lack of a support order poses no impediment to the continuation of [non-custodial parent's] duty to support, which is conditioned upon the child's disability."<sup>268</sup>

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<sup>259</sup> *Abbas v. Abbas*, 715 N.E.2d 613, 615-16 (Ohio Ct. App. 1998).

<sup>260</sup> *Id.*

<sup>261</sup> *Id.*

<sup>262</sup> *In re Edgell*, 2010-Ohio-6435, at \*39 (11th Dist.).

<sup>263</sup> *Id.* at 38-40.

<sup>264</sup> *In re Palcisco*, 2012-Ohio-6134, \*23-24 (11th Dist.).

<sup>265</sup> *Id.* at \*20.

<sup>266</sup> *Id.* at \*22.

<sup>267</sup> *Id.*

<sup>268</sup> *Id.*



### 3. Twelfth District's View: Absurd Result of Two Distinct Classes of Disabled Adults

The Twelfth District Court of Appeals in *Donohoo* also found that jurisdiction existed for domestic relation courts to initiate child support orders for disabled adults.<sup>269</sup> The *Donohoo* court provided that “we do not read anything in R.C. 3119.86 that *prohibits* a domestic relations court from ordering child support for disabled children after the child turns 18.”<sup>270</sup> The *Donohoo* court further noted, “When the Legislature codified the Ohio Supreme Court’s *Castle* decision, we believe that the Legislature was codifying Ohio’s common law principle that the obligation to support a disabled child remains even after that child has turned 18.”<sup>271</sup>

However, the *Donohoo* court took another view on the issue of jurisdiction over support orders for disabled adults initiated post-majority. The Twelfth district reasoned that section 3119.86 should not be interpreted “in such a way as to create two distinct classes of disabled children, those who did not turn 18 before their parents’ divorce and therefore are entitled to support, and those who just happened to turn 18 after the divorce and therefore are not entitled to support.”<sup>272</sup> The *Donohoo* court further provided, “Hinging a disabled person’s entitlement to support, regardless of the need, upon the timing of the divorce makes no sense.”<sup>273</sup> If this were the case, it may give parents motivation in bad faith to postpone divorce proceeding until after their disabled child reaches the age of majority in order to evade support obligations. One cannot fathom that principles behind the *Castle* would intend such an absurd result.

### 4. Tenth District's View: Odd Ball Case-Strict Textual View Inconsistent with *Castle* Principles

The Tenth District Court of Appeals in *Geygan* came to an opposite conclusion of the aforementioned districts and ruled that domestic relations courts lack jurisdiction to initiate support orders after a disabled child has reached the age of majority.<sup>274</sup> The *Geygan* court reasoned that had the Ohio legislature intended to permit the domestic relations court to impose child support orders during a divorce proceeding after the disabled child has already reached eighteen years old, it would have expressly stated so.<sup>275</sup> The court emphasized that the statute provides that the “duty of support to a child *imposed pursuant to a court child support order shall continue beyond* the child’s eighteenth birthday.”<sup>276</sup> The court continued, “In enacting R.C. 3119.86, the General Assembly considered the question of child support for adult children with disabilities.”<sup>277</sup> Further, the court explained that “[i]n

<sup>269</sup> *Donohoo v. Donohoo*, 2012-Ohio-4105 at \*23 (12th Dist.).

<sup>270</sup> *Id.* at \*17 (emphasis in original).

<sup>271</sup> *Id.* at \*18.

<sup>272</sup> *Id.*

<sup>273</sup> *Id.*

<sup>274</sup> *Geygan v. Geygan*, 973 N.E.2d 276, 281-83 (Ohio Ct. App. 1965).

<sup>275</sup> *Id.* at \*21-22.

<sup>276</sup> *Id.* at \*10.

<sup>277</sup> *Id.* at \*17.

so doing, legislators chose to incorporate the words ‘*continue*’ and ‘*beyond*’ which could have “very easily been deleted” by the General Assembly “and stated simply that child support may be imposed for a child who is over the age of 18 and is mentally or physically disabled and incapable of supporting or maintaining himself or herself.”<sup>278</sup> Based on those reasons alone, the *Geygan* court concluded “that the domestic relations court lacked jurisdiction to enter a child support order relating to [the disabled child who was over the age of majority] at the time of the final judgment entry.”<sup>279</sup>

The Tenth Sistrict’s strict textual view, however, deviates from principles and justifications in *Castle*, so *Geygan* should not be followed. *Castle* clearly identified that the overall duty of support for disabled children incapable of self-support continues beyond the age of majority.<sup>280</sup> Nothing in the *Castle* decision suggests that there is a limitation requiring a support order for a disabled child to be in place prior to the child reaching eighteen. In fact, the only limitation imposed by the Ohio Supreme Court in *Castle* is that the underlying disabling condition must have existed prior to the child reaching the age of majority.<sup>281</sup> As the Sixth, Seventh, Eleventh and Twelfth districts have reiterated, the statute that *Geygan* has wrongly interpreted codifies the legal decision in *Castle*; therefore, courts must follow rationales and principles set forth within the Supreme Court’s decision.

*D. Brief Overview of Other States’ Stances on Jurisdiction to Initiate Support For Disabled Adults*

The subsequent cases and laws from other jurisdictions allow for the initiation of support for a disabled adult after that child has reached the age of majority:

- In California, legislation relies on the common law principle that parents have a compelling moral duty to care for their adult disabled children. The California statute relating to this matter requires that “parents have a duty to maintain . . . a child of whatever age who is incapacitated from earning a living and without sufficient means.”<sup>282</sup>
- Legislation in South Carolina allows courts to initiate the support of disabled adult children on the justification that it is in the best interest of the child and is beneficial to the family.<sup>283</sup>
- Tennessee and South Dakota both follow a humanitarian belief that parents should support their adult disabled children because the need for support exists, and humanity requires parents to support their children before majority should also continue post-majority.<sup>284</sup> Specifically,

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<sup>278</sup> *Id.*

<sup>279</sup> *Id.* at \*20.

<sup>280</sup> *Castle v. Castle*, 473 N.E.2d 803, 805-06 (Ohio 1984).

<sup>281</sup> *Id.*

<sup>282</sup> CAL. FAM. CODE § 3910(a) (West 2016).

<sup>283</sup> Buhai, *supra* note 99, at 736 (citing S.C. CODE ANN. §20-7-420 (17) (1985 & Supp. 2005)).

<sup>284</sup> *Id.* at 733.

“Both [states] provide that parents owe a duty of support to their adult disabled children because these children are as helpless as infants.”<sup>285</sup>

- Oregon law provides, “Parents are bound to maintain their children who are poor and unable to work to maintain themselves. Nature imposes a duty of child support for adult disabled children.”<sup>286</sup>
- In Kentucky, child support for an adult handicapped child is governed by statute, which provides that both parents “shall have joint custody, care, and support of their children who have reached the age of eighteen (18) and who are wholly dependent because of permanent physical or mental disability.”<sup>287</sup> This statute holds both parents responsible for a child who is wholly dependent when he becomes eighteen.<sup>288</sup> Jurisdiction over child support cases in Kentucky further notes that concurrent jurisdiction rests with the district and circuit courts to *establish*, modify, and enforce obligations of child support in situations where paternity is not a concern.<sup>289</sup>
- In New Jersey, in support of the initiation of support for disabled adults, courts provided that common sense and normal instincts of humanity called for an obligation of support of their disabled adult children.<sup>290</sup>

*E. New View: Proposed Amendment to R.C. § 3119.86 as a Resolution to the Divide in Interpretation of Initiation of Support for Disabled Adults*

In order to properly address this split amongst Ohio courts, there needs to be a change that comes directly from the legislature. The Ohio legislature should amend Ohio Revised Code Section 3119.86 to provide that the obligation of support for disabled adults shall continue beyond the age of majority regardless of whether or not the support order was implemented prior to the disabled child reaching the age of majority. Such an amendment will help eliminate the absurd and unintended result of punishing disabled, dependent adults whose parents decided to wait to divorce until after the child reached the age of majority. Below is the proposed amendment to current legislation:

**Ohio Revised Code § 3119.86: Continuance of Support Obligation beyond a Child’s Eighteenth Birthday.**

- (A) Notwithstanding *section 3109.01 of the Revised Code*, both of the following apply:

<sup>285</sup> *Id.* (citing *Mower v. Mower*, 199 N.W. 42, 42 (S.D. 1924); *Sayne v. Sayne*, 284 S.W.2d 309, 312 (Tenn. 1955)).

<sup>286</sup> Buhai, *supra* note 99, at 736, (citing OR. REV. STAT. ANN. §109.010 (West 2016)).

<sup>287</sup> KY. REV. STAT. ANN. § 405.020(2) (West 2016).

<sup>288</sup> *Id.*

<sup>289</sup> KY. REV. STAT. ANN. § 205.766 (West 2016).

<sup>290</sup> *Kruvant v. Kruvant*, 241 A.2d 259, 265-66 (N.J. Super. Ct. App. Div. 1968).

- (1) *The father and mother shall provide support of their children who have reached the age of eighteen (18) if any of the following apply:*
- (a) The child is wholly dependent because of a permanent mental or physical disability and thus is incapable of supporting or maintaining himself or herself.
  - (b) The child's parents have agreed to continue support beyond the child's eighteenth birthday pursuant to a separation agreement that was incorporated into a decree of divorce or dissolution.
  - (c) The child continuously attends a recognized and accredited high school on a full-time basis on and after the child's eighteenth birthday.
- (B) Concurrent jurisdiction rests with the domestic relations courts to establish, modify, and enforce obligations of child support if section 3119.86 (A)(1)(a), section 3119.86(A)(1)(b), or section 3119.86(A)(1)(c) is satisfied.

#### IV. CONCLUSION

The current reality is that if Section 3119.86 of the Ohio Revised Code is not amended, Ohio divorce courts will have the unfettered discretion to circumvent jurisdiction to initiate support orders for disabled adults, based solely on the timing of their caregivers' divorce. Without any attempt to rectify this ambiguity in the law, single caregivers bear a substantial part in the financial responsibility their disabled adult child while the noncustodial parents are relinquished of their legal obligations. Because of the inevitable overlap between law and morality in American law, especially in the area of family law, Section 3119.86 of the Ohio Revised Code should be interpreted to reflect the overlap between a parent's moral and legal duties and recognize the courts' powers to initiate support orders for disabled adults. It is evident that optimized results occur when the legislature supplements moral obligations with legislation. Further, it is even more apparent that the moral duty to support disabled children throughout adulthood triggered legislative action in the first place. In order to prevent disabled children from being denied continued support by a noncustodial parent in a divorce solely because the divorce occurred once the disabled child reached adulthood, this Ohio law must be amended to expressly mandate that courts have the authority to initiate support orders for disabled adult children, regardless of the timing of their caregivers' divorce.

