Intergenerational Family Economies

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Families continue to be a cornerstone of support for the health and welfare of individuals and of society. Multi-generational family relationships are an increasingly important part of this system. Yet such relationships have not been the subject of sustained or systematic attention in American laws and policies. This article is a step toward that goal.

This article focuses on the legal regulation of economic and social collaborations in families between the generations. Increasingly so, families engage in a web of economic and affective connections between older and younger generations. Now that people are living longer, these ties are even longer lasting, with multi-generational relationships spanning many decades, and cycling through several phases. For example, many aging parents are being cared for their adult children or other family members. Conversely, many elder family members (G1) help support the younger generations by providing care for grandchildren (G3) and economic resources to the middle generation (G2). The demands on the middle generation are particularly high, and are unsustainable for many, especially for poorer families. Along with providing care for G1, who are living longer, often with years of dependency, G2 adults also now often provide care and financial support for their children well into adulthood. At the same time, the middle generation is expected to work full time, to produce income to support themselves and their loved ones, to balance work and family, and to save for their own future retirement and end of life care.

This kin network is becoming a critically important resource in light of changing and varied family structures existing today that include more single parent households with children, more single people; skyrocketing elder care needs, and a prolonged economic downturn. Multi-generational family relationships contribute significantly to the economic and social welfare of each generation. For example, intergenerational family care networks are incredibly valuable and necessary for human flourishing, from elder care, to child care, to supporting the middle generation through many challenges. In particular, this network helps enormously with the caregiving needs of many people, and of society. Yet the benefits of such family collaborations also frequently come with costs. Caregivers may reduce their employment and sacrifice earnings and other benefits. Consumption costs also may increase, necessitating reallocation of family spending to care recipients. Additionally, in some families the lines dividing property ownership between the generations are blurred, and property that starts out as belonging to one generation may be transformed into a resource available for another.

Looking at multi-generational relationships as a network of financial and social connections, I advocate that American laws and policies should recognize and support economic collaborations between the generations to enhance the benefits and to fairly distribute the costs that these ties produce. I explore a few key areas of law, including some aspects of elder care and family property law, evaluating the degree of support in our system for encouraging intergenerational family connections, and suggesting improvements.

The following is a brief outline of my in process ideas for this piece.

Thesis: Intergenerational family collaborations are valuable and often necessary for individual and family health & welfare and a functioning society. The legal regime should be improved and reformed to support economic connections and caregiving and fairly distribute the burdens/costs.

I. Introduction

II. Multigenerational Family Economic Collaborations

A. Sharing Behaviors (G1, G2, G3)

Adult children caring for aging parents

Grandparents caring for grandchildren

Aging parents helping their children with money & time

Middle generation parents helping their children (minors & boomerang gen)

Time, money, labor and consumption costs are often shared to an extent

1. Financial Sharing

Generations may share assets

Sharing homes/real estate

Shared bank accounts or financial instruments

Gifts

Including "spending down" for medicaid

Shared decisionmaking:

POA can include power to gift to self or GC, or to create a trust

Inheritance

2. Sharing Caregiving

A. Elder Care:

G2 & C3 care of G1

89% CG persons provide care to a relative

Typical caregiver is 49 year old woman who is married, employed, earns 35,000 per year

B. *Seniors as Care Providers*

72% of GP's provide substantial care to GC, 13% are primary caregivers

C. *G2 Care of G3*

D. *Parents care of Minors & Boomerang Generation*

B. Effects of Sharing

1. Financial Benefits & Costs

Benefits:

Family caregivers are providing the state and individuals with enormous benefits

$39.2 billion worth of unpaid service GP to Grandchildren

Helps mothers engage in more paid work

$200-450 billion in unpaid care to elders

Can promote health & welfare of care recipients

Direct Wealth transfers help in a variety of ways

B. Economic Losses

Reduced employment/compensation for middle generation

- CG leave jobs/retire early or diminish hours, miss days
- Losses to income, retirement savings & SS benefits

Significant Expenses

- ex: average AC caregiver pays $8,800 for EP excluding costs of care facilities
- Tend toward poorer physical & mental health

C. Variation

But Connections are Variable and Limited

Attitudes

68% of Americans do not believe GP's have responsibility to care for GC

Most aging parents do not want children to directly provide personal care & neither do most children want to provide such care

Many elder parents want to be economically independent & Ac to be free & independent too

Economic Choices often remain separate in significant ways

D. Family Care Patterns Raise Concerns About Equality

- It is Gendered:
  - Majority of elder care & child care provided by women
  - Elderly women are vulnerable because women tend to live longer & have less money & retirement income
- Race and Class Implications:

- African American and Hispanic women are far more likely to be poor
- Low income caregivers are half as likely as higher-income caregivers to have paid assistance available to provide some relief from their caregiving functions

2. Psycho-social Benefits & Costs

III. Regulation of Intergenerational Financial Sharing

Decision-making

Next gen are default health care decision-makers, consider default financial power of attorney?

Medicaid

5 year look back

Estate recovery

Penalizes transfers now, need broader caregiver exception, or family set aside (for eligibility and estate recovery)

Co-ownership/gifts (bank accounts)

[Gifts: UGMA]

Inheritance

Equitable distribution claim against estates?

Housing/Residences—new additions/lease/gift/unjust enrichment/co-ownership

Taxes?

IV. Regulation of Intergenerational Caregiving

A. Assigning Duties for Care

Family

Filial Support laws: children/adults

30 states including Delaware

Can require adult children to support parents

Is enforced in some states

Health Care & Retirement Corporation of America v. Pittas (Pa. Super. Ct. 2012)

Encourage but don't mandate

Not economically practical

Not adequately justified

Individual

State

Education, Dependency & Neglect, Guardianship, Social Security, medicare, medicaid

B. Time for Care

FMLA

Family caregiving discrimination claims

C. Subsidy for Care

Paid leave Employment Law/FMLA

Medicaid (consumer driven care contracts)

Guardianship (elders/children) (paid care)

Foster care (paid care) (KINSHIP CAREGIVER SUPPORT ACT fed law)

Inheritance as a payback for care/part performance doctrine

Social security (credit for care?)

Tax (dependency deductions, MSA for care recipient)