

21. See Titiev, *supra* note 15; Eggan, *supra* note 15; Levy, *supra* note 15; see Whiteley, *supra* note 13, for good reviews of these contradictions.
22. Titiev, *supra* note 15, at 46.
23. Eggan, *supra* note 15, at 110.
24. *Id.* at 109.
25. Whiteley, *supra* note 13, at 94.
26. Geertz, *supra* note 13; Whiteley, *supra* note 13; see also Paul V. Kroskrity, *Language, History, and Identity: Ethnolinguistic Studies of the Arizona Tewa* (Tucson: University of Arizona Press, 1993), Whiteley, *supra* note 11.
27. Whiteley, *supra* note 13, at 92.
28. *Id.* at 90.
29. *Id.* at 92.
30. *Id.*
31. *Id.* at 94.
32. Levy, *supra* note 15, at 48.
33. Emory Sekaquaptewa, personal conversation, University of Arizona, August 17, 1998.
34. Peter Whiteley, "Unpacking Hopi 'Clans,' II: Further Questions about Hopi Descent Groups," *Journal of Anthropological Research* 42 (1986): 69–79, 71.
35. Elizabeth Mertz, "Recontextualization as Socialization: Text and Pragmatics in the Law School Classroom," *Natural Histories of Discourse*, ed. Michael Silverstein and Greg Urban (Chicago: University of Chicago Press, 1996).
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## Inheritance Law, Heritage, Heredity: European Perspectives

Sigrid Weigel\*

*Abstract.* This article explores relationships between property inheritance laws and customs and political and scientific developments, both modern and premodern. The cultural idea of "generation" is traced from late eighteenth-century aspects through twentieth-century modifications. The piece concludes by underlining the importance of humanities insights on inheritance.

*Keywords:* heritage, culture, generation

In premodern and so-called traditional societies, the elders could (and can) act on the assumption that they leave to their descendants material possessions in exchange for the guarantee that their descendants will remember them. This exchange of memory for goods between the living and the dead is referred to by German historians as the *Jenseitsökonomie* (the "afterlife economy"). As a sign of today's "society of inheritance," and of increasing life expectancy, this exchange has morphed into a different sort of transaction between various groups of living people; it has shifted into an exchange between young adults and older adults, and sometimes those very advanced in age: it means care for the elderly in prospective exchange for inheritance.

Many institutions of the European social system derive from a sort of balanced reproduction cycle based on the two-generation model, in which parents give by investing in the upbringing of their children, and take by having society care for them in their old age. But this type of intergenerational contract is put out of balance when today's sociological theory—because of advances in medicine and healthcare—must account for four ranks of ages:

children, young adults, older adults, and the elderly. The complex problem of mediating these groups' interests has become more difficult in the past few decades, because the intended balance between generations has to be set for a future that is more difficult to calculate.

The term *inheritance* pertains not only to private or familial wealth, the bequest, or the estate. It also pertains to those means and abilities—economic and cultural, intellectual and biological—that will be shared by societies or cultures—and still more, by all of humankind. Inheritance, then, means to share and distribute, which means—and this is the “scandal” of inheritance—that its particular economics of exchange do not necessarily function according to laws of market equivalence. Against this stands the fact that inheritance laws interact across time and that the means of inheriting depend on historical events and biological circumstances. In this sense, inheritance constantly pertains to *non-concurrent*—and also unequal and unjust—forms and means of transfer. One less pleasing realization signaled by the notion of inheritance is that it encompasses guilt and debts.

Though today most people think of money and property when they hear the term “inheritance,” Heinrich Heine in the mid-nineteenth century described history as the continual reworking of a generational inheritance:

Of the generations that follow one another, a solidarity reigns; the people who enter the arena, one after another, take over this solidarity, and in the end all of mankind liquidates the great bequest of the past. In the valley of Josaphat the great register of debts will be destroyed, or maybe before then through universal bankruptcy. (Heinrich Heine, *Memoiren*)

Today it is largely forgotten that inheritance also means incurrence of obligations. In response to these obligations, some legal scholars propose reassessing the idea and term of inheritance *rights*, in order to take account of sociocultural changes. For the way in which the nonconcurrent and unequal exchange of inheritance is regulated is part of human beings' own created culture. Thus, for instance, British rights of inheritance, which accord the deceased extensive freedom to direct dispersal of their wealth by Last Will and Testament, contradict the prevailing sense of justice in France and Germany. And this sense of justice itself was shaped by the civil right of inheritance, as it was formulated and cemented in the course of the last two centuries. The French and German sense of inheritance binds itself to familial genealogy. Thus the transfer of family property is organized, both in the *Code Civil* and in *Das*

*Bürgerliche Gesetzbuch*, according to an order of biological reproduction, which favors direct progeny in the transfer of possessions and secures for them legally mandated minimum portions. Never before, and nowhere else, are biological/genetic generational links so tightly connected with the transfer of property. Because of this tradition, when inheritance is discussed, most French and Germans think today of familial succession.

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A look back to *before* this narrow modern concept of heritage (which links property inheritance to biological heritage) is appropriate. Some modern crises are put in perspective by comparison with historical differences. For example, the so-called patchwork family was, in earlier times, more the rule than the exception, simply because of multiple marriages—due to shorter life spans and high maternal mortality rates. Thus it was more “relatedness” than family that determined proceedings of inheritance—“relatedness” including many relationships that were not blood relations, such as godparenthood, adoption, fraternity, and other forms of “spiritual relationships.” And where the relatedness was not able to assure appropriate, sufficient concern and care, remembrance and preservation, transfer and dissemination, then executor responsibilities were undertaken. One might say that a historically and culturally comparative examination of inheritance promises thoroughly premodern suggestions for postmodern problems.

The equation of inheritance and familial genealogy represents the foundation of modern social policy: the family as agency of transformation, and as medium of biological reproduction and economic inheritance, backed by regulations of the state. Many phenomena motivating contemporary discourses of crisis are distortions resulting from this conception of inheritance. When one looks to history, the so-called normal family has in fact had a relatively short career as norm and measure of intergenerational contract and the laws of inheritance. This “normal” family was previously the exception and not the rule. Usually societies found practical ways to regulate child care and accommodate the elderly. In premodern and traditional societies, inheritance and relationships between generations were aligned less according to ideas of justice than by reference to need and necessity.

The idea of inheritance in which blood relations, bequeathal, and the transfer of wealth are all connected, and uniform laws of inheritance are presumed,

actually emanates from far-reaching scientific and political upheavals of about two hundred years ago. At that time, the developing science of biology began to research biological laws of heredity, while the bourgeois nuclear family was becoming the model of social order and the agency of transmission. After that, many social practices were based on and managed through a framework of two generations: the *older* and the *younger* generation.

This same historical moment was the hour of birth for “youth” (meaning young adults) and its rights as progeny, i.e., as heirs. In contrast to rights of inheritance in the *ancien régime*, it is stated in the *Declaration of the Rights of Man* (1793) that no generation has the right “to subject future generations to its law.” The production of the future, the right of youth, and inheritance defined as acquisition of property by biological successors: all were part of the same concept—the modern notion of bequests, in which history is understood as links between (older and younger) generations and a people is understood as a (biological) population.

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Historical upheavals often show themselves through the surfacing of new concepts and imagery. This can be clarified through the term *the future generation*. Around the year 1800, as this term strengthened the rights of progeny at the expense of their progenitors, a new temporalization of history appeared. With this, the nineteenth century learned to think of history as development and progress “from generation to generation.” In the twentieth century, that idea was replaced by a new generational consciousness that asserted itself; groups began to identify themselves as collectives stamped by a shared dramatic experience: thus the generation of the First World War, the generation of Hitler Youth, the Vietnam generation, etc. Such generations not only *tell* history from their own unique vantage; since that time as well, generations have been *counted*. As first, second, and third generations, they allude to a historical event like the Second World War, which achieves for subsequent history the character of an origin myth. Everything must be explained from it and derive from it. History itself becomes a succession. Understood as aftermath, actions continue to be based on this event.

Against this background of experience-driven generational consciousness, including the divisive identities that derive from it, the recent (re)emerging conception of the “future generation” might indicate another radical upheaval

in the understanding of cultural inheritance. Thus the Foundation for the Rights of Future Generations (*Stiftung für die Rechte zukünftiger Generationen*) was established. With the magazine *Generations Justice* (*Generationengerechtigkeit*) and its demand for a new intergenerational contract, the foundation not only gave new buzzwords to reform and demography debates; it also sparked an initiative to amend the German constitution as follows: “The state must in its actions consider the principle of sustainability and must protect the interests of future generations.” The term “generation” (which the French historian Pierre Nora once called the daughter of democracy, because it stems from the time of the French Revolution thus becomes a kind of agency for government-secured sustainability. One could also say that future generations are suing for their legally mandated minimum portion: they admonish current living people not to gamble away their inheritance and not to deplete it with wasteful lifestyles. But it is not so easy to verify when exactly a “future generation” begins, who can step forward as its speaker, and how its future interests can be known.

Even before this, the concept of future generations had (re)emerged in 1972 at the UNESCO *World Heritage Convention*. The goal was defined as “identification, protection, conservation, presentation, and *transmission* to *future generations* of the cultural and national *heritage*.” With this formulation, it was expressed that that which is to be preserved as inheritance, and passed on to future generations, is not to be understood as self-evident, but rather as a result of negotiation, conflict, and controversy. The question of cultural heritage is marked here as an object of complex investigations.

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More and more, the insight is spreading that research on cultural heritage is relevant and useful for the future. This insight is owed in no small measure to concerns about inheritance. These concerns have given considerable valence to the term “cultural heritage” in the contexts of recent sociopolitical and economic “crisis” discourses. Through these contexts, inheritance has increasingly become the object of complicated negotiations between different interest groups, nations, and generations. Insofar as a comprehensive concept of inheritance is sought, one that examines various aspects of succession together with future life conditions, it requires a notion of inheritance that brings to bear economic and biological resources, as well as natural and

cultural resources. And yet still, in the sixth research program of the European Union, the promotion of *exclusively conservational techniques* for the preservation of material assets of libraries, archives, and monuments (which meant this promotional program stood available first and foremost to “Heritage Studies,” a discipline between monument preservation and cultural management) lay quietly behind the title “Cultural Heritage”—thus quietly eschewing a more comprehensive sense of investigation into inheritance. Here slumbers enormous potential for research relating to cultural studies, for investigating inheritance as a fundamental anthropological practice. This research can participate in transforming the past’s bequests and the present’s resources into a future.

In discourses on crisis, particular problems appear as disparate and without connection. Here critics bemoan the destruction of architecture and cityscapes that were to be passed down; there they deplore the loss of environments and the plurality of languages, cultures, and species. Just as serious are the predictions of depletion of natural resources such as fossil fuels and drinking water. But the resources provided us by nature and history are not the only ones in danger; social and economic security are also threatened. The possibility of a nation’s population dying off is publicly debated as “demographic change”; such discussions are accompanied by evocative pictures—empty delivery rooms and elementary schools—and by worst-case scenarios. Witness the 2007 German docufiction *Insurrection of the Elderly (Aufstand der Alten)*, in which the characters are already preparing for the year 2030. The intergenerational contract and generational justice have climbed to the top of the political agenda. In this context the future is, above all, calculated.

But statistics and other quantifiers are often confused by data collection methods that do not account for the cultural changes taking place in the basic structures of kinship relations. Symptomatic of these problems are mistaken statistics of childlessness among female academics in Germany; these fail to take account of the increasing age of mothers in general, caused by sociocultural and biomedical changes. A qualitative study of “demographic change” must base itself on socioculturally updated sets of numbers. Such an updating must take account of, among other things, biomedical development. It must also consider how relationships between social worlds and people of different ages, and between mental and bodily health, will develop as a result of pharmaceutical and genetic advances.

When both the resources of tradition—as bequeathed and acquired—and potentials for the future have become objects of serious concern, it will

become clear that the human species is, first and foremost, a *homo hereditans*, a creature that inherits and bequeaths. Only by considering together *all* aspects of bequeathal and future living conditions can we develop a comprehensive concept of inheritance. Bequeathal and inheritance mean delivering over and taking over. This means transference: objects and knowledge, material and immaterial, organic and inorganic, natural and artificial, with all this moving between people and times, between the dead, the living, and the yet to be born. Such transfers can be organized in many ways. Ideas, laws, and practices of inheritance are responsible for that which will mediate past, present, and future. By viewing pressing social and political questions in terms of inheritance, we constitute active subjects: responsible for decisions as to how to deal with the bequests of the past in light of coming life-environments. The contrast with historically distinct inheritance practices is broadly productive: it differently illuminates ideas of succession and sharpens the contours of discussion. This broader optic of humanities research is needed to supplement, enrich, and contrast empirical findings.

In contrast to the “big science” dimensions of brain research and the life sciences, however, the interdisciplinary study of inheritance is lacking in comparable institutes and programs. And yet the very fact of various succession practices running together leads us to recognize the value of inheritance research. In terms of inheritance, a particular society turns out to be an interrelation and interplay of biological, economic, cultural, legal, social, and political inheritance laws and customs. Research on inheritance is basic research into cultural history: with intelligence, vigilance, and creativity, we focus on development of future perspectives, working with the past’s bequests and the present’s resources.

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\*Translated by Kendall Jackson.

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Law & Literature  
Benjamin N. Cardozo School of Law  
55 5th Ave  
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