child inherits from and through adoptive parents[41] and recovers workmen's compensation death benefits from his adoptive parents;[42] but, it is not expressly stated whether he may inherit from his natural parents. This failure to expressly sever the relationship between an adopted child and his natural parent has resulted in an Iowa decision holding that, in the absence of an inheritance statute to the contrary, an adopted child may inherit from his natural parents.[43] More recently the Iowa Supreme Court permitted a stepchild, wholly dependent upon his stepparents, to recover the death benefit upon the death of his natural father.[44] The court noted that while this will result in double dependency in some instances, it is analogous to the situation where an adopted child is granted the right to inherit from both his natural parents and adopted parents.[45] This decision seems to be inconsistent with the purpose of workmen's compensation and confuses the right of inheritance with the support of dependents.

From the above it appears possible that an Iowa court faced with the issue presented in *Patton* would hold similarly, *i.e.* an adopted child could receive benefits upon the death of his natural father. This result, however, is not necessarily desirable nor consistent with the purpose of the Iowa Workmen's Compensation Act. The Georgia court in *New Amsterdam*[46] has faced the issue more realistically in recognizing that payment of death benefits to persons who are neither dependent nor in a family unit is not consistent with the purpose or spirit of the law of workmen's compensation.

DON MUYSKENS

Wrongful Death—Minors—RECOVERY FOR LOSS OF MINOR'S COMPANIONSHIP AND SOCIETY ALLOWED IN WRONGFUL DEATH ACTION BY PARENTS.—*Lockhart v. Besel* (Wash. 1967).

In an action for the wrongful death of a seventeen-year-old child, instigated by his father, the trial court entered judgment for plaintiff in the amount of $4,500, which was the estimated value of the son's lost services to the father. The father appealed, claiming that the trial court erred in not granting an instruction which would permit the jury to evaluate loss of companionship in determining damages. The Washington Supreme Court, in a unanimous decision, *Held,* reversed. Due to economic conditions and changes

41 *Id.* § 633.223 (1966).
42 *Id.* § 85.42(2).
43 Wagner v. Varner, 50 Iowa 532 (1879).
44 Day v. Town Club, 241 Iowa 1264, 45 N.W.2d 222 (1950).
45 *Id.*
46 New Amsterdam Casualty Co. v. Freeland, 216 Ga. 491, 117 S.E.2d 538 (1960), *rev'g* 101 Ga. App. 754, 115 S.E.2d 443 (1960).

in our way of life, the measure of damages under the wrongful death statute should be extended to include loss of companionship of a minor child during his minority without giving any consideration for grief, mental anguish or suffering of parents by reason of such child's wrongful death.[1] *Lockhart v. Besel*, 426 P.2d 605 (Wash. 1967).

At common law there was no cause of action for the wrongful death of a human being.[2] A cause of action did exist and damages could be obtained, if the same wrongful act caused a non-fatal injury.[3] This anomaly of the common law was removed by the passage of Lord Campbell's Act[4] which provided that where a person could have maintained a cause of action for a wrongful act if death had not ensued, the cause of action could be maintained by an executor or administrator, on behalf of certain beneficiaries.[5] Lord Campbell's Act has been adopted in varying forms[6] by most jurisdictions.[7] These statutes, patterned after Lord Campbell's Act, are generally called wrongful death statutes. Such statutes create an entirely new cause of action distinct from and independent of any right of action which decedent might have had during his lifetime or would have had if he had survived the injury.[8] The inquiry is the extent of damages sustained by the beneficiaries as a consequence of the wrongful death, which normally includes such matters as loss of support and services.[9] If decedent's estate brings the action, the damages are found by computing the loss to the estate because of the premature death of decedent.[10] In addition to the wrongful death approach, many states have survival statutes which provide for the survival of any cause of action which the deceased might have maintained had he survived the injury.[11] Under these statutes, generally, the estate recovers for injury to decedent, his bodily integrity and continued existence, but not for his death.[12]

Section 611.20 of the 1966 Iowa Code, contemplates the survival of the decedent's cause of action.[13] But the Iowa court, in interpreting the statute,

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1 Lockhart v. Besel, 426 P.2d 605, 609 (Wash. 1967).
2 C. McCormick, Damages § 93 (1935).
3 *Id.*
4 9 & 10 Vict. c. 93 (1846).
5 22 Am. Jur. 2d *Death* § 2 (1965).
6 C. McCormick, Damages § 95 (1935).
Statutes may provide a cause of action for a named beneficiary. Iowa R. Civ. P. 8 allows a parent to recover damages for the wrongful death of his child. An action may be brought under the survival statute, Iowa Code § 611.20 (1966), which allows a personal representative to recover damages to the estate of one who died as a result of the wrongful act. Some states have survival acts which in theory allow recovery from time of injury until death; however, the more liberal rule permits the life expectancy to govern. The liberal view is followed in the following cases: Kling v. Torello, 87 Conn. 301, 87 A. 987 (1913); Kyes v. Valley Tel. Co., 132 Mich. 281, 93 N.W. 623 (1903); Imbriani v. Anderson, 76 N.H. 491, 84 A. 974 (1912).
7 W. Prosser, Torts § 121 (3d ed. 1964).
8 22 Am. Jur. 2d *Death* § 13 (1965).
9 F. Harper & F. James, Torts § 25.14 (1956).
10 *Id.* § 25.15.
11 *Id.* § 24.2(3).
12 *Id.*
13 "Actions survive. All causes of action shall survive and may be brought notwithstanding the death of the person entitled or liable to the same."

has applied the wrongful death measure of damages by allowing the decedent's estate to recover damages to the extent the premature death diminished the estate.[14]

The wrongful death approach as it pertains to the wrongful death of a minor, generally provides for damages to the parents. The damages are computed by estimating the pecuniary value of the services the child would have provided the parents minus the probable cost of rearing the child.[15] Iowa allows a parent to recover damages for the wrongful death of a child under a Rule of Civil Procedure[16] as opposed to the statutory right in most states.[17] The cause of action created for the parents falls into two categories, with minor variations, from jurisdiction to jurisdiction. The majority view allows the parents to recover for loss of services during minority, plus possible contributions which the child may have made to them after reaching majority, less the expenses of rearing a child until he reaches his majority.[18] A minority of jurisdictions, including Iowa, does not allow damages for the value of contributions the child might have made after reaching majority.[19]

The principal case exemplifies a new development in the problem of trying to establish a satisfactory criterion for evaluating the loss to the parents which was caused by the wrongful death of a minor child. The Washington Supreme Court based its decision upon the holding in *Sweeten v. Pacific Power and Light Co.*,[20] which held that the wrongful death statute implies something more than mere nominal damages to the parents for the wrongful death of their child.[21] The court then pointed out that due to the changes in

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14 Jones, *Civil Liability for Wrongful Death in Iowa*, 11 IOWA L. REV. 28 (1925); Note, *The Measure of Damages for the Wrongful Death of the Head of the Family in Iowa*, 39 IOWA L. REV. 494 (1954).

15 C. MCCORMICK, DAMAGES § 101 (1935); 10 DRAKE L. REV. 74 (1960); Morris v. Chicago, M. & St. P. Ry., 26 F. 22 (C.C.N.D. Iowa 1885); Carnego v. Crescent Coal Co., 164 Iowa 552, 146 N.W. 653 (1894); Benton v. Chicago, R.I. & P. Ry., 55 Iowa 496, 8 N.W. 330 (1881); Hopkinson v. Knapp & Spalding Co., 92 Iowa 328, 60 N.W. 330 (1894); Walters v. Chicago, R.I. & P. Ry., 36 Iowa 458 (1873).

16 IOWA R. CIV. P. 8 provides: "Injury or death of minor. A father or if he be dead, imprisoned or has deserted the family, then the mother, may sue for the expense and actual loss of services resulting from injury to or death of a minor child."

17 F. HARPER & F. JAMES, TORTS § 25.14 (1956).

18 Insperation Consol. Copper Co. v. Bryan, 35 Ariz. 285, 276 P. 846 (1929); Dawkins v. Chavez, 132 Colo. 61, 285 P.2d 821 (1955); Williams v. Hoyt, 117 Me. 61, 102 A. 703 (1917); Gordon v. Lee, 208 Miss. 21, 43 So. 2d 665 (1949); Burus v. Ensinger, 84 Mont. 397, 276 P. 437 (1929); Sutherland v. State, 189 Misc. 953, 68 N.Y.S.2d 553 (1947); Caldwell v. Abernathy, 231 N.C. 692, 58 S.E.2d 763 (1950); Sample v. Campbell, 305 P.2d 1033 (Okla. 1957); Gill v. Laquerre, 51 R.I. 158, 152 A. 795 (1931); McCleod v. Tri-State Milling Co., 71 S.D. 326, 24 N.W.2d 485 (1946); Texas & N.O. Ry. v. Hansen, 271 S.W.2d 309 (Tex. Civ. App. 1954); Butterfield v. Community Lt. & P. Co., 115 Vt. 23, 49 A.2d 415 (1946); C. MCCORMICK, DAMAGES § 101 (1935); 10 DRAKE L. REV. 75 (1960); 18 WASH. & LEE L. REV. 277 (1961).

19 Morris v. Chicago, M. St. P. Ry., 26 F. 22 (C.C.N.D. Iowa 1885); Boyle v. Bornholtz, 224 Iowa 90, 275 N.W. 479 (1937); Carnego v. Crescent Coal Co., 164 Iowa 552, 146 N.W. 653 (1894); Benton v. Chicago, R.I. & P. Ry., 55 Iowa 496, 8 N.W. 330 (1881); Hopkinson v. Knapp & Spalding Co., 92 Iowa 328, 60 N.W. 330 (1894); Walters v. Chicago, R.I. & P. Ry., 36 Iowa 458 (1873); Siebeking v. Ford, 148 N.E.2d 194 (Ind. 1958); McFetridge v. Kurn, 125 S.W.2d 912 (Mo. App. 1939); Lane v. Hatfield, 173 Ore. 79, 143 P.2d 230 (1943); Frantz v. Gower, 119 Pa. Super. 156, 180 A. 716 (1935); IOWA R. CIV. P. 8.

20 88 Wash. 679, 153 P. 1054 (1915).

21 *Id.* at 683, 153 P. at 1055. "In the nature of the case direct evidence of specific pecuniary loss would be impracticable, not to say impossible. To hold that without such

economic conditions and our way of life, the proposition that the loss of services of a minor child has a pecuniary value, over and above his cost of support and maintenance, is a pure fiction and "an affront to reason and logic."[22] McCormick, in his work on damages,[23] cites a 1930 survey which estimated the cost of raising a child to the age of eighteen to be $7,425.[24] In 1949, the estimated cost of raising a child to the age of eighteen was $16,337 for a family with a yearly income of between $5,000 and $10,000; and in 1959, the equivalent of the amount was estimated to be $34,483.[25] These figures, adjusted to consider today's inflation, lend support to the proposition that today's child is an economic liability rather than an asset.[26] In *Wycko v. Gnodtke*,[27] the Michigan court relegated the "loss of services minus expenses" doctrine to the following era: "[A]mple work could be found for the agile bodies and nimble fingers of small children. . . . [E]mployment of children of tender years was the accepted practice and their pecuniary contributions to the family [were] both substantial and provable."[28]

The "loss of services minus expenses" measure of damages has been criticized because in many instances it has been ignored by the jury, and substantial verdicts have been sustained.[29] "[I]t is very evident that the jury [has] taken the bull by the horns, and in reality have compensated for prohibited sentimental aspects of the family relation, with the court benevolently winking at a flagrant violation of the rule it has laid down."[30] This tendency was noted by the Washington court in the principal case when the court cited *Skeels v. Davidson*,[31] where damages of $1,000, exclusive of funeral expenses, were awarded to the parents for the wrongful death of a six-year-old retarded child, even though it was shown that the parents had incurred substantial expenses for his care and maintenance. The Washington court concluded that the *Skeels* case established the right of a parent to recover damages for the wrongful death "of a child who would always have been a hopeless and expensive burden"[32] and this recovery "could be justified only on the basis of loss of companionship . . . ."[33]

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direct evidence no recovery beyond nominal damages could be had, would render nugatory the statute permitting a recovery for wrongful death . . . as applied to the loss of a child of tender years."

22 Lockhart v. Besel, 426 P.2d 605, 609 (Wash. 1967).

23 C. McCormick, Damages § 101 (1935).

24 *Id.*

25 W. Prosser, Torts § 121 (3d ed. 1964).

26 *Id.* "[A]s any parent is well aware, any realistic view of the prospects must mean that the cost of rearing the child will far exceed any conceivable pecuniary benefits that might ever be optimistically expected of him; and damages honestly calculated on this basis could never be anything but a minus quantity." (Footnote omitted.)

27 361 Mich. 331, 105 N.W.2d 118 (1960).

28 *Id.* at 335-36, 105 N.W.2d at 120-21.

29 Menneti v. Evans Const. Co., 259 F.2d 367 (3d Cir. 1958) ($45,385 for 7 yr. old); National Homeopathic Hospital v. Hord, 204 F.2d 397 (D.C. Cir. 1953) ($17,000 for infant); Daggett v. Atchison, T. & S.F. Ry. Co., 48 Cal. 2d 655, 313 P.2d 557 (1957) ($50,000 for two children aged 5 yrs. and 10 months); Reed v. Eubanks, 232 Miss. 27, 98 So. 2d 132 (1957) ($40,000 for 8 yr. old).

30 W. Prosser, Torts § 121 (3d ed. 1964) (footnote omitted).

31 18 Wash. 2d 358, 139 P.2d 301 (1943).

32 Lockhart v. Besel, 426 P.2d 605, 608 (Wash. 1967).

33 *Id.*

In the event of the wrongful death of a three-year-old child in Iowa today, his father could recover damages under Rule of Civil Procedure, No. 8, for the loss of the child's services minus expenses for the eighteen-year period until the child would have reached twenty-one. Under Iowa Code section 611.20, the child's estate would be entitled to the present value of what the child might have been expected to accumulate *after age twenty-one,* had he lived his natural life.

As the principal case points out, the "loss of services less expenses" measure of damages is antiquated and not applicable to the present day attitudes and concepts of the child's role in the family.[34] As a result, there is little or no compensation to the parents for the loss of an eighteen-year period of the child's expected life; moreover, it would be during this period that the child would probably have made his greatest contribution in the form of companionship, society, and all the other innumerable benefits parents derive from rearing their children.

If Iowa were to adopt the "loss of companionship" measure of damages, the unfairness of the above situation would be relieved. A change in the Iowa law could be accomplished by either judicial interpretation or legislation. The courts, if they desire, could interpret the language of the present court rule[35] so as to include companionship as something in the nature of a service provided by a child to his parents. If the court fails to take the initiative, the legislature could give the parent the statutory right to recover damages for the loss of their child, based upon the reasonable value of the child's companionship and society. Such a change is needed to modernize Iowa's nineteenth century legal concept of a child's relationship to his family and to give juries a more realistic approach in evaluating the loss to a parent due to the wrongful death of his child.

JOHN C. WELLMAN

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34 *Id.*
35 IOWA R. CIV. P. 8.