Divorcing Your Parents

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This Article argues that adult children should be able to "divorce" their parents. In loftier prose, they should be able to free themselves from the state's conscriptive family law regime that assigns them a legal status-relationship at birth and reifies natural law by refusing to even contemplate the possibility of exit. To illustrate the issue, it begins with stories of egregious parental wrongs, and the resulting adult children who feel that they are harmed when the state insists that they cannot exit the legal-parent-child relationship. Even absent serious wrongs, some adult children want the state to recognize the people who parented them as legal parents, and, conversely, to revoke legal recognition from their existing legal parents. Giving adult children the power to exit dysfunctional relationships is foundationally important for autonomy and identity. This is largely taken for granted in other adult relationships. But a facade of natural law occludes the possibility of exit from parent-child relationships. Once we see through this facade and understand that the legal definitions of family are political decisions, we can correctly identify that the proper questions are when and how, not whether, to allow adult children to exit the legal-parent-child relationship. Robust and unilateral exit rights best respect the autonomy and identity interests of adult children. Recent victories

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in recognizing families of choice should not be artificially constrained to empower only parents. Adult children, too, deserve the opportunity to create families of choice, which necessarily entails the power to leave families of conscription.

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INTRODUCTION

Stephanie (a fictional name but a real person) begins describing her childhood by saying that her biological mother was "not a break-bones abuser," but there was always a "low level current of physical threat" in the home that "made me feel like I was never safe."[1] Her biological mother "weaponized" the cultural and legal authority that motherhood provides to ward off others and retain control over Stephanie. It was not until college — when Stephanie began travelling out of the physical reach of her biological mother and interacting with her peers without the direct shadow of her biological mother looming over her — that she

[1] Interview by author with "Stephanie" (May 13, 2022); E-mail from "Stephanie" to author (Jan. 8, 2023) (on file with author).

was able to identify her experiences as abuse. Toward the end of college, she secretly moved out of her apartment, hid in a friend's studio, changed her bank accounts, and only then confronted her biological mother over email. To this day, even as an established lawyer, she tries to make sure she never puts information on the internet that could lead her biological mother to her new home, and she says that "the prospect of physically bumping into my biological mother is a terror."

Stephanie was eventually able to use adult adoption to legally replace her biological mother with her stepmother — who Stephanie now calls "mom." By using adult adoption to terminate her legal relationship with her biological mother, Stephanie sought to "craft a life where I'm not scared" and "get this threat of [my biological mother's] power out of my life." But what if Stephanie's now-adoptive mom had believed the biological mother's lie that Stephanie was a delusional opioid addict, and declined to adopt her? Should the state then prevent Stephanie from exiting her abusive relationship?

In cases of child abuse, the answer seems clear. The state, having granted the victim's parents the authority and privacy that they used to abuse that child, should finally give a voice to the victim herself.

Although these are extreme cases, they nonetheless help define the proper normative question for more mundane cases. We should not be debating *whether* adult children should be able to exit the legal-parent-child relationship, but instead *when and under what circumstances*.

Even absent abuse or other egregious parental wrongs, adult children have a strong interest in not being trapped in a legal relationship that they never consented to. All adults have strong identity and autonomy interests in resisting the state's attempts to impose unwelcome identity categories upon them. This is clear, for instance, in the case of gender, where adult children may seek to alter their birth certificates to reflect their gender identity. But this does not exhaust the identity interests people have in resisting the state's ascriptive identity regimes. People also have strong, deeply-felt, intensely personal identity interests in defining their parentage.[2] Even if most legal consequences of the parent-child relationship evaporate once the child becomes an adult, that legal

[2] *See generally* Sean Hannon Williams, *DNA Dilemmas*, 40 YALE L. & POL'Y REV. 536, 549-53 (2022) (discussing the role of birth certificates in defining identity).

relationship still has (potentially deeply distressing) social and personal meaning. This Article argues that adult children should be able to exit the legal-parent-child relationship without the existing barriers imposed by adult adoption and without having to name new parents. It proceeds in five Parts.

Part I clears away the natural law facade of family law. Under a natural law view, family is a pre-political fact (perhaps rooted in genetics) that the state merely recognizes through family law rather than actively shapes to achieve various policy goals. Today, in an era of assisted reproductive technologies, and at a time when we acknowledge the need to provide pathways to parentage for same-sex couples, the law has significantly recentered parentage around consent rather than natural law. If we take seriously the importance of consent, then we should also take the *lack of consent* seriously and allow exit.

Part II discusses philosophical accounts of "filial piety," which is the term most often used to discuss the moral obligations of adult children to their aging parents. None of the three leading accounts of filial piety would impose a moral obligation on adult children to remain in the legal-parent-child relationship. That is, none would impose a duty of what I call "filial recognition." Even if they did, there are strong reasons not to enforce this hypothetical moral duty through law. Of course, a functional and legal parent might reasonably feel aggrieved if their child exited the legal-parent-child relationship, and this feeling is rooted in an intuition about duties of filial recognition. Nonetheless, there is an important difference between feeling aggrieved (a perfectly understandable reaction) and actively seeking to control one's adult child whether through law or coercion. Parents who elevate their potential interest in retaining recognition above their adult child's best interest cast serious doubt on whether they are owed filial duties at all.

Part III is the normative heart of the Article. It outlines a series of interlocking arguments for robust exit rights rooted in notions of identity and autonomy. Along the way, it complicates existing scholarly work on identity regimes by discussing the concept of "relational identities," which simultaneously imposes a shared identity category on multiple people. Consider marriage, a legal-family relationship that imposes the identity of "married" on two people simultaneously. Marriage now has robust exit rights — one party can dissolve the

marriage and force the identity of "divorcee" on the other.[3] There are many strong reasons to allow robust exit rights from marriage, two of which are identity and autonomy. Imagine a hypothetical state "divorce" regime that ended all legal consequences of marriage, but nonetheless continued to insist that the parties were "married" under something like a marriage-is-forever principle. This would be a grossly inadequate "divorce." Even though this hypothetical post-divorce "marriage" is an empty legal husk, it still carries significant expressive force. Spouses have an interest not only in eliminating marital property, testimonial privileges, and other concrete legal effects of their marriage, but also in resisting this hypothetical state's attempt to impose a relational identity upon them. Of course, any simple analogy between marriage and parentage is deeply imperfect. Rather than relying on a simple analogy, this Article identifies the *reasons* that exit is important in marriage. Many of these reasons apply with similar and sometimes greater force in the context of parentage. Adult children, like spouses, have identity and autonomy interests in exercising control over the relational identity categories that the state saddles them with. Even if most legal consequences of the parent-child relationship evaporate once the child becomes an adult, and therefore the parent-child relational category is a relatively empty legal husk, that empty husk still has social and personal meaning.[4] Allowing exit is even more appropriate in the context of parentage because adult children, unlike spouses, never consented to the relationship.

Allowing adult children to have a voice in their parentage simply gives their autonomy interests the same respect that the law extends to prospective parents. The law has rightly recognized the importance of parenting to many people's life projects and identity.[5] Accordingly, it has increased pathways to parentage and strived to respect families of

[3] *See infra* Part III.B.ii.

[4] *See* Naomi Cahn, Clare Huntington & Elizabeth Scott, *Family Law for the One-Hundred-Year Life*, 132 YALE L.J. 1691, 1750 (2023) (noting that formal recognition of relationship status "can have significant symbolic value and meaning . . . even in the absence of legal obligations"). Many parents might bristle at the idea that their adult children could dissolve that relationship. These feelings provide further proof that the parent-child relationship is immensely meaningful, and both creates and maintains powerful identities.

[5] *See infra* notes 265–266 and accompanying text.

choice.[6] Adult children should have the same power. They too have an interest in creating families of choice, which should include the capacity to exit families of non-choice.

Part IV takes a more practical turn. It acknowledges that some readers may resist the full implications of the arguments in Part III, and seeks to balance the autonomy interests of adult children against, for example, the parents' interest in maintaining the relationship. It therefore outlines a series of possible exit regimes in order to begin a conversation about which political compromises are most promising. It examines exit regimes along two primary dimensions: the consequences of exit, and the requirements for exiting. Combining these dimensions creates a matrix of possible regimes. Each of these regimes are preferable to the current regime, although some are significantly better than others.

Part V confronts three major classes of objections. First, readers may worry that allowing exit will have significant ripple effects, potentially distorting other areas of law that use legal parentage to trigger certain consequences, such as intestacy, wrongful death, and grandparent visitation. Luckily, allowing exit will create only a few mild and easily handled ripples that courts have already grappled with in the context of adoption. Allowing exit also offers opportunities to significantly improve the fit between those areas of law and their underlying purposes. Second, readers might worry that allowing exit will lead to various negative consequences. For example, adult children may act rashly, and harm both themselves and their parents. We might then conduct an informal cost-benefit analysis by adding up the benefits of exit regimes to Stephanie and others and weighing them against these other costs. But most of these welfarist worries are wildly speculative. Regardless, they cannot justify eliminating exit. Instead, they can only justify designing exit regimes in ways that mitigate the welfarist concerns while still respecting Stephanie's core autonomy interest. Third, readers may worry that adult children will use their new voice to disagree with their parents or the state about the best definition of "parent" or the acts that forfeit that title. But constraining the voice of adult children because we are afraid that they might hold different values than their parents, or different values than society, or different

[6] *See infra* notes 265–266 and accompanying text.

values than the best moral philosophers, is not the right pathway to pursue parental recognition. Overall, we can empower Stephanie and others to exit the legal-parent-child relationship without imperiling other values, disrupting exiting law, or creating significant externalities.

I. THE LEGAL FAMILY VS. THE NATURAL-LAW FAMILY

It is tempting to dismiss Stephanie's claims on the ground that she is denying reality — you simply cannot change your DNA or who raised you. However, as family law scholars have long argued, family law reflects political choices that serve political ends; it does not merely recognize pre-political "natural" realities.[7] It is also tempting to claim that, once the state defines the legal family in the first instance, family should last forever. But the state has not taken this position, and it has serious normative shortcomings. Just as the choice of how to define family is a political one that is not bound by natural law, the choice as to whether and under what circumstance to allow people to exit family relationships is a political one.

This Part first clears away the natural law[8] facade of family law. Absent a conscious or unconscious commitment to natural law, the legal-parent-child relationship should be deeply puzzling. Although it is clearly justified to impose a parent-child relationship on an infant, why do we continue to disempower the child when she becomes an adult?

[7] *See, e.g.*, Katharine K. Baker, *The DNA Default and Its Discontents: Establishing Modern Parenthood*, 96 B.U. L. REV. 2037, 2090 (2016) ("Once it becomes clear that parentage, like all designations of family, are questions of politics and law, not questions of science and fact, then the possibilities for family formation become almost infinite."); Anne C. Dailey & Laura A. Rosenbury, *The New Parental Rights*, 71 DUKE L.J. 75, 106 (2021) ("The law's allocation of control to parents is a choice, not a natural state of affairs.").

[8] For purposes of this Article, I'll use "natural law" to refer to theories of the family that identify a universal pre-political definition of the family. Although identifying universal pre-political truths is only one feature of natural law theories more broadly, it is the one most-commonly highlighted when scholars discuss natural law theories of the family. *See, e.g.*, Mary R. Anderlik & Mark A. Rothstein, *DNA-Based Identity Testing and the Future of the Family: A Research Agenda*, 28 AM. J.L. & MED. 215, 222 (2002) (discussing natural law theories of the family); Katharine T. Bartlett, *Rethinking Parenthood as an Exclusive Status: The Need for Legal Alternatives When the Premise of the Nuclear Family Has Failed*, 70 VA. L. REV. 879, 887 (1984) (same). For a fuller discussion of natural law theory as it relates to family law, see LAURENCE D. HOULGATE, PHILOSOPHY, LAW AND THE FAMILY 13-14, 18 (2017).

After all, we normally resist the idea of imposing statuses that one is born into and cannot escape.[9] Once we cast natural law aside, a set of normative questions emerge surrounding whether to allow adult children to exit their legal-parent-child relationship. This Part frames those questions. Other Parts answer them.

A. *Family as Fact?*

> "[Y]*ou can choose your friends but you sho' can't choose your family, an' they're still kin to you no matter whether you acknowledge 'em or not, and it makes you look right silly when you don't.*"[10]

> "[P]*arentage, like all designations of family, are questions of politics and law, not questions of science and fact.*"[11]

A skeptical reader might agree with the first quote above and argue that the state recognizes a pre-political family unit, rather than creating it through law.[12] Under this view, adult children who seek to alter their legal parentage seem delusional. They are simply denying reality. You cannot change your DNA. You cannot change who gave birth to you or who raised you. If these things, either alone or in combination, are constitutive of family, then you cannot change your family.

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[9] *See* Kaiponanea T. Matsumura, *Breaking Down Status*, 98 WASH. U. L. REV. 671, 720 (2021) ("Where statuses are defined by the state — and where most of the rights associated with those statuses fall beyond the scope of private agreements — the state has a duty 'to create a diversity of social institutions that enable the individual to make genuine and meaningful choices between various alternatives.'"); Katharine B. Silbaugh, *Marriage Contracts and the Family Economy*, 93 NW. U. L. REV. 65, 115 (1998) ("Marriage is not the most offensive sort of status—the kind to which one is born and cannot escape.").

[10] HARPER LEE, TO KILL A MOCKINGBIRD 256 (1960) (Jem, quoting Atticus).

[11] Baker, *supra* note 7, at 2090.

[12] *See* Katharine K. Baker, *What Is Nonmarriage?*, 73 SMU L. REV. 201, 211 (2020) ("Sometimes scholars use the word family as a self-defining noun, suggesting that the word family is not a legal term but a natural or extra-legal one."); June Carbone, *Autonomy to Choose What Constitutes Family: Oxymoron or Basic Right?*, *in* 1 IUS GENTIUM: COMPARATIVE PERSPECTIVES ON LAW AND JUSTICE 11, 13 (Mortimer Sellers ed., 2007) ("The traditional family of biological mother, father, and child was often treated as prior to the state.").

But far from being defined by some form of natural law, the legal family is defined by the state to serve the state's interests and to reflect the preferences of its current citizens.

Who is the father? In an English case from 1304, the court discussed the rule that the legal father is the husband of the mother.[13] The only exception was when the husband was out of the realm during the entire period of gestation.[14] This rule served political ends. It avoided the pall of illegitimacy and helped ensure clear family lines for purposes of inheritance.[15] In the U.S. today, the spouse of the birth mother is presumed to be the other legal parent.[16] Here, states create legal parentage based on the legal institution of marriage, not genetic connection or natural law.

Who is the mother? Before assisted reproductive technologies, the answer was easy. The birth mother was the legal mother.[17] This woman's claim to parentage could be rooted in her genetic connection, her care in gestating the child, or a combination of both.[18] Regardless, there is an air of natural law in this determination. Under this natural law view, parentage is a fact of nature — rooted in genetics or gestation — and the state recognizes rather than creates parentage.

But the law has largely abandoned this natural law view of maternity. Today, gestational surrogacy cleaves genetic and gestational parentage apart. Using in vitro fertilization ("IVF"), a single woman can use donor sperm and donor eggs and carry the child herself. In both this IVF case and some surrogacy cases, there is a gestational mother who is not the genetic mother. In the surrogacy case, this non-genetic gestational

[13] Alein de Wartone v. Simon, YB 32 & 33 Edw. 1 (1304) (Eng.), *reprinted in* 4 YEAR BOOKS OF THE REIGN OF KING EDWARD THE FIRST 60, 62 (Alfred J. Horwood ed., 1864).

[14] Joanna L. Grossman, *Thoroughly Modern Motherhood*, 74 SMU L. REV. 277, 279 (2021).

[15] *See* Clare Huntington, *Postmarital Family Law: A Legal Structure for Nonmarital Families*, 67 STAN. L. REV. 167, 225 (2015).

[16] *Id.* at 178.

[17] *See* Marsha Garrison, *Is Consent Necessary? An Evaluation of the Emerging Law of Cohabitant Obligation*, 52 UCLA L. REV. 815, 826 (2005).

[18] *See* Jennifer S. Hendricks, *Essentially a Mother*, 13 WM. & MARY J. WOMEN & L. 429, 472-75 (2007).

mother *is not* the legal mother.[19] In the IVF case, she *is*.[20] Why? Because the law has rejected the natural law view of maternity. The legal parentage of the mother is sometimes determined by genetics and gestation, and sometimes not. These are political choices. And those choices largely track consent and intent.[21] The gestational surrogate and the gamete donors are not the legal parents because they do not intend to be. Instead, the intended parents will be the legal parents. In short, legal parentage is a political choice and states have chosen to root many of these choices in consent, not natural law.

Assisted reproductive technologies have also transformed the definition of fatherhood. When a married man consents to his wife's use of donated sperm, he is the legal father, not the sperm donor.[22] Here, intent rather than natural law is the foundation of legal parentage.

Even outside of assisted reproductive technologies, where babies are created through sexual intercourse, the state allows its own interests to shape the law of parentage. For non-marital births, the dominant way that fathers establish parentage is by signing a Voluntary Acknowledgement of Paternity ("VAP") along with the mother.[23] They can do so regardless of whether the acknowledging father is the genetic father.[24] VAPs reflect political choices for political ends. They were designed to increase child support payments to children who might otherwise receive federal welfare benefits.[25] To facilitate the speedy identification of a source of child support payments, states are not allowed to require DNA tests before allowing people to sign VAPs, and must treat the VAP as a legal determination of parentage.[26] Far from

[19] *See, e.g.*, UNIF. PARENTAGE ACT § 809 (UNIF. L. COMM'N 2017) (explaining that a gestational surrogate is not a parent of the child).

[20] *See, e.g.*, *id.* §§ 201, 703 (establishing the presumption that the individual who gives birth to the child is the parent, but an individual who consents to assisted reproduction with the intent to be a parent of a child is the parent of the child).

[21] *See* Courtney Megan Cahill, *The New Maternity*, 133 HARV. L. REV. 2221, 2271 (2020).

[22] See UNIF. PARENTAGE ACT §§ 702-04.

[23] Baker, *supra* note 7, at 2049.

[24] *See* Jeffrey A. Parness & Zachary Townsend, *For Those Not John Edwards: More and Better Paternity Acknowledgments at Birth*, 40 U. BALT. L. REV. 53, 59 (2010).

[25] *See id.* at 57.

[26] *Id.* at 60.

endorsing natural law, the state is using family law strategically for its own monetary ends.

To clarify, I am not claiming that notions of natural law play no role in legal parentage. They clearly still have influence over legislators, and hence law.[27] But for centuries legal parentage freely deviated from natural law when it suited the state's needs or when citizens demanded it.

Overall, family is not a pre-political fact. The legal family is created and shaped by law and the policy goals it seeks to achieve. When adult children seek to alter legal parentage, they are not seeking to deny some pre-political truth. They are merely seeking to have a voice in the state's policy choices that, to date, have imposed a legal status upon them without their consent.

B. Family Is Forever?

> *"You are born into your family and your family is born into you. No returns. No exchanges."*[28]

Even if we admit the state's role in defining family, we might still assert that family, once formed by the state through whatever historically contingent and morally imperfect definitional system it adopts, should be forever. This is a normative commitment; it is an assertion of what family should be. Obviously, this commitment would be inconsistent with robust exit rights.

As a normative principle, "family-is-forever" appears related to claims that family relationships are important or valuable in part because we do not choose them.[29]

The unchosen nature of family is potentially valuable because it teaches us tolerance and encourages us to find something to love about people who we might, on many levels, loathe. Conversely, an unchosen

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[27] Much of parentage law is still rooted in genetics. Although one could construct a defense of genetics as a basis for parentage that is not rooted in natural law, it has a natural law ring to it.

[28] ELIZABETH BERG, THE ART OF MENDING: A NOVEL 236 (2004).

[29] Of course, some family members encounter more unchosen elements than others. An infant gets no choice about whether to be born or which parents to have. A parent who conceives through sexual intercourse might choose to have a child, but she does not choose the child she gets.

family provides us with emotional security because we know that no matter how loathsome we are, some people will stand by us. It may also be valuable in material ways by creating family-based financial safety nets. Overall, a state might justify a system of unchosen family on grounds of paternalism (people would not exercise choice wisely, and this would lead them to be worse-off psychologically or financially), protecting the state fisc (privatizing the support of vulnerable people obviates the need to spend public funds to provide this support), or societal interests in having people internalize certain lessons or values (perhaps people raised to believe family is forever make better citizens in some way).

Even if the law sometimes reflects a family-is-forever principle, it is at the very least subject to numerous exceptions. Adoption is the classic example. Adoption allows one set of parents to terminate their parental rights, and another set to create parental rights.[30] This elevates adult consent over family-is-forever.[31] When parents neglect their children, the state may terminate their parental rights and seek new parents for them.[32] This elevates the child's physical and emotional interests over notions of family-is-forever.[33] I suspect we can set these aside as small caveats. Perhaps both adoption and termination ultimately seek to find a good enough forever family for children as soon as possible, so that that newly created family can be the object of the state's commitment to family-is-forever.[34]

[30] 1 THOMAS R. YOUNG, LEGAL RIGHTS OF CHILDREN § 6:1 (3d ed. 2022), Westlaw LEGRTSCHILD.

[31] *See, e.g.*, 1 THOMAS A. JACOBS & NATALIE C. JACOBS, CHILDREN AND THE LAW: RIGHTS AND OBLIGATIONS §§ 4.5, 4:15 (2023), Westlaw CALRO (discussing the requirements of adult consent in some adoption situations).

[32] *See id.* § 3:1.

[33] For debates on how aggressively to pursue family reunification, see James G. Dwyer, *The Most Dangerous Branch of Science? Reining in Rogue Research and Reckless Experimentation in Social Services*, 87 MO. L. REV. 1, 13-30 (2022).

[34] Two states — Vermont and West Virginia — offer another caveat, by allowing adoptees to dissent to the adoption once they become adults, which vacates it. Kathleen M. Lynch, *Adoption: Can Adoptive Parents Change Their Minds?*, 26 FAM. L.Q. 257, 269 (1992). Requests like this often involve a desire to inherit from the biological parents. *See id.*; *In re* Adoption of Evans, 491 P.3d 218, 220 (Wash. Ct. App. 2021).

But there are other examples that are not as easily dismissed. Both adult adoption and divorce flatly reject family-is-forever.

Adult adoption reflects an uncommon but unequivocal rejection of family-is-forever. In most states, one adult can adopt another.[35] This cuts off the legal relationship between the adult child and her former legal parents.[36] Notably, those legal parents have no right to notice of the adoption, and no right to prevent it.[37] After the adoption, the adult child has new legal parents.[38] Adult adoption requires the consent of the adopted adult and the consent of those who adopt her.[39] As such, it reflects a commitment to choosing families.[40]

Divorce is another example that is in significant tension with the logic of family-is-forever. It reflects a commitment to choosing *not* to be in a family. Marriage used to be forever.[41] Since the 1970s, however, it is a status that one can exit through choice.[42] That decade brought the no-fault revolution to divorce law, which allowed either member of the marriage to sue for divorce without proving that their partner

[35] JACOBS & JACOBS, *supra* note 31, § 4:7; Richard C. Ausness, *Planned Parenthood: Adult Adoption and the Right of Adoptees to Inherit*, 41 ACTEC L.J. 241, 255 (2015).

[36] *See* Ausness, *supra* note 35, at 271.

[37] *See in re* Adoption of Adult by C.K., 715 A.2d 1030, 1032 (N.J. Super. Ct. Ch. Div. 1998) ("[A]n adult . . . is automatically imbued with a wide variety of rights and choices with which their parents generally have no right to interfere. They may marry, they may vote, they may change their religion. . . . The adult adoption statute implicitly recognizes these fundamental rights of the adult seeking to be adopted. . . . And with those rights comes the extinction, in reality, of the parent's right to object."); Sarah Ratliff, *Adult Adoption: Intestate Succession and Class Gifts Under the Uniform Probate Code*, 105 NW. U. L. REV. 1777, 1789 (2011).

[38] *See* Ausness, *supra* note 35, at 271.

[39] *See* JACOBS & JACOBS, *supra* note 31, § 4:7.

[40] But perhaps policymakers have not fully thought through how allowing adult adoption would affect norms surrounding family-is-forever. Perhaps adult adoption is too rarely invoked for policymakers to really take sufficient notice.

[41] *See* Ayelet Hoffmann Libson, *Not My Fault: Morality and Divorce Law in the Liberal State*, 93 TUL. L. REV. 599, 604, 606 (2019) ("Within a brief period, marriage in most of the Western world was transformed from an institution terminable only by grave circumstances to one dissolvable at will.").

[42] *See id.* at 605-06.

committed any particular wrong.[43] They could leave the marriage as long as they simply wanted to leave.[44]

We might dismiss these examples as well, but doing so appears ad hoc. Perhaps the family-is-forever principle only applies to vertical family relationships between grandparents, parents, and children. The problem with this ad hoc response is that it is false: adult adoption alters vertical relationships, and the law does not allow exit from the horizontal relationship of siblings.

Another ad hoc response might assert that unchosen family is valuable, but even if we allow divorce and adult adoption, we will have a sufficient degree of unchosen family that we will obtain the relevant benefits. But this would beg the question of what the optimal level of choice and non-choice is, and how we know that the current mix is optimal. If we can obtain the benefits of unchosen family even if there are some exceptions, then how do we know that allowing exit from parentage will somehow cause us to cross some invisible threshold where we no longer gain the value of unchosen family?

Overall, it is hard to discern a commitment to family-is-forever from current state law. Adult adoption suggests just the opposite, as does divorce.[45] If a family-is-forever principle is not a bar to exit, this opens up the key normative question: should we allow adult children to exit the legal-parent-child relationship? We need more background before answering this question.

C. Post-Majority Parentage

In a previous article, I argued that post-majority parentage — the legal relationship between parents and their adult children — is a largely

[43] *Id.*

[44] Of course, exit is not costless; courts must split the spouses' assets. Although courts can also award maintenance — post-divorce payments from one ex-spouse to another — they increasingly do so only on a temporary basis. Regardless, it is important to separate these costs from the core freedom that divorce provides. *Id.* at 601 (insisting that autonomy requires exit, even if various forms of compensation might then become due).

[45] Other legal rules seem agnostic toward family-is-forever. When the state conscripts genetic fathers into legal parenthood, it potentially *disrupts* a functioning family unit consisting of a child and a single mother in order to protect its own fisc.

unrecognized legal space within family law.[46] It is unrecognized in part because states have no strong interest in policing this relationship between adults, and so have been content to leave the regulation of this space to legal inertia. Because I have outlined these arguments elsewhere, I will only briefly summarize them here.

The various state interests that undergird family law all evaporate or substantially dissipate once the relevant child becomes an adult. Those interests largely revolve around privatizing the child's dependency and ensuring that adults care for the relevant child.[47] For example, states seek to find a source of child support when, otherwise, the child would need state assistance.[48] Once the child is no longer eligible for child support, this state interest no longer applies. Child support is one example of a broader set of laws that states enact because they promote the best interests of *minor* children. Here, state rules surrounding termination of parental rights, adoption, custody, relocation, and child support all rely substantially on the "best interests of the child" test.[49] That is, the legal rights[50] in these areas are granted because they serve the best interests of the child. With only a few caveats, these laws simply do not apply once the child becomes an adult.[51] Other family laws are grounded in the identity projects of would-be parents. These laws rightly recognize the importance of becoming a parent to many people. After our family laws grant these people legal parentage, they then offer them robust parental rights.[52] These parental rights provide parents

[46] Williams, *supra* note 2, at 580-82. Of course, post-majority parentage is relevant to some other areas of law, like intestate succession.

[47] *See generally id.* at 574 (identifying the state interests as "ensuring that the child has a steady source of child support" and "protecting vulnerable children's emotional attachments to their legal parents").

[48] *See id.*

[49] *See id.* at 585.

[50] Or, in the case of child support, the obligations imposed.

[51] *See* Chiappone v. Chiappone, 984 A.2d 32, 37 n.6 (R.I. 2009) (holding that custody disputes become moot when the "child" turns 18); Lauren C. Barnett, Comment, *Having Their Cake and Eating It Too? Post-Emancipation Child Support as a Valid Judicial Option*, 80 U. CHI. L. REV. 1799, 1800 (2013) ("For many centuries, the prevailing jurisprudence has held that when a child becomes emancipated, any parental support obligation ceases."); *see, e.g.*, Williams, *supra* note 2, at 570 (examining adult-adoption cases where "best interests" was reinterpreted to mean consent of the adults).

[52] *See* Williams, *supra* note 2, at 599.

with significant power to shape their children in ways that fit the parent's projects, but only while those children remain children. After the relevant child becomes an adult, the state's interest in helping people pursue their parenting projects collapses under the weight of the state's larger commitments to treating adults as autonomous persons.[53] Although the state has no strong interest in policing post-majority parentage, the statuses of parent and child simply persist, largely unexamined, even after the child becomes an adult.

D. Exit Rights and the Denaturalized Legal Family

The rules of family law do not merely reflect pre-political facts. They are political choices. These choices require a normative defense. This includes both the choice to enact laws and the choice not to enact laws.[54] For example, a refusal to intervene in a family is an active choice to subject those family members to the private power dynamics within that family. Put another way, the law does not remain neutral when it asserts family is a fact, or its opposite. The law does not remain neutral when it asserts family-is-forever, or its opposite. Most relevant to this paper, we should hesitate before putting much weight on the default rule that legal-parent-child relationships continue even after the child becomes an adult. That default rule needs a substantive normative defense. It is not enough to simply say that it is the default, and to place the burden on those who want to change that rule. Each choice should be framed as an active one for the purposes of comparing them.

We might imagine the following sets of interrelated questions, each of which frames the same core issue in a slightly different way:

1. Do adult children owe a moral duty to respect their parents by continuing to recognize the legal-parent-child relationship? Assuming that parents could waive any relevant duties owed to them, should states require their waiver or permission before

[53] Put another way, after the child becomes an adult, the state no longer has to choose between two imperatives: respecting choice and privatizing dependency. For a discussion of those principles and their tension in other areas, see Emily J. Stolzenberg, *The New Family Freedom*, 59 B.C. L. REV. 1983, 1986 (2018).

[54] *See* Courtney G. Joslin, *Family Choices*, 51 ARIZ. ST. L.J. 1285, 1299 (2019) (noting that the choice not to regulate is itself a form of regulation).

allowing the adult child to exit the legal-parent-child relationship? These questions highlight issues of moral obligation, and whether to enforce that moral obligation through law.

2. Should the state require adult children to remain in legal-parent-child relationships against their will? Because the parent-child relationships create important identities for both parent and child, should the state require the consent of both before that legal relationship is terminated? These questions highlight identity and autonomy issues.

Part II focuses on the first set of questions and the frame they provide. It makes two negative claims. It concludes that the moral duties that adult children owe their parents do not include a duty to remain in that legal relationship against their will. Even if such a moral duty existed, it should not be enforced through the law.

Part III focuses on the second set of questions and the frame they provide. It makes a positive case for empowering adult children to unilaterally exit the parent-child relationship.

II. A DUTY OF FILIAL RECOGNITION?

This Part canvases the three major theories of filial piety — the philosophical term for the obligations that adult children owe to their aging parents.[55] It first asks a set of questions about morality: do adult children owe moral duties to their parents, under what conditions, and what might those duties entail? More specifically, do adult children have what I'll call a duty of filial recognition, which could correspond to their parents' right to continue to be recognized as the child's parent? This Part then asks a question about law: assuming for the sake of argument that adult children owe a duty of filial recognition to their parents, should those duties be enforced through law? Although it is likely that adult children owe some moral duties to their parents, this Part argues that those duties do not include a duty to remain in the legal-parent-child relationship, and regardless, any such duty should not be enforced through law.

[55] *See* Simon Keller, *Four Theories of Filial Piety*, 56 PHIL. Q. 254, 254 (2006).

A. Three Theories of Filial Piety

Philosophers have occasionally turned their attention to the duties that adult children owe their parents. They begin with a set of intuitions that adult children would, at least under some circumstances, commit a wrong if they ignored the needs of their vulnerable elderly parents.[56] Philosophers have sought to introduce various theories that might explain and justify the intuitive obligations of adult children, and give more concrete guidance about the content of the resulting obligations. There are three major theories of filial piety: debt theories, gratitude theories, and friendship theories.[57] Ultimately, none of these theories support a moral duty to maintain filial recognition.

1. Debt

Under the debt theory of filial obligations, "[y]our parents have done an enormous amount for you, and you owe them something in return."[58] Although not the most popular theory today,[59] the debt theory has a good deal of intuitive appeal and has been influential in older western accounts of filial obligations.[60]

The simplest version asserts that you owe your parents a certain amount of money and labor to pay them back for their sacrifices along those dimensions. This version fails to cohere with common intuitions. It would suggest that easy children owe less than difficult children because difficult children require more parental sacrifices.[61] It would also suggest that children of wealthy parents owe more than children of poor parents because wealthy parents generally provide more material

[56] Jonathan Herring, *Together Forever? The Rights and Responsibilities of Adult Children and Their Parents*, *in* RESPONSIBILITY, LAW AND THE FAMILY 41, 42 (Jo Bridgeman, Heather Keating & Craig Lind eds., 2008); *see* Amy Ziettlow & Naomi Cahn, *The Honor Commandment: Law, Religion, and the Challenge of Elder Care*, 30 J.L. & RELIGION 229, 236 (2015) ("An overwhelming majority of Americans say that they would feel obligated to provide assistance to their parent in a time of need.").

[57] Keller, *supra* note 55, at 255.

[58] *Id.* at 256.

[59] *See id.* at 256-57.

[60] *See* Anders Schinkel, *Filial Obligations: A Contextual, Pluralist Model*, 16 J. ETHICS 395, 399 (2012).

[61] Keller, *supra* note 55, at 260.

benefits to their children.[62] Contrary to both of these implications of the simplest version of debt theory, we might intuit that adult children have roughly similar duties to their parents regardless of these facts. The debt theory would also suggest that adult children owe a fixed amount that can be fully discharged by a one-time lump-sum payment.[63] But the adult lawyer who gives her parents $200,000 one year does not seem like someone who fulfills her duties to her parents. If anything, the lawyer seems to radically misunderstand those duties. Finally, a simple debt theory would imply that repayment is required even when the adult child was poor, and the parents were wealthy and without need.[64]

Blackstone offered a more nuanced version. "[T]hey who by sustenance and education have enabled their offspring to prosper, ought in return to be supported by that offspring, in case they stand in need of assistance."[65] This suggests that the parents and children are each obligated to provide care in the face of the other's vulnerabilities. This version of debt theory avoids some of the critiques of the simple version. Blackstone envisioned an obligation that is more open-ended than the simple version of debt theory and is contingent on parental need.

Both the simple debt theory and Backstone's are subject to three major criticisms. Blackstone's view in particular is also subject to a fourth critique. Fifth and finally, it is not clear that any debt theory has much to say about the obligation at issue in this Article: filial recognition of the legal-parent-child relationship.

First, it is not clear that people should incur obligations when they did not consent to the benefits in question.[66] The child never agreed to repay the parents and had no choice about whether to be born or whether to receive their care. Hence, it is inappropriate to think about filial obligations as holding up one's end of a bargain. Of course, not all obligations flow from consent. The doctrine of unjust enrichment creates obligations to return some unconsented-to benefits.[67] But moving from a contract analogy to one rooted in unjust enrichment

[62] Herring, *supra* note 56, at 48.

[63] *See* Keller, *supra* note 55, at 256; Schinkel, *supra* note 60, at 399.

[64] *See* Keller, *supra* note 55, at 256.

[65] 1 WILLIAM BLACKSTONE, COMMENTARIES *453.

[66] *See* Schinkel, *supra* note 60, at 399.

[67] Herring, *supra* note 56, at 48 (using analogy to unjust enrichment).

reintroduces several problems. For example, under this doctrine, the recipient generally only has to repay the precise amount by which they were benefited.[68] This analogy could therefore imply a bounded obligation that could be discharged with a one-time payment, rather than an open-ended one.

Second, not all benefits, even if consented to, create obligations to repay. You may happily accept a gift from your parents, but gifts would not be gifts if they imposed debts. And perhaps parental care is somewhat akin to a gift.[69] Similarly, some benefits are given because the provider is under a duty to do so. Parents have duties to care for their children.[70] If parents are under a duty to provide care, then perhaps fulfilling that duty does not create an obligation to repay.

Third, debt theories are solely backward looking.[71] The debt is owed once the parent successfully ushers the child into adulthood. But what if the parent later attempts to murder the adult child? Debt theories do not address this. They imply that post-majority actions would be irrelevant.[72] This may conflict with common intuitions.

A fourth critique emerges most pointedly for Blackstone's view. He asserts that "a child . . . is equally compellable . . . to maintain and provide for a wicked and unnatural progenitor, as for one who has shown the greatest tenderness and parental piety."[73] This claim seems outdated. Parents today — perhaps more so than in Blackstone's time — are charged not only with ensuring that their children survive and can earn a living, but also ensuring that they thrive and are happy.[74] Once the parental project is broadened in this way, the wicked parent has

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[68] *See* RESTATEMENT (THIRD) OF RESTITUTION AND UNJUST ENRICHMENT § 1 cmt. a (AM. L. INST. 2011).

[69] Treating parental investments as gifts does not have the same pernicious gendered effects as treating cohabitant investments as gifts, and hence not compensating for them. *See* Albertina Antognini, *Nonmarital Coverture*, 99 B.U. L. REV. 2139, 2161-64 (2019).

[70] Herring, *supra* note 56, at 48 (noting that this ground for a duty to provide care would not apply to adult children, who in no ways caused their parent's vulnerability).

[71] *See* Keller, *supra* note 55, at 256.

[72] *See id.*

[73] BLACKSTONE, *supra* note 65, at *454.

[74] *See* Peter N. Stearns, *Happy Children: A Modern Emotional Commitment*, 10 FRONTIERS PSYCH., 2019, at 1, 1-2.

provided his child with some positive goods (food, clothing, an education) and also some negative goods (lifelong depression or crippling anxiety). A debt theory should offset these in some way and should be open to the claim that the negatives fully offset the positives such that the adult child has no debt-based obligations.

The fifth point is not so much a critique of debt theory, but rather an acknowledgement of its limits. Suppose for the sake of argument, that we generate a new debt-based theory that addresses all of the above shortcomings. How might this debt theory of filial obligations impact questions of filial recognition? Perhaps not at all. At their core, debt theories root filial obligations in the past receipt of benefits. Nothing in the theories relies on the legal relationship between parents and child during the child's minority. Similarly, nothing in these theories depends upon whether the child and parent retain a legal relationship. The currency of debt theories is money and labor, not legal connection. Accordingly, debt theory has very little to say about whether we should allow adult children to exit the parent-child relationship.

The next theory of filial obligations — the gratitude theory — will contribute more directly to the debates in this Article.

2. Gratitude

Under the gratitude theory of filial obligations, adult children should do "appropriate acts of gratitude in response to the good things your parents have done for you."[75] This is the most common defense of filial obligations today.[76] Its core strength is its flexibility.[77] It is reciprocal like debt theory, but not rigid with respect to what is owed.[78] What is owed can be quite context dependent. Unlike under the simple debt theory, expressions of gratitude need not be proportional to benefits received.[79] Unlike all debt theories, it is not solely backward looking. An

[75] Keller, *supra* note 55, at 257.

[76] *Id.*

[77] *See* Maria C. Stuifbergen & Johannes J.M. Van Delden, *Filial Obligations to Elderly Parents: A Duty to Care?*, 14 MED., HEALTH CARE & PHIL. 63, 64 (2011); Brynn F. Welch, *A Theory of Filial Obligations*, 38 SOC. THEORY & PRAC. 717, 720 (2012).

[78] *See* Keller, *supra* note 55, at 257.

[79] Welch, *supra* note 77, at 720.

adult child no longer owes duties of gratitude to a parent who tries to kill them.[80] This flexibility seems reflected in common intuitions.

This flexibility, while offering benefits, is also the greatest weakness of the gratitude theory. It is an expressive theory.[81] Adult children are obligated to express gratitude. We may agree that a single "thank you" card is not enough,[82] but there may be a very large range of acceptable ways of expressing the appropriate degree of gratitude. This range of expressive options seems to be in tension with common intuitions about filial obligations, which generally include some duty to care for, not just thank, parents.[83]

This limitation does not impact gratitude theory's applicability to the issues in this Article. An adult child who severs her legal relationship with her parent expresses something. This is, in part, a communicative act. It seems safe to say that severing legal ties does not communicate gratitude, and if anything communicates the opposite.[84]

Despite this, gratitude theory does not support a parent's right to demand filial recognition. To show why will require delving into gratitude theory more deeply.

Gratitude is due only when others act with the motivation to benefit you as an intrinsic good.[85] This nicely explains why adult children have filial obligations even when the parents were under a duty to provide care. The parents were under a duty to provide material benefits, but under no duty to do so with any particular motive. Parental motives trigger the obligation to show gratitude, not parental contributions.[86]

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[80] *See* Sungwoo Um, *What Is a Relational Virtue?*, 178 PHIL. STUD. 95, 105 (2021) ("It seems unreasonable to claim that a child should have love, gratitude, and respect, no matter how terrible her parents are."). Imagine a parent who callously abandons her children when they are teenagers. Welch, *supra* note 77, at 726-27. She provided for them for most of their lives, and so, under a debt theory, she would be owed a substantial amount. Under a gratitude theory, however, her children would not be obligated to show her gratitude, because the parent did not show respect for her children. *Id.* at 729.

[81] *See* Keller, *supra* note 55, at 257, 259.

[82] *See* Welch, *supra* note 77, at 718, 722.

[83] *See* Ziettlow & Cahn, *supra* note 56, at 244.

[84] Of course, one might be able to construct a hypothetical where it communicates something else.

[85] Welch, *supra* note 77, at 719.

[86] *Id.*

Under the gratitude theory, there may be an obligation to show gratitude, but there is no corresponding right to demand it.[87] Consider a non-custodial father who, on his daughter's 18th birthday, presents her with a bill for all of the child support he paid over the years. Under a debt theory, this callus act seems justified. Under a gratitude theory, the father's act eliminates any obligation to show gratitude.[88] It suggests that his monetary contributions were not made with the proper motive. If the parent's motive was to benefit the child and allow her to flourish, then she would be happy just to see her child flourishing, rather than demanding acts of gratitude.[89]

These observations have direct relevance to how filial recognition might be embedded within law. That obligation could be translated into law by requiring parental consent before the adult-child can exit the legal relationship.[90] This effectively gives parents a right to veto their adult-child's efforts. But even if an adult child has a duty of filial recognition, the parent has no right to demand it.

A parent who steps in to veto their adult child's efforts casts into doubt their previous motives and lessens their normative claim to possess that veto power in the first place. Of course, a functional and legal parent might reasonably feel aggrieved if their child exited the legal-parent-child relationship. Merely having these feelings would not lessen the adult child's duty to show gratitude. However, something changes once the parent shifts from merely feeling aggrieved (a perfectly understandable reaction) to actively seeking to control her adult child, whether through law, threats of disinheritance, or other coercion. These parents elevate their interest in recognition above their

[87] *Id.*

[88] *Id.* at 722 ("[I]f a benefactor demands . . . expressions of gratitude, the benefactor indicates that he views the beneficiary as merely a means to an end; consequently, the beneficiary does not owe gratitude . . . ."); *see* Fred R. Berger, *Gratitude*, 85 ETHICS 298, 304-05 (1975) ("To use the fact of one's past aid in order to control another's life is to deny him the independence befitting a moral agent.").

[89] *See* Berger, *supra* note 88, at 304-05; *see* Welch, *supra* note 77, at 722.

[90] The law could also simply bar exit. However, this would be in tension with filial obligations in general, which are obligations *to parents*, and are waivable by those parents.

child's best interest.[91] This casts doubt on the purity of their previous motives and therefore also calls into question whether they are owed filial duties.[92]

3. Friendship

The third major theory of filial obligations grounds them in consent. Filial duties are just a special case of duties toward those with whom you have a current friendship-like relationship. "[T]he source of filial duty lies not in what parents have done in the past, but in the relationship shared by children and parents in the present."[93]

As an explanatory theory, the friendship model faces immense difficulties. It cannot explain why intuition suggests that filial duties are more demanding than duties to friends.[94] Relatedly, it seems odd to justify an adult child's indifference in the face of her parent's needs by saying "well, they just drifted apart over the years and are no longer good friends."[95]

Although descriptively weak, the theory has plausible normative justifications. This theory is committed to the claim that duties cannot arise absent consent. Thus, it would reject debt theory and gratitude theory on the ground that the child never consented to be born, and never consented to receiving care.[96] Of course, there are moral and legal duties that arise absent consent. A strong swimmer may have a moral obligation (although not a legal one) to rescue a drowning child even though the swimmer never consented to that obligation.[97] Unjust enrichment creates a legal obligation to repay benefits that can operate

[91] A parent might seek to veto her adult-child's attempts in the good faith belief that exiting the relationship is not in the best interests of the adult child. If the parent was using the best interests of the adult-child as the dominant basis for her actions, then those actions would not cast doubt on her previous motives.

[92] Of course, mixed motives and degrees of parental wrong would matter. Here we encounter a weakness of gratitude theory. It does not precisely specify the degree of gratitude required in any given case.

[93] Keller, *supra* note 55, at 262.

[94] *See id.* at 264.

[95] *See id.* at 263-64.

[96] *See* Schinkel, *supra* note 60, at 399-400.

[97] *Id.* at 400-01.

even in the absence of consent.[98] But perhaps these exceptions highlight the rule. Perhaps we need some special reason to impose a duty absent consent. We may impose a moral duty on the swimmer because it would be so easy (almost costless) for her to discharge that duty. Filial obligations are different. They entail ongoing and potentially costly obligations. Unjust enrichment requires only one-time payments not ongoing obligations, and it carefully limits the magnitude of the obligation.[99] Unjust enrichment also would not impose obligations on one who receives a gift, or who is benefited only by virtue of another person discharging some independent duty.[100] Filial obligations are again quite different.

Friendship theory would strongly support an adult-child's capacity to end their legal relationship with their parents. Ongoing obligations must be rooted in ongoing consent. Once the adult child removes this consent, she no longer has obligations. She would be free to leave the parent-child relationship, just like she would be free to leave any particular friendship relationship.

4. Summary

Taken together, the three major philosophical theories of filial obligations suggest that adult children are not morally obligated to remain in a legal-parent-child relationship that they wish to leave. The debt theory is agnostic with regards to whether adult children can unilaterally leave the legal-parent-child relationship. It roots obligations in past functional parenthood, which is not affected by current legal status. The friendship theory strongly supports exit because it roots any ongoing obligations in ongoing consent. The gratitude theory — the most popular today — is sensitive to context. Under this theory, parents who seek to veto their adult child's attempt to leave the relationship undermine their own normative claim to have that veto power in the first place.

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[98] *See* RESTATEMENT (THIRD) OF RESTITUTION AND UNJUST ENRICHMENT § 1 cmt. d (AM. L. INST. 2011).

[99] *See id.* § 1 cmt. a.

[100] *Id.* § 2 cmt. b; *see* RESTATEMENT (FIRST) OF RESTITUTION § 116 cmt. c (AM. L. INST. 1937).

B. Legally Enforced Filial Recognition

Not all moral duties are enforced through law. Strangers generally have no legal duty to rescue one another, even when they can do so with minimal risk to themselves.[101] This is true even though a strong swimmer may have a moral duty to rescue a drowning child. This raises the issue of whether, even if there are filial obligations, we should use the law to enforce them. We should not.

There are many reasons not to enforce all moral duties. First, there may be disagreement about the existence of a moral duty and its weight compared to conflicting moral duties. Second, there may be agreement in principle that a moral duty exists, but disagreement about the particular facts that would trigger that duty. Third, even if people agreed on the existence of a moral duty, and the specifics of when it applied, the relevant facts might not be verifiable by courts.

Filial recognition falters at every stage of this analysis.

Is there a moral duty to respect and honor one's parents that would include a duty to remain in the legal-parent-child relationship? Notice that the three major theories of filial piety disagree about even this foundational question. Friendship theory holds that, because the child never consented to the care she received, it should not serve as the basis for imposing an unwanted obligation upon her.[102] Debt theory is agnostic about legal recognition.[103] Gratitude theory might require it, but the particular facts of each case will matter.[104]

Even if there is a general consensus that there is a duty to honor one's parents, it is not clear that a consensus will form about how this duty is affected by particular facts. If the adult child has loved and respected her parents for the last decade, does this reduce her obligation to recognize her parents in the next decade?[105] If the parent was largely

[101] *See, e.g.*, RESTATEMENT (THIRD) OF TORTS: PHYSICAL & EMOTIONAL HARM § 37 (AM. L. INST. 2012) ("An actor whose conduct has not created a risk of physical or emotional harm to another has no duty of care to the other . . . ."); *id.* cmt. e (discussing rationales for this no-duty rule).

[102] *See supra* Part II.A.

[103] *See supra* Part II.A.

[104] *See supra* Part II.A.

[105] Under a debt-like theory, this adult child may have already repaid the relevant debt in the relevant currency. Under a gratitude theory, copious amounts of past

absent from the child's life, or was only present as an occasional "Disney Dad," does this reduce the obligation of the adult child?[106] If so, by how much? Is there still sufficient obligation to prevent formal exit?

Even if we could come to agreement on the effects of past gratitude and past inattention, the relevant facts are not verifiable. How would a court discover, with any legitimate degree of certainty, how loving or respectful an adult child was over the last decade, or how cold and disrespectful a parent was 40 years ago? Of course, there will be some easy cases. But there will be a great many ambiguous ones. This is especially true under a gratitude theory where the motive for acting is as important as the action itself.

Ultimately, there are strong overlapping reasons not to enforce filial recognition through the law. It is not clear whether there is a moral duty of filial recognition. It is not clear how past actions affect it. It is not clear whether courts could verify facts that might be relevant to these determinations. What would it look like for a state to refrain from enforcing filial recognition? At a minimum, it would mean not imposing a parent-child relationship on an adult child when they affirmatively seek to opt out of that relationship.

III. EXIT AND ONE'S AUTONOMY OF IDENTITY

This Part reveals a surprisingly diverse set of legal possibilities for governing entry into, and exit from, familial relationships. This diversity invites the question of which regime should control the dissolution of, or exit from, the parent-child relationship. This Part argues that the adult child has strong autonomy and identity interests in controlling whether she remains in this legal relationship. The parents' own identity interests, even if equally weighty, do not justify forcing another person to remain in a relationship with them.

gratitude might reduce the obligation to show gratitude in the future, or at least change the forms of gratitude that are appropriate.

[106] It would under a debt theory. It would likely do the same under a gratitude theory, although there, the parent's potential excuses for their inattention might matter as well.

A. Relational Identity

Parentage complicates existing work on identity because it is a *relational identity*.[107] Relational identities generally create an identity for two (or more) people simultaneously. The identities can be complementary. One person is a parent, and the other is a child. At least while the child is a minor, this relational identity reflects a hierarchy of power; the parent exercises control over the child. Other relational identities are reciprocal and egalitarian, at least as a legal matter. Both people who enter a marriage are spouses, and each obtains identical rights and duties by virtue of that relationship. Brothers and sisters are both siblings. All members of a sports team are teammates. There is no hierarchy or difference necessarily embedded within these reciprocal relational identities.[108]

In the existing literature on identity, the two most relevant identity categories for purposes of this Article are elective identities and ascriptive identities.

Elective identities are freely chosen, freely shed, and fluid.[109] They allow the individual to determine their own identity and self-narrative.[110] They are potentially problematic because they offer no

[107] Other scholars have used this term to illuminate different phenomena. For example, Douglas NeJaime has argued that sexual orientation is a "relational identity" because that identity is tightly linked with one's desire for certain types of relationships with certain genders of others. Douglas NeJaime, *Marriage Inequality: Same-Sex Relationships, Religious Exemptions, and the Production of Sexual Orientation Discrimination*, 100 CALIF. L. REV. 1169, 1198-99 (2012). I use the term to highlight the *statuses* that simultaneously attach to all members of a relationship, and one's identity interests in those statuses. Identifying as gay is an identity that implies certain relationships, but it is not a "relational identity" as I use that term. Courtney Joslin discusses "relational" autonomy to highlight the fact that it takes the exercise of two or more people's jointly exercised autonomy to create a "family." Courtney G. Joslin, *Autonomy in the Family*, 66 UCLA L. REV. 912, 917 (2019). This is akin to my concept, except insofar as I highlight the identity-conferring elements of the relationship, whereas Joslin highlights the reliance and corresponding obligations that might result from the relationship. *Id.* at 977.

[108] Of course, there used to be such differences embedded with the relationship between husband and wife. The doctrine of coverture provides the quintessential illustration.

[109] Jessica A. Clarke, *Identity and Form*, 103 CALIF. L. REV. 747, 763 (2015).

[110] *Id.*

stability to a state that may need concrete definable identity categories.[111] The state has no interest in policing one's identity as a fan of Taylor Swift (a Swiftie). People are free to identify as such, and de-identify as such, whenever they want. In contrast, the state has an interest in other identity categories. A state university may use racial categories in admissions decisions. It does so to further some substantive goal.[112] That goal would be thwarted if people could freely identify with these categories for purposes of admission, and then de-identify with them immediately afterward.

Ascriptive identities are imposed from the outside, regardless of choice.[113] For example, a state university might choose to impose sex and race identities on applicants, using its own definitions that serve its own goals. Ascriptive identities generally offer stability but stifle individual identity projects.[114] Recent debates about the degree to which the state should define sex, or alternatively allow individuals to define the official gender markers on their birth certificates and driver's licenses for themselves, are debates that pit ascriptive identities against ones that are more elective. Ascriptive legal categories impose identities upon us in ways that are difficult to ignore. A person born with male genitalia might assert a right to live her life as a woman. Government identity documents that label her a man interfere with this interest in concrete ways by outing her. Further, this same person might assert not only her interest in *living* as a woman, but in simply *being* a woman. Government

[111] *Id.* at 767.

[112] *See* Joanna Hou, *Ahead of National Affirmative Action Rulings, Schill Emphasizes NU's Commitment to Diversity*, DAILY NW. (May 18, 2023), https://dailynorthwestern.com/2023/05/18/campus/ahead-of-national-affirmative-action-rulings-schill-emphasizes-nus-commitment-to-diversity/ [https://perma.cc/3MJM-WK49] ("Northwestern's commitment to student diversity will remain no matter what the Supreme Court decides . . . . [D]iversity is a critical component of a well-rounded education."); *see also Understanding & Interpreting Affirmative Action Goals*, UC DAVIS HUM. RES., https://hr.ucdavis.edu/supervisors/diversity/using-affirm-action-goals (last visited July 9, 2023) [https://perma.cc/6QBL-E8DU] ("This commitment [to affirmative action] is guided by an understanding that a diverse workforce is necessary to promote innovation, creativity, and inclusive excellence. Additionally, our workforce should reflect the students, patients, and communities we serve.").

[113] Clarke, *supra* note 109, at 757.

[114] *Id.* at 762.

identity documents that assert otherwise constitute a direct assault on her identity.

Relational identities significantly complicate this typography. The identity generated by creating a parent-child relationship can be elective for one member of the relationship and fully ascriptive for the other. In many cases of assisted reproductive technology, VAPs, adoption, and conception through intercourse, entering parentage is elective for the parent, but ascriptive for the child.[115] But the reverse can be true as well. Some states allow children to file paternity suits after they turn eighteen, as long as they do so within the short statute of limitations.[116] In this scenario, the adult child's identity as the child of the parent would be freely chosen, and hence elective. But the resulting parent's identity would be ascribed to him based on genetics.[117] The adult child has the power to ascribe identity, but only to her genetic father. That is, the state's ascriptive definition works in tandem with the adult child's choice to ascribe identity. Both are required.[118] The core benefit of elective identity — its capacity to avoid external ascriptive definitions — is impossible to achieve in this situation because one member of the relationship is given the power to ascribe it to the others. We might call these conscriptive relational identities.[119]

A conscriptive relational identity might also be symmetrical or asymmetrical with regards to who holds the relevant conscriptive power. Both parties might have equal rights to conscript the other into the relationship, or only one party might have this right. In some states,

[115] The parent's identity is only elective on entry because the status of "parent" cannot be easily shed.

[116] *E.g.*, IND. CODE ANN. § 31-14-5-2 (2023).

[117] *See* UNIF. PARENTAGE ACT § 607.B.1 (UNIF. L. COMM'N 2017).

[118] There is an analogy to the core of tort law here. Unlike in criminal law, tort law provides the victim, not the state, with the power to bring the suit or decline to do so. This is what makes tort law a form of private law. Once someone is no longer eligible for child support, the public law aspects of parentage wane, and the state should treat her dispute as one of private law.

[119] Although children can conscript parents into that relationship, more often parents conscript children. Those who adopt, use assisted reproductive technology, sign a Voluntary Acknowledgment of Parentage, or perhaps even those who simply refrain from putting a child up for adoption, use the state's rules to conscript the child into the legal-parent-child relationship.

children have a longer statute of limitation to bring paternity suits than alleged fathers.[120] During the time that both can bring a paternity suit, the conscriptive capacity is symmetrical. But after the alleged father's right to sue lapses, the conscriptive capacity lies only with the child.

So far, I have only discussed the process of *entering or creating* relational identities. More complications emerge when we add *dissolving or leaving* those relationships.

Marriage illustrates the potential asymmetries between entry and exit. Marriage is largely elective, but *jointly* so. It requires mutual consent to enter, but not to leave. After the no-fault divorce revolution in the 1970s, each spouse can choose the identity of "divorced" and foist it upon the other.[121] This curious combination of formal and ascriptive is the mirror image of the examples of conscriptive relational identities mentioned above. While those described cases where one party forces another *into* the relationship. Here one party to the relationship is forcing another party *out* of it.

These are just a few illustrations of the complex landscape of possible identity regimes. Three dimensions are worth reiterating. First, the regimes that govern entry and exit can be different. Second, the regimes that govern each person in the relationship can be different. Third, the first two can combine. So, one might imagine a regime where the child can conscript a man into legal parentage but not vice versa, and where, after the relationship has been formed, some members of it can exit by mutual consent. This is roughly how one might describe a legal family formed by a paternity suit, and later reformed when the child's stepfather wants to adopt the child and the legal father agrees. The father-child relationship began as a conscriptive relational identity but was terminated and reformed as an elective relational identity[122] rooted in mutual consent of the relevant parental figures.

Further complications are also possible. Although it sounds oxymoronic at first, we might conceive of relational identities that hold

[120] *Compare* IND. CODE ANN. § 31-14-5-2 *with* IND. CODE ANN. § 31-14-5-3 (2023) (providing a statute of limitation of 20 years from birth when the child brings a paternity suit, and 2 years from birth when the legal father does so).

[121] MARGARET C. JASPER, MARRIAGE AND DIVORCE 20 (3d ed. 2008).

[122] In Clarke's typography, this would be a "formal" identity because it required formalities to create. Clarke, *supra* note 109, at 770.

only for one member of the relationship. We might imagine a legal regime in which P is a parent of C, but C is not a child of P. This sounds quite odd, but it accurately describes some areas of law. In some states, adopted children remain children of their biological parents for purposes of intestate succession, but the biological parents are not parents for those same purposes.[123] This asymmetry also accurately, albeit sadly, describes real relationships.[124] A parent may continually offer help and guidance to her child, while that child may no longer recognize the relationship.

Surfacing relational identity in general, and these various nuances in particular, reveals new options for context-dependent identity regimes. This newly revealed array of legal options precludes reliance on simple arguments about symmetry or family-is-forever and opens up questions about what justifications the state has for choosing one specific regime from the vast number of possible ones. The next Section begins the process of finding justifications for various types of exit regimes.

B. When and Why Exit Rights Are Needed

There are strong reasons, rooted in autonomy, to allow people to exit legal relationships. These reasons are stronger when the legal implications of those relationships are greater. For example, marriage imposes significant monetary obligations, and this is one reason why we might favor robust and unilateral exit rights. But the autonomy argument has force even when there are few legal entanglements, especially when the relevant legal relationship triggers oppressive social norms or is intimately tied to personal identity. To illustrate these arguments, this Section will discuss and seek to explain the different exit rights in two legally sanctioned relational identities: siblings and spouses.

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[123] ALOYSIUS A. LEOPOLD, 39 TEXAS PRACTICE: MARITAL PROPERTY AND HOMESTEADS § 22.6 (2022), Westlaw TXPRAC.

[124] Meredith Maran, *When Your Child Won't Talk to You*, AARP MAG. (Apr.–May 2012), https://www.aarp.org/relationships/friends-family/info-03-2012/the-stranger-in-your-family.html [https://perma.cc/RB73-288R].

1. No Exit Rights: Siblings

Consider sibling relationships. The state ascribes the sibling relationship to people. While parents may have the choice of whether to have another child, once they do, the legal sibling relationship is automatically imposed upon both children. This is how siblings enter that relationship. As for exit, siblings have no avenue for terminating their legal relationship. Why? Perhaps because the combination of few legal obligations and few social norms governing adult-sibling relationships means that there is little demand to terminate this relationship. Adult siblings who want to walk away from the relationship can mostly do so already.

There are very few legal consequences to the sibling relationship, and those that exist are subject to easy opt outs. Siblings might inherit by and through one another, but generally only if there are no spouses or children.[125] Similarly, in the absence of these other relatives, siblings might be empowered to make medical decisions for one another.[126] Although there is no direct means to eliminate all of these rights in one stroke by severing the legal sibling relationship, the law allows siblings to freely eliminate each of these legal consequences of their relationship. They can write a will that cuts their sibling out.[127] They can reject attempts for their sibling to devise something to them.[128] They can sign a medical power of attorney to ensure that their sibling cannot make medical decisions for them.[129] The fact that the law does not police these de facto legal divorces between adult siblings — at least not on the basis that the relationship is important and should be subject to protection — suggests that the state has no strong interest in maintaining that legal relationship.

[125] UNIF. PROB. CODE § 2-103 (UNIF. L. COMM'N 2019).

[126] *See* Shana Wynn, *Decisions by Surrogates: An Overview of Surrogate Consent Laws in the United States*, 36 BIFOCAL 10, 10-13 (2014).

[127] *See* UNIF. PROB. CODE §§ 2-501, -301, -302.

[128] *See id.* § 2-1105; Fabian N. Marriott, *No Disclaimer for the Domestic Support Evader: Why Alimony and Child Support Obligors Should Be Barred from Their Right to Disclaim Inheritances*, 71 RUTGERS U. L. REV. 1097, 1106 (2019).

[129] *See* Ardath A. Hamann, *Family Surrogate Laws: A Necessary Supplement to Living Wills and Durable Powers of Attorney*, 38 VILL. L. REV. 103, 128-29 (1993).

There are also very few social norms that would constrain each sibling's autonomy. Social norms dictate that you care for spouses in ways that go well beyond the legal obligations that flow from the spousal relationship. In contrast, social norms surrounding adult siblings are often far weaker. In a common trope, it is irresponsible and cruel to not call your mother to check in occasionally. But there is no corresponding obligation to call your adult sibling.[130] Again, this suggests that there would be little demand to terminate the legal relationship between siblings. If you want to walk away — legally and socially and as a matter of personal identity — from your adult sibling, you can already do so quite effectively.[131]

2. Robust and Unilateral Exit Rights: Spouses

Now consider marriage, which used to be rooted in natural law.[132] Entry into marriage has long required mutual consent, even if a shotgun was sometimes required to generate that consent.[133] Before the no-fault divorce revolution, exit from marriage was not tied to consent, or more accurately the lack thereof.[134] But since the 1970s, the vast majority of

[130] Of course, some siblings may feel substantial pressures to care for another sibling, especially in the case of severe disability.

[131] This does not mean that there are no autonomy interests in allowing exit. My only point is those interests are not supplemented by many legal or social obligations. If we tweak the introductory hypothetical and think about an older brother sexually abusing his younger sister, it is easy to see that exit rights would have value even as applied to sibling relationships. *See infra* Part V.F.

[132] John Witte, Jr., *The Nature of Family, the Family of Nature: The Surprising Liberal Defense of the Traditional Family in the Enlightenment*, 64 EMORY L.J. 591, 601, 662-68 (2015) (discussing Greco-Roman, early Christian, Enlightenment, and early American understandings of marriage and family as rooted in natural law).

[133] John Witte, Jr. & Joel A. Nichols, *More than a Mere Contract: Marriage as Contract and Covenant in Law and Theology*, 5 U. ST. THOMAS L.J. 595, 601 (2008). Of course, mutual consent was a necessary but not sufficient condition. States have historically barred some persons from marriage, including same-sex couples.

[134] JOSEPH STORY, COMMENTARIES ON THE CONFLICT OF LAWS, FOREIGN AND DOMESTIC, IN REGARD TO CONTRACTS, RIGHTS, AND REMEDIES, AND ESPECIALLY IN REGARD TO MARRIAGES, DIVORCES, WILLS, SUCCESSIONS, AND JUDGMENTS 100-18 (Boston, Hilliard Gray & Co. 1834). ("Unlike other contracts, it [marriage] cannot . . . be dissolved by mutual consent; and it subsists in full force, even although one of the parties should be

states have allowed unilateral no fault divorce.[135] This gives robust exit rights to each spouse. Mutual consent governs entry into marriage, and now the lack of mutual consent governs exit.

States allow unilateral exit rights in part because the burdens of remaining in a marriage are high. This is true of both the legal burdens and those imposed by social norms.

Legally, remaining married carries numerous consequences. Most disturbingly, your husband may have a legal defense to raping you.[136] In some circumstances he can also prevent you from testifying against him.[137] Monetarily, you are liable for some debts of your spouse, and you continue to have rights in each other's property.[138] Remaining married also prevents you from marrying anyone else.[139]

These legal entanglements coexist with, and sometimes reinforce, a series of social norms that create further entanglements. Even though states no longer criminalize adultery,[140] there remain norms against it. People who are still technically married to someone, even though the social and personal elements of a marriage are lacking, may find it harder to find someone willing to date them. Even if a purely technical marriage did not legally obligate you to pay the medical debts of your spouse, you might feel moral obligations to provide some forms of care to them, and others in your community might condemn you for not doing so. But this moral obligation is likely significantly diluted if not dissolved by a legal divorce. Divorce has meaning. Today, it means that your lives are now separate. Absent some co-parenting relationship, or the rare award of long-term alimony, you are truly legal strangers.[141] More generally, the

forever rendered incapable, as in the case of incurable insanity, or the like, from performing his part of the mutual contract."); Witte, Jr., *supra* note 132, at 662.

[135] JASPER, *supra* note 121.

[136] Jessica Klarfeld, *A Striking Disconnect: Marital Rape Law's Failure to Keep Up with Domestic Violence Law*, 48 AM. CRIM. L. REV. 1819, 1819 (2011).

[137] *E.g.*, MELISSA L. BREGER, DESERIEE A. KENNEDY, JILL M. ZUCCARDY & LEE H. ELKINS, 1 NEW YORK LAW OF DOMESTIC VIOLENCE § 2:127 (3d ed. 2022), Westlaw NYLDOMVIOL.

[138] 1 BRETT R. TURNER, EQUITABLE DISTRIBUTION OF PROPERTY § 1:2 (4th ed. 2023), Westlaw EQDP; 41 C.J.S. *Husband and Wife* § 72, Westlaw (database updated Aug. 2023).

[139] 10 C.J.S. *Bigamy and Related Offenses* § 1, Westlaw (database updated Aug. 2023).

[140] 2 C.J.S. *Adultery* § 3, Westlaw (database updated Aug. 2023).

[141] *See* Emily J. Stolzenberg, *Properties of Intimacy*, 80 MD. L. REV. 627, 649 (2021) ("The clean-break norms of no-fault divorce insist that former spouses' financial ties

legal status of marriage triggers various social norms that a spouse may rightly wish to shed and can do so through a divorce.

Because the legal and social entanglements of marriage are so burdensome, there are strong reasons to allow people to exit. But this does not exhaust the reasons for allowing robust exit rights. Even if people faced no legal or social obligations, they still might feel like the law was creating an unwelcome connection between them and another person.

Compare annulments to divorces. For short marriages, both are likely to end the legal and social obligations that stem from it. Despite these similar legal consequences, people may strongly prefer an annulment. It has symbolic force. It says I was never married, that the first marriage did not count.[142] People who seek an annulment might want to avoid the residual meaning of having been married in the past. After a divorce, they may still feel saddled with the (legally empty) husk of a former legal marriage. Annulment offers them a greater psychological distance from the past, and more freedom to move forward without the weight of that past.

Now imagine a legal regime that maintained marriage-is-forever as a symbolic matter. Divorce would sever all material obligations. It would even allow you to enter into domestic partnerships with other people. But the state would still label you as "married." Is this regime just as good as our current one? No.

There is something incomplete about this "divorce." If the state asserts that you are forever and always married, it makes identity claims that each person in the former marriage may reject. They may have good reason for doing so. When the state asserts that ex-partners have a continuing legal relationship, it supports psychological connections, some of which would be highly unwelcome. Most importantly, an abuser might ruminate on the state's assertion that they are still married and believe that this justifies his continued involvement in his spouse's life. Even in the absence of abuse or controlling behavior, the law has

are to be severed as soon as possible after they separate."). This does not mean that exit is always costless. Libson, *supra* note 41, at 615 ("While partners have the right to unilaterally demand the dissolution of the marriage, if they are morally at fault, they should nonetheless be required to compensate the other partner.").

[142] Kerry Abrams, *The End of Annulment*, 16 J. GENDER, RACE & JUST. 681, 684 (2013).

expressive force. Asserting that the couple is still married impedes their psychological capacity to move on. Both ex-partners may want the more complete break that comes when the law recognizes that they are no longer bound together at all — they are legal strangers.

These ex-partners assert an autonomy interest in defining their own identity without unjustified interference or influence by the state.[143] Here, the word "unjustified" will have to do a lot of work. But it nonetheless signals that the state should have to offer reasons for why it might interfere in one's autonomy of identity. The state could decide to interfere with people's lives in this way, but it would need to defend this choice rather than, for example, hiding behind the veil of natural law.

C. Identity and Parentage: The Adult-Child

Where does parenthood sit within this emerging spectrum between married couples and siblings; between those that need the ability to leave the legal relationship, and those that don't? To answer this question, it may help to understand what's at stake. There are three dimensions of this question that are worth separating: the legal stakes, the social stakes, and the identity stakes.

1. Legal Stakes

Legally, the relationship between a parent and an adult child looks like sibling relationships. There are few legal implications for this relationship, and both parties can opt out of them. First, the parent-child relationship is relevant to intestate succession. When a parent dies, their adult children can inherit.[144] When an adult child dies, their parent can inherit, but generally only if the adult child had no spouse or children.[145] If these default rules are objectionable, the parties can change them by writing a will. They can also refuse to take under a will that attempts to devise something to them. Second, the relationship

[143] Libson, *supra* note 41, at 601 ("The right to exit is derivative of the centrality of autonomy to liberal thought and signifies a person's right to detach oneself from a relationship with another person. The right to exit is fundamental to the liberal ideal of being the 'author of one's own life.'").

[144] YOUNG, *supra* note 30, § 7:1.

[145] *Id.*

between parents and their adult children has implications for medical decision-making.[146] Most states have statutes that determine who has the legal authority to make medical decisions for incapacitated persons.[147] Many of these "default surrogate" statutes list parents and adult children as proxy decision-makers.[148] If these default rules are objectionable, the parties can write a durable power of attorney naming someone else as their surrogate decision-maker.[149]

There are a smaller set of legal implications that neither the parent nor the adult child can contract around. Wrongful death statutes give standing for various relatives to sue.[150] Some of these statutes give standing to parents or adult children.[151] Accordingly, an adult child cannot prevent their parent from profiting from their death.[152] Grandparent visitation statutes give grandparents a right, under some conditions, to seek visitation with their grandchildren.[153] A small handful of states have filial support statutes that allow nursing homes to sue adult children to partially offset the costs of caring for their parents.[154] Adult children cannot avoid these obligations.

2. Social Stakes

What about social norms? As we saw in the discussions of filial piety, there are likely social norms that tie adult children to parents. People commonly believe that they have moral obligations to their parents to take care of them when they are old. The ten commandments included a duty to "honor one's mother and father" but any corresponding moral

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[146] Wynn, *supra* note 126, at 13.

[147] *Id.* at 10.

[148] *Id.*

[149] Hamann, *supra* note 129, at 128-29.

[150] Sean Hannon Williams, *Lost Life and Life Projects*, 87 IND. L.J. 1745, 1753 (2012).

[151] JAMES E. ROOKS, JR., RECOVERY FOR WRONGFUL DEATH §§ 3:1-3:7 (5th ed. 2022), Westlaw WRONGDEATH.

[152] Assuming, of course, that the death is actionable under the relevant wrongful death statute.

[153] Michael K. Goldberg, *A Survey of the Fifty States' Grandparent Visitation Statutes*, 10 MARQ. ELDER'S ADVISOR 245, 248 (2009).

[154] Jessica Dixon Weaver, *The Perfect Storm: Coronavirus and the Elder Catch*, 96 TUL. L. REV. 59, 116 (2021).

duties to honor one's siblings, if they exist at all, were apparently not important enough to make the cut. This suggests that the social norms surrounding parentage might be burdensome, and this in turn counsels for more robust exit rights.[155]

3. Identity Stakes

Like spouses who wish to exit a marriage, adult children have an interest in controlling whether they remain tied to their parents through legal parentage. When the state asserts that an adult child is the legal child of a particular parent, it makes claims that sometimes have highly unwelcome consequences for the adult child's identity.

Megan had a biological father that only "made the odd cameo" in her life but was lucky enough to have a loving mother and a stepfather, Ed, who was "my dad in every sense of the word."[156] When she was 28 and pregnant, Megan again turned her attention to her legal relationship with Ed.

> [E]ven though Ed knows how much I love him and our extended family never makes a distinction between father and stepfather, introductions with coworkers and people we didn't see often were always a bit stilted. We would all muddle the words "stepdad" and "stepdaughters" around in our mouths. Those were [technically] the right words to describe our situation, but they didn't accurately reflect how our family felt or functioned.
>
> . . . The summer I was pregnant with twins I was even sappier than usual, and I found myself strangely jealous that my children would get to call Ed "Grandpa." . . . [M]y kids would give him [that] title without qualifiers, something no one would raise an

[155] Of course, the state may have an interest in supporting norms of filial piety to help privatize the burden of caring for the elderly. I'll discuss this in Part V when I turn to various objections. Here, my focus is on building a case for why adult children have a legitimate interest in exiting the legal-parent-child relationship.

[156] Megan Zander, *I Surprised My Dad at Age 28 with Adoption Papers*, SHEKNOWS (June 17, 2016, 11:30 AM EDT), https://www.sheknows.com/living/articles/1118421/adopted-as-an-adult/ [https://perma.cc/9HPE-HGP9].

> eyebrow at, a name he deserved. So why shouldn't my sister and I do the same?[157]

Megan and her sister surprised Ed on his birthday with adult-adoption papers. "Arranging an adult adoption for my stepfather to become my legal father was one of the best things I've ever done. It's just a piece of paper, but means so much more than that to our family."[158]

Ashley also sought to have her relationship with her stepfather formally recognized, again through adult adoption.[159]

> I didn't explicitly tell my biological father. He'd been in and out of my life. We're okay now, but we don't have a close relationship. I believe he knows though. My mom thought I was angry, but I wasn't really. I didn't do it out of anger. I did it to celebrate the sacrifices my dad (Keith) made for me. . . . The benefit is mostly emotional for me. I like knowing that the man who raised me is listed as my father.[160]

Megan and Ashley each have a view of who their parents are and assert an identity interest in having that relationship recognized. Today, this requires terminating the parental rights of an existing parent. It is not clear whether Megan and Ashley see this as an unfortunate consequence of recognizing their functional parent, or as a nice bonus. Others are more explicit about that; they have a view of who their parents *are not*.

> I'm 23 and I need to legally divorce my family (at least I think that's what it's called). Basically I want my family to legally be no longer considered family. I do not want them to have the right to visit me in the hospital, to view medical records, etc. Also, when I have a child in the future I want all possible

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[157] *Id.*

[158] *Id.*

[159] *True Story: I Was Adopted at Age 24*, YES & YES, https://www.yesandyes.org/2016/06/adult-adoption.html (last visited July 13, 2023) [https://perma.cc/3PCC-4TVT].

[160] *Id.*

> grandparents rights and rights my siblings have that would give them access to the child to be erased.[161]

This person understood that they can accomplish some of these concrete goals with, for example, a will, but they indicated that this "isn't nearly enough."[162] A lawyer responded with incredulity, questioning how a will, a power of attorney, and a healthcare directive could not be sufficient.[163] This lawyer appears to have a myopic view of family and identity.

Even if all legal consequences of the parent-child relationship are removed — leaving only an empty husk — that empty husk still has social and personal meaning. This twenty-three-year-old is not merely seeking to be free from certain concrete legal obligations. She seeks the autonomy to stop the state's (perhaps inadvertent) attempt to impose a relational identity upon her.[164]

For readers who still think these identity stakes are unimportant, recall the analogy to divorce. Imagine a state that allowed you to eliminate all legal obligations stemming from your marriage, but still insisted that you were forever married to your first spouse. This "divorce" would be radically insufficient to respect the autonomy of the ex-spouses. The legal link is likely to have meaning, both for the spouses and for their community, and ex-spouses should be able to free themselves from this imposed identity and the social burdens that follow. The same can be said for adult children and parentage. In fact, because adult children never consented to entering the relationship in the first place, their autonomy claims are even stronger than those of an ex-spouse.

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[161] *How Can I Disown My Parents? I'm over 18. Help?*, AVVO (Feb. 18, 2018), https://www.avvo.com/legal-answers/how-can-i-disown-my-parents-i-m-over-18-help--3409323.html#! [https://perma.cc/37NM-W4YL].

[162] *Id.*

[163] *Id.*

[164] Erez Aloni, *Deprivative Recognition*, 61 UCLA L. REV. 1276, 1334 (2014) ("[R]ecognition 'is a vital human need' because people's identities are shaped, formed, and determined by the way other people recognize them. Because recognition is such a necessity, misrecognition 'can inflict a grievous wound.'").

4. "It's No Big Deal"

Some readers may still think that the overall stakes are low. They might then conclude that there is insufficient reason to disrupt the status quo. There is room for reasonable disagreement about the strength of the average adult child's interest. But this disagreement would not justify barring exit.

First, Stephanie is not the average adult child in an average parent-child relationship. So, the question becomes *who* should be allowed to exit, and *when*. Barring exit for everyone in every circumstance — the current status quo — cannot be justified just because forcing adult children to remain in the relationship is not a big deal for many or most of them.

Second, the "it's no big deal" position cannot stand on its own. Assume for the sake of argument that the legal and social stakes commonly associated with parent-child relationships were no big deal after the child becomes an adult. It's no big deal to have default intestacy rights and obligations. It's no big deal if your community has norms that pressure you to care for aging parents. We could then ask: would it also be true that the state could assign these rights and obligations randomly? You would then be linked with a random other person; they would now inherit from you by default; they would now have medical decision-making authority over you if you became incapacitated by default. I suspect many readers would resist this and demand a reason for linking them with this other person. I further suspect that readers would demand a *strong* reason. Now imagine that the state didn't link you with a random person, but instead linked you with the person who bullied you in elementary school, or an ex from a particularly dysfunctional relationship. We would get little traction by simply asserting "Well, it's no big deal, so there's no reason to complain!"

The invisible scaffolding that supports "it's no big deal" intuitions is probably natural law.[165] Linking parent and adult child is no big deal precisely because it accords with the "natural" order. Linking strangers

[165] *See* Dailey & Rosenbury, *supra* note 7, at 104 ("Expansive parental rights thus implicitly rest on a naturalized vision of the private two-parent family."). This could be rooted in genetics, or in function. Natural law is more closely aligned with the former. But an assertion that functioning as a parent *just does* make one a parent is akin to natural law in that it asserts a pre-political fact that the law should recognize.

randomly does not. Of course, once we reject natural law, we might search for other reasons to link parents and adult children by default. For example, we might say that the link is justified by presuming the intent of the parties. That justifies intestacy default rules in the standard case.[166] But if intent is the moral touchstone, *we should respect the intent to exit*. So, the "it's no big deal" arguments are likely tainted by natural law intuitions, and as such we should be especially skeptical about whether they can justify a refusal to respect the autonomy and identity interests of adult children.

Although I suspect that natural law intuitions play the largest scaffolding role, an intuitive version of debt theory could also undergird "it's no big deal." One might assert that functioning as a parent earns you a right to various legal connections. This would reflect a debt theory of filial obligations, where part of the currency of repayment is a continued legal connection. Again, "it's no big deal" is not doing the work alone. It requires the addition of this novel form of debt theory. The legal connection is "no big deal" only because the adult child owes it anyway. This vision of debt theory is not only novel, but also potentially deeply problematic. As discussed above, what a child "owes," if anything, should depend on how the parents behaved in the past, and how they behave now.[167] Yet these are largely unverifiable to third parties.[168] If we cannot know what the adult child owes, and we cannot know whether the parent deserves praise or contempt, then we cannot say that forcing a legal connection is "no big deal." For Stephanie and many others, it is a very big deal.

D. Identity and Parentage: The Parent

Nothing in the previous Section denies that parents will often have a strong identity interest in *maintaining* the parent-child relationship. Parents, perhaps even more than children, consciously entangle their identity with their children. But the question is not who has the stronger

[166] Reid Kress Weisbord, *Wills for Everyone: Helping Individuals Opt Out of Intestacy*, 53 B.C. L. REV. 877, 884 (2012).

[167] *See supra* Part II.A.ii.

[168] *See supra* Part II.B.

identity interest. Those interests have asymmetrical implications once refracted through the lens of autonomy.

Consider marriage, again. One spouse may have an identity interest in exiting. The other may have an identity interest in maintaining the union. This second identity interest, no matter how strong, cannot justify conscripting the other person into an identity that they reject. Autonomy — here envisioned as the interest one has in being the author of one's own life and choosing relationships that are central to one's identity — strongly supports unilateral exit rights. So, we might rightly treat an identity interest that requires conscription differently than an identity interest what requires only exit.

E. Asymmetrical Exit and Historic Power Imbalances

Autonomy arguments suggest that both parties to the relationship should have a unilateral right to exit. Perhaps parents should be able to divorce their adult children, just as adult children might be able to divorce them. Although I will remain formally agnostic about whether parents should be able to divorce their adult children, this Section introduces several strong arguments against symmetrical exit rights.

1. Causing and Choosing

Autonomy is not the only strong value at issue, and even if it were, there are reasons to treat parent exit differently than adult child exit. Often, parents have chosen to create a child.[169] This choice, this exercise of their autonomy, may have significance. We might conclude that deciding to create a child should come with lifetime obligations, rather than obligations that only last until the child becomes an adult. Of course, sometimes parents don't choose parenthood, but have it thrust upon them. A couple might accidentally conceive. In a post-*Dobbs* world, the woman may have no right to terminate her pregnancy.[170] The man can be conscripted into legal parentage at the birth of the child. Although these parents never consented to parenthood, they created the

[169] Garrison, *supra* note 17, at 828.

[170] Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228, 2279 (2022).

child. They caused the child to exist.[171] These features — the choice to create a child, and the bare fact of causing the child to exist — might ground a limitation on the pure autonomy argument for exit.[172]

I say "might" because I make no strong claims here. The fact that parents caused the child to exist and often chose to create the child suggests possible grounds for allowing the adult child to exit while not allowing the parent to exit. The rest of this Section offers another reason why these exit rights may be asymmetrical. But this Article will stay focused on the adult child and leave a full discussion of whether parents can exit for another day.[173]

2. Historic Power Imbalances

Asymmetrical exit rights are further supported by the historic power imbalances in the legal-parent-child relationship. "[T]he muscular, liberally informed version of parental rights, such as those enshrined in the US constitution . . . confers far too much power and control on parents over their children, essentially relegating children's status to that of parental property."[174] The fact that the law systematically disempowered the child in the past is an additional reason to respect their autonomy by granting them the power, now, to exit.

[171] Garrison, *supra* note 17, at 828. ("Most scholars thus justify parental obligation on the basis of causation instead of consent.").

[172] Merle H. Weiner, *Family Law for the Future: An Introduction to Merle H. Weiner's* A Parent-Partner Status for American Family Law (*Cambridge University Press 2015*), 50 FAM. L.Q. 327, 346 (2016) (arguing that "[a]utonomy is not a trump card" when someone creates dependencies).

[173] Those who are inclined to think that parents should be able to exit may simply assume this is so. Nothing in my arguments depend on it either way.

[174] Meredith Harbach, *Feminist Legal Theory and Children's Rights*, *in* THE OXFORD HANDBOOK OF CHILDREN'S RIGHTS LAW 159, 169 (Jonathan Todres & Shani M. King eds., 2020); *see also* HARRY BRIGHOUSE & ADAM SWIFT, FAMILY VALUES: THE ETHICS OF PARENT-CHILD RELATIONSHIPS 151-52 (2014) ("[W]e cannot respect parents' rights without giving parents the space to do what they have no right to. . . . The right to choose one's children's bedtime stories implies the opportunity to choose stories that will fill their heads with whatever parents want their heads to be filled with. In effect, then, there is a sphere of discretionary authority within which the misuse of their rights may occur.").

Consider an "insensitive, ungrateful twit"[175] who seeks to cut off all legal (and social) ties with her parents as an adult. Her parents never abused or neglected her. In fact, by all accounts they were wonderful people and perfect parents. Despite their love and attention, their child now wishes to remove them as her legal parents.

These parents, despite their evident commitment to their child, have exercised a great deal of power over her. They chose how many siblings she would have. They chose what values to try to instill in her. They chose the family religion. They chose her schools. They chose various limits on her screen time and her socializing. They chose how to enforce various rules.

Assume that they made these choices with one touchstone in mind: the best interests of the child. But they still used *their* metric for best interests. This touchstone is famously ambiguous, both normatively and empirically.[176] To know what is best for a child, one must have a theory of what makes children thrive. This entails value judgments. Should you choose to instill a work ethic in your child? This is a value judgment. Should they be religious? Which religion? These entail value judgments. Even if we could agree on these value judgments and could reduce the best interest inquiry to an empirical one — perhaps maximizing the sum of lifetime happiness — we could not make the necessary predictions. Here, the point is just that all parents exert a great amount of power over their children, even when they try to do what's right for them.

This power is not the inevitable result of the natural order. *The state* allows just about anyone to become a parent — to fulfill their identity project of becoming a parent — without any inquiry into whether they will be good parents. Then *the state* gives those parents vast power over their children.

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[175] Erin Cosentino & Ashley Frazier, *The Coalition for Genetic Truth*, SEVERANCE MAG. (Sept. 2, 2020), https://severancemag.com/adoptee-npe-and-donor-conceived-communities-come-together-to-form-the-coalition-for-genetic-truth-an-organization-dedicated-to-advocacy-and-education/ [https://perma.cc/WGZ4-TFJV] (discussing what one talk radio host called a person who had called in asking for advice when they discovered that their legal parent was not their genetic parent).

[176] PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION: ANALYSIS AND RECOMMENDATIONS § 2.02 (AM. L. INST. 2002).

This historic lack of power should be rebalanced once the child becomes an adult. Despite effectively winning the legal-parentage lottery upon birth by getting loving and attentive parents, the child nonetheless has been systematically disempowered. Once she becomes an adult, it is time to respect her projects as well. Those projects might include freeing herself from a legal relationship that she took no part in creating, that was partially designed to serve the projects of her parents, and that now imposes an unwelcome relational identity upon her.

IV. POSSIBLE EXIT REGIMES

A natural law view of parentage would not allow exit at all. This Part rejects that view without repeating the above discussions.[177] It assumes, as a baseline, that there should be some exit rights, and asks what those exit rights might look like. It examines those regimes along two primary dimensions: the consequences of exiting and the requirements for exiting. Combining these dimensions creates a matrix of possible regimes. Each of the potential regimes discussed below are preferable to the current regime. But some are significantly better than others. I reject some on autonomy grounds. I strongly disfavor others on autonomy and pragmatic grounds. I favor regimes that give robust exit rights, and offer multiple possible regimes that do so, even though they differ somewhat in the degree of robustness of that right.

My primary goal is not to convince the reader that one particular regime is optimal or to design a model statute that resolves every detail of that optimal regime.[178] Rather, the primary goal is to show how different exit regimes can respect the adult child's autonomy to greater or lesser degrees, and to begin a conversation about how, precisely, we should balance those interests against others.

It is also important to outline what this Part *does not* do. This Article focuses on exit regimes. It assumes that any attempt to enter a new

[177] *See supra* Part I.

[178] For example, one might ask who should obtain notice of alterations of parentage. Should the law require that the adult child provide notice to her siblings, aunts, uncles, and grandparents? If the adult child divorces only one parent, would she have to provide notice to the other? This may depend on whether the notified people will have some right to intervene, see *infra* Part IV.B.ii–iv, or whether their rights are impaired by the change. *See supra* Part IV.A.

parent-child relationship would be governed by the current rules of adult adoption. The same autonomy and identity interest described above could justify a regime where any adult can become the parent of any other adult, as long as both consent. Some state rules on adult adoption allow this, others only allow adult adoption when it recognizes a functional parent-child relationship that existed when the child was a minor.[179] Regardless, this Article decouples the two legal effects of adult adoption: its exit function, where it terminates existing previous parent-child relationships, and its entry function, where it creates new parent-child relationships. Once decoupled, we can more clearly focus on exit rights. Future work will shift focus to the rules for creating new parent-child relationships. This Article will retain its focus on exit.

A. Consequences of Exit

This Section considers two possible consequences of exit. The first is straightforward. Exit terminates the legal relationship. The adult child is no longer the legal child of her parent. The parent is no longer the legal parent of the adult child. They are legal strangers.[180]

The second possible regime is more responsive to the concerns that parents have significant identity interests as well. Even if we conclude that parents should have no exit rights themselves, their identity interests may ground at least some caveats to a complete termination of the legal-parent-child relationship. Here, I will outline the possibility of recognizing a *nonreciprocal relationship status*. As mentioned above, it is possible to conceive of a world where Person C is a child of Person P, while Person P is not a parent of Person C, or vice versa. This is the legal effect of adoption in some states. In Texas, a child who is adopted

[179] *See, e.g.*, OHIO REV. CODE ANN. § 3107.02 (2016) (allowing adult adoption if "the adult had established a child-foster caregiver, kinship caregiver, or child-stepparent relationship with the petitioners as a minor, and the adult consents to the adoption"); WYO. STAT. ANN. § 1-22-102 (2023) (allowing adult adoption when "[t]he adopting parent was a stepparent, grandparent or other blood relative, foster parent or legal guardian who participated in the raising of the adult when the adult was a child").

[180] This is the sole consequence considered in other scholarship. *See* Tali Marcus, *Cutting Off the Umbilical Cord-Reflections on the Possibility to Sever the Parental Bond*, 25 J.L. & POL'Y 583, 633 (2017).

retains a right to inherit from her original legal parents.[181] But those parents have no reciprocal right to inherit from the adopted child.[182] Their parent-child relationship is nonreciprocal, and only exists in ways that benefit the child.

Consider an adult child who has exited the parent-child relationship. The parent might want to retain or reassert their parental identity. They could perhaps do so by retaining their *obligations* to their adult child, even if they cannot retain any *rights*. This would be a particularly potent signal that they adhere to commonly exalted visions of parenthood, where parents would do anything for their children.

This form of nonreciprocal relationship might be created privately. First, the legal-parent-child relationship could be completely severed, but the state could advise the parent of their capacity to write a will and a durable power of attorney. The relevant will would be like offering a gift to the adult child, which the adult child is free to refuse. The adult child's autonomy probably does not extend so far that they can prevent the parent from even offering that gift. A former legal parent might also craft a durable power of attorney that gave their adult child authority to make medical decisions if the parent became incapacitated. Again, this would be an offer or a request. The adult child is always free to refuse.

Alternatively, if the parent opts for it,[183] the state might sever only part of the legal-parent-child relationship and create a nonreciprocal relationship status. This might entail that the adult child retains a right to inherit from the parent, even though the parent has no reciprocal right. Similarly, the adult child might maintain that status for purposes of medical decision making when her parent is incapacitated, but the parent would no longer qualify as a relative if the adult-child becomes incapacitated.

I make no strong claims about which of these regimes is better, but I will note some of the relevant costs and benefits. The imprimatur of the law — as opposed to private decision making — might have special significance to the parent. They can point to the law as a sign that they are, on some level, still the parent of this person. This is a benefit to the

[181] LEOPOLD, *supra* note 123, § 22.6.

[182] *Id.*

[183] One could also decline to give the parents any choice and force them to bear the obligations even though their child has divorced them.

parent. On the other hand, it might be unwelcome from the perspective of the adult child. But it is perhaps not significantly more unwelcome than a parent who writes a will and durable power of attorney as if their legal relationship was never terminated.

These nonreciprocal regimes offer at least some recognition of the parent's identity interests while perhaps only minimally impacting the identity interest of the adult child. As such, they offer options for state legislatures who weigh the parent's identity interests heavily, options that don't require denying the adult-child a voice in her parentage.

B. Requirements for Exit

The previous Section outlined two possible consequences of exiting the legal-parent-child relationship — full termination of the relationship or retaining a nonreciprocal relationship where the parents have obligations but no rights. This Section discusses the requirements to trigger those consequences. Readers who strongly prefer one consequence over the other are invited to think about this Section in terms of their preferred consequence. Section C will discuss hybrid regimes that pair different requirements with different consequences.

1. Mutual Consent

I've already argued that adult children should have a unilateral right to exit.[184] Requiring the consent of the parents would be an improvement over the existing regime — which denies all voice even if all of the relevant parties want the relationship dissolved — but it is only a slight improvement. It still contains a feature that should be deeply troubling. It allows one adult to exert control over another, and to force them to remain in a relationship that they want to exit. In the context of marriage, this would be unthinkable to many. And this is so even though in marriage at least the parties entered the relationship voluntarily. The adult child, by contrast, never consented to nor chose the relationship that she is now bound to.

[184] *See supra* Parts II.A.ii, iv.

2. Parental Wrongs

This Section argues against a regime that only allows exit when and if the adult child can prove that their parent committed some wrongful act. Although parental wrongs are *sufficient* to justify exit, making them *necessary* gets the default rule seriously wrong.

a. Parental Wrongs Are Sufficient for Exit

Cases of serious child abuse offer the most poignant illustration of the appropriateness of allowing exit. Extrapolating from these stories, one could construct a regime that continued to give parents power over their adult children, unless and until they lost their "right" to control them by committing a parental wrong.

Stephanie's biological mother always sought to control her.[185] When she was in middle school, Stephanie's biological mother told her to start keeping a diary, and then after a few weeks she took the diary, read it, and screamed at Stephanie for hours for writing that she didn't think her biological mother was a very good mother. Stephanie knew that if she told any family member anything about herself there was a chance that the information would get back to her biological mother, who was prone to rages if she thought Stephanie was not confiding in her enough. When Stephanie was in high school, her biological mother searched through Stephanie's text messages and found out that she was flirting. She then dragged Stephanie to a police station and demanded that the police do something about her out-of-control daughter. The police — perhaps misinterpreting the situation as a rebellious teenager and a heroic mother doing her best — lectured Stephanie. Hoping to avoid confrontations, Stephanie understandably isolated herself from others in order to manage her biological mother and her anger. Even in college, when Stephanie made money, it was deposited into a bank account that Stephanie's biological mother controlled, an account which she monitored and would become angered by if she decided Stephanie had bought the wrong thing for lunch. If Stephanie didn't keep in regular contact, she would threaten to come and drag Stephanie home by her hair, or to call her boss at the college and try to get her fired. When

[185] *See* Interview with "Stephanie," *supra* note 1.

Stephanie finally told her biological mother not to contact her again, she tried to convince Stephanie's father that Stephanie had become addicted to opioids, or, in the alternative, that her boyfriend had kidnapped her. These were the kinds of lies that her family might have believed in the past, and that they were only able to see through after Stephanie presented them with evidence of her childhood full of abuse.

Months after Stephanie finally broke free from her biological mother, she was finally able to sleep through the night without nightmares again. Stephanie's other family members said that she was an "entirely different human being" once freed from her biological mother.[186] They agreed with Stephanie that "they didn't really meet me until after I left my biological mom."[187]

Before Stephanie was able to engineer her adoption, her legal-parent-child relationship imposed limits on her feelings of freedom. As a young lawyer learning about agency law, she wondered what would happen if she became incapacitated in a hospital and they contacted her biological mother. "The last person in the world I want making choices for me is the abusive parent that I worked like hell to get away from."[188]

Her adoption technically eliminated this threat. But only technically. Stephanie is in the process of amending her birth certificate to remove her biological mother from it. She worries about the way that her biological mother might use the birth certificate to assert power over her in the future — to barge into a hospital room and claim that she is Stephanie's mother.

Imagine for a moment that Stephanie had not been able to find another adult to adopt her, or lived in a state that imposed extra requirements on adult adoption that she could not meet, or just felt that entering into a new mother-daughter relationship was too emotionally fraught. Under these circumstances, Stephanie would not have been able to sever her legal ties to her biological mother. She could, of course, write up a medical power of attorney. But what if, in an emergency, her biological mother arrives at the hospital before whomever has that medical power of attorney? Stephanie is cognizant of the need to shore

[186] *Id.*

[187] *Id.*

[188] *Id.*

up a whole set of defenses to protect her from her biological mother. A medical power of attorney is not enough.

Should the law give Stephanie's biological mother this continued legal and de facto power, or should it finally empower Stephanie to exit this abusive relationship? The question largely answers itself. It seems the height of cruelty to enact laws (or let existing laws stand) that allow a controlling parent to continue this control even after the child becomes an adult. More generally, some parental wrongs are likely *sufficient* to justify giving adult children the power to sever their legal relationship with their parents.[189]

b. Parental Wrongs Should Not Be Necessary for Exit

The real question is whether parental wrongs, while sufficient, should also be *necessary* to exit the legal-parent-child relationship. I answer no. Normally, adults do not have special legal obligations to one another absent some form of consent. Why have a different rule for parents and children? There are several possible arguments, none of which are convincing. Such a system would get the default rule seriously wrong, have significant definitional and distributional shortcomings, and would risk re-victimizing Stephanie and others.

First, we might reasonably assume consent as part of a majoritarian default rule. Most adult children want to retain their legal relationship with their parents, and so a state might reasonably continue that relationship. However, this argument only justifies shifting the default. It does not justify barring exit.[190]

Second, natural law visions of the family make consent or the lack thereof irrelevant. But as discussed above, our current laws explicitly

[189] Alternatively, one might argue that past wrongdoing is not alone sufficient and would need to be combined with some threat of future harm. I will focus on a backward-looking–wrongs-based regime here, not a forward-looking–trauma-based regime. I do so in part because the wrongs-based regime is what might emerge from a natural law vision of family, and I suspect that this vision undergirds intuitive support for it.

[190] One could assert, in an ad hoc manner, that the default parent-child contract includes a provision that neither can be ousted absent some wrong. Descriptively, this is false, as adult adoption shows. Normatively, it is questionable. Who would agree to this limitation when so many reject it in the context of divorce? If people would not agree to this limitation, on what basis would the law presume consent to it?

and rightly reject a family-is-fact view in part because of its numerous normative shortcomings.[191]

Third, parents may have earned a right to filial recognition through their labor (or, less plausibly, solely through their genetic connection) that they can lose by committing some set of parental wrongs. But this does not seem to follow from the major theories of filial piety.[192] Even assuming for the sake of argument that a dutiful parent is owed a moral duty of respect and recognition, enforcing this duty through law is in significant tension with general principles of adult liberty and autonomy. We generally don't give one adult power to force another adult into a legal relationship.[193] Doing so would give one adult power to control the identity-conferring status of the another. The fact that the state gave wide power to the parent over the child during the child's minority does not suggest that this power relationship should continue after the child becomes an adult. In fact, the opposite conclusion seems more plausible. Allowing parents to bar exit is also in tension with common norms of parenthood. Those norms suggest that parents should not consciously harm their children, and in fact should attempt to help them thrive. A parent who forces her adult child to remain in the legal-parent-child relationship violates these norms by actively seeking to bring about a state of the world that the adult child herself sees as

[191] *See supra* Part I.A.

[192] *See supra* Part II.

[193] *See* Harry Beran, *A Liberal Theory of Secession*, 32 POL. STUD. 21, 24 (1984) ("Because of liberalism's commitment to freedom as an ultimate value, . . . all relationships among sane adults in such a society should be voluntary."); Lisa V. Martin, *Restraining Forced Marriage*, 18 NEV. L.J. 919, 933 (2018) ("Denying an individual the opportunity to choose her own life partner, and thereby the direction and circumstances of her life, communicates that her own needs or desires are unworthy of respect and secondary to the designs for her life that others have created to advance their own interests."); Elizabeth S. Scott, *Rehabilitating Liberalism in Modern Divorce Law*, 1994 UTAH L. REV. 687, 739 (1994) ("Liberalism requires the state to respect individual choice, and individuals may or may not define themselves as family members."); R. George Wright, *Consenting Adults: The Problem of Enhancing Human Dignity Non-Coercively*, 75 B.U. L. Rev. 1397, 1397 (1995) ("We can hardly imagine the law of contracts, of property, or of crimes and torts — including battery, trespass, assumption of the risk, and informed medical consent — apart from the idea of consent. Consent is often thought to be basic not only to many dimensions of private law, but to the constitutional order itself, and even to the very obligation to obey a government in the first place.").

harmful. It is not clear why we would endorse a law that contravened autonomy *and* facilitated behavior that undermined norms or parenting.

Fourth, in addition to these more theoretical issues, a wrongs-based regime would have significant definitional and distributional issues. What might a state legislature define as a sufficient parental wrong? Existing statutes about terminating parental rights provide a ready framework. These statutes allow courts to terminate a parent's rights if doing so is in the best interests of the child, and the parent commits variously defined acts of abuse or neglect.[194] Those statutes don't apply once the child becomes an adult.[195] But the state could revise them to allow post-majority terminations.[196] Regardless, these statutory definitions of abuse and neglect can have problematic effects. In Texas, the Attorney General recently defined abuse to include offering gender affirming care to your child.[197] In many states, poverty and neglect are largely synonymous.[198] This means that impoverished parents would be disproportionately subject to a wrongs-based regime. Many states also include incarceration as a ground for terminating parental rights.[199] This would introduce significant racial disparities.

[194] ANN M. HARALAMBIE, HANDLING CHILD CUSTODY, ABUSE AND ADOPTION CASES § 13:1 (2022). The one case where a child "divorced" his parents was a termination of parental rights case. Scott A. Cannon, Comment, *Finding Their Own "Place to Be": What Gregory Kingsley's and Kimberly Mays' "Divorces" from Their Parents Have Done for Children's Rights*, 39 LOY. L. REV. 837, 843 (1994).

[195] *See* IOWA CODE ANN. § 600A.3 (2023) ("[T]ermination of parental rights between an adult child and the child's parents may be accomplished by a decree of adoption establishing a new parent-child relationship.").

[196] In the context of adult children, we would likely replace the best interest inquiry with an inquiry into the adult child's wishes.

[197] Amir Vera & Ashley Killough, *Texas AG Declares Pediatric Gender-Affirming Procedures to Be Child Abuse, Legal Opinion Says*, CNN (Feb. 23, 2022, 11:26 PM EST), https://www.cnn.com/2022/02/23/us/texas-attorney-general-gender-affirmation-child-abuse/index.html [https://perma.cc/859U-GT9T].

[198] Melody R. Webb, *Building a Guaranteed Income to End the "Child Welfare" System*, 12 COLUM. J. RACE & L. 669, 675-76 (2022).

[199] Anna Iskikian, *The Sentencing Judge's Role in Safeguarding the Parental Rights of Incarcerated Individuals*, 53 COLUM. J.L. & SOC. PROBS. 133, 155 (2019).

Fifth, even if we could overcome these definitional and distributional issues, there are significant problems with verifying the relevant facts.[200] A person abused as a child may take decades to come to terms with that abuse. It may be even longer before she decides that, to move forward, she needs to exit the legal-parent-child relationship. Litigating facts that occurred twenty years ago is likely to come with significant uncertainty. This is especially true when our tradition of parental rights allows parents to isolate the child and prevent people from witnessing the abuse.

Sixth, even if a court could verify the relevant facts, doing so carries its own significant costs. It could force Stephanie to re-engage with her abuser. Stephanie's biological mother always used the law to control her. Requiring a trial could just be another tool for that control. Additionally, litigating fault will likely motivate people in a counterproductive way. Parents accused of wrongdoing might fight to salvage their reputations. This could cause lengthy acrimonious litigation. A wrongs-based regime for parentage (like its fault-based equivalent in divorce law) could easily do more harm than good.[201]

For readers still sympathetic to a wrongs-based approach the next two Sections discuss several ways to partially accommodate a wrongs-based view.

3. Good Cause

We could require that the adult child appear before a judge and convince that judge that she has "good cause" for terminating the relationship.[202] This would be more flexible than a parental wrongs

[200] *See* Elizabeth Scott, *Marital Commitment and Regulation of Divorce*, *in* THE LAW AND ECONOMICS OF MARRIAGE AND DIVORCE 51 (Anthony Dnes & Robert Rowthorn eds., 2002) (arguing against fault-based divorce because fault is unverifiable).

[201] *Id.* (arguing that fault-based divorce would increase litigation and acrimony). Of course, this does not mean it would do no good. It might help preserve family-is-forever norms, and some victims might appreciate the opportunity to "have his or her day in court to recount a personal narrative and receive recognition for their plight as an allegedly injured victim." Libson, *supra* note 41, at 613.

[202] The only other article advocating exit rights in the parent-child context argues for forced mediation, followed by an inquiry into good cause. Marcus, *supra* note 180, at 632.

approach, and could, for example, consider the adult child's ongoing psychological needs regardless of any past wrong. The existing legal parents could be excluded from this proceeding if the adult child requests this,[203] to prevent people like Stephanie from being intimidated. This would roughly mirror the regime for providing adopted children access to their original birth certificate once they turn eighteen.[204]

This system has some notable drawbacks. Most foundationally, it still assumes that there must be some special reason to respect the adult child's autonomous choice. It allows people to be conscripted into a legal relationship, and then puts the burden on them to show why they should be set free from it. This seems to get the default rule backwards.

More pragmatically, this regime would be subject to the critiques of "good cause" as a gateway to accessing original birth certificates in the adoption context. Courts have no guidance to help apply this standard.[205] This likely leads to vast idiosyncrasy and invites judicial bias. It also buries the definitional problem rather than solving it. It simply delegates the important normative decisions to a state employee elected in a low-salience local election where only two percent of the voting citizens could even identify a single judicial candidate.[206]

4. Good Cause, Redux

Moving one step further toward empowering adult children, we could implement a "good cause" system that shifts the burden to the parents. An adult child would then be able to exit the legal-parent-child relationship unless the parents could convince a judge that there was "good cause" to prevent that exit.[207]

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[203] Alternatively, those parents could give testimony in written form only, testify when their child is not present, etc.

[204] Christopher G.A. Loriot, *Good Cause Is Bad News: How the Good Cause Standard for Records Access Impacts Adult Adoptees Seeking Personal Information and a Proposal for Reform*, 11 U. MASS. L. REV. 100, 110 (2016).

[205] *Id.* at 112.

[206] *See* Michael J. Nelson, *Uncontested and Unaccountable — Rates of Contestation in Trial Court Elections*, 94 JUDICATURE 208, 209 (2011).

[207] Loriot, *supra* note 204, at 120 (proposing a similar shift in the default for adoptee access to their original birth certificates).

This system would at least create more alignment between principles of autonomy and the default rule. The default would be respecting the adult child's autonomous choice, and it would require a special showing to overcome that decision. But there are still drawbacks. It is not clear why an adult who never consented to the relationship should have any constraints on their choice. We might also worry that local judges will have no guidance on what constitutes good cause, making outcomes unpredictable. This increases litigation costs and violates principles of equal treatment.

5. Attestation

We could simply ask the adult child to attest that some parental wrong occurred, or that they have some psychological need to exit the relationship, without seeking to verify the claim or assess whether it rises to the level of "good cause."

Channeling a parental-wrongs theory of filial recognition, the state might require the adult child to attest that her parents "have engaged in abusive or neglectful behavior." Various verbal formulations could signal different thresholds, some of which would track parental wrongs theories more closely, others less so. For example, we could simply ask adult children to attest that her parents "have engaged in behavior that is not consistent with a productive parent-child relationship going forward."[208] Notice that this attestation does not mention abuse, but it does still imply that some bad parental behavior is required to justify exit.

We could also reject a parental wrongs approach and require the adult child to attest that "after long and careful contemplation, I have decided that retaining my legal relationship with my existing legal parents would cause ongoing trauma." This implies that the adult child should carefully consider her decision. It also shifts focus from a backward-looking assessment of the parents' behavior to a forward-looking assessment of the adult child's needs. This is far more autonomy respecting, but it still

[208] This regime would be close to the no fault divorce regime we currently have. These regimes often require claiming that there are "irreconcilable differences" or that "there is no realistic hope of reconciliation." Instead of verifying those claims, as courts might have once attempted, today courts generally just take the claimant's word for it.

implies that "trauma" would be required to justify exit. That is, it still implies a strong default of continued recognition. Other attestations might say something like: "After long and careful contemplation, I have decided that retaining my legal relationship with my existing legal parents is inappropriate because of abuse, abject neglect, trauma, or other serious circumstances." This allows more flexibility about what justifies exit, but still offers guidance.

These attestation regimes have two key benefits. First, at the end of the day they allow exit. Regardless of what the attestation says, the law refrains from second-guessing the adult child.[209] But the attestation, depending on the precise language, can put some psychological barriers in the way of exit. To the extent that these barriers are designed simply to encourage caution, they are autonomy respecting. Attestations that require "trauma" or "abuse" are less autonomy respecting, but they still come with a second benefit. It might be beneficial to communicate to adult children that exit is an extreme option, and to offer guidance on what justifies exit (for example "abuse" or "trauma").

6. Unilateral No-Fault

Under this regime, adult children could exit without even attesting that there is some justification for exit. The justification is simply their current lack of consent to that legal relationship. This reflects the reality, if not the technical pleading requirements, of today's no-fault divorce. Divorce litigants might have to attest that there are "irreconcilable differences,"[210] but this verbal formulation probably does not create any significant barriers to divorce. Further, judges don't second guess the spouse's assertion.[211] This effectively creates unilateral opt out rights. This reflects a basic commitment to ongoing autonomy as a value that is more important than forcing someone to hold to the "until death do us part" portion of their marriage vows. These autonomy

[209] The law might also insulate the adult child from defamation or other tort claims based solely on the text of the attestation.

[210] *E.g.*, CAL. FAM. CODE § 2311(1994); N.J. STAT. ANN. § 2A:34-2 (2006); TENN. CODE ANN. § 36-4-103 (2020).

[211] Although rarely used, courts can decline to grant the divorce and instead order counseling to see whether their differences are indeed irreconcilable. *E.g.*, TEX. FAM. CODE ANN. § 6.505 (1997).

interests are more potent when the relevant relationship began with conscription, not choice, as it does for adult children.

C. Hybrid Regimes

Of course, various hybrid possibilities exist. Mutual consent could always be sufficient for exit, even if it would not be necessary when paired with one of the other regimes. We might also imagine hybrid regimes where different regimes result in different outcomes. Unilateral exit or simple attestations could result in a nonreciprocal relational status, where parents can choose to maintain their obligations but not their rights. Conversely, if the adult child proves good cause or parental wrongs, then parents would have to write wills and durable powers of attorney to signal their ongoing commitment to the now-terminated relationship. I won't pursue these hybrid regimes in detail. It is sufficient to flag these possible compromise positions, which could respect an adult-child's autonomy while mitigating the impacts on their parents.

D. Summary

Although any regime that allows any exit is preferrable to our current one, there are reasons to favor some regimes over others. Requiring mutual consent seems too constraining, especially since it would allow Stephanie's biological mother to continue her control. A parental wrongs regime gets the default rule wrong, might cause significant harm to minority and poor populations, and creates definitional difficulties. But the intuition that parental wrongs should be required may persist, especially among parents with adult children. Assuming that they have special wisdom, we might worry that allowing unilateral opt out does not do enough to respect the care work that parents have done. As a potentially useful compromise, we might consider good cause regimes or attestation regimes. Good cause regimes give too much power to local judges. In this space of conflicting and deeply felt views on who is a parent, and who no longer deserves that title, simply shifting power to low level state judges merely punts on the important normative questions. Attestation regimes are a significantly better compromise. They can respect the adult-child's autonomy, while at the same time

offering guidance about what might justify exit. Readers who worry that attestation regimes insufficiently protect the parent's identity interests might pair them with reduced consequences and allow the parent to maintain her parental identity by retaining her parental obligations.

V. OBJECTIONS

Perhaps because allowing adult children to exit the parent-child relationship is such a novel idea, it may cause readers to worry about possible negative consequences. This Part argues that there is very little to worry about.

A. Recalibrating Collateral Legal Consequences

Readers may worry that allowing people to "divorce" one or both of their parents will have significant ripple effects, potentially distorting other areas of law that use legal parentage to trigger certain consequences. Luckily, allowing exit will create only a few mild and easily handled ripples, but will not send any tidal waves into other areas of law.

An initial point is worth emphasizing. The law already embraces a contextual view of parentage. There are currently different definitions of a "parent" for purposes of child support, wrongful death statutes, and inheritance.[212] The state need not embrace one uniform definition of parentage, and hence can tailor the legal effects of divorcing a parent.

[212] *See, e.g.*, COLO. REV. STAT. ANN. § 15-11-119 (2017) ("A parent-child relationship exists between both genetic parents and an individual who is adopted by a relative of a genetic parent, or by the spouse or surviving spouse of a relative of a genetic parent, but only for the purpose of the right of the adoptee or a descendant of the adoptee to inherit from or through either genetic parent."); LeSage v. Dirt Cheap Cigarettes & Beer, Inc., 102 S.W.3d 1, 4 (Mo. 2003) (en banc) (approving of different statutes of limitations and different procedural requirements for paternity suits under the family code and paternity determinations for purposes of inheritance, owing to their differing purposes); *In re* Est. of Heater, 466 P.3d 728, 731, (Utah Ct. App. 2020), *aff'd*, 471 P.3d 168 (Utah 2021) (noting different definitions of parent in parentage age and probate code); *id.* at 733, ("While the conclusion that a child may inherit from both his presumptive and biological fathers' intestate estates certainly seems bizarre, or at least at odds with societal expectations, the plain language of the Probate Code dictates this conclusion."); Taylor v. Hoffman, 544 S.E.2d 387, 395 (W.Va. 2001) ("Limitations provisions included within the paternity statute are inapplicable to a civil action by a child born out of

In the context of inheritance, parental divorce might terminate the default intestacy rights of both parent and child. Alternatively, it might trigger a non-reciprocal default. Either way, as long as the procedures for parental divorce include notice, everyone can write a will if they want to alter these defaults. Even a regime committed to unilateral exit rights might require that parents be notified. After getting this notice, if they still don't write a will, it is doubtful that they had strong preferences that would be thwarted by an intestacy default rule. The law could also make writing a will-type instrument easier, by bundling notice with a quick and easy form where parents can opt to maintain the default rule that their child will inherit from them.

Wrongful death statutes can easily accommodate exit and might be significantly improved by doing so. Wrongful death statutes often confer standing on "children" and "parents" of the deceased.[213] Some states define these terms using both legal and genetic ties. These laws might misfire in Stephanie's case. Perhaps genetic parents should only be included if they were not explicitly removed as legal parents by adoption, termination, or parental divorce. For states that use a legal definition of "parent" and "child," divorcing one's parents would likely have the same effect as divorcing one's spouse. In both cases, divorce

wedlock seeking to inherit from his or her father."); *In re* Paternity of C.A.V.M., 728 N.W.2d 636, 643 (Wis. 2007) ("[T]he policies and purposes behind the paternity provisions . . . relate to the care and support of a mother during pregnancy and the birth, care, and custody of a child. None of the policies and purposes contemplate a parent's right to bring a paternity action for the sole purpose of then bringing a separate wrongful death action." (citations omitted)); Paula A. Monopoli, *Nonmarital Children and Post-Death Parentage: A Different Path for Inheritance Law?*, 48 SANTA CLARA L. REV. 857, 860 (2008) (arguing that the "expansive family law regimes for establishing the parent-child relationship, while appropriate during life, may not be the optimal approach for inheritance law in post-death cases since inheritance and family law have distinctly different policy concerns and goals."); *see also* State v. Moore, 91 N.E.3d 1267, 1270-72 (Ohio Ct. App. 2017) (holding that incest statute criminalizing sex between adult-child and her "natural or adoptive parent" applies even if the parents' parental rights have been terminated); Kerry Abrams & R. Kent Piacenti, *Immigration's Family Values*, 100 VA. L. REV. 629, 634 (2014) (discussing different core principles underlying federal immigration policy and state family law).

[213] CAL. CIV. PROC. CODE § 377.60(a) (2020); FLA. STAT. ANN. § 768.18 (2003); TEX. CIV. PRAC. & REM. CODE ANN. § 71.004(a) (1985); ROOKS, *supra* note 151, § 13:8.

would divest the parties of standing to sue for the other's death. This likely makes sense.

Of course, we could decide in either intestate succession or wrongful death to make special rules that attach to a new legal status of "ex child" or "ex parent." The argument here is that we have time to consider this because the existing laws will operate smoothly even if we allow parental divorce.

One area of mild concern is grandparent visitation. Many states have statutes that authorize "grandparents" to seek visitation with their grandchildren.[214] Many people might colloquially understand the definition of "grandparent" to be the parent's parent.[215] This definition makes the grandparent-grandchild relationship contingent on their relationship with the parent. This is not inevitable. We could imagine regimes where the grandparent-grandchild relationship is independent of any legal relationship that either the child or the grandparent has with the parent.[216] For example, some states define "grandparent" to include biological grandparents.[217] This makes the legal relationship between the parent and grandparent irrelevant to their standing to seek visitation. Because some grandparent visitation statutes define grandparent as the parent of the child's parent,[218] this Section confronts the worst-case scenario from the perspective of collateral consequences, namely that grandparent status will be vulnerable to changes in their legal relationship with their adult-child.

Although some recalibrations may be required, potential analogies exist to guide them. If the grandchild is adopted, the legal relationship with his parents and grandparents is severed, and hence the grandparents would no longer be entitled to seek visitation. But states have already crafted nuanced solutions to allow former legal

[214] Goldberg, *supra* note 153, at 248.

[215] *See, e.g.*, TEX. FAM. CODE ANN. § 153.431 (2005) (implicitly defining grandparent in one particular context as the "parent . . . of a deceased parent").

[216] *See, e.g.*, TEX. FAM. CODE ANN. § 162.017(d) (2005) (stating that adoption of a child does not affect the "rights of a biological . . . grandparent to reasonable possession of or access to a grandchild").

[217] *E.g.*, TENN. CODE ANN. § 36-6-306 (2018); TEX. FAM. CODE ANN. § 153.432 (2009).

[218] *E.g.*, ALA. CODE § 30-3-4.2 (1975).

grandparents to retain visitation rights even after the adoption.[219] These solutions could be applied to parental-divorce as well.[220] Grandparent visitation cases, by definition, entail a conflict between parents and grandparents. If parents had the ability to thwart grandparents by altering their legal tie to them, they could sidestep the grandparent visitation statute. Courts are well-positioned to handle these issues and craft solutions, just like they have done in cases of adoption.

B. Welfarist Cost-Benefit Analysis

Readers might worry that exit regimes will lead to various negative consequences. For example, adult children may act rashly, and harm both themselves and their parents. A no-exit regime may help facilitate voluntary elder care and may encourage better parenting. We might then conduct an informal cost-benefit analysis by adding up the benefits of allowing Stephanie and others to exit and weighing them against the costs. Some readers may have an intuition that the costs are high and widespread, and the benefits will only flow to a few. This might then undergird a resistance to exit regimes.

Before delving into particular welfarist claims, there are three general observations that will help frame each discussion.

First, many of the welfarist claims are wildly speculative. For example, one might wonder whether and how exit regimes will affect incentives to parent, or the amount of voluntary elder care. Both questions are exceedingly difficult to answer. It might be that no one pays attention to exit regimes, and they are only relevant to Stephanie and others whose circumstances are rather extreme. This seems likely, given that ignorance of family laws is rampant even for people with huge monetary stakes.[221] But even if exit regimes have broader impact, and their shadow

[219] JACOBS & JACOBS, *supra* note 31, § 4:56; YOUNG, *supra* note 30, § 3:6; *see* Raney v. Blecha, 605 N.W.2d 449, 453 (Neb. 2000) (holding that adoption terminates a grandparent's right to seek visitation for the first time, but does not terminate visitation orders obtained before the adoption).

[220] *See* Worley v. Worley, 534 So.2d 862, 864 (Fla. Dist. Ct. App. 1988) (holding that children of an adult adoptee may continue to enjoy a relationship with their biological grandparents).

[221] *See* Helen Colby & Margaret Ryznar, *An Empirical Study of Family Law Understanding*, 58 U. LOUISVILLE L. REV. 79, 99 (2019).

affects how parents and adult children treat one another, it is not clear that this will be positive or negative from a welfarist perspective. In fact, plausible predictions suggest that allowing exit regimes might increase parental effort, increase gender justice, and make post-estrangement reconciliation more meaningful.[222]

Second, welfarist cost-benefit analysis ignores autonomy and other values.[223] Cost-benefit analysis seems like a useful tool for deciding whether to mandate back up cameras in cars but seems out of place when values other than welfare are important. For example, many people would balk at the idea that we should use cost-benefit analysis to decide whether to allow abortion, whether to rescue a child who has fallen down a well, or whether to allow political dissent. In the context of legal statuses that one is born into, autonomy takes center stage. Of course, we can and do balance autonomy interests against welfarist ones, and so the welfarist effects are not irrelevant. But we need to keep cost-benefit analysis in its place. It creates one input to a moral question of how to balance welfare against autonomy; cost-benefit analysis cannot itself answer that question.

Third, even if some welfarist effects are negative and non-speculative, they cannot justify eliminating exit entirely. Instead, they can only justify altering or modifying exit regimes in ways that mitigate the welfarist concerns while still at least partially respecting Stephanie's autonomy interest.

The rest of this Section outlines specific welfarist concerns and repeats some of the themes above in each context.

1. Improvident Children and Regret

In an era of cancel culture,[224] perhaps some people will seek to cancel their parents or succumb to peer pressure to do so. More generally, we might worry that some subset of adult children will not make wise use of their new-found power to exit, and later come to regret their decision.

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[222] *See infra* Parts V.B.ii–iv.

[223] *See* Sean Hannon Williams, *Statistical Children*, 30 YALE J. ON REG. 63, 65 (2013).

[224] "Cancel culture" refers to a particular type of response that people, often celebrities, receive when it is revealed that they have acted inappropriately. *See* Nanci K. Carr, *How Can We End #Cancelculture — Tort Liability or Thumper's Rule?*, 28 CATH. U. J.L. & TECH. 133, 133-39 (2020) (collecting sources and defining cancel culture).

The risk of improvident action cannot, alone, justify barring exit. Broad rules — like barring exit for all — have over- and under-inclusion problems. Even if they offer paternalistic benefits to some people, they will inevitably harm others. To justify these broad rules, then, one must argue both that some people will benefit, and that those benefits somehow offset the harms. Put most concretely, barring exit would force Stephanie to live in terror in order to prevent someone else from making a choice that they will come to regret. Once we acknowledge these tradeoffs, paternalistic policies no longer look so benevolent.

Autonomy also matters and can outweigh the potential welfarist gains of paternalism. Consider an analogy to marriage. Some people will get a divorce but will come to regret it. After the divorce, they will be less happy, less healthy, and poorer. There is a great deal of evidence to substantiate these concerns.[225] Should we bar divorce? Today, this would be an unthinkable response.[226] People would make one of two main arguments in favor of robust exit rights. First, they might argue that the autonomy interest in divorce should not be subject to these welfarist constraints. People make huge mistakes in the realm of the family every day. Some people get married too young. Some people get divorced too soon. Yet we generally don't place strong constraints on marriage or divorce. In part, this is because we place a high value on self-determination in these intimate choices. Second, and relatedly, we might acknowledge that these welfarist arguments have some weight but assert that more tailored responses are more appropriate than barring divorce for all people in all circumstances. Accordingly, some states have waiting periods before allowing divorce.[227] Other states

[225] *See* Paul R. Amato, *Research on Divorce: Continuing Trends and New Developments*, 72 J. MARRIAGE & FAM. 650, 658 (2010).

[226] *See* Libson, *supra* note 41, at 615 ("Barring or impeding exit through complicated bureaucracy or prohibitive costs is fundamentally incompatible with central liberal principles.").

[227] *See, e.g.*, M.L. Cross, *Validity, Construction, and Effect of Statute Providing a "Cooling Off Period" or Lapse of Time Prior to Filing of Complaint, Hearing, or Entry of Decree in Divorce Suit*, 62 A.L.R.2d 1262, §1 (1958); Linda D. Elrod & Robert G. Spector, *A Review of the Year in Family Law: Looking at Interjurisdictional Recognition*, 43 FAM. L.Q. 923, 976 (2010) (describing requirements to live "separate and apart" for a certain number of years before a divorce can be finalized, and listing waiting periods of various states).

require waiting periods before marriage.[228] These regulations attempt to mitigate the problems of improvident action while retaining the capacity of people to pursue their autonomy interests.[229]

Similarly, there are ways the law could mitigate the risks of improvident action by adult children without barring exit. The state might require waiting periods before allowing exit. Various formalities could similarly help give people more time to consider their decision.[230] We could also accommodate fleeting feelings by allowing people to rescind an attestation, or more broadly to undo the effects of exit and reinstate the relationship, within one or even five years. Overall, it would be hard to argue that an adult-child was acting rashly if she had to apply to exit, then renew her application after one year, then declined to reinstate the relationship for five years. Regardless of the details, the autonomy interests at stake are sufficiently weighty that we should pursue tailored responses to welfarist concerns, rather than denying all people the autonomy that exit regimes provide.

2. Hindering Reconciliation

The previous Subsection discussed adult children who come to regret their choice to exit. But perhaps the problem with allowing exit is precisely that adult children *will not regret* their decision. That is, exit may lock in fleeting feelings. Then, the seeming finality of divorcing one's parents might make reconciliation more difficult.

Scholars have long had similar worries in the context of no-fault divorce. Elizabeth Scott worried that "temporary fluctuations in commitment" might be ossified under no-fault divorce.[231] She also

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[228] *Marriage License Waiting Periods — USA*, U.S. MARRIAGE L., https://www.usmarriagelaws.com/marriage-license-laws/by-state/mandatory-waiting-period/ (last visited July 15, 2023) [https://perma.cc/HC57-L2JS].

[229] *See* Colin Camerer, Samuel Issacharoff, George Loewenstein, Ted O'Donoghue & Matthew Rabin, *Regulation for Conservatives: Behavioral Economics and the Case for "Asymmetric Paternalism,"* 151 U. PA. L. REV. 1211, 1212 (2003) (seeking regulations that disproportionately affect the people in need of paternalism, and that create only small barriers to "those who reliably make decisions in their best interest").

[230] Clarke, *supra* note 109, at 773 ("In identity contexts, formal requirements may caution individuals against hasty decisions that they will later regret.").

[231] Scott, *supra* note 200, at 45.

worried that allowing exit would negatively impact relationships: "The dynamics of spousal interaction can be intense, and conflict can escalate into a retaliatory pattern that may be harder to reverse if exit is always an option."[232]

So, should we preclude divorce because the spouses might reconcile? Despite her worries, Elizabeth Scott weighed autonomy arguments quite strongly, and merely suggested waiting periods and gestured toward counseling requirements.[233] Today, courts and legislators generally respect the choice of the spouse to divorce.[234]

Just as we should not second-guess the spouse's determination that the relationship is not worth salvaging, we should not second-guess the adult child's analogous determination. Even those inclined to second-guess adult children should not bar exit entirely. A "good cause" regime could give a judge a chance to assess the probability of reconciliation, and perhaps refuse to allow exit when reconciliation was reasonably probable.

3. (Dis?)Incentives to Parent Well

Allowing exit may have incentive effects. Gary Becker famously asserted that the law could have profound impacts on the incentives and behavior of family members.[235] Channeling this type of work, readers may worry that exit regimes will have negative incentive effects. This Subsection assumes that exit regimes will have some incentive effects and asks whether those effects would be positive or negative. Consider four possible incentive effects. First, parents may fear that, even if they parent well, they will be legally abandoned by the children they so lovingly raised. This could lower their incentives to parent well. Second, the looming threat of divorce might cause parents to parent even more effectively, to reduce the likelihood that their child will want to divorce

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[232] *Id.*

[233] *Id.* at 50.

[234] *See* Lynn D. Wardle, *No-Fault Divorce and the Divorce Conundrum*, 1991 BYU L. REV. 79, 90, 130 (1991).

[235] GARY S. BECKER, A TREATISE ON THE FAMILY 31 (1981); *see also* Robert A. Pollak, *Gary Becker's Contributions to Family and Household Economics*, 1 REV. ECON. HOUSEHOLD 111, 111 (2003) ("Like all social scientists who study the family, I must position myself in relation to Gary Becker.").

them. Third, there might be a bimodal effect. Parents who are already doing a good job might begin to do even better. Parents who are not doing a good job, and fear that their relationship with their child is beyond fixing, might abandon all hope and stop parenting altogether. Fourth, rather than affecting *how well* the parent parents on a unitary scale, the possibility of divorce may influence *how* parents parent. They might, for example, give teenagers more autonomy, and to some scholars this would be a welcome development.[236]

The net effect of these incentives is unclear.[237] But we can get some mildly clearer guidance when we consider parental power.

Numerous scholars defend parental rights by claiming that it is in children's best interests for parents to have robust control over their upbringing.[238] One common claim is that state monitoring and intervention are expensive and counterproductive.[239] We want parents to be spontaneous and free, and we don't want them to fear losing their children for making a parenting misstep.[240] Accordingly, the state *underenforces* the norm that parents should act in their child's best interest.[241] It gives them the legal power and freedom to act in ways that deviate from the best interests of their children, because monitoring and enforcing those norms would undermine the parent-child relationship, and therefore harm children.[242]

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[236] *See* Dailey & Rosenbury, *supra* note 7, at 117.

[237] *See* Abraham L. Wickelgren, *Why Divorce Laws Matter: Incentives for Noncontractible Marital Investments Under Unilateral and Consent Divorce*, 25 J.L., ECON., & ORG. 80, 100 (2009) (arguing that unilateral divorce is better for some types of relationship investments, but consent-based divorce is better for other types of relationship investments, and that the net effects on investments are unclear).

[238] BRIGHOUSE & SWIFT, *supra* note 174, at 54, 93, 120-21; Clare Huntington & Elizabeth Scott, *The Enduring Importance of Parental Rights*, 90 FORDHAM L. REV. 2529, 2531 (2022). *But see* Dailey & Rosenbury, *supra* note 7, at 79, 97 (critiquing this asserted justification).

[239] Clare Huntington & Elizabeth S. Scott, *Conceptualizing Legal Childhood in the Twenty-First Century*, 118 MICH. L. REV. 1371, 1419-20 (2020).

[240] *See* BRIGHOUSE & SWIFT *supra* note 174, at 91, 99.

[241] *See id.* at 120; Harry Brighouse & Adam Swift, *Family Values Reconsidered: A Response*, 21 CRITICAL REV. INT'L SOC. & POL. PHIL. 385, 397 ("[W]e have to accept that parents have obligations that the state cannot enforce. . . . [T]he importance of intimacy within the parent-child relationships means that parents must be given space within which they can, in fact, fail to deliver on their duties.").

[242] *See* BRIGHOUSE & SWIFT *supra* note 174, at 120.

If the state cannot adequately enforce the best interests norm, perhaps some private party with better information can. The adult child would be an excellent candidate. Monitoring is not costly for the children themselves. It is not invasive either. When they become adults, they can perhaps call their parents to account for their failings. This helps fill a gap left by the state; it helps incentivize parents to act in their child's best interest even when the state does not directly monitor or enforce that behavior. These effects already exist because adult children can and do call their parents to account for their behavior in various informal ways. Adding an option to formally exit the relationship increases the adult child's power and increases the parent's incentive to act in ways that the adult child will judge to be appropriate. This will normally have a great deal of overlap with what was in the child's best interest.[243] Therefore, as a prima facie matter at least, we should favor exit regimes because they help align parenting more closely with the best interests of the child.

Even if readers resist this prima facie case, the most that can be said is that there is a great deal of uncertainty about the welfare effects of exit regimes. If this is right, then the non-welfarist arguments — like those rooted in autonomy — necessarily become more central. Those arguments counsel for robust exit rights.

4. Voluntary Elder Care

Readers may worry that allowing exit will erode norms of filial piety. Perhaps if people come to see the parent-child relationship as chosen, they will choose not to voluntarily care for their elderly parents. We've seen similar anxieties before. Some people worried that women's liberation would lead to a crisis in care, both for children and the

[243] Notice that the incentive is to act in the child's best interest, *as defined by the adult child*. This is certainly not identical to acting in the child's best interest, *as defined by the parent*. To the extent that there are differences, providing some incentive for the parent to consider the adult child's possible views about their own best interest provides a nice counterweight to parental power. Parents should be humble about their ability to know what is in their child's best interest. Responding to potential disincentives levied by the adult child helps parents move toward this humility.

elderly.[244] They feared that autonomy was incompatible with obligation and commitment.[245] This is the core worry here as well. This worry is as baseless now as it was then.[246]

We could even construct a counter-narrative, where exit has benefits. Perhaps people will come to see parentage more as a matter of choice. They might then think: "I'm certainly not one of those people who would ever divorce my parents!" This might then cause them to appreciate their parents more. Again, the main point is that the net welfare effects are impossible to predict, and this means that autonomy arguments should play a relatively larger role in the choice of whether to allow exit.

C. Involuntary Elder Care

Above, I argued that it is not clear how exit regimes would affect norms of filial piety and voluntary care for one's elderly parents. Here I turn my attention to filial support statutes, which obligate adult children to contribute financially to their elderly parents' care.[247] Although these statutes could be defended on welfarist grounds, they are more closely aligned with moral judgements about what children owe their parents.[248]

At one time, many states had filial support statutes.[249] These statutes generally imposed vague obligations to support parents in poverty if the adult child could reasonably do so.[250] These statutes were repealed or

[244] DEBORAH CHAMBERS, A SOCIOLOGY OF FAMILY LIFE: CHANGE AND DIVERSITY IN INTIMATE RELATIONS 36, 39, 41 (2012).

[245] *Id.*

[246] *See id.* at 4-5; *id.* at 46-47 (noting that, despite large changes to the family, commitment is common, and children still come first); *id.* at 46, 99 (finding that, despite large changes to the family, "young people today have as much affection and regard for their parents as their parents [did for theirs]").

[247] Weaver, *supra* note 154, at 116.

[248] *Id.*

[249] *See* Karen L. Sheng, *Kinder Solutions to an Unkind Approach: Supporting Impoverished and Ill Parents Under North Carolina's Filial Responsibility Law*, 71 DUKE L.J. 209, 211-13 (2021).

[250] *Id.* The state arguably also has an interest in privatizing dependency. Many family law scholars resist this premise and argue for more robust government support of dependency. *See, e.g.*, Cahn et al., *supra* note 4, at 1751-53, 1764 (noting that the

fell into disuse after Medicare took over much of the burden of aging parents.[251]

To the extent that the state decides that it needs to revive filial support statutes,[252] it can do so even under an exit regime. Just as ex-spouses sometimes have continuing obligations toward one another,[253] so too might adult children and their former legal parents. The state can keep historical records of legal parentage. It can then decide, consistent with a debt theory of filial piety, that adult children owe monetary duties to *functional parents* in need. It could then use the previous legal-parent-child relationship as a proxy for functional parenthood.

If anything, exit regimes serve a useful purpose here. They force the state to clarify the basis for imposing obligations on adult children. They also provide useful information. For example, we might decide that adult children who exercised their right to exit the parent-child relationship ten years before their parents' vulnerability emerged did not do so strategically to avoid filial support obligations, but rather did so because of significant rifts in that relationship. Accordingly, and potentially consistent with the friendship and gratitude theories of filial piety, perhaps they should not be subject to forced filial support.

So far, this Section has assumed that allowing an adult child to walk away from their aging parents is a bad thing. But that's only half the picture.

Exit regimes could also be a tool for gender equity. The vast majority of elder care is done by women.[254] These daughters and daughters-in-law

privatization of dependency is a "problematic premise" and suggesting various reforms to increase government support for caregiving of elderly parents by their child-children).

[251] Sheng, *supra* note 249, at 213; *see* Weaver, *supra* note 154, at 116.

[252] For critiques of this approach, see Cahn et al., *supra* note 4, at 1751 (suggesting that filial support statutes problematically reinforce the notion that dependency should be privatized); Herring, *supra* note 56, at 56 (worrying that filial support statutes would undermine the relationship by creating feelings of resentment and guilt); Ziettlow & Cahn, *supra* note 56, at 258 (worrying that filial support statutes could re-entangle adult children with abusive parents, or exacerbate caregiver abuse).

[253] Sean Hannon Williams, *Sex in the City*, 43 FORDHAM URB. L.J. 1107, 1114 (2016).

[254] *See* Peggie R. Smith, *Elder Care, Gender, and Work: The Work-Family Issue of the 21st Century*, 25 BERKELEY J. EMP. & LAB. L. 351, 360-62 (2004).

engage in massive amounts of unpaid invisible labor.[255] They sacrifice their own earning capacity and their own health to care for the elderly members of their family.[256] Exit regimes provide at least the potential to disrupt these patterns. A daughter who becomes legally parentless may feel less obligation, and may experience less social pressure, to care for the people who used to be her legal parents. Exit regimes might allow her to free herself from the oppressive social norms that conscript her into debilitating care work yet leave her brother largely untouched. If enough people use exit regimes in this way,[257] it could spur a renewed conversation about gendered care work.

D. Ethics of Care

Scholars familiar with the ethics of care might protest that exit regimes reinforce flawed notions of the liberal autonomous self.[258] Perhaps surprisingly, this Article's recommendations are consistent with the ethics of care, an ethical theory that centers relationships rather than individuals.

Care ethics focuses our attention on daily lived experiences in context, rather than abstract hypotheticals.[259] This Article did not begin with abstract appeals to autonomy. It centered Stephanie's lived

[255] *See id.* at 356-60.

[256] *Id.* at 370-73.

[257] It is possible that women will use exit regimes more than men. *See* Mélanie Gourarier, *"Are You Paying for Somebody Else's?" the Value of Secrecy in the Uses of DNA Paternity Tests in the USA*, 29 SOC. ANTHROPOLOGY 495, 503 (2021) (finding that women play a large role in policing the boundaries of family by managing the process through which men get paternity testing); Tom Rowley, *My Life Was a Lie . . . Now Gaps on My Birth Certificate Tell the Truth About My Father*, TELEGRAPH (July 20, 2014, 6:30 AM), https://www.telegraph.co.uk/news/10978332/My-life-was-a-lie-. . .-now-gaps-on-my-birth-certificate-tell-the-truth-about-my-father.html [https://perma.cc/54JG-PWP9] (providing an example where the daughter sought to alter her birth certificate to reflect genetic parentage but the son, her brother, felt it was no big deal).

[258] *See* Libson, *supra* note 41, at 614 ("The right to exit relies on an individualist ontology, which views the individual as the focus of society and is therefore committed first and foremost to allowing the individual to be the author of her own story.").

[259] VIRGINIA HELD, THE ETHICS OF CARE: PERSONAL, POLITICAL, AND GLOBAL 23, 140 (2006).

experience and then sought to build up from it, rather than building down from abstractions.

Care ethics centers relationships, not individuals.[260] When those relationships are healthy, the law should respect them. But "[r]elations between persons can be criticized when they become dominating, exploitative, mistrustful, or hostile."[261] Care and exit are not incompatible. The ethics of care embraces exit and reformation when those serve to create caring relationships.

> [P]ersons often may and should reshape their relations with others — distancing themselves from some persons and . . . strengthening ties with others — the autonomy sought within the ethics of care is a capacity to reshape and cultivate new relations . . . . Those motivated by the ethics of care would seek to become more admirable relational persons in better caring relations.[262]

After she left her biological mother, Stephanie was an "entirely different human being" who, for the first time, could sleep soundly at night.[263] That act of leaving may well pave the way for more, and more caring, relationships.

E. Disproportionate Impacts on Non-Normative Families

Some families might, in theory, be more vulnerable to exit regimes than others. If there are larger cultural forces that nudge adult children toward a genetic definition of parentage, then non-genetic parents might be disproportionately vulnerable. This might impact parents who adopt or use donor gametes, LBGTQ+ parents, and parents that obtain that legal status through de facto parent doctrines.[264]

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[260] *Id.* at 140.

[261] *Id.* at 37.

[262] *Id.* at 14. Further, relationships are not worth protection when they are relationships of domination. *Id.* at 36-37. This is a fair, albeit somewhat exaggerated, description of what the parent-child relationship would become if the parent sought to prevent the adult-child's exit and force her to remain in the relationship.

[263] Interview with "Stephanie," *supra* note 1.

[264] Different cultural forces might affect other families. Perhaps various cultural pressures might lead their children to be secular rather than religious. Those cultural

I doubt that these possibilities will emerge. My guess is that adult children will by and large respect function, and demand only good-enough rather than perfect parenting. Even if I'm wrong, these disproportionate impacts cannot justify barring exit.

We should extend the same respect to adult children's autonomy that we currently extend to prospective parents. The law has rightly recognized the importance of parenting to many people's life projects and identity.[265] Accordingly, it has increased pathways to parentage and strived to respect families of choice.[266] It would be quite ironic to deny adult children the capacity to enact families of choice on the basis that doing so might interfere with their parent's capacities to enact families of choice. Courtney Joslin has rightly argued that "for individuals to have meaningful choice in family relationships, they must have options from which to choose."[267] If choice and consent occupy a central place in family formation, then they should occupy a central place in family continuation. After the relevant child becomes an adult, her interests in forming families of choice matter too, and should include the power to leave families of conscription. The state should not deny adult children a voice just because they might use it to disagree with their parents about either the definition of "parent" or about the acts that forfeit that title.

F. Why Just Parentage?

A reader who is convinced that adult children should have robust exit rights might wonder whether those rights should extend beyond parentage. Perhaps a sister should be able to sever legal ties with her brother, her aunt, her grandmother, or her second cousin. Although parentage occupies a special place in the pantheon of familial relationships — because of its capacity to impact identity, the intensity of the emotions involved, and the historical power imbalances —

pressures increase the likelihood that their adult children will come to believe that their parents should not have raised them in a strict religion. Those religious parents, too, might be disproportionately affected by exit regimes.

[265] *See* Joslin, *supra* note 107, at 914-15, 945 (noting the scholarly consensus on the importance of recognizing chosen family).

[266] *Id.* at 955-56; *see also* UNIF. PARENTAGE ACT § 301 (UNIF. L. COMM'N 2017).

[267] Joslin, *supra* note 54, at 1294.

nothing in this Article should be read to suggest that people should *not* be allowed to exit other family relationships. Below I offer a brief sketch — not a full analysis — of why we might want to allow people to exit sibling relationships.

Both the common law and current family law scholarship often ignore the sibling relationship.[268] Jill Hasday has argued that this is a mistake and has highlighted the positive potential for these relationships.[269] But there is a darker side of sibling relationships: sibling sexual abuse ("SSA").[270] SSA often involves "exploitation of a power dynamic and some degree of forced or coercive activity."[271] Because of a lack of reporting,[272] the precise prevalence of SSA is unclear, but experts suggest that it is five times more prevalent than parent-child sexual abuse.[273] SSA is also more likely to be brushed under the rug. "Understandably, many parents and caregivers feel torn between the needs of the victim-child and the child who perpetrated the harm, and some parents may respond by minimizing the behavior."[274]

Victims of SSA might find it useful to be able to formally exit the sibling relationship. Although there are no significant legal implications for siblinghood, that relationship has impacts on identity. A victim might understandably want to cut ties with her abuser. She can certainly do this informally, but providing a formal pathway could have two important benefits. First, the formality itself might make the separation more emotionally salient to the victim. Second, formally exiting a sibling relationship sends a signal about the intensity and severity of the impacts of the abuse. Parents too often ignore or downplay SSA. Giving victims exit rights would allow them to send a strong signal to their family that the abuse was real and had profound effects.

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[268] Jill Elaine Hasday, *Siblings in Law*, 65 VAND. L. REV. 897, 899, 902 (2012).

[269] *Id.* at 900.

[270] Jessica Schidlow, *The Hidden Crisis of Sibling Sexual Abuse-Part 1*, CHILD USA (Aug. 17, 2021), https://childusa.org/the-hidden-crisis-of-sibling-sexual-abuse-part-1 [https://perma.cc/AJ8X-C2NS].

[271] *Id.*

[272] *Id.*

[273] *Id.*

[274] *Id.*

G. Summary

None of the objections addressed in this Part create serious concerns with robust exit regimes. Allowing exit will have minimal impacts on collateral areas of law. In those areas that require mild recalibration, policies about how to handle adoption already provide ample guidance. As for welfarist critiques, it is not clear whether exit regimes will have net benefits or net costs, or the magnitude of these effects. This uncertainty bolsters the autonomy-related case for exit. That case is not undermined just because adult children may use their new-found voice to disagree with their parents or the state about the definition of "parent" or the behavior that forfeits that title.

CONCLUSION

Family law's natural law facade normalizes a stunningly odd state of affairs. Today, family law imposes a status upon every child — a status that they are born into and cannot escape. While mutual consent is the touchstone for relationships between adults across broad swaths of our legal landscape, and family law has recognized the centrality of unilateral exit in the context of divorce, the law has not yet recognized that adult children have an interest in controlling the relational identity categories that the state imposes on them. Stephanie and other adult children have a strong interest in exiting dysfunctional parent-child relationships and doing so without significant state oversight. Recent victories in recognizing families of choice should not be artificially constrained to empower only parents. Adult children, too, deserve the opportunity to create families of choice, which necessarily entails the power to leave families of conscription.