

Someday All This Will Be Yours: Inheritance, Adoption, and Obligation in Capitalist America[†]

Addison C. Harris Lecture

April 7, 2003

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The story of *Van Duyne v. Vreeland*¹ began, or at least my telling of it begins, with the 1822 birth of John H., or John Henry, Van Duyne in Morris County, New Jersey. John Henry (as I will continue to refer to him because there are other Johns in this story) was the second child born to Nicholas and Hannah Van Duyne. Three or four days after his birth, his uncle, John Vreeland, the brother-in-law of his mother, came to visit. Though Vreeland and his wife, Rachel, had often been to see Nicholas and Hannah, this time Vreeland came with a mission: He wanted John Henry for his own child; he wanted “to take him right away.” Hannah’s first answer was no. But by the end of the visit, she and her husband had agreed that Vreeland and his wife could have the baby if they waited until John Henry was a year old and had him baptized immediately. Vreeland agreed, and when John Henry Van Duyne was between seven and eight weeks old, he was baptized as John H. V. Vreeland.² About a year later he was taken by the Vreelands into their home, where he grew up as their child. He called John Vreeland “father”; he called Rachel Vreeland “mother.”³ He was ten or twelve before he knew that his birth parents were not his uncle and aunt.⁴

What had the Vreelands offered to Hannah and Nicholas when they asked for their child? “Nothing,” according to Hannah, “only the promise they made,” for they “had always been after the children.” (Evidently, he and Rachel had previously asked for their first-born.) What promise was that? That John Henry would have all their property. Were there conditions on that promise? Not according to Hannah. Indeed, she testified she would not have agreed to give up her child if the promise had been conditioned.⁵ The lawyer questioning Hannah pressed her one last time: “Was it your understanding that Mr. Vreeland was to give John all his property, or the principal part of it, or that he would treat him as he would treat his own child in

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^{*} Class of 1921 Bicentennial Professor in the History of American Law and Liberty, Princeton University. What follows represents a slightly edited version of the Harris Lecture, delivered to the faculty and students of Indiana University School of Law—Bloomington on April 7, 2003. I am grateful to Dean Lauren Robel and to the faculty and students of Indiana University School of Law for their generosity and their comments on that occasion. Earlier versions were delivered as the 2002 Siben and Siben Lecture at Hofstra University School of Law and to a faculty colloquium at the University of Wisconsin Law School. I am particularly grateful for the comments of Howard Erlanger, Stewart Macaulay, Nancy Hartog, and Carla Laroche.

1. 12 N.J. Eq. 142 (N.J. Ch. 1858).

2. Evidence on Part of Complainant at 49-50, *Van Duyne v. Vreeland*, 12 N.J. Eq. 142 (N.J. 1858) (source on file with author).

3. *Id.* at 51.

4. *Id.* at 51, 58.

5. *Id.* at 50-51.

disposing of his property when he came to die?" Hannah answered: "He always said he would give him all when he came to die."⁶

Why did Vreeland want John Henry? Again, according to Hannah: "No other reason, only he had had different children,⁷ and he could not bring them up right to suit him; that is all the reason I ever heard of."⁸

John Henry evidently became exactly the child that Vreeland and his wife had hoped for. Catherine Miller, a neighbor of the Vreelands, recalled that when John Henry was a small boy, Vreeland once stopped at her house; he lit his pipe, and they had a conversation. She had a child on her lap, and Vreeland commented that he was a nice child. Catherine "asked him whether he did not wish that he had one [of his own]."⁹ Vreeland replied that he had one "and thought a good deal of him," as well as if he were his own.¹⁰ He had taken John Henry "as his own, and meant to give it all he had."¹¹ Catherine said he was still young enough to have children of his own, and she wondered if he would give "it part of his property if he had one."¹² No, Vreeland replied, "that was fixed . . . so that it could not be altered."¹³ And, he continued, "his word was as good as a bond."¹⁴

For many years, until John Henry was well into his twenties, John and Rachel Vreeland were very happy with their new son. According to Jack Bonto, an African American servant who lived with them on their farm in Pequannock, Rachel thought the world of John Henry.¹⁵ Everyone agreed that John Henry was a hard-working boy and, later, young man. One witness recalled that he was talking with Vreeland one day about how uneasy he felt because his own son had gone "back in the mountains after a load of rails."¹⁶ Vreeland had replied that he understood exactly how the witness felt, "that he thought he had just the same feeling that parents had for their children."¹⁷ Another witness reported that during the presidential election of 1844, by which point John Henry was a young man of twenty-two, he and Vreeland were walking past the Van Duyne's house on their way to a political meeting, and some of the Van Duyne children were making noise and quarreling with each other.¹⁸ (The Van Duynes eventually had six more children.) Vreeland remarked, "Do you see that?" "Yes," replied the witness, "[T]hey are used to that, the old folks are in the habit of such work, fighting and quarrelling."¹⁹ And he went on, "[A]s the old cock crows the young one learns."²⁰ Then Vreeland said, "I have got one of them, but he has been brought up in another kind of a style from what they are, and I never . . . knew him to quarrel with any one, or give any one a saucy word; he has always

6. *Id.* at 55.

7. I have no idea if that means he had tried out several previous adoptions with children of other parents.

8. Evidence on Part of Complainant at 49, *Van Duyne*.

9. *Id.* at 80.

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.* at 79-80.

15. *Id.* at 93.

16. *Id.*

17. *Id.* at 85-86.

18. *Id.* at 87.

19. *Id.*

20. *Id.*

been a good boy to me, and I intend to do well by him, and I intend to give him a good chance and make a man of him.”²¹ Several other witnesses told similar anecdotes.

When John Henry was about eight, Vreeland fell ill. Fearing that he would soon die he set about to write a will. (Writing wills seems to have been something of a hobby for him, and he wrote many over the next thirty years.) He sent for Nicholas Van Duyne, John Henry’s birth father, and asked him whether he would allow the child to remain with him as his son.²² If so, he would bequeath John Henry all his property. Van Duyne replied that if Vreeland did as he had promised, he would not take the child away.²³ When John Henry was twelve, Vreeland took him out of school. He had already been doing ploughing and mowing and other forms of farm work in the years before he had turned twelve.²⁴ Thereafter, and until he was twenty-five, he worked full-time for Vreeland. Some time around John Henry’s sixteenth birthday, Van Duyne came again to talk with Vreeland, this time about what sort of trade the boy should learn. Vreeland told him that John Henry did not need any kind of trade because he was taken care of and would inherit all the land. Also, because John Henry was needed on the farm, Vreeland said he could not spare him.²⁵ Some time later Van Duyne came again, this time to tell Vreeland that he was writing his own will and that as he did not have so much he would divide what he had between his other children, excluding John Henry, on the supposition that Vreeland was going to take care of him. Vreeland told him to go ahead and cut John Henry out of his will, because he was well taken care of. (Nicholas Van Duyne died in 1842, leaving nothing to John Henry.)²⁶

In 1841, when he was nineteen, John Henry married. Vreeland evidently had reservations both about such an early marriage and about the family of John Henry’s bride. But before and after the marriage, John Henry continued to devote himself to his adoptive father’s farm. A few years later, John Henry was elected local constable. Later on Vreeland claimed that he had opposed John Henry’s decision to seek the office—that John Henry had disobeyed him. Nonetheless, even after his election, John Henry continued to devote a significant portion of his work time to Vreeland’s farm.²⁷ And Vreeland continued to write wills in which John Henry was the residual legatee who would receive nearly all of his property.²⁸

In 1849, Rachel died, leaving a will giving John Henry all her separate property. Because New Jersey’s new married women’s property law had no retrospective effect, this will turned out to be void. However, at least according to Vreeland, John

21. *Id.* at 87-88.

22. Bill of Complaint at 1, 3, *Van Duyne v. Vreeland*, 12 N.J. Eq. 142 (N.J. 1858) (source on file with author).

23. Evidence on Part of Complainant at 101-02, *Van Duyne*, 12 N.J. Eq. 142; Bill of Complaint at 3, *Van Duyne*.

24. Bill of Complaint at 11, *Van Duyne*.

25. Bill of Complaint at 11, *Van Duyne*; Evidence on Part of Complainant at 52, 61, 70-71, *Van Duyne*.

26. Bill of Complaint at 4-5, *Van Duyne*; Evidence on Part of Complainant at 52-53, *Van Duyne*; Exhibit A2 of Complainant at 186-87, *Van Duyne v. Vreeland*, 12 N.J. Eq. 142 (N.J. 1858) (source on file with author).

27. Evidence on Part of Complainant at 60, 87-88, 108, *Van Duyne*.

28. Bill of Complaint at 6-9, *Van Duyne*; Evidence on Part of Complainant at 101, 125-26, *Van Duyne*.

Henry did get effectively what Rachel had meant to convey to him.²⁹ (I know nothing more about how that occurred.)

Then, about a year after Rachel's death, John Vreeland remarried, to Maria Ackerson, a widow. And here the story I am telling reverts to an old and familiar form, identified with the figure of the "wicked stepmother."³⁰ For a while, at least in John Henry's telling, all of them continued to live on "the most friendly terms . . . without dispute or complaint . . ." ³¹ He continued to "serve" John Vreeland "faithfully," and Vreeland said he was satisfied with John Henry's conduct.³² John Henry and his adopted father had never kept any accounts of the work and labor that John Henry had done. Instead, in John Henry's telling, he and "Vreeland lived and worked and dealt together, as father and son do, where perfect good feeling and confidence exists between them."³³ But, in the latter part of July 1850, Vreeland seemed to become "dissatisfied with and hostile" towards John, though without making open complaints.³⁴ And so matters continued until the winter of 1853-54, when Vreeland twice asked John Henry for a receipt for his work, which John Henry took to mean that Vreeland's feelings had "changed, and that he wished to cast off and cut off" John Henry.³⁵ John Henry attributed the change to the influence of the new wife. "[H]er conduct and manner, clearly to be seen, but not easily to be described . . . showed . . . that she felt unfriendly towards him, and disliked to see . . . Vreeland reposing confidence" in him.³⁶

By April 1854, John Henry heard that Vreeland had told others that he would not have anything more to do with him. At that time, he moved to a new home, about four miles away from Vreeland's farm. (Up to that point, he had lived next door.) And after that they rarely saw each other.³⁷

Meanwhile, Vreeland was writing new wills that excluded John Henry. And during the following winter, he conveyed all his lands in Pequannock to John and Elizabeth Brickell, the son-in-law and daughter of his new wife. The consideration for the sale was \$6000. (John Henry and most of Vreeland's neighbors thought that seriously undervalued the property.) But no money changed hands. Instead, Vreeland gave the son-in-law a mortgage in exchange for a promise that Vreeland and Maria (and their servants) would be taken care of for the rest of their lives. "Things" were "fixed" so that John Henry Van Duyne Vreeland "could not get anything."³⁸

But in February 1856, John Henry filed a petition with the Chancellor of the State of New Jersey, asking that the sale from Vreeland to John and Elizabeth Brickell be declared a fraud on John Henry's rights. Vreeland, according to the petition, had contracted with John Henry's parents. Both the parents and John Henry had fully performed their obligations—that is, the parents had turned John Henry

29. Answer to Bill of Complaint at 32-34, *Van Duyne v. Vreeland*, 12 N.J. Eq. 142 (N.J. 1858) (source on file with author); Bill of Complaint at 6-7, *Van Duyne*.

30. Bill of Complaint at 6-7, *Van Duyne*.

31. *Id.* at 10.

32. *Id.*

33. *Id.* at 11.

34. *Id.*

35. *Id.* at 12.

36. *Id.* at 10, 12.

37. *Id.* at 12-13.

38. *Id.* at 13-26.

over to the Vreelands, and John Henry had done everything that a dutiful son should do. In return, Vreeland was obligated to make John Henry his heir. As for the Brickells, they could hold title to the property until Vreeland's death, but at that time they would have to convey fee simple title to John Henry. Because the conveyance by which they had received the property had been conceived to defraud John Henry, and because the Brickells were far from innocent "bona fide" purchasers, the chancellor should order specific performance, with the effect that they would have nothing "except a naked legal title," which meant that the property would become John Henry's when Vreeland died.³⁹

John Vreeland answered John Henry's petition in July 1857. (In the interim his lawyer and the lawyer for the Brickells had filed a demurrer that was overruled.) The answer conceded much of John Henry's narrative of his childhood, though Vreeland's version of the original transaction had a central difference: From his standpoint, what he had promised John Henry's father and mother was that he would "treat him as a son, as long as he treated and behaved . . . as a dutiful child should do." Everything ever promised or talked about at that time was framed by the "express understanding" that John Henry be a "dutiful and affectionate son" to Vreeland and his wife, "especially in their old age."⁴⁰

Vreeland insisted that he had done "all" for John Henry that he would have done for his own child. It was true that Vreeland had often told John Henry that he meant to make a property disposition in his favor, though always "accompanied with the proviso" that John Henry remain with Vreeland and act towards him and his wife "the part of an affectionate and dutiful son." And Vreeland had no doubt that these "assurances" had for a while "influenced" John Henry to behave himself. For many years he had been quite pleased with his adoptive son, but later on, particularly after John Henry's marriage, those assurances had not had as much influence as Vreeland had hoped. And it was John Henry who had broken whatever contract there was, by becoming something other than an "affectionate and dutiful son."⁴¹

John Vreeland conceded that he had told many people of his intentions to leave his property to John Henry. He also conceded that Rachel, his first wife, had made a will that would, if it could have been carried into effect, have given John Henry her estate. He did not know why she had tried to make that disposition of her property. He supposed it probably was because she thought of John Henry as her adopted son. But he was confident that she did not write that will "as a matter of obligation."⁴² And neither had he ever done so when he had drafted earlier wills that made John Henry his residual legatee.

Shortly after his second marriage, Vreeland became "more or less dissatisfied" with John Henry's conduct.⁴³ John Henry became "slack and careless." One of Vreeland's witnesses described how he would have to go over to wake John Henry at four or five in the morning, so that he would start work at the time that Vreeland thought appropriate.⁴⁴ In 1850 he proposed that John Henry take over the farm, giving Vreeland a share of the crops and the profit. John Henry agreed and did go

39. *Id.* at 21-26.

40. Answer to Bill of Complaint at 27-28, *Van Duyne*.

41. *Id.* at 31, 34-37.

42. *Id.* at 33.

43. *Id.* at 35.

44. *Id.*; Defendants' Evidence at 156-61, *Van Duyne v. Vreeland*, 12 N.J. Eq. 142 (N.J. 1858) (source on file with author).

plant the corn. But at harvest time, John Henry said he was ill and neglected to attend to the harvest, which required Vreeland to hire hands to gather the crops. John Henry had demonstrated that he lacked "industry and energy," that he was not willing to "relieve" Vreeland of the "burden and care of his farm." Two years later, Vreeland became sick with "bilious fever," and though John Henry still lived nearby, he seldom visited and did little to help Vreeland. He did not act as a "dutiful and affectionate son."⁴⁵

Vreeland, on the other hand, had never rejected John Henry. He wanted "his society and assistance in his . . . old age"⁴⁶ Every year, his need for help increased, as he "felt the infirmities of age increasing upon him"⁴⁷ He was, at the time of writing his answer to John Henry's petition (i.e., in 1857), sixty-six years old, and was "subject to the ordinary infirmities and weaknesses incident [t]o age"⁴⁸ He had been "a hard-working man . . . all [h]is life"⁴⁹ When he had adopted John Henry, he had looked "forward to this period of his life"⁵⁰ He had hoped "to secure some one who would, from ties of affection as well as the hope of reward, look after him in his old age"⁵¹ But he had now discovered that he would be disappointed, and found that he needed to make alternative arrangements for his and his family's care.⁵²

And that is why Vreeland conveyed the property to his stepson-in-law and his stepdaughter. Farming had become too much of a burden for him. He had sold the farm, as he had every right to do as a property owner, in order to secure his retirement. John and Elizabeth Brickell were innocent purchasers, who had paid for the land by agreeing to come and take care of Vreeland and his wife and his "colored servants as long as they lived"⁵³ It is true that Vreeland had told them that he had adopted John Henry, brought him up, and expected John Henry to take care of him in his old age. But John Henry had "deserted" him, and he needed someone to take care of the farm. The Brickells had taken the deed to the farm without any knowledge or suspicion of any claim on it. There was no intention on anyone's part to defraud John Henry. This was, rather, "such a disposition of his property" as he and they "had a moral, legal and equitable right to make."⁵⁴

There is a story that everyone who goes to law school confronts, probably early in the first year. An older man or woman asks a younger person, usually a relation, a son or daughter, or a niece or nephew, to live with him or her. Or, as in the Vreeland story, a child is informally adopted. "Take over the business of the farm or the boardinghouse or the store." Or, "Clear the south forty and make a new farm of it." Or, "Take care of your aunt and me, do all the housework, and make a home with us." Or, more simply, "Don't leave me." And then, the universal refrain,

45. Answer to Bill of Complaint at 35-36, *Van Duyne*; Defendants' Evidence at 132-35, *Van Duyne*.

46. Answer to Bill of Complaint at 37, *Van Duyne*.

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.* at 37-38.

53. *Id.* at 38-39.

54. *Id.* at 38-41.

“Someday”—which might be, “when I am done with it” or “when your mother dies,” but which might be, “soon”—“all this will be yours!”

And the younger relation says, “yes.” And the younger person moves in, giving up work or career or schooling or travel or farmland (or the family of birth).

For the next period, which might be twenty-five years or more, he or she (which might be he, she, and children, since often the younger person brings along or acquires his or her own growing family) does the work that is consistent with the terms stated or implied in the agreement made with the older person. The work likely results in substantial “improvements” to the property—improvements that increase its market value—and also often embraces caretaking of an increasingly intimate character, as the older person becomes less able to take care of herself or himself. The younger person gets no regular pay for what he or she does. But over the years the older person talks often, to many different people, about the will or deed he or she has or is about to write that will give effect to the promise. Sometimes he or she shows the younger person a deed or a will conveying the property to her or him.

But then the older person dies and the younger person discovers that the will has never been written, or that a different will was written, or that the deed or will which was written is invalid for any of a number of reasons. Or, as in the Vreeland story, the older person simply goes ahead and conveys the property to others. Others, often siblings and other relations, get the property. Soon the younger person and his family are evicted from the home they have lived in for many years. Or, as in the Vreeland story, they simply discover that they have no property to look forward to.

And when the no-longer-younger person goes to court to enforce the promise that was once repeatedly made to him or to her, he or she learns lessons like those still taught to law students. All of these come under the headings of “life is tough,” and “you should have gone to see a lawyer.” The promise was usually not in writing, and a seventeenth-century statute reenacted everywhere throughout the English-speaking world, called the Statute of Frauds, declares that oral promises for the transfer of real estate are entirely void.⁵⁵ There was no contract that a court will recognize. The promise occurred many years before. What was actually said may be unrecoverable, at least in a form that a court will recognize and affirm. Memories are obviously “interested.” And many of those present when the promise was made, if it was made, are now dead. In any event, a property holder is entirely free to will property or not to will property to whomever she or he chooses, and to change her or his mind repeatedly for reasons bad or good. This is at the heart of the freedom given to property owners in a free society. No one is anyone’s heir until the anyone has died. Nothing is fixed until then. And one who has been written into a will can always, at least until death, be written out. A gift, let alone a promise of a gift, is not a contract. The older person, in telling the younger what he or she intended to do, was merely articulating an intention—one without legal consequences. In doing the work, in choosing to live with the older person, the younger one was a “mere volunteer.” Work done within a family, within a household, by family members, is not done with the expectation of compensation. There has to be an explicit and formal contract to counter the strong presumption that love and care motivated the work, not the expectation of a reward of property. (For those who want a specific

55. Statute of Frauds, 1677, 29 Car. 2, c. 3, §§ 4-5 (Eng.) (“... or else they shall be utterly void and of none effect.”).

reference for such language, see Judge Cardozo's opinion in *Burns v. McCormick*,⁵⁶ which still appears in several of the leading property law casebooks.⁵⁷)

I have lived with versions of this story and its apparent meanings in various phases of my adult life. I came across it as a law student, recoiled against its seeming injustice, wondered (because I was already something of a historian by inclination) about the culture and the society within which the real men and women involved had lived their lives, and accepted that it was an accurate and useful portrayal of "the law." Later, I taught it when I became a property law teacher, and I learned to love the reactions it inspired from students who nearly always identified with the younger person, the loser in the modal (casebook) story. For me, the story became an occasion to work through the foundational understanding of the tension between law and morality that, is or has usually been, understood as the core of "thinking like a lawyer." It offered one of several occasions where I could demonstrate that, whatever its moral attractions, a labor theory of value—that is, a vision of work as creating a right to property or other resources—had never carried the day within American legal doctrine. Eventually, as I became socialized in the law at the same time that I was trying to socialize and educate law students, I managed to convince myself that it was not unjust (or not always unjust) that the younger person would lose. He or she should have known better. And one could always move to the utilitarian moral: The lesson taught in this story would become part of the known working rules of the society, so that newer generations of "younger persons," in particular the students I was teaching, would know what to ask for and how to ask it, and would know how to advise and to represent clients.

For reasons that may have been rooted in my own time of life—with an older parent needing care and with children having left home—and out of a desire to make historical sense out of legal situations that I had never quite come to terms with, I began to look further than two years ago to see how courts had once dealt with such intergenerational promises. And what I found was a revelation and will be eventually the subject of a book. From the middle of the nineteenth century through the middle of the twentieth century, over a century of American history, courts heard hundreds, perhaps thousands, of cases in which petitioners claimed property based on oral promises whose existence was "proven" by work done and by other opportunities foregone. Many were children or near relatives of the property owner. Some were not. Some were housekeepers. Some were adopted children or more distant relatives, like John Henry Van Duyne Vreeland. A remarkable number of the children (or younger people) won when they went to court to ask for specific performance—that is, for an order that would convey to them property they had once been promised. In 1919, Roscoe Pound complained that such cases were flooding the courts and that American courts had become overly sympathetic with the unverifiable claims of men and women who insisted on the existence of contracts with dead or dying testators.⁵⁸ To him and to other legal commentators, the apparent sympathy of many judges and equity chancellors for the young people's claims had become an invitation to fraud.

Looking into the New Jersey court records, I have found well over 100 published cases dealing with such situations between 1850 and 1950, including *Van Duyne v. Vreeland*. For approximately forty of those cases, including *Van Duyne*, I

56. 135 N.E. 273, 274 (N.Y. 1922).

57. See JOSEPH SINGER, *PROPERTY LAW* (1993).

58. See Roscoe Pound, *The Progress of the Law, 1918-1919: Equity*, 33 HARV. L. REV. 929, 933-50 (1920).

have also found the records and briefs, including transcripts of testimony that offer an amazingly rich window into family life in nineteenth and twentieth-century New Jersey.⁵⁹ Why there were almost no cases prior to 1850 is a matter I need to explore and explain. After 1950, there were still a few such cases, but the end of the separate New Jersey Court of Chancery in the late 1940s⁶⁰ offers one fairly arbitrary endpoint to my study.

I am drawn both to the stories in the cases, which are often inexpressibly poignant (incorporating children who in many cases have sacrificed much of their adult individual lives to some difficult parental type, occasional complicated frauds, and endless family conflict, complete with the contending stories that make up family quarrels) and to the legal discourse, which touches on a wide range of themes in private law—e.g., contract law, property law, inheritance, and civil procedure (particularly the boundaries between law and equity).

Throughout the rest of this talk I want to draw one stream or rivulet out of the flood of legal issues that framed the familial struggles as a way to situate cases like *Van Duyne* in their time, which for me was a long transitional period—a period following a market revolution of the early nineteenth-century, but preceding the world we live in today—one marked by social security, pensions, formal adoption laws, and a discomfort with the notion that inheritance should serve as a form of familial power.

The case of *Van Duyne v. Vreeland* came twice to Chancellor Williamson of the New Jersey Court of Chancery, once on a demurrer,⁶¹ and then again after trial.⁶² Each time Williamson held that an injustice had been done to John Henry Van Duyne. And after trial he ruled that there had been actual fraud in the conduct of Vreeland and the Brickells. In his final ruling, he followed the petition of John Henry's attorney and ordered a form of specific performance that made the Brickells into the constructive trustees of the property for Van Duyne until Vreeland's death, at which point they would be obligated to convey the property to Van Duyne.⁶³

In both opinions Williamson moved from a detailed and moralistic discussion of how John Henry's life had been altered irrevocably as a result of Vreeland's actions to a slightly more technical discussion of two issues that were relatively easy questions in this case, but that would consume the attention of judges in other cases: First, whether there was a contract, (in *Van Duyne*, Vreeland had effectively conceded that point) and, second, whether there had been such part performance by John Henry as to take the oral contract out of the Statute of Frauds. (In this case, which was of course in part a third-party beneficiary contract case, there was full performance by John Henry's parents in giving him up to Vreeland, and further, Williamson found there was abundant evidence that John Henry had "performed" as

59. Except for a few early cases, I have limited my readings of "records and briefs" to those cases that were appealed to the Court of Errors and Appeals, because printed copies of most of those can be found at the New Jersey State Library in Trenton. The "records and briefs" of the Court of Chancery, in manuscript up through the end of the nineteenth-century, are located at the New Jersey State Archives in Trenton. I am very grateful to the archivists and librarians at both institutions.

60. ROBERT F. WILLIAMS, *THE NEW JERSEY STATE CONSTITUTION: A REFERENCE GUIDE* 132 (1990).

61. *Van Dyne v. Vreeland*, 11 N.J. Eq. 370 (N.J. Ch. 1857).

62. *Van Duyne*, 12 N.J. Eq. at 142.

63. *Id.* at 157-60; *Van Dyne*, 11 N.J. Eq. at 380.

fully as any ordinary child could have been expected to perform.)⁶⁴ Thus, to repeat, in Williamson's rendition this was an easy case.

By the late nineteenth and early twentieth century, chancellors and judges dealt with such cases using a predictable form, one shaped I think by John Norton Pomeroy's late nineteenth-century treatise on specific performance of contracts⁶⁵ and by a number of treatises on the Statute of Frauds.⁶⁶ In those works the question of the existence of the contract was largely subsumed under the heading of "part performance," which became one of those complicated and protean legal terms that provided explanations both for victory and for defeat. The issue that Williamson made crucial, whether there had been an alteration in the conditions of John Henry's life, would have been seen as no more than evidence as to whether there had been the right degree—quantity and quality—of part performance. If there was such part performance as to take the oral contract out of the Statute of Frauds, then the child might win. Otherwise he or she would definitely lose. I should also add that in a few, particularly southern jurisdictions, "part performance" was explicitly rejected as ever providing reason why the Statute of Frauds should not make void and unenforceable an oral contract to convey lands.⁶⁷

But for Chancellor Williamson, the crucial question was whether a life had been changed fundamentally by a promise of a legacy. As Williamson retold John Henry's story, that question was clearly answered in the affirmative.⁶⁸ But to understand why the answer was yes, why John Henry's life had been changed fundamentally by the promise of a legacy, one needs to be clear how the promise of the inheritance had changed his life. To the chancellor, the point was not that he had been adopted by John and Rachel Vreeland, because an adopted child, even if understood as the equal of a birth child (an assumption that would not have been legally the case until the twentieth century, and one that would certainly not have been the case for an informally-adopted child like John Henry),⁶⁹ was still without any particular

64. *Van Dyne*, 11 N.J. Eq. at 379-80.

65. JOHN NORTON POMEROY, A TREATISE ON THE SPECIFIC PERFORMANCE OF CONTRACTS AS IT IS ENFORCED BY COURTS OF EQUITABLE JURISDICTION IN THE UNITED STATES OF AMERICA (John Norton Pomeroy Jr. & John C. Mann eds., 3d. ed. 1926) (1879).

66. CAUSTEN BROWNE, A TREATISE ON THE CONSTRUCTION OF THE STATUTE OF FRAUDS AS IN FORCE IN ENGLAND AND THE UNITED STATES WITH AN APPENDIX CONTAINING THE ENGLISH AND AMERICAN STATUTES (4th ed. 1880). HENRY REED, A TREATISE ON THE LAW OF THE STATUTE OF FRAUDS, AND OF OTHER LIKE ENACTMENTS IN FORCE IN THE UNITED STATES OF AMERICA, AND IN THE BRITISH EMPIRE (1884); H. Campbell Black, *Reformation in Equity of Contracts Void Under the Statute of Frauds*, 24 U. PA. L. REV. 81 (1885).

67. The decisions of Texas courts offer a few such examples. See, e.g., *Dawson v. Tumlinson*, 242 S.W.2d 191, 192-93 (Tex. 1951); *Upson v. Fitzgerald*, 103 S.W.2d 147, 150-51 (Tex. 1937); *Hooks v. Bridgewater*, 229 S.W. 1114, 1117 (Tex. 1921); *Henderson v. Davis*, 191 S.W. 358, 360 (Tex. Civ. App. 1917); *Altgelt v. Escalero*, 110 S.W. 989, 990-92 (Tex. Civ. App. 1908); *Raycraft v. Johnston*, 93 S.W. 237, 238 (Tex. Civ. App. 1906); *Baker's Ex'rs v. De Freese*, 21 S.W. 963, 964-66 (Tex. Civ. App. 1893). I can only speculate that a legal culture once founded on chattel slavery would find it difficult to allow work to create entitlement (i.e., to recognize legally a labor theory of value).

68. *Van Dyne*, 12 N.J. Eq. at 150-53; *Van Dyne*, 11 N.J. Eq. at 379-80.

69. JOAN H. HOLLINGER, ADOPTION LAW AND PRACTICE §1.03[3] (rev. ed. 2003). There is little historical writing on the practices of informal adoption in nineteenth- and twentieth-century America, although some recent literary representations of orphans and adoptees is helpful. See CLAUDIA NELSON, LITTLE STRANGERS: PORTRAYALS OF ADOPTION

entitlement to an inheritance. A child that stayed home in the hope of an inheritance was merely gambling with his or her parent's freedom to give or not to give. Presence did not create a right. Nor did work on its own. Children who stayed at home did not grow entitled to compensation for their work in their parents' households or farms or businesses. Indeed, a daughter (and perhaps even a son) who stayed home and continued to work past the age of twenty-one was not, according to the ruling case law, even emancipated, in the sense that she or he was owed compensation for wages lost; children were free to come or go; staying created no implication that limited the freedom of a parent to exclude the child. (Indeed, there is a long line of nineteenth-century cases that begin syllogistically from the premise that anyone who does work is entitled to compensation, then move to the minor premise that distinguishes children and other relatives whose work within the household is not entitled to compensation, absent an explicit contract.⁷⁰ Lots of these cases then turn on complicated discussions of what is a "relative"; for example, is a sister who goes to keep house for her brother a relative in the sense that she is that sort of person who is not presumptively entitled to compensation?)⁷¹

And in the particular case of an adopted child, it was always possible to reinterpret the care and education the child had received from a "friendly stranger" (even if the stranger was an aunt or uncle or had become the only parent a child had ever known) as more than equivalent to what the destitute or neglected child would have known, if she or he had not received such a gift.⁷² To require adoptive parents to give a legacy to adoptees, because they had been adopted, would sour the gift relationship on which adoption rested. (And in at least one jurisdiction, Texas [though certainly not New Jersey] courts held that doing so would also violate public policy by creating a monetary incentive to parents to convey away their children to friendly strangers.)⁷³ And by the later years of my study, in the early twentieth century, most of the New Jersey cases I have read concerning informal adoptees denied the promised legacy claimed by the adoptee, on the theory that having been an obedient and dutiful and helpful child in a situation where one was receiving care and education from adoptive parents did not demonstrate "part performance" of the sort that would take the promise out of the Statute of Frauds. To be obedient and dutiful was merely to do as one ought under the circumstances.⁷⁴

AND FOSTER CARE IN AMERICA, 1850-1929 (2003); MARIANNE NOVY, IMAGINING ADOPTION ESSAYS ON LITERATURE AND CULTURE (2001).

70. The decisions of New Jersey courts offer a few such examples. *See, e.g.*, *Sutton v. Huffman*, 32 N.J.L. 58, 64-65 (N.J. 1866); *Brown v. Ramsay*, 29 N.J.L. 117, 120-21 (N.J. 1860); *Ridgway v. English*, 22 N.J.L. 409, 415-17 (N.J. 1850); *Dodson v. Severs*, 38 A. 28, 28-29 (N.J. Ch. 1896); *Prickett v. Prickett's Adm'rs*, 20 N.J. Eq. 478, 479-80 (N.J. Prerog. Ct. 1869).

71. *See Disbrow v. Durand*, 24 A. 545, 546 (N.J. 1892) (holding that the law will not presume a promise on the part of a brother to pay for housekeeping services rendered by his sister).

72. *See Overlander v. Ware*, 166 N.W. 611, 612-13 (Neb. 1918); *Fenlon v. Fenlon*, 145 N.W. 634, 635-37 (Neb. 1914); *Hendershot v. Hendershot*, 37 A.2d 770, 772-73 (N.J. Ch. 1944); *Burdick v. Grimshaw*, 168 A. 186, 188-92 (N.J. Ch. 1933); *Dusenberry v. Ibach's Ex'rs*, 133 A. 186 (N.J. Ch. 1926).

73. *See, e.g.*, *Hooks v. Bridgewater*, 229 S.W. 1114, 1118 (Tex. 1921).

74. *See Hendershot*, 37 A.2d at 772; *Burdick*, 168 A. at 188-92; *Elmer v. Wellbrook*, 158 A. 760 (N.J. Ch. 1932); *Di Girolamo v. Di Matteo*, 156 A. 24 (N.J. Ch. 1931); *Salomonsson v.*

Chancellor Williamson would have disagreed. In his opinion denying the demurrer, he emphasized the "beneficial arrangement" that John Henry's birth father had made for his son in allowing John Henry to be adopted.⁷⁵ Vreeland had made his agreement and now had to live up to it, even if "it deprived [him] of the free disposal of his property."⁷⁶ The agreement with Van Duyne had "provided him with a son, and only obligated him, in the disposal of his property, to make such provision for the child of his adoption as might reasonably be expected from parental obligation and affection."⁷⁷ Williamson continued, "There was nothing unnatural . . . in his assuming such an obligation, and of his making the complainant the object of his affections."⁷⁸

John Henry's lawyer had constructed a compelling trial record that demonstrated how John Vreeland's promised legacy fundamentally changed John Henry's life. John Henry's mother's claim that she would never have given him up without that promise was never challenged. Witness after witness reported on Vreeland's refusal to let John Henry learn a trade, because he was needed at home and because he would never need a trade since he was going to inherit the property. Witness after witness testified that John Henry's birth father had excluded him from his will, because of Vreeland's promise. And witness after witness insisted that John Henry himself had "devoted the prime of his life to the service of . . . Vreeland. He served him twenty-five years, upon the faith of an agreement, made, at the solicitation of the defendant," with his own birth father.⁷⁹ Unlike the imagined adoptee who moved from destitution to luxury, John Henry had spent his life, as one witness put it, "like everybody else I suppose, doing all he could to make a living; he was not in any particular business; he was constable a while; I think it was two years . . . I understood him to say he was carting a short time in New York."⁸⁰ And all the while he also continued to work for John Vreeland.

Attorneys for later complainants took from *Van Duyne v. Vreeland* the lesson that it was important to show what the complainant had given up in accepting or abiding by the oral agreement. Sons who had been offered land by fathers always insisted that they had been about to make an offer to purchase or lease another farm when their father made his promise to give the land to them if they cleared it and stayed.⁸¹ Nephews and nieces who agreed to come live with aged uncles or aunts and take care of them in their old age always described in detail the jobs and the businesses they had given up.⁸² Foregone opportunities were central to a successful trial record. The most cited case decided just before *Van Duyne*, *Johnson v. Hubbell*,⁸³ involved a father whose deceased wife's property was divided, in accordance with then New Jersey law, one-third to their daughter and two-thirds to

Olofsson, 147 A. 116, 117 (N.J. Ch. 1929); *Dusenberry*, 133 A. at 186. Clearly the passage of modern adoption statutes is an important part of the story as well.

75. *Van Dyne v. Vreeland*, 11 N.J. Eq. 370, 380 (N.J. Ch. 1857).

76. *Id.* at 381.

77. *Id.*

78. *Id.* at 380-81.

79. *Id.* at 379-80.

80. Defendants' Evidence at 145, *Van Duyne*.

81. *See, e.g., Vreeland v. Vreeland*, 32 A. 3, 4-5 (N.J. Ch. 1895); *France v. France*, 8 N.J. Eq. 650, 650-53 (N.J. Ch. 1852).

82. *See Van Horn v. Demarest*, 77 A. 354, 358-59 (N.J. 1910), *aff'd*, 77 A. 354 (N.J. 1910); *Burns v. McCormick*, 135 N.E. 273 (N.Y. 1922).

83. 10 N.J. Eq. 332 (N.J. Ch. 1855).

their son. The father disagreed with that unequal division, and he took the son aside and told him that if he did not make a voluntary conveyance of one-sixth of the inheritance, so that his share and his sister's share were equalized, the father would make an unequal division of his estate in favor of his daughter. But if the son did make that adjustment, he would share equally with his sister. The son did as his father asked, but the father later decided to cut him out of his will. (He had gone to California against his father's wishes.)⁸⁴ But the New Jersey Court of Chancery held that the son had acquired a contractual right to an equal share because he had given up a portion of what he had inherited from his mother.⁸⁵

We can all recognize that the language of foregone opportunities would have had an important gendered effect. A son who could participate in the labor and land markets of nineteenth-century America would have an easier time constructing a picture of what he had lost when he agreed to stay than would a daughter who often had nothing to show except, perhaps, an offer of marriage.⁸⁶ (There are actually quite a number of exceptions to this statement, particularly by the end of the nineteenth century. I do find a surprising number of women who could plausibly allege that they had given up jobs or other occupations in going to care for an aged relative.⁸⁷ But as a generalization, it remains the case.) In particular, elder daughters who stayed on to help parents with younger children would not be able to claim that there had been an alteration in their lives. It is important to note the historic significance of an emerging legal culture that understood work as ordinarily occurring away from home.⁸⁸ Williamson's language is language historians identify with the "market revolution," and it is a language too familiar to us today. We take it for granted that our work lives are lived elsewhere, away from home. And it is then inevitably an irrevocable alteration when one returns to work at home, for parents and the family. But once, as historians like James Henretta have reminded us, only two or three generations before *Van Dyne*, to have stayed "home" to live with an increasingly elderly parent remained a predictable expectation for a son's work life.⁸⁹ By the time of *Van Dyne*, however, by the late 1850s, it had become a tacit understanding that real (male) lives and real careers would be altered irrevocably (and perhaps unnaturally), if men had to return home to stay with or care for family members.⁹⁰

The notion of foregone opportunities, of a life away that had been given up, only worked some of the time as a measure of the young person's entitlement. It was too easy. There were too many housekeepers who had given up other jobs to take care of

84. *Id.*; Records and Briefs at 52, *Johnson v. Hubbell*, 10 N.J. Eq. 332 (N.J. 1855).

85. *Id.* at 333-35, 338.

86. See Miller v. Sauerbier, 30 N.J. Eq. 71, 74 (N.J. Ch. 1878); see also *Ridgway v. English*, 22 N.J.L. 409 (N.J. 1850); *Gardner's Adm'r v. Schooley*, 25 N.J. Eq. 150 (N.J. Ch. 1874). *Contra* *Snediker v. Everingham*, 27 N.J.L. 143 (N.J. 1858); *De Camp v. Wilson*, 31 N.J. Eq. 656 (N.J. Prerog. Ct. 1879).

87. See, e.g., *Sears v. Redick*, 211 F. 856, 857 (8th Cir. 1914).

88. See JEANNE BOYDSTON, *HOME AND WORK: HOUSEWORK, WAGES, AND THE IDEOLOGY OF LABOR IN THE EARLY REPUBLIC* (1990); AMY DRU STANLEY, *FROM BONDAGE TO CONTRACT: WAGE LABOR, MARRIAGE, AND THE MARKET IN THE AGE OF SLAVE EMANCIPATION* (1998).

89. James A. Henretta, *Families and Farms: Mentalité in Pre-Industrial America*, 35 WM. & MARY Q. 3 (1978).

90. William A. Sundstrom & Paul A. David, *Old-Age Security Motives, Labor Markets, and Farm Family Fertility in Antebellum America*, 25 EXPLORATIONS ECON. HIST. 164, 176-79 (1988).

elderly gentlemen or who had said no to an opportunity to go work in Montana to stay on in New Jersey, and who had traded weekly wages for an understanding—never clearly enough specified—that they would be given a farm or a house, when their employer died; there were too many young men and women who had given up good jobs to go take care of uncles and aunts on the speculative understanding that they would inherit when they “were done with the land.”⁹¹ The denial of a testator’s freedom, binding him or her, required more. To refuse to honor the claims of other family members, typically siblings, who believed they were entitled to an equal share of the inheritance, because of what the testator had written or because of the rules of intestacy, required more.

That “more,” implicit but not articulated in *Van Duyn*, was the assumption of special, singular, duties and responsibilities and perhaps the assumption of a singular identity that distinguished one from others. These assumptions allowed (or perhaps required) a judge or chancellor to infer that the older person, the testator, must have intended to make a special dispensation, even though there was no actual enforceable written contract. In *Van Duyn*, again, it was easy for Williamson to portray John Vreeland as a childless man who had received from John Henry exactly the individualized care and attention that such a man could have hoped for. John Henry’s lawyer brought in many witnesses to describe the particularities of the farm work he had done and also his care of his adoptive father when Vreeland was ill.⁹² There were other young men who had worked for Vreeland, at least two of whom Vreeland talked to about taking over the farm. But none had done what John Henry had done or had been who John Henry had been.

What were exceptional duties and responsibilities? In *Rhodes v. Rhodes*,⁹³ an early 1846 New York decision Williamson had cited, it was a brother’s willingness to take care of his epileptic brother. Other siblings had refused even to visit because they were so disgusted by and fearful of epileptic seizures. But the one brother had remained, and by his conduct he revealed the plausibility that his brother must have agreed to give him the property when he died.⁹⁴ In another case, the record revealed at length the arduous and disgusting work of a nephew asked to give an enema regularly to his impacted uncle.⁹⁵ In a third case, a young woman took on the task of keeping the books for and later housing a largely illiterate tugboat captain.⁹⁶ He never paid her, but he had often promised a house to her and her family. And when, after death, it turned out that he had all the while owned a house in Newark, the court required his estate to convey it to her. In many cases, on the other hand, singularity was not so different from the acts identified in property lore with (adverse) possession—doing those things that would put someone else on “inquiry notice”—for example, putting one’s name on the barn, paying the taxes, or making

91. See *Cooper v. Colson*, 66 N.J. Eq. 328 (1903); Record and Briefs at 320:6, *Cooper v. Colson*, 66 N.J. Eq. 329 (1903).

92. See *supra* notes 16-27 and accompanying text.

93. 3 Sand. Ch. 279 (N.Y. Ch. 1846).

94. *Id.* at 282.

95. Record at 15-28, *Cullen v. Woolverton*, 47 A. 626 (N.J. 1900).

96. *Winfield v. Bowen*, 65 N.J. Eq. 636, 638-41 (N.J. Ch. 1903).

sure that all the neighbors knew you were the one in effective control of the property.⁹⁷

What were not exceptional duties and responsibilities were the acts of housekeepers and others who did what they did in the way that others similarly situated also did what they did. The leading New Jersey case at the turn of the century, a case that was cited and relied on throughout the twentieth century, *Cooper v. Colson*,⁹⁸ told the story of a woman who had devoted more than thirty years of her life as a housekeeper to an older man who paid her almost nothing (though she kept up a chicken-and-egg operation on his land), but who frequently and in the presence of many others had promised her one of his three farms when he died. When he died without a will, the court held that though she probably could sue for some unpaid wages quantum meruit (though the statute of limitations had probably run on most of her claim), she had no right to a farm. What she had done, while dutiful and valuable, was not distinguishable from what housekeepers ordinarily did. And so she lost. She was not changed unalterably by her employer's promise.⁹⁹ Similarly, in what I regard as the saddest case I have so far come across, *Malone v. Romano*,¹⁰⁰ decided in 1923, an Italian widow with five sons and an infant daughter contracted (sometime around 1909) with a man who was courting her. Her five sons were all in the orphanage, but she evidently still owned some land she had inherited in Italy. If she would sell her Italian holding and invest it in property in Riverside, New Jersey, he would make sure her children would inherit it after she and he died. She agreed. They married. Each of the sons came out of the orphanage as they turned twelve, and was immediately put to work in the local watch factory. There they worked, for sixteen hours a day, turning all their wages over to their stepfather, who took the money while always telling them that it was going into "their" property. With the onset of World War I, four of the boys enlisted, and throughout their years of military service, they gave all their salary to their stepfather, who continued to tell them they were investing in their own property. Their mother died during the 1919 yellow fever epidemic. They went back to work in Riverside after the war, still turning their wages over to their stepfather, until some time in the early 1920s when they discovered that the property was held in his name alone. They sued, but they lost, in part because none of them was present when their mother made the agreement, but also because there was nothing exceptional in a child turning over his wages to his stepfather, who stood *in loco parentis*. That was as it ought to be.¹⁰¹

Adoption, as I have already noted, raised a similar situation. If one put aside the explicit and acknowledged contract between the Van Duynes and the Vreelands at John Henry's birth, *Van Duynes v. Vreeland* might have been a much more difficult case. One could imagine (indeed, I find trial records that give content to that imagining) that the story of John Henry's childhood and young adulthood could easily have been characterized as about a young man taken in by a kindly uncle and aunt, who gave him much that his family of birth could not have. What he had done

97. See, e.g., *Young v. Young*, 51 N.J. Eq. 491, 494-500 (N.J. Ch. 1893); *Young v. Young*, 45 N.J. Eq. 27, 33-41 (N.J. Ch. 1889); Records and Briefs at 11:576, *Young v. Young*, 45 N.J. Eq. 27 (N.J. Ch. 1889).

98. 58 A. 337 (N.J. 1904).

99. *Id.* at 339.

100. 127 A. 91 (N.J. 1923).

101. *Id.* at 92-93. See also Record and Briefs at 18-93, *Malone v. Romano*, 127 A. 91 (N.J. 1923).

for them was what was expected—as much as but no more than what was expected—of a young man in his position. Indeed, as his uncle/father insisted in his response to John Henry's petition, John Henry did not do precisely what was most important in the relationship—that on which any property right was conditioned—that is, care for his elderly uncle in his old age.

Let me offer a brief conclusion. When I first found cases like *Van Duyn v. Vreeland*, I exulted. Call it that peculiar revisionist exultation of a legal historian who has discovered that casebook knowledge is wrong, that what appears doctrinally one way, actually was as likely to go the other way. I could disprove the lessons I had imparted to my law students. Whoopee! Like shooting fish in a barrel.

I now realize that these materials—materials about the intersections between promises and inheritance, about care and employment, about the nature of “family,” and about the nature of a “labor market”—are much more interesting than that, and more difficult. They do complicate and often contradict casebook lore, but they also reveal a fault line in the legal culture of nineteenth- and twentieth-century America around the still-present questions of family obligation and caretaking. So far as I can tell, over the whole period from 1850 to 1950 there was never a single “correct” answer to the doctrinal issues such cases raised. There was, rather, a morass of contending and changing understandings—in the courts and in the culture—around questions of adoption; of inheritance; of the rights of siblings; of when a mere promise became an obligation; of housework; of oral understandings within families; of what we today call “reliance interests”; of the multiple meanings of “part performance”; and of the individual identities of family members and their continuing obligation to care for elderly relatives. Questions—of who should take care of whom; of how elderly people could secure care for themselves; of whether taking care gave one special rights or entitlements; of what constituted “work” deserving of compensation; and of what was just the work of being a family member—float through the cases I have been reading.

Perhaps it had not always been so difficult. It may be, if the historians who have studied the “market revolution” are correct, that families in eighteenth-century America once operated within a coherent understanding of the power of family and of family wealth to secure care for successive generations of elderly.¹⁰² It may be

102. See THE MARKET REVOLUTION IN AMERICA: SOCIAL, POLITICAL, AND RELIGIOUS EXPRESSIONS, 1800-1880 (Melvyn Stokes & Stephen Conway eds., 1996); CHARLES GRIER SELLERS, THE MARKET REVOLUTION: JACKSONIAN AMERICA, 1815-1846, at 8-14 (1991); Henretta, *supra* note 89; Sundstrom & David, *supra* note 90. Recent writing on the long history of “old age” demonstrates that many different cultures have used “retirement contracts.” Though some of this historiography mobilizes these contracts as evidence of an expectation of intergenerational obligation, other writing insists (more convincingly, I think) that such contracts reveal the weakness, or at least the contingency, of the obligations of the young for the old. See PAT THANE, OLD AGE IN ENGLISH HISTORY: PAST EXPERIENCES, PRESENT ISSUES 75 (2000); David Gaunt, *Rural Household Organization and Inheritance in Northern Europe*, in FAMILY HISTORY AT THE CROSSROADS 121-43 (Tamara Hareven & Andrejs Plakans eds., 1987); Jack Goody, *Inheritance, Property and Women: Some Comparative Considerations*, in FAMILY AND INHERITANCE: RURAL SOCIETY IN WESTERN EUROPE, 1200-1800, at 10, 22 (Jack Goody et al. eds., 1976); Michel Oris & Emiko Ochiai, *Family Crisis in the Context of Different Family Systems: Frameworks and Evidence on ‘When Dad Died,’* in WHEN DAD DIED: INDIVIDUALS AND FAMILIES COPING WITH FAMILY STRESS IN PAST SOCIETIES 17, 29-51 (Renzo Derosas & Michel Oris eds., 2002); Richard M. Smith, *The Manorial Court and the Elderly Tenant in Late Medieval England*, in LIFE, DEATH,

that in those days notions of family lineage solved the problems that later came to dominate the case literature. I doubt it, but there is a contrast between more distant and less distant pasts that should be drawn. In the legal and economic world in which John Henry Van Duyne lived, no one expected, as earlier generations had, that it was in the natural order of things that he would remain in the household of his adoptive father. That was something his adoptive father should contract for, if he wanted it to come to pass. And it is important to emphasize the extent to which cases like that of *Van Duyne v. Vreeland* only make sense within a capitalist world in which a labor market outside of the family has come to be understood as the ordinary location for “work,” and in which family work has become problematic.

Eventually I hope that the book that puts together the stories I have collected of all the John Henry Van Duynes and John Vreelands will allow me to use these cases as a way into a difficult and largely lost legal world. I fantasize that someday I will understand something of how work within families was managed in an economy and a legal order that privileged paid labor outside the home (and that sometimes had difficulty recognizing work within the home as work); that I will be able to illuminate the complicated meanings and qualities of family membership throughout nineteenth- and twentieth-century America—of what it meant to be a parent, a child, a cousin, a housekeeper, siblings, an adopted child, or a relation; and that I will, someday, be able to make sense of a variety of contradictory nineteenth- and twentieth-century legal understandings and doctrinal categories—of inheritance, of rules of contract, of fraud, of gifting, of promising, and of entitlement—understandings and categories that today remain mysterious and impenetrable to me.

But for the moment, let me end with a more mundane hope: That I learn to write about private law disputes in a way that takes account of the multiple meanings and concerns that shaped the legal positions that men like John Vreeland and John Henry Van Duyne assumed when they came to court. John Henry had not spent his life working for Vreeland because of a rational calculation that he would inherit if he did. He did so because Vreeland was his father, the important father in his life, and he probably loved him. And his suit was not just to regain an inheritance he had earned. It was also about rejection and loss. Likewise for Vreeland. Of course his sense of himself as a powerful property owner free to choose what to do with his holdings was crucial. His property made it possible for him to adopt a child who should be there to take care of him in his old age; perhaps it got him a second wife. In writing and rewriting his wills, he reminded himself of his freedom to choose and to unchoose. But he was also, as many witness reported, someone who was easily led by others. And the writing and rewriting of wills probably also reveals someone deeply unsure of himself. He wanted an obedient son. Presumably he wanted to

AND THE ELDERLY: HISTORICAL PERSPECTIVES 39, 43-51 (Margaret Pelling & Richard M. Smith eds., 1991); Liam Kennedy, *Farm Succession in Modern Ireland: Elements of a Theory of Inheritance*, 44 *ECON. HIST. REV.* 477 (1991); Beatrice Moring, *Conflict or Cooperation? Old Age and Retirement in the Nordic Past*, 28 *J. FAM. HIST.* 231 (2003). For American examples, see JON GJERDE, *THE MINDS OF THE WEST: ETHNOCULTURAL EVOLUTION IN THE RURAL MIDDLE WEST, 1830-1917*, at 206-08 (1997); GLORIA L. MAIN, *PEOPLES OF A SPACIOUS LAND: FAMILIES AND CULTURES IN COLONIAL NEW ENGLAND* 225 (2001); Jack Resch, *Poverty, Patriarchy, and Old Age: The Households of American Revolutionary War Veterans, 1820-1830*, in *POWER AND POVERTY: OLD AGE IN THE PRE-INDUSTRIAL PAST* 31, 37-46 (Susannah R. Ottaway et al. eds., 2002).

make his new wife happy. He wanted to take care of her, and he wanted to use his holdings to secure care for both her and for himself (and also for his aged "colored" servants). And probably he wanted to do right by his son. But how to do all that proved elusive. And in the end, after the case, he would end up without the love and care of his adopted son.¹⁰³

I wonder what his second wife did after the suit. I wonder what his last years were like. We could fantasize that after all the litigation was finished John Henry and John Vreeland reconciled—that John Henry took care of his "father" in his father's last years. But nothing in the individualistic legal culture of mid-nineteenth-century America could make that happen. If it did, it happened because life is more complicated than anything the law can construct.

103. The court ordered the property to be transferred to John Henry on Vreeland's death. The Brickells were to remain on the farm and care for the Vreelands until John Vreeland died. John Henry was then to compensate them for expenses that ran above profits taken in during their tenancy. *Van Duyne*, 12 N.J. Eq. at 159.