

**WHO PAYS FOR THE “BOOMERANG GENERATION”?:  
A LEGAL PERSPECTIVE ON FINANCIAL SUPPORT  
FOR YOUNG ADULTS**

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This Article examines the repercussions of two recent overlapping trends: the growth in the number of young adults who live with or receive other types of financial support from their parents, and the high rates of divorce, separation, and unmarried parenthood. Social scientists have shown that the transition from adolescence to self-sufficient adulthood takes much longer today than in the past, because of a variety of economic and social factors. Therefore, the expectation that children will become financially independent upon reaching the age of majority is increasingly unrealistic. Parental support is often crucial to enable young adults to achieve long-term financial security.

The children of parents who are divorced, separated, or never married receive less parental support during young adulthood than their peers whose parents are married to each other. Furthermore, among parents who are divorced, separated, or never married, mothers pay a disproportionate share of support for young adult children. Women in general, and single mothers in particular, have fewer financial resources than men. As a result, the poverty rate for elderly women, which already exceeds the rate for elderly men, threatens to rise further.

Unlike the law in many other countries, family law in the United States generally does not permit a child support order for a child who is past the age of majority. Some states allow exceptions to this rule, but they do so only if the adult child is disabled or enrolled in higher education. This Article argues that child support orders should be more broadly available for young adults who are past the age of majority but not yet financially independent.

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“The conveyor belt that transported adolescents into adulthood has broken down.”<sup>1</sup>

“My son graduated last June from college . . . ,” wrote Lupe. “[H]e’s not ready to move out, not ready to be on his own. He does have a part-time job, has put in some applications, but nothing has come up in his field. . . . I have supported him for 24 years. . . . I’m a single mom, with two more kids in college . . . . Man, do I need a break.”<sup>2</sup>

## INTRODUCTION

Relationships between parents and children are profoundly important, not only while children are young but also after they have reached adulthood.<sup>3</sup> Many adult children and their parents maintain frequent contact throughout their shared lifespans and experience a strong sense of mutual obligation, especially in times of need.<sup>4</sup> Longer life expectancies, smaller nuclear families, and marital instability have the potential to make parent-child relationships the most significant and enduring family bonds in contemporary American society.<sup>5</sup>

Like many other types of family relationships, the ties that bind adult children and their parents are not purely emotional. They also have an economic component. A large proportion of adult child-parent relationships involve exchanges of financial support and other forms of material aid; the majority of assistance flows from the older generation to the younger,<sup>6</sup> in contrast to traditional expectations. Despite the prevailing American ideology of individualism and the assumption that adults should be self-sufficient,<sup>7</sup> it is the norm rather than the exception for young adults to receive financial support from their parents.<sup>8</sup>

This issue has gained increasing attention in recent years as the number of adult children moving in with their parents or receiving other types of

<sup>1</sup> Peg Tyre et al., *Bringing Up Adulthood*, NEWSWEEK, Mar. 25, 2002, at 35 (quoting sociologist Frank Furstenberg, Jr.).

<sup>2</sup> Jane Clifford, *Reactions to ‘Boomerang Kids’ Vary by Parent*, BILLINGS GAZETTE (Sept. 23, 2005, 11:00 PM), [http://billingsgazette.com/lifestyles/reactions-to-boomerang-kids-vary-by-parent/article\\_7d91d199-cdfd-5621-a06c-99647f225922.html](http://billingsgazette.com/lifestyles/reactions-to-boomerang-kids-vary-by-parent/article_7d91d199-cdfd-5621-a06c-99647f225922.html), archived at <http://perma.cc/OfYuMoJbgcP>.

<sup>3</sup> See generally ALICE S. ROSSI & PETER H. ROSSI, OF HUMAN BONDING: PARENT-CHILD RELATIONS ACROSS THE LIFE COURSE (1990) (examining the parent-child relationship as a core attachment at various stages of the life course).

<sup>4</sup> See Teresa Toguchi Swartz, *Intergenerational Family Relations in Adulthood: Patterns, Variations, and Implications in the Contemporary United States*, 35 ANN. REV. SOC. 191, 194, 198–99 (2009) [hereinafter Swartz, *Intergenerational*].

<sup>5</sup> See *id.* at 193–94, 199.

<sup>6</sup> See *id.* at 196; see also *infra* Part I.B.

<sup>7</sup> See MARTHA ALBERTSON FINEMAN, THE AUTONOMY MYTH 20–22 (2004).

<sup>8</sup> See *infra* Part I.B (describing patterns of parental support for young adults).

support from them has soared. While it is not new for parents to spend large sums for their adult children to attend college, a growing number of parents provide financial support to adult children in other circumstances, including college graduates.<sup>9</sup> The recent economic downturn has intensified this trend.<sup>10</sup> This phenomenon has spawned new terms, like “boomerang kids” and “adultolescents,” and triggered a flood of commentary and analysis from social scientists and the mass media.<sup>11</sup>

Meanwhile, the law has remained virtually silent on this major shift in American family life. Young adults’ prolonged financial dependency on their parents has implications for a wide range of legal doctrines.<sup>12</sup> Yet, with few exceptions (such as the Patient Protection and Affordable Care Act, which mandates that adults up to age twenty-six must be permitted to remain on their parents’ health insurance policy),<sup>13</sup> legal rules have not been revised to take account of the growing financial burden borne by parents of adult children.

Of particular concern is the impact of divorce, separation, and single parenthood on financial support for adult children. In the absence of an appropriate legal framework, three troubling patterns of inequality have emerged.

First, young adults whose parents are divorced, separated, or never married receive less support than those whose parents are married to each other.<sup>14</sup> Second, divorced, separated, or never married mothers bear a heavier burden of support for adult children than divorced, separated, or never married fathers.<sup>15</sup> To address both of these forms of inequality, this Article will

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<sup>9</sup> See *infra* Part I.B.

<sup>10</sup> See *infra* Part I.B.

<sup>11</sup> See *infra* Part I.

<sup>12</sup> See generally Hillary B. Farber, *A Parent’s “Apparent” Authority: Why Intergenerational Coresidence Requires a Reassessment of Parental Consent to Search Adult Children’s Bedrooms*, 21 CORNELL J.L. & PUB. POL’Y 39 (2011) (proposing that the Fourth Amendment doctrine of third-party consent to police searches should be revised in response to the increased prevalence of intergenerational households); Carrie A. O’Reilly, *Empty Nest No More: Defining Adult Children as Dependents*, 32 AM. BANKR. INST. J. 24 (2013) (analyzing the treatment of dependent adult children in parents’ bankruptcy proceedings); Barbara Bennett Woodhouse, *Youthful Indiscretions: Culture, Class, Status, and the Passage to Adulthood*, 51 DEPAUL L. REV. 743 (2002) (discussing the implications of the delayed transition to adulthood for the juvenile justice system and criminal law).

<sup>13</sup> Pub. L. No. 111-148, 124 Stat. 119 (2010) (codified as amended in relevant part at 42 U.S.C. § 300gg-14 (2011)); see also *Covering Young Adults Through Their Parents’ or Guardians’ Health Policy*, NAT’L CONFERENCE OF STATE LEGISLATURES (Sept. 23, 2010), <http://www.ncsl.org/issues-research/health/dependent-health-coverage-state-implementation.aspx>, archived at <http://perma.cc/0qWPThuhMCG> (listing state laws requiring health insurance dependent coverage for adult children).

<sup>14</sup> See *infra* Part II.B.

<sup>15</sup> See *infra* Part II.B. This Article concentrates on male-female couples and their children, who are the primary focus of existing empirical data on young adults’ financial dependency on their parents. Additional empirical research is needed to determine the extent to which patterns of financial dependency are the same or different in families headed by same-sex couples.

propose broadening access to child support for children who are over the age of majority.<sup>16</sup>

A third form of inequality lies in the fact that adult children of affluent parents receive more support than their less privileged counterparts, perpetuating and compounding class differences in American society.<sup>17</sup> This type of inequality cannot be remedied by increasing access to post-majority child support.<sup>18</sup> Instead, a solution would require a large-scale public policy response, including more public funding for higher education, job training, housing, and other resources necessary to help young adults along the path toward self-sufficiency.<sup>19</sup> A full discussion of such initiatives is beyond the scope of this Article.

Part I of this Article will present an overview of young adults’ financial dependency on their parents. After exploring reasons why the transition from adolescence to independent adulthood takes much longer today than in the past, it will document the widespread practice of parental support for young adults. This Part will then discuss the advantages and disadvantages of this trend. Contrary to the assumption that parental support undermines adult children’s autonomy, research has shown that under current economic and social conditions, parental support during early adulthood actually improves a young person’s prospects for long-term independence.

Part II will examine the impact of divorce, separation, and single parenthood on parents’ support for their young adult children. Current law sharply restricts the availability of court-ordered child support past the age of majority, and noncustodial fathers are less likely than married fathers to provide such support voluntarily. As a result, young adults whose parents are divorced, separated, or never married receive less parental support than their peers whose parents are married to each other. The expense of supporting these young adults falls primarily on their mothers, who typically have limited resources. This process threatens to exacerbate women’s existing financial disadvantages.

In order to ensure that the burden of financial support for young adults is distributed equitably, Part III will propose the creation of a new legal remedy known as “expanded post-majority child support.” Modeled on state statutes and case law that permit child support awards for adults who are in college, expanded post-majority support will help to alleviate the harmful consequences of divorce, separation, and unmarried parenthood for women and adult children. By establishing appropriate procedural and substantive rules, including a list of factors to guide judicial discretion and incentives for recipients to become self-supporting, this new remedy can achieve fairness for parents while providing crucial support for young adults.

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<sup>16</sup> See *infra* Part III.

<sup>17</sup> See *infra* Part I.B.

<sup>18</sup> See *infra* Part II.B.

<sup>19</sup> See *infra* Parts I.C, III.C.

## I. THE SLOW TRANSITION TO ADULTHOOD AND YOUNG ADULTS' PROLONGED FINANCIAL DEPENDENCY ON THEIR PARENTS

The past few decades have brought a dramatic increase in the number of adults who live with or are otherwise financially supported by their parents. This trend, which intensified in the aftermath of the recent economic recession, presents a stark contrast to family patterns that prevailed during the middle of the twentieth century. While some have criticized the behavior of today's young adults and their parents, in many ways their actions are a sensible adaptation to changing social and economic conditions.

### A. *Growing Up Is Hard to Do: The Long Road to Adulthood*

In the period following World War II, social and economic forces impelled young adults to become financially independent and leave their parents' homes at an early age.<sup>20</sup> Full-time jobs with wages adequate to support a family were readily available without a college degree and in some instances without a high school diploma.<sup>21</sup> For young women, higher education was rare, career opportunities were limited, and early marriage and childbearing were encouraged.<sup>22</sup> Reasonable housing costs and favorable mortgage terms enabled young adults to establish new households.<sup>23</sup> The GI Bill, enacted in 1944, provided government funds for education and housing to millions of returning military veterans.<sup>24</sup> Even without subsidies furnished by the GI bill, college tuitions were set at levels that were affordable for many.<sup>25</sup> In light of these conditions, it is not surprising that the prominent sociologist Talcott Parsons wrote in 1949, "For young people not to break away from their parental families at the proper time is a failure to live up to expectations, an unwarranted expression of dependency."<sup>26</sup>

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<sup>20</sup> See Mary C. Waters et al., *Introduction to COMING OF AGE IN AMERICA* 1, 12–13 (Mary C. Waters et al. eds., 2011) [hereinafter Waters et al., *Introduction*].

<sup>21</sup> See Frank F. Furstenberg, Jr., *On a New Schedule: Transitions to Adulthood and Family Change*, 20 *FUTURE OF CHILD*. 67, 69 (2010) [hereinafter Furstenberg, *On a New Schedule*]; Swartz, *Intergenerational*, *supra* note 4, at 199.

<sup>22</sup> See Frank F. Furstenberg, Jr. et al., *On the Frontier of Adulthood: Emerging Themes and New Directions*, in *ON THE FRONTIER OF ADULTHOOD: THEORY, RESEARCH, AND PUBLIC POLICY* 3, 4–5 (Richard A. Settersten, Jr. et al. eds., 2005); Waters et al., *Introduction*, *supra* note 20, at 12–13.

<sup>23</sup> See Frank F. Furstenberg, Jr. et al., *Growing Up is Harder to Do*, 3 *CONTEXTS* 33, 39 (2004) [hereinafter Furstenberg et al., *Growing Up*].

<sup>24</sup> Waters et al., *Introduction*, *supra* note 20, at 12; *NewsHour: Remembering the GI Bill* (PBS television broadcast July 4, 2000), available at [http://www.pbs.org/newshour/bb/military/july-dec00/gibill\\_7-4.html](http://www.pbs.org/newshour/bb/military/july-dec00/gibill_7-4.html), transcript archived at <http://perma.cc/0jcCmdREtHw>.

<sup>25</sup> See Swartz, *Intergenerational*, *supra* note 4, at 199.

<sup>26</sup> Talcott Parsons, *The Social Structure of the Family*, in *THE FAMILY: ITS FUNCTION AND DESTINY* 173, 200 (Ruth Nanda Anshen ed., 1949), cited in Lynn K. White & Stacy J. Roberts, *Strong Support But Uneasy Relationships: Coresidence and Adult Children's Relationships with Their Parents*, 59 *J. MARRIAGE & FAM.* 62, 63 (1997).

The situation today is radically different. The transition from adolescence to adulthood has become protracted. During recent decades, the average ages at which people reach traditional milestones like completing education, marrying, having a child, working in the paid labor force or as a full-time married homemaker, and moving out of the parental home have reached new heights.<sup>27</sup> Americans’ average age at first marriage is higher than it has been at any time since 1890.<sup>28</sup>

Moreover, the concept of what it means to be an adult has changed. Many people in their twenties and thirties no longer primarily define adulthood in terms of traditional benchmarks like marriage, becoming a parent, establishing a separate household, finishing school, and obtaining employment.<sup>29</sup> Instead, when describing the prerequisites for adulthood, they emphasize subjective factors like taking responsibility for one’s actions, making one’s own decisions, and achieving financial independence.<sup>30</sup>

These developments have led psychologist Jeffrey Arnett and others to argue that young people are experiencing a new life stage.<sup>31</sup> Just as adoles-

<sup>27</sup> See Furstenberg, *On a New Schedule*, *supra* note 21, at 69–71; Furstenberg et al., *Growing Up*, *supra* note 23, at 37–38. In 1960, 77% of women and 65% of men had completed all these major steps by the age of thirty, compared to just 46% of women and 31% of men in 2000. Frank F. Furstenberg, Jr. et al., *Between Adolescence and Adulthood: Expectations About the Timing of Adulthood* 17 (Network on Transitions to Adulthood and Pub. Policy, Working Paper No. 1, 2003), *archived at* <http://perma.cc/Ovo1kNrS> UfU. The contrast is even more pronounced when comparing twenty-five-year-olds: 68% of women and 44% of men had reached all the major milestones by age twenty-five in 1960, while only 25% of women and 13% of men had done so in 2000. *Id.* at 17.

<sup>28</sup> See Sheldon Danziger & Cecilia Elena Rouse, *Introduction to THE PRICE OF INDEPENDENCE: THE ECONOMICS OF EARLY ADULTHOOD* 1, 3–4 (Sheldon Danziger & Cecilia Elena Rouse eds., 2007) (stating that median age at first marriage, after falling during the mid-twentieth century, has risen to an unprecedented twenty-six for women and twenty-seven for men); *see also* Erik Eckholm, *Saying No to “I Do,” With the Economy in Mind*, N.Y. TIMES (Sept. 28, 2010), [http://www.nytimes.com/2010/09/29/us/29marriage.html?\\_r=0](http://www.nytimes.com/2010/09/29/us/29marriage.html?_r=0), *archived at* <http://perma.cc/0WjotoJ1uMN> (stating that between 2000 and 2009, the percentage of young adults ages twenty-five to thirty-four who have never been married rose from 35% to 46%). Although the average ages at which people marry and have children have risen for the population as a whole, there are significant differences among subgroups; young people from religious, rural, or disadvantaged backgrounds are more likely to marry and/or have children early. *See* RICHARD SETTERSTEN & BARBARA E. RAY, NOT QUITE ADULTS 81 (2010); *see also* Maria J. Kefalas & Patrick J. Carr, *Conclusion to COMING OF AGE IN AMERICA*, *supra* note 20, at 191, 199 (stating that the pattern of delaying childbearing is characteristic of the college-educated elite and is not shared by working-class and low-income young adults).

<sup>29</sup> *See* Sharon Sassler et al., *Are They Really Mama’s Boys/Daddy’s Girls?: The Negotiation of Adulthood upon Returning to the Parental Home*, 23 SOC. F. 670, 675 (2008).

<sup>30</sup> *See* JEFFREY JENSEN ARNETT, EMERGING ADULTHOOD 15, 209–14 (2004); *see also* Gordon Berlin et al., *Introducing the Issue*, 20 FUTURE OF CHILD. 3, 4–5 (2010), *archived at* <http://perma.cc/0KH3uCaGabb> (stating that “the social construction of adulthood seems to rely much less on the traditional demographic markers—home leaving, full-time work, and family formation—and more on personal psychological self-assessments of ‘maturity’”).

<sup>31</sup> *See, e.g.*, EMERGING ADULTS IN AMERICA (Jeffrey Jensen Arnett & Jennifer Lynn Tanner eds., 2006) [hereinafter Arnett & Tanner, EMERGING ADULTS IN AMERICA]; Jeffrey Jensen Arnett, *Emerging Adulthood: A Theory of Development from the Late Teens*

cence was initially designated as a separate life stage at the beginning of the twentieth century,<sup>32</sup> Arnett has coined the term “emerging adulthood” to describe the phase spanning from age eighteen through the mid- to late-twenties.<sup>33</sup> Building on Erik Erikson’s theory of sequential stages of psychosocial development,<sup>34</sup> Arnett has distinguished emerging adulthood from both adolescence and adulthood.<sup>35</sup> According to Arnett, emerging adulthood is characterized by five core features: identity exploration, instability, focus on the self, a feeling of being in transition, and a sense of possibilities.<sup>36</sup> While there is debate about whether the period from late teens through the twenties actually constitutes a distinct developmental stage,<sup>37</sup> social scientists generally agree that the passage to adulthood takes far longer today than in the past.<sup>38</sup>

Various reasons have been identified for the prolonged transition to adulthood.<sup>39</sup> Availability of birth control, the proliferation of sexual relationships outside of marriage, and growing social acceptance of cohabitation and non-marital births have contributed to the postponement of marriage.<sup>40</sup> With

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*Through the Twenties*, 55 AM. PSYCHOLOGIST 469 (2000) [hereinafter Arnett, *A Theory of Development*].

<sup>32</sup> See Furstenberg et al., *On the Frontier of Adulthood: Emerging Themes and New Directions*, *supra* note 22, at 3–4; Arnett, *A Theory of Development*, *supra* note 31, at 476.

<sup>33</sup> Arnett is not entirely consistent in setting the age limits for “emerging adulthood.” See ARNETT, EMERGING ADULTHOOD, *supra* note 30, at vi (stating that emerging adulthood “lasts . . . at least from age 18 to 25 for most people and usually beyond”); *id.* at 207 (“I have described emerging adulthood as lasting from about age 18 to age 25, but always with the caveat that the upper age boundary is flexible.”); Arnett, *A Theory of Development*, *supra* note 31, at 469 (stating that the theory of emerging adulthood applies to the period “from the late teens through the twenties, with a focus on ages 18–25”). Some other scholars have applied broader age parameters. See, e.g., Furstenberg et al., *On the Frontier of Adulthood: Emerging Themes and New Directions*, *supra* note 22, at 18 (defining early adulthood as spanning the years from eighteen to thirty-four); Waters et al., *Introduction*, *supra* note 20, at 17–18 (dividing young adulthood into early, middle and late stages ranging from eighteen to thirty-four).

<sup>34</sup> See Arnett, *A Theory of Development*, *supra* note 31, at 470 (citing ERIK H. ERIKSON, *CHILDHOOD AND SOCIETY* (1950) and ERIK H. ERIKSON, *IDENTITY: YOUTH AND CRISIS* (1968)).

<sup>35</sup> *Id.* at 476–77.

<sup>36</sup> ARNETT, EMERGING ADULTHOOD, *supra* note 30, at 7–17.

<sup>37</sup> See, e.g., JEFFREY JENSEN ARNETT ET AL., *DEBATING EMERGING ADULTHOOD: STAGE OR PROCESS?* (2011) (debating whether emerging adulthood is a developmental stage or a process shaped by individual and environmental factors); James Côté & John M. Bynner, *Changes in the Transition to Adulthood in the UK and Canada: The Role of Structure and Agency in Emerging Adulthood*, 11 J. YOUTH STUD. 251 (2008) (critiquing the utility and applicability of Arnett’s emerging adulthood model). Because the term “emerging adults” is not universally accepted, this Article uses the more generic phrase “young adults.”

<sup>38</sup> See Sassler et al., *supra* note 29, at 674–76.

<sup>39</sup> See Waters et al., *Introduction*, *supra* note 20, at 1–2.

<sup>40</sup> See Furstenberg, *On a New Schedule*, *supra* note 21, at 69–70. Other reasons for delaying marriage include a desire for personal freedom, fear of divorce, and unwillingness to marry before achieving economic security. See ARNETT, EMERGING ADULTHOOD, *supra* note 30, at 97–117; SETTERSTEN & RAY, *supra* note 28, at 77–101 (2010); Eckholm, *supra* note 28.

the shift to an information-based economy, the need for additional education has delayed entry into the full-time workforce.<sup>41</sup> As the cost of higher education has risen, students graduate with mounting levels of debt, further compromising their ability to support themselves.<sup>42</sup> A weak economy makes high-paying, secure jobs difficult to find; many high school and college graduates are unemployed or underemployed.<sup>43</sup> In many areas, housing costs are out of reach for those with low earnings and few assets.<sup>44</sup> All of these factors have impeded young people’s progress toward independence. As the following discussion will show, one result of these changes has been an increase in the number of young adults who live with or receive other types of support from their parents.

### B. *You Can Go Home Again: Young Adults’ Reliance on Parental Support*

During the lengthy journey to adulthood, young people are increasingly relying on their parents for support. A key indicator of this trend is the burgeoning number of young adults who live with their parents. As of 2011, 53% of adults between the ages of eighteen and twenty-four, and 39% of those between the ages of eighteen and thirty-four, either lived with their parents or moved back in with their parents temporarily in the past few years.<sup>45</sup> From 1970 to 1990, the proportion of people in their twenties who lived with their parents rose by 50%.<sup>46</sup> The percentage of young adults ages twenty-five to thirty-four living in multigenerational households is now at its highest level in over sixty years.<sup>47</sup>

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<sup>41</sup> See Waters et al., *Introduction*, *supra* note 20, at 1–2; Furstenberg et al., *Growing Up*, *supra* note 23, at 39.

<sup>42</sup> See REBECCA HINZE-PIFER & RICHARD FRY, PEW RESEARCH CTR., *THE RISE OF COLLEGE STUDENT BORROWING 1–7* (2010); Andrew Martin & Andrew W. Lehren, *A Generation Hobbled by College Debt*, N.Y. TIMES, May 13, 2012, at A1.

<sup>43</sup> KATHERINE S. NEWMAN, *THE ACCORDION FAMILY* 46, 209 n.8 (2012); PEW RESEARCH CTR., *THE RETURN OF THE MULTI-GENERATIONAL FAMILY HOUSEHOLD 7* (2010) (stating that in 2009, 37% of eighteen- to twenty-nine-year-olds were either unemployed or underemployed, the highest figure in almost four decades); Catherine Rampell, *More Young Americans Out of High School Are Also Out of Work*, N.Y. TIMES (June 6, 2012), <http://www.nytimes.com/2012/06/06/business/more-young-americans-out-of-high-school-are-also-out-of-work.html>, archived at <http://perma.cc/0PXhbhnVvZ5>.

<sup>44</sup> NEWMAN, *supra* note 43, at 50–51; Waters et al., *Introduction*, *supra* note 20, at 2; Swartz, *Intergenerational*, *supra* note 4, at 200.

<sup>45</sup> See KIM PARKER, PEW RESEARCH CTR., *THE BOOMERANG GENERATION 6* (2012); see also Waters et al., *Introduction*, *supra* note 20, at 18–19 (reporting that approximately half of all eighteen- to twenty-four-year-olds live with their parents).

<sup>46</sup> See Robert F. Schoeni & Karen E. Ross, *Material Assistance from Families During the Transition to Adulthood*, in *ON THE FRONTIER OF ADULTHOOD: THEORY, RESEARCH, AND PUBLIC POLICY*, *supra* note 22, at 396, 413; see also SETTERSTEN & RAY, *supra* note 28, at x (documenting increases in the proportion of young adults living with their parents since 1970).

<sup>47</sup> PARKER, *supra* note 45, at 11. From 2007 to 2009, the share of Americans living in multigenerational households increased more among young adults than among any other age group. *Id.* at 10–11.

Although earlier periods of American history also saw large numbers of adults living with their parents,<sup>48</sup> the current trend differs from prior eras in several ways. In the past, young people who left home usually did not return.<sup>49</sup> Today, returning home after moving out is an experience shared by nearly half of young adults.<sup>50</sup> Previously, multigenerational households were common primarily within the poor and working class, but in recent years this arrangement has spread up the socioeconomic ladder.<sup>51</sup> In addition, young adults' reasons for sharing their parents' household are different from preceding generations. In the early twentieth century, adults routinely remained in the parental home in order to contribute to the family economy.<sup>52</sup> Now, most adult children who share their parents' home do so primarily for their own benefit.<sup>53</sup> Some use the opportunity to save money while working or attending school.<sup>54</sup> Others move back in with their parents as a result of a financial or personal setback, such as unemployment, illness, foreclosure, or dissolution of a marriage or cohabiting relationship.<sup>55</sup> These developments are the product of economic and social forces that show no sign of abating, such as the globalized and uncertain economy, increased educational demands, and instability of marriage and cohabitation.<sup>56</sup>

At the same time that record numbers of young adults have moved back in with their parents, the flow of other types of financial support from parents to young adults has also grown. In a 2007 study, almost three-quarters of people between the ages of eighteen and twenty-five reported that they received financial assistance from their parents in the preceding twelve months.<sup>57</sup> Moreover, over one-third of eighteen- to twenty-four-year-olds, and almost one-fifth of eighteen- to thirty-four-year-olds, get financial help from parents or other family members on a regular basis.<sup>58</sup>

The level of support parents bestow on their adult children is substantial. The average amount parents spend on children between the ages of

<sup>48</sup> See SETTERSTEN & RAY, *supra* note 28, at 127.

<sup>49</sup> See ARNETT, EMERGING ADULTHOOD, *supra* note 30, at 51.

<sup>50</sup> *Id.* at 52; FRANCES GOLDSCHIEDER & CALVIN GOLDSCHIEDER, *THE CHANGING TRANSITION TO ADULTHOOD* 54 (1999).

<sup>51</sup> NEWMAN, *supra* note 43, at 133–35.

<sup>52</sup> See *id.* at 15; FURSTENBERG, *On a New Schedule*, *supra* note 21, at 72–73.

<sup>53</sup> See JUYEON KIM & LINDA J. WAITE, *THE ECONOMIC DOWNTURN AND THE FAMILY: MOVING IN, MOVING OUT AND FINANCIAL WELL-BEING* 4 (2011); SASSLER et al., *supra* note 29, at 680–81; SWARTZ, *Intergenerational*, *supra* note 4, at 196.

<sup>54</sup> See SETTERSTEN & RAY, *supra* note 28, at 49.

<sup>55</sup> See NEWMAN, *supra* note 43, at xvii, 42; SCHOENI & ROSS, *supra* note 46, at 397.

<sup>56</sup> See NEWMAN, *supra* note 43, at xx–xxiii; SWARTZ, *Intergenerational*, *supra* note 4, at 207.

<sup>57</sup> See PEW RESEARCH CTR., *A PORTRAIT OF “GENERATION NEXT”* 19 (2007) (reporting results of a survey in which 73% of eighteen- to twenty-five-year-olds indicated that they had received financial help from their parents during the previous year); see also SETTERSTEN & RAY, *supra* note 28, at 51 (presenting statistics from surveys conducted in 2005 and 2007 showing that about 70% of eighteen- to twenty-four-year-olds had received financial help from their parents in the prior year).

<sup>58</sup> PARKER, *supra* note 45, at 14.

eighteen and thirty-four is \$42,280 in 2005 dollars.<sup>59</sup> This is roughly one quarter of the amount spent by middle-income families on their children from birth through age seventeen.<sup>60</sup> In other words, close to one-fifth of parents’ total expenditure on children occurs after children turn eighteen. A more recent study of young adults ages nineteen to twenty-two shows even higher amounts of annual financial transfers from parents.<sup>61</sup>

The preceding figures include expenses for college. However, children who are not in college also receive significant amounts of parental support. According to a 2011 survey, 59% of parents have given financial support to their adult children who are between the ages of eighteen and thirty-nine and no longer in school.<sup>62</sup> The most common kinds of support reported by these parents were housing, living expenses, transportation costs, insurance, spending money, medical expenses, emergency money, loan assistance, payments toward credit card debt, and down payments for homes.<sup>63</sup>

In addition to monetary assistance, parents also frequently provide their adult children with valuable, unpaid services like help with child care, transportation, and chores.<sup>64</sup> Between the ages of eighteen and thirty-four, adults receive an average of almost 200 hours of services from their parents and parents-in-law each year.<sup>65</sup>

The recent recession has accelerated these trends.<sup>66</sup> The United States Census Bureau reported that from 2007 to 2011, the number of adults be-

<sup>59</sup> See Anna Bahney, *The Bank of Mom and Dad*, N.Y. TIMES (Apr. 20, 2006), <http://www.nytimes.com/2006/04/20/fashion/thursdaystyles/20money.html?pagewanted=all>, archived at <http://perma.cc/0vxAcpsLUJg> (quoting economist Dr. Robert Schoeni); see also Schoeni & Ross, *supra* note 46, at 405 (reporting that the average amount parents spend on their children between the ages of eighteen and thirty-four is \$38,340 in 2001 dollars).

<sup>60</sup> See Schoeni & Ross, *supra* note 46, at 405; Bahney, *supra* note 59.

<sup>61</sup> See Patrick Wightman et al., *Familial Financial Assistance to Young Adults* 6 (Nat’l Poverty Ctr. Working Paper Series, Paper No. 12–10, 2012), archived at <http://perma.cc/0Yalp1wifr8> (reporting that the average amount received by all respondents was \$7,490 per year in 2009 dollars; excluding those who received no assistance, the average was nearly \$12,185 per year).

<sup>62</sup> Jenna Goudreau, *Nearly 60% of Parents Provide Financial Support to Adult Children*, FORBES (May 20, 2011), <http://www.forbes.com/sites/jennagoudreau/2011/05/20/parents-provide-financial-support-money-adult-children/>, archived at <http://perma.cc/0y7YXEJQ5hn>.

<sup>63</sup> *Id.*

<sup>64</sup> See PEW RESEARCH CTR., A PORTRAIT OF “GENERATION NEXT,” *supra* note 57, at 19 (reporting that 64% of respondents between eighteen and twenty-five said that their parents have helped them in the past twelve months with errands, housework, and home repairs); Teresa Toguchi Swartz et al., *Transitions to Adulthood in the Land of Lake Wobegon*, in *COMING OF AGE IN AMERICA*, *supra* note 20, at 59, 82 [hereinafter Swartz et al., *Transitions*] (“One common and important way that parents helped their children was by providing regular or intermittent care for their grandchildren.”).

<sup>65</sup> See Schoeni & Ross, *supra* note 46, at 402–03, 416 n.3 (reporting that over the sixteen-year span between the ages of eighteen and thirty-four, children receive an average total of 3,852 hours of assistance from family members, of which 80% is provided by parents and parents-in-law).

<sup>66</sup> See NEWMAN, *supra* note 43, at xvii, 42–43. The recent recession officially began in December 2007 and ended in June 2009. See David Johnson, *Households Doubling*

tween twenty-five and thirty-four years old living with their parents shot up by 26%, from 4.7 million to 5.9 million.<sup>67</sup> The recession caused many adults who previously lived on their own to move back in with their parents. A 2010 survey found that one-fourth of those aged eighteen to twenty-four had done so, as did one-fifth of those aged twenty-five to thirty-four.<sup>68</sup> With employment opportunities drying up due to the ailing economy, some young adults have decided to pursue an additional degree instead of a job, which in many cases means additional tuition expenses for their parents.<sup>69</sup>

However, parental support for young adults is not distributed equally. Although intergenerational support can be found in all racial, ethnic and socioeconomic groups in the United States, the nature and amount of support differ. Several studies show that white, non-immigrant families are more likely to provide financial support, while non-whites and immigrants are more likely to share a multigenerational household and provide assistance with practical tasks.<sup>70</sup> In addition, adult children from African-American, Latino, and immigrant families are more likely than others to contribute financially to their parents, placing them at a disadvantage in comparison to other groups of young adults.<sup>71</sup>

The amount of parental support provided to adult children varies greatly according to family income.<sup>72</sup> Young adults whose parents' income places them in the top quartile receive over three times as much economic assistance as those in the bottom quartile.<sup>73</sup> Low-income parents give approximately the same percentage of income to their adult children as other parents; since their incomes are lower, so is the amount of support they

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*Up*, RANDOM SAMPLINGS: THE OFFICIAL BLOG OF THE U.S. CENSUS BUREAU (Sept. 13, 2011), <http://blogs.census.gov/2011/09/13/households-doubling-up/>, archived at <http://perma.cc/0RfNhKbvyJF>.

<sup>67</sup> Johnson, *supra* note 66.

<sup>68</sup> RAKESH KOCHHAR & D'VERA COHN, PEW RESEARCH CTR., FIGHTING POVERTY IN A TOUGH ECONOMY, AMERICANS MOVE IN WITH THEIR RELATIVES 3 (2011).

<sup>69</sup> See Swartz, *Intergenerational*, *supra* note 4, at 200; Sharon Jayson, *Parents Spread Out Safety Net in Tough Economy*, USA TODAY, May 3, 2012, at 3D.

<sup>70</sup> See KIM & WAITE, *supra* note 53, at 6, 8; Yean-Ju Lee & Isik A. Aytac, *Intergenerational Financial Support Among Whites, African Americans, and Latinos*, 60 J. MARRIAGE & FAM. 426, 426–27, 433 (1998); Swartz, *Intergenerational*, *supra* note 4, at 204.

<sup>71</sup> See NEWMAN, *supra* note 43, at 15 (describing the pressure on children from immigrant households to contribute their earnings to their parents); Frank F. Furstenberg, Jr. et al., *The Effect of Divorce on Intergenerational Transfers: New Evidence*, 32 DEMOGRAPHY 319, 332 n.7 (1995) [hereinafter Furstenberg et al., *Effect of Divorce*] (stating that “blacks are more likely than whites to have made a financial transfer to their parents, although the proportions are still very low”); Furstenberg et al., *Growing Up*, *supra* note 23, at 40 (stating that many young adults who are employed continue to receive support from their parents, with the exception of those from immigrant families, who more often help support their parents); Lee & Aytac, *supra* note 70, at 433 (reporting that after controlling for children's and parents' family structure and socioeconomic status, Latinos are more likely than whites to give financial support to their parents).

<sup>72</sup> Swartz, *Intergenerational*, *supra* note 4, at 204–05.

<sup>73</sup> Schoeni & Ross, *supra* note 46, at 407–11.

provide.<sup>74</sup> Another important variable affecting financial support received by young adults is their parents’ marital status, which will be discussed more fully below.<sup>75</sup>

The United States is not unique in having a large cohort of adult children who live with or otherwise depend financially on their parents. The phenomenon is global in scope.<sup>76</sup> Other countries have their own names for what Americans call “boomerang kids.”<sup>77</sup> In Japan, they are called “parasaito shinguru” (parasite singles);<sup>78</sup> in Italy, they are known as “mammoni” (mama’s boys);<sup>79</sup> and in England, they have been given the acronym “kippers” (kids in parents’ pockets eroding retirement savings).<sup>80</sup> In some countries, remaining in the parental home is even more common than it is in the United States.<sup>81</sup> With the increased globalization of the economy and attendant economic and social pressures, it can be expected that this trend will continue to grow.<sup>82</sup>

### C. *All in the Family: The Benefits and Burdens of Parental Support for Young Adults*

As described above, young adults’ financial dependency on their parents is a widespread consequence of powerful social and economic forces. The question remains whether parental support for adult children is benefi-

<sup>74</sup> Furstenberg, *On a New Schedule*, *supra* note 21, at 79; Wightman et al., *supra* note 61, at 7–8 (explaining that parents at all income levels contribute about 10% of their permanent income to adult children).

<sup>75</sup> See *infra* Part II.B.

<sup>76</sup> See generally NEWMAN, *supra* note 43 (describing adult children living with their parents in various countries).

<sup>77</sup> The terms “boomerang kid” and “boomerang generation” are widely used to refer to young adults who move back to their parents’ homes after leaving, including those who return after graduating from college. See, e.g., PARKER, *supra* note 45; Martha Farnsworth Riche, *The Boomerang Age*, 12 AM. DEMOGRAPHICS 24 (May 1990); Elizabeth Wong, “Boomerang Kids” *Trend Comes Full Circle*, WASH. TIMES, Mar. 31, 2011, at A1, archived at <http://perma.cc/0cFr9Sd9xeS>.

<sup>78</sup> Hiroyuki Takahashi & Jeannette Voss, *Parasite Singles—A Uniquely Japanese Phenomenon?*, 31 JAPAN ECONOMIC INSTITUTE REPORT 1 (2000), <http://www.jei.org/Restricted/JEIR00/0031f.html>, archived at <http://perma.cc/0xLP6Wbosd3>.

<sup>79</sup> NEWMAN, *supra* note 43, at 99.

<sup>80</sup> Becky Barrow, *Parents Pay Dear as “Kippers” Refuse to Sever Home Ties*, TELEGRAPH (Nov. 17, 2003), <http://www.telegraph.co.uk/news/uknews/1446906/Parents-pay-dear-as-kippers-refuse-to-sever-home-ties.html>, archived at <http://perma.cc/0cDULKJxAp>.

<sup>81</sup> See ARNETT, *EMERGING ADULTHOOD*, *supra* note 30, at 53; Furstenberg, *On a New Schedule*, *supra* note 21, at 73. The rate of adults living with their parents varies widely from country to country, based in part on cultural factors, economic conditions, and the availability of social welfare programs to assist young adults. See NEWMAN, *supra* note 43; Furstenberg, *On a New Schedule*, *supra* note 21, at 73; Marta Choroszewicz & Pascal Wolff, *51 Million Young EU Adults Lived with Their Parent(s) in 2008*, EUROSTAT STATISTICS IN FOCUS, Sept. 28, 2010, archived at <http://perma.cc/0VgZeUz97No> (comparing the share of young adults living with their parents in twenty-nine European countries).

<sup>82</sup> See ARNETT, *EMERGING ADULTHOOD*, *supra* note 30, at 23; Kefalas & Carr, *supra* note 28, at 194.

cial or detrimental. The answer is both. Parental support for young adults serves a crucial function and confers significant advantages on young adults, their parents, and society. At the same time, this trend imposes burdens that the law should address.

During the mid-twentieth century, when early independence was the norm, a young adult's failure to separate from parents was considered pathological.<sup>83</sup> Although conditions have changed drastically since then, some modern commentators still take the view that adults who live with or receive support from their parents are lazy slackers whose parents are guilty of coddling them.<sup>84</sup> According to this perspective, parents who provide housing or other support are depriving their adult children of the opportunity to become self-reliant and trapping them in a state of permanent immaturity.<sup>85</sup> In fact, this formulation confuses cause and effect. Increased parental support does not create delays in the transition to adulthood but rather is a response to it.<sup>86</sup>

Contrary to the assertion that parental support for adult children undermines self-sufficiency, there is ample evidence that parental support actually improves the prospects for long-term independence.<sup>87</sup> Many young adults legitimately need the security of the parental home or a parental financial subsidy while equipping themselves to compete in the job market, which increasingly demands higher levels of education and skills.<sup>88</sup> Parental investment in young adults opens the door to advanced education, career success, and higher living standards.<sup>89</sup> Young adults who lack such support are often

<sup>83</sup> See *supra* note 26 and accompanying text (quoting Talcott Parsons).

<sup>84</sup> See, e.g., Elizabeth Kolbert, *Spoiled Rotten*, THE NEW YORKER, July 2, 2012, at 76, 76 (referring to overindulgent parents who “spend two hundred thousand dollars on tuition only to find your twenty-something back at home, drinking all your beer”); Rita Koganzon, *Slacking as Self-Discovery*, 29 NEW ATLANTIS 146, 146 (2010) (lamenting “the rebranding of indolence as ‘emerging adulthood’”); Tyre, *supra* note 1 (asserting that “the Me Generation is raising the Mini-Me Generation” and referring to experts who describe parental support of adult children as “an insidious form of co-dependence”). But see Jeffrey Jensen Arnett, *Suffering, Selfish, Slackers? Myths and Reality About Emerging Adults*, 36 J. YOUTH & ADOLESCENCE 23 (2007) (rebutting claims that emerging adults are selfish materialists who refuse to grow up).

<sup>85</sup> See, e.g., Wong, *supra* note 77, at 3 (quoting a professor warning that returning home to live with parents after college can “delay[ ] maturity” by “postponing adult responsibilities”).

<sup>86</sup> See Bahney, *supra* note 59 (quoting economist Robert Schoeni).

<sup>87</sup> See SETTERSTEN & RAY, *supra* note 28, at 142 (“The presence of strong family guidance and support is ultimately the factor that sharply separates those who swim from those who tread or sink in the transition to adulthood.”); William S. Aquilino, *Family Relationships and Support Systems in Emerging Adulthood*, in Arnett & Tanner, EMERGING ADULTS IN AMERICA, *supra* note 31, at 193, 204 [hereinafter Aquilino, *Family Relationships*] (“Financial support from parents improves emerging adults’ chances of success in the transition to adult roles.”); Schoeni & Ross, *supra* note 46, at 397 (stating that “direct material support” from parents can be “critical” in ensuring a successful transition to adulthood).

<sup>88</sup> See Aquilino, *Family Relationships*, *supra* note 87, at 205–07 (describing the need for and benefits of sharing the parental home).

<sup>89</sup> See *id.* at 204–06; Moshe Semyonov & Noah Lewin-Epstein, *The Impact of Parental Transfers on Living Standards of Married Children*, 54 SOC. INDICATORS RES. 115 (2001).

trapped in a cycle of dead-end jobs, debts, and sporadic attempts to obtain education and training.<sup>90</sup> As one group of researchers on the transition to adulthood explained, parental support for young adults “does not have to compete with an ideal of independence; it can be conceptualized as a step toward autonomy.”<sup>91</sup>

It is important to remember that most parental assistance to adult children is temporary.<sup>92</sup> For example, in a longitudinal study that followed young adults from age twenty-four through age thirty-two, 52% of the respondents received money for living expenses from their parents at some point, and 51% received housing support at some point.<sup>93</sup> However, when calculated on an annual basis rather than for the entire eight-year span, an average of only 19% of the respondents received assistance with living expenses and 19% received housing support per year.<sup>94</sup> This study used the terms “scaffolds” and “safety nets” to describe the two most common functions served by parental support for young adults. A “scaffold” provides support to boost the child’s human capital or increase the child’s chances of reaching a specific goal (such as by enabling the child to attend school).<sup>95</sup> A “safety net” is designed to minimize the harmful impact of setbacks in the child’s journey toward adulthood; examples of such setbacks include temporary unemployment, divorce, or serious illness.<sup>96</sup> The study found that both types of assistance are time-limited and that they diminish as children grow older.<sup>97</sup>

Other studies confirm that, for the most part, parents have crafted a system of temporary aid that meets specific needs and fades out over time.<sup>98</sup> As young adults age, they become much less likely to live with or receive financial assistance from their parents, and the amount of support they receive also drops.<sup>99</sup> This pattern is consistent with the concept that parental support for young adults is a helping hand along the path to self-sufficiency,

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<sup>90</sup> See ARNETT, EMERGING ADULTHOOD, *supra* note 30, at 42; SETTERSTEN & RAY, *supra* note 28, at xi–xv, 133–34; Furstenberg et al., *Growing Up*, *supra* note 23, at 40.

<sup>91</sup> Teresa Toguchi Swartz et al., *Safety Nets and Scaffolds: Parental Support in the Transition to Adulthood*, 73 J. MARRIAGE & FAM. 414, 416 (2011).

<sup>92</sup> See *id.* at 426.

<sup>93</sup> *Id.* at 418.

<sup>94</sup> See *id.*

<sup>95</sup> *Id.* at 415, 426.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.* at 415, 425.

<sup>98</sup> See, e.g., SETTERSTEN & RAY, *supra* note 28, at 127–28 (reporting that young adults living at home generally fell into two camps: “those who experienced a serious blunder and had to return home to recover, and those who were earning credentials or saving money to ensure more positive futures for themselves”); Aquilino, *Family Relationships*, *supra* note 87, at 205 (citing survey data indicating that about two-thirds of adults who return to the parental home stay there for fewer than two years).

<sup>99</sup> See SETTERSTEN & RAY, *supra* note 28, at 127 (indicating that the percentage of young adults living with their parents declines with age); Schoeni & Ross, *supra* note 46, at 411–13 (finding that parental assistance “declines virtually monotonically with age” and that specific variables other than age do not account for the decline); PARKER, *supra* note 45, at 14 (reporting that a third of eighteen- to twenty-four-year-olds say that they

not an obstacle blocking that path.<sup>100</sup> Thus, over the long term, parental support can contribute to young adults' financial independence, which benefits them, their parents, and society.

In addition to its long-term benefits, parental support can also produce significant advantages in the short term. For individuals and families struggling to make ends meet, a multigenerational living arrangement is a way to pool resources and economize on household expenses.<sup>101</sup> The poverty rate among people in multigenerational households is substantially lower than in other types of households.<sup>102</sup> The difference is especially pronounced for young adults. In 2011, twenty-five- to thirty-four-year-olds who lived with their parents had a poverty rate of 8.4% based on total household income; if their poverty status were determined by their own income, 45.3% of them would have fallen below the poverty threshold for a single person under age sixty-five.<sup>103</sup> For many young adults, living at home is the only way to afford to go to college.<sup>104</sup> Among more affluent families, shared housing can be a money-saving strategy if the alternative would be for the parents to pay for the adult child to live in a separate apartment or college dormitory.<sup>105</sup> Vulnerable groups, including single mothers and immigrants adjusting to life in the United States, have a heightened need for the support of an extended family household.<sup>106</sup> The economies of scale permitted by multigenerational living arrangements not only help individual young adults and their parents, but also work to the advantage of society as a whole by alleviating poverty and reducing welfare expenditures.

Multigenerational living arrangements are frequently depicted as a source of conflict between parents and adult children.<sup>107</sup> However, empirical research indicates that most parents and adult children who live together are

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regularly receive financial assistance from their parents, compared to 8% of twenty-five- to thirty-four-year-olds and 4% of those age thirty-five or older).

<sup>100</sup> See Swartz et al., *Transitions*, *supra* note 64, at 79 (describing living at home as “a temporary situation” that enabled young adults to “achieve a goal such as completing school . . . or gave them a bridge through a temporarily difficult time, facilitating their eventual independence”).

<sup>101</sup> See NEWMAN, *supra* note 43, at 53, 115–16, 196–97.

<sup>102</sup> See KOCHHAR & COHN, *supra* note 68, at 1 (stating that the poverty rate in 2009 was 11.5% for people in multigenerational households, as compared to 14.6% in other households).

<sup>103</sup> Phil Izzo, *More Americans Are Doubling-Up*, WALL ST. J. REAL ECONOMICS BLOG (Sept. 13, 2011, 11:58 AM), <http://blogs.wsj.com/economics/2011/09/13/more-americans-are-doubling-up/>, archived at <http://perma.cc/053aJ5yCGae> (quoting Census Bureau statistics).

<sup>104</sup> See NEWMAN, *supra* note 43, at 40; cf. Aquilino, *Family Relationships*, *supra* note 87, at 206; Swartz et al., *Transitions*, *supra* note 64, at 79.

<sup>105</sup> Sassler et al., *supra* note 29, at 672, 684.

<sup>106</sup> See SETTERSTEN & RAY, *supra* note 28, at 130 (describing interdependence of immigrant family members); Swartz, *Intergenerational*, *supra* note 4, at 205 (describing advantages of multigenerational households for immigrants and young mothers).

<sup>107</sup> Sassler et al., *supra* note 29, at 672; SETTERSTEN & RAY, *supra* note 28, at 128–29.

pleased with the arrangement and that intense conflict is rare.<sup>108</sup> When both parties are adults, the familiar roles of parent and child may no longer fit, requiring adjustment and compromise on both sides.<sup>109</sup> Among parents and adult children who live together, parents’ satisfaction generally increases if the child is taking steps toward economic self-sufficiency,<sup>110</sup> and children’s satisfaction generally increases if their parents treat them as adults rather than adolescents.<sup>111</sup> Living at home does not necessarily prevent young adults from exercising their capacity for self-direction;<sup>112</sup> in fact, a shared residence can furnish the necessary structural support to enable young adults to learn how to become more autonomous.<sup>113</sup> There is no shortage of advice designed to help parents and adult children navigate the shoals of living together,<sup>114</sup> although further research is needed to identify which approaches are most effective.<sup>115</sup> On balance, parents and adult children alike usually conclude that the positive aspects of shared housing outweigh the negative ones.<sup>116</sup>

Parental support allows young adults to take more time before making important life decisions. While some would argue that young adults today have too much freedom to experiment with different roles and choices,<sup>117</sup>

<sup>108</sup> See PARKER, *supra* note 45, at 8 (finding that parents and children who co-reside report similar levels of satisfaction with their family life and housing situation to those who live apart); *id.* at 1 (stating that 78% of adults ages twenty-five to thirty-four who live with their parents are satisfied with their living arrangements); see also Aquilino, *Family Relationships*, *supra* note 87, at 206 (citing research); Sassler et al., *supra* note 29, at 672 (same).

<sup>109</sup> See ARNETT, EMERGING ADULTHOOD, *supra* note 30, at 52–56; NEWMAN, *supra* note 43, at 67–68, 71–75; Aquilino, *Family Relationships*, *supra* note 87, at 194–96; Sassler et al., *supra* note 29, at 679–90.

<sup>110</sup> See NEWMAN, *supra* note 43, at 82–83, 114–20; Aquilino, *Family Relationships*, *supra* note 87, at 206.

<sup>111</sup> See ARNETT, EMERGING ADULTHOOD, *supra* note 30, at 52–53; Sassler et al., *supra* note 29, at 686–90.

<sup>112</sup> See ARNETT, EMERGING ADULTHOOD, *supra* note 30, at 55–56 (describing opportunities for independence and experimentation while living with parents); NEWMAN, *supra* note 43, at 63–79 (describing young adults who “live a fairly autonomous existence” while living with their parents in a state of “in-house adulthood”).

<sup>113</sup> See Aquilino, *Family Relationships*, *supra* note 87, at 206 (stating that living in the parental home can provide the structural support and time necessary for the development of confidence, life skills, and maturity, thereby facilitating entry into adult roles).

<sup>114</sup> See, e.g., JEFFREY JENSEN ARNETT & ELIZABETH FISHEL, WHEN WILL MY GROWN-UP KID GROW UP? 107–26 (2013); ELINA FURMAN, BOOMERANG NATION: HOW TO SURVIVE LIVING WITH YOUR PARENTS THE SECOND TIME AROUND (2005) (providing advice); Laura Koss-Feder, *Bunking In with Mom and Dad*, TIME (Feb. 19, 2009), <http://content.time.com/time/magazine/article/0,9171,1880642,00.html>, archived at <http://perma.cc/0T4UBpkhaVz>; Holly Robinson, *Dealing With Boomerang Kids*, AARP (Oct. 2010), [http://www.aarp.org/relationships/parenting/info-10-2010/adult\\_children\\_move\\_back\\_home\\_tips.html](http://www.aarp.org/relationships/parenting/info-10-2010/adult_children_move_back_home_tips.html), archived at <http://perma.cc/0cYvBv5rzSy>.

<sup>115</sup> See Furstenberg, *On a New Schedule*, *supra* note 21, at 74, 80 (calling for more research on the day-to-day interactions of parents and young adult children who live together).

<sup>116</sup> SETTERSTEN & RAY, *supra* note 28, at 128–29.

<sup>117</sup> See James E. Côté, *Emerging Adulthood as an Institutionalized Moratorium: Risks and Benefits to Identity Formation*, in Arnett & Tanner, EMERGING ADULTS IN

rushing into adult decisions at an early age poses much greater risks.<sup>118</sup> Research on the human brain has shown that the prefrontal cortex, which is responsible for impulse control, continues to mature until at least age twenty-five.<sup>119</sup> Demographic statistics demonstrate that delaying marriage and childbearing until the mid-twenties or beyond leads to greater family stability and better outcomes for both adults and children.<sup>120</sup> Similarly, moving quickly into full-time work without a period of education and exploration may compromise lasting success in the labor market.<sup>121</sup> In fact, during the “marriage rush and baby boom” of the mid-twentieth century,<sup>122</sup> experts warned that young people were trying to grow up too fast and were hurrying into decisions and responsibilities for which they were unprepared.<sup>123</sup>

Parents’ financial support of young adults is part of a larger pattern of increased parental investment in children,<sup>124</sup> which has become prevalent in middle- and upper-class families.<sup>125</sup> As John Langbein pointed out in his article *The Twentieth-Century Revolution in Family Wealth*, there has been a major shift from parents amassing assets to be transmitted to their children upon their death, to parents investing in their children’s human capital during

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AMERICA, *supra* note 31, at 85–113; Barry Schwartz, *Self-Determination: The Tyranny of Freedom*, 55 AM. PSYCHOLOGIST 79, 80–81 (2000).

<sup>118</sup> See SETTERSTEN & RAY, *supra* note 28, at xv (“Rushing headlong into adulthood no longer makes sense and can put kids at risk.”).

<sup>119</sup> See Robin Marantz Henig, *What Is It About 20-Somethings?*, N.Y. TIMES (Aug. 18, 2010), [http://www.nytimes.com/2010/08/22/magazine/22Adulthood-t.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2010/08/22/magazine/22Adulthood-t.html?pagewanted=all&_r=0), archived at <http://perma.cc/0JbpEUv3GCt>; see also Vivian E. Hamilton, *The Age of Marital Capacity: Reconsidering Civil Recognition of Adolescent Marriage*, 92 B.U. L. REV. 1817, 1858–59 (2012) (explaining that the neural system responsible for socio-emotional maturity, including the ability to control impulses and make good decisions, develops at a later age than the neural system responsible for cognitive maturity).

<sup>120</sup> See SETTERSTEN & RAY, *supra* note 28, at 99; Hamilton, *supra* note 119, at 1844–50; see also Kefalas & Carr, *supra* note 28, at 199 (stating that delays in family formation “have helped make marital unions more equitable, increased the marital satisfaction among spouses, reduced divorce rates, and created a more stable and secure family life for raising children.”); Furstenberg, *On a New Schedule*, *supra* note 21, at 81 (“Delaying marriage and parenthood . . . results in wiser marriage choices and consequently more stable family situations and more positive environments for childbearing and childrearing.”). *But see* Norval D. Glenn et al., *Later First Marriage and Marital Success*, 39 SOC. SCI. RES. 787, 787 (2010) (finding no additional advantage in delaying entry into marriage beyond age twenty-five).

<sup>121</sup> See NEWMAN, *supra* note 43, at 117; William S. Aquilino, *Impact of Family Structure on Parental Attitudes Toward the Economic Support of Adult Children Over the Transition to Adulthood*, 26 J. FAM. ISSUES 143, 144 (2005) [hereinafter Aquilino, *Impact of Family Structure*].

<sup>122</sup> See Berlin et al., *supra* note 30, at 3.

<sup>123</sup> Waters et al., *Introduction*, *supra* note 20, at 2.

<sup>124</sup> See Furstenberg, *On a New Schedule*, *supra* note 21, at 71.

<sup>125</sup> See SETTERSTEN & RAY, *supra* note 28, at 123; Furstenberg, *On a New Schedule*, *supra* note 21, at 71; see generally ANNETTE LAREAU, *UNEQUAL CHILDHOODS: CLASS, RACE, AND FAMILY LIFE* (2d ed. 2011) (describing the intensive parenting style of middle-class families and comparing it to the more laissez-faire approach of working-class and poor families).

the parents’ lifetime.<sup>126</sup> Parents today often provide support to enable their adult children to obtain an education, explore opportunities, make job shifts, develop a talent, and build a career—exactly the types of activities that enhance human capital.<sup>127</sup> Some parents explicitly view financial transfers to their young adult children as a substitute for an inheritance, with the dual advantages that the transfer takes place when the child most needs it and the parent can enjoy seeing the child spend the money.<sup>128</sup>

Altruism plays a role in parental transfers to adult children, but that is not the only motivation. Financial assistance from parents is frequently part of a process of exchange in which practical and emotional support flows in both directions, although not necessarily at the same time or in equal amounts.<sup>129</sup> Parents’ financial contributions to young adults can yield a direct payoff later; several studies suggest that parents who provide support to their young adult children are more likely to receive assistance from those children when the parents are old.<sup>130</sup> In addition, parents who view their own success as tied to that of their children benefit indirectly from subsidizing their children’s accomplishments.<sup>131</sup>

<sup>126</sup> John H. Langbein, *The Twentieth-Century Revolution in Family Wealth Transmission*, 86 MICH. L. REV. 722, 729–38 (1988).

<sup>127</sup> See NEWMAN, *supra* note 43, at 117; Aquilino, *Family Relationships*, *supra* note 87, at 204, 206; *see also supra* notes 92–95 and accompanying text (discussing “scaffolds”).

<sup>128</sup> See Bahney, *supra* note 59 (quoting a mother who said, “I’m enjoying watching them spend their inheritance.”); Bella English, *Playing Bridge*, BOSTON GLOBE (Mar. 23, 2010), [http://www.boston.com/lifestyle/family/articles/2010/03/23/for\\_parents\\_who\\_support\\_adult\\_children\\_when\\_does\\_helping\\_out\\_become\\_entitlement/](http://www.boston.com/lifestyle/family/articles/2010/03/23/for_parents_who_support_adult_children_when_does_helping_out_become_entitlement/), archived at <http://perma.cc/0a3sWipwshj> (quoting a mother who said, “If inflation is going to eat it up anyway, why not give it now to someone who can use it to pay the rent and buy a car? The old folks used to say, ‘Better from a warm hand than from a cold one.’”); Langbein, *supra* note 126, at 735 (quoting a father who told his Ivy League-educated sons “your education is going to be your inheritance”).

<sup>129</sup> See Michael A. Smyer & Teresa M. Cooney, *Family Relations Across Adulthood: Implications for Alimony and Support Decisions*, in ALIMONY: NEW STRATEGIES FOR PURSUIT AND DEFENSE 88, 90–91 (American Bar Association Section of Family Law ed., 1988) (describing the giving and receiving of support by parents and adult children); Dennis P. Hogan et al., *The Structure of Intergenerational Exchanges in American Families*, 98 AM. J. SOC. 1428, 1431, 1455 (1993); Lee & Aytac, *supra* note 70 (exploring differences among racial and ethnic groups in exchanges of resources between parents and adult children).

<sup>130</sup> See Karen Fingerman et al., *Giving to the Good and the Needy: Parental Support of Grown Children*, 71 J. MARRIAGE & FAM. 1220, 1222, 1229–30 (2009) [hereinafter Fingerman et al., *Giving to the Good and the Needy*]; cf. Sassler et al., *supra* note 29, at 694; Swartz, *Intergenerational*, *supra* note 4, at 199.

<sup>131</sup> See Fingerman et al., *Giving to the Good and the Needy*, *supra* note 130, at 1222, 1229–30 (describing parents who benefit from the “reflected glory” of their adult children’s success); Smyer & Cooney, *supra* note 129, at 90 (stating that “parents judge their own lifetime success and accomplishment, in part, by how well their [adult] children are doing”); Ann Laquer Estin, *Love and Obligation: Family Law and the Romance of Economics*, 36 WM. & MARY L. REV. 989, 1074 (1995) [hereinafter Estin, *Love*] (describing the economic theory that family members have shared utility functions, meaning that what benefits one family member also benefits the others).

Often, material support goes hand in hand with less tangible forms of sharing. In general, young adults are emotionally closer and in more frequent contact with their parents (especially their mothers) than in earlier eras.<sup>132</sup> Unlike previous generations, baby boomers and their adult children are notable for having similar tastes, attitudes, and lifestyles,<sup>133</sup> which contributes to their sense of comfort with each other and their tendency to view each other as friends as well as relatives.<sup>134</sup>

While close contact between the generations is sometimes derided as “helicopter parenting,”<sup>135</sup> parental involvement in the lives of young adults can actually fulfill important needs on both sides. With the increasing length and complexity of the passage to adulthood, young adults may need their parents’ advice and emotional support more than ever.<sup>136</sup> Meanwhile, many parents value having a strong bond with their adult children and enjoy spending time with them.<sup>137</sup> Some parents undoubtedly overplay their role in their child’s life and risk thwarting the child’s emerging independence; the solution in such cases is to fine-tune the parent’s involvement, not to eliminate it.<sup>138</sup> Ideally, parents’ relationships with adult children can be emotionally close while at the same time acknowledging separateness and facilitating the development of the child’s autonomy.<sup>139</sup> When those conditions are met, the relationships can be a source of deep satisfaction for everyone involved.

During the middle of the twentieth century, parents generally supported children until they completed their education, married, and/or had a stable job—goals that most people achieved by the time they reached the age of

<sup>132</sup> See SETTERSTEN & RAY, *supra* note 28, at 120, 125–27, 179; Karen L. Fingerman & Frank F. Furstenberg, *You Can Go Home Again*, N.Y. TIMES, May 31, 2012, at A29; Swartz, *Intergenerational*, *supra* note 4, at 195, 201; PEW RESEARCH CTR., A PORTRAIT OF “GENERATION NEXT,” *supra* note 57, at 18–19.

<sup>133</sup> NEWMAN, *supra* note 43, at 63, 128; Kefalas & Carr, *supra* note 28, at 198–99; Tom W. Smith, *Generation Gaps in Attitudes and Values from the 1970s to the 1990s*, in ON THE FRONTIER OF ADULTHOOD: THEORY, RESEARCH, AND PUBLIC POLICY, *supra* note 22, at 177, 182–96.

<sup>134</sup> See ARNETT & FISHEL, *supra* note 114, at 6, 17; FURMAN, *supra* note 114, at 20–21; SETTERSTEN & RAY, *supra* note 28, at 118–19, 125–26.

<sup>135</sup> See Henig, *supra* note 119, at 36 (defining helicopter parents as “a term that describes heavily invested parents who hover over their children, swooping down to take charge and solve problems at a moment’s notice”); see also *infra* notes 281–82 and accompanying text (discussing critiques of helicopter parenting).

<sup>136</sup> NEWMAN, *supra* note 43, at 68–69, 137–38; SETTERSTEN & RAY, *supra* note 28, at 17, 133–35, 176–77; Fingerman & Furstenberg, *supra* note 132.

<sup>137</sup> See NEWMAN, *supra* note 43, at xvi–xvii, 64, 129–33; SETTERSTEN & RAY, *supra* note 28, at 128–31; Fingerman & Furstenberg, *supra* note 132.

<sup>138</sup> See ARNETT & FISHEL, *supra* note 114, at 5 (urging parents to “step back while staying connected”); SETTERSTEN & RAY, *supra* note 28, at 180–81 (quoting Michael Kimmel asserting that the proper antidote to hyper-involved parenting is not disengagement but rather “[p]ower-[s]trip [p]arenting: [y]ou help keep your kid grounded. You help them plug in. Then, if there’s an overload, you run interference.”).

<sup>139</sup> See NEWMAN, *supra* note 43, at 63–79; Aquilino, *Family Relationships*, *supra* note 87, at 201, 206.

majority (which was then twenty-one) or soon thereafter.<sup>140</sup> Today, families often support children until they reach the same milestones, but that can easily take until the early thirties or longer.<sup>141</sup> Economic and social forces have simultaneously made the process of transition to adulthood more challenging and drawn out than ever before, and placed greater responsibility on parents to assist with that process.<sup>142</sup> The result has been an unprecedented burden on parents of adult children.

The many advantages that parental support bestows on young adults, their parents, and the rest of society do not negate the fact that such support comes at a high cost. Parental support for adult children is a major drain on the older generation’s resources.<sup>143</sup> Among parents who have provided support to adult children who are not in school, 7% reported that they postponed retirement, 13% delayed a life event like buying a home or taking a vacation, 26% took on additional debt, and 30% reported that they lost privacy when their children moved in with them.<sup>144</sup> When a parent takes an adult child into the parent’s home, the parent’s financial well-being usually declines because his or her income is being stretched across a larger number of people.<sup>145</sup> Some adults who live with their parents pay rent, help pay for household expenses, or perform chores,<sup>146</sup> but they rarely contribute enough to offset

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<sup>140</sup> See Furstenberg et al., *Growing Up*, *supra* note 23, at 33; Swartz, *Intergenerational*, *supra* note 4, at 199–200; see also *supra* notes 27–28 and accompanying text (describing delays in reaching traditional benchmarks of adulthood); *infra* notes 179–84 and accompanying text (describing changes in the age of majority).

<sup>141</sup> See Swartz, *Intergenerational*, *supra* note 4, at 200; see also NEWMAN, *supra* note 43, at 22 (quoting a father with an adult son living at home who said, “The milestones are still the same. It is just a lot harder to achieve.”).

<sup>142</sup> See SETTERSTEN & RAY, *supra* note 28, at 172; Furstenberg et al., *Growing Up*, *supra* note 23, at 40.

<sup>143</sup> In the words of one parent,

After raising my kids, I was looking forward to an “empty nest” and am a little disappointed we will not have that for several more years. I feel like I can’t get on with my life until they are settled in theirs. And, although it will help them out, it will be a financial strain on us. I will definitely be there if my kids need me, but the cost of college has made it prohibitive for kids to become independent right after graduation.

Eric Ringham, *What’s Your Experience with Adult Children Moving Back in with Their Parents?*, MINN. PUBLIC RADIO TODAY’S QUESTION BLOG (Mar. 29, 2010, 5:00 AM) (comment by “Laurie”), <http://blogs.mprnews.org/todays-question/2010/03/whats-your-experience-with-adult-children-moving-back-in-with-their-parents/>, archived at <http://perma.cc/0rATmagkDAb>.

<sup>144</sup> Goudreau, *supra* note 62.

<sup>145</sup> See KIM & WAITE, *supra* note 53, at 4, 21–22.

<sup>146</sup> See NEWMAN, *supra* note 43, at 227 n.8 (citing survey data regarding contributions to housework by adult children in intergenerational households); PARKER, *supra* note 45, at 11 (reporting that in a survey of eighteen- to thirty-four-year-olds living with their parents, 35% paid rent, 75% contributed to household expenses, and 96% did household chores); Goudreau, *supra* note 62 (reporting that 75% of non-students ages eighteen to thirty-nine who are living with their parents contribute to the household financially and 42% perform household chores).

the cost of their presence in the home.<sup>147</sup> Many parents spend money on their adult children that they need for their own retirement.<sup>148</sup> In short, parents are making large sacrifices to support their young adult children.

The advantages and disadvantages of parental support for adult children are reflected in public attitudes on the topic, which remain in a state of flux.<sup>149</sup> Although the stigma attached to adults' financial dependency on their parents is fading,<sup>150</sup> American society has not yet fully embraced the trend. There is no social consensus in favor of parental support for adult children, with the exception of support for students in college.<sup>151</sup> "Boomerang kids" are the targets of sardonic humor even as their numbers grow.<sup>152</sup> In general, Americans are more accepting of a young adult remaining in the family nest if the individual is seen as having a legitimate reason for doing so and is making an effort to move ahead in the world.<sup>153</sup>

Parents who provide support to adult children, and the children themselves, often have mixed feelings about the situation.<sup>154</sup> Ambivalence is a prominent feature of family life, and it is not surprising that it plays a large

<sup>147</sup> See Sassler et al., *supra* note 29, at 680–84 (reporting that among a small sample of adult children living with their parents, most contributed modestly or not at all to household expenses and housework). Immigrant and low-income families are exceptions to the rule that young adults usually do not pull their own weight; see NEWMAN, *supra* note 43, at 133–35 (describing financial contributions to the household by young adults in immigrant and low-income families); Berlin et al., *supra* note 30, at 4 ("Young people (unless they are the children of recent immigrants) rarely contribute earnings to the household; by and large, they are either fully or partially beholden to their parents for support.").

<sup>148</sup> English, *supra* note 128 (quoting an expert stating, "You've got a lot of parents who are spending their retirement on their grown children."); Tyre, *supra* note 1 (quoting a financial planner stating, "I've seen parents willing to destroy themselves financially . . . They're giving their college graduates . . . money they should be plowing into retirement.").

<sup>149</sup> See NEWMAN, *supra* note 43, at 114 ("Americans are on the fence about the moral status of the accordion family. Is it something to fret over or a social evolution to accept?").

<sup>150</sup> See SETTERSTEN & RAY, *supra* note 28, at 15; PARKER, *supra* note 45, at 1; Haya El Nasser, *Why Grown Kids Come Home*, USA TODAY (Oct. 1, 2005), [http://usatoday30.usatoday.com/news/nation/2005-01-10-cover-kids\\_x.htm](http://usatoday30.usatoday.com/news/nation/2005-01-10-cover-kids_x.htm), archived at <http://perma.cc/0Nk7BNzV5Dq> (quoting a psychologist stating that young adults do not view living with their parents as a stigma).

<sup>151</sup> See Aquilino, *Family Relationships*, *supra* note 87, at 204; Diane N. Lye, *Adult Child-Parent Relationships*, 22 ANN. REV. SOC. 79, 95–96 (1996). There also appears to be widespread, although not universal, recognition that adults with disabilities are deserving of parental support. See *infra* notes 185–88 and accompanying text (discussing child support orders for adult children with disabilities).

<sup>152</sup> See, e.g., Simon Rich, *Your New College Graduate: A Parent's Guide*, THE NEW YORKER, May 24, 2010, at 33, archived at <http://perma.cc/0e3as2zbtXY>; FAILURE TO LAUNCH (Paramount Pictures 2006).

<sup>153</sup> See NEWMAN, *supra* note 43, at 114–18.

<sup>154</sup> See ARNETT, EMERGING ADULTHOOD, *supra* note 30, at 53; NEWMAN, *supra* note 43, at 67; SETTERSTEN & RAY, *supra* note 28, at xi; Swartz et al., *Transitions*, *supra* note 64, at 80; Fingerman & Furstenberg, *supra* note 132.

role in the response to this issue.<sup>155</sup> Even in some countries where adults who live with their parents are more numerous and more widely accepted than in the United States, ambivalence about the subject remains.<sup>156</sup> However, ambivalence is not a legitimate reason for the law to ignore a pervasive phenomenon that has significant financial ramifications.

In particular, the law should not ignore inequities in the provision of financial support to young adults. As noted earlier,<sup>157</sup> high-income parents contribute more to their adult children than low-income parents, widening the opportunity gap between the two groups.<sup>158</sup> Special obstacles confront young adults emerging from foster care, those who have been in the juvenile justice or criminal justice system, and those with disabilities.<sup>159</sup> These problems cannot be solved within individual families. The best response to all of these challenges lies in public programs to support young adults’ transition to financial self-sufficiency.<sup>160</sup> Such programs are currently inadequate.<sup>161</sup>

In addition, the law should not ignore the inequitable division of financial responsibility for an adult child between the child’s two parents. As the following section will show, in the aftermath of divorce, separation, or single parenthood, the expenses of supporting an adult child fall overwhelmingly and disproportionately on women, who on average have far fewer resources than men to meet those expenses.

<sup>155</sup> See Karl Pillemer & J. Jill Suitor, *Ambivalence and the Study of Intergenerational Relations*, in INTERGENERATIONAL RELATIONS ACROSS TIME AND PLACE 3 (Merril Silverstein & K. Warner Schaie eds., 2005) (examining ambivalence in relationships between parents and adult children); Clare Huntington, *Embracing the Affective Family*, 33 HARV. J.L. & GENDER 321, 322 (2010) (observing that family life is a mixture of positive and negative emotions); Clare Huntington, *Repairing Family Law*, 57 DUKE L.J. 1245 (2008) (calling on family law to recognize the full range of diverse emotions that exist within family relationships).

<sup>156</sup> See ARNETT, EMERGING ADULTHOOD, *supra* note 30, at 54. Attitudes toward adults living with their parents differ from country to country and are usually, but not always, more positive in societies where the practice is common. See NEWMAN, *supra* note 43, at xxi–xxii, 7, 31.

<sup>157</sup> See *supra* notes 72–74 and accompanying text (describing disparities in support for adult children based on parental income).

<sup>158</sup> See Swartz, *Intergenerational*, *supra* note 4, at 192, 204–07 (describing intergenerational support as “a largely hidden . . . mechanism by which privilege or disadvantage is transferred through families from generation to generation”).

<sup>159</sup> See ON YOUR OWN WITHOUT A NET: THE TRANSITION TO ADULTHOOD FOR VULNERABLE POPULATIONS (D. Wayne Osgood et al. eds., 2005) (analyzing difficulties faced by vulnerable youth in the transition to adulthood).

<sup>160</sup> See Richard A. Settersten Jr., *Social Policy and the Transition to Adulthood: Toward Stronger Institutions and Individual Capacities*, in ON THE FRONTIER OF ADULTHOOD: THEORY, RESEARCH, AND PUBLIC POLICY, *supra* note 22, at 534, 537–50 (recommending institutional changes to improve outcomes for young adults); Furstenberg et al., *Growing Up*, *supra* note 23, at 40–41 (proposing reforms in education, the military, alternative national service programs, and other arenas to “address the realities of the longer and more demanding transition to adulthood”).

<sup>161</sup> A full discussion of public programs to support the transition to adulthood is beyond the scope of this Article.

## II. THE IMPACT OF DIVORCE, SEPARATION, AND SINGLE PARENTHOOD ON PARENTS' FINANCIAL SUPPORT FOR ADULT CHILDREN

The growth in the number of young adults who live with or otherwise receive financial support from their parents has occurred in tandem with high rates of divorce and single parenthood.<sup>162</sup> As a result, many financially dependent young adults have parents who are not married to each other.<sup>163</sup> In those circumstances, support is far more likely to be provided by mothers, even though on average they have significantly lower income and assets than fathers.<sup>164</sup>

Feminist legal theorists emphasize the importance of grounding legal scholarship and legal practice in women's actual experiences.<sup>165</sup> The first step of feminist legal analysis is to ask "the woman question."<sup>166</sup> As Katherine Bartlett has explained, this question "is designed to identify the gender implications of rules and practices which might otherwise appear to be neutral or objective."<sup>167</sup> Asking "the woman question" about young adults' financial dependency reveals a serious problem of gender inequity in parents' financial responsibility for adult children. The gender imbalance in parental support for young adults has remained largely hidden and ignored, yet it has a major negative impact on women and their children. Under current legal rules, child support is not sufficiently available to rectify this disparity.

### A. *Growing Pains: The Age of Majority as a Limitation on Child Support*

It is well established that parents have an obligation to provide financial support for their minor children.<sup>168</sup> Parents who are married to each other are

<sup>162</sup> See Jason DeParle & Sabrina Tavernise, *Most U.S. Births Outside Wedlock Before Age of 30*, N.Y. TIMES, Feb. 18, 2012, at A1 (indicating a sharp increase in non-marital births since the late 1960s and reporting that in 2009, 41% of all births and 53% of births to women under the age of thirty took place outside of marriage); Hamilton, *supra* note 119, at 1845 (explaining that the divorce rate increased until about 1980, leveled off for a couple of years, and then declined modestly to its current rate of nearly 50%); J. Thomas Oldham, *Changes in the Economic Consequences of Divorces, 1958–2008*, 42 FAM. L. Q. 419, 420 (2008) (describing changes in the divorce rate over the past fifty years).

<sup>163</sup> See Smith, *supra* note 133, at 179 (indicating that in 1997, 39% of people between the ages of eighteen and twenty-four had "grown up in broken homes").

<sup>164</sup> See *infra* notes 245–47, 265–72 and accompanying text.

<sup>165</sup> See MARTHA CHAMALLAS, INTRODUCTION TO FEMINIST LEGAL THEORY 4–5 (3d ed. 2013); CATHARINE A. MACKINNON, FEMINISM UNMODIFIED 32–45 (1987); Patricia A. Cain, *Feminist Legal Scholarship*, 77 IOWA L. REV. 19, 20 (1991).

<sup>166</sup> Katherine T. Bartlett, *Feminist Legal Methods*, 103 HARV. L. REV. 829, 837–49 (1990).

<sup>167</sup> *Id.* at 837.

<sup>168</sup> For discussion of the history of child support obligations in the United States, see Marsha Garrison, *Autonomy or Community? An Evaluation of Two Models of Parental Obligation*, 86 CALIF. L. REV. 41, 48–57 (1998) [hereinafter Garrison, *Autonomy*]; Leslie J. Harris et al., *Making and Breaking Connections Between Parents' Duty to Support and*

expected to discharge this obligation without legal supervision.<sup>169</sup> The law’s reluctance to interfere with married parents’ financial decisions concerning their children is a specific instance of the broader legal principle of nonintervention in the family.<sup>170</sup> However, the policy of not interfering in parent-child relationships<sup>171</sup> does not apply if the parents are divorced, separated, or never married. Various justifications have been offered for legal intervention in the families of parents who are not married to each other. It has been suggested that by invoking the legal system to obtain a divorce, the parties have consented to legal supervision of the family.<sup>172</sup> In addition, if the two parents do not live together, they are unlikely to be able to resolve their child-rearing disputes privately, and a parent who does not live with the child might not be inclined to act in the child’s best interest.<sup>173</sup> After divorce,

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*Right to Control Their Children*, 69 OR. L. REV. 689, 692–702 (1990); *infra* notes 369–73 and accompanying text.

<sup>169</sup> See Harris et al., *supra* note 168, at 702 (stating that a child in an intact family cannot sue his or her parents to enforce their duty of support). In some states, creditors have a remedy against parents in an intact family for goods or services provided to a child under the doctrine of necessities or family expense statutes, but these are rarely used and largely ineffective. *Id.* at 702–05.

<sup>170</sup> See McGuire v. McGuire, 59 N.W.2d 336, 342 (Neb. 1953) (refusing to recognize a claim for spousal support in an intact marriage); Ira Mark Ellman & Tara O’Toole Ellman, *The Theory of Child Support*, 45 HARV. J. LEGIS. 107, 141 (2008). The principle of nonintervention in the ongoing family has been subjected to critique. See, e.g., Garrison, *Autonomy*, *supra* note 168, at 110 n.306 (citing sources criticizing judicial reluctance to interfere with spending patterns in an intact marriage); Sally F. Goldfarb, *Violence Against Women and the Persistence of Privacy*, 61 OHIO ST. L.J. 1, 19–28 (2000) (critiquing the principle of nonintervention in the family as applied to domestic and sexual violence against women); Harris et al., *supra* note 168, at 701 (noting that deference to parental autonomy “can be criticized for failing to protect defenseless children from serious harm at the hands of their parents”).

<sup>171</sup> The right of parents to raise their children as they see fit enjoys constitutional protection, but it is not unlimited. See, e.g., Prince v. Massachusetts, 321 U.S. 158 (1944); Pierce v. Soc’y of Sisters, 268 U.S. 510 (1925); Meyer v. Nebraska, 262 U.S. 390 (1923); Anne L. Alstott, *What Does a Fair Society Owe Children—and Their Parents?*, 72 FORDHAM L. REV. 1941, 1957 (2004). For example, the law will intervene between parents and children in cases of abuse and neglect. See Curtis v. Kline, 666 A.2d 265, 272–73 (Pa. 1995) (Montemuro, J., dissenting).

<sup>172</sup> See William V. Fabricius et al., *Divorced Parents’ Financial Support of Their Children’s College Expenses*, 41 FAM. CT. REV. 224, 224 (2003); Kathleen Conrey Horan, *Post-Minority Support for College Education—A Legally Enforceable Obligation in Divorce Proceedings?*, 18 N.M. L. REV. 153, 170 n.160 (1988) (quoting Patrick Charles Marshall, Recent Development, *Post-Minority Child Support in Dissolution Proceedings*, 54 WASH. L. REV. 459, 470 n.62 (1979) (“When the parents seek to alter their marital status, the *locus parentis* shifts from the parents to the dissolution court.”)); R. Chun, Note, *Post Majority Educational Support: Is There an Equal Protection Violation?*, 6 U. HAW. L. REV. 225, 234 (1984).

<sup>173</sup> See Harris et al., *supra* note 168, at 710; see also Kujawinski v. Kujawinski, 376 N.E.2d 1382, 1390 (Ill. 1978) (observing that “parental love and moral obligation” is sufficient to ensure that children’s best interests are met when their parents are married but not when they are divorced); LeClair v. LeClair, 624 A.2d 1350, 1357 (N.H. 1993), *superseded by statute on other grounds* (noting that a higher level of judicial involvement in the financial and personal lives of divorced families is warranted by the “unique problems that exist in a home that is split by divorce,” even though courts would not have similar power over intact families).

separation, or parenthood outside of marriage, a child support award serves as the mechanism for carrying out the noncustodial parent's support obligation.<sup>174</sup>

Beginning in the 1970s, the federal government took a series of steps to improve the adequacy and enforcement of child support awards.<sup>175</sup> Among other measures, federal law required each state to adopt numerical guidelines for calculating child support and to apply the guidelines as a rebuttable presumption in all child support cases.<sup>176</sup> Despite some improvements attributable to the reforms of recent decades, child support awards remain low, enforcement is uneven, and custodial parents continue to bear most of the cost of raising children.<sup>177</sup>

### 1. *The "Age of Majority" Rule and Two Exceptions*

As a general rule, a parent's child support obligation ends when the child becomes emancipated, which typically occurs when the child reaches the age of majority.<sup>178</sup> Traditionally, the legal age of majority for child support and most other legal matters was twenty-one.<sup>179</sup> However, in 1971, ratification of the Twenty-Sixth Amendment reduced the voting age to eighteen.<sup>180</sup> Many states followed suit and reduced their ages of majority to

<sup>174</sup> Child support obligors include parents who have neither legal nor physical custody, parents who have legal but not physical custody, and parents who have joint custody. Harris et al., *supra* note 168, at 705–06, 712 n.88. Some states use different nomenclature in place of the traditional custody terminology. See, e.g., N.J. COURTS, CHILD SUPPORT GUIDELINES, APPENDIX IX-A 15 (referring to "parent of primary residence" and "parent of alternate residence"). For the sake of brevity, this Article uses the term "noncustodial parent" to refer to all categories of child support obligors. For the same reason, the terms "custodial" and "noncustodial" will be used to refer to parents who currently occupy those roles as well as those who formerly did so but are technically no longer in those roles because their children are past the age of majority.

<sup>175</sup> See, e.g., Child Support Enforcement Amendments of 1984, Pub. L. No. 98-378, 98 Stat. 1305 (1984) (codified as amended in scattered sections of 26 U.S.C. and 42 U.S.C.); Family Support Act, Social Services Amendments of 1974, Pub. L. No. 93-647, 88 Stat. 2337 (1975) (codified as amended at 42 U.S.C. §§ 651–65).

<sup>176</sup> See Sally F. Goldfarb, *Working With Child Support Guidelines*, TRIAL, Apr. 1989, at 43. Child support guidelines vary from state to state. See Garrison, *Autonomy*, *supra* note 168, at 44, 57–62; Jane C. Venohr & Robert G. Williams, *The Implementation and Periodic Review of State Child Support Guidelines*, 33 FAM. L. Q. 7, 8–9 (1999); see generally LAURA W. MORGAN, CHILD SUPPORT GUIDELINES: INTERPRETATION AND APPLICATION (1996 & Supp. 2010) [hereinafter MORGAN, CHILD SUPPORT GUIDELINES].

<sup>177</sup> Estin, *Love*, *supra* note 131, at 1068–69; Garrison, *Autonomy*, *supra* note 168, at 42–45, 62–67.

<sup>178</sup> Laura W. Morgan, *When Will It Ever End?: The Duty to Support Adult Children*, in 2001 FAMILY LAW UPDATE 155, 157, 166 (Eric Pierson ed., 2001) [hereinafter Morgan, *When Will It Ever End?*]; PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION: ANALYSIS AND RECOMMENDATIONS § 3.24 cmt. c (2002) [hereinafter PRINCIPLES]. Other grounds for a finding of emancipation can include the child's joining the armed forces, getting married, or becoming financially self-sufficient. Morgan, *When Will It Ever End*, *supra*, at 159–66; PRINCIPLES, *supra*, § 3.24 cmt. c.

<sup>179</sup> PRINCIPLES, *supra* note 178, § 3.24 cmt. b.

<sup>180</sup> U.S. CONST. amend. XXVI, § 1.

eighteen for most purposes.<sup>181</sup> Today, ages of majority vary from state to state and from issue to issue.<sup>182</sup> With respect to child support, the most common age of majority is eighteen, but a few states draw the line at nineteen or twenty-one.<sup>183</sup> In some states, the age of majority for child support is normally eighteen but can be extended to nineteen or twenty if the child is still in high school.<sup>184</sup>

To the extent that states recognize any exceptions to the rule that child support ends at the age of majority, they do so only for two categories of cases: children with disabilities and children who are enrolled in higher education.

Most states have statutes or case law requiring parents to support children over the age of majority who have a mental or physical disability.<sup>185</sup> The basic principle expressed by these states’ laws is that adult children whose disabilities make them unable to support themselves deserve to receive continuing support from their parents.<sup>186</sup> The underlying rationales include a parent’s moral obligation to support his or her child, as well as the belief that society should not bear the cost of supporting individuals whose parents are able to support them.<sup>187</sup> Cases imposing a duty of support on parents of adult children with disabilities date back to the early twentieth century and beyond.<sup>188</sup>

States are divided on the question of whether a parent is obligated to support an adult disabled child if the disability did not arise until after the child reached the legal age of majority.<sup>189</sup> In states that permit a child support obligation to be imposed when a child becomes disabled after the age of majority, the parent’s moral duty to support a child who is incapable of self-

<sup>181</sup> See PRINCIPLES, *supra* note 178, § 3.24 cmt. b.

<sup>182</sup> See Jonathan Todres, *Maturity*, 48 HOUS. L. REV. 1107, 1110 (2012) (critiquing the “patchwork of inconsistent laws” that determine when someone is sufficiently mature to gain various legal rights and responsibilities); Melissa Dribben, *When Do Kids Become Adults?*, PHILA. INQUIRER, Jan. 31, 2011, at A2 (comparing ages of legal adulthood for various purposes).

<sup>183</sup> See *Termination of Support—Age of Majority*, NAT’L CONFERENCE OF STATE LEGISLATURES (June 2012), <http://www.ncsl.org/research/human-services/termination-of-support-college-support.aspx>, archived at <http://perma.cc/0kYVhcEv8dU> (listing states).

<sup>184</sup> *Id.*; MORGAN, CHILD SUPPORT GUIDELINES, *supra* note 176, at 4-38.3 to 4-38.5.

<sup>185</sup> See Morgan, *When Will It Ever End*, *supra* note 178, at 166–69; Sande L. Buhai, *Parental Support of Adult Children with Disabilities*, 91 MINN. L. REV. 710, 716–36 (2007); Katherine Ellis Reeves, *Post-Majority Child Support for Disabled Children: A Fifty State Survey*, 8 WHITTIER J. CHILD & FAM. ADVOC. 109, 121–22, 123 tbl.1 (2008); *Termination of Child Support—Exception for Adult Children with Disabilities*, NAT’L CONFERENCE OF STATE LEGISLATURES (June 2012), <http://www.ncsl.org/research/human-services/termination-of-child-support-exception-for-adult.aspx>, archived at <http://perma.cc/0VtAYzT56ku> (listing states).

<sup>186</sup> See Morgan, *When Will It Ever End*, *supra* note 178, at 169; Buhai, *supra* note 185, at 716–17.

<sup>187</sup> See Noralyn O. Harlow, Annotation, *Postmajority Disability as Reviving Parental Duty to Support Child*, 48 A.L.R.4th 919, 921 (2013).

<sup>188</sup> See Buhai, *supra* note 185, at 716; Harris et al., *supra* note 168, at 718–719.

<sup>189</sup> Buhai, *supra* note 185, at 717–18, 723–36; Morgan, *When Will It Ever End*, *supra* note 178, at 172–73; Harlow, *supra* note 187, § 2a.

support, together with the public policy conclusion that society should not be financially responsible for individuals with parents capable of supporting them, are viewed as outweighing the parent's expectation that he or she will no longer have to pay support once the child becomes emancipated.<sup>190</sup> The American Law Institute has endorsed the view that the time of onset of the disability is just one of many factors that should be considered in determining whether to award support.<sup>191</sup>

The law's approach to child support for college students has evolved over time.<sup>192</sup> For much of American history, a college degree was not required to achieve success in the working world; accordingly, post-secondary education was not considered a necessary part of a child's upbringing.<sup>193</sup> Times have changed, and post-secondary education is now indispensable for most highly paid jobs.<sup>194</sup> College is no longer the exclusive province of the privileged elite.<sup>195</sup> The number of students pursuing a college education has soared.<sup>196</sup> Meanwhile, with the lowering of the age of majority in most states to eighteen, it is virtually impossible for a child to complete college before

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<sup>190</sup> See Buhai, *supra* note 185, at 730–38. Cases involving parental support for adult disabled children sometimes arise when the government seeks to shift the cost of providing services for a disabled individual from a public agency to the individual's parents. See *id.* at 720 (stating that state courts frequently recognize a parental support duty as a means to reimburse the state for the cost of hospitalization). The present Article does not address that issue and instead concerns only a parent's duty of support with respect to the child and the other parent. See PRINCIPLES, *supra* note 178, § 3.24 cmt. g (stating that “these Principles adopt the view, explicitly expressed in the law of some states, that a parent's duty to support a disabled adult child runs to the child and the other parent, but not to the state”).

<sup>191</sup> PRINCIPLES, *supra* note 178, § 3.24 cmt. g.

<sup>192</sup> Most post-majority child support cases involve college expenses, so the term “college support” is often used to refer to any child support for post-secondary students. In addition to college, various other types of post-secondary education can also give rise to a child support obligation. See 23 PA. CONS. STAT. § 4327(j) (1993) (defining “post-secondary education” for purposes of post-majority child support as “[a]n educational or vocational program provided at a college, university or other postsecondary vocational, secretarial, business or technical school”), ruled *unconstitutional on other grounds* in *Curtis v. Kline*, 666 A.2d 265, 270 (Pa. 1995); *Ross v. Ross*, 400 A.2d 1233, 1237 (N.J. Ch. 1979) (awarding child support for an adult child attending law school); see generally J. Andrew Crawford, Note, *Graduate School Support: One Last Dip Into the Proverbial Parental Pocketbook*, 56 IND. L.J. 541 (1981) (discussing child support for graduate and professional students). The terms “college,” “higher education,” and “post-secondary education” are used interchangeably in this Article.

<sup>193</sup> See Harris et al., *supra* note 168, at 721; Crawford, *supra* note 192, at 550–51.

<sup>194</sup> See Horan, *supra* note 172, at 168; Monica Hof Wallace, *A Federal Referendum: Extending Child Support for Higher Education*, 58 U. KAN. L. REV. 665, 671–72 (2010). College graduates earn significantly more than those who lack a college degree. See SETTERSTEN & RAY, *supra* note 28, at 22, 35, 72–73.

<sup>195</sup> See *Newburgh v. Arrigo*, 443 A.2d 1031, 1038 (N.J. 1982).

<sup>196</sup> See Wallace, *supra* note 194, at 671; Leah duCharme, Note, *The Cost of a Higher Education: Post-Minority Child Support in North Dakota*, 82 N.D. L. REV. 235, 237 (2006).

reaching the age of majority.<sup>197</sup> At the same time, the cost of a college education has increased,<sup>198</sup> and financial aid for college students is limited.<sup>199</sup>

For all these reasons, many states have adopted rules broadening access to child support for adult children who are enrolled in higher education.<sup>200</sup> In almost every state, a valid agreement between the parents for payment of post-majority college support is enforceable.<sup>201</sup> Additionally, about one-third of the states give judges the power to order support for post-secondary education past the age of majority in the absence of parental agreement.<sup>202</sup>

In states that permit court-ordered support for adult children receiving post-secondary education, judges are given discretion to determine whether an award is appropriate based on the facts of each case.<sup>203</sup> State law usually furnishes a list of factors for the judge to consider, such as the child’s academic ability, the parents’ educational background and financial resources, and the child’s access to other sources of funding.<sup>204</sup> In addition to allowing awards to defray the direct costs of higher education such as tuition, fees, textbooks, room and board, some states also permit awards to cover the

<sup>197</sup> See Harris et al., *supra* note 168, at 720; Horan, *supra* note 172, at 168.

<sup>198</sup> See NEWMAN, *supra* note 43, at 220 n.62. The average total cost to attend a four-year undergraduate institution in 2010–11 was \$27,435 per year for full-time students. NAT’L CTR. FOR EDUC. STATISTICS, U.S. DEP’T OF EDUC., THE CONDITION OF EDUCATION 2012 262, tbl.A-40-1 (2012), available at <http://nces.ed.gov/pubs2012/2012045.pdf>, archived at <http://perma.cc/0zC5ioVQicE?type=pdf>.

<sup>199</sup> See Ruth N. López Turley & Matthew Desmond, *Contributions to College Costs by Married, Divorced, and Remarried Parents*, 32 J. FAM. ISSUES 767, 768, 784 (2011). When determining financial aid eligibility, many private colleges consider both parents’ resources, even if the noncustodial parent refuses to pay. See duCharme, *supra* note 196, at 238; Charles F. Willson, Note, *But Daddy, Why Can’t I Go to College?: The Frightening De-Kline of Support for Children’s Post-Secondary Education*, 37 B.C. L. REV. 1099, 1121–22 (1996).

<sup>200</sup> See *Termination of Support—College Support Beyond the Age of Majority*, NAT’L CONFERENCE OF STATE LEGISLATURES (June 2012), <http://www.ncsl.org/research/human-services/termination-of-support-college-support.aspx>, archived at <http://perma.cc/0kYVhcEv8dU> (listing states). “College support may be in addition to [regular] child support, a part of child support, or a separate payment after regular child support ends.” *Id.*

<sup>201</sup> See *id.*; Morgan, *When Will It Ever End*, *supra* note 178, at 176–77. Depending on state law and on whether the parental agreement for post-majority support was merged into the divorce decree, the agreement can be enforced through the court’s contempt power and/or a separate contract action. See *Solomon v. Findley*, 808 P.2d 294, 296–97 (Ariz. 1991) (en banc); Wallace, *supra* note 194, at 683. *But see* In re Goulart, 965 A.2d 1068, 1070–71 (N.H. 2009) (holding that a statute stating that “no child support order shall require a parent to contribute to an adult child’s college expenses. . .” deprived the courts of subject matter jurisdiction to approve or enforce a parental agreement for payment of college support).

<sup>202</sup> See MORGAN, CHILD SUPPORT GUIDELINES, *supra* note 176, at 4-39 to 4-42; Wallace, *supra* note 194, at 675–76; *Termination of Support—College Support Beyond the Age of Majority*, *supra* note 200; *infra* notes 209–15, 232–42, 305–09 and accompanying text (discussing justifications for judicially imposed support for adult college students).

<sup>203</sup> Horan, *supra* note 172, at 169.

<sup>204</sup> See, e.g., *Newburgh v. Arrigo*, 443 A.2d 1031, 1038–39 (N.J. 1982); Annotation, *Responsibility of Noncustodial Divorced Parent to Pay for, or Contribute to, Costs of Child’s College Education*, 99 A.L.R.3d 322 (1980) [hereinafter Annotation, *Responsibility*]. For further discussion of factors for court-ordered college support, see *infra* notes 310–13 and accompanying text.

other living expenses of an adult child who is enrolled in college, such as housing and food during the summer and school vacations.<sup>205</sup>

There have been several constitutional challenges to court-ordered post-majority child support for college students, but almost all have been unsuccessful.<sup>206</sup> The constitutional challenges typically rest on the claim that it is a violation of equal protection to require a divorced, noncustodial parent to pay for a child to attend college, since the state does not require married parents to do so.<sup>207</sup> In the absence of a suspect classification or fundamental right, these disputes are governed by rational relation analysis, which requires merely that the challenged classification is rationally related to a legitimate government interest.<sup>208</sup> Courts have repeatedly identified two legitimate state interests that are served by court-ordered college support: the state's interest in furthering higher education for its citizens,<sup>209</sup> and its interest in minimizing the damaging effects of divorce on children.<sup>210</sup> After divorce, noncustodial parents, even those who are wealthy and well-educated, are far less likely than married parents to pay their children's college expenses.<sup>211</sup> In the words of one court, "Parents, when deprived of the custody of their children, very often refuse to do for such children what natural instinct would ordinarily prompt them to do."<sup>212</sup> Since most married parents

<sup>205</sup> Madeline Marzano-Lesnevich & Scott Adam Latera, *Child Support and College: What Is the Correct Result?*, 22 J. AM. ACAD. MATRIMONIAL LAW. 335, 341–87 (2009).

<sup>206</sup> See MORGAN, CHILD SUPPORT GUIDELINES, *supra* note 176, at 4-38.5 to 4-39 n.85 (citing cases). A rare judicial decision concluding that court-ordered, post-majority college support is unconstitutional is *Curtis v. Kline*, 666 A.2d 265 (Pa. 1995). The holding of *Curtis v. Kline*—namely, that it is an equal protection violation for courts to order divorced parents to pay college support since they may not order married parents to do so—would seem to suggest that any court-ordered child support award would likewise be unconstitutional. See *id.* at 272 n.4 (Montemuro, J., dissenting). A similar case in South Carolina was recently overturned less than two years after it was decided. *Webb v. Sowell*, 692 S.E.2d 543, 544–45 (S.C. 2010), *overruled by McLeod v. Starnes*, 723 S.E.2d 198, 201 (S.C. 2012), *cert. denied*, 133 S. Ct. 198 (2012).

<sup>207</sup> See, e.g., *Childers v. Childers*, 575 P.2d 201, 203 (Wash. 1978).

<sup>208</sup> See, e.g., *In re Marriage of Vrban*, 293 N.W.2d 198, 201 (Iowa 1980), *superseded by statute on other grounds*; *Childers*, 575 P.2d at 209.

<sup>209</sup> See, e.g., *McLeod*, 723 S.E.2d at 204; *Vrban*, 293 N.W.2d at 202; *Childers*, 575 P.2d at 208–09.

<sup>210</sup> See, e.g., *McLeod*, 723 S.E.2d at 204; *Kujawinski v. Kujawinski*, 376 N.E.2d 1382, 1390 (Ill. 1978); *Childers*, 575 P.2d at 208–09.

<sup>211</sup> For discussion of noncustodial parents' failure to pay college support voluntarily, see *infra* notes 234–38 and accompanying text.

<sup>212</sup> *Esteb v. Esteb*, 244 P. 264, 267 (Wash. 1926), *quoted in Childers*, 575 P.2d at 208; see also *Vrban*, 293 N.W.2d at 202 (stating that "even well-intentioned parents, when deprived of the custody of their children, sometimes react by refusing to support them as they would if the family unit had been preserved"); *Curtis v. Kline*, 666 A.2d 265, 271–72 (Pa. 1995) (Montemuro, J., dissenting) (recognizing that noncustodial parents are often reluctant to contribute to the costs of a child's college education "because they lose concern for their children's welfare, or out of animosity toward the custodial parent"). The altruism that often characterizes intrafamily relations tends to dissipate after divorce. See INGRID ROTHE & LAWRENCE M. BERGER, ESTIMATING THE COSTS OF CHILDREN: THEORETICAL CONSIDERATIONS RELATED TO TRANSITIONS TO ADULTHOOD AND THE VALUATION OF PARENTAL TIME FOR DEVELOPING CHILD SUPPORT GUIDELINES

voluntarily provide financial support for children to attend college,<sup>213</sup> married and divorced parents are not similarly situated to each other, and neither are their children.<sup>214</sup> Thus, a court award of post-majority college support does not create an inequity, but rather prevents an inequity by ensuring that children of divorced parents enjoy the same educational opportunities as children of married parents.<sup>215</sup>

## 2. Comparing the “Age of Majority” Rule in the United States to Legal Rules in Other Countries

Except for children who are disabled or receiving post-secondary education, post-majority support is generally not ordered by courts in any state in this country.<sup>216</sup> The roots of this approach lie deep in the common law. Centuries ago, William Blackstone proclaimed that the “duty of parents to provide for the maintenance of their children is a principle of natural law,” but that the duty lasts only as long as the child is unable to work due to “infancy, disease or accident.”<sup>217</sup> This rule is not universal. Many other countries take a more generous approach to post-majority child support.

In civil law legal systems derived from Roman law, the fundamental assumption is that parents have a duty to support their children regardless of age, based on the child’s needs and the parent’s ability to pay.<sup>218</sup> Therefore, in many civil law countries, judges may order parents to provide financial support to their adult children under a variety of circumstances.<sup>219</sup> Although

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11 (Apr. 2007); Estin, *Love*, *supra* note 131, at 1074; Elizabeth S. Scott & Robert E. Scott, *Parents as Fiduciaries*, 81 VA. L. REV. 2401, 2446–47 (1995).

<sup>213</sup> See *Vrban*, 293 N.W.2d at 202; *Childers*, 575 P.2d at 207.

<sup>214</sup> See *Vrban*, 293 N.W.2d at 202 (“The differences in the circumstances between married and divorced parents establishes the necessity to discriminate between the classes.”).

<sup>215</sup> See *Kujawinski*, 376 N.E.2d at 1390; *Curtis*, 666 A.2d at 274 (Montemuro, J., dissenting); *Childers*, 575 P.2d at 208–09.

<sup>216</sup> As noted above, parental agreements for post-majority support are an option in many instances when court-ordered support would not be permitted. See *supra* note 201 and accompanying text (discussing parental agreements for college support).

<sup>217</sup> 1 WILLIAM BLACKSTONE, COMMENTARIES \*435–37.

<sup>218</sup> See Ingeborg Schwenzer & Sophie Holdt, *Support Obligations Towards Adult Children* 1 (2011) (describing parents’ legal obligation of support in Germany, Switzerland, and other countries) (unpublished paper on file with the author); see also Anna Stepień-Sporek & Margaret Ryznar, *Child Support for Adult Children*, 30 QUINNIPIAC L. REV. 359, 368–75 (2012) (describing Polish law); Alan Riding, *Italian Court Rules that Son Knows Best About Leaving Home*, N.Y. TIMES (Apr. 6, 2002), <http://www.nytimes.com/2002/04/06/world/italian-court-rules-that-son-knows-best-about-leaving-home.html>, archived at <http://perma.cc/ORAZdPsYTVf> (reporting that Italian law “does not set a time limit on the parental obligation”).

<sup>219</sup> See, e.g., Tom Kington, *Italian Father Ordered to Pay Allowance to 32-Year-Old “Big Baby”*, GUARDIAN (Jan. 17, 2010), <http://www.theguardian.com/world/2010/jan/17/italian-adults-living-at-home>, archived at <http://perma.cc/ODrWM8GS59L> (reporting that an Italian judge ordered a father to continue paying an allowance to his 32-year-old daughter who was still working on her thesis eight years after she was due to graduate); Riding, *supra* note 218 (describing an Italian appeals court ruling that a father must support his 29-year-old son who was an unemployed attorney).

support for adult children is not automatic and is subject to judicial discretion, the point of departure of the civil law is the opposite of the prevailing American approach.<sup>220</sup>

Broad access to post-majority support is not limited to civil law countries. In Canada, which shares the United States' common law heritage, statutory and case law have significantly expanded parents' support obligations to adult children.<sup>221</sup> Canadian courts have held parents responsible for providing support to children over the age of majority not only in cases involving higher education or disability, but also in cases where the adult child is unemployed or training as a competitive athlete.<sup>222</sup> Although it is not common for Canadian courts to extend support past the age of twenty-five, such cases have been occurring more frequently in recent years.<sup>223</sup> There have been no equivalent developments in child support law in the United States.

### 3. *The "Age of Majority" Limitation Undermines the Policy Goals of Child Support*

The purpose of child support is to take the place of financial support that would be offered spontaneously in the course of daily life if both parents were living with the child.<sup>224</sup> A child's legal entitlement to financial support from both parents is not dependent on the parents' marriage,<sup>225</sup> and it is not

<sup>220</sup> In civil law legal systems, the obligation of parents to support adult children is part of a general principle of intergenerational solidarity. See JUDITH AREEN ET AL., FAMILY LAW 546 (6th ed. 2012) (quoting Roscoe Pound, *Individual Interests in the Domestic Relations*, 14 MICH. L. REV. 177, 185 (1916) (tracing the development of "reciprocal duties of support on the part of ascendants and descendants" from Roman law to modern civil codes)); Schwenzer & Holdt, *supra* note 218, at 1 (describing reciprocal support obligations between parents and children).

<sup>221</sup> See Nicholas Bala, *Child Support for Adult Children: When Does Economic Childhood End?* (Queen's Faculty of Law Legal Studies Research Paper Series, Working Paper No. 08-01, 2008) (unpublished paper on file with the author).

<sup>222</sup> *Id.* at 12–14.

<sup>223</sup> *Id.* at 27.

<sup>224</sup> See *LeClair v. LeClair*, 624 A.2d 1350, 1357 (N.H. 1993), *superseded by statute on other grounds* ("While financial support of the family unit may be an unquestioned responsibility in an intact home, such support decisions often become regulated by court order in a disputed divorce."); see also *supra* note 174 and accompanying text (discussing child support as a mechanism for enforcing noncustodial parents' support duty); *supra* notes 211–12 and accompanying text (discussing noncustodial parents' unwillingness to pay child support voluntarily after divorce).

<sup>225</sup> See PRINCIPLES, *supra* note 178, § 3.01 cmt. b ("[I]t is now generally accepted that children of informal and formal relationships must be treated equally with respect to the amount and duration of child support."); Karen Czapaniskiy, *Volunteers and Draftees: The Struggle for Parental Equality*, 38 UCLA L. REV. 1415, 1423 (1991) [hereinafter Czapaniskiy, *Volunteers*] (stating that parents share equivalent child support duties whether married or not). *But see* *Johnson v. Louis*, 654 N.W.2d 886, 889–91 (Iowa 2002) (holding that a statute permitting post-secondary support for children of divorced parents does not impermissibly discriminate against children of parents who never married, because post-secondary support is a quid pro quo for the child's loss of a previously stable family unit as a result of divorce). *Cf.* Scott A. Hall, *In the Best Interests of the Child and*

terminated by their divorce.<sup>226</sup> Children have an interest in not suffering financially because their parents have divorced, separated, or not married.<sup>227</sup> Accordingly, many authorities assert that one of the goals of child support is to place children in the economic position they would have enjoyed if they were in an intact family with both parents.<sup>228</sup> This rationale suggests that child support should not automatically end at the age of majority, if the parents would have continued supporting the child if they were married.

Furthermore, from the perspective of distributive justice, the expense of supporting the child should be distributed equitably between the parents.<sup>229</sup> Although this principle is usually used as a basis for establishing the amount of a child support order,<sup>230</sup> it is also directly relevant to determining the duration of the child support obligation.

While child support law in the United States has long recognized the post-majority support needs of children who are disabled and has begun to

*the State: A Call for Expansion of Iowa's Postsecondary Education Subsidy Law*, 57 *DRAKE L. REV.* 235, 251–54 (2008) (critiquing *Johnson v. Louis*).

<sup>226</sup> The often-expressed but controversial goal of making divorce a “clean break” has been widely rejected where the parent-child relationship is concerned. See Buhai, *supra* note 185, at 715 n.23 (citing *Stanton v. Wilson*, 3 Day 37, 56 (Conn. 1808) (“By the divorce the relation of husband and wife was destroyed; but not the relation between [the husband] and his children. His duty and liability, as to them, remained the same . . .”)); Herma Hill Kay, *Commentary: Toward a Theory of Fair Distribution*, 57 *BROOK. L. REV.* 755, 765 (1991) (“In contrast to property distribution and spousal support, the theoretical basis for child support appears relatively clear. The legal bond between parents and their children is not terminated by divorce . . .”).

<sup>227</sup> See *PRINCIPLES, supra* note 178, § 3.04 cmt. c.; Czapsanskiy, *Volunteers, supra* note 225, at 1423.

<sup>228</sup> See, e.g., *Puckett v. Puckett*, 458 P.2d 556, 557–58 (Wash. 1969) (“Thus, the law, recognizing that young children are virtually helpless to affect their own economic future, aspires to perpetuate for the children of divorced parents a standard of living in some degree compatible with that provided them before the divorce.”); *UNIF. MARRIAGE & DIVORCE ACT* § 309(3) (amended 1973), 9A U.L.A. 167 (1987) (listing “the standard of living the child would have enjoyed had the marriage not been dissolved” as a relevant factor in child support determinations); Crawford, *supra* note 192, at 546–47; see also *supra* notes 213–15 and accompanying text (discussing inequities between children of married and divorced parents as a justification for the constitutionality of college support awards). Of course, child support has multiple objectives, and they are often in tension with each other. See *PRINCIPLES, supra* note 178, § 3.04 cmts. a–o (describing the need for compromise among competing interests of the child and both parents); Ellman & Ellman, *supra* note 170, at 129 (describing multiple purposes of child support). Even if one were to equalize the standards of living of the custodial and noncustodial households, as some have advocated, see, e.g., *SUSAN MOLLER OKIN, JUSTICE, GENDER, AND THE FAMILY* 183 (1989); Sally F. Goldfarb, *Child Support Guidelines: A Model for Fair Allocation of Child Care, Medical, and Educational Expenses*, 21 *FAM. L.Q.* 325, 328 (1987) [hereinafter Goldfarb, *Child Support Guidelines*], it would still be impossible in many cases to replicate the standard of living the child would have enjoyed if the parents were married, because it is more expensive to maintain two households than one. See *PRINCIPLES, supra* note 178, § 3.04 cmt. c.

<sup>229</sup> See Garrison, *Autonomy, supra* note 168, at 74–117 (arguing on the basis of principles of distributive justice that child support awards should be based on a model that regards the family as a community and mandates income sharing as a basic approach); see also *PRINCIPLES, supra* note 178, § 3.04(3)–(4), § 3.04 cmt. k (stating that child support rules should treat both parents fairly).

<sup>230</sup> See, e.g., Garrison, *Autonomy, supra* note 168, at 92–102.

do so for children who are receiving higher education, it has lagged with respect to other types of support for children who are past the age of majority. As a consequence, most post-majority support falls by default on mothers, who are the majority of custodial parents.<sup>231</sup> As the following section will show, the outcome is that these women's financial vulnerability is intensified.

*B. Women and Children Last: Inequities in Post-Majority Support Based on Gender and Marital Status*

As noted above, one of the justifications courts have relied upon when ordering child support for adult college students is the fact that noncustodial parents, most of whom are fathers,<sup>232</sup> are less likely than married parents to contribute voluntarily to their children's college expenses.<sup>233</sup> Empirical research has confirmed that parents who are divorced or separated pay less for their children to attend college than married parents with similar income and education levels.<sup>234</sup> A longitudinal study of divorced families in California, where courts are not permitted to order post-majority support in the absence of parental agreement, found that 29% of children of divorced parents received full or consistent partial support for college from their parents, compared to 88% of children of married parents.<sup>235</sup>

Voluntary support for adult children attending college is more often provided by divorced mothers than by divorced fathers.<sup>236</sup> Even fathers who regularly fulfill their child support obligations while the child is a minor are

<sup>231</sup> See U.S. CENSUS BUREAU, CURRENT POPULATION REPORTS, CUSTODIAL MOTHERS AND FATHERS AND THEIR CHILD SUPPORT: 2009 2 (2011) (reporting that 82.2% of custodial parents are mothers, based on 2009 statistics); see also Press Release, U.S. Census Bureau, More Young Adults Are Living in Their Parents' Home, Census Bureau Reports (Nov. 3, 2011), archived at <http://perma.cc/0uim3RyZkF> ("Among the children who lived with one parent [in 2011], 87% lived with their mother.").

<sup>232</sup> See *supra* note 231.

<sup>233</sup> See *supra* notes 206–15 and accompanying text (discussing constitutionality of post-majority college support awards).

<sup>234</sup> See Turley & Desmond, *supra* note 199, at 778, 782–83.

<sup>235</sup> JUDITH WALLERSTEIN ET AL., THE UNEXPECTED LEGACY OF DIVORCE 249, 335–36 n.6 (2000) [hereinafter WALLERSTEIN ET AL., UNEXPECTED LEGACY]; cf. Paul R. Amato et al., *Helping Between Parents and Young Adult Offspring: The Role of Parental Marital Quality, Divorce, and Remarriage*, 57 J. MARRIAGE & FAM. 363, 373 (1995) [hereinafter Amato et al., *Helping*] (reporting that "59% of offspring from intact families reported that their parents paid for all or most [college] expenses, compared with 36% of those from divorced families. Correspondingly, 17% of those with continuously married parents said that their parents provided no assistance [for college], compared with 29% of those whose parents divorced . . .").

<sup>236</sup> See WALLERSTEIN ET AL., UNEXPECTED LEGACY, *supra* note 235, at 252; LENORE J. WEITZMAN, THE DIVORCE REVOLUTION 279 (1985). *But see* Fabricius et al., *supra* note 172, at 234, 239 n.8 (asserting that divorced mothers and fathers with similar financial resources contribute similar amounts for their children's college expenses; however, this study relied on college students' estimates of their parents' incomes and acknowledged that many students either guessed their parents' incomes or had "no idea" how much their parents earned).

unlikely to pay for college after the child reaches the age of majority, if they are not legally required to do so.<sup>237</sup> Divorced fathers are less generous in meeting college expenses for their daughters than for their sons.<sup>238</sup>

Without monetary support from the noncustodial parent, the financial strain of paying for college falls on the child and the custodial parent, who typically have limited resources.<sup>239</sup> The result is that children of divorced, separated, and unmarried parents have lower rates of attending and graduating from college than those whose parents are married to each other.<sup>240</sup> In addition, children of divorced parents who do attend college are more likely than children of married parents to delay or interrupt their college education in order to earn money.<sup>241</sup> Since a college degree is a prerequisite for most well-paid jobs, the fact that court-ordered college support is unavailable in many cases poses a threat to the long-range economic prospects of adult children. That is one reason why the California study found that more than half of children of divorce experience downward mobility, ending up in a lower socioeconomic stratum than either of their parents.<sup>242</sup>

<sup>237</sup> See WALLERSTEIN ET AL., UNEXPECTED LEGACY, *supra* note 235, at 252; *see also* Furstenberg et al., *Effect of Divorce*, *supra* note 71, at 330 (“We find absolutely no evidence that fathers who paid child support are more likely to be involved in subsequent [voluntary] transfers with their adult children.”).

<sup>238</sup> See Smyer & Cooney, *supra* note 129, at 92–94; Judith S. Wallerstein & Shauna B. Corbin, *Father-Child Relationships After Divorce: Child Support and Educational Opportunity*, 20 FAM. L.Q. 109, 121 (1986) [hereinafter Wallerstein & Corbin, *Father-Child Relationships*].

<sup>239</sup> See WALLERSTEIN ET AL., UNEXPECTED LEGACY, *supra* note 235, at 247–53; WEITZMAN, *supra* note 236, at 279–81.

<sup>240</sup> See WALLERSTEIN ET AL., UNEXPECTED LEGACY, *supra* note 235, at 335–36 n.6 (showing that smaller percentages of adult children of divorce went to college and earned a degree than adult children from intact families); Ben Gose, *Study Finds Children of Divorced Parents Less Likely to Enroll at Selective Colleges*, CHRON. HIGHER EDUC., July 12, 1996, at A35–36 (reporting that economist Barbara Wolfe stated that “[e]ven after controlling for a parent’s income and education, ‘the longer you live with a single parent, the less likely you are to go on to college’”); Dean Lillard & Jennifer Gerner, *Getting to the Ivy League: How Family Composition Affects College Choice*, 70 J. HIGHER EDUC. 706, 711–22 (1999) (documenting the disparity between the proportion of children who do and do not live with both parents during high school who later apply to and attend college, and finding that the disparity is particularly large for highly selective four-year colleges and universities); Turley & Desmond, *supra* note 199, at 769 (“Numerous studies have concluded that young adults from divorced or separated households are less likely to be admitted to college and are also less likely to attend and to graduate compared with their peers from married households.” (citations omitted)).

<sup>241</sup> See Smyer & Cooney, *supra* note 129, at 97; *see also* Turley & Desmond, *supra* note 199, at 784 (finding that “children whose parents are married must cover about 23% of college expenses themselves, but children with remarried parents must shoulder 47% themselves, and those from divorced households need to come up with a full 58% of the cost”).

<sup>242</sup> See Wallerstein & Corbin, *Father-Child Relationships*, *supra* note 238, at 122–23; *see also* Paul R. Amato, *Children of Divorced Parents as Young Adults*, in COPING WITH DIVORCE, SINGLE PARENTING, AND REMARRIAGE 147, 150–51 (E. Mavis Hetherington ed., 1999) (showing that adults whose parents were divorced have fewer average years of education, lower annual earnings, and fewer assets than those whose parents were not divorced).

Just as noncustodial parents as a group are reluctant to contribute voluntarily to their children's college expenses, a similar pattern has emerged with respect to non-college-related expenses for adult children. Young adults whose parents are not married to each other receive less parental support than their counterparts whose parents are in intact marriages.<sup>243</sup> For example, in comparison to adults whose parents have remained married, a lower percentage of adult children of divorced parents are living with a parent.<sup>244</sup>

To the extent that adult children of divorced parents do receive parental support, it comes primarily from their mothers.<sup>245</sup> One study found that almost twice as many young adults whose parents were divorced received money from their mothers as from their fathers,<sup>246</sup> and that about ten times as many were living with their mothers as their fathers.<sup>247</sup>

For young adults, financial support from parents has become an increasingly important stepping stone on the path toward self-sufficiency. Much like a college degree, parental support in the form of "scaffolds" and "safety nets" plays a central role in equipping young adults for eventual financial success.<sup>248</sup> Therefore, inadequate parental support during young adulthood places the children of parents who are not married to each other at increased risk of future financial insecurity.

There are several possible reasons for the fact that divorced fathers are less likely to provide financial support to their young adult children than either married fathers or divorced mothers. One of the most common explanations is that traditional custody arrangements deprive fathers of contact with their children,<sup>249</sup> which erodes the parent-child relationship and vitiates the fathers' sense of parental responsibility and generosity.<sup>250</sup> While there is research supporting this theory, it does not tell the whole story. Statistics showing that fathers with joint custody are more likely to support their children than those who only have visitation rights do not necessarily demon-

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<sup>243</sup> See Aquilino, *Family Relationships*, *supra* note 87, at 205; Teresa M. Cooney & Peter Uhlenberg, *Support From Parents Over the Life Course: The Adult Child's Perspective*, 71 *SOC. FORCES* 63, 74-75, 80 (1992); Lye, *supra* note 151, at 91.

<sup>244</sup> See Teresa M. Cooney, *Young Adults' Relations With Parents: The Influence of Recent Parental Divorce*, 56 *J. MARRIAGE & FAM.* 45, 50 (1994) [hereinafter Cooney, *Young Adults' Relations*] (finding that compared to young adults from intact families, young adults whose parents are divorced are half as likely to be living with their mother and over four times less likely to be living with their father); Furstenberg, *On a New Schedule*, *supra* note 21, at 74.

<sup>245</sup> See Amato et al., *Helping*, *supra* note 235, at 372 (finding that 45% of young adults with divorced parents received gifts or loans from their mothers, compared to 24% who received gifts or loans from their fathers); Cooney, *Young Adults' Relations*, *supra* note 244, at 50 (finding that 27% of young adult children of divorced parents were living with their mother and 12% were living with their father).

<sup>246</sup> Furstenberg et al., *Effect of Divorce*, *supra* note 71, at 324.

<sup>247</sup> *Id.* at 330.

<sup>248</sup> See *supra* notes 95-97 and accompanying text.

<sup>249</sup> Census Bureau statistics indicate that women are the overwhelming majority of custodial parents. See *supra* note 231.

<sup>250</sup> See Amato et al., *Helping*, *supra* note 235, at 366; Fabricius et al., *supra* note 172, at 229-34; Harris et al., *supra* note 168, at 699, 735.

strate cause and effect. Instead, there might simply be a correlation between the group of fathers who obtain joint custody and the group of fathers who willingly pay support, with both groups consisting of men who were predisposed to demonstrate a high degree of commitment to their children.<sup>251</sup> Furthermore, children who grow up in the sole custody of their mother tend to lose out on financial support from their father later in life, but the same pattern does not hold true in reverse; many children who grow up in the sole custody of their father continue to receive financial support from their mother during adulthood.<sup>252</sup> Even when children are too old for a formal custody order at the time of their parents' divorce, they are more likely to live with and be in close contact with their mothers than with their fathers.<sup>253</sup> Thus, custody arrangements, although relevant, do not provide a complete answer to the question of why so many divorced fathers fail to support their adult children.

There is evidence that divorce itself weakens fathers' relationships with their children more than mothers'.<sup>254</sup> During marriage, mothers are usually the primary caretakers of children, laying a foundation of emotional closeness that is in place at the time of divorce.<sup>255</sup> Women more often function as “kinkeepers” and view themselves as the “family glue,” responsible for holding family relationships together.<sup>256</sup> In contrast, many fathers see parenthood as part of a “package deal” along with marriage or cohabitation; when the relationship with the mother ends, the father often drifts away from

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<sup>251</sup> See Estin, *Love*, *supra* note 131, at 1078.

<sup>252</sup> See Furstenberg, *On a New Schedule*, *supra* note 21, at 74; see also William S. Aquilino, *Impact of Childhood Family Disruption on Young Adults' Relationships with Parents*, 56 J. MARRIAGE & FAM. 295, 309 (1994) (stating that young adults from mother-custody families were less likely than those from father-custody families to receive financial support from parents, because of custodial mothers' limited resources and noncustodial fathers' unwillingness to pay); *id.* at 311 (describing the “great efforts” made by noncustodial mothers to maintain positive relationships with their children into adulthood).

<sup>253</sup> See Cooney, *Young Adults' Relations*, *supra* note 244, at 50.

<sup>254</sup> See Constance R. Ahrons & Jennifer L. Tanner, *Adult Children and Their Fathers: Relationship Changes 20 Years After Parental Divorce*, 52 FAM. REL. 340, 343 (2003) (finding that twenty years after their parents' divorce, 60% of adults said that their relationships with their mothers had gotten better but only 49% said the same about their fathers); see also *id.* at 345 (finding that while 38% of adults said that their relationships with their fathers had gotten worse only 27% said the same about their mothers, and finding that custody arrangements had no direct association with the adult children's reports of changes in their relationships with their fathers); Teresa M. Cooney et al., *Surviving the Breakup?: Predictors of Parent-Child Adult Relations After Parental Divorce*, 44 FAM. REL. 153, 154 (1995) [hereinafter Cooney et al., *Surviving*] (“In sum, regardless of the child's age, and apart from postdivorce custody arrangements, divorce appears to put fathers at greater risk than mothers for problematic relations with their offspring.”).

<sup>255</sup> See ARNETT, EMERGING ADULTHOOD, *supra* note 30, at 63; Cooney et al., *Surviving*, *supra* note 254, at 160.

<sup>256</sup> See Smyer & Cooney, *supra* note 129, at 102; Cooney, *Young Adults' Relations*, *supra* note 244, at 54; Lye, *supra* note 151, at 88.

the child as well.<sup>257</sup> A sizeable body of research suggests that fathers' relationships with daughters are particularly vulnerable to disruption, in part because daughters are perceived as siding with the mother after divorce.<sup>258</sup> The effect of these trends is that adult children generally have closer relationships with their mothers than their fathers after their parents' divorce.<sup>259</sup> It is therefore unsurprising that adult children of divorced parents are more inclined to ask their mothers than their fathers for financial support, and that mothers are more inclined than fathers to provide it.<sup>260</sup>

Another reason that has been suggested for the lower level of parental support received by adults whose parents are divorced is the fact that divorce reduces the parents' available resources. It is true that divorce places a strain on family finances, and it costs more to maintain two households than one. Nevertheless, divorced or separated parents provide significantly less support to their adult children than married parents, even after controlling for parental income.<sup>261</sup> Children of divorced or separated parents receive less support not only because their parents have fewer resources, but also because their parents share a smaller proportion of those resources with them.<sup>262</sup> A remarriage that brightens the economic prospects of a divorced parent does not necessarily increase the parent's willingness to provide support to an adult child.<sup>263</sup> Remarried parents contribute much less support to

<sup>257</sup> See Furstenberg, *On a New Schedule*, *supra* note 21, at 74. The observation that these social patterns are widespread is not meant to imply that they are universal, biologically innate, or inevitable.

<sup>258</sup> See Smyer & Cooney, *supra* note 129, at 92–94; Ahrons & Tanner, *supra* note 254, at 344; Cooney, *Young Adults' Relations*, *supra* note 244, at 53; Gayle Kaufman & Peter Uhlenberg, *Effects of Life Course Transitions on the Quality of Relationships Between Adult Children and Their Parents*, 60 J. MARRIAGE & FAM. 924, 926 (1998).

<sup>259</sup> See ARNETT, EMERGING ADULTHOOD, *supra* note 30, at 63–65; Cooney et al., *Surviving*, *supra* note 254, at 160. Regardless of their parents' marital status, young adults tend to have closer relationships with their mothers than their fathers. See SETTERSTEN & RAY, *supra* note 28, at 125–27, 179; Swartz, *Intergenerational*, *supra* note 4, at 195, 201; PEW RESEARCH CTR., A PORTRAIT OF "GENERATION NEXT," *supra* note 57, at 18–19.

<sup>260</sup> See WALLERSTEIN ET AL., UNEXPECTED LEGACY, *supra* note 235, at 253 (describing a college student who had never thought of requesting support from her divorced father); WEITZMAN, *supra* note 236, at 279 (reporting survey results showing that college students with divorced parents "were more likely to ask their mothers than their fathers for money, even though they realized that her financial resources were more limited"); Amato et al., *Helping*, *supra* note 235, at 370 (noting that "divorce is associated with fewer exchanges of assistance with fathers, but not mothers"); Cooney et al., *Surviving*, *supra* note 254, at 157 (noting a "strong positive connection . . . between closeness to mother and perceiving her as a potential source of financial support").

<sup>261</sup> See Turley & Desmond, *supra* note 199, at 778 (analyzing parental contributions toward college costs).

<sup>262</sup> See Lillard & Gerner, *supra* note 240, at 719–20 (analyzing the reasons why children from disrupted families are less likely to attend a selective college); Turley & Desmond, *supra* note 199, at 776 (finding that divorced or separated parents contributed a lower percentage of their income toward their children's college costs than married parents).

<sup>263</sup> See Aquilino, *Impact of Family Structure*, *supra* note 121, at 145–46, 162–63. Although remarriage confers additional resources, stepfamilies may have a number of characteristics that militate against support for adult children: diffusion of responsibility

their adult children than continuously married parents, even though they have similar incomes.<sup>264</sup>

The detrimental financial impact of divorce and single parenthood does not fall evenly on men and women. Following divorce, the average woman experiences a drop in her standard of living, while the standard of living for many men actually rises.<sup>265</sup> This is the product of numerous factors. Women’s average wages are lower than men’s.<sup>266</sup> Regardless of their marital status, women are the majority of primary caretakers of young children.<sup>267</sup> Mothers’ caregiving responsibilities reduce their availability for market labor,<sup>268</sup> leading to a permanent decline in their earning power.<sup>269</sup> Employment discrimination against women in general, and mothers in particular, also takes a toll on earnings.<sup>270</sup> Inadequate alimony and child support payments, together with limitations on the availability of public assistance, paid leave, and affordable child care, compound the financial difficulties of single

among a larger number of adults, ambiguous obligations on the part of stepparents, strained relationships between adults and children, and disagreement between the parent and stepparent about whether to support the adult child. *Id.*; see also Brent Berry, *Financial Transfers from Living Parents to Adult Children: Who Is Helped and Why?*, 67 AM. J. ECON. & SOC. 207, 230, 232 (2008) (finding that adult stepchildren receive less total support from both parental households than children whose parents are married to each other).

<sup>264</sup> See Turley & Desmond, *supra* note 199, at 778, 780, 782–83.

<sup>265</sup> See KATHARINE T. BARTLETT ET AL., GENDER AND LAW 272 (6th ed. 2013); Suzanne Bianchi et al., *The Gender Gap in the Economic Well-Being of Nonresident Fathers and Custodial Mothers*, 36 DEMOGRAPHY 195, 195–202 (1999); Penelope E. Bryan, *Reasking the Woman Question at Divorce*, 75 CHI.-KENT L. REV. 713, 713 (2000); Karen C. Holden & Pamela J. Smock, *The Economic Costs of Marital Dissolution: Why Do Women Bear a Disproportionate Cost?*, 17 ANN. REV. SOC. 51, 53–58 (1991).

<sup>266</sup> AM. ASS’N OF UNIV. WOMEN, THE SIMPLE TRUTH ABOUT THE GENDER PAY GAP 3 (2013) (stating that in 2012, women working full-time in the United States earned on average 77% of men’s earnings).

<sup>267</sup> See, e.g., Czapaniskiy, *Volunteers*, *supra* note 225, at 1451–53.

<sup>268</sup> AM. ASS’N OF UNIV. WOMEN, *supra* note 266, at 9 (finding that more mothers than fathers stay out of the work force or work part-time); Alicia Brokars Kelly, *Navigating Gender in Modern Intimate Partnership Law*, 14 J. L. FAM. STUD. 1, 26–27 (2012); ROTHE & BERGER, *supra* note 212, at 6–10 (describing the opportunity costs of time spent caring for children). Even when women continue to work full-time, being a mother results in lower earnings. See PRINCIPLES, *supra* note 178, § 5.05 cmt. n.d.

<sup>269</sup> See JOAN C. WILLIAMS, RESHAPING THE WORK-FAMILY DEBATE 25–26 (2010); PRINCIPLES, *supra* note 178, § 5.06 cmt. n.a.; Karen Syma Czapaniskiy, *Chalimony: Seeking Equity Between Parents of Children With Disabilities and Chronic Illnesses*, 34 N.Y.U. REV. L. & SOC. CHANGE 253, 267 (2010) [hereinafter Czapaniskiy, *Chalimony*]; Oldham, *supra* note 162, at 425–27.

<sup>270</sup> See Czapaniskiy, *Chalimony*, *supra* note 269, at 268; Joan C. Williams & Nancy Segal, *Beyond the Maternal Wall: Relief for Family Caregivers Who Are Discriminated Against on the Job*, 26 HARV. WOMEN’S L. J. 77, 77–78 (2003); see also AM. ASS’N OF UNIV. WOMEN, *supra* note 266, at 8–9 (indicating that a significant portion of the wage gap between men and women cannot be explained by men’s and women’s different choices).

mothers.<sup>271</sup> Consequently, single-mother families have a higher poverty rate than any other major demographic group.<sup>272</sup>

If a single mother has raised a child to the age of majority, she has probably accrued a variety of economic disadvantages. Then, if child support payments end abruptly while she is still providing financial support to the young adult child, she will be left even worse off than before.<sup>273</sup> Similarly, a child growing up with a single mother has a greater than average chance of suffering the effects of economic hardship.<sup>274</sup> Upon reaching the age of majority, that child is already in a position of having fewer opportunities than children of married parents with a more privileged upbringing. If children of married parents continue to receive more generous parental subsidies into their adulthood, the children of single mothers will fall further and further behind.<sup>275</sup>

Most mothers supporting adult children are on the threshold of middle age or beyond. Thus, their financial contributions to their adult children come at a time when they should be preparing for their own retirement.<sup>276</sup> Women who make financial sacrifices on behalf of their adult children at the expense of their own retirement savings are in danger of economic disaster in old age. In all racial and ethnic groups, a higher percentage of women live in poverty during retirement than men.<sup>277</sup> On average, women live longer than men but have less access to pensions and savings late in life.<sup>278</sup> They are also more likely than men to live alone as they age, which costs more per

<sup>271</sup> See TIMOTHY CASEY & LAURIE MALDONADO, LEGAL MOMENTUM, WORST OFF—SINGLE-PARENT FAMILIES IN THE UNITED STATES 9–27 (Dec. 2012); WILLIAMS, RESHAPING THE WORK-FAMILY DEBATE, *supra* note 269, at 131.

<sup>272</sup> See Turley & Desmond, *supra* note 199, at 770; see also CASEY & MALDONADO, *supra* note 271, at 27 (stating that in 2011, the official poverty rate was 41% for single-mother families, 22% for single-father families, and 9% for two-parent families).

<sup>273</sup> See WEITZMAN, *supra* note 236, at 278–79.

<sup>274</sup> See Turley & Desmond, *supra* note 199, at 769–70.

<sup>275</sup> Socioeconomic status, like marital status, affects levels of financial support for adult children. See *supra* notes 72–74 and accompanying text. Adult children from low socioeconomic status families receive less financial assistance from their parents than their counterparts from more privileged families. See *supra* notes 72–74 and accompanying text (describing inequities in support for adult children based on parental income). Child support alone cannot solve this problem, especially since many low-income non-custodial parents have little or no ability to pay child support. See Karen Syma Czapan-skiy, *ALI Child Support Principles: A Lesson in Public Policy and Truth-Telling*, 8 DUKE J. GENDER L. & POL'Y 259, 264 (2001); Leslie Joan Harris, Questioning Child Support Enforcement for Poor Families, 45 FAM. L.Q. 57, 164 (2011).

<sup>276</sup> See Beth Kobliner, *Guiding a Child to Financial Independence*, N.Y. TIMES (Nov. 4, 2010), [http://www.nytimes.com/2010/11/05/business/businessspecial5/05LAUNCH.html?\\_r=0](http://www.nytimes.com/2010/11/05/business/businessspecial5/05LAUNCH.html?_r=0), archived at <http://perma.cc/0ivKCqpar9D> (quoting Cindy Hounsell, president of Women's Institute for a Secure Retirement, stating, "I see too many parents, especially mothers, helping out grown children when they should be squirreling away more money for their own retirement.").

<sup>277</sup> See Paul Sullivan, *The Tightwire Act of Living Only on Social Security*, N.Y. TIMES, Sept. 12, 2012, at F3.

<sup>278</sup> See WIDER OPPORTUNITIES FOR WOMEN, DOING WITHOUT: ECONOMIC INSECURITY AND OLDER AMERICANS 2 (2012); WILLIAMS, RESHAPING THE WORK-FAMILY DEBATE, *supra* note 269, at 26.

capita than sharing a home.<sup>279</sup> In short, a financially struggling single mother who provides support to her adult child is at heightened risk of becoming an impoverished elderly woman.<sup>280</sup>

It could be argued that the solution to this problem is for women simply to do less for their adult children. Many commentators have asserted that in middle- and upper-middle-class families, modern child-rearing practices have become skewed in the direction of intensive and over-involved parenting, much of which is unnecessary as well as damaging to both children and parents.<sup>281</sup> These commentators point out that “helicopter parenting” is not limited to parents of young children, but takes place among parents of adults as well.<sup>282</sup> However, as discussed earlier, parental contributions are often indispensable for a successful transition to adulthood.<sup>283</sup> If mothers withhold financial support from their adult children, many young adults may be unable to achieve long-term financial independence.

Instead of urging mothers to “just say no” to financially dependent adult children, a better approach would be to ensure that the burden of financial support for young adults is distributed more equitably. As Martha Fineman has observed, dependency can arise either directly from one’s own circumstances or from one’s caregiving responsibilities toward others.<sup>284</sup> Divorced, separated, and never-married mothers of financially dependent young adults are in a position of derivative dependency.<sup>285</sup> If they cut their financial ties to their adult children, they jeopardize the children’s financial security. If they don’t cut those ties, they jeopardize their own. A solution that safeguards the well-being of both mothers and young adults is urgently needed. In the absence of widely available public programs to meet the needs of young adults, the most obvious solution is to divide the cost of

<sup>279</sup> WIDER OPPORTUNITIES FOR WOMEN, *supra* note 278, at 3.

<sup>280</sup> Some states have filial responsibility laws, which require financially capable adult children to support their indigent parents, but they are rarely enforced. *See* LESLIE JOAN HARRIS ET AL., FAMILY LAW 510 (4th ed. 2010); Katherine C. Pearson, *Filial Support Laws in the Modern Era: Domestic and International Comparison of Enforcement Practices for Laws Requiring Adult Children to Support Indigent Parents*, 20 ELDER L.J. 269, 270–74, 278–80 (2012).

<sup>281</sup> *See, e.g.*, LAREAU, *supra* note 125, at 42–55, 253–54, 307 (describing parents’ involvement in their children’s over-scheduled daily activities and their children’s preparation for admission to college); WILLIAMS, RESHAPING THE WORK-FAMILY DEBATE, *supra* note 269, at 22–24 (discussing how upper-middle-class parents structure their children’s development through activities); *see generally* Gaia Bernstein & Zvi Triger, *Over-Parenting*, 44 U.C. DAVIS L. REV. 1221 (2011) (discussing parents’ increased involvement in their children’s lives).

<sup>282</sup> *See* Bernstein & Triger, *supra* note 281, at 1239–40, 1276–77; Kolbert, *supra* note 84, at 76–79; Sara Lipka, *Helicopter Parents Help Students, Survey Finds*, CHRON. HIGHER EDUC., Nov. 9, 2007, at A1.

<sup>283</sup> *See supra* notes 87–106, 117–23 and accompanying text.

<sup>284</sup> FINEMAN, *supra* note 7, at 34–37 (defining “inevitable dependency” and “derivative dependency”).

<sup>285</sup> *See id.* at 36–37 (describing the economic and structural dimensions of women’s “derivative dependency” arising from their role as caregivers).

supporting them fairly between both parents, as proposed in the following section.

### III. A PROPOSED SOLUTION: EXPANDING ACCESS TO CHILD SUPPORT PAST THE AGE OF MAJORITY

#### A. *The Case for Expanded Post-Majority Child Support*

In child support cases involving disabled children and college students, many legislatures and courts recognize that children may remain financially dependent on their parents even after reaching the age of majority.<sup>286</sup> Child support for adult children who are disabled or pursuing higher education is crucial and should be available by law in all states. But what about children who are neither disabled nor in college? Child support law everywhere in the United States expects that children will become financially self-sufficient at the age of majority. As the previous discussion has shown, current economic and social circumstances make this expectation highly unrealistic. With the transition from adolescence to independent adulthood taking much longer today than in the past, family law should adapt to changing conditions by broadening access to post-majority child support for adult children who are neither disabled nor in college. This Article will refer to this proposed new category of support as “expanded post-majority child support.”

Many young adults who rely on their parents for financial assistance are enrolled in college, but many others are not. The situation of a non-student whose parents are providing housing or a financial subsidy can be very similar to that of a college student. Like a college student,<sup>287</sup> the financially dependent young adult is presumably capable of earning money and may indeed be doing so, but he or she usually lacks the experience and credentials necessary for success in today’s competitive labor market. College gives young adults the gift of time during which they can learn about themselves and the world and position themselves to enter the job market at a higher level due to their increased human capital.<sup>288</sup> In the same way, parental support for young adults who are not in college permits them to take time to explore employment opportunities, change jobs, develop skills, and lay the groundwork for a career.<sup>289</sup> This approach yields higher lifetime earnings and job satisfaction than rushing into a dead-end job in order to make ends

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<sup>286</sup> See *supra* Part II.A.1.

<sup>287</sup> See Jeffrey Jensen Arnett & Jennifer L. Tanner, *Themes and Variations in Emerging Adulthood Across Social Classes*, in ARNETT ET AL., *DEBATING EMERGING ADULTHOOD: STAGE OR PROCESS?*, *supra* note 37, at 31, 33.

<sup>288</sup> See ARNETT, *EMERGING ADULTHOOD*, *supra* note 30, at 138–40.

<sup>289</sup> See NEWMAN, *supra* note 43, at 117; SETTERSTEN & RAY, *supra* note 28, at 181–82; Aquilino, *Family Relationships*, *supra* note 87, at 306; see also ARNETT, *EMERGING ADULTHOOD*, *supra* note 30, at 143–63 (describing emerging adults’ extended process of job exploration and career development).

meet.<sup>290</sup> Just as people do not automatically become capable of long-term self-support upon reaching the age of majority, they also do not automatically become capable of long-term self-support upon graduation from college.<sup>291</sup> Progress toward financial independence is incremental, particularly if independence is defined to mean more than mere survival.<sup>292</sup> Parental support in the form of housing or other financial assistance may be the best way to help a young adult move along the continuum toward lifelong self-sufficiency.

However, non-students who are financially dependent on their parents are also different from college students in significant ways. College is, at least in theory, a concrete and time-limited experience, whereas “emerging adulthood” could conceivably embrace a wide variety of circumstances and continue indefinitely. Yet this difference is not as stark as it initially appears. Many college students take more than four years to graduate or never graduate at all,<sup>293</sup> and most financial support for young adults is temporary and designed to respond to specific needs. As discussed earlier, most parental support provided to young adults serves as either a “scaffold” to permit the child to rise or a “safety net” to prevent the child from falling; both types are time-limited.<sup>294</sup> Expanded post-majority child support should be structured to reflect these characteristics.

Perhaps the most significant difference between college support and expanded post-majority support is that the majority of the general public recognizes the value of a college degree and believes that parents should pay for their children to receive a college education if they are able to do so, but no similar consensus exists with respect to supporting adult children who are not in college.<sup>295</sup> In fact, financially dependent young adults who are neither disabled nor enrolled in higher education are the objects of ambivalence in

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<sup>290</sup> See NEWMAN, *supra* note 43, at 117; Aquilino, *Impact of Family Structure*, *supra* note 121, at 144.

<sup>291</sup> See ARNETT, EMERGING ADULTHOOD, *supra* note 30, at 132–34, 151 (describing how the American higher education system does not provide as much preparation for the workplace as many European education systems); NEWMAN, *supra* note 43, at 134–35 (referring to the limited earning power of “a freshly minted BA” and the difficulty of finding a job after college).

<sup>292</sup> See Harris et al., *supra* note 168, at 721 (stating that “often children become increasingly self-supporting over time, rather than going from a dependent to an independent status abruptly”).

<sup>293</sup> See ARNETT, EMERGING ADULTHOOD, *supra* note 30, at 125 (stating that one-fourth of college students drop out in their first year and that most of those who earn a bachelor’s degree take at least five years to do so); SETTERSTEN & RAY, *supra* note 28, at 5 (stating that almost half of students who enter college drop out within six years without earning a degree).

<sup>294</sup> See *supra* notes 92–97 and accompanying text (discussing scaffolds and safety nets).

<sup>295</sup> See Aquilino, *Family Relationships*, *supra* note 87, at 204; Lye, *supra* note 151, at 95–96; Rayna Amber Sage & Monica Kirkpatrick Johnson, *Extending and Expanding Parenthood: Parental Support to Young Adult Children*, 6 SOC. COMPASS 256, 259–60 (2012).

some quarters and outright hostility in others.<sup>296</sup> Although this lack of public consensus poses an obstacle to expanding the availability of post-majority child support, it should not be regarded as the final word on the subject. In light of the growing numbers of young adults who are financially dependent on their parents, and the social and economic forces that suggest this trend will continue, it is possible that expanded post-majority child support is in the same position today that college support was in one hundred years ago. As the number of college students grew, so did public awareness of the importance and value of a college education, and an increasing number of states adopted statutes or case law permitting court-ordered college support and/or enforcing parental agreements for college support.<sup>297</sup> The time is ripe to begin a similar evolution in the law with regard to young adults who are neither disabled nor enrolled in higher education but are not yet capable of self-support. Whether or not every state eventually chooses to make expanded post-majority child support available, this issue deserves the attention of family law scholars, attorneys, legislators, and judges.

### B. *Implementing Expanded Post-Majority Child Support*

There are at least three ways to make post-majority child support available for adult children who are neither disabled nor receiving higher education. First, family law attorneys can negotiate agreements for expanded post-majority child support in conjunction with divorce settlements and other child support proceedings. In most jurisdictions, the law already permits this. As indicated above, the overwhelming majority of states (including most of those where courts are not permitted to impose post-majority support on a non-consenting parent) will enforce an agreement between the parents for post-majority support.<sup>298</sup> Most such agreements involve support for college, but the underlying legal and policy considerations—including respect for the parents' private ordering of their dispute—suggest that courts would be equally willing to enforce agreements for expanded post-majority support.<sup>299</sup> Parental agreements regarding child support are subject to review by the court acting in its role as *parens patriae* to ensure that the child's best interests are met; an agreement to provide support in excess of what the state guidelines would dictate would normally receive judicial approval.<sup>300</sup> Coun-

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<sup>296</sup> See *supra* notes 149–56 and accompanying text.

<sup>297</sup> See *supra* notes 192–202 and accompanying text (describing the evolution of legal rules on college support).

<sup>298</sup> See *supra* note 201 and accompanying text.

<sup>299</sup> See PRINCIPLES, *supra* note 178, §§ 3.13, 3.24(4) (encouraging judicial deference to parental child support agreements).

<sup>300</sup> See *id.* § 3.13 cmt. a (stating that the court should defer to a child support agreement by the parents, unless the amount of child support provided by the parents' agreement is substantially less than would otherwise be required and the agreement is not consistent with the best interests of the child); *id.* § 3.24(4) & cmt. h (“The parties may always agree to obligations to a child . . . that exceed those imposed by law. This is a

sel for custodial parents should routinely consider including a provision for expanded post-majority support in a negotiated child support agreement.

It might seem that the payor would have no incentive to agree to pay expanded post-majority support if such payments are not required by state law, since negotiations take place “in the shadow of the law.”<sup>301</sup> This supposition is belied by the fact that many parents agree to post-majority college support obligations in states where judges lack the power to impose them. As with any negotiation, the outcome will depend on the motivations of the parties, what other concessions are made, and how the various pieces of the agreement fit together.

A second possible approach, which is more ambitious, would be for judges to order expanded post-majority support on a case-by-case basis. This approach will probably be resisted in states that do not already permit court-ordered post-majority support for college, since expanded post-majority support is even less popular than college support. However, in states that allow courts to impose college support over a parent’s objection, judges or legislators might be persuaded on public policy grounds to adopt a similar rule for adult children who are not in college. In addition to helping custodial parents who litigate their child support cases, the possibility of obtaining a court order for expanded post-majority support would strengthen the bargaining position of a custodial parent seeking such support in a negotiated agreement.<sup>302</sup>

A third strategy would be to amend state child support guidelines to include a provision for expanded post-majority support. Achieving this will be difficult. Currently, most child support guidelines do not address parental responsibility to support children in college,<sup>303</sup> and it is improbable that expanded post-majority support would receive more favorable treatment than college support. Furthermore, the duration, amount, and other features of expanded post-majority support awards are highly variable. Therefore, if a state’s guideline were going to take expanded post-majority support into account, it should do so by creating a separate, fact-specific inquiry, instead of trying to fold the calculation of the expanded post-majority support into the basic child support formula.<sup>304</sup>

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consistent theme in current law and in these Principles.”); Jon T. Ferrier, *Family Law: Child Support Agreements in the Wake of Holmes*, 89 MICH. BAR J. 26, 30 (2010) (stating that parents’ agreements for child support that exceed what is required by the state child support formula will be enforced absent a compelling reason not to do so).

<sup>301</sup> See Robert Mnookin & Lewis Kornhauser, *Bargaining in the Shadow of the Law: The Case of Divorce*, 88 YALE L.J. 950 (1979).

<sup>302</sup> See generally *id.* (describing the impact of background legal rules on negotiated divorce agreements).

<sup>303</sup> See MORGAN, CHILD SUPPORT GUIDELINES, *supra* note 176, at 4-38.5 to 4-39.

<sup>304</sup> See Goldfarb, *Child Support Guidelines*, *supra* note 228, at 31 (defining extraordinary expenses as “any large, discrete, legitimate . . . expense that varies greatly from family to family or from child to child,” and recommending that extraordinary expenses be allocated between the parents separately from and in addition to the basic child support award that is calculated by applying the guideline formula).

If courts are permitted to order expanded post-majority support in the absence of a parental agreement, what criteria should they use to make that decision? A helpful analogy is provided by the method courts use for deciding whether to order college support.

The overarching goal of the college support inquiry is the same as for child support awards in general: to place children in the financial position they would have occupied if their parents were married to each other.<sup>305</sup> Married couples differ in whether they contribute to their children's college expenses and if so, how much they contribute. Accordingly, courts attempt to determine what the parents of a given child would have done if they were in an intact married family.<sup>306</sup> Judges use two types of evidence to make this determination: first, any indications of plans or expectations by the parents,<sup>307</sup> and second, information about the parents and child from which the judge can extrapolate the likelihood that the parents would have provided financial support for college if they were married.<sup>308</sup> The relevance of the second type of evidence is based on the assumption that certain characteristics are proxies for a married parent's tendency to pay for a child's college education. For instance, courts can reasonably assume that a noncustodial father who is a highly educated, wealthy professional would have voluntarily paid for his child to go to college if he were married to the child's mother.<sup>309</sup>

To assist with this inquiry, courts consider a series of factors, such as the child's academic ability, the parents' educational backgrounds and finan-

<sup>305</sup> See MORGAN, CHILD SUPPORT GUIDELINES, *supra* note 176, at 4-42 to 4-43; Horan, *supra* note 172, at 169-70, 172; Wallace, *supra* note 194, at 677 n.93 (citing statutes and cases); see also *supra* notes 206-15 and accompanying text (discussing the constitutionality of college support awards); *supra* notes 224-28 and accompanying text (describing the purpose of child support).

<sup>306</sup> See *McLeod v. Starnes*, 723 S.E.2d 198, 204-05 (S.C. 2012), *cert. denied*, 133 S. Ct. 198 (2012); see also MORGAN, CHILD SUPPORT GUIDELINES, *supra* note 176, at 4-42 to 4-43 (describing a three-step decision-making process consisting of first determining whether college support would have been provided if the parents and child were in an intact family, then deciding the amount of the child's reasonably necessary college expenses, and finally deciding the amount the parent can reasonably afford to pay).

<sup>307</sup> See Crawford, *supra* note 192, at 544. A college savings fund and a parent's expression of willingness to support a child in college are examples of this type of evidence. The focus of the inquiry should be on the parents' plans and expectations before their relationship deteriorated. See *id.* at 552. In some cases, there might be no evidence of the parents' plans and expectations, requiring the court to rely exclusively on the second category of evidence, described in the text immediately below.

<sup>308</sup> See *id.* at 545-46, 549-57.

<sup>309</sup> See *Childers v. Childers*, 575 P.2d 201, 205-06 (Wash. 1978) (upholding an award of college support and stating that "we think it reasonable to assume that a medical doctor, himself with years of higher education which brings him a higher than average income, would willingly treat his sons as dependents if they chose and showed an aptitude for college, but for the fact of the divorce"); see also PRINCIPLES, *supra* note 178, § 3.12 cmt. b ("In the absence of objective indicia [of whether the parent would have provided the child with support for education or other life opportunities if they were living together], the parent should be assumed to do what residential parents of similar wealth and background ordinarily do.").

cial resources, and the child’s access to other sources of funding.<sup>310</sup> The list of factors differs from state to state and is non-exclusive, with considerable discretion vested in the judge.<sup>311</sup> A particularly thorough list of factors was provided by the New Jersey Supreme Court’s decision in *Newburgh v. Arigo*,<sup>312</sup> which stated:

In evaluating the claim for contribution toward the cost of higher education, courts should consider all relevant factors, including (1) whether the parent, if still living with the child, would have contributed toward the costs of the requested higher education; (2) the effect of the background, values and goals of the parent on the reasonableness of the expectation of the child for higher education; (3) the amount of the contribution sought by the child for the cost of higher education; (4) the ability of the parent to pay that cost; (5) the relationship of the requested contribution to the kind of school or course of study sought by the child; (6) the financial resources of both parents; (7) the commitment to and aptitude of the child for the requested education; (8) the financial resources of the child . . . ; (9) the ability of the child to earn income . . . ; (10) the availability of financial aid . . . ; (11) the child’s relationship to the paying parent . . . ; and (12) the relationship of the education requested to any prior training and to the overall long-range goals of the child.<sup>313</sup>

A similar set of factors should be developed for cases involving expanded post-majority child support. The following list of factors, adapted from *Newburgh*, would provide an appropriate basis for case-by-case determinations of expanded post-majority support:

In evaluating the claim for contribution toward post-majority support, courts should consider all relevant factors, including (1) whether the parent, if married to the child’s other parent, would have contributed toward the requested support;<sup>314</sup> (2) the effect of

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<sup>310</sup> See *In re Marriage of Vaughan*, 812 N.W.2d 688, 693–94 (Iowa 2012); *Childers*, 575 P.2d at 205; Wallace, *supra* note 194, at 677–78; Annotation, *Responsibility*, *supra* note 204, § 2.

<sup>311</sup> See Goldfarb, *Child Support Guidelines*, *supra* note 228, at 346–47; Horan, *supra* note 172, at 169.

<sup>312</sup> 443 A.2d 1031 (N.J. 1982). *Newburgh* arose from a dispute over the proceeds of a wrongful death case, but it has become a leading case on the issue of post-majority college support awards. See 2 GARY N. SKOLOFF & LAURENCE J. CUTLER, *NEW JERSEY FAMILY LAW PRACTICE* § 5.1C(4) (14th ed. 2010).

<sup>313</sup> *Newburgh*, 443 A.2d at 1038–39.

<sup>314</sup> In contrast to *Newburgh*, the first proposed factor for expanded post-majority support considers whether the parent would have provided support if he or she were married to the other parent, rather than if he or she were “still living with the child.” A focus on what the parent would have done if living with the child seems misplaced in the case of adult children who are no longer living with either parent, and the phrase “still living with the child” is particularly inappropriate for parents who have never lived with their

the background, values and goals of the parent on the reasonableness of the expectation of the child for support; (3) the amount of support sought by the child; (4) the ability of the parent to pay that cost; (5) the relationship of the requested contribution to the purpose for which support is sought by the child; (6) the financial resources of both parents; (7) the commitment to and aptitude of the child for the purpose of the requested support; (8) the financial resources of the child; (9) the ability of the child to earn income; (10) the availability of financial support from other sources; (11) the child's relationship to the paying parent;<sup>315</sup> and (12) the relationship of the support requested to any prior training and to the overall long-range goals of the child.

The first of these factors—whether the child would have received the requested support if the parents were married to each other—is particularly important. Just as with college support, any evidence of the parents' plans and expectations before their relationship deteriorated would be directly relevant to this determination.<sup>316</sup> Although parents are more likely to plan ahead for a child's college expenses than for other expenses of an adult child, it is certainly possible that evidence will exist of the parents' intentions concerning expanded post-majority support. For example, the parents might have encouraged the child to enter a career that is difficult to break into, with assurances that the parents would provide a subsidy while the child is gaining experience and credentials. In cases where evidence of the parents' plans and expectations is not available, courts will have to rely on other facts to determine whether expanded post-majority support would have been paid if the parents were married to each other. Existing research suggests that the parents' resources, the child's age, and the child's needs are among the variables that affect voluntary parental support for adult children.<sup>317</sup> Further research about parents who voluntarily subsidize adult children for reasons other than a disability or college education could assist in identifying charac-

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children. In addition, tying the award of expanded post-majority support to a determination of what the adult child would have received if the parents were married to each other can help withstand constitutional equal protection challenges. See *supra* notes 206–15 and accompanying text (discussing constitutional challenges to college support).

<sup>315</sup> The issue of the child's relationship to the paying parent is potentially problematic and must be addressed carefully. See *infra* note 381 and accompanying text (discussing parental estrangement).

<sup>316</sup> See *supra* note 307 and accompanying text (describing college support).

<sup>317</sup> See Aquilino, *Family Relationships*, *supra* note 87, at 205; Berry, *supra* note 263, at 210–36 (considering multiple variables affecting financial transfers from parents to children); Fingerman et al., *Giving to the Good and the Needy*, *supra* note 130, at 1227–28 (finding that parental support varied according to children's needs and parents' resources); Sage & Johnson, *supra* note 295, at 259–63 (examining how young adults' educational, work and family roles affect parental support); Schoeni & Ross, *supra* note 46, at 402–13 (examining variations in parental support based on children's age, parental income, and other factors); Swartz et al., *Safety Nets and Scaffolds*, *supra* note 91, at 422–27.

teristics to serve as proxies for the likelihood that a particular parent would have provided the requested support if he or she were married to the child’s other parent.<sup>318</sup>

Unlike court-ordered child support for adult children who are disabled or in college, permitting courts to mandate expanded post-majority support is a novel concept.<sup>319</sup> Although a detailed discussion of implementation is beyond the scope of this Article, there are several questions that need to be addressed in order to outline the parameters of expanded post-majority support. Once again, existing law on college support provides a helpful frame of reference for answering these questions.

### 1. *Who Can Seek Expanded Post-Majority Support?*

With some variations based on state law, college support actions can generally be brought by an adult child or by a custodial parent seeking a continuation of child support on behalf of the child.<sup>320</sup> Some authorities take the view that once a child has legally become an adult, allowing the custodial parent to bring an action on his or her behalf is inconsistent with the child’s adult status.<sup>321</sup> On the other hand, if post-majority support is seen as an extension of support for the minor child, the custodial parent is the most logical person to press the claim. Furthermore, a custodial parent is more likely to have the resources and sophistication necessary to bring a legal action.<sup>322</sup> In order to make expanded post-majority support widely available, either the adult child or the custodial parent should be permitted to seek an award.

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<sup>318</sup> See Aquilino, *Family Relationships*, *supra* note 87, at 212 (indicating that further research is needed about individual and group differences in parental support for emerging adults); Berry, *supra* note 263, at 236 (emphasizing the need for additional research).

<sup>319</sup> The concept of expanded post-majority support is implicitly endorsed by the American Law Institute’s *Principles of the Law of Family Dissolution*, which states that children should “not suffer loss of life opportunities that the child’s parents are able to provide without undue hardship to themselves or their other dependents.” PRINCIPLES, *supra* note 178, § 3.12(1). The term “life opportunities” is defined as including but not limited to “(a) postsecondary education and vocational training; (b) preprimary, primary, and secondary education; and (c) specialized education and training appropriate to the child’s special talents or disabilities.” *Id.* § 3.12(2). The Comment states, “In addition to formal education, life opportunities may also include, for example, summer camps, cultural travel, and support during nonpaying or low-paying apprenticeships.” *Id.* § 3.12 cmt. a. The *Principles* recommend continuing child support past the age of majority when necessary to prevent the loss of “life opportunities.” See *id.* § 3.24(2) & cmt. f.

<sup>320</sup> See SKOLOFF & CUTLER, *supra* note 312, at 5:63–65; Jeff Atkinson, *Support for a Child’s Post-Majority Education*, 22 LOY. U. CHI. L.J. 695, 701–02 (1991); Harris et al., *supra* note 168, at 730–34.

<sup>321</sup> See Harris et al., *supra* note 168, at 735–37.

<sup>322</sup> *Id.* at 735.

## 2. *Who Can Be Required to Pay Expanded Post-Majority Support?*

Should child support orders be available against married parents? In the context of college support, permitting orders against married parents would have the advantages of helping some children attend college and eliminating the equal protection challenges raised by opponents of the existing college support regime.<sup>323</sup> Although some commentators have broached the idea of requiring married parents to pay college support,<sup>324</sup> family law statutes and cases have not taken that path.<sup>325</sup> This reflects judges' and legislators' concern for family privacy and legal nonintervention in the family, as well as the presumption that married parents (unlike those who are divorced) will instinctively act in their children's best interest.<sup>326</sup> Imposing a post-majority college support obligation on parents who are not married to each other is "a relatively minor extension of a well-accepted practice" of child support awards for minors; this extension is justified by "a well-founded belief that many divorced parents will not help their children through college without being coerced."<sup>327</sup>

Likewise, in the context of expanded post-majority support, married parents are significantly more likely to provide voluntary support for adult children than those who are not married to each other.<sup>328</sup> Constitutional constraints on government intervention into family life are most stringent when the interests of all the members of the family are, or appear to be, congruent; when parents are not married to each other, the divergence in their interests (and in the interests of the child and noncustodial parent) justifies a greater degree of government intervention.<sup>329</sup> Therefore, it is appropriate to limit

<sup>323</sup> See *supra* notes 206–15 and accompanying text (discussing constitutional challenges to college support).

<sup>324</sup> See Hall, *supra* note 225, at 259–60; Chun, *supra* note 172, at 232–33, 255–56, 260; Willson, *supra* note 199, at 1128–31.

<sup>325</sup> See *Childers v. Childers*, 575 P.2d 201, 207 (Wash. 1978) (acknowledging that married parents, unlike divorced parents, are legally free to "bid their children 'a fiscal farewell' at age 18"). There are no states that permit children to sue married parents for post-majority college support. Cf. *Braun v. Comm'r, T.C. Memo.*, 1984–285, 48 T.C.M. (CCH) 210 (1984) (holding that when married taxpayers established grantor trusts with children as beneficiaries and used the income to pay the children's college expenses, the income was taxable to the taxpayers; construing New Jersey law as imposing a duty on married New Jersey taxpayers to pay their children's college costs); Terrance A. Kline, Note, *Clifford Trusts and the Parental Duty to Provide a College Education: Braun v. Commissioner*, 46 U. PITT. L. REV. 537, 548 (1985) (critiquing the *Braun* decision and stating that the duty to provide college support "has never been imposed on married parents who live together" by any state).

<sup>326</sup> See *Curtis v. Kline*, 666 A.2d 265, 273–74 (Montemuro, J., dissenting) (stating that constitutional privacy rights forbid ordering married parents to finance their children's college education, and observing that parents often lose the motivation to support their children after divorce); see also *supra* notes 168–74 and accompanying text (explaining the unavailability of child support orders against married parents).

<sup>327</sup> Harris et al., *supra* note 168, at 739.

<sup>328</sup> See *supra* notes 243–44 and accompanying text.

<sup>329</sup> See Czapaniskiy, *Volunteers*, *supra* note 225, at 1440–41; see also *id.* at 1461 ("Legal intervention in family life occurs more at the edges, such as when parents di-

court orders for expanded post-majority support to divorced, separated, and never-married parents.

A related question is whether custodial as well as noncustodial parents could be ordered to pay expanded post-majority support. One of the main justifications for court-ordered college support is that noncustodial parents fail to provide support voluntarily for children who do not live with them. This justification differentiates noncustodial parents from both married parents and custodial parents.<sup>330</sup> In fact, custodial parents routinely continue to support their children into adulthood.<sup>331</sup> Therefore, some cases and statutes do not require the custodial parent to pay college support, on the assumption that she is making contributions directly to the child.<sup>332</sup> For the same reasons, custodial parents should be exempted from orders for expanded post-majority support.

Exempting custodial parents from expanded post-majority support orders does not mean that a custodial parent’s financial status is irrelevant to the support determination. The financial resources of both parents should be considered, and the court can take into account the custodian’s resources (as well as the child’s) when deciding how much support the noncustodian should be ordered to pay.<sup>333</sup> A useful point of departure is to allocate the support between the parents in proportion to their incomes.<sup>334</sup> Proportional allocation is often used in child support awards for child care, medical, and educational expenses.<sup>335</sup> Allocating financial responsibility in proportion to the parents’ incomes is consistent with principles of distributive justice and comports with laypeople’s sense of how to resolve child support disputes fairly.<sup>336</sup> While proportional allocation is a good starting point, the court

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voiced, when parents never live together, or when parents abuse or neglect their children.”).

<sup>330</sup> See Crawford, *supra* note 192, at 543 n.10 (differentiating among custodial parents, noncustodial parents, and married parents).

<sup>331</sup> See *supra* notes 236–37, 245–47, and accompanying text (discussing disparities between mothers’ and fathers’ support for children in college and for adult children in general).

<sup>332</sup> See *In re Marriage of Korte*, 549 N.E.2d 906, 910–11 (Ill. App. Ct. 1990) (affirming a trial court order requiring the noncustodial father but not the custodial mother to pay college support, and stating that “[w]hile the contribution of [the mother] may not be capable of strict mathematical calculation, the trial judge could very well find . . . that, in equity, [the mother’s] contributions are equivalent in value” to the amount the father was ordered to pay); Fabricius et al., *supra* note 172, at 225 (stating that almost all states that have court-ordered college support impose it only on the noncustodial parent); Wallace, *supra* note 194, at 678.

<sup>333</sup> See MORGAN notes 314–15 and accompanying text (listing factors for expanded post-majority support awards).

<sup>334</sup> See Goldfarb, *Child Support Guidelines*, *supra* note 228, at 332–34; Morgan, *When Will It Ever End*, *supra* note 178, at 185.

<sup>335</sup> See MORGAN, CHILD SUPPORT GUIDELINES, *supra* note 176, at 3-2, 3-12 to 3-13; Goldfarb, *Child Support Guidelines*, *supra* note 228, at 332–33; Venohr & Williams, *supra* note 176, at 19–20.

<sup>336</sup> See generally Garrison, *Autonomy*, *supra* note 168 (advocating the application of distributive justice principles to child support awards); Nora Cate Schaeffer, *Principles of Justice in Judgments About Child Support*, 60 SOC. FORCES 157 (1990) (reporting survey

should consider all the relevant circumstances in order to arrive at an equitable award of expanded post-majority support. For example, a large disparity in the parents' assets might warrant a different allocation.<sup>337</sup>

### 3. *When Can Expanded Post-Majority Support Be Sought?*

Depending on the circumstances and on state law, college support orders can be sought as part of an original child support action, in a motion to modify an existing child support award, or as a separate action.<sup>338</sup> If the child is too young to make college plans when the child support award is entered, the agreement or court order can address the issue and lay the groundwork to determine a specific amount when the child's college plans are more definite.<sup>339</sup> The same procedures can be followed for expanded post-majority support.

Some agreements and court orders require one or both parents to contribute to a trust fund or other account to save for college over an extended period of time.<sup>340</sup> A similar arrangement could be beneficial to create a pool of money for expanded post-majority support. If the funds are not needed, they can be returned to the parents later. Requiring a parent to maintain a life insurance policy is also an option.<sup>341</sup>

Some courts permit modification or reinstatement of child support after a child has reached the age of majority; others do not.<sup>342</sup> In college support cases, the amount of time elapsed between the interruption and resumption of education is sometimes a factor in determining whether college support will be provided to a child who wants to continue schooling after a hiatus.<sup>343</sup> A decision to resume a child support obligation after a gap in time, or to extend an existing obligation beyond its original termination date, implicates

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results showing that laypeople endorse a child support system in which parents' contributions are proportional to their resources).

<sup>337</sup> See *Newburgh v. Arrigo*, 443 A.2d 1031, 1038 (N.J. 1982) (stating that "courts should consider all relevant factors"); Atkinson, *supra* note 320, at 706-07 (describing case law on allocation of college support between parents).

<sup>338</sup> Harris et al., *supra* note 168, at 730.

<sup>339</sup> See Horan, *supra* note 172, at 171; Annotation, *Responsibility*, *supra* note 204, § 19 a-b (citing cases); see also Morgan, *When Will It Ever End*, *supra* note 178, at 176 (stating that courts will routinely enforce an agreement to pay "reasonable" college expenses).

<sup>340</sup> See MORGAN, CHILD SUPPORT GUIDELINES, *supra* note 176, at 4-38.3, 4-43; SKOLOFF & CUTLER, *supra* note 312, at 5:63; Wallace, *supra* note 194, at 697.

<sup>341</sup> Annotation, *Responsibility*, *supra* note 204, § 8 (citing cases).

<sup>342</sup> See Todd R. Smyth, Annotation, *Child Support: Court's Authority to Reinstitute Parent's Support Obligation After Terms of Prior Decree Have Been Fulfilled*, 48 A.L.R.4th 952, § 2 (1986); see also *supra* notes 189-91 and accompanying text (discussing child support for adult children with disabilities that arose after the age of majority).

<sup>343</sup> See *Thiele v. Thiele*, 479 N.E.2d 1324 (Ind. App. 1985) (affirming the father's college support obligation for his daughter who returned to college twenty months after dropping out); *Sakovits v. Sakovits*, 429 A.2d 1091, 1095-96 (N.J. Ch. 1981) (declining to order college support after the child had a four-year gap between high school and college).

competing policy concerns. On one hand, a noncustodial parent has a valid interest in knowing what his or her financial obligations are in order to plan for the future.<sup>344</sup> On the other hand, if the adult child has a legitimate need, and a married parent or custodial parent would voluntarily meet that need, it seems worthwhile at least to consider whether the noncustodian should contribute. Thus, while it is desirable to make provisions for expanded post-majority child support as far in advance as possible, adult children should not be denied support to which they would otherwise be entitled simply because of the passage of time. This conclusion argues against a rigid deadline for bringing an action seeking expanded post-majority support.

#### 4. *How Long Can a Parent Be Required to Pay Expanded Post-Majority Support?*

With regard to college support, maximum age limits have been criticized as arbitrary and unjustified.<sup>345</sup> Nevertheless, some states limit college support to individuals under a certain age, ranging from twenty to twenty-three.<sup>346</sup> Since the process of transition to adulthood is highly variable, there are good reasons to make a case-by-case determination of how long expanded post-majority support should last. However, ease of administration or political compromise might demand a bright line rule.<sup>347</sup> If so, the age cut-off could be copied from an existing law affecting young adults. For example, the federal Patient Protection and Affordable Care Act allows adults up to age twenty-six to remain on their parents' health insurance.<sup>348</sup> In some states, the age limits for young adults' coverage under their parents' health insurance policies are even higher.<sup>349</sup>

#### 5. *How Much Expanded Post-Majority Support Can Be Required, and for What Purposes?*

The purpose for which support is being sought is one of the factors that should be considered when determining an award of expanded post-majority

<sup>344</sup> See Horan, *supra* note 172, at 171.

<sup>345</sup> See *id.* at 169.

<sup>346</sup> See *Termination of Support—College Support Beyond the Age of Majority*, *supra* note 200.

<sup>347</sup> The American Law Institute's *Principles of the Law of Family Dissolution* recommend that post-majority support to provide for a child's life opportunities should terminate at an age specified by a uniform rule of statewide application, unless the parties agree to extend the duration of the obligation. PRINCIPLES, *supra* note 178, § 3.24(2), (4).

<sup>348</sup> Pub. L. No. 111-148, 124 Stat. 119 (2010) (codified in relevant part as amended at 42 U.S.C. § 300gg-14 (2011)). Another example of an age limit found in federal law that affects young adults is the Internal Revenue Code's definition of “dependent,” which includes a qualifying child who is a student below the age of twenty-four. 26 U.S.C. § 152(c)(3)(A)(ii) (2006).

<sup>349</sup> *Covering Young Adults Through Their Parents' or Guardians' Health Policy*, *supra* note 13.

support.<sup>350</sup> Because the transition to adulthood is a complex and individual process, the valid purposes of expanded post-majority support do not lend themselves to a narrow definition. As noted earlier, parents frequently provide their adult children who are not in school with financial support for housing, living expenses, transportation costs, insurance, spending money, medical expenses, emergency money, loan assistance, payments toward credit card debt, and a down payment for a home.<sup>351</sup> However, this list is far from exhaustive.

A promising theoretical framework for analyzing the legitimate purposes of expanded post-majority support is provided by the concepts of “scaffolds” and “safety nets.”<sup>352</sup> Parents most often provide voluntary support to their adult children to furnish an opportunity for advancement (a scaffold) or to cushion the blow of a major setback (a safety net).<sup>353</sup> The category of “scaffold” support includes situations where the child is developing a skill, building credentials, or obtaining training.<sup>354</sup> When a parent provides support so that an adult child can work on a higher degree, hold down an unpaid or low-paid internship, or save for a down payment on a house, those are examples of “scaffolds.” Conversely, “safety net” support is a response to negative circumstances such as loss of a job, divorce, illness, and foreclosure.<sup>355</sup> Financial reversals arising from forces like poverty, recession, high housing costs, and high unemployment contribute to the need for “safety net” support.<sup>356</sup> The concepts of “scaffolds” and “safety nets” can provide helpful guidance for deciding legal claims seeking expanded post-majority child support, while still allowing room for judicial discretion. Situations similar to all of the examples described above should be recognized as potentially permissible purposes for expanded post-majority support.

Parental support in the form of both scaffolds and safety nets is typically intended to assist young adults in becoming financially independent.<sup>357</sup> Just as some court orders or agreements for college support impose conditions requiring the student to remain in good academic standing,<sup>358</sup> an expanded post-majority support award could require the adult child to demonstrate good-faith efforts to work toward financial independence.<sup>359</sup>

The method of setting an award amount presents some challenges. Because expenses can vary greatly over time, setting an award in advance might not accurately reflect actual expenses. Yet forcing the child or custo-

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<sup>350</sup> See *supra* text accompanying notes 314–15 (listing proposed factors).

<sup>351</sup> Goudreau, *supra* note 62.

<sup>352</sup> See *supra* notes 92–97 and accompanying text.

<sup>353</sup> See generally Swartz et al., *Safety Nets and Scaffolds*, *supra* note 91.

<sup>354</sup> See NEWMAN, *supra* note 43, at 114–25.

<sup>355</sup> See *id.* at xvii, 42, 50–51, 114–25, 134–36.

<sup>356</sup> See *id.*

<sup>357</sup> See *id.* at 82–83, 114–20; Swartz, *Intergenerational*, *supra* note 4, at 200.

<sup>358</sup> See Wallace, *supra* note 194, at 679, 695–96.

<sup>359</sup> See *infra* note 389 and accompanying text (describing limitations placed on expanded post-majority support awards).

dial parent to incur an expense before seeking reimbursement from the noncustodian would place them in a disadvantageous position, especially since noncustodians do not always pay the child support they owe. Retroactive reimbursement would be difficult for noncustodial parents as well, because they would not know the amount of their obligation in advance. Requiring a modification proceeding every time the level of expenses changes would be burdensome for the courts and the parties. The best solution, if feasible in a given case, is to establish a fund that can be drawn down to pay for qualified expenses as they arise.<sup>360</sup>

With regard to college support, some statutes, court orders and agreements set a cap on the amount that can be awarded—for example, the cost of a four-year degree at an in-state public university.<sup>361</sup> Others specifically reject a fixed cap and instead look at the totality of the circumstances to set the amount of the award.<sup>362</sup> For expanded post-majority support, there is no obvious benchmark analogous to an in-state university that can be used to set a maximum dollar limit; any limit would necessarily be arbitrary. Therefore, the amount of the award should be based on all relevant factors. Of course, those factors include the parents’ financial resources and their ability to pay, which in many cases will serve to place an upper limit on the amount of the award.<sup>363</sup>

### C. *Arguments For and Against Expanded Post-Majority Child Support*

Any attempt to adopt expanded post-majority child support will almost certainly trigger opposition from interest groups advocating the rights of noncustodial parents, as well as others. Predictable objections to the proposal, and replies to them, include the following.

#### 1. *Parental Support for Adult Children Should Be Voluntary*

The most fundamental critique of expanded post-majority child support rests on a rigid distinction between children who are below and above the age of majority. Traditionally, parents were obligated to support children only as long as they were minors. However, that rule has been significantly weakened. As the previous discussion has demonstrated, the law in many states has extended child support eligibility to include adults who have disabilities or are college students. Thus, the proposal presented here is a reason-

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<sup>360</sup> See *supra* note 340 and accompanying text (discussing the use of trust funds to save for college).

<sup>361</sup> See MORGAN, CHILD SUPPORT GUIDELINES, *supra* note 176, at 4-43 n.92; Morgan, *When Will It Ever End*, *supra* note 178, at 181; Wallace, *supra* note 194, at 678, 695.

<sup>362</sup> See SKOLOFF & CUTLER, *supra* note 312, at 5:61-62; Horan, *supra* note 172, at 165.

<sup>363</sup> See *supra* notes 314-15 and accompanying text (listing factors for expanded post-majority support).

able and incremental extension of policies that are already in place in many, although not all, states.

In addition, the argument has been made that since parents are free to disinherit their adult children,<sup>364</sup> they should also be free to deny support during their lifetimes to adult children who are disabled or in college.<sup>365</sup> Presumably the same objection would be raised against expanded post-majority support. However, this argument proves too much. Parents in every state except Louisiana are free to disinherit their minor children,<sup>366</sup> and yet they are not permitted to avoid supporting their minor children while the parents are alive.<sup>367</sup> In any event, because inheritance law and child support law serve different purposes, there is no inherent reason why they must be consistent with respect to obligations to adult children.

It has also been suggested that requiring a parent to support an adult child deprives the parent of the opportunity to do so voluntarily, and that a gift that is freely offered has more emotional and moral benefit for both parties than a legally compelled payment.<sup>368</sup> Yet making expanded post-majority support mandatory does not prevent parents from choosing to give additional gifts. Furthermore, relying exclusively on a noncustodial parent's generosity, which is often in short supply, is inadequate to safeguard the interests of children and custodial parents.

The history of child support law is marked by the repeated expansion of children's legally enforceable rights. Under common law, parents were considered to have a moral, but not legal, duty to support their children.<sup>369</sup> Beginning with the Elizabethan Poor Laws at the dawn of the seventeenth century, a legal obligation was created in order to relieve communities of the financial burden of supporting poor children.<sup>370</sup> During the nineteenth century, family law in the United States increasingly recognized the right of the individual child to enjoy a standard of living commensurate with the parent's financial means.<sup>371</sup> In the late twentieth century, the federal and state governments adopted a variety of measures to improve the adequacy and enforcement of child support awards.<sup>372</sup> Underlying these reforms is the recognition

<sup>364</sup> See Buhai, *supra* note 185, at 758–59.

<sup>365</sup> See Judith G. McMullen, *Father (or Mother) Knows Best: An Argument Against Including Post-Majority Educational Expenses in Court-Ordered Child Support*, 34 *IND. L. REV.* 343, 363–66 (2001).

<sup>366</sup> See McMullen, *supra* note 365, at 354.

<sup>367</sup> See *supra* notes 168–74 and accompanying text (describing child support obligations).

<sup>368</sup> Buhai, *supra* note 185, at 751–53.

<sup>369</sup> Garrison, *Autonomy*, *supra* note 168, at 49–50; Harris et al., *supra* note 168, at 694–95.

<sup>370</sup> Garrison, *Autonomy*, *supra* note 168, at 48–51; Harris et al., *supra* note 168, at 692.

<sup>371</sup> Garrison, *Autonomy*, *supra* note 168, at 50–51; Harris et al., *supra* note 168, at 693–96.

<sup>372</sup> See Garrison, *Autonomy*, *supra* note 168, at 53–54, 57–62; see also *supra* notes 175–76 and accompanying text (describing legal reforms beginning in the 1970s).

that legal enforcement of parental obligations is warranted in situations where children’s needs would otherwise not be met.<sup>373</sup>

The legal principle of nonintervention in the family is widely viewed as inapplicable in cases of divorce, separation, and parenthood outside of marriage.<sup>374</sup> In decisions imposing college support obligations on noncustodial parents, courts have often stated that after divorce, it is necessary to create a legal duty to take the place of a moral duty that a parent would have voluntarily undertaken while married.<sup>375</sup> Similarly, in the situation of adult children who are financially dependent on their parents, the law should take the step of requiring noncustodial parents to provide support that they would have offered voluntarily if they were married to the other parent.

## 2. Parental Support Should Be Accompanied by Parental Control

Throughout much of legal history, a parent’s duty to support a child and the child’s duty to obey the parent were two sides of the same coin. Adult children (unlike minors) are not subject to their parents’ legal authority; therefore, it might seem anomalous to grant them a right to parental support.<sup>376</sup>

The same issue has emerged in cases involving college support. Courts have developed three different ways of dealing with this apparent contradiction.<sup>377</sup> Some courts grant the noncustodial parent the power to withhold support if the child does not follow the parent’s rules.<sup>378</sup> Others have conditioned a support award on the child’s adherence to behavioral limitations imposed by the court. Examples of such limits include requirements that the child

<sup>373</sup> See Czapanskiy, *Volunteers*, *supra* note 225, at 1436 n.73; see also Scott & Scott, *supra* note 212, at 2447 (“Encouraging non-custodial parents to act in their children’s interest requires translating informal norms into more explicit legal directives.”).

<sup>374</sup> See *supra* notes 171–74 and accompanying text.

<sup>375</sup> See *Kujawinski v. Kujawinski*, 376 N.E.2d 1382, 1390 (Ill. 1978) (observing that “it is not the isolated exception that noncustodial divorced parents . . . cannot be relied upon to voluntarily support the children of the earlier marriage to the extent they would have had they not divorced,” and that “parental love and moral obligation” are sufficient to ensure that children’s best interests are met when their parents are married but not when they are divorced); *Vrban v. Vrban*, 293 N.W.2d 198, 202 (Iowa 1980), *superseded by statute on other grounds* (stating that “even well-intentioned parents, when deprived of the custody of their children, sometimes react by refusing to support them as they would if the family unit had been preserved”); *LeClair v. LeClair*, 624 A.2d 1350, 1357 (N.H. 1993), *superseded by statute on other grounds* (“While financial support of the family unit may be an unquestioned responsibility in an intact home, such support decisions often become regulated by court order in a disputed divorce.”); *Childers v. Childers*, 575 P.2d 201, 208 (Wash. 1978) (quoting *Esteb v. Esteb*, 244 P. 264, 267 (Wash. 1926)) (“Parents, when deprived of the custody of their children, very often refuse to do for such children what natural instinct would ordinarily prompt them to do.”); see also *Curtis v. Kline*, 666 A.2d 265, 271–74 (Pa. 1995) (Montemuro, J., dissenting) (recognizing that divorce often causes noncustodial parents to ignore their moral duty to contribute to the costs of a child’s college education).

<sup>376</sup> See generally Harris et al., *supra* note 168.

<sup>377</sup> *Id.* at 724.

<sup>378</sup> *Id.* at 724–25.

attend school full-time, remain in good academic standing, take steps to obtain scholarships and loans, maintain a relationship with the noncustodial parent, and consult with the noncustodial parent about the choice of school.<sup>379</sup> The third approach is to attach no behavioral conditions to the award, thereby separating the financial support from the question of how, if at all, the noncustodial parent will influence the child's behavior.<sup>380</sup>

The same options are available for awards of expanded post-majority support. However, the first and second approaches described above should be approached with caution. Excessive behavioral limitations could undermine one of the main objectives of expanded post-majority support, which is to help the adult child move toward independence. In addition, adult children should not be penalized for things that are out of their control. For example, if the relationship between the child and noncustodian has deteriorated because the noncustodian has been abusive or abandoned the family, the resulting estrangement should not cause the child to lose support.<sup>381</sup>

### 3. *Expanded Post-Majority Child Support Will Encourage Young Adults to Remain Financially Dependent on Their Parents*

When family law evolves in response to shifting trends in family life (such as rising rates of divorce, heterosexual cohabitation, and same-sex relationships), observers often raise the question of cause and effect. Do legal reforms trigger the proliferation of non-traditional family structures, or does the process work in the opposite direction? The question presumes a false dichotomy, because legal and social changes are intertwined and mutually reinforcing.<sup>382</sup>

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<sup>379</sup> See Atkinson, *supra* note 320, at 708–09; Harris et al., *supra* note 168, at 725–26; Morgan, *When Will It Ever End*, *supra* note 178, at 184–86; Wallace, *supra* note 194, at 679–80, 695–96.

<sup>380</sup> See, e.g., Harris et al., *supra* note 168, at 726–28.

<sup>381</sup> See *Gac v. Gac*, 796 A.2d 951, 957–58 (N.J. Super. Ct. App. Div. 2002), *rev'd on other grounds*, 897 A.2d 1018 (N.J. 2006); Goldfarb, *Child Support Guidelines*, *supra* note 228, at 347 n.131; Brett R. Turner, *From Child to Adult: Parental Liability for Support of College-Age Children*, 5 *DIVORCE LITIG.* 169, 182 (1993).

<sup>382</sup> See Carl E. Schneider, *The Channelling Function in Family Law*, 20 *HOFSTRA L. REV.* 495, 496 (1992) (quoting Karl Llewellyn, *Behind the Law of Divorce*, 32 *COLUM. L. REV.* 1281, 1283 (1932), on the dynamic interaction of law and society); see also Ann Laquer Estin, *Unmarried Partners and the Legacy of Marvin v. Marvin: Ordinary Cohabitation*, 76 *NOTRE DAME L. REV.* 1381, 1406–08 (2001) (analyzing the relationship between legal change and the growth of non-marital cohabitation); Marsha Garrison, *The Decline of Formal Marriage: Inevitable or Reversible?*, 41 *FAM. L.Q.* 491, 508–09 (2007) [hereinafter Garrison, *The Decline of Formal Marriage*] (observing that “legal and cultural norms often change rapidly and in tandem” and stating that experts disagree on whether adoption of no-fault divorce grounds caused a long-term increase in divorce rates); Sanford N. Katz, *Five Decades of Family Law*, 42 *FAM. L.Q.* 295, 297 (2008) (stating that it “remains to be seen” whether the Massachusetts Supreme Judicial Court was leading or following society when it declared a constitutional right to same-sex marriage).

Legal recognition of alternative family arrangements reduces the stigma associated with them, leading to an increase in public approval for those arrangements, which in turn might influence behavior.<sup>383</sup> In other words, the “expressive function” of family law can affect people’s actions by conveying a message about acceptable family practices.<sup>384</sup> Thus, family law has the potential to accelerate the pace of social change.<sup>385</sup> However, the power of law to influence family life is limited. Legal rules reflect the society in which they are created and lose credibility if they stray too far from contemporary norms. To complicate matters further, economic factors play a significant role in driving family behavior.<sup>386</sup> In general, the law is a relatively minor actor in shaping people’s family arrangements, and changes in family law tend to follow social and economic changes rather than precede them.<sup>387</sup> Within these constraints, the fundamental task confronting family law decision-makers is to design rules that create fair outcomes under prevailing social and economic conditions.<sup>388</sup>

These principles support the adoption of expanded post-majority child support. Young adults’ financial dependency on their parents is already widespread, and under current law, child support is not available to ensure that this burden is shared equitably. There is ultimately no way for the law to remain neutral regarding this situation. If the status quo is allowed to persist, custodial parents and their children will continue to be disadvantaged. If expanded post-majority child support becomes available, it will help to level the playing field between custodial and noncustodial parents and between children of parents who are and are not married to each other. In other words, the law can either tacitly reinforce existing inequities, or attempt to alleviate them by creating a new remedy.

Expanded post-majority child support can and should be structured in such a way that it does not deter young adults from becoming financially self-sufficient.<sup>389</sup> Any risk of encouraging financial dependency can be minimized by creating positive incentives to work toward independence. For example, the availability of an award can be premised on having a specific goal or need; the award can be time-limited (subject to extension if neces-

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<sup>383</sup> See Marsha Garrison, *Nonmarital Cohabitation: Social Revolution and Legal Regulation*, 42 FAM. L.Q. 309, 330 (2008) (describing the role of legal rules in shaping perceptions and behavior).

<sup>384</sup> See Schneider, *supra* note 382, at 498. Of course, the messages conveyed by law are often complex and susceptible to multiple interpretations. See Carol Weisbrod, *On the Expressive Functions of Family Law*, 22 U.C. DAVIS L. REV. 991, 997–98 (1989) (describing the ambiguous messages expressed by *Marvin v. Marvin*, 557 P.2d 106 (1976)).

<sup>385</sup> See Czapanskiy, *Volunteers*, *supra* note 225, at 1460–63.

<sup>386</sup> See Garrison, *The Decline of Formal Marriage*, *supra* note 382, at 506–16.

<sup>387</sup> Ira Ellman, *Why Making Family Law is Hard*, 35 ARIZ. ST. L.J. 699, 702–06 (2003).

<sup>388</sup> See *id.* at 707.

<sup>389</sup> See Buhai, *supra* note 185, at 752, 761–62; Stępień-Sporek & Ryznar, *supra* note 218, at 382.

sary); and if appropriate under the circumstances, continued receipt of support can be made conditional on demonstrating a good faith attempt to obtain training, find a job, or engage in a career-enhancing activity.

#### 4. *Judicial Determinations of Expanded Post-Majority Support Will Be Administratively Burdensome*

If judges are permitted to make case-by-case determinations of expanded post-majority support, critics will probably assert that this will burden the courts with intractable inquiries.<sup>390</sup> Although child support law in the United States has embraced mathematical formulas through the adoption of statewide guidelines, that approach is not well suited for large, highly variable expenses that fall outside the basic expenses of raising a child.<sup>391</sup> As Ira Ellman has pointed out, one reason why “making family law is hard” is that the desire for clear and predictable rules often collides with the quest for fairness.<sup>392</sup> In the case of expanded post-majority support, fairness demands an individualized inquiry. Providing judges with a list of relevant factors like those described above can help them decide whether the facts of a given case warrant an award, and if so, for how much and how long.<sup>393</sup>

From the perspective of someone who is skeptical about expanded post-majority support, making the awards dependent on the facts of each case, instead of imposing a blanket requirement, is actually an advantage. As several courts have noted in cases involving college support, allowing a judge to award support only if he or she finds that appropriate circumstances exist is preferable to requiring support in all cases.<sup>394</sup> Giving judges the discretion to grant or deny a support award gives potential payors the opportunity to have their interests honored by the court.<sup>395</sup>

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<sup>390</sup> See Buhai, *supra* note 185, at 754–57, 763 (arguing that post-majority support awards for disabled children are administratively burdensome); McMullen, *supra* note 365, at 369 (arguing that college support awards “will burden the judicial system”).

<sup>391</sup> See *supra* note 304 and accompanying text (describing extraordinary expenses).

<sup>392</sup> Ellman, *Why Making Family Law Is Hard*, *supra* note 387, at 713–14.

<sup>393</sup> See Horan, *supra* note 172, at 169 (describing the use of factors in case-by-case resolution of college support disputes).

<sup>394</sup> *Vrban v. Vrban*, 293 N.W.2d 198, 202 (Iowa 1980), *superseded by statute* (finding that a state statute allowing college support is neither arbitrary nor unreasonable because it does not require support in all cases but rather permits the trial court, in its discretion, to award college support under the proper circumstances); *Curtis v. Kline*, 666 A.2d 265, 273 (Pa. 1995) (Montemuro, J., dissenting) (pointing out that a noncustodial parent has no liability under the challenged college support statute unless the court finds in its discretion that an award is appropriate); *Childers v. Childers*, 575 P.2d 201, 206–07 (Wash. 1978) (observing that college support depends on the circumstances and will not be awarded if the noncustodial parent has insufficient financial resources).

<sup>395</sup> See Atkinson, *supra* note 320, at 700.

5. *The State, Not Individual Parents, Should Do More to Support Young Adults*

A valid argument can be made that society as a whole should take more responsibility for helping young people make the transition to adulthood.<sup>396</sup> If adequate public programs serving financially dependent young adults were in place, the need for post-majority child support payments could be greatly reduced or eliminated. Such programs would also help alleviate the disparities between adult children of high-income and low-income parents, something that child support alone cannot achieve. This position is consistent with Martha Fineman’s call for creating “responsive structures whereby state involvement actually empowers a vulnerable subject by addressing existing inequalities of circumstances.”<sup>397</sup>

However, programs to assist financially dependent young adults are rare, and in the current economic climate, it is unlikely that recommendations to expand them will be heeded.<sup>398</sup> In the absence of large-scale public programs like the GI Bill of the mid-twentieth century, there is a pressing need for other sources of support to assist young adults who have not yet achieved financial independence.<sup>399</sup> A variety of moral, philosophical, and practical considerations militate in favor of placing financial responsibility for dependent children on their parents rather than on other individuals.<sup>400</sup> A parent who can afford to help meet the child’s financial needs should not be allowed to shift the entire burden of support to the other parent. These considerations do not lose their persuasive force when the child reaches the age of majority.<sup>401</sup> Therefore, expanded post-majority child support should be available for financially dependent young adults.

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<sup>396</sup> See *supra* notes 72–74, 157–61 (describing inequality in young adults’ access to parental support); see also MAXINE EICHNER, *THE SUPPORTIVE STATE: FAMILIES, GOVERNMENT, AND AMERICA’S POLITICAL IDEALS* 77–80 (2010) (arguing that no family can raise children and care for dependents entirely on its own and that the state has an obligation to support caretaking and human development); Alstott, *supra* note 171 (arguing that children are both a private and public responsibility).

<sup>397</sup> Martha Albertson Fineman, *The Vulnerable Subject and the Responsive State*, 60 *EMORY L.J.* 251, 274 (2011).

<sup>398</sup> See SETTERSTEN & RAY, *supra* note 28, at 172–76, 186–96 (calling for expansion of public programs for young adults); Richard A. Settersten, Jr. & Barbara Ray, *What’s Going on with Young People Today?: The Long and Twisting Path to Adulthood*, 20 *FUTURE OF CHILD*. 19, 34–36 (2010).

<sup>399</sup> See SETTERSTEN & RAY, *supra* note 28, at 172–73 (describing the increased importance of parental resources for young adults as the post-World War II institutional safety nets are fraying).

<sup>400</sup> See Scott Altman, *A Theory of Child Support*, 17 *INT’L J.L. POL’Y & FAM.* 173, 176–201 (2003); Buhai, *supra* note 185, at 736–49.

<sup>401</sup> See Alstott, *supra* note 171, at 1942 (stating that “society expects—and needs—parents to persist in their role for eighteen years, or longer if needed”).

## CONCLUSION

The importance of child support for the financial well-being of women and children is widely acknowledged. Traditionally, child support obligations were limited to the period before the age of majority. Most states now recognize the need to make court-ordered child support available for adult children who are disabled, and a substantial minority of states do so for adult children in college. However, the law has failed to respond to the reality that parents are increasingly supporting their adult children who are neither disabled nor in college. Such support is often necessary to ensure a successful transition to independent adulthood. In cases of parents who are divorced, separated, or never married, expanded post-majority child support should be available to ensure that the burden of supporting young adult children is equitably shared by both parents.