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Margaret F. Brinig

Notre Dame Law School, mbrinig@nd.edu

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Recommended Citation

Margaret F. Brinig, *Finite Horizons: The American Family*, 2 Int'l J. Child. Rts. 293 (1994).

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Finite horizons: the American family

MARGARET F. BRINIG

School of Law, George Mason University, Arlington, VA, USA

1. Introduction

In the summer of 1992, while I was reading and thinking about Martha Minow's latest book,¹ I was struck with my double role as a responsible adult.² Vacationing in the north woods of Wisconsin with my mother, I suddenly needed to care for her as well as my own small children. Generational connections, important before, swelled hugely in crisis. As I caught my breath between hospital runs and kids' activities, I was thankful that I had received so much from my parents during my childhood. And I resolved to rethink the relationships between parents and children, adults and elderly.

Policy makers wonder why American children do not outshine their foreign counterparts on standardized tests and other measures of intellectual achievement.³ In a seemingly unrelated context, they ask why fathers systematically fail to meet their child support obligations⁴ and why an "epidemic" of reported

¹ *Making All the Difference* (1991). Minow's provocative essay addresses the marginalization of various groups including children and suggests that each group has a positive contribution to make.

² I am obviously not the only middle aged person in that position. See, e.g., Herbert S. Donow (1991) Am I My Father's Keeper? Sons as Caregivers, *Gerontologist* 31: 709; Marshall B. Kapp (1992) Elder Law: Who's the Parent Here? The Family's Impact on the Autonomy of Older Persons, *Emory L.J.* 41: 773, 775–776 (citing Subcommittee on Human Services of the Select Comm. on Aging, 100th Cong., 2d Sess., Exploding the Myths: Caregiving in America (Comm. Print 19233); Beverly Horsbaugh (1992) Redefining the Family: Recognizing the Altruistic Caregiver and the Importance of Relational Needs, *U. Mich. J. L. Reform.* 25: 423; and Christine L. Himes (1992) Future Caregivers: Projected Family Structures of Older Persons, *J. Gerontology: Soc. Sci.* 47: 17.

³ See, e.g., The National Education Goals Panel (1992) *The National Education Goals Report: Building a Nation of Learners*, 36 (suggesting that parents and children do not stress the importance of mathematics and science, although it is essential for global competitiveness); Final Report of the National Commission on Children (1991) *Beyond Rhetoric: A New American Agenda for Children and Families*, xxv ("Despite more than a decade of education reform, America remains a "nation at risk." American students continue to lag behind their counterparts in many developed and developing nations in standardized measures of reading, math, and science"; Harold W. Stevenson and James W. Stigler (1990) *The Learning Gap: Why Our Schools Are Failing and What We Can Learn from Japanese and Chinese Education*, 44, 50–51.

⁴ See, e.g., Subcommittee on Human Resources of the Committee on Ways and Means, U.S. House of Representatives, Child Support Enforcement Report Card (1991); National Commission on Children, *supra* note 4, at 93; Taylor, Life without Father, *Washington Post*, June 7, 1992,

child abuse exists.⁵ If children are a good, perhaps the most important product of a marriage⁶ and certainly the nation's greatest capital asset,⁷ why don't we invest in them?

This paper argues that as adults we do not put our resources into children because we have lost one important benefit of our bargain. We cannot count on our progeny for support when we are no longer income-producers.⁸ If we look upon the historical family as an intergenerational relational contract, Western society has cut off a vital link. The break in the chain occurred when society prescribed that private family-based care of the elderly would be the exception rather than the rule. In doing this, in contrast to non-occidental societies, we have lost at least two valuable things. We have weakened the incentives for investment in children and we no longer enjoy the many valuable benefits that would otherwise come from senior citizens.⁹

at C1; United States Department of Commerce, Bureau of the Census, P-60 #173, Child Support and Alimony: 1989 1 (only 69% of the total child support due was paid in 1989); Harry Krauss (1990) Child Support Reassessed: Limits of Private Responsibility and the Public Interest, in Stephen Sugarman and Herma Hill Kay (eds.) *Divorce Reform at the Crossroads*, 166, 169-174; The 10 Most Wanted . . . Fathers, Washington Post A12, August 28, 1989.

In several cases, a father has unsuccessfully that he had no duty to be responsible for his child because he offered to pay for the mother's abortion. See, e.g., *People ex rel. S.P.B.*, 651 P.2d 1213 (Colo. 1982); *Linda D. v. Fritz C.*, 687 P.2d 223 (Wash. App. 1984); *Harris v. State*, 356 So. 623 (Ala. 1978); *Ince v. Bates*, 558 P.2d 1253 (Or. App. 1977).

⁵ National Commission on Children, *supra* note 4, at xxx; International Society for Prevention of Child Abuse and Neglect (1992) *World Perspectives on Child Abuse: An International Resource Book*, iii.

⁶ This is Gary Becker's claim. Gary Becker (1981) *Treatise on the Family*. See also Martin Zelder (1993) Inefficient Divorces, *J. Leg. Stud.* 22: 503.

⁷ See National Commission on Children, *supra* note 4, Chapter 13 ("Investing in America's Future"): "We must develop a common focus and purpose to change the conditions that jeopardize the health and well-being of so many of our youngest citizens. Failure to act today will only defer to the next generation the rising social, moral, and financial costs of our neglect. We can and must be better masters of our nation's destiny." *Id.* at 390.

John H. Bishop (1989) Is the Test Score Decline Responsible for the Productivity Growth Decline?, *Am. Econ. Rev.* 79: 178, suggests that the decline in American SAT scores may be signaling a large drop in the quality of young entrants into the work force and that this may be responsible for a \$86 billion decrease in GNP in 1987 from what it would have been if the 1967 growth rate had continued.

⁸ Paul Rubin, James B. Kau and Edward F. Meeter (1972) Forms of Wealth and Parent-Offspring Conflict, *J. Social Biol. Struct.* 2: 53, 54, argue that as more wealth is held in human capital, rather than in other forms of capital, parents have less wealth to leave as an estate for children. So long as wealth is accumulated in the form of real property, it will have a higher value to children than its market value because of the children's specific skills. *Id.* at 57. This implies that their control over children decreases. They therefore can't rely upon children for support should they become indigent in old age. The authors suggest that this is why retirement plans have replaced reliance on family for support for the aged. *Id.* at 55.

⁹ This is not a one-sided proposition, of course:

[P]eople live their lives embedded within various relationships, among which the family for most of us is paramount. Since these relationships tend to grow stronger over time, they take on added significance for most older persons. These relationships have an empowering

These direct consequences also occasion byproducts. We have created a situation where it is nearly inevitable that fathers will have less of a stake in their children than do mothers.¹⁰ Further, in Western society, women necessarily will have more of a stake in the care of aged parents as well as small children.¹¹

quality contributing to the older person's potential for positive, affirmative autonomy to think and act, as opposed to the simple, negative autonomy to be left alone.

Marshall Kapp (1992) *Elder Law: Who's the Parent Here?* *Emory L.J.* 41: 773, 782 (citing Bertram J. Cohler (1983) *Autonomy and Interdependence in the Family of Adulthood: A Psychological Perspective*, *Gerontologist* 23: 33).

One report suggests that the elderly have lost their utility and therefore their "worth." Lucia C. Grassi (1988) *Alternatives and Options for Financing Long Term Care*, *Nursing Homes* 37: 22(7). This is reflected in the increase in "granny dumping" according to Dr. Robert Anzinger, past president of the American College of Emergency Physicians, who estimates that between 100,000 and 200,000 elderly people are left on the doorsteps of hospitals each year. Barbara Crosley (1992) *How to Enjoy Your Elderly Parents*, *Focus on the Family* 12 (Dec. 1992).

For example, in colonial Massachusetts parents were expected to play a role in the personal lives even of grown children. John Demos (1981) *A Little Commonwealth: Family Life in Plymouth Colony*, 103–104. However, as Gertrude Himmelfarb pointed out recently, this "Golden Age" view of the family may not be realistic. In 18th and 19th century Britain, children were viewed as savages needing "taming." *Points of Light: New Approaches to Ending Welfare Dependency* (1991).

¹⁰ See, e.g., Milton C. Regan, Jr. (1993) *Family Law and the Pursuit of Intimacy* at 5, 185–188; Jerry McCant (1987) *The Cultural Contradiction of Fathers as Non-Parents*, *Fam. L.Q.* 21: 127. This seems to be particularly true for black fathers. Black children are increasingly being raised in matriarchal families headed by never married or divorced mothers. See, e.g., *A World Without Fathers: The Struggle to Save the Black Family*, *Newsweek*, August 30, 1993, at 16, 17 (black children have only a one in five chance of growing up in a two-parent family until age 16).

Over the last 60 years, despite increasing work force participation, there has been no real change in the overall time mothers spend with their children. W. Keith Bryant (1992) *Are We Investing Less in the Next Generation? Historical Trends in Time Spent Caring for Children*, 16–17 (mimeograph, Cornell University). See also John Robinson, *Caring for Kids*, *American Demographics* 52 (July 1989), suggesting that mother and father spend similar time in primary care for children. See also Elizabeth M. Dolan and Elizabeth Scannell (1987) *Husbands' and Wives' Household Work: Moving Towards Egalitarianism?* *J. Consumer Stud. and Home Economics* 11: 387, 398 (time spent is approximately the same, if overlapping time is considered). Work may influence the total amount of time parents spend with children, but impact more in those aspects of the family life in which children are relatively peripheral, such as homemaking or entertaining than in specifically child-oriented activities. Steven I. Nock and Paul William Kingston (1988) *Time with Children: The Impact of Couples' Work-Time Commitments*, *Social Forces* 67(1): 59, 71. However, despite gender equality and involvement with the work force, it is still primarily women who raise children. For example, Cynthia Rexrooth and Constance Sheehan (1987) *Family Life Cycle and Spouses' Time in Housework*, *J. Marr. & Fam.* 49: 737, 744 and Table 3, show a disparity of at least 2 to 1 between women's and men's participation in all childcare.

¹¹ Women are described as being sandwiched between two care-giving responsibilities. See, e.g., Karen Czapanskiy (1991) *Volunteers and Draftees: The Struggle for Parental Equality*, *UCLA L. Rev.* 38: 1415 and popular press such as *Newsweek*. See, e.g., Melinda Beck, *Trading Places*, *Newsweek*, July 16, 1990 at 48 ("The average American woman will spend 17 years raising

Following this brief introduction, this article in Section 2 describes the nuclear family as a relational contract with infinite horizons. Section 3 looks at the same problem empirically, in terms of an American cross-sectional analysis and a cross-cultural study with many of the same variables. Section 4 discusses these empirical results and provides some directions for further study and some modest suggestions for change.

2. The family as an intergenerational contract

Many modern students of the family write in terms of marriage as contract. However, virtually no one has thought of the parent-child relationship in this way.¹² Regardless of its power as a theoretical construct, it is difficult to speak in the language of bargain when any contract between a natural child and his or her parents is clearly made without the child's express, or even tacit, consent.¹³ Even if one accepts the idea of an implied promise, other conceptual barriers remain. The difficulty is perhaps even more pronounced for

children and 18 years helping aged parents"); Nora Underwood, *Mid-Life Panic; Thousands of Canadians are Caught Between Children and Elderly Parents*, *Maclean's*, August 19, 1991, p. 30 ("You have a situation now in which you have adults, particularly women, caring for their children at a time when their own parents are likely to need help"); Lee Smith, *What do We Owe to the Elderly?* *Fortune*, March 27, 1989, p. 55 ("Both Christianity and Judaism make it plan that a child's responsibility to a parent is fundamental, maybe even greater than his duty to his offspring . . . Carrying out the Fourth Commandment generally falls to middle-aged daughters and other female relatives.")

¹² Although the language of contract is not used, the lifecycle economic literature does imply a contract-like relationship between the generations. See, e.g., Franco Modigliani (1988) *The Role of Intergenerational Transfers and Life Saving in the Accumulation of Wealth*, *J. Econ. Persp.* 2: 15.

Recent cases in which children sue their parents to terminate family relationships may be seen as rescission of the parent-child contract by the children. See, e.g., *Kingsley v. Kingsley*, 18 Fla. L. Week D1852, 1993 WL 31598 So.2d (Fla. 1993); *Mays v. Twigg*, 1993 WL 330624 (Fla. Cir. Ct.) No 88-4489-CA-01, August 18, 1993.

Sociologist Peter Laslett suggests an intergenerational tricontract connecting succeeding generations, in which each cohort of children can claim support from parent cohorts as a matter of right, creating corresponding duties to future generations. Peter Laslett (1992) *Is There a Generational Contract?* in Peter Laslett and James S. Fishkin (eds.) *Justice Between Age Groups and Generations*, 24. This is different from the present analysis because it does not also involve support to the elder generation. See also Derek Parfit (1991) *Reasons and Persons*.

¹³ See, e.g., Richard Epstein (1989) *Justice Across the Generations*, *Tex. L. Rev.* 67: 1465: "Democratic processes with universal suffrage cannot register the preferences of the unborn, and the dialogue between generations is frustrated when future generations, or at least some future generations, are of necessity silent." Epstein suggests a Rawlsian approach.

It may well be that the parents, in conceiving and choosing to bear the child to term, covenant between themselves regarding parenthood. See, e.g., William Everett (1987) *Contract and Covenant in Human Community*, *Emory L.J.* 36: 557.

lawyers than for those in other disciplines, since infancy is a barrier to capacity in most legal contexts.¹⁴

In other fields, such as theology, anthropology, and economics, there is no such built-in problem with thinking in multi-generational terms. Thus, the sins of fathers may devolve upon their children.¹⁵ Accepted wisdom dictates that societies receive the customs and institutions of their ancestors.¹⁶ And, most relevant for this discussion, important economic models are built assuming implicit ties between parent and child.¹⁷

¹⁴ Some of these disabilities include the inability to make contracts, commit crimes, consent to marriage (also a contract), hold property, commit torts, give testimony, and consent for medical procedures. See, e.g., Martha Minow, *supra* note 1, at 284; John Coons, Robert Mnookin and Stephen Sugarman (1991) Puzzling over Children's Rights, *B.Y.U. L. Rev.* 307; Elizabeth Scott (1992) Judgment and Reason in Adolescent Decisionmaking, *Villanova L. Rev.* 37: 1607; Allen Susman (1977) *The Rights of Young People: The Basic ACLU Guide to a Young Person's Rights*, 24–25, 48–49, 188–89; Sanford Katz, William Schroeder and Lawrence Sidman (1973) Emancipating Our Children – Coming of Legal Age in America, *Fam. L.Q.* 7: 211.

¹⁵ Lamentations 5:7 (“Our fathers sinned, and are no more; and we bear their iniquities.”)

¹⁶ See, e.g., John Rawls (1971) *A Theory of Justice*, 284–293 (intergenerational savings in which each generation preserves the gains of culture and civilization necessary to maintain just institutions and adds to them for the benefit of future generations); Carl Schneider (1992) The Channeling Function in Family Law, *Hofstra L. Rev.* 20: 495, 511 (“The knowledge that our forebears organized their lives around the social institutions that still shape us and the belief that the lives of our progeny will be made recognizable by their participation in those same institutions add meaning to our lives and help inspire us as individuals and as members of society to cherish the past and our elders and to nurture the future and our children.”) See generally N. Chodorow (1978) *The Reproduction of Mothering*. Mit Regan argues that once modern children leave home, the extent of contact and degree of involvement tend to depend on the quality of personal interaction rather than the expectations that flow from the parent-child relationship itself. Regan, *supra* note 11, at 50, citing R. Bellah *et al.* (1985) *Habits of the Heart*, 89. In single earner families, the father's attitude toward the fathering he received as a youngster will be the most consistent predictor of the time spent with his children. Rosalind C. Barnett and Grace K. Baruch (1987) Determinants of Fathers' Participation in Family Work, *J. Marr. & Fam.* 49: 29, 37.

¹⁷ Thus many macroeconomic models depend upon concern for future generations and past ones to make sense of concepts such as “real wealth” and transfers under Social Security. Robert Barro (1974) Are Government Bonds Net Wealth? *J. Pol. Econ.* 82: 1095, 1098; Paul Samuelson (1958) An Exact Consumption-Loan Model of Interest with or Without the Social Contrivance of Money, *J. Pol. Econ.* 66: 467–82; Paul Diamond (1965) National Debt in a Neoclassical Growth Model, *Amer. Econ. Rev.* 60: 1126–1150. Barro's Ricardian equivalence theory, in which government purchases and marginal tax rates matter, but the debt/tax mix is irrelevant, has spawned a large literature surveyed by John J. Seater (1993) Ricardian Equivalence, *J. Econ. Litt.* 31: 142. Seater concludes that although the theory is not completely true, its empirical success and analytical simplicity make it an attractive model of government debt's effects on economic activity. *Id.* at 184. Altruism within the family is in part built upon some expectation of future inheritance from a parent. Gary Becker (1981) *A Treatise on the Family*, ch. 8; Richard Epstein (1992) Justice Across the Generations, in Peter Laslett and James S. Fishkin (eds.) *Justice Between Age Groups and Generations*, 84, 89 (“The most powerful source of this interdependence is genetic connection, which induces parents to take into account the utility of their children (and the reverse as well) in making decisions about present and future consumption.”); Donald Burnheim, Andrei Shleifer, and Lawrence Summers (1985) The Strategic Bequest Motive, *J. Pol.*

In premodern times, the language of contract would not have been out of place. The change in terminology is not surprising, given the fact that Western families have not had their current structure for all that long.¹⁸ When our parents were children, elderly people frequently lived with their children's families. In the days before Social Security, when no one had heard of pension plans, IRAs or TIAA-CREF, children provided the security when parents could no longer work. Granted, there were fewer octogenarians or nonagenarians¹⁹ and

Econ. 93: 1045–1046; James M. Buchanan (1983) Rent Seeking, Noncompensated Transfers, and Laws of Succession, *J. L. & Econ.* 26: 71–85; Philippe Weil (1987) Love Thy Children: Reflections on the Barro Debt Neutrality Theorem, *J. Mon. Econ.* 19: 377. These theories are critically reviewed in Franco Modigliani, *supra* note 12. Modigliani's view is that the individual seeks to consume all of his wealth during life, seeking to smooth consumption throughout his lifetime. See, e.g., Franco Modigliani and Richard Brumberg (1954) Utility Analysis and the Consumption Function; An Interpretation of Cross-Section Data, in K. Kurihara (ed.) *Postkeynesian Economics*, 388; Franco Modigliani and Albert Ando (1957) Tests of the Life Cycle Hypothesis of Savings: Comments and Suggestions, *Bulletin of the Oxford Institute of Statistics* 99. The concept of human capital as an asset has been used to explain why some countries experience acceleration of economic growth. Paul Romer (1986) Increasing Returns and Long Run Growth, *J. Pol. Econ.* 94: 1002–1037.

In his 1992 Nobel address, *The Economic Way of Thinking* 23, Gary Becker presages some of the argument of this paper when he states that “[i]f children are expected to help out in old age – perhaps because of guilt or related motivations – even parents who are not very loving would invest more in the children's human capital, and save less to provide for their own age.” He sets out a proof of this hypothesis in Section 3 of the Appendix, concluding following equation 14 that there will be “greater investment in children when parents expect greater old-age support” from them. “Even completely selfish parents ($a = 0$) might invest in children if that would sufficiently increase the expected old-age support from guilty children.” This seems quite a change of positions from that taken in his earlier *Treatise on the Family*, where he suggests that expenditures on the elderly are part of a “social compact” between generations. In this work, taxes on adults help finance efficient investments in children. In return, adults receive public pensions and medical payments when old. *Id.* at 370. Public expenditures on the elderly were not important until 1940. *Id.* at 371 and Table 11S-1. Becker argues that “any generation that benefits from the current level of public investments in children can easily use the higher earnings created by these investments to provide current levels of support for the elderly, and still have a considerable profit left over.” *Id.* at 373. Children would thus be happy to enter into such a social compact with their parents. This scheme necessitates a balanced budget to insulate the present generations from heavy taxation in the future. See James M. Buchanan and Richard E. Wagner (1977) *Democracy in Deficit: The Political Legacy of Lord Keynes*.

¹⁸ See generally Mary Ann Glendon (1975) *The New Family and the New Property*; Viviana Zelizer (1985) *Pricing the Priceless Child: The Changing Social Value of Children*; John Demos (1974) The American Family in Past Time, *American Scholar* 43: 422; John Demos (1979) Images of the American Family, Then and Now, in Tufte and Myerhoff (eds.), *Changing Images of the Family*, 43.

¹⁹ Life expectancy at birth in 1920 was 54.1 years. Bureau of the Census, Historical Statistics 1790–1970 B116. In 1990, the expectation at birth is 75.4. United States Department of Commerce, Bureau of the Census. Statistical Abstracts 1992 Table 104 at 76. The percentage of the population over 85 was 0.2 in 1920 and 3.0 in 1990. Barbara Vobejda, Census: Elderly Population Growth Will Lead to 4-Generation Families, *Washington Post* A3, Nov. 10, 1992. Although these gains have occurred primarily through reduction of infant mortality (at the low end), there has also been an extension of the expectancy of the elderly through eradication of some diseases and advances in surgical technology. United States Department of Commerce,

more children in most families to share the expense of housing and caring for an aged parent.²⁰

Family law scholars have examined the difference in laws relating to child custody and support as the role of children changed. They have concluded that many of the legal perceptions of childhood postdate the change from an agricultural to an industrial economy.²¹ In an agrarian economy, children over the age of five were assets, since they could work around the farm or household.²² As cottage industry and then factory production developed, the feeding, clothing, and educating of children became more of a consumption activity than a financial investment.²³ The only positive input children could provide

Bureau of the Census (1993) *Our Aging World II*, International Population Reports P95/92-3 23-30.

²⁰ The average size of a family in 1920 was 6. Historical Statistics, *supra* note 20, at A355. In 1990, the figure was 3.18. Statistical Abstracts, *supra* note 20, at Table 66, p. 53 (1992). See also Daniels (1985) Family Responsibility Initiatives and Justice Between Age Groups, *Law, Med. & Health Care* 73: 153, 157 (twice as large in 1900).

²¹ Jamil Zainaldin (1979) *The Emergence of a Modern American Family Law: Child Custody, Adoption, and the Courts, 1796-1851*, 73 C 1038; Katz *et al.*, *supra* note 15; Mary Ann Glendon (1975) *The New Family and the New Property*; Philippe Aries (1962) *Centuries of Childhood*.

²² If not already generating a positive cash flow at this early age, they might well before reaching the age at which they would set up an independent household. In fact, the noted historian Philippe Aries has developed a "theory of childhood" as a separate age of man based upon the decline in infant mortality. Children under age 5 up until perhaps 1700 were more likely to die than to live, so parents did not dare become too attached to them. As soon as they passed infancy, they were thought of as "miniature adults" who wore smaller adult-styled clothes and performed increasingly adult-like tasks around the house. Aries, *supra* note 10.

The colonial family is described by Michael Grossberg as: "hierarchical, patriarchal, and vested with overlapping and undifferentiated internal and external obligations. The community charged each male governor with the duty of maintaining a well-governed home and sustained his authority by granting him control of its inhabitants as well as of property and other resources."

Michael Grossberg (1985) *Governing the Hearth*, 5. See also John Demos, *supra* note 10, at 100-101. However, the early colonies such as that of Massachusetts Bay were comprised mainly of small nuclear families. *Id.* at 64-65. This apparently continued as late as 1975 in Rhode Island, where a study found 82% of the families were nuclear. Edward T. Pryor, Jr. (1972) Rhode Island Family Structure 1887-1960, in Peter Laslett (ed.) *House and Family in Past Time*, 571. Barbara Laslett argues that the nuclear family pattern continued until the early 1970s. The Family as a Public and Private Institution: An Historical Perspective, *J. Marr. & Fam.* 35: 480, 483 (1973).

²³ John C. Caldwell (1982) *Theory of Fertility Decline*, contrasts the economic benefits of children in poor, traditional rural societies with the high economic costs of children in rich, Westernized industrialized societies. Gary Becker and H. Gregg Lewis (1973) On the Interaction Between the Quantity and Quality of Children, *J. Pol. Econ.* 2: S279 state that the cost of adding an additional child, holding quality of care constant, is greater the higher the quality is.

The English Poor laws (43 Eliz. c.2) enacted in 1601, provided that relatives were to be the primary source of support for old people. Community provision was to be the last resort. This was the essential legal position in England until 1950. David Thomson (1984) 'I Am Not My Father's Keeper': Families and the Elderly in Nineteenth Century England, *L. & Hist. Rev.* 2: 265. William Blackstone wrote that parents, because they care for infants, "ought in return to be supported by their offspring," who owe them "honor and reverence" regardless of misbehavior on the parents' part. I Commentaries on the Law of England, ch. 16. Thomson argues that these rules may have been greatly circumscribed in reality. Thomson at 268-269.

for the total family financial picture was their income,²⁴ which theoretically belonged to their parents.²⁵ And when, for whatever public interest or interest group reason,²⁶ child labor laws and compulsory education statutes were enacted,²⁷ even the relatively small income that most children could provide evaporated.²⁸ But the problem is larger than this. In some industrialized nations, even though children are no longer needed as income producers during minority, the attitude towards aged parents is quite different.²⁹

The legal treatment of children in families has always presumed a lack of anything approaching contract between them and their parents. Parents are

²⁴ Zainaldin, *supra* note 22. See also John Kett (1975) *Rites of Passage: Youth and Adolescence in America, 1790-Present*; Daniel Vickers (1988) Working the Fields in a Developing Economy: Essex County, Massachusetts 1630-1675, in Stephen Innes (ed.) *Work and Labor in Early America*, 49-69; Louis Green Carr and Lorena S. Walsh (1988) Economic Diversification and Labor Organization in the Chesapeake, 1650-1820, in Stephen Innes (ed.) *Work and Labor in Early America* 150-151, 167-168; David Stern, Sandra Smith and Fred Doolittle (1975) How Children Used to Work, *Law & Cont. Probs.* 39: 93. For a modern case in which the father's control over the family's "exchequer" or purse controlled intrafamilial tort immunity, see *Wright v. Wright*, 213 Va. 177, 191 S.E.2d 223 (1972).

²⁵ See, e.g., *Fletcher v. Taylor*, 344 F.2d 93, 95 (4th Cir. 1965). This concept was used to explain when children become emancipated as recently as World War II. See, e.g., *Buxton v. Bishop*, 185 Va. 1, 37 S.E.2d 744 (1946).

²⁶ H.P. Marvell has suggested that the laws were enacted as protectionist legislation for unmarried working men, whose factory wages were threatened since women and children would work for less. Factory Regulation: A Reinterpretation of the Early English Experience, *J.L. & Econ.* 20: 379-409 (1977). See also Gary Anderson and Robert Tollison (1984) A Rent-Seeking Explanation of the British Factory Acts, in D.C. Collander (ed.) *Neoclassical Political Economy*.

²⁷ Compulsory education statutes were enacted in the 1860s. *Wisconsin v. Yoder*, 406 U.S. 205 (1972); child labor laws in the 1890-1910 period. Stern, Smith and Doolittle, *supra* note 25.

²⁸ This of course does not include money traditionally earned by paper boys, baby-sitters, or teen-aged lawn maintenance personnel. Most families in which such moneymaking goes on are middle-class, and the children keep their earnings for themselves, although in most states parents have a right to them. See, e.g., *Buxton v. Bishop*, 185 Va. 1, 37 S.E.2d 755 (1946); *Wright v. Wright*, 213 Va. 177, 191 S.E.2d 223 (1972).

Children of truly indigent parents are not included in this analysis either. In some of these families, public assistance serves as the only form of household income. In others, older children do in fact work outside the household and do provide needed income for family expenses.

²⁹ Thus, my thesis is consistent with that offered by Paul Rubin, James Rau, and Edward Meeker, *supra* note 9, who imply that parents who cannot count on threats (of removing bequests of real property) to control their children will invest in the children's human capital. Even where real property is not important as a wealth transmission mechanism, if aged parents are connected to their adult children, there will be more investment in minor children.

Since this paper was written, I discovered the work done by Donald Cox and Odel Stark, Intergenerational Transfers and the Demonstration Effect, presented at the Southern Economics Association annual meeting in New Orleans, November 21-23, 1992. Cox and Stark begin with parties whose identities and incentives are the same as those presented in this paper. They argue, however, that causation works the other way. In their model, parents demonstrate what they will expect from their children in the future as they interact with their own elderly parents through phone calls and visits. Of course, the two phenomena are not mutually exclusive.

strongly presumed to act in their children's best interest³⁰ and are legally given almost all decision-making power when it comes to interactions with the outside world.³¹ Even within the family, relationships are treated as private and agreements as unenforceable.³² Thus, children cannot sue their parents for simply being bad parents,³³ nor for failure to provide the education or other

³⁰ *Parham v. J.R.*, 442 U.S. 584 (1979); *H.L. v. Matheson*, 450 U.S. 398 (1981).

³¹ See, e.g., Scott, *supra* note 15. This is a power that has not changed since the time of Blackstone, although in the 19th century the male head of household represented his wife as well. He exercised suffrage, held the family property, and entered into contracts. William Blackstone, *Commentaries on the Laws of England I*: 433-436; Martha Minow, *supra* note 1, at 269-270.

³² The family was considered a private sphere in which the state would not interfere unless called upon to do so by the parents. John Demos, *supra* note 10, at 100-101; Jana Singer (1992) *The Privatization of Family Law*, *Wis. L. Rev.* 1445; James Schouler (1870) *A Treatise on the Law of Domestic Relations*, 299; Martha Minow, *supra* note 1, at 270.

Recently, children have been given some autonomy in areas of personal privacy, such as contraception and abortion, *Planned Parenthood v. Danforth*, 428 U.S. 52 (1976); *Bellotti v. Baird*, 443 U.S. 622 (1979); though the Supreme Court has upheld statutes giving parents of immature pregnant minors the right to be informed in most cases of their daughter's pregnancy. *H.L. v. Matheson*, 450 U.S. 398 (1981); *Planned Parenthood v. Casey*, 505 U.S., 112 S. Ct. 2791 (1992). As the child approaches majority, he or she may also acquire decision-making power in terms of elective medical care; see, e.g., Ala. Code §22-2-4 (age 14); Ore. Rev. Stat. §109.840 (age 15); S.C. Code Ann. §20-7-28 (La. Coop. 1985) (age 16); *In Re Green*, 448 Pa. 338, 292 A.2d 387 (1972); and child custody placement with divorcing parents. See, e.g., Va. Code Ann. §20-107.2(7) (Michie Supp. 1993) ("The reasonable preference of the child, if the court deems the child to be of reasonable intelligence, understanding, age and experience to express such a preference"); Wis. Stat. § 767.24 (1985-86)(2)(am) ("The wishes of the child as to his or her custody"); U.M.D.A. § 402(2) (wishes of the child as to his custodian); see generally Ellen G. Garrison (1991) *Children's Competence to Participate in Divorce Custody Decisionmaking*, *J. Clinical Child Psychology* 20: 79; see generally Joseph Kett (1986) *Rites of Passage: Adolescence in America*; Scott, *supra* note 15, at 1608, writes: "By age fourteen adolescents are indistinguishable from adults in their decision making competence." Children over age seven are able to testify in most cases, and where criminal behavior directed at them is involved, even younger children may be witnesses if they understand the difference between right and wrong. See, e.g., Martha Minow, *supra* note 1, at 284. Minow notes, *id.* at 303, that articulating children's interests in terms of rights undermines the relationships through which their needs are usually met. See also Arlene Skolnick (1975) *The Limits of Childhood: Conceptions of Child Development and Social Context*, *Law & Cont. Prob.*, 38, 43.

State statutes may also provide for emancipation prior to the age of majority. For a critical discussion with some empirical evidence from California, see Carol Sanger and Eleana Willemsen (1992) *Minor Changes: Emancipating Children in Modern Times*, *U. Mich. J.L. Ref.* 25: 239. The statutes are collected *id.* at n. 25.

All of these movements towards independence of minors weaken the implicit contract we discuss here. Together with outside care of aged parents, on margin they dilute the investment the parents can make. Perhaps because I am a parent of teenagers, I am skeptical that the legal changes are good.

³³ *Burnett v. Wahl*, 284 Or. 705, 588 P.2d 1105 (1978); see generally Comment, *Defining the Parent's Duty After Rejection of Parent-Child Immunity: Parental Liability for Emotional Injury to Abandoned Children*, *Vand. L. Rev.* 33: 775 (1980). A recent much publicized case gave at least one teen aged child the ability to "divorce" his parents. *Kingsley v. Kingsley*, 18 Fla. L. Week D1857, 1993 W.L. 31598 (Fla. 1993). However, on appeal, the case was decided on

amenities that the child feels appropriate.³⁴ In other words, they cannot enforce the implicit contracts we discuss here.

However appropriate a no-contract assumption may be in a legal sense, it loses descriptive power when we analyze the family as an economic unit. This problem is particularly evident when we consider the incentive structure within the family.³⁵ Currently the incentive provided for investment in children is purely subjective.³⁶ Parents may "spend" time or money on their

the complaint by the foster parents for termination of parental rights and remanded for completion of adoption proceedings.

If parents' behavior towards their children is truly outrageous, the state, rather than the child, takes action to remove the children from the home, sometimes permanently. But there is then no compensation that runs from parent to child, although the parent may have to reimburse the state for money expended on the child's behalf due to foster care. See, e.g., Va. Code §16.1-290.

Some states have allowed the child's representative (usually the other parent) to bring suit for outrageous intentional torts, see, e.g., *Doe v. Holt*, 332 N.C. 90, 418 S.E.2d 511 (1992); if the family unit is effectively destroyed. *Mahnke v. Moore*, 197 Md. 61, 77 A.2d 923 (1951) ("complete abandonment of the parental relation"). Most states currently allow suits in tort (not contract) for simple negligence, especially in automobile accident cases. See, e.g., *Smith v. Kauffman*, 212 Va. 181, 183 S.E.2d 190 (1971). Household or automobile insurance usually pays for such recoveries, thus relieving, rather than threatening, burdens upon the "household exchequer." See, e.g., *Merenoff v. Merenoff*, 76 N.J. 535, 388 A.2d 951 (1978).

³⁴ In divorce cases, this is described as a problem of standing. The child does not have the ability to enforce court-ordered support nor to ask for increased support to meet additional expenses. *Yarborough v. Yarborough*, 290 U.S. 202 (1933), *Kelleher v. Kelleher*, 21 Ill. App. 3d 601, 316 N.E.2d 212 (1974); *Drake v. Drake*, 89 App. Div. 2d 207, 455 N.Y.S.2d 420 (1982). Once the child reaches the age of majority, an action for support may not be brought by the parent, but may be entertained by the adult child or a representative under statutes requiring support for incompetent or inform adult children. *Harmatz v. Harmatz*, 457 A.2d 399 (D.C. 1983); *Suire v. Miller*, 363 So. 2d 945 (La. App. 1978).

³⁵ The incentives provided to various parties is very important in the law and economics analysis of other civil obligations, such as tort, Guido Calabresi (1961) *The Costs of Accidents*; William Landes and Richard Posner (1988) *The Economic structure of Tort Law*, and George Priest (1982), *The Best Evidence of the Effect of Products Liability Law on the Accident Rate: A Reply*, *Yale L.J.* 91: 1386; George Priest (1991) *The Modern Expansion of Tort Liability: Its Source*; and contract, see, e.g., William Bishop (1983) *The Contract-Tort Boundary and the Economics of Insurance*, *J. Leg. Stud.* 12: 241; William Bishop (1985) *The Choice of Remedy for Breach of Contract*, *J. Leg. Stud.* 14: 299; Lon Fuller and William Perdue (1936) *The Reliance Interest in Contract Damages* (pts. 1 & 2), *Yale L.J.* 46: 52, 373; Steven Shavell (1984) *The Design of Contracts and Remedies for Breach*, *Q. J. Econ.* 99: 121. Elsewhere I have extended this analysis to the married couple. June Carbone and Margaret Brinig (1991) *Rethinking Marriage: Feminist Ideology, Economic Change, and Divorce Reform*, *Tul. L. Rev.* 65: 953; and Margaret F. Brinig (1993) *The Law and Economics of No-Fault Divorce*, *Fam. L.Q.* 26: 453.

³⁶ Martha Minow, *supra* note 1, at 284, notes that "over the past several centuries members of Western societies, including parents, have valued children less for their economic contributions than as objects of love and affection." Katharine T. Bartlett (1988) *Re-Expressing Parenthood*, *Yale L.J.* 98: 293, 298, suggests that parents earn authority by meeting support obligations. This is quite like the Hobbesian view, "[h]e which giveth sustenance to another, whereby to strengthen him, hath received a promise of obedience in consideration thereof." Thomas Hobbes (1982) *De Corpore Politico* pt. II, ch. 4, §3, in Jeffrey Blustein, *Parents and Children: The Ethics*

children because they are altruistic.³⁷ They may invest in their children because they feel some sort of duty to do so.³⁸ They may act because they take pride in their children's achievements, either because these enhance the family reputation or their own immortality.³⁹ They do not act because they expect any sort of reward,⁴⁰ especially not in a monetary sense.

Formerly in Western society, and currently in other places, parents have another incentive for "optimal" investment in their offspring. Because adult children will be expected to support their now infirm parents, such investments have a financial as well as a psychic reward.⁴¹ In North America and Western

of the Family, 69. See also Barbara Bennett Woodhouse, *Hatching the Egg: A Child-Centered Perspective on Parents' Rights*, *Cardozo L. Rev.* 14: 1747, 1818-1819, noting that parental "authority is a corollary of stewardship - earned during gestation and childhood and exercised in service to the child's emerging capacity." Like Samuelson and Barro in the economic context, *supra* note 18, Woodhouse extends her duty of stewardship to another generation by arguing that well brought up children will later nurture their own children. Compare C. Russell Hill and Frank R. Stafford (1980) *Parental Care of Children: Time Diary Estimates of Quantity, Predictability and Variety*, *J. Hum. Res.* XV: 2.

³⁷ This is not the sort of "pure" altruism that results in Good Samaritan behavior. See, e.g., Jane Mansbridge (1990) *Beyond Self Interest*. In economic terms, one is altruistic about another when they have interdependent utility functions. Gary Becker and Kevin Murphy (1988) *The Family and the State*, *J. L. & Econ.* 31: 1. The other is seen as an extension of the self. Gary Becker, *supra* note xx, at 5. In more commonplace language, they love each other. Richard Posner (1992) *Sex and Reason*; Allen Parkman (1992) *No-Fault Divorce: What Went Wrong?*, 26-27. Martin Zelder, *supra* note 6, writes that since the public goods investment in children cannot be divided at divorce, many "inefficient" divorces are granted, and many noncustodial parents will perceive that dollars spent will go into the custodial parent's general "pot," with only a fraction being spent on the children themselves. *Id.* at 506. Robert Weiss and Robert Willis suggest that non-support by non custodial parents may be due largely to the fact that the non custodial parent cannot monitor spending by a custodial parent he no longer completely trust to act in the children's' best interest. *Children as Collective Goods in Divorce Settlements*, *J. Lab. Econ.* 1: 15 (1985).

Fathers spend about 1.5 hours per week on direct child care when both parents work, as compared to the mother's 4.4 hours. When only one parent works, the father spends 2.4 hours, the mother 8.7. Peter Kooreman and Arie Kapteyn (1987) *A Disaggregated Analysis of the Allocation of Time Within the Household*, *J. Pol. Econ.* 95: 223, 233. The wife's sole responsibility for child care when employed was 39.2 percent of her time in 1976; when not employed it was 55.8. Elizabeth Maret and Barbara Finlay (1984) *The Distribution of Household Labor Among Workers in Dual Earner Families*, *J. Marr. & Fam.* 46: 357 (May).

³⁸ The eighteenth century economist David Hume used this explanation as a justification for treating adultery more seriously for married women than married men: men will have the obligation of supporting their offspring, and will not be inclined to take care of children without the biological connection. *Of Morals*, Sec. XII in *Essays: Moral, Political and Literary* (rev. ed. 1985).

³⁹ Buchanan, *supra* note 18; Becker and Murphy, *supra* note 38.

⁴⁰ but see *Parker v. Stage*, 43 N.Y.2d 128, 371 N.E.2d 513, 400 N.Y.S.2d 794 (1977), suggesting that the parent's duty of providing at least minimal support depends on at the child's giving some credence to the parent's corresponding right to exert some control and discipline.

⁴¹ Oriental cultures also have religious and moral traditions of respect for the elderly that, despite the Fourth Commandment to "honor thy father and thy mother," are largely missing from Western culture.

Europe, we expect our elderly parents to support themselves out of some combination of accumulated earnings, pension plans, and social security.⁴² Unlike the non-Western industrialized nations,⁴³ our elderly largely live alone or in nursing homes. The next section of this paper explores the question of whether there is a connection between treatment of elderly parents and investment in minor children.

3. Modeling the connections between generations

Reduced to its simplest non-mathematical terms, this paper argues that positive investments in children will be a function of the parent's expectation of reciprocal care in advanced age. Since families tend to mirror patterns of care through the generations,⁴⁴ individually and on an aggregate level, the parent's current involvement with his or her own parents reflects these expectations. Of course, the family expectations will not be the only thing

⁴² Karen C. Holder and Timothy M. Smeeding (1990) The Poor, the Rich, and the Insecure Elderly Caught in Between, *Millbank Q.* 68(2): 191. Statutes in some states do require some minimal support from working children if the aged and infirm parents would otherwise be on state support or are in state institutions. See, e.g., Ark. Stat. Ann. § 20-47-106 (1992); Cal. Civ. Code § 206 (1992); Burns Ind. Code Ann. § 31-2-9-1 (1992); Md. Fam. Law Code Ann. § 13-102 (1991); Mont. Code Ann. § 40-6-301 (1992); Nev. Rev. Stat. Ann. § 428.070 (1991); N.J. Stat. Ann. § 44:1-140 (West Supp. 1991); 62 Pa. Cons. Stat. Ann. § 1973 (1968 & Supp. 1990); S.D. Cod. Laws § 25-5-21 (1992); Va. Code Ann. § 20-88 (Michie 1991); W. Va. Code § 9-5-9 (1990). See generally Terrance A. Kline (1992) A Rational Role for Filial Responsibility Laws in Modern Society? *Fam. L.Q.* 26: 195, 200 & n.47 (1992); Catherine D. Byrd (1988) Relative Responsibility Extended: Requirements of Adult Children to Pay for their Indigent Parent's Medical Needs, *Fam.L.Q.* 22: 87; Ranae R. Patrick (1984) Honor Thy Father and Mother: Paying the Medical Bills of Elderly Parents, *U. Rich. L. Rev.* 19: 69; Alison P. Barnes and Lawrence N. Frolick (1993) America The Aging, *Fam. Advocate* 16: 19, 22-23. Most elderly are above the poverty line, but just barely. Holden and Smeeding, Table 10; Henry Cisneros (1989) Health Policy for an Aging Population, *Houston L. Rev.* 26: 787 & fn. 19. These figures are confirmed by statistics the author obtained on Oct. 2, 1992, from the United States Department of Commerce, Bureau of the Census, Poverty and Statistics Branch, Poverty Statistics (for 1990).

⁴³ See, e.g., Charles Y. Horioka, *The Applicability of the Life Cycle Model of Saving to Japan* (8072), cited in Burnheim, Shleifer and Summers, *supra* note 18, at 1074. By looking at industrialized nations, and by systematically factoring out the influence of agriculture in the empirical estimates, the otherwise strong effect of economic incentives in the family farm has hopefully been eliminated. My thanks go to Paul Rubin for this consideration.

⁴⁴ See, e.g., State ex rel. *Williams v. Marsh*, 626 S.W.2d 223, 226 (Mo. 1982); *Kulko v. Superior Court*, 436 U.S. 84 (1978); Characteristics of Child Victims of Physical Violence: Research Findings and Clinical Implications, *J. Interpersonal Violence* 7, 244-276 (June, 1992); Fong, P. and Coles, R. (1991) *Breaking the Cycle: Survivors of Child Abuse and Neglect*; Starr, R.H., Jr., MacLean, D.C., and Keating, D.P. (1991) Life-Span Developmental Outcomes of Child Maltreatment, in Starr, R.H., Jr. and Wolfe, D.A. (eds.) *The Effects of Child Abuse and Neglect*, 1-32; Zaidi, L.Y., Knutson, J.F.; Mehm, J.G. (1989) Transgenerational Patterns of Abusive Parenting: Analog and Clinical Tests, *Aggressive Behavior* 15: 137-152.

influencing investment, so this empirical work controls for other factors as well.

More formally, if $y_1 \dots y_n$ represent investment in children, x_1 represents family care of the aged, and $x_2 \dots x_n$ represent other factors influencing investment, then

$$y_i = f(x_1, x_2 \dots x_n) \quad (1)$$

How can we measure investment in children, and what are some of the other factors besides care of aged parents influencing investments? Several studies, beginning with Becker, have examined the investment in children based upon the number of children in the family (fertility rates).⁴⁵ Economists have related the number of children to such factors as parental income, years of education, and the divorce rate.⁴⁶ Another way of measuring investment in children is to calculate the time spent on their care. Studies have already modeled time spent on children as a function of their age, income, gender, and the employment status of each parent.⁴⁷

This paper looks at other measures of investment in children. One other measure of parental investment is the financial outlays parents make for their children.⁴⁸ A data source measuring this outlay is the payment of agreed upon or court-ordered child support by noncustodial parents.⁴⁹ Another is the investment by the state in education for children; however, studies reveal that the amount spent on education is not a successful predictor of child performance on such tests as the Scholastic Aptitude Test.⁵⁰ A closer proxy might be investment in gifted secondary school students enrolled in college-level courses. A data source measuring the output of this investment is success on the Advanced Placement examination. Another data source measuring successful parenting is the child's performance on standardized tests given to all children in school systems.⁵¹ Unfortunately families also experience negative "invest-

⁴⁵ See, e.g., Becker and Lewis, *supra* note 24; Gary Becker and Nigel Tomes (1976) Child Endowments and the Quantity and Quality of Children, *J. Pol. Econ.* 84: 143.

⁴⁶ *Id.*

⁴⁷ See sources cited at note 38, *supra*.

⁴⁸ If expenses on food and housing are examined, it is difficult to separate out money spent directly on children from that spent on the household in general. This can be compared to the difficulty in studies looking at parental time allocation, which must filter out time spent in general household activities. See articles cited in note 38, *supra*.

⁴⁹ As Weiss and Willis argue, *supra* note 38, allocation of these payments cannot be controlled efficiently by the payor spouse. However, the law presumes that they are being spent to benefit the child. The noncustodial parent may have remedies against the custodial parent if diversion of the payments is egregious. See, e.g., *Rosenblatt v. Birnbaum*, 16 N.Y.2d 212, 212 N.E.2d 37, 264 N.Y.S.2d 521 (1965).

⁵⁰ See discussion in note 60, *infra*.

⁵¹ The National Education Goals Report, *supra* note 3, gives a variety of reasons for the relatively poor performance of American schoolchildren. These include the scarcity of good teachers, the prevalence of crime, and the pervasiveness of drugs.

ments," akin to dissipation or wasting of assets.⁵² The data source measure that relates directly to children is parental child abuse. Equations measuring parental investment therefore might take the following forms:

$$y_3 = f(x_1, x_2 \dots x_n), \text{ where } y_3 = \text{parental child abuse.}^{53} \quad (2)$$

$$y_2 = f(x_1, x_2 \dots x_n), \\ \text{where } y_2 = \text{performance on standardized testing.}^{54} \quad (3)$$

$$y_1 = f(x_1, x_2 \dots x_n), \\ \text{where } y_1 = \text{performance of child support obligations.}^{55} \quad (4)$$

⁵² Divorce itself, while it may be beneficial to the adults involved, frequently has a negative effect upon their children. See, e.g., Barbara Dafoe Whitehead (1993) Dan Quayle was right; Harmful effects of divorce on children, *The Atlantic* 271: 47 (April). Whitehead's article reviews research by such scholars as Judy Wallerstein and Mavis Hetherington, both of whom did longitudinal research involving the children of divorced parents. See, e.g., Mavis Hetherington, Martha Cox, and Roger Cox (1982) Effects of Divorce on Parents and Children, in M.E. Lamb (ed.) *Nontraditional Families: Parenting and Child Development*, 233; Mavis Hetherington, Martha Cox and Roger Cox (1985) Long-Term Effects of Divorce and Remarriage on the Adjustment of Children, 24 *J. Amer. Acad. Child Psych.* 24: 518; Judith S. Wallerstein (1989) *Second Chances: Men, Women, and Children A Decade After Divorce*; Judith S. Wallerstein (1980) *Surviving the Breakup: How Children and Parents Cope with Divorce*; Judith S. Wallerstein (1991) The Long-Term Effects of Divorce on Children: A Review, *J. Amer. Acad. Child & Adolescent Psychiatry* 30: 349.

Whitehead writes:

If we fail to come to terms with the relationship between family structure and declining child well-being, then it will be increasingly difficult to improve children's life prospects, no matter how many new programs the federal government funds. Nor will we be able to make progress in bettering school performance or reducing crime or improving the quality of the nation's future work force – all domestic problems closely connected to family breakup. Worse, we may contribute to the problem by pursuing policies that actually increase family instability and breakup.

⁵³ My colleague Frank Buckley speculates that child abuse has decreased over time. Although I have not run these equations as time series, my guess would be the opposite. When children were valuable economic assets, there would be little incentive to exploit them through physical or sexual abuse. Compare David Galenson (1986) *Traders, Planters and Slaves* (no real incentive to exploit slaves since they would not otherwise be valuable in the future). Further, with the tremendous increase in the divorce rate since World War II, parents "on the margin" of abuse have less incentive to refrain in order to hold their families together.

⁵⁴ There are two measures of this investment examined here: the Scholastic Aptitude Test, and the Advanced Placement examination pass rate. Most college bound secondary school students in the United States take the S.A.T. Students taking college level courses while in high school attempt the AP exams.

⁵⁵ Although a divorce may indicate a breach or rescission of the marital contract, the cases are quite clear that the parent-child relationship continues on, affected as little as possible by the parents' separation. See, e.g., *Conway v. Conway*, 10 Va. App. 653, 395 S.E.2d 464 (1990) (children are entitled to the financial advantages they would have had if the marriage had remained intact). See also Everett, *supra* note 13 (the parental covenant continues). Child support is a complicated phenomenon, since in part any payment made by a noncustodial parent benefits the custodial (divorced) parent in some way. For a discussion of the monitoring problems involved with child support, see Weiss and Willis, *supra* note 37. Because of these complications, it would not make sense to look only at this equation.

The section below describes empirical testing of Equations 2 to 4 in both American and international settings.

4. Is there a contract between parents and children? Empirical results

If it is correct that there used to be an intergenerational contract for support at the time of dependency, investment in children should be highest where more elderly people are cared for by their adult children. Conversely, where many elderly people live alone, their children should not be investing as much in minor children.

In order to explore these predictions, I collected both national and international data. I looked for evidence of both positive and negative contributions by parents. In each case, I used an investment variable as dependent. The regressions explored whether I could isolate provision for the elderly as an important contributing factor.⁵⁶ The right hand side variables also included general demographic information that alternatively might explain the dependent variable.

Table 1 shows the results of variation among states in the number of people over 65 living alone (ALONE65)⁵⁷ on the incidence of child abuse (CABUSE) in the United States during 1991.⁵⁸ The other exogenous (independent) variables considered are the percentage of children under 18 (UNDER18),⁵⁹ family income (FAMINC),⁶⁰ the divorce rate in 1988 (DIV88), the percentage of married women with husbands present who are in the labor force (WOMLAB),⁶¹ the percentage of the state population living in rural areas (NONMETRO), and the state's infant mortality rate (INFMORT).⁶²

⁵⁶ Because the relationship were not necessarily linear, all coefficients in the regressions represent logarithmic values except for the dummy variable for a statutory preference for joint custody. Econometric analysis for this paper used White, K. J. SHAZAM. A Comprehensive Computer Program for Regression Models (Version 6), *Computational Statistics and Data Analysis* (December, 1988).

⁵⁷ Data for this variable on the state level comes from United States Department of Commerce, Bureau of the Census (1992) *Sixty Five Plus in America*, Current Population Reports P23-178, Table 6-6, at 6-11 to 6-12.

⁵⁸ Data for child abuse in the United States came from United States Department of Health and Human Services, National Child Abuse and Neglect Data System, Working Paper 1, 1990 Summary Data Component 10, Section II - Report Data by Source (1992). Child abuse reporting rates per 1000 US children can also be found in Table I of the American Humane Association (1989) *Highlights of Official Aggregate Child Abuse and Neglect Reporting* (Denver, Colo.).

⁵⁹ Population data come from United States Department of Commerce, Bureau of the Census, *Statistical Abstract: 1992*, Table C.

⁶⁰ Data was taken from the United States Department of Commerce, Bureau of the Census (1991) *Money Income of Households, Families and Persons in the United States 1991*, P-60, Table 180.

⁶¹ This data comes from a computer printout supplied by the United States Department of Labor, Bureau of Labor Statistics, Reference 140, dated February 13, 1989. This data is from 1987.

⁶² The infant mortality rates were taken from Statistical Abstract, *supra* note xx, at 81, Table 112.

Table 1. Child abuse in United States

Variable name	Estimated coefficient	Standard error	T-ratio 42 D.F.	Partial correlation	Standardized coefficient	Elasticity at means
ALONE65	1.3456	0.69757	1.9290*	0.2853	0.3018	1.9601
FAMINC	0.16189	0.51616	-0.31365	0.0483	0.59168-01	0.72574
UNDER18	-0.54738	0.24360	-2.2470*	-0.3276	-1.2464	-3.2410
DIV88	0.52341	0.23694	2.2090*	0.3226	1.1970	0.61437
WOMLAB	0.62291	0.53427	1.1659	0.1771	0.17069	1.0926
NONMETRO	-0.16152E-01	0.58374E-01	-0.27670	0.0427	-0.4993E-01	-0.22666E-01
INFMORT	0.29614	0.43366	0.68289	0.1048	0.10414	0.29237
CONSTANT	-0.96722	7.5100	-0.12879	-0.0199	0.00000E+00	-0.42142

$R^2 = 0.21$ * sig. at 0.05

The dependent variable, child abuse (CABUSE) is the number of reported incidents during the 12 previous months in each state, divided by the state's population.

The significant positive relationship between child abuse and the percentage of elderly people living alone is central to the thesis of this paper. Of course, grandparents may suppress abuse when they live with their adult children simply because their presence deters bad behavior.⁶³ This is not inconsistent with my thesis – the presence of a caring relative who can buffer an abusing parent's anger is the important thing.

The popular wisdom is that child abuse partly reflects poverty or a parent's general feelings of powerlessness. This view is not supported by this study, although the coefficients in question are not significant. Here the estimated coefficient for income is positive. Similarly, one would expect less not more abuse as the wife entered the labor force, since the additional income should alleviate stress in the home. These two results may reflect an increased willingness of educated persons to report abuse. Reporting may also account for the higher incidence of abuse in metropolitan areas, where there are also more services for abused family members. The negative (but insignificant) coefficient would not appear to support Rubin, Kau and Meeter's⁶⁴ thesis that parents need to make time-intensive investments to control their children's behavior in places where capital is primarily human capital. Since children often take the brunt of their parent's anger in unhappy marriages,⁶⁵ you could

⁶³ The analogy is to people flashing their headlights at oncoming traffic to signal radar traps. If the goal is to cause traffic to slow down, rather than to increase the public treasury, it will be achieved irregardless of the signaling.

⁶⁴ *supra* note 9.

⁶⁵ See National Commission, *supra* note 4, at xxx. See also Whitehead, *supra* note 51, at 59:

One of the worst consequences of these divided interests is a withdrawal of parental investment in children's well-being. As the Stanford economist Victor Fuchs has pointed out, the main source of social investment in children is private. The investment comes from the

predict the significant positive correlation with the divorce rate. Further, parents who think they are not going to be living with their families for much longer might be inclined to invest less in them.⁶⁶

In contrast to the "negative investment" shown in Table 1 and Table 2 demonstrates how a larger percentage of senior citizens supported by (or at least living with) their families may have a positive effect on the investment in children. This time I measured contribution by the percentage of students passing Advanced Placement Examinations, again by state. Right hand side variables in addition to ALONE65 include the percentage of the population finishing high school (FINISH),⁶⁷ the size of the population under 18 (UNDER18), the median family income (FAMINC), the percentage of women in the labor force (WOMLAB) and the percentage of people living in non-metropolitan areas (NONMETRO).⁶⁸

Table 2. Percentage passing AP EXAM

Variable name	Estimated coefficient	Standard error	T-ratio 42 D.F.	Partial correlation	Standardized coefficient	Elasticity at means
ALONE65	-3.94	1.3454	-2.9305*	-0.4041	-0.38875	-2.5237
FINISH	0.87009	0.83552	1.0414	0.1551	0.14064	1.6830
UNDER18	0.77676E-06	0.24003E-05	0.32361	0.0487	0.43138E-01	0.22165E-01
FAMINC	0.70883E-03	0.82449E-03	0.85972	0.1285	0.13577	0.47498
NONMETRO	-0.43707	0.18204	-2.4010*	-0.3403	-0.38483	-0.35361
CONSTANT	75.386	65.722	1.1470	0.1704	0000.00	1.697

$R^2 = 0.52$; * sig. at 0.05.

The variable ALONE65 was significantly and negatively related to the percentage of students passing the Advanced Placement examination. Parents who do not have close connections with their own parents shows less concern for the child's education, whether through emphasis at home or less directly

children's parents. But parents in disrupted families have less time, attention, and money to devote to their children. The single most important source of disinvestment has been the widespread withdrawal of financial support and involvement by fathers. Maternal investment, too, has declined, as women try to raise families on their own and work outside the home. Moreover, both mothers and fathers commonly respond to family breakup by investing more heavily in themselves and in their own personal and romantic lives.

Id. at 59.

⁶⁶ See Weiss & Willis, *supra* note 37. There may be somewhat of a simultaneity problem here. Divorce may cause abuse, while at the same time abuse may cause divorce. Abuse of a child is an independent cause of action for divorce in at least one state and would probably support a cruelty-based divorce in others. W. Va. Code §48-2-4(9) (1992).

⁶⁷ This data comes from Statistical Abstracts, *supra* note 59.

⁶⁸ A two-stage least squares analysis, with ALONE65 as the dependent variable in one equation, did not produce significant results for a relationship with NONMETRO and MEDINC.

through support of advanced secondary school programs. The only other significant variable in this equation was the non metropolitan population, again with a negative result. This time, however, the results support the Rubin, Kau and Meeker thesis.⁶⁹ It may be that farm parents are not as interested in college level work, or that the rural high schools are too small to have good preparation for the examination. As one would expect, although not significant, the sign is positive for median income and the percentage completing high school.

A third table (Table 3) also shows the negative side of the intergenerational contract. In this case, I tested whether the number of persons over 65 living alone (ALONE65) would have an important effect on the percentage of noncustodial parents meeting child support obligations.⁷⁰ Other variables include family median income (FAMINC), the percent of children under 18 (UNDER18), the percentage of women in the labor force (WOMLAB), the divorce rate for 1988 (DIV88), a dummy variable for state statutes presuming joint custody (JTCUSTODY),⁷¹ the percentage living in non-metropolitan areas (NONMETRO), and the infant mortality rate (INFMORT).

Table 3. Child support percentage collected, US

Variable name	Estimated coefficient	Standard error	T-ratio 42 D.F.	Partial correlation	Standardized coefficient	Elasticity at means
ALONE65	-1.8854	0.97047	-1.9428*	-0.3161	-0.34051	-1.6318
INCOME	0.24030	0.41907	0.57342	0.0979	0.11208	0.63726
UNDER18	0.54712	0.19910	2.7480*	0.4263	1.5898	1.9170
WOMLAB	0.60900	0.41251	1.4763	0.2454	0.22041	0.63120
DIV88	-0.45216	0.19381	-2.3331*	-0.3715	-1.2963	-0.31414
JTCUSTODY	0.57931E-01	0.11229	0.51589	0.0881	0.78910E-01	0.10079E-01
NONMETRO	0.45482E-01	0.47636E-01	0.95477	0.1616	0.18431	0.38386E-01
INF. MORT	0.38466	0.37370	1.0293	0.1738	0.16629	0.22555
CONSTANT	-1.9905	7.1084	-0.28002	-0.0480	0.00000E+00	-0.51349

R² = 0.34 * sig. at 0.05

My analysis predicts that the parents who have their parents living with them will be more motivated to meet obligations involving children, such as child support. In fact, this appears to be the case, and the negative value on ALONE65 is significant. Perhaps the collection mechanism improves as the

⁶⁹ Supra note 9.

⁷⁰ Data on child support enforcement comes from United States Department of Health and Human Services, Administration for Children and Families, Office of Child Support Enforcement, Child Support Enforcement (1990) Fifteenth Annual Report to Congress 138, Table 97. Again, all data is by state for the United States.

⁷¹ State statutes come from Timothy B. Walker and Linda H. Elrod (1993) Family Law in the Fifty States: An Overview, *Fam. L.Q.* 26: 319, 378 and Table 9.

number of children under 18 increases. This would explain the positive and significant coefficient for UNDER18, but seems to contradict the negative and significant coefficient for the divorce rate. Other values were not significant, but had the sign one would expect.

Of course it was entirely possible for these results to hold true only for the United States because of some other conditions present in this country. I therefore collected similar data from various Western and non-Western economies. Because child support enforcement regimes varied considerably between countries,⁷² I did not obtain this data. However, Tables 4 and 5 present testing results (for Mathematics and Science) on an international level, with independent variables much like those in Tables 2 and 3.⁷³

The international results are close to what one would predict using the present analysis. The coefficient on per capita income is significant in only one equation (and is negative in both), the infant mortality rate is negative and significant in both equations. Infant mortality is another indication of the country's level of development. It is possible that this coefficient indi-

Table 4. International math results

Variable name	Estimated coefficient	Standard error	T-ratio 42 D.F.	Partial correlation	Standardized coefficient	Elasticity at means
ALONE65	-0.74861E-01	0.36575E-01	-2.0468*	-0.5434	-0.52507	-0.45302E-01
POPOVER65	0.30329E-01	0.15373	0.19729	0.0623	0.67515E-01	0.16785E.01
INCOME	-0.15029	0.63602E-01	-2.3630*	-0.5986	-0.88410	-0.32506
URBAN	0.20994	0.17700	1.1861	0.3512	0.29321	0.21423
INFMORT	-0.35054	0.11490	-3.0509*	-0.6943	-1.1683	-0.21162
CONSTANT	5.5728	1.0158	5.4859	0.08664	0.0000E+00	1.3510

$R^2 = 0.59$; * sig. at 0.05.

⁷² Australia, for example, requires employers to withhold child support payments automatically as they do income taxes. Other countries require some action by the custodial spouse to trigger enforcement. In contrast, the enforcement mechanism in the United States is mandated by the Social Security Act and is therefore uniform. Compliance in the United States will therefore vary between states for other reasons than the mechanism for collection.

⁷³ Data for population (POP) and income (INCOME) come from the World Bank (1991) *World Development Report 1991, The Challenge of Development*, Table 1, 204–205 (Oxford Univ. Press). Data on Urbanization (URBAN) is found id. at Table 31, 264–265; while data on population under 14 (POP14), since under 18 population is not measured, is found id. at Table 26, 254–255. Data on infant mortality (INFMORT) appears id. at Table 28, 258–229. Data for population over 65 (POPOVER65) and Population living alone come from the United States Department of Commerce, Bureau of the Census Center for International Research (1990) *Living with the Elderly: A Cross-National Perspective*, Table I and are largely for 1990. Results on the Mathematics Test come from Educational Testing Service (1992) *International Assessment of Educational Progress, Learning Mathematics*, Figure 1.1 at 18. The samples are small because the mathematics test sample was only for 20 countries.

Table 5. International math results⁷⁴

Variable name	Estimated coefficient	Standard error	T-ratio 42 D.F.	Partial correlation	Standardized coefficient	Elasticity at means
ALONE65	-0.33827E-02	0.18540E-01	-1.8246*	-0.4998	-0.49280	-0.19973E-01
POP	-0.78872E-02	0.16365E-01	-0.48196	-0.1507	-0.13670	-0.19634E-01
INCOME	-0.30925E-01	0.34192E-01	-0.90446	-0.2750	-0.37786	-0.65264E-01
URBAN	0.87304E-01	0.92494E-01	0.94388	0.2860	0.25326	0.86925E-01
INFMORT	-0.13161	0.57602E-01	-2.2848*	-0.5857	-0.91108	-0.77524E-01
CONSTANT	4.6314	0.45022	10.287	0.9559	0.00000E+00	1.0955

R² = 0.48; * sig. at 0.05.

cates a greater regard for children as more of them survive infancy.⁷⁵ Population is not significantly related to performance on the examination. Otherwise the positive and negative investment regressions are nearly identical.

Finally, Table 6 looks again at the problem of child abuse, this time on an international sample of 20 countries.⁷⁶ Independent variables, excluding "ALONE65", include the population under 14 (POP14), per capita income (FAMINC), percent living in urban areas (URBAN), and the infant mortality rate (INFMORT).

Robust analysis produced interesting results for the international child abuse equation. As predicted, the number of elderly living alone is significantly related to the incidence of abuse. In fact it is the most significant indicator other than population. As with the domestic data, the positive sign on the relevant population variable is difficult to explain. As with the United States, there is a negative relationship with non-urban areas. This time there is a positive but insignificant relationship with income. Child abuse is negatively and significantly related to the infant mortality rate. This suggests that the parents value children less if they are unsure they'll survive to adulthood.

⁷⁴ Statistics on the Science test come from Educational Testing Service (1992) *International Assessment of Educational Progress, Learning Science*, 18, Figure 1.1. Countries involved in this study include Korea, Taiwan, Switzerland, Hungary, Russia, Slovenia, Italy, Israel, Canada, France, Scotland, Spain, United States, Ireland, Jordan, England, China, Portugal, and Brazil. Although I would have preferred a study involving only industrialized countries, I attempted to control for any inaccurate results by using the variable INFMORT, since infant mortality is generally associated with less developed nations.

⁷⁵ See Aries, *supra* note 22, and Demos, *supra* note 10, at 71 (children occasionally "put out") to live in other homes and learn trades.

⁷⁶ Information on Child Sexual Abuse comes from David Finkelhor, *International Epidemiology of Child Sexual Abuse*, Family Research Laboratory and Department of Sociology, University of New Hampshire, 12 and Table 2. His data is explained in Appendix I at 13. Again, the sample size limitation comes from Finkelhor's small sample size. Finkelhor also failed to include data for oriental countries. This data has been requested from another source. The countries included Austria, Australia, Brazil, Canada, Costa Rica, England, France, Germany, Hungary, Honduras, Ireland, Jordan, New Zealand, Norway, South Africa, Spain, Sweden and the United States.

Table 6. International child abuse

Variable name	Estimated coefficient	Standard error	T-ratio 42 D.F.	Partial correlation	Standardized coefficient	Elasticity at means
ALONE65	0.17183	0.33765E-01	5.0890*	0.8160	0.35615	1.57162
POP14	0.44977	0.68943E-01	6.5238*	0.8752	0.70892	1.2112
FAMINC	0.40644R-01	0.37354E-01	1.0881	0.2889	-0.67857E-01	-0.61140E-01
URBAN	-0.69264E-01	0.14313E-01	-4.8392	-0.8019	-0.28229	-0.57788
INFMORT	-0.59807E-01	0.26242E-01	-2.2791*	-0.5343	-0.23597	-0.10316
CONSTANT	-0.87129	2.1896	0.39792	-0.1097	0.0000	-0.10346

* sig. at 0.05.

Conclusion

There are at least two possible explanations for the observed relationship between treatment of the elderly and treatment of children. One possibility is the economic one: parents who expect to be supported by their children in their declining years are likely to make greater investments in them. The other is that some cultures more than others revere elderly family members. Data within the United States tend to support this second possibility to the extent that American culture is heterogeneous. A better test would be to examine very similar countries that differ only in the elderly living alone variable. For example, if one could examine data from North and South Korea, Croatia and Slovenia, and West and East Germany, in a series of pairwise comparisons, there could be interesting observations.

Of course, both explanations are related. If the culture supports reverence for the aged ancestor for a non-economic reason such as religion, the economic result may hold true as well: the elderly citizen will be supported his adult children.⁷⁷ A deeper regard for all family members will increase benefits for both the children and the elderly.⁷⁸ One would expect the investment in children that is reflected in the analysis above.

There are therefore two recommendations, besides a suggestion for further study, that might be made. One assumes that the economic motivation is dominant: if public provision for the elderly results in less investment in children, some thought might be given to discontinuing or limiting public

⁷⁷ For recent comments on Japan, suggesting that more and more older persons become dependent members of younger households, see Fumio Hayashi (1986) Why is Japan's Saving Rate So Apparently High?, in *National Bureau of Economic Research, Macroeconomics Annual*, 147, 176 (Stanley Fischer, ed.) (67 percent of persons 65 or over lived with their children in 1983).

⁷⁸ Although it is possible that to some extent the Catholic Church is trying to diversify support for its pro-life stand, the encyclical *Humanae Vita* clearly ties care for children (including the unborn) to care for the elderly and terminally ill.

support.⁷⁹ The other assumes that the cultural motivation dominates, although the economic effect might follow.⁸⁰ Under this alternative view, the Western nations, which are the ones with the least significant connection between adults and their parents, might try to strengthen these ties. The beginning could be made by heavy investments of time and money in our own children,⁸¹ or by providing the example in offering homes for our elderly parents. Finally, to some extent, strengthening connections, especially for fathers,⁸² may require a change in emphasis in legal interpretation.⁸³

⁷⁹ Gary Becker makes this argument in his Nobel address, *supra* note 18, at 24, when he states that "parents who do not need support when they become old do not try as hard to make children more loyal, guiltier, or otherwise feel as well-disposed toward their parents. This means that programs like social security that significantly help the elderly would encourage family members to drift apart emotionally, not by accident but as maximizing responses to those policies." See also Burnheim, Shleifer and Summers, *supra* note 18, at 1074 (general decline in attentiveness of adult children to parents since introduction of Social Security); see also Richard Epstein, *supra* note 14, at 1466:

[T]he natural parental investment in their children creates a bias for the protection of their future that legal and social institutions should exploit, not undermine. Taxing and regulatory policies designed to secure equality of wealth in the next generation do so at the cost of reducing the levels of capital accumulation.

Epstein says the basis for the link is genetic, *id.* at 1472, and that transmission is largely through bequests, *id.* at 1475.

As Lloyd Cohen points out, any abolition of pensions and other old age benefits may have an unfortunate effect that goes beyond hardship to a current generation left without financial support. Without the cultural or community motivation, there might still be little investment in children but only a greater investment in one's own human capital by the middle generation. The expectation under this alternative would be that one must provide for one's own old age.

⁸⁰ See Mary Ann Glendon (1991) *Rights Talk: The Impoverishment of Political Discourse*, 126 (noting the economic argument, but adopting a communitarian approach).

⁸¹ Victor Fuchs and Diane M. Reklis (1992) *America's Children: Economic Perspectives and Policy Options*, *Science* 255: 41, 44, state that this cannot be compelled, but might be induced through a "well-chosen combination of taxes on adult consumption and subsidies of children's goods and services." Sociologist Peter Laslett suggests that an intergenerational tricontract connects succeeding generations, in which each cohort of children can claim support from parent cohorts as a matter of right, and creates corresponding duties to future generations. Peter Laslett (1992) *Is There a Generational Contract?*, in Peter Laslett and James S. Fishkin (eds.) *Justice Between Age Groups and Generations*, 24.

Any value change to be followed later by a desired economic result would require a real educational effort. Such attitudinal change can be achieved, of course, as we have seen with modern campaigns against smoking and in favor of a lower amount of fat in diets.

⁸² Whitehead, *supra* note 51, at 57, writes that "fatherhood has declined as a norm for men. In 1976 less than half as many fathers as in 1957 said that providing for children was a life goal. The proportion of working men who found marriage and children burdensome and restrictive more than doubled in the same period. Fewer than half of all adult Americans today regard the idea of sacrifice for others as a positive moral virtue."

⁸³ Barbara Woodhouse explains that laws defining "fathering as little more than procreation plus formal recognition and occasional contact with the child may mask the importance to family systems of both cross-generational and intergenerational support and functional inter-

What I have discussed here portrays a rather static view of the world, rather than one adapting and changing over time to meet societal needs.⁸⁴ For example, in the nineteen thirties, when the United States enacted Social Security laws, the country was in the midst of a deep economic depression. Income security for the elderly, the disabled, and dependents was naturally a most important national goal. Since the legislation protected many children's interests, Congress gave little thought to the "dark side": that in future years Social Security (and later, private pension plans) might cleave the tissue of the family itself. Perhaps only now, as the country reassesses the wisdom of social insurance for fiscal reasons, is it important to look at its unintended consequences.⁸⁵

dependence." Barbara Bennett Woodhouse (1993) *Hatching the Egg: A Child-Centered Perspective on Parents' Rights*, *Cardozo L. Rev.* 14: 1747. See also Schneider, *supra* note 17, at 526-529, noting how what he calls law's "channeling function" can strengthen the institutions of marriage and parenthood.

⁸⁴ This is somewhat ironic, for I have recently criticized feminists for making the same mistake as they castigate Victorian women who chose the separate sphere of their household to market production. Margaret F. Brinig, *Status, Contract and Covenant*, *Corn. L. Rev.* 79: —, nn. 27-50 (forthcoming 1994).

⁸⁵ Compare Margaret F. Brinig and Steven M. Crafton, *Opportunism in Marriage*, *J. Legal Stud.* 23: 869 (forthcoming, 1994).