

Max Planck Institute for Social Anthropology
Department 'Resilience and Transformation in Eurasia'

Sylvia Yanagisako

Accumulating Family Values

Goody Lecture 2018



MAX-PLANCK-GESELLSCHAFT

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Jack Goody (1919–2015)

Sir John Rankine Goody was brought up near London and initially studied English at Cambridge. Formative experiences during the Second World War led him to switch to social anthropology. He undertook fieldwork in Northern Ghana during the last decade of British colonial rule and taught anthropology at Cambridge University alongside Meyer Fortes and Edmund Leach. After succeeding Fortes as William Wyse Professor of Social Anthropology in 1973, he began to explore long-term historical contrasts between sub-Saharan African societies and those of Europe and Asia. Following V. Gordon Childe, Goody emphasized commonalities across the Eurasian landmass since the urban revolution of the Bronze Age. In numerous publications he highlighted developments in East Asia and criticised the eurocentric bias of Western historians and social theorists. Core themes include productive systems, the transmission of property and class inequality in global history; kinship, marriage and the “domestic domain”; technologies of communication, especially writing, the transmission of myth, and of knowledge generally; and consumption, including cuisine and flowers. These topics are not approached in isolation but in their interconnections. Ethnographic insights are essential, but they form just one component of Goody’s comparative vision. His best known works include *Death, Property and the Ancestors* (1962); *Technology, Tradition and the State in Africa* (1971); *Production and Reproduction* (1976); *The Domestication of the Savage Mind* (1977); *The Development of the Family and Marriage in Europe* (1983); *The Oriental, The Ancient and the Primitive* (1990); *The East in the West* (1996); *The Theft of History* (2006); *Renaissances: the one or the many?* (2010); *The Eurasian Miracle* (2010); *Metals, Culture and Capitalism: an essay on the origins of the modern world* (2012).

Goody’s agenda is one which the Department ‘Resilience and Transformation in Eurasia’ at the Max Planck Institute for Social Anthropology seeks to continue. In an annual lecture series, a distinguished scholar addresses pertinent themes for anthropology and related fields:

Goody Lecture 2011: Keith Hart, “Jack Goody’s Vision of World History and African Development Today”.

Goody Lecture 2012: Peter Burke, “A Case of Cultural Hybridity: the European Renaissance”.

Goody Lecture 2013: Martha Mundy, “The Solace of the Past in the Unspeakable Present: the historical anthropology of the ‘Near East’”.

Goody Lecture 2014: Francesca Bray, “Rice as Self: food, history and nation-building in Japan and Malaysia”.

Goody Lecture 2015: David Wengrow, “Cities before the State in Early Eurasia”.

Goody Lecture 2016: Martine Segalen, “On *Papies* and *Mammies*: the invention of a new relative in contemporary European kinship”.

Goody Lecture 2017: Nur Yalman, “On Cultural Revolutions: observations on myth and history in Turkey”.

The eighth Goody Lecture was given by Sylvia Yanagisako on 28th June 2018.

Sylvia Yanagisako

Accumulating Family Values

Preface

I want first to thank Chris Hann and his colleagues here at the Max Planck Institute for Social Anthropology for inviting me to present this lecture and giving me the opportunity to honor Jack Goody. I am sure all of you are familiar with Jack Goody's prolific record of publications on an amazing array of topics – from literature and technology to food and flowers. Yet his core contribution to social anthropology, at least from the perspective of the generation of anthropologists trained in the 1970s and 1980s, lies in his analysis of kinship's crucial role in shaping economy and polity – from the dynamics of marriage and family to the accumulation of property by the Christian church.

My lecture today is an attempt to extend this analytic project, which Goody vigorously pursued over several decades, to a case on which he did not focus. At the same time, my lecture carries forward his commitment to comparative sociology – which he viewed as central to the academic mission of anthropology. Jack Goody's comparative sociology was both wide-ranging and ambitious. Mine today is, by comparison, a rather puny, limited foray into comparative analysis. Rather than attempt a sweeping comparison of the domestic domain in African and Eurasian societies and a bold argument about the social consequences of homogeneous inheritance as opposed to diverging devolution (Goody 1976), my comparative project aims mainly to provoke a critical analysis of the interplay between kinship, economy, and politics in one society. I must, therefore, apologize in advance for the provincialism of my argument today. I am afraid that the only excuse I can offer for this narrow exercise lies in the provincial character of the society that is the primary focus of my lecture: namely, the United States of America.

Introduction

I begin with Thomas Piketty's widely-read book *Capital in the twenty-first century*, published in 2014, which offers considerable insight into one of Jack Goody's primary concerns: the interrelation of kinship and economy. Most commentaries on Piketty's book have tended to focus on his findings about the extent of wealth inequality in what he calls the "leading developed" capitalist countries – France, Germany, Great Britain, Japan and the U.S. There are indeed striking revelations about wealth inequality in the book, including for example that in the U.S. the top decile now own 72 percent of the nation's wealth, while the bottom half own just 2 percent (Piketty 2014: 257). More important for those of us interested in the relationship between kinship and economy, however, is Piketty's analysis of the "structure of inequality," which relies on differentiating the unequal distribution of income from labor from the unequal distribution of inherited wealth. Teasing apart these two modes of wealth accumulation leads Piketty to conclude that in these nations inheritance has been a key driver of wealth concentration in the top 10 percent of the population. This is the segment of the population that owns more than 60 percent and often as much as 90 percent of the total national wealth (ibid.: 336). There is some variation, of course, in the structure of inequality in these societies. For example, in the U.S. and Great Britain the extraordinarily high pay that the top managers of large firms have been granting themselves since the 1980s plays a greater role in wealth inequality than it does in countries such as France and Germany (ibid.: 332–333).

Yet even in the U.S., inequality of income from capital is greater than inequality of income from labor, as it has been in all countries, in all periods for which data are available (ibid.: 244). Inheritance, moreover, has grown increasingly important in the last three decades. The very high concentration of capital ownership in this period cannot be explained by savings over the course of individuals' lives. It can, however, be explained by the inheritance of wealth and its cumulative effects (ibid.: 246).

Piketty's analysis of the structure of inequality in the 20th and 21st centuries has powerful implications for theories of kinship, capitalism, and class. Above all, it provides overwhelming evidence of the crucial role inheritance has played, and is once again playing, in the wealthiest capitalist societies. These findings should drive a gigantic nail into the coffin of theories that posit the decline of kinship's significance in 'modern' (read *capitalist*) society. Yet like so many ideological models dressed in empirical clothing, this myth of modernity appears to have zombie-like powers of regeneration.

For more than 150 years social theorists have argued that in modern capitalist societies kinship has lost the economic and political functions it once had in 'traditional', pre-modern societies, and instead has become restricted to the 'domestic domain' of childrearing and homemaking. From the nineteenth century social evolutionary theories of Maine and Morgan, to Durkheim's theory of the differentiation of institutions in modern society, dominant theories of capitalist modernity have posited the formation of a secular, rational public domain governed by economic and political institutions, in contrast to an affectively ordered domain of family. In the 1950s, Talcott Parsons (1949) took this even further by claiming that in modern society occupation depends on individual merit rather than on family membership. He thereby separated kinship from class and reduced the family's function to the nurturance of children and the production of adult personalities. Piketty's findings about the history and structure of wealth inequality in the U.S. and other leading capitalist societies not only challenges Parsons' conclusion by providing overwhelming evidence of the continuing importance of kinship; they also offer a valuable clue for understanding why so little attention has been paid to inheritance in theories of modernity and kinship. As the economic sociologist Jens Beckert (2008) notes, although inheritance is known to be a central cause of the intergenerational reproduction of social inequality, it has received little attention in recent sociological scholarship. Studies in social stratification focus on the unequal distribution of income but largely ignore wealth and the bequest of property. Why has this been the case? The answer is embedded in Piketty's findings about the only period in the history of modern capitalism in which wealth inequality actually declined in the U.S. and Western Europe.

Piketty's analysis reveals that the lopsided distribution of income and wealth in leading capitalist nations has held relatively steady from the nineteenth century

to the present, with one exception: the period between World War I and 1970. In these interwar and postwar years, wealth inequality actually declined for the first time since the 19th century. The flow of inheritance, which had accounted for between 15 and 25 percent of national income in France, Germany and Britain at the beginning of the 20th century, decreased spectacularly between 1910 and 1950 (Piketty 2014: 425), and the wealth share of the upper one percent fell from upwards of 50 percent in Europe at the beginning of the 20th century to 20–30 percent in the postwar era (*ibid.*: 346). It was in this period, moreover, that for the first time, the group standing between the top 10 percent and bottom 50 percent in the ladder of wealth distribution became relatively wealthier, pulling away from the bottom 50 percent as it came to control a more substantial portion of the national wealth (*ibid.*: 336–337). The emergence of this “patrimonial middle class,” as Piketty calls it, was the most important long term structural transformation of wealth distribution in the history of these countries.

What caused this remarkable decline in the flow of inheritances and the fall in wealth inequality from World War I to the 1970s? According to Piketty, it was a unique constellation of historical factors, including wartime destruction, progressive tax policies, and exceptional growth in the three decades after World War II in which the return on capital was lower than the rate of growth of national economies (*ibid.*: 356). Whether or not one finds Piketty’s explanation of the narrowing wealth gap in this period convincing, what is striking is that this exceptional period of declining inequality was also an exceptionally formative period for social science scholarship. Indeed, it would not be far-fetched to argue that the still reigning model of modern capitalist society – the functionalist sociological model articulated by Talcott Parsons (1949) – congealed and attained near unquestioned hegemony in this period. The emergence of a “patrimonial middle-class” in both Western Europe and the U.S. convinced many scholars (most of whom were members of this class) that western capitalist society was moving decisively towards a meritocratic, occupationally-based class system in which inherited wealth played an insignificant role (*ibid.*: 384). The unprecedented reduction in flow of inheritance in the first half of the 20th century led scholars to include that inheritance was no longer significant and that capital was now wealth that individuals had accumulated by hard work and saving during their lifetimes.

Although this ‘new normal’ of declining wealth inequality was short-lived, it shaped the views of social class among the scholars of that era as well as the baby boomers who later came of age in it (ibid.: 381). Indeed, it came to be viewed by functionalist sociologists as the natural evolutionary path of modern capitalist society. Maintaining this vision of narrowing wealth inequality as a natural outcome of capitalist society, however, required overlooking the enormous impact of two world wars and the public policies enacted in response to the Great Depression – from rent control and nationalization to highly progressive taxes on income and inheritances (Piketty 2014: 275). Far from resulting from Durkheimian, equilibrium-seeking mechanisms of modern capitalist society, this ‘new normal’ was forged through intense political conflict.

It is important to keep in mind, moreover, that even during this period of decreasing wealth inequality in the U.S, the top decile’s share of total wealth dropped only from 80 to 70 percent. In Europe it dropped from 90 to 60 percent (ibid.: 349). In addition, the end of this exceptional period of declining inequality was not long in the offing. It was followed by a steady rebound in inequality starting in the 1970s and accelerating in the 1980s to the present (ibid.: 294, 349).

How did this occur? After 1980, there was an explosion of income inequality in all the leading capitalist societies. In the U.S., increasing inequality was largely the result of an unprecedented increase in wage inequality, in particular among an exorbitantly paid class of ‘supermanagers.’¹ But this does not mean that income from capital played an insignificant role. The growing inequality of income from capital since 1980 accounts for about one-third of the increase in income inequality in the U.S, and as in Europe, income from capital becomes more important the higher one goes up the income ladder (ibid.: 300). In addition, the two types of income inequality (income from labor and income from capital) are not necessarily mutually exclusive; indeed they often complement each other insofar as top managers’ earnings comprise both salaries and capital gains. (For example, a CEO’s total compensation package generally combines a generous base salary with stock options). This may well explain why the concentration of wealth in the U.S. is currently higher than in Europe (ibid.: 265).

¹ See Ho (2009) for an illuminating ethnography of how Wall Street investment bankers’ experience and ideology produces an ethos that justifies their ‘super-salaries’.

The ownership of capital in the U.S. and Europe, moreover, is becoming more concentrated once again as economic growth slows, increasing the likelihood of a rising wealth gap. If the next century turns out to be characterized by both low demographic and economic growth, as Piketty projects, it is very likely that inheritance will once again be as important as it was in the nineteenth century. In France, for example, if today's upward trends persist, inherited wealth will exceed 70 percent of total private capital by 2020 and account for nearly 80 percent in the 2030s (Piketty 2014: 403).²

The historical evolution of inheritance in the U.S. is more difficult to assess and the future more difficult to predict because of the unreliability of U.S. sources, which is itself a consequence of a history of more lax tax policies than in France and other European countries. Indeed, the data are so unreliable that it is debatable whether inherited wealth accounts for 20–30 percent of total U.S. capital or 70–80 percent. This debate aside, while the baby boomers and their adjacent cohorts grew up in a period in which pre-mortem gifts and bequests accounted for just a small part of national income, people born after 1970 have already experienced the crucial role that intergenerational transfers of wealth play in their lives (*ibid.*: 406). They recognize more than their parents that in both the short and the long run, both over the course of their lives and in the history of capitalism, kinship is still at the core of wealth inequality and is the major determinant of social class. It is also a major determinant of political power and, as some political scientists have concluded, of the polarization of politics in the U.S. Studies by my Stanford colleague Andrew B. Hall show that it is not that the general public has become more ideologically polarized but rather that the increasing influence of wealthy donors on elections has led to the selection of political candidates with more extreme views on both ends of the political spectrum (Hall and Thompson 2018; Hall 2015).

While Piketty shows us that intergenerational transmission of wealth is

² For those interested in wealth inequality in Germany, it should be noted that Piketty is much more constrained in his discussion of wealth inequality in Germany because there are significant gaps in German tax records, mostly as a result of 20th century political upheavals (Piketty 2014: 325). Yet his estimates – based on the imperfect data available after 1870 – show some significant parallels with France (*ibid.*: 140). As in France, inheritance flows contracted substantially after the two world wars, from roughly 16 percent of national income in 1910 to two percent in 1960. Inheritances rebounded dramatically thereafter, reaching 10–11 percent of national income in the first decade of the 21st century. (*ibid.*: 425).

integral to the structure of inequality in the U.S. and other leading capitalist nations, he does not delve into the intimate, affective and gendered processes through which wealth is converted into inheritance. He thus misses an opportunity to understand how kinship and capital work in tandem to reproduce inequality. In this lecture today, I treat inheritance as a culturally valorized and legally-sanctioned conversion process through which intimate bonds and sentiments of family naturalize capital accumulation. Since an analysis of the kinship and political economy of inheritance even in just the U.S. is too ambitious to attempt in a 45 minute lecture, in what follows, I will focus on one key element in this assemblage: the estate tax.

On Inheritance and the Estate Tax

In December 2017, President Trump signed into law the Tax Cuts and Jobs Act (TCJA) that had been passed by the Republican-controlled Congress. Among the taxes targeted for reductions in the bill was the federal estate tax – the tax on transfers of wealth at the time of a person’s death.³ Although Trump and the Republican legislators had considered abolishing the estate tax entirely, the TCJA instead doubled the estate tax exemption threshold to around \$11.2 million for individuals and \$22.4 million for couples.⁴ With this increased threshold, the number of estates throughout the country estimated to be affected by the estate tax was reduced from 5,000 to 2,000 (Ebeling 2017). In comparison, before the Bush administration’s 2001 tax cut bill, the estate tax exemption threshold of \$675,000 per individual affected around 52,000 American estates (Ebeling 2017).⁵

³ Unless another act is passed in the U.S., after 2025 the estate tax which is now set at the rate of 40 percent will revert back to pre-2018 rates.

⁴ The doubling of the ‘generation skipping’ and ‘gift’ tax exemption rates of the TCJA add another significant dimension to the transfer of wealth in the U.S. These changes allowed individuals to transfer \$11.2 million to their adult children and \$11.2 million to their grandchildren tax-free over the course of their lifetime.

⁵ Under the previous Republican administration, President G.W. Bush had signed into law the Economic Growth and Tax Relief Reconciliation Act of 2001, more widely known as the Bush tax cut bill. Title V of the Act focused on the federal estate tax, phasing it out over the following nine years. With the passage of the Act, the estate tax exemption, which had been \$675,000 per individual in 2001, was increased to \$1 million in 2002 and increased gradually to \$3.5 million by 2009. The estate tax, along with the other tax cuts were scheduled to expire in 2010, so the estate tax would go back to the way it was before the legislation was enacted.

The debates occasioned by both the TCJA and other recent legislative attempts to repeal the estate tax (such as the Republican-sponsored bill that was vetoed by President Clinton in 2000) revisit long-standing legal, political and cultural disagreements about the role of inheritance in American society. At the core of these debates is a basic ambivalence: on the one hand, we are strongly committed to the ideals of a meritocracy, in which achievement is based on an individual's own abilities and efforts, rather than on inherited wealth or social status. On the other hand, we believe in an individual's right to dispose of his or her property as he or she chooses.

Until very recently, a civil or positivist view of inheritance appeared to dominate legal and political thought in the U.S. The idea that the transmission of property at death is a creation of civil society which is rightfully subject to regulation by the state had obvious appeal to the leaders of the American revolution, including Thomas Jefferson, who were determined to dismantle the hereditary privileges on which the British monarchy and British aristocracy relied. Subsequent generations of U.S. legal and political leaders affirmed this view of inheritance. Supreme Court decisions from the mid-nineteenth century distinguished the civil institution of inheritance from property itself, and taxes on inheritance were construed not as direct taxes on people's property, but indirect duties on the process of transferring that property from the dead to the living. This view of inheritance was further reinforced in the late 19th century as the popularity of limiting inheritance through taxation increased in response to growing economic inequality.

The competing view of inheritance as a natural right, however, never disappeared. Rather, it has resurfaced repeatedly in U.S. legal and political thought, most recently in the arguments made by those advocating the repeal of the estate tax in both the Bush tax cut of 2001 and the Trump tax cut of 2017. Those who advocated the reduction or outright repeal of the estate tax pointed to two ways in which the tax goes 'against nature'. The first is that it turns a natural event (death) into a taxable event (hence its labeling as a 'death tax'). The second is that it intervenes in the affairs of the family at a time when the family is already burdened by grief and loss – adding, as it were, government insult to family injury. According to sponsors of the repeal of the estate tax, one of the most powerful motives behind hard work is to make life better for one's children and loved ones. This makes the estate tax the most unnatural of all taxes as it seeks to repeal human nature

Proponents of the estate tax, on the other hand, frame the debate in terms of meritocratic and democratic values. They ask how much intergenerational transfer of wealth is optimal for promoting a just society. In arguing that the estate tax helps reduce concentrations of power and promote equality of economic opportunity, its current defenders echo the majority view of Congress in 1916, when the estate tax was first adopted. As Bill Gates senior (father of the better-known billionaire Bill Gates) explained, the estate tax “is the purest example of progressive taxation” and helps to level the playing field (Johnston 2001). Perhaps the senior Mr. Gates also had in mind the admonitions of one of the most vociferous supporters of the federal estate tax, Andrew Carnegie, who over a century ago opined that “the parent who leaves his son enormous wealth generally deadens the talents and energies of the son, and leads him to lead a less useful and less worthy life than he otherwise would” (Carnegie 2006 [1891]: 36).

As it has been articulated in arguments for and against the repeal of the estate tax, the politics of inheritance seem to center on reconciling the purported natural right of the family to transmit its legacy to subsequent generations with the right of individuals to equal opportunity for advancement in a meritocratic society. Once again, it would appear that the conservative political agenda has been successful in casting itself as the advocate of ‘family values’, leaving progressives to argue for the rights of individuals and making them once again vulnerable to the all-too-familiar accusation of undermining the family.

Closer scrutiny of both the rhetoric and the reality of the estate tax, however, raises some intriguing questions about precisely what kinds of family values are being pursued. It also reveals that the terms in which the debate has been cast have obscured some other important aspects of the politics of inheritance. In what follows, I will focus on two aspects that have, for the most part, been overlooked in debates over the estate tax: the disinheritance of children and the gender politics of the family, both of which are reflected in and shaped by U.S. inheritance laws. I will then turn to discuss their implications for family values in the U.S.

One of the key contributions of feminist scholarship on the family over the past quarter century has been a critique of the ‘natural family’ as an ideological construct (Collier, Rosaldo and Yanagisako 1981). The natural right view of

inheritance rests on just such an idea of the family as a universal institution, given in nature or given by God, and existing prior to and apart from culture. Like most appeals to the natural, it functions to justify the status quo and, along with it, gender hierarchy and inequality. Considering the topic from an anthropological perspective, I ask what kinds of family sentiments, parental commitments, conjugal relations, class inequalities and configurations of power are reflected in and promoted by the laws and policies governing inheritance in the U.S. In short, what kind of family values do these inheritance laws transmit?

To answer this questions, I am going to take a brief side-trip to northern Italy, where I have conducted research on families, specifically family firms in the silk industry of Como, since the mid-1980s and where I came to view inheritance in the U.S. with fresh eyes. Here I want to interject a short aside about the special relevance of Italy for this lecture today, because it was in northern Italy after a conference on kinship and gender at the Bellagio center on the shores of Lake Como that I had the good fortune to sit next to Jack Goody on a train ride to Milan. It was on this occasion that I had the pleasure of hearing the amazing story of his experience in Italy during World War II, including his capture as a prisoner of war, his escapes and his hiding out on the grounds of a large estate.

Italian Inheritance Law and Family Dynamics

To understand what I learned about inheritance and the gender balance of power in Italian families in the 1980s and 1990s, you need a little background on Italian inheritance before 1975. When Italy emerged as a unified nation-state in the mid-nineteenth century, its Civil Code was modeled upon the Napoleonic Code, which had been fashioned as an attack on the concentration of aristocratic wealth and power. Rather than accomplishing this through a civil, positivist approach to inheritance, however, the Napoleonic Code treated inheritance as a natural right. Reconciling a commitment to family legacies with the egalitarian goals of the French revolution yielded a different strategy for breaking up estates – namely, requiring equal division of the patrimony among all children irrespective of gender.

The Italian Civil Code not only dictates that sons and daughters receive equal portions of their parents' property, it also guarantees inheritance by family members, granting their inheritance rights absolute priority over the testamentary right of individuals. In other words, in Italy, as in Germany, inheritance represents an 'overriding duty' to family members that cannot be set aside by individual testators. At least half the estate of individuals who have a surviving spouse or a child is reserved for these family members; in addition, which family members receive an inheritance and the proportions they receive are all codified and set forth according to the configuration of the family at the time of an individual's death. Testamentary inheritance – that portion of the estate which an individual can give away according to his or her own wishes – applies only to what is left after the distribution of what is called the *legitim* – the portion reserved for family members.⁶ This latter portion ranges from one-third (in the case of an individual who dies leaving neither spouse nor children) to three-fourths of the estate (when an individual dies leaving a spouse and two or more children). If an individual dies intestate, i.e. leaving no will, a complex set of rules governs the proportion received by various kin under different scenarios.

Law, of course, does not entirely dictate custom and daughters certainly have not received the same shares as sons since the formation of the Italian nation-state. Until recently, fathers and sons in propertied families employed a variety of strategies to retain control over more of the patrimony than was their legal due. In northern Italy, for example, a common practice was for fathers to give daughters a share of the inheritance in the form of a dowry or other pre-mortem payments, including real estate (Yanagisako 2002). These pre-mortem payments were usually of much less value than what was legally

⁶ The testator's will is restricted by a number of provisions, among them that the inheritor must be 18 and mentally competent (Lessico Universale 1979: 199) and that illegitimate children may not, if there are legitimate children, receive more than would be their share if legal inheritance were followed (ibid.: 181). Legal inheritance takes effect when there is no will and applies to the part not distributed by *legitim*. There is a complex set of rules governing the proportion received by various kin under different scenarios (summarized in Davis 1973: 181). In general, as Davis (ibid.: 180) notes, legal inheritance "places much more emphasis on the nuclear family than does the law of *legitim*, which, by excluding siblings and other collateral kin, emphasizes the direct line of descent and ascent. Even in legal inheritance, however, priority is given to the descendants and then to ascendant over spouse and siblings." If there are no surviving kin, the legal inheritance and the *legitim* go to the state (Mengoni 1961: 5).

due to these daughters. But daughters hardly had the resources to demand their legal rights. For one, they had an interest in the undivided strength of their family's estate, because fathers and brothers were their only refuge from a failed marriage. The continuing success and wealth of a woman's family of origin was also a source of cultural capital that enhanced her position in relation to her husband and in the community at large. Second, daughters could not count on the support of their mothers to help them obtain their legal share of the patrimony.

They could not count on their mothers because, until 1975, wives had weaker *legitim* rights than children. Not only was a wife guaranteed less than a child, but her *legitim* rights were limited to usufruct alone, not to actual ownership. This meant that upon her husband's death, a wife had the right to be supported by a stipend and to manage the patrimony until her children came of age, but she could neither sell the patrimony nor transmit it to anyone. After her children reached maturity, she was dependent upon them, usually her sons, to manage the patrimony and provide her with a stipend. As a consequence, widows shared their sons' interest in keeping the patrimony intact, rendering them unlikely supporters of their daughters' inheritance claims.

By the late 1960s, the Italian women's movement was openly challenging gender inequality and the state policies that codified it (Birnbaum 1986; Bono and Kemp 1991, 1993). The revisions in family law that accompanied the legalization of divorce in 1975 both reflected and facilitated changes in family and gender norms and practices in Italy. These revisions of the Civil Code significantly strengthened the rights of spouses and children born out of wedlock. Although the Civil Code of 1975 is most well-known for legalizing divorce, the establishment of spousal community property (that is, property acquired by the spouses after their marriage, whether individually or together) for the first time was of equal or greater importance. Supporters of the reform argued that if divorce were to become possible, women would need financial resources and, therefore, rights to family property. Their arguments prevailed and with the passage of the Civil Code, wives were granted their share of community property. In accordance with these new rights, widows were granted actual ownership rights to their husband's estate, rather than mere usufruct rights. A widow with two or more children became entitled to at least one-third of the patrimony if her husband died intestate. If he died leaving a

will that gave someone else the portion of his property that he could freely assign to whomever he wished, she would still be entitled to at least one-fourth of his property. This portion is considered her *legittima*. As her children are also entitled to their *legitim*, a woman and her two children have a combined entitlement to three-fourths of her husband's estate.

Although these legal reforms were intended primarily to provide financial support for divorced women, among the bourgeois families I studied their more significant consequence was to strengthen mothers' and daughters' inheritance claims and their ability to get fathers and brothers to honor them (Yanagisako 2002). As women became more aware of their community property rights, the gender balance of power in families shifted. Once mothers had been endowed with legally enforceable claims of actual ownership of family property, they became more than a moral force in the family; they became political and economic actors with considerable financial leverage over their husbands and children. Furthermore, once they were no longer financially dependent on their sons to provide them with a stipend after the death of their husbands, women became stronger advocates of their daughters' inheritance rights, calling for equal shares for sons and daughters. Although many propertied fathers' desire to endow their sons with sufficient assets to ensure their livelihood and the continuity of the family continued to take priority over goals of gender equity, they now had to contend with wives and daughters whose stronger legal claims to the family's wealth emboldened them to champion a different vision of family continuity – one that included adult daughters and their spouses and children as well as adult sons and theirs.

Italian inheritance law provides a useful comparative perspective on U.S. inheritance law – a vantage point from which to raise critical questions about inheritance in the U.S. When I describe Italian inheritance law to people in the U.S. they are usually quite surprised to hear about the limits it places on an individual's testamentary freedom. When I describe U.S. inheritance law to Italians, conversely, they are shocked to hear of the wide latitude Americans have to decide how much, if any, of their property to leave to their children.

As we head back to the U.S. from Italy, one of the first things we might notice is that the impetus for legal reform generated by the second wave of the feminist movement in the U.S. also resulted in the strengthening of spousal

inheritance rights in a number of states. Spouses have been increasingly protected against disinheritance through near universal passage of some form of 'elective' or forced share. These legal reforms still leave much to be desired, especially in common law states, almost all of which give the spouse election rights of no more than one-third of the testator's estate. This small spousal share is disadvantageous to women because in general much of the property acquired during marriage falls into the husband's estate.

When it comes to the inheritance rights of children, the U.S. is something of an oddity, if not an outright aberration. Most countries today protect the inheritance of children through a forced share system, along the lines of Italy. These include, among others, Greece, France, Germany, Japan, Puerto Rico, Spain, Switzerland, and the Scandinavian countries of Denmark, Finland, Norway and Sweden. On the other hand, the commonwealth countries of England, Australia, Ireland and a number of Canadian provinces have adopted a family maintenance system in which a discretionary judicial process can override a parent's will after a showing of just cause in order to provide for the needs of a child. In the U.S., by contrast, a parent can disinherit a child without giving any reason. In some states, moreover, a child support obligation ends upon the death of the parent, regardless of the parent's wealth, or the age or economic circumstances of the child (Oldham 1999: 266).⁷

The apparent indifference in the U.S. to children's inheritance rights has been attributed to the extreme individualism of Americans. Evidence of this can be found in statements such as the one made by a Louisiana legislator, who exclaimed during a debate in the 1980s over limiting the inheritance rights of children, "This is my money, I made it and I can do what I want with it" (quoted in Oldham 1999: 273). In an historical irony, this passionate commitment to the testamentary freedom of individuals appears to initially have been incited by the anti-aristocratic views of the founding fathers of the U.S., who were critical

⁷ Note that some states allow child support orders (for non-intact families) to continue beyond the date of the obligor's death, if the obligor can afford it and the child needs the support. Also a few states have adopted statutes providing that, if a testator leaves a child surviving who would qualify for public benefits, the testator's estate must reimburse the state for those benefits if there are sufficient assets (Oldham 1999: 268). No state has adopted legislation to protect the inheritance rights of children in intact families; to the contrary, in 1989, Louisiana, which had been the only state that followed the Napoleonic Code, adopted legislation to limit the protection of children's inheritance rights to children under the age of 24 and in cases of disability/inability to generate income.

of the British inheritance laws that kept large estates intact. It was also fueled by the increasing value placed on economic independence that accompanied the transformation of the U.S. from an agrarian society to an industrial-capitalist one. At the same time, testamentary freedom would seem to be at odds with widely held commitments to the family. As David Schneider (1968) concluded in his anthropological study of American kinship, at the core of American ideas about the family is the concept of blood as a symbol of diffuse, enduring solidarity. For most Americans, the bonds of the family are rooted in nature and, therefore, are unbreakable and enduring. The unrestricted testamentary freedom of individuals flies in the face of this concept of the family. It appears to imply that the family as a collective unit of mutual responsibility and commitment ends when children reach the age of maturity. Certainly from an Italian perspective, the enduring solidarity of family members in the U.S. seems both fragile and conditional.

For several decades, legal scholars have made compelling arguments for legislative reforms that would protect the inheritance rights of children in the U.S. (Batts 1990; Chester 1998; Haskell 1964; Shapo 1998). They note the illogic of giving testamentary freedom priority over the needs of children when testamentary freedom is already overridden by creditor's rights, property and income taxes, and spousal inheritance rights. In addition, the need to protect the inheritance rights of children has become increasingly acute given the high frequency of divorce. Half of the marriages in the U.S. now end in divorce and more than 75 percent of divorced women and 80 percent of divorced men eventually remarry. In many of these remarriages, people have additional children. The consequent increase in the number of step-families, of children being raised by one parent, and of fathers and mothers who have commitments to two families has amplified the need to protect children's inheritance rights. Some of these legal scholars (Batts 1990) have proposed enacting a form of 'protected inheritance' along the lines of the *legitim* in civil code countries like Italy. Others, such as the 1965 report by the Bennett Commission of the New York State Legislature (Oldham 1999: 267) have argued for the adoption of a commonwealth system of family maintenance in which the testator's freedom would be secondary to the enforcement of a moral obligation to provide adequately for his or her family. In these discussions, the gender implications of testamentary freedom and the proposed alternatives remain somewhat

hazily in the background – behind the gender neutral references to ‘parental responsibility’ rather than paternal or maternal responsibility. Yet there are clear gender implications of testamentary freedom and significant gender consequences to protecting children’s inheritance rights.

Some of the gender implications would appear quite obvious. The first pertains to the issue of whose individualism is being protected by testamentary freedom. As feminist scholars have argued, the construct of the individual as an independent agent freely fashioning his destiny has enabled the freedom of men more than women. This concept of individualism is certainly at odds with what our society has long expected and still continues to expect of women as wives and mothers. Indeed, most women continue to place less priority than men on achieving an individuality that overrides their commitments to their families.

A second rather obvious gender implication of testamentary freedom follows from the fact that men in the U.S. own and control considerably more wealth than do women. While their testamentary freedom as husbands is constrained by provisions for community property and spousal election, as fathers, American men have greater testamentary freedom than do fathers in almost all other capitalist, democratic nations. As a consequence, the men who control the most wealth in the world bear comparatively less paternal responsibility for their children than those in other countries. Rather than speculating about how this has affected men’s behavior as fathers, I want to consider the potential gender implications of guaranteeing the inheritance rights of children.

I suggest that we think back to the shift in the balance of power in Italian families that followed the establishment of wives’ inheritance rights with the 1975 revision of the Civil Code. In the U.S. case, I suggest that a shift in the gender balance of power in marriage would be the outcome of the establishment of children’s inheritance rights. This may seem counter-intuitive, so let me explain. As I mentioned before, while women are in a better position in the U.S. today as a result of their improved inheritance rights as wives, there is still much more to be done. Focusing exclusively on the inheritance rights of wives artificially separates women’s experience as wives from their experience as mothers. For those who are both, the separation is merely academic. Once we

consider both aspects together, it becomes apparent that the decline in women's financial resources after separation or divorce is compounded by the children's inability to make legal claims on their father's assets once they reach the age of majority. Given that the majority of children in the U.S. these days are still pursuing their education after the age of 18, and given the ever increasing cost of education, it is obvious that current laws governing parental responsibility fall far short of what is needed. In addition, the weak legal rights of children to parental support render mothers more dependent on husbands than vice-versa and thus more vulnerable to their husbands' withdrawal of support. Divorced fathers are not only free to start new families without meeting their obligations to children from a previous marriage, but they are free to distribute their assets disproportionately among their children, leaving some nothing at all.⁸

Guaranteeing children's inheritance rights and requiring equal division among them would both affirm and legally sanction parents' enduring commitment to their children while promoting a more balanced distribution of power in the family. Fathers, as well as mothers, would be constrained from taking on new commitments by the knowledge that all their children would share equally in their estate, and second spouses would think carefully about the liability of marriage partners whose estates are already substantially earmarked for children from previous marriages.

Protecting the inheritance of children could, of course, lead to a decrease in the portion reserved for spouses and, therefore, could be viewed as working against women's interests as wives. There are, however, ways in which the needs of surviving spouses could be balanced against the needs of children. More importantly, I suggest that protecting children's inheritance rights would force us to move beyond a conjugal-centered model of entitlement and power in the family and toward a more inclusive model of the family as an enduring collectivity.

⁸ The absence of protection for children whose parents have written wills seems to contradict the norms and sentiments written into the laws of intestacy, which dictate how a person's assets are to be distributed in the absence of a will. These laws, like the intestacy laws of the civil code, specify how the deceased's property is to be distributed among family members – first among the surviving spouse and children and then among other relatives.

Conclusion

My intention in exploring these gender implications of testamentary freedom and of children's inheritance rights is not to argue for adopting the Napoleonic Code or for making U.S. families more Italian or more German, for that matter. Culture and society are far too complex and historically contingent to make this a viable option. There are, moreover, a plethora of changes taking place in the U.S. that are already reshaping families – all of which are relevant to inheritance and which I have not been able to consider fully here. In addition to the increasing cost of education and the lengthening of the period in which children are dependent on parents, there is increased longevity, the long term care needs of the elderly, and the legalization of gay marriage. The changing ethnic and racial composition of the U.S. has undoubtedly increased the diversity of ideas and practices of inheritance. All of these would have to be taken into account in a comprehensive attempt to reform U.S. inheritance laws. My foray into this issue tonight is not such an attempt. Rather it is an attempt to understand how economic and political inequality, as well as gender inequality, are shaped by inheritance laws and practices.

This lecture is also an attempt to call into question the 'family values' embedded in the calls to repeal or decrease the estate tax. For all the rhetorical appeal to the protection of family legacies and the allusions to the natural bonds between parents and children made by those arguing for its repeal, there are no legal guarantees that the 'family estate' will be inherited by children. Instead, the emphasis on a parent's *right* to transmit wealth to children and grandchildren obscures the absence of attention to a parent's *responsibility* to do so. A genuine commitment to strengthening families through the intergenerational transfer of wealth would entail a corresponding protection of children's inheritance rights. Yet, not a word has been said about this in the debates over the U.S. estate tax. For all the accusations of parental irresponsibility that have appeared in recent American debates about child support, dead-beat dads, teenage pregnancy and welfare mothers, there is a peculiar silence about parental responsibility in debates surrounding inheritance. This calls into question the 'family values'

being transmitted in the U.S. by the testamentary freedom of those who have benefitted financially from the decrease in the estate tax.

My lecture today has taken us a long way from Jack Goody's detailed field study of the modes of property transmission of property at death in rural communities in northern Ghana and their effects on kinship and affinity. These early ethnographic studies were formative in the development of Goody's theory of inheritance as a key variable in explaining the differences between African and Eurasian constructions of the domestic domain and its relations to economy. Whether or not one agrees with his argument that African hoe culture versus Eurasian plough farming was the key variable shaping strategies of heirship and forms of marriage and adoption in these two regions, one can hardly argue with his conclusion that "the link between stratification and the economy is by means of the system of inheritance, which organises the transmission of property from generation to generation (...)" (Goody 1976: 65). My lecture today has demonstrated that what was true of those two adjacent villages in northern Ghana in the 1950s is as true today of the wealthy capitalist countries on both sides of the Atlantic.

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