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marketability, and once this is realized there will in all likelihood be less reluctance to take advantage of the incentive.

It appears that from a legal standpoint communities can require, by one method or another, that part of future developments be built to ease the need for low and moderate income housing. In addition to these legal questions, the exclusionary tendency of the suburbs is a significant barrier to implementation of these methods.¹⁰² The more difficult question is not whether communities can provide the housing, but whether they will do so. These methods, whatever their ultimate form, will only be implemented when municipalities are ready for them.¹⁰³ A determination of when this will be is better left to sociologists, but the urgency of the problem makes one hope that a willingness will soon arrive.

JOHN J.E. MARKHAM II

INDIGENT CHILDREN AND FISCAL CLEARING

It is the policy of the law to protect the interests of minor children incapable of looking after their own affairs.¹ Where any indigent child,² who is cared for at state expense, has legally responsible relatives or friends in another state willing to provide a home for the child even though they are financially unable to support him, it will be in the child's best interests that he be placed with them.³ However, the administrative procedures and policies of state welfare departments often retard or

¹⁰²In the REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS (1968) it was recognized that even a national fair housing law would "not deal with an equally impenetrable barrier, the unavailability of low and moderate income housing in *non-ghetto* areas." *Id.* at 263 (emphasis added).

¹⁰³Exclusionary sentiment in the suburbs has been labeled municipal parochialism by the courts. *See, e.g.,* *Simon v. Town of Needham*, 311 Mass. 560, 42 N.E.2d 516 (1942). *See also* Williams, *Planning Law and Democratic Living*, 20 LAW AND CONTEMPORARY PROBLEMS 317 (1955); Comment, *Zoning Against the Public Welfare: Judicial Limitations on Municipal Parochialism*, 71 YALE L.J. 720 (1962).

¹*See, e.g., In re Guardianship of Carlon's Estate*, 43 Cal. App. 2d 204, 110 P.2d 488 (1941); *In re Anderson's Estate*, 20 Ill. App. 2d 305, 155 N.E.2d 839 (1959); *Zoski v. Gaines*, 271 Mich. 1, 260 N.W. 99 (1935); *Fiorella v. Fiorella*, 241 Mo. App. 180, 240 S.W.2d 147 (1951); *Pieri v. Nebbia*, 178 Misc. 388, 34 N.Y.S.2d 317 (1942); *Tart v. Register*, 257 N.C. 161, 125 S.E.2d 754 (1962). This policy is based on the theory that the state, as *parens patriae* should protect the child against those who might take advantage of him.

²The term "indigent" is commonly used to refer to one's financial ability, and ordinarily indicates one who is without means of comfortable subsistence. *Weeks v. Mansfield*, 84 Conn. 544, 80 A. 784 (1911). *See also* note 49 *infra*.

³If the child's interest will be better promoted by awarding the custody to a non-resident the court will not hesitate to do so because of the residence of the applicant. *See* note 1 *supra*.

prohibit such transfers through the use of fiscal clearing⁴ when the financial burden of supporting the indigent child threatens to shift to the receiving state.⁵ Realizing that the financial burden of supporting the child would now fall upon them, some receiving states, before admitting the indigent child, require the custodial state to agree to retain financial responsibility.⁶

Fiscal clearing has its historical source in the English law of public assistance which was known as the Elizabethan Act of 1601 For the Relief of the Poor.⁷ This Act established the principle of local responsibility for indigents as taxation was imposed upon the parishes for the public support of local indigent adults and children.⁸ Under this public assistance policy special attention was given to the vocational training of indigent children. The imposition of local responsibility resulted, however, in attempts to reduce this relief burden.⁹

In 1662 a statute was passed placing "strangers" in a class unentitled to relief.¹⁰ In their efforts to combat vagrancy and mendicancy the English localities developed rules regarding the settlement and removal of

⁴"Fiscal clearing" is the term specifically applied by Judge Justine Polier of the New York Family Court to the financial processing involved in the transfer of indigent children. See *In re Paul and Mark*, 64 Misc. 2d 382, 315 N.Y.S.2d 12 (1970).

⁵The term "receiving state" refers to that state to which the indigent child is being sent and the term "custodial state" denotes the state in whose custody the child remains pending fiscal clearing.

⁶Many states require not only that the consent of the state welfare board be obtained before any dependent child be brought into the state, but a bond must be furnished to insure that the child will not become a public charge. See, e.g., IND. ANN. STAT. §§ 52-509 to -510 (1964); MASS. ANN. LAWS ch. 119, § 36 (1965). Other states avoid the indemnity bond arrangement by merely requiring the custodial state to sign a guarantee to retain welfare responsibility. See MICH. STAT. ANN. § 16.414(d) (Repl. Vol. 1968). Fiscal clearing will be the term used throughout to refer to such guaranty and indemnity procedures.

⁷43 Elizabeth ch. 2 (1601).

⁸See Reisenfeld, *The Formative Era of American Public Assistance Law*, 43 CAL. L. REV. 175, 178 (1955) (hereinafter cited as *Reisenfeld*).

⁹*Id.* at 181.

¹⁰Such an effort came with a 1662 statute:

That it shall and may be lawful, upon complaint made by the churchwardens or overseers of the poor of any parish, to any justice of peace, within forty days after any such person or persons coming so to settle as aforesaid, in any tenement under the yearly value of ten pounds, for any two justices of the peace, whereof one to be . . . of the division where any person or persons that are likely to be chargeable to the parish shall come to inhabit, by their warrant to remove and convey such person or persons to such parish where he or they were last legally settled . . .

Act of 1662, 13 & 14, Car. II c. 12, as quoted in *Reisenfeld* at 181-82. This statute provided for the forced removal of "strangers" who were really unwanted indigents. See also Mandelker, *Exclusion and Removal Legislation*, 1956 WIS. L. REV. 57, 58; Note, *Depression Migrants and the States*, 53 HARV. L. REV. 1031, 1032 (1940).

potential paupers. Local jurisdictions passed laws which called for the forced removal of paupers from the locality if they had not lived in the parish for the time required by statute.¹¹ Colonists transplanted similar laws to America during the seventeenth century.¹²

Due to the increase in population and economic development of the colonies during the American eighteenth century, new methods were devised to accommodate welfare recipients.¹³ The erection of local almshouses for children, the tightening of settlement laws, and the further development of provisions for the removal of unsettled paupers are examples.¹⁴ States enacted exclusion and removal statutes based on the English statutory and judicial practice and these did receive some court support.¹⁵ In *New York v. Miln*,¹⁶ the Supreme Court dealt with a New York statute which imposed upon the master of a vessel the obligation to report to the authorities the last legal settlement, age and occupation of every passenger brought into the port of New York from another state or country. The Court upheld the statute as

competent and as necessary for a State to provide precautionary measures against the moral pestilence of paupers, vagabonds, and possibly convicts, as it is to guard against the physical pestilence which may arise from unsound and infectious articles imported . . .¹⁷

¹¹*Reisenfeld* at 192-200.

¹²The colonies authorized the public support of indigent children; provided for their education; farmed out to foster homes the children of indigent parents; held that the home residence of the child was liable for all support expenses given the child by another residence; sent poor children to work in the public workhouses; and provided for the apprenticeship of poor children. *Id.*

¹³*Id.* at 223.

¹⁴*Id.* at 223-24.

¹⁵The statute of 1662 also provided for the compulsory removal to his place of residence of any person "likely to become chargeable." Thus evolved the practice of removal. This statute allows relief administrators to transport to their place of settlement persons who were ineligible for relief as well as prohibited persons thought to be potential relief recipients from acquiring a settlement. Mandelker, *Exclusion and Removal Legislation*, 1956 Wis. L. Rev. 57, 58. In regards to exclusion laws, the state imposed civil and criminal liability upon anyone who brought a poor person into a locality with knowledge or intent that the individual will become a public charge. *Id.* For a discussion of the constitutionality of exclusion legislation, see text accompanying notes 33-38 *infra*.

¹⁶*New York v. Miln*, 36 U.S. (11 Pet.) 357 (1837). A few convictions under laws against bringing indigents into a state have been upheld by state courts. See *State v. Cornish*, 66 N.H. 329, 21 A. 180 (1890); *Winfield v. Mapes*, 4 Denio 571 (N.Y. 1847). There was Supreme Court dicta that the state could defend against indigents which were brought in and likely to become public charges. See *Passenger Cases*, 48 U.S. (7 How.) 140, 155 (Wayne, J., concurring), 190-91 (Grier, J. concurring), 193-94 (Taney, J. dissenting) (1848); *Prigg v. Pennsylvania*, 41 U.S. (16 Pet.) 417, 440 (1842).

¹⁷36 U.S. at 369.

By 1940, local responsibility for the poor, indigent exclusion procedures and settlement were being determined by statute.¹⁸

To these restrictions upon freedom of movement some states added more legislation which concerned the interstate travel of children, especially the indigent.¹⁹ The Uniform Transfer of Dependents Act was approved in 1935 by the National Conference of Commissioners on Uniform State Laws and the American Bar Association.²⁰ The Act has been adopted by eleven states²¹ and authorizes the state welfare agency to enter into reciprocal agreements with the custodial state relating to the acceptance, transfer, and support of the indigent child. It is also provided that no state shall be committed to the support of persons who were ineligible in the opinion of the receiving state.²²

The idea of reciprocal agreements²³ has not been ignored by other states. New York is one of six states that has enacted a statute providing for interstate compacts on the placement of children.²⁴ The statute provides that the custodial agency retains financial responsibility for the child unless the receiving state agrees to provide welfare assistance for the indigent child. Based on the statutory provisions, New York can avoid having to support the child.²⁵ In addition to these compacts some states

¹⁸See Note, *Depression Migrants and the States*, 53 HARV. L. REV. 1031, 1033 (1940). As of 1940, thirty-eight states required a resident to live in the jurisdiction one year before he was eligible for public assistance; twenty-eight states provided that settlement could be lost by non-residence during a period equal to or shorter than that required to gain one. Regarding the development of exclusion statutes, by 1940 twenty-seven states made it a misdemeanor to bring an indigent into the state or imposed a fine for so doing. Some states even provided that non-settled indigents could be forcibly removed. *Id.* at 1033-34.

¹⁹*In re Higgins*, 46 Misc. 233, 259 N.Y.S.2d 874, 878 (Family Ct. 1965).

²⁰UNIFORM LAWS ANN. 9C at 216 (1935).

²¹The 11 states are California, Colorado, Connecticut, Delaware, Louisiana, Maine, Minnesota, North Dakota, Pennsylvania, South Dakota and Virginia. CAL. WELF. & INST'NS CODE §§ 18400-18401 (West Ann. 1966); COLO. REV. STAT. ANN. §§ 119-5-1 to -5-4 (1963); CONN. GEN. STAT. ANN. § 17-293 (1958); DEL. CODE ANN. tit. 31, § 119 (1953); LA. REV. STAT. ANN. §§ 46:01-02 (1950); ME. REV. STAT. ANN. tit. 22 § 4191 (1964); MINN. STAT. ANN. §§ 261.25, 261.251 (1959); N.D. CENT. CODE § 50-06-11 to -06-12 (1960); PA. STAT. tit. 62 § 209 (1968); S.D. CODE § 28-16-7 (1967); VA. CODE ANN. § 63.1-99 (Repl. Vol. 1968).

²²*Id.*

²³The prefatory note to this Act gives a reading of the purpose or idea behind the Act:

In recent years there has been a great change of sentiment . . . upon which the transfer of public dependents by the states should be effected, and experience has demonstrated the wisdom of having legislation passed which will enable each state to confer upon its public welfare officials the right to enter into reciprocal agreements for the interchange of dependents, rather than in attempting to have uniform settlement laws.

UNIFORM LAWS ANN. 9C at 218-19.

²⁴N.Y. SOCIAL SERVICES LAW 374a (McKinney 1966).

²⁵The other 5 states that have complementary legislation are Kentucky, Maine, New

have enacted separate statutes which affect the mobility of children in need of placement. For example, Michigan states that it is a misdemeanor for a county agent to bring about the transportation of an indigent child into Michigan without the welfare district's official approval.²⁶ Arkansas has provided that the Arkansas State Department shall administer all child welfare activities including the regulation and importation of indigent children.²⁷ If these statutes, compacts, and uniform acts are considered along with the state statutes requiring indemnification as to the child's public liability,²⁸ a wide network of restrictions upon the child's placement in a receiving state is apparent.

In 1941, the United States Supreme Court in *Edwards v. California*²⁹ held unconstitutional a California exclusion statute³⁰ which made it a crime to knowingly bring a poor person into the state. This decision, which forced the first breach in the statutes based on the English Poor Laws,³¹ employed the commerce clause as a vehicle to consider the state's interference with interstate commerce.³² The Court determined that the exclusion statute burdened the indigent citizen's constitutional right of interstate travel which was found not to admit of diverse treatment merely because paupers were involved.³³

In 1969, the Court in *Shapiro v. Thompson*³⁴ extended its holding in *Edwards* and held that residency requirements for state welfare recipients were unconstitutional. *Shapiro* involved statutory provisions³⁵ which denied welfare assistance to residents of the state who had not been present within the jurisdiction for at least one year immediately preceding their

Hampshire, North Dakota, and Wyoming. See KY. REV. STAT. ANN. § 199.341 (1969); ME. REV. STAT. ANN. tit. 22, §§ 4191-4200 (1964); N.H. REV. STAT. ANN. §§ 170-A:1 to -A:6 (Supp. 1970); N.D. CENT. CODE § 14-13-01 to -13-08 (Supp. 1969); WYO. STAT. §§ 14-52.1 to -52.9 (1957).

²⁶MICH. STAT. ANN. § 16.450 (1) (Rev. Vol. 1968).

²⁷ARK. STAT. ANN. § 83-109 (Repl. Vol. 1960).

²⁸See note 6 *supra*.

²⁹314 U.S. 160 (1941).

³⁰See notes 15 and 18 *supra*.

³¹Mandelker, *Exclusion and Removal Legislation*, 1956 WIS. L. REV. 57.

³²314 U.S. 174, 176. The Court referred to *Milk Control Board v. Eisenberg Farm Products*, which explained the commerce clause.

This court has repeatedly declared that the grant [commerce clause] established the immunity of interstate commerce from the control of the States respecting all those subjects embraced within the grant which are of such a nature as to demand that, if regulated at all, their regulation must be prescribed by a single authority.

306 U.S. 346, 351 (1939).

³³314 U.S. at 175-77. Paupers were held to be entitled to the same rights as any other United States citizen.

³⁴394 U.S. 618 (1969).

³⁵Connecticut and Pennsylvania and the District of Columbia statutes were involved.

application for such assistance. The Court held that, absent a compelling state interest, the statutory provisions violated the equal protection clause of the fourteenth amendment since the classification of residency touched upon the fundamental constitutional right of interstate travel.³⁶ The Court concluded that the statutory purpose of inhibiting the migration by needy people into the state is constitutionally impermissible.

Though the Court has yet to rule on whether the receiving state can require the sending state to retain financial responsibility, *Edwards* and *Shapiro* have served as a basis upon which the Family Court of New York, in two cases, extended the law by ruling fiscal clearing practices to be unconstitutional.³⁷ In the first of these cases, *In re Higgins*,³⁸ a family court judge was presented with a demand by Michigan authorities that New York sign a guarantee³⁹ promising the three year old child would not become a public charge in Michigan. Michigan deemed this necessary in order to validate a private arrangement that had been made for the child to live with his maternal aunt in Michigan.⁴⁰ The mother, who was living in New York, died while the father was in prison. The New York court decided it did not have the power to comply with this requirement and that the demand for such an agreement deprived the child of her constitutional right to freedom of travel. The court analogized the Michigan fiscal clearing demand to the exclusion statute in *Edwards v. California*. The analogy appears correct in that both statutes were discriminatory by creating two classes of citizens. In *Edwards*, California recognized that local indigents were entitled to welfare and freedom of travel and

³⁶394 U.S. at 638. According to the Court if a migrant had to operate under such a statute he would be greatly inhibited in his interstate freedom of travel.

An indigent who desires to migrate, resettle, find a new job, and start a new life will doubtless hesitate if he knows that he must risk making the move without the possibility of falling back on state welfare assistance during his first year of residence, when his need may be most acute.

Id. at 629.

³⁷*In re Paul and Mark*, 64 Misc. 2d 466, 315 N.Y.S.2d 12 (Family Ct. 1970); *In re Higgins*, 46 Misc. 2d 233, 259 N.Y.S.2d 874 (Family Ct. 1965).

³⁸46 Misc. 2d 233, 259 N.Y.S.2d 874 (Family Ct. 1965).

³⁹See MICH. STATS. ANN. § 16.414(d) (Repl. Vol. 1968).

⁴⁰The pertinent section of the statute gives the state welfare department the power to

. . . approve the placing of a child of this state in a family home of persons unrelated to the child by a person not a resident of this state . . . by an agency or organization with no place of business in this state. Written approval of the proposed placement shall be obtained from the State department. Such person, agency or organization shall furnish the state department with such information as it may deem necessary regarding the child and the prospective foster parents and such guaranty as is required by the state department to protect the interests of the county in which the child is to be placed.

Id.

determined that non-resident indigents were entitled to neither. In *Higgins*, Michigan could deny relief to non-resident children and consequently their freedom of travel, but a local child did not encounter these restraints. Just as *Edwards* struck down the exclusion statute, *Higgins* ignored Michigan's attempt at discriminatory fiscal clearing.

In *In re Paul and Mark*,⁴¹ Judge Polier made use of the *Higgins* analogy to the *Edwards* case as a foundation for considering the constitutionality of California's attempt at fiscal clearing. The decision involved a mother who, realizing she could not support her three children, placed them in a New York welfare agency. Subsequently, she moved to California, rehabilitated herself, established a home and requested that her children be reunited with her. Despite the recommendations of a California welfare agency and the New York agency, New York was advised by California that the children could not be reunited with their mother pending fiscal clearing with California. California wanted New York to retain legal liability for the children since the mother could not earn enough to support the children without state assistance.⁴² The New York court found no justification for keeping the children from their mother in light of the *Edwards* analogy⁴³ and *Shapiro's* rejection of both direct (exclusion statutes) and indirect (residency laws) attempts by state agencies to discourage the right of freedom to travel.

The residency requirements invalidated in *Shapiro* are similar to the California and Michigan fiscal clearing demands⁴⁴ in that they imposed a condition upon indigents in need of welfare who wished to enter the state. *Shapiro*, in striking down the residency requirement as a threat to the constitutional right to equal protection of the laws, cited *Sherbert v. Verner*,⁴⁵ which stated that this constitutional challenge cannot be answered by the argument that public assistance benefits are a "privilege" and not a "right."⁴⁶ Fiscal clearing appears to be unconstitutional in that public assistance is a child's right and if he is eligible in one state, it would seem that he should be eligible in any state in which he resides.⁴⁷ Such a result is implied by the reasoning of Judge Polier in *In re Paul and Mark*.

⁴¹64 Misc. 2d 466, 315 N.Y.S.2d 12 (Family Ct. 1970).

⁴²It is not obvious from the facts as given in the case whether California was basing her demand for guaranty on a statute or on informal welfare policy. However, California has enacted the Uniform Transfer of Dependents Act. CAL. WELF. & INST'NS CODE § 18400 (West 1966). This Act allows a state to avoid financial responsibility through reciprocal agreements.

⁴³See text accompanying notes 37-39 *supra*.

⁴⁴See text accompanying notes 37-40 *supra*.

⁴⁵*Sherbert v. Verner*, 374 U.S. 398, 404 (1963).

⁴⁶*Id.*

⁴⁷See *Slaughter House Cases*, 83 U.S. (16 Wall.) 36, 77 (1872). This is not to suggest that a child should be able to reap the benefits of double welfare payments. See text accompanying notes 50-51 *infra*.

A child's well-being is, however, within the state's constitutional power to regulate.⁴⁸ This power is limited to regulations that promote the welfare of the child and his physical, mental, and moral development.⁴⁹ All other considerations should be deferred or subordinated to the child's interests.⁵⁰ In light of this limitation it seems that where the indigent child's welfare would be promoted by transporting him to another state, the receiving state should not require fiscal clearing that would disregard the child's well-being. *Shapiro* has affirmed another restriction upon the state's right to regulate child welfare where the state has enacted legislation that classifies the children. Where a classification serves to penalize the exercise of a constitutional right, unless shown to be necessary to promote a compelling governmental interest, the legislation is unconstitutional.⁵¹ Just as residency laws could not qualify under a compelling governmental interest in *Shapiro*, fiscal clearing would appear to fail in like manner.

States attempt to justify fiscal clearing procedures, contending that they are based on permissible state objectives despite the fact that they penalize the exercise of the constitutional freedom to travel. The state objectives have yet to be specifically delineated but fiscal clearing would be sanctioned as allowing for budget predictability, preventing double payment to children, and saving state welfare costs.⁵² These objectives failed to justify residency laws and by analogy they also seem to fall short of validating fiscal clearing. Double payment (the possibility of two states paying the same recipient child) might be prevented by requiring that the migrant child give legal proof of his prior residency before assistance is given by the receiving state. Notice to the last state of custody would

⁴⁸*See, e.g., Ginsberg v. New York*, 390 U.S. 629, 639 (1968). The case involved a statute prohibiting the sale of obscene literature to minors and this was held to be a constitutional exercise of state police power, notwithstanding the fact that the Court indicated that had minors not been involved in the sale, the literature may have been subjected to a different test.

⁴⁹*See, e.g., Abdul-Rahman Omar Adra v. Clift*, 195 F. Supp. 857 (D. Md. 1961); *Weatherton v. Taylor*, 124 Ark. 579, 187 S.W. 450 (1916); *Williams v. Williams*, 110 Colo. 473, 135 P.2d 1016 (1943); *Workman v. Workman*, 191 Ky. 124, 229 S.W. 379 (1921).

⁵⁰*Id.*

⁵¹394 U.S. at 634. To qualify as a compelling state interest the action must bear a reasonable relationship to the achievement of the governmental purpose asserted as its justification. The state must have so cogent an interest in the action as to justify the infringements upon personal liberty. *See Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942); *Korematsu v. United States*, 323 U.S. 214, 216 (1944); *Bates v. Little Rock*, 361 U.S. 516, 524-25 (1960). Restrictions of liberties must be justified by clear public interest, "threatened not doubtfully or remotely, but by a clear and present danger." *Thomas v. Collins*, 323 U.S. 516, 530 (1944).

⁵²These arguments were used to sanction residency requirements in *Shapiro* and would appear to be the likely arguments of those states employing fiscal clearing practices.

eliminate the possibility of double benefits.⁵³ The suggestion that the receiving state's budget would remain predictable through the use of fiscal clearing is cancelled by *Shapiro* which held that new residents are not required to give advance notice of their need for welfare assistance.⁵⁴ The contention that fiscal clearing will save state welfare costs by forcing the sending state to retain the support obligation is defeated by the equal protection clause. According to *Rinaldi v. Yeager*,⁵⁵ the equal protection clause imposes requirements of rationality and non-discriminatory application upon state law. In other words, a state cannot impose special burdens, in this instance restricted freedom of travel, upon defined classes without the distinctions that are drawn having some relevance to the purpose for which the classification is made.⁵⁶ Fiscal clearing seems to be discriminatory in its application as incoming indigent children are met with clearing requirements that can deny the child state welfare where resident indigent children do not encounter such treatment. In light of the Supreme Court's holding in *Rinaldi*, it would seem that such a classification would not be justified by an attempt to save money by limiting welfare payments.

Moreover, the social philosophy recognized in this country for thirty-five years since the adoption of the Social Security Act in 1935⁵⁷—that every person in the country should have access to basic income to meet the essential needs of life—is in conflict with restrictions on indigent aid.⁵⁸ It is not wrong for a person to move to another state because there are superior educational, medical, or other social welfare provisions there.⁵⁹ According to the Social Security Act, a state shall

provide . . . that all individuals wishing to make application for aid to families with dependent children shall have the opportunity

⁵³394 U.S. at 637.

⁵⁴*Id.* at 635.

⁵⁵384 U.S. 305, 309-10 (1966). *Rinaldi* involved an attempt to reduce expenses by requiring prisoners to reimburse the state out of their institutional earnings for the cost of furnishing a trial transcript. This was held unconstitutional because it did not require similar repayments from unsuccessful appellants given a suspended sentence, placed on probation, or fined.

⁵⁶*Id.* Cf. *Baxstrom v. Herold*, 383 U.S. 107, 111 (1966). *Baxstrom* involved a statute which invidiously discriminated against the mentally ill. The classification was invalidated by the same test mentioned in text.

⁵⁷Social Security Act, 42 U.S.C. § 301 (1964).

⁵⁸See Note, *Residence Requirement for Public Relief: An Arbitrary Prerequisite*, 2 COLUM. J. OF L. AND SOC. PROB. 133, 143 (1966), citing Simons, "Our Obsolescent Residence Laws," Speech presented at Forty-ninth California State Conference on Health and Welfare, in Berkeley, California, May 3, 1960. The Social Security Act is an enactment of progressive social legislation intended to alleviate a citizen's economic insecurity. *Rivard v. Bijou Furniture Co.*, 67 R.I. 251, 25 A.2d 563 (1941).

⁵⁹*Id.* See also 394 U.S. at 630.

to do so, and that aid to families with dependent children shall be furnished with reasonable promptness to all eligible individuals.⁶⁰

Those states which wish to take advantage of federal funds⁶¹ must conform to these requirements of the Social Security Act.⁶² Fiscal clearing, by avoiding financial responsibilities for incoming indigent children, appears to permit states to ignore the mandate of section 402 which provides for payments of federal money by the state to all eligible individuals.⁶³ States have the power to determine in a non-arbitrary manner who is entitled to public assistance, but fiscal clearing as applied by states such as California and Michigan in the aforementioned New York cases is inconsistent with the philosophy that all should have access to a basic income to meet the essential needs of life.

The concurring opinion of Justice Douglas in *Edwards v. California* presents another possible approach by which fiscal clearing might be challenged. Douglas concluded:

The right to move freely from State to State is an incident of national citizenship protected by the Privileges and Immunities Clause of the Fourteenth Amendment against state interference.⁶⁴

Although Douglas admitted there was no specific constitutional guarantee of freedom to travel, he concluded that even before the fourteenth amendment it was a fundamental right.⁶⁵ Fiscal clearing results in this same type of restraint upon a child exercising his rights of national citizenship. When an indigent child, desiring to enter another state, is subjected to fiscal clearing practices by the receiving state which seeks to protect itself from any new financial burden, such a child is relegated to an inferior class of citizenship. In light of the reasoning of Justice Douglas, such a relegation is unconstitutional under the privileges and immunities clause and infringes upon the child's fundamental rights.

⁶⁰42 U.S.C. § 602(a)(9) (1964). The term "dependent child" means a needy child who has lost his parents by reason of death, continued absence, or physical or mental incapacity. 42 U.S.C. § 606(a)(1) (Supp. 1964). The term is modified to permit a child to be treated as a dependent when placed in a foster home or child care agency. 42 U.S.C. § 608 (1964).

⁶¹The funds come from the Federal plan for aid to families with dependent children which provides funds to the states for distribution to parents of needy children. The state plan for assistance is submitted to the Federal government and upon approval the state becomes eligible for federal funding. For a full discussion of this plan see *King v. Smith*, 392 U.S. 309 (1968).

⁶²*Williams v. Dandridge*, 297 F. Supp. 450, 454 (1968). 42 U.S.C. 602(b) (1964) authorizes the Secretary of Health, Education and Welfare to approve state plans which impose a year's residence requirement on any child residing within the state. In light of *Shapiro*, this is unconstitutional.

⁶³Though paid to an adult guardian, the financial assistance is treated as a benefit to the child. See *Williams v. Dandridge*, 297 F. Supp. 450 at note 9.

⁶⁴314 U.S. at 178.

⁶⁵*Id.*

Although fiscal clearing may restrict a child's right to travel, some form of administrative procedure may be necessary to prevent payment by more than one state.⁶⁶ As implied by the language in *Shapiro*,⁶⁷ such a procedure might consist of exchanging data which would notify the custodial state that the child had been entered on another state's welfare rolls. Requiring proof of previous residence from the indigent child would make him eligible for local assistance and would allow the receiving state to notify the prior custodial state. In view of *Shapiro*, the imposition of any further burden upon the incoming indigent child would seem to discourage the child's constitutional right of freedom to travel. Since fiscal clearing would impose additional burdens, it follows that these may restrict an indigent child's right to travel and hence be unconstitutional.

E. THOMAS COX

⁶⁶See text accompanying notes 48-51 *supra*.

⁶⁷See *Shapiro v. Thompson*, 394 U.S. 618, 639 (1969).

