IMPERATIVE INHERITANCE LAW IN A LATE-MODERN SOCIETY

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IMPERATIVE INHERITANCE LAW IN A LATE-MODERN SOCIETY

Five Perspectives

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PREFACE

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

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

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

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

Reverting to the Imperative Inheritance Law, my first written thesis was on the subject of 'Testamentary freedom in Common law and Civil law', a comparative study that was presented at Harvard Law School half a century ago. Later on, here in Leuven, I continued to study what is referred to herein as Imperative Inheritance Law. The title of my book was *The Hereditary Reserve* (*De erfrechtelijke reserve*).

I do not think that further elaboration on that subject is required in this preface. Imagine that by reading this volume we were to arrive at the conclusion that there should not be such an institution as 'my' 'hereditary reserve'! In that case my old book would disappear from the library shelves, unless I had defended the same hypothesis. But that was not so, not so at all.

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

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

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

I think most of our citizens would still subscribe to such a system. In its application we should definitely get rid of accessory rules of old times that do no longer

respond to modern situations, like the so-called right to get the reserved part of the succession *in natura*, leading to many difficulties and unnecessary consequences in practice. Here, as in many other parts, we in Belgium have been more faithful, even submissive towards the Napoleonic Code, than the French themselves. Moreover, we must no longer stick to the principle that the freely disposable part depends on the number of children of the deceased. Finally, we must accept some exceptions to the interdiction of making anticipative arrangements about a future succession.

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

Roger Dillemans
Honorary Rector
K.U. Leuven

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