

## To legislate filial piety: is the elderly rights law a panacea?

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# To Legislate Filial Piety: Is the Elderly Rights Law a Panacea?

## Abstract

With the life expectancy being steadily increasing, caring for an ageing population presents a paramount challenge in China. The paper explores the traditional value of filial piety which is perceived to underpin social norms and beliefs about caring for aged parents. Apart from state and social institutions, a particular regard is given to the reshaping of relationships between aged persons and their family members. Given filial piety being a core value in Chinese cultures, there is a societal interest in protecting a healthy relationship between parents and children in the twenty-first century. In terms of the relational dimensions of current theories, it remains unclear whether an individual rights-based approach would have traction in the Chinese context, or represents an unintended disavowal from the Chinese traditional core values. More critically, a new law requires adult children to visit their elderly parents regularly. With the ongoing attempts to theorise and reconceptualise elder law across jurisdictions, the research further examines emerging legal issues that have arisen in China, and seeks to ascertain the extent to which the law addresses the above inquiry.

## Introduction

China's aging population is creating serious economic, social and political challenges, many of which have started to manifest in key areas of society. There is a growing need for either family members or government agencies to look after the vulnerable group properly. Over the last four decades, China has had unprecedented economic growth. Challenges arising from an aging population have been becoming increasingly pronounced as the elderly population is predicted to rise to 400 million people by 2033.<sup>1</sup> It has started to strain the current system, which catalyses an explosion in demand for elderly services.<sup>2</sup> In response to the challenge, this paper proceeds with five parts as follows. Part I starts with conceptual approaches, ascertaining how to reshape a more constructive relationship between aged parents and adult children. It sets for an interdisciplinary framework under which a variety of variables are examined, including social, cultural and economic factors. The extent is examined to which they contribute to the emerging aging issue. Law and regulation should be reconceptualised to include the needs of aged parents. Part II looks at the law of *Protection of Rights and Interests of Elderly People* (PRIE 2013). It ascertains whether the law can be justified in a theoretical framework, where the reciprocal contract theory and economic policy theory are discussed. Part III refers to the seminal debate about whether a moral obligation could be effectively enforced by law. A primary concern arises as to whether this statutory approach could be a panacea, and further help to achieve its legislative intent.

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<sup>1</sup> Jing Li, 'Beijing Mulls Treating Elderly in Neighbouring Cities' *South China Morning Post* (5 May 2014)

<sup>2</sup> Tim Wang, William Morris & Richard Brubaker, 'Sustainability Insights: China's Elderly' *Collective Responsibility* (2016) <<https://www.coresponsibility.com/wp-content/uploads/2016/06/Elderly-in-China.pdf>>

Arguably, the legislation may have a negative effect on family harmony and may not be functional well, given it is difficult to enforce the obligation. Part IV moves to a comparative study between jurisdictions, and looks into compatibility of possible transplantation of more established experiences from other jurisdictions. Part V seeks to address the access to social justice in protecting the elders' rights. With the behavioural changes theory taken into account, two approaches are compared between the deterrence model and the incentive mechanism. Since the state cannot care for the elderly adequately, it explores how to improve the infrastructural facilities for the elder, among other things, via the public and private partnership. The paper ends with a conclusion remark.

## A. Reconceptualise the Global Challenge of Aging

China, the second largest economy in the world, is not keeping up with its increasing longevity with the protection of the elderly's interests.<sup>3</sup> The aging population has challenged the traditional infrastructure of interrelationships and placed an extraordinary amount of pressure on younger generations to support their aged parents.<sup>4</sup> Inadequately-addressed elderly needs have the potential to spark social unrest and undermine the authority of a government.<sup>5</sup> The collision of new realities with responsibilities to parents has struck in the traditional Confucian society, where filial piety is a cherished value.<sup>6</sup> It is worth examining Confucianism, its philosophical foundations, and how it has shaped the Chinese traditional culture.

### 1. Filial Piety in China's Traditional Culture: The First among 100 Virtues

Confucius is the most family-oriented philosopher in human history.<sup>7</sup> Filial piety and the spirit of Confucianism have been deeply rooted in the Chinese social norm. Familism is long-established in the core of Confucian culture and provides a strong normative legitimacy for intergenerational ties.<sup>8</sup> Loyalty and devotion to family members have long been traditional values and filial piety underpins social norms and beliefs.<sup>9</sup> Filial piety is considered one of the core values in Chinese culture, which involves respect and care for the elderly with affection and gratitude.<sup>10</sup> Confucian respect for the elderly remains a powerful force in Chinese society. Filial piety under Confucianism is thus considered the most important ethical principle in human relations, which is a paramount virtue in the Chinese culture. Social security and long-term care are well woven into the basic underlying thread for all virtues. A Chinese proverb

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<sup>3</sup> David Bloom, David Canning, and Gunther Fink, 'Implications of Population Ageing for Economic Growth' (2010) 26 (4) *Oxford Review of Economic Policy* 583, 612

<sup>4</sup> Dominic Bailey, Mick Ruddy and Marina Shechukina, 'Ageing China: Changes and challenges' *BBC* (20 September 2012)

<sup>5</sup> Tim Wang, William Morris & Richard Brubaker, 'Sustainability Insights: China's Elderly' *Collective Responsibility* (2016) 16

<sup>6</sup> Francine Russo, 'Caring for Aging Parents: Should There Be a Law?' *Time* (22 July 2013)

<sup>7</sup> Jonathan DeHart, 'Confucian Crackdown: New Chinese Law Enforces Filial Piety' *The Diplomat* (4 July 2013)

<sup>8</sup> Ning Jackie Zhang, Man Guo and Xiaoying Zheng, 'China: Awakening Giant Developing Solutions to Population Aging' (2012) 52 (5) *The Gerontologist* 589, 596

<sup>9</sup> David Phillips and Zhixin Feng, 'Challenges for the Aging Family in the People's Republic of China' (2015) 34 (3) *Cambridge Journal on Aging* 290, 304

<sup>10</sup> Lia Bryant and Suzane Lim, 'Australian-Chinese Families Caring for Elderly Relatives' (2013) 33 (8) *Ageing & Society* 1401, 1421 at 1403

considers filial piety as “the first among 100 virtues,” and the bedrock of social harmony.<sup>11</sup> As Weber said: “... ‘the absolutely primary virtue’ which ‘in case of conflict...preceded all other virtues’ in China.”<sup>12</sup> The responsibility of adult children to take care of their parents is in line with the Confucian doctrine of filial piety.<sup>13</sup> In substance, reverence for elders remained a cultural obligation.<sup>14</sup> However, the value has been declining, with many variables contributing to the erosion.

## 2. Contributing Variables to the Erosion of Traditional Values

The transformation of Chinese society during the four-decade reform has catalysed the change of the traditional family model, despite the filial piety deeply embedded in the national psyche.<sup>15</sup> Chinese family members take primarily care of their elder adults, however, the longstanding tradition is being challenged by the country’s unprecedentedly migration. Urbanisation and smaller family sizes have eroded the traditional system of old-age care.<sup>16</sup> Rapidly increasing life spans leave many adult children struggling to look after their parents. These forces, along with the country’s one-child policy, have left more aged parents living alone. It is worth examining the extent to which the demographic and economic change has placed China’s pressing system.

### (a) Societal Aging

Increased life expectancy and declining birth rates are raising the average age of China’s population. The national Old Dependency Ratio (ODR) means the proportion of the population over 60, relative to the working-age population (those aged 15 to 59), which increased by over 70% between 2010 and 2014.<sup>17</sup> The startling percentage stems from the combination of the dramatic demographic change, caused by the family planning policy which was introduced in 1979, and a considerable increase in life span—from 41 to 73 over the past four decades.<sup>18</sup> Because of declining fertility rates and growing life expectancy, China will have one of the world’s oldest populations.<sup>19</sup> In the long run, the 60–64 age group will represent the largest share of population by 2050.<sup>20</sup> The number of old people will leap from

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<sup>11</sup> Edward R. Canda, ‘Filial Piety and Care for Elders: A Contested Confucian Virtue Reexamined’ (2013) 22 (3) *Journal of Ethnic & Cultural Diversity in Social Work* 213, 234

<sup>12</sup> Max Weber, *The religion of China Confucianism and Taoism* (New York, Free Press, 1951) 157

<sup>13</sup> Xiaoying Qi ‘Filial Obligation in Contemporary China: Evolution of the Culture-System’ (2015) 45 (1) *Journal for the Theory of Social Behaviour* 141, 161

<sup>14</sup> Adam Minter, ‘In China, Visit Granny or You Might Get Sued’ *Bloomberg* (2 July 2013)

<sup>15</sup> Clifford Coonan, ‘Chinese Law Forces People to ‘Visit and Greet’ Their Ageing Parents’ *The Independent* (1 July 2013)

<sup>16</sup> Rita Jing-Ann Chou, ‘Filial Piety by Contract? The Emergence, Implementation, and Implications of the “Family Support Agreement” in China’ (2011) 51 (1) *The Gerontologist* 3, 16

<sup>17</sup>  $ODR = \frac{\text{Number of Elderly People (60+Years)}}{\text{Number of Working-Age People (15-59 Years)}}$  Chinese National Bureau of Statistics (CNBS, 2015).

<sup>18</sup> Andy Wong, ‘China to Require Children to Visit Aging Parents as Elderly Care Poses Problem for Nation’ *The Associated Press* (1 July 2013)

<sup>19</sup> Dara Lee Luca and David Bloom, ‘Global Demography of Ageing: Facts, Explanations, Future’ in John Piggott and Alan Woodland (eds.) *Handbook of the Economics of Population Aging* (Amsterdam, Elsevier, 2016) 3-56

<sup>20</sup> David Bloom, David Canning, Jocelyn E. Finlay, ‘Population Aging and Economic Growth in Asia’ in Takatoshi Ito and Andrew Rose (Eds.), *The Economic Consequences of Demographic Change in East Asia*, NBER-EASE Volume 19 (Chicago, University of Chicago Press, 2010) 61 - 89

185 to 487 million by 2053, according to the China National Committee on Ageing.<sup>21</sup> It indicates that 35% of the total population will enter the so-called "grey tide", compared with the 20% of the world average.<sup>22</sup> The aging population represents a demographic challenge. This shift implies that older cohorts of the population will increase in size. The rising ODR shows slower economic growth and mounting pressure on public budgets.<sup>23</sup> China is in danger of becoming a greying society with a shrinking population of young people who can contribute entrepreneurial sparks to the economy.<sup>24</sup> The resulting societal aging implies that fewer people contribute to economic growth, and more people demand health care.<sup>25</sup> Apart from the social aging, the relationship has eroded as China's one-child policy has increased the burden on the adult children who migrate to cities for more opportunities.

### *(b) One-Child Policy*

The one-child policy has heightened the aging crisis. China undergoes a demographic transition from higher to lower birth rates. Multiple generations of the one-child policy have left China with a calamitous demographic crunch, in which the challenge of caring for its elderly is evident.<sup>26</sup> The policy accelerates the drop in fertility rates, causing the elderly proportion of the population to more than double, that is, 7.18% to 15.20% over the last 35 years.<sup>27</sup> The sharp fertility drop and sustained long-term lower fertility has produced predictable outcomes in terms of demographics.<sup>28</sup> As such, the burden of taking care of the elderly is amplified by the "4-2-1" dilemma.<sup>29</sup> The large number of sole offspring will be responsible for taking care of up to four grandparents and two parents in the near future. This places heavy financial and emotional pressure on the youngest generation. By 2050 there are likely to be just 2.5 working-age adults for every person over 65, down from eight today.<sup>30</sup> The recent repeal of the 'One-Child Policy' cannot fix this imbalance in the short-term, although the change of policy is intended to balance population development and the societal aging.<sup>31</sup> It remains uncertain as to whether the changes will significantly boost the total population and labour force.

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<sup>21</sup> Lijia Zhang, 'China's Unfeasible Plan for the 'Grey Tide': Force People to Visit Their Parents' *The Guardian* (15 Jul 2013); 'China's aging population to double by 2053' *China Daily* (23 October 2012)

<sup>22</sup> Franklin Goza and Yuanting Zhang, 'Who will care for the elderly in China?: A review of the problems caused by China's one-child policy and their potential solutions' (2006) 20 (2) *Journal of Aging Studies* 151, 164

<sup>23</sup> Charlie Campbell, 'China's Aging Population Is a Major Threat to Its Future' *Time* (7 February 2019)

<sup>24</sup> Bruce Einhorn, 'Why China Is Ordering Adult Children to Visit Their Parents' *Bloomberg* (2 July 2013)

<sup>25</sup> Andrew Scott, 'The Myth of the "Aging Society"' *Project Syndicate* (25 May 2018)

<sup>26</sup> Victoria Loo, 'Saying Goodbye to China's One Child Policy and Aging Population' *The Yale Global Health Review* (25 September 2016)

<sup>27</sup> Tim Wang, William Morris and Richard Brubaker, 'Sustainability Insights: China's Elderly' *Collective Responsibility* (2016)

<sup>28</sup> Howard Steven Friedman, 'China's Dependency-Ratio Turning Point' *Huffington Post* (12 September 2014)

<sup>29</sup> Charlotte Bruckermann, 'Longevity, Labour, and Care between Kin and State in China' *Global Europe-Basel Papers on Europe in a global perspective* (Number 114, 2017)

<[http://eterna.unibas.ch/index.php/global\\_europe/article/view/164](http://eterna.unibas.ch/index.php/global_europe/article/view/164)>

<sup>30</sup> 'The kin and I' *The Economist* (27 August 2015)

<sup>31</sup> Scott Cendrowski, 'China's Landmark One-Child Policy Reversal Doesn't Seem to Be Working' *Fortune* (24 February 2017)

### (c) Urbanisation and Families Fragmented by Migration

China's dramatic economic transformation has brought wrenching social change, with a nation of countryside people migrating to cities, and the "one-child policy" wreaking havoc on traditional family structures.<sup>32</sup> Key contributing factors include the migration and change in family structure from intergenerational to nuclear families.<sup>33</sup> The rise in the migration since the relaxation of the *Hukou* system in the mid-1980s has changed traditional familial setups considerably.<sup>34</sup> In addition, urbanisation is recognised as a way to pursue a better quality of life<sup>35</sup> that serves as a major driving force behind China's Confucian fallout, which results in the deterioration of conventional values.<sup>36</sup> It has been dramatically reshaping the family structural interactions and moral scenarios, posing many a problem to the aging Chinese population.<sup>37</sup> As a result, the traditional Chinese culture of filial propriety is diminishing, due largely to economic barriers, and the change in values between younger and older generations.<sup>38</sup> This is also partly the result of the increase in nuclear families which has weakened traditional extended family support.

Previously, Chinese aged parents have lived with their adult children and depended on them for care. Nowadays, younger generation people are leaving home to seek better development opportunities. The elderly parents are restricted by the *Hukou* system from moving to the city with their children, in which they are not allowed to access public services. This trend is especially prevalent among rural residents, with 145 million rural-urban migrants in 2009, more than 60% of which were being born after 1980.<sup>39</sup> In 2016, there are 169,340,000 migrant workers in China, which means more than 40% of the labour force in the urban area is migrant workers.<sup>40</sup> The exodus is deteriorating longstanding family values.<sup>41</sup> The vast majority of low-income migrant workers may not be able to afford the long-distance travel for regular visits. They are caught between the filial responsibility, geographical demands, and

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<sup>32</sup> Nathan VanderKlippe, 'How China's Rural Elderly are being Left behind and Taking Their Lives' *The Globe and Mail* (12 November 2017)

<sup>33</sup> Jesús Sánchez-Barricarte and Quanbao Jiang, 'The 4-2-1 Family Structure in China: A Survival Analysis Based on Life Tables' (2011) 8(2) *European Journal of Ageing* 119

<sup>34</sup> 中国发改委 2019 年新型城镇化建设重点任务 (*Prioritised Strategies in the New Urbanisation Plan of 2019* issued by the National Development and Reform Commission of the People's Republic of China (NDRC)): "Cities with permanent residents population under 3 million should remove all limits on *hukou* (household registration); and cities with populations between 3 million and 5 million should relax restrictions on new migrants."; Jason Young, 'China's Hukou System: Markets, Migrants and Institutional Change' (2016) 21 (1) *Journal of Chinese Political Science* 117, 118

<sup>35</sup> Yun-Liang Gao, Yong-bao Wei, et al., 'China's Empty Nest Elderly Need Better Care' (2014) 62 (9) *Journal of the American Geriatrics Society* 1821, 1822

<sup>36</sup> Jonathan DeHart, 'Confucian Crackdown: New Chinese Law Enforces Filial Piety' *The Diplomat* (4 July 2013)

<sup>37</sup> Martin Whyte, 'Filial Obligations in Chinese Families: Paradoxes of Modernisation' in Charlotte Ikels (ed.) *Filial Piety: Practice and Discourse in Contemporary East Asia* (Stanford: Stanford University Press, 2004) 106–127

<sup>38</sup> Charlotte Ikels, 'Economic Reform and Intergenerational Relationships in China' (2006) 34 (4) *Oxford Development Studies* 387, 400

<sup>39</sup> Xiaochu Hu, 'China's Young Rural-to-Urban Migrants: In Search of Fortune, Happiness, and Independence' (Migration Information Source, Migration Policy Institute, 4 January 2012)

<sup>40</sup> Ministry of Human Resources and Social Security of the PRC, '2016 Statistical Bulletin on Human Resources and Social Development'

<[http://www.mohrss.gov.cn/SYrlzyhshbzb/zwgk/szrs/tjgb/201705/t20170531\\_271671.html](http://www.mohrss.gov.cn/SYrlzyhshbzb/zwgk/szrs/tjgb/201705/t20170531_271671.html)>

<sup>41</sup> Anqi Xu and Yan Xia, 'The Changes in Mainland and Chinese Families during the Social Transition in the Last 30 Years' (2014) 45 (1) *Journal of Comparative Family Studies* 31, 53

their employment commitments.<sup>42</sup> As such, the adult children are legitimately unable to look after their parents because of their own financial difficulties.<sup>43</sup> As a forgotten population, the elderly parents are increasingly left behind during China's rapid economic development.<sup>44</sup>

Since the dramatic societal changes having weakened family interrelations, an "empty-nest" phenomenon hence arises.<sup>45</sup> It is becoming increasingly prevalent in rural areas, where nearly half of the 241 million people age 60 and older live apart from their children.<sup>46</sup> Dependency on others increases exponentially and the group is more vulnerable to physical and psychological problems such as poor health, depression, and poverty.<sup>47</sup> It remains a serious concern in China's both public and private discourse with the decline in intergenerational solidarity, which inevitably result in high degree of loneliness and even depression.<sup>48</sup> Little support is in place when families fail to help those living alone because of the Chinese weak social-safety net.<sup>49</sup> The changing family dynamics is reshaping the intergenerational relationship as well as the long-standing virtue.<sup>50</sup> The tipping point for China's demographic crisis may have arrived.<sup>51</sup> Accordingly, law and regulation need to be reconceptualised to incorporate sensibly the rights of aged parents.

## **B. Protection of Rights and Interests of Elderly People (PRIE 2013)**

To preserve the virtue of filial piety, China amended its elder-care law in December 2013 mandating that adult children regularly visit and emotionally support their parents.<sup>52</sup> They are required to provide for the both emotional and physical needs. The *law of Protecting the Rights and Interests of Elderly People* (PRIE 2013) has nine clauses that lay out the duties of children and their obligation to tend to the spiritual needs of the elderly. It holds that adult children cannot ignore and isolate their parents who are age 60 or older.<sup>53</sup> Failure to do so risks being sued, facing fines and even potential imprisonment.<sup>54</sup> For the sake of implementation, employers should also ensure these visitors' rights of having necessary

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<sup>42</sup> Thomas Leopold, Marcel Raab and Henriette Engelhardt, 'The Transition to Parent Care: Costs, Commitments, and Caregiver Selection Among Children' (2014) 76 (2) *Journal of Marriage and Family* 300, 318

<sup>43</sup> Jonathan Herring, *Older People in Law and Society* (Oxford, Oxford University Press, 2009) 232

<sup>44</sup> Rebecca Lee, 'Guardianship of the Elderly with Diminished Capacity: The Chinese Challenge' (2015) 29 (1) *International Journal of Law, Policy and the Family* 1, 14

<sup>45</sup> Donald Treiman and Qiang Ren, 'Living Arrangements of the Elderly in China and Consequences for Their Emotional Well-being' (2015) 47 (3) *Chinese Sociological Review* 255, 286

<sup>46</sup> Edward Wong, 'A Chinese Virtue Is Now the Law' *New York Times* (2 July 2013); China has 241 million people over the age of 60 by 2018. <[http://www.xinhuanet.com/2018-02/26/c\\_1122456862.htm](http://www.xinhuanet.com/2018-02/26/c_1122456862.htm)>

<sup>47</sup> Lara Queen Plaisance, 'Will You still ... When I'm Sixty-Four: Adult Children's Legal Obligations to Aging Parents' (2008) 21 *Journal of the American Academy of Matrimonial Lawyers* 245, 270

<sup>48</sup> Merrill Silverstein, Zhen Cong and Shuzhuo Li, 'Intergenerational Transfers and Living Arrangements of Older People in Rural China: Consequences for Psychological Well-Being' (2006) 61 (5) *Journal of Gerontology: Social Sciences* 256, 266

<sup>49</sup> 'The kin and I' *The Economist* (27 August 2015)

<sup>50</sup> Mengwei Tu, 'Chinese One-Child Families in the Age of Migration: Middle-Class Transnational Mobility, Ageing Parents, and the Changing Role of Filial Piety' (2016) 3 (1) *The Journal of Chinese Sociology* 1, 17

<sup>51</sup> Bruce Einhorn, 'Why China Is Ordering Adult Children to Visit Their Parents' *Bloomberg* (2 July 2013)

<sup>52</sup> 中华人民共和国老年人权益保障法(Law for the Protection of the Rights and Interests of the Elderly) was passed in December 2012 by the Standing Committee of the National People's Congress. It took effect on 1 July 2013.

<sup>53</sup> PRIE 2013 Articles 2 & 3

<sup>54</sup> PRIE 2013 Article 5

holidays and time off.<sup>55</sup> The PRIE 2013 *prima facie* strengthens parents' right to request support from their adult children.<sup>56</sup> Making it a legal duty for children to visit their elderly parents will encourage them to better fulfil this role. The concept behind the law is to relieve the government of a rapidly aging society, and ensure that some of the costs are passed on to the elder children. The elderly will therefore receive more emotional comfort, while the positive virtue of respecting the elderly in Chinese culture would be better inherited.<sup>57</sup>

## 1. Reciprocal Contract Theory

The nature of family creates a responsibility to be in a relationship, which is reflective of more family accounts of values in ways that are equitable between parents and children.<sup>58</sup> Aristotle once held: "...but there is nothing by doing which a son will have done the equivalent of what he has received, so that he is always in debt."<sup>59</sup> Mason echoed such a thought, and observed:

"Child support obligations, custody rights, and inheritance rights exist between children and their natural parents by virtue of a biological tie alone, regardless of the quality of social or emotional bonds between parent and child."<sup>60</sup>

Mill provides a similar remark that "it is a given good to be in a relationship that is enduring and unconditional."<sup>61</sup> Although there is an assumption that the family should take care of elderly members in the same way that children are cared for by parents, it is argued that it may not be fair to justify the theory due to the lack of equivalent consideration between each other.<sup>62</sup> A reciprocal contract theory may uphold the argument,<sup>63</sup> and bring about an implicit contract forms between parent and child, which underscores the moral obligation to support one's parents.<sup>64</sup> The theory entails willingness to repay one's parents' care. An adult child ought to reciprocate for his parents. Otherwise, it would allow the child to be unjustly enriched.<sup>65</sup> Consistent with the reciprocal contract theory, children whose parents abused, neglected, or abandoned them may be excused from the duty of support.<sup>66</sup> Some statutes

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<sup>55</sup> PRIE 2013 Articles 7; Jonathan DeHart, 'Confucian Crackdown: New Chinese Law Enforces Filial Piety' *The Diplomat* (4 July 2013) "Recognizing this predicament, some companies offer generous vacation packages for non-local staff."

<sup>56</sup> Patti Waldmeir, 'China's children are legally bound to respect their elders' *Financial Times* (11 April 2016)

<sup>57</sup> Shigong Li, 'To Legislate Filial Piety?' *Beijing Review* (26 July 2012)

<sup>58</sup> Corinne Reczek and Zhe Zhang, 'Parent-Child Relationships and Parent Psychological Distress: How Do Social Support, Strain, Dissatisfaction, and Equity Matter?' (2016) 38 (7) *Res Aging* 742, 766

<sup>59</sup> Aristotle, *The Nicomachean Ethics VIII* (2006) 322-370 at 368

<sup>60</sup> Mary Ann Mason, 'The Modern American Stepfamily: Problems and Possibilities' in Mary Ann Mason, Arlene Skolnick and Stephen Sugarman (2<sup>nd</sup> eds.) *All Our Families: New Policies for a New Century* (New York, Oxford University Press, 1998) 95-116

<sup>61</sup> Claudia Mills, 'Duties to Aging Parents' in James M. Humber and Robert F. Almeder (eds.), *Care of the Aged* (Humana Press, 2003) 145-166

<sup>62</sup> Seymour Moskowitz, 'Filial Responsibility Statutes: Legal and Policy Considerations' (2001) 9 *Journal of Law and Policy* 709, 722

<sup>63</sup> Terrance Kline, 'A Rational Role for Filial Responsibility Laws in Modern Society?' (1992) 26 *Family Law Quarterly* 195, 197

<sup>64</sup> Merrill Silverstein, Stephen Conroy, et al., 'Reciprocity in Parent-Child Relations Over the Adult Life Course' (2002) 57 (1) *The Journals of Gerontology* 3, 13

<sup>65</sup> Maria Stuijbergen and Johannes Van Delden, 'Filial Obligations to Elderly Parents: A Duty to Care?' (2011) 14 (1) *Med Health Care Philos* 63, 71

<sup>66</sup> Shannon Frank Edelstone, 'Filial Responsibility: Can the Legal Duty to Support Our Parents Be Effectively Enforced?' (2002) 36 (3) *Family Law Quarterly* 501, 514



expressly make the child's obligation to support dependent on parental behaviour.<sup>67</sup> A classic statement exists in Blackstone's Commentaries on the Laws of England (1745):

"The duties of children to their parents arise from principles of natural justice and retribution...Upon this principle proceed all the duties of children to their parents which are enjoined by positive laws."<sup>68</sup>

There are divergences as to whether common law or statutory law should impose any form of a duty of care on adult children for their elderly parents based merely on the familial relationship.<sup>69</sup> To a greater extent, a Chinese tradition is of a reciprocal obligation between parents and children, in which parents care for their children as they grow and children return the support as their parents age.<sup>70</sup> PRIE 2013 is no more than a legislative endorsement of the implicit contract, given the rare direct implementation of the Constitution.<sup>71</sup> Such an approach turns to more family accounts of values in ways that are equitable between each other. The attempt to better shape the relational connections could have significant normative force. In reality, it remains uncertain as to whether there should be such a reciprocal obligation to look after each other between parents and children.

## 2. Economic Policy Theory

Another paradoxical rationale to legitimise filial responsibility is to relieve the government from the burden of providing facilities.<sup>72</sup> A primary justification for the legislation is to shift the burden of looking after the elderly into the adult child. Apparently, public provision of care is not adequate.<sup>73</sup> The state cannot afford looking after all those elders so it has to use moral suasion to force grown children to help,<sup>74</sup> if necessary, through enforcement by the court. As such, the PRIE 2013 enforcement may help to save the public purse, and the amount of public welfare is thus reduced to a considerable extent. However, the enforcement cost is high, which may outweigh the expected benefits. As a commentator held:

"Although the moral obligation to support needy relatives is nowhere questioned, embodying this duty in a statute does seem to raise more difficulties than it solves. Even though legal enforcement against the malignant few might be desirable, that ability comes at too high a price for society."<sup>75</sup>

With the public enforcement considered, the adult children's compliance cost should also be taken into account. It remains to be seen whether legislation is the best way to ensure optimal

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<sup>67</sup> The Code of Virginia ss 20-88: "This section shall not apply if there is substantial evidence of desertion, neglect, abuse or willful failure to support any such child by the father or mother"; Pennsylvania Pa. C.S.A s4603 (a) (2) (ii) of 23: "A child shall not be liable for the support of a parent who abandoned the child and persisted in the abandonment for a period of ten years during the child's minority."

<sup>68</sup> Book 1 Chapter 16 of William Blackstone's Commentaries on the Laws of England (1745)

<sup>69</sup> Lara Queen Plaisance, 'Will You still ... When I'm Sixty-Four: Adult Children's Legal Obligations to Aging Parents' (2008) 21 Journal of the American Academy of Matrimonial Lawyers 245, 270

<sup>70</sup> Yuan Yao, 'Weakening Family Support for the Elderly in China' (2001) 34 Chinese Sociology & Anthropology 26, 28

<sup>71</sup> Paul Gewirtz, 'Constitutional Enforcement: Who Should Do It and How?' (Lecture delivered at Peking University Law School on 19 March 2015) <<https://law.yale.edu/system/files/china-law-documents/gewirtzconstitutionalismarticleenglishincompletedraft222016.pdf>>

<sup>72</sup> *People v. Heitzman*, 886 P.2d 1229 (Cal. 1994)

<sup>73</sup> Mika Oldham, 'Financial Obligations Within the Family-Aspects of Intergenerational Maintenance and Succession in England and France' (2001) 60 (1) Cambridge Law Journal 128, 177

<sup>74</sup> Patti Waldmeir, 'China's children are legally bound to respect their elders' *Financial Times* (11 April 2016)

<sup>75</sup> Catherine Doscher Byrd, 'Relative Responsibility Extended: Requirement of Adult Children to Pay for Their Indigent Parent's Medical Needs' (1988) 22 Family Law Quarterly 87

care for elderly parents. Another avenue is similarly important to strengthening the traditional family system through moral education and the inculcation of the virtues of filial piety.<sup>76</sup>

### 3. Law *vis-à-vis* Morality

Ideally, adult children fulfil an obligation, and the elder parents should get the support they need from their families, which is provided out of love and respect, not compelled by law.<sup>77</sup> Moral power is at the current stage unable to ensure that children pay regular visits, and thus the PRIE 2013 is put in place. Arguably, the legal obligation may exist independently of a moral obligation.<sup>78</sup> Despite a primary focus on an account of the legal regulation concerning aged parents, many barriers make it difficult for the aged children to fulfil this obligation.

#### (a) Moral Obligation

A moral justification for filial responsibility laws stems from the Ten Commandments 'requirement to honour thy mother and father.'<sup>79</sup> Children are morally obligated to support their parents, which has become a norm instead of the exception.<sup>80</sup> As Herring observed: "the child is morally obliged to assist the parent when the parent is in need."<sup>81</sup> In this regard, the traditional family value of filial piety should be addressed in a moral sphere, and left to families instead of being legislated. The care of the elderly should be encouraged via morality rather than law enforcement. Notably, laws are punitive measures to correct a problem,<sup>82</sup> so is PRIE 2013. The legislative intent under the law is to promote moral integrity, protect rights of the elderly,<sup>83</sup> and maintain the Chinese virtue of filial piety.<sup>84</sup> Morality and law cannot always be clearly separated, and the boundaries between each other are indiscernible and blurred.<sup>85</sup> The law hereby seeks to exert moral pressure on adult children to attend to their parents, and they have a legal duty to take affirmative action for the sake of implementation. Moral questions are thus upgraded into legal issues to be solved through legal punishment. A most positive point of this law is to arouse a consensus in society that everyone has a moral responsibility to see their aging parents. The elderly do need adequate protection because of deterioration of the traditional values. Some moral obligations need to be ensured through laws.<sup>86</sup> One of the paramount challenges is how to enforce the law that is essentially about

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<sup>76</sup> Hektor Yan, 'Is filial piety a virtue? A reading of the Xiao Jing (Classic of Filial Piety) from the Perspective of Ideology Critique' (2017) 49 *Educational Philosophy and Theory* 1184, 1194

<sup>77</sup> Katherine Pearson, 'Filial Support Laws in the Modern Era: Domestic and International Comparison of Enforcement Practices for Laws Requiring Adult Children to Support Indigent Parents' (2013) 20 (2) *Elder Law Journal* 269, 313

<sup>78</sup> George Christie, 'On the Moral Obligation to Obey the Law' (1990) 6 *Duke Law Journal* 1311, 1336

<sup>79</sup> "Honour thy father and thy mother" is one of the Ten Commandments in the Hebrew Bible. The commandment is generally regarded in Protestant and Jewish sources as the fifth in both the list in Exodus 20:1–21, and in Deuteronomy (Dvarim) 5:1–23.

<sup>80</sup> Xiaoying Qi, 'Filial Obligation in Contemporary China: Evolution of the Culture-System' (2015) 45 (1) *Journal for the Theory of Social Behaviour* 141, 161

<sup>81</sup> Jonathan Herring, *Older People in Law and Society* (Oxford, Oxford University Press, 2009) 230-234

<sup>82</sup> W. Bradley Wendel, 'Legal Ethics and the Separation of Law and Morals' (2005) 91 (1) *Cornell Law Review* 67, 128

<sup>83</sup> Jonathan DeHart, 'Confucian Crackdown: New Chinese Law Enforces Filial Piety' *The Diplomat* (4 July 2013)

<sup>84</sup> Bruce Einhorn, 'Why China Is Ordering Adult Children to Visit Their Parents' *Bloomberg* (2 July 2013)

<sup>85</sup> H. L. A. Hart, 'Positivism and the Separation of Law and Morals' (1958) 71 (4) *Harvard Law Review* 593, 629

<sup>86</sup> 'H. L. A. Hart on Legal and Moral Obligation' (1974) 73 (2) *Michigan Law Review* 443, 458

morality and personal choice. The ultimate purpose is not to legislate morality, but to effectively enforce law, so as to realise the legislative goals.

*(b) A Hybrid Model: Both Moral and Legally-Binding Duty*

PRIE 2013 renders it legally-binding for adult children who have the ability to provide support. With the law coming into effect, parental support becomes not only a moral obligation but also a legally imposed duty.<sup>87</sup> China's Constitution Law is well reflective of the substantive law approach, which provides that:

"Parents have the duty to rear and educate their children who are minors; and children who have come of age have the duty to support and assist their parents"<sup>88</sup>

Even before PRIE 2013 became effective, the Chinese Marriage Law had enacted the duty of mutual support from between parents and children.<sup>89</sup> The implied theory of reciprocity is thus reflected in the Marriage Law, allowing for an aged parents to demand financial support from an adult child. The Articles under Constitution and Marriage Law not only pertain to elder parents support in general, but also provide the legal foundation for PRIE 2013.

The law helps to strengthen family bonds because it codifies an existing cultural and moral obligation to repay parents for their support while instilling the value of caring for elderly parents.<sup>90</sup> In the current Chinese social, legal and cultural settings, it is plausibly necessary to make "mental and emotional care" a legal duty for the children to fulfil.<sup>91</sup> If enforced properly, the PRIE 2013 may help prompt a shift in attitudes and better voluntary assumption of responsibility.<sup>92</sup> The virtue of filial piety will be better preserved as a result. While no government can legislate loyalty or love, more legislatures are finding it necessary to mandate responsibilities, especially those of the financial kind.<sup>93</sup> In this regard, the aim of PRIE 2013 is to build a safety net if filial piety fails, so as to ensure that the elderly can maintain a decent living standard provided that their children are financially able to support them. As such, the statutory approach may make it more productive to motivate and facilitate elder care by families.<sup>94</sup>

### **C. Can filial responsibility law effectively protect elderly parents' interests?**

Legislation could have a negative effect on family harmony and may not be as effective as expected, given its difficult enforcement. Questions around the appropriateness of judicial involvement is to be examined in cases concerning socio-economic rights and positive

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<sup>87</sup> Michael Collingridge and Seumas Miller, 'Filial Responsibility and the Care of the Aged' (1997) 14 (2) *Journal of Applied Philosophy* 119, 128

<sup>88</sup> 中华人民共和国宪法 (The Constitution Law of People's Republic of China) Article 49

<sup>89</sup> 中华人民共和国婚姻法 (PRC Marriage Law) Articles 20, 21, and 22

<sup>90</sup> Shannon Frank Edelstone, 'Filial Responsibility: Can the Legal Duty to Support Our Parents Be Effectively Enforced?' (2002) 36 (3) *Family Law Quarterly* 501, 514

<sup>91</sup> Shigong Li, 'To Legislate Filial Piety?' *Beijing Review* (23 July 2012)

<sup>92</sup> Shannon Frank Edelstone, 'Filial Responsibility: Can the Legal Duty to Support Our Parents Be Effectively Enforced?' (2002) 36 (3) *Family Law Quarterly* 501, 514

<sup>93</sup> Francine Russo, 'Caring for Aging Parents: Should There Be a Law?' *Time* (22 July 2013)

<sup>94</sup> Ghy Ting and Jean Woo, 'Elder Care: Is Legislation of Family Responsibility the Solution?' (2009) 4 (2) *Asian Journal of Gerontology & Geriatrics* 72, 75

obligations.<sup>95</sup> The deliberative aspects of judicial review are key to ensuring accountability.<sup>96</sup> It remains to be seen whether the law has a real chance of restoring China's virtue of reverence toward their elderly and whether the consequence of punishment only diminish devotion to aging parents.<sup>97</sup> The responsiveness of the legal framework and institutional structures in this area will be scrutinised through the evaluation of the limited ability of the courts. From an enforcement scenario, at stake is whether the PRIE 2013 can effectively protect the elderly parents' interests.

### 1. Enforcement: A Paramount Challenge!

There are paramount challenges in enforcing PRIE 2013, although some commentator considered it as the resurrection of the traditional ethic of filial piety in the contemporary Chinese law.<sup>98</sup> Law is a serious and compulsory concept, while filial piety is an emotional issue.<sup>99</sup> Even if the latter is written into the law, it relies primarily upon enforcement. In this regard, filial law is a legal oddity.<sup>100</sup> Enforcing filial responsibility statutes will weaken the family unit by creating family dissension.<sup>101</sup> The imposition of a legal obligation on an adult child to maintain his aged parent poses a great risk of causing family disharmony.<sup>102</sup> The focus should be on education and guidance but not on punishment.

#### *(a) Suing Children: Against a Guanxi Society with Harmony Deeply-Embedded*

Parents are loath to sue their children, especially in the Chinese society with harmony and *guanxi* embedded deeply.<sup>103</sup> The potential effectiveness of the law is uncertain, as elderly parents are generally unwilling to bring lawsuits against their children because of the effect on family relationships. Chinese normally view litigation as undesirable behaviour that undermines social harmony.<sup>104</sup> Family harmony will be affected when the law compels adult children to support their parents.<sup>105</sup> Taking a children to court is regarded as a disgrace to the family, let alone the damage of the parent-child relationship during the lawsuit.<sup>106</sup> As Chan observed:

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<sup>95</sup> Hong-Jae Park, 'Legislating for Filial Piety: An Indirect Approach to Promoting Family Support and Responsibility for Older People in Korea' (2015) 27 (3) *Journal of Aging & Social Policy* 280, 293

<sup>96</sup> Sylvia Macon, 'Grow up Virginia: Time to Change our Filial Responsibility Law' (2016) 51 *University of Richmond Law Review* 265, 298

<sup>97</sup> Susan Newman, 'Visit Your Parents—It's the Law! Can devotion and loyalty be legislated?' *Psychology Today* (25 June 2013)

<sup>98</sup> Jiaguo Wang, 'Spiritual Care and the Revival of Family Ethics in Chinese Law' (2015) 1 *Law Science* 81, 83

<sup>99</sup> Edward R. Canda, 'Filial Piety and Care for Elders: A Contested Confucian Virtue Reexamined' (2013) 22 (3) *Journal of Ethnic & Cultural Diversity in Social Work* 213, 234

<sup>100</sup> Nicholas Kasirer, 'Honour Bound' (2001) 47 *McGill Law Journal* 237, 259

<sup>101</sup> Jacobus tenBroek, 'California's Dual System of Family Law: Its Origin, Development, and Present Status, Part 1' (1964) 16 *Stanford Law Review* 257, 291

<sup>102</sup> Heying Jenny Zhan, Xiaotian Feng and Baozhen Luo, 'Placing Elderly Parents in Institutions in Urban China: A Reinterpretation of Filial Piety' (2008) 30 (5) *Research on Aging* 543, 571

<sup>103</sup> Seymour Moskowitz, 'Adult Children and Indigent Parents: Intergenerational Responsibilities in International Perspective' (2002) 86 (3) *Marquette Law Review* 401, 455

<sup>104</sup> Wing-Cheong Chan, 'The Duty to Support an Aged Parent in Singapore' (2004) 13 (3) *Pacific Rim Law & Policy Journal* 547, 578

<sup>105</sup> Ghy Ting and Jean Woo, 'Elder Care: Is Legislation of Family Responsibility the Solution?' (2009) 4 (2) *Asian Journal of Gerontology & Geriatrics* 72, 75

<sup>106</sup> Rita Jing-Ann Chou, 'Filial Piety by Contract? The Emergence, Implementation, and Implications of the "Family Support Agreement" in China' (2011) 51 (1) *The Gerontologist* 3, 16

“Parents would not be prepared to institute proceedings against their own children due to a desire to preserve family harmony and the fear of alienating their children.”<sup>107</sup>

For the sake of saving faces, most elderly would rather not choose to initiate lawsuits against their children.<sup>108</sup> With little incentive to enforce the statutes, the elderly will continue to be suffering from the neglect or even abuse. Another factor that prevents parents from suing their children includes parents’ lack of awareness of the cause of action that parental support is a legal responsibility. In cases of dispute, the elderly parents may turn to an organisation in which the children are employed, or the neighbourhood committees for mediation. It is essential to address unintended tensions that emerge in families because of the legitimisation of elder care and constructions of filial piety. An amicable solution should be exhausted rather than going through the court system. Filial responsibility may best be encouraged by incentive schemes and community support services that are of help to family carers.<sup>109</sup> In this sense, the enforcement of the PRIE 2013 only plays a supplementary role.

### *(b) Side Social Effect*

Despite the legislative intent, the PRIE 2013 may affect family harmony and have other side social effects. The fundamental legislative intent is to cultivate a healthy relationship between adult child and their elderly parents.<sup>110</sup> An ongoing debate is whether it is viable to solve a moral issue in a legal way.<sup>111</sup> Taking care of parents is an emotional issue. Emotional support typically comes with voluntary care. Love cannot be achieved through legislation. As Macon commented:

“Where no voluntary care of a parent exists, there is likely a strained parent-child relationship; that tension becomes exacerbated when a child is forced de jure to support a parent.”<sup>112</sup>

Mental support is an important aspect in the protection of old people’s rights and interests. Filial piety is a sentiment of the heart which cannot be enacted.<sup>113</sup> If they are unwilling to make the effort, such forced visits will be not only pointless but also uncomfortable for both sides.<sup>114</sup> Any adult child who chooses not to care for aging parents would probably not undergo a change of heart solely because of an imposed legal obligation.<sup>115</sup> As such, resorting to law may be counterproductive. The idea of legislating an obligation to one’s parent is bound to leave neither party happy.<sup>116</sup> The mandating of parental visits will even cause

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<sup>107</sup> Wing-Cheong Chan, ‘The Duty to Support an Aged Parent in Singapore’ (2004) 13 (3) *Pacific Rim Law & Policy Journal* 547, 578

<sup>108</sup> Rita Jing-Ann Chou, ‘Filial Piety by Contract? The Emergence, Implementation, and Implications of the “Family Support Agreement” in China’ (2011) 51 (1) *The Gerontologist* 3, 16

<sup>109</sup> Ghy Ting and Jean Woo, ‘Elder Care: Is Legislation of Family Responsibility the Solution?’ (2009) 4 (2) *Asian Journal of Gerontology & Geriatrics* 72, 75

<sup>110</sup> Edward R. Canda, ‘Filial Piety and Care for Elders: A Contested Confucian Virtue Reexamined’ (2013) 22 (3) *Journal of Ethnic & Cultural Diversity in Social Work* 213, 234

<sup>111</sup> Robert Birmingham, ‘Legal and Moral Duty in Game Theory: Common Law Contract and Chinese Analogies’ (1968) 18 *Buffalo Law Review* 99, 117

<sup>112</sup> Sylvia Macon, ‘Grow up Virginia: Time to Change our Filial Responsibility Law’ (2016) 51 *University of Richmond Law Review* 265, 298

<sup>113</sup> Edward Wong, ‘A Chinese Virtue Is Now the Law’ *New York Times* (2 July 2013)

<sup>114</sup> Shigong Li, ‘To Legislate Filial Piety?’ *Beijing Review* (23 July 2012)

<sup>115</sup> Sylvia Macon, ‘Grow Up Virginia: Time to Change our Filial Responsibility Law’ (2016) 51 *University of Richmond Law Review* 265, 298

<sup>116</sup> Erin Anderssen, ‘Elder-care is about more than duty. It’s the law’ *The Globe and Mail* (26 March 2017)

embarrassment to their children. The use of PRIE 2013 to enforce the visiting obligation will amount to a humiliating intrusion into the family lives of litigants.<sup>117</sup> Resorting to law may end up causing more familial strife and resentment toward elderly parents.<sup>118</sup> The law may only provide financial support, but inadequate to address the “spiritual needs” of the old.<sup>119</sup> The PRIE 2013 *per se* cannot save filial piety from disappearing.<sup>120</sup> To integrate filial piety as a compulsory requirement into law is partly an attempt to meet the lonely elderly people's demand for children's care.<sup>121</sup> Ideally, children will be inspired to better fulfil their duties to their parents with the "visit elderly parents regularly" written by law. A pure visiting does not satisfy a requirement to provide for the emotional well-being of a parent.<sup>122</sup>

As soon as the law came into effect, a court in the eastern city of Wuxi, Jiangsu Province of China, ruled that a young couple visit the wife's 77-year-old mother, who had sued her daughter and son-in-law for neglect.<sup>123</sup> The daughter was found negligent and was ordered to visit her mother at least once every two months, and on at least two national holidays a year. However, the judge in the People's Court held that the law could only facilitate conversations between sides and could not force children to visit their aged parents. Adult children may then give financial support to their parents grudgingly.<sup>124</sup> Whether one is willing to go home to visit their parents is a moral issue, so it is a challenge to implement this law in real life.<sup>125</sup> There is no way for the court to make sure the children visit their parents with sincerity. Most cases showed that the lawsuits have worsened intergenerational relations, and even further jeopardising emotional support.<sup>126</sup>

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<sup>117</sup> Wing-Cheong Chan, 'The Duty to Support an Aged Parent in Singapore' (2004) 13 (3) *Pacific Rim Law & Policy Journal* 547, 578

<sup>118</sup> Francine Russo, 'Caring for Aging Parents: Should There Be a Law?' *Time* (22 July 2013)

<sup>119</sup> Francine Russo, 'Caring for Aging Parents: Should There Be a Law?' *Time* (22 July 2013)

<sup>120</sup> Shigong Li, 'To Legislate Filial Piety?' *Beijing Review* (23 July 2012)

<sup>121</sup> Shigong Li, 'To Legislate Filial Piety?' *Beijing Review* (23 July 2012)

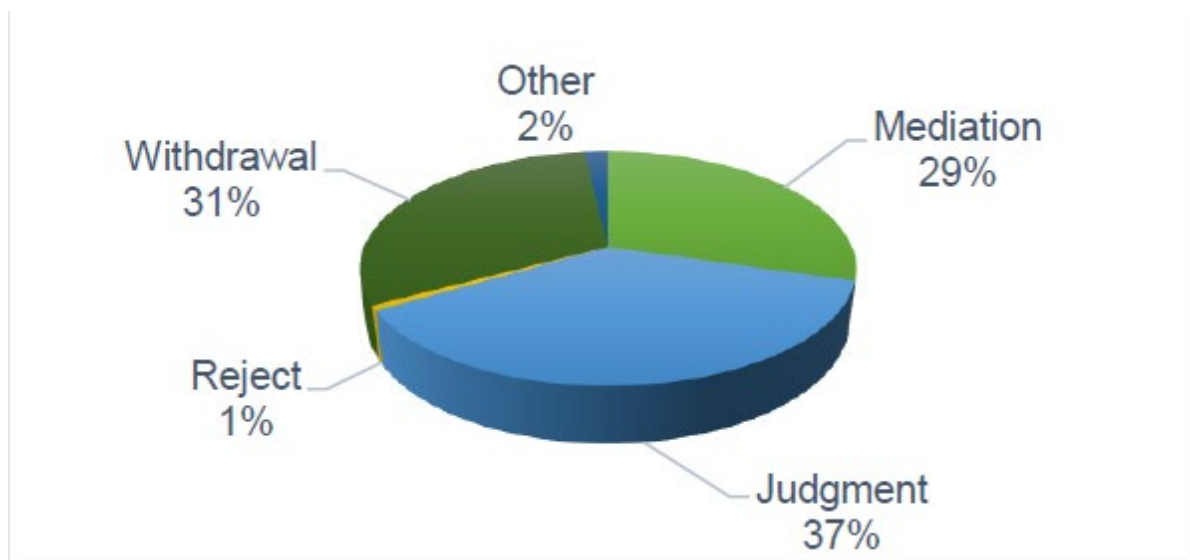
<sup>122</sup> Xiaoying Qi, 'Family Bond and Family Obligation: Continuity and Transformation' (2016) 52 (1) *Journal of Sociology* 39, 52

<sup>123</sup> 中国江苏无锡北塘区法院储某诉马某, 朱某案 (*Chu v Ma & Zhu* (Wuxi Beitang District People's Court, Wuxi, Jiangsu Province), 1 July 2013; Xiaoqing Pi, 'China Filial Piety Law Draws First Blood' *The Wall Street Journal* (2 July 2013)

<sup>124</sup> Jonathan Herring, 'Together Forever? The Rights and Responsibilities of Adult Children and Their Parents' in Jo Bridgeman and Craig Lind (eds.) *Responsibility, Law and the Family* (Routledge, 2016) 41-62

<sup>125</sup> Jieyu Liu, 'Ageing, migration and familial support in rural China' (2014) 51 *Geoforum* 305, 312

<sup>126</sup> Lei Lei, 'Sons, Daughters, and Intergenerational Support in China' (2013) 45 (3) *Chinese Sociological Review* 26, 52



Resolution of Support Disputes by First Instance Trial Courts (2015)<sup>127</sup>

The above pie demonstrates that over 60% of the cases were either withdrawn or settled by mediation before trial, and most of parties managed to resolve disputes amicably within the family. Notably, it is the last resort for the parties to pursue a dispute to the court. Chinese parents are normally unwilling to confront their children in court, which is line with the Chinese legal culture, that is, the strong aversion to litigation.

## 2. Inadequate Enforcement Mechanisms: The Quantitatively vs. Qualitative Analysis

As the provisions under PRIE 2013 are general in nature, the law is inadequate to protect the elderly parents' rights effectively. There are no enforcement mechanisms in place to access to information of a defendant. As Wise observed:

“While ensuring the financial care of the elderly is important, legislatures and courts need to look critically at how states currently attempt to ensure the elderly are cared for physically and mentally.”<sup>128</sup>

While ensuring the financial care of the elderly is important, legislatures and courts need to look critically at how the state attempts to ensure the elderly are cared for physically and mentally. In addition, a People's Court may need to balance the adult child's ability to pay against the parent's needs by using a variety of factors, such as previously incurred liabilities, earning capacity and job related expenses.<sup>129</sup> For instance, Article 18 under PRIE 2013 may be interpreted in response to the increasing migrant workers, who work normally far away from their parents. The enforcement process will be triggered when the elderly person initiates a lawsuit. It is problematical that cases are brought without clear guidelines to redress grievances. Conceptually, the definition of 'regular visits' is vague. Some issues arise regarding what adult children owe their parents, and how far those obligations extend. Except a general principle, The PRIE 2013 does little to change the *status quo*, and the new wording does not

<sup>127</sup> China Statistical Year Book (2016), Compiled by National Bureau of Statistics of China. <<http://www.stats.gov.cn/tjsj/ndsj/2016/indexch.htm>>

<sup>128</sup> Katie Wise, 'Caring for Our Parents in an Aging World: Sharing Public and Private Responsibility for the Elderly' (2002) 5 New York University Journal of Legislation and Public Policy 5 63, 574

<sup>129</sup> Yan Xia and Anqi Xu, 'The Changes in Mainland Chinese Families during the Social Transition: A Critical Analysis' (2014) 45 (1) Journal of Comparative Family Studies 31, 53

specify how often people must visit or clarify penalties for those who do not.<sup>130</sup> It seems difficult to judge the extent to which an adult child is living up to the legal standard. Unlike a social contract which has objective behavioural indicators that can be measured in a relatively reliable way,<sup>131</sup> there is no scientific ruler to measure one's care for their parents. Therefore, the standard of filial piety should not depend on the times children have visited their parents, but how much care their parents have felt. After all, filial piety functions mainly through morality rather than coercion.<sup>132</sup> Emotional care is enacted as a legal duty, which seems bound to be formalistic since real love can neither be imposed, nor enforced by law. The court is unable to sooth the resentment between the family member litigants and defendants. The government should initiate a programme to effectively enforce the statutes. It is helpful to design more adequate procedures in place, including the scope, and assessment, and potential defences of the liability under the framework of PRIE 2013. Otherwise, the law will continue to remain inefficiently enforceable until the government or the Supreme People's Court (SPC) steps in to create enforcement mechanisms and provide judicial interpretation.

## **D. The Comparison with other Jurisdictions**

Laws vary from one country to another given their diverse settings of culture, law and policy. Some countries have enacted filial legislation while others have not done so. It is not unusual to impose obligations on adult children to look after their aged parents.<sup>133</sup> A comparative study provides further insights about legal responses to the global challenge arising from the greying of the population across jurisdictions. Notably, some rationale is deeply rooted in an individual's socio-psychological settings, which has been then transformed into the will of state.

### **1. The Grand China Area**

Although the filial responsibility law varies in different regions, the general principle is to allow elderly parents to obtain financial and emotional support from their adult children. The policy objective is to ensure that elderly parents are given at least a minimum standard of living if their children are financially able to give support. Filial piety, deemed a "core value" in Taiwan's society, has been strictly upheld by law. A Criminal Code subjects children convicted on charges of parent abandonment, for failing to fulfil the obligation, to prison terms of ranging from six months to five years.<sup>134</sup> In addition, the government could impose restrictions on inheritance besides tax deductions and allowances. Legislation is proposed to prohibit children from inheriting their parents' property if the children do not provide support

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<sup>130</sup> Jill Reilly, 'Visit Your Parents... Or Risk Being Sued: New Chinese Law Demands Offspring Keep in Touch with the Elderly' *Mail* (1 July 2013)

<sup>131</sup> Anja Steinbach, 'Family Structure and Parent-Child Contact: A Comparison of Native and Migrant Families' (2013) 75 (5) *Journal of Marriage and Family* 1114, 1129

<sup>132</sup> Rita Jing-Ann Chou, 'Filial Piety by Contract? The Emergence, Implementation, and Implications of the "Family Support Agreement" in China' (2011) 51 (1) *The Gerontologist* 3, 16

<sup>133</sup> Katherine Pearson, 'Filial Support Laws in the Modern Era: Domestic and International Comparison of Enforcement Practices for Laws Requiring Adult Children to Support Indigent Parents' (2013) 20 *Elder Law Journal* 269

<sup>134</sup> Crimes of Abandonment, Criminal Code of the Republic of China, Article 294 of Chapter 5



for their parents or if they abandon their parents before their death.<sup>135</sup> In Hong Kong, however, adult children do not have any legal responsibility to take care of their elderly parents. There is no statute requiring adult children to support their parents, adult children only have a moral duty to provide financial support.<sup>136</sup> The moral obligation they owe to their elder parents does not translate into a legal obligation.<sup>137</sup> This is in contrast to care of children where parents bear the legal responsibility, though.

## 2. State Interventional *vis-à-vis* Individual Autonomy

Cultural norms and socio-economic conditions in the West diverge widely from those observed in China. The PRIE 2013 appears to be a relic of the Elizabethan Poor Laws enacted in 1601,<sup>138</sup> when it was more common for multigenerational families to live near each other and to be economically interdependent.<sup>139</sup> Notably, a fundamental difference between each other is that the former is private obligation while the latter falls within the ambit of public law. More affluent European countries rely primarily on some sort of government support for eldercare, with varying degrees of potential family involvement.<sup>140</sup> The United Nations (UN) process underway to consider the need for and potential contents of a dedicated international treaty on the rights and dignity of aged parents.<sup>141</sup> Considering its functional utility to influence an individual's socio-psychological outcomes, this study goes beyond the common practice of treating filial piety within the confines of caring for family elders.<sup>142</sup>

### (a) Divergences in Individual's Socio-psychological Perspectives

Filial piety, once a cherished virtue, is now taking a back seat in China's increasingly individualist society.<sup>143</sup> Younger generations are abandoning the Confucianism virtue of filial piety. Due to the shift to individualistic modern societies, modernisation and ageing theory contrasts the strong family ties traditional societies, in which aged parents are socially, economically and geographically marginalised.<sup>144</sup> Such a transformation is consistent with the Western contemporary vision, which stresses the importance of separation of children from their parents. Failure to achieve independence from parents is seen as a symptom of

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<sup>135</sup> Ghy Ting and Jean Woo, 'Elder Care: Is Legislation of Family Responsibility the Solution?' (2009) 4 (2) *Asian Journal of Gerontology & Geriatrics* 72, 75

<sup>136</sup> Ruiping Fan, 'Which Care? Whose Responsibility? And Why Family? A Confucian Account of Long-Term Care for the Elderly' (2007) 32 (5) *Journal of Medicine and Philosophy* 495, 517

<sup>137</sup> Lara Queen Plaisance, 'Will You still ... When I'm Sixty-Four: Adult Children's Legal Obligations to Aging Parents' (2008) 21 *Journal of the American Academy of Matrimonial Lawyers* 245, 270

<sup>138</sup> Elizabethan Poor Laws 1, ch. 1-4, 12, IV (Eng.) (1601): "...blood relatives were the primary source of support for family members, including the elderly...".

<sup>139</sup> Francine Russo, 'Caring for Aging Parents: Should There Be a Law?' *Time* (22 July 2013)

<sup>140</sup> Norway provides universal long-term care to everyone. In France, the elderly receive a payment similar to Social Security, which increases according to the recipient's income and care needs. In Germany, a social-insurance approach like Medicare helps pay for long-term care.

<sup>141</sup> Léon Poffé, 'Towards a New United Nations Human Rights Convention for Older Persons?' (2015) 15 (3) *Human Rights Law Review* 591, 601

<sup>142</sup> Kuang-Hui Yeh, Chin-Chun Yi, et al., 'Filial piety in contemporary Chinese societies: A comparative study of Taiwan, Hong Kong, and China' (2013) 28 (3) *International Sociology* 277, 296

<sup>143</sup> Lijia Zhang, 'China's Unfeasible Plan for the 'Grey Tide': Force People to Visit Their Parents' *The Guardian* (15 Jul 2013)

<sup>144</sup> Fredda Blanchard-Fields, Michelle Horhota, et al., 'Cultural Differences in the Relationship Between Aging and the Correspondence Bias' (2007) 62 (6) *The Journals of Gerontology* 362, 365

psychological problems in adult children.<sup>145</sup> The emphasis on the care for aged parents may be contrasted with the value of independence encouraged in Western cultures which motivates people to plan for their old age and discourages them from turning to their children for financial support.<sup>146</sup> They are generally thought to be entitled to a greater degree of autonomy.<sup>147</sup> Otherwise, it may undermine the traditional public policy of maximising individual autonomy. Filial support is somewhat considered as blurring the line of separation between the adult child and his parent.<sup>148</sup> In this vein, it is undesirable for the government to impose law and to intervene in family life.<sup>149</sup>

### *(b) State Intervention*

Although Western traditions would rightly resist state interference on this scale,<sup>150</sup> an inquiry arises as to what if some aged parents cannot maintain the autonomy. If so, would it be well-justified to translate a moral duty into a legal one? It is worth exploring the extent to which state interference in an area as private as the family may be acceptable to the public.<sup>151</sup> France passed an elderly care law in 2004 requiring its citizens to keep in touch with their elderly parents.<sup>152</sup> Adult children are obligated to honour and respect their parents, paying for their daily expenses, provided that they are not able to do it by themselves.<sup>153</sup> While in the Netherlands, a different type of au-pair system is introduced for elderly people, where students are offered rent-free accommodation in nursing homes in return for spending at least 30 hours a month with some of the elderly residents.<sup>154</sup> Due to the absence of a common law duty for adult children to care for their elderly parents, a statutory duty of care may make meaningful difference. In Ontario, Family Law Act provides:

“(e)very child who is not a minor has an obligation to provide support, in accordance with need, for his or her parent who has cared for or provided support for the child, to the extent that the child is capable of doing so.”<sup>155</sup>

In the above jurisdictions, the duty of adult children to provide support for needy parents is deeply rooted in the statutory law. It is justifiable for the law to intervene into family matters

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<sup>145</sup> Charlie Cooper, ‘Overly-Controlling Parents Cause Their Children Lifelong Psychological Damage’ *Independent* (3 September 2015)

<sup>146</sup> Wing-Cheong Chan, ‘The Duty to Support an Aged Parent in Singapore’ (2004) 13 (3) *Pacific Rim Law & Policy Journal* 547, 578

<sup>147</sup> Nina Kohn, ‘Second Childhood: What Child Protection Systems Can Teach Elder Protection Systems’ (2003) 14 *Stanford Law & Policy Review* 175, 190

<sup>148</sup> Shannon Frank Edelstone, ‘Filial Responsibility: Can the Legal Duty to Support Our Parents Be Effectively Enforced?’ (2002) 36 (3) *Family Law Quarterly* 501, 514

<sup>149</sup> Ursula Kilkelly, ‘The Right to Respect for Private and Family Life: A Guide to the Implementation of Article 8 of the European Convention on Human Rights’ (Council of Europe, 2003) <[https://www.echr.coe.int/LibraryDocs/DG2/HRHAND/DG2-EN-HRHAND-01\(2003\).pdf](https://www.echr.coe.int/LibraryDocs/DG2/HRHAND/DG2-EN-HRHAND-01(2003).pdf)>

<sup>150</sup> Thomas Franck, ‘Is Personal Freedom a Western Value?’ (1997) 91 (4) *American Journal of International Law* 593, 627

<sup>151</sup> Wing-Cheong Chan, ‘The Duty to Support an Aged Parent in Singapore’ (2004) 13 (3) *Pacific Rim Law & Policy Journal* 547, 578

<sup>152</sup> Ingrid Jönsson, Anne-Marie Daune-Richard, et al., ‘The Implementation of Elder-Care in France and Sweden: A Macro and Micro Perspective’ (2011) 31 *Aging and Society* 1, 20

<sup>153</sup> Article 207 of the Civil Code

<sup>154</sup> Marlous Elisabeth Arentshorst, Roy Reinier Kloet and Alexander Peine, ‘Intergenerational Housing: The Case of Humanitas Netherlands’ (2019) 33 *Journal of Housing For the Elderly*; Johanna Harris, ‘Here’s Why Some Dutch University Students Are Living in Nursing Homes’ *The Conversation* (29 November 2016)

<sup>155</sup> Ontario Family Law Act 1990 Article 32

under certain circumstances.<sup>156</sup> Notably, the law is rarely applied unless family support breaks down. Compared with its Chinese counterpart, the Canadian law does not go that far, since there is no requirement to visit their elder parents in person.

## E. Access to Social Justice in Protecting the Elder Rights

An approach to social justice is rooted in the capabilities theory.<sup>157</sup> The multipronged approach to equity forms the basis of the theoretical critique in this part. It attempts to propose a viable solution to the complex problems inherent in the filial responsibility statute.<sup>158</sup> Solutions are innovatively explored to encourage family support for elderly parents via a variety of schemes. It is recommended that filial responsibility for elderly parents should be rewarded through incentives complemented by legislation. In this vein, the burden may need to be shared by society as well as private parties. The PRIE 2013 may promote a public and private partnership to achieve the legislative intent to provide decent protections of the elderly.

### 1. Behavioural Change Theory: Penalty-Deterrence *vis-à-vis* Reward-Incentive

The theory means to incentivise and change people's behaviour. PRIE 2013 is intended to exert moral pressure on adult children to look after their parents. As Kohn said,

“If we as a society believe that families have at least some duty to provide for their members, broader legal definitions of affirmative duties are most likely to comport with our sense of moral responsibility.”

It requires children to pay regular visits to their parents and thereby stress adult children's filial piety at home and overall care for the elderly throughout society.<sup>159</sup> The law is primarily aimed at raising awareness of the issue, which seeks to ensure rights and obligations in the form of encouragement.<sup>160</sup>

#### (a) Penalty-Deterrence Model

The national policy has directed action at the local level governments. In April 2016, Shanghai's Municipal People's Congress issued *Regulations Safeguarding the Interests of the Elderly* to encourage people to frequently visit elderly parents.<sup>161</sup> The Shanghai legislation provides elderly parents a right to sue their children for neglect, with the punishment taking the form of lowering the children's credit scores.<sup>162</sup> It spells out the specific punishment via downgrading credit scores in order to address the enforceability problems. Shanghai

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<sup>156</sup> California Penal Code, s270(c)

<sup>157</sup> Patricia McGrath Morris, 'The Capabilities Perspective: A Framework for Social Justice' (2002) 83 (4) *Families in Society: The Journal of Contemporary Social Services* 365, 373

<sup>158</sup> Shannon Frank Edelstone, 'Filial Responsibility: Can the Legal Duty to Support Our Parents Be Effectively Enforced' (2002) 36 (3) *Family Law Quarterly* 501, 514

<sup>159</sup> David Phillips and Zhixin Feng, 'Challenges for the Aging Family in the People's Republic of China' (2015) 34 (3) *Canadian Journal on Aging* 290, 304

<sup>160</sup> Xiaoying Qi, 'Filial Obligation in Contemporary China: Evolution of the Culture-System' (2015) 45 (1) *Journal for the Theory of Social Behaviour* 141, 161

<sup>161</sup> 上海市老年人权益保障条例 (*Regulations Safeguarding the Interests of the Elderly in Shanghai*) was adopted on 29 January and came into effect on 1 May 2017.

<sup>162</sup> Robin Brant, 'Enforcing family care by law in Shanghai' *BBC* (30 May 2016)

residents who fail to visit their elderly parents regularly may have their names added to a credit blacklist that could make it difficult for them to apply for jobs and loans, and even influence their eligibility for welfare.<sup>163</sup> Arguably, the measure through the linking of credit scores to filial responsibility aims to ensure that the PRIE 2013 can be enforced effectively.

*(b) Reward-Incentivise Model*

Government has an important role to play in formulating policies that reward care of the elderly by their families, so as to avoid reliance upon the government.<sup>164</sup> Filial piety is somewhere near the heart of a Confucian order regulating society.<sup>165</sup> According to the Chinese social need, it functions under PRIE 2013 not only as a mandatory legal obligation, but also as a legally-encouraged moral virtue that is being constantly adjusted.<sup>166</sup> For instance, the law provides that the government shall: “commend or reward the organisations, families or individuals that have made outstanding achievements in respecting, providing for and helping the elderly.”<sup>167</sup> Thus, the moral virtue is given statutory enforcement by Article 10. The awarding mode under PRIE 2013 is to give honorary titles to the moral children who have fulfilled their filial duties outstandingly. To encourage family support and adult children living with their elderly parents, the government could change housing policy and provide loans to families.

In Japan, although there are laws on filial responsibility, there are other policies on housing and medical care to encourage family support for elderly parents. There are housing loans to families so that the elderly can live with them.<sup>168</sup> Japan has modified employment policies to allow post-retirement employment, so that the elderly can continue to have an income after retirement.<sup>169</sup> Similarly, the Housing Authority has launched a special scheme for families with elderly members in Hong Kong. The government can offer subsidies, tax incentives, or awards for families. The tax regimes, like those of Japan and Singapore, provide for personal tax exemptions and allowances for children who provide financial support for their parents. Under the scheme, families with two elderly members are given priority to move into a public housing estate.<sup>170</sup> If a person gives support to a parent or grandparent, a dependent parent/grandparent allowance of HK\$30 000 or elderly residential care expenses of HK\$35 000 can be deducted from salary taxation.<sup>171</sup>

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<sup>163</sup> Rishi Iyengar, ‘Shanghai Citizens May Soon Have Their Credit Scores Lowered for Not Visiting Their Parents’ *Time* (12 April 2016)

<sup>164</sup> Milena Nikolova, ‘Two Solutions to the Challenges of Population Aging’ *Brookings* (2 May 2016) <<https://www.brookings.edu/blog/up-front/2016/05/02/two-solutions-to-the-challenges-of-population-aging>>

<sup>165</sup> ‘The kin and I’ *The Economist* (27 August 2015)

<sup>166</sup> Katie Wise, ‘Caring for Our Parents in an Aging World: Sharing Public and Private Responsibility for the Elderly’ (2002) 5 (2) *New York University Journal of Legislation and Public Policy* 563, 598

<sup>167</sup> PRIE 2013 Article 10

<sup>168</sup> Jim Miller, ‘Home Improvement Assistance Programs for Seniors’ *Huffington Post* (18 May 2015)

<sup>169</sup> Bernard H. Casey, ‘The Employment of Older People: Can We Learn from Japan?’ (2005) 30 (4) *The Geneva Papers on Risk and Insurance* 620, 637

<sup>170</sup> United Nations Department of Economic and Social Affairs, *The World Ageing Situation: Exploring a Society for All Ages* (United Nations Publications, 2001) 64

<sup>171</sup> Ghy Ting and Jean Woo, ‘Elder Care: Is Legislation of Family Responsibility the Solution?’ (2009) 4 (2) *Asian Journal of Gerontology & Geriatrics* 72, 75

In Mainland China, as analysed above, adult children are required by law to support their elderly parents. Apart from the legal obligation, China takes after the Hong Kong Model on the tax deduction, providing tax advantages for those caring for their elderly parents. On 22 December 2018, the State Council of the People's Republic of China (PRC) released the *Interim Measures on Additional Special Deductions for Individual Income Taxes (Measures)*. The *Measures*, among other things, allow a taxpayer to deduct Chinese Yuan ¥RMB24,000 (£2400) per year from taxable income for the sake of supporting elderly parents and grandparents.<sup>172</sup> According to the *Measures*, a taxpayer may claim a standard monthly deduction of ¥RMB 2,000 (£200) for elderly support if he or she is a single child. When a taxpayer is not a single child, the ¥RMB 2,000 (£200) deduction is split among the siblings, and each of them may claim no more than ¥RMB 1,000 (£100).<sup>173</sup> The “elderly” defined by the *Measure* include parents over 60 years old, and grandparents over 60 whose children have all passed away.<sup>174</sup> Furthermore, the government could do more to support adult children in caring for their parents, for example, by enforcing laws on maximum working hours and annual leave policies.<sup>175</sup> Further relaxation of *hukou* restrictions would make it easier for rural parents to accompany their children to the cities and access social services there.<sup>176</sup> This is a welcome development given that it will play a complementary role in promoting the protection of aged parents.

## 2. Improve the Facility and Infrastructure via Public and Private Partnerships (PPPs)

Aid for the elderly is not keeping pace with China's aging population.<sup>177</sup> State welfare is not considered as a viable option in view of China's rapidly aging issues, though government health and social services have taken a dominant role at the current stage.<sup>178</sup> The nursing home industry is still in its infancy. Retirement homes are a rarity, and decent pension provision remains to be addressed, given that a new rural pension scheme does not cover everyone.<sup>179</sup> Hence, society should bear the responsibility of providing security of aged parents, with a particular regard to facility and infrastructure. Current affordable and dependable facilities for the elderly lack the capacity to handle the growing number of retirees.<sup>180</sup> China offers approximately half as many beds per 1,000 seniors as other developed countries.<sup>181</sup> While 4% to 8% of elderly in Western nations live in residential care

<sup>172</sup> 中国国务院个人所得税专项附加扣除暂行办法（PRC State Council, *Interim Measures on Additional Special Deductions for Individual Income Taxes*）[2018] No. 41, 13 December 2018. The Measure was released on 22 December 2018 and became effective on 1 January 2019

<sup>173</sup> *Interim Measures on Additional Special Deductions for Individual Income Taxes 2019 Article 22*

<sup>174</sup> *Interim Measures on Additional Special Deductions for Individual Income Taxes 2019 Article 23*

<sup>175</sup> Dwayne Benjamin, Loren Brandt and Scott Rozelle, ‘Aging, Wellbeing, and Social Security in Rural Northern China’ (2000) 26 *Population and Development Review* 89, 116

<sup>176</sup> Chuanbo Chen and C. Cindy Fan, ‘China's *Hukou* Puzzle: Why Don't Rural Migrants Want Urban *Hukou*’ (2016) 16 (3) *China Review* 9, 36

<sup>177</sup> Howard French, ‘China's Twilight Years’ *The Atlantic* (June 2016)

<sup>178</sup> M Ramesh, Xun Wu and Alex Jingwei He, ‘Health Governance and Healthcare Reforms in China’ (2014) 29 (6) *Health Policy and Planning* 663, 672

<sup>179</sup> Clifford Coonan, ‘Chinese Law Forces People to ‘Visit and Greet’ Their Ageing Parents’ *The Independent* (1 July 2013); Robert Pozen, ‘Tackling the Chinese Pension System’ (July 2013)

<<https://www.brookings.edu/wp-content/uploads/2016/06/31-reforming-chinese-pension-system-pozen.pdf>>

<sup>180</sup> National Committee on Aging, ‘China's Nursing Homes Falling Behind’ (2012)

<<http://www.cncaprc.gov.cn/en/info/1739.html>>

<sup>181</sup> Gerald-Mark Breen, Ning Jackie Zhang & others, ‘Comparison of Nursing Home Care between the USA and China’ (2010) 5 (2) *International Journal of Public Policy* 121, 132; John Giles, Philip O’Keefe & others, ‘The

facilities, only 1.5% to 2.0% of Chinese elderly (65+years) do the same.<sup>182</sup> The resulting rampant loneliness and disillusionment causes added physical and mental problems in China, where aging peoples have been suffering from chronic illness and senile dementia.<sup>183</sup>

The future of social security is uncertain due mainly to the increasing life expectancy and decreasing birth rates.<sup>184</sup> The current systems are poorly aligned to the care that older populations require in China, largely because long-term care models are both inadequate and unsustainable.<sup>185</sup> An ongoing debate still remains unaddressed as to who has the responsibility to ensure the well-being of aged parents. The PRIE 2013 sets “actively responding to the ageing of the population” as “a long-term strategic task of the state”.<sup>186</sup> It provides that:

“The state shall gradually establish a long-term care insurance system. Encourage and guide the commercial insurance companies to undertake the long-term care insurance business. For the long-term disabled and older persons with financial difficulties, local governments should provide subsidies according to need.”<sup>187</sup>

The Chinese government seems to be unable to sustain high levels of support to the elderly, since the country lacks facilities and trained staff to provide care to this growing demographic.<sup>188</sup> The welfare system is ill-equipped to help the elderly living alone.<sup>189</sup> The existing system of care for the elderly is untenable and will require the government to continue investing in public facilities to accommodate its looming elderly problem.<sup>190</sup> In particular, the government programmes are insufficient to provide basic necessities in some undeveloped areas, where potential breaches of PRIE 2013 are very likely to take place.<sup>191</sup> The law provides that the government will ensure a basic living and basic medical care for the elderly through the pension mechanism and healthcare scheme. Nevertheless, the monthly payments are meager, and health care is inadequate.<sup>192</sup> The cost to live in the nursing home is high and looking after the elderly at home seems to be a more practical option.

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Elderly and Old Age Support in Rural China Challenges and Prospects’ (The International Bank for Reconstruction and Development / The World Bank, 2012)

<<http://documents.worldbank.org/curated/en/769231468215685476/pdf/675220PUB0EPI0067882B09780821386859.pdf>>

<sup>182</sup> Zhanlian Feng, Chang Liu, et al., ‘China’s Rapidly Aging Population Creates Policy Challenges in Shaping a Viable Long-Term Care System’ (2012) 31(12) *Health Affairs* 2764, 2773

<sup>183</sup> Christine Victor and Keming Yang, ‘The Prevalence of and Risk Factors for Loneliness among Older People in China’ (2008) 28 (3) *Ageing and Society* 305, 327

<sup>184</sup> Quanbao Jiang, Shuzhuo Li, and Marcus W. Feldman, ‘China’s Population Policy at the Crossroads: Social Impacts and Prospects’ (2013) 41 (2) *Asian Journal of Social Science* 193, 218

<sup>185</sup> World Health Organization (WHO), *World Report on Ageing and Health* (Geneva: WHO, 2015) 18

<sup>186</sup> PRIE 2013 Article 4

<sup>187</sup> PRIE 2013 Article 29

<sup>188</sup> Vincent Mor, Zhanlian Feng, et al., ‘China’s Rapidly Aging Population Creates Policy Challenges In Shaping A Viable Long-Term Care System’ (2012) 31 (12) *Health Affairs* 2764, 2773

<sup>189</sup> ‘The kin and I’ *The Economist* (27 August 2015)

<sup>190</sup> David Shou, ‘The Elderly Care Crisis in Aging China’ *Duke East Asia Nexus*  
<<http://www.dukenex.us/david-shou-the-elderly-care-crisis-in-aging-china.html>>

<sup>191</sup> Xiaoying Qi ‘Filial Obligation in Contemporary China: Evolution of the Culture-System’ (2015) 45 (1) *Journal for the Theory of Social Behaviour* 141, 161

<sup>192</sup> Greg Chen, ‘A Study of Healthcare Reform in China in Light of the USA and Canadian Systems’ (2007) 4 (1) *Chinese Public Administration Review* 21, 36

The system relies upon large cohorts of descendants to care for their aged parents. Accordingly, relevant law and policy have been addressed to their children.<sup>193</sup> The PRIE 2013 explicitly states that it is the responsibility of the family, rather than the government, to care for their elderly parents.<sup>194</sup> Literally, it seems inconsistent with Article 4 related to the state's commitment. It might well be interpreted that the state is supposed to focus more upon the challenges of the superstructure, while the family to address the issue at a micro level. As such, heavy burden is placed upon family members to take care of the financial and emotional needs of parents. One of the legislative intent is to relieve the government from the burden of supporting the aged parents whose adult children can afford looking after them. In this regard, the PRIE 2013 presents an alternative to provide for the elderly without increasing governmental investment. Private investors can enter the conversation in asset-based, service-based, and technological arenas.<sup>195</sup> In terms of constructing affordable nursing home facilities, private actors may revolutionise the elderly experience for individuals from all walks of life.<sup>196</sup> Thus, it is vital to harmonise the goals of public and private actors.<sup>197</sup> This holds particularly true in terms of the former's policy-steered and the latter's profit-oriented perspectives.

## Conclusion

The notion that adult children should care for their aged parents is deeply ingrained into the Chinese society with filial piety recognised as a core value. However, China is undergoing accelerating and seismic social change triggered by the rapid industrialisation and urbanisation. Among other deeply-rooted causes contributing to erosion of Confucius values, China's one-child policy accounts for the increased tension between aged parents and adult children. The enforcement is presumed to be at stake to upholding the moral obligation to support one's parents, as well as to saving public purse. Based on the legitimate criticism of the PRIE 2013, the analysis of the current legal protections available for older people exposes the obstacles faced in obtaining meaningful implementation of these rights. The adult children retain the moral obligation to support an aged parent in spite of the legal obligation such that the PRIE 2013 is called upon only as a legal avenue of last resort. After all, laws are supposed to educate and guide people, apart from the compulsory enforcement. The PRIE 2013 stresses more of the emotional connection than the physical and financial one. Given a lack of qualitative research on the general effect on the elderly who have either contemplated or applied PRIE 2013, it remains to be seen whether the law can provide a viable avenue for remedies. It is still too early to tell whether the PRIE 2013 has a real chance of restoring China's virtue of reverence toward their elderly, or whether the consequence of punishment will only diminish devotion to aging parents.

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<sup>193</sup> Merrill Silverstein and Zhen Cong, 'Parents' Preferred Care-Givers in Rural China: Gender, Migration and Intergenerational Exchanges' (2018) 34 (5) *Ageing and Society* 727, 752

<sup>194</sup> Franklin Goza and Yuanting Zhang, 'Who Will Care for the Elderly in China? A Review of the Problems Caused by China's One-Child Policy and their Potential Solutions' (2006) 20 (2) *Journal of Aging Studies* 151, 164

<sup>195</sup> 'China Encourages Public-Private Partnership in Senior Care Industry' *People's Daily* (1 February 2018)

<sup>196</sup> Larry Polivka and Baozhen Luo, 'Neoliberal Long-Term Care: From Community to Corporate Control' (2017) *The Gerontologist* 1, 8

<sup>197</sup> Katie Wise, 'Caring for Our Parents in an Aging World: Sharing Public and Private Responsibility for the Elderly' (2002) 5 *New York University Journal of Legislation and Public Policy* 563, 574