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Disappointed "Heirs" as a Socio-Legal Phenomenon

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Abstract

This paper focuses on the socio-legal characteristics of succession battles, drawn from a large-scale empirical study of contemporary inheritance and probate procedures and conflicts in Israel. The study shows that litigating disappointed "heirs", i.e. people who challenge the division of the estate because their inheritance hopes have been shattered, are an exception to the rule of undisputed probate and administration of estates. Moreover, the findings point to the will as a risk factor which allows disappointed "heirs" to approach the court, while legal disputes in intestate cases are even scarcer. Based on the findings, the paper also offers a typology of the relational triangles – between the deceased, the alleged heirs, and the disappointed "heirs" - which characterize most of the cases studied. This typology is correlated to the finding that most succession conflicts are not among nuclear family members, but among parties who are remote relatives or with no family relation. Finally, the study documents two dominant outcomes of succession battles: out-of-court compromises that do not respect the prima facie deceased's last wishes; and the irreversible destruction of relationships between siblings. The paper ends with a discussion of the sociological question concerning the possible increase or decrease of the phenomenon of disappointed "heirs", and of the legal implications of the study's findings.

Key words

Inheritance conflicts; succession; wills; Israel

Resumen

Este artículo se centra en las características sociojurídicas de las disputas de sucesión, obtenidas a partir de un estudio empírico a gran escala de los

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procedimientos contemporáneos de herencias y sucesiones y los conflictos en Israel. El estudio demuestra que los “herederos” decepcionados que litigan, es decir, las personas que cuestionan la división de los bienes porque no se han colmado sus expectativas, son una excepción a la regla de las sucesiones y administración de bienes sin disputas. Es más, los resultados apuntan al testamento como factor de riesgo que permite a los “herederos” decepcionados a acudir a la justicia, mientras que las disputas legales en los casos de intestados son más escasas si cabe. Basándose en los resultados obtenidos, el artículo también ofrece una tipología de la relación triangular que se establece entre el fallecido, los supuestos herederos, y los “herederos” decepcionados - que caracterizan la mayoría de los casos estudiados. Esta tipología está correlacionada con el hallazgo de que la mayoría de los conflictos de sucesión no se dan entre los miembros de la familia nuclear, sino entre las partes que son parientes distantes o sin relación familiar. Por último, el estudio documenta dos resultados dominantes en las disputas de sucesión: acuerdos alcanzados fuera del juzgado, que no respetan la presunción de última voluntad del fallecido; y la destrucción irreversible de las relaciones entre hermanos. El artículo finaliza con un debate sobre la cuestión sociológica que atañe al posible aumento o disminución del fenómeno de los “herederos” decepcionados, así como de las implicaciones legales de los resultados del estudio.

Palabras clave

Conflictos de sucesión; sucesión; herencia; testamentos; Israel

Table of contents

1. Introduction

In one of Charles Dickens' most famous novels, 'Bleak House' (Dickens 1977[1852]), a legal battle over the estate of Jarndyce, who left several wills, goes on for years and years, consuming the mental and physical health of several potential heirs, and eventually the estate itself as it vanishes into litigation costs and lawyers' fees. The novel excites the imagination with its young characters who never knew the deceased but bet their lives on the chance of winning a part of his fortune, and with its harsh criticism of greedy lawyers and incompetent judges. It is believed that Dickens was influenced in his artistic work by his experience as a court and a lawyer's clerk and as a freelance proceedings transcriber, but the precise extent to which Bleak House reflects the socio-legal reality of inheritance conflicts and disappointed "heirs" of its time is unknown (Cox 1993).

A very different picture emerges from Hendrik Hartog's (2012) recent historical study of conflicts over estates in New Jersey from the mid-19th century to the mid-20th century. In this study, the disappointed "heirs" are individuals who cared for old people under the misapprehension that they would be rewarded for their labor through a bequeathal. Here, the disputing party not only knew the deceased but was also, in many cases, very close to him or her, physically and emotionally. Moreover, in some of these cases the judge came to the rescue of the care-giver, acknowledging her or his right to at least a part of the estate. Hartog's thorough and detailed study of these legal battles over estates sheds fascinating light on the interrelations between family, care in old age, material resources and the law, in a place and era where no public care was available for the elderly, and people were obliged to use economic promises to convince a relative or a stranger to stay with them and care for them when they were no longer able to care for themselves.

Hartog points to the dramatic changes that have occurred since the period of his study. Indeed, longer life expectancy, growing urbanization and globalization, individualization and new family forms and expectations constantly shape and reshape the interrelations between family, wealth, and death. However, little has been done to study the characteristics and the outcomes of disputes over estates in our era in order to learn about these interrelations. Twenty-five years ago, Jeffrey A. Schoenblum (1987) labeled what we know of will contests "an empirical vacuum", and very little has been done since to fill this void (for exceptions, see Schoenblum 1987, Rosenfeld 1997, Schwartz 2000, Kemp and Hunt 2001).

This paper is based on one of the largest empirical studies of inheritance proceedings in late modernity, and is aimed at demonstrating the potential such studies offer both jurists interested in an efficient and just inheritance and probate law on books and in action, and sociologists interested in changes in the dynamics between family relations, wealth accumulation and the end of life (see also, Hacker 2010a, 2010b, 2011). The findings reported in this paper focus on disappointed "heirs", i.e. people who challenge the estate's division due to their shattered inheritance hopes, as a socio-legal phenomenon. The paper will not dwell on the psychological motives for a succession battle, but rather will look for the legal and sociological variables that characterize the phenomenon and its outcomes. The next section of the paper will lay out the study's methodology; the third part will detail the findings; and the last part will present a few sociological and legal insights that emerge from the empirical section.

2. Methodology

The findings reported here are drawn from a mixed-methods study (Hesse-Biber 2010), built on four layers:

a. The mapping of all Israeli Supreme Court decisions related to succession, in cases initiated during 2000-2010 and published by the end of 2010 (n=42), and the analysis of all decisions related to substantial private inheritance

Oñati Socio-legal Series, v. 4, n. 2 (2014), 243-263
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conflicts (n=26), as opposed to judicial decisions on procedures, death declaration, conflict with the state or the estate manager, etc.[1]

b. The analysis of private inheritance conflicts in Israel's largest Family Court (Ramat Gan), in the years 2000, 2002, and 2004. First, an archival study was conducted in which 144 files – out of the about 200 cases that had been concluded by mid-2007 – were analyzed. These files allowed for the investigation of the parties' arguments, the content of the will, expert reports, witness testimonies and settlement agreements or judicial rulings. In addition, each of this court's decisions in such conflicts, in files initiated in 2000, 2002, and 2004, handed down by the end of 2010 and available on electronic databases, were located and analyzed (n=67, after omitting those decisions located in the previous stage). A comparative sample included the analysis of 599 randomly selected undisputed probate and administrative files in the archives of the Inheritance Registrar and the Rabbinical Court in the same region.[2]

c. In-depth interviews were conducted with 14 people who were involved, in the past or at the time of the interview, in a succession conflict. One interviewee was a personal colleague; the rest were recruited through public advertisements. Eight were women, five men, and another woman interviewee told the story of her male spouse. In six cases, the conflict was among siblings; in five cases the interviewee was in conflict with the spouse of his or her parent; and in three cases the dispute was among cousins. These interviews provided rich accounts of the personal ordeal experienced by people who are part of a succession dispute, and draw our attention to insights that cannot be drawn from court files, such as those relevant to conflicts which do not enter the judicial field.

Finally, the study also included in-depth interviews with 8 lawyers specializing in inheritance law, and with the Family Court judge who had heard most of the inheritance and probate procedures at the Ramat Gan Family Court during the archival studied period. I approached the lawyers whose names appeared most frequently in the Family Court files, and those whom they mentioned as the leading lawyers in the field. All but one of the lawyers I approached agreed to be interviewed. The judge and the lawyers provided additional succession conflict stories, as well as valuable information about their role within the judicial process.

All interviews were recorded and transcribed, and the names of the interviewees redacted to protect their privacy. Together with the quantitative and qualitative data drawn from the court files, they allow a thorough investigation of the circumstances and outcomes of succession conflicts among the Israeli Jewish population.[3]

[1] The larger empirical project included the mapping of all Supreme Court decisions on inheritance from the establishment of the State of Israel in 1948 until 2010 (n=444), and the creation of a sub-sample of the cases incorporating a substantial private dispute (n=241). The Israeli Supreme Court hears inheritance cases as an appeal court over the District Courts, which are themselves an appeal court over decisions of the Family Court. This appeal over an appeal is not a guaranteed right but is only granted at the Supreme Court's discretion, see The Courts Law [Integrated Version], S.H. 1123, p. 198 (Israel)(1984), §40(b). Inheritance cases can also reach the Israeli Supreme Court in its capacity as the supervisor of religious tribunals, also authorized to decide such cases (see fn 2 below). In these cases, however, the Supreme Court is not an appeal court and it intervenes only when it finds it necessary to grant relief for the sake of justice or where the religious tribunal has exceeded its jurisdiction, see Basic Law: Judiciary, S.H. 1110, p. 78, (Israel)(1984), §15.

[2] By law, heirs of a deceased may apply to either the Inheritance Registrar or, if all the heirs consent, to a religious court (the Rabbinical Court in cases of the Jewish population), for inheritance or probate orders. When a will is contested, the dispute may be handled by either the Family Court or the Rabbinical Court, see Succession Law S.H. 63, p. 249 (1965) (Israel) §66(a), 151, 155, *hereinafter* Succession Law). My study (Hacker 2012) revealed that inheritance disputes are rarely heard by the Rabbinical Court, which prefers that conflicts are handled by the Family Court.

[3] About 20% of Israel's population is non-Jewish. Interestingly, the study revealed that while this population have every right to turn to the Inheritance Registrars and the Family Courts in inheritance

3. Findings

3.1. The exception to the rule

The data reveal that legal succession battles are rare compared to undisputed inheritance and probate procedures. In the years under consideration (2000, 2002 and 2004), 100,422 Jewish Israelis passed away. 32,231 inheritance and probate orders (called letters of administration and grants of probate, respectively, in other legal systems), were handed down by the Tel Aviv Inheritance Registrar, which handled approximately 56% of all applications filed with inheritance registrars across Israel during that period; and 5,345 inheritance and probate procedures were concluded, usually with an undisputed order, by the Tel Aviv Rabbinical Court, which accounted for about one-third of all succession procedures conducted in the Israeli rabbinical courts during that period. Hence, about 70% of the deceased left sufficient material assets to warrant an application for an order. In 44% of these procedures, the deceased also left a will (see also, Hacker 2012, fn44). During each of the three years in question, the Tel Aviv Inheritance Registrar transferred about 1,400 files to the Family Courts, due to its inability to issue an order as requested by the applicant.[4] The archival study revealed that only about 8% of these files involved a case in which a party contested another party's request for an order.[5] The majority of the transferred files related to other issues, such as missing information in the will and problems locating heirs, which limited the ability of the Inheritance Registrar to issue the order and therefore required a court's intervention. Hence, in Israel, inheritance and probate procedures that are contested by one or more disappointed "heirs" are very exceptional when compared to uncontested procedures, and occur in less than one percent of the overall number of inheritance and probate orders.

The rarity of legal disputes concerning probate was also reported by Schoenblum (1987, p. 613), who found only 66 contested wills out of his overall Tennessee sample of 7,638 wills probated in 1976-1984 (0.9%). Likewise, Schwartz (2000, p. 272) reported that only 0.9 percent of the 319 wills probated in Rhode Island in 1985 were contested. This was so even though 13 percent of the wills disinherited one or more prospective heirs (p. 268). As we shall see, the vast majority of legal succession disputes are over a will. Since the studies demonstrate that this kind of dispute happens in less than one percent of cases, we can conclude that legal disputes related to intestacy hardly ever occur.[6]

This rarity notwithstanding, the very low percentage of objections to probate and the administration of estates in this and other studies do not reveal the magnitude of the disappointed "heirs" phenomenon. My study reveals that there are disappointed "heirs" who do not approach the court. Such was the case in the most emotional interview I conducted. In this case, after Tamar's mother died, she learned that her mother had given all her assets to her other daughter and that daughter's son during her lifetime; in legal terms, the mother did not leave an estate after her death. Tamar was devastated to learn that she had actually been disinherited by her mother, who had lived in her house for eight years and never revealed nor explained her intentions. Despite her feeling of great injustice, she did not take her sister and nephew to court because the lawyer she turned to claimed

procedures, they seldom do, and prefer the Sharia Court (the religious tribunal for the Muslim community), at least in the central region of the country which the study focused on. See, also, Alemy-Kabha (2013).

[4] Data received by the author from the Tel Aviv Registrar, April 27, 2006.

[5] In 2001, two additional Family Courts were established in the central region of Israel, of which the Tel Aviv Inheritance Registrar is a part; so, I refer here only to 2000. However, the ratio of about 1:13 between a challenge by a disappointed "heir" and a referred file was observed also in 2002 and 2004.

[6] In the light of these findings, we might also assume that countries with less freedom of testation (e.g., with reserved shares for family members) experience fewer legal disputes over estates (see, also, Langbein 1993-1994, Lamarca I Marqès 2014). However, I could not confirm this hypothesis, due to lack of data from European countries with reserved shares for family members.

that she had no legal ground for contesting her mother's actions. Unlike some jurisdictions (Klein 2002), Israeli law does not recognize tortious interference with the expectation of inheritance. Although there was no legal conflict, Tamar has not spoken with her only sibling ever since, and wept continuously during the interview, despite the fact that more than ten years had passed since the death of her mother.[7]

This story is not just an example of the pyramided shape of the development of succession disputes, in which not all conceived injustices reach the stage of a legal claim – with the legal naming and emotional and economic investment this demands (Felstiner *et al*. 1980-81); it is also an example of the interconnections between *in vivo* gifts and inheritance (Sussman *et al*. 1970, p. 27-28). Clearly, studying only disputes over estates of the deceased cannot capture all those circumstances in which an individual believed s/he should have been included in the wealth division of another, only to discover after that person's death that s/he was not.

The disparity between disappointment from a wealth division upon death and actual legal disputes can also be learned from Kemp and Hunt's (2001) studies in New Zealand. In one of their studies, 18% of the 89 informants reported some disagreements associated with the will, while in another study, only five out of the 38 informants involved in a succession dispute reported that it had been brought to court. This disparity might also account for the recent growing interest in legal remedies to the shattered hopes of disappointed "heirs" that cannot be addressed in intestate or probate procedures: for example, when the disappointed "heir" was not mentioned in the will and is not a family member, and thus has no standing and cannot seek remedy through administrative or probate procedures. Several authors argue that in such cases, the option of a tort claim, either against those who sabotaged the fulfilment of expectation or against the lawyer who drafted the will, should be acknowledged (for example: Klein 2002, Fried 2004, Johnson 2008).

Still, the low rate of legal succession conflicts documented in several countries, as well as the difficulty I encountered in finding interviewees who were involved in such conflicts, and the discovery through this study that there are very few Israeli lawyers who specialize in this legal field – as is the case in the UK (Monk 2014) – support the conclusion that disappointed "heirs" is not a social common phenomenon. This conclusion goes hand in hand with Gillian Douglas and her colleagues' (Douglas *et al*. 2011) finding from the UK that decisions about bequests are still traditional in the sense that most people focus on their nearest and dearest within the nuclear family, and with the ample empirical evidence that people make equal bequests to their relatives with equal degrees of family relationship, among other reasons, in order to prevent inheritance disputes (Kemp and Hurt 2001, Hacker 2010a). As will be elaborated below, the findings of the circumstances related to legal succession battles further highlight the exception to the norm that they represent; the findings highlight the increased likelihood of disappointed "heirs" when the testator discriminates between children, has a "complex" nuclear family, or no nuclear family at all.

3.2. The will as a risk factor

While the findings reported above shed doubt on Leon Jaworski's (1958, p. 88) claim that "a will is more apt to be subject of litigation than any other legal instrument", they do demonstrate how the existence of a will increases the probability of a legal dispute over the estate. When no will exists, the heirs can dispute such matters as the valuation of the estate, or rights of a woman arguing she was the deceased's common-law spouse; but the irrefutable assumption is that the deceased wished his or her estate to be divided according to the default rules of

[7] Interview, June 29, 2008.

the Succession Law. However, when the deceased does leave a will, in addition to disputes over matters that can be raised in intestate cases, the basic questions concerning the identification of heirs and to what part of the estate can be opened up, by the submission of an objection to the will. Objections can be based on formalities (such as that the will was not signed) or on the circumstances of the will's signing (for example, undue influence, fraud, or mental incapacity). Hence, the mere existence of a will creates an opportunity for disappointed "heirs" to challenge the division of the estate. Indeed, 88% of the sample of Family Court cases (archive and published decisions) were of cases in which the deceased left a will. Within the Supreme Court sample, a will existed in 65% of the cases, as this tribunal was asked to determine in precedential questions related also to intestate cases, such as questions of conflict of laws and the correct interpretation of different articles of the Succession Law.[8]

In 2011, an Israeli non-governmental organization (NGO) called 'New Family' published a "Rights Guide to the Testator and Heir", in which it included a general recommendation to draft a will. Moreover, a few of the lawyers I interviewed claimed that some of their clients insist on drafting a will so that they can feel in control of their bequests, even if the content of the will does not differ from the default rules of the Succession Law. One of these lawyers said that he tries to explain to such clients: "Don't write a will. Listen, I will tell you something that will sound totally absurd. If you draft a will, there is a chance that your wishes will not be respected".[9] Indeed, the findings reported above show that contrary to the NGO's advice and to a layman's perception, a will is a risk factor for losing control and creating conflict. One should have an important motive to deviate from the default Succession Law rules, which counterbalance this risk and justify writing a will. As the next section demonstrates, in many cases such motivation occurs when the law's default rules cannot capture the complex or unique familial circumstances and relations of the testator.

3.3. Three typical relational triangles

The famous opening of Tolstoy's Anna Karenina (2000 [1878]), "Happy families are all alike; every unhappy family is unhappy in its own way", resonates when one reviews the files and court decisions related to intestate and probate conflicts, and listens to interviewees who tell personal stories of their experience of succession conflicts. Each case is singular and dramatic. I will start with presenting such three singular cases, but will subsequently argue that each one of them represents an example of one of the three common types of triangles of relationships found as characterizing the vast majority of succession conflicts.

One case, extracted from the Supreme Court decisions studied, is the battle over the estate of Luna Gazoli,[10] a widow who passed away at the age of 93. In her will she left her modest estate (principally a two room apartment) to her son, one of her ten children. One of the nine disinherited children challenged the will by presenting a document which she claimed to be her mother's second will, written six months later than the other, in which the mother divided the estate equally among all her children. The challenging daughter argued, furthermore, that the first will was signed under undue influence and that the inheriting son and his wife made the mother believe she was signing social security forms. The inheriting son argued that the alleged second will had formal defaults and did not reflect the testator's wishes.

[8] Interestingly, Erika Denisse Grajeda (2008, p. 78) found that more intestate cases reach the Mexican Supreme Court than those involving testamentary succession. She explains this finding by the law, which allows cases with a will to be resolved by a notary of choice whilst interstate succession cases must be brought to a family court.
[9] Interview, August 18 2008
[10] CA 4885/00 Margalit Cohen and others v. Ezra Gazoli.

After losing the case in the District Court, seven other siblings joined the disappointed daughter in her appeal to the Supreme Court. However, the Supreme Court judges reaffirmed the lower court's judgment. Since the "second will" was not drafted according to the law's requirements, the burden of proof of its validity rested on the disappointed "heirs". The medical records and experts convinced the court that this burden was not successfully carried out, and that the first will should be executed. Since the parties to the conflict agreed that only the medical evidence was relevant to the dispute, the judges (and us) were left with no information about the familial relations that preceded the mother's death, or any clue that could explain her preferences for how her estate should be divided.

A more detailed case can be extracted from the interview I conducted with Hanna, whose parents belonged to the modern observant religious sector of Israeli society. Hanna's mother was very ill for many years before her death, including a five year period in a quasi-permanent vegetative state. Hanna's father took care of his wife "quite devotedly", though he frequently did not sleep at home and refused to reveal his whereabouts to his three daughters. The daughters concluded that their father had another woman in his life, but this was never openly discussed with him while the mother was alive.

A few weeks after the mother passed away, the father moved in with another woman, Hanna's age. A year later, the father married this woman, whom the daughters subsequently learned later had already been in an intimate and intense relations with their father for 15 years before their mother passed away. Hanna tried to talk her father into signing an agreement with the second wife to secure the daughters' inheritance rights in his estate, at least as valued up to the date he remarried, but the father refused.

Four years later, at the age of 75, the father passed away due to complications following an operation and after four months of agony. The second wife and the daughters sat "Shivah" (the customary mourning period according to Jewish tradition), separately. After the week of mourning was over, the wife informed the daughters of contents of their father's will, through which she received three-quarters of his estate and the three daughters shared the remaining quarter between them equally. Hanna recalled: "This was an unexpected slap in the face. It wasn't that we had a bad relationship. He always had a good relationship with his daughters. He was an egotistical man and he thought that Dana [the second wife] was alone, that she had no one in the world. […] It was a terrible insult, this soap opera; we did not see it coming". The insult increased in magnitude, as the daughters learned that their father had given money to his second spouse during his lifetime while not economically assisting his daughters, even though she had assets of her own and no children, while they were struggling to meet their children's needs.

Both sides were assisted by lawyers, and an out-of-court legal struggle developed, even though the daughters realized that there were no grounds to challenge the will in court. It concluded with a settlement in which the second wife relinquished some of the assets from the first wife's estate that had been inherited by the father. Hanna stated: "I really do not want to see her face. I do not care what is going on with her. I do not wish her bad things but have no wish or interest in seeing her."[11]

The third and last case I will detail is drawn from the Family Court archive. In this case,[12] the testator – a childless widower – left a very detailed will in which he named 26 different beneficiaries: four Jewish studies institutions, his paid caregiver and her daughter, the spouse of his wife's nephew, seven children of his two nephews, two nephews and one niece of his wife, and nine children of his wife's two nephews and two nieces. Most of the relatives received 10,000NIS (about

[11] Interview, July 8 2008.
[12] Identifying details redacted to protect the confidentiality of the parties concerned.

$2,500),[13] while three of his wife's relatives received 150,000NIS (about $37,500), one a specific lot (no specified value), and one a pair of candlesticks. One institute received the testator's library and the royalties from a book the testator wrote – on the condition that the institute publishes it – while another institute received the royalties from the testator's published books. The third and fourth institutions received 90% and 10% respectively of what was left from the estate after all the other heirs received their share and the burial costs were covered. The paid caregiver received the contents of the testator's safety-deposit box, his residential apartment and its contents, and $80,000. The caregiver's daughter received tuition funding up to a Ph.D.

The disappointed "heir" in this case was one of the testator's nephews (the son of his sister), who challenged the will though three of his children were mentioned as beneficiaries of $2,500 each. He argued in his petition that he was "the closest person, in blood relations" to the testator, and that between his family and the testator there had always been "warm family relations and a tight family connection that was manifested among other ways in mutual and frequent visits and spending most of the holidays together". This nephew further argued that the caregiver "took over the deceased by letting her husband and daughter enter his home and become permanent residents, and did in the house as she pleased." As to the two of the institutions mentioned in the will, he claimed that they "entered his [the testator's] house, tempted him with different temptations and won the majority of his estate". Moreover, the testator was 94, in poor physical and mental health, and was "totally and unfairly influenced by these elements".

The caregiver testified that she started to take care of the testator four years before the will was drafted. The testator told her that when she was with him "he had confidence in life". She argued that "a warm friendship and mutual understanding" evolved between them, that the testator was clear-minded and functioning, and that her family had never moved into his house. The caregiver also testified that the relatives of the testator's wife were closer to him then his own, and one of them submitted an affidavit stating that the testator had told him that the caregiver cared for him "like a daughter cares for her father".

After three court sessions in which the will challenger clarified that he was attacking only the shares given to the caregiver and the institutions, the case was settled. The disappointed "heir" received 175,000NS ($43,750), paid in equal shares by the caregiver and the third and fourth institutions.

Notwithstanding the uniqueness of each legal succession conflict, manifested in these three examples, the study reveals that such legal disputes share more common characteristics than their rareness and the existence of a will. Indeed, each of the three cases detailed above is an example of one of the three common types of triangles of relationships that characterize the vast majority of conflicts over the probate or administration of an estate, and are illustrated in Graph 1:

[13] At the time the will was drafted $1=3.8NIS. By the time it was executed $1=4.73NIS, (Central Bureau of Statistics 2012) .

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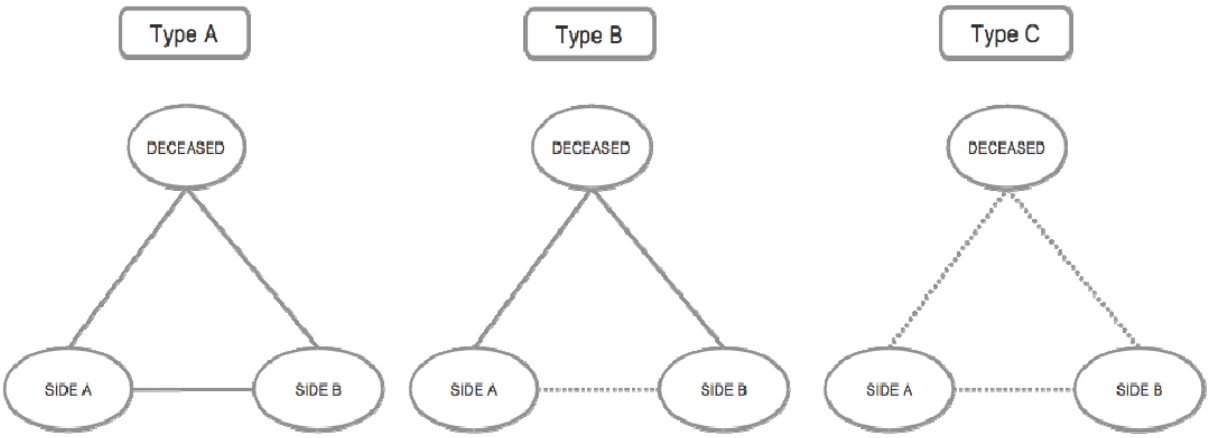
Graph 1: Common Triangles of Relationships



Legend: continuous line = nuclear family; dotted line = others (extended family, friends, care workers, institutions, strangers)

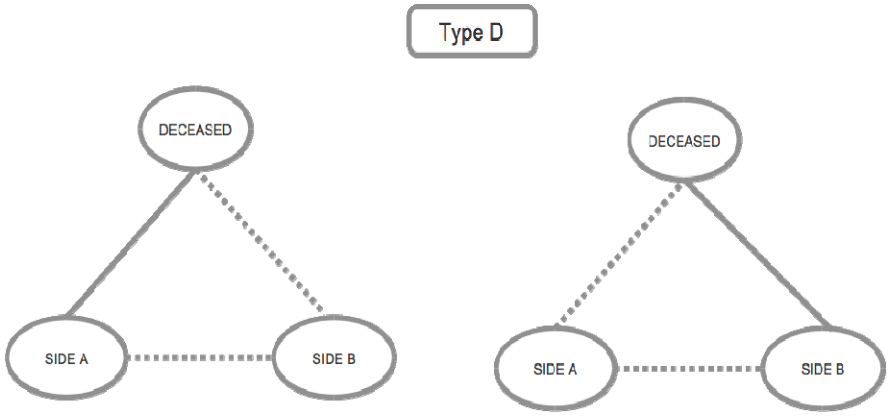
Type A includes cases in which the deceased and both sides to the conflict are part of the same nuclear family. As the first example above demonstrates, this situation usually materializes when siblings struggle over a parent's estate following disinheritance or unequal distribution (see also, Kemp and Hunt 2001). This type also includes conflicts between a child and a parent over the other parent's estate; between parents who fight over a deceased child's estate; and between a parent who fights over his child's estate with another child, the deceased child's sibling. This type was present in 30.5% of the Family Court cases studied in the archive, as well as in this tribunal's published decisions, and in 21.5% of the Supreme Court decisions (see Table 1).

Type B includes situations in which the deceased had a nuclear family relationship with both sides to the dispute, but the parties to the conflict did not share such a bond. Hanna's story above is an example of the most common situation in this type, i.e. a succession struggle between the deceased's spouse and his children, who are not that spouse's offspring. Less common are situations in which a widow fights with the deceased's common-law partner; where the nuclear family (usually the spouse) struggles with the testator's family of origin (usually the siblings); and where a biological child fights an adoptive child. This type is the most dominant one. It was present in 32.6% of the Family Court cases studied in the archive, as well as in this tribunal's published decisions, and in more than half of the Supreme Court decisions (53.6%), (see, Table 1).

Type C includes situations in which there is no nuclear family relationship between the deceased and the conflicting parties, and between the parties themselves. As the third example illustrates, these situations usually materialize when the deceased passed away childless and with no living spouse. In such cases, the parties to the conflict over the estate may be remote relatives such as nephews and nieces, institutions, care workers, or a person who argues that she was the deceased's common law partner although they did not share a household. It is important to note, however, that as the connection between the testator and his caregiver in the third example illustrates, and as Daniel Monk (2013) argues and demonstrates, the lack of an objective close familial relationship does not mean that Type C does not include cases with subjective familial relationships and with meaningful friendships between the deceased and the parties to the conflict. However, it does mean that the parties to the conflict did not have a close relationship to each other, if at all. Type C was less common than Types A and B, but still amounted to 16% of the Family Court archival files, 19.2% of the Family Court published decisions, and 10.7% of the Supreme Court decisions (see, Table 1).

The remaining cases amount to less than 20% of the samples, and include a variety of circumstances in which the deceased had a close objective familial tie with only one of the parties (the applicant or the objector), while the conflicting parties shared no such tie (for example, a nuclear family member v. a distant relative of the deceased's spouse, or, a family member v. a creditor, or, a family member v. an institution) – Type D (see, Graph 2); child support claims against the estate by a child born out of wedlock; and cases in which the triangle of relationships could not have been detected from the presented facts.

Graph 2: Type D's Two Options



Legend: continuous line = nuclear family; dotted line = others (extended family, friends, care workers, institutions, strangers)

Table 1: Frequency of Triangles of Relationships

	Family Court archival files (n=144)	Family Court published decisions (n=67)	Supreme Court decisions (n=26)
Type A - **nuclear family**	**30.5%**	**30.5%**	**21.5%**
Type B	32.6%	32.6%	53.6%
Type C	16%	19.2%	10.7%
Type D and others	20.9%	17.7%	14.2%
Total of **non-nuclear family**	**69.5%**	**69.5%**	**78.5%**

To conclude: In contrast to the common perception,[14] the majority of legal succession conflicts are not among nuclear family members (Type A), but rather among parties who share only remote familial ties or none at all (Types B, C, and D). This finding is strengthened by a comparison with the undisputed sample. While in 82% of undisputed procedures for the grant of probate by the Inheritance Registrar and 97% of such procedures in the Rabbinical Court the procedure is initiated by the son, daughter or married spouse of the deceased, in the succession conflicts in the Family Court this figure drops to 53%, as detailed in Table 2.

[14] Recently the NGO New Family published its services as drafter of wills and information provider by sending an e-mail to its extensive distribution list, arguing that “in most cases inheritance conflicts and fights occur among our relatives and family members, a fact that causes great pain” (e-mail to author, January 27, 2013). Moreover, the judge interviewed for this study argued that he encourages settlements in succession disputes since he believes that the deceased would not have wanted the family and his children to quarrel, Interview, October 29 2009. See, also, Hacker (2011).

Table 2: Involvement of non- nuclear family members in procedures for will execution

Disputed	Undisputed		
Family Court (n=108)	Rabbinical Court (n=60)	Inheritance Registrar (n=198)	
47%	3%	18%	Applicant – NOT Married Spouse, Son, Daughter
52%	-----	-----	Objector – NOT Married Spouse, Son, Daughter
37%	-----	-----	Initiator + Objector – NOT Married Spouse, Son, Daughter

Indeed, these figures lead to the conclusion that legal succession conflicts are more likely to occur when the deceased had an unorthodox family life, especially with more than one spouse (simultaneously or not), or with no children.

3.4. Social and cultural context

The court files and interviews revealed additional variables that could affect the likelihood that a legal succession conflict would arise.[15] Though the data is only preliminary, the findings are strong enough to direct our attention to the possible cultural context of the interrelations between family, wealth, and death, and hence to warn us away from the generalizations that ignore the significance of societal divisions into sub-groups.

When I read the Family Court files, I noticed that among the relatively rare cases of succession conflict among siblings, there were several in which the parties belong to the Yemenite Jewish ethnic group. This finding caught my attention because this is a very small ethnic group within Israeli society, and so should have not been so highly represented within the sample. I thought that this might be a coincidence, and was well aware of the dangers that can arise from an irresponsible report that singles out a specific ethnic group as litigious.[16] However, several of the examples of succession conflicts among siblings, provided by the lawyers interviewed, involved Yemenite families, again despite the relative small size of this group in the overall Israeli population. Even more surprising was a claim, common to the lawyers interviewed, that they are well aware that this ethnic group is exceptionally litigious when it comes to brothers and sisters and their parents' estates. One lawyer went so far as to admit to his own discriminatory practice, when he detailed how when he recently detected "a case of Yemenites", he asked for double his usual fee, hoping they would take their fight to another lawyer because he anticipated it would be a relatively demanding case.[17]

When I asked the interviewees for possible explanations for this alleged ethnic tendency, I received different answers. The judge argued that this is an example of a culture that prefers sons over daughters and the firstborn over his siblings. The father believes that the brothers will take care of their sisters and that the firstborn will take care of the other children; but the disinherited "know this culture does not

[15] Interestingly, gender was not found in this study to be a significant variable, see discussion in Hacker (2010b, p. 343-345).
[16] Interestingly, according to the (unfortunately commonplace) Israeli ethnic stereotypical discourse, unlike other Eastern Jewish groups (*Mizrahim*) that are perceived as violent or greedy, the Yemenites are perceived as pleasant and as satisfied with little (Lissak 1987).
[17] Interview, September 9 2009.

work anymore" and refuse to accept these parental cultural preferences.[18] One of the lawyers argued that the Yemenites are "stubborn" about their inheritance because of their difficult immigration circumstances, migrating to Israel in the 1950s from a poor country and being obliged to work very hard for every penny they earned. Consequently, the testators feel they have the right to set conditions for their potential heirs and to prefer those who will honor these conditions.[19] Finally, another lawyer, himself of Yemenite origin, said that in addition to struggles arising from favoring the firstborn, succession conflicts among this ethnic group are relatively common because they involve families with many children, and from different mothers (the result of polygamy, which was accepted in the community in the period before migration to Israel, or because of the early death of the first female spouse leading to remariage); because the estate is often a piece of land that cannot, by law, be divided among the children and thus conflicts arise when the will which divides the estate equally cannot be executed, or when a child who was allowed by the parents to live in a house on the land demands that it be recognized as his; and because there is a common practice of building a synagogue in the house, which complicates the ability of the children to inherit the house and use it, and creates tensions between the children who wish to preserve their parental spiritual heritage and those who wish to benefit from the estate's economic value.[20]

Of course, the explanations provided by the interviewees are based on professional experience and personal interpretation, and do not and cannot replace an as yet un-conducted comprehensive and comparative study of succession conflicts within different ethnic groups in Israel. They are presented here simply to illuminate the possible and understudied interrelations between succession conflicts and variables such as immigration, religiosity, number of children, economic class, and primogeniture cultural or legal regimes.

Another indication for the possible cultural context of succession conflicts can be extracted from the recent study of Nasreen Alemy-Kabha (2013) on inheritance procedures among Muslims in Israel. Though she focused on the cultural practice of sisters renouncing their share of an inheritance to their brothers, her study sheds light on the cultural dynamics of inheritance disputes. Muslim women in Israel find themselves entangled in a web of contradictory familial expectations, as well as conflicting national, religious, and cultural laws and norms. Their location within a national and religious minority renders the Israeli Succession Law, and its gender-equal distribution rules, irrelevant: the women tend to agree to subordinate themselves to Sharia Law, which is recognized by the State of Israel when all interested parties agree to submit to its jurisdiction. Sharia Law, it should be noted, grants females only half the share of an inheritance that males in the same familial position would receive. Still, conflicts may occur when the women insist on receiving their unequal share, while their brothers expect them to renounce it. Alemy-Kabha's study shows that the women's insistence is usually not for their own sake but rather for their children's, and is most acute in cases in which the children need the inherited land to establish their own homes. Indeed, as Alemy-Kabha argues, we cannot understand the gendered, religious, and cultural negotiations and conflicts over inheritance within the Muslim sector without understanding the importance of land to this group, and the impact of the shortage in land deliberately created by the State of Israel as part of its discriminatory policy against the Muslim population.

To conclude, while there are common characteristics of legal succession disputes that include their rarity, the existence of a will, the unorthodox family life of the testator, and the remoteness or absence of familial connections between the

[18] Interview, 29 October 2009.
[19] Interview, November 8 2008.
[20] Interview, October 29 2008.

conflicting parties, there are also cultural norms and practices which are interrelated with other social forces, such as religion and nationalism; these affect the chances of conflict over an estate, as well as the characteristics of that conflict. These social and cultural variables have been severely neglected by the academic community. Until this neglect is addressed, our understating of succession conflicts will remain limited and partial.

3.5. Outcomes

In this last section of the findings, I wish to highlight two additional themes that emerged from the study, and to move away from the variables that characterize the occurrence of legal succession conflicts to their outcomes. While one theme exposes the settlement practice in succession conflicts and its price as far as the deceased's wishes are concerned, the other points to the devastation of the relationship between siblings, which in many cases do not survive the succession conflict. Hence, together these themes point to the adversarial nature of succession conflicts, which do not become an opportunity for familial reconciliation if and when they have been settled, but rather end up with an economic compromise that ignores the wishes of the deceased.

Within the Family Court archival sample, 114 procedures included an objection to a will. Nine of these cases ended with a judicial ruling: [21] in 6 of these cases the judge ruled that the last will should be executed, and in 3 cases the judge sustained the objection to the will. In an additional 20 cases, the objection was withdrawn by the objector.[22] Each of the other 85 cases ended with a settlement between the rival parties. In 6 of these cases the parties agreed to the execution of the will. However, in the remaining cases, constituting 69% of the sample, the outcome of the procedure differed from what the testator appeared to request in his or her last will, despite the fact that there was no ruling that the will was invalid.

For example, in one of the Family Court archival cases studied,[23] the testator left two wills. In the first one, from 1997, she divided her estate equally between her male cousin, her female cousin, her mother's female cousin, and that cousin's daughter. In her second will, from 1999, the testator left her two cousins and her mother's cousin's daughter only 1NIS, which is in fact a symbolic expression of intentional disinheritance. The whole estate in this will went to the mother's cousin. In the court file, I found a claim from the two cousins of undue influence on the part of the sole beneficiary of the second will. The mother's cousin, on the other hand, argued that the testator was angry with her two cousins because they did not keep in close contact with her, while she was the testator's favorite relative because she cared for her and was named by her as "my daughter". After the submission of testimony affidavits – but before any cross examination or court ruling regarding the validity of the second will – the parties notified the court that they had reached a settlement agreement according to which the two cousins shared equally 50% of the estate, and the sole beneficiary in the second will was left with 50%. This agreement was immediately approved by the court (see, Table 3).

[21] Madoff (2002) argues, based on Schoenblum's findings and anecdotal evidence, that a higher percentage of will contests are resolved by judicial ruling than in civil litigation generally. In my Israeli sample, however, the percentage resolved by judicial ruling (7.9%) is identical to the general percentage in the US. One possible explanation might be the pressure put by the Israeli judges on the parties to settle (Hacker 2011).

[22] The files do not include information as to the reasons for the objection removal. One such reason might be a compromise agreement reached by the parties, according to which the heirs deliver a part of the estate to the objectors, without notifying the court nor seeking its approval. These can also be the circumstances in the 6 cases in which the parties notified the court that they have agreed to the probating.

[23] Identifying details redacted to protect the confidentiality of the parties concerned.

Table 3 – An Example of Settlement Division

	Will, 1997	Will, 1999	Court Approved Settlement
Male cousin	25%		25%
Female cousin	25%		25%
Mother's female cousin	25%	100%	50%
Mother's female cousin's daughter	25%		

As this cousins' case demonstrates, the outcome of settlements over estates cannot correspond with the testator's wishes as expressed in his/her will/s. Neither the first nor the second will are reflected in the outcome of the legal proceedings (see, for more examples and a detailed discussion, Hacker 2011). Indeed, as Schoenblum (1987, p. 621) also observed in his will contests study: "the contestant rarely obtained less than a substantial portion of the estate."

Moreover, the common practice of settlements does not mean that the rival parties reconcile. The study found that although succession conflicts are dealt with in Israel in the Family Courts, the largest such court does not refer disputing parties in such conflicts to the Assistance Unit, a unit of therapeutic professionals established to provide "diagnosis, counseling, therapy and mediation in family matters".[24] Likewise, Hila Meller (2014) reported in her recent study that this non-referral policy is common in most other Israeli Family Courts. As we have seen, in many cases the succession conflict is not a "family matter" in the sense of two parties with close familial rations between them, and so the non-referral to family mediation can be justified. However, in cases of type A above, the dis-referral to the Assistance Unit might cost the court's understating of the interrelations between the alleged economic dispute over the estate and its familial origin, as well as the possibility of mediating between nuclear family members.

Indeed, I have learned from the interviews that the most devastating effect of succession conflicts is on siblings. As detailed above, in most cases of all types but Type A, there was no substantial, long-term, intimate relationship between the two parties prior to the conflict. Hence, while they might have no contact after the conflict, there had not been much contact beforehand. When brothers and sisters fight over their parent's estate however, the succession conflict is in many cases the cause of an irreversible rift between the parties.

For example, Ruth told me that the relationship between her and her two sisters was "always very very intact, the parents navigated things, and all in all things went very well. There were never any conflicts, fights, nothing. My mother passed away; now my parents are Holocaust survivors and so the family unit was always the most important thing. This is what we were brought up on, and this is what we continue. The terms ‘wills’ and ‘property divisions’ were nonexistent. Every one helped the parents as one could, without making calculations". However, tension built up when one of the sisters insisted that the father be moved into an old age home. Ruth and her other sister disagreed, but decided not to confront the third sister. After the father passed away, the third sister demanded all of the father's estate, as compensation for expenses she had incurred from his stay at the old age home. The case reached court and there were "shouts and anger, and very very unpleasant things". The litigating sister lost, and the estate was divided equally among the three daughters. Ruth reflected on her and her sister’s relations with the

[24] Family Court Act, 1995, §5. The assistance units were established as part of an attempt to create a "caring court" for family matters. They have also been recently established within the Rabbinical Courts. They can counsel the court and assist the parties in reaching agreements, but have no legal authority to settle disputes or to grant the legal authorization needed for settlements (Meller 2014).

litigating third sister: "Since then, we have been completely disconnected, no connection whatsoever. With all the sorrow, this is a very sad process, very sad, because we are only three, and we have no other family, no uncles, nothing."[25] Likewise, the other five interviewees who had been involved in a succession conflicts against a sibling described long-term relationships which, while not always warm, did not survive the succession conflict.

Indeed, the most common example of bitter succession conflicts provided by the lawyers interviewed was that of siblings fighting over a parent's estate. Moreover, the judge I interviewed argued that "the emotional baggage in succession conflicts bursts out just as, and sometimes even more than, in regular family court disputes between a husband and a wife. And siblings start to remember how mother behaved and how father behaved when they were little children and who was deprived and who was not deprived, and 'they always gave him and favored him' or 'I was favored'. By and large, the conflict is much more emotionally charged."[26] Likewise, the social workers and the judges interviewed by Meller (2014), agreed that succession conflicts among siblings are harder to reconcile compared to divorce conflicts, because of their intergenerational nature and the extremely bitter feelings involved. After interviewing both divorcees (Hacker 2008) and people involved in succession disputes, this is also my impression. The interviews with individuals who went through a legal succession dispute – especially if the other side was a sibling – were more emotional than those conducted with divorcees, as if for them the wound was still bleeding, while the divorcees had been able to open a new page in life. A colleague of mine, witnessing a struggle between siblings in her extended family over parental estates, observed: "I believe that with inheritance there is a longer mileage of baggage. In both cases, the fight is over the existence of love or lack of it. In divorce there are children that should be considered and the memory of standing together at their wedding. In inheritance, there is the legitimation to break the rules and to turn the anger away from the dead parents and towards the siblings".[27] Similarly, strong intensity of feelings in succession conflicts among siblings and these conflicts' detrimental outcomes were also observed by Schoenblum (1987, p. 653), and by Titus *et al*. (1979).

4. Concluding discussion

Cates and Sussman (1982) provided us with a useful framework that links family systems and inheritance in a Western historical context. They argued that in the past, only very few people accumulated wealth to be transferred after death, that lineage took precedence over the conjugal in inheritance, and that inheritance law was religious and traditional. In contrast, in modern complex societies, a large portion of the population accumulates wealth that can be bequeathed, the conjugal takes precedence over the lineage, and the law is secular. They add that urbanization, longer life expectancy, women's growing participation in the labor force, growing rates of divorce and of remarriage, lower birthrates, family-form pluralism including cohabitants and same-sex couples, and old-age segregated housing - all provide new types of bonding, and might upset the usual pattern of intergenerational relationships and inheritance transfers in ways that "will keep hosts of legal talent busy for the next 30 years" (p. 8).

[25] Interview, July 10 2008.
[26] Interview, October 29 2009.
[27] E-mail to author, February 7, 2013. The higher probability of mediation in divorce conflicts than will contests was also observed by Madoff (2002), though she argues that this is due to the substantive law of wills in the US, which emphasize the testator's intent, offer all-or-nothing remedies, and rely on moral judgment rather than the emotions involved. Madoff calls for an adoption of the English family maintenance statute, which allows certain people to claim maintenance from the estate, arguing that this will ease will contests. Israeli law already resembles English law in this regard, see Succession Law, ch. 4.

Thirty years have passed, and things have become even more complex, raising questions as to the viability and nature of the socio-legal institution of inheritance. On the one hand, the cult of consumption, the economic and pension crises, and the privatization of care in old age all contribute to the shrinkage of wealth transference upon death. On the other hand, the substantial wealth of the upper deciles, globalization causing family members to move apart and bringing labor migrants to care for the elderly, fertility technology that creates a separation between genetic, biological, and social parenthood, as well as singlehood and child-free lifestyles which are on the rise, and the increasing legitimacy of non-hetero-centric lifestyles, might lead to more deviation from intestate laws, and to the pluralistic expressions of freedom of testation.

While it is too early to detect many of the effects of these trends on the institution of inheritance, and although these effects will probably vary according to society and legal system, the study of succession disputes in Israel at the beginning of the third millennium, as reported here, can shed light on the direction we are heading. The finding of the dominance of non-nuclear family triangles of relationships within succession conflicts strengthens earlier observations that familial pluralism and the changes in familial bonds and dependency upon old age create a tension between the default inheritance rules – focused on the nuclear family – and the wishes of testators. As this gap grows, more people will be motivated to draft a will, which, as shown above, is a risk factor for legal succession struggles. Hence, we will witness more disappointed "heirs", who, whilst objectively a part of the testator's family, find themselves disinherited or receiving a smaller share than expected, and who will bring their disappointment to court (see, also, Rosenfeld 1982, Madoff 1997, Schwatz 2000, Collins 2000).

While this tendency can be celebrated as part of late-modernity's break from the traditional hetero-normative family and of the law's recognition of a person's right to single out his/her beloveds regardless of formal familial ties, the study reported here points to the risks of ignoring the testator's wishes through legal settlements and of creating irreversible rifts among siblings. Several simple mechanisms, partly already suggested by others, can address these risks. One suggestion is to use video recording and mental evaluation as standard procedures to accompany any will signing, or to adopt and encourage the use of the continental legal mechanism of the authenticated will, approved before a quasi-judicial officer (see, also, Langbein 1994). These procedures will help prove to potential disappointed "heirs" and to the court that the testator fully understood the import of his or her actions, and thus diminish the chance of a legal succession conflict and its outcomes, as well as the tortious claims of those who believe their right to inherit have been wrongly interfered with, in jurisdictions that allow such claims.

The second suggestion is to distinguish between Type A cases and the rest. In Type A cases, in which the disputing parties belong to the same nuclear family, including the non-traditional forms which may become more common in the future (for example, a man and a woman who struggle over the estate of their third polyamorous partner), the court should be aided by therapeutic professionals, for evaluation and mediation, who will assist in understanding the "baggage" embedded in the conflict and promote the chance of familial reconciliation (see also, Chester 1998-1999, Meller 2014).

More substantial reformative suggestions, based on the study's findings and the above social forecast but which cannot be elaborated here, are to minimize the gap between the default inheritance rules and the new forms of families, and to replace reserved shares for spouse and children, in the legal systems that mandate them, by freedom of testation, moderated by dependency clauses and care-conditioned wills (for recent fascinating reformative discussions concerning the law of succession, see Kreiczer Levy 2008, Spitko *et al*. 2010, Monk 2011). These radical

changes would reduce the need to draft a will on the one hand, and would allow tailored wills on the other.

While some of the recommendations above, such as the formalistic ones, will probably lead to an even more certain and stable law of wills, other suggested changes, such as introducing dependency clauses, might integrate flexibility and fluidity into the relatively rigid law of succession, with the outcome of more ambiguity, confusion, and conflict. In our era, of the family as a "no longer" but "not yet" sphere (Beck and Beck-Gernsheim 1995), this might be a positive outcome, which would enhance succession conflicts' socio-legal role as an arena for reflecting on, criticizing, conceptualizing, and reshaping our understanding of the interrelations between wealth, death, and human relations.

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