Child Support for Adult Children

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CHILD SUPPORT FOR ADULT CHILDREN

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ABSTRACT

Although family law requires parents to support their minor children, the question of post-majority support—or child support for adult children—is entirely different. Some states permit this type of child support, while others do not. Those affected by this divergence in approaches include college students, unemployed people, disabled people, and of course, their parents—at a time of financial difficulty for many. The approach of each jurisdiction to this issue rests on whether the family is viewed as a social support system and whether intergenerational obligations exist. To help analyze these questions, this Article uses a comparative approach, considering the relevant law and public policy of both Europe and the United States.

I. INTRODUCTION

At the mention of intergenerational support, many people think of children’s duties to their parents.1 The concept of

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1 This may be especially true in certain cultures. For example, many Chinese families have viewed daughters as offering emotional care, loyalty, and intimacy. Kay Johnson, Politics of International and Domestic Adoption in China, 36 LAW & SOC’Y REV. 379 (2002). In other cultures, children may be slower to become independent of their parents, such as in Europe. Thomas D. Cook and Frank F. Furstenberg Jr., Explaining Aspects of the Transition to Adulthood in Italy, Sweden, Germany, and the United States: A Cross-Disciplinary, Case Synthesis Approach, 580 ANNALS 257, 264-65 (2002) (noting that many Italian adult children live with their parents).
intergenerational support, however, also includes the concept of continued financial support of children past the age of majority.

The continuation of child support into adulthood\(^2\) is no doubt controversial,\(^3\) and there is no comprehensive or consistent law on the subject. Adult children who may need parental support include university students, disabled adults, and the unemployed.\(^4\) The vulnerability of these groups in today’s particular economy has resulted in their increased reliance on family support, prompting many questions regarding the legal obligations of their parents.

Different states have taken differing legal approaches to this issue. While some have not addressed this issue, others have enacted post-majority support statutes.\(^5\) In the latter states, the issue most often arises in divorce cases, when the court must determine the financial support of any children resulting from the marriage. In such proceedings for dissolution of marriage, legal separation, or child support, post-majority support may be ordered just as regular child support would be ordered for a minor child.\(^6\)

Although certain American courts may order post-majority child support for college students and disabled adults, their approaches are neither uniform nor universal. In many ways, post-majority support is controversial, thereby benefiting from the insights afforded by another country permitting post-majority child support, such as Poland.

In Poland, courts have been ordering child support for adult children outside the context of divorces—sometimes even for unemployed adult children who are not students—after finding a

\(^{2}\) “Post-majority” indicates the time period after a child reaches the statutory age of majority, or adulthood. Some literature uses “post-majority” and “post-minority” interchangeably.

\(^{3}\) Legal issues often arise when parents attempt to draw financial lines regarding their children. An obvious example is when unwed fathers attempt to circumvent child support. The law has evolved to deal with this common fact pattern well. See, e.g., Margaret Ryznar, Two to Tango, One in Limbo: A Comparative Analysis of Fathers’ Rights in Infant Adoptions, 47 DUQ. L. REV. 89 (2009). Both wed and unwed parents of both genders, however, occasionally encounter the less obvious issue of post-majority child support that is considered in this Article.

\(^{4}\) See infra Part II.A.

\(^{5}\) See infra notes 33-34.

\(^{6}\) See generally Jane C. Venohr & Robert G. Williams (describing state child support guidelines); CARL E. SCHNEIDER AND MARGARET F. BRING, AN INVITATION TO FAMILY LAW, 1192-1247 (2006) (discussing the dimensions of the child support responsibility).
general duty for parents to support their adult children who are unable to provide their own maintenance. This approach, different from those in the United States, offers insights into the issue of intergenerational support.

Accordingly, Part II of this Article begins by surveying American law on intergenerational support obligations, with a focus on post-majority child support. Part III considers equivalent European law, emphasizing Poland’s approach. Finally, Part IV analyzes the lessons drawn from a comparison of these approaches, including a discussion of child support enforcement and family unit modeling.

II. American Law on Post-Majority Child Support

Family law is in the domain of the states and, accordingly, these laws differ among the states. This is especially true in the laws on post-majority child support, where there has been a wide range of approaches to this issue by the states—far greater than the consistently aggresive approach taken towards child support for minor children. Before considering the relevant state laws on post-majority child support, it is important to first consider the universal circumstances that would require such support.

A. Circumstances Necessitating Support to Adult Children

The worldwide economic recession that began in 2008, as well as the pattern of increasing educational and healthcare costs, has resulted in financial stresses for adults, and especially young adults,

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7 See Kristin A. Collins, Federalism’s Fallacy: The Early Tradition of Federal Family Law and the Invention of States’ Rights, 26 CARDOZO L. REV. 1761 (2005) (noting that family law is currently in the domain of the states, but that, historically, the federal government was not limited in this way). But see Libby S. Adler, Federalism and Family, 8 COLUMBIA JOURNAL OF GENDER AND LAW 197 (1999) (arguing that there is no foundation for the view that family law belongs in the state domain). Justice Antonin Scalia has expressed concern about the increasing federalization of family law: “I think it obvious . . . that we will be ushering in a new regime of judicially prescribed, and federally prescribed, family law. I have no reason to believe that federal judges will be better at this than state legislatures; and state legislatures have the great advantages of doing harm in a more circumscribed area, of being able to correct their mistakes in a flash, and of being removable by the people.” Troxel v. Granville, 530 U.S. 57, 93 (2000) (Scalia, J., dissenting).
that have prompted many of them to turn to family support. A consideration of these realities provides a helpful background for the more theoretical questions of the appropriate legal regimes to govern such situations.

Raising a child in the United States is expensive, with the average per-child expenditure being $221,190 through the age of eighteen. These expenses can be divided into many categories, two of which are 1) the expenses incurred during the child’s minority and 2) those incurred during the child’s majority. In the first group, there are the costs relating to pregnancy and child-care. Less obvious expenses in this category include those incurred by a woman’s lost wages due to child-bearing and her common subsequent preference for part-time work.

The latter group of parenthood expenses—those incurred during a child’s older years—may be more controversial given that it is not clear if and when parents should pay them. These expenses often center on a child’s education, such as whether it should be

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9 This differs from the historical times when people received economic benefits from their children. Whereas historically children have been expected to engage in paid work to contribute to the family, child labor was disfavored in the later phases of the industrialization and afterwards. Today, instead of contributing to the family, a child costs the family financially. See, e.g., HUGH D. HINDMAN, CHILD LABOR: AN AMERICAN HISTORY 8 (2002) (identifying that, presently, the average child significantly costs a household, instead of financially contributing).


public or private, and whether parents should pay for university or not.

Many commentators have argued that a college education is necessary to enter the middle class in the United States and that education plays an essential role in American society. Although education is not a fundamental right under the federal Constitution, it is protected in most state constitutions. Nonetheless, the cost of a college education has skyrocketed each year, outpacing inflation. During the 1980s and early 1990s, college tuition increased by double-digit percentages, and annually by four or five percent by the late 1990s. Many students take out major loans to achieve their educational goals. This is true even in Europe, where tuition has remained relatively inexpensive.

However, it seems to be true that the availability of additional sources for college fees often has the indirect effect of prompting the

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15 See, e.g., Ben Wildavsky, Paying for College: Is that the Real Price?, U.S. NEWS & WORLD REP., Sept. 6, 1999, at 64 (“Since 1980, the average tuition at four-year institutions has more than doubled after adjusting for inflation, while the median family income for the parents of college-age children has increased just [twelve] percent.”).
16 McMullen, supra note 12, at 346.
increase of college tuition. For example, commentators have noticed that the availability of government loans has led to a tuition bubble. This observation is important and relevant because while parental investment in their children’s education is important, this should not be a reason for university fees to continue to increase drastically.

Different families have different resources. While some parents save money for their children’s education for decades, others do not feel the same obligation. Additionally, families have differing levels of income and wealth. With increasing college tuition costs, however, those children with parental financial support for college are at a significant advantage.

Beyond the significant expense of a university education, circumstances requiring post-majority child support may involve a child’s disability. Most obviously, there are relevant health care costs, in addition to home-care costs to assist with the disability. Furthermore, disabled people may lose out on wages—unemployment among disabled people is significantly higher than average.

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19 See, e.g., Macchiarola & Abraham, supra note 17, at 69; Howard, supra note 17, at 485-87.
20 There are college savings plans that allow parents to begin saving as soon as they expect a child. See, e.g., U.S. Securities and Exchange Commission, An Introduction to 529 Plans, available at http://www.sec.gov/investor/pubs/intro529.htm.
22 For example, they are not cornered into high-paying jobs to repay their college loans. See generally Macchiarola & Abraham, supra note 17, at 69 (noting many students’ large loans); Howard, supra note 17, at 485-87 (same).
In fact, unemployment for any person is an issue that may prompt parental support, particularly in the current recession. The unemployment rate for the general American population has remained at approximately 9% since the economic crisis began in 2008. Unemployment among young people and college students surged to 20%. In July 2010, the share of young people employed was the lowest July rate on record, which began in 1948. In 2009, almost 50% of college-educated youth were either unemployed or working in a job that did not require a college degree, with a median annual earning of $15,896.

Therefore, it is not difficult to imagine the circumstances under which adult children would benefit from financial help from their parents—whether due to college costs, disability, or unemployment. In fact, any person in a difficult financial situation may stand to benefit from parental help, prompting the question of when such help is appropriate, and if it should ever be mandated by the law.

B. American State Laws on Support

Family law is in the domain of the states and, accordingly, these laws differ among the states. One of the exceptions to this has been the federalization of child support and, in particular, child

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28 Id.
30 See supra note 7 and accompanying text.
support enforcement.\textsuperscript{31} This particular federalization has increased the success of collection, without which the taxpayers would bear the costs of unsupported children.\textsuperscript{32}

However, the federalized notion of child support is limited to minor children. The theory of post-majority support, on the other hand, has been left to the states, thereby differing from state to state. And, while most states do not require children’s post-majority support,\textsuperscript{33} others have enacted post-majority support statutes that require parents to, for example, pay for their children’s college education.\textsuperscript{34} This issue most often arises in divorce cases, which aim to determine the financial support of any children resulting from the marriage. In a proceeding for the dissolution of marriage, legal separation, or child support, such post-majority support may be ordered, if statutorily permitted, just as regular child support would be ordered for a minor child.\textsuperscript{35}

In Missouri, for example, child support is terminated when the child either dies, marries, enters active duty in the military, is

\textsuperscript{31} For example, in 2010, the U.S. Supreme Court announced that it will hear the case of Michael D. Turner v. Rebecca Price and the S.C. Department of Social Services, a case regarding the rights to a lawyer of an indigent father imprisoned for his failure to pay child support.

\textsuperscript{32} See, e.g., Estin, supra note 8, at 505 (“Much of the motivation for the enormous national effort and expense devoted to the child support revolution was the promise that better support enforcement would help keep single-parent families off the welfare rolls and allow the government to recoup its growing expenditures for public benefits.”).

\textsuperscript{33} See, e.g., Madeline Marzano-Lesnevich & Scott Adam Laterra, Child Support and College: What is the Correct Result?, 22 J. AM. ACAD. MATRIMONIAL LAW. 335, 339 (2009) (“A review of the law throughout the nation on the issues of child support for children in college, and the definition of college expenses, yields a wide array of results. The majority of states contain no provision requiring parents to contribute toward their children’s college costs. Moreover, the majority of these states call for a child’s emancipation no later than the child’s graduation from high school.”).

\textsuperscript{34} See, e.g., MO. ANN. STAT. § 452.340 (West 2004); COLO. REV. STAT. § 14-10-115 (2004); IOWA CODE § 598.21 (2003). For an analysis of parental support of children’s college costs in the states of Kentucky, Alabama, Connecticut, Hawaii, Illinois, Indiana, Iowa, Maryland, Massachusetts, Mississippi, Missouri, Montana, New Jersey, New York, North Dakota, Oregon, Pennsylvania, South Carolina, South Dakota, and Washington, see Marzano-Lesnevich & Laterra, supra note 17, at 339-373.

\textsuperscript{35} See supra note 6.
self-supporting, or becomes eighteen. However, the Missouri legislation includes a lengthy description of child support potentially owed to college students, but the support is capped once the child reaches the age of twenty-one or finishes the program, whichever occurs first. To receive the support, the child must continue to attend and progress toward completion of a secondary school program of instruction. There are strict requirements for the child in these circumstances, including that the child must enroll in college in the fall following high school, take at least twelve credit hours per semester, and show each semester’s transcripts to his parents.

In Colorado, children reaching the age of majority at the age of nineteen are no longer entitled to child support. However, in regards to college costs: “If the court finds that it is appropriate for the parents to contribute to the costs of a program of postsecondary education, then the court shall terminate child support and enter an order requiring both parents to contribute a sum determined to be reasonable for the education expenses of the child, taking into account the resources of each parent and the child.” In other words, Colorado permits a university stipend, but not necessarily post-majority child support.

In Iowa, meanwhile, the court may order a postsecondary education subsidy if good cause is shown. The cost is determined based on the cost of in-state public institution, from which the child’s expected contribution is deducted. The remainder is apportioned between the parents, but the amount paid by each parent should not exceed 33.3% of the total cost of postsecondary education. Children must forward their transcripts to their parents within ten days of receipt.

The state supreme courts in Arkansas, North Dakota, and Alabama have also permitted divorce courts to impose awards of

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36 Provided that the custodial parent has relinquished the child from parental control by express or implied consent. MO. ANN. STAT. § 452.340 (West 2004).
37 Id.
38 Id.
39 Id.
41 Id.
42 IOWA CODE § 598.21 (2003).
43 Id.
44 Id.
45 Id.
post-majority support, including college expenses.\textsuperscript{46} In determining the appropriateness of a post-majority support award for higher education, the courts may consider factors such as whether the parent, if still living with the child, would have contributed to higher education; the ability of the parent to pay the costs; the commitment to and the aptitude of the child for the requested education; the ability of the child to earn income during the school year or on vacation; available financial aid; the child’s relationship to the paying parent in terms of the shared goals between the parent and the long range ones of the child; and all other factors that appear reasonable and necessary.\textsuperscript{47}

The Washington Supreme Court also found in favor of post-majority child support based on constitutional grounds.\textsuperscript{48} In \textit{Childers v. Childers},\textsuperscript{49} the court, using a rational basis review, upheld the duty to pay a post-majority child’s college education based on the state’s strong legitimate interest in ensuring education.\textsuperscript{50} The court underscored that children of divorced parents face more economic disadvantages than children from intact homes.\textsuperscript{51} Furthermore, the court determined that the change of the relevant statutory language from “minor children” to “minor or dependent child” may have illustrated the legislature’s intent to provide courts with the discretion to determine support.\textsuperscript{52} Accordingly, the court held that the support obligation is based on dependency, not minority, and ends at emancipation, not majority.\textsuperscript{53}

Some states permit a court to extend child support to disabled children, as well. The relevant Missouri statute allows the court to


\textsuperscript{47} Richard Corbi, Note, \textit{You Have the Right to Cable TV, But Not Education: A Proposal to Amend the Bankruptcy Code to Permit All Education Expenses in Chapter 13 Bankruptcy Plans}, 43 FAM. C.T. REV. 625, 633 (2005).


\textsuperscript{49} \textit{Id.}

\textsuperscript{50} \textit{Id.}

\textsuperscript{51} \textit{Id.}

\textsuperscript{52} \textit{Id.} at 204.

\textsuperscript{53} \textit{Id.} at 205. The court decided not to determine the exact meaning of “emancipation,” instead basing its decision on the issue of whether the lower court abused its discretion. \textit{Id.}
extend the parental support obligation past a child’s eighteenth year when he is physically or mentally incapacitated from supporting himself and is insolvent as well as unmarried. The corresponding Colorado statute permits the court or the delegate child support enforcement unit to order child support for a mentally or physically disabled child beyond the statutory majority age of nineteen, which would include payments for medical expenses and insurance.

In many states, therefore, university education and a child’s disability are two recognized exceptions to the termination of child support upon the child’s attainment of majority. Otherwise, child support terminations are generally linked to a statutorily authorized age—even if the adult children are incapable of supporting themselves.

Unemployment or underemployment has not generally merited parental financial support. In these cases, public assistance becomes a source of support, such as unemployment insurance. However, unemployment and underemployment become more significant when it is the parent owing child support becoming unemployed or underemployed, not when the unemployed or underemployed person is an adult child.

In sum, while circumstances exist that would permit American courts to order post-majority child support, such as continued university education or disability, the approaches are neither uniform nor universal. In many ways, such support is controversial, benefiting from an analysis of another country permitting post-majority child support, such as Poland.

55 See supra Part II.B. Compare infra note 60 and accompanying text.
57 Timothy M. Smeeding, Irwin Garfinkel, & Ronald B. Mincy, Young Disadvantaged Men: Fathers, Families, Poverty, and Policy, 635 ANNALS 6, 12 (2011) (noting that when fathers earn zero dollars, their child support arrears build up instead of being waved). Alimony payments are also, as a rule, not reduced upon self-imposed changes in salary. Margaret Ryznar, All’s Fair in Love and War: But What About in Divorce? The Fairness of Property Division in American and English Big Money Divorce Cases, 86 N.D. L. REV. 115, 144 (2010). See also infra notes 128-29.
III. POLISH LAW ON POST-MAJORITY CHILD SUPPORT

In Poland, regulation of the maintenance obligation is embedded in the Family and Guardianship Code of 25th February 1964 (KRO). The statutory provisions relating to this obligation are absolutely binding, and the parties cannot change them. Consequently, the emergence and extent of this obligation are dependent on the conditions specified in the KRO. If they no longer apply, the maintenance obligation expires.

The general rule regarding the maintenance obligation of parents to children is described in art. 133 § 1 KRO. According to this regulation, parents are obliged to provide maintenance to a child that cannot provide for himself or herself, unless the income from the child’s property is sufficient to cover his or her maintenance and upbringing.

This means that there is no general rule stating that the age of majority causes the end of the maintenance obligation, but the courts use a presumption that adult children are able to provide for themselves in terms of maintenance. In other words, reaching the age of majority is not a criterion for the expiration of the maintenance obligation. Instead, parents’ obligation expires when their child is able to provide maintenance for himself or herself. This might happen if, for example, a child completes his or her education and enters a profession, achieving financial independence.

There are, however, different circumstances that justify perpetuating a maintenance obligation although a child is of age. Notably, unlike in American law, the parental maintenance obligation...

60 Advocates of this doctrine agree that art. 133 § 1 KRO means that the parent’s duty of maintenance does not expire on the date the child becomes an adult. See GREEN PAPER, Zbigniew Radwański (ed.). See also AN OPTIMAL VISION OF THE CIVIL CODE OF THE REPUBLIC OF POLAND 127 (2006), available at http://www.ejcl.org/112/greenbookfinal-2.pdf.
61 MAREK ANDRZEJEWSKI, PRAWO RODZINNE I OPIEKUNCZE 219 (2010).
62 It is clear that maintenance obligation rests with the parents of minor children.
63 See supra Part II.
obligation can be restored when an adult child is without financial means. Nonetheless, the exact duration of the maintenance obligation is a matter of controversy, and hence it is helpful to discuss it further. This is especially true given that Polish courts have relatively broad discretion regarding whether a maintenance obligation rests with the parents.

It is possible that a child is physically or mentally disabled and can never provide maintenance for himself or herself. In such cases, the parents’ maintenance obligation can be long-lasting, even until the death of one of the parties. In these special situations, the legal basis for this obligation is the above mentioned art. 133 § 1 KRO. In its decisions, the Polish Supreme Court has assumed that a disabled child is not able to support himself or herself. Furthermore, some court decisions indicate that the inability of adult children to support themselves as a result of a complete inability to work due to alcoholism or drug addiction does not solely preclude the maintenance obligation of the parents. This is especially true if the parents’ neglect of their duties in bringing up their children may have caused such addictions.

Before being amended on June 13, 2009, the KRO treated adult and minor children in the same way. Specifically, from the

65 There are many doubts on this matter. The Civil Law Codification Commission, acting under the Minister of Justice, had noted these doubts and taken them into consideration in its preparation for the reform of Polish civil law. See Zbigniew Radwański (ed.), Green Paper. An Optimal Vision of the Civil Code of the Republic of Poland 127-129 (2006).
66 Dominczyk, supra note 64, at 818.
68 See, e.g., Decision of the Supreme Court of the Republic of Poland of 31 Jan. 1986 [Uchwała Sądu Najwyższego z dnia 31 stycznia 1986 r., III CZP 76/85].
69 Janusz Pietrzykowski [in] Krzysztof Pietrzykowski Ed.), Kodeks Rodzinny I Opiekuńczy: Komentarz 1105 (2010). The author points out, however, that the claim of children for maintenance in the situation outlined above can be regarded as contrary to the principles of social coexistence (art. 5 Civil Code).
moment of birth\textsuperscript{71} to the moment when the child could provide his or her maintenance, parents were obliged to support the child.\textsuperscript{72} These rules, however, did not consider the significant differences between minor and adult children, many due to the fact that adult children are not under the authority of their parents.\textsuperscript{73} Parents bring up and exercise care only over minor children,\textsuperscript{74} and therefore applying maintenance obligations to adult children who are not under the authority of parents, who do not have any influence on their behavior, can cause some reservations. Accordingly, art. 133 KRO was amended, giving parents of adult children the right to withdraw from the maintenance obligation if its exercise would be linked to excessive loss, or if the child has not made efforts to support himself or herself. This amendment means that the absolute obligation of maintenance applies only to minor children.\textsuperscript{75}

The possibility of deviation from the maintenance obligation is new in KRO (written statutory law),\textsuperscript{76} although in a few of the decisions of the Supreme Court, specific instances were identified when the maintenance obligation of adult children could be discontinued. For example, maintenance could be discontinued if the support would cause excessive damage to the property of the parents.\textsuperscript{77}

Such decisions discontinuing parental maintenance, however, have been isolated. The courts’ predominant view has been that regardless of the age of the child, parents are committed to providing maintenance if the child is not able to provide maintenance to himself or herself. The action for maintenance may be dismissed

\textsuperscript{71} Id. at 287. The existence of maintenance obligation towards children is not dependent on “lack of means” (\textit{niedostatek}).

\textsuperscript{72} Jacek Ignaczewski, \textit{JACEK IGNACZEWSKI, MAŁGORZATA KARCZ, WOJciech MACIEJko, MARTA ROMAŃSKA, ALIMENTY: KOMENTARZ} 81 (2009).

\textsuperscript{73} See art. 92 KRO.

\textsuperscript{74} See art. 95 KRO.

\textsuperscript{75} See Wojtaszek-Mik, \textit{supra} note 59, at 579.

\textsuperscript{76} Poland is a country where the decisions of courts are not sources of law.

\textsuperscript{77} See Decision of the Supreme Court of the Republic of Poland of 18 May 1995 [Uchwała Sądu Najwyższego z dnia 18 maja 1995 r., III CZP 59/95]; Decision of the Supreme Court of the Republic of Poland of 10 Dec. 1998 [Wyrok Sądu Najwyższego z dnia 10 grudnia 1998 r., I CKN 1104/98]. In the latter decision, the Supreme Court stressed that parents who are due low pensions and have only modest hedges for their material needs should be exempted from their obligation to the maintenance of their adult child who, having learned a profession, achieves mediocre results with further studies.
only if the parents are unable at all to fulfill their obligation to provide maintenance, but the assumption is that parents should share even the smallest incomes with their child.\textsuperscript{78}

In light of the current legislation, the principle of the “last slice” does not apply in relation to adult children.\textsuperscript{79} This principle essentially means that children have the right to an equal standard of living with their parents,\textsuperscript{80} but this rule cannot be interpreted in a way that compels parents to make extraordinary efforts in a situation where a child simply does not want to become independent.

Present regulation therefore allows parents to avoid their maintenance obligation not only in difficult financial situations, but also in cases wherein adult children are not interested in gaining independence and self-satisfaction of their needs. The rationale for the introduction of greater exceptions from parental maintenance obligations is the observation that the previous generosity of maintenance obligations justified and even rewarded negative attitudes of adult children, who had not made any efforts to become independent.\textsuperscript{81} An absolute maintenance

\textsuperscript{78} See Decision of the Supreme Court of the Republic of Poland of 24 Mar. 2000 [Wyrok Sądu Najwyższego z dnia 24 marca 2000 r., I CKN 1538/99]. In this decision, the Court stressed that a child who not only has reached the age of majority, but who has also earned an education and entered professional life, allowing for self-maintenance, does not lose rights to maintenance, if, for example, that child wants to continue an education and this decision is justified by the results achieved to that point. The Supreme Court has also pointed out that the parents’ difficult financial situation does not exempt them from the maintenance obligation—they are forced to share with their children even a small income, unless the parents are deprived of such a possibility at all. In extreme cases, especially for a transitional period, fulfillment of this parental obligation may even require a sale of part of their assets. See also Decision of the Supreme Court of the Republic of Poland of 6 Jan. 2000 [Wyrok Sądu Najwyższego z dnia 6 stycznia 2000 r., I CKN 1077/99].

\textsuperscript{79} Ignaczewski, supra note 72, at 83.

\textsuperscript{80} Pietrzykowski, supra note 69, at 1102. Some advocates of this doctrine have criticized this rule, arguing that parents are obliged to cover the needs of their children who are justified in the light of good upbringing. The parents are not, however, required to satisfy all the needs of their children, especially luxury needs, even if parents have the sufficient means to do so. See Smyczyński, supra note 70, at 719.

\textsuperscript{81} See the justification of the draft of law, which introduced Art. 133 KRO. Print No. 888 of the Sejm 6\textsuperscript{th} term (Sejm is the lower house of the Polish Parliament).
obligation of adult children despite their inappropriate behavior would be morally and legally undesirable.\(^{82}\)

The duty for parents to maintain their adult children is terminated when they gain their independence.\(^{83}\) Therefore, it is important to establish when children become independent. There are several circumstances in which children can be considered independent, including when they finish their studies, collect unemployment benefits, and marry.

The start of a child’s education has several implications for parents and their maintenance obligations. According to art. 96 § 1 KRO, parents are obliged “to care for the physical and spiritual development of the child, and prepare him/her adequately to work for the good of society in accordance with his/her talents.” Putting together this provision with art. 133 KRO, parents are expected to bear the costs related to a child who is a student.

This may be justifiable given that the start of a course of study is preparation for future work. Often times, it is important for an individual child’s financial and professional future to undertake and complete his or her studies.\(^{84}\) Whether a child is serious about his or her studies can be judged by his or her performance during the course of study. If the child’s ability is sufficient, parents cannot prohibit a child beginning his studies.\(^{85}\)

The mere fact that a child comes of age during the period of study does not mean that the child is able to support himself or herself. Parents cannot waive the obligation of maintenance in these circumstance by arguing that the discontinuation of study and the commencement of work would allow the child to maintain himself or herself.\(^{86}\) On the contrary, the decisions of the Polish Supreme Court have permitted children of a majority age to continue to have an entitlement to maintenance if they want to continue their education.


\(^{84}\) See also supra note 12 and accompanying text.

\(^{85}\) The opposite position might lead to an inhibition of the development of children. See Janusz Pietrzykowski, supra note 69, at 1106.

\(^{86}\) Ignaczewski, supra note 72, at 84.
and this intention is justified by their previously achieved results. In determining the appropriateness of continuing maintenance for students, Polish courts may take into account not only the child’s desire to continue learning, but also whether the child’s personal abilities and character traits really allow him or her to continue the education.

The maintenance obligation of parents lasts until the child’s graduation. This does not mean, however, that parents are obliged to provide maintenance in a situation wherein a child neglects studies, has made no progress, does not pass term exams, or must repeat a year of study. The maintenance obligation lasts only for as long as the child actually uses the time to learn. Only effective study permits an adult child to rely on parental maintenance.

Another interesting issue considered by the Polish courts is whether parents are required to cover the costs of studying in a situation wherein a child started the studies a few years after graduating from high school, having been able to provide maintenance himself or herself in the meantime. In such cases, the Polish Supreme Court has ruled that the child cannot require parents to cover the costs of such studies, but that the child could take advantage of opportunities such as night school and continuing education.

However, this view is not necessarily reasonable in every case. For example, a student’s further studies could lead to significantly better earnings, and undertaking studies after a delay due to the reluctance of parents to cover the costs of study would justify maintenance payments. This is especially true if the child’s abilities and test scores suggest that the studies would have been completed on time if the parents had supported the education earlier.

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88 Decision of the Supreme Court of the Republic of Poland of 14 Nov. 1997 [Wyrok Sądu Najwyższego z dnia 14 listopada 1997 r., III CKN 257/97].
89 Decision of the Supreme Court of the Republic of Poland of 8 Aug. 1980 [Wyrok Sądu Najwyższego z dnia 8 sierpnia 1980 r., III CRN 144/80].
90 JERZY IGNATOWICZ & MIROSŁAW NAZAR, PRAWO RODZINNE 327 (2006).
92 Compare the state code.
The Polish Supreme Court seems to have adopted this direction, stating that if the child’s current skills do not provide him or her with an adequate standard of living and if the child intends to improve these skills by, for example, undertaking higher education, the fact that prior to the studies the child worked and earned money does not exempt parents from alimony on the grounds that the child can support himself or herself.\(^{94}\)

Education can be quite costly,\(^{95}\) while parents may be poorly skilled and low-earning. Therefore, the question arises whether, in such cases, parents are obliged to pay maintenance despite their inability to pay. The Polish Supreme Court has held that, in such cases, it is difficult to require parents to cover the high costs of a child’s studies, especially in the context of art. 135 § 1 KRO, which illustrates that the scope of maintenance provided depends on the justified needs of the eligible person, as well as the earning capacity and assets of the obliged.\(^{96}\)

If, on the other hand, a child becomes independent, he or she can register with the employment office and start drawing unemployment benefits when he or she cannot get a job. This does not automatically mean that the child is able to support himself or herself.\(^{97}\) Instead, the child’s ability to self-support can be determined by analyzing the specific facts of the given case.\(^{98}\) Setting aside the parental maintenance obligation, a consideration is whether the child is able to get a job before the end of the period in which he or she is entitled to receive unemployment benefits. Moreover, it is also necessary to take into account whether the child’s allowance is sufficient to meet his or her needs at least at a basic, but not scarce, level.

Another situation that may affect the parents’ duty to maintain the child is the child’s entry into marriage. Marriage alone does not override the parental maintenance obligation, but it changes

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\(^{95}\) See supra notes 15-18 and accompanying text.

\(^{96}\) See uchwała Sądu Najwyższego z dnia 18 maja 1995 r., III CZP 59/95 [Decision of the Supreme Court of the Republic of Poland of 18 May 1995]. See also infra note 119 and accompanying text.

\(^{97}\) Uchwała Sądu Najwyższego z dnia 18 maja 1995 r., III CZP 59/95 [Decision of the Supreme Court of the Republic of Poland of 18 May 1995].

the order of the maintenance obligation. Specifically, the maintenance obligation of the spouse outweighs the duty of his or her relatives, and therefore the child should first seek maintenance from the spouse.

Notwithstanding this legal framework, it is also possible that the maintenance obligation will expire before the child becomes an adult. As Polish law does not link child maintenance to the age of majority, but to the means of the child, the minor child may occasionally obtain sufficient income for his or her own maintenance, thereby terminating the parental obligation. However, the Supreme Court has held that it cannot be expected for the minor child to maintain himself or herself.

Another interesting rule in Polish law is the possibility of avoidance of the maintenance obligation, which should be discussed to provide the full context of the rules on the maintenance obligation of adult children. According to art. 144 KRO, an obliged person may avoid complying with the maintenance obligation if the demand for maintenance is contrary to the principles of social coexistence. Notably, this requirement does not apply to parents in relation to their minor children.

In sum, Polish law is very flexible and the courts have broad discretion in determining whether parents are obliged to provide maintenance to their adult children. In fact, maintenance of adult children is an example of the role for courts and an illustration of the importance of judicial decisions in civil law countries such as Poland. Such broad judicial freedom is sometimes criticized, with

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100 See Ignaczewski, supra note 72, at 86.
101 Pietrzykowski, supra note 69, at 1105. See supra notes 55, 60, and accompanying text.
102 See Decision of the Supreme Court of the Republic of Poland of 16 Dec. 1987 [Uchwała Sądu Najwyższego z dnia 16 grudnia 1987 r., III CZP 91/86].
103 See Decision of the Supreme Court of the Republic of Poland of 14 Nov. 1987 [Wyrok Sądu Najwyższego z dnia 14 listopada 1997 r., III CKN 217/97].
105 Such notions as “excessive damage,” or the necessity to adjudicate whether a child can provide maintenance for himself or if the child endeavors to support himself, means that the role of courts is very important. See Wojtaszek-Mik, supra note 59, at 582.
critics recommending the introduction of an explicit age of majority of children that would terminate parental maintenance.\footnote{Jancewicz, supra note 104, at 190.} In the meantime, courts continue to have broad discretion in awarding post-majority child support.

IV. IMPLICATIONS OF ANY POST-MAJORITY CHILD SUPPORT SCHEME

The issue of intergenerational support for post-majority children is shared by both the United States and Poland. However, the two countries’ approaches to post-majority support are different.

Regardless of which regulation legislators select, there are two major elements to any post-majority support system that may be determinative of the success of any such system. The first is the very practical issue of the enforcement of post-majority child support, while the second element is the more theoretical question of which family model society desires—only a certain model would support post-majority child support.

A. Post-Majority Child Support Enforcement Problems

If a duty for parents to financially support their adult child’s education is imposed, the practical issue of enforcement arises. This is true both in the literal sense of collecting money from parents, and the theoretical issue of the fairness of such collection, depending on the family type implicated.

Most importantly, there is a major practical problem with the enforcement of such a duty. Child support for minor children alone—which is far less controversial than post-majority support—has been notoriously difficult to collect. In 2007, only about 62.7% of the $34.1 billion due in child support for minors was reported as received, averaging $3,350 per custodial parent due support.\footnote{U.S. CENSUS BUREAU, Custodial Mothers and Fathers and Their Child Support: 2007 (Nov. 2009), available at http://www.census.gov/prod2009pubs/p60-237.pdf.} Child support collection was difficult even when the money was required for children’s basic necessities—24.6% of all custodial parents had incomes below poverty, while 18.2% of those who received at least some child support payments were below poverty.\footnote{Id.} Such data are not available for Poland, but according to the latest report of the Supreme Chamber of Control (Naczelna Izba Kontroli),
the total amount of alimony debts is approximately 10,000,000,000 PLN. Elaborate enforcement systems have been established to collect child support money for minor children, but they have not been entirely successful.

Often times, child support collection is difficult because the debtor parents do not have much money to be collected. In a survey by the United States Government Accounting Office, two-thirds of custodial mothers not receiving owed child support stated that the fathers were unable to pay. Therefore, although poverty is not an excuse for the nonpayment of child support for minor children, collection is difficult when there are no assets to collect.

The collection of funds for an adult child’s college education, disability, or unemployment would be at least this difficult to collect, and likely more so given that college education is more discretionary, more expensive, and more controversial than the basic necessities of food and housing for minor children.

Beyond the literal and universal problem of enforcing a parental obligation to pay for adult children, fairness issues arise in the United States due to the inevitable inequitable treatment by American courts of married parents and divorced parents in ordering post-majority support. Specifically, the courts do not become as involved in intact family units, potentially making it more

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109 See http://www.nik.gov.pl/aktualnosci/nik-o-alimentach.html. This amount includes only alimony that has been paid by the Alimony Fund, an institution founded to pay alimony for unreliable debtors. However, the total amount of unpaid alimony is larger because not everybody is entitled to get money from the Alimony Fund. The rules on the Alimony Fund are regulated by the Act of Assistance to the Persons Entitled to Alimony of 7th of September 2007.


112 See supra note 57 and accompanying text; see also Goulah, supra note 110, at 479.

113 See supra notes 30-32 and accompanying text.

114 One married couple could not agree on the education of the child and brought the case to court, but the Alabama Supreme Court held that it had no jurisdiction in “the settlement of a difference of opinion between parents as to what is best for
problematic to achieve a court order for support. Although a private cause of action might be created to aid children in claims against their parents, such a private cause of action continues to run afoul of the courts’ reluctance to interfere with intact family units.

In divorce cases, meanwhile, the court wields wide discretion over child support decisions. With the power to intervene in family breakups, the court may compel divorced parents to pay for their children’s college costs while married parents escape this obligation. Although parental or marital statuses do not qualify as a protected class, this disparate treatment of married and divorced parents in regard to children’s college costs may create certain equal protection issues, and at the very least, unequal treatment.

On the other hand, divorced and intact families may be sufficiently different to avoid equal protection concerns. In fact, the supposed unevenness between children of married parents and those of divorced parents is the justification for judicial intervention in the latter situation. According to one court, “Parents, when deprived of the custody of their children, very often refuse to do for such children what natural instinct would ordinarily prompt them to do.” As another Washington court noted, “In allowing for divorce, the State undertakes to protect its victims. Perhaps there has been an equal protection problem in regard to the children who have been deprived of economic advantages which they would have had absent the remedy of divorce, and which children of married parents retain.”

One commentator has noted such a pattern, “A number of courts adopt the policy that a child should not suffer because his parents are divorced. The child of divorced parents should be in no worse position than a child from an unbroken home whose parents could be expected to supply a college education.”

However, there may be many problems in the assumption that college-aged children of married families are better off than those from divorced families. Indeed, the assumptions are based on the

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116 Esteb v. Esteb, 184, 244 P. 264, 246 P. 27 (Wash. 1926).

idea that married parents are more fit than divorced ones, and that any such inequalities are reparable with money. Nonetheless, it is true that divorced parents, on average, are less wealthy than married ones.118

There are several additional issues regarding enforcement of post-majority support. Many of these center around the determination of the amount of post-majority child support. One measure for child support is the ability of the parent to pay, as well as the amount required by the child.119 However, this does not resolve the interesting question of whether a divorced parent’s payments toward adult child match other parent’s, although this position is not favored.

Nonetheless, today’s high college tuition costs are cost-prohibitive for most families, giving great advantages to those children with parental financial support for college and other adulthood costs. On the other hand, the limited assets of many parents makes this question moot for most families. In these cases, enforcement of post-majority support would be difficult, despite any theoretical notions of parental obligation.120 An equally theoretical issue is which model of the family is preferred, and which supports the notion of post-majority support, considered next.

B. Model of Family

Society’s decision regarding the extent of parental obligations indicates society’s preferences for a particular type of model of the family. The preferred model can treat family as either a social support system or a limited duty, and determines whether intergenerational obligations exist.

Any model of the family necessarily creates an incentives structure for the behavior of individual family members. For

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118 In 1993, for example, the mean income for divorced American mothers was $17,859, while for divorced fathers it was $31,034. Arthur B. LaFrance, Child Custody and Relocation: A Constitutional Perspective, 34 U. LOUISVILLE J. FAM. L. 1, 6 (1996). But see Kelly Bedard & Olivier Deschênes, Sex Preferences, Marital Dissolution, and the Economic Status of Women, 40 J. HUM. RESOURCES 411 (2004) (arguing that divorced women live in households with more income per person than never-divorced women).


120 See supra notes 95-96 and accompanying text.
example, imposing obligations on parents to pay for their children’s education raises the costs of having children, perhaps deterring people from having children. This is especially so under broad consent theories—i.e., by having intercourse, one consents to parental duties should a child result—which can be stretched to justify extensive parental obligations into a child’s adulthood. On the other hand, a family model requiring parental financial involvement may permit and encourage parents to become passionate participants in the education of their children.

In principle, however, the extension of parental obligations to adult children may be problematic if people had different expectations upon the conception of their children. If the law did not comport with a person’s expectation of limited familial duty, the cost and burden of the family would weigh too heavily to be mandated by law.

If society chooses a less cohesive and interdependent model of family, the taxpayer, through the social net, is an alternate supporter. This is already the case in traditional child support cases, wherein the taxpayer is the alternate payor to a deadbeat parent. Additionally, all children receive certain public goods funded by taxpayers, such as education below the university level. Laws have been enacted to compel parents to send their children to school, but this obligation is different from a university obligation, particularly when education is free. The only financial efforts required of the parents of minor children are essentially the basics of room and

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121 For the argument that economic incentives drive women’s behavior, see Edward J. McCaffery, Taxation and the Family: A Fresh Look at Behavioral Gender Biases in the Code, 40 UCLA L. REV. 983, 1033, 1040-41 (1993) (arguing that Congress should lower married women’s tax rates to encourage both marriage and married women’s participation in the labor force).


124 Altman, supra note 122, at 174.

125 Bruce C. Hafen, Developing Student Expression Through Institutional Authority: Public Schools As Mediating Structures, 48 OHIO ST. L.J. 663, 668 (1987). Hafen states, “Our tradition asserts that this compulsion [to educate minors] is in the best interest of children, because education ultimately develops their capacity to enjoy the full and meaningful exercise of their adult liberties.” Id.
board while the child attends school, as child labor laws prevent
children from obtaining these basics themselves. 126

However, while taxpayers serve as the only viable alternative
to supporting minor children, the adult child begins to undertake
some financial responsibility in cases of higher education,
unemployment, and disability. For example, while society might
offer tax-subsidized universities—unlike the completely subsidized
elementary and high school education—it is the individual students
who are responsible for their supplemental loans. 127

The distinction between adult children and minor children, of
course, is that adult children are expected to be self-sufficient and
able to provide for themselves and their minor children, if they have
any. This expectation has been upheld by the courts even in cases of
parental unemployment. For example, if a noncustodial parent is
unemployed but owes child support to a child on welfare, states must
develop procedures whereby the court or agency can mandate that
the parent participate in “work activities.” 128 Furthermore, income
will be imputed to unemployed people in determining the amount of
child support they owe for their minor children. 129 Therefore, it is
expected that adults are able to earn an income and provide for
themselves. Accordingly, while there are various arguments as to the
extent to which the government should support children and the
extent to which families should do so, these arguments do not
necessarily translate to the case wherein the child at issue is an adult.
In discussions of adult children, the emphasis invariably falls on
“adult” rather than “children.”

The problem arises of how, under any given model of the
family, to treat cases outside the main two-parent unit. For example,
courts have ordered basic child support of victims of statutory rape,

126 See supra note 9 and accompanying text.
127 See, e.g., Macchiarola & Abraham, supra note 17, at 69; Howard, supra note
17, at 485-87.
666(a)(16) (2000). Work activities include unsubsidized employment, subsidized
private and public sector employment, on-the-job training, job search and job
readiness assistance, community service programs, vocational education training of
less than twelve months, and job skills training “directly related to employment.”
Id. § 607(d).
129 Catherine Moseley Clark, Comment, Imputing Parental Income in Child
those deceived about birth control, and those misled to believe they were the biological parents.\textsuperscript{130} Because child support for these minors is debated, any parental support could hardly be extended to college costs or other costs incurred during adulthood.\textsuperscript{131}

In any case, necessities—at their most basic level—are most often met either by the family unit or government.\textsuperscript{132} The family might offer a higher level of support, but this is purely discretionary and should remain so under a model that views the family as limited in its duties.\textsuperscript{133} Court-compelled parental support of unemployed and disabled adults must also be limited under the model that views the family’s obligations as restricted.

In sum, society’s choice of family model, as reflected in its relevant statute on post-majority child support, has important consequences. The responsibilities imposed upon families must be weighed with their costs, and importantly, such responsibilities should not be cost-prohibitive to the formation of families.

V. CONCLUSION

In sum, the issue of intergenerational support includes important questions regarding the support of adult children who are students, disabled, or unemployed. Different countries have taken different approaches. Certain American states permit actions for post-majority support for students and disabled, often when the issue of financial support for the various family members is brought to the courthouse steps by a divorce case. In Poland, meanwhile, actions for post-majority support also occur outside the divorce context and for the unemployed. A comparative analysis of this topic therefore

\begin{itemize}
\item \textsuperscript{130} Id.
\item \textsuperscript{131} Id.
\item \textsuperscript{132} Private charities can also provide certain services as an alternative to the government. See Lewis D. Solomon and Matthew J. Vlissides, Jr., \textit{Faith-Based Charities and the Quest to Solve America’s Social Ills: A Legal and Policy Analysis}, 10 CORNELL J. L. & PUB. POL’Y 265 (2001).
\item \textsuperscript{133} And thus explains the existence of the doctrine of necessaries in family law, wherein courts intervene to ensure that the earning spouse is responsible for the payment of expenses incurred by the nonearning spouse for those things that are necessary for the family. Susan Kalinka, \textit{Taxation of Community Income: It Is Time for Congress to Override Poe v. Seaborn}, 58 LA. L. REV. 73, 94 (1997). Necessity is determined by examining factors such as the spouses’ means, social position, and circumstances. Id.
\end{itemize}
reveals not only the universality of the issue of post-majority support, but also the differing approaches to it.

Any discussion of this topic entails considering the practical aspect of child support enforcement, as well as selecting the theoretical model of the family. If the family is viewed as a social support system, then intergenerational obligations must exist. On the other hand, if familial independence and personal autonomy is to be incentivized, then perhaps establishing such intergenerational obligations is counterproductive. Legislators must weigh the various factors and select the required intergenerational support in their own jurisdictions, particularly as the presence of this issue continues to increase in the current economic climate.