

## Maintenance Agreements for the Elderly: Canada, 1900-1951

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Résumé de l'article

Les pensions alimentaires et les donations entre vifs ont longtemps assuré une certaine sécurité économique aux personnes âgées; plus généralement, ces pratiques garantissaient la viabilité de l'économie familiale. Le Canada du tournant de la fin du XIX<sup>e</sup> siècle et de la première moitié du XX<sup>e</sup> siècle a vu se développer plusieurs variations sur ce modèle traditionnel. Avec l'expansion des possibilités de travail salarié, la dépendance des jeunes adultes vis-à-vis du patrimoine familial diminue et la nature de la propriété familiale s'en trouve souvent modifiée. En effet, la réduction de cette dépendance entraîne à son tour une diminution de l'obligation qu'avaient les parents âgés d'utiliser leur patrimoine pour assurer la continuité de la famille d'une génération à l'autre, en permettant à certains d'entre-eux de disperser leur bien voire même de l'aliéner. Ainsi dégagé de son rôle traditionnel de maintien d'un mode de vie et d'une culture familiale dans son entier, l'usage du patrimoine put être dirigé vers le simple entretien de ses propriétaires. C'est ainsi que les personnes âgées transformèrent une coutume séculaire pour rencontrer leurs besoins dans un contexte de changements socio-économiques fondamentaux.

# Maintenance Agreements for the Elderly: Canada, 1900-1951

JAMES G. SNELL

## Résumé

*Maintenance agreements were a traditional mechanism by which the elderly gained economic security for themselves and ensured the continuing viability of the family economy. Over the later decades of the nineteenth century and the first half of the twentieth century in Canada, variations to this traditional process developed. The wage-labour opportunities available to young adults altered their dependence on family property, that itself was often changing in character. Reduced dependence lowered the elderly parents' obligation to use the property to sustain the family over succeeding generations, even allowing the elderly to disperse or alienate the property. New forms of property could also be employed to somewhat altered purposes — the property no longer had to sustain an entire family culture and way of life, but simply to maintain its owners. Thus, an age-old custom was adapted by the elderly to meet their needs in circumstances of fundamental economic and social change.*

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Property and property rights are a powerful factor in old age. The elderly have long employed control over property to structure the character of their social and physical environment, giving those with property or property rights significant leverage over their social and economic condition. The best known historical process by which the elderly employed property is the inheritance strategy, a form of intergenerational transfer of wealth that has generated a very large literature in the history of the family. The subject involves such critical issues as family culture, family structure, the family economy, and the character and quality of intrafamilial relationships, since patterns of inheritance reflected families' beliefs and behaviour regarding such crucial issues.<sup>1</sup> For inheritance strategies to work to the best interests of the elderly themselves the benefits of the strategy chosen must be seen during their lifetime.

In some families, and some family cultures, the promise of inheritance has certainly been enough to induce the sort of behaviour from potential heirs that the elderly were seeking — retention of control over the property throughout the remainder of their lifetime gave them very real power over potential heirs. In their final years, the elderly in some societies have tended to use their property, particularly real property, to gain the work and support of the heir in exchange for inheritance of the property at the death of the owner. Historians have noted a variation on this strategy in some cultures — the maintenance agreement — in which the elderly would assign title to the property during their lifetime in exchange for a promise of lifetime maintenance (using the economic potential of the property to meet this promise). The elderly, usually farmers, bargained with their home, farm land, crops, implements and livestock: property would be turned over to a son, who had built up a claim on the property by working the land alongside his parents; but in exchange for the property, the son acquired a continuing obligation to support his parents. In essence, the elderly here used the earning power of the property for ongoing support, while setting up an adult child in a career and family context.

Such processes had deep historical roots in the culture of the family. Mediaeval peasants used their land rights as a potential reward in bargaining for support, usually from an adult son or son-in-law. Studies of the practice in England show that these agreements were made by both elderly women and elderly men, usually at the point at which they were persuaded that some form of stepping down from productive work was appropriate. Since some agreements involved devolution of only part of the elderly person's holding, and others infrequently involved the contribution of some labour by the elderly person, it is obvious that additional factors could also determine the timing of the agreement — marriage of the heir, partial 'retirement,' and physical inability to maintain the entire holding, to name a few. There are also occasional examples of agreements being made with non-kin. These involved securing shelter, food, clothing and fuel for the elderly and were always for the lifetime of the elderly person(s) involved.

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1. J. Goody, "Introduction," in J. Goody, et al. eds., *Family and Inheritance: Rural Society in Western Europe, 1200-1800* (Cambridge, 1976). Intergenerational transmission of property occurred throughout the family life-course, including such obvious mechanisms as dowry and marriage settlements, but this paper will restrict its discussion of those processes directly connected with the elderly.

Where the community and the local lord considered that elderly persons could no longer support themselves and maintain the land in production, a maintenance agreement could be imposed on them. All of the property transfers involved in such agreements were conditional on the terms of support being met.<sup>2</sup>

Use of maintenance agreements continued throughout the early modern period, and there are several eighteenth-century examples of the custom. In one region of France almost half of the marriages examined in one study involved a decision by the parents to share their property with the marrying heir (almost always the son), expanding the household to include the extended family. The practice was much more likely to occur within families where the father was still alive and where there was greater wealth.<sup>3</sup> Better known is the evidence uncovered by Lutz Berkner and others for rural Austria and sections of Germany. There too maintenance agreements were linked directly to marriage of the heir (usually a son or son-in-law, though non-kin were at times involved). A contract (not necessarily written) was negotiated turning over title to the property to the succeeding son in exchange for a promise of maintenance of the elderly parents until their death; the support requirements were always detailed, including the terms of shelter, food, grazing for an animal, services, and either cash or credit which the elderly then used in the local money market to gain income. An entrenched custom since the early middle ages, by the nineteenth century maintenance agreements in Austria tended to become more common as peasants gained greater control over their land and as the size of rural households shrank, leaving more room for retiring elderly.<sup>4</sup>

There are also nineteenth- and twentieth-century examples of the custom, during which period the use of maintenance agreements may have increased.<sup>5</sup> In rural Ireland at least until the 1930s maintenance agreements were an essential part of the process of

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2. G. C. Homans, *English Villagers of the Thirteenth Century* (New York, 1960 [1941]), 144-159; B. Hanawalt, *The Ties That Bind: Peasant Families in Medieval England* (New York, 1986), 229-232; E. Clark, "Some Aspects of Social Security in Medieval England," *Journal of Family History*, 7 (1982): 307-320; R. M. Smith, ed., *Land, Kinship and Life-Cycle* (Cambridge, 1984), 102, 176-177, 204, 218, 255, 289.
  3. A. Collomp, "Famille nucléaire et famille élargie en Haute Provence au XVIIe siècle," *Annales e.s.c.*, 27 (1972): 969-976.
  4. L. Berkner, "The Stem Family and the Developmental Cycle of the Peasant Household: an Eighteenth-Century Austrian Example," *American Historical Review*, 77 (1972): 398-418; T. Held, "Rural Retirement Arrangements in Seventeenth- to Nineteenth-Century Austria: a Cross-Community Analysis," *Journal of Family History*, 7 (1982): 227-254; Berkner, "Inheritance, land tenure and peasant family structure: a German regional comparison," in J. Goody, et al. eds., *Family and Inheritance*, 71-95. See also, for example, P. Greven, *Four Generations: Population, Land, and Family in Andover, Massachusetts* (Ithaca, 1970), 72-99, 125-172; D. H. Fischer, *Growing Old in America* (New York, 1977), 52-58; H. S. Barron, *Those Who Stayed Behind: Rural Society in Nineteenth-Century New England* (Cambridge, 1984), 93-97; A. Plakans, "Stepping Down in Former Times: A Comparative Assessment of 'Retirement' in Traditional Europe," in D. I. Kertzer and K. W. Schaie, eds., *Age Structuring in Comparative Perspective* (Hillsdale, NJ, 1989), 175-195; D. Gaunt, "Rural Household Organization and Inheritance in Northern Europe," *Journal of Family History*, 12 (1987): 121-141.

family reproduction. When the elderly parents decided that the time was ripe for them to retire (and this was a matter of balancing their needs against those of the chosen heir), a marriage settlement was made in which the chosen heir (usually male) married and took over the family farm through a formal agreement. The elderly transferred title and control in exchange for a commitment of maintenance (the details of which were always spelled out and which customarily included use of the best room in the house); they also received the dowry brought by the new daughter-in-law, and out of this dowry provided benefits for their other children. By the twentieth century the agreement, which in early times had tended to be informal, had become a contract drawn up by someone with legal expertise.<sup>6</sup>

Maintenance agreements seem also to have been an important custom in rural Quebec during the late nineteenth and early twentieth century. Here they tended to be associated with the marriage of the male heir, but formal transfer of the land awaited the death of the father. Still, it was central to the continuing power of the elderly parents that they used ownership of the land and residence to extract deference and obedience from their son and daughter-in-law — a process which, as Michel Verdon makes clear, was fraught with intergenerational tension and conflict, contributed to by the elderly's unwillingness to relinquish control and by the absence of any written agreements binding both parties to particular behaviour and/or results. Though the son and daughter-in-law shared in the economic benefits to be derived from the elderly's property and ensured the continuing economic viability of the family economy to the particular benefit of the elderly parents, actual transfer of the property occurred through formal inheritance at death.<sup>7</sup>

Similarly, farming families in rural western North America used maintenance agreements regularly in the nineteenth and early twentieth centuries. A study of land transfers in a Nebraska neighbourhood between 1879 and 1937 found that as many as 36 per cent of all transfers had occurred prior to the death of the owner, using maintenance agreements to support the owners. A similar study of farm transfers in Iowa for the years 1895-1945 found that, while 17.9 per cent of all transfers had occurred prior

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5. A. B. Sorenson, "Old Age, Retirement, and Inheritance," in Kertzer and Schaie, eds., *Age Structuring*, 210-211. cf. D. Gaunt, "The property and kin relationships of retired farmers in northern and central Europe," in R. Wall, J. Robin, and P. Laslett, eds., *Family forms in historic Europe* (Cambridge, 1983), 270-286.
  6. C. M. Arensberg and S. T. Kimball, *Family and Community in Ireland* (Cambridge, Mass., 1940), 124-131, 142-143; C. M. Arensberg, *The Irish Countryman* (Gloucester, Mass., 1937), 75-79, 85-87; E. Layton, *The One Blood: Kinship and Class in an Irish Village* (St. John's, 1975), 76.
  7. M. Verdon, "The Quebec Stem Family Revisited," in K. Ishwaran, ed., *Canadian Families: Ethnic Variations* (Toronto, 1980), 105-124; H. M. Miner, *St. Denis: French-Canadian Parish* (Chicago, 1939), 212-214. For discussion of maintenance agreements in Quebec in earlier periods, see for example, A. Greer, *Peasant, Lord, and Merchant: Rural Society in Three Quebec Parishes 1740-1840* (Toronto, 1985), 22-23, 34-36, 69, 76-81, 196, 222-224, 230; W. S. Reid, "An Early French-Canadian Pension Agreement," *Canadian Historical Review*, 27 (1946): 291-294.

to the death of the owner, there were considerable differences among various ethnic groups. Such transfers, which occurred at a mean age of 65, were much more likely to result in retention of the farm within the family in the following years.<sup>8</sup> Some of the literature, however, reports that in many jurisdictions where maintenance contracts were traditional they fell into disrepute in the twentieth century as the two generations involved were often unable to abide by their contractual obligations.<sup>9</sup>

There is general agreement about some of the characteristics of these processes. They are invariably associated in the western world with rural, pre-industrial societies; the custom had its origins in the pre-capitalist world, though its adaptability is suggested by its continuing presence within capitalist economies. Stepping down from productive work is an essential element in the custom, as the elderly parents tried to gain financial security for their old age while ensuring the continuing economic viability of the succeeding generations. The agreements tend strongly to be associated with the stem family structure, with lineal inheritance strategies, and usually with impartible or occasionally (to employ David Gagan's term) 'partially impartible' inheritance.<sup>10</sup> Logically, to maintain the property's economic productivity during their lifetime, the elderly would have sought to keep the property together. At the same time, many family cultures emphasized the pre-eminence of the family as a whole. In Cicely Howell's words, "the most fundamental of these principles [regarding inheritance] was that family land belonged to the whole family; every member had a claim to support from it, generation after generation."<sup>11</sup>

For the elderly to protect themselves in a time of declining vigour and productive capacity, such competing values and needs involved some calculated 'trade-offs'. To bring a male heir within their household and to allow him to establish his own family of procreation within the now-extended family held the possibility of considerable friction and conflict. To persuade an adult son to retain his place within the family economy or to rejoin that family economy, it was necessary to offer advantages that were significant or substantial enough to outweigh economic opportunities elsewhere.<sup>12</sup> Once the

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8. R. Diller, *Farm Ownership, Tenancy, and Land Use in a Nebraska Community* (Chicago, 1941), 134, cited in M. Friedberger, *Farm Families & Change in Twentieth-Century America* (Lexington, 1988), 75; Friedberger, *Farm Families & Change*, 74-87; Friedberger, "The Family Farm and the Inheritance Process: Evidence from the Corn Belt, 1870-1950," *Agricultural History*, 57 (1983): 1-13; S. Kohl and J. W. Bennett, "Kinship, Succession, and the Migration of Young People in a Canadian Agricultural Community," *International Journal of Comparative Sociology*, 6 (1965): 106-107.
  9. Friedberger, *Farm Families & Change*, 74-75.
  10. See, for example, Plakans, "Stepping Down in Former Times;" Berkner, "The Stem Family and the Developmental Cycle of the Peasant Household," 400-401; C. Howell, "Peasant inheritance customs in the Midlands, 1280-1700," in Goody, *Family and Inheritance*, 112-155; D. Gagan, *Hopeful Travellers: Families, Land and Social Change in Mid-Victorian Peel County, Canada West* (Toronto, 1981); Sorenson, "Old Age, Retirement, and Inheritance," 209-211.
  11. Howell, "Peasant inheritance customs in the Midlands," 113. See also Sorenson, "Old Age, Retirement, and Inheritance," 200-207.
  12. Smith, *Land, Kinship and Life-Cycle*, 307-308; W. P. Ward, "Family Papers and the New Social History," *Archivaria*, 14 (1982): 64-66.

commitment to an adult son had been made, some form of joint title to the property existed, at least informally. If the adult son was hostage to the future inheritance, the elderly were equally hostage to their son's and his wife's labour (and probably increasingly dependent upon it). The maintenance agreement, as one form of this process, offered some potential advantages. It placed the understanding between the two generations on a firmer footing, reducing the vulnerability of both sides, at least in some respects. For the elderly there was greater assurance that the son would stay around, since he already had at least partial title to the property and thus formal headship over the family economy. As one Nova Scotia justice explained in 1911:

The person who remains by the father or the mother cannot always depend on a will. Sometimes they [the elderly] marry again; sometimes they quarrel after a long period of service. They [the elderly] have not facilities for selling a farm, and purchasing an annuity and living at home, and the farm is very often not sufficient to buy very much of an annuity, and at the end there is no farm for the descendant. So that is what the old people often do.<sup>13</sup>

Potential conflicts should have been reduced, since the expectations of both parties tended to be made more explicit. On the other hand, timing became more critical because there was more precision about relationships and ownership of property involved. To reach an agreement too soon meant that the elderly were giving up power and control that they were not yet ready to concede; too late and the adult children had already committed themselves to other economic opportunities.

Variations to this traditional process developed over the later decades of the nineteenth century and the first half of the twentieth century in Canada. In an increasingly urbanized and commercialized society, the wage-labour opportunities available to young adults altered their dependence on family property. This decreased dependence both reduced the leverage of the elderly through their property and increased their flexibility in determining how the property could be used for their support, since the next generation's claims to the property were moderated by the economic opportunities available elsewhere. Reduced dependence lowered the obligation to use the property to sustain the family over succeeding generations, even allowing the elderly to disperse or alienate the property. Moreover, new forms of property could also be employed. Rather than simply agricultural land, whose productive capacity could be shaped to the support of a larger household or of two separate households, urban land and property as well as movable assets, such as investments, could now be brought within the compass of such processes — the property had no longer to sustain an entire family culture and way of life, but simply to maintain its owners. At the same time, the kinds of property controlled by many elderly slowly altered, centring increasingly on housing stock and less on directly productive assets, and this change likely reduced the flexibility in some options available to them. Nevertheless, an age-old custom was adapted by the elderly to meet their needs in circumstances of fundamental economic and social change.

Using information gained from public records in the first half of the twentieth century Canada — Old Age Pension (OAP) records, welfare files, the papers of old age

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13. *Madden v McNeil et al* (1911), 45 Nova Scotia Reports 407 at 433 (C.A.).

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homes, law reports — I have examined the ways in which the elderly employed maintenance agreements. In such records, maintenance agreements are revealed only in relation to other processes. No systematic analysis of the incidence or internal character of such agreements was thus possible. The quality of the information prohibits any attempt to analyze several factors of likely significance, such as social class, ethnicity and regionalism. Since the OAP program was instituted in Canada in the 1930s,<sup>14</sup> much of the information used here was generated at a time of extensive economic distress, perhaps exacerbating clashes among parents, children and state pension bureaucracies regarding maintenance agreements.

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Who used maintenance agreements? Gender shaped the use of this device in quite particular ways. Both men and women, as well as couples, employed maintenance agreements, but men's disproportionate control over property suggests that they wielded much greater influence in the structuring of the agreement. The agreements were signed with both sons and daughters, though in the latter instance sons-in-law tended also to be parties to the agreement. The age at which the elderly signed agreements varied, starting usually no earlier than when the elderly were in their mid-60s and continuing even as late as their early 80s. It is likely that age or sex (or some combination of the two) affected the strength of the elderly's negotiating position with their children both at the time of the initial agreement and in enforcing it thereafter, but the data uncovered permit no firm conclusions in this regard. Not surprisingly, those elderly with a strong commitment to the family farm culture (or, more broadly, to a family economy culture that was common within primary production) — and to the obligations arising out of that — were highly represented, not so much because primary producers necessarily had a stronger sense of familial obligations than did others, but rather because of the nature of property employed in primary production. Urban elderly frequently sought to repay their adult children who had helped (through income contributions as young adults) to acquire the home and property used by the elderly; but the urban elderly were usually able to take full advantage of the economic capacity of their real property, so that repayment could be deferred until inheritance through wills.

A farm or a fishing boat, on the other hand, required extensive labour to extract its productive worth, and at some stage many elderly were no longer able to provide the requisite labour, leading them to bring in someone else to exploit the income potential of the property from which all could benefit. Many farming elderly would likely have invested a very high proportion of their savings in their farm, leaving them fewer adaptive strategies for stepping down. Recent literature argues that the late nineteenth and twentieth century elderly had considerable capacity for savings accumulation. Savings could be in the form of financial assets (cash or pensions, which were open to relatively few prior to 1945), real assets (homes, for example), or human capital (such as children's education). Those whose actual savings behaviour had not reflected this theoretical capacity were more likely to find themselves in a position where their limited assets

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14. For a summary of the establishment of the OAP program in Canada, see K. Bryden, *Old Age Pensions and Policy-Making in Canada* (Montreal, 1974), 45-101.



would have to be shared with others in order to provide the elderly with greater access to the economic potential of their resources.<sup>15</sup> Despite this increasing capacity for savings and thus the ownership of property, the ability to use some form of maintenance agreement continued to be shaped by the class membership of the individual elderly.

The most common forms of maintenance agreements in Canada in the first half of the twentieth century occurred in the primary extraction occupations, fishing and farming, that relied heavily on family labour. Families dependent on fishing followed practices similar to farm families. A 68 year-old fisherman on the northern peninsula of Newfoundland turned over his house in 1940 to one married son and divided his fishing boat and gear among all four married sons. He explained to state officials, "When I was unable to carry on and use it [my property] I gave it all over to my sons. In return they have been helping me as far as they could according to their earnings from same." The old man and his wife continued to live in the home with their son.<sup>16</sup> Family farms had long relied on the labour of both adults and children, and the adult children had eventually been recompensed for their labour through inheritance of the farm or acquisition of additional farm land or the provision of funds for an independent start in life.<sup>17</sup> Such transfers of assets were fundamental to the culture of family farming and were used in every agricultural district in Canada in the early twentieth century; the family farm was a family, rather than an individual, asset. "Nothing can be more common among such people in this province," commented a Nova Scotia jurist in 1911, "than taking an instrument of maintenance and conveying one's property to that purpose."<sup>18</sup>

Some provincial officials understood this and considered transfers of farms to children who had assisted on the farm for a period of years did not disqualify the parents from receiving an OAP. But it was difficult to persuade bureaucrats that such transfers were not simply a way of qualifying for the means-tested OAP, since that was so clearly

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15. B. Gratton and F. M. Rotondo, "Industrialization, the Family Economy, and the Economic Status of the American Elderly," *Social Science History*, 15 (1991): 337-362; Gratton and Rotondo, "The 'Family Fund': Strategies for Security in Old Age in the Industrial Era," in M. Szinovacz, D. J. Ekerdt, and B. H. Vinick, eds., *Families and Retirement* (Newbury Park, CA, 1992), 51-63; M. R. Haines, "The Life Cycle, Savings, and Demographic Adaptation: Some Historical Evidence for the United States and Europe," in A. S. Rossi, ed., *Gender and the Life Course* (New York, 1985), 43-63; Haines, "Industrial Work and the Family Life Cycle, 1889-1890," *Research in Economic History*, 4 (1979): 289-356.
  16. Newfoundland and Labrador Provincial Archives, GN37/1, Box 7, File #9322.
  17. J. A. Henretta, "Families and Farms: *Mentalité* in Pre-industrial America," *William and Mary Quarterly*, 35 (1978): 3-32; Gagan, *Hopeful Travellers*.
  18. *Madden v McNeil et al* (1911), 45 Nova Scotia Reports 407 at 432 (C.A.). On inheritance practices in Nova Scotia, see F. K. Siddiq, "Nineteenth-Century Wealth Transfers in Nova Scotia: the Administration of Probate," *Nova Scotia Historical Review*, 9 (1989): 35-48; P. Wagg, "The Bias of Probate: Using Deeds to Transfer Estates in Nineteenth-Century Nova Scotia," *ibid.*, 10 (1990): 74-87; F. Siddiq and J. Gwynn, "The Importance of Probate in Estimating the Distribution of Wealth," *ibid.*, 11 (1991): 103-117. In this exchange, only Wagg, 80-83, is sensitive to the phenomenon of maintenance agreements.

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one of their results.<sup>19</sup> One rural official in Ontario was asked to estimate how many prospective old age pensioners lived in his district, but he found distinguishing potential pensioners at odds with the family farming culture:

you are aware that it will be very hard to discriminate and doubtless some who I think should be supported by their families especially the son who has now the old farm and paying a rent of less than \$365. a year therefore. I might say also that in the very nature of things the Proposed Pension scheme will discriminate against the farmer as in order for a farmer to keep any of his sons on the land it is necessary for him to save a sufficient amount to give his sons a start on a farm which requires to be a considerable amount then in his old age the sons make him an annual payment as rental while he lives.<sup>20</sup>

New governmental processes, often designed or administered by urban-based reformers and bureaucrats, were difficult to mesh with traditional practices.

For their part the elderly readily adapted the custom of maintenance agreements to the new circumstances of state support for the elderly. Timing of the transfer of the property was now affected by an additional factor — the age of eligibility for the OAP. An account of property transfer to the next generation in 1930s Ireland emphasized this adaptability.

The introduction of the old-age pension has facilitated this transfer. Originally designed for the support of the aged in an industrial population in England, it has speedily woven itself into the fabric of Irish rural life. Nowadays, the farmer can turn over his land at the age of seventy. In doing so, he divests himself of his property which stands in the way of his receiving the pension. One countryman . . . sang the praises of the pension in no uncertain terms. His words show clearly that, even with this new source of income at his disposal, the old, abdicating farm father forms part of the family economic unit. "To have old people in the house," he said, "is a great blessing in these times, because if you have one it means ten bob a week and if you have two it means a pound a week coming into the house."<sup>21</sup>

What was true for Ireland was equally true for Canada, though state officials did what they could to frustrate such blatant attempts to manipulate the elderly's property so as to qualify for the means-tested OAP.<sup>22</sup>

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19. Canada, National Archives (NA), RG29, Vol. 142, File #208-5-8 part 2, W. C. Ronnon to V. W. Wright, Ottawa, 14 July 1938; Wright to Ronnon, Edmonton, 19 August 1938; Vol. 154, File #208-7-3 part 3, 1946 Proceedings of the Interprovincial Advisory Board, 383-384.

20. Ontario Archives (AO), RG8, Series II-10-F, Box 12, File Arthur Twp. (Wellington), A. Hellyer to J. A. Ellis, Kenilworth, Ont., 10 July 1928.

21. Arensberg, *The Irish Countryman*, 86-87. Gaunt, "Property and kin relationships," 273-275, argues that maintenance agreements were essentially pre-capitalist and did not mesh well with a cash-based society, but evidence in Ireland, Canada and elsewhere suggests that the elderly and their families effectively adapted the mechanism to changing circumstances.

22. An analysis of a random sample of 379 OAP applications in Lambton county, Ontario found that 91.2 per cent of the applicants admitted no property transfer in the past five years, but the process was biased in favour of underreporting. Of the 33 applicants reporting such trans-

Most property-based maintenance agreements followed a standard pattern. The farm land, livestock and equipment, and the farm house were turned over to an adult son in exchange for several considerations, all of which involved the maintenance of the elderly parent(s) and owner of the property. Prairie families often used crop-sharing arrangements, the son agreeing to turn over one-third to one-quarter of each year's crop, producing a regular annual income for the elderly. Some elderly remained in a portion of the farm house, requiring the son to provide room and board for them.<sup>23</sup> Others preferred to move to the local town or village. According to some accounts, elderly widows were particularly likely to turn their farm over to an unmarried son, while the widows stayed on to keep house.<sup>24</sup>

Such agreements were often registered with the land title when the property was transferred.<sup>25</sup> A Quebec couple offers a good example of such agreements. In 1929 the elderly couple had transferred their property (valued at \$3,000-\$5,000) to their son, who in turn agreed to assume all of his father's debts (\$3,200). In addition, the couple had a lifetime right to continue living on the property, during which time the son would provide them with lodging, clothing, food, medical care, and a decent burial. In the fashion of partially impartable inheritance processes, the son also promised to provide similar support for his only sister.<sup>26</sup>

An eastern Ontario example suggests another variation on the standard practice. A farming couple, aged 78 and 74, owned a farm in Leeds county in 1930, valued at \$1,200 but encumbered with a \$400 mortgage. According to a local official, the couple were "about at the end of their rope, both financially and with regard to ability to work," the husband had a serious physical disability, and they lived with their married daughter. Their son-in-law offered to take over their property, including the mortgage, paying the couple \$100 a year for six years and, in lieu of interest, they would retain the use of two

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fers, four were to married daughters, six to married sons, two to unmarried sons, two to nephews, two to other relatives, and seventeen to non-relatives. The results were similar for a random sample of 413 OAP applicants in London, Ontario, where 91.3 admitted no property transfer. Of the 36 applicants reporting 38 transfers, two were to married daughters, seven were to unmarried daughters, two to married sons, two to unmarried sons, one to a brother, one to another relative, twenty-two to non-relatives, and one to an institution.

23. See, for example: NA, RG29, Vol. 138, File #208-5-6 part 1, E. R. Swettenham to J. W. MacFarlane, [n.p.], 30 August 1939, case #22050.
24. NA, RG29, Vol. 137, File #208-5-5 part 1, E. A. Thomas, Memo to the Minister, Ottawa, 4 April 1930.
25. University of Western Ontario, Regional History Collection (UWO), London Welfare Records, Box B408, E. V. Berry to Mr Raycroft, London, 9 December 1942. This offers an obvious avenue for systematic analysis of the agreements, but there may be several weaknesses with such a research base. So many of the agreements were informal that only families with certain characteristics or sharing one understanding of the family culture may have followed the formal practice of rendering to agreement in legal terms and registering it with the state. Also, it is possible that registration of the agreements was part of a regional or urban family culture, since no references to registration were found outside urban southern Ontario.
26. NA, RG29, Vol. 128, File #208-2-3 part 2, V. D. McElary to J. W. MacFarlane, Quebec, 3 March 1939. A second son also continued to live with his parents on the property ten years later.

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rooms in the farmhouse. The common character of such an arrangement is suggested by the fact that the official saw nothing unusual or remarkable about the proposed arrangement.<sup>27</sup> Similar agreements had been fundamental to the family culture of rural society and its economy for many generations, employing the productive capacity of the property to serve the various members of the family in different but vital ways.

Such transfers and maintenance agreements were not uncommon in urban settings as well. John McAlton<sup>28</sup> of London, Ontario, a widower, transferred his two residential properties in the city to his adopted son on the understanding that his son would thereafter care for him. Soon after moving in with his son, the elderly McAlton became dissatisfied and left, moving in with a nephew. The courts rejected an attempt to recover the properties from his son, although the elderly McAlton was awarded a life interest in them. The son, meanwhile, continued to be willing to take in his father and objected (because of the impact on the son's reputation) to the granting of an old age pension, but the elderly McAlton insisted on his relative independence and refused to return to his son.<sup>29</sup>

A more traditional agreement, though reversing the usual sex-based pattern, occurred in another London family. A male old age pensioner remarried late in life and transferred ownership of his house to his new wife into which she put some of her own funds. When she died two years later, she willed the home to her daughter on condition that the daughter provide a home for the old man. The pensioner, however, felt that his room and board were properly coming to him in return for the property, because instead of helping his step-daughter with his OAP cheque he preferred to give his grandson assistance.<sup>30</sup> In the early 1940s a widow, born in 1874, rented three rooms at the back of her London home at a reduced rate in return for her tenants' promise "to look after and board" her. The agreement remained in operation until she became an invalid and was moved into a private hospital, when the agreement was of no further assistance.<sup>31</sup> This urban character of some maintenance agreements is the first indication of the changing use of this custom by the modern elderly.

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27. AO, RG8, Series II-10-F, Box 7, File Leeds and Grenville, W. Jelly to J. A. Ellis, Brockville, Ont., 4 January 1930.

28. Access to several of the archival collections was granted on condition that the identities of private individuals be concealed; I have extended this privacy to include all individual elderly acting in a private capacity in all research collections used. Thus, for example, any elderly writing privately on their own behalf to any state or charitable official has had their identity concealed; but any elderly acting publically on their own behalf or on behalf of the elderly as a group has not been given anonymity. Where it was desirable for stylistic reasons to provide a name for an individual, I assigned a pseudonym which retained some sense of the ethnic character of the original name.

29. UWO, London OAP Committee Record Books 1933, 221. See also, for example: UWO, London Welfare Records, Box B408, E. V. Berry to H. E. Copeland, London, 26 April 1949, where the maintenance agreement was with a "nephew-in-law."

30. UWO, London Welfare Records, Box B419, "OAP Applications E." Relief Officer to S. Baker, London, 21 October 1933.

31. UWO, London Welfare Records, Box B408, E. V. Berry to R. H. Cooper, London, 25 June 1948.

At times the elderly, against their own best interests, altered these maintenance agreements so much that they were no longer recognizable as mechanisms for their support, and in these cases state officials could and did step in to redress the balance. In 1938, for example, Francois Lebrun of Cookshire, Quebec had transferred his property (valued at \$3,500) to one of his sons, providing that the son meet certain obligations to Lebrun's other sons and daughters. Struck by the fact that there was no provision for the support of Lebrun himself, the Quebec OAP board decided that the property transfer had been carried out in order to qualify for a pension and that the adult children could be expected to contribute \$240 annually to their father's upkeep. A monthly OAP of \$10.41 was awarded (well below the maximum \$20) though the chair of the board protested that this was too generous.<sup>32</sup> In a Saskatchewan case an elderly farmer had turned over to his son a half section of land valued at over \$7,000, along with livestock and a full line of machinery. In return the son, who had worked on the farm all his life, promised to pay his father \$200 annually for the rest of the father's life. The father was receiving only a small return on the property's total value, and he tried to supplement this income with an old age pension. But it is impossible to say to what extent the father was influenced by a desire to take advantage of state support systems or by a desire to repay his son for years of work.<sup>33</sup> What is clear, however, is that the availability of the OAP was reshaping, often quite fundamentally, the timing and the ways in which families distributed property and responsibilities among members.<sup>34</sup>

At other times the maintenance agreements and transfers took less explicit forms, as with much of family transactions, resting on a basis of unspoken, but mutual understanding and tradition — that is, on a culture of the family. A London widow, for example, who had lived with her married daughter and son-in-law for fifteen years by 1936 (and had been receiving the OAP since 1930) had made an \$800 loan (representing approximately 80 per cent of her total property) to her son-in-law who was trying to keep a small business afloat. Her son-in-law had never paid any interest on the loan and she had never paid for her room and board.<sup>35</sup> There was a *quid pro quo* operating here, though there was no evidence of any written agreement or explicit understanding.

In another case, when Nettie O'Toole was widowed in 1923, she had four daughters, three married and one unmarried. At that time it was agreed among Mrs O'Toole and all the daughters that the unmarried daughter, then aged 28, would look after her mother in return for eventually receiving her mother's estate, the other daughters all

32. NA, RG29, Vol. 128, File #208-2-3 part 2, V. D. McElary to "Ernie," Quebec, 1 February 1939.

33. Saskatchewan Archives (SA), T. C. Douglas Papers, R33.1, XVII, 636 (17-5K), D. E. Chalmers to E. Loehr, Regina, 2 January 1948.

34. Since the records relied upon here are all generated by state and quasi-state agencies, it is possible that they exaggerate the state's role in altering family relationships. For a recent discussion of some of the ways in which the changing role and character of the state were influencing Canadians both directly and indirectly, see A. Greer and I. Radforth, eds., *Colonial Leviathan: State Formation in Mid-Nineteenth Century Canada* (Toronto, 1992).

35. UWO, London Welfare Records, Box B419, "OAP Applications A," Administrator to K. G. Crawford, London, 4 November 1936.

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informally agreeing to surrender their claims to a share in it. In 1935 Mrs O'Toole applied for an OAP, but she asked that her application be rejected if the board expected to claim against the estate. The property was willed to her unmarried daughter and she had earned it: "Applicant feels that the daughter has put more into the home than she could get out of it, and being 40 years old she must look forward for herself."<sup>36</sup> Such unwritten agreements indicate the strength of traditional values.

These maintenance agreements were not always successful, however, and when they failed the elderly could be badly hurt. One London man, for example, transferred three King Street properties (assessed at \$9,000) to a local homeopathic physician in return for maintenance, clothing, and \$60 cash annually. The properties were already heavily mortgaged, and both the mortgage and the taxes were in arrears. When, then, the new owner contracted for improvements on one of the homes and subsequently ran into severe financial difficulties, the contractor placed a mechanic's lien on the property, the mortgagor began action to sell the property because the mortgage payments were not being made, and the city claimed \$1,000 in tax arrears. The properties were lost, and the physician failed to meet her commitments to maintenance. The original owner — now a potential old age pensioner — was left with no property and absolutely no support.<sup>37</sup> In another case a London widow transferred her farm to her son, who was to pay her \$2,000 for it; the son did not pay her since he could not operate the farm at a profit and instead transferred the farm to his brother, who also had not paid his mother anything.<sup>38</sup>

In an Alberta case an elderly woman had signed an agreement with her son and daughter that the son would manage his mother's land and business in return for which the son would maintain his mother. She moved into a cabin on the land and subsequently transferred the property outright to her son on condition that he carry out certain undertakings. The son later sold the property and moved to Edmonton, offering his mother a room in his house there. The mother went to court to try to protect her interests, demanding an accounting of her son's handling of her property and claiming she had to be maintained in her cabin, rather than be forced to move. The court did not support her in her claims, however, underlining the mother's vulnerability. Neither the court, nor her son, nor her other children were disposed to use her property in the ways she expected, and she was without substantial leverage to enforce her desires.<sup>39</sup>

Similarly, in 1925 in northern Ontario an elderly couple entered into a maintenance agreement with an apparently unrelated married woman whom they had raised from childhood. The couple turned over assets valued at \$7,625 (an \$8,500 farm, mortgaged for \$3,000, \$1,500 in chattels, and \$625 in cash) in return for a promise of lifetime support and payment of burial expenses for both. Unfortunately, after making the agreement conflict arose and the couple left, claiming that they had been "illused." Four

36. UWO, London Welfare Records, Box B419, "OAP Applications O," 3 April 1935.

37. UWO, London Welfare Records, Box B419, "OAP Applications E," Administrator to K. G. Crawford, London, 9 November 1936.

38. UWO, London Welfare Records, Box B419, "OAP Applications R," 2 November 1937. See also, *ibid.*, Box B408, E. V. Berry to H. E. Copeland, London, 26 April 1949.

39. *Mitchell v Mitchell*, [1946] 3 Western Weekly Reports 670 (Alta.S.C.).

years later the couple had no assets, the husband was incapacitated with cataracts, and they were forced to beg to a hostile local board for an old age pension.<sup>40</sup>

The vulnerability of the elderly in maintenance agreements is clearly exposed in these examples. They could not only lose their property but also become ineligible for an OAP. Where a maintenance agreement had been reached between an elderly person and someone else, usually a relative, pension boards could and did insist that the elderly person was already guaranteed support and additional help from the state was unnecessary. Maintenance agreements could leave the potential pensioner ineligible for a pension, even when circumstances changed within the elderly person's family to the extent that the family members were sometimes unable to meet their obligations under the agreement.

The most striking case of this vulnerability, while at the same time emphasizing the economic calculations entailed in maintenance agreements, comes from the Peterborough area. There David Scollie, an unmarried old man from a rural area outside the city, entered into an agreement with Thomas (a plasterer) and Hessie Gray in the late 1880s: Scollie would give his ten acres and house to Thomas Gray in return for the Grays' agreement "to keep him as long as he lived and bury him when he died." The Grays and their children moved into the house, Scollie retaining use of an upstairs bedroom. But it was not too long before the Grays began to feel that their position of power was not sufficiently reflected in the agreement and that the deal was not as profitable to them as they had expected. "The Grays had been heard to say on several occasions that the old man was living too long to suit them," reported one newspaper. When the old man offered to cancel the agreement and to pay board instead, the Grays demanded \$1,300 (at which Scollie balked) and then, after consulting a lawyer, opted to stand by the original agreement. Shortly thereafter, a heavy flower pot fell out of an upstairs window onto Scollie, inflicting severe injuries; suggestively, neighbours took charge of the old man's recovery, rather than leaving him to be cared for by the Grays. On the other side there were suggestions that Scollie was difficult to get along with, being described by Thomas Gray as a "d\_\_\_\_\_d old brute." On the night of 23 February 1894, when Thomas Gray had wisely absented himself from the district, Hessie Gray allegedly set fire to the house, getting all of her four children out of the home but failing to awaken Scollie. Scollie died, and the Grays were charged with arson and murder.<sup>41</sup> But beyond Scollie's vulnerability and the obvious change in relative

40. AO, RG8, Series II-10-F, box 11, file New Liskeard (Timiskaming). R. R. Woods to OAP Commission, New Liskeard, Ont., 21 November 1929; [OAP Commission] to Woods. [Toronto], 25 November 1929.

41. *Orillia Weekly Times*, 25 July 1895, 2; *Peterborough Daily Evening Review*, 23 February 1894, 16 and 17 July, 26 and 27 September 1895; *Peterborough Daily Examiner*, 23 February 1894, 16 and 17 July, 26 and 27 September 1895. Witnesses reported that Hessie Gray had made a number of threats against Scollie's life, and there was some evidence offered that Scollie may already have been killed before the fire started, but the Grays were acquitted. I am grateful to Catharine Wilson for drawing this case to my attention. The most detailed example of the types of conflict sometimes produced by such agreements, both tacit and explicit, and of the power wielded by the various parties can be found in a 1936 Prince Edward Island agreement discussed at length in *McKay v Clow et al.* [1941] Supreme Court Reports 643.

power between the parties once a maintenance agreement had been entered into, this case also points to what seems to be a continuing characteristic in the history of such agreements — their extension to include parties other than kin or fictive kin.

At least by the late nineteenth and early twentieth centuries the traditional elements and understandings implicit in these customary processes in Canada had weakened. Some elderly, for example, no longer signed formal agreements, even when non-kin were the recipients of the property,<sup>42</sup> though formal agreements were common.<sup>43</sup> The elements of support and maintenance were no longer necessarily understood or accepted by the parties without explicit articulation, and the courts tended to insist on quite detailed listing of the benefits being exchanged.<sup>44</sup> Informal community enforcement of such agreements tended to be replaced by a formal reliance on the state and its courts.<sup>45</sup> As familial and community understanding of maintenance agreements weakened, some elderly found it advantageous to turn to a more impersonal (but perhaps more secure) state for support.

By the early twentieth century property continued to serve the needs of the elderly in traditional ways, but new mechanisms had also been added in meeting the same ends. Demographic change and a shift in the predominant character of property holdings dictated some of the impulse to alter these traditional processes. The declining fertility rate and the compacting spacing between births could result in a lack of ‘fit’ in timing between the parents’ willingness to turn over primary control of the property and a son’s readiness to take over, particularly when adult sons were aware of the opportunities for social and economic independence in rapidly growing urban communities. Adult children increasingly had viable opportunities elsewhere and were no longer as dependent on their parents. As wealth was increasingly held in forms other than productive realty, new approaches to maintenance in old age and inheritance evolved. Most notably, there developed a separation between family culture and the ownership of any particular form

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42. See, for example, *Smith v Alexander* (1908), 12 Ontario Weekly Reports 1144 (trial); *Madden v McNeil et al* (1910), 8 Eastern Law Reporter 480 (N.S.S.C.); *Hrynyk v Hrynyk*, [1932] 1 Western Weekly Reports 82 (Man.C.A.); *Donnelly v Jesseau*, *Donnelly v Morrissey* (1936), 11 Maritime Provinces Reports 1 (N.B.S.C.).

43. See, for example, *Parker v Parker* (1910), 8 Eastern Law Reporter 438 (N.S.S.C.); *Weir v Weir*, [1920] 1 Western Weekly Reports 785 (B.C.S.C.); *Mitchell v Cook* (1923), 25 Ontario Weekly Notes 25; *McKay v Clow et al*, [1941] Supreme Court Reports 643.

44. See, for example, *Smith v Alexander* (1908), 12 Ontario Weekly Reports 1144 (trial); *Madden v McNeil et al* (1910), 8 Eastern Law Reporter 480 (N.S.S.C.); *Weir v Weir*, [1920] 1 Western Weekly Reports 785 (B.C.S.C.); *Comeau v Leblanc*, [1923] 2 Dominion Law Reports 1076 (N.S.S.C.); *McKay v Clow et al*, [1941] Supreme Court Reports 643.

45. See, for example, *Smith v Alexander* (1908), 12 Ontario Weekly Reports 1144 (trial); *Madden v McNeil et al* (1910), 8 Eastern Law Reporter 480 (N.S.S.C.); *Parker v Parker* (1910), 8 Eastern Law Reporter 438 (N.S.S.C.); *McKay v Clow et al*, [1941] Supreme Court Reports 643 (where an informal community legal specialist failed to include the specific terms requested by the old man making the agreement); *Paroschy v Balan*, [1947] Ontario Weekly Notes 778 (H.C.J.); *Letcher v Clarke* (1947), 21 Maritime Provinces Reports 270 (N.S.C.A.); *O’Neill v O’Neill*, [1952] Ontario Reports 741 (H.C.J.).



of property.<sup>46</sup> In the past, in the absence of available relatives, the elderly had turned to other individuals who might accept the old person's property in exchange for a promise of support. Some of these alternatives continued to be used, as with the elderly New Brunswick widow who in 1939 transferred her property to her parish priest on the understanding that she could continue to live there and that he would supply fuel and pay for taxes and any repairs.<sup>47</sup> But others adopted more innovative alternatives.

The most striking of these new mechanisms was evident in the actions of those elderly who turned over their assets to state authorities in exchange for a promise of lifetime support. Where parents lacked adult children willing to take over the family property and with it responsibility for supporting them, they looked elsewhere. For example, in 1903 a 73 year-old labourer tried to make his application to the provincial Old Men's Home in Kamloops, British Columbia more attractive by offering to turn over all his assets — \$200 in cash. A second applicant in 1905 "was possessed of considerable property, but as he had no one to take care of him, made arrangements with the Government to do so at the 'Home' and in payment turned over to the Government 160 acres of land" near New Westminster. Usually the property, often of little or no market value, consisted of real estate, the most likely form of savings for the elderly.<sup>48</sup>

Similar examples were found in the east over the following three decades. A 79 year-old "respectable and deserving" widow, described by one official as "a good old soul," turned over \$200 in cash and assigned all her assets (there were no others at the time) to the city of London in return for admission to the privately operated McCormick Home as a city charge.<sup>49</sup> In April 1932 the city entered into an agreement with Mr and Mrs Len Golden (ages 64 and 59 respectively): the couple turned over their house and land, assessed at \$1,500, in return for "the usual terms" — lifetime support at \$30 monthly (less any funds received through the OAP), continued use of the house (on which the city would pay the property taxes), two tons of fuel annually, and reasonable funeral expenses.<sup>50</sup> In 1936 the same city entered into a less generous agreement with a spinster who exchanged properties valued at \$1,700 for full support in the McCormick Home for the Aged for at least two years and for as long thereafter until the funds realized from the properties had been expended. Ten years later the city conducted an accounting

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46. C. Shammas et al, *Inheritance in America from Colonial Times to the Present* (New Brunswick, NJ, 1987), 103-122.

47. NA, RG29, Vol. 128, File #208-2-3 part 2, V. D. McElary to J. W. MacFarlane, Fredericton, N.B., 11 February 1941.

48. British Columbia Archives and Records Service (BCARS), GR624, Box 2, File 4, application of 11 June 1903; *ibid.*, File 5, E. M. Carncross to J. A. Anderson, Cloverdale, B.C., 1 February 1908. See also, for example, *ibid.*, File 5, J. Baird to Deputy Provincial Secretary, Cumberland, B.C., 7 April 1904; File 6, A. McInnes to A. C. Riddle, New Denver, B.C., 6 October 1905.

49. UWO, London Welfare Records, Box B411, File 1912-29 A-D, E. Davis to City Council, London, 12 April 1917; J. W. McCallum to Mayor, London, 21 April 1917.

50. UWO, London Welfare Records, Box B408, E. V. Berry to City Administration Board, London, 24 March 1944.

of the agreement through which the woman continued to be supported, finding that the city had spent \$3,254 (including property taxes) and had received \$1,750.50 (from rental and sale) and still held one vacant property valued at \$550.<sup>51</sup> In 1939, another spinster was admitted as an invalid to the Parkwood Hospital in London, without funds to pay for her support. Earlier she had turned over two local residential properties to her brother and her nephew in exchange for lifetime support, but the city now wrote the two men asking that they either pay for the woman's maintenance in hospital or return the properties so that the woman could reconvey them to the city. Her relatives chose the latter course.<sup>52</sup> In the fall of 1941 London city council adopted a resolution discontinuing the practice of accepting property from individuals in exchange for maintenance, which suggests that such agreements were relatively frequent. Henceforth, the city resolved to force the elderly to manage their own property and assets to generate sufficient funds for support. Nevertheless, when individual elderly were too incapacitated to do so, the city continued to accept their property in exchange for support. Beginning in 1941, John Bolton resided in local institutions for three years at city expense, in return for which the old age pensioner assigned to the city most of his monthly pension cheque and all claims to any real or personal property. Thus, when his brother died in England, John's \$296.10 from the estate went to the city, and another such sum was expected shortly. But the city interpreted its mandate for maintenance broadly, granting him \$25 for clothing in 1944 when his landlady suggested that new clothes were badly needed.<sup>53</sup> In 1930 an eastern Ontario couple, a 64 year-old sister and her 62 year-old brother who was no longer able to work, offered to sell their 180 acre farm to the government on condition that the government allow the couple to continue to live there during their lifetime. Why this would have been a profitable transaction from the point of view of the purchaser is unclear, suggesting that the state had acquired a distinctly expanded role in the eyes of the couple.<sup>54</sup>

The essence of the ownership of property was that it gave the elderly some individual leverage, power to influence their own circumstances. Aware of this, some elderly were loathe to relinquish their property in the clear understanding that they might well be relinquishing the only substantial lever they had in bargaining for their own security. John McIntyre, for example, had already been a resident at the Kingston Home for Aged, Friendless and Infirm Persons when his case received some public attention in 1922. John had inherited title to a Kingston house and lot assessed at \$500, and by

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51. UWO, London Welfare Records, Box B408, E. V. Berry to N. Toll, London, 8 October 1946. See also, for example, Box B411, File 1912-29 A-D, agreement of 11 February 1915.

52. UWO, London Welfare Records, Box B411, File 1929-44 [A-C], F. McKay to individual, London, 25 September 1939; *ibid.*, to Miss Turner, London, 21 August 1940. Her brother, who lived in Toronto, nevertheless maintained his interest in his sister's welfare, extracting a promise that she "would be well taken care of" and later complaining about the quality of her care.

53. UWO, London Welfare Records, Box B408, E. V. Berry to Welfare Board, London, 26 October 1944. See also, for example, *ibid.*, Berry to R. H. Cooper, London, 31 October 1947, 18 August 1948.

54. AO, RG8, Series II-10-F, Box 7, File Brockville (Leeds and Grenville), individual to J. A. Ellis, Brockville, Ont., 6 July 1929.

informal agreement with the Home he received his maintenance and a \$5 monthly allowance in return for the Home receiving the rental income from the property and apparently a verbal promise to transfer the title at some time in the future. City and home officials pushed John to sign the transfer papers, eventually taking him before a county court judge where he again declined to give up title. After two more months of negotiation, a formal agreement was finally reached. John McIntyre's property would bear the costs (\$4 weekly) of his maintenance in the Home, and John himself would receive a monthly allowance of \$4; in return, the city would become responsible for the interest payments on the property's \$180 mortgage, John would make a will assigning title to the city, and the agreement would be registered with the title to the property.<sup>55</sup> Though his potential use of the property had been constrained, John McIntyre had nevertheless gained the best possible deal for himself in the circumstances, thwarting both city and Home officials and retaining title to his primary asset.

Such transactions were condoned by the modern state. For example, in 1912 the Ontario legislature acknowledged the moderate frequency of such property transfers when it authorized county councils to accept property transfer from persons entering local houses of refuge.<sup>56</sup> The state or a quasi-state agency was employed as a substitute for family. The elderly involved took a traditional practice and adapted it to their own circumstances, using state or quasi-state agencies as coping mechanisms in much the same ways that other agencies were used by families in times of crisis.<sup>57</sup> The practice had been basic to municipal welfare processes for a considerable period, and was acknowledged and legitimized in the Ontario Unemployment Relief Act in 1939 as well, remaining on the statute books for the duration of the period under study. One elderly unmarried woman in London, for example, had earlier transferred her property to her sister and nephew in exchange for a promise of lifetime support; when they could no longer care for her and she became a city charge at Parkwood Hospital in 1939, the city officers sought and received conveyance of her properties to the city to offset the costs to the city of her maintenance.<sup>58</sup> What was crucial here was that the initiative for transfer was as often with the elderly as with the local authorities.

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55. Queen's University Archives, #2262, Box 1, File 3, A. H. Muir to Board of Management, Kingston, 19 October 1922; *ibid.*, minutes of Board of Management, Kingston, 27 December 1922; *ibid.*, Secretary to T. J. Rigney, Kingston, 28 December 1922.

56. UWO, London Welfare Records, Box B408, E. V. Berry to R. H. Cooper, London, 18 August, 31 October 1947; Ontario, 2 Geo. V (1912), c.82, s.12 (1); BCARS, GR624, Box 2, File 5, example of Form F; Ontario, 3 Geo. VI (1939), c.47, s.32.

57. See, for example, B. Bradbury, "The Fragmented Family: Family Strategies in the Face of Death, Illness, and Poverty, Montreal, 1860-1885," in J. Parr, ed., *Childhood and Family in Canadian History* (Toronto, 1982), 109-28; S. Houston, "The 'Waifs and Strays' of a Late Victorian City: Juvenile Delinquents in Toronto," in *ibid.*, 135-6.

58. UWO, London Welfare Records, Box B411, File 1912-29 A-D, F. W. McKay to individual, London, 25 September 1939, and file. This substitution of institutional support for family support has led in the United States to the development of the increasingly popular life care contract, a modern term for a maintenance agreement; see Shamma et al, *Inheritance in America*, 158-159.

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Legislators reflected many of these same traditional values and attitudes in the old age pension legislation. In inviting pension applicants to turn over their property to the state<sup>59</sup> and in allowing state OAP authorities to make claims against pensioners' estates, legislators merely reflected a very traditional view of property as a means to acquire maintenance and support. In this new relationship the relative strength of the parties involved had fundamentally changed; the state had at its disposal so much more powerful (much less authoritative) resources that a balance of power was completely lacking and there was no possibility of continuing, overt renegotiation of positions as could occur on an intergenerational basis within families.

Under the 1927-1951 Canadian OAP, the elderly could retain use of their assets for their lifetime, turning over whatever portion was owing to the state only after death. But while the procedure was founded on historic practices and reflected some traditional values, it also violated some fundamental ideas of even longer standing. Property was a family-based asset, owned in some ways by the family rather than just the individual (whatever the law said formally). In this context, the elderly had a strong sense of their own familial status and of their responsibility to other family members, particularly of the next generation, and property transfer was a central mechanism by which that status and responsibility were recognized and reinforced. The move from occasional alienation of property in favour of the state in individual circumstances to a large-scale welfare program in which all participants risked losing all their property to the state threatened significant elements of the predominant family culture. Many elderly were quite prepared to take all possible steps to thwart the loss of property and power to the state while gaining maximum advantage for themselves.

The twentieth-century elderly continued to employ maintenance agreements. The rural elderly did so, imbued with a traditional family culture that sought to support the elderly parents while sustaining the economic viability of the family over succeeding generations. But so too did the urban elderly, who employed traditional maintenance agreements in new ways for old ends. Many of the urban agreements used urban realty, which was usually more limited in potential productive capacity than rural land, to house a stem family following tradition. In the absence of effective family support, others made new forms of maintenance agreements with state or quasi-state institutions. In doing so these elderly pointed the way to contemporary inheritance practices, shifting the emphasis away from the family in order to meet the more immediate needs of the elderly — support during increasingly lengthy retirement.<sup>60</sup>

The sources of such support now spread beyond the family in significant ways. The use of property remained constant, but the concern for family and for the interge-

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59. Of the 792 OAP applications coded for Lambton county and the city of London, just 42 potential Pensioners indicated their willingness to turn over their property to the state in return for an old age pension. No identifiable social characteristics — age, sex, marital status, number of living children — distinguished these applicants from all the other applicants. However, 74 per cent of these applicants submitted their applications in the first five years of the program's existence; after the fall of 1934 very few applicants volunteered to surrender their property to the old age pension board.

60. Shammas et al, *Inheritance in America*, 147-206.

nerational transmission of property (at least in its traditional form) weakened. For a small proportion of the elderly property was now divorced from the family culture. In such cases property's function was limited to facilitating stepping down from productive work. In part this reflected the younger generation's greater access to other means of support, most obviously wage labour. The younger generation experienced increased dependency on their parents during childhood and adolescence, but lessened dependence in adulthood. Elderly parents demonstrated their adaptive ability by substituting state or institutional parties when adult children were not available for maintenance agreements. Transfer of substantial economic support between adult generations within families declined in importance, and the family culture altered by placing greater significance on other forms of intrafamilial support.