IMPERATIVE INHERITANCE LAW IN A LATE-MODERN SOCIETY
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IMPERATIVE INHERITANCE
LAW IN A LATE-MODERN
SOCIETY

Five Perspectives

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PREFACE

It is with great pleasure that I may introduce this volume. I feel honoured to participate in this multidisciplinary study which infuses a very specific field of law – family property law – with philosophical and ethical perspectives in this area of law, including the views of anthropology, history, sociology and of course, economics.

There is much discussion on interdisciplinary studies being the successful approach which universities – universitas studiorum – stand for. It must be confessed though that, in practice, this approach is seldom accomplished. Therefore, the project team is to be congratulated on this initiative. I hope that this pioneering project will set a precedent which will be followed both within and outside this faculty.

A Law faculty plays an important role and owes a duty, both critical and creative, to society and its citizens: the civil society. Invoking the vision on what a university has to aspire to, as proclaimed by the Magna Charta Universitatum, in Bologna, in 1988 (and prepared by a commission that held most of its meetings in Leuven):

(…)

The universities’ task of spreading knowledge among the younger generations implies that, in today’s world, they must also serve society as a whole. (…) The university is an autonomous institution at the heart of societies differently organised because of geography and historical heritage (…) To meet the needs of the world around it, its research and teaching must be morally and intellectually independent of all political authority and economic power. Teaching and research in universities must be inseparable if their tuition is not to lag behind changing needs, the demands of society, and advances in scientific knowledge. Freedom in research and training is the fundamental principle of university life, and governments and universities, each as far as in them lies, must ensure respect for this fundamental requirement. (…) A university is the trustee of the European humanist tradition. (…) As in the earliest years of their history, they encourage mobility among teachers and students (…).

Reverting to the Imperative Inheritance Law, my first written thesis was on the subject of ‘Testamentary freedom in Common law and Civil law’, a comparative study that was presented at Harvard Law School half a century ago. Later on, here in Leuven, I continued to study what is referred to herein as Imperative Inheritance Law. The title of my book was The Hereditary Reserve (De erfrechtelijke reserve).
I do not think that further elaboration on that subject is required in this preface. Imagine that by reading this volume we were to arrive at the conclusion that there should not be such an institution as ‘my’ ‘hereditary reserve’? In that case my old book would disappear from the library shelves, unless I had defended the same hypothesis. But that was not so, not so at all.

It is my wish to bring a humble message as (by far) the oldest participant for whom inheritance is not a remote matter of interest. When I wrote my thesis, I stood on the other side, and could live with limitations on the freedom of disposition in favour of future generations. In some ‘progressive’ minds, inheritance is in itself a source of inequality. They do not err; it is no different from the diverse and varying levels of genetic talents that we receive from our predecessors, or the decisive differences in education at home or at school, in Leuven or in Kampala.

Inheritance is concerned with private property. After the moral collapse of the collectivist utopia at the end of the 20th century we can once again defend that institution, even with the support of the good old social doctrine of the Church. Private property is not a goal in itself, but an instrument and a means to fulfil the ultimate project of greater humanity. It achieves this by making us less limited to primary goods, by giving us more freedom in general, by letting us get away from stress and uncertainty and, finally, by giving us the salutary opportunity to share it with those in need.

Private property is generally linked to individual persons. They all die one day, and then the destiny of their personal goods, has to be taken care of. There is no better solution than to hand the goods down to the members of their family, their next of kin, their household. At least this is the general rule. One should permit the ‘future deceased’ to decide who gets his goods, hereby taking into account many possible criteria. This should be possible at least up to a certain point, society opines, has always opined and it is a view that I personally share. It is part of the parental duty to consolidate in favour of his close family members, in principle at least. We must reckon with situations where such preference and solidarity has no good basis. For example, the legal definition of ‘unworthiness’ must certainly be broadened; a mother who never received any respect, recognition or support from a son, without a real cause, cannot be compelled to bequeath him part of her succession. Secondly, the obligation to share should not apply to the entirety of the succession. Further, it must only be guaranteed to the limited circle of the children and the surviving spouse, and perhaps to the parents if none of the foregoing existed.

I think most of our citizens would still subscribe to such a system. In its application we should definitely get rid of accessory rules of old times that do no longer
respond to modern situations, like the so-called right to get the reserved part of the succession *in natura*, leading to many difficulties and unnecessary consequences in practice. Here, as in many other parts, we in Belgium have been more faithful, even submissive towards the Napoleonic Code, than the French themselves. Moreover, we must no longer stick to the principle that the freely disposable part depends on the number of children of the deceased. Finally, we must accept some exceptions to the interdiction of making anticipative arrangements about a future succession.

It is apparent to you, the reader, how eager I am to hear of the reception and reaction to this new volume in the *European Family Law Series*.

Roger Dillemans  
Honorary Rector  
K.U. Leuven
# TABLE OF CONTENTS

**PREFACE**  
Roger Dillemans ..................................................... v

**INTRODUCTION AND OBJECTIVES**  
Christoph Castelein..................................................... 1

§1. Introduction .......................................................... 1
§2. Universality of succession law ...................................... 1
§3. Ways in which property is inherited ............................... 3
§4. Symbolic function of the law ....................................... 4
§5. Choices in our actual inheritance law ............................. 6

I. Choices within the intestate inheritance law ................. 6  
   1. Ratio legis for the (reduction of) intestate inheritance  
      law (to patrimonial rights) .................................. 7  
   2. Background perspective – individualism and private  
      property ........................................................... 8  
   3. Founding principles ............................................. 9  
   4. Legal translation of these founding principles ............. 10  
   5. Consequences .................................................... 18  
   6. The idea of intestate inheritance law as the tacit will of  
      the deceased ..................................................... 23  

II. Choices within the testamentary inheritance law .......... 24

III. Choices within the imperative inheritance law ........... 28
   1. Introduction .................................................... 28  
   2. Imperative inheritance law in a comparative law approach .. 30  
      a. First type – law of forced heirship ....................... 30  
      b. Second type – mandatory asset claims .................... 31  
      c. No mandatory succession law ............................... 32

§6. Contestation of the choices made by our inheritance law .... 32

§7. Multidisciplinary International Seminar on Imperative Inheritance  
Law ................................................................. 34
   I. Aim ............................................................. 34
   II. Discussion proposals .......................................... 34

§8. Conclusions .......................................................... 37

Intersentia ix
PERSPECTIVE 1  LEGAL ANTHROPOLOGY
Marie-Claire Foblets ................................................. 39
§1. Introduction ..................................................... 39
§2. What is legal anthropology? .................................. 40
§3. Imperative inheritance law: ethnographic appraisal of 'discriminatory'
practices .......................................................... 44
   I. Women's lesser rights of inheritance ......................... 44
   II. Women's 'exclusion' from independent ownership of land
versus other avenues of obtaining property ...................... 47
§4. Inheritance Laws and Islam .................................... 52
   I. Islamic inheritance law. A succinct presentation of the main
basic principles .................................................. 53
   II. Practice: Estate planning and renunciation of specific fractional
shares ............................................................ 55
   III. Addressing Islamic inheritance law through international
human rights standards ............................................ 57
§5. Conclusion: Either your Culture or your Inheritance Rights? ............. 61

PERSPECTIVE 2  LEGAL HISTORY
A History of the Law of Succession, in Particular in the Southern
Netherlands/Belgium
Dirk Heirbaut .......................................................... 65
§1. The importance of the law of succession ......................... 65
§2. The diversity of the law of succession in the Southern Netherlands
before 1795 .......................................................... 66
§3. In spite of the diversity, some 'general principles of the law of
succession' can be found .......................................... 68
§4. The rest of the law has to follow the dictates of legal devolution ........ 70
   I. Limited possibilities for wills ................................ 70
   II. Debts were no impediment ................................ 72
   III. Restrictions on gifts and sales .............................. 72
   IV. The mildness of the tax collector ........................... 73
   V. Ransom .......................................................... 73
   Vi. One exception: the rights of the surviving spouse ....... 74
§5. The old law of succession was not static ........................ 75
§6. The law of succession as the best weapon of the French revolution .... 76
§7. Napoleon: tempering the Revolution ........................... 79
§8. After Napoleon: lethargy ........................................ 80
§9. The future: is freedom possible? ............................... 82
PERSPECTIVE 3  SOCIOLOGY OF LAW
Anton C. Zijderveld .......................... 85

§1. Introductory comments .................................................. 85
§2. Parallel ideal-types ....................................................... 85
§3. Socio-cultural transformations ................................. 86
§4. Recapitulation and conclusion ......................................... 89

PERSPECTIVE 4  LAW AND ECONOMICS
The Post Mortem Homo Economicus: What Does He Tell Us?
Boudewijn Bouckaert .......................... 91

§1. Introduction .......................................................... 91
§2. Explaining inheritance .................................................... 93
§3. Legitimate share or free will ........................................ 94
§4. Regulating free bequest ................................................ 100
§5. The state as the Heir: Inheritance Tax ............................ 102
§6. Conclusions .......................................................... 104
Bibliography .............................................................. 106

PERSPECTIVE 5  COMPARATIVE LAW – THE NETHERLANDS
Martin Jan A. van Mourik ......................... 107

§1. The battle pertaining to new inheritance law (1947–2003) ........ 107
§2. The arguments for upholding the legitimate portion ............ 110
  I. The family tie ...................................................... 110
  II. Prevention of disputes and problems ................................ 111
  III. Maintenance ...................................................... 112
  IV. Sense of justice or juridical view .................................. 112
  V. Incidental need ...................................................... 113
  VI. Tradition and comparative law .................................... 114
§3. The arguments for abolishing the legitimate portion .......... 114
  I. The arguments in favour of the legitimate portion are not
     convincing ......................................................... 114
  II. It’s a free country .................................................. 115
  III. Justice .......................................................... 116
  IV. Safeguarding of the financial provision .......................... 116
  V. Simplicity .......................................................... 117
§4. Other statutory rights ......................................................... 117  
  I. Freedom of will making ................................................. 117  
  II. Entitlements of imperative law ........................................ 118  
  III. Critical remarks regarding the ‘other statutory rights’ .......... 119  
§5. Forfeiture of the right to inherit (passive) .......................... 120  
§6. Forfeiture of the right to dispose of by will (active) ............... 121  
§7. Conclusion ........................................................................ 122  

PERSPECTIVE 5 COMPARATIVE LAW – UNITED KINGDOM  
Paul Matthews ................................................................. 123  

§1. Introduction ................................................................. 123  
§2. Common law European legal systems .................................... 123  
§3. What is a property right? ................................................... 125  
§4. Patrimony and estate ....................................................... 127  
§5. Administration of estates .................................................... 130  
§6. Freedom of testation ....................................................... 130  
  I. Land ............................................................................. 130  
  II. Chattels ......................................................................... 131  
  III. Intestacy ........................................................................ 132  
  IV. Twentieth century reform ................................................. 133  
  V. Scotland and the Channel Islands ...................................... 134  
§7. The Inheritance (Provision for Family and Dependents) Act 1975 . 137  
  I. Introduction .................................................................... 137  
  II. Domicile of the deceased .................................................. 138  
  III. Time limit for bringing a claim ........................................ 139  
  IV. Who can bring a claim? ................................................... 139  
  V. The court’s approach ...................................................... 140  
  VI. The tests for reasonable financial provision ....................... 140  
  VII. What is maintenance? ................................................... 141  
  VIII. What are the factors the court considers to ascertain  
  ‘reasonable provision’? ...................................................... 141  
  IX. Common law and civil law compared .................................. 142  
  X. Claims by surviving spouses/civil partners ......................... 142  
  XI. Ancillary relief cases ...................................................... 143  
  XII. Impact of the ancillary relief cases on 1975 Act claims ........ 144  
  XIII. Claims by adult children ............................................... 144  
     A. Evolution ..................................................................... 144  
     B. Myers v Myers ............................................................. 145  
     C. Gold v Curtis ............................................................. 147  

xii Intersentia
Table of Contents

D. Land v Estate of Land .............................. 147
E. Garland v Morris ............................... 148
XIV. Anti-avoidance ................................. 148
XIV. Judicial attitudes to the legislation ............ 149
§8. The impact of the legislation ..................... 150
§9. Conclusion ........................................ 151

PERSPECTIVE 5 COMPARATIVE LAW – BELGIUM
Hélène Casman ........................................ 153

§1. Introduction ........................................ 153
§2. Intestate Inheritance Law ......................... 153
§3. Remarks regarding children ...................... 154
§4. Imperative rights for descendents and ascendants .... 155
§5. Intestate rights for the surviving spouse .......... 156
§6. Remarks about this matrimonial property ......... 156
§7. Imperative rights for the surviving spouse ....... 158
§8. Intestate rights of the surviving partner .......... 159
§9. Imperative inheritance rights now ................. 160
§10. Imperative inheritance rights in a future law ...... 161
§11. By way of conclusion ............................. 165

PERSPECTIVE 5 COMPARATIVE LAW – GERMANY
Compulsory Portion and Solidarity Between Generations in German Law
Walter Pintens and Steven Seyns .......................... 167

§1. Concept ............................................. 167
§2. Historical development ........................... 168
§3. Constitutional protection .......................... 169
   I. Constitutional approach: Articles 6 and 14 GG .. 169
   II. The Constitutional Court’s decision of 2000 .... 171
   III. The Constitutional Court’s decision of 2005 .... 172
§4. Holders ............................................. 174
   I. Descendants, parents, surviving spouse and registered partner 174
   II. Condition: exclusion of hereditary succession .... 175
§5. Calculation of the Pfl ichtteil ....................... 176
   I. Calculation of the Pfl ichtteilsquote .............. 176
      A. Descendants ........................................ 176
Table of Contents

B. Parents ................................................................. 177
C. Surviving spouse and registered partner ......................... 177
II. Calculation of the value of the Pflichtteil ..................... 179
§6. Claims for the protection of the Pflichtteil ................... 179
I. Right to information ............................................... 179
II. Claim for the remainder of the compulsory portion
(Pflichtteilsrestanspruch) ............................................. 180
III. Deduction (Anrechnung) ........................................ 180
IV. Right to a supplement to the compulsory portion
(Pflichtteilergänzungsanspruch) ..................................... 181
§7. Forfeiture of the Pflichtteil .................................... 182
I. Loss of the right of succession .................................. 182
A. Unworthiness ....................................................... 182
B. Introduction of divorce proceedings .......................... 182
C. Renouncement of the right of succession or of the
compulsory portion ..................................................... 182
D. Renouncement of the estate ..................................... 183
II. Deprivation by the testator ..................................... 183
III. Limitations ex bona mente ...................................... 184
§8. Prescription .......................................................... 185
§9. The future of the compulsory portion ......................... 186

PERSPECTIVE 5  COMPARATIVE LAW – FRANCE
Réserve héréditaire, ordre public et autonomie de la volonté en droit
français des successions
Frédérique Ferrand ..................................................... 189
§1. Introduction .......................................................... 189
§2. Les apports de la loi du 3 décembre 2001 : faveur au conjoint survivant 191
I. Droit du conjoint survivant sur le logement de la famille ...... 191
II. Autres droits successoraux du conjoint survivant :
l’apparition d’une réserve en l’absence de descendant du
defunt ............................................................................. 192
§3. La loi du 23 juin 2006 : une réforme favorisant l’autonomie de
la volonté ................................................................. 195
I. Disparition du droit de réserve héréditaire des ascendants.... 195
II. De la nullité à la validité contrôlée des pactes sur succession
future ............................................................................ 196
III. Clarifications apportées par la loi du 23 juin 2006 .......... 197
IV. Régime des restitutions .......................................... 197
## Table of Contents

V. Admission des donations-partages transgénérationnelles  
VI. Modernisation des opérations de partage

§4. Conclusion

**CONCLUSIONS – TOWARDS AN OPEN AND FLEXIBLE IMPERATIVE INHERITANCE LAW**

René Foqué and Alain Verbeke

§1. Introduction

§2. Four preliminary perspectives

I. Anthropology of law
II. History of law
III. Sociology of law
IV. Law and economics

§3. Comparative legal perspective

I. From context to law, and from “institution” to multiple “institutes”
II. Forced heirship
III. Intermediate position: forced heirship limited to some type of assets
IV. Potential inheritance claim
    1. England
    2. Other countries
V. Legal certainty vs. flexibility

§4. Openness and flexibility