

The Law of Aging

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Date : March 12, 2012

Hendrik Hartog, [Someday All This Will Be Yours: A History of Inheritance and Old Age](#) (Harvard University Press, 2012).

Modern medicine, the rise of the welfare state, and profound cultural shifts have transformed old age in the industrialized world. Or have they? [Hendrik Hartog](#)'s history of inheritance disputes from 1850 to 1950 excavates a world both familiar and foreign. Then, older people who dreaded loneliness and destitution promised generous bequests of property in exchange for care and solicitude from younger adults. In turn, younger adults sacrificed opportunities—independence, mobility, marriage, fortune-seeking—to remain close to home and to provide arduous and intimate care in the hope of recompense, often in the form of real estate.

Disappointment, resentment, and recrimination predictably ensued—at least in many of the cases Hartog describes. He takes us deep into the lives of middle-class New Jersey families, as revealed in trial transcripts from law suits brought by frustrated would-be heirs. Hartog first explores the world of the aging adults who attempted—with varying degrees of calculation and desperation—to exercise control over their “retirement” years, particularly their anticipated physical and mental decline.

In a time before social insurance and nursing homes, elder care happened at home. Many of New Jersey's immigrants hailed from traditional societies where adult children rarely strayed far from their families of origin. But in nineteenth- and early twentieth-century America, free labor and geographic mobility made staying close to home much less attractive. To guard against abandonment, older adults often promised their children (or nephews or nieces) that if they stayed, if they provided care and company, they would inherit the house or the farm or a valuable tract of land.

Hartog next examines these bargains from the perspectives of those who relied on such promises, only to be left with nothing when their would-be benefactors died intestate or otherwise reneged, intentionally or not. He describes how circumstances, legal rules, and sometimes deceit deprived the younger parties of property they believed they had earned through such bargains.

The second part of the book, “Death and Lawyers,” takes us into the lawyers' offices and courtrooms where the ensuing legal disputes unfolded. Here is the first sustained discussion of legal doctrine, though Hartog emphasizes how law profoundly shaped the consciousness and actions of his characters. Testators' freedom, the Statute of Frauds, concepts of undue influence, and shared understandings about contractual obligations and their limits, structured both legal outcomes and the carefully laid plans of the aging and the young.

Hartog weaves such legal concepts seamlessly into his narrative. Family relationships, old age, intergenerational conflict and cooperation—not to mention a century of caselaw from New Jersey's equity courts—are messy. Hartog imposes order while preserving nuance and complexity. His imaginative use of the sources exemplifies sophisticated yet accessible legal history. At one point, where the sources speak less clearly, he invites the reader to envision an extended conversation between lawyer and client. Far from fanciful, his grounded speculations provide a compelling picture of the doctrinal and cultural constraints that likely shaped legal counsel and its reception. Throughout,

Hartog treats his protagonists with empathy yet without sentimentality.

Hartog's story is full of paradoxes. The young women who performed much of the caregiving labor for the aged confronted the expectation that such work was unexceptional and non-remunerative—the ordinary obligation of a daughter, or daughter-in-law, rather than evidence of a contract to inherit property or receive other compensation. Others were accused of exercising “undue influence” over their elderly charges, invalidating wills that explicitly provided for inheritance. Ironically, younger people who revealed in court that they had stayed with their aging relatives and performed care work out of love or a sense of familial duty often sabotaged their claim that they labored because of an enforceable contractual understanding.

Over time, Hartog shows, more of the work of elder care came to be seen as compensable. But by the middle of the twentieth century, his protagonists were “not yet in a normative universe...where direct care of the aged is presumptively provided by way of paid contracted work by strangers.” (P. 265) The book's brief epilogue reflects upon what has changed—the temporal extension of “retirement,” the partial public financing of old age, the expansion of housing and care options, the political mobilization of elderly Americans, the ethic of consumption outpacing that of saving. Older Americans are more likely to share wealth with the younger generation not through “strategic bequests” but through investments in human capital (higher education) and sometimes in real estate (helping out with a down payment on a young couple's first home). Today, we often see inherited wealth as “unearned.” As Hartog perceptively notes, such a concept would have been incomprehensible a century ago.

Continuity also characterizes our modern world of elder care, however, even as the legal disputes Hartog chronicles have all but disappeared from the case reports. Much uncompensated care for the aged is still provided by spouses and adult children. As Hartog emphasizes, the labor performed now is primarily *caretaking*—decisionmaking, coordinating, navigating medical and other bureaucracies—in addition to or even instead of *caregiving*. He makes a persuasive case for significant “discontinuity” between past and present. But as a moving coda acknowledges, Hartog's account of family conflict, wrenching financial and emotional trade-offs, and the abject terror of planning for an ultimately uncertain future also provokes a shiver of recognition in modern readers.

Cite as: Serena Mayeri, *The Law of Aging*, JOTWELL (March 12, 2012) (reviewing Hendrik Hartog, *Someday All This Will Be Yours: A History of Inheritance and Old Age* (Harvard University Press, 2012)), <https://legalhist.jotwell.com/the-law-of-aging/>.