GRATITUDE AND THE MAP OF MORAL DUTIES TOWARD CHILDREN

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But the angel of Yahweh called to him from heaven. "Abraham, Abraham!" he said. "Here I am," he replied. "Do not raise your hand against the boy," the angel said. "Do not harm him, for now I know you fear God. You have not refused me your own beloved son." [FN1]

Love and care for children is so fundamental a human commitment that God made it the supreme test of Abraham's priorities whether he was willing to flout it. Tested by Satan, Job endured the loss of all his worldly wealth—his oxen, donkeys, camels, sheep, shepherds, and servants. But when finally told of the death of all his children, Job "stood up, tore his robe and shaved his head," proclaiming "[n]aked I came from my mother's womb, naked I shall return." [FN2] In nine years of defiance King Priam of Troy humbled himself before the Greeks only once, to beg Achilles for the body of his son Hector: "'I have gone through what no other mortal on earth has gone through; I put my lips to the hands of the man who has killed my children.'" [FN3] It remains a truism that "'[t]here is no bond . . . stronger than being a parent." [FN4] The philosopher Hans Jonas, indeed, sees in this bond a model for all social attachments and duties: "For when asked for a single instance . . . where that coincidence of 'is' and 'ought' occurs, we can point at the most familiar sight: the newborn, whose mere breathing uncontradictably addresses an ought to the world around, namely, to take care of him." [FN5]

Certainly Jonas' account of the "is"—that the newborn makes a powerfully effective, if mute, appeal to those who witness her birth—finds strong support on biological, evolutionary grounds. [FN6] Every child contributes to the "reproductive success" of her parents and blood relations, and a desire for such "success" is a fundamental biological characteristic of all living things. [FN7] Yet, Jonas is not content with expanding this parental "is" into a parental "ought" in defiance of Hume's famous dictum against deriving an ethical conclusion from a factual premise. [FN8] He insists, too, that duties toward children are "utterly beyond comparison" to other kinds of moral obligation, and that such duties are a "germ" which "spreads and transfigures itself into other, more public horizons of responsibility." [FN9]

Even those who cannot see, with Jonas, the source of every public responsibility in duties owed to children, are likely to concede that children are not merely a source of moral duty for parents but also for the community at large. [FN10] Anglo/American law has always treated biological parents as responsible for their children's welfare, and for at least the past century has *1123 recognized the parens patriae responsibility of the state toward children whose welfare is threatened. [FN11] In some ways, indeed, legal responsibilities toward children—whether located in both parents or in government—have dramatically increased during just the last thirty years. Thus, the parental duty to avoid harming a child has grown since the 1960s into a legal responsibility to avoid "abuse" and "neglect"—terms of art with expansive meaning. [FN12] State and federal governments have accepted corresponding duties to evaluate parental failures and then to remove, protect, and care for victimized children. [FN13] In only the last five years,
many jurisdictions have enacted "parental responsibility laws" to extend existing principles making parents civilly and even criminally liable for the destructive conduct of their teenagers. [FN14] Historically, of course, state courts and legislatures have acted on the assumption that, in the famous words of Ex Parte Crouse, "the public has a paramount interest in the virtue and knowledge of its members." [FN15] This premise long served to justify the "status offense" jurisdiction of courts to remove children from parental custody even for non-criminal conduct, [FN16] and has more recently served to support holding juveniles who are at "serious risk" of criminal conduct in "preventive detention." [FN17] More recently, federal measures have reflected, however inadequately, the belief that national responsibilities toward children qua children exist. These measures include expanded child-support collection efforts, [FN18] a federally funded network of shelters for runaway and homeless youth, [FN19] and mandated special educational opportunities for disabled children. [FN20]

But if parental and community duties to children strike us as fundamental, they can also quickly appear to be complex, ill-defined, and surprisingly tentative. Forced to choose between two children by different mothers, Abraham exiled his adolescent son Ishmael into the desert with no more than bread and a "skin" of water; only God's intervention saved him from death. [FN21] Job's condition was "restored" when he fathered ten new children at the end of his misfortunes, and indeed he is not depicted as ending his life in mourning for the children he lost. [FN22] "High-hearted" Priam was willing to sacrifice all of his children rather than refuse Aphrodite's gift of Helen to his son, [FN23] just as Abraham would have sacrificed Isaac in deference to divine command. When does duty to the young end-after infancy, childhood, or adolescence? Is it transferable, parent for parent, or child for child? And how far does it extend in a world full of competing moral demands and human opportunities?

These are not idle questions. For just as the limits of "childhood"—and so, usually, parental responsibility—were legally reduced from age twenty-one to age eighteen in the 1970s, so too in the next twenty years would very young adolescents come to be seen as fit subjects for "emancipation," informal exile from home, [FN24] or treatment as adult criminals. [FN25] A legal system [FN25] that little more than a century ago could not countenance adoption now permits a panoply of adoptive and fostering arrangements, and tolerates as well a host of alternate reproductive techniques that divorce biology from parenthood. [FN26] A society that, as a matter of "divine ordinance," viewed "the domestic sphere as that which properly belongs to the domain and functions of womanhood," [FN27] now offers women and all parents a dizzying array of choices both of vocation and lifestyle-opportunities that may have moral weight comparable to, or greater than, the fulfilling of the often routine tasks of parenthood. Trends in twentieth century law and life have thus arguably weakened as often as they have strengthened the force of special responsibilities toward children.

Perhaps because of its almost hopeless complexity, the question of why we owe duties to the young—if in fact we owe any at all—has excited little sustained scholarly attention. True, a number of prominent scholars have attempted in the past decade to provide models for parental responsibility (often framed in terms of children's "rights"), [FN28] but these often persuasive efforts have tended to assume the existence of parental responsibility in some form. [FN29] Even if framed in terms of children's "rights," the ethical [FN30] provenance of those rights, and the precise identity of the adults required to satisfy them, is typically left obscure. Indeed, because parental or other custodial duty may require overruling the wishes of a child, and so at least temporarily curtailing the child's autonomy, it will often be impossible to match such duty with a corresponding "right" in the child. [FN31] On a more fundamental level, as Onora O'Neill has explained, children's rights fail to match adult obligations because the latter are "imperfect"—that is, not owed to all other people or to specified others "in abstraction from [social] an[d] institutional context." [FN32] It is for this reason, above all, that manifestos developing the "rights" of adolescents are particularly unhelpful in constructing duties toward that group. For those "rights" are almost always defined as claims to be let alone—whether in expression, sexual conduct, medical decision-making, or outright emancipation—and so are wholly "imperfect," divorced from notions of positive "duty" borne by parents or other adults and may even be inimical to traditional notions of such duty. [FN33]

Nor are workable concepts of positive duty likely to emerge easily out of the substantial literature on parental rights. [FN34] Again, many such rights are [FN35] negative ones that provide freedom against state interference while containing no prescriptive force for action inside the family. So it is that parents have the right to freedom from state interference in choosing a religion for their children, but no corresponding duty to expose their children to any church. Even clearly positive parental rights—for instance, to discipline a child—tend not to be helpful in tracking parental duties for at least two reasons. First, rights imply optional behavior by their holder, and so are hard to parse.
This Article will make a direct attempt to address the awkward question whether we can in fact justify our intuitions about obligations toward children. In particular, as John Eekelaar provocatively asked several years ago, [FN34] can we find a recognizable moral source, or a set of converging sources, for the duties we typically believe biological parents owe their offspring? [FN39] And can we find an identical or similar provenance for the less onerous responsibilities that we feel are owed children by other adults and the state? References to "duty" and "obligation" in this context may overlap, but should not be confused with, existing legal duties and legal obligations—this is an inquiry into moral requirements that arise for parents and for society from the existence of children. While it may be open to question whether discovering such requirements—what Cass Sunstein would more cautiously describe as "social norms" [FN40]—will ultimately result in political and legal change, [FN41] certainly it seems entirely fair simply to assume the intrinsic value of moral inquiry in an area of such pervasive importance. [FN42]

*1129 Fundamentally the question of duties toward the young may be seen as simply posing a special case within the larger problem of justice between generations, and, indeed, the work of Peter Laslett [FN43] on that problem will be seen to be of significant importance in providing an answer. Paradoxically, though, I will argue that it is necessary to make the case even more "special" to discern its difficulty. That is, I suggest that the questions of parental and community obligation toward the young should be addressed with older children—and especially adolescents—in mind. In part that is because, as the words of Hans Jonas quoted earlier illustrate, [FN44] duties to infants have a virtually self-evident quality based on the newborn's utter neediness, and so may be too "easy" for almost any ethical theory to justify. Further, the proper care and nurture needed by infants and small children is far easier to define than that needed by teenagers, who after years of development constitute a group with needs far more diverse than those of babies. Finally, both parents and the community seem more likely to abdicate all *1130 responsibility for adolescents than for young children [FN45]—it is, then, most important in practical terms to assess the basis of duty toward this older age group, which seems to possess, in Richard Nozick's terms, less "ethical pull." [FN46]

Section I describes several highly simplified cases of parental conduct toward teenaged children, and then examines consequentialist, Kantian, and contractarian approaches to determine whether they yield an adequate account of parental duty in all three cases. At the same time, Section I assesses the potential for constructing community duties toward these adolescents out of these three leading ethical approaches. Because I find that none of the three can generate a plausible starting point for an account of parental or community duties, I turn in Section II to Peter Laslett's use of contractarian theory-specifically, his proposal that we imagine the existence of a "generational tricontract" [FN47]—as the basis for duties toward later generations. Although I argue that Laslett's proposal fails to account for duties toward children, I adopt one of its central insights—the need to consider complex moral interactions among three or more generations as the heart of my own approach. That proposal, which I present in Section III, rests on the contention that some use of natural law theory-specifically, what Hobbes called the "Law" of gratitude [FN48] is necessary, though not entirely sufficient, to account for responsibilities to children and especially adolescents. After evaluating "gratitude" as a ground of parental and community obligation, I briefly apply the concept to the three cases previously discussed, and suggest its application in the public policy context. Finally, in Section IV, I attempt to "map" the moral terrain of duties toward the young by using gratitude as a point of entry—with consequentialist, Kantian, and religious considerations illuminating those corners of the landscape for which gratitude alone cannot provide an adequate chart. Ultimately, I argue that parental and communal duties to children are the mysterious product of several different moral impulses, with gratitude at the *1131 center, and that such duties cannot be derived from the contractarian rationales that largely support our conceptions of political duty.

I. Duties Toward Children and the Limits of Modern Ethical Theory
Consider three different, thoroughly oversimplified, parent-child histories:

A. Mrs. Jellyby—who has one child, Abe—inherited a fortune from her parents, and enjoyed the advantages of the very best of higher education. Because of her extensive charity work she has little personal time to devote to Abe. Though her income is large, she spends only enough on Abe to meet his subsistence needs and basic educational expenses until he is sixteen years old, while at same time lavishing her surplus income on charities caring for needy children in foreign lands. When Abe is sixteen, he can legally get a job and quit school, and Mrs. Jellyby urges him to do so and to leave home. Abe does leave and in fact finds a job, which allows him to support himself at a subsistence level. From that time he lives independently and within the law—neither receiving nor inheriting any further resources from his mother.

B. Mr. Dorrit—who has one child, Barb—grew up in poverty. Working very hard, abjuring any luxuries for himself, and accepting help from his family, he is able to meet Barb's subsistence needs and basic educational expenses. At age sixteen, Barb finds a job, and from that time she lives independently and within the law. Worn out by his exertions on Barb's behalf, Mr. Dorrit loses his job and is forced to go on public assistance after her departure.

C. Mr. Dombey—who has one child, Carl—grew up in middle-class circumstances and became a teaching tennis pro. To satisfy his dream that his son would become the tennis star that he never could, he begins Carl's tennis training at the earliest possible age, molding him into a tennis "phenom" by age sixteen, when Carl wins his first Wimbledon title. At that time, and with his father's blessing, Carl signs a $25 million endorsement contract and moves out of Mr. Dombey's house. He continues to have great success on the tennis tour, and lives independently and within the law.

Which of these parents has satisfied, or failed to satisfy, "duties" or "obligations" toward his or her child—or at least which one seems to have done the best job of meeting parental responsibilities? Because all three children ended up living on their own, and obeyed the law, we might say that all three parents have fulfilled their duties. Of course, some will immediately object that all three parents have failed to support their children until the age of majority (eighteen in the vast majority of states), and so are clearly deficient in that respect. However, these parents may well have complied with the law, because in a number of states "emancipation" procedures are available for mid-adolescents. [FN49] Even in states without such procedures, the law does almost nothing to enforce support obligations to adolescents outside divorce proceedings. [FN50] And should it? A respectable view holds that sixteen-year-olds are capable of making even momentous decisions rationally. [FN51] Particularly since these three youths suffered no clear harm from ending their legal childhood early, can we call any of these parent-deficient simply based on their refusal to honor an arbitrary age line? In any case, this fact, common to all three cases, does not distinguish one from another.

And do we not feel some inclination to distinguish these parents in regard to their compliance with parental duty? Mr. Dorrit has struggled against the odds and made great sacrifices so that his daughter can be at least a minimally productive citizen, while Mrs. Jellyby, who could have done so much more for her son, maneuvered him out of the house before he had even finished high school. Her actions may not sit well with our moral intuition. Mr. Dombey presents a far harder case. The results of his parenting are by some measures spectacular, far greater than poor Mr. Dorrit's, and the effort he put into raising his child is apparently far greater than that of Mrs. Jellyby—but do we not have qualms about Mr. Dombey's confiscation of his son's childhood and narrowing of his career options? Judging him as a parent, we are likely, other things being equal, [FN52] to consider Mr. Dorrit a *1133* success (or perhaps just "better"), Mrs. Jellyby some kind of failure (or "worse" than Mr. Dorrit), and—though this may provoke more disagreement—Mr. Dombey at best a qualified success (or somewhere between the other two).

A. Consequentialism

But what standard ethical theory can explain this moral intuition? Can we explain it by reference to standard "consequentialist" reasoning? Such reasoning, as Samuel Scheffler describes it, "in its purest and simplest form . . . says that the right act in any given situation is the one that will produce the best overall outcome, as judged from an impersonal standpoint which gives equal weight to the interests of everyone." [FN53] Whether "best outcome" is the same as "greatest happiness," as the specifically Utilitarian root of consequentialism holds, [FN54] or some other kind of good, clearly this approach seems to hold great promise for justifying and explaining the parameters of parental duty to anyone who simply wants children to grow into happy and successful adults.

Indeed, a kind of consequentialist thinking is central to almost all legal analysis and empirical research concerning the parent-child relationship. In child custody cases judges are required under prevailing standards to consider what
situation will be in the child's "best interests," rather than considering non-consequentialist "moral" claims of the competing spouses. [FN55] Petitions for adoption and foster-care transfer petitions are likewise scrutinized under a best-interests-of-the-child test. [FN56] The very definitions of parental "abuse" and "neglect" are largely dependent on the results, not the *1134 motives, of the parents' actions-thus, "physical abuse" is typically defined as non-accidental behavior by a parent which causes serious harm or the risk of serious harm to a child. [FN57] The United Nations Convention on the Rights of the Child arguably goes even further, authorizing separation of a child from her parents against their will "when competent authorities subject to judicial review determine . . . that such separation is necessary for the best interests of the child." [FN58]

Moreover, when read more closely, the language of key Supreme Court cases defining parental and juvenile rights is almost uniformly consequentialist in its logic. Prince v. Massachusetts is most obviously in this category, upholding State intervention into family life on the premise that a "democratic society rests, for its continuance, upon the healthy, well-rounded growth of young people into full maturity as citizens, with all that implies." [FN59] This view of parents, "whose primary function and freedom include preparation [of their children] for obligations the state can neither supply nor hinder," [FN60] suggests that it is the later value of children to the State which is most crucial to the constitutional values undergirding parental rights. [FN61] Likewise, the justices signing the majority opinion in In re Gault [FN62] were thoroughgoing consequentialists in assessing whether constitutional standards for procedural due process should apply in juvenile delinquency proceedings, holding that some, but not all, protections must be available where crime prevention and "therapeutic" values could be maximized without losing benefits for the juveniles. [FN63] Justice Harlan vehemently objected to this approach in dissent, criticizing, as the "failure to provide any discernible standard," the Court's "marshaling a body of opinion which suggests that the accomplishments of [juvenile] courts have often fallen short *1135 of expectations." [FN64] But despite this unusual protest, a focus on "consequences" has remained a hallmark of the Court's analysis in the area. [FN65]

This kind of consequentialism depends upon empirical analysis of the parent-child relationship and other factors causally related to outcomes for children. Less obviously, empirical claims about children and child-rearing typically presume a consequentialist moral universe. This is true, for example, of the famous assault on the "best interests" standard mounted by Joseph Goldstein and his colleagues, in which they argued, based on their clinical experience, that the indeterminacy of the "best interests" standard should yield to another standard based on promoting the "unbroken continuity" of a child's relationship with his or her "psychological parents" because it will produce better outcomes for the children affected. [FN66] Other research on children is almost entirely concerned with the consequences from certain actions or patterns of actions affecting children, with certain outcomes (e.g., higher school achievement, lower delinquency, or drug use) usually assumed to be "best" or "good." [FN67] This focus on cause-and-effect, with certain effects seen as particularly interesting or optimal, is entirely consistent with the traditional scientific method. And when well done, such work can illuminate the moral illegitimacy of practices that purport to *1136 produce certain beneficial consequences for children when in fact they do not. [FN68]

Yet for all its virtues as an analytical tool, consequentialism is ultimately inadequate as a foundation of parental duty, and not entirely satisfactory, though crucially important, in justifying community responsibilities toward children. Several intractable problems—choosing between multiple "goods," balancing the needs of multiple persons, and locating duties in specific responsible moral agents—immediately arise when we limit our moral focus to a consideration of outcomes.

1. Multiple "Goods"

To construct a notion of parental duty on consequentialist terms we must know, to begin with, the exact nature of the outcome, or "good," [FN69] that we seek to achieve from parenting. Consequentialism requires for its moral calculus some notion of a single rational good—a good that can then be "maximized" in defining justice. [FN70] But discovering such a notion in regard to *1137 parenting-and most especially parenting of adolescents—is almost certainly an impossibility. [FN71] Of course in a democracy we value autonomy in our teenagers, but like Athenians facing Sparta, in the case of a war we value obedience, strength, and valor even more. We want some kids to be classical musicians, some bookworms, some athletes, some cheerleaders, some computer wonks—and to varying degrees we are likely to applaud the different parenting styles that produce these results. Or on a subconscious, biological level we may be programmed to maximize our "reproductive success," by parenting in such a way as to produce the maximum number of healthy descendants. [FN72] As John Finnis [FN73] and Phillippa Foot [FN74]
have each pointed out, once we accept the notion of multiple basic goods, the power of consequentialism's logic is severely weakened. [FN75] Unless we believe that all children should be raised toward the same personality type, vocation, or ideals, consequentialism may not seem to provide an adequate basic structure for parental duty.

It may, however, be possible for consequentialists to provide at least a partial solution to the problem of choosing a relevant "good" to "maximize" regarding children. [FN76] In developing a consequentialist theory of children's rights, Laurence Houlgate distinguishes between "basic needs," which he defines as "those that if not met are likely to lead to serious harm, or harm to an important interest," and those needs that are "not basic." [FN77] While Houlgate admits that "great differences in schemes for the good life" and "in what people would say are a child's end needs" block consequentialist conclusions about duties to children regarding needs that are "not basic," [FN78] he argues that partial consensus is possible. For example, reasonable consensus is likely about a child's "basic" need for food and therefore about a duty to provide it. [FN79] For two reasons, however, Houlgate's argument suggests that the "good" defined by reference to "basic needs" will be narrowly circumscribed. First, Houlgate views the failure to satisfy such "basic" needs as justifying state intervention in the family, [FN80] so that a broad interpretation of the scope of such needs would be highly costly to family autonomy and privacy. Second, apart from food and shelter, much of what child-rearing entails is extremely unlikely to produce general agreement. [FN81]

Nor is the concept of "basic needs," however carefully defined, likely to survive the early years of childhood. Every child poses a unique challenge to a parent, and the challenge is more obviously unique once the fairly standard tasks of caring for a helpless infant yield to the infinite complexity of responding to an adolescent with a substantially developed identity and a remarkable capacity for disobedience. Not only are the "goods" and the "costs" of parenting in these later stages more clearly multiple, but the number of the parties crucial to determining them increases. For example, even more than their younger siblings, teenagers are capable of doing their own cost-benefit analysis regarding every parental decision. If adolescents feel that their parents' support is rooted not in some absolute obligation, but is rather the outcome of a grand utility calculation, they are likely to experience the "alienation" Peter Railton has described [FN82]-the loss of a crucial sense of belonging. [FN83] Ultimately one "consequence" of casting parental duty in the benevolent-but impersonal and contingent-terms of consequentialism is to undermine the very efficacy of good parenting. [FN84]

Applied to the three hypothetical parents described at the outset of this section-all of whom seem to have satisfied their children's "basic" needs-some of the plurality-of-goods awkwardness of consequentialist analysis becomes clearer. Is the "good" we seek from parental duties measured by the degree of personal autonomy which the adolescent achieves? Then, in our examples, we would likely judge Mrs. Jellyby and Mr. Dorrit to have adequately fulfilled their parental obligations, while Mr. Dombey's wholesale preemption of Carl's life choices would be a breach of his duty. Conversely, if we assume that Abe Jellyby and Barb Dorrit are equally competent, equally well off, equally happy when they are sent off from home at age sixteen, it appears that, judged from a consequentialist standpoint, their respective parents have achieved equal outcomes for their children, and so have equally fulfilled their "duties." This of course goes against our intuition that Mrs. Jellyby is far less admirable as a parent than Mr. Dorrit, who achieved Barb's success with far less resources at his command.

Or is the "good" the degree to which the adolescent makes actual contributions to the overall social welfare? Then as consequentialists we might judge Wimbledon-parent Dombey easily the best of the three parents, with the other two seen as, at best, minimally faithful to their duties. Likewise, if we accept Posner's suggestion that wealth creation be the standard measure of utility, [FN85] Mr. Dombey is an exemplary parent, while Jellyby and Dorrit are failures. Indeed, on this last standard Dorrit might be judged as derelict in his conduct if we discovered that his selfless concentration on childrearing in difficult circumstances had caused him to forego a chance to improve his own education and personal economic productivity. By these same lights Mr. Dombey seems a superior parent to either of the others, for Carl appears to be more independent, far wealthier, and (after his success at Wimbledon) perhaps even "happier" than Abe or Barb. But while we may feel unable to judge Mr. Dombey's wholesale manipulation of his son's life very harshly on these limited facts, would we not feel uncomfortable accepting at face value the proposition that Carl's success automatically proves that Mr. Dombey fully complied with his parental duties in the fullest sense, or that his parenting could be judged superior to poor Mr. Dorrit's?

One easy escape for consequentialism from this paradox may be simply to reassert that a person's actions are to be

judged not by absolute outcomes, but by whether, given the resources at hand, the person has maximized the amount of good accomplished. [FN86] At first, it may seem easy to resolve the problem of Mrs. Jellyby versus Mr. Dorrit, since he clearly made fewer resources go equally as far in achieving Barb's equal competence. But this response is only provisionally valuable, for it does not take into account the overall happiness or success of the entire parent-child unit. Thus, we can easily imagine that Mrs. Jellyby has been able, through her relative neglect of Abe, to achieve rich self-fulfillment and extraordinary benefits for others in using her time and resources to benefit needy children in foreign lands—and thus can claim she has fulfilled her consequentialist "duty." [FN87] And when we think of Mr. Dombey and his son, we can certainly envision that Carl's success has made his father enormously happy, not to mention wealthy, which, when combined with Carl's own joy and prosperity, makes the two of *1141 them by far the happiest and most successful unit in terms of outcomes. Nor is it clear that judging the outcomes from a larger perspective—e.g., their respective "good for society"—would weaken this response. Would not the Jellyby household, which spreads enormous good to outsiders, while not causing any social harm other than the possible loss of Abe's higher personal development, be from a consequentialist standpoint at least the equal of the Dorrits—who, after all, achieved minimal success for Barb at great cost to Mr. Dorrit? And, if society values the wealth creation and pleasurable excitement generated by a successful tennis career, might not the Dombey's still be seen as the best household model of all?

2. Multiple Persons

As this "whole household" twist on the problem illustrates, even if it were possible to define one "good" that parents could be expected to maximize in raising a child, [FN88] consequentialism still must confront the formidable problem of explaining how that standard is to be supplied in the context of multiple persons. At this point, it is worth noticing how "best interest of the child" analysis, however outcome-oriented, departs from the standard consequentialism (especially classical utilitarianism) which demands an impartial weighing of the "good" (for utilitarians the "happiness" potential) for all affected parties. [FN89] It might be possible to argue that acting solely in the best interests of children ultimately produces the most good for society as well. But can we truly imagine a moral calculus that fails to take account of the sacrifices demanded of parents in raising their children? Or can we believe that doing what is in a child's "best interest" is always in a parent's best interest as well? Consequentialism seems to pose the following dilemma in considering parental duty: (1) if the "good" to be maximized is *1142 that only of the child, then surely in many circumstances parents will have the "duty" to sacrifice more of their personal happiness and prospects, and perhaps more of what Bernard Williams calls their "integrity," [FN90] than would be reasonable; but (2) if "good" embraces all others, or even just the family unit (including siblings with their own needs), then in many situations parental neglect of the child's welfare is justified. [FN91]

In fact, the "best interests" legal test generally avoids this dilemma precisely because it does not apply to the whole of the parent-child relationship, but instead applies only at moments of artificial family creation (adoption) or break-up (divorce, foster care placement). Indeed, properly speaking it is only third parties (judges, guardians ad litem) who are legally required to act according to the "best interests" standard in choosing between caretakers; parents who have custodial rights are generally free to take into account their own (and others') needs in making decisions affecting their child. Moreover, adults are free to escape even indirect contact with "best interests" obligations by eschewing parenthood altogether.

That last freedom—to avoid parenthood—poses another awkward problem for any consequentialist construction of parental duty. For it is almost certainly true that there are many childless-by-choice adults who would make wonderful parents and whose children (if they existed, or if they existed in greater numbers) would ultimately enhance the overall well-being of society. Yet, consequentialists typically do not claim that these adults have a moral duty to have children, even if the basis of that decision was whimsical or wholly selfish. [FN92] Nor, except in fairly extreme cases such as Derek Parfit's *1143 "wretched child," [FN93] would consequentialists deny adults the moral right to exercise broad discretion whether to bring into the world children who are likely to take more than they give in overall social or family utility. But if taking on the parental role is wholly or largely exempted from consequentialist moral considerations, then how can those considerations define the duties of the role once assumed? [FN94] Duties regarding procreation and those related to ongoing parenthood cannot be neatly separated. Must a couple with one child feel obligated to have more children if they are reliably told that a sibling would be good for their child? Or has a couple morally transgressed by adding a third child to the family when they know this event
will cut in half the time and resources they can devote to the eldest child? [FN95]

The difficulty of fulfilling parental duties for more than one child goes far beyond the initial question of procreation. Some children need more from a parent to survive or thrive, but other children may seem to a parent worth more in terms of their likely overall contribution to the general welfare, however defined. Consider the wrenching choices faced by parents who have a badly disabled or catastrophically ill child, as well as one or more healthy ones. In our culture and time, we expect such parents to meet the needs of the neediest child even if this means compromising the care provided for healthier siblings. [FN96] and we might believe that such expectations *1144 are simply a means of maximizing overall welfare. Yet a surprising number of contemporary western philosophers, most famously the consequentialist Peter Singer, believe that infanticide is justified in a substantial range of circumstances. [FN97] Other societies and other eras, too, have viewed the matter quite differently. Outright infanticide has been common throughout human history, serving, in the words of one scholar, as a means of "fertility control at both population and family levels" and of "maximizing the resultant output (in terms of number and quality of offspring reaching adulthood) of parental investment by allowing parents to select the healthiest, most desirable children to rear." [FN98] No matter what "good" we select as our consequentialist goal, danger exists that some or many children will be either counterproductive or of negligible value in achieving it, making parental duties of care with respect to those unfortunate exceptions nearly impossible to derive.

3. Defining the Responsible "Parent"

If consequentialism's calculus cannot reliably derive parental duties toward all children, so too it may be an inadequate basis for deciding who the responsible "parent" of a child will be. Why should parental duty follow from the simple act of procreation, when so many biological parents are plainly unwilling or unable to fulfill the duties of the role? Of course it is difficult to disagree with Sidgwick that we assign the duties of "parents" to procreators because they are likely to have emotional/biological reasons to *1145 care more for a child than would any other adult. [FN99] But this is more an argument for permitting biological parents to have custody of their children than for requiring them to discharge any specific duties. [FN100] Furthermore, this empirical assertion may be unpersuasive in light of evidence that adopted children, or more tellingly, children raised in a kibbutz, are equally well cared for and equally competent as adults. [FN101] Richard Posner, a thoroughgoing consequentialist, has argued strongly that children should be freely transferable, even in a market transaction, by biological parents to other adults, and seems to assume that all duties of the procreators are thereby extinguished. [FN102] And surely an individual parent, using consequentialist premises, might well decide that parenting of her particular child by virtually anyone else-including the foster-care system or a baby-buyer-would produce greater overall social utility (especially when taking into account her own sacrifices), and so feel justified in abdicating her role without a backward glance. Assuming she is correct in that calculation-or perhaps even assuming that she lacks the psychological or personal qualities to make a correct calculation-it is not clear how consequentialism can hold she has transgressed some duty to the child, even if the child's new situation turns out to be objectively terrible. [FN103]

*1146 4. Adolescents

The limitations of consequentialist analysis are particularly striking when applied to parenting adolescents. Why, after a dozen years of great sacrifice, should a parent continue to feel bound to do more? The costs of continued involvement with a teenager may be prohibitive; indeed, a delinquent, disturbed, or violent teenager may be a devastating threat to a family's very safety. Financially, teenagers actually cost more to keep than younger children, and that cost rises as adolescence progresses. [FN104] Conversely, the benefits of parenting appear to decline as children become adolescents, when parental influence can be swamped by the power of peer pressure and the social environment. Prior to this century it was common for teenagers to live away from their parents in household service or apprenticeships, [FN105] and in many societies that remains the case today. [FN106] Thus even though we are probably inclined to accept Sidgwick's utilitarian defense of parental duties as necessary for nourishment and education of the young, on its own terms it applies only to that "period of infancy" during which children "cannot be left to provide for themselves." [FN107] Adolescents are far sturdier than small children, and when they are difficult they are more intractable-why should a parent continue to feel bound to make enormous sacrifices for a tiny social or personal return?

5. Community Duties Toward Children.
Consequentialism seems to fare better, though, if applied to the problem of community duties to adolescents and children. Armed with the consequentialist wisdom of social science, as well as long social experience, a society can determine which general policies regarding the young will best advance specific social goals. This is indeed the everyday coinage of political advocacy for children: "Nothing." Hillary Rodham Clinton writes, "is more important to our shared future than the well-being of children. . . . The village we build with them in mind will be a better place for us all." Because community duties typically exist in relation to categories of rights-holders, and do not typically involve the intimate task of shaping a personality, and because the sacrifices involved in fulfilling these less onerous duties can be spread very widely, many of the conundrums involved in trying to apply consequentialist ethics to an individual family unit do not apply to a community. Thus we can use consequentialist language rather easily to argue that, as a society, we will be better off in the long run if both Abe Jellyby and Barb Dorrit are given financial assistance to complete high school and college; and therefore, as a community, we have the duty so to act.

Again, though, such consequentialist thinking is ultimately vulnerable to the problem of "goods" and to political distortions in weighing "costs." We may want Abe and Barb to get an education, but we also need relatively uneducated adolescents to fill the ranks of the armed services and the subsistence jobs of a service economy. It may be impossible to agree on any specific "duty" to teenagers-Abe and Barb might well be left, as they are now in America, to fend for themselves. That is all the more likely because in determining the costs of community duties to children, children themselves will have no vote, and little effective voice. Adults will likely get only long-term or derivative benefits from community duties to the young, but feel their sacrifices immediately and directly: so adults' costs can be expected to be disproportionately weighed in the political process. By contrast, imposing duties on the young--e.g., the military draft-gains immediate benefits for their elders, while the weighing of costs is at least partially suppressed. Encouraging the adult political community to think of children in instrumental terms, then, may well lead to seriously child-unfriendly results.

B. Kantian Deontology

If grounding a theory of duty toward children on the general consequences of adult actions is inadequate, and perhaps even destructive, the immediately obvious alternative is to focus on adult motives. Such a project would involve building on some version of Kantian morality, which takes as its starting point the rejection of consequences as a measure of an act's moral worth. Parental duty would thus be extrapolated from the categorical imperatives: (1) that the "maxim" of my action should be such that I could will it to become a universal law; and (2) that I should treat every rational being as an end in itself, and not merely as a means. Unlike consequentialism, this is an agent-specific morality: acts are judged, not by their effect on society at large, but by the nature of the actor's motives-by what the actor was attempting to do, rather than what she actually accomplished.

At first, this angle of judgment seems to provide us with some cogent explanations for our intuitions with respect to parental duty. Thus in our initial examples we seem better equipped to explain why Mr. Dorrit, who sacrificed everything for his daughter, is closer to a moral ideal of parenthood than Mrs. Jellyby, who, given her resources, has done little for her son. And we also gain a perspective from which to criticize Mr. Dombey's wildly successful fanaticism on behalf of his son's tennis career-he may be seen as having treated his son's life as a means of realizing his own failed dreams, rather than as an end in itself.

1. Fixing Responsibility for Childrearing

Kant himself appeared to believe that his basic principles could explain and justify parental duty, though his account of it is stunningly brief:

For the offspring is a person, and it is impossible to form a concept of the production of a being endowed with freedom through a physical operation. So from a practical point of view it is a quite correct and even necessary idea to regard the act of procreation as one by which we have brought a person into the world without his consent and on our own initiative, for which deed the parents incur an obligation to make the child content with his condition so far as they can. They cannot destroy their child as if he were something they had made . . . or as if he were their property, nor can they even just abandon him to chance, since they have brought not merely a worldly being but a citizen of the world into a condition which cannot now be indifferent to them even just according to concepts of

Right. [FN115]

Kant thus decisively rejects Hobbes' notion that parents have a pre-social, natural right "to save, or destroy" their children. [FN116] Further, he establishes parental duty as an agent-relative (or "deontological") constraint on human behavior, a moral requirement that applies to specific persons regardless of its consequences.

2. Extent of Childrearing Duty

But how far does this deontological construction actually go toward establishing what Kant conspicuously labeled a "practical" idea of parental duty? Certainly it seems difficult to avoid the basic notion that, as we are morally responsible for the foreseeable consequences of our actions, we must take responsibility for the results of an "act of procreation." [FN117] When considered in relation to other aspects of Kantian morality, however, this argument probably proves too much, and almost certainly proves too little, about parental duty.

*1150 Kant's logic proves nothing, of course, unless we grant his first premise that "the offspring is a person." [FN118] But that is not free from doubt. For "person" is earlier defined as a "subject whose actions can be imputed to him." [FN119] How exactly can an infant's actions be in any meaningful sense "imputed to him"-at least any more than the actions of animals, whom Kant excludes from "persons"? The second formulation of the categorical imperative itself is explicitly founded on the premise that "rational nature exists as an end in itself," [FN120] and not simply as a means. But are infants or very small children "rational" for this purpose? [FN121] Kant himself recognizes at least some difficulty in this regard both in a long footnote to the passage quoted-where he acknowledges the impossibility of accounting for the creation of a "free" being from a series of physical and "supersensible" acts originating ultimately in God [FN122]-and in his use of the word "necessary" in juxtaposition to "correct." [FN123] Ultimately Kant seems here to be implicitly relying, as did John Locke explicitly before him, [FN124] on an unproven (theological?) assumption that children are "persons." Perhaps by broadening the definition of "persons" to include potentially rational beings *1151 in its scope. [FN125] Kant's argument is saved. Yet others may object to this move on the grounds that it adds a kind of probability calculus to a categorical imperative that claims much of its persuasive power precisely by avoiding probabilistic thinking. [FN126] Still others may be wary, in view of the battles over abortion and infant euthanasia, of broadening the definition of "persons" to include a "potentiality" component. [FN127]

Inviting an expanded notion of personhood is not the only way in which Kant's justification for parental duty may prove too much. For it seems to ignore the complexity and the variety of the "acts" that lead to procreation. [FN128] Is the woman who is impregnated by a rapist bound by a lifelong duty to her child? What about a not fully rational teenage mother-or, for that matter, teenage father? What about a sperm donor? In all these cases it may seem reasonable to impose some moral requirements on the parent, but can those requirements be as clearly inexorable and extensive as those we would impose on fully mature adults who have sex with the intention of procreation? Does the imposition of parental duty also exclude the option of putting a child up for adoption or into foster care when that could mean forfeiting the power later to protect the child from harm? Kant distinguishes between deeds committed "in a state of agitation" from those done "with *1152 cool deliberation," [FN129] with the former less morally imputable to the agent. It seems unfair, and indeed contrary to the whole Kantian perspective, to impose one of the most sweeping and durable obligations known to humans on a person who acted in accordance with humanity's most agitating natural passion.

But if we accept-and certainly our intuitions, laws, and traditions suggest we should-the basic notion that the "act of procreation" is productive of moral and legal duties, how far does this take us toward any full account of parental duty? For Hobbes the answer was almost no distance at all: in his view the sparing of a child's life at birth, and the provision of nourishment thereafter were enough in themselves to produce in the child a lifelong duty of absolute obedience and loyalty to the parent, with nothing more required from the parent. [FN130] Kant's account is certainly more persuasive in demanding preservation of infants, and far more intuitively attractive in arguing that parents also have a duty to make their child "content with his condition so far as they can." [FN131] Unfortunately that last phrase contains potentially serious ambiguity. Does it imply a duty to keep a child happy in his present "condition" on a day-to-day basis, even if it means giving in to childish whims? This interpretation can probably be rejected as wholly inconsistent with Kant's injunctions on the importance of educating the young. [FN132] If instead Kant meant that parents should aim to manage their offspring's childhood to produce "contentment" in adulthood-which is

later described by Kant not as personal happiness, but rather as a kind of personal satisfaction in having fulfilled the "duty" of "promoting the true well-being of others." This seems to reduce the proper goal of childrearing to the production of a "moral pleasure" that Kant admits is often "merely negative." A parent-Mrs. Jellyby in our example-who provided her offspring a joyless childhood leading to an autonomous, dutiful, but joyless adulthood would, by this standard, have satisfied her parental duty.

*1153 3. Impartiality and Parenthood

It is hardly a novel complaint that the Kantian conception of duties is severely impoverished with respect to such "special relations" as the family. As Bernard Williams has argued, this impoverishment results from Kant's insistence on an "impartiality" that leads to "indifference to any particular relations to particular persons." Indeed, this may not go far enough. For Kant maintains that a beneficial action done "from inclination" lacks "the moral import, namely, that such actions be done from duty." Actions from "inclination" cannot be actions resulting from an unfettered "good will": thus a happy person's concern for his health typically lacks moral value, but taking care to preserve one's own life when it has become unbearable is a "maxim" with "moral worth." As for duties to others, one commentator declares it the logical outcome of Kant's premises that:

A man who visits a detested relative because he has promised to do so is a morally good man, because he is doing his duty; but the man who visits a much-loved relative out of spontaneous good nature is not morally good because he has obeyed the inducements of inclination.

While that conclusion is perhaps a caricature, Kant's commitment to objectivity and rationality means, at least, in Susan Wolf's phrase, that "[t] he tight and self-conscious rein we are thus obliged to keep on our commitments to specific individuals . . . will doubtless restrict our value in these things, assigning them a necessarily attenuated place."

Robert Nozick's concept of "ethical pull," which varies according to how much "we value someone's particularity," addresses some of the problems of Kantian impartiality. Under this principle closer acquaintances can have greater "value" to an actor, justifying differential treatment-thus "[a] father may aid his own over other children, knowing that had the others been his, he would have loved and aided them." This addition to Kant's structure does not, however, significantly enhance the foundations of parental duty, for it seems only to give permission for special treatment of one's own children. At a later point Nozick appears to acknowledge that not all "ethical pull" is matched by "ethical push"-the force leading a rational person to respond to that "pull"-an obvious point with respect to parents in an era rife with child abuse, neglect, and abandonment. But even if "push" matched "pull" in this area, the decision to "value" a child's "particularity" would still rest with the parent. A parent who does not or will not perceive such appealing "particularity" would thus have no further basis for parental duty.

Kant's categorical imperative, by contrast, does encompass a clear duty, but its formulations seem difficult to reconcile with many aspects of parenting. Thus the command that "I am never to act otherwise than so that I could also will that my maxim should become a universal law" seems inconsistent with the intimacy of the parent-child relationship: the need of a parent to act to shape her child's conceptions of good, to treat her own children differently from other children, and to treat different children within the family differently as their personalities and capacities warrant. But even if no actual inconsistency appears, the sort of parental "maxims" that would fit the categorical imperative-"love my child" or "love all children and especially my own"-are far too general and abstract to give any significant form to parental duty. The more specific principles a typical parent might adopt-e.g., to raise my child as a "good, patriotic American," or a "good Catholic,"-would often be highly objectionable if elevated to universal mandates. Kant's own formulation of the limits of the "wide" duty of beneficence is not reassuring. The required amount of personal sacrifice for others depends "on what each person's true needs are in view of his sensibilities" and does not extend to "promoting others' happiness at the sacrifice of one's own happiness," so that it "must be left to each to decide this for himself." Because the very foundation of the duty of beneficence, in Kant's view, was that "every man who finds himself in need wishes to be helped by other men," it would be self-defeating to deny the duty of mutual aid. But it is patently not the case that every adult who finds herself in need wishes to be helped by children, or imagines ever being in a position where children could be of significant help.
As for the second chief formulation of the categorical imperative, that we always treat humanity not "as means only" but as an "end," how tenable is this as an all-purpose instruction to parents? Will it really be possible in such a relationship of inequality to keep the child's "end" separate from that of the parent? Indeed, specifically recognizing that children are non-autonomous beings that have not yet adopted their own "concepts of happiness," Kant allows for "forcing" on them the "gift" of the parent's notions of happiness. [FN152]

But if that is true, we may well have to revise our initial assessment of our three parent-child cases under Kantian principles. Mr. Dombey, our overbearing tennis father, may in fact be perfectly right to force the "gift" of his tennis fanaticism on his son Carl, who of all three of the offspring we *1156 posited may easily have the strongest reason to be "contented" with his position. Yet as Christina Hoff Sommers has pointed out, Mrs. Jellyby may claim perfect compliance with her Kantian duties "as a paragon of impartial rectitude" in her concentration on foreign charity instead of her child. [FN153] Surprisingly, it is Mr. Dorrit who may be subject to censure, for his beneficence to Barb has exceeded what Kant would allow, in going to "the extent that he himself would finally come to need the beneficence of others." [FN154] His sacrifices on behalf of Barb have compromised his own autonomy in service to his child, and in a non-consequentialist universe he cannot point to the happy result of his parenthood as a defense. [FN155] These judgments conflict not only with our initial, hopeful assessment of the Kantian framework but also with our fundamental intuitions about the moral worth of the actions of these parents.

4. Adolescents

On reflection we should not be surprised by the failure of that approach, especially because these cases involve adolescents. For it is the essence of the Kantian tradition to value individual autonomy above virtually all else, and adolescents make tempting subjects for classification as autonomous persons. [FN156] Because the successful fulfillment of parental "duty" almost always involves the need for some degree of control over a child, in adolescence that "duty" from a Kantian perspective will frequently appear to be an unfortunate interference with the liberty of an autonomous being. Anything but the most limited concept of parental duty, therefore, will likely be highly unappealing.

Deontological logic supports extensive community duties to adolescents even less. The limited duty of beneficence, the status of adolescents as arguably autonomous persons, and the inability of non-parents to understand, in Nozick's terms, the "particularity" [FN157] of a specific youth all seem to exempt from duty any strangers to the family unit. Finding the provenance *1157 of duty toward children in the "act of procreation," as Kant does, [FN158] even more strongly insulates the community from the claims of children—for why should any public responsibilities emerge from perhaps the most private of acts? [FN159] Indeed, even when Kant argues for a public duty to educate children, he grounds it not in a categorical imperative but instead on a consequentialist conception of the benefits to the future of humanity from promoting culture and discouraging barbarism. [FN160] Faced with the actual and intractable barbarity of adolescents to whom she has no family ties, the Kantian may easily imagine more attractive targets for her beneficence.

C. Contractarianism

Between the open commons of consequentialism and the fenced yard of Kantian deontology stands the most powerful moral edifice in our political tradition, the social contract. From Hobbes to Locke to Rawls the idea that, in theory at least, autonomous persons in a given society could all agree on the desirability of certain rules and structures has seemed an attractive way to resolve, at least partially, the conflicts between Kant and the consequentialists. Thus, Rawls could agree with the utilitarian Sidgwick that Kant's structure lacks a decisive means of distinguishing the moral worth of conscientiously followed principles of knavery and sainthood, [FN161] while fully agreeing with Kant that an impersonal, society-wide, "utility" calculus for determining moral worth would be devastating to the value of the individual. [FN162] Rawls proposed the "original position"-a device for moral reasoning in which we are asked to imagine the bargaining toward a social contract of autonomous individuals who have been deprived of "the knowledge of those contingencies (e.g., individual wealth) which sets men at odds and allows them to be guided by their prejudices" [FN163] as a means of *1158 solving the complementary weaknesses of utilitarianism and Kantian deontology. [FN164]

1. Social Contract and Family Obligation
Most pertinently, Rawls, in arguing that the contractors in the "original position" would adopt:

principles of paternalism . . . to protect themselves against the weakness and infirmities of their reason and will in society. Others are authorized and sometimes required to act on our behalf and to do what we would do for ourselves if we were rational, this authorization coming into effect only when we cannot look after our own good. Paternalistic decisions are to be guided by the individual's own settled preferences and interests insofar as they are not irrational, or failing a knowledge of these, by the theory of primary goods. [FN165]

The "social primary goods" are elsewhere listed to include "rights and liberties, powers and opportunities, income and wealth," and, above all, "self-respect," while "natural [primary] goods" are "health and vigor, intelligence and imagination." [FN166] But at no point in A Theory of Justice did Rawls clearly indicate how family relationships and obligations fit into his design. Drawing on Rawls a decade later, however, Jeffrey Blustein constructed a contractarian theory of parental duty in which parental duty was held to be lexically prior to parental right, and parental duties were defined in relation to the "primary goods." [FN167] Following Rawls's structure, Blustein argued that the contractors would adopt, in addition to the principle of paternalism, "another principle of natural duty-what I shall call the duty of preparation for just institutions." [FN168]

Unhappily for Blustein's account, in building on the principle of paternalism in A Theory of Justice, he is relying on the very weakest part of Rawls's structure. John Eekelaar has called contractarian thinking in general, and Rawls's theory of justice in particular, a "spectacular failure" in its attempt to provide a basis for parental duties to children using assumptions grounded in self-interest. [FN169] It is unnecessary to recapitulate and *1159 assess Eekelaar's cogent analysis of the deficiencies of the contractarian approach here, especially because my own work, [FN170] as well as that of other writers, [FN171] has already done so. Because it is difficult to imagine that self-interested contractors would agree to a potentially onerous duty of "paternalism," or an even more extensive "duty of preparation for participation in just institutions," [FN172] Rawls had to incorporate into the structure of the "original position" the assumption that the contractors are "heads of families, and therefore [have] a desire to further the welfare of their nearest descendants." [FN173] Nor do Rawls or Blustein satisfactorily *1160 identify who should bear the burden of "parental duty": Rawls confesses severe agnosticism about the family as an institution, [FN174] while Blustein explicitly denies that parental duties derive from the act of procreation. [FN175] Instead, he proposes to locate them in whatever arrangement is "better for the development of the human personality . . . whether adult men and women will lead more satisfying lives if parental care is replaced by group care, whether society is better able to maintain a continuity of values by assigning childrearing tasks to ordinary parents or child-development experts." [FN176] Yet this observation, so reminiscent of the consequentialist difficulty in identifying who should bear parental duties, [FN177] seems ultimately incoherent because of the ambiguity, in a world of multiple ideas of good, of such phrases as "development of the human personality" and society's "continuity of values." [FN178]

2. Adolescents

In part because of the existence of multiple conceptions of the "good," and in part because of its Kantian reverence for personal autonomy, the contractarian approach is especially unsatisfying as a justification of parental duty to adolescents. For as Rawls' own description of paternalism suggests, parents are only permitted or required to act paternalistically "when [adolescents] cannot look after [their] own good." [FN179] As soon as a person has outgrown "irrationality" she should be free of paternalist domination, while her caretaker is free of paternalist duty. As was noted earlier, [FN180] reasonable arguments may be made-and how attractive they might well seem to an *1161 overstretched parent!-that even young teenagers have the same decision-making capability as adults. Greater psychological capacity of an adolescent, in turn, increases the chance that her idea of "good" within the family will differ from, and even violently conflict with, that of her parent's. Rawlsian paternalism seems to lead to an overly simple, unacceptable choice in such circumstances: either the child is "irrational" and the parent may wholly suppress the child's choice of the "good," or the child is "rational" and may freely pursue her chosen course even if it means serious family disruption. [FN181] What this view seems to ignore is the diminished capacity of many parents to cope with difficult teenagers while raising other children and attempting to maintain reasonable happiness in their own lives. [FN182]

The poverty of the contractarian view becomes even plainer if applied to the parenting of Mrs. Jellyby, Mr. Dorrit, and Mr. Dombey. Each of them has preserved his or her child from serious harm, and each of them has raised a child

who apparently is at least minimally capable (under Blustein's standard) of participating in just institutions, and leading a law-abiding life. Beyond that assessment, though, we cannot go, for how can we imagine any group in the "original position" who could agree that any one of the parenting styles exhibited is inadequate? In light of Mrs. Jellyby's commitment to foreign charity work, Mr. Dorrit's heroic sacrifice of his own personal development, and Mr. Dombey's fanatical drive to make his child "great" in a sport—could a rational group of imagined contractors find any of these conceptions of the good wholly unreasonable? Ultimately, then, it is fruitless to hope for significant insight into parental duty from contractarian justice.

3. Protecting the Contractarian Polity and the Family from Each Other

Before leaving the discussion of this tradition, however, it is worth pausing to note why, if it is to succeed as a theory of the polity, social contractarianism cannot generate an adequate account of parental duty. John Locke, progenitor of the tradition, pointedly refused to cast the parent-child relationship in contractarian terms, and instead adopted an explicitly theological account:

From [Adam] the World is peopled with his Descendants, who are all born Infants, weak and helpless, without Knowledge or *1162 Understanding. But his Off-spring having another way of entrance into Improvement of Growth and Age hath removed them, Adam and Eve, and after them all Parents were, by the Law of Nature, under an obligation to preserve, nourish, and educate the Children, they had begotten, not as their own Workmanship, but the Workmanship of their own Maker, the Almighty, to whom they were to be accountable for them. [FN183]

Further, Locke made it clear that he identified parental rights and duties solely with biological parents, [FN184] and so the cloudiness in modern contractarian thinking about who should bear parental burdens would likely seem wholly alien to him. Contrary to Kant and Hobbes, he believed that the source of all paternal duty and authority was not the act of procreation, but the creative action of God. [FN185]

Locke's account of parental duties thus becomes incoherent if his religious premises are rejected, because he would have regarded an attempt to use the secular idea of the social contract to define and regulate the family as positively dangerous—not so much to the family as to the State. Locke wrote his Two Treatises precisely to refute an attempt by Robert Filmer to define political society in terms of the family. [FN186] Filmer traced the justification for all coercive social power to God's gift of authority to Adam, "who is lord paramount over his children's children to all generations, as being the grandfather of his people." [FN187] This led him to a conclusion inimical to Locke's:

And this subordination of children [to their parents] is the fountain of all regal authority, by the ordination of God himself. . . . Which quite takes away that new and common distinction which refers only power universal or absolute to God, but power respective in regard of the special form of government to the choice of the people. [FN188]

Filmer's identity of fatherhood and kingship was complete: "If we compare the natural duties of a Father with those of a King, we find them to *1163 be all one, without any difference at all but only in the latitude or extent of them." [FN189] To make his case for patriarchalism stronger, Filmer could point out the undoubted biblical and historical evidence for the monarchic principle while ridiculing social contract theories as wholly ahistorical. [FN190] More tellingly, he argued that human beings are naturally social, so that it is wholly unreasonable to assume that all political structures and obligations rest on a principle of consent. [FN191]

Locke met this challenge, as Gordon Schochet concludes, [FN192] not by refuting Filmer's historical claims that the state originated in the family, but by rejecting his notion that such origins have normative meaning: "The Society betwixt Parents and Children, and the distinct Rights and Powers belonging respectively to them, . . . is far different from a Politick Society." [FN193] Only by separating these two forms of society could he use a principle of consent as the foundation of political obligation, [FN194] for such consent is largely foreign to the role obligations inherited by parents and children toward each other. [FN195] In this respect Locke followed Aristotle—who called it a "mistake" to think that "the qualifications of a statesman, king, householder, and master are the same" [FN196]—and foreshadowed Hegel, who *1164 declared it "impossible" and indeed "shameful" to "subsume marriage and the family under a concept of contract." [FN197]

Any contractarian theory which tends to conflate the construction of political and familial obligation thus runs a serious danger of becoming incoherent with regard to both. If "consent" is conceived in the strictest sense as "the rational consent of individuals" necessary to justify political authority, [FN198] then requiring it as an ongoing element in family life would be intolerable, and indeed dangerous to children. [FN199] But if consent is broadened to include the untutored, cowed acquiescence of children in families, then a well-armed tyrant could claim political legitimacy for his power based simply *1165 on his ability to keep it through "consent" colored by ignorance and duress. "Fatherland" is a notion that can cut both ways, and leave dangerous wounds in either direction. The Lockean, Rawlsian social contract thus draws its strength in part from avoiding the problem of children.
II. Peter Laslett's "Intergenerational Tricontract"

Even if detached from the political realm and the "original position," however, notions of contract still have a powerful role to play in defining private duty, and possibly can explain duties between generations as well. This certainly appears to be the view of Peter Laslett, who has recently advanced a deeply interesting proposal for conceiving intergenerational duties, including parent-child, as part of the "intergenerational tricontract." [FN200] Although Laslett admits that his concept is far from completely worked out, [FN201] it is of particular interest here, first because of its relationship to parental and community duties toward the young, and second because, as a leading authority on both Locke and Filmer, Laslett is peculiarly well situated to recognize both the limitations (e.g., the "notorious unrealism") [FN202] of contractarian thinking and its undoubted force.

Laslett addresses the problem of justice between generations through two distinct but related concepts: the "intergenerational tricontract and the intragenerational intercohort trust." [FN203] The latter of these formulations is largely irrelevant to our discussion of parental duty, for it is meant to regulate the flow of benefits between "cohorts," each of which is comprised of "every person with the same birth date," and so are distinct from "age-groups of the generational kind." [FN204] Through elaboration of the "intragenerational intercohort trust," Laslett seeks to "justify [that] welfare flows upward in the generational order, . . . from juniors to seniors, from younger to older age-groups." [FN205]

The "intergenerational tricontract" serves the opposite function, to explain the flow of duties downward among generations, and so covers parental and community duties to children. [FN206] Laslett proposes the tricontract *1166 as a superior alternative to the "two-generational procreational contract"-which "requires that children must support their parents when they can no longer support themselves in return for having been procreated and nurtured by those parents," and which is based on "[t]he assumption . . . that parents in conferring these benefits and children in accepting them are behaving in an implicitly contractual way." [FN207] Echoing other scholars, [FN208] Laslett finds the notion of contractual reciprocity between parents and children as "an absurdity" in attempting to put into contractual terms benefits offered "in the spirit of love," which are "spontaneous, proferred without expectation of return at the time or thereafter, and done as an end in itself." [FN209] Moreover, he asks, "[h]ow could a yet to be born individual make even a hypothetical contract with someone to bring him or her into existence?" [FN210]

Laslett's tricontract is conceived to avoid these defects, and to give "formal expression to a widespread conviction about the obligations of generations to those coming after them,. . . that each generational entity must deliver the world to its successors in the condition in which it was received." [FN211] In that spirit he proposes the following model for justice between generations:

In this construction of the intergenerational contract, three removed generations are in question rather than two, hence the name tricontract. If each successive generation is regarded as having both rights and duties, then the rights that any given generation (here generation 2) has in its predecessor (generation 1) are met by the duties it performs for its successor (generation 3). [FN212]

The flow of obligations in this model is strictly down the generations-no one has contractual obligations to those anterior to his or her generation. [FN213] The tricontract, Laslett argues, allows us to answer the question that has *1167 been so awkward for environmentalists and others: "Why should I do anything for future generations? They have done nothing for me." [FN214]

As a "formal expression" of our convictions about what we owe the future, Laslett's tricontract has strong appeal. By including three rather than two generations in the concept, he paints a more intuitively plausible portrait of the flow of benefits from old to young through successive generations, with each gaining rights and assuming duties. And of course this "entirely hypothetical" [FN215] contract is not imagined as part of some larger Rawlsian political contract, so it avoids the mistake Locke denounced in Filmer, of improperly conflating the moral foundations of the family and the state. [FN216]

Yet for all its appeal as a general approach to intergenerational justice, Laslett's tricontract fails as an account of parental and community duties to children. In part that failure is related to the use of contractual imagery and "rights" language, which can neither adequately describe nor persuasively justify parent-child obligations. More
crucially, though, the very object of the contract-to deliver to the next generation the same world we received—is both morally implausible and seriously at odds with the aspirations of most dutiful parents and most dutiful citizens. Amending that object to bring it more in line with our standard moral adherence to optimism about the future, however, would further undermine the specifically contractual character of the arrangement.

Laslett is careful from the beginning to warn that the tricontract is merely "hypothetical" and that all the standard denunciations of imagined social contracts from Filmer to Hume to Bentham are still in effect. [FN217] Yet the difficulty of speaking of "contract" and "rights" in parent-child relationships goes beyond the logistical issues raised by those thinkers in relation to more general metaphorical compacts. Not that procedural difficulties are unimportant: for if Laslett objects, as we have seen, to the notion of a hypothetical contract between a parent and an unborn child, how is such a contract between such a parent, such a child, and a (possibly dead) grandparent any more plausible? Further, what of the enforcement of the tricontract? Since the State is not mentioned as a party, [FN218] the grandparents who gave benefits may be dead, and the children entitled to benefits may *1168 well be incapable of effectively understanding or asserting their claims, what is the result in case of breach? [FN219]

More substantively, how does Laslett reconcile his use of the language of bargain and of rights with his insistence, in dismissing the two-generational contract, that "as Scripture reminds us, love seeketh not its own." [FN220] If we follow his view, as most undoubtedly would, that parental actions on behalf of children are "spontaneous" and uncalculating, how can we conceive them as part of a formal transaction based on give-and-take? Because the actions of the grandparents were also presumably rooted in spontaneous love, how can their actions be part of some bargain now binding on the parents? True, we might think of third-party beneficiary contracts, such as life insurance policies, as an example of love creating a contract, but there the love is between one of the contracting parties and the beneficiary, not between purchaser of the insurance and the insurance company.

The formality of what Mary Ann Glendon calls "rights talk," moreover, may do more to obscure than to illuminate the content of "duty." [FN221] That is especially evident in the language of "right" and "duty" employed by Laslett in the tricontract: "each generational entity must deliver the world to its successors in the condition it was received." [FN222] Taken on its face, this seems a moral outrage: do we then have a duty to preserve the injustices that we received from our ancestors along with the benefits? Do our children have the right to receive the benefits (or the harms) of injustices perpetrated or endured by their grandparents? [FN223] This question is all the more troubling *1169 because Laslett later contends that under the intergenerational tricontract, as opposed to other principles of justice, "we have no contractual duty to take responsibility for any misdoings our predecessors perpetrated," so that, for example, no reparations are owed African-Americans from American whites. [FN224]

But even if Laslett does not mean to propose a duty to preserve injustice, a standard that exalts the status quo hardly seems to comport with our usual conception of the future we will give our children—we feel that, if possible, it ought to be better than the world we inherited. [FN225] Thus the Preamble of the United Nations Convention on the Rights of the Child explicitly recognizes "the importance of international co-operation for improving the living conditions of children in every country." [FN226] Richard Epstein attributes this sense to our "genetic code," which "creates a bias toward the future." [FN227] John Dewey, in a similar determinist/utilitarian vein, held that "[c]ontinuity of life means continual readaptation of the environment to the needs of living organisms," which explains our impulse and duty to educate the young in the service of human progress. [FN228] Regarding the lives of our children, we are committed optimists, whether by instinct or principle or both.

Laslett's intergenerational tricontract seems not to incorporate this optimism, and, indeed, how could it? For in its formulation as a contract, subject to all the principles of contractual fairness, it could hardly demand that one party receive less out of the bargain than the other parties. But if we modified the terms of the tricontract to mandate a best-effort-to-improve-the-world duty on the part of the grandparents and parents, one party would unfairly receive less. Nor is Laslett's contractual imagery very helpful in *1170 confronting the need for adaptation to new circumstances in later generations. How is it ever possible to give a new generation the world "in the condition it was received"? [FN229] And yet how can we meaningfully imagine a tricontract not just with a dead party in one corner and an unborn party in another, but with a res that can change radically in a 1929 minute?

Reconsidering our three parent-child cases further suggests the difficulties in using the tricontract model, with its strictly downward flow of duties. Mrs. Jellyby inherited a fortune from her parents—is she therefore required to pass

on this fortune to her son Abe based on his "rights"? Application of the tricontract theory here would seem to be in sharp tension with our settled traditions of freedom of testation and gift. Mr. Dorrit sacrificed his own life chances for his daughter Barb-is it fair to say that she had a "right" to this level of sacrifice, and even if so, did she have no duty to help her father in return when he loses his job and falls into poverty? In this case, and more generally, the tricontract's rigid adherence to the downward flow of duties seems to conflict with our basic notions of the duties owed by a child to a good parent. [FN230] Mr. Dombey's fanaticism for Carl's tennis career certainly appears to have benefited both of them, but was it at all contemplated by Carl's grandparents in their non-fanatical approach to Mr. Dombey's upbringing? What if they objected to the narrowness of the project? Does their status as parties to the tricontract give them moral standing to criticize or interfere with their son's approach to raising his son?

Because Laslett has produced no more than a basic sketch of the intergenerational tricontract, it is possible that he has answers to all or some of these problems. Even with all its difficulties, though, his argument raises issues of fundamental importance, and the expanded vision he offers-of multiple successive generations bound together by half-hearted gestures toward contract imagery. On what moral basis-certainly not that of contract-can the actions of our ancestors bind us to take particular actions of our own? Specifically, why and how does the parenting I received define my parental duties toward my own children? The last section of this paper attempts briefly to develop a conceptual basis for parental duty that permits tentative answers to those questions.

*1171 III. Duties to the Young and the Laws of Gratitude

Abraham's submission to God's command to sacrifice Isaac did not go unnoticed:

The angel of Yahweh called Abraham a second time from heaven. I swear by my own self, Yahweh declares, that because you have done this, because you have not refused me your own beloved son, I will shower blessings on you and make your descendants as numerous as the stars of heaven and the grains of sand on the seashore. Your descendants will gain possession of the gates of their enemies. All nations on earth will bless themselves by your descendants, because you have obeyed my command. [FN231]

Only a tiny number of biblical figures-Job was another [FN232]-heard words of this particular kind from the Almighty, words declaring God's intended beneficence not simply out of His inscrutable, all-loving will, but rather as a response to the actions of a creature. These are words of gratitude, which hold out not merely a contractarian promise of an equal or a fair return for actions performed, but the pledge of inconceivably vast beneficence in answer to an act of love. As much as the children of Israel through the centuries have needed the blessings of this divine gratitude toward Abraham, children of all nations each day require the virtually unbounded beneficence of their parents and other adults. Do they, too, have a claim in gratitude to receive it?

That a child owes gratitude to a parent, or to others who raised him, was long commonplace, finding perhaps its most vivid expression in Hobbes, who declared gratitude to be the "fourth Law of Nature." [FN233] Under that law a child owes lifelong subservience to its parent on the ground that "it ought to obey him by whom it is preserved." [FN234] More recently this stark account of what children owe parents on account of benefits they neither sought nor had a fair opportunity to refuse has been severely qualified-but the recognition of a duty of gratitude flowing from child to parent has generally remained. [FN235] *1173 Perhaps because of Hobbes' influence, or perhaps because the reaction to his proposition has diminished the interest in gratitude itself, [FN236] the possibility of a duty of gratitude flowing from parent to child has not been explored by previous writers. [FN237]

In this last section I will argue that, in fact, the moral force of duties toward children-both duties of parents, and duties of the community-comes more from the requirements of gratitude than from any other identifiable source. In making this assertion I will be relying heavily on the definitions and analysis in Terrance McConnell's admirable recent account of gratitude, [FN238] though I will be forced both to qualify some of his conclusions and to extend others beyond a point he might consider reasonable. After adopting a working general description of gratitude, I will argue briefly that it is a moral requirement best explained by the natural law tradition instead of modern ethical theories, and that as such it is to be understood as a component of what John Finnis called the "basic values of human existence." [FN239] Because of its importance to human flourishing I will contend that gratitude can raise duties not only, as most believe, to the original benefactor, but to others close to the benefactor or covered by his benevolent intentions. That notion, I urge, leads to a duty of parent to child based on, and largely defined by, the
parent's duty of gratitude to his or her own parent. Finally, I will argue that gratitude can cover probable future sacrifices benefiting society, and that on that basis a duty of the community to children, and especially to adolescents, arises.

A. Gratitude Defined

To fully understand what the "duty" of gratitude encompasses, two questions quickly arise: (1) when is gratitude owed; and (2), when owed, what does it require? [FN240] Terrance McConnell's thorough analysis of these problems, in conjunction with the work of A. John Simmons, [FN241] makes it possible to embark on a consideration of gratitude in the specific context of parent-child and community-child duties with only a basic recapitulation and slight adjustment of their basic conclusions.

1. Occasions of Gratitude

According to Simmons, whose framework McConnell largely adopts, gratitude for a benefit is owed under five conditions:

1. The benefit must be granted by means of some special effort or sacrifice.
2. The benefit must not be granted unintentionally, involuntarily, or for disqualifying reasons.
3. The benefit must not be forced (unjustifiably) on the beneficiary against his own will.
4. The beneficiary must want the benefit (or would want the benefit if certain impairing conditions were corrected).
5. The beneficiary must not want the benefit not to be provided by the benefactor, or would not want the benefit not to be provided by the benefactor if certain impairing conditions were corrected. [FN242]

McConnell argues that several of these requirements should be modified or rejected. In urging rejection of condition one, he argues plausibly that in certain circumstances we may have a debt of gratitude to someone who *1175 performs an easy action that greatly benefits us. [FN243] He also agrees with Simmons in holding that condition one may be satisfied by someone performing an action for reasons of duty. [FN244] Regarding conditions four and five, McConnell contends that the desires of the beneficiary as to either the benefit or the identity of the benefactor cannot preclude a debt of gratitude if the beneficiary accepts the benefit. [FN245] Conversely, he argues in favor of an added condition that a mere intention on the part of a person to benefit another, coupled with an attempt to confer the benefit, can give rise to an obligation of gratitude even if the actual benefit never materializes. [FN246] At the same time, where the intention to benefit another is grounded, not in benevolence, but in a desire simply to advance one's own interests-e.g., the typical intent of contracting parties-no gratitude is owed. [FN247]

On the whole, McConnell's amendments to the stringent Simmons conditions seem sensible, but fortunately I need not enter that debate, because it appears that raising a child would satisfy either set of requirements. Few would deny the "special effort" and sacrifice involved in even below-average parenting; nor is it possible to raise a child (as opposed, say, to fathering a child) "unintentionally." And while it is true that no child gets the chance to refuse parenting at least until a certain age, neither would it be fair to say that children have it forced on them, nor that they do not desire the love and care they receive. As McConnell himself concludes, normal-as opposed to abusive or neglectful parenting-raises a debt of *1176 gratitude in the child. [FN248] Surprisingly, though, in contradiction to his earlier view that actions undertaken solely from duty can still create a debt of gratitude, he seems to indicate that merely dutiful parenting-as opposed to parenting "demonstrating care, affection, or love"-does not create such a debt. [FN249] This conflict does not exist, though, if we assume, as I think we must, that providing "care," "affection," and "love" are the very essence of parental "duty," so that any parent utterly deficient in those qualities has in fact failed to comply with his duty, and so is unworthy of gratitude. [FN250]

2. Requirements of Gratitude

But if gratitude is owed to another, how can we discharge that duty? McConnell marshals strong arguments that the mere expression of appreciation by the beneficiary, while appropriate and at times the only response possible to a beneficent act, is not enough to meet the requirements of gratitude. [FN251] Instead, he explains, in terms similar to those used by Sidgwick: [FN252]

A person discharges a debt of gratitude to another when she acknowledges and appreciates what the other has
done, is prepared to provide the benefactor willingly with a commensurate benefit if *1177 the proper occasion for doing so arises, and does so because she (or a loved one) has been benefited by the other. [FN253]

Somewhat daringly, McConnell later supplements these requirements with a quasi-obligation on the part of the beneficiary actually to feel grateful, for not to do so, he argues, "is sometimes indicative of moral failure." [FN254]

While in almost every other respect admirable, McConnell's account of what gratitude requires contains at its core an odd asymmetry-and one of particular importance for our discussion of parental duty. It refers to an obligation created by an act of kindness to the beneficiary's "loved one," but does not seem to allow repayment to a "loved one" of the benefactor. In his discussion, McConnell indicates discomfort with any kind of transferred repayment: he rejects, for example, the notion that because I have received benefits from my academic mentor, I now owe similar benefits to my own students. [FN255] Yet this issue remains unresolved in his account, in part because in this example he allows that the obligation of such a transfer possibly "depends on the desires of [a] mentor," [FN256] and in part because he does not discuss such a transfer in the context of a "loved one" of the benefactor. As this point will be crucial below, I will leave it, along with other aspects of the requirements of gratitude, for further development in the context of parental duty.

B. Gratitude's Claim

Before proceeding to apply the principles of gratitude in the context of parental duty, it is worthwhile pausing momentarily to consider how the obligation of gratitude arises-that is, why the call of gratitude ought to be heeded. McConnell argues that, with an occasional slight strain, utilitarianism, Kantian deontology, and the "ethics of virtue" can account for the duty of gratitude. [FN257] Without responding in detail to his careful arguments, I want to suggest why the first two seem to me unable to account for the demands of gratitude—indeed, why they are in certain respects hostile to its claims—and why a "virtue" approach seems at best inadequate as opposed to one rooted clearly in natural law.

*1178 1. Consequentialism and Gratitude

The utilitarian [FN258] explanation of gratitude by Sidgwick is similar to his attempt to accommodate our common sense notions of familial duties within notions of maximizing utility (or "general happiness"), and is also eerily similar to that of Hobbes: [FN259]

In all cases where it is conducive to the general happiness that unbought services should be rendered, Gratitude (if we mean by this a settled disposition to repay the benefit in whatever way one can on a fitting opportunity) is enjoined by Utilitarianism no less than by Common Sense; for experience would lead us to expect that no kind of onerous services will be adequately rendered unless there is a general disposition to require them. [FN260]

This certainly provides a partial account of Gratitude—as does an even more obviously cynical one offered by etiquette teachers around the world: "Write a thank-you note, and be nice to them, if you want them to send you more presents." [FN261] But, it fails in two fairly clear respects. First, as McConnell himself argued, gratitude can be owed for many actions that are not "onerous." [FN262] Those actions, often the result of easy, spontaneous good will, are not taken in anticipation of "a general disposition to requite them." [FN263] More importantly, though, the initial reference to "unbought services" that are "conducive to the general happiness" suggests how many acts of common-sense gratitude will fall outside the utilitarian/consequentialist calculus. Consider the following case:

Paula is the owner of a small, struggling grocery store in the country. A friend of hers, Jane, who is a salesman for Xerxes *1179 Food Corp. sees her plight and sells her a storeful of groceries at a price that eliminates Jane's commission and enables Paula to sell the items at such a profit that Paula's business thrives, knocking the next-door store owned by George out of business. During the next year, out of gratitude for Jane's generous act (which at the time came only out of motives of friendship), Paula buys all her supplies from Jane, now paying the commission. Unfortunately for Paula's customers, the prices of Xerxes food products including Jane's commission are significantly higher than those of other companies, but now there is no other store in which to shop and the financial risk of opening one is too high to attract competitors.

In fact, not all "unbought services," such as those rendered by Jane to Paula—or, we might add, by members of an organized crime family to each other [FN264]—are "conducive to the general happiness," but at the same time such

acts may fit the conditions posited by McConnell and Simmons for generating a debt of gratitude.

2. Kant and Gratitude

Kant gives a more florid, but less cogent, account of gratitude as a "sacred duty": it is a duty, he says, because its violation "can destroy the moral incentive to beneficence in its very principle." [FN265] This last has a suspicious ring to it, and remarkably, even as McConnell carefully works through Kant's views on why acts of gratitude are owed, it comes back to "the crucial empirical premise . . . that if no one shows gratitude for favors received, favors will become far less frequent, indeed, practically nonexistent." [FN266] But is this not precisely the consequentialist argument advanced by Sidgwick, and so ultimately subject to the same response that we do not necessarily want to encourage all the kinds of "favors" that produce gratitude? Kant resorts here to consequentialism, I think, because in fact gratitude as a duty is in severe tension with the primary focus of his *1180* moral universe: personal autonomy, and the well-planned life. [FN267] Tension results because gratitude can be owed based on favors that are unasked for, even unwanted, and can demand significant personal sacrifice to repay such a debt. [FN268] It is not for nothing that Nietzsche could call gratitude a "form of revenge" that "violate[s] the . . . sphere" of the recipient. [FN269] McConnell's own later discussion of the "pathological demands" some parents make on their children to repay debts of gratitude [FN270] is example enough of the ways gratitude can threaten values of autonomy. Like consequentialism, Kantian morality seems comfortable with only a limited range of the duties of gratitude.

3. "Virtue," Natural Law, and Gratitude

Less persuasive than these approaches, in McConnell's view, is an Aristotelian theory of gratitude based on the notion of virtue. [FN271] First, he questions how we can know which of many habits, emotions, and traits are "properly virtue," and second, he wonders how such an approach can be "action-guiding." [FN272] As basic objections to "virtue ethics," those questions have been carefully addressed (and in my view, adequately answered) by John Finnis in his defense of natural law theory. [FN273] but in the context of *1181* gratitude they are essentially beside the point. For as will shortly appear, [FN274] gratitude is a moral quality, a duty, that has enjoyed apparently universal acceptance in human societies: on any list of social obligations we can conceive, gratitude has some place.

Indeed, gratitude appears to be "action-guiding" in a sense more fundamental than other virtues-so much so that the nature of gratitude may make it wrong to call it a "virtue" at all. [FN275] For is it not, rather, a response to the action of virtue in another-to another's benevolence? And as a response, gratitude is primal, as often non-reflective as considered. [FN276] The great psychoanalyst Melanie Klein described its fundamental importance thus in connection with childhood:

One major derivative of the capacity for love is the feeling of gratitude. Gratitude is essential in building up the relation to the good object and underlies also the appreciation of goodness in others and in oneself. Gratitude is rooted in the emotions and attitudes that arise in the earliest stage of infancy, when for the baby the mother is the one and only object. [FN277]

John Bowlby stated the matter more coolly, but still in terms of a response to beneficence: "It is evident that whom a child selects as his principal attachment-figure, and to how many other figures he becomes *1182* attached, turn in large part on who cares for him . . . ." [FN278] Secure attachment, in turn, is a key predictor of independence, autonomy, and self-esteem in an individual's later life. [FN279] Nor would it be very daring to suggest that many of the most rewarding attachments in adulthood, most prominently those involving romantic love, are the fruit of gratitude-the product of an unexpected kindness, or the effort of another to understand the secret workings of the soul. [FN280] Cicero may therefore have been quite right to call gratitude the "mother" of all virtues. [FN281]

Along with love, as Klein found, gratitude gives a child the ability, "without being fundamentally damaged, [to] withstand temporary states of envy, hatred, and grievance." [FN282] The capacity for gratitude, like the capacity for love, is more than essential for being good, it is essential for being human. [FN283] For that reason, both the Classical and Renaissance moral *1183* traditions treated ingratitude as, in words of one historian, "the prelude to evil of any and every kind . . . . a vice which implies a moral callousness or shamelessness in the offender," [FN284] who as an ingrate "degraded himself from the level of human nature." [FN285] And even Hume, hardly a friend of those traditions, reverted to the language of natural law in describing as "universally acknowledged" the following...
truth: "Of all crimes that human creatures are capable of committing, the most horrid and unnatural is ingratitude, especially when it is committed against parents . . . ." [FN286]

Gratitude thus holds a secure place in a natural law account of the "good of practical reasonableness," which as Finnis explains is "participated in precisely by shaping one's participation in the other basic goods, by guiding one's commitments, one's selection of projects, and what one does in carrying them out." [FN287] At the very least, gratitude is an essential means of participating in the good of "sociability," which has as its "weakest form" a "minimum of peace and harmony amongst men," and as its "strongest form . . . the flowering of full friendship." [FN288] Without it, men and women are simply incapable of responding appropriately to the benevolence of others-to make, in Aristotle's phrase, that "equal return in goodwill and in pleasantness" essential to the "friendship of the good." [FN289] As such, gratitude is bound up with that "thick" concept of justice developed by Aquinas [FN290] and by Finnis, [FN291] which rejects the "thin" Rawlsian focus on institutions, and attempts to find what practical reasonableness requires of us in all our relations with others, including our parents and our children.

*1184 In sum, the deep connection between gratitude and individual (as opposed to society-wide) flourishing leads me to conclude that a natural law foundation of that duty is, on present evidence, most plausible. But as McConnell has emphasized, all relevant moral theories can largely accommodate, and all to at least some extent require, the fulfillment of the duty of gratitude. [FN292] Thus, with respect to the final part of my argument-the role that gratitude plays in explaining duties of parents and others toward the young-the provenance of gratitude is only of marginal significance.

C. Gratitude and Duties Toward Children

Let us briefly take stock of our progress in attempting to find a secure moral basis for duties toward children, and especially adolescents. We found in consequentialism only the most tenuous support for parental obligations to children, and even less to adolescents, but somewhat more sturdy support for community duties to the young that also happen to promote the general welfare of society. In Kant's agent-relative approach, by contrast, we could see a fairly convincing foundation for requiring parents to take care of small children, very little basis for requiring parental attention to adolescents, and almost none for community obligations to either. Finally, in the contractarian tradition we found fundamental obstacles preventing any substantial construction of parental or community duties to children. But in the recent contractarian work of Peter Laslett, which looks away from the social contract and considers relationships among multiple generations, a useful new perspective appeared-though not one capable of overcoming the defects of contract imagery in an area of life so foreign to contract.

1. First-Order (Direct) Gratitude

We therefore turned to a human duty, gratitude, that acts-more powerfully perhaps than considerations of utility or disinterested justice-as a mediating force in human relationships. In looking at the circumstances in which gratitude is owed, it seemed clear that they cover non-abusive, non-neglectful care of children by parents and others. Likewise, we can see how, in reverse, a first-order duty of gratitude can arise when children act benevolently toward their parents or other family members. An adolescent who has spent many years sacrificing for the family's welfare, or who has *1185 been a loving, nurturing brother or sister to younger siblings, has earned gratitude from those, especially parents, who have benefited.

More specifically, a child who has been required to accept the hardships in a household created by the birth of a severely impaired sibling deserves the gratitude of both her parents and the sibling, a debt that ought to be consistently acknowledged and, when later circumstances permit, repaid by appropriate beneficence. [FN293] Ongoing acknowledgment of the sacrifice of siblings in such households may lessen the sense of immediate abandonment that such siblings can feel when their parents are required to focus most attention on their most vulnerable child. [FN294] Furthermore, holding that they should receive later rewards, where possible, seems a more satisfactory resolution of the conflicts in such households than the consequentialist suggestion that their sacrifice should simply be accepted because, in the overall weighing of benefits and costs, it is beneficial to the family or society generally. [FN295] Gratitude is thus an immediate source of justification for parental duties especially toward older children, though admittedly not a basis for such duties in all families.
All children, too, may be said to enrich the emotional lives of their parents or caretakers. [FN296] Thus, George Eliot's Silas Marner felt gratitude for the chance to raise the foundling child Eppie as his own, and in his life all the classic benefits of gratitude appeared:

No child was afraid of approaching Silas when Eppie was near him: there was no repulsion around him now . . . . for the little child had come to link him once more with the whole world . . . .

*1186 . . . [A]s some man who has a precious plant to which he would give a nurturing home in a new soil, thinks of the rain and sunshine, and all influences, in relation to his nursling, and asks industriously for all knowledge that will help him to satisfy the wants of the searching roots, or to guard leaf and bud from invading harm. [FN297]

Even when his hard-earned hoard of money was stolen, "now something had come to replace his hoard which gave a growing purpose to the earnings, drawing his hope and joy continually onward beyond the money." [FN298] How many of us owe gratitude simply for the purpose children bring to our lives? [FN299]

Still, given that the parents' sacrifices for their children are in virtually every case likely to have been greater than the reverse, what does gratitude require of the children who have received nurturance? Returning to McConnell's explanation of gratitude's requirements, it is apparent that children owe their benefactor/caretakers "a commensurate though not necessarily equal benefit." [FN300] We can therefore acknowledge, as a first-order account of a child's duty of gratitude, the duty of beneficence directly toward his/her parents, including honor, respect, and possibly financial support and physical care in old age. [FN301]

But this is a case in which first-order, direct acts of gratitude are almost certainly insufficient, for as Aristotle put it: This is why it would not seem open to a man to disown his father (though a father may disown his son); being in debt, he should repay, but there is nothing by doing which a son will have done the equivalent of what he has received, so that he is always in debt. [FN302]

The justice of this observation is apparent even if we are repelled by images of debtors and creditors in a relationship of love. [FN303] Given the *1187 massive demands of children on the emotional, physical, and financial resources of parents, it will be the exceptional case when a child will be able to render "commensurate" benefits in response—even most home care of the elderly is likely to be a lighter burden than the eighteen or more hair raising years it takes to raise a child. And of course many children will have no opportunity at all to render substantial benefits to their parents, either because the parents will die before needing any substantial help, or because they will possess adequate resources and prefer to take care of themselves. [FN304] Even most of the (very few) children who will have the chance for commensurate beneficence will not know of that opportunity until they themselves are well into middle age, by which time other duties and opportunities may make it exceedingly hard to give gratitude its due.

2. Second-Order (Transferred) Gratitude

Because of the impossibility, or extreme unlikelihood, of my fulfilling my duty of gratitude toward my parents directly to them, I must consider the possibility of an indirect response. As we discussed earlier, [FN305] McConnell admits that I can acquire a debt of gratitude indirectly, through beneficence directed at my "loved one," [FN306] but does not clearly concede that I can discharge a debt in the same manner, by beneficence toward my benefactor's loved one.

This seems entirely at odds with common understanding, particularly because many debts of gratitude can only be fairly discharged indirectly. Consider a relatively trivial example:

My son moves to the city where my best friend lives. When my son has trouble finding housing, my friend (out of affection for me) gives him a room, and then helps him find a good job—all of which leads to his being happily settled within a few months. Two years later my friend's son moves to my city and encounters similar difficulties, ultimately coming to me for assistance. Even if *1188 I do not do exactly the same things to help out this young man, would it not be rank ingratitude if I did little or nothing for him? [FN307]

In the context of kindly deeds toward children, indirect repayment of gratitude is daily coin of the realm. If you go out of your way to help my child, both of us will normally expect that the best response, and often the only response, is a beneficent act toward your child. Responding by doing something for the other parent might even be seen as
presumptuous, or worse, insulting-as implying that the other adult wanted something for herself (as opposed to her child, for whom she is expected to welcome the beneficence of others). On a much grander scale, it was the notion of transferred gratitude that Abraham Lincoln invoked near the end of the Gettysburg Address:

The world will little note, nor long remember what we say here, but it can never forget what they did here. It is for us the living, rather, to be dedicated here to the unfinished work which they who fought here have thus far so nobly advanced. [FN308]

Because McConnell concedes that the "desires" of a benefactor are relevant to the question of indirect responses in gratitude, [FN309] I will take it as a given that when a commensurate benefit cannot be bestowed on a benefactor, indirect or "second-order," responses benefiting a loved one (or other intended beneficiary) of the benefactor are morally required.

Once second-order gratitude is acknowledged, it becomes possible to look at parent-child duties of gratitude with fresh eyes. For if a child cannot discharge her debt of gratitude to her parent, then she should discharge it to that parent's intended beneficiary. To find that beneficiary, moreover, we have not far to look, as Plato tells us:

This is how every mortal creature perpetuates itself. It cannot, like the divine, be still the same throughout eternity; it can only leave behind new life to fill the vacancy that is left in its species by obsolescence. This...is how the body and all else that is temporal partsake of the eternal; there is no other way. And so it is no wonder that every creature prizes its own issue, since the whole creation is inspired by this love, this passion for immortality. [FN310]

There is, then, a "loved one" of a parent to whom a child has a duty to respond in gratitude-the grandchild. Only to my own child can I offer benefits truly commensurate to those I received from my parent, and even if my parent did not live to see this grandchild I can fairly guess that she would have "prized" her own descendants and wanted them to bask in the benevolence she fostered in me. [FN311] Nor is this merely sentimental, for if indeed evolutionary biologists are correct about the primacy of "reproductive success" as a goal of life, then grandparents have an exceptionally high stake in the care of their grandchildren. [FN312]

In this way, the duty of second-order gratitude adds to the Kantian equation, and succeeds better than consequentialist calculus, in identifying the specific agent primarily responsible for a child's care. I am responsible for the offspring I produce not only because as Kant argued, the helpless baby has been created by my conscious act, [FN313] but also because others to whom I owe debts of beneficence expect me to repay them through my love for this child. Moreover, because of the debt of gratitude I owe to these others, I am not free to engage in a detached consequentialist calculation of whether someone else might do the childrearing better or with less personal cost. [FN314] I must attempt to meet my obligations in gratitude by acting as a responsible parent unless it is manifestly impossible for me to do so, or unless my so acting would clearly be deleterious to the child (in which case I would not be acting beneficently, as gratitude requires).

And this brings us back to Laslett, and his claim that the rights I claim against my parents are matched by the duties I owe my own children. [FN315] As we saw, [FN316] no imagined contract, which by its nature looks to the future, can support this claim. But gratitude, which looks to the past, can do so with ease-at least once we have adopted the duty of second-order, transferred gratitude. Better, gratitude allows us to give real empirical content to those duties: my duties of transferred gratitude to my own children will be measured not by theoretical "rights," but the actual beneficence I experienced at the hands of those who reared me. Thus, gratitude can justify specific duties-e.g., to raise a child in a particular religion or cultural heritage-in a way that Kantian reflection cannot. [FN317]

The nature of gratitude also avoids another serious difficulty encountered by Laslett's "tricontract"-the initially puzzling, but ultimately integral requirement of the tricontract that I must deliver to my children the world in the same condition as I received it, which opens up disturbing possibilities of rights or even duties to preserve evil or ignore past injustice. [FN318] Unlike contract, gratitude requires and repays only benevolence. In reflecting on whether I owe gratitude, I must consider whether the action of another was a true benefit, or an attempted true benefit, and whether the motives of the other were truly benevolent. If my parent abused me in some ways, and sincerely benefitted me in others, I have the duty to respond in gratitude only [1191] to the good. That means my transferred duty to my children only extends to showing them comparable beneficence. [FN319]
In overcoming this problem, however, the theory of parental duty based on transferred gratitude encounters another, unsolvable one. For it leads to a conception of differential duty on the part of individual parents: that is, it might be rephrased as "To whom much was given, much will be expected." This sits uncomfortably at first with our desire to believe that every child deserves the best parenting possible, and that an adult's own terrible childhood could never justify failure to be the best possible parent. And yet, I do not believe it is in conflict with our fundamental moral intuitions, for four reasons. First, we do expect more from parents who have had a lucky life-child abuse or neglect by wealthy, well-educated, apparently happy parents is especially shocking and outrageous to our moral sense. [FN320] Gratitude is part of what Bernard Williams famously calls our "moral luck." [FN321] Second, of course, gratitude has no role to play in justifying or defining responses to bad actions, [FN322] so it could never countenance visiting on a child the sins of a grandparent. (Indeed, the most thoroughly reflective kind of gratitude would allow us to consider what our parents suffered at the hands of their parents, and to feel grateful for their ability, even if only partial, to overcome that suffering and bestow some measure of beneficence on us.) Third, we may owe our children a duty of transferred gratitude not only for what we received from our parents, but also for what we received from all other adults who acted benevolently in a way so as to give rise to gratitude. [FN323] In addition, if we are religious, we may owe a debt of transferred gratitude to our children for the good we have received from God. [FN324] (Indeed, the language of second-order gratitude to God can provide a means of stirring support for meeting children's needs among groups otherwise indifferent or hostile to "social programs." ) Finally, gratitude is only one basis of parental duty, a basis complementing and only part of the time transcending either consequentialist reasons for parental obligation or the Kantian/Lockean duty to care for a creature whose existence we caused. [FN325] Indeed, transferred gratitude is a way of giving case-by-case substance to the otherwise vague duty of care posited by the consequentialist and Kantian traditions.

If we apply the second-order duty of gratitude to our original three cases, its usefulness and intuitive appeal becomes clearer. To begin with, we can now account more clearly for our distaste for Mrs. Jellyby's parenting. Having received the benefits of higher education, and a fortune, from her parents, she provides neither to Abe, but relegates him to a life of subsistence-a result that we have to believe would be hurtful to Abe's grandparents if they were alive to see it. On the other hand, our admiration for Mr. Dorrit-admiration bestowed despite the fact that Barb is in no better position than Abe-has a firmer base. Mr. Dorrit received nothing other than perhaps the love of his family as a child, and yet he made extravagant sacrifices to allow Barb to achieve an independent, if limited life. Further, we may be able to explain those sacrifices if we knew a bit more about Mr. Dorrit's childhood-perhaps he watched his parents make similar efforts on his behalf.

Finally, we may now account better for our thoroughly mixed response to Mr. Dombey, who achieved Wimbledon superstardom for his son Carl through a process of complete domination of Carl's childhood. To the extent that Mr. Dombey was acting out of gratitude for the joy tennis had brought his own youth, through the efforts of his parents and others, we can understand and approve of his effort to give Carl an even larger dose of that joy. On the other hand, if his motivations are not so benevolent-if he is merely trying to live vicariously in (and personally profit from) Carl's success, his actions cannot be justified or required by gratitude. And to the degree that Mr. Dombey was allowed during his childhood to choose his own activities and life direction, we can now judge him guilty of ingratitude in his refusal to allow a similar range of constructive autonomy to Carl. We are thus ultimately able to account for our ambivalence regarding Mr. Dombey in the teeth of the apparent objective success of his parenting.

Second-order gratitude can also help us explain-and argue for the existence of--community duties to children. To the extent the community of adults acted beneficently toward us as children and teenagers, so too we may have the duty in gratitude to act with kindness toward the young now that we are part of that community. [FN327] While we may repay the older generations directly in some ways (e.g., Social Security), given human mortality, our direct responses at best will reach only some of the adults who comprised that benevolent community when we were children. Further, we can be sure that much of that older generation's kindness to us sprung from the good will toward "Posterity" that the Preamble to our Constitution enshrines, [FN328] and so *1194 was bestowed with the expressed or implicit desire that we respond by behaving in a similar spirit to the generations that follow us.

While hardly a conclusive measure of society's obligations to the young, the requirements of second-order gratitude provide an additional tool for testing the moral acceptability of public policy initiatives. Thus, in the early 1970s we might have tested two enormously important legal initiatives-giving eighteen-year-olds the vote, [FN329] and defining them as adults for all legal purposes [FN330] -from the standpoint of transferred gratitude. Thus we would

hardly be surprised to find that Congress cited the contributions of eighteen- to twenty-one-year-olds to society generally and to the armed forces-especially, the "supreme sacrifice in the Indochina War" of "tens of thousands" -to support the proposition that they had "earned the right to vote." [FN331] Sharing political power was a first-order response in gratitude to those youths who had served their country well, and, apparently, a second-order response to those who had already made the "supreme sacrifice" -a response of beneficence to younger siblings and peers of the dead.

On the other hand, our doubts about the "emancipation" of that age group from legal minority status might have increased dramatically if we had taken into account our second-order duty of gratitude. For such emancipation carried with it the loss of both the right to parental support [FN332] and the *1195 protection against liability on improvident contracts [FN333] -rights enjoyed by preceding generations. [FN334] Arguably it was an act of ingratitude for the adult generation of the 1970s and 1980s to withdraw protections it had enjoyed during late adolescence.

3. Third-Order (Anticipated) Gratitude

When carefully considered, community duties to the young may also arise from another form of gratitude-"third-order" or "anticipated" gratitude. This is a duty of gratitude which springs from beneficent actions on our behalf that almost certainly will be performed by persons to whom we can never hope to provide a commensurate return and whom we may not yet be able to identify with specificity.

Suppose I knew that during the next twenty years one member of a group of 100 people would become a police officer, and in the line of duty would save, or attempt to save, my life, dying in the act. Suppose I knew as well that another ten of those people would enter an uncomfortable, highly risky environment to protect my political freedom, and that two of them would die fighting there. Suppose, finally, that at present I have no idea which of the 100 people fell into these helpful categories. Do I have a duty of gratitude based on this knowledge, and to whom does it extend?

It is obviously inadequate in these cases to wait until after the beneficent act is performed to assume a burden of gratitude. My life, my freedom, will be saved by people who will not live to enjoy theirs, and who will not be around to receive my direct, grateful responses. Of course, I might gamble that, after they die, I can find a way to benefit their loved-ones, but is that really the best course when my future benefactors are actually alive now, and so could receive my response directly? Even if I cannot currently identify which of the 100 people will behave so heroically, I do know that if I take an action benefiting the whole group I will be certain to have made some direct (advance) return to my future benefactors. Under these circumstances, I should both acknowledge the debt of gratitude I will owe, and respond as best I can in beneficence directed at the group which will spawn these heroes.

But is that not our situation, in the adult population, as we look at the children and adolescents in our own society? We know that many members of the following generation will die in police work and the military, and that many will work in menial, unrewarding occupations that will provide us with an enormous range of comforts in our old age, among them Social Security benefits greatly in excess of the fair value of our contributions. [FN335] Because *1197 we cannot make commensurate return to the specific members of that generation who will bestow these benefits in the future, how can we ignore our duty to do something now? Of course what we do will have to be directed generally at the group from which our future benefactors will come, [FN336] with the benefits we bestow spread among them, reaching some future laggards and malefactors along with the heroes. But gratitude only demands that we do our best, [EN337] and because based in benevolence it is not appalled at the possibility of inadvertently rewarding the weak and the bad. [FN338] With respect to the Twenty-Sixth Amendment, again, it was a substantial consideration with Congress in extending the franchise to eighteen-year-olds that "they will contribute a great deal to our society." [FN339]

The third-order duty of "anticipated" gratitude overlaps, complements, and sometimes corrects the consequentialist approach to community duties toward children. Both depend on the idea that children will do good things for us in the future, but part company in several key ways in responding to this premise. A consequentialist can argue that there is a duty on our part to take those actions that will make such good things more probable or more valuable. If those actions make children happier and more secure, so much the better. But if, to obtain that long-term...
maximization of utility from the young, it is necessary to treat them now in a highly punitive manner, that, too, may be our consequentialist duty. Or if no particular action by adults will increase the probability or value of children's utility contributions, then no duty of action arises at all.

From the standpoint of anticipated gratitude, by contrast, the only appropriate response to our certainty of future beneficence from today's *1198 children is corresponding beneficence on our part now. Punitive action toward those benefactors, even if it increased the level of their contribution, is clear-cut ingratitude. Likewise, the option of doing nothing is not available to us once we acknowledge the impending debt of gratitude—though we can of course moderate the level of our response depending on our reasonable assessment of the likely beneficence of the future benefactor, or our belief that in a given case we will be able to respond adequately after the kindly act toward us.

4. Gratitude, Social Norms, and Children

Taken together, finally, the requirements of second- and third-order gratitude help explain the role of culture in shaping particular moral duties to children. To the extent we are reflectively grateful for the good we have received from particular social practices in our culture-practices imbued with the requisite apparent benevolence toward future generations in the minds of the previous generations which kept them alive—we have the second-order duty of passing those values on to our children. And to the extent that our particular social practices will demand for our benefit future sacrifices from our children that we likely cannot fully repay after the fact, we owe them an immediate third-order duty of benevolence. On this basis I therefore agree fully with John Eekelaar's view that "social rules" can "attach duties to parenthood," [FN340] but unlike him I would hold that those rules create duties to children by virtue of the moral force of gratitude (and other requirements of practical reasonableness), not in spite of, or separate from, moral principles. [FN341] Moreover, I suggest, without having the space to *1199 develop the point here, that it is in the moral realm of gratitude that we can justify the wide variations in conceptions of parental duty between cultures without weakening the moral force of those duties within each culture. And from the standpoint of law in a nation of plural cultures, we can understand how terms such as "abuse," "neglect," and "best interests" may have marginally different meanings for families from different traditions. [FN342]

IV. The Moral Landscape of Duties to Children

To some extent everyone accepts the notion that children are owed duties of love and care. But proving the existence of such duties is another matter altogether. So, as Hugh Trevor-Roper tells the story, Robert Boyle in 1710 endowed a series of lectures to "prove the existence of God by natural reason." [FN343] The result was a decided disappointment, leading the deist Anthony Collins to remark: "nobody doubted the existence of the deity until the Boyle lectures had undertaken to prove it." [FN344] The most careful moral reflection is never likely to untangle fully the deep mystery of why we owe children anything, and even less to demonstrate precisely how much sacrifice that obligation requires. But it is certainly possible for such reflection to yield a better sense of the terrain of this familiar yet confusing place.

Gratitude is the right place to begin a map of moral duties toward children and adolescents. The love, kindness and obedience children show parents and other guardians-custodians they never had the chance to choose-is itself a strong basis, not just emotionally, but morally, for the obligations those adults feel toward their young, especially toward older children who have done much to deserve this bond. [FN345] Yet as Hans Jonas powerfully suggests, [FN346] even infants can contribute so powerfully to the happiness of *1200 their parents that an immediate sense of responsibility for their welfare is the only moral reaction to their helplessness.

Even though direct duties of gratitude to children are sometimes absent, they frequently arise on a transferred (second-order) or an anticipated (third-order) basis. Because we almost invariably cannot repay through direct acts of gratitude the beneficence of those who reared us, we owe comparable beneficence to our own progeny and to other children we might imagine to be beloved by our benefactors. [FN347] Just as we were cared for by the generosity of others, so too we must care for those in a similar state—or we are ungrateful. And more, when we know that in the future we will be the beneficiaries of sacrifices by young people whom we will then be unable to repay, we owe the young now a debt of special beneficence—beneficence that will necessarily be diffuse in its targets because we cannot know exactly which of the young will ultimately deserve it. [FN348] Neither the duties of transferred nor those of anticipated gratitude require us to hand down to our children a better world than the one we

received, but we must do everything in our power to give them one at least as good. And because our efforts must be
rooted not in meeting the demands of a contract (such as Laslett's "tri-contract"), [FN349] but instead in the spirit of
beneficence that gratitude demands, we are likely to feel ourselves impelled to give the young as happy an existence
as we reasonably can.

All these moral debts must be repaid, moreover, according to the special nature of gratitude's demands. We must
reflect carefully on, and acknowledge, what was good in the acts of others which gave rise to our duty of gratitude.
Because of the intimacy and long duration of the child-rearing experience, it is likely that such reflection will
produce especially confident individual conclusions about the nature of "goodness" in this context, while at the same
time making it likely that no two people, and no two societies, will agree entirely on its content. Gratitude demands,
then, that we respond not in exactly the same way, but in a way that shows commensurate beneficence. We may
conclude, for example, that the efforts of our parents to raise us with religious belief had good effects in our lives,
but that the particular religion they chose was deleterious. Our transferred debt of gratitude in raising our own
children may then require comparable efforts to awaken them to a sense of spirituality, but would allow us to
choose a different religious context (or perhaps no institutional context at all) in which to discharge that
responsibility.

Gratitude can only be a starting point, however, in canvassing the terrain of moral duty toward children, and
(depending on the orientation of the moral agent) will almost always have to be supplemented by consequentialist,
deontological, or religious considerations—perhaps, indeed, by all three together. What is more, in the modern liberal
state, a child-centered morality founded on gratitude will find the limit of its terrain at the point where family and
politics collide.

Consequentialism, which runs into deep confusion if used as a launching-off point for duties toward children,
[FN350] nevertheless can be an invaluable aid in clarifying the content of duties of beneficence once established.
The individual and communal reflection on the past that gratitude demands will produce some important conclusions
about what is "good" in the lives of the young. Yet, those conclusions will necessarily be only partial ones, and,
moreover, will be conclusions dangerously subject to all the limitations of memory. The consequentialist focus on
empirical truth, and its inherent demand that individuals subject their conclusions about the "good" to the scrutiny of
the many, seems at least a necessary check on the wildest peculiarities of parental or cultural norms, and at best an
additional means for parents and communities to understand fully what it means to bestow the commensurate beneficence
that gratitude requires. [FN351] Viewing through scientific eyes the consequences of physical abuse of
children—the graphic pictures and text in Henry Kempe's famous article on the "battered-child syndrome," [FN352]
for example—we were forced to discard our loyalty (perhaps rooted in a kind of misguided gratitude) to unchecked
parental power over the bodies of their children.

If in certain cases gratitude may need consequentialist assistance in accounting for the content of duties to the
young, in others it will likely require the assistance of Kantian considerations to establish the existence of such
duties. Thus, there are certainly a significant number of children—though overall a tiny minority—reared with such
merciless unconcern or even cruelty by their parents and their communities that positing in them a debt of
"gratitude" transferable to their own offspring seems ludicrous. [FN353] (*1202 In the context of gratitude, we
might call this, with due deference to Derek Parfit, [FN344] the problem of the "Wretched Childhood." *) If we are
to find a moral duty in these unfortunate to care for their own children, it must be on some other basis. Here Kant's
argument, sketched out in more detail above, [FN355] seems compelling: because "we have brought a person into
the world without his consent" we "incur an obligation to make the child content with his condition so far as [we]
can." [FN356] Even those who experienced unmixed suffering as children have no right to inflict suffering on
helpless children, and should some degree of positive responsibility for bringing happiness to children they
themselves create. Likewise, those who experienced only very limited beneficence as children may, on the basis laid
by Kant, take on themselves responsibility for meeting more fully the needs of the young than strict considerations
of gratitude would require. [FN357]

For others, questions about the "hard cases" of duty are answered in religious belief. [FN358] Thus Joseph, who
was sold by his brothers into slavery, named his first-born son Manasseh, "'[b]ecause,' he said 'God has made me
forget all my suffering and all my father's household,'" and his second son Ephraim. "'[b]ecause,' he said 'God has
made me fruitful in the country of my misfortune.'" [FN359] Gratitude to God may be reason enough to name and to

care for the young. Or if not that, then hope of God's rewards and fear of God's wrath may inspire such responsibility. As Christ declared, "[a]nyone who welcomes a little child like this in my name welcomes me . . . ., [b]ut anyone who is an obstacle [to] these little ones . . . would be better drowned in the depths of the sea with a great millstone round his neck." [FN360] So Dante would place Archbishop Ruggieri, who starved to death the children of Count Ugolino, in the Ninth Circle of Hell, where the wicked cleric would be eternally eaten by the Count himself, who, to save himself from starvation, had eaten his own children's flesh. [FN361]

This odd, shifting terrain of moral duty toward the young-entered most easily by means of gratitude but traveled fully only with the help of other ethical or religious vehicles-is, finally, bounded in its farthest reaches by the claims of the contractarian liberal state. The "goods" that parents and *1203 communities choose to bestow on the young must include, again in the words of Prince, "the healthy, well-rounded growth of young people into full maturity as citizens, with all that implies." [FN362] Adults may not so entirely devote themselves to the welfare of children that they neglect their own obligations to the State, nor may they raise children in such a way that they grow up to be incapable of taking on responsibilities of liberal citizenship. [FN363] Yet as Locke plainly saw, just as the political claims of the liberal state are not rooted in, nor defined by, the obligations of parenthood, so, too, the rights and duties of parents do not arise out of political authority and cannot ultimately be finally defined by the State. [FN364] So even as it set boundaries on the reach of parental prerogatives, the Prince Court carefully, and famously, recognized "the private realm of family life which the state cannot enter." [FN365]

V. Conclusion

What gratitude demands from you, in answer to
My pleading. As you admit, you clasped my hand, and knelt
Before me, and touched my cheek. I kneel to you, and touch
Your hand, your cheek. I beg in turn what you begged then.
I implore you, do not tear my child from me, do not
Kill her. [FN366]

*1204 When Hecabe, widow of Priam and former Queen of Troy (now a slave), learns from Odysseus that her daughter Polyxena is to be sacrificed by the Greeks, she does not plead for her daughter in the language of universal justice, the general welfare, or even a limited social contract. Instead, she reminds him of the moment, before Troy's fall, when he was within the city's walls as a spy and clung to the Queen's knees begging not to be exposed and killed. [FN367] Having shown him mercy then, she now demands her daughter's life in the language of gratitude, a transferred duty of gratitude.

Odysseus acknowledges her moral claim but dismisses it in terms of utility, impartiality and, shockingly, his perverse notion of "gratitude." First, the sacrifice is necessary because it is specifically to honor the dead Achilles, and failing to so honor him would have these consequences:
   Just suppose, now, that once more
   We had to mobilize and fight our enemies:
   A man would ask himself, "Shall I join up and fight?
   Or stay safe here at home, seeing that those who are killed
   Receive no special honour?"
   [FN368]

As for her particular sorrow, she should try to be impartial and consider the pain of others:
   And if you think, Hecabe,
   That what you suffer is pitiful, let me tell you this:
   We have at home old women no less miserable
   Than you, and old men too, and young wives who have lost
   Heroic husbands, buried here in Trojan dust. [FN369]

Finally, the sacrifice is justified by the "ingratitude" of the Trojans which it punishes. [FN370]

Hecabe has no strength to respond to this web of rationalization, but at least with respect to the reliance on gratitude she has already answered Odysseus:

They had found a neat excuse for passing their decree
To shed this child's blood? What was it persuaded them
*1205 To spurn the more appropriate offering of a bull,
And signalize this grave with human sacrifice?
Was it their sense of duty? Or did Achilles want
A life in payment for his life? [FN371]

Gratitude is a duty rooted in benevolence, justifying and requiring counterposing kindness and mercy. It is not "appropriate" to engage in the merciless evil of human sacrifice, either to show gratitude or punish its opposite.

Hecabe watches her daughter leave to go to her death, but her horror is not at an end. Soon after, she learns that her last surviving son, Polydorus, was murdered by her former friend Polymestor, who, having received Hecabe's hospitality in Troy, agreed to keep the young Polydorus out of harm's way in Thrace for the duration of the siege of Troy. At first she responds by appealing to Agamemnon in terms of gratitude, the duty of transferred gratitude that Polymestor owed the young boy as a result of accepting his parents' kindnesses:

[H]elp me take revenge
On this most false and perjured friend, who without fear
Of powers below or powers above, has done a deed
Of blackest treachery!
...
If men kill guests, rob temples and are not condemned
And punished, there is no more justice on the earth. [FN372]

Yet again she is rebuffed, and again for consequentialist reasons: Agamemnon tells her he cannot afford to take action against Polymestor because it might cause "the army [to] think I have connived at killing Polymestor for Cassandra's love." [FN373]

And that is Hecabe's downfall, for she can now no longer resist what she herself earlier condemned-the return of evil for ingratitude. Marshalling allies among the other slave women, and cleverly insinuating herself into Polymestor's tent, she blinds him, kills his sons, and then justifies herself before Agamemnon as having done only what Polymestor's treachery demanded. The Greek king, ever a pole star of moral insipidity, accepts her *1206 defense. [FN374] Yet we know better. As Martha Nussbaum describes it: "When [Hecabe] stabs her image in another she destroys something deep about herself, namely her tie to the other and to otherness," and becomes more like a beast than a human being. [FN375] Euripides leaves us with a prophecy of her lonely and miserable death.

Gratitude and the duty to nurture and protect children are also things "deep" about us, and they are qualities that are ultimately bound closely together. Yet when we plead for children, and especially for older children and adolescents, we too often forget that tie. We urge Justice in its "thin" modern terms, with the "rights" that flow from it, and we beg society to recognize how much it has to gain from ensuring care for the young. We appeal to imaginary social compacts that claim to demand protection of the young within the family, when in fact they can barely justify the larger political arrangements for which they were originally conceived. Yet we are surprised when modern Agamemnons turn a deaf ear, and when using these modern tools we have trouble explaining even to ourselves why duties to the young exist.

Ignoring the rhetoric and the moral tradition of gratitude in mapping out our duties to children is a costly mistake. For gratitude calls us to respond, not to metaphorical constructions, but to events that actually occurred in the past, or that will almost certainly occur in the future.

What we begged as children, our children in turn beg of us.

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[FN3]. The Iliad of Homer bk. 42, ll. 505-06 (Richmond Lattimore trans., The Univ. Chicago Press 1951) (n.d.).

[FN4]. Robert Nozick, The Examined Life 28 (1989); see also, e.g., Hilary Rodham Clinton, It Takes a Village 7 (1996) (describing how she was "overwhelmed by the love and responsibility [she] felt" for her newborn daughter).


[FN7]. See Jones, supra note 6, at 1131-34.


[FN9]. Jonas, supra note 5, at 134-35. Unfortunately, Jonas did not explicitly describe how the is-equals-ought moral status of newborn children supports wider conceptions of public responsibility. Nor, again unfortunately for this project, did he express his views concerning the moral claims of older children or adolescents on parents and community.

[FN10]. "Each of us," Hilary Rodham Clinton writes, "has the opportunity and responsibility to protect and nurture children . . . as parents and through the myriad choices we make as employers, workers, consumers, volunteers, and citizens." Clinton, supra note 4, at 317 (emphasis added). Republicans declared in their famously non-statist 1996 platform that children are among the "most vulnerable of our people" whom they (and presumably all Americans) have a "commitment . . . to protect"-who indeed "are entitled to the best education in the world," and who deserve to receive a "better environment than we have today." The Platform: Prosperity, Self-Government and 'Moral Clarity', 54 Cong. Q. 2317, 2328 (1996). And Ross Perot told the Reform Party Convention: "I am absolutely committed, irrevocably committed to passing on a better world to our children and grandchildren." Susan Baer & Frank Langfitt, Perot Starts 2nd Bid for Presidency, Baltimore Sun, Aug. 19, 1996, at A1.


[FN15]. Ex Parte Crouse, 4 Whart. 9, 11 (Pa. 1838).


[FN21]. See Genesis 21:8-21. To be fair, Abraham's action came only after Sarah had given birth to Isaac and had insisted on Ishmael's (and his mother Hagar's) exile-and perhaps more to the point, only after Abraham had received Yahweh's assurance that Ishmael would found a "great nation." Id. at 21:9-13. Still, they were sent into the wilds unprotected, and even Yahweh only helped them when their water was spent and when Hagar "abandoned the child under a bush" and cried out, "I cannot see the child die." Id. at 21:14-16.


[FN23]. See The Iliad of Homer, supra note 3, at bk. 3, ll. 56-64, bk. 4, ll. 164-65, bk. 6, ll. 281-84.


[FN28]. See, e.g., Katharine T. Bartlett, Re-Expressing Parenthood, 98 Yale L.J. 293, 294 (1988) (arguing that parental responsibility should be "based upon notions of benevolence and responsibility" and not "exchange and individual rights"); Janet L. Dolgin, The Fate of Childhood: Legal Models of Children and the Parent-Child Relationship, 61 Alb. L. Rev. 345, 347 (1997) (finding that American law is caught in deep ambivalence between traditional and contemporary conceptions of childhood and the role of parents); Wendy Anton Fitzgerald, Maturity, Difference, and Mystery: Children's Perspectives and the Law, 36 Ariz. L. Rev. 11, 19 (1994) (urging that "we imagine that childhood is an inherently valuable state of being," so that children would have greater financial and procedural rights in family disputes); Elizabeth S. Scott & Robert E. Scott, Parents as Fiduciaries, 81 Va. L. Rev. 2401, 2401-03 (1995) (arguing that parental responsibilities should be reconceived using concepts from the law of agency and trusts); Barbara Bennett Woodhouse, Hatching the Egg: A Child-Centered Perspective on Parents' Rights, 14 Cardozo L. Rev. 1747, 1752 (1993) (contending that parental rights should be conceived as stewardship,
governed by children's "need-based rights").

[FN29]. With regard specifically to parental obligations, two marked exceptions to this observation are the works of Jeffrey Blustein, Parents and Children: The Ethics of the Family 101-61 (1982) (attempting to formulate a "moral theory of parenthood"), and John Eekelaar, Are Parents Morally Obliged to Care for Their Children?, 11 Oxford J. Legal Stud. 340 (1991). More recently, Marsha Garrison has visited some of these questions-in particular, "how much a parent owes to his child"-in arguing that a "community" model for monetary child support obligations of divorced or unmarried parents is most consistent with current law, public opinion, and public policy goals. Marsha Garrison, Autonomy or Community?: An Evaluation of Two Models of Parental Obligation, 86 Cal. L. Rev. 41, 74, 92-117 (1998). For a foundational discussion of the post-divorce child-support obligation that arrives, on wholly consequentialist grounds, at a somewhat broader "community" ideal than Garrison's, see Stephen Parker, Child Support: Rights and Consequences, 6 Int'l J.L. & Fam. 148 (1992). Like Blustein's and Eekelaar's pieces, this article attempts to assess parental obligations apart from, and regardless of, marital duties or status, but it attempts as well to extend the inquiry to consider obligations of non-parents, and indeed the community as a whole, toward children and adolescents. Like Garrison's article, this article will approach the question of the extent of duties to children by examining competing moral theories regarding parental obligation, but it is more centrally concerned with the fundamental basis of those duties-the "why" of duties. See infra text accompanying notes 37-42.


[FN31]. Id. at 26-27; see also Laurence D. Houlgate, The Child and the State: A Normative Theory of Juvenile Rights 51 (1980) (arguing that duties to care for children are "not perfect duties" in Kantian terms). Connecting specific children with specific adults, as social norms do, can cause the rights of the former to correspond with the duties of the latter, see O'Neill, supra note 30, at 27, but assuming any specific connection on that basis begs the question as to the moral value of the social norm itself, see infra text accompanying notes 98-102, and note 330.

[FN32]. What, for example, is the parental "duty" that arises out of a "mature" teenage girl's "right" to have an abortion under the doctrine of Bellotti v. Baird, 444 U.S. 887 (1979) and the cases that follow it? At no point have these courts suggested that parents are required to undertake any positive action either to pay for an abortion, support a non-aborting daughter through pregnancy, or contribute to the upbringing of a resulting grandchild. Their legal "duty" is simply, in the face of a child's "mature" constitutionally protected decision, to do nothing. For many parents, doing nothing may sharply conflict with their sense of duty to provide moral guidance to a minor in their care and, for some, to protect the life of an unborn grandchild.

[FN33]. For a recent overview of that literature, see Stephen G. Gilles, On Educating Children: A Parentalist Manifesto, 63 U. Chi. L. Rev. 937 (1996). Elizabeth S. Scott and Robert E. Scott have recently argued that parental rights can be seen as a kind of incentive for parents to fulfill child-rearing responsibilities, with parents in a role analogous to trustees, but their analysis does not address the moral basis of those responsibilities. See Scott & Scott, supra note 28, at 2401, 2456-62. For an argument against recognizing "parental rights," as opposed to a limited parental privilege to raise children, see James G. Dwyer, Parents' Religion and Children's Welfare: Debunking the Doctrine of Parent's Rights, 82 Cal. L. Rev. 1371 (1994).

[FN34]. The range of options defined by a right might of course be limited by a duty-thus, parents are usually seen as having a right to correct and discipline their child that is circumscribed by their duty to avoid physical and emotional abuse of the child. But, the boundaries established by a "duty" on a "right" are seldom likely, as in this example, to be discerned or justified by reference simply to the right itself. Arguably, there are cases where holding a "right" implies a moral "duty" to act-e.g., the right to vote-but such instances are likely to involve simple, wholly straightforward actions (voting) instead of complex, highly nuanced ones (discipline). For Hegel, at the highest level rights and duties united in an ideal conception of the State: "In the state, as something ethical, as the inter-penetration of the substantive and the particular, my obligation to what is substantive is at the same time the embodiment of my particular freedom. This means that in the state duty and right are united in one and the same relation." Hegel's Philosophy of Right 161 (T.M. Knox trans., Oxford Univ. Press 5th ed. 1965) (1821). But he recognized that: In the spheres of personal rights and morality, the necessary bearing of right and duty on one another falls short of actualization . . . . In the family, the content of a son's duties to his father differs from the content of his rights against him; the content of the rights of a member of civil society is not the same as the content
of his duties to his prince and government. Id. at 161-62.

[FN35]. By contrast, in reciprocal rights situations, such as a contract, a defined right held by one party (e.g., specific performance of a real estate contract) may be seen as implying a similar right in the other party, and so a corresponding duty in the holder of the first right.

[FN36]. "The Power, then, that Parents have over their Children, arises from that Duty which is incumbent on them, to take care of their off-spring, during the imperfect state of Childhood." 2 John Locke, Two Treatises of Government § 58, at 348 (Peter Laslett ed., 1965) (n.d.).

[FN37]. John Stuart Mill, for example, argued that "Hardly anyone, indeed, will deny that it is one of the most sacred duties of the parents [[, . . .] after summoning a human being into the world, to give to that being an education fitting him to perform his part well in life towards others and towards himself," and that a parent's right to make choices about education were subordinate to that first duty. John Stuart Mill, On Liberty 176 (1974, 1st ed. 1859); see also Lehr v. Robertson, 463 U.S. 248, 261 (1983) (holding that only unmarried fathers who have demonstrated "full commitment to . . . [[[meeting] responsibilities of parenthood" have constitutionally cognizable rights in their children); Quillen v. Walcott, 434 U.S. 246, 256 (1978) (holding that unwed father who had failed to legitimize his child and had provided only irregular support could not block adoption by stepfather).

[FN38]. Eckelaar, supra note 29, at 340.

[FN39]. For the purposes of this inquiry, this paper rejects Janet Ainsworth's recent suggestion, based partly on "radical epistemological skepticism," that "human life stages such as childhood and adolescence" are merely "socially constructed." Ainsworth, supra note 25, at 1092-96. Ainsworth suggests that empirical research cannot be relied on to support the notion of distinctive life stages. See id. at 1092. But cf. Elizabeth Scott et al., Evaluating Adolescent Decisionmaking in Legal Contexts, 19 L. & Hum. Behav. 221, 226 (1995) (reviewing evidence that even in later childhood significant differences may exist between young and old which justify their separate legal treatment).

[FN40]. Cass R. Sunstein, Social Norms and Social Roles, 96 Colum. L. Rev. 903, 914 (1996) (describing "norms" as "social attitudes of approval and disapproval, specifying what ought to be done and what ought not to be done").

[FN41]. See id. at 964 (arguing that "[m]any laws have an expressive function . . . . They are an effort to constitute and to affect social meanings, social norms, and social roles"); see generally Lawrence Lessig, The Regulation of Social Meaning, 62 U. Chi. L. Rev. 943 (1995) (distinguishing between "norm talk" and "meaning talk," with the latter providing a vehicle to assess value and costs of social norms); Cass R. Sunstein, On the Expressive Function of Law, 144 U. Pa. L. Rev. 2021 (1996) (examining ability of law to alter social norms through law's "expressive" function, as opposed to law's capacity to alter behavior directly). Perhaps the most powerful, yet balanced, appreciation of the potential for moral arguments to influence legal change is that of John Stuart Mill, in his famous assessment of Jeremy Bentham: We do not mean that his writings caused the Reform Bill, or that the Appropriations Clause owns him as its parent: the changes which have been made, and the greater changes which will be made, in our institutions, are not the work of philosophers, but of the interests and instincts of large portions of society recently grown into strength. But Bentham gave voice to those interests and instincts: until he spoke out, those who found our institutions unsuited to them did not dare to say so, did not dare consciously to think so . . . . Bentham broke the spell. J.S. Mill, Bentham, in John Stuart Mill and Jeremy Bentham, Utilitarianism and Other Essays 132, 134 (Alan Ryan ed., 1987).

[FN42]. But, it is also only fair that I come clean about the mundane, personal reasons for my own interest in pursuing the question of obligations toward the young. For about ten years I worked in a program for homeless and runaway youth, and not infrequently found myself in the same position as thousands of other lawyers and social workers in similar places-desperately trying to persuade a parent (or often any minimally relevant, apparently trustworthy adult) to do something for a child, most often simply to take the youth back into the house. And while the law was occasionally relevant to these conversations, usually it was not. Asking that misbehavior be overlooked, that expectations or disciplinary rules be softened, that potentially abusive conditions be changed, that applications for immigration benefits be signed: all these requests required more than the language of law, and sometimes
another language altogether. "Why should I do more?" a parent asks, and what do we say? "Why should I take her in?" an aunt queries, and how do we answer? "Why should I waste my committee's time with a loser-youth issue?" a legislator demands, and what is our reply? We need more words of persuasion in our language about kids.


[FN44]. See Jonas, supra note 5, at 131. It is also possible, of course, that I am biased on this point, because my own experience in services to children was limited to working with severely troubled teenagers.


[FN46]. Robert Nozick, Philosophical Explanations 451 (1981) ("Ethical pull is the term . . . for the moral claim on us exerted by others so that, in virtue of what they are like, we ought to behave toward them in certain ways and not in others . . . . "). For a discussion of the role of "ethical pull" in constructing duties toward children, see infra text accompanying notes 141-46.


[FN50]. See Loken, supra note 24, at 1716-27.


[FN52]. That is, assuming for example that no distinction could be made between the three parents in respect of "affection" given to their respective children. While it may seem impossible to believe that parents so different in their actions toward their children could be similar in the emotional affection they bestowed, longitudinal research indicates that there is little or no connection between a non-custodial father's contacts with, and affection for, a child and the willingness of such a father to pay for schooling after the child reaches the age of majority. See Judith S. Wallerstein & Shauna B. Corbin, Father-Child Relationships After Divorce: Child Support and Educational Opportunity, 20 Fam. L.Q. 109, 118-25 (1986).


[FN54]. See J.S. Mill, Utilitarianism, in Utilitarianism and Other Essays supra note 41, at 272, 278 ("Utility, or the Greatest Happiness Principle, holds that actions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness.").

[FN55]. See Unif. Marriage & Divorce Act § 402 (amended 1973), 9A U.L.A. 282 (1998 & Supp. 1999) ("The court shall determine custody in accordance with the best interest of the child."). Of the five factors listed for determining "best interest," none permit the court to weigh the relative sacrifices made by the competing parties on behalf of the child; one listed factor, the "mental and physical health of all individuals involved," could easily work to defeat the claim of a parent who had heroically struggled against illness or disability to provide care to a child in...
favor of a parent for whom the sacrifices involved in that role were comparatively minor. Id. § 402(5).


[FN57] See Besharov, supra note 13, at 66-68.

[FN58] United Nations Convention on the Rights of the Child, supra note 5, at 278. Situations involving "abuse or neglect of the child by the parents" are described only as examples of when the "best interest" standard may be satisfied. Id.


[FN60] Id. at 166.

[FN61] The language in Prince echoes the declaration of Meyer v. Nebraska, 262 U.S. 390 (1923), that "the State may do much, go very far, indeed, in order to improve the quality of its citizens." Id. at 401. It also echoes the standard, applied in Meyer, that parental choice is limited to actions "not injurious to the health, morals or understanding of the ordinary child"-that is, to actions without bad consequences. Id. at 403; see also Pierce v. Society of Sisters, 268 U.S. 510, 534-35 (1925) (coupling parental rights with "the high duty . . . to recognize and prepare [the child] for additional obligations" and invoking "public welfare" as justifying state intervention in educational choice) (emphasis added).


[FN63] See id. at 21-29 (relying, in part, on empirical studies of the effects of juvenile justice procedures on crime prevention and rehabilitation of offenders).

[FN64] Id. at 66-67 (Harlan, J., concurring and dissenting) (emphasis added).

[FN65] See, e.g., Schall v. Martin, 467 U.S. 253, 264 (1984) (upholding New York's pretrial detention of juveniles based on the "combined interest in protecting both the community and the juvenile himself from the consequences of future criminal conduct") (emphasis added); McKeiver v. Pennsylvania, 403 U.S. 528, 547 (1971) (refusing to recognize a right of juveniles to jury trials in delinquency proceedings after balancing the value of jury trials against the "promise" and "rehabilitative goals" of the juvenile justice system).

[FN66] Joseph Goldstein et al., The Best Interests of the Child: The Least Detrimental Alternative 8-16 (1996). Among the critical assessments of the "minimum intervention" approach perhaps the most powerful is Marsha Garrison, Child Welfare Decisionmaking: In Search of the Least Drastic Alternative, 75 Geo. L.J. 1745 (1987); notably, however, that critique is rooted in the same concern about finding the best outcomes for children at risk, though with a dramatically different view of the relevant evidence.


[FN68] A classic example of such consequentialist debunking is the work of Laurence Steinberg and his colleagues on part-time employment of high school students, showing that, contrary to all popular expectations that it is character-building, such work (if more than minimal) has dramatically negative effects on teenagers' commitment to schoolwork, while increasing their use of drugs and alcohol. See Steinberg, supra note 67, at 163-73 (summarizing studies); Laurence Steinberg & Elizabeth Cauffman, The Impact of Employment on Adolescent Development, 11

[FN69]. See supra text accompanying notes 52-54. As Bernard Williams puts it, "I take it to be the central ideal of consequentialism that the only kind of thing that has intrinsic value is states of affairs, and that anything else that has value has it because it conduces to some intrinsically valuable state of affairs." Bernard Williams, Consequentialism and Integrity, in Consequentialism and Its Critics, supra note 53, at 20, 21; see also Phillippa Foot, Utilitarianism and the Virtues, in Consequentialism and Its Critics, supra note 53, at 224, 227 ("What is it . . . that is so compelling about consequentialism? It is, I think, that the rather simple thought that it can never be right to prefer a worse state of affairs to a better."); cf. John Finnis, Natural Law and Natural Rights 61 (1980) (defining as a "basic value" within natural law theory any "general form of good that can be participated in or realized in indefinitely many ways on indefinitely many occasions" and distinguishing such "general" good from a more limited form of "good" that is "the particular object of a particular person's desire, choice, or action").

[FN70]. See Samuel Freeman, Utilitarianism, Deontology, and the Priority of Right, 23 Phil. & Pub. Aff. 313, 349 (1994). It might seem open to a consequentialist to deny this point, and to contend that she is willing to weigh multiple goods in her utility calculus. See Peter Railton, Alienation, Consequentialism, and the Demands of Morality, in Consequentialism and Its Critics, supra note 53, at 93, 109-10. However, this is in fact self-defeating-for it would turn consequentialism into something much more like natural law ethics, which has always championed the effort to realize multiple, incommensurable goods through personal and social action. See Finnis, supra note 69, at 112-15 (contrasting single-sum approach of consequentialism with multiple-goods approach of natural law). In her recent article considering different "models" for parental child support obligations, Marsha Garrison examines two different consequentialist approaches, one based on "utility" and one on "equality," with no stated preference as to which "good" is superior. See Garrison, supra note 29, at 76-80. These differing "goods" produce different support formulas, see id. at 78, 93-94, and it thus seems fair to say that in attempting to apply consequentialism to parental duty Garrison has graphically illustrated one of its central difficulties. Nor does she explain, as at least one other author has, see Parker, supra note 29, at 154-62, why any strong duty of parental support arises on consequentialist grounds. For a discussion of Parker's analysis, see infra note 88.

[FN71]. For an international perspective on the striking differences in childrearing goals among parents polled in eight different countries, see Lois Wladis Hoffman, Cross-Cultural Differences in Childrearing Goals, in Parental Behavior in Diverse Societies 99, 99-122 (Robert A. LeVine et al. eds., 1988). In the United States, for example, 48% of urban mothers said that the quality they would most like to see in their children is "to be a good person"; 25% said "to be independent and self-reliant"; and 15% said "to mind their parents." Id. at 103 tbl.I. For urban Sundanese mothers in Indonesia, by contrast, those percentages were 15%, 14%, and 64%, respectively. See id.

[FN72]. See Jones, supra note 6, at 1133-35; Daly & Wilson, supra note 6, at 1273-83.

[FN73]. Finnis, supra note 69, at 112-15.

[FN74]. Foot, supra note 69, at 224.

[FN75]. While the point is not worth discussing at length here, the problem of multiple basic goods in the parent-child relationship appears to me to make a turn to "rule-utilitarianism" no more persuasive as an explanation of parental duty than "act-utilitarianism." How can one formulate a single standard or "rule" for parental obligation that can effectively cut across the wide differences in the circumstances of individual children-especially in their adolescent years? (To a large extent this is the same difficulty that we will encounter in confronting a deontological basis for parental duty, which is the subject of the next section.) Moreover, strict rule-consequentialism, by requiring moral agents to follow a rule even when better consequences would flow from a different action in the situation at hand, seems particularly unattractive as a guide to parents attempting to meet the constantly changing circumstances presented by a growing child. See J.J.C. Smart, Extreme and Restricted Utilitarianism, in Theories of Ethics 171, 176-183 (Philippa Foot ed., 1967).

[FN76]. It is worth noting, of course, that the problem of choosing among multiple goods is not at all unique to consequentialism, even if it poses a peculiar threat to the coherence of consequentialist moral arithmetic. See Parker, supra note 29, at 167 ("If, say, autonomy or liberty are to be used as principles from which rights are deduced or...
constructed then a procedure is required for dealing with the clashes of rights than [sic] inevitably soon occur."). For a discussion of an approach to the problem of multiple goods within natural law theory, see infra text notes 271-75.

[FN77]. Houlgate, supra note 31, at 112.

[FN78]. Id. at 113.

[FN79]. See id. at 112-13. Because Houlgate was concerned almost entirely with defining the state's interest in children, unfortunately, he does not develop a basis for imputing this duty to any particular person, including parents. Indeed, he earlier described duties to children as "imperfect"-that is, not clearly attributable to any one person-though this may merely have been his view of Kantian ethical principles. See id.

[FN80]. See id. at 132-37.

[FN81]. See Philip Alston, The Best Interests Principle: Towards a Reconciliation of Culture and Human Rights, 8 Int'l J.L. & Fam. 1, 19-23 (1994) (arguing that cultural context is crucial to interpreting international "best interest of the child" standards, though certain practices such as "female circumcision" or the "non-education of lower class or caste children" might violate international standards even if culturally sanctioned); Stephen Parker, The Best Interests of the Child-Principles and Problems, 8 Int'l J.L. & Fam. 26, 31-40 (1994) (noting the breadth of "rule skepticism" in modern thought that helps make the "best interest" standard indeterminate, but arguing that at least a "local convention" is possible to give it some content).

[FN82]. See Peter Railton, supra note 70, at 93-97; see also John Rawls, A Theory of Justice 500-01 (1971) (describing how the utilitarian calculus can "encourage self-hatred" and "[distort] the development of affective ties").

[FN83]. See Loken, supra note 24, at 1759-62.


[FN87]. Following Charles Dickens and Bernard Williams, Christina Hoff Sommers labels this stance the "Jellyby fallacy." Christina Hoff Sommers, Filial Morality, 86 J. Phil. 439, 443 (1986); see also George P. Fletcher, Loyalty: An Essay on the Morality of Relationships 11-16 (1993) (arguing that utilitarianism fails properly to value intimate relationships). A less unusual scenario involving arguably similar trade-offs would be a parent's decision to adopt a disadvantaged or disabled child (or several children), thereby reducing drastically the time and resources available to children previously born or adopted in the family. Cf. Martha Minow, All in the Family & in All Families: Membership, Loving, and Owing, 95 W. Va. L. Rev. 275, 305, 325-26 (1992-93) (discussing dilemma confronting a parent of two children, one of whom needs a bone marrow transplant, which the other child could supply, but not without risk to the donor child, as an illustration of "the special problems posed by multiple relationships among family members"). For a consequentialist view that seems, at least in Hoff Sommers' view, to hold that the Jellyby Fallacy is not in fact a fallacy, see Peter Singer, The Expanding Circle: Ethics and Sociobiology 101 (1981) (arguing that a dinner with friends should have equal weight, in a utilitarian calculus, as a visit to one's father).

[FN88]. Stephen Parker, one of the rare consequentialists to wrestle directly with the question of parental duty, suggests using as the measuring stick the "good of non-betrayal"-that is, "the good enjoyed by a community which justifiably believes that the opportunities in life of all its members have not been impaired by the reasonably avoidable adverse consequences of past adult choices." Parker, supra note 29, at 157. While not without value for measuring basic care for children, this standard fails to resolve what "opportunities" are to count in the lives of...
children, and so does not serve to answer the difficulties posed by a plurality of goods.

[FN89]. See Henry Sidgwick, The Methods of Ethics 411-17 (1962); L.W. Sumner, The Moral Foundation of Rights 170-71 (1987). It is, of course, possible to limit analysis of consequences to those affecting only one person or a limited group, but that will greatly weaken the persuasive normative force of the calculus as a guide to all; cf. Saul Levmore, Unconditional Relationships, 76 B.U. L. Rev. 807, 833 (1996) (arguing that refusal to permit unfettered bargaining in certain relationships because of undesirable consequences for the community ignores perhaps far greater costs imposed on non-community members).

[FN90]. Williams, supra note 69, at 20, 42-50; see also Rawls, supra note 82, at 189 (stating that the classical doctrine of utilitarianism is “the ethic of perfect altruists”). In this regard, it is notable that Liam B. Murphy defends consequentialism against Williams’s charge of “over-demandingness” by positing an additional “compliance condition”-which would limit individual sacrifices to roughly the level at which they would be necessary if everyone in society were also acting in full compliance with the demands of consequentialist morality. See Liam B. Murphy, The Demands of Beneficence, 22 Phil. & Pub. Aff. 267, 277-81 (1993). Yet Murphy admits that neither the compliance condition nor other prominent consequentialist attempts to limit the demands of beneficence are successful in addressing “special obligations,” and specifically familial obligations. See id. at 290-92.

[FN91]. See Posner, supra note 84, at 57 (citing "the utilitarian's readiness to sacrifice the innocent individual on the altar of social need"); Martha Minow, supra note 87, at 325 (weighing "greatest good for the greatest number within the family" fails adequately to solve problems involving conflicts of needs among siblings).

[FN92]. See, e.g., Gregory Kavka, The Paradox of Future Individuals, 11 Phil. & Pub. Aff. 93, 99 (1982). The converse of this proposition, however—that adults who would be bad parents, or who otherwise know that their children would be miserable, have no moral duty to refrain from procreation—would not necessarily receive acquiescence from consequentialists.

[FN93]. Derek Parfit, Future Generations: Further Problems, 11 Phil. & Pub. Aff. 113, 148-51 (1982) (defining the "Wretched Child" as a child who "will be so multiply diseased that his life will be worse than nothing. He will never develop, will live for only a few years, and will suffer pain that cannot be relieved."). Parfit argues that "it would be wrong knowingly to conceive such a child," and that the "wrongness" would "[not] primarily lie in the effects on others . . . [but] in the predictably appalling quality of the child's life." Id. at 148.

[FN94]. Henry Sidgwick’s attempt to explain the family on utilitarian grounds fails to take account of procreative freedom. Indeed, it rests on the proposition that it “is necessary for the well-being of mankind that in each generation children should be produced in adequate numbers, neither too many nor too few”—which might well be taken to imply a utilitarian duty to procreate, or not, depending on general social circumstances. Sidgwick, supra note 89, at 435.

[FN95]. See Robert Nozick, Anarchy, State, and Utopia 41 (1974) (“Utilitarianism is notoriously inept with decisions where the number of persons is at issue.”) [hereinafter Anarchy].

[FN96]. For a description of the civil and criminal sanctions applicable to parents who fail to care adequately for severely impaired infants, see Heimer & Staffen, supra note 6, at 155-61. Despite those sanctions, however, in the urban neonatal intensive care unit studied by those authors, 17% of mothers and 28% of fathers made no visits to their infants during the term of their child’s hospitalization. See id. at 74 tbl.2.4. Ultimately, less than half of the parents studied accepted a "high" degree of responsibility for such children following discharge, and 11% assumed only a "low" degree. See id. at 121 tbl.3.2. In one case, the older brother of an infant born with severe abnormalities "felt abandoned and unloved when his mother more or less disappeared from his life" to care for the infant. Id. at 111; see also Raymond S. Duff & A.G.M. Campbell, Moral and Ethical Dilemmas in the Special-Care Nursery, 289 New. Eng. J. Med. 890, 892-93 (1973) (describing how many parents of severely impaired infants "feared that they and their other children would become socially enslaved, economically deprived, and permanently stigmatized, all perhaps for a lost cause," and how some physicians and parents might ultimately "join in a conspiracy to deny the right of a defective child to live or to die").

[FN98]. Susan C. M. Scrimshaw, Infanticide in Human Populations: Societal and Individual Concerns, in Infanticide: Comparative and Evolutionary Perspectives 439, 460-61 (Glenn Hausfater & Sarah Blaffer Hrdy eds., 1984); see also Daly & Wilson, A Sociobiological Analysis of Human Infanticide, in Infanticide: Comparative and Evolutionary Perspectives, supra, at 487, 488-93; Victor G. Rosenblum & Michael L. Budde, Historical and Cultural Considerations of Infanticide, in Infanticide and the Handicapped Newborn 1, 1 (Dennis J. Horan & Melinda Delahoyde eds., 1982) (describing how, of the justifications for infanticide, "a few of them--particularly the elimination of handicapped offspring--run through almost all infanticidal cultures"). Western societies, from the time of ancient Greece, have historically tended to resort more to "exposure" or abandonment of undesirable children than to outright infanticide. See generally John Boswell, The Kindness of Strangers : The Abandonment of Children in Western Europe from Late Antiquity to the Renaissance (1988) (history of attitudes and practices that permitted parents to cast off responsibility for unwanted children, and of highly variable social and legal responses to the plight of abandoned children).

[FN99]. See Sidgwick, supra note 89, at 435 (citing the "common" belief that "the best or even the only known means" of ensuring the care and education of children is through "the existing institution of the Family").

[FN100]. Indeed, even the weaker argument for permissive biological parenting has detractors-most famously, of course, Plato in the Republic. See Plato, The Republic, in The Collected Dialogues of Plato 575, 696 (Edith Hamilton & Huntington Cairns eds., Paul Shorey trans., 7th ed. 1973) (n.d.) (457(d)) (arguing that "the greatest good" will result in his ideal republic if the children will be held in common, "and that no parent shall know its own offspring nor any child its parent"). Perhaps the most crucial historical example of a consequentialist decision to refuse permission to a parent to raise her child was that taken by Protestant Scottish nobles in denying Mary Queen of Scots access to her son, James VI, later James I of England. Those nobles, and of course Elizabeth I, knew that if Mary were allowed to play her role as mother, she would raise James as a Catholic, with implications that to most Englishmen of the era would have seemed spectacularly contrary to the general good. See generally Antonia Fraser, Mary Queen of Scots 341-42, 455-62 (1969) (biography); Garrett Mattingly, The Armada 13-18 (1959) (discussing political implications of the religious allegiance of Mary). The political disutility of family ties may be observed in the efforts of late medieval and early modern Europe to free society from the extreme family solidarity that led to private vengeance and the "vendetta," see Marc Bloch, Feudal Society 125-30 (1961), and to forge united, monarchical nation states by subduing the great aristocratic families, see id. at 375-408.


[FN103]. See Scoccia, supra note 86, at 334 ("Utility maximizers only have the duty to make the kinds of sacrifices that people with their level of benevolence can make . . . .").

[FN104]. See Family Economics Research Group, U.S. Dep't of Agriculture, Expenditures on a Child by Husband-Wife Families: 1990 11 (1991) (overall costs to maintain a teenager are about 25% higher than those for an infant or toddler).

[FN105]. See Joseph F. Kett, Rites of Passage 17-29, 93-102 (1977). In pre-industrial Europe it was relatively common for children as young as 10 to be sent from home to earn their living in domestic service. See J. Hajnal, Two Kinds of Pre-Industrial Household Formation System, in Family Forms in Historic Europe 65, 95-97 (Richard Wall et al. eds., 1983).

[FN106]. In developing countries, millions of young children and adolescents are bonded laborers, sold by their parents or given away as payment for past debts, and hundreds of thousands are used as child prostitutes. See Roger J.R. Levesgue, Sexual Use, Abuse and Exploitation of Children: Challenges in Implementing Children's Human Rights, 60 Brook. L. Rev. 959, 978-87 (1994); Maureen Moran, Comment, Ending Exploitative Child Labor

[FN107]. Sidgwick, supra note 89, at 435.

[FN108]. Clinton, supra note 4, at 318 (emphasis added).

[FN109]. See Finkelhor, supra note 45, at 113-17, 158-61 (reviewing serious risks faced by "thrownaways"); Loken, supra note 24, at 1730-33, 1748-56 (reviewing the risks and lack of effective services for such minors).

[FN110]. It is true, of course, that consequentialist doctrine requires the moral agent to remember "that in particular cases where his own interests are involved his calculations are likely to be biased in his own favour," and to make the appropriate correction in order to arrive at the correct utility-value of a given action. Smart, supra note 75, at 175. For the classic debunking of the "self-deceiving utilitarian" objection, see J.S. Mill, Whewell on Moral Philosophy, in Utilitarianism and Other Essays, supra note 41, at 228, 246-47. Given this human tendency toward self-absorption, however, and given perhaps an additional human tendency toward lack of strict moral rigor-Original Sin?-it may ultimately be dangerous to adopt consequentialism as a touchstone of public morality in an area where the political arena excludes the very group most likely to suffer ill effects from a given public choice. Cf. United States v. Carolene Products Co., 304 U.S. 144, 153 n.4 (1938) (expressing concern about "prejudice against discrete and insular minorities" that "tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities").


[FN112]. This difficult term appears to mean more than an "intention"; it is a somewhat general rule that "function[s] to trump otherwise legitimate consequential calculations." Heidi M. Hurd, What in the World Is Wrong?, 5 J. Contemp. Legal Issues 157, 164 (1994).

[FN113]. See Kant, Fundamental Principles, supra note 111, at 48-59.


[FN115]. Id. at 98-99 (footnote omitted) (Doctrine of Right, § 28).


[FN117]. Metaphysics of Morals, supra note 114, at 99. Kant's argument for parental duty here seems perfectly consistent, though not coextensive, with a natural law formulation of "commutative" or "corrective" justice that requires us to make amends for injuries we inflict on others. See Finnis, supra note 69, at 177-84.

[FN118]. Metaphysics of Morals, supra note 114, at 98.

[FN119]. Id. at 50.

[FN120]. Fundamental Principles, supra note 111, at 57.

[FN121]. Hobbes apparently believed that infants could give tacit, binding consent to the rule of their parents, but this view was in severe tension with others of his statements that seem clearly to imply that children lack the power of giving meaningful consent. See Blustein, supra note 29, at 70-71.

[FN122]. See Metaphysics of Morals, supra note 114, at 99. Kant states: No concept can be formed of how it is possible for God to create free beings, for it seems as if all their future actions would have to be predetermined by that first act, included in the chain of natural necessity and therefore not free. But that such beings . . . are still free
the categorical imperative proves for morally practical purposes, as through an authoritative decision of reason without its being able to make this relation of cause to effect comprehensible for theoretical purposes, since both are supersensible. Id. It is worth noting that even if God does not exist, the problem of proving that "free" human beings can emerge from a materially deterministic universe does not disappear. To the contrary, the problem grows more difficult once we abandon belief in at least one absolutely "free" being outside that universe, a being that might possess a mysterious power to bestow part or all of that freedom on other beings.

[FN123]. Id. Imputing personhood to children may be seen as a "necessary idea" to Kant's scheme in providing a neat, if question-begging, solution to the fundamental problem of deciding what "persons" count as "ends." Almost any attempt to define personhood with reference to specific characteristics such as maturity (or the capacity for enjoying "freedom") would invite insidious comparative valuation of different persons along consequentialist lines. See supra text accompanying notes 95-98.

[FN124]. See Blustein, supra note 29, at 109; 2 Locke, supra note 36, § 6, at 311.

[FN125]. Thus Blustein states that Kant believed children had "an original, innate (not inherited) right' to become rational and autonomous beings." Blustein, supra note 29, at 87. But in fact the passage Blustein quotes states that children have the "original, innate . . . right to the care of their parents until they are able to look after themselves, and they have this right directly on the basis of principle (lege), that is, without any special act being required to establish this right." Metaphysics of Morals, supra note 114, at 98 (emphasis added) (Doctrine of Right, § 28). Kant did not actually propose a category of potential persons from which to deduce a parental duty, and indeed seems to indicate in his language that such duty is simply a first "principle," rather than an extension of the categorical imperative. But even if such a category was in Kant's mind, neither he nor Blustein explain why "potential" rationality has moral worth, or when that potential is too limited to count (e.g., in respect to mentally defective infants?).

[FN126]. Thus, for example, in a choice between two "potential persons" or between one "person" and one "potential person" an actor might have to engage in the same kind of balancing that characterizes consequentialist thought.


[FN128]. Jeffrey Blustein has suggested a slightly modified version of Kant's argument: It is not procreation itself that creates the duties of biological parents any more than the natural fact of A's having typhoid by itself creates in B a duty to rid A of it. Rather, it is typically the decision to undertake parental duties that is entailed by the decision to procreate. Blustein, supra note 29, at 145 (footnote omitted). This restatement does not resolve the central problem with this approach, however, it does account for the many instances in which the "decision to procreate" is either compelled or seriously compromised by questions of circumstance or incapacity.

[FN129]. Metaphysics of Morals, supra note 114, at 54.


[FN131]. Metaphysics of Morals, supra note 114, at 99 (Doctrine of Right, § 28).

[FN132]. See id. at 266-68 (Doctrine of the Methods of Ethics, § 49).

[FN133]. Id. at 195 (Doctrine of Virtue, ch. 7). What "contentment," the product of a developed moral consciousness, might mean for a child is nowhere mentioned, nor is it easy to imagine such a usage.

[FN134]. Id.

[FN135]. See Nozick, supra note 46, at 529; Sommers, supra note 87, at 442-43. For an extensive argument that the

Kantian perspective cannot account for the "full moral dimensions of friendship," because of "its emphasis on obligatory conduct, on impersonal considerations, [and] on universal attitudes," see Lawrence A. Blum, Friendship, Altruism and Morality 43-83 (1980).

[FN136]. Bernard Williams, Persons, Character and Morality, in Moral Luck 1, 2 (1981). But this view is not free from doubt. Kant argues in The Doctrine of Virtue that the "lawgiving reason . . . in accordance with the principle of equality . . . permits you to be benevolent to yourself on the condition of your being benevolent to every other as well." Metaphysics of Morals, supra note 114, at 245. Yet "benevolence" here consists in "wishing" well to others, and Kant later allows that "in acting I can, without violating the universality of the maxim, vary the degree greatly in accordance with the different objects of my love (one of whom concerns me more closely than another)." Id. at 246. Still, Kant nowhere indicates that one must so act differentially, nor does he give a reason why in regard to beneficence, as opposed to justice, we may treat others unequally; nor does he attempt to harmonize this with his views on the lack of "moral worth" of actions performed from natural inclination. See supra text accompanying notes 137-40, 147-52.

[FN137]. Fundamental Principles, supra note 111, at 23.

[FN138]. See id. at 22.

[FN139]. Alan Ryan, Introduction to Utilitarianism and Other Essays, supra note 41, at 7, 23. Even W.D. Ross, a latter-day Kantian who believed that Kant did not give sufficient moral credit to actions proceeding from both duty and sympathy, nevertheless concurred that the man who helps his neighbor from sympathy has a lesser character than another man who helps his neighbor from a sense of duty. See W.D. Ross, The Right and the Good 164-65 (1930).


[FN141]. Nozick, supra note 46, at 456. "Ethical pull" is "how the value of a person gives rise to determinate conditions, to moral constraints upon the behavior of others." Id. at 401.

[FN142]. Id. at 456.

[FN143]. See id. at 528-34.

[FN144]. See id. at 401.

[FN145]. See id. at 455. Nozick here seems to assume that all parents love their children, and love them in the same way.

[FN146]. Indeed, Nozick's belief in the moral legitimacy only of "a minimal state limited to the narrow functions of protection against force, theft, fraud, enforcement of contracts, and so on," Anarchy, supra note 95, at ix, and essentially unconcerned with problems of distributive justice, see id. at 147-241, makes it difficult to imagine what enforceable concept of parental duty could emerge from his theory, though he does at least plainly state that parents have no right to take their children's lives, see id. at 38; see also id. at 287-91 (discussing inadequacies of Locke's arguments in favor of parental duty without advancing any positive ones in their place).

[FN147]. Fundamental Principles, supra note 111, at 27.

[FN148]. See Nozick, supra note 46, at 455-56.

[FN149]. Cf. Williams, supra note 136, at 12 ("The Kantian emphasis on moral impartiality . . . [provides] ultimately too slim a sense in which any projects are mine at all."); Hurd, supra note 112, at 196-201 (arguing that Kantian deontology cannot coherently justify a "maxim" against "negligence").

[FN150]. Metaphysics of Morals, supra note 114, at 197 (Doctrine of Virtue, ch. 8). Marcia Baron has recently
attempted to refute the notion that Kant's ethics require "only minimal decency" to others, by arguing that beneficence is mandatory in his theory. See Marcia Baron, Kantian Ethics and Supererogation, 84 J. Phil. 237, 237 (1987). But even her account does not seem to broaden the scope of that duty in any way that might interfere with personal autonomy or happiness. See id. at 261-62 (noting that while "one must . . . embrace a maxim of beneficence, . . . it is impossible to say exactly what one must do accordingly," with great sacrifices such as those of Mother Theresa to be viewed as the product of a "character trait").


[FN152] See id. at 249.


[FN156] Thus Kant states that children have the "right to the care of their parents until they are able to look after themselves," Metaphysics of Morals, supra note 114, at 98 (Doctrine of Right, § 28), a point that might very well be long before the age of legal emancipation. For a discussion of adolescent "capacity," and the tendency of the liberal tradition to overrate it in order to avoid some of the difficulties in accommodating principles of liberty to a world that contains vulnerable children, see Loken, supra note 24, at 1733-36, 1741-48.


[FN159] Cf. DeShaney v. Winnebago County Dept. of Soc. Servs., 489 U.S. 189, 202 (1989) (holding the state has no constitutional obligation to protect children from dangers created by parents, and not by the state).

[FN160] See Blustein, supra note 29, at 87-88.

[FN161] See Rawls, supra note 82, at 254-55; Sidgwick, supra note 89, at 516 ("[T]he scoundrel must exhibit and express his characteristic self-hood in his transcendental choice of a bad life, as much as the saint does in his transcendental choice of a good one.").

[FN162] See Rawls, supra note 82, at 22-27. In A Theory of Justice, of course, Rawls explicitly identified his conception of justice with "the familiar theory of the social contract as found, say, in Locke, Rousseau, and Kant." Id. at 11 (emphasis added). He would later acknowledge, however, that because "Kant's doctrine is a comprehensive moral view in which the ideal of autonomy has a regulative role for all of life," it is "incompatible with the political liberalism of justice as fairness." John Rawls, Political Liberalism 99 (1993) [hereinafter Political Liberalism].

[FN163] Rawls, supra note 82, at 19.

[FN164] See id. at 161-75, 183-92, 251-57.

[FN165] Id. at 249.

[FN166] Id. at 62, 440.

[FN167] See Blustein, supra note 29, at 101-36.

[FN168] Id. at 126.

See Loken, supra note 24, at 1740-48 (discussing both Rawls's and Blustein's framework for parental rights and finding them inadequate).

See John O'Neill, The Missing Child in Liberal Theory 34-52 (1994) (arguing that in its contractarian terms, "liberal anthropology is incapable of furnishing the ontological grounds of social and political embodiment," and especially providing a basis for parental and community duties to children); Laslett, supra note 43, at 27-30 (arguing for inadequacy of "two-generational procreational contract"). For a more sweeping attack on Rawls's general account of how obligations are derived from the "original position," see Michael J. Sandel, Liberalism and the Limits of Justice 107-13 (1982).

Blustein, supra note 29, at 126. For analysis of the problems of such bargaining, see Eekelaar, supra note 29, at 347 (stating that contractors "might plausibly gamble on eliminating certain children (painlessly at or soon after birth) if their survival was likely (for example, through overpopulation) to threaten the full enjoyment of life by adults"); Loken, supra note 24, at 1746 (questioning how paternalistic principles would emerge from bargaining among self-interested individuals who have, at best, "good will" only toward their own children). But see, Garrison, supra note 29, at 80-82 (reasoning that Rawls's conclusion that "original position" contractors would adopt "maximin" approach to distribution of social economic inequalities would lead to adoption of "the equal outcomes model" of child support obligations). Unfortunately, while Garrison does acknowledge that Rawls himself has consistently refrained from sanctioning substantial application of "political liberalism" to the family and other private associations, see John Rawls, The Idea of Public Reason Revisited, 64 U. Chi. L. Rev. 765, 788-89 (1997), she does not explain why the contractors in the "original position" would include future generations in their "maximin" scheme. Rawls specifically denied that the "original position" is to be conceived of as multi-generational in composition, see Rawls, supra note 82, at 139, and relied strongly on a presumption that the contractors would act in their own perceived individual self-interest, with no inclination toward "sacrifice" for others, see id. at 178-83. Garrison nowhere explains why the contractors would choose to protect the interests of children not their own or not even in existence, except to state that she is relying on Susan Moller Okin's revision of Rawls's concept of the "original position." See Garrison, supra note 29, at 81 n.200. For a discussion of Okin's approach, see infra note 173.

See B.M. Barry, Justice Between Generations, in Law, Morality and Society: Essays in Honour of H.L.A. Hart 268, 268-84 (P.M.S. Hacker & J. Raz eds., 1977); see also Eekelaar, supra note 29, at 346-47; Loken, supra note 24, at 1745-47. This assumption, phrased somewhat differently, is also present in Susan Moller Okin's vision of the "original position" as modified by concerns for gender equality: "everyone in the original position has a high personal stake in the quality of childhood." Susan Moller Okin, Justice, Gender, and the Family 174-75 (1989). But why exactly is that so, especially for the childhood of those persons in the next generation? And do not the original contractors also have a "high personal stake" in the quality of adulthood, the period that will be burdened by any duties they adopt toward children? Okin persuasively argues "that in a gender-structured society there is such a thing as the distinct standpoint of women," which must be taken into account in imagining the "original position" if the interests of women are to be adequately recognized. Id. at 106-07. But are we not in an age- and generation-structured society as well? Rawls seems to have recognized, in adopting his motivational assumption about beneficence toward future generations, that he could not make sense of a multi-generational original position. See Rawls, supra note 82, at 139.

See Rawls, supra note 82, at 511.

See Blustein, supra note 29, at 142-45.

Id. at 160.

See supra text accompanying notes 99-103.

Blustein, supra note 29, at 160. Rawls himself has recently disclaimed any "particular metaphysical conception of the person" and instead relies solely on a "political conception of the person," Political Liberalism, supra note 162, at 27-35; further, he holds that contractarian liberalism supports a "plurality of reasonable though
opposing comprehensive doctrines each with its own conception of the good," id. at 134; see also supra text accompanying notes 70-75.

[FN179]. Rawls, supra note 82, at 249.

[FN180]. See supra text accompanying notes 156-60.

[FN181]. See Rawls, supra note 82, at 249-50.

[FN182]. See Loken, supra note 24, at 1736-40 (reviewing empirical evidence on ability of contemporary parents to cope with rearing troubled adolescents).

[FN183]. 2 Locke, supra note 36, § 56, at 347.

[FN184]. See 1 Locke, supra note 36, § 74, at 233 ("[T]he Father's Natural Dominion, the Paternal Power cannot descend to him by Inheritance. For it being a Right that accrews to a Man only by begetting, no Man can have this Natural Dominin over any one he does not beget . . .").


[FN186]. See Peter Laslett, Introduction to Robert Filmer, Patriarcha and Other Political Works of Sir Robert Filmer 1, 38-43 (Peter Laslett ed., 1949) [[hereinafter Patriarcha]; Schochet, supra note 185, at 244-46.


[FN188]. Id. at 63 (footnote omitted); see also Schochet, supra note 185, at 146 ("[I]t is most important to realize that [Filmer] saw [regal and political authority] as identical, not merely similar or in some way analogous.").

[FN189]. See Robert Filmer, Observations Concerning the Originall of Government, in Patriarcha, supra note 186, at 237, 241 (accusing Hobbes of "imagining a company of men at the very first to have been all created together without any dependency one of another, or as mushrooms . . . they all on a sudden were sprung out of the earth without any obligation one to another").

[FN190]. See Robert Filmer, Observations upon Aristotle's Politiques Touching Forms of Government, in Patriarcha, supra note 186, at 185, 225-27; Laslett, supra note 186, at 31, 40 ("Locke did not succeed in establishing against Filmer that consent pervaded all social relationships.").

[FN191]. See Robert Filmer, Observations upon Aristotle's Politiques Touching Forms of Government, in Patriarcha, supra note 186, at 185, 225-27; Laslett, supra note 186, at 31, 40 ("Locke did not succeed in establishing against Filmer that consent pervaded all social relationships.").

[FN192]. See Schochet, supra note 185, at 259-60.

[FN193]. 2 Locke, supra note 36, § 84, at 365.

[FN194]. See Laslett, supra note 186, at 40; Schochet, supra note 185, at 259-64.

[FN195]. See Michael O. Hardimon, Role Obligations, 91 J. Phil. 333, 346 (1994) ("[W]e cannot give up the idea of noncontractual role obligation without also ceasing to conceive of ourselves as family members and citizens.").

[FN196]. Aristotle, Politica, in The Basic Works of Aristotle 1127, 1127 (Richard McKeon ed., Random House, Inc. 1941) (n.d.). Susan Moller Okin rejects this distinction despite finding additional support for it in Rousseau, Hume and such modern writers as Michael Sandel, arguing for the "primacy of justice" in defining duties within the family because of the subordination of women and abuse of children she sees at the heart of the classic, "idealized" family. See Okin, supra note 173, at 25-40. Making an argument that "justice" has some place in defining the family is not, however, an argument for its absolute primacy in such a definition. We might, for example, exempt a great deal of rough-and-tumble between siblings from the assault-and-battery notions that we in "justice" apply to non-
family relations without sacrificing our ability to apply unvarnished "justice" in cases of spousal or child abuse. For Hegel, indeed, the state exists precisely to balance and reconcile the conflicting claims of civil society's justice and the family's love. See Hegel's Philosophy of Right paras. 238-40, at 148, paras. 255-61, at 154-62 (T.M. Knox trans., Oxford Univ. Press 1965) (1821). For a recent effort to redefine the family as a "public institution" rather than a "private association," see Anne C. Dailey, Constitutional Privacy and the Just Family, 67 Tul. L. Rev. 955 (1993).

[FN197]. Hegel's Philosophy of Right, supra note 196, para. 75, at 58. With Filmer, of course, Hegel urged that in the family, a relation "specifically characterized by love," is the germ of civil society and the state. Id. para. 158, at 110, para. 181, at 122, paras. 238-39, at 148, para. 261, at 161. But like Locke, Hegel argued that families enter civil society for "the actual attainment of selfish ends," through "corporations," associations of those with similar interests which "protect [their] members against particular contingencies." Id. paras. 250-56, at 152-55. Apart from both Filmer and Locke, however, Hegel saw that if civil society is, in his words, a "universal family," at the same time it "tears the individual from his family ties, estranges the members of the family from one another, and recognizes them as self-subsistent persons." Id. para. 238, at 148. For Hegel, the "love" of the family and the "selfish" fundamental character of civil society are wholly distinct, and reconcilable only on a higher level-that is, in the state, the "end immanent" within the family and civil society, yet simultaneously "an external necessity" and "higher authority" to both. Id. para. 261, at 161. To critique the family from the standpoint of the contractarian premises of a civil society, therefore, would be inconceivable for Hegel-they are the "two ideal spheres" of "mind," which are constantly in the process of "sundering" themselves from one another in a kind of necessary, ultimately beneficial war out of which only the idealized "state" can bring peace. Id. para. 262, at 162. Ultimately, Hegel rejected the "wild idea of the 'people,'" id. para. 279, at 183, as an "atomistic and abstract point of view [which] vanishes at the stage of the family," id. para. 303, at 198. For a discussion of the nuances of Hegel's thought on political structure, in which the author strongly disputes a view of Hegel as a champion of "absolutism, autocracy, and reaction," see Z.A. Pelczynski, Introductory Essay to Hegel's Political Writings 5, 134 (T.M. Knox trans., Oxford Univ. Press 1964) (1821). I am grateful to Frank Farrell and Linda Ross Meyer for helping me understand the relevance of Hegel's thought to the Locke-Filmer debate on family and state.

[FN198]. John Dunn, Consent in the Political Theory of John Locke, 10 Hist. J. 153, 158 (1967). Dunn argued that Locke used a very limited conception of rational consent: It did not have to be wholly "voluntary" (only uncoerced), nor explicit, nor occur with "any reasonable future grasp of the probable consequences." Id. at 181. Locke clearly did not, however, conceive of the rule of parents as deriving from a child's "consent." See supra text accompanying notes 183-85.

[FN199]. Cf. Dolgin, supra note 28, at 430-31 ("[I]f . . . society redefines children . . . lead[ing] to the amalgamation of childhood and adulthood, the consequences for children will likely be unfortunate, unless-and little beyond whim or hope suggests this to be the case-children really are 'little adults.'").


[FN201]. See id. at 44-46.

[FN202]. See id. at 25.

[FN203]. Id. at 26.

[FN204]. Id. at 30-31.

[FN205]. Id. at 32 (emphasis added).

[FN206]. Laslett confuses the issue briefly by describing the "tricontract" as subsisting "between non-contemporaneous removed generations," id. at 26, but it later becomes clear that he means by this generations as they would be thought of from a familial standpoint, and that transfers from grandparents to parents to children are covered by the "tricontract" rather than the "intercohort trust," which is in essence a way of describing "generations" from a governmental, public policy perspective. See id. at 37.
[FN207]. Id. at 27.


[FN210]. Id. at 29. Nor would it seem substantially more reasonable to imagine a "contract" between a newborn child and an adult.

[FN211]. Id. at 29. In light of this "conviction," Laslett complicates his contractual image at this point with "the suggestion that the world itself is held by each successive set of its human inhabitants in trust for those who will come after." Id. at 29-30 (emphasis added). Indeed, he later recognizes that the concept of the world as a "trust" is in some ways "awkward" in a theory depending on contractual ideas. See id. at 44.

[FN212]. Id. at 26.

[FN213]. See id. at 31.

[FN214]. Id. at 28.

[FN215]. See id. at 25.

[FN216]. See supra text accompanying notes 183-99.


[FN218]. By contrast, Laslett does include the State as a "further party" in the "intragenerational intercohort trust." Id. at 32.

[FN219]. See Richard A. Epstein, Justice Across the Generations, in Justice Between Age Groups and Generations, supra note 43, at 84, 85 ("There is little that coercion and duty can do specifically to ensure that the next generation receives its fair share of human and natural resources.").


[FN223]. Laslett does place some limit on this right: Nothing that has been advanced here makes it a duty for a parent to confer on his or her children ill-gotten gains; such possessions, by the rules of reciprocity, belong to the persons from whom they were stolen. But if a child should by generational position inherit a disputed possession, the criteria as to whether the child should keep that inheritance are scarcely generational. He or she is guilty only if the courts of law, or the political process . . . decide that the possession is now unjustifiable. Id. at 43. When the "persons from whom [such gains] were stolen" are dead, however, it is strikingly unclear whether their descendants have any rights of "reciprocity" under this qualification. Id. And because the passage of time so easily permits new generations to raise plausible "disputes" about the fairness of past practices, reliance on the courts or political process to serve as a source of moral authority for current beneficiaries of those past practices seems to give hardly any guidance at all.

[FN224]. Id. at 39. Laslett does allow, however, for "an appeal to that general fairness which cements mankind" to address perduring injustices. Id.

[FN225]. See Baer & Langfitt, supra note 10, at A1 (quoting Ross Perot: "And I am absolutely committed-irrevocably committed to passing on a better world to our children and grandchildren."); Bill Gertz, Clinton Salutes
Troops in 3-Hour Visit to Bosnia, Wash. Times, Jan. 14, 1996, at A1 (quoting President Clinton: "we all want a safer, better world for our children").


[FN227]. Epstein, supra note 219, at 89.

[FN228]. John Dewey, Democracy and Education 2 (1966) (emphasis added). Education, in Dewey's view, is peculiarly tied to democracy, "where progress, or readjustment, is an important consideration." Id. at 87. From a contractarian/justice perspective John Rawls seems to have reached essentially the same conclusion: "Each generation must not only preserve the gains of culture and civilization, . . . but it must also put aside in each period of time a suitable amount of real capital accumulation" to pass on to successor generations. Rawls, supra note 82, at 285. Rawls limited this "savings principle," however, to the period until "just institutions are firmly established," without intimating whether, say, current conditions in the United States meet that requirement. Id. at 287. Thus it is possible that Rawls would ultimately support Laslett's refusal to recognize a moral obligation of good faith efforts to improve our children's lives.


[FN230]. See Blustein, supra note 29, at 162-95 (discussing children's duties of obedience, support, gratitude, and friendship).


[FN233]. Hobbes, supra note 48, pt. 1, ch. 14, at 209. Hobbes stated the law as follows: "That a man which receiveth Benefit from another of meer Grace, Endeavour that he which giveth it, have no reasonable cause to repent him of his good will." Id. For rare discussion and application of the duty of gratitude in the legal literature, see Laura E. Little, Loyalty, Gratitude, and the Federal Judiciary, 44 Am. U. L. Rev. 699, 702-10 (1995).


[FN235]. See Blustein, supra note 29, at 175-95 (noting that grown children owe parents duty of "friendship"); Terrance McConnell, Gratitude 217-30 (1993) (stating that with certain qualifications, "children ought to provide for their parents whatever help [they] can whenever it is needed"); Sommers, supra note 87, at 447 (stating that ingratitude of children "does violence to a social role"). But see Norman Daniels, Am I My Parents' Keeper? An Essay on Justice Between the Young and the Old 30 (1988) (expressing the view that grown children owe parents nothing for acts performed as part of parents' duty); A. John Simmons, Moral Principles and Political Obligations 182-83 (1979) (stating that gratitude is owed to parents only if "warm and affectionate care" provided); Jane English, What Do Grown Children Owe Their Parents?, in Having Children 351, 352-53 (Onora O'Neill & William Ruddick eds., 1979) (same). A more radical formulation of the individual's tie to prior generations, though not grounded in gratitude, comes in George Fletcher's description of the "historical self," which is the creation of relationships "logically prior to the individual"-so that "the family and the nation define the individual." Fletcher, supra note 87, at 15-16.

[FN236]. See McConnell, supra note 235, at 2 (1993) ("[S]ince W.D. Ross . . ., gratitude has received little more than passing attention from major moral theorists.").

[FN237]. John Eekelaar's account of parental duty does consider a natural law approach to duty, but does not touch on a role for gratitude as a basis for such duty. See Eekelaar, supra note 29, at 348-53. I recognize, of course, that speaking of any "duty" in regard to relationships so emotional and passionate as that of parent and child may seem impossibly abstract and even offensive. Martin Luther, in a not unrelated context, abominated the "leviathan" of justification by "works" in our relationship with God. Martin Luther, The Freedom of a Christian, in Martin Luther's
Basic Theological Writings 585, 615 (Timothy F. Lull ed., 1989). For, as he argued, "commandments show us what we ought to do but do not give us the power to do it." Id. at 600. And no doubt it is true that some acts of gratitude are only possible if done with a loving heart. Yet surely a parent has the "power" to provide financial and practical help to a child-as no one can toward God. And surely, too, love is at least in part a matter for reflection and decision. For these reasons, and because each child begins as a stranger to her parent, I do not think it superfluous or wrongheaded to speak of parental "duty" of gratitude, even if it is often inseparable from simple emotional responses.

[FN238]. See McConnell, supra note 235. One of the most thorough early examinations of the nature of gratitude and the obligations that flow from it occurs in the work of Thomas Aquinas, and the conclusions Aquinas reaches seem largely congruent with, though far less developed than, those of McConnell. See 2 St. Thomas Aquinas, Summa Theologica 1648-53 (Fathers of the English Dominican Province trans., Benziger Brothers, Inc. 1947) (1266-1273) (Question 106). Aquinas makes six points of inquiry regarding thankfulness or gratitude: Concerning thankfulness there are six points of inquiry: (1) Whether thankfulness is a special virtue distinct from other virtues? (2) Who owes more thanks to God, the innocent or the penitent? (3) Whether man is always bound to give thanks for human favors? (4) Whether thanksgiving should be deferred? (5) Whether thanksgiving should be measured according to the favor received or the disposition of the giver? (6) Whether one ought to pay back more than one has received? Id. at 1648. For a recent discussion of the concept of gratitude in a largely unrelated context, see Little, supra note 233, at 699.

[FN239]. Finnis, supra note 69, at 59.

[FN240]. Here it is worth emphasizing again that in describing a "duty" of gratitude I am in no sense referring to a legal obligation. Gratitude holds a tenuous track of ground in legal contexts. It is, for example, widely recognized that gratitude alone is insufficient as consideration for a contract, see Restatement (Second) of Contracts § § 71 cmt. a, 86 cmt. a (1979); nor may one who has gratuitously conferred a benefit upon another expect to receive a reciprocal benefit on principles of restitution, even where the beneficiary has promised to provide it, see Restatement (First) of Restitution § 57 (1936); see also Harrington v. Taylor, 36 S.E.2d 227, 227 (N.C. 1945) (holding that no action lay for plaintiff to enforce the promise, where plaintiff intervened to protect defendant from an assailant and took the axe blow intended for defendant, who then promised to pay plaintiff for her damages, though "defendant should be impelled by common gratitude to alleviate the plaintiff's suffering"). Still, while gratitude by itself is virtually never held to be a basis for forcing another to take a reciprocal action in the future, it can support the legal validity of a wide variety of past actions. So gratitude is a sufficient basis for rebutting a presumption of undue influence in the making of a will, see, e.g., In re Estate of Webb, 863 P.2d 1116 (Okla. 1993); Guthrie v. Suiter, 934 S.W.2d 820 (Tex. Ct. App. 1996); in a deed, see, e.g., Mackall v. Mackall, 135 U.S. 167 (1890); McDonald v. McDonald, 298 N.W.2d 136 (Neb. 1980); or in the adoption of a child, see e.g., In re Adoption of Jones, 558 P.2d 422 (Okla. Ct. App. 1976). Gratitude may be a sufficient basis for avoiding the finding of a resulting trust in a real estate transfer unsupported by other consideration. See, e.g., Reizenberger v. Shelton, 97 A. 293 (N.J. Ch. 1916). Gratitude may support the inference that the holder of a power of appointment intended to exercise it in the residuary clause of a will, see Restatement (First) of Property: Future Interests § 343 illus. 5 (1940); and it may serve as a valid basis, entirely separate from concern for the well-being of the object of such a power, for exercise of the power of appointment, see Restatement (Second) of Property: Donative Transfer § 20.2 cmt. h (1986). Further, an employer's gratitude for a deceased employee's past services can serve to characterize a payment to the employee's surviving spouse as a non-taxable gift instead of income. See Estate of Carter v. Commissioner, 453 F.2d 61 (2d Cir. 1971); Estate of Hellstrom, 24 T.C. 916 (1955). Finally, gratitude for services that benefited the public can support the exercise of state powers of taxation and appropriation. Compare Ingham Ass'n v. Nation, 109 P. 984 (Kan. 1910) (upholding appropriation recognizing past services of home for homeless and aged women upheld), with People v. Westchester County Nat'l Bank of Peekskill, 132 N.E. 241, 242-44 (N.Y. 1921) (state taxation to raise funds to pay bonus to World War I veterans upheld as serving public purpose of "showing the gratitude of the people," but payment of bonus held to violate state constitutional provision banning "gifts" to "individual[s]")

[FN241]. See Simmons, supra note 235.

[FN242]. Id. at 178-79.

[FN244]. See id. at 17-18; Simmons, supra note 235, at 179-82. Thus, we feel grateful to soldiers who perform their duties faithfully, especially in heavy combat—part no doubt because of the risks such duty entails, both to them in fulfilling it and to us if it is shirked. As Simmons points out, however, many duty-fulfilling actions which benefit us may not justify gratitude, such as paying money already owed. See id. at 181. The distinction between the two kinds of dutiful actions rests, he speculates, on "whether the obligation is undertaken for strongly benevolent reasons," or the action involves "[going] out of our way to offer needed assistance . . . ." Id. at 182. It is admittedly a crucial premise of the arguments to follow that the mere fact that parents may have been fulfilling "duties" to their children in nurturing them does not in itself preclude a debt of gratitude arising. Because parenting typically requires both strong benevolence and substantial sacrifice, this assumption does not seem unwarranted.


[FN246]. See id. at 41-42.

[FN247]. See Simmons, supra note 235, at 171-72. As Simmons points out, this distinguishes gratitude from "reciprocation." See id. at 172. An example of confusing the two concepts, it seems to me, comes in Laura Little's argument that federal judges owe "gratitude" to the President and Senators participating in their appointment. See Little, supra note 233, at 730-38. For of all the motivating reasons she identifies for such appointments—ideology, reward for political support, gaining future political favors, demographics, and competence, see id. at 738-49, none involves benevolence and almost all suggest self-interest advanced through expectations of reciprocity.

[FN248]. See McConnell, supra note 235, at 217-19. The mere "gift of life" conferred by a parent's procreative sexual act does not, in McConnell's view, create such an obligation, because an unhappy life may be a gift of doubtful value, because the gift did not come to someone who already existed and so made no one existing "better off," and because the motives of the procreators likely did not, in the act of sex, include benevolence toward the future child. See id. at 210-11. This logic seems to me less than persuasive. We certainly place an absolute value on even an unhappy life if it is taken. And, of course, many children abandoned by a parent lead relatively happy lives anyway; if it actually turns out that life is an enormous benefit for the abandoned child, would it be ludicrous to feel gratitude? As to the second point, with equal facility we could argue that a murdered person is not worse off because of his death because he no longer exists. Finally, the act of sex itself likely involved some benevolence directed at the partner, if not the to-be-conceived child; thus, it may warrant gratitude from one who loves the partner-her child. In sum, I think the question of gratitude for a parent's procreative act is very much still an open one, and should, moreover, include for believers a further question as to how much gratitude we owe God for the mere fact of our existence.

[FN249]. Id. at 218.

[FN250]. This logic would not apply, of course, to adults who provide shelter and necessities to a child without assuming the role of parent. They could deserve gratitude without having to add displays of affection to their beneficent acts.

[FN251]. See McConnell, supra note 235, at 57. In this, McConnell follows Kant's distinction between perfect and imperfect duties. See id. at 66-72; Metaphysics of Morals, supra note 114, at 248-49 (Doctrine of Virtue, §§ 32-33).

[FN252]. See Sidgwick, supra note 89, at 259-61.

[FN253]. McConnell, supra note 235, at 56.

[FN254]. Id. at 112.

[FN255]. See id. at 76-77.
[FN256]. Id. at 77.

[FN257]. See id. at 148-79.

[FN258]. As does McConnell, I here confine myself to a discussion of act-utilitarianism, as opposed to rule-utilitarianism. See id. at 151-52.

[FN259]. Thomas Hobbes writes: For no man giveth, but with intention of Good to himselfe; because Gift is Voluntary; and of all Voluntary Acts, the Object is to every man his own Good; of which if men see they shall be frustrated, there will be no beginning of benevolence, or trust; nor consequently of mutuall help; nor of reconciliation of one man to another . . . . Hobbes, supra note 48, pt. 1, ch 15, at 209.


[FN261]. See, e.g., Judith Martin, Miss Manners' Guide to Excruciatingly Correct Behavior 503 (1982) (urging readers to "write charming little notes to bolster the generous impulses of those who have offered presents, hospitality, and favors"); Kant called this a "prudential maxim" in favor of gratitude. Metaphysics of Morals, supra note 114, at 248-49 (Doctrine of Virtue, § 32).


[FN263]. Sidgwick, supra note 89, at 437.

[FN264]. Of course, other moral requirements might forbid certain expressions of gratitude, such as commission of a crime. But that does not mean that the very solidarity fostered by gratitude-inducing acts between certain persons is not in itself a danger to maximizing utility. See, e.g., Monarch Tape Duplicating, 205 N.L.R.B. 520, 525 (1973) (employer's giving employees a day off for their birthday held to be an effort to "instill a feeling of gratitude in the employees for the purpose of affecting their union inclinations" and so an improper interference with an election); Schissler v. Chesshire, 7 Nev. 427, 431 (1872) (rule forbidding parties to a lawsuit from giving favors to jurors held to be based in fear that jurors might be swayed by "motives of gratitude" rather than an "unbiased sense of right").

[FN265]. Metaphysics of Morals, supra note 114, at 249 (Doctrine of Virtue, § 32).

[FN266]. McConnell, supra note 235, at 167.

[FN267]. See supra text accompanying notes 156-59. It is well to remember that ties of gratitude were at the heart of the medieval feudal structure binding vassal and lord. See Marc Bloch, 1 Feudal Society 226 (1961); E. Catherine Dunn, The Concept of Ingratitude in Renaissance English Moral Philosophy 45-91 (1946).

[FN268]. See supra text accompanying notes 242-47.

[FN269]. Frederich Nietzsche, Human, All Too Human verse 44, at 46 (Marion Faber & Stephen Lehmann trans., Univ. of Neb. Press 1984) (1878) Frederich Nietzsche writes: The powerful man feels gratitude for the following reason: through his good deed, his benefactor has, as it were, violated the powerful man's sphere and penetrated it. Now through his act of gratitude the powerful man requites himself by violating the sphere of the benefactor. It is a milder form of revenge. Id.


[FN271]. See id. at 172-78.

[FN272]. Id. at 174. Nietzsche had no such doubts about the action-guiding power of gratitude, at least for those with virtue: A noble soul will be happy to feel itself bound in gratitude and will not try anxiously to avoid the occasions when it may be so bound; it will likewise be at ease later in expressing gratitude; while cruder souls resist
being bound in any way, or are later excessive and much too eager in expressing their gratitude. Nietzsche, supra note 269, at 188.

[FN273]. See Finnis, supra note 69, at 85-97 (describing and defending choice of seven "basic values" against which to measure human attitudes and actions, with emphasis on combination of empirical anthropological evidence and the process of "practical reflection"); id. at 297-320 (discussing how obligation to act arises out of individual's need to support, and participate in, the "common good" of the community); see also John Finnis, Fundamentals of Ethics 50-53 (1983) [hereinafter Fundamentals of Ethics] (denying that human "goods" can be discovered simply by unemotional "deduction or inference from one proposition to another," but rather from a final "perception (i.e. the understanding or intelligent discernment) of a basic form of human flourishing in which, not one human being on one occasion, but somehow all human beings in appropriate circumstances can participate").

[FN274]. See infra text accompanying notes 277-86.

[FN275]. Kant declares gratitude a "duty" rather than a virtue, and indeed, asserts that "the recipient [of the benefactor's action] can never win away from the benefactor his priority of merit, namely having been the first in benevolence." Metaphysics of Morals, supra note 114, at 249 (Doctrine of Virtue, § 32); see also Ross, supra note 139, at 27 (gratitude described as a duty rather than a virtue).

[FN276]. Hume indeed denies that the "universally acknowledged" claims of gratitude can be "discover'd by demonstrative reasoning," and asserts instead that they are "felt by an internal sense, and by means of some sentiment, which the reflecting on such an action naturally occasions." Hume, supra note 8, at 466 (emphasis added).

[FN277]. Melanie Klein, Envy and Gratitude, in Envy and Gratitude and Other Works 1946-1963, at 176, 187 (M. Masud & R. Khan eds., 1975); cf. Drucilla Cornell, Loyalty and the Limits of Kantian Impartiality, 107 Harv. L. Rev. 2081, 2085 (1994) ["[T]he dominance of the view of the self as constituted only through its own auto-genesis is based on a profound erasure of the ethical significance of the mother."].

[FN278]. John Bowlby, 1 Attachment and Loss 305 (1969). Thus Bowlby found that someone other than a natural mother could become the object of an infant's attachment "provided [she or he] behaves in a mothering way," id. at 306, that is, in a way that not only satisfies the child's bodily needs, but his need for social interaction as well, see id. at 314-19.


[FN280]. This I take to be the view of Jane Austen, whose heroines almost invariably came to a final acceptance of romantic love only in response to the beneficence of their suitors. This is most obvious, perhaps, in Pride and Prejudice, where Elizabeth comes to love Darcy not in response to his passion, intelligence, or wealth, but rather after he performed unlooked-for kindnesses toward her and those she loved: "If gratitude and esteem are good foundations of affection, Elizabeth's change of sentiment [toward Darcy] will be neither improbable nor faulty." Jane Austen, Pride and Prejudice 261 (Books, Inc. 1942) (n.d.).


[FN282]. Klein, supra note 277, at 187. This view of gratitude's importance to human flourishing apparently finds strong support in Buddhist tradition: Reflecting on your own mother is the preliminary to relative bodhicitta practice. . . . Traditionally, we use our mother as an example, and then we extend beyond that to our friends and to other people generally. Finally, we even try to feel better toward our enemies, toward people we don't like. So we try to extend that sense of gentleness, softness, and gratitude. . . . [W]e can experience a sense of gratitude toward anybody at all, starting with our mother and going beyond that to include . . . the rest of the world. Chogyam Trungpa, Training the Mind and Cultivating Loving Kindness 26-28 (1993).

[FN283]. This is not to argue "is" from "ought"-for example, that because gratitude is part of our nature we have a duty to follow its dictates. Rather, under the natural law tradition as elaborated by Aquinas and Finnis we must
independently evaluate, both reflectively and empirically, whether a certain value is universally valued in human societies and then whether it is one of the "basic aspect[s] of [our] well-being." Finnis, supra note 69, at 86. While it seems to me clear that gratitude easily qualifies as a "basic" value under this standard, I cannot undertake a full examination of that view here. See Dunn, supra note 267, at 3-42 (reviewing tendency of ancient, medieval, Renaissance, and even "oriental" moralists to consider gratitude a supreme moral requirement); McConnell, supra note 235, at 2-3 (reviewing importance of gratitude in the history of Anglo-American moral theory).

[FN284]. Dunn, supra note 267, at 119.

[FN285]. Id. at 13. Shakespeare put it best: "I hate ingratitude more in a man/ Than lying, vainness, babbling, drunkenness,/ Or any taint of vice whose strong corruption/ Inhabits our frail blood." William Shakespeare, Twelfth Night act 3, sc. 4.

[FN286]. Hume, supra note 8, at 466.

[FN287]. Finnis, supra note 69, at 100.

[FN288]. Id. at 88. "[T]he friendliness that is expressed by manifested gratitude is a great human good . . . ." Id. at 175.


[FN290]. See 2 Aquinas, supra note 238, at 1648-55 (discussing "special virtue" of gratitude and "special sin" of ingratitude); id. at 1652 ("Gratitude is a part of justice, not indeed as a species is part of a genus, but by a kind of reduction to the genus of justice . . . ."). For a full discussion of the natural law tradition's identification of gratitude and justice, to which I am much indebted, see Dunn, supra note 267, at 20-22. At the same time, however, it seems clear to me that in modern parlance the claims of "justice," relying on "thin" conceptions of the good, are in severe tension with principles of gratitude, which strongly push toward a thickening of the meaning of "good." See supra text accompanying notes 282-89. For a more general discussion of the conflict between "thin" theories of good and natural law theory, see Fundamentals of ethics, supra note 273, at 48-50.

[FN291]. See Finnis, supra note 69, at 161-63, 175-77.


[FN293]. This I take to be part of the meaning of the parable of the prodigal son, whose older brother protested his father's sacrifice of the fatted calf when the younger returned after years of wasting the family's property. The father first acknowledged the debt ("you are with me always") and promised actual rewards ("all I have is yours"). Luke 15:11-32.

[FN294]. See supra note 96.

[FN295]. See supra text accompanying note 96.

[FN296]. Similar emotional benefits—or often greater, because they come from a person mature enough to understand better how to promote happiness—are being bestowed on children by parents all along, so these "debts" of gratitude may largely cancel each other out. Martha Minow has argued that "reciprocation theory," which may at least in part refer to duties of gratitude, is an inadequate basis for parental duty. See Minow, supra note 87, at 321-25. By this she appears to mean direct first-order gratitude owed only from parent to child and the reverse, with "reciprocation" implying an "exact one-for-one exchange" or "quid pro quo." Id. at 323. Gratitude properly understood, of course, does not require any exactitude in response to another's beneficence, but rather comparability of the beneficence returned. See supra text accompanying notes 251-56. And indeed, there is substantial evidence for "reciprocal interaction" between parents and children "even in the first hours and days of life" that is somehow so gratifying to parents that it "evokes feelings of possessiveness" in them. Watkins, supra note 279, at 32-33. This may be the basis of the claim of Hans Jonas that the "sight" of the newborn itself creates a parental "ought."
Jonas, supra note 5, at 131.


[FN298]. Id. at 160.

[FN299]. And to the extent we do owe such gratitude to individual children, we then become the specific agents responsible to some extent for their well-being. As more fully described below in connection with the concept of "transferred gratitude," see infra text accompanying notes 315-17, this aspect of a gratitude approach adds to the Kantian rationale for locating specific responsibility for childrearing in parents, a problem that bedevils consequentialist analysis.

[FN300]. McConnell, supra note 235, at 58.

[FN301]. See Blustein, supra note 29, at 167-75.

[FN302]. Aristotle, Ethica Nicomachea, supra note 289, bk. 8, ch. 14, at 1076; see also Minow, supra note 87, at 321-25 (discussing inadequacy of "reciprocation" as a basis for measuring duties within a family).

[FN303]. For a bracing attack on "sentimentalism" in parent-child relations-i.e., the idea that children cannot actually "owe" their parents any moral debts because their relationship is based on love, see Sommers, supra note 87, at 448-52. I agree with Hoff Sommers that "the idea of care, responsibility and personal commitment, without formal obligation" is "dangerous" in the parent-child context, and that "duties of gratitude" do exist, id. at 448-49, although in my assessment they are not typically discharged in full by behavior directed solely at the parents.

[FN304]. See McConnell, supra note 235, at 58 (reasoning that to fulfill duty of gratitude the "benefit must be provided in response to a real need of the benefactor").

[FN305]. See supra text accompanying notes 254-56.

[FN306]. McConnell, supra note 235, at 56.

[FN307]. This is not to deny that my son has a separate obligation of gratitude to my friend, and that my friend's son has a similar one to me. But both of those debts may likewise have to be discharged indirectly, perhaps by special kindness to another child or friend of the benefactor. In the realm of contract, of course, it is now commonplace that third parties may be made the beneficiaries of a bargained-for promise. See Restatement (Second) of Contracts § 71 cmt. e (1979). Likewise, of course, one indebted to a person who has died typically becomes the debtor of that person's estate, and so of the decedent's heirs or devisees. See Unif. Probate Code § 3-703(c) (amended 1997), 8 U.L.A. 138-39 (Supp. 1999).

[FN308]. President Abraham Lincoln, Address delivered at the dedication of the Cemetery at Gettysburg (Nov. 19, 1863), in Louis A. Warren, Lincoln's Gettysburg Declaration: A New Birth of Freedom (1964) (Bliss Standard Version). Conversely, we think a person ungrateful who has received generous treatment and then refuses generosity in similar circumstances to others-thus in the New Testament parable, a debtor who is forgiven his debt of ten thousand talents is condemned when he then fails to forgive the debt of a fellow servant who owes him one thousand. See Matthew 18:21-35.

[FN309]. See McConnell, supra note 235, at 77. Nor, as discussed earlier, does he analyze indirect repayment in the context of a "loved one."


[FN311]. Martha Minow mentions this concept of reciprocity in the course of discussing duties to aging parents, though in terms that suggest she may think it unpersuasive: "Moreover, some may actually understand their duty to

their aging parents in terms of providing for their own children the way their parents provided for them.” Minow, supra note 87, at 323. Whether providing for one's own children can be a discharge of gratitude that trumps the more direct opportunity of helping parents in old age is beyond the scope of this discussion, but at least at first blush the complete substitution of indirect for direct expressions of gratitude would seem morally problematic.

[FN312]. See Jones, supra note 6, at 1134-35. Jones writes: Reproductive success, therefore, cannot be calculated in offspring alone. Rather, one needs to take stock of the extent to which an individual has increased the reproductive success of its relatives (discounted by their degree of relatedness) . . . . [F]or any given individual (all else being equal) each of its reproductive offspring contributes as much, genetically, to that individual's reproductive success, as . . . two reproductive nieces, nephews, uncles, or grandchildren . . . . Id.

[FN313]. See supra text accompanying notes 114-16. Because it creates obligations based on benefits already received, moreover, second-order gratitude may require that parents care for children even if not consciously or voluntarily conceived, one of the difficulties with the Kantian account. See supra text accompanying notes 127-29. That obligation would, for example, require a teenaged mother who feels that the circumstances of her becoming pregnant (coercion, ignorance, unconsciousness) were insufficient to require her to accept responsibility as a conscious, free actor to consider, as well, how her parents and caretakers would want her to act toward the baby. That might well not include acting as a lifetime parent, but it would almost certainly encompass a minimum of effort to prevent death or injury to the child while a suitable parent is sought.

[FN314]. See supra text accompanying notes 98-103.


[FN316]. See supra text accompanying notes 161-78, 216-27.

[FN317]. See supra text accompanying notes 147-52.

[FN318]. See Laslett, supra note 43, at 29; see also supra text accompanying notes 217-24.

[FN319]. One obvious, and difficult, issue raised by this claim of duty is whether it could extend to include an obligation on the part of a grateful child to have children of her own. And surely many children feel pressure-the implied claim of ingratitude?-from their parents to give them grandchildren. Yet, because the act of procreation itself is typically not the primary basis of our debts of gratitude to our parents, see supra text accompanying notes 209-10, an act of procreation would not seem to be the required response, especially if a child intends to show beneficence to other loved ones (e.g., nieces, nephews) of her parent, or perhaps to any other children. This would be especially true if a child reasonably believed that she could not raise a child in as beneficent a way as she herself was raised. I do grant, though, that in some cases—for example, the last survivor of a family, or culture, devastated by war or persecution—a duty of gratitude might fairly be felt requiring procreation as the only way to preserve a benevolent tradition. Thus, an argument from gratitude suffers from some of the same tension regarding procreative duty that applies to consequentialism, see supra text accompanying notes 91-95, but clearly it sweeps far more narrowly.

[FN320]. Conversely, it seems to me that even as we deplore the terrible parenting (or child abandonment) of young men and women in deeply poor neighborhoods, we also understand and allow for partial mitigation of their fault, because of inadequate parenting or other disadvantages they suffered in their childhoods. Cf. Hume, supra note 8, bk. 3, sec. 6, at 530, in which Hume writes: And here it may be worth while to observe, that tho' abstract reasoning, and the general maxims of philosophy and law establish this position, that property, and right, and obligation admit not of degrees, yet in our common and negligent way of thinking, we find great difficulty to entertain that opinion, and do even secretly embrace the contrary principle. Id.


[FN322]. Cf. Aquinas, supra note 238, at 1655 (arguing that "we should not withhold favor from the ungrateful" and that the benefactor should rather "be inclined to turn [the other person's] ungratefulness into gratitude" by
continuing acts of kindness).

[FN323]. Martha Minow suggests as much in describing the subtleties of family ties: "As an alternative to simple reciprocation, some people and some families operate complex networks of exchange. African-American families often build patterns of sharing and exchange of favors across networks of siblings, aunts, and uncles, and other family members, especially when it comes to caring for children." Minow, supra note 87, at 321; see also, Jones, supra note 6, at 1134 (discussing that uncles, aunts, and other blood relations have some evolutionary stake in the care of new children in the family).

[FN324]. Cf. Finnis, supra note 69, at 406 (arguing that knowledge of God's favor toward other human beings adds an additional ground of natural obligation on us to favor them and sacrifice for them as well); infra Section IV. I freely admit, as a believing Catholic, that this kind of gratitude is a crucial component of my own conception of my duties to children. A lack of belief in God, or a lack of belief in God's benevolence, however, is no bar to the claims of gratitude arising out of benefits received from human beings.

[FN325]. See supra text accompanying notes 76-81; infra Section IV. Thus, the unusual parent who had never received significant nurturance as a child from any adult toward whom transferred gratitude would be owed still must consider, if a consequentialist, the overall effect on social well-being in choosing whether to nurture her child. As noted earlier, however, in some cases, such as those involving severely disabled children, consequentialism may still not persuade a parent to undertake that responsibility. See supra text accompanying notes 95-98.

[FN326]. See supra text accompanying notes 115-17; infra Section IV. Because all who are parents now were preserved from death and cared for by someone when they were children, however, it is possible to recast even this strong deontological argument in terms of gratitude-or, more properly, rank ingratitude on the part of parents who allow their children to die or languish when they received at least minimally adequate physical care in their own childhoods.

[FN327]. Conversely, children and adolescents may, as William Buckley has recently argued, have debts of gratitude to their country and their civilization which such actions as military service and taxation in part repay. See William F. Buckley Jr., Gratitude: Reflections on What We Owe to Our Country 10-19 (1990).

[FN328]. "WE THE PEOPLE of the United States, in Order to . . . secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this CONSTITUTION for the United States of America." U.S. Const. preamble.

[FN329]. See U.S. Const. amend. XXVI, § 1.

[FN330]. For an early, classic argument that a general change in the age of majority should follow naturally in the wake of the 26th Amendment, see Sanford N. Katz et al., Emancipating Our Children-Coming of Legal Age in America, 7 Fam. L.Q. 211, 238 (1973).

[FN331]. S. Rep. No. 92-26, at 6 (1971). As additional grounds for supporting the 26th Amendment, the Senate Judiciary Committee cited its belief that "our younger citizens today are mentally and emotionally capable" of exercising the franchise, and its view that it is "difficult to justify holding a person legally responsible for his or her actions in a criminal court of law when we continue to refuse to consider the same person responsible enough to take action in a polling booth." Id. Over the past 25 years, of course, it has become far easier to have doubts about the full competence of the 18- to 21-year-old group, see, e.g., South Dakota v. Dole, 483 U.S. 203, 208-09 (1987) (accepting as reasonable Congress's use of funding incentives, in 23 U.S.C. § 158, to prevent youths under age 21 from drinking alcohol), while at the same time youths under 18 have become subject to adult criminal prosecution in virtually all states, see generally Torbet et al., supra note 25. By contrast, considerations of gratitude to this age group, which comprises the bulk of newly enlisted soldiers in the military, remain as strong as ever. See National Security and International Affairs Division, United States General Accounting Office, Military Recruiting-More Innovative Approaches Needed, available in 1994 WL 792360 ("The services believe that individuals between 17 and 21 years of age are more likely to consider joining the military than they are at any other age. Since 1990, 83 to 88 percent of those who joined the services each year have been in this age group.").
[FN332]. Most importantly, post-divorce child-support obligations typically end at age 18. See, e.g., Blue v. Blue, 616 A.2d 628 (Pa. 1992). In many states, indeed, such obligations have been challenged on constitutional grounds. See Jeff Atkinson, Support for a Child's Post-Majority Education, 22 Loy. U. Chi. L.J. 695, 696-700 (1991). This leaves adolescents who are already at a disproportionate risk of financial need that much less likely than the offspring of intact marriages to be able to afford college.

[FN333]. Certainly the most substantial contract many 18- to 21-year-olds will enter, sometimes quite improvidently, is a note for a student loan, and many more are currently forced to do so than in the past because, in recent years, Congress has largely shifted federal aid to college students from grants to loans. See Evelyn Brody, Paying Back Your Country Through Income-Contingent Student Loans, 31 San Diego L. Rev. 449, 462 (1994). In the same period Congress has made debts for student loans non-dischargeable in bankruptcy under 11 U.S.C. § 523(a)(8). See George H. Singer, Section 523 of the Bankruptcy Code: The Fundamentals of Non-Dischargeability of Consumer Debt, 71 Am. Bankr. L.J. 325, 387-97 (1997). Thus, a generation that enjoyed the benefits of educational aid programs based largely on outright grants, and enjoyed, too, the ability to avoid, in bankruptcy, liability for those college debts which were incurred, proceeded to reduce direct grants while simultaneously making debts non-dischargeable. From a "second-order" perspective, this is ingratitude. Cf. Michael S. McPherson & Morton O. Schapiro, Keeping College Affordable: Government and Educational Opportunity 175 (1991) (accusing current generation of parents of breaking "intergenerational compact" regarding education through changes in structures of federal college aid programs).

[FN334]. Unfortunately, I know of no substantial work examining the fortunes of the 18- to 21-year-old age group following passage of the 26th Amendment and the ensuing wave of emancipation legislation. Certainly by one rough measure-unemployment-older youths suffered great losses during the 1970s and early 1980s. In 1969 only 2.6% of all youths aged 16 to 24 were unemployed; they represented 28.6% of all unemployed persons. See Bureau of the Census, U.S. Dept of Commerce, Statistical Abstract of the United States 219 tbl.347, 221 tbl.351 (94th ed. 1973) (author's calculations from table) [hereinafter 1973 Abstract]. By 1980 fully 9.3% of all youths in that category were unemployed, representing 45.4% of all such persons. See Bureau of the Census, U.S. Dept of Commerce, Statistical Abstract of the United States 390 tbl.653, 397 tbl.668 (105th ed. 1985) (author's calculations from table) [hereinafter 1985 Abstract]. To make matters worse, the percentage of that age group in school actually declined from 1969 to 1980, from 43.2%, 1973 Abstract, at 221 tbl.351, to 42.3%, 1985 Abstract, at 397 tbl.668. The 1990s have witnessed more youths aged 16 to 24 in school-52% in 1995-but the percentage of "unemployed" in that age group remained at 7.6% in 1995, far above the levels of the 1960s, with those youths constituting 33.4% of all unemployed persons in 1994. See Bureau of the Census, U.S. Dept of Commerce, Statistical Abstract of the United States 394 tbl.616, 398 tbl.623 (116th ed. 1996) (author's calculations from table). The impetus toward social and legal emancipation of older teenagers in the 1960s and 1970s may have contributed as well to a decline in the fortunes of 16- and 17-year-olds during those decades. See Peter Uhlengren & David Eggebeen, The Declining Well-Being of American Adolescents, The Pub. Interest, Winter 1986, at 25, 35-37 (surveying broad variety of social and economic problems afflicting older adolescents from 1960 to 1980, and arguing that their "decline" is the result of "a deterioration in the quantity and quality of parent-child relationships").

[FN335]. This, at least, has been the pattern since the Social Security program began in the 1930s. See Kathryn L. Moore, Privatization of Social Security: Misguided Reform, 71 Temp. L. Rev. 131, 142-48 (1998). Both lower reproductive rates and higher benefits paid under the program, however, mean that at some point in the next two or three decades contributors will have a negative return on their contributions. See id. at 146-47. That does not change the fact, however, that proportionately far fewer young people will be carrying the social burden of caring for the aged in the 21st century. See Bureau of the Census, U.S. Dept of Commerce, Statistical Abstract of the United States 25 tbl. 24 (117th ed. 1997) (projecting that percentage of United States population aged 65 or older will grow from 12.7% in the year 2000 to 18.5% in 2025).

[FN336]. Compare the problem, discussed by Lawrence Becker, of responding in gratitude to the beneficence of a group. Becker argues that where it is impossible for the individual to benefit the entire group, gratitude requires instead that the individual participate in the group to the extent possible. See Lawrence Becker, Reciprocity 114 (1986); see also McConnell, supra note 235, at 75-76 (discussing and critiquing Becker's account).
[FN337]. See McConnell, supra note 235, at 69-70. "Best" in this context, unlike the "good" of consequentialism, is not a value exterior to an individual moral agent that can be computed in conjunction with what is "good" for other agents, see supra text accompanying note 53, but rather is an individual's own assessment of what will be beneficial to the specific person owed gratitude in a measure reasonably appropriate to the beneficence already received, see text accompanying notes 247-53.

[FN338]. See 2 Aquinas, supra note 238, at 165 (arguing that favors should continue to be shown to another despite ingratitude).


[FN340]. Eekelaar, supra note 29, at 352; see generally Heimer & Staffen, supra note 6 (arguing that the likelihood of parental acceptance of responsibility to care for severely impaired infants is a social product mediated by the social background of the parents, the resources available to them, and the structure of organizations and communities with which they interact).

[FN341]. See Eekelaar, supra note 29, at 352. Eekelaar's formulation of parental duty is founded first in a general natural law requirement (relying on the work of John Finnis) "to promote human flourishing" that "binds everyone and is not specifically directed towards parents," id. at 351, a proposition I am fully committed to accepting. See supra text accompanying notes 271-92. Second, such duties are "derivative from . . . society itself, for social practice determines the application of that duty within its structure"-but are entirely "independent" of any "moral duty to comply with moral practice." Id. This last seems to me clearly wrong. It leads Eekelaar to hold that, depending on social practice, a father who abandons his children, leaving their mother and society responsible for their care, violates no moral obligation toward them. See id. at 352. But a social practice--such as the subordination of women, exposure of infants, or slavery--may be, on reflection, so inimical to human flourishing that it cannot work together with the natural law requirement of care for children that Eekelaar first posits. By contrast, just as the requirements of gratitude insure that only those social norms that promote human flourishing obtain moral force in determining duties to children, so too they suggest that oppressive social norms cannot be used as a basis for avoiding those duties. Thus, Huckleberry Finn would find that he had to "humble [himself] to a nigger" and provide illegal help to a slave--i.e., to Jim, who would "do everything he could think of for me." Mark Twain, Adventures of Huckleberry Finn 121, 271 (Shelley Fisher Fishkin ed., Oxford Univ. Press 1996) (1884).

[FN342]. For one statute that recognizes this debt to culture, while limiting its application to marginal cases of abuse or neglect, see Cal. Welf. & Inst. Code § 16509 (West 1991): "Cultural and religious child-rearing practices which differ from general community standards shall not in themselves create a need for child welfare services unless the practices present a specific danger to the physical or emotional safety of the child."


[FN344]. Id. at 279.

[FN345]. See supra text accompanying notes 293-95.

[FN346]. See supra text accompanying notes 5-9, 296-99.

[FN347]. See supra text accompanying notes 304-34.

[FN348]. See supra text accompanying notes 334-40.

[FN349]. See supra text accompanying notes 200-30.


[FN351]. See supra text accompanying notes 52-68.

[FN353]. See supra text accompanying notes 319-26 (discussing possible answers within moral tradition of gratitude to the problem of the terrible childhood).

[FN354]. See Parfit, supra note 93, at 113, 148-51.

[FN355]. See supra text accompanying notes 114-27.

[FN356]. Metaphysics of Morals, supra note 114, at 99 (Doctrine of Right, § 28).

[FN357]. But see supra text accompanying notes 135-55 (discussing tension between Kantian duties of impartial benevolence and duties of parenthood).

[FN358]. See supra text accompanying note 324.


[FN363]. The extent to which parents must subject their conceptions of the good to those of the State has, of course, been the subject of a very lively debate. Compare, e.g., Bruce Ackerman, Social Justice in the Liberal State 139-67 (arguing that children must receive an education that exposes them to competing values and conceptions of the good), with Stephen G. Gilles, On Educating Children: A Parentalist Manifesto, 63 U. Chi. L. Rev. 937, 938 (1996) (arguing for parental primacy in making educational decisions). But even those who substantially oppose the use of State power to impose educational choices on parents generally admit, as Gilles puts it, that parental authority must be exercised in a way that does not "violate the core notions of the human good and of social responsibility on which there is liberal consensus." Id. at 1033.

[FN364]. See supra text accompanying notes 182-99.

[FN365]. Prince, 321 U.S. at 166.

[FN366]. Euripides, Hecabe, in Medea and Other Plays 63, 71 (Philip Vellacott trans., Penquin Books 1963) (n.d.) (emphasis added). I am indebted to the reading of this play by Martha C. Nussbaum, The Fragility of Goodness 397-421 (1986). Nussbaum emphasizes how the fate of Hecabe-a noble, virtuous being driven by circumstances to engage in bestial revenge and loss of humanity-demonstrates the risks, even the luck, inherent in living a good life. See id. at 419-21. My own reading, in which the role of ingratitude is most prominent, is not to the contrary: Because the possibility of gratitude or ingratitude arises only based on the conduct of another, we are all vulnerable to the risk that gratitude will demand from us more than we would like, or that ingratitude will rob of us the joy of our own beneficence. See supra text accompanying notes 267-70.

[FN367]. See Euripides, supra note 366, at 70.

[FN368]. Id. at 72.

[FN369]. Id.
[FN370]. See id. 72-73. Here Odysseus is apparently referring to the original ingratitude of Paris in violating Menelaos's hospitality, but it is not clear. Certainly there is no basis in the story for attributing ingratitude to Polyxena, the victim about to be sacrificed.

[FN371]. Id. at 70-71.

[FN372]. Id. at 87.

[FN373]. Id. at 89.

[FN374]. See id. 95-101. Hecabe's taking of justice into her own hands, and the killing of the innocent loved ones of her son's murderer, as a return of malice for ingratitude, must of course be distinguished from Agamemnon's unmet prior duty to impose just punishment under law on a murderer and an ingrate.

[FN375]. Nussbaum, supra note 366, at 414.

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