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**Title**

Filial Piety and U.S. Family Law: How Cultural Values Influence Caregiving, End-of-Life, and Estate Planning Decisions in Asian American Families

**Permalink**

<https://escholarship.org/uc/item/6284p67t>

**Journal**

Asian Pacific American Law Journal, 26(1)

**ISSN**

2169-7795

**Author**

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**Publication Date**

2023

**DOI**

10.5070/P326160687

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# **Filial Piety and U.S. Family Law: How Cultural Values Influence Caregiving, End-of-Life, and Estate Planning Decisions in Asian American Families**

*Shui Sum Lau*

## ABSTRACT

Due to centuries of anti-Asian discrimination in U.S. immigration policy and in its court system, many Asian Americans have migrated relatively recently. As a result, many Americans of East and South Asian descent maintain common cultural values such as respect for elders, filial piety, and community wellbeing. This Article examines how these values affect Asian Americans’ approach to decisions regarding the elderly, in particular caregiving, end of life decisions, and estate planning. Finally, the Article proposes suggestions for future research to improve outcomes and meet the legal needs of a growing, aging population.

## ABOUT THE AUTHOR

Shui Sum (“Summy”) Lau is a 2022 graduate of UCLA School of Law and a 2013 graduate of Vanderbilt University. This Article is dedicated to the resilient elders, women, families, and communities impacted by anti-Asian violence during the COVID-19 pandemic. The author wishes to thank her wonderful family and friends and beloved cat for supporting her through each step of law school, as well as the entire APALJ team for their detail-oriented feedback and professionalism.

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## INTRODUCTION

For thousands of years, families of Chinese descent across Asia have observed Qingming Festival, also called Tomb Sweeping Day or Ancestors' Day. Qingming Festival occurs during the first weekend of April and marks the unofficial beginning of spring.<sup>1</sup> On this day, families visit the resting places of ancestors, clean gravesites, make ritual offerings, and enjoy picnics with foods like crispy cakes and sweet rice balls.<sup>2</sup> Sometimes conflated with ancestral worship, the rituals of Qingming Festival more accurately represent a Confucian form of posthumous remembrance.<sup>3</sup> For example, observers sweep and tidy graves as a tangible way to pay respects to ancestors and retell their stories to the next generation.<sup>4</sup> Burning thin joss paper is said to send “money” to deceased relatives that they can use to buy goods and even pay off afterlife debts.<sup>5</sup> And baking green rice balls, sharing peach blossom porridge, and flying kites are all ways for observers to express their anticipation of new life in the spring season.<sup>6</sup>

Qingming traditions offer a glimpse into East Asian cultural values surrounding life, death, and aging. These values include revering elders,

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1. *Qingming Festival: Traditional Chinese Festivals*, CHINA INTERNET INFO. CTR., <http://www.china.org.cn/english/features/Festivals/78319.htm> (last visited Apr. 28, 2021) [<https://perma.cc/UQ2D-V82F>].

2. *Seven Foods for Qingming Festival*, CHINA DAILY, <https://www.chinadaily.com.cn/a/201904/06/WS5ca7df1ea3104842260b49f4.html> (Apr. 6, 2019, 7:05 PM) [<https://perma.cc/WVB2-KFVH>].

3. *See, e.g.*, Chris Buckley, *China's Ancestor Day Leads Confucian Revival*, REUTERS (Apr. 3, 2008, 11:46 PM), <https://www.reuters.com/article/idINIndia-32846920080404> [<https://perma.cc/BV9P-WQ2C>]. *But see Qing Ming Festival*, SMITHSONIAN NAT' MUSEUM ASIAN ART, <https://asia.si.edu/learn/for-educators/teaching-china-with-the-smithsonian/videos/qing-ming-festival> [<https://perma.cc/U5S8-4GU8>] (“[T]he festival traditions derive primarily from Confucianism, which emphasizes respect and filial piety to the deceased.”).

4. *See, e.g.*, *Tomb Sweeping Festival: China Pays ‘Virtual’ Respects to Ancestors*, BBC (Apr. 4, 2020), <https://www.bbc.com/news/world-asia-china-52157455> [<https://perma.cc/T42K-C5KU>] (describing new methods to pay “virtual respect” as a result of COVID-19, including buying offerings and “cloud tomb sweeping” online, or paying cemetery staff to live stream the physical tomb sweeping ritual).

5. Wes Radez, *How to Buy and Burn Joss Paper: A Complete Guide*, CHINESE AM. FAM. (May 10, 2020), <https://www.chineseamericanfamily.com/how-to-buy-and-burn-joss-paper> [<https://perma.cc/746B-ELP7>].

6. *Qingming Festival*, VANDERBILT UNIV. (Apr. 5, 2019), <https://www.vanderbilt.edu/diversity/qingming-festival> [<https://perma.cc/TTR7-V3UZ>]; *Introduction to Qingming Festival*, NANYAN OBSERVER AT PEKING UNIV. SHENZHEN GRADUATE SCH. (Apr. 8, 2020), <https://thenanyan.com/2020/04/08/introduction-to-qingming-festival> [<https://perma.cc/XA9P-CYM4>].

observing filial piety, and maintaining family harmony.<sup>7</sup> As cultural bedrocks, these values are often instilled in those who have migrated from Asia to America.<sup>8</sup> This Article seeks to explore how aspects of Asian American identity and history uniquely shape individual interactions with family and elder law, with a focus on the aspects of East and South Asian culture mentioned above.<sup>9</sup> Specifically, this Article examines how values like filial piety manifest in the immigrant community's approaches to elder caregiving, end-of-life decisions, and estate planning.

Part I provides background regarding the United States' extensive history of anti-Asian immigration policies and legislation; these discriminatory policies help explain the continuing proliferation of Asian cultural values in Asian American immigrants. Part II describes cultural and historical considerations that shape how Asian American adult children provide caregiving to their parents, particularly in the face of a rapidly aging society. Part III examines the unique challenges Asian American families face in helping elders establish advanced directives and making end-of-life decisions on behalf of ill family members. Part IV considers similar challenges in estate planning and the handling of inheritance disputes. Finally, Part V suggests topics for future research to meet the legal needs of the rapidly growing and aging sectors of Asian America today. The Article concludes by recognizing inevitable changes to once deep-seated cultural values as members of the East and South Asian diaspora become increasingly acclimated to the United States majority culture.

## I. OVERVIEW OF ASIAN AMERICAN MIGRATION

Who is included in the term "Asian American"? As victims of legal exclusion and disenfranchisement from the 1800s until the 1960s, the Asian American experience is one of both invisibility and perpetual conspicuousness.<sup>10</sup> This tendency may be traced to dehumanizing narratives that persist about Asian Americans as foreign, submissive members of a "model minority" monolith.<sup>11</sup> But the Asian American experience is far from universal.

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7. See Qun Wang, "Double Consciousness," *Sociological Imagination, and the Asian American Experience*, 4 RACE, GENDER & CLASS 88, 91 (1997) (noting Confucianism's "emphasis on courtesy, individual responsibility, and familial and social harmony . . . played an instrumental role in maintaining stability and peace" in once-war-torn China).

8. See, e.g., Katherine Lee McBride, *[A Life] Lived Diligently*, 81 J. KAN. BAR ASS'N. 1, 11 (2012).

9. The author wishes to clarify this focus given that the term "Asian American," coined in the 1960s as a tool of political unification, refers to a huge swath of people from dozens of mother countries. See Anna Purna Kambhampaty, *In 1968, These Activists Coined the Term 'Asian American'—and Helped Shape Decades of Advocacy*, TIME (May 22, 2020, 12:00 PM), <https://time.com/5837805/asian-american-history> [<https://perma.cc/GEU3-VCKM>].

10. See Wang, *supra* note 7, at 88–89 (citing examples from Asian American literature in which characters' "psychological confusion, emotional frustration, and cultural alienation" stems from having to look at themselves through the eyes of others).

11. See Harvey Gee, *From Bakke to Grutter and Beyond: Asian Americans and*

Today, the Asian population in America is the country's fastest-growing racial group.<sup>12</sup> The Asian American population grew 81 percent over the last two decades; the second-fastest growing group was Hispanic Americans at 70 percent growth, compared to 20 percent growth among Black Americans and just 1 percent growth for white Americans.<sup>13</sup> In the 2020 Census, approximately 7.2 percent of U.S. citizens identified as Asian American,<sup>14</sup> and they originated from a myriad of home countries across East, Southeast, and South Asia.<sup>15</sup> Similar to the great diversity of national origin, the lifestyles and social status of Asian Americans after immigrating are also among the most economically divided in the nation.<sup>16</sup> The disparity in education, employment, English proficiency, and income levels between Asian American ethnic groups continues to widen.<sup>17</sup> For example, the Bureau of Labor Statistics reported in January 2021 that 44 percent of unemployed Asian American women were out of work for 6 months or longer during the COVID-19 pandemic, the highest rate of long-term unemployment for any racial group.<sup>18</sup> However, the reality of many Asian American women working in service professions like restaurants, retail, and beauty has been largely underreported and misunderstood.<sup>19</sup>

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*Diversity in America*, 9 TEX. J. C.L. & C.R. 129, 140–44 (2004) (discussing the origins and problematic implications of presenting Asian Americans as “a monolithic ethnic group that achieves economic success and social acceptance through education and hard work, and without governmental assistance or racial preferences”); *see also* LastWeekTonight, *Asian Americans: Last Week Tonight with John Oliver* (HBO), YOUTUBE (June 6, 2021), <https://youtu.be/29IXsOYBaow> [<https://perma.cc/5AF7-5XBV>] (explaining same).

12. Vignesh Ramachandran, *Asian Americans Are the Fastest Growing Group in the U.S., Report Finds*, PBS NEWS HOUR (Apr. 13, 2021, 4:52 PM), <https://www.pbs.org/newshour/nation/asian-americans-are-the-fastest-growing-group-in-the-u-s-report-finds> [<https://perma.cc/L639-WRRC>].

13. *See* Abby Budiman & Neil G. Ruiz, *Asian Americans Are the Fastest-Growing Racial or Ethnic Group in the U.S.*, PEW RSCH. CTR. (Apr. 9, 2021), <https://www.pewresearch.org/fact-tank/2021/04/09/asian-americans-are-the-fastest-growing-racial-or-ethnic-group-in-the-u-s> [<https://perma.cc/U2ZQ-YNVL>].

14. Nicholas Jones, Rachel Marks, Roberto Ramirez & Merarys Ríos-Vargas, *2020 Census Illuminates Racial Ethnic Composition of the Country*, U.S. CENSUS BUREAU (Aug. 12, 2021), <https://www.census.gov/library/stories/2021/08/improved-race-ethnicity-measures-reveal-united-states-population-much-more-multiracial.html> [<https://perma.cc/L6F5-HYVF>].

15. *See* Abby Budiman & Neil G. Ruiz, *Key Facts about Asian Americans, a Diverse and Growing Population*, PEW RSCH. CTR. (Apr. 29, 2021), <https://www.pewresearch.org/fact-tank/2021/04/29/key-facts-about-asian-origin-groups-in-the-u-s> [<https://perma.cc/LR2P-2XQA>].

16. *Id.*

17. *Id.* (comparing, for example, the median Indian American household income of \$119,000 with that of Burmese Americans at \$44,000).

18. CLAIRE EWING-NELSON, NAT'L WOMEN'S L. CTR., *ALL OF THE JOBS LOST IN DECEMBER WERE WOMEN'S JOBS 1* (2021), <https://nwlc.org/wp-content/uploads/2021/01/December-Jobs-Day.pdf> [<https://perma.cc/HJ8F-KXDF>].

19. *See* Katherine Kam, *Why Asian American Women Have Had Highest Jobless Rates During Last 6 Months of Covid*, NBC NEWS (Jan. 27, 2021, 10:16 AM), <https://www.nbcnews.com/news/asian-america/why-asian-american-women-have-had-highest-jobless-rates-during-n1255699> [<https://perma.cc/Z27M-9XVV>].

Each group of immigrants has its own history and challenges, but understanding the general development of East and South Asian immigration to the United States may help explain the high degree to which common Asian cultural values have proliferated in American immigrants. Namely, the population has largely retained values like filial piety because most Asian American immigration is relatively recent.

In the mid-19<sup>th</sup> century, Chinese immigrants began arriving in the United States to pursue better economic prospects in the California Gold Rush.<sup>20</sup> When the Gold Rush ended, America fell into widespread economic depression.<sup>21</sup> Chinese American workers were regarded as cheap labor in the railroad, garment, and factory industries, and they faced hostility and ethnic discrimination from non-Chinese workers and legislators.<sup>22</sup> In 1882, the Chinese Exclusion Act banned immigration from China,<sup>23</sup> the first major restriction on voluntary immigration in American history.<sup>24</sup> In 1907 and 1908, similar restrictions were placed on Japanese and Korean immigration through the “Gentlemen’s Agreement,”<sup>25</sup> a stipulation with the Japanese government to voluntarily restrict the number of exit visas issued to common laborers.<sup>26</sup> Ten years later, the Immigration Act of 1917 limited the entry of Asian Indians;<sup>27</sup> by 1922, Japanese people were deemed ineligible for citizenship entirely.<sup>28</sup> National origin quotas remained in place until 1965, after which Asian migration rose sharply.<sup>29</sup>

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20. Freddy Funes, *Beyond the Plenary Power Doctrine: How Critical Race Theory Can Help Move Us Past the Chinese Exclusion Case*, 11 SCHOLAR 341, 343–46 (2009) (describing the explosion of Chinese immigration after 1850 and subsequent vilification of and mob violence towards the new immigrants); see also *Chinese Immigration and the Chinese Exclusion Acts*, U.S. DEPT. STATE: OFF. HISTORIAN, <https://history.state.gov/milestones/1866-1898/chinese-immigration> [<https://perma.cc/KY4A-DKXV>].

21. Funes, *supra* note 20, at 346–47.

22. *Id.*

23. Chinese Exclusion Act of 1882, ch. 126, 22 Stat. 58, 58–59 (noting that, “in the opinion of the Government of the United States the coming of Chinese laborers to this country endangers the good order of certain localities within the territory thereof”).

24. *Chinese Exclusion Act (1882)*, NAT’L. ARCHIVES, <https://www.archives.gov/milestone-documents/chinese-exclusion-act> [<https://perma.cc/7FQM-HAKS>].

25. Paul Finkelman, *Coping with a New “Yellow Peril”: Japanese Immigration, the Gentlemen’s Agreement, and the Coming of World War II*, 117 W. VA. L. REV. 1409, 1411, 1444–45 (2015) (quoting a report of the U.S. Industrial Commission in 1901 describing “the Japanese” as “more servile than the Chinese, but less obedient and far less desirable. They have most of the vices of the Chinese, but none of the virtues . . . and are as a class tricky, unreliable and dishonest.”).

26. *Id.* at 1428.

27. *A Brief Timeline of U.S. Policy on Immigration and Naturalization*, New York City Bar Association, 2015 WL 6394834 (noting the 1917 Immigration Act “provided for literacy tests for those over 16 and established an ‘Asiatic Barred Zone’” which barred immigration from all Asian countries).

28. *Id.*

29. See Mary Hanna & Jeanne Batalova, *Immigrants from Asia in the United States*, MIGRATION POL’Y INST. (Mar. 10, 2021), <https://www.migrationpolicy.org/article/immigrants-asia-united-states-2020> [<https://perma.cc/X9UK-U4HM>].

In addition to the country's prolonged history of targeting Asian immigrants through legislation,<sup>30</sup> Asian Americans have also routinely been denied full rights to citizenship, suffrage, and due process in the courts. In *People v. Hall*,<sup>31</sup> for example, the Supreme Court of California held that the testimony of Chinese people was inadmissible against a white man, overturning his conviction for murdering a Chinese immigrant.<sup>32</sup> Similarly, in 1923, the Supreme Court, in *United States v. Thind*,<sup>33</sup> held Asian Indians to be ineligible for citizenship.<sup>34</sup> And during World War II, Japanese Americans were regarded as the enemy and forced into internment camps, a practice infamously upheld by the Supreme Court in *Korematsu v. U.S.*<sup>35</sup>

Due to centuries of discrimination and exploitation,<sup>36</sup> the majority of Asian American immigrants arrived after the national origin quotas were removed in 1965.<sup>37</sup> The Pew Research Center reports that the majority of all Asian Americans today, 57 percent—and 71 percent of all Asian American adults—were born outside the United States.<sup>38</sup> In 2003, just 12 percent of Asian Americans were third-generation and beyond, or born to U.S.-born parents.<sup>39</sup> Because most Asian Americans are relatively recent arrivals (first- and second-generation), research suggests that individuals continue to maintain a significant degree of attachment to cultural values like filial piety, conformity, and a traditionally patriarchal family structure in the United States.<sup>40</sup> Scholarship in the fields of sociology and psychology reveals

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30. *Id.*; see also Carl Krueger, *Congress Controls the Melting Pot*, 46 R.I. BAR J. 9 (Dec. 1997).

31. 4 Cal. 399, 404–05 (1854).

32. *Id.* at 404–05. In the majority opinion, Chief Justice Murray described Chinese immigrants as an “anomalous spectacle of a distinct people, . . . whose mendacity is proverbial; . . . incapable of progress or intellectual development beyond a certain point.” *Id.* at 404–405. He wrote, “The same rule which would admit [Chinese people] to testify, would admit them to all the equal rights of citizenship, and we might soon see them at the polls, in the jury box, upon the bench, and in our legislative halls.” *Id.* at 404.

33. 261 U.S. 204 (1923)

34. *Id.* at 214–15. The Court ruled that a “high-caste Hindu” was not a white person and thus disqualified from naturalization. *Id.*

35. *Korematsu v. United States*, 323 U.S. 214 (1944).

36. See Gilbert C. Gee et. al., *The Association Between Self-Reported Racial Discrimination and 12-Month DSM-IV Mental Disorders Among Asian Americans Nationwide*, 64 Soc. Sci. MED 1984, 1985 (2007) (outlining the history of Asian American discrimination in the U.S. and hate crimes, racial profiling, and employment discrimination today).

37. See Hanna & Batalova, *supra* note 29.

38. See Budiman & Ruiz, *supra* note 15; see also *The Rise of Asian Americans*, PEW RSCH. CTR., <https://www.pewresearch.org/social-trends/2012/06/19/the-rise-of-asian-americans> [<https://perma.cc/2XKL-XW93>] (reporting Japanese Americans to be the only Asian subgroup majority U.S.-born, with 73% of the total population born in the U.S.).

39. Min Zhou, *Are Asian Americans Becoming “White?”*, 3 CONTEXTS 29, 31 (2004).

40. David Quan, *Asian Americans and Law: Fighting the Myth of Success*, 38 J.L. EDUC. 619, 622–23 (1988); but see Isao Takei & Arthur Sakamoto, *Demographic Characteristics of Third-Generation Asian Americans: Socioeconomic Attainments and Assimilation*, POPULATION ASS'N OF AM. 1, 26–27 (2009) (describing changes in economic



Asian Americans experience stress when the cultural values of their heritage conflict with those of the American majority, and there are dual pressures to conform to both.<sup>41</sup>

Although the aforementioned studies explain why Asian American immigrants maintain a cultural link to their home countries, limited legal scholarship has been done on how various parts of the Asian American community navigate family law decisions. Thus, for the purposes of this Article, references to “Asian culture” encompass very broad characteristics shared generally by Chinese, Indian, Korean, Vietnamese, Japanese, Singaporean, Filipino, and Pacific Islander backgrounds.<sup>42</sup> Data gathered by the U.S. Census regarding Asian American and Pacific Islander (“AAPI”) individuals refers to these ethnicities as well, though the cultures differ substantially.

## II. ELDER CAREGIVING

I tell you, monks, there are two people who are not easy to repay. Which two? Your mother & father. Even if you were to carry your mother on one shoulder & your father on the other shoulder for 100 years, and were to look after them by anointing, massaging, bathing, & rubbing their limbs, and they were to defecate & urinate right there [on your shoulders], you would not in that way pay or repay your parents.

Discourse on Knowing the Debts (Kataññu Sutta)<sup>43</sup>

### A. *Origins of Filial Piety in Asian Countries*

The notion of filial piety is prevalent in many East Asian countries<sup>44</sup> and India,<sup>45</sup> where caregiving is seen as a natural commitment to elder parents. Generally, the notion of filial piety derives from Confucianism and early Buddhism in East Asia and from Hinduism and Sikhism in South Asia.<sup>46</sup>

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and cultural outcomes among third-and-higher generation Hispanic and Asian Americans; for example, the more that Asian Americans culturally assimilated to the U.S., the less education they attained).

41. Derek Iwamoto & William Liu, *The Impact of Racial Identity, Ethnic Identity, Asian Values and Race-Related Stress on Asian Americans and Asian International College Students' Psychological Well-Being*, 57 J. COUNS. PSYCH. 79, 88 (2010) (finding an inverse relationship between study participants' connection to their ancestral cultural values and beliefs, and their self-rated psychological well-being).

42. See Budiman and Ruiz, *supra* note 15 (analyzing data from the 2020 U.S. Census and reporting that Americans of Chinese, Indian, Filipino, Vietnamese, Korean and Japanese descent account for 85% of all Asian Americans).

43. *Kataññu Suttas: Gratitude*, AN 2.31–32, (Thanissaro Bhikku trans., Access to Insight BCBS ed. Nov. 30, 2013), <http://www.accesstoinsight.org/tipitaka/an/an02/an02.031.than.html> [<https://perma.cc/WS8J-WK6X>].

44. McBride, *supra* note 8, at 11.

45. See, e.g., Karuna Sharma & Candace L. Kemp, “*One Should Follow the Wind*”: *Individualized Filial Piety and Support Exchanges in Indian Immigrant Families in the United States*, 26 J. AGING STUD. 129, 130, 137 (2012) (analyzing qualitative data from older Indian American immigrants describing how filial piety affected their intergenerational relationships and provision of familial support).

46. See generally Daniel Qin, *Confucian Filial Piety and the Fifth Commandment: A*



Under these social and religious traditions, adult children are expected to ensure both the physical and mental well-being of their aging parents.<sup>47</sup> The Confucian virtue of filial piety, or *xiao* in Chinese, refers to children's submission to parental authority, whereby children are expected to provide older parents with "support, memorializing, attendance, deference, compliance, respect and love."<sup>48</sup> The concept of *sevā* in Indian culture, derived from Hinduism and Sikhism, and meaning "selfless service," is similar.<sup>49</sup> It refers to relationships "of intergenerational reciprocity and affection, in which juniors provide care for their senior parents . . . in return for all of the effort, expense and love their parents expended to produce and raise them in infancy and childhood."<sup>50</sup> Buddhism emphasizes helping one's parents in their spiritual progress, such as helping parents perform good deeds and giving them respect, but material and physical assistance is also expressly required.<sup>51</sup>

Today, the centuries-old concept of filial piety is placing a greater strain on social and government systems. The primary reason: nearly every Asian country with significant immigration ties to the United States has a growing senior population. For example, in 2015, China ended its decades-old "one-child policy" in order to address the burdens of a rapidly aging population.<sup>52</sup> The Chinese government's primary method of addressing rising eldercare needs has been to radically alter a foundational part of China's strategy towards "moderate prosperity," another Confucian ideal.<sup>53</sup>

Singapore is similarly reticent to shift the onus of caregiving from individuals onto the state. In 1957, adults aged 60 and over made up less than 4 percent of Singapore's population.<sup>54</sup> Today, thanks to a successful popula-

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*Fulfillment Approach*, 16 ASIAN J. PENTECOSTAL STUD. 139 (2013).

47. See *Adult Children Ignoring Confucius Risk Lawsuits in China*, BLOOMBERG (Mar. 17, 2013, 2:48 PM), <https://www.bloomberg.com/news/articles/2013-03-17/chinese-kids-who-ignore-confucius-face-state-backlash> [<https://perma.cc/B3PM-B5ML>].

48. Kuang-Hui Yeh & Olwen Bedford, *A Test of the Dual Filial Piety Model*, 6 ASIAN J. SOC. PSYCH. 215 (2003).

49. Edwina Pio & Jawad Syed, *Sacred Activism through Seva and Khidmat: Contextualising Management and Organisations in South Asia*, 6 J. MGMT. & ORG. 20 572, 576-77 (2014).

50. Sarah Lamb, *Intimacy in a Transnational Era: The Remaking of Aging Among Indian Americans*, 11 DIASPORA 299, 304-06 (describing "intergenerational reciprocity" in Indian culture as both parents and children providing for each other material support, services, affection, and the performance of rites); Sharma & Kemp, *supra* note 45, at 129.

51. Xing Guang, *The Teaching and Practice of Filial Piety in Buddhism*, 31 J.L. & RELIGION 212, 217 (2016).

52. Chris Buckley, *China Ends One-Child Policy, Allowing Families Two Children*, N. Y. TIMES (Oct. 29, 2015), <https://www.nytimes.com/2015/10/30/world/asia/china-end-one-child-policy.html> [<https://perma.cc/XWR5-TMDE>].

53. In 2015, General Secretary Xi Jinping announced policy goals to build a "moderately prosperous society." This Chinese term, derived from Confucianism, describes a society with smaller disparities between the wealthiest and the poorest, built around a functional middle-class. See *China Media Back Xi's 'Prosperous Society' Dream*, BBC (Feb. 26, 2015), <https://www.bbc.com/news/world-asia-china-31636045> [<https://perma.cc/4RH3-8WZB>].

54. Charles P. Wallace, *Aging Asia Feels the Squeeze*, L.A. TIMES A1, A9 (Aug. 19, 1994).

tion control policy and improvements in life expectancy, adults 60 and up are expected to comprise 26 percent of the population by 2030.<sup>55</sup> Average annual healthcare expenses are expected to reach more than \$37,000 USD per year by 2030 as well,<sup>56</sup> the highest in the Asia-Pacific region.<sup>57</sup> Singapore has actively avoided setting up a Western-style state welfare system—most notably by not having a social security program—and instead uses policies like compulsory savings plans to encourage individuals to provide for their own “security.”<sup>58</sup> As a result, there are few government safety nets. The government subsidizes the cost of some elder daytime centers and, for adults with severe needs, live-in maids,<sup>59</sup> but caretaking remains the younger generation’s out-of-pocket expense.<sup>60</sup> In fact, financially supporting parents is not only customary but codified in Singapore; under the 1996 Maintenance of Parents Act, parents who cannot support themselves may sue their children to obtain a monthly allowance.<sup>61</sup>

With a declining fertility rate and high life expectancy, Taiwan is one of the fastest aging societies in the world; researchers estimate that, by 2025, a fourth of its population will be 65 years of age or older.<sup>62</sup> Due to its “super-ag-

55. *Id.* (noting that Singapore’s aging demographic, similar to the rest of Asia’s, have been caused by two converging trends: a decline of the birthrate due to rising incomes and education, and increased life expectancy due to improvements in medical care).

56. Janice Tai, *Elderly health costs to rise tenfold by 2030: Report*, THE STRAITS TIMES (Aug. 25, 2016, 5:00 AM), <https://www.straitstimes.com/singapore/health/elderly-health-costs-to-rise-tenfold-by-2030-report> [<https://perma.cc/M52Z-YTV8>]

57. Marina Lopes, *As Singapore Ages, Single Women Pay the Price of Caring for Elderly Parents*, WASH. POST (Apr. 12, 2021, 2:00 AM), [https://www.washingtonpost.com/world/asia-pacific/women-asia-singapore-parents-ageing/2021/04/12/1479ef98-95da-11eb-8f0a-3384cf4fb399\\_story.html](https://www.washingtonpost.com/world/asia-pacific/women-asia-singapore-parents-ageing/2021/04/12/1479ef98-95da-11eb-8f0a-3384cf4fb399_story.html) [<https://perma.cc/53CE-8HUZ>].

58. See Inger Olsson et. al., *Social Welfare in Singapore and Sweden: Differences in Organisational Systems of Health Care, Social Security and Rehabilitation*, 3 INT’L J. DISABILITY MGMT. RSCH. 30, 34–35 (2008) (describing differences between Singapore’s Central Provident Fund and Western-style social security pools. “While social welfare policy in the latter is based on social insurances and income transfers based on need, the individual fund system of Singapore . . . is based on individual savings” that “may be used at the individual’s discretion for different purposes over the course of his or her life.”).

59. See Lopes, *supra* note 57.

60. See *id.* One caretaker describes setting aside money for her mother as an “allowance” since she was 16; becoming “broke at 48, having spent more than \$75,000 on her mother’s care”; and eventually moving back home at 53 to support her mother’s needs. *Id.*

61. Maintenance of Parents Act 1995, ch. 167B § 5(2), SING. STATUTES ONLINE (June 1, 1996), <https://sso.agc.gov.sg/Act/MPA1995> [<https://perma.cc/RZH5-HRV8>] (“When ordering maintenance for the benefit of an applicant, the Tribunal shall have regard to all the circumstances of the case including (but not limited to) the following matters: the income, earning capacity, property and other financial resources of the respondent; the expenses incurred by the respondent in supporting his spouse or children; and the contributions and provisions, whether financial or otherwise, which the respondent has made for the maintenance of the applicant.”).

62. Yi-Yin Lin & Chin-Shan Huang, *Aging in Taiwan: Building a Society for Active Aging and Aging in Place*, 56 GERONTOLOGIST 176, 177 (2016).

ing” status,<sup>63</sup> the onus of eldercare in Taiwan has expanded somewhat beyond one’s own children. First, while filial responsibility laws are also in place, amendments passed in 2010 allow adult children’s obligations to their parents to be waived or exempted in cases where the parents abused or abandoned the children.<sup>64</sup> Additionally, rather than elder care being solely one family’s duty, increasingly it is seen as the collective responsibility of the whole community.<sup>65</sup> The Taiwanese Constitution expressly endorses principles of a welfare state with regards to eldercare,<sup>66</sup> and in 2017, the government implemented the Long-Term Care Service Act to expand coverage and streamline its system of paying caregivers.<sup>67</sup> However, as a practical matter, state support in Taiwan remains almost always supplemental to unpaid care by children. Given that 30 percent of Taiwan’s elders live alone or with an elderly spouse<sup>68</sup> and the country has the world’s lowest birth rate,<sup>69</sup> this arrangement likely cannot be sustained for much longer. Further, the burden is disproportionately borne by daughters,<sup>70</sup> reinforcing gendered family labor divisions that Taiwanese people may consider outdated and unfair.<sup>71</sup>

As the traditional view of filial caregiving as an unpaid moral obligation becomes unattainable for many, the state must step in to ensure its elders can live in comfort, with dignity.

## B. *An Aging Asian America*

Asian Americans face similar struggles. Like their home countries, the population of Asians in America is also rapidly aging. The U.S. Census Bureau projects the number of Asian, Hawaiian, and Pacific Islanders in the United States over age 65 to reach 7.9 million by 2060, compared to just 2.5

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63. *Id.*

64. Min-hsi Huang & Lillian Lin, *Filial Duty No Longer Absolute Obligation After Law Revision*, TAIWAN NEWS (Jan. 7, 2010, 10:01 PM), <https://www.taiwannews.com.tw/en/news/1150123> [<https://perma.cc/46F2-4VTB>].

65. Chao-Tien Chang, *Whose Duty of Elder Care? Examining Aging Law and Policy In Taiwan*, 37 WIS. INT’L L.J. 1, 34–37 (2019).

66. TAIWAN CONST. § 4, art. 155 (rev. 2005) (“The State shall establish a social insurance system to promote social welfare. To the aged and the physically disabled who are unable to earn a living, and to victims of extraordinary calamities, the State shall provide appropriate assistance and relief.”).

67. Cheng-fen Chen & Tsung-hsi Fu, *Policies and Transformation of Long-Term Care System in Taiwan*, 24 ANNALS GERIATRIC MED. & RSCH. 187, 189–193 (2020).

68. See Lo Pin-shan, *Solitary Seniors Need More Care*, TAIPEI TIMES (July 8, 2020), <https://www.taipetimes.com/News/editorials/archives/2020/07/08/2003739547> [<https://perma.cc/L8T6-ALUA>] (reporting nine percent of Taiwanese elders aged 65 and up live alone, while another twenty percent live only with a spouse, likely another elder).

69. Keoni Everington, *Taiwan has lowest birth rate in world: CIA*, TAIWAN NEWS (Apr. 19, 2021, 1:13 PM), <https://www.taiwannews.com.tw/en/news/4180941> [<https://perma.cc/4RMF-FSCL>].

70. See Chang, *supra* note 65, at 10–13; see also Allison K. Hoffman, *The Reverberating Risk of Long-Term Care*, 15 YALE J. HEALTH POL’Y L. & ETHICS 57, 61–62 (2015) (noting women in the U.S. are more likely than men to leave the workforce and become caregivers).

71. See Chang, *supra* note 65, at 7, 20–21.

million in 2019.<sup>72</sup> In 2025, the Asian American population will have grown 246 percent in 25 years compared to just 73 percent growth for non-Hispanic White Americans.<sup>73</sup> Further compounding the issue, about three in ten Asian American seniors qualify as disabled.<sup>74</sup>

The American Association of Retired Persons (AARP) recently reported that Asians remain the racial group in the United States most likely to assist in caring for or financially supporting parents, in-laws, or other older relatives.<sup>75</sup> Asian Americans are one of the racial groups most likely to employ “informal home care,” or give health-related services in their homes<sup>76</sup>, and make significant sacrifices of careers, money, and time to do so. One reason: caregiving continues to be viewed by Asian Americans (as well as Hispanic and Black Americans) as an expected part of life for members of a society.<sup>77</sup> AAPIs are more than twice as likely to live in multigenerational households compared to the general U.S. population (17 percent versus 7 percent).<sup>78</sup> Thus, immigrant children who watch parents take care of grandparents while growing up may come to see the sacrifices of caregiving as “something that was done without question.”<sup>79</sup> Other research has confirmed the inverse. One study of 55 older Taiwanese immigrants revealed that those who did not physically care for their own parents, given that they were overseas, adjusted their expectations of their children accordingly.<sup>80</sup>

72. See ADMIN. CMTY. LIVING, 2020 PROFILE OF ASIAN AMERICANS AGE 65 AND OLDER 1, 2 (2020); see also Tanzina Vega, *As Parents Age, Asian-Americans Struggle to Obey a Cultural Code*, N.Y. TIMES (Jan. 14, 2014), <https://www.nytimes.com/2014/01/15/us/as-asian-americans-age-their-children-face-cultural-hurdles.html> [<https://perma.cc/STV9-Z6KL>].

73. Esme Fuller-Thomson, Sarah Brennenstuhl & Marion Hurd, *Comparison of Disability Rates Among Older Adults in Aggregated and Separate Asian American/Pacific Islander Subpopulations*, 101 AM. J. PUB. HEALTH 94 (2011).

74. ADMIN. CMTY. LIVING, *supra* note 72, at 4.

75. Sheel Pandya, *Racial and Ethnic Differences Among Older Adults in Long-Term Care Service Use*, AARP PUB. POL'Y INST. (Jun. 2005) (finding 42% of Asians in America assist in caring for or financially supporting parents, in-laws, or other older relatives, followed by Hispanic (34%), Black (28%) and White (19%) Americans).

76. James B. Kirby & Denys T. Lau, *Community and Individual Race/Ethnicity and Home Health Care Use Among Elderly Persons in the United States*, 45 HEALTH SERV. RSCH. 1251, 1260 (2010).

77. Jennifer R. Pharr, Carolee Dodge Francis, Christine Terry & Michele C. Clark, *Culture, Caregiving, and Health: Exploring the Influence of Culture on Family Caregiver Experiences*, 2014 ISRN PUB. HEALTH 1, 3 (Mar. 26, 2014).

78. *Family Caregiving*, NAT. ASIAN PACIFIC CTR. ON AGING, <https://www.napca.org/impact-areas/family-caregiving> [<https://perma.cc/6D9Z-D6MQ>].

79. Min Xue et. al., *The Experience of Family Caregivers of Patients Receiving Home Nasogastric Tube Feeding in China: A Descriptive Qualitative Study*, 35 J. HUM. NUTRITION & DIETETICS S564, S565 (2021).

80. See generally Ken Chih-Yan Sun, *Reconfigured Reciprocity: How Aging Taiwanese Immigrants Transform Cultural Logics of Elder Care*, 76 J. MARRIAGE & FAMILY 875, 879–880 (2014). One study participant noted that “the sense of unrealized responsibilities that she had for her father influenced her expectations of how her own children should treat her”; another said she did not “have any moral right to expect her children to look after her in her later life.” *Id.*

Additionally, caregiving is considered an essential part of respecting elders. The cultural tenet of elder respect has been a positive driving force for many Asian American communities during the COVID-19 crisis. Some communities have chosen to organize in response to an ongoing string of violent hate crimes, often directed towards older immigrants.<sup>81</sup> Community-based solutions include accompanying the elderly on walks and errands,<sup>82</sup> organizing free grocery distributions, and conducting bystander intervention training to disrupt hate-based harassment.<sup>83</sup> The desire to protect and provide for elders has also encouraged some small business owners and restaurants to organize food deliveries for homebound and at-risk seniors during the pandemic.<sup>84</sup>

On the other hand, researchers have observed that the value of filial obligation may lead to a pervasive belief among Asian Americans that it is “unacceptable to say no to family caregiving responsibilities.”<sup>85</sup> One 2015 study found that 73 percent of adult Chinese Americans giving care to elders felt stress, depression, anxiety, or isolation, while six in ten even showed potential for abusing or neglecting their parent.<sup>86</sup> This sense of compulsion, without appropriate interventions, can sow seeds of resentment and increase one’s sense of burden, ultimately harming the caregiving individual’s mental well-being.<sup>87</sup>

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81. See, e.g., Eric Westervelt, *Anger and Fear as Asian American Seniors Targeted in Bay Area Attacks*, NPR (Feb. 12, 2021, 12:49 PM), <https://www.npr.org/2021/02/12/966940217/anger-and-fear-as-asian-american-seniors-targeted-in-bay-area-attacks> [<https://perma.cc/4XA6-4Q3Z>]; Kimmy Yam, *There Were 3,800 Anti-Asian Racist Incidents, Mostly Against Women, in Past Year*, NBC NEWS (Mar. 16, 2021, 3:13 PM), <https://www.nbcnews.com/news/asian-america/there-were-3-800-anti-asian-racist-incidents-mostly-against-n1261257> [<https://perma.cc/Q7VW-ULSH>].

82. See, e.g., Kelsie Smith, *Hundreds of People Are Volunteering to Escort Elderly Asian Americans to Help Keep Them Safe*, CNN (Feb. 15, 2021, 8:38 AM), <https://www.cnn.com/2021/02/15/us/volunteer-group-helps-to-keep-elderly-asian-americans-safe-trnd/index.html> [<https://perma.cc/XP65-MUVT>].

83. See, e.g., *Training to Stop Anti-Asian/American and Xenophobic Harassment*, HOLLABACK!, <https://www.ihollaback.org/bystanderintervention> [<https://perma.cc/J6MC-3CVJ>].

84. See, e.g., HEART OF DINNER, <https://www.heartofdinner.org/our-story> (last visited Apr. 29, 2022) [<https://perma.cc/2HNY-CNC3>] (an initiative delivering weekly hot lunches, fresh produce, and bulk ingredients to homebound elders in Manhattan’s Chinatown).

85. Man Guo, Sohyun Kim, XinQi Dong, *Sense of Filial Obligation and Caregiving Burdens Among Chinese Immigrants in the United States*, 67 J. AM. GERIATRICS SOC. S564, S565 (Aug. 2019).

86. Xinqi Dong, *Filial Piety Report: Health and Well-Being of Chicago Chinese Caregivers* 1, 24 (2015).

87. See Guo, Kim & Dong., *supra* note 85, at S569 (suggesting the implementation of programs that “focus[] on celebrating the cultural heritage of immigrants and improving the relationship between the parents and children”; the authors hypothesize that helping Chinese immigrant caregivers balance traditional and new social norms will help reduce caregiving burdens).

### C. *Filial Support Laws by State*

Filial support laws vary by jurisdiction in the United States.<sup>88</sup> More than half of American states have statutes delineating an adult child's duty to provide for her indigent parents, provided she has the financial resources.<sup>89</sup> Filial support statutes are more narrow than general "family responsibility" laws, which outline an individual's duty to support not only one's parents but also children, siblings, or a spouse.<sup>90</sup> Parent-specific support statutes are set by the legislature, while the more general family provision laws are rooted in common law.<sup>91</sup> For example, California Family Code § 4404 reads: "In determining the amount to be ordered for support, the court shall consider the following circumstances of each party: (a) Earning capacity and needs. (b) Obligations and assets. (c) Age and health. (d) Standard of living. (e) Other factors the court deems just and equitable."<sup>92</sup> The American justification for supporting parents may derive at least partially from legal duty.

In China, the aging population has forced some local governments to establish nursing homes and assisted-living facilities.<sup>93</sup> Although they remain scarce and prohibitively expensive for many,<sup>94</sup> these institutions were almost unheard of a decade prior. There has been a similar uptick of the use of retirement communities among aging Asian Americans as the need grows. From 1998 to 2008, the number of Asian American seniors living in nursing homes rose by 54 percent.<sup>95</sup> Meanwhile, more AAPI-centric organizations are aiming to help older seniors "age in place," or remain at home, for as long

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88. Art Lee, *Singapore's Maintenance of Parents Act: A Lesson to Be Learned from the United States*, 17 LOY. L.A. INT'L & COMP. L. REV. 671, 674 (1995).

89. *Id.*; see also Ann Britton, *America's Best Kept Secret: An Adult Child's Duty to Support Aged Parents*, 26 CAL. W. L. REV. 351, 351 (1990).

90. Lee, *supra* note 88, at 675.

91. A typical filial support statute might read: "All children shall be responsible for supplying necessary goods and services to their parents when their parents are unable to do so themselves." Lee E. Teitelbaum, *Intergenerational Responsibility and Family Obligation: On Sharing*, 1992 UTAH L. REV. 765, 784 (1992).

92. Cal. Fam. Code § 4404 (effective Jan. 1, 1994). Interestingly, these factors align closely with those enumerated in Singapore's Maintenance of Parents Act. See Maintenance of Parents Act 1995, ch. 167B § 5(2), SING. STATUTES ONLINE (June 1, 1996), <https://sso.agc.gov.sg/Act/MPA1995> [<https://perma.cc/RZH5-HRV8>]. This may point to a universality of the desire to look after aging parents, though the degree of personal and financial obligation one feels may differ.

93. Vega, *supra* note 72.

94. Leung-Wing Chu & Iris Chi, *Nursing Homes in China*, 9 J. AM. MED. DIR. ASS'N. 237, 241 (2008) (reporting that China has nursing home beds for fewer than 2% of the Chinese population age 65 and older).

95. Zhanlian Feng et al., *Growth of Racial and Ethnic Minorities in U.S. Nursing Homes Driven By Demographics and Possible Disparities in Options*, 30 HEALTH AFFS. 1358, 1358, 1360 (2011).



as possible.<sup>96</sup> One example is Penn Asian Senior Services, known as PASSi.<sup>97</sup> The Philadelphia-based homecare provider offers programs to train non-professional caregivers, typically adult children, to care for their parents at home.<sup>98</sup> The reason: studies suggest that “aging in place” can improve health outcomes in minority populations by helping elders stay in familiar surroundings, speak their own language, and eat familiar foods, assuming their health condition permits.<sup>99</sup>

One practical impediment for older Asian American adults to find quality eldercare, given that they are more likely to have migrated recently than other racial groups, is the prevalence of a language barrier. In 2016, Asian Americans Advancing Justice-LA reported that approximately 62 percent of Asian Americans in Los Angeles County ages 50 and up had limited English proficiency or faced challenges in English communication that hampered their ability to access basic services.<sup>100</sup> Similarly, a 2017 study of 705 older Chinese American immigrants found a significant association between limited English proficiency and poor health even where patients were given “racial-and language-concordant” care, meaning they saw a Chinese doctor who spoke Chinese.<sup>101</sup> The researchers concluded that simply providing a medical interpreter, even one from the same cultural background, does not itself ensure patients understand what is being communicated.<sup>102</sup>

Along with language barriers, U.S. health care providers must grapple with questions of cultural sensitivity. These might include whether to address

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96. See Shirley Wang, *As Asian Americans Age, Many Look for Options that Allow Them to Remain in Their Homes*, NBC NEWS (Sep. 26, 2019, 1:51 AM), <https://www.nbcnews.com/news/us-news/Asian-americans-age-many-look-options-allow-them-remain-their-n1057206> [<https://perma.cc/F2BP-X57T>].

97. *About Us*, PENN ASIAN SENIOR SERVICES (PASSi), <https://passi.us/about-us> (last visited Apr. 29, 2022) [<https://perma.cc/M5TH-JBDX>] (describing PASSi as “the largest provider of linguistically-attuned senior services for Asian and other limited English proficient (LEP) older adults in Southeastern Pennsylvania”).

98. *Id.*

99. Suzanne Dupuis-Blanchard et. al., *Strategies for Aging in Place: The Experience of Language-Minority Seniors with Loss of Independence*, 2 GLOB. QUAL. NURSING RSCH. 1, 7 (2015) (in a Canadian study examining the social and health advantages of aging at home in seniors who speak a minority language, the authors found that language barriers hampered both seniors’ use of health services and their overall health status).

100. ASIAN AM. ADVANCING JUST. & AARP, A COMMUNITY OF CONTRASTS: ASIAN AMERICANS 50 AND OLDER (LOS ANGELES COUNTY) (2016).

101. Janice Y. Tsoh et. al., *Healthcare Communication Barriers and Self-Rated Health in Older Chinese American Immigrants*, 41 J. CMTY. HEALTH 1, 7–9 (2016) (using subjective questionnaires to assess patients’ self-reported health status).

102. *Id.* at 8–9 (recommending, among other suggestions, that physicians work with community leaders and utilize multi-media digital technology to more effectively convey medical information to older Chinese American immigrants). See also Sunmin Lee et. al., *Barriers to Health Care Access in 13 Asian American Communities*, 34 AM. J. HEALTH BEHAV. 1, 7, 9 (2010) (finding, in their study of 174 older Asian Americans from thirteen countries of origin, “[e]ven Asians who have a relatively good command of the English language have difficulty in describing symptoms, understanding the physician’s explanation and treatment, and reading prescription labels”).



a patient by his first or last name, or how to treat war trauma in an elder who may have fled from violence in her home country.<sup>103</sup> There is a growing need for “culturally competent elder care services for Asian Americans,” as PASSi founder and executive director Im Ja Choi has noted.<sup>104</sup> PASSi seeks to address this need through creative use of its 29,000-square-foot facility, providing seniors a large space to enjoy or receive freshly prepared multi-cultural meals, counseling, vocational ESL classes, benefits assistance, dance classes, art workshops, and other social activities geared towards Asian nationalities.<sup>105</sup>

### III. END-OF-LIFE DECISIONS

How Asian Americans make family-based medical decisions can be another manifestation of filial piety. Although making end-of-life decisions on behalf of one’s parents is difficult for people of all cultural backgrounds, Asian Americans often struggle to balance the sensitive nature of a parent’s impending passing with ingrained cultural values.

One area of conflict is the desire to avoid sharing bad news with elders. In Chinese culture, the mention and even thought of death is traditionally avoided,<sup>106</sup> but there remain many cultural taboos and superstitions about death. For example, the number four in Chinese sounds phonetically identical to the word for “death,” so apartment building owners seeking to minimize bad luck might label the fourth floor as the “fifth” floor and repeat with subsequent floor levels containing the number four.<sup>107</sup>

Other Asian cultures believe direct disclosure of terminal illness or death may eliminate a sick person’s hope or will to live, or cause additional depression or anxiety.<sup>108</sup> Some Filipino patients, for example, have expressed a desire to not participate in end-of-life treatment discussions.<sup>109</sup>

103. Vega, *supra* note 72.

104. *Id.*

105. See PENN ASIAN SENIOR SERVICES (PASSi), <https://passi.us> (last visited Apr. 29, 2022) [<https://perma.cc/7NU8-T25T>].

106. See generally Yu Xu, *Death and Dying in the Chinese Culture: Implications for Health Care Practice*, 19 HOME HEALTH CARE MGMT. & PRAC. 412 (2007). The avoidance of discussing death may be in part due to the prevalence of irreligion in China. While traditional Chinese culture, some sects of Buddhism, and Taoism do not preclude belief in an afterlife, a 2015 Gallup poll revealed some 61 percent of people in the People’s Republic of China identify as atheist. *Losing Our Religion? Two Thirds of People Still Claim to Be Religious*, GALLUP INTL., <https://www.gallup-international.bg/en/33531/losing-our-religion-two-thirds-of-people-still-claim-to-be-religious> (last visited Apr. 29, 2022) [<https://perma.cc/Q8UN-JZ3K>].

107. This cultural superstition has also been called *tetraphobia*, or the fear of four. Jaclyn Skurie, *Superstitious Numbers Around the World*, NAT’L GEOGRAPHIC (Sep. 14, 2013), <https://www.nationalgeographic.com/culture/article/130913-Friday-luck-lucky-superstition-13> [<https://perma.cc/8PYY-LXCC>].

108. HEALTHCARE CHAPLAINCY NETWORK, *HANDBOOK OF PATIENTS’ SPIRITUAL AND CULTURAL VALUES FOR HEALTH CARE PROFESSIONALS* 72 (Susan K. Wintz & George Handzo, eds., 2014).

109. *Id.* at 72–73.

Approximately 65 percent of Filipinos identify as Catholic,<sup>110</sup> and healthcare chaplains have noted these families may believe a loved one can survive if their faith is “strong enough.”<sup>111</sup> In a report by the National Asian Pacific Center on Aging, a Fijian elder even noted that doctors themselves symbolize death and morbidity within the culture.<sup>112</sup>

Physicians may be unaware that some minority families avoid communicating “bad news” to family members and may even consider such communication disrespectful.<sup>113</sup> If there is a language barrier between the patient and the doctor, family members may purposefully choose not to translate certain portions of diagnoses or medical information.<sup>114</sup> Furthermore, in situations where telling the truth would not readily help a patient’s treatment, hiding the truth with a white lie may be expected of healthcare professionals.<sup>115</sup>

Further complicating end-of-life decision making is the duty a child may feel to prolong the life of a parent as much as possible, even if that parent prefers not to receive life-sustaining treatment.<sup>116</sup> For example, for thousands of years, Chinese emperors were said to seek miracle drugs to extend their lives or even achieve immortality.<sup>117</sup> Chinese death culture practices have few if any analogs to Western concepts like advance directives and establishing power of attorney.<sup>118</sup> Healthcare professionals have observed that asking Asian American patients about advanced directives is less likely to be well received than other racial groups.<sup>119</sup> Such a question may be perceived as bad luck, bringing the event of death “to their door,” or even sealing

110. Joseph Liu, *Asian Americans: A Mosaic of Faiths*, PEW RSCH. CTR. (July 19, 2012), <https://www.pewforum.org/2012/07/19/asian-americans-a-mosaic-of-faiths-overview> [<https://perma.cc/FQ55-CEFJ>].

111. Wintz & Handzo, *supra* note 108 at 72; *see also* Xu, *supra* note 106.

112. David Schafer, Heather Chun & Wesley Lum, *The Emerging Needs of Asian American and Pacific Islander Older Adults*, NATL. ASIAN PAC. CTR. AGING 1, 18 (2017). In another study of Asian American elders, most participants reported that going to the doctor for routine checkups is not the norm in their home countries. *See* Lee, *supra* note 102, at 7. They viewed going to the doctor as primarily a curative measure to be taken once one is very ill rather than preventive. *Id.*

113. McBride, *supra* note 8, at 11; *see also* THE FAREWELL (BIG BEACH FILMS ET. AL., 2019) (exploring the conflict between Western and Eastern approaches to end-of-life decision-making, when a Chinese family decides to keep their beloved family matriarch in the dark about her terminal diagnosis).

114. *Id.*

115. Xu, *supra* note 106, at 413.

116. Mei Ching Lee, Katherine A. Hinderer & Carla S. Alexander, *What Matters Most at the End-of-Life for Chinese Americans?*, 4 GERONTOLOGY & GERIATRIC MED. 1, 1–2 (2018) (in a survey of older Chinese Americans, their end-of-life wishes included not being a burden to family, being pain free and maintaining dignity; the authors note that “[i]n managing [end-of-life] care of parents, a good and ‘filial’ child is expected to do everything to prolong their parents’ life”).

117. Xu, *supra* note 106, at 412.

118. *Id.* at 413.

119. *See* Wintz & Handzo, *supra* note 108 at 72.

the patient's fate.<sup>120</sup> Instead, doctors recommend discreetly asking a family member regarding the existence of this important legal document.<sup>121</sup>

One Korean American journalist, Katherine McBride, shared her experience with her family taking over medically-informed consent for her Korean grandfather:

Under Korean law, custodians are to give consent for medical treatment for incapacitated persons. However, the accepted cultural expectation is that the family will make all medical decisions for a patient, despite the patient's competence. Though my grandfather was mentally competent until a few days prior to his death, my family was extremely involved in the decisions made regarding his healthcare treatment, physician-patient communications, end-of-life decisions regarding resuscitation and incapacitation, and a bequest of his body to the local university.<sup>122</sup>

McBride's experience illustrates both a child's duty to preserve her parent's life, and the cultural norm of prioritizing community over the individual. Together, a family's ideas and preferences can take priority or even replace those of the individual should a conflict arise.

Finally, a different lens through which many Asian Americans view end-of-life decisions may be Western religion. Nearly half of all Asian Americans identify as Christians.<sup>123</sup> Members of Christian congregations may consider filial piety differently than Asians do or be held to different expectations by parents who are both Christian and Asian. Because Asian American Christians actively contemplate life after death, for example, they may be more accustomed to discussing and preparing for death. And importantly, as discussed in greater detail in Part V, the younger generations now making end-of-life decisions tend to be more acculturated to the U.S.<sup>124</sup> A greater degree of acculturation has been linked to a lesser degree of one's sense of filial obligation.<sup>125</sup>

#### IV. ESTATE PLANNING

Some 65 percent of all Americans die without leaving a will.<sup>126</sup> In Asian cultures that avoid the topic of death, planning one's estate and preparing a living will is even less common. In fact, just one percent of China's more than 200 million seniors are thought to have drawn up wills, at any income level.<sup>127</sup>

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120. *Id.*

121. Xu, *supra* note 106, at 413.

122. McBride, *supra* note 8, at 11.

123. Liu, *supra* note 110.

124. See Takei & Sakamoto, *supra* note 40, at 16 (finding "acculturation into the mainstream U.S. society a key feature" for third-generation and later Asian Americans).

125. See Guo, Kim & Dong, *supra* note 85, at S569 (hypothesizing that child caregivers less acculturated to U.S. society derive "greater self-affirmation" from the caregiving experience because they identify more strongly with traditional filial values).

126. Scott James, *Dying Alone Intestate Places Burden on the County*, N.Y. TIMES (July 23, 2010), <http://www.nytimes.com/2010/07/23/us/23bcjames.html> [<https://perma.cc/HPQ6-JSAJ>].

127. Hannah Gardner, *Chinese Don't Have Wills—And Now It's a Big Problem*, USA

One reason wills remain taboo is the prevalence of superstitions and beliefs that writing a will is “akin to putting a curse on yourself.”<sup>128</sup> Moreover, in some Asian cultures, children asking parents about their inheritance is akin to stating they want to go after their money, a brazen act that runs counter to filial piety.<sup>129</sup>

Leaving a will may also be unusual for Asian Americans who migrated due to a lack of economic opportunities back home.<sup>130</sup> Unlike child caregiving and multigenerational living, both of which are typical in many Asian cultures, building up enough wealth to leave an inheritance is a much more recent development. For example, although Communist principles expressly discourage inheriting riches, the Chinese government approved of individual wealth accumulation around the 1990s.<sup>131</sup> Additionally, estate planning in America is often driven by the desire to maximize tax savings on one’s estate.<sup>132</sup> However, China does not collect estate or inheritance taxes,<sup>133</sup> which may help explain the relatively lower demand. As a result, older adults are now fighting siblings and relatives in court to divide up the estates of their parents.<sup>134</sup> As the first generation of wealthy Chinese families begins to pass away, the lack of inheritance-passing mechanisms is threatening social stability.<sup>135</sup> Because the concept of an inheritance is relatively new for Chinese and many other Asian families, the process may cause discomfort to Asian American elders or fail to cross their minds altogether.

Another cultural value that poses challenges for legal practitioners and individuals in divvying one’s estate is the prioritization of collective wellbeing. Many Asian cultures seek to maintain harmony within a group, sometimes at the expense of individual needs.<sup>136</sup> Individual choices are likewise evaluated

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TODAY (Jan. 2, 2017, 11:09 AM) <https://www.usatoday.com/story/news/world/2017/01/02/chinese-wills-savings-beijing/95750124> [<https://perma.cc/DW69-W3K2>].

128. *Id.*

129. Sonia Kolesnikov-Jessop, *Asians Paying More Attention to Inheritance Planning*, N.Y. TIMES (July 16, 2010), <https://www.nytimes.com/2010/07/16/business/global/16iht-nwasia.html> [<https://perma.cc/S5Q8-6LWD>] (finding high-net worth individuals in Singapore – those with at least one million dollars in investable assets – are more likely to do estate planning out of an obligation to provide for their family, but doing so remains far from the norm).

130. Anecdotally, the author’s parents migrated for better economic opportunities in America. With each parent having five or more siblings, her grandparents had little to pass on to each child by way of inheritance.

131. Gardner, *supra* note 127.

132. *See, e.g.*, Maryalene LaPonsie, *Estate Planning Tips to Keep Your Money in the Family*, U.S. NEWS (Oct. 11, 2021, 9:59 AM), <https://money.usnews.com/money/personal-finance/articles/estate-planning-tips-to-keep-your-money-in-the-family> [<https://perma.cc/L65U-2NFM>].

133. Yangyang Li, *Analysis on the Feasibility of Collecting Estate Tax in China*, 80 ADVANCES ECON., BUS. & MGMT. RSCH. 219 (2019).

134. Kolesnikov-Jessop, *supra* note 129.

135. Gardner, *supra* note 127.

136. *See* Suzanne Ogden, *Chinese Nationalism: The Precedence of Community and Identity over Individual Rights*, 25 ASIAN PERSPECTIVE 157, 165–170 (2001).

by the impact they have on one's family or community, not personal motivations.<sup>137</sup> By prioritizing the family as a whole, it may be more difficult for individual wishes to be honored in the bequeathing process.

Respect for seniority can also influence the testator's wishes. It is not unheard of for Asian parents to leave unequal portions to the firstborn child, or even disinherit daughters in favor of sons.<sup>138</sup> This practice creates permanent rifts within families—not to mention potential legal issues on whether courts may execute a discriminatory will.<sup>139</sup>

Finally, the style of communication in Asian American families is often indirect compared to that of other American racial groups, which can be another barrier to effective estate planning. In many Asian cultures, individuals communicate holistically, including body language and in the context of previous interactions.<sup>140</sup> Giving an outright 'no' is not as common as less direct phrases like 'Let me think about it,' or offering another suggestion, such as 'How about . . . ' or 'otherwise.'<sup>141</sup> A 'soft no' is meant to help the initial speaker "save face,"<sup>142</sup> or retain respect or prestige if in error. Similarly, a speaker can mean 'yes' while saying 'no,' depending on the context. An employee may disagree with a compliment to demonstrate modesty, for instance, or agree to complete a task that they are unable to take on. Even grammatically, the subject of sentences is omitted altogether in the Japanese, Chinese and Korean languages.<sup>143</sup> Etiquette and formalities add layers of complexity to communication; for example, in Chinese culture, it is customary to decline acceptance of a gift several times before accepting.<sup>144</sup>

137. *Id.*

138. *See, e.g.,* Ian Young, *Asian Values Are No Excuse for Disinheriting Daughters, Canadian Court Rules, as Vancouver Sisters Win Multimillion-Dollar Case*, S. CHINA MORNING POST (July 31, 2019, 9:35 PM), <https://www.inkstonenews.com/society/chinese-traditions-are-no-excuse-disinheriting-daughters-vancouver-canada/article/3020791> [<https://perma.cc/WY6D-PWVH>] (describing Chinese and Indian Canadian families' attempts to leave entire fortunes to sons, disinheriting daughters and wives. Attorneys note this practice was especially common where the daughter had married and changed her surname).

139. *See* Meelad Hanna, *Discriminatory Strings Attached: Reining in the Testator's Intent in Conditioning Will and Trust Bequests*, 25 U. FLA. J.L. & PUB. POL'Y 331, 342–351 (2014) (providing examples where courts have both voided conditions based on race, sex, gender, and other protected classes, and where courts upheld such bequests).

140. *See, e.g.,* Jinna Wang, *Different Ways Chinese People Say Yes or No*, YOYO CHINESE (Mar. 23, 2017, 11:00 PM), <https://www.yoyochinese.com/blog/Learn-Mandarin-Chinese-Different-Ways-Chinese-People-Say-Yes-or-No> [<https://perma.cc/WY6D-PWVH>].

141. *Id.*

142. *Preference for Indirect Communication*, UNIQUE VIEW INSIDE CHINA, <https://uniqueview.com/market-research-in-china/inside-china/preference-for-indirect-communication> [<https://perma.cc/9YGQ-U6EN>].

143. YOSHITARO OBA, *HIGH/LOW CONTEXT COMMUNICATION AND THERAPEUTIC WORKING ALLIANCE AMONG ASIAN AMERICANS* 23 (2016).

144. *See* Ming-Jer Chen, *The Nuances of Cross-Cultural Communication*, UVA DARDEN (Mar. 26, 2015), <https://ideas.darden.virginia.edu/the-nuances-of-cross-cultural-communication> [<https://perma.cc/R67R-NDBM>].

Indirect communication, while perhaps less likely to result in immediate conflict, is prone to misunderstandings in the long run.<sup>145</sup> This is especially true in estate planning, where a will's efficacy comes from memorializing express wishes in writing.<sup>146</sup> Language barriers, cultural divides and social stigma may also prevent some Asian American families from seeking professional family conflict resolution.<sup>147</sup> When planning one's estate, practitioners suggest open, honest communication from all family members regarding sensitive subjects like goals, personal finances, assets, and interfamilial relationships.<sup>148</sup>

Given the high priority Asian cultures place in promoting the collective good and preserving family relationships, peacemaking legal options like mediation and collaborative law could be especially well suited for Asian American families approaching issues like inheritance disputes.

## V. SUGGESTIONS FOR FUTURE RESEARCH

It is the author's hope that future research focuses on the legal needs of third-generation or later Asian Americans—people whose parents were born in the United States—to determine how these generations relate to cultural values like filial piety and community wellbeing. Despite the persistent racist misconception that Asian Americans are foreign, Asian American families are growing to second and third generations.<sup>149</sup> Children of immigrants who migrated due to the increase of skilled employment immigration quotas in the 1990s<sup>150</sup> have begun having families of their own. Meanwhile, families of Chinese and Japanese descent in areas like California and Hawaii are reaching fifth and sixth generations and greater.

As more Asian Americans continue raising families in the States, it seems likely that the prevalence of values like filial piety and community wellbeing could wane. The degree of an immigrant's American acculturation

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145. *Id.*

146. In Illinois, for example, courts have held the intention of the testator may only be ascertained from the “four corners” of the will; courts may not “surmise that the testator may have preferred a different will, . . . supply omissions, nor even . . . give legal effect to ambiguous language on the ground that the testator intended it to have some meaning.” *Tucker v. Countryman*, 414 Ill. 215, 221 (Sup. Ct. 1953); see also John J. Dvorske, Michele Hughes, Lucas Martin & Michael Rosenhouse, *Intention of Testator—Ascertainment from Will, Generally*, 36 ILL. L. & PRAC. WILLS §153.

147. See, e.g., Elizabeth Kramer et. al., *Cultural Factors Influencing the Mental Health of Asian Americans*, 176 West. J. Med. 227, 227–28 (2002) (finding social stigma and “traditional” Buddhist beliefs about mental health may prevent Asians from seeking behavioral health care).

148. Emily E. Beach, *Nudging Testators Toward Holistic Estate Planning: Overcoming Social Squeamishness on the Subjects of Money and Mortality*, 26 OHIO ST. J. ON DISP. RESOL. 701, 710 (2011), quoting David Gage, et al., *Holistic Estate Planning and Integrating Mediation in the Planning Process*, 39 REAL PROP. PROB. & TR. J. 509, 530–31 (2004).

149. See Budiman & Ruiz, *supra* note 15 (reporting 45% of Asian Americans reside in the West; 24% in the South; 19% in the Northeast; and 12% in the Midwest).

150. In 1990, Congress implemented an H-1B visa program for skilled temporary workers, revising the Immigration Act of 1965. Immigration Act of 1990, 8 U.S.C. §1101.



depends on many factors, including how long the family has stayed in America, the ethnic makeup of their hometown, parental attitudes toward American culture, and the individual's personality.<sup>151</sup> More research is needed on the correlation of American acculturation and filial piety values, and the resulting effects on Asian American approaches to elder care, end-of-life decisions, and estate planning.

Second, the U.S. Census Bureau reports that South Asians are the largest growing segment of the AAPI population; for example, the population of Indian Americans grew by 142 percent between 2000 and 2010.<sup>152</sup> Current legal scholarship on the South and Southeast Asian American experience continues to be very sparse. Future studies of how traditional values affect end-of-life decision making in the South Asian community is overdue. The findings will be particularly novel given the significant differences between the religions in this region<sup>153</sup> versus East Asia, and how religion impacts South Asian cultural views of death and the afterlife.

Third, immigrants of Asian descent are moving to smaller and more rural areas of the United States. For instance, the Asian American population in North Dakota has risen by 241 percent since 2000, the highest rate of growth in the country.<sup>154</sup> Chinese Americans have a rich history of settled roots in the Mississippi Delta and perhaps a very different experience in elder care and estate planning than urban Asian Americans.<sup>155</sup> Because nearly all of the current research on Asian American populations originates in major metropolitan hubs—such as New York, New Jersey, California, Chicago, and Texas—it would be helpful to understand how members of rural Asian communities obtain health care, given more sparse networks.

Finally, of critical importance in this moment is to conduct more research on how discrimination and bias affects the care and benefits Asian American elders receive. Although Asian seniors have been subjected to publicized

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151. See, e.g., Eunjung Kim & Seth Wolpin, *The Korean American Family: Adolescents Versus Parents Acculturation to American Culture*, 15 J. CULT. DIVERS. 1, 1–4 (2009) (describing cultural and linguistic characteristics of Korean American families, including how moral and social values intersect with language fluency, daily lifestyles, media consumption and social networks).

152. Abby Budiman, *Indians in the U.S. Fact Sheet*, PEW RSCH. CTR. (Apr. 29, 2021), <https://www.pewresearch.org/social-trends/fact-sheet/asian-americans-indians-in-the-u-s> [<https://perma.cc/2JV8-PUJW>] (sharing U.S. Census Bureau census data showing the Indian American population increased from 1.9 to 4.6 million in two decades).

153. *Chapter 7: Religious Affiliation, Beliefs and Practices*, PEW RSCH. CTR. (June 19, 2012), <https://www.pewresearch.org/social-trends/2012/06/19/chapter-7-religious-affiliation-beliefs-and-practices> [<https://perma.cc/N8VX-EGF9>] (finding about half of Indian Americans identify as Hindu).

154. Jaweed Kaleem, *Where Are Asian American Communities Growing the Fastest? Not California*, L.A. TIMES (Apr. 29, 2021, 6:51 PM), <https://www.latimes.com/world-nation/story/2021-04-29/asian-americans-north-dakota> [<https://perma.cc/JDV5-Q8UX>]. In second place: South Dakota, at 202 percent. *Id.*

155. Melissa Block & Elissa Nadworny, *The Legacy of the Mississippi Delta Chinese*, NPR (Mar. 18, 2017, 8:12 AM), <https://www.npr.org/2017/03/18/519017287/the-legacy-of-the-mississippi-delta-chinese> [<https://perma.cc/9NY3-HZT3>].



attacks<sup>156</sup> in a surge of COVID-19 related violence, racist scapegoating has subjected Asian Americans of all ages to discrimination and harassment.<sup>157</sup> A 1200 percent rise in anti-Asian violence in less than one year<sup>158</sup> is a symptom of centuries of xenophobic policies and precedent outlined in Part I. Given the increasing vulnerability and visibility of Asian seniors, more research on racial bias from government agencies, private healthcare workers, institution staff, and more could dramatically improve how elders live out their final years, many of them far from home.

### CONCLUSION

After centuries of discrimination in the courts and legislation, many Asian Americans have migrated to the U.S. relatively recently. As a result, common cultural values like filial piety, focus on communal wellbeing, and respect for elders remain. This Article examined how cultural values affect the way Asian American families approach caregiving, end of life decisions, and estate planning. The vulnerability of a rapidly-aging population has been highlighted during the COVID-19 pandemic, as elders have inexplicably borne the brunt of racial violence. Further research is needed on how children and communities can most effectively care for their elders and meet their pressing legal needs.

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156. *See, e.g.*, Christine Chung & Weihua Li, *Older Asians Face 'A Whole Wave' of Hate Hidden in Official NYPD Stats*, THE CITY (Apr. 20, 2021, 5:01 AM), <https://www.thecity.nyc/2021/4/20/22392871/older-asians-face-a-hate-hidden-nypd> [<https://perma.cc/6V66-UA6R>].

157. *See generally* Hannah Tessler, Meera Choi & Grace Kao, *The Anxiety of Being Asian American: Hate Crimes and Negative Biases During the COVID-19 Pandemic*, 45 AM. J. CRIM. JUST. 636 (2020).

158. *Anti-Asian Discrimination is a Public Health Crisis*, AM.ACAD.NURSING (Mar. 4, 2021), <https://www.aannet.org/news/press-releases/position-statement-anti-asian-discrimination> [<https://perma.cc/87RL-V94R>].