

The Gendered Dimensions of Inheritance: Empirical Food for Legal Thought

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Inheritance is an extremely significant personal, familial, social, and legal phenomenon. Due to the significance of inheritance in wealth distribution and family relations, it is essential to uncover and discuss its gendered dimensions, which have benefited from surprisingly little empirical or legal attention. This article provides an updated state-of-the-art review of the limited available empirical data on women as legators and on women as heirs in different parts of the world. The review is based on 23 studies, including the original results from a study the author conducted on inheritance in Israel, which illuminates the reach of insights that can be drawn from an inheritance study that focuses on gender. The review shows a sharp dichotomy between the ongoing discrimination women experience in non-Western societies in relation to inheritance and the social reality in the West, in which inheritance is a rare economic space in which women enjoy privilege, power, and control. Although egalitarian inheritance laws have had a dramatic impact on women’s representation in intestacy and their participation in will writing in the West, the data demonstrate that even in this part of the world, cultural patriarchal practices persist and limit women’s inheritance rights and, accordingly, point to the importance of creating legal mechanisms that can counterbalance these practices. Moreover, the available data indicate the value of freedom of testation for women and the importance of ceasing to regard care as cause for suspicion in inheritance law, and instead viewing it as a practice deserving of reward. Finally, the article identifies the areas in which further research on gender and inheritance is warranted, hopefully spurring greater interest and developments in the field.

I. INTRODUCTION

In this article, I seek to provide a state-of-the-art review of what we empirically do and do not know about the contemporary gendered dimensions of inheritance and to demonstrate the legal implications of our limited knowledge on this issue. The article will both reveal the gendered manifestations of inheritance law in action and connect between empirical knowledge and theoretical and policy-oriented insights regarding inheritance law.

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Inheritance has become an extremely significant financial phenomenon in recent years, making the study of its gendered aspects all the more important and compelling. Whereas in the past, bequeathing was a practice prevalent only among the wealthy elite, today it is far more common and of far-reaching economic consequence. The increase in home ownership and the proliferation of the middle class in the West have combined with private land ownership in agricultural countries to make inheritance a widespread practice and major mechanism of wealth transfer and stratification (Finch & Mason 2000:1–2, 12; Shamma et al. 1987:3; Kohli 1999:105; Agarwal 1994). But inheritance is not only about property and wealth. Its gendered aspects are intriguing since it is also about relations, particularly family relations (Kreitzer-Levi 2008). Actual and potential bequests can reflect the testator's relations with others, as well as shape them during his or her life and after the testator's death. In many cases, inheritance manifests spousal as well as intergenerational links and can thus tell us a great deal about the ways testators, heirs, and the disinherited understand and construct property within the family setting (Rossi & Rossi 1990; Finch & Mason 2000). Beyond this connection to such important social institutions as property and family, inheritance, and its gendered dimensions, is also a fascinating and unique subject of inquiry in that it is simultaneously private and public, personal and social. On their face, decisions about the distribution of one's property after death are private, influenced by personal feelings, wishes, and interests. However, society governs inheritance through law and thereby transforms it into a public event with symbolic messages about normative property distribution, individual freedom, and familial or other collective obligations.

The questions of whether inheritance has gendered aspects and what they are should have generated considerable interest from at least two feminist perspectives: that stressing power relations within families, which are manifested in, among other things, unequal resource distribution (e.g., Williams 2000), and the approach that values care giving and emphasizes its gendered dimensions, particularly in the familial context (e.g., Gilligan 1982). This should have been expected particularly in light of the fact that women outlive men¹ and that women tend to be younger than their husbands and hence be the last of the couple to pass away (Kristiansen 2005). Indeed, the ramifications of this demographic and cultural reality are that inheritance offers a rare potential opportunity for women to control family wealth and to decide, without male interference, its distribution.

The scant empirical investigation of the possible gendered aspects of inheritance is, thus, surprising, although typical of the general sociological neglect of inheritance (Szydlak 2005; Finch & Hayes 1995). Moreover, most of the current legal scholarship on inheritance does not treat gender as an important category that might influence our understanding of inheritance law or offer proposals for its revision. This article aims at filling some of these

¹For example, in Japan, where both women and men enjoy relatively long life expectancy, there is an almost 10-year gap between the sexes (79 for men compared to 89 for women). In France, the gap is seven years, in Italy six years, and in Israel four years. For these statistics and those for other countries, see Israel Central Bureau of Statistics, Women and Men in Israel 1985–2005, 67 *Statistilite* 4 (2007), available at <http://www1.cbs.gov.il/www/statistical/mw2007_e.pdf>. In the United States, the life expectancy for white men is 75.5, for white women 80.8, for black men 69.5, and for black women 76.5. U.S. Census Bureau, The 2009 Statistical Abstract, at tbl. 103 (2009), available at <<http://www.census.gov/compendia/statab/tables/09s0103.pdf>>. Interestingly, some researchers claim that the gender gap in life expectancy will be closed by 2035 (cited in Harlow & Waite 2009).

sociological and legal voids by mapping out the available empirical findings on the gendered dimensions of inheritance and by demonstrating their implications for inheritance law. This empirical food for legal thought will hopefully foster theoretical, empirical, and activist interest in inheritance as a gendered phenomenon.

Section II of the article will present the research's methodology. This includes a narrative review of 23 studies from different parts of the world that deal with at least some of the current gendered practices or perceptions of inheritance, including a study I conducted on inheritance in Israel. Section II will also include a table summarizing all these studies, which will be discussed in the subsequent parts of the article. Section III will focus on women as legators. It will explore what we empirically know about the gendered aspects of intestate succession as well as of will writing and content. In Section IV, I will discuss women as heirs and explore the available empirical findings on the existence of gender discrimination between spouses and among siblings, on gendered use of inherited shares including renunciation, and on the gendered elements of inheritance conflicts. Both Sections III and IV will also highlight questions that remain unanswered and warrant further empirical investigation. Finally, Section V will offer some preliminary insights and thoughts on the relevance to inheritance law of the available empirical data presented here.

II. THE METHODOLOGY

To investigate the current gendered dimensions of inheritance, I aimed at providing a state-of-the-art review of all the studies that report any empirical finding relevant to the intersection between gender and inheritance from 1980 to 2008. To produce such a review, I searched both social sciences and legal electronic databases.² In addition, I turned to the bibliographies of all the books and articles found through these databases for references to other relevant empirical studies. Only a very few of the studies were devoted completely or significantly to the gendered aspects of inheritance. Hence, I also included in my search studies that reported on certain such aspects in the framework of a more general research project. In this article, I will refer to all the studies I found on Western societies and the major studies I found on non-Western societies, 22 in total.³

In addition, the 23rd study that is included in the review is my own study on inheritance in Israel, whose findings on gender are published here for the first time. Israel

²The databases that were searched are LexisNexis, Sociological Abstract, and Aleph (the Israeli universities libraries' electronic database). Each database was searched for articles that included in their title or key words any of the following words: inheritance, succession, will, wills, or intestacy, and gender, women, or woman. Of the publications that came up, only those that were written in English and available either in electronic format or as a hard copy in one of the Israeli universities libraries were included in the review. Fortunately, some of the English publications reported also on studies published in other languages, and this information was included in the review. Nonetheless, it is regretfully likely that a few relevant studies, especially unpublished dissertations and publications in other languages, were left out using this search method.

³There are many small-scale studies on discrimination against women in land inheritance in different non-Western parts of the world. I could not address all of them in this article and, moreover, found it unnecessary since they focus on the same questions and social phenomena as those studies that I do review here.

is an important and interesting case study in the context of gender and inheritance, since it fits somewhere in between Western and non-Western societies. On the one hand, it is a developed, democratic, and capitalist country. On the other hand, its familialism is more characteristic of non-Western societies, and its legal system acknowledges to some extent religious and patriarchal inheritance laws and tribunals (Fogiel-Bijaoui 1999; Smooha 2009–2010). This duality is evident in the Israeli inheritance law, which allows heirs of a deceased to approach either the Inheritance Registrar (in cases of consent), the Family Court (in cases of a dispute), or, if all the heirs agree, a religious tribunal that may apply its religious inheritance rules.⁴

Recently, I have conducted a qualitative and quantitative study of inheritance procedures of the Jewish population in the central region of Israel, initiated in 2000–2004.⁵ The study examined 743 inheritance files in the archives of the Inheritance Registrar, the Family Court, and the Rabbinical Court.⁶ Moreover, as part of the study, in-depth interviews were conducted with 14 people involved in inheritance disputes and with eight lawyers specializing in inheritance law. The study yielded a wide range of findings. In this article, I will refer only to the data related to gender.

The details of the 23 studies that will be reviewed and discussed in this article are summarized in Table 1.

As can be seen from Table 1, the studies reviewed were conducted in different parts of the world, explored different questions relating to the gendered dimensions of inheritance, and employed a variety of methodologies. This notwithstanding, the significance of the review is that it enables comparison between the variety of resources, which yields shared themes while at the same time highlights the divergences among different societies and legal systems. A systematic evaluation of the research evidence is impossible, however,

⁴Succession Law S.H. 63, p. 249 (1965) (Israel) § 66(a), 151, 155 [hereinafter, Succession Law].

⁵The specific focus on the Jewish population, which constitutes 78 percent of the general population in Israel, is due to the fact that the study revealed that most non-Jews turn to religious tribunals rather than the civil authorities in inheritance matters. Since I have no knowledge of Arabic, I could not examine the procedures in the Sharia and Christian tribunals.

⁶The study encompassed overall the examination and analysis of 401 files of consensual applications for an inheritance order (158 filed with the Tel Aviv Inheritance Registrar and 243 with the Tel Aviv Rabbinical Court), 198 consensual applications for a probate order (138 filed with the Tel Aviv Inheritance Registrar and 60 with the Tel Aviv Rabbinical Court), and 144 files of inheritance disputes brought before the Ramat Gan Family Court. In the relevant years (2000, 2002, 2004), 100,422 Israeli Jews died overall. During these years, 16,441 applications for inheritance orders and 14,853 applications for probate orders were submitted to the Tel Aviv Inheritance Registrar, which handles approximately 56 percent of all applications filed in all Inheritance Registrars in Israel (information provided by the Chief Inheritance Registrar). During the same period, 4,212 applications for inheritance orders and 1,044 applications for probate orders were submitted to the Tel Aviv Rabbinical Court, which accounted for about a third of all inheritance procedures conducted in the Israeli rabbinical courts in that period, see <<http://www.rbc.gov.il/statistics/index.asp>> (in Hebrew). Hence, the randomly selected sample represents but a fraction of all consensual inheritance procedures handled by the various tribunals in the relevant years for the Israeli Jewish population. With regard to inheritance disputes, the study revealed that of the approximately 1,400 files transferred yearly from the Tel Aviv Inheritance Registrar to the Ramat Gan Family Court, only a small minority involve disputed inheritance, with the majority relating to missing information in the will, difficulties in locating heirs, controversies over the appointment of an executor, and so forth. The sample included about half of all the files from the year 2000 ($N = 50$) and all the files from 2002 ($N = 48$) and 2004 ($N = 46$) that involved an inheritance dispute and were concluded by mid 2007.

Table 1: Empirical Studies on the Gendered Dimensions of Inheritance, 1980–2008

	<i>Researcher(s)</i>	<i>Years of Data</i>	<i>Place of Study</i>	<i>Methodology</i>	<i>Relevant Main Issues</i>
1.	Bina Agarwal	Authors' study: 1985–1987	South Asia	Fieldwork and resources synthesis	Land inheritance
2.	Brend Bossong	1990s	Germany	Vignettes testing of 169 students	Gender differences in inheritance patterns
3.	Stephen Clowney	1990–1995	Pennsylvania	Analysis of 145 wills	Holographic wills
4.	Carmen Diana Deere & Magdalena Leon	1960–1997	Latin America	Statistical synthesis	Gendered ownership of land
5.	Deirdre G. Drake & Jeanette A. Lawrence	?	Melbourne, Australia	Vignettes testing of 89 clients at two day-centers operating within a geriatric hospital	Inheritance distribution preferences and the meaning of equality
6.	Joula E. Dekker & Mark V. A. Howard	2004	New South Wales, Australia	Quantitative analysis of 571 Probate Registry files (548 with wills)	Inheritance distribution preferences
7.	Jonna P. Esudillo, Agnes R. Quisumbing, Keijiro Otsuka, & Cristina D. David	1985, 1998	Central Luzon and Panay Island, Philippines	Face-to-face surveys of 369 households	Parental preferences in land allocation
8.	Janet Finch, Lynn Hayes, Jennifer Mason, Judith Masson, & Lorraine Wallis	Wills: 1959, 1969, 1979, 1989 Interviews: 1991–1993	England	Quantitative analysis of 800 wills and in-depth interviews with 98 laypersons and 30 solicitors and will advisors	Wills' contents, kinship and inheritance, women as testators
9.	Daphna Hacker	Wills: 2000, 2002, 2004 Interviews: 2008	Israel (central region)	Quantitative analysis of 743 registry and court probate files (323 with wills) and in-depth interviews with 14 laypersons and 8 lawyers	Probate procedures, will contents, and inheritance disputes
10.	Monica K. Johnson & Jennifer K. Robbennolt	1996	Minnesota	Telephone survey of 256 respondents	Inheritance distribution preferences of unmarried committed partners
11.	Debra S. Judge & Sarah Blaffer Hrdy	1890–1984	Sacramento, CA	Quantitative analysis of 2,500 probate files (41% with wills)	Inheritance among close kin
12.	Noah Lewin-Epstein, Moshé Semyonov, & Seymour Spilerman	1994–1995	Israel	Face-to-face surveys of 1,607 respondents	Practices and perceptions of intergenerational inheritance

Table 1 *Continued*

	<i>Researcher(s)</i>	<i>Years of Data</i>	<i>Place of Study</i>	<i>Methodology</i>	<i>Relevant Main Issues</i>
13.	Annelies Moors	1980–1989	West Bank, Palestine	Fieldwork and life-story interviews	Women, property, and Islam
14.	Veena K. Murthy	1985–1995	U.S.	Textual analysis of 266 appellate decisions	Inheritance-related undue influence and judicial gender stereotypes
15.	Agnes R. Quisumbing & Keijiro Otsuka	1996–1997	Sumatra (west)	Retrospective survey of 370 plots	Land inheritance
16.	Paul C. Rosenblatt, Leni de Mik, Roxanne Marie Anderson, & Patricia A. Johnson	1980s	Minnesota	92 face-to-face interviews with family members from 59 family firms	Inheritance of small businesses
17.	Alice S. Rossi & Peter H. Rossi	1984–1985	Boston, MA	Face-to-face interviews with 1,393 respondents	Intergenerational inheritance
18.	Sonya Salamon, Kathleen M. Gengenbacher, & Dwight J. Penas	1975–1983	Illinois	Fieldwork and door-to-door survey of 175 households	Intergenerational inheritance of family farms
19.	Jeffrey A. Schoenblum	1976–1984	Tennessee	Quantitative analysis of 66 wills	Contested wills
20.	T. P. Schwartz	1775–1790, 1885, 1985	Rhode Island	Content analysis of 429 wills	Family and nonfamily beneficiaries
21.	Carole Shammas, Marylynn Salmon, & Michel Dahlin	1685–1775, 1791–1801, 1891–1893, 1898, 1979, 1980	Pennsylvania and California	Quantitative analysis of 3,812 probate files, including 2,287 wills; survey of inheritance laws	Changes in inheritance laws and testamentary behavior
22.	Marc Szydlík	1996	Germany	Face-to-face survey of 5,000 respondents	Past received inheritances and future inheritance expectations
23.	Heather Xiaoquan Zhang	1994	China (north)	Fieldwork and in-depth interviews with 15 women and unknown number of officials	Daughters' inheritance rights

and, for the purpose of this article, also undesirable. The aim of the narrative review provided here is not to judge the validity of each study and impose a quantitative protocol but, rather, to use the variety of studies to provide a map of the different gendered aspects of inheritance for further empirical, legal, scholarly, and activist investigation.

III. WOMEN AS LEGATORS

In some non-Western societies, state law continues to play a role in limiting women's right to property, thereby restricting also their ability to be legators (e.g., Agarwal 1994:ch. 5). Moreover, in many societies in which inheritance is first and foremost influenced by customary law rather than state law, women's access to resources and their ability to bequeath their property as they wish are severely restricted (for Latin America, see Deere & Leon 2003; for Africa, see Lastarria-Cornhiel 1997). However, in Western societies, four legal reforms have led to a profound change in women's ability to be legators and testators and to bequeath property. The first reform was the enactment of laws recognizing a married woman's right to property, including the right to independently decide on its distribution upon her death. The second legal reform was the abolishment of legal rules that discriminate against women as heirs. The third legal change was the enactment of laws protecting women's equal rights in the labor force, which advanced their economic independence and ability to accumulate wealth. The fourth legal development has been a growing tendency on the part of legislatures and the judiciary to recognize the concept of spousal joint property, which gives a woman legal ownership of half the property accumulated during marriage, even if her spouse earned more than she did and even if the assets are registered in his name alone (Finch & Hayes 1995). These reforms have contributed to the construction of our era as the first in Western history in which a large number of women have, potentially, the freedom and wealth to become legators and active testators.

But do women take full advantage of the inheritance potential that the law has created for them? Do women make use of this new freedom to bequeath their wealth as they wish? Are there any gendered dimensions to intestate succession? Are there any differences between women's wills and men's wills? The following sections offer preliminary responses to these questions from the available data we have on women as legators.

A. Gender and Intestacy

Not all people leave a will when they die. In fact, most people die intestate.⁷ Thus, any gendered aspects to intestacy could be particularly interesting. Statistics provided by

⁷The rate of intestacy varies across time and place. While Rossi and Rossi (1990:467) report that two-thirds of the adults older than 60 in their Boston sample had a written will, in Schoenblum's (1987) Tennessee study, only 21 percent of the deceased had a will. Finch and Mason (2000:62) report that only one-third of the English population write a will. Likewise, the Israeli statistics reveal that about one-third of the Jewish population leave a will that is submitted for execution, see *supra* note 6. Due to the correlation between economic class and education and the probability of writing a will, discussed below, it is reasonable to assume that the rates of will writing in non-Western societies are lower than in the West.

Shammas et al. (1987:16–17) on intestacy probates from different U.S. counties reveal a dramatic change from the 18th century, when laws restricted women's property rights and intestate estates were almost exclusively men's, to present times, when no such gender disparity exists. In Bucks County, Pennsylvania, for example, in 1751, 43.1 percent of male decedents who died intestate had probated estates compared to 2 percent of female decedents. Almost 250 years later, in 1979, the estates of 58.8 percent of the intestate males and 59.2 percent of the intestate females were probated. Similar unequivocal indications of this trend were documented by Judge and Hrdy (1992) in their California sample of probates between 1890 and 1984. They found an increase in female representation from 30 percent to 50 percent during this period and, moreover, no significant difference in average estate size by sex of the deceased.

These findings are surprising given women's still-prevailing economic inferiority (for the United States, see Caiazza et al. 2004). Indeed, the findings are perhaps one more reflection of women's growing economic independence, as well as of the impact of legal recognition of joint ownership of marital property and changes in pension and life insurance benefits for widows (Finch et al. 1996:4–5). This notwithstanding, however, it is important to recall that probate samples represent only those cases in which the deceased left something that the heirs found worth the trouble of initiating the bureaucratic process of getting a probate order. Hence, the equal number of female and male legators and the general parity in estate size between women and men are not reliable indicators of gender economic equality with respect to women from the relatively lower economic classes. Moreover, my findings on 401 intestate probates of the Jewish population in Israel found that only 40.6 percent were for the estates of female deceaseds. These data reinforce the need to learn about female intestacy across the world, particularly in non-Western countries.

Unfortunately, aside from the significant fact that, at least in the United States, intestacy is today as significant a phenomenon among women as it is among men, we know nothing from the data about its gendered dimensions. The findings from my study seem to be the only data offering some insight into what can be learned from the interface of intestate probates and gender. The study found that the median birth year of Jewish legators in intestate probates executed in the central region of Israel in 2000–2004 was 1924 for females and 1925 for men, with the average age of males upon death as 71.49 compared to 73.47 for females. This is a much longer life expectancy than that of the general Jewish population born during these years,⁸ arguably due to the relative wealth of those with estates to leave behind and the positive correlation between wealth and life expectancy (Ezzati et al. 2008). However, in the same sample, it was found that the life expectancy of intestate decedents was shorter than that of those who had left a will.⁹ Indeed, other studies have also found that will writing becomes more common as people grow older (Rossi & Rossi 1990:467; Finch et al. 1996:51).

In my sample, 70.5 percent of the deceased males had been married at the time of death, compared to only 39.2 percent of the female deceased. The ratio reversed in respect

⁸See 59 *Statistical Abstract of Israel* tbl. 3.24.

⁹The average age of female testators in the testate probates sample was 80.1, as compared to 80.4 for males.

to widowhood, with 15.1 percent of the men widowers and 52.7 percent of the women widows when they passed away. We thus see that the gendered difference in life expectancy, along with the norm dictating that men are usually older than their wives, result in a significant divergence in the personal status of male and female legators, something that is reflected in how their estates tend to be divided. Indeed, women's estates are more likely to be divided among their children, whereas men's estates are more likely to pass to their spouse. In the Israeli Inheritance Registrar sample, for example, 41.8 percent of intestate males' estates were not shared with offspring, as compared to 16.7 percent of intestate females' estates. Only 28.3 percent of the deceased women's estates passed, at least partly, to their spouses, compared to 59.3 percent of the men's estates. These differences all but disappear when married men and women are compared separately from widows and widowers.

The difference in outcome for male and female intestacy in terms of patterns of estate division is, of course, not a product only of gendered demographics and marital norms, but also stems from Israeli inheritance law, which provides that a spouse receives at least half the deceased's estate in the absence of a will and, when there is no surviving spouse, the deceased's children take precedence over other relatives.¹⁰ Had Israeli inheritance law instead granted the spouse only his or her equal share of the marital property and prescribed that the deceased's share be divided solely among his or her children, there would have been no gendered divergence in intestacy outcomes.

Indeed, the predominance of intestacy in general, along with the Israeli empirical data implying its gendered aspects, underscore the impact of inheritance laws that serve as the default in cases of no will. We know nothing about current differences in men's and women's perceptions of these laws or if any such differences even exist. The very few studies on public perception of inheritance law are generally obsolete, which, in any event, tended to report their findings without distinguishing between male and female respondents.¹¹ Different legal systems establish different distribution inheritance models. They allow or restrict freedom of testation;¹² include or exclude unmarried heterosexual or homosexual spouses as heirs;¹³ exclude different assets from the

¹⁰Succession Law, § 10-12. The law provides that a spouse is entitled to half the estate if the deceased is survived by children, children's offspring, or parents. If the deceased is survived only by siblings or their offspring or by grandparents, the spouse is entitled to two-thirds of the estate. If the deceased is not survived by any of the noted kin, then the spouse inherits the entirety of the estate.

¹¹A rare example of a survey that looked into variations in allocation preferences according to sex and found minor gendered differences was conducted in Iowa during the 1970s. See Contemporary Project: A Comparison of Iowans' Dispositive Preferences with Selected Provisions of the Iowa and Uniform Probate Codes, 63 *Iowa L. Rev.* 1041, 1087, 1140, 1142-46 (1977-1978).

¹²Unlike the centrality accorded to freedom of testation in the U.S. and Israeli legal systems, on the European Continent, forced heirship, which limits testator freedom, is an accepted legal norm. See Krecizer-Levi (2008:chs. 4.2, 4.4).

¹³Israeli law awards the same inheritance rights to cohabitants as it does to married couples, Succession Law, § 55. Moreover, in a recent Israeli District Court decision, a homosexual spouse was recognized as his partner's heir under Israeli intestacy law, D.C. (Nazareth) 3245/03, *Estate of S.R. v. Attorney Gen.*, PM 2004(2) 721 (Hebrew). In contrast, most states in the United States do not recognize the inheritance rights of committed partners. See Fellows et al. (1998:15-17).

estate;¹⁴ allow or prohibit caretakers to be compensated by the estate;¹⁵ and enforce different rates of taxation on inheritance or none at all.¹⁶ We do not know if women think differently about these matters than men or if prevailing inheritance law, like other fields of law, in fact centers on the “reasonable male legator” and is based on male values despite its use of gender-neutral language. The impressive proportion of women whose estates are probated under intestacy law constitutes yet another important reason to address this acute empirical void.

B. Women as Will Writers

1. Freedom of Testation

For women to control the division of their property after death, they need to write a will. The available data suggest that, at least in the West, women practice will writing in the same proportions as men do. Finch et al. (1996:51) found that in England, women and men are equally likely to write a will. In my study of Jewish Israelis, women’s wills comprised 45 percent of the sampled wills—not total equality, but nonetheless indicative of a very high proportion of women realizing their freedom of testation. In Schwartz’s (1996:510) sample from Rhode Island, the proportion of female testators rose from 19 percent in the period between 1775 and 1790, to 53 percent in 1885, to 62 percent in 1985. Shammass et al. (1987:16–17) reported a similar trend in their survey of Bucks County, Pennsylvania, and Los Angeles, California: in the 1890s, 38.5 percent of deceased women in Bucks County and 33.3 percent in Los Angeles had left a will that was probated; by 1979–1980, this had risen to 50 percent and 58.8 percent, respectively. Recent findings from Australia indicate that women are in fact even more likely than men to write a will, as 55.8 percent of the sampled wills were females’ (Dekker & Howard 2006:11). These data are clear indication of the dramatic increase in Western women’s active participation in the legal and social institution of inheritance.¹⁷ Unfortunately, there are no data available on the extent to which women write wills in non-Western societies, but we can assume it to be at a much lower rate than in the West.¹⁸

¹⁴Israeli law, for example, excludes “sums payable in consequences of the death of a person under an insurance policy, by reason of membership in a pension fund or benefit fund or under a like arrangement” from the estate, Succession Law, § 147.

¹⁵See discussion, *infra*, Section V.C.

¹⁶In most developed countries, bequests are taxed; however, Israeli law treats estates as private property and regards taxation on inheritance as an illegitimate tool for minimizing social gaps. See Ben Bassat (2000) (Hebrew).

¹⁷It is important to note that all these studies are based on samples of wills that were submitted for execution. In fact, we cannot know if there are gendered differences present in wills not submitted for probate due, for example, to the small size of the given estate.

¹⁸This is due to the relatively high level of education and economic class of those who write wills, mentioned above, as well as to the prevalence of discrimination against women as testators in non-Western societies, which will be discussed below.

Finch et al. (1996) found that, parallel to what is the case among the general population, female testators tend to have a longer life expectancy than male testators. A gendered difference in the average age of the testator at the time of writing the will emerged, with the average age for men 69 and for women 73. This latter divergence perhaps partially explains their finding of a far higher proportion of female widowed will writers relative to their male counterparts. Finch and Hayes (1995:123–24) concluded from the relative prevalence of wills among widows and from their finding that married couples tend to bequeath the majority of their property to each other that “it is women, as the most likely survivor of any couple, who are the ones who will determine the disposition of property to the next generation.”

Although in my sample there was no significant divergence between the sexes in terms of will writers’ life expectancy,¹⁹ I also detected an association among gender, marital status, and the probability of writing a will. In my sample of wills, at the time of death, 89 men were married compared to 45 widowers, whereas for women the trend reversed: 32 were married and 81 widowed. A similar trend emerged from the Australian sample, with 96 males, as opposed to 31 females, married at the time of death, and 101 males and 242 females widowed (Dekker & Howard 2006:8).

Notwithstanding, Rossi and Rossi (1990:469) found in their Boston area sample that while never-married women are more likely to write a will than never-married men, widowers are more likely than widows to make a will. Moreover, Johnson and Robbennolt (1998:490), in their sample of unmarried committed partners, found no gender difference in tendency to write a will between women and men in same-sex partnerships, but that of opposite-sex partners, men were much more likely to write a will than women. It is important to note that these two studies were based on findings from interviews. The studies discussed above, relating to the already-deceased, show a clear possibility of people’s testation behavior changing over the course of their lifetime. Regardless, the findings in the Rossi and Rossi and Johnson and Robbennolt studies demonstrate that there might be places and circumstances in which women do not take full advantage of the potential to dictate the allocation and fate of the family wealth by writing a will.

Rossi and Rossi (1990:469) also found that married couples tend to draw up joint wills. This finding raises the question of power relations within the actual practice of will writing. In a society in which men enjoy greater social and familial power, the practice of joint or mutual wills could be exploited by the husband to control the contents of his wife’s will and to overcome the “risk”—created by women’s longer life expectancy and the social norm of men marrying younger women—that she will determine the fate of the family wealth by writing a will after he has passed away. The lawyers I interviewed insisted that they had detected no difference in behavior or preferences between their male and female clients, including in the context of joint or mutual wills, but these lawyers, all but one of whom are male, might be blind to the discursive and other covert mechanisms that might be employed by husbands to influence the contents of their wife’s will. This possibility is reinforced by Finch and Hayes’s (1995:125) findings on the differences between the wills of

¹⁹See *supra* note 9.

widows and those of married women. Widows name their children and include siblings, nieces, and nephews as beneficiaries far more frequently than do married women. In addition, married women tend to bequeath their estates in their entirety, whereas widows tend to divide the estate into a variety of gifts. Hence, widows tend to follow a bequeathing pattern that acknowledges a wide set of relationships, which is consistent and corresponds with the pattern of informal disposal many women practice during their lifetime, whether married, widowed, or single. Based on these findings, Finch and Hayes suggest that married women “may be under some constraint to fall into line with the pattern of disposal favoured by their husbands” (1995:131). Indeed, greater research attention is warranted with regard to the prevalence of mutual and joint wills, the motivations and dynamics of their creation, and their outcomes.

Another way to undermine a woman’s freedom to control her and her deceased husband’s property is by contesting her will after she has died. I found no indication of any prevalence of this practice among the Jewish population in the central region of Israel, as the proportions of female wills were almost identical in the samples of uncontested wills (44 percent) and contested wills (47 percent). A very similar finding was reported by Schoenblum (1987:643) from his small sample of contested wills in Tennessee. We must look, however, beyond these encouraging findings to the outcome in contested wills. Murthy (1997–1998), in her study of U.S. appellate court rulings, found that while a similar number of female and male contested wills reached the appellate level, 62 percent of the female wills were invalidated compared to only 30 percent of the male wills. Analyzing these decisions, she found that they were grounded on stereotypical perceptions of women as nurturing and dependent and in need of protection and of men as independent and capable.

The study I conducted allows a glimpse into the negotiations that take place over the course of will contest proceedings, as the majority of the cases in my sample were resolved by agreement between the parties rather than by judicial ruling. The outcomes of the negotiations tended to be somewhat in favor of the male wills, relative to female wills, as more of them were either not amended or only slightly amended (50 percent compared to 42 percent). The contested female wills were more likely to be significantly altered than the male wills (22 percent compared to 12 percent) and almost as likely as male wills to undergo extreme changes (36 percent compared to 38 percent). These differences, though not statistically significant, nevertheless highlight the importance of looking beyond the formal rulings to the gendered aspects of the negotiations taking place in the shadow of inheritance law.

In sum, then, we have strong evidence from England, the United States, Australia, and Israel that will writing is no longer a male-dominated practice. Further investigation is warranted into the prevalence of will writing among women in other countries, particularly non-Western ones, as well as into the social and legal circumstances that encourage or discourage women from fully realizing their freedom of testation. Moreover, there is an urgent need to inquire into the impact of marital power relations and the gendered bias of judges and other agents participating in will contests on women’s ability to freely exercise freedom of testation as granted to them by formal law. The possibility of such an obstacle clearly arises from the findings on the common practice of joint wills in the United States, on the divergences between the wills of unmarried women and married women in England, on the judicial prejudice that leads to a relatively higher proportion of invalidated female

wills in the United States, and on the gender gap in negotiation outcomes in will contests in Israel.

2. Content and Style

Judge and Hrdy (1992) found no statistically significant difference in average estate size by sex of decedents with a will. They did not indicate if there had been any changes in this over the course of the extended period they examined (1890–1984). A change over time was, however, reported by Finch et al. (1996:55) with respect to their wills sample. While the median size of estates was significantly lower for women relative to men in 1959 and 1969, there was no gendered difference in 1979. Unfortunately, there were no such available data with regard to the wills they sampled from 1989. As in the case of intestacy, it is important to note the connection of the prevalence of will writing to education, wealth, and advanced age (Sussman et al. 1970; Fellows et al. 1978). Hence, the fact that the estates of women and men are of equal size is indication that an increasingly larger number of women are enjoying an egalitarian family life and economic welfare in old age; it is not, however, particularly germane with regard to the reality of young, uneducated, and poor women.

This important finding on the gendered similarity in estate size aside, other findings indicate that the contents of women's wills differ from men's. Specifically, these findings show that women tend to diverge in choice of heirs from men. Judge and Hrdy (1992) found in their sample that married fathers are more likely than married mothers to bequeath all their property to their spouse (55 percent compared to 34 percent). Moreover, they found that men tend on average to bequeath significantly larger shares of their estate to their spouse relative to what women leave their spouse (80 percent compared to 40 percent). Judge (1995) concluded that men trust their wives to use the inherited resources in the best interests of their mutual offspring, whereas married mothers are less confident in their spouse, a distrust that Judge's findings indicate is not unfounded: men are significantly more likely to remarry and disinherit their children from a prior marriage than are women. Unfortunately, Judge did not indicate if these findings refer to the entirety of the long period studied or if there were changes over time in these trends. Bossong's (2000) experiments with German students indicated that there is reason to continue to suspect that males will not use the resources they inherit from a spouse in the best interests of their mutual offspring. Bossong conducted two experiments in which the respondents were asked to imagine their and others' bequeathal preferences in different familial, age, and sex circumstances. It emerged from the responses that women prefer allocation where the interests of their children are well-protected, while men prefer to give the surviving spouse freedom to use the resources as she or he wishes. However, a recent Australian wills survey found, in contrast, that women are no more likely to distribute residue to their children than men are (Dekker & Howard 2006).

Rare and interesting insight into gendered inheritance preferences in non-Western societies can be found in the findings from a survey conducted in Mexico of wills written and filed between 1993 and 1995 (cited in Deere & Leon 2003:933). Subject to a legal regime that allows the bequeathal of land to only one heir, the overwhelming majority of both male and female landowners in this survey preferred a son as their sole heir; however, 19 percent of the women designated a daughter as sole heir compared to only 5

percent of the men. This hints at the possibility of women testators using inheritance to increase gender equality within patriarchal settings. This possibility is demonstrated also in Shammass et al.'s (1987:204) findings related to North American women in the late 19th century, who favored their daughters in contrast to the norm of favoring sons.

In addition to widows' unique bequeathal patterns, mentioned above, that acknowledge a wide set of relationships and that divide the estate into a variety of gifts, Finch and Mason (2000:146) found that women in general, more so than men, tend to bequeath personal and sentimental possessions, such as jewelry and household items. Moreover, Rossi and Rossi (1990:475) found that women tend to bequeath to kin in addition to their spouse and children more than men do and are more likely to include nonkin beneficiaries in their will, such as friends and charity institutions. In contrast, no gender difference was evidenced in my Israeli sample in bequeathing to extended family and nonfamily heirs, nor any special tendency on the part of women to mention specific properties or items in their wills relative to men. Like the majority of male testators, female testators in this sample generally divided their estate among close family members either in shares or into specific bequeathals of only large properties, such as apartments. Even jewelry, which tends to be a gendered inherited item, was itemized specifically only by very few female testators. Hence, unlike in England and the United States, no gendered bequeathing patterns are discernible from the Israeli findings.

Finch et al. (1996:106–08) also looked at the interesting matter of conditions testators set in wills. They found that most bequests are unconditional, but that male testators tend to set more conditions than females. This relates to the limiting of the beneficiary's use of the testator's home only until he or she marries and the establishment of a trust for the beneficiary as a gift only for the duration of his or her lifetime.

Many of the above-mentioned findings point to a relational emphasis in how female testators allocate their estates. This contrasts with a rather counterintuitive finding on will content that emerged from my sample in Israel. Although most of the 323 sampled wills were written in a formal, legal, and standardized style (Hacker forthcoming), 112 of them did include unique, personal, and, at times, sentimental expressions and statements. Unexpectedly, however, in the majority of cases—68 of the 112 wills—the testator was male, not female. In some cases, the statements were related to the estate division *per se*, such as an explanation for the disinheritance of a potential heir or the favoring of another. In 58 wills, however, the statements were not directly related to the division of the estate but, instead, were, for example, an expression of love or gratitude, a request for a specific burial location, an instruction against performing an autopsy, or an entreaty to family members to respect one another. In the context of this latter type of will content, there is an even stronger male bias, with only 20 of the 58 wills belonging to female testators. Hence, it seems that Israeli Jewish women use their wills far less than men as a forum for expressing personal and sentimental thoughts, feelings, or wishes.

My own and other findings on the centrality of lawyers in the construction of wills as a formal document (see Hacker forthcoming; Masson 1994a, 1994b; Shaffer 1970) can also provide insight into the impact of the interaction between male and female testators and their lawyers. Indeed, this interaction might explain the apparent contradiction between the lack of unique female bequeathing patterns and of personal or sentimental statements

in female wills in Israel and the relational nature of women's estate division elsewhere. Perhaps Israeli women are less successful than Israeli men and women in England and the United States at resisting the pressure often brought to bear by lawyers to formulate their wills in a legalized, standardized, and impersonal manner and to exclude any matter not strictly related to estate allocation. Support for this assumption of lawyers' influence on women testators can be gleaned from the scanty empirical data available on holographic wills. Clowney (2008), who focused on this rare type of will, found that 65 percent of the handwritten and unwitnessed wills in his sample had been drawn up by women. He suggested that this might be due to the fact that female testators tend to be less sophisticated with regard to financial matters and less comfortable around lawyers. Moreover, he noted that these homemade wills allow testators to distribute small gifts to a variety of beneficiaries and to express their most tender emotions, contents that would most likely have been absent from a professionally drafted will. In my sample, women were more than twice as likely to leave an oral or handwritten will compared to men (10 percent vs. 4 percent, respectively). While these types of wills were, indeed, more likely than typed wills to include personal, sentimental, or non-property-related expressions, their numbers are too small for any valid generalization.

To conclude this discussion, the little that we do know about the gendered aspects of will contents and style points to much needed empirical inquiry into the circumstances surrounding will writing and their effect on women's ability to exercise their freedom of testation. There are several indications that women might be constrained by their spouses and by professionals involved in the will-making process from using their wills to acknowledge their broader network of relationships, to address specific items they own, and to express personal and sentimental thoughts and feelings. These preliminary indications can be confirmed or contradicted only by conducting studies across the world that analyze will contents, observe lawyer-client interactions related to making a will, and interview women on their individual will-writing process.

IV. WOMEN AS HEIRS

A. Equality and Discrimination Between Spouses and Among Siblings

As noted, it appears that in Western societies, widows, more so than widowers, are the beneficiaries of their deceased spouse's estates, since fathers tend to bequeath larger shares to their spouses than do mothers. Moreover, when the deceased leaves no written will, inheritance laws in Western legal regimes do not discriminate between women and men in dividing the estate. In circumstances of both intestacy and testacy, then, the difference in life expectancy and the spousal norm that husbands are older than their wives lead to more women than men becoming an inheriting spouse.

In contrast, women in many non-Western societies are still subject to discrimination in spousal inheritance, with some legal systems limiting or even denying widows inheritance rights. In Tanzania, for example, customary law, which is recognized by the state legal system, explicitly denies widows inheritance if the deceased husband left behind relatives

of his clan. A widower, on the other hand, takes full control over his deceased wife's property, which was not even considered to be hers to begin with since all marital property belongs to the husband (Erez 2006). Tanzania also recognizes Islamic law, which governs inheritance in modern Muslim states, such as Egypt, Tunisia, Morocco, and Iran, under which wives are entitled to only half of what their husbands would have received in similar circumstances, that is, one-fourth of the estate if the husband leaves no descendants and one-eighth if he does. Moreover, if the deceased husband had more than one wife, which is permitted under Islamic law, that one-fourth or one-eighth share is split among all the wives (Biloo 2006–2007; Radford 1999–2000).

In some non-Western countries, even where the state has egalitarian spousal inheritance law, customary laws and practices prevent widows from fully realizing their legal inheritance rights. In some communities in South Asia, for example, although state law has become more egalitarian, under customary practices, women can exercise their land inheritance rights only if they have at least one son and do not remarry (Agarwal 1994:254–55). Similarly, in Latin America, legal reforms improving the lot of widows have met with resistance from males seeking to preserve the traditional norm favoring sons over widows (Deere & Leon 2003:932). Indeed, there is ample empirical evidence of the discriminatory effects on widows of patriarchal inheritance laws and customs, especially with regard to land inheritance. In many agricultural societies, widows are completely denied any land ownership or left with only very restricted access rights to land (see, e.g., studies reported by Agarwal 1994:254–59; Deere & Leon 2003:932; Lastarria-Cornhiel 1997).

When the inheritance rights of offspring are examined, a similar and even worse dichotomist picture emerges between egalitarian laws and practices in the West and discriminatory laws and practices in other parts of the world. Western inheritance law does not differentiate between the rights of sons and daughters of the deceased. Hence, in the vast majority of cases of parental death, which tend to be without a will, daughters inherit the same share of the parent's estate as do their brothers. In addition, previously existing patriarchal legal institutions that had allowed only a sole male heir, such as the English primogeniture, under which all lands were passed to the first-born son, were replaced by freedom of testation and partible inheritance (Drake & Lawrence 2000:273).

The findings from numerous studies conducted in a diversity of places show, moreover, that even when a will is written, most parents in Western societies treat their offspring equally regardless of sex. Shammass et al. (1987:202–03) found no significant bias in favor of sons in their U.S. wills sample, neither in the late 19th century nor in 1979–1980. Likewise, Judge and Hrdy (1992:514) found in their California sample that sons and daughters were treated equally irrespective of the size of the parent's estate. From the study conducted by Finch and her colleagues (Finch et al. 1996:ch. 5; Finch & Mason 2000:168), it emerges that English parents bequeath equal shares of their major assets to their sons and daughters, and findings from a large-scale aging survey in Germany likewise found that, in contrast to earlier times, parents do not discriminate between their sons and daughters in their legacies (Szydlik 2005:37–38). A study conducted in Melbourne, Australia, of the lower-middle-class clients of two day-centers operating within a geriatric hospital also found a strong gender equality norm with regard to inheritance distribution among children (Drake & Lawrence 2000). Similarly, in a representative survey of Israeli families

(Lewin-Epstein et al. 1995), the vast majority of respondents asserted that parents should not discriminate in inheritance between sons and daughters. Furthermore, when asked about inheritances they or their spouse had received from their parents, most reported that the parents had divided their estates equally between their offspring. However, in the minority of cases, in which respondents indicated that parents had discriminated between their children by sex, it had most often been in favor of a son. My study showed a similar finding. In 17 of the 75 cases in which the probate file indicated that the deceased had both sons and daughters, a son was favored in the will, compared to only seven cases in which a daughter was favored. Interestingly, most of the wills favoring a son or daughter were contested.

Evidence from France also demonstrates a strong ethos of bequeathal equality toward offspring but, in contrast to Israel, daughters enjoy a slight advantage. One explanation for this is that parents will at times reward those children who care for them in old age (Twigg & Grand 1998:137). This raises the issue of the price daughters possibly pay for the sake of formal equality in inheritance. In Drake and Lawrence's (2000) study of inheritance preferences, respondents were willing to somewhat forego the principle of formal equality among siblings in cases where one child gave material or social support to the parent. This notwithstanding, in the West, general testamentary behavior in practice seems to bend toward not recognizing the fact that a child has cared for the parent testator in old age as justifying favoring that child in the will. Thus, in the interviews conducted by Finch and Mason (2000:81), for example, only two interviewees mentioned caring for an elderly parent as justification for receiving a larger share of the parent's estate. Moreover, in the interviews I conducted with lawyers specializing in inheritance law and will drafting, the only reason they mentioned as justifying favoring one child over his or her siblings is the existence of a special need, such as in the case of a disabled child or a child experiencing particular economic hardship. In fact, the lawyers reported urging parents to treat their children equally in their wills, regardless of the quality of the relations with them, so as to prevent inheritance conflicts. The gendered dimension of this ethos of formal equality in offspring inheritance, which rejects using inheritance as reward for care giving, is that, in most families, it is the daughters, rather than sons, who perform the everyday tasks of caring for an aging parent (Finch & Mason 1990:52–53). And so, formal equality in fact fails to compensate daughters for their relatively greater contribution to caring for the parents, since this contribution is usually not reflected in the division of parental inheritance.

The strong egalitarian ethos of equal inheritance for offspring notwithstanding, there is some evidence to show that there are types of properties and items that are bequeathed to children along gender lines. In my study, for example, in the few cases in which pieces of jewelry were specifically itemized in a will, they were usually passed on to a daughter. Likewise, Finch and Mason's (2000:75) study revealed that jewelry and watches are usually passed down from mother to daughter and from father to son, albeit generally not within the framework of a formal will. More significantly, there are some empirical indications of a gendered aspect to the bequeathal of farms and businesses in favor of sons. In Salamon et al.'s (1986) study of U.S. farmers in the early 1980s, for example, it emerged that family farms are intergenerationally passed on from father to son; daughters seem not

to be conceived as potential farm heirs. In some cases, the parents ensure that the non-farming offspring receive their equal share of the value of the farm by instructing in their wills that the farm heir pay out to his siblings their share (Salamon 1985:329). Nonetheless, inheritance conflicts still arise between siblings in these circumstances, when off-farm heirs, especially sisters, demand from the farm heir what they perceive to be their rightful share (Salamon et al. 1986:26).

Rosenblatt et al.'s (1985) study of U.S. family businesses in the 1980s revealed that the preference of sons as heirs to the family's source of livelihood is not unique to farmers. The owners of these businesses, all males themselves, almost never considered daughters as their appropriate successors. They would ignore their daughters as heirs even if at the cost of losing the business to an outsider. The researchers surmised this to be the product of both gendered bias against women in entrepreneurial roles as well as the perception that married daughters are no longer part of their family of origin; hence bequeathing the business to them would actually be tantamount to passing the business out of the family. Rosenblatt and his colleagues did not report on whether daughters are compensated in any way for being excluded from inheriting the family business.

More up-to-date studies would reveal whether daughters are in fact still being thusly discriminated against as potential heirs of central family properties such as farms and businesses and whether they are compensated and how. We do not have an answer to the question of what changes, if any, have transpired in this context due to women's increased participation in the entrepreneurial world (Wells 1997) and the permeation of the legal concept of joint property, mentioned above, which might have simultaneously reduced fathers' control and increased mothers' control over how family farms or businesses are allocated upon one or the other's death. Moreover, the particular nature of the intergenerational transfer of family farms and businesses, a process that often begins long before the parents die through role socialization and *inter vivo* gifts (Ambrose 1983; Salamon et al. 1986), highlights the importance of investigating the gendered dimensions of inheritance within the broader context of intergenerational human and economic capital transfers and their own gendered features (for an example of such study, see Rossi & Rossi 1990).

The preference of sons as heirs in the family farm and business context in the West is a deviation from the common egalitarian norm. It is, however, part of a prevalent and widespread norm and practice in non-Western societies. Empirical studies show that daughters are still harshly discriminated against in heirship in many parts of the world. As with spousal inheritance, some non-Western countries have state succession laws that discriminate against daughters. Tanzanian customary law is an extreme example in this respect as well. Its hierarchical arrangements are based on gender and age, according the eldest son the largest share, each remaining son a medium share, and all the daughters the smallest share to be divided among them. In addition, the inheritance rights of daughters are significantly limited, for even when a daughter is an only child, she is permitted only use of the land she inherits and prohibited from selling it. Though critical of these discriminatory customary rules, the Tanzanian government nonetheless recognizes them as valid and enforceable (Erez 2006). Islamic law and, hence, the many countries that have adopted it as state law, also discriminates against daughters, with the Quran dictating that daughters receive only half the share sons receive (Billoo 2006–2007:647).

Furthermore, as in the case of spousal inheritance rights, there are societies and communities where, despite the fact that the relevant formal state inheritance law makes no distinction between sons and daughters, custom dictates that daughters not receive an equal portion of their parents' estate. In South Asia, for example, the greatest likelihood of a daughter inheriting her parents' land is when there are no sons in the family. Moreover, even when a woman has no brothers, her inheritance rights might be limited to trusteeship on her son's behalf, who is ultimately the owner of the land (Agarwal 1994:249–54). Similar findings have been reported based on surveys conducted in rural Philippines, where the eldest son is most favored in land inheritance and sons generally inherit larger shares of land than their sisters (Estudillo et al. 2001:30). A survey conducted in Japan similarly reveals that echoes of the traditional patrilineal succession system still strongly reverberate in current parental bequeathal preferences, as many parents make their oldest son sole heir of their estate (reported in Izuhara 2002:69). In China as well, there is tension between the egalitarian state laws and the prevalent values and practices that discriminate against daughters and construct the disinheritance of a married daughter as acceptable (Zhang 2003; Kiong 2005). Finally, in Latin America, inheritance is an important mechanism of land acquisition for women, who have the benefit of a relatively favorable legal tradition that does not discriminate between sons and daughters. Nonetheless, daughters are still subject to discrimination in land inheritance, due mainly to the culture's gender roles, which define agriculture as a male occupation (Deere & Leon 2003:930–31).

The only empirical evidence of substantial inheritance preference for daughters today that I could find was from Sumatra. In this rare example of a matrilineal society, daughters are favored over sons in the inheritance of paddy lands. However, sons are compensated through their parents' investment in their schooling and through inheritance of bush-fallow lands. While greater investment in male education is common in matrilineal societies, the bequeathal of bush-fallow land to sons is a relatively new phenomenon in Sumatra, which can be attributed to the shift from communal to individualized land tenure and the need for male labor on such land (Quisumbing & Otsuka 2001). These findings highlight the need to examine compensatory mechanisms in societies in which daughters suffer from discrimination in heirship.

Indeed, a common argument disputing discrimination of daughters in inheritance is that their disinheritance in land and housing is counterbalanced by the schooling, dowry, and heirship of other items (such as household goods) they receive from their parents and that their brothers do not. In the Philippines, for example, daughters are thusly favored in terms of schooling, which is one of the factors in the parity between female and male average income. Moreover, an increase in the returns from schooling and decrease in the returns from agriculture might even create an income gap to the advantage of daughters (Estudillo et al. 2001). However, elsewhere, the exclusion of daughters from land and house inheritance is not substantially compensated and leaves women at the mercy of their spouse's family (Deere & Leon 2003:931; Agarwal 1994:480–83; Moors 1995:ch. 3). Moreover, as suggested by recent evidence, the current shift in developing countries toward a market-based, individualized tenure system threatens to undermine the existing, albeit limited, land rights women have enjoyed under customary tenure systems (Lastarria-Cornhiel 1997). This further reinforces the need for ongoing scholarly inquiry into the

gendered dimensions of inheritance within the complex familial, social, and economic circumstances that empower or disempower women in the economic sphere.

Western countries that are considering recognizing the authority of religious tribunals, such as the United Kingdom and Canada, and countries that have a dual inheritance law system, such as Israel and India (Shachar 2008), could face a normative tension between egalitarian and discriminatory inheritance norms. My study is the only one that I have found inquiring into the possible gendered ramifications of this potential tension. Jewish inheritance law discriminates against women in three contexts in how it allocates estates. First, it deems husbands their wife's heir, but excludes the latter from their husband's estates. Second, daughters are not recognized as heirs of their fathers if there are surviving sons or descendants of sons. Third, a mother and her family are not recognized as heirs of a deceased child. These discriminatory rules are particularly problematic since Jewish law does not recognize freedom of testation nor, therefore, a right to override these rules with a will. However, over time, Jewish religious leaders have recognized the validity of written documents granting inter vivo gifts as a substitute for a will, so that, among other reasons, daughters and mothers will be able to "inherit" (Radford 1999–2000:162–63).

My study of inheritance procedures in the Rabbinical Court reveals that it does indeed thusly recognize "wills" if they are formulated as inter vivo gifts. Moreover, I found that if the deceased dies intestate or leaves a will not thus formulated, the Rabbinical Court tends to recognize the male heirs' relinquishment of part of their own share so that the deceased's wife, daughters, and granddaughters can receive the same share as male heirs from the same family line or the share that the testator had wished to bequeath to them. To do this, the court applies a religious law construction that recognizes a fictitious obligation (called an *odita*; see Rivlin 1999:157) on the part of the male heirs toward the female family members.

In an interview I conducted with Rabbi Shimon Yacobi,²⁰ the Legal Advisor to the Rabbinical Courts Management, he claimed that such an application of religious egalitarian mechanisms to overcome the discriminatory religious inheritance law is not unique to the Tel Aviv Rabbinical Court but, rather, is part of the general egalitarian inheritance policy of the rabbinical courts system.²¹ According to Rabbi Yacobi, discriminating among offspring or disinheriting a wife runs counter to public values and perceptions, including within the religious and ultra-orthodox sectors. Hence, the religious judges look for mechanisms that will enable them to conform religious law to these values and perceptions. He added that in the rare cases in which the male heirs do not agree to an egalitarian division of the estate and the conflict is irresolvable, the rabbinical court will try to find grounds for dismissing the case so that the heirs will have to bring their case before the family court, which is not bound by the discriminatory religious rules. In the very rare instances in which

²⁰Interview conducted on Apr. 1, 2008.

²¹This egalitarian inheritance policy stands in sharp contrast to the rabbinical courts' discriminatory rulings and practices in divorce. See, on the latter, Shochoetman (1995).

there is no legal ground for dismissal,²² the rabbinical court will be forced to render a decision based on religious laws, even though they discriminate against women.

My study did not include an investigation into the practices and perceptions of judges in the Muslim, Christian, or Druze religious tribunals in Israel. However, Palestinian feminists in Israel assert that the Muslim tribunals (the *Sharia* courts) that govern family law for most Palestinians in Israel do not try to ameliorate the discriminatory effect of Islamic law toward women in the inheritance context. They claim that Muslim judges in fact contribute to the prevailing cultural pressure, which will be discussed next, put on women to relinquish even the limited inheritance share they are entitled to under *Sharia* in favor of male family members (Ali 2007). The apparent approach of the *Sharia* courts, like my contrasting findings on the policy of the rabbinical courts, demonstrates the importance of empirical investigation of religious tribunals in Western countries, in both their formal rulings and the informal interactions that take place within their walls. Among other things, this could offer insight into the question of whether inheritance is yet another sphere in which women pay a heavy price in the name of legal multiculturalism (Okin 1999).

B. Inheritance Renunciation

In some cases, heirs relinquish their inherited shares to the benefit of others. Although the gendered aspects of this phenomenon have been recognized and discussed in the context of non-Western societies, they have been by and large ignored by researchers studying Western societies.

The available data point to a widespread phenomenon among Islamic communities, for example, in Pakistan (Agarwal 1994:282–84), Israel (Nator 1991:110), and Palestine (Moors 1995:ch. 3), of female renunciation of their (already limited by religious law) inheritance share in favor of male family members. Women's renunciation in these communities is part of a larger familial economic network in which male family members are expected to care for their female relatives, hence compensating the women for lacking independent inheritance rights. Notwithstanding, it seems that there are cases in which women are emotionally and even violently forced to relinquish their inheritance share and cases in which male relatives do not carry out their economic obligations toward their female relatives, even if the latter renounced their inheritance rights (Lim & Sait 2007:255–58). Moors's (1995) study is an exceptional example of the complexities of renunciation that can be exposed by a detailed ethnographic study. In her study of women in a rural village and in an urban town in the West Bank, she uncovered the relations between a woman's marital status, her age, the number, age, and sex of her children, her relations with her husband's family, and even urbanization and war times, on the one hand, and her willingness and ability to claim or renounce her inheritance rights, on the other hand. Moreover, Moors demonstrates the prices a woman might have to pay and the privileges she might benefit from by choosing to claim or to renounce her share. For example, both in the village and in the city, a married woman with brothers is very likely to renounce her inheritance share. By that, she

²²The rabbinical court can dismiss the case using the construction that not all parties involved have given their free consent to its jurisdiction. It is more difficult to make use of this mechanism when all the parties are religious.

strengthens her ties with her closest male kin, who she is counting on for assistance in time of need. The norm of female renunciation is somewhat eased in cases of very wealthy families, when the woman is relatively old and single, when she has no brothers, and when the inherited good is not land but movable property, especially gold.

The only Western study discussing inheritance renunciation that I could find was Finch and Mason's (2000:91), where it is noted that the interviewees provided several examples of heirs giving away part or all of their inheritance shares. Of such heirs, slightly more were women than men, except in cases of children relinquishing their shares to their mother, which involved more sons than daughters.

Hence, my study is the only one providing detailed analysis of renunciation of inheritance in the framework of civil probate proceedings. Israeli law provides for an heir to give notice to the Inheritance Registrar or the court processing the probate of his or her renunciation of part or all of his or her share after the testator has died but before the estate has been divided. The renunciation can be in favor only of the deceased's spouse, children, or siblings.²³ Since renunciations are rare in the inheritance conflicts adjudicated by the family courts,²⁴ and since, as discussed above, male heirs are encouraged by the rabbinical courts to renounce part of their inheritance in favor of female kin, I analyzed only the renunciations reported in the Inheritance Registrar files. I found that in the 138 files in which the testator had left a will, renunciation was rare, amounting to only four cases. However, within the 157 intestacy files, 63 files included 162 heirs who had renounced their inheritance. There were clear gendered aspects to these cases. In 40 of the cases, the deceased was male, and in 23 cases, female. Thirty-five of the male decedents and 14 of the females were married at the time of death. Hence, renunciation was more common in cases of a female spouse surviving her husband. Indeed, in 28 cases, the renunciation was in favor of the surviving female spouse of the deceased. In nine cases, a male spouse was the beneficiary of the renunciation, in 13 cases a son of the deceased, and in 16 cases a daughter. The majority of renouncing heirs were children of the deceased: 86 sons and 59 daughters. It appears, therefore, that mothers in particular benefit from the generosity and trust of their offspring in relinquishing their inherited property rights—an act that can hardly be imagined in any other property-related human interaction.

These rare and limited findings on inheritance renunciation raise the question of the motives and outcomes of formal and informal inheritance concessions in different parts of the world. In-depth studies and investigation would reveal if the empowerment of female heirs through inheritance renunciation is a phenomenon unique to the Israeli context or prevalent elsewhere as well.

C. Inheritance Disputes

Little empirical attention has been devoted to legal inheritance disputes or, in particular, to their gendered dimensions. The only two relevant studies that I know of, Schoenblum's

²³Succession Law, § 6.

²⁴Indeed, among the 144 court files, only in two cases did an heir relinquish his or her inheritance share.

(1987) and my own, examine the gendered dimensions of will contests but not legal conflicts in cases of intestacy.

Schoenblum's study showed no gendered difference in testators' relation to will proponents, with sons and daughters, sisters and brothers, nephews and nieces, and grandsons and granddaughters almost equally likely to be proponents in the sample. However, wives, mothers, and fiancées were more likely to be proponents than husbands, fathers, and fiancés, though the sample is too small for a statistical pattern to be detected. In my sample, in which there were many more proponents who were family members of the deceased (97 out of 107) than in Schoenblum's study (55 out of 102), sons of the deceased (27) were more likely than daughters (19) to be proponents, while female spouses (12) were much more likely than male spouses (2) to be proponents.²⁵ Widows were also more active than widowers as proponents in the undisputed wills sample, suggesting that the differing gender ratios for will proponents are also a product of the longer life expectancy of female spouses. In contrast, the predominance of sons, relative to daughters, as proponents in will conflicts could be due to daughters being less informed as to the existence of a will, which is also evident in Germany (Szydlik 2005:40).

In my sample, females and males were equally represented as will contestants. In Schoenblum's sample, in contrast, contestants were more likely to be female (49 compared to 29 males). Since the study did not examine a possible correlation between the sex of the will's beneficiary and that of the contestant, we do not know if females were more likely to be challenged as heirs by males or by females.

Particularly important findings did emerge, however, relating to the sex of the beneficiaries of the contested wills in both studies. In Schoenblum's sample, a gendered pattern could be detected, with 71 of the beneficiaries female and 48 male. A most troubling finding is the fact that more daughters (34) than sons (16) were beneficiaries of a challenged will. Since, as we saw, daughters are generally not overly represented in their parents' wills, this is strong indication that wills benefiting females are more likely to be challenged in court than when males are the beneficiaries. The findings from my sample diverged from Schoenblum's, however: female beneficiaries were represented more than males only in the spousal category. Since this pattern arose also in the samples of uncontested wills and intestacy, it can be understood as part of the general trend of spousal inheritance discussed above, rather than representative of a trend of greater attempts to challenge wills that benefit females. Indeed, there were almost equal numbers of contested wills that included sons and daughters as beneficiaries. Moreover, as mentioned above, the rare wills favoring daughters and the more prevalent wills favoring sons were likely to be contested in court. Thus, the Israeli sample in fact suggests that parents who do not adhere to the ethos of equality toward their offspring in their will risk igniting a legal battle over their will's validity. The partial and

²⁵Unfortunately, Schoenblum did not indicate the sex of the individual proponents described in the file as having no relation to the testator (37 out of 112). My study demonstrates that this might be of significance, since five of the nonrelated proponents in my sample were female, while only one was male.

contradicting findings gleaned from Schoenblum's sample and my own point to the urgent need for further empirical investigation of inheritance conflicts and their possible gendered ramifications.

D. Use of Inheritance

Finch and Mason's (2000:chs. 4–6) study was the sole study that I could find that explored the gendered dimensions of the use of inherited money and items. Among their interviewees, more women than men had invested their inherited money for their children's benefit or in the family home. The researchers note the general tendency of women to spend money from any source on their household rather than on themselves. Indeed, an important unaddressed question is whether women tend to spend their inherited funds on others, while men tend to perceive and use them more individualistically. Moreover, Finch and Mason found that a few more women than men were engaged in commemorative spending of the funds and were occupied with the symbolic meaning of inheriting by being more concerned with objects that invoke the memory of the deceased, such as rings, watches, books, and pictures. Some of these women act as "treasuring keepsakes," that is, they keep such items in special ways and places and think and talk about them in relation to their relationship with the deceased. These findings indicate that, as in female testation, there is a strong relational emphasis in the female heir context.

To conclude the discussion of women as heirs, presently available empirical data expose the existence of a sharp dichotomy between the egalitarian legal and social reality prevailing in the West and the discriminatory reality outside of the West. In the former, women enjoy equal rights as heirs and tend to be spousal heirs more often than men. In contrast, in many non-Western societies, the legal and customary arrangements strip wives and daughters of inheritance rights. However, there is also some evidence that even in the West, daughters are sometimes deprived of major family assets, such as the family farm or business. Moreover, we know very little about the gendered dimensions of inheritance renunciation, the use of inherited property and funds, or inheritance conflicts.

V. SOME PRELIMINARY LEGAL THOUGHTS

In this section, I will put forth some preliminary legal thoughts inspired by the empirical data presented above. These observations are necessarily preliminary since, as the review has shown, we know too little about the gendered dimensions of inheritance to begin to propose a comprehensive or decisive evidence-based legal policy. This notwithstanding, however, the overall empirical review does allow us to map out some globally shared themes as well as differences and nuances that point to a need to reflect on the legal implications of the gendered dimensions of inheritance in the context of the specific society and legal system being considered. This is another reason why I offer here only preliminary thoughts. Since the scope of this article does not allow for an in-depth analysis of one particular legal system operating in a specific society, my observations are intended merely to highlight the relevancy of empirical findings to our understanding and evaluation of inheritance law in

general. Moreover, gender is but one of many parameters that should inform the design of inheritance law. Crafting any specific aspect of inheritance law entails a proper balancing among all these parameters, a full analysis of which is not possible in the framework of this discussion. Still, the insights offered below should, hopefully, demonstrate that it is crucial that gender not be overlooked as a relevant dimension in any such legal scheme.

A. Egalitarian Inheritance Laws

The first and most important legal lesson that can be drawn from the empirical review in this article is the primary importance of egalitarian inheritance laws for women. The normative prescription that inheritance laws should not discriminate against women is, of course, self-evident from any humanistic standpoint and should be independent of any empirical findings. However, the findings presented here are significant not only in that they demonstrate the negative effects of discriminatory inheritance laws, but also in bringing to the forefront the dramatic positive effects of egalitarian inheritance laws. Since the majority of people across the world die intestate, default inheritance rules that prescribe equal shares for spouses and offspring regardless of sex necessarily ensure gender equality in the division of most estates. Moreover, in many countries that have adopted egalitarian inheritance laws, women take advantage of the potential embedded in the formal law and exercise their freedom of testation at levels similar to those of men.

Indeed, one of the most dramatic achievements of the liberal feminist struggle for gender equality in the law is witnessed by the findings showing that in the West, wives and daughters are not discriminated against in consensual inheritance procedures. Moreover, it was shown that due to the life expectancy gap and the gendered marriage pattern, it is more likely that a wife will be a beneficiary of her deceased husband's estate than vice versa. Unlike egalitarian labor laws, laws against sexual violence, and other feminist legal achievements, which have met with only partial success due to a variety of factors constricting the law's effect, in the case of inheritance law, the impact has been profound and almost automatic, as all intestate probates have been made subject to an egalitarian bureaucratic legal procedure of estate division without any gender bias.

The data also, however, point to the limitations of egalitarian state laws in guaranteeing inheritance gender equality when they are challenged by cultural patriarchal opposition. The evidence from different communities in different parts of the world reveals the predominance of customary and religious laws, despite egalitarian state laws, which prevent women from realizing their formal legal rights as legators and as heirs. The findings raise several options for overcoming this harsh gender discrimination. One possible measure would be for the law to limit freedom of testation by reserving certain portions of the estate for spouses and offspring without discriminating between them on the basis of sex, a mechanism applied in many civil-law and commonwealth jurisdictions (Tate 2008:138). Another measure would be for the law to prohibit relinquishment of an inherited share within the framework of probate. The egalitarian legal message that this would convey alongside the fact that the female family member would then have legal ownership of the inherited share might serve to counter the pressure placed on women to relinquish their shares to male relatives. A third possible measure would be to reject the legal authority of

patriarchal religious tribunals in inheritance matters when they apply discriminatory religious laws or accept cultural discriminatory practices that deny women their inheritance rights.

Since, as I will explain in the next section, the data strongly indicate the importance of freedom of testation for women, perhaps the first measure would be appropriate only in countries where the majority holds discriminatory perceptions of women as heirs, whereas the third measure would be suitable to countries in which this is only a minority view. As to the second measure, the Israeli findings that show widows to be the principal beneficiaries of inheritance renunciations, and the Palestinian findings that show that renunciation can be a part of an economic safety net for women, highlight the need to consider the option of prohibiting renunciations with extreme caution and awareness of the possible harms that might be caused by this prohibition. Indeed, all these three suggestions of forced egalitarian mechanisms are problematic from a multicultural perspective. It is not possible within the scope of this article to engage in a full discussion of the tension between the goal of safeguarding egalitarian inheritance rights for women, on the one hand, and the desire to respect and allow the legal autonomy of communities that do not identify with the law of the state in which they live. However, it is important to note the importance of such a discussion and my belief that it must be conducted in the context of a specific state and a specific community, with the utmost weight given to the views and measures suggested by feminists from the specific community.

Another implication of the empirical data is that legal mechanisms that impose the designation of a sole heir should be abolished. Even in societies with an egalitarian public conception of inheritance, such rules are very likely to result in the preference of sons over daughters.²⁶ Moreover, it seems that legislatures should consider the enactment of legal arrangements that foster parental bequeathal of substantial economic assets, such as family farms and businesses, equally to offspring. Parents can be motivated to include their daughters in the inheritance of such major assets, for example, through affirmative action in the form of succession tax exemptions for the inherited commercial asset.

B. Freedom of Testation

The particular importance of freedom of testation for women is apparent from the empirical evidence, in a number of respects. As we saw, women put a relational emphasis on inheritance, and many female testators, when not subject to the influence of males or legal professionals, depart from the intestate and male pattern of bequeathal by acknowledging

²⁶A mechanism embedded in Israeli law, for example, forces parents in certain agricultural settlements (*moshavim*) to choose only one of their children as the “holdover son,” that is, the offspring who is entitled to the tenure rights on the land. Though either a son or daughter can be chosen, the mere term “holdover son” in combination with the data we have on farm inheritance in the United States, see, *supra*, Section IV.A, suggest that sons will be favored over daughters. Moreover, § 114 of the Israeli Succession Law states that any farm “which is a unit the partition of which would impair its validity as a farm capable of supporting an agricultural family shall be allotted to the heir ready and able to maintain it and he shall compensate the other heirs to the extent that the value of the farm exceeds the amount due to him from the estate.” Thus this provision and others relevant to cooperative agricultural societies force the designation of only one heir to the family farm. See Ottolenghi (1982).

in their wills a broad array of relationships and bequeathing concrete items rather than allocating shares of their estate to a small number of family members. Moreover, freedom of testation gives elderly women, in many cases for the first time in their lives, control over the family assets. For example, it might allow them to reward a care-giving child, a point on which I elaborate in the next section.

From what we empirically know about the gendered dimensions of inheritance, there is only one substantive restriction on freedom of testation that should be considered in egalitarian societies: a legislative arrangement that ensures the transfer of a deceased parent's estate to her or his children in the event that the other parent remarries. This would be motivated by, on the one hand, the fact that mothers tend to seek to secure their children's inheritance interests and, on the other, the fact that some widowers who remarry detract from the inheritance interests of their children from a previous marriage. This inheritance security could be achieved through a legal mechanism that allows children from a previous marriage to claim from their surviving parent the share they would have inherited under intestacy law from the deceased parent's estate had the other parent not remarried and died intestate.

The empirical evidence also points to another possibly desirable limitation on freedom of testation, but of a formative, rather than substantive, nature. The differences discerned between the wills of married women and those of widows and our understanding of spousal power relations should give legislatures and judges reason to reconsider the institutions of joint wills and mutual wills. With regard to the relatively rare phenomenon of joint wills (Dukeminier et al. 2005:288), a legislative requirement that testators write separate wills might hamper attempts on the part of a relatively stronger spouse, usually the husband, to hinder the other spouse's freedom of testation. A restriction on mutual wills, which are more common among spouses (Dukeminier et al. 2005:288; Blecher-Prigat 2006), would be more complicated and likely implausible if freedom of testation is to be preserved in general. Yet empirical insight into the spousal interactions surrounding mutual wills and their outcomes is vital for responding to the legal question of whether a spouse who signed a mutual will should be allowed to change his or her will before or after the other spouse dies. If empirical evidence can be found indicating that husbands tend to manipulate their wives by changing their mutual will without informing her or after she has passed away, legislatures and courts should consider restricting the power to do so. It could, however, emerge that women's freedom of testation is limited by mutual wills since men exploit them, in light of the likelihood that they will die before their spouse, to prevent their wives from gaining control of the family wealth once they are widowed. If this is indeed the case, legislatures and courts might be encouraged to permit spouses to alter a mutual will without notifying the other spouse or after the latter has died, as well as be receptive to claims made by a testator's potential heirs that the mutual will does not reflect her free will.

C. Care as a Category of Reward

The findings reviewed in this article point to a current tendency on the part of testators to disregard the care they do or do not receive from their children in their adherence to

formal equality bequeathing patterns. Moreover, there are indications that lawyers encourage this trend and discourage parents from using inheritance as an opportunity to reward care-giving children.

According to Tate (2008), the need to care for the elderly increases as the rates of senior citizens increase. He notes that in the United States, it is estimated that by 2030, 20 percent of the population will be age 65 and older. Many of the elderly receive unpaid assistance and care, provided mainly by their children. Tate argues that caregivers should be entitled to be rewarded from their parents' estates, especially since the burden of care is usually not equally distributed among family members and is more likely to be borne by daughters. I would further add that there is a gendered dimension to using inheritance as a means of rewarding caregivers, not only because the caregiver is likely to be female, but also because the testator in need of the care is more likely to be female. As mentioned above, women tend to outlive men and are more likely to spend their final days without a spouse. Moreover, women are more likely than men to suffer from chronic illness, especially in old age (Ifran 1999). Thus, it is in women's best interests, as both the likely recipients and providers of care, that this care be acknowledged and rewarded through inheritance law.

Tate suggests two ways in which such reward can be facilitated. The first would be to allow complete freedom of testation, with no reserved shares for offspring and with the power to disinherit a child. This would allow parents to reward a care-giving child at the expense of other offspring. However, the studies revealed the inherent risks of such an arrangement for women. For complete freedom of testation could be exploited to discriminate against wives and daughters rather than reward them for care giving. Hence, such a scheme should be considered as an option only in cultures with a strong ethos of gender equality in inheritance. Moreover, in countries such as France, where reserved shares for children are part of a legal arrangement that also obliges the children to financially care for their parents (see Twigg & Grand 1998), absolute freedom of testation might erode the ethos of familial mutual care rather than enhance it. Unequal bequeathals are also problematic since they can be interpreted as indication that the parent loved one child more than the other. For this reason, *in vivo* gifts, which, unlike a will, must not be public, could be a better way of rewarding a care-giving child (see Bernheim 2003).

The second solution proposed by Tate is to allow a family member who cared for the deceased to claim compensation from the estate. I would suggest expanding such an arrangement to include nonfamily members as well, in cases where they establish family-like caring relations with the deceased. Alternatively, I would suggest allowing people to sign contracts with caregivers that reserve a portion of their estate in return for the care provided. Current U.S. law disfavors contracts between decedents and caregivers and imposes significant barriers to their enforcement (Foster 1999:1240), while Israeli law actually prohibits such contracts and perceives them as an invalid restriction on freedom of testation.²⁷ French law, in contrast, recognizes a care-giving contract between a parent and child, in which an increased inheritance share is promised to the latter, who undertakes to

²⁷Succession Law, § 8.

support the parent “in sickness and in health” (Twigg & Grand 1998:138). Similarly, the Chinese legal system encourages such contracts, even in cases in which the caregiver is not a family member (Foster 1999:1250–54).

These proposed arrangements could arguably lead to an increase in the current relatively low rate of inheritance conflicts.²⁸ This would be the inevitable risk of enhancing and legitimating the connection between care giving and inheritance, with will contests revolving around allegations of “undue influence” on the part of the caregiver. But judges should exercise extreme caution in invalidating a will based on claims of undue influence (see also Dagan 2004:190–202). Indeed, the *Restatement* states that a testator’s decision to give an enlarged share to a voluntary caregiver cannot constitute the basis for invalidating the will, in the absence of suspicious circumstances.²⁹ Yet even in the United States, undue influence, which Schoenblum (1987:647–49) found to be the most prevalent argument in will contests, does at times ground a court’s decision to invalidate a will that rewards a caregiver (Frolik 1996; Leslie 1996). Israeli inheritance law is even more wary of wills rewarding caregivers. The care provided to the testator by the beneficiary and the dependence of the testator on that care are considered to be in themselves suspicious circumstances that could be indication of undue influence (Shohat et al. 2005:100–01). Thus, by allowing caregivers to receive increased inheritance shares, judges will both acknowledge the relational nature of inheritance and minimize the risk of meritless legal conflicts.

VI. CONCLUSION

When I first embarked on this exploration of the gendered dimensions of inheritance, I was wearing my usual dominance feminism glasses. My feminist scholarly agenda is, first and foremost, aimed at looking for the social and legal spaces in which women are discriminated against, exploited, and marginalized (e.g., Hacker 2001). I assumed inheritance to be one such space (see also Fellows 1991–1992). To my surprise, however, the literature review and my own study revealed inheritance to be a space in which Western and Israeli women enjoy privilege, power, and control. Indeed, the data show the field of inheritance to be one of the most impressive achievements of liberal feminism. The combination of automatically enforced egalitarian intestacy laws, which designate the spouse and children as the major heirs, females’ greater longevity, and the prevalent norm that women should be younger than their spouse has allowed women to enjoy and control the family wealth in old age. The unexpected high rate of women writing wills, which, in some countries, even surpasses that of men, is another indicator of the rare economic power and autonomy women enjoy in the sphere of inheritance.

²⁸Both in Schoenblum’s (1987) sample and my own, contested wills comprised less than 1 percent of all probated wills.

²⁹See the *Restatement (Third) of Property: Wills and Other Donative Transfers* § 8.3 cmt. H (2003), as discussed in Tate (2008:190).

This notwithstanding, however, it also emerges from the data that the dominance feminism standpoint should not be abandoned, even in the unique context of inheritance. First and foremost, women in non-Western societies continue to experience harsh discrimination as heirs, limiting significantly their ability to become legators. Indeed, state laws, customary laws, and patriarchal norms all contribute to the exclusion of women from the sociological institution of inheritance in many parts of the world. Moreover, even in the West, there is some evidence that women still suffer from discrimination as testators and heirs. Mutual and joint wills and the pressure brought to bear by spouses and legal professionals can potentially constrain women's freedom of testation and manipulate their bequeathing preferences to conform with male interests and values. Patriarchal perceptions and attitudes regarding farming and business might also lead to the exclusion of women as heirs from the family's principal source of livelihood. Finally, the presence of non-Western communities in Western countries, which, in some cases, enjoy judicial autonomy in inheritance, blurs the lines of the dichotomy between the West and non-West and draws attention to the impact of discriminatory religious inheritance laws practiced in the West and in hybrid countries such as Israel.

Finally, the review presented in this article not only brings to light what we do know about the gendered dimensions of inheritance, but also exposes how much we do not know. It emerges that gender is no less a blindspot in this area of research than in others, ignored by both legal and social scholars investigating inheritance. We know almost nothing about women as legators in non-Western societies and very little about female legators in the West. We do not know if women's views diverge from those of men with regard to the variety of moral decisions reflected by inheritance laws, and we know very little about the gendered practices of heirs. Moreover, we know hardly anything about the possible gendered aspects of inheritance conflicts, including those of judicial rulings and out-of-court negotiations.

It is my hope that by compiling this review of the knowledge that has been amassed thus far on the current gendered dimensions of inheritance and by pointing to its possible legal implications, I have stirred the reader's curiosity and set a fruitful starting point for continued scholarly and activist efforts to understand the interrelations between gender and inheritance and to shape inheritance law for the welfare and benefit of women.

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