

Review Symposium: Retrospective on the Work of Hendrik Hartog

Parents and Adult Children: The Elusive Boundaries of the Legal Family

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HARTOG, HENDRICK. *Someday All This Will be Yours: A History of Inheritance and Old Age*. Cambridge, MA: Harvard University Press, 2012.

The literature on the relationship between parents and adult children reveals an embedded tension. While the law typically characterizes parents and their adult children as legal strangers, several legal rules assume intergenerational altruism. This Essay argues that Someday All This Will Be Yours by Hendrik Hartog unpacks this dichotomy and offers a much richer depiction of intergenerational relations in an age of market economy. The book portrays an intermediate space where autonomous individuals engage in private ordering but the same parties also maintain a dynastic understanding of their commitments. This depiction provides a useful lens for the analysis of occurrences of informal care between parents and adult children. The Essay discusses intergenerational cohabitation in the wake of the 2008 financial crisis as an example of such an analysis.

INTRODUCTION

The legal treatment of the parent-adult child relationship is ambivalent and inconsistent. Mainstream Anglo-American legal theory defines the family quite narrowly (Kreiczer-Levy 2014). The nuclear family, composed of a couple and their minor children, is the prototype of a family in the eyes of the law. Once a child reaches the age of majority, she is not legally part of her parents' family. Barring occasional filial responsibility laws, which are narrow in scope (Ross 2008), adult children and parents are under no legal obligation to care for one another. They are understood to be free, autonomous individuals that can bargain for their own care, at times with each other. Although parents and adult children are legal strangers in terms of *defining* their mutual obligations, the law *assumes* they do care for each other, an assumption demonstrated in a number of presumptions. For example, when parents or children give each other large sums of money, there is a legal presumption of a gift rather than a loan (*Bhagat v. Bhagat* 2014). Such a presumption assumes generosity, even altruism, in the familial setting and ignores the possibility of bargaining between related individuals.

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The gap between the lack of formal obligations and a presumption of care reveals an embedded tension. There are two competing understandings of the relationship. One sees adulthood as the end of familial responsibility. It emphasizes the individualist, contractual aspect of the relationship, well-suited for an age of market economy and social mobility. The second understanding continues to assume commitment and care in the intergenerational family. The cold market sphere of money and compensation is considered ill-suited for the relationship between parents and their adult children.

A similar tension arises from certain theoretical models of intergenerational relations. The altruistic or caring model assumes parents care about their children's well-being (Wilhelm 1996; Bianchi et al. 2008). The serial reciprocity model posits that each generation is responsible for the well-being of the next generation (Laslett 1992). These models highlight commitment and care between members of the intergenerational family. The exchange or reciprocity model, on the other hand, claims that financial help or bequests are payments that parents make for goods and services provided by children, such as visitations, telephone calls, or care (Bernheim et al. 1985). This approach highlights the contractual aspect of the relationship. All three models struggle to explain commitment in an age of individualism and market exchange. While the first two models focus on familial responsibility, the latter one highlights bargaining for care.

Inheritance is an excellent example for the ambivalent socio-legal treatment of the parent-adult child relationship. On the one hand, in Anglo-American jurisprudence, inheritance is governed by the will of the property owner (Hirsch and William 1992). Parents are under no obligation to bequeath their estate to their adult children. The property owner can be vindictive, petty, and capricious. On the other hand, inheritance involves familial expectations. Children usually inherit from their parents. This is also the default rule provided by the law. Empirical studies show that children expect to inherit from their parents, and that parents generally fulfill this expectation (Hacker 2010; Sussman et al. 1970). Inheritance then is a field that reflects an inherent tension between free will and familial commitment.

Hendrik Hartog's *Someday All This Will Be Yours* unpacks this dichotomy and offers a much richer depiction of intergenerational relations, using stories of inheritance promises. Hartog studies inheritance practices in nineteenth- and early twentieth-century New Jersey, describing a period of transition. Following the disintegration of the intergenerational family, adult children were no longer responsible for their parents' care, nor were they entitled in common law jurisdictions to inherit from their estate. Labor mobility was rising, and young people had more opportunities than before. Most importantly, the government was not yet in the business of providing old age care, through social security or support of pensions, and retirement plans were not available. In order to secure care, young people had to be lured to stay and care for their parents or other elderly relatives. At times, parents promised to convey property to their child in exchange for long-term, affectionate care.

Hartog finds that these inheritance promises were made informally. The parties agreed that a child, child-in-law, adopted child, or a would-be child (a caretaker assuming the role of a child) will care for the elderly parent in exchange for a bequest of the property. Siblings, neighbors, and the community often acknowledged, even shared, this understanding and formal, written contracts did not seem appropriate in the familial setting (Hartog 2012, 43, 47, 82). Moreover, parents did not transfer the

property to the caretaker in advance; they wanted to preserve their control over the asset and monitor the quality of care. The expectation was, instead, that parents would execute a will that bequeathed the home, land, or farm to their caretaking child. When they failed to do so, children had to prove the existence of a contract limiting the freedom of a parent to will. This was not an easy task.

The book delicately portrays young caretakers' struggle to present their case in legal terms. As a matter of law, a successful claim had to tell a story of two independent individuals agreeing to an economic arrangement; love or commitment could not be a part of the story. Herein lies the painful paradox: in order to get a bequest from one's parents, one has to be caring and loving. In order to succeed in court, one has to minimize the role of affection and present oneself as a cold, calculated party to a contract (Hartog 2012, 147). The book makes it clear that inheritance promises challenge the rather clear dichotomies of the law. Negotiations among parents and children occupy an intermediate space where love and money, commitment, and compensation are intermingled.

BEYOND INHERITANCE PROMISES

Inheritance promises present a fascinating example of negotiations between parents and adult children. Yet, the book has a wider scope, revealing broader themes of intergenerational relations in an age of market economy, and offering a fresh perspective on the relationship between parents and children. First, the historical analysis demonstrates the complexity of pinpointing agreements between parents and adult children. Viviana Zelizer's theory of connected lives provides a helpful analytical framework for evaluating these agreements. Zelizer explains that the distinction between intimate and commercial, market and home marks "distinct arenas for economic activity and intimate relations" (2007, 20). Against this approach, Zelizer points out that many transactions involve a mixture of the economic and the intimate. The book describes an intermediate space, hosting a complicated web of expectations, compensations, and commitments but also of entitlements. This rich spatiality offers a useful lens for analyzing the obligations between parents and adult children.

The second theme concerns entitlement; both parents and children maintain a quasi-dynastic understanding of their commitments. In Hartog's words, inheritance became "an opportunity to receive what one was entitled to because one had done as one ought as a good and loving child" (Hartog 2012, 32). Inheritance promises engage with preexisting expectations and understandings of familial roles. This represents an intricate notion of entitlement that has significantly developed over time. In the earlier days of the multigenerational family, with low mobility rates for individuals, inheritance served to bind different generations together, in the name of the family (Kreiczler-Levy 2014b). Land was passed along generations as a single, undivided unit that symbolized the family name and status. Individuals, both parents and children, were not as important as the family itself, symbolized by the property. Dynastic inheritance practices such as entail and primogeniture are strong examples of this practice.

With the rise of geographical mobility, individualism, and the disintegration of the multigenerational family, dynastic inheritance practices fell from grace. We tend

to think that modern inheritance practices represent a clear contrast to dynastic patterns, and are founded on choice, love, and meaningful relationships (Friedman 2004, 1–3). However, dynastic understandings did not disappear; they were transformed. The dynasty is no longer a rigid biological connection, but rather a matter of will and good behavior. Parents and children have a rough sense of fairness and desert in the context of family property. When a caring, loving child is disinherited, the implied message is that the child is disowned, that he or she loses their status as a son, as a daughter, or at least as a good son or daughter (Kreiczer-Levy *forthcoming*). Inheritance reaffirms the child's belongingness to the family. This dynastic aspect explains the importance of *inheriting* property, rather than receiving compensation for the care.

Yet, the most novel and provocative argument in the book concerns the commingling of the dynastic aspect, with its entitlements and good behaviors, and the contractual aspect, envisioning free, autonomous individuals. Both aspects are dominant throughout the book, and in many of the stories. Their coexistence demonstrates that belongingness to family can be negotiated. Moreover, children did not only negotiate with their parents; they also negotiated with their siblings. Together, they created a quasi-dynastic structure. As Hartog explains: "Sons contracted to be 'sons.' Daughters contracted to be 'daughters'" (Hartog 2012, 32). This is also true for unrelated caretakers who assumed the position of "family."

The third theme concerns the social perception of children who stayed at home to care for parents and were therefore not considered fully independent adults, freely emancipated from their parents' household. In an age of mobility, adult children are expected to build new life for themselves, outside of the parent's home. Commitments conflict with independence.

The fourth and last theme is of particular importance. The book describes a period of transition, and of immense economic pressure. The absence of retirement plans led to very few available options for parents. Neither the market nor the state offered viable solutions for old age. In times of economic pressure, people seek to rely on their family. The family serves as a safety net when no other means of security are feasible.

NEW CHALLENGES

The themes just discussed offer a prism for analysis of informal care, in a rapidly changing world (Hacker 2017). Here I explore a very different example of care: children who moved back into their parents' home in the wake of the financial crisis of 2008. This example is quite unique. It is different from nineteenth century inheritance promises as it concerns children, young college graduates, or homeowners in their thirties and forties, who need the support of their parents, rather than elderly parents seeking care for old age. In the expected life cycle, parents care for their young children, and children care for their parents in their old age. Hartog's book fits comfortably within this paradigm, but children moving back home represent an uncomfortable exception. Although Hartog's themes remain relevant and insightful, this exception calls for further development.

The financial crisis of 2008 was probably the worst economic crisis since the Great Depression, and many people lost their economic independence. For many of these

individuals, moving back into their parents' home became an economic lifeline; in the United States in 2012, 36 percent of America's young adults ages 18 to 31 were living with their parents, a record number of 21.6 million young adults (Fry 2013).

The clearest connection between the nineteenth century and post-2008 cohabitation patterns is the connection between economic pressure and quasi-dynastic practices. The extended family provides a safety net at times of necessity, an insurance against the risks embedded in the market (Kaplan 2012). Parents provide financial assistance, support, and shelter in a time of crisis. However, a parents' home is more than mere shelter. Children think of themselves as "coming home" (White 2002), the home functions as the property of the family, a space where both children and parents are long-term stakeholders.

This sense of children's dynastic entitlement stands in stark contrast to the law. Formal property rights allow parents to decide whether to welcome a child to their home, and whether to evict their child. Children are mere licensees, not even tenants, and can be evicted at will in a swift process. Hartog encourages us to think of entitlement as deeply entangled with negotiation and bargaining for care. It does not, however, reflect on the different positions of parents and children in these relationships. Although both are rooted in a quasi-dynastic notion of family property, parental commitment to children and a child's commitment to her parents clearly diverge.

Someday All This Will be Yours focuses solely on children's commitments, explaining how economic pressure affects those commitments. Yet, the discussion does not consider how mobility, individualism, and freedom might affect parental obligation at a time of financial crisis. This new question becomes increasingly relevant today. A European study found a correlation between late leaving of the parental home and a close relationship with parents in later stages of life, including living in proximity to the parents' home and high frequency of contact (Leopold 2012). An alternative explanation concerns familial roles. Just as children were negotiating the role of a "good child" in a changing world, parents are negotiating the meaning of parenthood, and of being a "good parent" in the face of financial crises.

An additional theme reveals that intergenerational cohabitation is experienced as a loss of independence, privacy, and autonomy. Much like the "un-emancipated" children who live with their parents to offer care for old age, intergenerational cohabitation provokes a social perception of immaturity. There is a delicate tension between dependency, voice, and belongingness. There is evidence that the more voice a child gets in decisions about the household, and the more he or she contributes to the household or assumes responsibility in familial roles, the more that child will feel a part of the family (Leopold 2012, 222–23), and that parental satisfaction is higher when children contribute to the household by paying rent or board, performing chores, or offering emotional support (Mitchell 1998).

Although intergenerational cohabitation is different from inheritance promises, they are both examples of informal care at times of economic pressure and they reveal similar themes. These common themes are not bound by the familiar dichotomies of the socio-legal discourse on intergenerational relations. They open up the conversation to allow deeper insights to guide the law.

CONCLUSION

Someday All This Will Be Yours introduces a complex, richer understanding of inter-generational commitment, addressing dynastic tendencies, contractual negotiations between individuals, and the importance of the economic climate. This understanding can be applied in other contexts of familial obligation at times of economic pressure. Its application, however, requires further development to address new socio-legal challenges. In particular, the Essay invites scholars to think about the important differences between caring for adult children and caring for one's parents.

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