

## FAMILIES AND THE ETHIC OF GLOBORDERED MARKETS

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*In this Article, I examine the ethical implications of the impact of what I term globordered markets—that is, the markets created by the intense interactions between national borders and globalization—on families. While the interrelations between “the family” and “the market” have been acknowledged ever since Engels pointed to the connection between private property and the patriarchal family, and more recently in the rich discussions over work—family balance, there remains much more to be explored in this moral domain. In particular, very little scholarly attention has been given to how families are affected by both the global market and the impact of the global human rights discourse on local markets—and to the ethical concerns these effects raise.*

*I will analyze two important phenomena to demonstrate my argument that any discussion on the ethical challenges of the market must include deep empirical understanding and complex normative contemplation regarding the impact of bordered globalization on families. Both phenomena relate to the question of meeting the basic needs of children in the poorest parts of the world. The first example is the phenomenon, relatively new in its scope and intensity, of parents who leave for another country without their children, to send remittances back home. The second example is that of child labor, common in many parts of the Global South. While the former is constructed by international law, as well as by scholastic and broader discourses, as ethically non-problematic, the latter is conceived and fought-against by the international community as an evil that must be eliminated. By looking at empirical studies of both, through an ethic of parent–child relations that places parental nurturing care at its core, I argue that the judgmental gaze should be reversed. I will suggest in this Article that parental emigration indeed is very problematic and that ignoring its impact on the children left behind stands in sharp contradiction of the norm of parental involvement advanced in the Global North. As to child labor, I will contend that, when shaped as a*

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*non-abusive addition to effective schooling, it should be perceived as a legitimate manifestation of parental nurturing care and, as such, be legally allowed. These stances highlight the centrality of families in the construction and operation of local and global markets, as well as the impact of these markets on families—hence the need, I contend, for scholars and policymakers to take proper account of familiarity when contemplating the ethical dimensions of these markets.*

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#### INTRODUCTION

Try to imagine (though your socio-economic privilege may hinder you) that you are a poor mother of four children aged 15, 13, 6 and 2—be it because you wanted four children, or because you have no access to contraception, or because your religion prohibits using birth control. You are so poor that you cannot assure the food, clothing, housing and other conditions needed for the healthy and adequate development of your children. Likewise, your government does not secure your children’s basic needs (perhaps because your country is extremely poor, or because your government is cruel or corrupted). You have four options to try to guarantee your children’s basic needs: you can leave for another country to become a migrant care worker for someone else’s children and send remittances back home; you can carry a surrogate pregnancy for a couple from another country in return for money; you can sell your youngest child to a couple from abroad; or you can send two of your older children to work at a nearby factory that supplies goods to meet foreign demand. What would you do?

Now imagine you are the Prime Minister of the country in which this mother lives. Your government is not cruel or corrupted, but it cannot support the many very poor children due to lack of resources. Which of the four solutions would you legally allow or otherwise encourage? And would your answer change if you were the Prime Minister of a country to which this mother could emigrate, or from which the intended or adoptive parents may come, or whose citizens buy the factory’s cheap products?<sup>1</sup>

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<sup>1</sup> For a general ethical theory of the duty of Country A toward the citizens of Country B, see Eyal Benvenisti, *Sovereigns as Trustees of Humanity: On the Accountability of States to Foreign Stakeholders*, 107 AM. J. INT. L. 295 (2013).

Now, imagine you are the UN Secretary-General. You are aware that some 156 million children worldwide are stunted. While this is a significant improvement compared to the 255 million children reported to be suffering from stunting in 1990,<sup>2</sup> you are still concerned about this figure and fear it will rise again following severe crises such as the war in Syria<sup>3</sup> and the famine in Yemen.<sup>4</sup> Likewise, you are aware of the harsh economic inequality between the Global North and the Global South,<sup>5</sup> and the fact that many in the latter live on less than \$2 a day.<sup>6</sup> How would you suggest framing international law vis-à-vis these four options? Should national and global markets be free to allow parental emigration, to the cost of the children left behind? Should transnational surrogacy be allowed? Should child trafficking be permitted—or perhaps child labor?

In this Article, I will argue that debates over the ethic of the market that ignore families are unethical. Moreover, if these debates also ignore the interrelations between globalization and borders, then they are partial and distorted. Current markets are deeply embedded in what I term bordered globalization—the intense interactions between national borders and globalization—and are affected by, and affecting, families in dramatic ways.<sup>7</sup> I believe any attempt to regulate markets ethically should take this complex reality into consideration.

In the next part of this Article, I will contrast the ethic of the market with the ethic of the parent–child relationship, to highlight the importance of preserving them both. In Parts II and III, I will concentrate on two of the aforementioned options in relation to poor children of the Global South: parental remittances and child labor. I will show that the Western discourse accepts the former as a legitimate outcome of a market interaction between a migrant worker and an employer in a developed country, but denounces the latter as an illegitimate evil. I will argue that these perceptions are hypocritical and wrong when held up against

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<sup>2</sup> UNICEF, *LEVELS AND TRENDS IN CHILD MALNUTRITION* (Sept. 2015), [http://data.unicef.org/corecode/uploads/document6/uploaded\\_pdfs/corecode/JME-2015-edition-Sept-2015\\_203.pdf](http://data.unicef.org/corecode/uploads/document6/uploaded_pdfs/corecode/JME-2015-edition-Sept-2015_203.pdf).

<sup>3</sup> Tull K., *Nutrition in Syria, K4D Helpdesk Report*, INSTITUTE OF DEVELOPMENT STUDIES (2017); see also WORLD FOOD PROGRAMME, Section on Work Areas, Syrian Arab Republic, <http://www1.wfp.org/countries/syrian-arab-republic>.

<sup>4</sup> WORLD FOOD PROGRAMME, Section on Work Areas, Yemen, <http://www1.wfp.org/yemen-emergency>.

<sup>5</sup> UN, *17 Goals to Transform Our World, Goal 10: Reduce Inequality Within and Among Countries*, <http://www.un.org/sustainabledevelopment/inequality>.

<sup>6</sup> THE WORLD BANK, *Poverty, Overview*, <http://www.worldbank.org/en/topic/poverty/overview>.

<sup>7</sup> See also Guy Mundlak's call to "de-territorialize" labor law, embedded in the understanding that our era is characterized by the intensification of global chains of production and care, Guy Mundlak, *De-Territorializing Labor Law*, 3(2) L. & ETHICS HUM. RTS. 189, 189–90 (2009).

the familial ethical framework set out in Part I. Indeed, respecting the value of nurturing parental care, embodied in ideal parent–child relations, and the personal, loving, devoted, uncompetitive, educational and obligatory nature of these relations that such care necessitates—reverses the moral judgment and reveals the potential harms in parental cross-border emigration and the possible benefits of child labor. An ethical globordered world is one that allows all its citizens to enjoy both the values embedded in the market and those embedded in families.

### I. THE ETHIC OF THE MARKET VS. THE ETHIC OF THE FAMILY

Prominent feminist scholars, such as Francis Olsen,<sup>8</sup> Susan Okin,<sup>9</sup> and Joan Williams,<sup>10</sup> have opened our eyes to the fallacy of the notion of two separate and unrelated spheres—“the market” and “the family”—that is so common in liberal thinking. Most of this feminist unmasking project centers on the vicious circle created by the ways in which the gendered domestic labor division prevents women from fully integrating into the paid labor force, and the simultaneous ways the labor force shapes and genders domestic labor division.<sup>11</sup> Much less scholarly attention has been paid to other aspects of the interrelations between the market and the family, such as fertility rates<sup>12</sup> and domestic economic abuse.<sup>13</sup>

Furthermore, with very few exceptions, such as the groundbreaking work of Arlie Russell Hochschild,<sup>14</sup> much of the feminist engagement with the family–market dyad suffers, like other scholastic fields, from what Ulrich Beck called “the national methodological trap”<sup>15</sup>—that is, from studying the family and the market only within the boundaries of the nation state. Indeed, not only has a global hypercapitalist market emerged,<sup>16</sup> but national markets are also globalized now and cannot function detached from what is taking place outside the nation’s bor-

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<sup>8</sup> Frances E. Olsen, *The Family and the Market: A Study of Ideology and Legal Reform*, 96 HARV. L. REV. 1497, 1497 (1983).

<sup>9</sup> SUSAN MOLLER OKIN, *JUSTICE, GENDER, AND THE FAMILY* (1991).

<sup>10</sup> JOAN WILLIAMS, *UNBENDING GENDER: WHY FAMILY AND WORK CONFLICT AND WHAT TO DO ABOUT IT* 1–9 (2001).

<sup>11</sup> See, e.g., JANET C. GORNICK & MARCIA MEYERS, *FAMILIES THAT WORK: POLICIES FOR RECONCILING PARENTHOOD AND EMPLOYMENT* 1–17 (2003); see also Hila Shamir, Tsilly Dagan & Ayelet Carmeli (in this issue).

<sup>12</sup> Alicia Adserà, *Changing Fertility Rates in Developed Countries. The Impact of Labor Market Institutions*, 17 J. POPUL. ECON. 17–43 (2004).

<sup>13</sup> Judy L. Postmus et al., *Understanding Economic Abuse in the Lives of Survivors*, 27 J. INTERPERSONAL VIOLENCE 411–30 (2011).

<sup>14</sup> Arlie Russell Hochschild, *Love and Gold*, 11(4) AM. PROSPECT 32–36 (2000).

<sup>15</sup> Ulrich Beck, *Unpacking Cosmopolitanism for the Social Sciences: A Research Agenda*, 57(1) BRIT. J. SOCIOL. 1–23, (2006).

<sup>16</sup> JAN AART SCHOLTE, *GLOBALIZATION: A CRITICAL INTRODUCTION* 248–50 (2d ed. 2005).

ders.<sup>17</sup> Likewise, though much less widely discussed, families are becoming increasingly global.<sup>18</sup> As I demonstrated in my recent book,<sup>19</sup> millions of families are currently affected by globalization, due to short-term and long-term emigration of one or more family members, and growing exposure to different familial culture perceptions through tourism, transnational media, and international law.

In Parts III and IV of this Article, I will explore two examples of this market-family globalizing process: parental remittances and child labor. In this part, I wish to elaborate on the ethical prism through which I argue we should explore them, a prism that insists on the importance of preserving the family and the market as two important and morally distinct spheres. Recent works have demonstrated the market-like aspects of family life, for example its contractual elements,<sup>20</sup> as well as the familial aspects of the market, for example the emotional labor performed in the workplace.<sup>21</sup> While the investigation of the ethical overlap between the family and the market is extremely important, since the family is also an economic sphere and the market is also embedded in human relations, I join those who insist that much within these two spheres does not—and should not—overlap morally.<sup>22</sup> I will focus here only on parent-child relations because they are at the heart of the two examples I explore in the following parts of the Article.<sup>23</sup>

Elizabeth Anderson's influential analysis of the ethical limitations of the market is a good starting point for distinguishing between the ethic of the market and the ethic of parent-child relations.<sup>24</sup> The most important ideal of the modern capitalist market, according to Anderson, is "a particular conception of freedom," which is exercised in the consumption of commodities selected from a large menu of options in private life, including in relation to human labor, ungoverned by others' permis-

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<sup>17</sup> Theodore Levitt, *The Globalization of Markets*, in ROBERT Z. ALIBER & REID W. CLICK, *READINGS IN INTERNATIONAL BUSINESS: A DECISION APPROACH* 249 (1993).

<sup>18</sup> *Id.*

<sup>19</sup> DAPHNA HACKER, *LEGALIZED FAMILIES IN THE ERA OF BORDERED GLOBALIZATION* ch. 6 (2017).

<sup>20</sup> MARTHA M. ERTMAN, *LOVE'S PROMISES: HOW FORMAL AND INFORMAL CONTRACTS SHAPE ALL KINDS OF FAMILIES* (2015).

<sup>21</sup> Alicia A. Grandey, *Emotion Regulation in the Workplace: A New Way to Conceptualize Emotional Labor*, 5 J. OCCUP. HEALTH PSYCHOL. 95–110 (2000).

<sup>22</sup> See, e.g., MARTHA ALBERTSON FINEMAN, *THE NEUTERED MOTHER, THE SEXUAL FAMILY AND OTHER TWENTIETH CENTURY TRAGEDIES* (1995); Hochschild, *supra* note 14.

<sup>23</sup> I believe that spousal ethic and parental ethic, as well as ethic of other kinds of familial relations, such as between siblings, are not the same and should be discussed separately. For a brilliant and convincing discussion on marriage as an "egalitarian liberal community," see Carolyn J. Frantz & Hanoach Dagan, *Properties of Marriage*, 104 COLUM. L. REV. 75 (2004).

<sup>24</sup> Elizabeth Anderson, *The Ethical Limitations of the Market*, 6 ECON. PHILOS. 179, 189–90 (2008).

sion.<sup>25</sup> This freedom allows the subordination of things to one's own ends without regard to any intrinsic or personal value they might have.<sup>26</sup>

Parent-child relations do present some elements of freedom—primarily the choice all people should have to become parents or not, the choice as to how many children to have and the freedom from external interference captured in the notion of the right to family privacy, except in severe cases of neglect or abuse by parents,<sup>27</sup> or dangerous behavior from children.<sup>28</sup> However, freedom is hardly the most significant ideal of these relations. So, what are the ideals at the heart of parent-child relations? History and geography teach us that, just as in the case of the morals at the base of the ethic of the market, the answer to this question is socially constructed and can differ from one society to another.<sup>29</sup> Rather, I would argue that there is a current global consensus on the ideal of care as the most significant one within parent-child relations.<sup>30</sup> This is a particular conception of care based on nurturing, which parents are entitled and obliged to give to their children, so the latter can evolve physically, emotionally and socially, as their potential allows them.<sup>31</sup>

This ideal demands certain features that stand in sharp contrast to those of the market, as mapped by Anderson. According to Anderson, social market relations entail five elements.<sup>32</sup> First, market relations are impersonal.<sup>33</sup> Second, people are expected to behave egoistically, with-

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 180–81. But compare the much more ambitious and challenging suggestion by Hanoch Dagan, to view the core value of markets not in terms of “negative freedom,” *i.e.*, “independence,” but as the right to self-determination. Hanoch Dagan, *Markets for Self-Authorship*, in this issue.

<sup>27</sup> Linda D. Elrod, *Family Law and Human Rights: The United States Perspective*, 7 INT'L L. F. 167 (2005); *see also* Elizabeth S. Scott & Robert E. Scott, *Parents as Fiduciaries*, 81 VA. L. REV. 2400 (1995).

<sup>28</sup> Paul W. Schmidt, *Dangerous Children and the Regulated Family: The Shifting Focus of Parental Responsibility*, 73 N.Y.U. L. REV. 667 (1998).

<sup>29</sup> *See* Alice Armstrong, *School and Sadza: Custody and the Best Interests of the Child in Zimbabwe*, 8 INT'L J. LAW & FAMILY 151 (1994).

<sup>30</sup> *See Convention on the Rights of the Child*, New York (Sept. 2, 1990), <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>, which was ratified by all nation-states, and the centrality it grants care for children, in particular by their parents; Naomi R. Cahn, *Review: The Moral Complexities of Family Law: In Defense of Single-Parent Families* Nancy E. Dowd, 50 STAN. L. REV. 225, 226 (1997); ALBERTSON FINEMAN, *supra* note 22; Qiong Wang, *The Ethics of Family Relations*, PhD Dissertation (2009); Jeffrey Blustein, *On the Doctrine of Parens Patriae: Fiduciary Obligations and State Power*, 2 CRIM. JUST. ETHICS 39, 39 (1983); Steven H. Hobbs, *In Search of Family Value: Constructing a Framework for Jurisprudential Discourse*, 75 MARQ. L. REV. 529 (1992).

<sup>31</sup> Elizabeth Scott and Robert Scott offered to conceptualize parents as fiduciaries of their children, *supra* note 27.

<sup>32</sup> *Id.*

<sup>33</sup> Cf. Dagan's claim that “Numerous market transactions, however, are relational: They rely on robust interpersonal commitments and a good dosage of voice, and thus create thin—and in certain cases even thick—communities.” In this issue, *supra* note 26, at \_\_\_.

out consideration for others.<sup>34</sup> Third, the goods traded are exclusive and rivals in consumption—that is, they are limited to the purchaser and reduce the total amount available to others. Fourth, the market is purely wants-orientated: every choice is a matter of taste and, as such, should not be value-judged.<sup>35</sup> Finally, dissatisfaction with a market interaction can be expressed by exit from it.<sup>36</sup>

I wish to offer five elements that provide an oppositional mirror to those of the markets, as understood by Anderson and by many others,<sup>37</sup> and construct what I perceive as the worthy ethical framework that should guide parent-child relations. First, instead of impersonal relations, parental nurturing care must be based on personal relations. The law world-wide considers these relations so uniquely personal that it grants parents the exclusive right to perform this care. Parents need to know their children intimately, so that the care they give is tailored to the needs, abilities and wishes of each particular child. Hence, the *Convention on the Rights of the Child* mentions repeatedly the importance of not separating children from their parents.<sup>38</sup> Second, instead of egoism, parental nurturing care should be based on feelings of love and deep affection, or at least on a sense of commitment and devotion.<sup>39</sup> Parenting is so demanding and challenging that, without the presence of such feelings, children are at the risk of neglect and abuse.<sup>40</sup> Third, instead of exclusivity and rivalry in consumption goods, the emotional aspects of parental nurturing care should be granted to all children, and are assumed to be unlimited in the sense that the love shown to one child must not be “at the expense” of the love shown to the others.<sup>41</sup> Even in relation to the

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<sup>34</sup> Cf. Alexander’s anti-egoist moral discussion in relation to the right to destroy and the duty not to. In this issue. . . . See also Hockett and Kreitner’s argument that the market is not an end by itself, but a mean to self-development that might be dependent on minimal earning and cooperation with others. In this issue,

<sup>35</sup> Elizabeth Anderson, *The Ethical Limitations of the Market*, 6 *ECONOMICS AND PHILOSOPHY* 179, 182 (1990).

<sup>36</sup> *Id.*

<sup>37</sup> See DEBRA SATZ, *WHY SOME THINGS SHOULD NOT BE FOR SALE: THE MORAL LIMITS OF MARKETS* (2012).

<sup>38</sup> *The Convention on the Rights of the Child*, *supra* note 30, at 9.

<sup>39</sup> An interesting study of children of emigrating parents from Ghana reveals the social contingency of concepts such as “parental love.” See Cati Coe, 49(6) *What Is Love? The Materiality of Care in Ghanaian Transnational Families*, *INT. MIGR.* 7–24 (2011). In some societies, parental love is understood as material caring, and children are often sent away by their parents to live with an adult who can better provide for them. See *id.* However, in most other societies, parental love is understood first and foremost in emotional terms. See Jeffrey Bluestein, *On the Duties of Parents and Children*, 15(4) *SOUTHERN J. PHILOS.* 427, 431 (1977).

<sup>40</sup> See Coe, *supra* note 39, at 17–18.

<sup>41</sup> This, of course, does not mean that all parents love their children to the same extent. As with other ideals, there is often a gap between normative expectations and actual reality. See Susan M. McHale et al., *Congruence Between Mothers’ and Fathers’ Differential Treatment of Siblings: Links with Family Relations and Children’s Well-Being*, 66 *CHILD DEV.* 116–28 (1995).

economic goods parents provide for their children that are limited and exclusive, I would argue that parents should ideally dispense this material care according to the principle of substantial equality (to meet their children's actual needs), and obviously not according to the competitive ideal of the market.<sup>42</sup> Fourth, the family is not a sphere of taste preferences, and value-judgment is an essential part of parental nurturing care. This is true because part of this care entails socializing the child toward adult life, such as teaching her right and wrong, normal and deviant, and acceptable and unacceptable. Finally, dissatisfaction within the parent-child relations cannot be expressed by exit, as in the market, but rather (if at all) only by vocalization of such discontent by all or some of the parties concerned. Parental abandonment is considered a moral wrong, and parents and children are allowed or required to legally separate only under very limited circumstances.<sup>43</sup> Unlike modern spousal relations, parent-child relations are supposed to be for life and, at least until the children are adults themselves, are not supposed to be a matter of choice.<sup>44</sup>

I should clarify that I am not arguing that only biological parents can provide effective nurturing care for children. Adoptive parents and step-parents, as well as other relatives and paid caregivers, can very ably provide such care as well.<sup>45</sup> Moreover, I am not blind to the dark side of parent-child relations and to the many cases of parental abuse and neglect that exist. Notwithstanding, I will insist on the importance of preserving parent-child relations as having intrinsic value for both children and parents,<sup>46</sup> and as being the most likely to fulfill children's need for nurturing care.<sup>47</sup> Moreover, I argue for the importance of the family as a

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<sup>42</sup> Like in the case of parental love, this is not always the case in reality. See Monica Das Gupta et al., *Why Is Son Preference so Persistent in East and South Asia? A Cross-Country Study of China, India and the Republic of Korea*, 40 J. DEV. STUDI. 1-38 (2003).

<sup>43</sup> Parents are required to be separated from their children, for example, when the authorities decide that the best interest of the child is for him or her to be adopted, due to severe parental neglect or abuse, see Scott & Scott, *supra* note 27. In some cases, children are allowed to separate from their parents, as under the emancipation of minors US doctrine, *supra* note 28.

<sup>44</sup> See ANNE L. ALSTOTT, *NO EXIT: WHAT PARENTS OWE THEIR CHILDREN AND WHAT SOCIETY OWES PARENTS* (2015). In some cultures, the duty of care is reversed when the parents become fragile elders. *Id.* An extreme example of filial piety as a legal duty can be found in *The Law of the People's Republic of China on Protection of Rights and Interests of the Elderly*. 2 INT'L. J. WELFARE FOR THE AGED 173-82 (2000).

<sup>45</sup> Alstott, *supra* note 44, at 42.

<sup>46</sup> The right of children to be cared for by their parents was recognized as children's human right by the *Convention on the Rights of the Child*. See *supra* note 30. On parents' right to active parenthood, see Daphna Hacker & Michal Frenkel, *Active Parenthood and Employment Equal Opportunities: The Need to Change the Characteristics of the Labor Force*, 11 LABOR, SOCIETY AND LAW 275 (2005) (Hebrew).

<sup>47</sup> For an argument that parent-child relation have intrinsic value, as well as their assumption that parents "are the 'first best' child-rearers," and the empirical studies that support it, see Scott & Scott, *supra* note 27. at 2402 n.4, 2417 n.132. The thesis on the need of ethical



moral sphere distinct from that of the market—a necessary condition, I believe, for a full and meaningful life. The impersonal, egoistic, tradable, short-term and conditional relations the market has to offer us are important, but far from satisfy our emotional needs as human beings. To be only *homo economicus* is to live a very partial life, one that includes the risk of alienation, loneliness and depression.<sup>48</sup> We all have a right to be *homo integer* and *famina integra*, which should include the freedom to enjoy a meaningful family life and relations, including according to the ethical framework of parent-child relations sketched here.<sup>49</sup> We should insist on this right, especially in light of “the dangers of market imperialism.”<sup>50</sup>

With this ethical framework in mind, I now wish to explore two phenomena that highlight the interrelations between the family and the market in the era of bordered globalization, as well as the importance of preserving both the family and the market as two meaningful and morally distinct spheres.

## II. PARENTAL REMITTANCES

According to the World Bank, remittance flow to developing countries in 2014 stood at \$427 billion.<sup>51</sup> In the same year, official development assistance flow from developed to developing countries amounted to less than a third of that sum: \$137.2 billion.<sup>52</sup> These statistics are part of what Carol Adelman, an expert in international economics, calls “the privatization of foreign aid”—the process through which a growing share of the foreign aid provided to poorer parts of the world is the outcome of donations of private entities and of remittances sent back home by immigrating individuals, rather than the donations of foreign governments and international official bodies.<sup>53</sup>

The magnitude of the remittances phenomenon has resulted in much policy debate and academic attention, both of which center on its contribution to “growth and development” on the national or household

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markets not to harm the ethic of parent-child relations can be extended to other parental-like nurturing care that children receive from de-facto parents and others. *Id.*

<sup>48</sup> EMILE DURKHEIM, *SUICIDE: A STUDY IN SOCIOLOGY* (1876) (a sociological study on the sense of not belonging).

<sup>49</sup> Like all rights, this is not an absolute right, and it can be overcome, for example by such values as those opposing surrogacy services even to infertile people.

<sup>50</sup> DAGAN, *supra* note 26, at 6.

<sup>51</sup> WORLD BANK, *Migration and Remittances: Recent Developments and Outlook, Migration and Development Brief* 25, 4 (2015).

<sup>52</sup> OECD, *Final Official Development Assistance Figures in 2014* (Dec. 2015), <http://www.oecd.org/dac/stats/final-oda-2014.htm>.

<sup>53</sup> Carol C. Adelman, *The Privatization of Foreign Aid: Reassessing National Largesse*, 82(6) *FOREIGN AFF.* 9–14 (2003).

scales.<sup>54</sup> Interestingly, the very basic question of whether remittances have a positive impact on the economic growth of the nations to which they are sent is still empirically debated, with some researchers finding positive impact and others finding no significant (or even negative) impact.<sup>55</sup> On the household level, there is an empirical consensus that remittances are of short-term positive economic value as they are used for immediate consumption, including to meet the basic need for food, clothing and housing, as well as for health and education services.<sup>56</sup> But a long-term impact on economic mobilization is doubtfully created by remittances, as very little is saved or invested in projects that might protect the current or next generation from poverty.<sup>57</sup>

What I find striking in the scholastic and international policy debates over remittances is the relative absence of child-centered deliberations. The few studies that look at the impact of parental immigration on children's wellbeing suffer from one or more methodological deficiencies, including a small sample, lack of comparison to the child's wellbeing prior to parental emigration and to the wellbeing of children in intact families, and reliance on parental or caregiver reports rather than on direct evidence from the child.<sup>58</sup> Even the basic statistics of how many children are left behind by one or both parents are lacking. In Romania, for example, according to official statistics, in 2014 some 80,000 children were left behind, with more than 25 percent living without either parent.<sup>59</sup> However, a study conducted by UNICEF suggests the numbers are much higher.<sup>60</sup> Likewise, it is known that millions of children are left behind in the major immigration-sending countries, such as the Philip-

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<sup>54</sup> Uwaoma G. Nwaogu & Michael J. Ryan, *FDI, Foreign Aid, Remittance and Economic Growth in Developing Countries*, 19 REV. DEV. ECON. 100, 100–01 (2015).

<sup>55</sup> See *id.* (finding that remittance flow had no effect on country-level growth in Africa and a positive, albeit not robust, impact on country-level growth in Latin America and the Caribbean); see also Jeffrey H. Cohen, *Remittance Outcomes and Migration: Theoretical Contexts, Real Opportunities*, 40 STUD. COMP. INT. DEV. 88, 92 (2005); Ernesto Castañeda, *Living in Limbo: Transnational Households, Remittances and Development*, 51 INT'L. MIGRATION, e13, e27 (2012), <http://onlinelibrary.wiley.com/wo11/doi/10.1111/j.1468-2435.2012.00745.x/full>.

<sup>56</sup> Castañeda, *supra* note 55, at e19–21.

<sup>57</sup> Cohen, *supra* note 55, at 93–9; Castañeda, *supra* note 55.

<sup>58</sup> Valentina Mazzucato & Djamilia Schans, *Transnational Families and the Well-Being of Children: Conceptual and Methodological Challenges*, 73(4) J. MARRIAGE FAM. 704, 705–06, (2011). For a literature review of the impact of parental immigration on children in Asia and South America, see Theodora Lam, Brenda S. A. Yeoh, & Lan Anh Hoang, *Transnational Migration and Changing Care Arrangements for Left-Behind Children in Southeast Asia: A Selective Literature Review in Relation to the CHAMPSEA Study*, ARI Working Paper Series No. 207 (2013).

<sup>59</sup> Bertha Sănduleasa & Aniela Matei, *Effects of Parental Migration on Families and Children in Post-Communist Romania*, 46 REVISTA DE ȘTIINȚE POLITICE 196, 198 (2015).

<sup>60</sup> *Id.* at 201–02.

pires and Mexico, but exact numbers and data on the division between those children left behind by one or by both parents are not available.<sup>61</sup>

The basic and taken-for-granted assumption is that when parents emigrate for work and leave their children behind, it is “in search of better wages to send as remittances to their children.”<sup>62</sup> The departure of the parent is framed as a necessary and responsible act, benefiting the children and undertaken for their sake.<sup>63</sup> This assumption and the literature on remittances more generally ignore the many cases in which the emigration of the parent does not result in any improvement of the economic situation of the family left behind. The difficulties in repaying loans taken out to fund the costs of emigration and in securing a job in the host country, abusive employment conditions, imprisonment of the parent due to lack of legal status and high living costs in the host country are several of the reasons, largely ignored by researchers and policymakers,<sup>64</sup> that can lead to the inability of the parent to advance the economic wellbeing of the children left behind. For example, a third of transnational parents who emigrated from Romania report no improvement in the economic condition of the family they left behind.<sup>65</sup>

Moreover, the vast majority of the calculations in relation to the contribution of remittances to “growth and development” are made according to the state, region or household units, with no statistics on how much money is spent on the children left behind, as opposed to the money spent on their caregiver and on other family members of the migrant parent.<sup>66</sup> The only study I have been able to identify, which analyzes remittances according to family relation with the provider, was

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<sup>61</sup> In several immigration-sending countries, approximately 25 percent of children have at least one parent abroad. See Mazzucato & Schans, *supra* note 58, at 705; see also UNICEF, *Children and Women Left Behind in Labour Sending Countries: An Appraisal of Social Risks*, 11 (2008), [http://www.unicef.org/policyanalysis/files/Children\\_and\\_women\\_left\\_behind\(2\).pdf](http://www.unicef.org/policyanalysis/files/Children_and_women_left_behind(2).pdf); OECD, *Perspectives on Global Development 2017: International Migration in a Shifting World* (Dec. 2016), [http://www.oecd-ilibrary.org/content/book/persp\\_glob\\_dev-2017-en](http://www.oecd-ilibrary.org/content/book/persp_glob_dev-2017-en).

<sup>62</sup> LEISY J. ABREGO, *SACRIFICING FAMILIES: NAVIGATING LAWS, LABOR, AND LOVE ACROSS BORDERS 2* (2014).

<sup>63</sup> This perception is also shared by many parents. For example, in a survey conducted among transnational parents who emigrated from Romania, only a fifth considered separation from children as an argument against the idea of emigrating for paid work. See Sănduleasa & Matei, *supra* note 59, at 201–02.

<sup>64</sup> For a rare ethnographic account of the familial conflicts that may arise when the immigrants fail to send the expected remittances back home due to difficulties faced in the destination country, see Galia Sabar, *African Migrant Workers in Israel: Between Extended Family, Money and a Sense of Evil*, in EHUD R. TOLEDANO, *AFRICAN COMMUNITIES IN ASIA AND THE MEDITERRANEAN: BETWEEN INTEGRATION AND CONFLICT* 255–84 (2012).

<sup>65</sup> UNICEF Romania 2008 Survey, as reported in Sănduleasa & Matei, *supra* note 59, at 202.

<sup>66</sup> Mazzucato & Schans, *supra* note 58.

based on data extracted from five South-American countries in 2003.<sup>67</sup> It found that children received only 11%–16% of remittances, whereas siblings of the migrant worker received 28%–42%, parents 19%–29% and spouses 6%–13%.<sup>68</sup> However, because this survey did not include information about the parental status of the provider, it is unclear if these statistics represented a reality in which most labor migrants were single and childless, or a phenomenon of parental remittances not necessarily spent on children. One of these countries was El Salvador, in which 15% of remittances went to the provider's children.<sup>69</sup> In this case, we have further evidence that supports the second interpretation. Quantitative data reveal that 10% of children and adolescents with migrant parents do not receive remittances at all.<sup>70</sup> Likewise, in a qualitative study conducted by sociologist Leisy Abrego among 130 transnational El Salvadorian families, about 15% described a state of economic deprivation among the left-behind children, in spite of, or because of, parental emigration.<sup>71</sup> A further 37% described a state of “surviving,” in which the children left behind have access to food and go to school, but have no money for clothes or higher education.<sup>72</sup> Finally, 48% of the interviewees claimed that the parental emigration and family separation was “paying off,” enabling the children to thrive, with enough money for food, schooling, some luxuries and savings.<sup>73</sup> On this point, Abrego warns her readers not to think that half of transnational El Salvadorian families are thriving. She explains that her sample is not representative but is aimed at highlighting the disparity between left-behind children who have three pairs of shoes and those who barely survive—the latter, she claims, representing the majority of cases.<sup>74</sup>

Additional anecdotal evidence suggests that this might also be the case in other countries, and that the common assumption that children are saved from poverty if their parents emigrate to work abroad is overoptimistic.<sup>75</sup> For example, in a recent study conducted among Nigerians

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<sup>67</sup> Richard Feinberg & Manuel Orozco, *Remittances to Latin America and the Caribbean: Issues and Perspectives on Development*, 85 FOREIGN AFF. \_\_\_\_ (2004).

<sup>68</sup> Manuel Orozco, *Organization of American States, REMITTANCES TO LATIN AMERICA AND THE CARIBBEAN: ISSUES AND PERSPECTIVES ON DEVELOPMENT* 6 (2004).

<sup>69</sup> *Id.* at 7.

<sup>70</sup> ABREGO, *supra* note 62, at 135.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* at 141.

<sup>73</sup> *Id.* at 146.

<sup>74</sup> *Id.* at 151.

<sup>75</sup> See Hacker, *supra* note 19, at 204 n.30 (noting that the sum of remittances sent by Filipino immigrants working in Israel is not affected by their being parents or not, but by the number of family members in the household to which the remittances are sent); Daphna Hacker, *From the Moabite Ruth to Norly the Filipino: Intermarriage and Conversion in the Jewish Nation State* in HANNA HERZOG & ANN BRAUDE (EDS.), GENDERING RELIGION AND POLITICS: UNTANGLING MODERNITIES 101–24 (2009) (The story of someone who sent home

who had emigrated to developed countries and who were currently on holiday back in Nigeria,<sup>76</sup> one interviewee accused her husband of using the money she sent on himself, on other women and on alcohol, while sending the children to low-quality schools and leaving them in the care of elderly and incapable family members.<sup>77</sup> The outcomes were devastating:

[F]or five years I was sending money directly to my husband for the upkeep of the family, only to return in 2008 for the first time, seeing my only daughter pregnant at fifteen. I was not informed. Her two brothers were also not doing well in school. They have grown stubborn under the control of their father and other extended family members. This situation completely strained my relationship with their father and I had to seek for divorce in 2009. A lot had gone wrong in my absence.<sup>78</sup>

This story sheds light not only on the possibility that the widespread presumption that all left-behind children benefit economically from their parents' immigration is too optimistic, but also on the emotional costs for children, which are not necessarily compensated by the remittances sent by their parents.<sup>79</sup> This is another relatively neglected aspect within the research and policy debates over remittances.<sup>80</sup> As sociologist Ernesto Castañeda and clinical social worker Lesley Buck recently argued: "The literature on migration and development also often ignores the human drama and the social and psychological effects that family separation has on the members of transnational households."<sup>81</sup>

Sociologist Rhacel Salazar Parreñas was among the first to point to the "care crisis" created by parental immigration from developing countries.<sup>82</sup> She was also a pioneer in interviewing the children left behind, once they reached young adulthood, giving them voice and presenting

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money that was not used to support her child); see also HUNG CAM THAI, *INSUFFICIENT FUNDS: THE CULTURE OF MONEY IN LOW-WAGE TRANSNATIONAL FAMILIES* (2014); Adediran Daniel Ikuomola, *Unintended Consequences of Remittance: Nigerian Migrants and Intra-Household Conflicts*, SAGE OPEN, 1–7 (2015), <http://sgo.sagepub.com/content/spsgo/5/3/2158244015605353.full.pdf>.

<sup>76</sup> Ikuomola, *supra* note 75, at 2.

<sup>77</sup> *Id.* at 4.

<sup>78</sup> *Id.*

<sup>79</sup> See Ernesto Castañeda & Lesley Buck, *A Family of Strangers*, in 2 HIDDEN LIVES AND HUMAN RIGHTS IN THE UNITED STATES UNDERSTANDING THE CONTROVERSIES AND TRAGEDIES OF UNDOCUMENTED IMMIGRATION 176, 178–79 (LOIS ANN LORENTZEN, ed. 2014).

<sup>80</sup> Sánduleasa & Matei, *supra* note 59, at 198.

<sup>81</sup> Castañeda & Buck, *supra* note 79, at 178.

<sup>82</sup> See Rhacel Salazar Parreñas, *The Care Crisis in the Philippines: Children and Transnational Families in the New Global Economy*, in BARBARA EHRENREICH & ARLIE RUSSELL HOCHSCHILD (EDS.), *GLOBAL WOMAN: NANNIES, MAIDS, AND SEX WORKERS IN THE NEW ECONOMY* 39 (2004).

their narratives—so absent from the discourse on labor migration and remittances.<sup>83</sup> Parreñas conducted her study in the Philippines, a country that views the labor migration of its citizens as a major export industry.<sup>84</sup> In 2013 more than 10 million Filipinos worked abroad (about 10% of the entire population),<sup>85</sup> with a ratio of 67/100 male/female immigrants.<sup>86</sup> In her study, the mothers were living without their children for an average of 11.42 years, and saw them just 4.4 times during this long period, for an average length of 5.39 weeks per visit.<sup>87</sup> The fathers were absent for an average of 13.79 years, visiting 9.81 times, for 7.57 weeks each time.<sup>88</sup> As in other countries, parental immigration is often not temporary, even if planned as such, and parents can spend very long periods abroad, sometimes for most of their children’s childhoods.<sup>89</sup>

Parreñas revealed the gendered narratives of left-behind children in her study. When referring to an immigrating father, the children described a “gap”—“a sense of discomfort, unease, and awkwardness” they felt toward him, the difficulties they faced in openly communicating with him and the ambivalence they felt over his absence, wishing for his return but not immediately—reflecting their unfamiliarity with him.<sup>90</sup> On the other hand, children of immigrating mothers reported that they had ongoing contact with their mother and that she was still very much involved in their lives from afar.<sup>91</sup> These children also reported inadequate care received by caregivers, a sense of abandonment and the commodification of the tie with their mother.<sup>92</sup> Finally, out of the sixty-nine children interviewed by Parreñas, thirteen lived without either of their parents.<sup>93</sup> These children were more likely to drop out of school and to suffer poor guardianship.<sup>94</sup>

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<sup>83</sup> See RHACEL SALAZAR PARREÑAS, *CHILDREN OF GLOBAL MIGRATION: TRANSNATIONAL FAMILIES AND GENDERED WOES* (2005).

<sup>84</sup> *Id.* at 16–18, 22.

<sup>85</sup> OFFICE OF THE PRESIDENT OF THE PHILIPPINES, COMM’N ON OVERSEAS FILIPINOS, *YEARLY STOCK ESTIMATION OF OVERSEAS FILIPINOS* (2013), <http://www.cfo.gov.ph/program-and-services/yearly-stock-estimation-of-overseas-filipinos.html>.

<sup>86</sup> OFFICE OF THE PRESIDENT OF THE PHILIPPINES, COMM’N ON FILIPINOS OVERSEAS, *STATISTICAL PROFILE OF REGISTERED FILIPINO EMIGRANTS* (2015), <http://www.cfo.gov.ph/downloads/statistics/statistical-profile-of-registered-filipino-emigrants.html>.

<sup>87</sup> PARREÑAS, *supra* note 83, at 32.

<sup>88</sup> *Id.*

<sup>89</sup> See Castañeda, *supra* note 55, at e23–e24.

<sup>90</sup> PARREÑAS, *supra* note 83, at 71.

<sup>91</sup> John Hagan, *Ross MacMillan and Blair Wheaton, New Kid in Town: Social Capital and the Life Course Effects of Family Migration on Children*, 61 *AM. SOC. REV.* 368–85 (1996).

<sup>92</sup> PARREÑAS, *supra* note 83, at 94–95, 127, 131.

<sup>93</sup> *Id.* at 153.

<sup>94</sup> *Id.* But cf. Elspeth Graham & Lucy P. Jordan, *Migrant Parents and the Psychological Well-Being of Left-Behind Children in Southeast Asia*, 73(4) *J. MARRIAGE & FAM.* 763, 778 (2011) (finding no evidence of poorer psychological wellbeing among Filipino children in

Feelings of sadness, loneliness and abandonment were also reported by Abrego in her study of left-behind children in El Salvador.<sup>95</sup> Likewise, sociologist Joanna Dreby reports feelings of resentment and sadness among left-behind children in Mexico.<sup>96</sup> These children's narratives echo sociologist Paolo Boccagni's observation in relation to transnational families in which children are separated from their parents:

[W]hile most of the care activities that are typical of proximate families . . . can be enacted even from afar, some cannot. This crucially applies to that kind of personal support that requires a sensorial perception of the other's co-presence (hence some physical contact), access to the same life spaces, or the simple staying together.<sup>97</sup>

Moreover, both Abrego and Dreby found evidence that these sentiments correlate with the amount of remittances sent home: the more a child feels that the emigrating parent succeeds in securing their economic well-being, the more successful that child is in overcoming the sadness of separation.<sup>98</sup> This finding is part of other evidence that points to the process of the commodification of parental love resulting from the growing phenomenon of parental immigration.<sup>99</sup> As it becomes more common, children are learning to expect their parents to leave and to conceptualize parental love as the willingness to travel abroad and send remittances.<sup>100</sup> Indeed, remittances are sometimes conceptualized within the literature as a "product of love"<sup>101</sup> and as a communicative "bridge"<sup>102</sup> between a loving parent and loving children—all suffering the pain of separation. Hence, the spheres of the market and of child-parent relations, which I argued earlier should be preserved as distinct, collapse into one.

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transnational families, compared to children with no immigrant parent, while finding negative effects of parental immigration on children's psychological wellbeing in other Southeast Asian countries).

<sup>95</sup> ABREGO, *supra* note 62, at 151.

<sup>96</sup> Joanna Dreby, *U.S. Immigration Policy and Family Separation: The Consequences for Children's Well-Being*, 132 SOC. SCI. & MED. 245, 248 (2015). But recent quantitative data suggest no impact of parental absence on psychological wellbeing among Mexican youth. See Juyoung Jang, Veronica Deenanath, & Catherine A. Solheim, *Family Members' Transnational Migration, Community Contexts, and Psychological Distress in Mexican Families*, 20 FAM. SCI. REV. 94, 102 (2015).

<sup>97</sup> Paolo Boccagni, *Migration and the Family Transformations It "Leaves Behind": A Critical View from Ecuador*, 57 LATIN AMERICANIST 3, 19 (2013).

<sup>98</sup> See Abrego, *supra* note 62, at 149–50; Dreby, *supra* note 96, at 249.

<sup>99</sup> See PARREÑAS, *supra* note 87, at 131–35.

<sup>100</sup> Cati Coe, *What Is Love? The Materiality of Care in Ghanaian Transnational Families*, 49 INT. MIGRATION 7–24 (2011).

<sup>101</sup> Castañeda & Buck, *supra* note 79.

<sup>102</sup> See Boccagni, *supra* note 97, at 13–14.

Notwithstanding these alarming indications that children's emotional needs, and in some cases even their economic needs, are not met when their parents emigrate, national and international laws are, in fact, encouraging separation between parents from developing countries and their children.<sup>103</sup> In many developed countries seeking foreign workers, laws prevent child-worker accompaniment, and in some cases, foreign workers are forced to send their children (born in the country to which they emigrated) away, to the parent's country of origin.<sup>104</sup> Likewise, in many developed economies, uninvited immigrants are nevertheless an essential part of the economy,<sup>105</sup> and are often stripped of their parental subjectivity, to be used or disposed-of as economic goods rather than human beings.<sup>106</sup> On the international level, the pattern of ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (drafted 1990), is alarming. This Convention aims to secure basic rights for all documented and undocumented migrant workers and their families, and in relation to the former includes the duty of States Parties "to take measures that they deem appropriate and that fall within their competence" to facilitate the reunification of migrant workers with their spouses and minor dependent unmarried children.<sup>107</sup> Notwithstanding this somewhat hesitant language, this Convention has so far been ratified only by several developing countries that send immigrants, but not by even one developed country that receives immigrants.<sup>108</sup>

This legal neglect of the importance of parent-child relations stands in stark contrast to the evolving obsession of the law in the Global North with supporting and encouraging these relations in day-to-day hands-on care by both parents, manifested in recent legal reforms relating to children of divorced parents. In this case, the law encourages shared cus-

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<sup>103</sup> See Hacker, *supra* note 19, at 152.

<sup>104</sup> *Id.*

<sup>105</sup> Engin F. Isin & Bryan S. Turner, *Investigating Citizenship: An Agenda for Citizenship Studies*, 11 *CITIZENSHIP STUDIES* 10 (2007).

<sup>106</sup> HACKER, *supra* note 19, at 152.

<sup>107</sup> *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, Art. 44(2), (Dec. 18, 1990), <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx>.

<sup>108</sup> United Nations, *WORLD HAPPINESS REPORT 2017*, <http://worldhappiness.report/ed/2017>



tody<sup>109</sup> and the prevention of parental relocation<sup>110</sup> in the name of the best interests of the child and the right of both parents to be involved in the care of their children. Placing the scholastic, legal and public discourse on parental emigration from the Global South alongside the discourse on parental divorce in the Global North reveals harsh discrimination that constructs the children of the Global North as deserving of parental nurturing care and those of the Global South as not.<sup>111</sup>

Indeed, if the ethical framework for parent–child relations that I suggest here is to guide us, then the acceptance of parental emigration as a solution to child poverty should be replaced by deep concern and a quest for economic and legal reforms that will render parent-child separation unnecessary. The few scholars who do not overlook the left-behind children of emigrating parents offer several potential solutions, including: reunification policies of receiving countries; securing economies in poor countries so their citizens can enjoy the right to not have to emigrate; and developing policies within immigration-sending countries to assist left-behind children and educate parents about the possible harsh consequences of their immigration.<sup>112</sup> In any case, I contend that a global labor market that ignores the familial outcomes of parental emigration is unethical, as it sabotages the basic ethical elements of parental care in developing countries.

Another way to try to prevent parental emigration in cases of extreme poverty is by allowing children to work, an option discussed next in light of the ethical framework guiding this Article.

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<sup>109</sup> See Vivienne Elizabeth, *Child Custody*, in CONSTANCE L. SHEHAN (ED.), *THE WILEY BLACKWELL ENCYCLOPEDIA OF FAMILY STUDIES* (2016); see generally J. Herbie DiFonzo, *Dilemmas of Shared Parenting in the 21st Century: How Law and Culture Shape Child Custody*, 43(4) *HOFSTRA L. REV.* 1003–24 (2015) (discussing the courts' difficulty in deciding which form of shared custody works in the best interests of a child); Anna Singer, *Active Parenting or Solomon's Justice? Alternative Residence in Sweden for Children with Separated Parents*, in KATHARINA BOELE-WOELKI (ED.), *DEBATES IN FAMILY LAW AROUND THE GLOBE AT THE DAWN OF THE TWENTY-FIRST CENTURY*, 55–81 (2009) (discussing joint custody and the alternating residence of children with separated parents); Robert Bauserman, *Child Adjustment in Joint-Custody Versus Sole-Custody Arrangements: A Meta-Analytic Review*, 16(1) *J. FAM. PSYCHOL.* 91–102 (2002) (comparing the adjustment of children in joint-custody arrangements versus sole-custody arrangements); Reg Graycar, *Family Law Reform in Australia, or "Frozen Chooks Revisited Again?"*, 13 *THEORETICAL INQUIRIES L.* 241–69 (2012) (discussing Australia's reform of its child custody laws).

<sup>110</sup> See generally Ayelet Blecher-Prigat, *The Costs of Raising Children: Toward a Theory of Financial Obligations Between Co-Parents*, 13 *THEORETICAL INQUIRIES L.* 179, 200–02 (2012); Patrick Parkinson & Judy Cashmore, *Reforming Relocation Law: An Evidence-Based Approach*, 53 *FAM. CT. REV.* 23–39 (2015).

<sup>111</sup> For a detailed comparison of these two discourses, see HACKER, *supra* note 19, at table 6.1.

<sup>112</sup> ABREGO, *supra* note 62, at 198; Mazzucato & Schans, *supra* note 58; Hochschild, *supra* note 14.

## III. CHILD LABOR

There is a tremendous disparity between the relative neglect of a child-centered approach within the scholarly discussions over remittances and the intense international preoccupation<sup>113</sup> with the millions of children who work.<sup>114</sup> When it comes to child labor, an imagined global consensus on the best interests of all the world's children replaces the dichotomy of children of the Global North and "other" children, analyzed in the previous Part.<sup>115</sup>

By the beginning of the twentieth century, the international community had already drafted conventions to limit child labor.<sup>116</sup> Current international standards in this area are embedded in three international conventions: (1) The Minimum Age Convention of 1973, drafted by the International Labour Organization (ILO) in an attempt to abolish child labor by setting a universal standard of a minimum age of fifteen for working children.<sup>117</sup> It is currently ratified by 168 countries;<sup>118</sup> (2) The 1989 UN Convention on the Rights of the Child (CRC), ratified by all

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<sup>113</sup> In 2001, William E. Myers argued that "Child Labor has in recent years been perhaps the most visible single issue generating discussion about how children's rights are to be defined and observed in an era of globalisation." See William E. Myers, *The Right Rights? Child Labor in a Globalizing World*, 575 ANNALS AM. ACAD. POL. & SOC. SCI. 38, 39 (2001). Although several other issues have developed since, such as refugee children and genital mutilation, child labor is still an outstanding example of global children's rights discourse. *Id.*

<sup>114</sup> According to the ILO, between 2008 and 2012, about 264 million children aged 5–17 worked. 158 million of them suffered working conditions classified as illegal, according to ILO standards. This represents a significant drop, from 222 million and 215 million, respectively, in 2008. See Yacouba Diallo, Alex Etienne, & Farhad Mehran, *Global Child Labour Trends 2008 to 2012*, International Labour Organization (2013), <http://www.ilo.org/ipeinfo/product/download.do?type=document&id=23015>. However, statistics on working children should be approached with caution as they are often inaccurate, partial and biased. See David M. Smolin, *Strategic Choices in the International Campaign Against Child Labor*, 22(4) HUM. RTS. Q. 942, 950–56 (2000).

<sup>115</sup> See Roland Pierik & Mijke S. Houwerzijl, *Normative Political Theory in an Era of Globalization. The Case of Child Labor*, a paper presented at the annual meeting of the American Political Science Association (Aug. 28, 2002). Yoshie Noguchi, for example, argues that the abolishment of child labor, which he defines as work that is likely to cause negative consequences, is "an internationally accepted principle." See Yoshie Noguchi, *20 Years of the Convention on the Rights of the Child and International Action against Child Labour*, 18(4) INT. J. CHILD. RTS. 515, 516, 525, (2010).

<sup>116</sup> The driving force behind these conventions was the ILO, an international organization currently comprising 186 member states devoted to "promoting social justice and internationally recognized human and labor rights." See INTERNATIONAL LABOUR ORGANIZATION, MISSION AND IMPACT OF THE ILO, [www.ilo.org/global/about-the-ilo/mission-and-objectives/lang-en/index.htm](http://www.ilo.org/global/about-the-ilo/mission-and-objectives/lang-en/index.htm). The early conventions were drafted not only in the name of children's wellbeing, but also in attempt to prevent economic advantage to countries that allowed child labor within the growing global economy. See TREVOR BUCK, INTERNATIONAL CHILD LAW 241 (3d ed. 2014).

<sup>117</sup> See HACKER, *supra* note 19, at 215.

<sup>118</sup> Minimum Age Convention 1973, [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEX\\_PUB:12100:0::NO::P12100\\_ILO\\_CODE:C138](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEX_PUB:12100:0::NO::P12100_ILO_CODE:C138).

countries of the world but the US.<sup>119</sup> This convention obliges states parties to “recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development;”<sup>120</sup> and (3) Worst Forms of Child Labour Convention, drafted by the ILO in 1999 and ratified with unusual speed by 180 states.<sup>121</sup> This convention targets child slavery, trafficking, prostitution, pornography and other illicit activities such as those related to drug dealing.<sup>122</sup> It demands that states parties act immediately and effectively to prohibit and eliminate these phenomena as well as the much broader category of “work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.”<sup>123</sup> Unlike the Minimum Age Convention, which does not aim at protecting young people over fifteen and does not target informal and unpaid labor, the latter two Conventions define a child as any person under 18, and relate also to unpaid work—that is, work conducted within the household or in the informal labor sector.<sup>124</sup>

Although these three Conventions differ in scope, definitions and economic and cultural sensitivities,<sup>125</sup> many perceive them as forming part of a unified Eurocentric attempt to globally enforce Western privileged perceptions of childhood on all the nations of the world, regardless of their poverty level and culture. This attempt includes media coverage, NGO campaigns and transnational boycott threats,<sup>126</sup> all portraying child labor as an absolute evil that must be abolished, with no account taken of

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<sup>119</sup> See HACKER, *supra* note 19, at 215.

<sup>120</sup> Article 32 of the Convention on the Rights of the Child 1989, <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

<sup>121</sup> See HACKER, *supra* note 19, at 215.

<sup>122</sup> *Id.*

<sup>123</sup> Articles 1 & 3 of the Worst Forms of Child Labour Convention 1999, [http://www.ilo.org/dyn/normlex/en/f?pN°RMLEXPUB:12100:0::NO:12100:P12100\\_ILO\\_CODE:C182](http://www.ilo.org/dyn/normlex/en/f?pN°RMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C182).

<sup>124</sup> See HACKER, *supra* note 19, at 215.

<sup>125</sup> For a detailed analysis of these conventions, see Smolin, *supra* note 114; BUCK, *supra* note 116, at 242–57; R. A. Mavunga, *A Critical Assessment of the Minimum Age Convention 138 of 1973 and the Worst Forms of Child Labour Convention 182 of 1999*, 16(5) POTCHEFSTROOM ELECTRONIC LAW J. 121–68 (2013), [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2427729](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2427729); Noguchi, *supra* note 115.

<sup>126</sup> The famous example, often cited in the literature, is the Child Labor Deterrence Act proposed to the US Congress in 1992 by Senator Tom Harkin (the Harkin Bill). The Bill aimed to prohibit the importation of any manufactured or mined goods into the United States that were produced by children under the age of 15. Although the Bill was not passed, it led the exporting clothes manufacturing industries in Bangladesh to dismiss about 55,000 working children. A follow-up study by ILO-UNICEF found that none of these children had enrolled in school as a result, and that many had ended up working in even less rewarding and safe workplaces. See Ben White, *Globalization and the Child Labor Problem*, 8(6) J. INT. DEV. 829–39 (1996).

differing circumstances and of the possible benefits of work for children in given contexts.<sup>127</sup> Many condemn such efforts as imperialist, ahistorical, patronizing and demeaning.<sup>128</sup> Moreover, their opponents argue that the true motivation of industrialized countries in seeking to curb child labor is to limit the economic competitiveness of developing countries.<sup>129</sup> Finally, the wall-to-wall signing of the anti-child-labor international conventions, according to their critics, is the outcome of diplomatic pressures and strategies rather than shared norms and interests in relation to working children.<sup>130</sup>

Millions of children will continue to work in the foreseeable future, for two main reasons: poverty and cultural understandings of childhood.<sup>131</sup> With regard to poverty, the sad reality in many parts of the world is that children work to survive and to contribute to the survival of their family.<sup>132</sup> If these children's countries are too poor to provide a minimal standard of living—and in many cases they are—then withdrawing children from work is against their best interest,<sup>133</sup> unless the richer parts of the world are willing to feed them and their families. Not only is this not the case, as we saw earlier from the statistics on foreign aid, but those who support child labor argue that the rich countries are contributing to child poverty in the poor countries.<sup>134</sup> Through the mechanisms of the global economy, they alter and weaken local markets and encourage cheap labor.<sup>135</sup> These trends increase adult unemployment and increase child participation in the labor sector.<sup>136</sup>

The anti-child-labor campaign argues that children should be at school rather than in the labor force. But this campaign ignores the reality in which many children cannot enjoy schooling because there are no

<sup>127</sup> Michael Bourdillon, *Children and Work: A Review of Current Literature and Debates*, 37(6) DEV. & CHANGE 1201–27 (2006); Smolin, *supra* note 114; Sarada Balagopalan, *Memoirs of Tomorrow: Children, Labor, and the Panacea of Formal Schooling*, J. HISTORY CHILDHOOD & YOUTH 267–85 (2008); Lorenza B. Fontana & Jean Grugel, *To Eradicate or to Legalize? Child Labor Debates and ILO Convention 182 in Bolivia*, 21 GLOBAL GOVERNANCE 61–78 (2015).

<sup>128</sup> Bourdillon, *Children and Work*, *supra* note 127; Myers, *supra* note 113.

<sup>129</sup> Smolin, *supra* note 114, at 957.

<sup>130</sup> Tendai Charity Nhenga-Chakarisa, *Who Does the Law Seek to Protect and from What? The Application of International Law on Child Labour in an African Context*, 10(1) AFRICAN HUM. RTS. L. J. 161, 189–92 (2010); White, *supra* note 126.

<sup>131</sup> Bourdillon, *supra* note 127.

<sup>132</sup> Nehaluddin Ahmad, *Child Labour: Ground Realities of Indian Labour Laws*, 37(1) COMMONWEALTH L. BULL. 61–74 (2011).

<sup>133</sup> Bourdillon, *supra* note 127.

<sup>134</sup> See HACKER, *supra* note 19, at 217.

<sup>135</sup> *Id.*

<sup>136</sup> Bourdillon, *supra* note 127, at 1206, 1210. The anti-child-labor movement also ignores the reality of many children left alone in the world due to catastrophes such as the AIDS epidemic and war. *Id.* These children must work to support themselves and often also their younger siblings. *Id.*

schools, they are located far away, are too expensive, or provide poor-quality or irrelevant education. For example, some Indian schools, established to keep children out of the labor force, are not providing true schooling due to lack of adequate resources and trained teachers, and are harming poor children by exposing them to the experience of failure and shame.<sup>137</sup> In such cases, acquiring skills, experience and connections in the labor force might be the best available option for the child.<sup>138</sup>

But poverty and lack of better options do not tell the whole story. The debate over child labor is also embedded in competing perceptions of parent-child relations.<sup>139</sup> In the Global North, as prominent sociologist Viviana Zelizer explores, in her canonical study, a rapid revolution that occurred in the late nineteenth century, transformed children from wage-earners to the emotional *raison-d'être* of the nuclear family.<sup>140</sup> Ever since, childhood in the Global North is perceived as a unique and distinct period of life. Children are no longer understood as small adults but as vulnerable, innocent precious beings who should be protected and nurtured. According to this notion, parents should support their children and keep them far away from the labor market, to ensure their childhood is completely dedicated to learning, healthy development, and leisure.<sup>141</sup> In this paradigm, parents who send their children to work are regarded, at best, as short-sighted, because they fail to understand that it is in their children's long-term best interests to be educated;<sup>142</sup> at worst, they are judged to be abusive parents who victimize and use their children for their own self-interest.<sup>143</sup>

A recent example of this anti-parent suspicion is the response of the United Nations International Children's Emergency Fund (UNICEF) to the new amendments of the Indian law that governs child labor. In particular, UNICEF voiced its concern regarding the amendment that allows children to work to help the family or family enterprise, even though this is allowed only if the labor is not hazardous, and only if it takes place

<sup>137</sup> See Balagopalan, *supra* note 127; see also Bourdillon, *supra* note 127; Smolin, *supra* note 114, at 960.

<sup>138</sup> For an ethnography of children mining gold in Ghana, revealing that many of them work to earn the money needed for their education, and manage to combine work and school, see Samuel Okyere, *Are Working Children's Rights and Child Labour Abolition Complementary or Opposing Realms?*, 56 INT. SOC. WORK 80–91 (2013); see also Smolin, *supra* note 114, at 961; Mavunga, *supra* note 125, at 152–54; Fontana & Grugel, *supra* note 127, at 70.

<sup>139</sup> BAHIRA SHERIF TRASK, *GLOBALIZATION AND FAMILIES: ACCELERATED, SYSTEMATIC SOCIAL CHANGE* ch. 6 (2010).

<sup>140</sup> VIVIANA A. ZELIZER, *PRICING THE PRICELESS CHILD: THE CHANGING SOCIAL VALUE OF CHILDREN* (1994).

<sup>141</sup> Bourdillon, *supra* note 127; Balagopalan, *supra* note 127.

<sup>142</sup> Jessica Selby, *Ending Abusive and Exploitative Child Labour through International Law and Practical Action*, 15 AUST. INT. L.J. 165, 175 (2008).

<sup>143</sup> Kaushik Basu, *Child Labor: Cause, Consequence, and Cure, with Remarks on International Labor Standards*, 37(3) J. ECON. LITERATURE 1083, 1084, 1095 (1999).

after school hours or during vacations.<sup>144</sup> UNICEF strongly recommends that India remove this amendment, to “protect children from being exploited in invisible forms of work, from trafficking, and from boys and girls dropping out of school due to long hours of work.”<sup>145</sup> India can indeed be criticized for not introducing any age limit to child labor within the family; yet UNICEF’s response is extremely problematic as it portrays all families assisted by their children as potential child traffickers and abusers, and calls for an unrealistic overarching prohibition.

Moreover, this abolitionist, extreme stand ignores strong indications that there are many poor children who want to work to support themselves and their families. For example, the Bolivian Code for Children and Adolescents, enacted in 2014, which permits child work in relatively broad circumstances, was drafted with the participation of working children’s organizations.<sup>146</sup> Moreover, influenced by Western consumer culture and international corporate advertising, poor children often want to work to buy products such as Coca-Cola, Nike sportswear, and mobile phones, at times against their parents’ advice.<sup>147</sup>

Indeed, unlike in the Global North, in which parents are expected to ensure that the childhood of their offspring constitutes a separate and distinct period of the “best years of life”,<sup>148</sup> in the Global South, childhood and adulthood are understood as part of a continuum. According to this perception, while children should be supported and cared-for, they should also be gradually integrated into the world of adults, in accordance with their developing competence. Work, both paid and unpaid, is part of this integration.<sup>149</sup> In the Global South, work is also a manifestation of a collectivist perception of family and society, according to which kinship is granted extreme importance and each individual, whether young or adult, is expected to contribute for the benefit of the wider group. In this paradigm, from infancy, children must learn the familial reciprocal aid relationships, which include rights and responsibilities and which demand the ability to live in harmony with others, working for collective goals, participation in social activities, and obedience to au-

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<sup>144</sup> THE CHILD LABOR (PROHIBITION AND REGULATION) AMENDMENT, Act No. 35, Section 5, 2016 (India), <http://bombayhighcourt.nic.in/libweb/actc/yearwise/2016/2016.35.pdf>.

<sup>145</sup> UNICEF *Concerned about Amendments to India’s Child Labour Bill*, New Delhi, 25 July 2016, [http://www.unicef.org/media/media\\_92021.html](http://www.unicef.org/media/media_92021.html).

<sup>146</sup> Manfred Liebel, *Protecting the Rights of Working Children Instead of Banning Child Labour: Bolivia Tries a New Legislative Approach*, 23(3) INT’L J. CHILD. RTS. 529 (2015).

<sup>147</sup> Géraldine André & Marie Godin, *Child Labour, Agency and Family Dynamics*, 21(2) CHILDHOOD 161–74 (2014); Ben White, *Globalization and the Child Labor Problem*, 8(6) J. INT’L DEV. 829 (1996).

<sup>148</sup> TENDAI CHARITY NHENGA-CHAKARISA, *WHO DOES THE LAW SEEK TO PROTECT AND FROM WHAT?* 174 (2010).

<sup>149</sup> Bourdillon, *supra* note 127.

thority.<sup>150</sup> Hence, parents should be granted discretion regarding the work their children need to do, as they have the best interests of their children in mind and are in the best position to judge the situation contextually.<sup>151</sup> It is important to note that in many cases, this perception is accompanied by a strict gender division, in which girls are expected to perform housework and care for younger siblings, and boys are expected to work in the fields or tend to the livestock.

One can find a manifestation of this perception in the 1990 African Charter of the Rights and Welfare of the Child (ACRWC).<sup>152</sup> This convention, ratified by forty-one countries and signed by a further nine out of the fifty-four African countries, shares the CRC prohibition on exploitative and hazardous child labor, as well as on any work that is likely to interfere with the “child’s physical, mental, spiritual, moral, or social development.”<sup>153</sup> At the same time, it states that, in addition to rights and freedoms, children have duties toward their family, society, local community, state and international community. Among these, a child, subject to his age and ability, has the duty “to work for the cohesion of the family, to respect his parents, superiors and elders at all times and to assist them in case of need,” and “to serve his national community by placing his physical and intellectual abilities at its service.”<sup>154</sup>

The current discourse on child labor seems to center on (imagined) strict, clear dichotomies: Adult/Child; North/South; Hazardous/Beneficial; Rights/Duties; Individualism/Collectivism; Family Work/Paid Work; Working/Learning; Parental Authority/Parental Abuse; and Universalism/Relativism. I believe that keeping in mind the two distinct, yet related, ethical frameworks of the market and the family can yield a pluralist and contextual continuum approach that can better serve the needs of children. Such an approach suggests that we should view: children as individuals embedded in relationships, whose best interests are unavoidably and rightly interwoven with those of their caregivers, communities and societies;<sup>155</sup> childhood as a unique period of life that should be dedicated to learning and developing, including by working;<sup>156</sup> full-time

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<sup>150</sup> NHENGA-CHAKARISA, *supra* note 148, at 169.

<sup>151</sup> Balagopalan, *supra* note 127, at 270.

<sup>152</sup> NHENGA-CHAKARISA, *supra* note 148, at 170. This, and the difficulty in documenting work within the family, might explain the higher rates of males reflected in statistics on child labor. See DIALLO, ETIENNE, & MEHRAN, GLOBAL CHILD LABOR TRENDS 4 (2006).

<sup>153</sup> AFRICAN CHARTER OF THE RIGHTS AND WELFARE OF THE CHILD 1990, Article 15(1) (1990), <http://www.achpr.org/instruments/child>.

<sup>154</sup> AFRICAN CHARTER OF THE RIGHTS AND WELFARE OF THE CHILD 1991, Article 31 (1991).

<sup>155</sup> Barbara Bennett Woodhouse, *A World Fit for Children Is a World Fit for Everyone: Ecogenerism, Feminism, and Vulnerability*, 46 Hous. L. Rev. 818 (2009).

<sup>156</sup> I believe paid and unpaid work is also beneficial to children in the Global North. It teaches self-discipline, diligence and awareness of the needs of others, without which children

child labor that is a condition of survival as a failure on the part of global, national, community or familial forces; and the protection of the rights of children as working subjects, when they need or want to work, as a proper mission of child-centered national and international labor law.

I believe the anti-child-labor discourse ignores what is also missing from Anderson's ethical analysis of the market. I would challenge her argument that the most important value of the market is freedom, and instead argue that the most important value of the market is survival. Only those privileged enough not to worry about their survival can think otherwise. In poor countries, this might mean considering parents who are forced to send their children to work as performing their nurturing duty, at the horrible yet unavoidable price of converging the ethic of the family with that of the market. Just as in the case of parental remittances, the global ethical vision should be one in which all children of the world enjoy parental nurturing care that does not collapse into material care and is not governed by the ethic of the market.

#### CONCLUSION

Discussing parental remittances and child labor together reveals the problematic Eurocentric tendency to ignore the reality of the familial ties of children in the poorest parts of the world. Parental cross-border emigration is widely understood as inherently good for poor children, who arguably enjoy parental remittances, as if these children, unlike those in the Global North, do not need ongoing physical and emotional care from their biological parents. Child labor, on the other hand, is conceptualized as an evil that should not be governed by parental authority or by the need to survive, or by the acceptance of diverse cultural understandings of childhood or children's wishes—but by universal anti-child-labor norms. The indifference of the Global North to the harms of parental emigration, along with its jealous fight against child labor, together imply that economic motives, and not only genuine care for “other” children, are involved. It seems that Western interests in unaccompanied labor migrants and reduced global market competitiveness among poor countries help to explain the Global North's opposing stances of apathy regarding parental emigration, and obsession regarding child labor, operating in parallel.

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can grow up to be confused, lazy, spoiled or narcissist adults, in shock at the demands imposed on them as grown-ups. *See also* BERNSTEIN & TRIGER, *OVER-PARENTING* 1275–77 (2010). Indeed, many children work in developed countries for other reasons than survival. *See* RICARDO RODRÍGUEZ ET AL., *STUDY ON CHILD LABOUR AND PROTECTION OF YOUNG WORKERS IN THE EUROPEAN UNION: FINAL REPORT*, THE EUROPEAN COMMISSION (2007), <http://ec.europa.eu/social/BlobServlet?docId=4200&langId=en>.



Insisting on the importance of preserving a separate ethical sphere that allows nurturing parental care for all children of the world must reverse the judgment: parental emigration must be perceived as an acute problem endangering children, and child labor must be seen as an option that should be regulated to allow children to survive and develop within the safety of their familial environment. Going back to the dilemmas posed at the beginning of this Article, under the ethical framework I propose, international surrogacy<sup>157</sup> and open, paid-for, international adoption<sup>158</sup> (much like other possible family-related market solutions to child poverty that cannot be further explored here) can also acquire a value currently unrecognized by contemporary debates.

The world should view child poverty that leads to harmful deprivation as a global failure. Its minimization should not, and cannot, be accomplished by separating children from their parents, nor by excluding them completely from the labor market with no alternative material resources. The challenge in safeguarding all children of the world from extreme poverty, while protecting their right to parental nurturing care, is enormous. Yet, ethically, nothing less will suffice.

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<sup>157</sup> RUTH ZAFRAN & DAPHNA HACKER, INTERNATIONAL SURROGACY—ISRAEL, FINAL REPORT (2016) (demonstrating that international surrogacy in India has much greater economic value than in the US). Hence, under the condition that the surrogate will not be forced to leave her home to “surrogacy farms,” this might be a better solution to poverty than parental emigration, if the value of parental nurturing care is to be protected. *See also* Sital Kalantry, in this issue.

<sup>158</sup> HACKER, *supra* note 19.

