THE FUNCTIONS AND THE ORDER OF INHERITANCE

BY

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1. THE LINKS BETWEEN FUNCTIONS AND VALUES

1.1. *General remarks*

Intestate inheritance could scarcely have obtained a permanent foothold as an element in the legal culture had it not, as an institution, helped in working for valued goals in society. This same comment applies to the right of bequest. But what are the functions of inheritance, and how do they influence the contents of the order of inheritance? In the following paper, an analysis will be offered of what kind of elements determine the content of the decisions in society on the distribution of a decedent's estate.

Ultimately, the question of the justification of intestate inheritance and testamentary inheritance is purely a practical one. "Man is mortal. But the things he owns do not disappear with him."[1] Property requires an owner just as much as people require property. The interests of society and exchange call for an authoritative declaration by the legislator of how a decedent's estate is to be distributed among those who have not participated in the accumulation of this capital through their own work. It is precisely this factor which makes the law of inheritance a practical necessity. It is an "erbrechtliche Urprinzip", as has so aptly been said.[2] From this point of view, intestate inheritance and testamentary inheritance are only *provisions which apply to the selection of the new owner.* Inheritance differs from other legal forms of acquisition only in that the earlier owner is no longer alive when it is ultimately determined who shall become the new owner of the property.

It is not possible on the basis of the functions of inheritance to give an

[1] M. Rheinstein and M.A. Glendon, *The Law of Decedents' Estates*, Mineola 1971, p. 1.

[2] F. Reichert-Facilides, *Generalreferat. Arbeiten zur Rechtsvergleichung* 50, Berlin 1971, p. 101. The same idea is repeated in different forms by various authors. According to Papantoniou, "Das Erbrecht darf nicht als die Summe der Rechtsregeln betrachtet werden, welche gesetzt wurden, um die mühelose Bereicherung der Erben zu ermöglichen, *sondern als das Institut, das den Fortgang des Wirtschaftslebens trotz des Todes einer Person zum Ziel hat*". See N. Papantoniou, "Die soziale Funktion des Erbrechts", *Archiv für die civilistische Praxis* 1973, p. 391. According to Rheinstein, "the principal social function of inheritance is to transfer wealth from generation to generation in an orderly fashion". See M. Rheinstein and M.A. Glendon, *op.cit.*, p. 3. Also Matthias Calonius argues on behalf of the institutional necessity of the law of inheritance on the same basis. See M. Calonius, *Siviilioikeuden luennot*, Vammala 1946, pp. 443 f.

exhaustive explanation of changes in the law of inheritance or of the institution of inheritance as such. The definition of the functions of inheritance legislation is a question of evaluation.[3] This definition of the functions of inheritance is causally influenced by the set of goals that society has given to inheritance. The goals of the legislator, no matter whether explicit or implicit, determine the functions of inheritance. "Die Funktion des Erbrechts zu untersuchen bedeutet mit anderen Worten, die verschiedene Zwecke, in deren Dienst das Erbrecht gestellt ist, zu ermitteln."[4] Because of this the functions of inheritance are thus not eternal ones; an analysis of these functions cannot reveal the hidden core of inheritance. On the contrary, an analysis of the functions of inheritance can serve as a description which will enable us to evaluate the structural significance of inheritance.[5]

We may take as an example of the link between the functions of inheritance legislation and the express goals of the legislator the *function of inheritance legislation in demographic policy*. After Germany was defeated in the First World War and had suffered a considerable loss of population in that war, it was proposed that inheritance legislation could be used as an incentive in increasing the size of the population. Professor Kuczinsky and his colleague Mansfeld suggested that each citizen should take care of the raising of at least three children for the good of the fatherland. If the parents did not fulfil this obligation, on the death of the parent the state was to receive the portion belonging to the unborn child. According to the proposal, the state's right to a portion of the decedent's estate would have enjoyed protection as a compulsory portion.[6] National Socialist Germany planned the adoption of a similar system in order to raise the Aryan portion of the population.[7]

The functions of inheritance may conflict with one another. Such a conflict of functions may be a true one in the sense that even the same system of inheritance may fulfil two or more conflicting functions. This is presumably the case in general when there is conflict. On the other hand, the conflict of functions may also depend on the fundamental values which determine the functions of inheritance. In this latter type of conflict, the conflict is between the *autonomous function* and the *fiscal function* of inheritance.

If the value choices of the researcher strongly emphasize the independence of the individual in relation to the state as well as the inviolability of the right of

[3] Regarding the limitations of the functional theoretical approach, cf. W. Runciman, *Yhteiskuntatiede ja poliittinen teoria*, Jyväskylä 1976, pp. 110 ff.

[4] N. Papantoniou, *op.cit.*, p. 385.

[5] Regarding the functions of inheritance in general, cf. also M. Rheinstein and M.A. Glendon, "The social function of the law of succession", in their above-mentioned work, pp. 1-10.

[6] R. Kuczinski and Mansfeld, *Der Pflichtteil des Reiches*, Berlin 1917.

[7] W. Strunk, *Der Gedanke der Erbrechtsreform seit dem 18. Jahrhundert*, Dresden 1935, p. 41.

private ownership, he probably favours the opinion that the right of inheritance protects the individual against the attempts of the state to exert its interests. "Eigentum und Erbrecht sind nicht das einzige, aber ein sehr wichtiges Mittel, um ein Stück Freiheit und Unabhängigkeit des einzelnen von Staat und Gesellschaft zu erlangen. Mindestens in dem Mass, in dem die Versorgungsfunktion an Bedeutung verloren hat, wächst die Notwendigkeit, *die Autonomiefunktion des Erbrechts zu stärken.*"[8] On the other hand, if the ethos of the researcher emphasizes the primary position of society and the obligation to care for the equal satisfaction of the needs of citizens, it is certain that he views inheritance legislation *as only one method* of fulfilling social justice. Inheritance legislation can be used as a tool in obtaining funds for the state; after these funds have been gathered, the state merely sees to a redistribution of income in society.[9] The inheritance tax institution, which is closely connected to the law of inheritance, arose solely to satisfy fiscal interests.

The competition between the autonomous function and the fiscal function of inheritance legislation has turned into a victory for the autonomous function. Intestate inheritance and testamentary inheritance have successfully held their own in one form or another in all societies. The only known exception to this is the decree issued in the Greater Russian Soviet Republic in 1918 on the abolition of the right of inheritance. According to the new system, which was in force for three years, on the death of a person his property went to the state. However, the members of the decedent's family had a right, up to a prescribed amount, to receive an inheritance from the state in order to satisfy their social needs.[10] In practice, however, the system did not function, and for this reason the right of inheritance was returned to near relatives during the period of planned economy.

There are clear differences between the various functions of the right of inheritance in societies with different economic systems. In socialist societies

[8] W. Leipold, "Wandlungen in den Grundlagen des Erbrechts", *Archiv für die civilististische Praxis* 1980, p. 190.

[9] A common theme in the discussion on the theory of the law of inheritance during the 19th century and the early 20th century was the emphasis on the fiscal function of the law of inheritance. Regarding this, cf. O. Stillich, *Die Lösung der sozialen Frage durch die Reform des Erbrechts*, Leipzig 1924. According to Stillich, it would have been possible to dismantle the entire taxation institution had the private right of inheritance been abandoned and the accrued resources been used for the needs of society.

[10] The complete abolition of the right of inheritance may have been due to the position adopted by Lenin, according to which inheritance was totally subject to the right of private ownership. Lenin strongly criticized Michailovski for considering the institution of inheritance as superstructure upon the network of sexual and family relationships. V.I. Lenin, "Was sind die 'Volksfreunde' und wie kämpfen sie gegen die Sozialdemokraten?" *Werke*, vol. 1, Berlin 1965, pp. 176–77. Regarding the development of the Soviet right of inheritance in greater detail, cf. Å. Malmström, "Arvsrätt och samhällssystem", in *Teori och praxis. Skrifter tillägnade Hjalmar Karlgren*, Stockholm 1964, pp. 254 ff.

the focus is on the functions of inheritance legislation in fulfilling discretionary needs, while in Western market economies there is an essentially greater focus on the ties between inheritance legislation and the basic choices in the economic system. This difference, as well as the criticism that has already been directed above at the functional theoretical approach and its limitations, should be recalled in the following analysis of the other functions of inheritance.

1.2. *The function of strengthening social structures*

In the earliest legal systems inheritance was above all a method of transferring an individual's social position from one generation to the next. In a society based on lineal ownership, inheritance was a means of retaining power in the hands of the family line. "The static nature of life, the interpretation that landed property belonged to the family line and not to the individual, and the honoured status achieved by a lineage of illustrious men springing from divine origins influenced the fact that *social differences became inherited.*"[11] Even though later on lineal inheritance changed into *individual inheritance*, it retained essentially the same functions of strengthening social structures. The institution of inheritance was considered to be part of the system of inherited power in society, which in turn ensured the maintenance of the structures. This becomes apparent in an interesting way in, for example, the systematics adopted by Hugo Grotius; in his work *De jure belli ac pacis libri tres*, inheritance of the right of ownership and the system of inherited political power are dealt with as complementary and supplementary elements.[12]

However, one should not overestimate the significance of legal regulation in guiding the development of society. The dependence of the right of inheritance upon the power structure is made clear in the fact that the right of inheritance (even together with other legal arrangements) has not been able to prevent the process of change in society.[13] We no longer live in a lineal society. We no longer live in a feudal society. The function of the right of inheritance in strengthening social structures is limited only to the relationship between generations, and it does not go beyond that. However, in the short run the

[11] E. Jutikkala, *Pohjoismaisen yhteiskunnan historiallisia juuria*, Porvoo 1965, p. 21 (here translated). Regarding the institution of lineal inheritance in greater detail, cf. Å. Holmbäck, *Ätten och arvet enligt Sveriges medeltidslagar*, Uppsala 1919, pp. 7 ff.

[12] H. Grotius, *De jure belli ac pacis libri tres*, Oxford 1925, pp. 267-94.

[13] Marx emphasized the point that the system of inheritance is *subject* to the structure of power. "Wie jede andere bürgerliche Gesetzgebung sind die Erbschaftsgesetze nicht die Ursache, sondern die Wirkung, die juristische Folge der bestehenden ökonomischen Organisation der Gesellschaft, die auf das Privateigentum in den Mitteln der Produktion begründet ist." K. Marx, *Bericht des Generalrats über das Erbrecht. Marx-Engels Werke*, vol. 16, Berlin 1971, p. 369.

right of inheritance retains significance from the point of view of social stability and the continuity of society. Inheritance is part of the mechanism which transmits, from one individual to another, *similar social possibilities from one generation to the next.*[14] From this point of view the significance of inheritance goes beyond the mere technical arrangement of the transfer of ownership.

1.3. *The economic function*

Intestate inheritance and testamentary inheritance have always had a very central position from the point of view of the economic system. This has become concrete in two respects. First of all, intestate inheritance has been a means accepted by society for transferring without consideration the ownership of the means of production from one generation of owners to the next, if the private ownership of the means of production has indeed been permitted in general in the society in question. On the other hand, intestate inheritance has furthered and continues to further the accumulation of capital in society.[15] The pursuit of productive activity is not possible unless one has sufficient capital. The order of inheritance offers an excellent mechanism for obtaining this capital.

It is possible to find many sides in the function of inheritance legislation in the national economy. In the proper sense, the economic function of the inheritance legislation can be formulated as the question of *to what degree inheritance as an institution influences the distribution of wealth among all citizens in a society*. This question is extensively dealt with by Josiah Wedgwood in his work *The Economics of Inheritance.*[16] According to Wedgwood, the set of provisions on inheritance strengthens the differences in wealth in society which were originally due to other reasons. Thus, inheritance is not the original cause of inequality in society. The evolution of these differences in wealth in society is due not only to inheritance but also to other factors, such as the saving

[14] J.A. Brittain, *The Inheritance of Economic Status*, Washington 1977, pp. 17 ff. The idea of the very close relationship between inheritance and social structure is certainly not a new one. For example according to Immanuel Kant, "it would be an error to assume that a person could have property after his death". On the other hand, *a person's name* remains inviolate and it is *transferred* to the next generation. The intervening mechanism in this process consists of the provisions on inheritance. Cf. I. Kant, *Die Metaphysik der Sitten* (1797), Berlin 1914, pp. 295 ff.

[15] This element of inheritance is also emphasized by Calonius. According to him, "it is of greater benefit to the State that the resources are left in the hands of the citizens to be exchanged and accrued through their industriousness", as "most people act with greater vigour when they are heartened by the wonderful hope that the results of their work will devolve in accordance with the law to their children, their family and their relatives". See M. Calonius, *op.cit.*, p. 444 (here translated).

[16] J. Wedgwood, *The Economics of Inheritance*, London 1929.

propensity, the ability of the heir to utilize the capital he has received as well as the capital income.[17] Wedgwood illustrates the interrelationship among these factors with empirical studies and statistical analysis, but what is of even more interest is Wedgwood's analysis of the accumulation of wealth in his own family line. Wedgwood himself was a member of the upper middle class of England, and a detailed history of his family has been compiled. On the basis of this work and of over 250 wills he demonstrates how the differences in wealth between various branches of his family have developed over a period of ten generations. On the basis of this data Wedgwood states that the wealth of different family lines depends essentially on what type of economic conditions existed *five generations previously*.[18]

The significance of inheritance in the distribution of wealth, as assumed by Wedgwood, is upheld by recent economic studies. The American economic theorist Alan S. Blinder has studied changes in wealth with the help of a microeconomic model. Blinder took as the basis of his model 360 families which renew themselves every 25 years by producing two offspring, a girl and a boy. In particular the provisions on inheritance affect the distribution of wealth between the different generations, and Blinder assumes that each heir receives an equal portion of the inheritance. By using a mathematical model, Blinder demonstrates how the rate of accumulation of capital increases from one generation to the next.[19] In this sense there is ample justification for saying, as Wedgwood does, that the wealth that was amassed five generations ago in part determines, through the set of provisions on inheritance, the wealth of each individual.

In an historical perspective the economic function of inheritance has been emphasized most by those theorists who have been most closely connected to the socialist tradition of thought. According to the most radical views the right of private inheritance was considered the *reason* for the continuation of the capitalist means of production, and because of this the total abolition of the right of inheritance was proposed. The demand for such abolition was an essential part, for example, of the *Saint-Simonist* theory of social equality.[20] It was also included as the third point in the Communist Manifesto published in 1848. However, many theorists have noted that the abolition of the right of

[17] J. Wedgwood, *op.cit.*, pp. 60 ff. The relative significance of the institution of inheritance from the point of view of the accruing of capital can be seen very clearly in the structure of ownership in Finnish society. The most significant transfers of economic power take place through transactions *inter vivos*. Cf. E. Seppänen and H. Taanila, *Ken on maassa rikkahin?*, Jyväskylä 1983, pp. 19 ff.

[18] J. Wedgwood, *op.cit.*, pp. 165-8.

[19] A.S. Blinder, "Inequality and Mobility in the Distribution of Wealth," *Kyklos* 1976, pp. 607-38.

[20] For more details on the Saint-Simonistic theory of the law of inheritance, cf. W. Strunk, *op.cit.*, pp. 14 ff.

inheritance alone is not sufficient to change the economic system; it would have to be accompanied by a total prohibition of gifts.[21]

The economic function of inheritance has had a central position when arguing for or against a change of inheritance legislation. For example, the principle of *equal distribution* has been justified precisely on the grounds that it was assumed to open up the possibility of breaking the economic power of the higher nobility and of transferring it on an equal basis to all citizens. According to Rheinstein, Napoleon suggested to the King of Italy that the inheritance privileges of the nobility be abolished and that a decree be issued granting an equal right of inheritance, as this would make it possible to establish a middle class that would support the power of the ruler.[22] Also those opposing the principle of equal distribution had the same conception of the economic consequences of an equal right of inheritance. According to them, the principle of equal distribution would demolish the economic activity of a nation.[23] Even today, some researchers emphasize the significance of inheritance legislation in the decentralization of economic power. According to Dieter Reuter, "the right to a compulsory portion together with the provisions on inheritance tax are the most essential tools through which the present law of inheritance opposes the birth of an economic oligarchy".[24]

[21] P. Tissot, *Die Verwirklichung der sozialen Demokratie mittels Reichserbrecht und Scheckobligation*, Stuttgart, pp. 30 ff., and J. Wedgwood, *op.cit.*, p. 204. Also according to Marx the abolition of the right of inheritance would lead to a circumvention of such a prohibition through life-long transfers. Cf. *Aufzeichung einer Rede von Karl über das Erbrecht. Marx-Engels Werke*, vol. 16, Berlin 1971, p. 562.

[22] M. Rheinstein, *Diskussionsbericht. Arbeiten zur Rechtsvergleichung* 50, Berlin 1971, p. 132, J. Wedgwood, *op.cit.*, pp. 72 ff., and W. Schaer, *Ist das Pflichtteilsrecht ein erhaltenswertes Institut?*, Zurich 1976, pp. 87 ff. According to Schaer, the statutory portion has been defended specifically on the ground that it prevents the accumulation of capital in the hands of one person.

[23] Regarding the principle of equal distribution, cf. A. Saarenpää, *Tasajaon periaate*, Vammala 1980, pp. 63 ff. For a closer analysis of those opposing the principle of equal distribution, cf. L. Brentano, *Erbrechtspolitik, alte und neue Feodalität*, Stuttgart 1899, p. 143. In his study, Brentano himself demonstrates that the principle of equal distribution has *not* had the destructive effect it is presumed to have had on agriculture. Also according to Wedgwood the argument regarding the splitting up of the property being inherited is very much in error, as all of the studies had demonstrated the continuous growth in the size of farms. The tendency towards the accruing of capital was stronger than the tendency towards the splitting up of capital. J. Wedgwood, *op.cit.*, p. 73.

A model of the transfer of inheritance that is the complete opposite of the principle of equal distribution is the so-called *primogeniture institution*, which was followed, among others, in earlier Norman law, in Denmark and in England. According to this institution the eldest son had the exclusive right of inheritance to the landed property left by the decedent. The farm was not even divided among brothers. Regarding the primogeniture institution, see S. Pufendorf, *De Jure Naturae et Gentium. Libri octo. The Translation of the Edition of 1688*, Oxford 1934, pp. 630 ff., Å. Holmbäck, *Ätten och arvet enligt Sveriges medeltidslagar*, Uppsala 1919, pp. 68 f., A. Smith, *Lectures on Jurisprudence*, Oxford 1978, pp. 49-56, L. Brentano, *op.cit.*, pp. 199 ff. The purpose of the system was to support the economic foundation of a society based on feudal property. It was precisely for the same reasons that in some parts of England there existed the custom that it was the *youngest* son who obtained the entire inheritance. Cf. A. Smith, *op.cit.*, p. 63. The right of the youngest son to the inheritance is known as the *ultimogeniture system*. Cf. R. Winch, *The Modern Family*, 3rd ed. New York 1971, pp. 200 ff.

[24] D. Reuter, "Gesellschaftliche Nachfolgeregelung und Pflichtteilsrecht", *Juristische Schulung* 1971, pp. 289 ff. (here translated).

Also in the drafting of the Finnish legislation, the economic function of the law of inheritance has been used as an argument both in opposing and in supporting amendment of the Code of Inheritance. During the 1930s, the proposal to improve the position of the surviving spouse in regard to inheritance by granting him/her a so-called protection of non-partition was opposed. The idea behind the proposal was to grant the widow the right of use and the direct descendants the right of ownership of the estate. The proposal was rejected on the ground that "it cannot be considered satisfactory from the point of view of the economy that a considerable amount of property would thus become subject to dual administration".[25]

A second example from the drafting of Finnish legislation gives an even clearer demonstration of the significance of the economic functions of inheritance legislation. Agricultural producers had long criticized the fact that the set of provisions on inheritance could make it difficult to pursue agriculture. The principle of equal distribution forced the heirs to divide an agricultural holding in a decedent's estate, even if one of the heirs alone would have been willing to farm the holding. In order to remedy this defect, the special set of provisions in ch. 25 of the Code of Inheritance on the inheritance of farms was enacted. The only goal of these provisions was to maintain the original function of economically productive farms.[26]

The economic function of inheritance legislation has in part lost its significance along with the increase of *indirect ownership*. Different forms of groups of companies, holding companies and the ownership of shares have depersonified the right of private ownership and changed its nature.[27] The transfer of trade-linked property from one generation to the next usually takes place through *inter vivos* transactions, and it is only rarely that significant means of production are transferred from one generation to the next by inheritance. It is an entirely different matter that various redemption clauses are used to ensure the right of family members to the property being transferred in *inter vivos* transactions.[28]

[25] Government Bill 1935 on the Book on Inheritance, p. 64. Regarding this, see U. Kangas, *Lesken oikeudellinen asema*, Vammala 1982, p. 100, note 165.

[26] Regarding the reasons leading to the passing of ch. 25 of the Code of Inheritance, cf. A. Aarnio and U. Kangas, *Suomen jäämistöoikeus I*, Jyväskylä 1983, pp. 276-8.

[27] The law of succession has been said to be necessary to guarantee the continuity of enterprise, without which long-range economic activity could not flourish in an economy where property is individually owned. This argument has lost much of its force in an economic system in which large-scale enterprise has come to be carried on in corporate form, and to be directed not by owners but by specialists in management succeeding each other in the manner of office holders. M. Rheinstein and M.A. Glendon, *op.cit.*, pp. 3 f.

[28] For example, in the articles of association of the eighth largest company in Finland, A. Ahlström Oy (Ltd), the position of relatives has been secured by the following provision: "Should a shareholder desire to transfer an A-series share through other than the forms of acquisition

1.4. *The social welfare function*

The further we go backwards in time, the tighter the link between social welfare and the powers of ownership. With the absence of public social welfare arrangements, the privately-owned wealth of the decedent was the only source of property that could satisfy the needs of the potential beneficiaries of the estate for social security. Privately-owned wealth was at the same time social wealth: "Privatvermögen als Sozialvermögen".[29] The provisions on the distribution of this property were considered part of civil law. For example, according to Roman law a poor widow who had not received a gift from her husband in connection with the marriage or a dowry, received one fourth of the inheritance, along with the children.[30] The purpose of the provision was to safeguard the economic position of the widow. Later on, the social welfare function of inheritance legislation received its concrete form in the limitations placed on the power of the testator to dispose of his property: the first efforts were made to prevent the testator from using his property to the detriment of heirs in need.[31]

The limitations on the powers of the owner in order to achieve social welfare goals was a logical consequence of the view of the obligations of man, according to which the parents had a moral obligation to satisfy the social security of their children.[32] This obligation was considered mutual, in that when needed the children were to help their parents. The analysis of the moral obligations of the individual is a popular theme in classical philosophy. For this reason it comes as no surprise that very many different philosophies in different connections emphasized the obligation of the testator to look after the social welfare of those close to him. Thus, for example, according to Jeremy Bentham, in passing inheritance legislation, it is the primary duty of the legislator to make "provision for the subsistence of the rising generation".[33]

mentioned below to a person who is not a direct descendant or married to a direct descendant of Commercial Counsellor Antti Ahlström or of his wife Eva Ahlström, the share must before said transfer be offered for redemption by the other owners of A-series shares who are in said manner descendants of Antti and Eva Ahlström." (here translated) Regarding the above and similar provisions, cf. E. Seppänen and H. Taanila, *op.cit.*, pp. 180 ff.

[29] W. Schaer, *op.cit.*, p. 82. The idea of the obligating nature of the right of private ownership received specific expression in the Constitution of the Weimar Republic. "It is true that the Constitution continued to secure the right of ownership, but this right was placed within social obligations: Eigentum verpflichtet. Sein Gebrauch soll zugleich Dienst sein für das Gemeine Beste." H. Karapuu, "Omistusoikeus perusoikeutena", *Tutkijaliiton julkaisusarja* 21, Helsinki 1983, p. 51 (the Finnish text is translated here).

[30] M. Kaser, *Roomalainen yksityisoikeus*, Porvoo 1968, p. 286.

[31] Regarding the concept of "Noterbrecht", cf. U. Lübtow, *Erbrecht*, Berlin 1971, pp. 12 ff., and p. 554.

[32] Regarding the content of moral obligations between relatives, cf. H. Grotius, *op.cit.*, pp. 269 f. Grotius justifies his position by referring to the opinions of Aristotle, Plato and Euripides.

[33] J. Bentham, *The Theory of Legislation*, New York 1975, pp. 108 ff.

The content of the social welfare function of inheritance legislation is not only determined by the *choice of the heirs*,[34] but also by *how the net property in the estate is distributed among the surviving heirs in a socially just manner*.[35] It is typical of the principle of family inheritance that those individuals are favoured who are directly related to the decedent, such as the husband or wife, children and parents. It is in general precisely these persons who, when the decedent had been living, were dependent on his property. It is thus specifically these persons who have been favoured when drafting the contents of the present Finnish Code of Inheritance. The widow is protected by the non-partition protection given in ch. 3, sec. 1(a) of the Code; the parents are protected by the discretionary provision on assistance; and the direct descendants are protected not only by the set of provisions on the compulsory portion but also by the set of provisions on assistance. In Finland, the social welfare function of the inheritance legislation has received a great deal of emphasis, and for social welfare reasons even the right of a direct descendant to a compulsory portion must give way to the needs of persons who may not even be intestate heirs.[36]

The principle of welfare through inheritance legislation is generally recognized in different legal systems.[37] It has received special emphasis in the inheritance legislation of socialist countries. For example, according to the present Code of Inheritance in the Soviet Union the position of an intestate heir is granted to those disabled persons who had been dependent on the economic support of the decedent for at least a year before his death *even though* there was no blood relationship between the decedent and the disabled person.[38] Also the inheritance legislation of other socialist countries includes similar social welfare norms.[39]

However, deliberate utilization of the social welfare element of inheritance legislation is typical not only of the socialist states. In the foregoing, the example of the social security arrangements in the Finnish Code of Inheritance has already been mentioned. Also in many other Western European countries the social welfare nature of inheritance legislation is emphasized, which is shown, for example, in the term used to describe the Swiss system, "versorgungsorientierte Erbrecht". Even in England, which in contradistinction to the Continental European legal systems reserves a complete right of testamen-

[34] N. Papantoniou, *op.cit.*, p. 392.
[35] U. Kangas, *Lesken oikeudellinen asema*, p. 26.
[36] According to ch. 8, sec. 2 of the Code of Inheritance, a person who was betrothed to the deceased and is in need of assistance may be given such assistance even at the expense of violating the right of those descendants entitled to a compulsory portion. Regarding the contents of this provision, cf. A. Aarnio and U. Kangas, *op.cit.*, pp. 381 ff.
[37] F. Reichert-Facilides, *op.cit.*, p. 101.
[38] Å. Malmström, *op.cit.*, pp. 260 f.
[39] V. Knapp, *Rechte sozialistischer Länder. Arbeiten zur Rechtsvergleichung* 50, Berlin 1971, pp. 23 ff.

tary disposition,[40] testamentary assistance based on the discretion of the judge is known, "richterliche Erbhilfe".[41] The completely opposite system has been adopted in the BGB, according to which the needs of the heirs have no significance in the distribution of the estate.[42]

Factors which influence the effectiveness of the social security provided by inheritance legislation are not only the number of heirs and the model of distribution, but also the net size of the estate which is to be distributed. The wealth of a nation is unevenly distributed among its citizens. There are poor and very poor people, the middle class, the wealthy and the very wealthy. Paradoxically, the social welfare function of the inheritance legislation cannot be realized at all in those situations where the need for social welfare is the greatest. It is for this reason that Marx took a sceptical view of the entire institution of inheritance. According to him, "Für die Arbeiterklasse, die nichts zu vererben habe, sei diese Frage nicht von Interesse".[43] The same idea is expressed even more pointedly by Karl Renner, according to whom the law of inheritance was a purely illusory legal institution from the point of view of the working class.[44] Such utter pessimism, however, is not justified. In those cases where there is net property in the estate, the question of how and among whom it is to be distributed is certainly not immaterial. This was already pointed out by Anton Menger, according to whom the legislator can use inheritance legislation up to a certain degree to freely determine the social circumstances of the future.[45] Even though, today, social welfare is guided primarily through public law mechanisms,[46] intestate inheritance remains *one* way of determining how wealth is to be distributed in society. If it is at all possible, these means should be used so that the social welfare needs of the heirs are primarily satisfied.[47]

1.5. *The rearing and educational function*

Many functions of inheritance have been the focus of very heated disagreement. It may be that there is complete unanimity on only one function of inheritance, the satisfaction of the rearing and educational needs of the heirs with funds from the decedent's estate. According to Matthias Calonius, the

[40] P.M. Bromley, *English Law. Arbeiten zur Rechtsvergleichung* 50, Berlin 1971, pp. 69 ff.
[41] W. Schaer, *op.cit.*, pp. 94 ff., and F. Reichert-Facilides, *op.cit.*, p. 105.
[42] F. Reichert-Facilides, *op.cit.*, p. 105.
[43] Marx, *op.cit.*, p. 561.
[44] K. Renner, *The Institutions of Private Property and Their Social Functions*, London 1976, p. 246.
[45] A. Menger, *Das Bürgerliche Recht und die besitzlosen Volksklassen*, Tübingen 1890, p. 206.
[46] D. Leipold, *op.cit.*, p. 188.
[47] U. Kangas, *op.cit.*, pp. 3 and 12.

children have been granted an intestate right of inheritance because otherwise the state would "have conferred upon it the onerous task of maintaining and raising minors".[48] Also those researchers who consider that the children have no special right to demand an inheritance from their parents are in agreement that the inherited sum is primarily to be used for satisfying the rearing and educational needs of the children.

For example, the English economic theoretician John Stuart Mill was very critical of intestate inheritance as it existed in England during the 1800s. He totally rejected the idea of the equality of the heirs as a guiding principle in legislation. Mill writes that every society which accepts the right of private ownership should bear its consequences.[49] The powers of the owner should not be limited by the principle of equal distribution, nor by a system of compulsory portions of the inheritance. In principle, they were as bad models of legislation as those models which favoured one heir over the rest.[50] The unlimited power of ownership could be limited only by the obligation that the parents had to secure the education and raising of their children. If they did not have time to fulfil this obligation while they lived, the child had a right to demand that the obligation be fulfilled from the decedent's estate: "To this every child has a claim; and I cannot admit, that as a child he has a claim to more".[51]

The rearing and educational function of inheritance has also influenced the contents of the Finnish Code of Inheritance. According to ch. 8, sec. 1 of the Code, the child of the decedent has a right, in addition to the property he receives as an inheritance, to funds considered reasonable in the circumstances if the rearing or education of the child requires special support. Such assistance for rearing and education can only be given up to the time the child reaches 21 years of age.[52]

It is ironical that the one function of inheritance on which there is little disagreement is the one that is losing its significance. This is due in part to demographic factors and in part to the transfer of the responsibility for rearing and education from the individual to society. As in different studies around the world it has been noted that the average age of the direct descendants surviving their parents is rather high, almost forty years, for these heirs it could at most be a question of adult education.[53] The rearing and educational function of inheritance thus cannot be its most important function.

[48] M. Calonius, *op.cit.*, p. 444 (here translated).
[49] J.S. Mill, *Principles of Political Economy with Some of Their Applications to Social Philosophy*, London and Toronto 1965, p. 225.
[50] J.S. Mill, *op.cit.*, p. 224.
[51] J.S. Mill, *op.cit.*, p. 221.
[52] Regarding the contents of this provision, cf. A. Aarnio and U. Kangas, *op.cit.*, pp. 377 ff.
[53] Cf., for example, D. Leipold, *op.cit.*, p. 185, and N. Papantoniou, *op.cit.*, p. 397. Wedgwood

1.6. *The housing policy function*

Inheritance legislation can be and has been used as one means of ensuring that the heirs have a possibility of obtaining housing and the necessary furnishings. Already during the first decade of the 1800s, Matthias Calonius emphasized the housing policy function of inheritance. According to him, "it would be reasonable that even adults receive assistance from the property of their father when they are establishing a new home".[54] The changes that have taken place in the standard and cost of living have done nothing but increase the pressures towards more deliberate utilization of inheritance legislation also in this sector of life.

If we use the present Code of Inheritance in Finland as an example, we can easily see that the power that the decedent had to dispose of his property has been essentially limited in order to ensure the housing policy function of inheritance. Already on the basis of the assistance provision in ch. 8, sec. 2 of the 1965 Code of Inheritance, the widow could, according to the circumstances, be granted as assistance either a single-family house or the shares that granted title to possession of housing.[55] However, this granting of assistance was discretionary. Because of this, the Code of Inheritance was amended as of 1 September 1983 so that the surviving spouse always has a right to possession of the undivided estate to the extent that the estate includes the housing and furnishings that had been jointly used by the spouses.[56]

1.7. *The compensatory function*

Intestate inheritance as well as testamentary inheritance may be means of providing compensation, on the death of the person in question, for the services that the heir has rendered to him while he was living. The right of the parents of the decedent to inherit his estate if he has no direct descendants has been justified in particular with reference to this argument. Thus, for example, according to Jeremy Bentham the right of the decedent's parents to inherit his estate is a direct compensation for the costs resulting from his maintenance: "it's a recompense for services rendered, or rather an indemnity for the pains and expense of educating the child".[57]

observed already in 1929 on this same subject as follows: "The average age of children who survive well-to-do parents is somewhere about forty. The description 'children', for inheritors in the direct line of descent, is therefore apt to be misleading." See J. Wedgwood, *op.cit.*, p. 190.

[54] M. Calonius, *op.cit.*, p. 444 (here translated).

[55] Regarding the contents of ch. 8, sec. 2 of the Code of Inheritance, cf. A. Aarnio and U. Kangas, *op.cit.*, p. 383.

[56] Regarding the right of the widow to housing which is part of the estate, cf. U. Kangas, "Puolison oikeudesta hallita jäämistöä jakamattomana PK 3:1a:n nojalla", *Lakimies* 1983, pp. 731 ff.

[57] J. Bentham, *op.cit.*, p. 110.

Along with the change of relationships in society in general, the compensatory function has in part lost its significance in respect of the relation between parents and child, but there are still situations in which the realization of social justice calls for the giving of compensation. For example, it may have been that the heir had worked continuously for the benefit of the decedent without receiving reasonable compensation. The motive for the work may have been an erroneous idea that the decedent remembers him in his will. It is particularly with these situations in mind that the Code of Inheritance was amended as of 1 March 1983 so that a person who has the status of a heir may be granted compensation from the net savings of the estate.[58]

2. THE DISTRIBUTIVE PROBLEM

Logically, an analysis of the functions of inheritance legislation does not provide just one answer to the question of *in what way* the decedent's estate is to be distributed. The question of among whom and in what proportion the property is to be distributed may be called the *distributive problem of inheritance legislation.* This problem is ultimately one of justice.[59] It is the purpose of inheritance to satisfy the rightful expectations of man for justice, or to use Jeremy Bentham's expression, its purpose is the "prevention of disappointment".[60]

To be exact, the distributive problem of inheritance legislation is a three-dimensional one, as it does not affect only the proportion of distribution and the choice of those among whom the estate is to be distributed. The question is not only one of the structure of the distributive model and the choice of those entitled to the estate, but also one of the value of the property to be distributed.[61] It is possible to use *inheritance taxes* in order to affect the value of this property after the death of the decedent. Indeed, a deliberate effort has been made to use inheritance legislation as a means of confiscating "unjust enrichment" on the part of the new generation of owners. Thus, for example, according to Karl Marx the inheritance tax should be raised and the accruing

[58] Regarding the contents of ch. 8, sec. 5 of the Code of Inheritance, cf. A. Aarnio and U. Kangas, *op.cit.*, pp. 381 ff.

[59] As already expressed by Calonius, "The provisions contained in civil law may be based on a greater or lesser degree of reasonableness. Even so, presumably no one will undertake without due reflection to argue that the order of inheritance presently decreed and valid in our law is not extremely reasonable and exceptionally geared to the natural disposition of man" (here translated). The statement by Calonius naturally applies to the Inheritance Book in the 1734 Code. Cf. M. Calonius, *op.cit.*, p. 445.

[60] J. Bentham, *op.cit.*, p. 108.

[61] Regarding the different sides of the distributive problem, cf. J.S. Fishkin, *Justice, Equal Opportunity, and the Family*, New Haven and London 1983, pp. 11 ff.

funds should be used "zu dem Zwecke des sozialen Emanzipation".[62] The two sides of the problem of justice, the question of the structure of the distributive model and of the choice of the heirs, are part of the eternal questions of the law of inheritance.

The decision on the model of the distribution of the estate would at first sight seem to be more a problem of legislative technique then a question of justice. However, this is not necessarily the case. If we examine, for example, the provisions in the Swedish Code of 1734 on the procedure to be followed in dividing the estate, we can see that, for example, the provisions on the right to take a farm which belonged in the estate were based on the assumption that the best guarantee of justice was when the person who was entitled to the largest part of the inheritance could have his part taken from the real estate of his choice. This Code was also valid in Finland, which at the time of the enactment formed part of the Swedish Kingdom. In exactly the same way, the model of the distribution of the estate between a widow and the direct descendants in the situations dealt with in ch. 3, sec. 1(a) of the Code of Inheritance can be interpreted as decisions providing justice.

The most important element in the distributive problem, however, is the choice of the new generation of owners. On what grounds, and among whom is the property in the estate to be divided? In a familial society there were no difficulties in choosing these persons, as the property remained in the possession of the family line. The question became a burning one when the process of transformation from lineal inheritance to individual inheritance gathered speed. In all societies the criteria of the selection of the heirs, despite the changes which have taken place, have been determined under cross pressure from sociological and biological connections. For these reasons, in the econ-

[62] K. Marx, *Bericht des Generalrats über das Erbrecht. Marx-Engels Werke*, vol. 16, Berlin 1971, p. 369. The demand for the use of the income from the inheritance tax for social purposes had already been presented before Marx. For example the Saint-Simonist *Prosper Enfant* proposed an increase in the level of progression of the French inheritance tax and the use of the income from the tax for the establishment of schools and institutions for the common good. Cf. W. Strunck, *op.cit.*, p. 17.

In Sweden-Finland there was support for a tax-like fee on inherited property already before the passing of the Code of 1734. On 21 October 1698 King *Carl XII* issued a proclamation according to which "one eighth of a per cent shall be paid to the poor from all property in the estate" (here translated). The executor of an estate inventory was obliged to turn over the sum to the administrator of the poor relief fund. This so-called *property registration fee*, later called the *poor relief percentage*, was an important source of income for municipal poor relief. Cf. O.W. Louhivuori, *Kunnallinen köyhäinhoitorasitus Suomen suurimmissa kaupungeissa ennen nykyistä kunnallishallitusta*, Helsinki 1915, pp. 218 and 225. The poor relief percentage was collected in Finland until 1981, when the provision was repealed. The inheritance tax assessed in Finland today has an infinitesimally small effect from the point of view of the funding of income transfers in social welfare. This is already demonstrated by the fact that while the income from inheritance taxes in 1984 is estimated at 230 million marks, the cost in the field of administration of the Ministry of Social Welfare and Health alone is over 21,000 million marks. Cf. the proposal for the annual state budget, Helsinki 1983, pp. 11 and 81.

omically most developed states, the development has gone from lineal inheritance to *family inheritance*.[63]

Georg Wilhelm Friedrich Hegel has given us the theoretical formulation of the principle of family inheritance. According to Hegel, "the family is a moral individual with the right of ownership over the property in the possession of its members. Thus, intestate inheritance does not mean that the right of ownership is transferred from one individual person to another, it means the rearrangement of the possession of joint wealth."[64] Hegel's thoughts also met with acceptance in Finland, as the views that the Finnish political philosopher Johan Wilhelm Snellman held of the law of inheritance match those of his mentor in philosophy.[65]

The practical consequences of the principle of family inheritance as the model for solving the distributive problem in inheritance legislation correspond to the position of most theoreticians in natural law, according to which the content of intestate inheritance should be defined on the basis of the hypothetical will of the decedent. *The theory of the hypothetical will of the decedent* required that the legislator placed himself in the position of the decedent and gave an assessment of the probability of how and to whom the decedent would primarily have wished to leave his property after his death.[66] This also

[63] F. Reichert-Facilides, *op.cit.*, pp. 97 f.

[64] G.W.F. Hegel, *Grundlinien der Philosophie des Rechts oder Naturrecht und Staatswissenschaft im Grundrisse* (ed. Helmut Reichelt), Frankfurt am Main 1972, pp. 160-5 (here translated). This idea, as presented by Hegel, was further developed by Eduard Gahns in his mammoth work, *Das Erbrecht in weltgeschichtlicher Entwicklung. Eine Abhandlung der Universalgesichte*, Berlin 1924-35. It may be mentioned that Gahns edited the first edition of Hegel's philosophy of law, and thus was very well acquainted with Hegel's views on the theory of the law of inheritance.

[65] According to Snellman, "the general laws on the right of ownership recognize all ownership as solely personal, and even the family appears in this respect as a person. But on the other hand, in legislation pertaining to the family, in laws on inheritance and ownership, it is considered as the property of the family, something common to all members of the family. Indeed, all of this legislation must be based on the argument that the property of the family actually does belong to the family and is not merely the common property of the parents or the private property of one or the other of the parents, even though the parents are its natural administrators". J.W. Snellman, *Kootut teokset*, vol. 2, Porvoo 1928, p. 35 (here translated).

[66] Grotius argues on behalf of the theory of the hypothetical will of the decedent as follows: "If anyone had given no indication of his wishes, nevertheless, since it was not credible that his intention was to yield his property after his death to the first who would take it over, the inference is that his property is to belong to the person to whom it is especially probable that the dead man had wished that it should belong ... it's credible that each man wished what was most just and honourable." H. Grotius, *op.cit.*, p. 269. Regarding the theory of the hypothetical will of the decedent and the opinions of the natural law theorists, cf. also D. Leipold, *op.cit.*, p. 196, and W. Strunk, *op.cit.*, p. 8. According to Adam Smith, the theory of the hypothetical will of the decedent was empirically false, as it assumed the primary position of testamentary inheritance. On the contrary, numerous historical documents showed that statutory inheritance was the primary form and testamentary inheritance only secondary. A. Smith, *op.cit.*, pp. 38 f. Also Calonius rejected the theory of the hypothetical will of the decedent. M. Calonius, *op.cit.*, p. 444.

The theory of the hypothetical will of the decedent has obtained a permanent position in the law of testaments. According to ch. 11, sec. 1 of the Code of Inheritance, a testament is to be interpreted in accordance with the assumed will of the decedent. Cf. M. Ylöstalo, *Testamentin tulkinnasta*, Helsinki 1954, pp. 17 ff.

explains why the assumption of what the will of the decedent is may vary from time to time and in different societies. The content of intestate inheritance (*successio ab intestato*) follows to a great extent the content of family relationships and consanguinity.

Consanguinity may be regarded, first of all, as *unilinear or one-sided consanguinity*. One-sided consanguinity may be either patrilineal, related to the paternal line, or matrilineal, related to the maternal line. The system of patrilineal consanguinity corresponds to the *agnate model*. Agnate descendants are those men and women who are descended from a common forefather through male relatives. Generally, however, consanguinity is understood as *dual or bilateral consanguinity*. The system of bilateral consanguinity corresponds to the *cognate model*. Cognate relatives are determined through both the paternal and maternal line.[67] The order of intestate inheritance is rarely at odds with the dominant model of consanguinity. This model, however, is not sufficient in solving the distributive problem in inheritance legislation.

Regardless of the model of consanguinity, one must always solve the question of which members of the family line have the primary right to the inheritance. Once again, there are a number of ways to solve this problem, and the choice of the solution is determined by the weight that is given in society to the different functions of inheritance legislation. Provisions on a directly descending right of inheritance (*successio ascendentium*) have often replaced provisions on a regressive right of inheritance (*successio descendentium*). It can scarcely be said that there has always been a willingness to extend the right of inheritance to *collateral relatives*. The reason for this may be the importance of the economic function of inheritance legislation. If there is a willingness to use inheritance legislation for furthering the accumulation of capital in society, the reaching of this goal may be ensured through provisions on the selection of heirs. An excellent example of this type of solution can be found in the old provincial laws of Sweden.

The oldest codes of inheritance in the Swedish provincial laws were based on the *principle of gradualness* (*successio gradum*). According to this principle, the closest heirs were considered to be those who were separated by as few generations as possible from the decedent.[68] The distance of consanguinity was determined either by going back to a joint ancestor (*computatio canonica*) or by going to the decedent (*computatio civilis*).[69] There were no provisions in the principle of gradualness regarding collateral inheritance, for which reason the

[67] Regarding the significance of family relations in general, cf. N. Graburn, *Readings in Kinship and Social Structure*, New York 1971.

[68] A. Smith, *op.cit.*, p. 43, and R. Hemmer, *Suomen oikeushistorian oppikirja* II, Vammala 1967, p. 66.

[69] J.W. Chydenius, *Lärobok i Finsk arfs- och testamentsrätt, Helsinki* 1910, pp. 4-15.

property of the decedent was always transferred as a whole to the person entitled to the inheritance (*successio in capita*). Because of this, the application of the principle of gradualness in practice prevented the splitting up of the decedent's estate among several branches of the family.[70] As a solution to the distributive problem in inheritance legislation, it supported the institution of consanguinity as a nucleus of power in society. This is vividly evident in Åke Holmbäck's study *Ätten och arvet enligt Sveriges medeltidslagar.*[71]

The gradual erosion of the position of the family line as a source of power in society was slowly reflected also in the content of the mechanism of the distribution of inheritance. Already during the time of the old provincial laws, the *parentela principle* taken from Roman law (*successio ordinum*) began to replace the field of application of the principle of gradualness. Especially the right of substitution and the distribution of the inheritance among branches in the family line (*succesio in stirpes*), both of which are often connected with the parentela principle, led to the distribution of the inheritance among more heirs than before. Even so, as late as in the 1734 Code the scope of application of the parentela principle was limited to only the first and second parentelas. After the second parentela, the determination of the heirs followed the principle of gradualness.[72]

The direction of the development has been the same all over Europe, even though a mixture of systems is followed in for example the BGB. According to the BGB, after the parentela consisting of the direct descendants, the parents and the grandparents, a principle of lineal gradualness is followed (*succession in lineas*). It is typical of the lineal principle that the heirs on the father's side inherit the father, and those on the mother's side inherit the mother. The purpose of the system is to return the estate to the family line in which it originated (*paterna paternis, materna maternis*).[73] According to the system, the

[70] A. Smith, *loc.cit.*

[71] Å. Holmbäck, *op.cit.* The principle of gradualness can be illustrated with the order of inheritance contained in the *Västgöta* Code. According to this order, the estate was to be divided as follows. On the death of the person in question the estate went primarily to his son. If there was no son, the daughter received the estate. The third person entitled to the estate in the order of priority was the father of the decedent. From here on, the order of inheritance was as follows: (4) the mother of the decedent, (5) the brother of the decedent, (6) the sister of the decedent, (7) the son of the son of the decedent, (8) the son of the daughter of the decedent, (9) the son of the brother of the decedent, (10) the son of the sister of the decedent, (11) the father of the father of the decedent, (12) the mother of the mother of the decedent, and so on. The inheritance could be extended to the farthest relative. I. Otman, *Äldre Västgötalagen öfversatt och förklarad*, Helsinki 1883, pp. 34 ff.

[72] J.W. Chydenius, *op.cit.*, p. 10.

[73] Cf. U. Lübtow, *op.cit.*, pp. 46 ff., and P. Mikat, "Erbrecht", in *Staatslexikon Recht, Wirtschaft, Gesellschaft*, Breisgau 1958, pp. 1214-32. Also the order of inheritance in the Code Civile was based in part on the same line of thought. The Code Civile, instead of following the principle of parentelas, follows the so-called *class principle*. A. Rieg, *Französisches Recht. Arbeiten zur Rechtsvergleichung* 50, Berlin 1971, p. 81.

state does not have any right at all to the decedent's estate if the decedent had heirs living at the time of his death.[74]

In Finland, the distributive problem in inheritance legislation has been solved primarily on the basis of the parentela principle. However, our present Code of Inheritance contains some vestiges of the principle of gradualness as an exception in the position of half-relatives as heirs. The right of the state to the inheritance is relatively strong, and in addition the position of the surviving spouse has been arranged in a way that *de facto* alters the order of inheritance so that the widow has the primary right of inheritance. Alongside of consanguinity, social proximity has influenced the contents of the order of inheritance.

However, social proximity as the basis for inheritance has not been able to replace the consanguinity-based principle of family inheritance. This is apparent especially when examining the differences between *marriages* and *cohabitation without marriage*. Although the type of family has been abandoned as a criteria of classification in regard to the relationship between parent and child, this has not been done in respect of the relationship between parents. By entering into a marriage, a man and a woman come under the field of application of the Code of Inheritance as a married couple, but this is not possible solely on the basis of actual cohabitation. Cohabiting partners may arrange the distribution of their property after their death only through a mutual will. Even in this case, the surviving partner has a weaker position than does a widow/widower in relation to the direct descendants of the decedent.

The situation is a challenging one for the legislator. Should the distribution solutions given in inheritance legislation be changed so that a cohabiting partner will be granted a right of inheritance on the death of his partner? If social proximity is accepted as the basis for inheritance, and the order of intestate inheritance is otherwise arranged in accordance with the hypothetical will of the decedent, it would be consistent to treat a cohabiting partner in the same way as a married spouse. Extending the theory of neutrality so widely that it also covers cohabiting partners, however, does not appear probable at the time of writing, although many of the functions of inheritance legislation support inheritance by such partners. The question will be left for the future.

[74] U. Lübtow, *op.cit.*, pp. 88-99.