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Contrasting legal conceptions of family obligation and financial reciprocity in the support of older people: France and England

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ABSTRACT
This paper explores the way family obligation and reciprocity are defined in law in France and England. Focusing on the areas of inheritance and financial support in relation to older people, it explores how these are contrasted and linked in the two societies. In France, families are legally obliged to support their kin through *obligation alimentaire*, but inheritance is secured by law within the family. In England by contrast there is no such legal obligation to support older relatives; nor is there any constraint on inheritance: testamentary freedom is the legal principle. The paper discusses the significance of these differences and assesses how far they are modified by the operation of the welfare state and by embedded assumptions about family relations. It sets the differences within the context of different discourses of law and social policy in the two countries.

KEY WORDS **–** Family, obligation, inheritance, support, intergenerational, policy, law, comparative, France.

One of the striking differences between French and English law concerns the treatment of family obligation. French law, in common with certain other Continental traditions, encodes responsibility for the financial maintenance of parents by their children through the operation of *obligation alimentaire*. English law does not. In all western societies, family obligation and inheritance are connected, either implicitly or explicitly, but in France the pattern of inheritance is legally determined in ways that entrench the rights of families and parallel the legal definition of family obligation. In England this is not the case. The paper explores the significance of these different patterns.

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(The terms English and England are used advisedly here since the different parts of the UK have their own separate legal traditions.)

Obligation alimentaire in France

Obligation alimentaire is the obligation of relatives to provide material support to needy members of their kin. The obligation is not confined to the nuclear family but extends to other relationships and households. *Obligation alimentaire* itself refers to more than just food, encompassing the necessities of life generally, and extending as far as funeral expenses (Nénot and Rozez 1990). Though it has long-established roots in patterns of mutual obligation in pre-Revolutionary France, in its current form it dates back to the codification of French law that occurred in 1804 with the establishment of the *Code Civil*. The *Code Civil* drew together the fragmentary and contradictory traditions of Roman and customary law that had prevailed in patchwork fashion under the *ancien régime* and substituted a unified, reforming and rationalistic structure of law embodying Enlightenment ideals (David 1972). In amended form it constitutes French law to this day.

In one of its earliest sections, the *Code* sets out the character of marriage and the related nature of family obligation, defining to whom and under what circumstances an individual is required to give material support to a relative (*Code Civil* articles 205–211). Reciprocity between spouses is assumed during marriage and represents the first call on resources. After this, an individual must give support to his or her ascendants or descendants – that is parents, grandparents and beyond, children, grandchildren and beyond – without limit and without hierarchy between them. The obligation extends to in-law relations (though this now ceases with an individual's own divorce). If the marriage has ended with the death of the spouse, the obligation to in-laws remains so long as there are children living of the marriage. The obligation is confined to legitimate relationships. Since 1972 it has been possible to obtain a remission of the obligation if it can be shown that the relative has themselves failed in their obligations of kinship through, for example, abuse or neglect to support (article 207).

It is important to note that this codification is part of a general obligation enjoined by law and applies to all families and not simply those where a family member has fallen onto public relief. The obligation is conceptualised as a debt – those on whom the needy person may call are termed the debtors (*débiteurs d'aliments*) and the

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needy person termed the creditor (*créancier d'aliments*) – but it is debt that exists in potentiality, only activated at the point when the relative falls into a state of need (Nénot and Rozez 1990). It applies to all families and not simply those where a family member has fallen onto public relief. This, as we shall see, is an important contrast with the English tradition.

While not endorsing a radical leveling of fortune, *obligation alimentaire* contains the idea that differences in condition of life between family members should not be extreme (Nénot and Rozez 1990). Thus, the level of obligation is not set against an objective yardstick of income or need but reflects the relative social and financial position of the creditor and debtor. In determining the sums of money to be transferred, the law may take into account the reasonable expectations of the creditor as to their station in life. More significantly, the law must also take into account the resources of the debtor. *Obligation alimentaire* is not intended to pauperise the donor, but must reflect his or her capacity to pay (article 208). This brings a variable and subjective quality to the assessment, balancing in each individual case the needs of the one against the resources of the other.

The *Code Civil* was written at a time when family solidarity was of greater significance in the support of individuals in need and it gave legal expression to expectations that existed more widely. Its implementation was, however, always less certain. Historically, it suffered from the problem that those most likely to fall into need were those whose relatives were likely to be poor themselves. During the 20th century its significance has been greatly reduced due to the development of the welfare state and in particular of old age pensions.

Despite this, *obligation alimentaire* remains part of the *Code Civil* and still has a role to play, albeit a limited one. Although individuals can themselves still have recourse to the courts to enforce support, this is rare. Most commonly, *obligation alimentaire* is used by public bodies hoping to recoup from the needy person's relatives any expenditure for support. It therefore only comes into play when the older person comes into the orbit of that part of the welfare system that is based on means-tested social assistance. The greater part of the French welfare state is based on the social insurance model (Baker 1994). Old age pensions are provided by a complex patchwork of insurance schemes which have their origins in different employment sectors. The point at which *obligation alimentaire* becomes relevant is in relation to *aide sociale*. This is the means-tested, social welfare form of support that pays for social care, costs that are strictly medical being largely met by insurance. The role of *obligation alimentaire* in income support was largely displaced by

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the establishment in 1983 of the minimum income for older people and the *Revenue Minimum d'Insertion* for those of working age.

Aide sociale is funded by taxation not insurance contributions, and it only intervenes in default of other sources of support, whether personal resources, insurance cover or alimentary credits. When an individual applies for *aide sociale* they must furnish details of their resources. This includes a list of their debtors of aliment. If the applicant has such debtors, the *Commission d'Admission* assesses their contribution and can either refuse *aide sociale* or reduce it by the amount to be paid by the relatives. If the relative refuses to contribute, the Commission has to go to the courts for an assessment and judgment. In the case of emergency, the *aide sociale* will pay but it can recover the sums from a debtor of aliment. *Aide sociale* is legally a loan and is recoverable against the individual, should their fortunes revive, against the liable relatives, or against the estate by means of mortgage. Most recovery is by the last means. Overall, the contribution of *obligation alimentaire* is not great, representing, it has been estimated, about 15 per cent of the sums recuperated (*Commission des Affaires Culturelles, Familiales et Sociales* 1991). Many older people do not in fact have *débiteurs d'aliment*: one exploratory study undertaken in 1990 in the departments of Loire and Rhône found that less than 22 per cent had such a relative (Serverin 1992).

The impact of *obligation alimentaire* is also limited by the fact that certain forms of support are exempted from its operation. Help to younger disabled people is in general exempt, so that although disabled individuals are required to contribute to the cost of accommodation when in institutional care, if they are unable to meet this cost, *aide sociale* will pay and *obligation alimentaire* is not invoked against their relatives.

In relation to older people, the main exemption applies to the provision of home help (*aide ménagère*). Home helps in France are either paid for by individuals themselves (and/or their insurance fund in some cases) or are provided on a means-tested basis by *aide sociale*. In the latter case there is no recourse to liable relatives, though there would be for other forms of support under *aide sociale*. This exemption was introduced in 1977 as part of a policy to support older people remaining at home.

The circumstance where *obligation alimentaire* is significantly involved is in relation to the accommodation costs of older people in hospital, long-term nursing homes or other residential care. Older people are required to meet these costs by up to 90 per cent of their resources. If the older person is unable to meet the costs – and they are typically

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greatly in excess of pension income – *aide sociale* will pay but can seek recovery against the liable relatives or against the estate. Many older people and their relatives are reluctant to accept such charges being levied, and the existence of *obligation alimentaire* appears to act as an incentive to delay the transition to institutional care (Granet 1995).

There is considerable regional variation in the operation of *obligation alimentaire*. Since the decentralisation of 1983, *departements* which are responsible for the funding and administration of *aide sociale* have the ability to vary its application in accordance with their political and social policy objectives and their wealth. Some enforce only certain aspects of *obligation alimentaire*: for example, confining it to spouses and children; some operate sliding scales; and some ignore it altogether, though the legal status of this is disputed (Lefaucheur and Martin 1996).

A further complexity is added by the tendency for the courts to take a different approach from that of the administrators of *aide sociale*. The courts appear to be more inclined to abide by the original principle of the *Code Civil* that *obligation alimentaire* must be assessed in the context of the resources of the debtor, whereas *aide sociale* is more concerned with the straightforward recovery of monies, and tends to apply an objective yardstick. The response of the courts may also reflect a changing social consensus about the role of *obligation alimentaire*. The provisions of the *Code Civil* regarding spouses and children are widely accepted, but those in relation to the financial support of parents are less clearly so (Lefaucheur and Martin 1996). There is evidence of this particularly in relation to the support of people with dementia in long-stay facilities. Many families, perceiving dementia as an illness, feel that the costs should be covered fully by health insurance.

Inheritance in France

Inheritance in France is governed by concepts of family solidarity and reciprocity that directly parallel those of *obligation alimentaire*. Thus, just as individuals are required to support their descendants, so too are they required to leave part at least of their estate to their children. Unlike England, individuals in France are not free to leave their estate as they wish, but are obliged to leave a proportion in the direct line (Laferrère 1994; Hudson and Barbalich 1991). The part they may bequeath freely is called the *quotité disponible ordinaire*. Its size varies as a function of the number of reserved heirs: a half if there is one child; a third if two; and a quarter if three or more. As with *obligation alimentaire*, the legal

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framework governing inheritance was established in the *Code Civil* of 1804. This settled in favour of the direct line, and of equality between brothers and sister, putting an end – in theory at least – to the principles of primogeniture and unequal inheritance that had existed under the *ancien régime*, particularly in the south. Through the nineteenth century, debate continued between those who espoused the liberal model of absolute testamentary freedom and those who wished to protect the rights of children to inherit and to inherit in equal proportions. The advocates of the latter view presented testamentary freedom as entrenching the power of the paterfamilias through his capacity to disinherit or favour at will, and thus as a principle to be resisted (Laferrère 1994). Today, the terms of the inheritance laws command wide acceptance in France, being regarded as both just and in accordance with the expectations of family life. The one area where there is some evidence of a shift in view is in relation to spouses.

It is important to realise that spouses under French law are not reserved heirs, and that they can be disinherited at will. Even under intestacy the spouse only receives a life interest in a quarter of the estate. This apparently disadvantageous position is tempered in part by the fact of community of property of all goods acquired during the marriage, so that at death the surviving spouse receives half of these goods by right. If the testator wishes to leave the disposable part to a spouse, he or she must make a will. Such bequests are frequent, and spouses tend to receive more than the sum allowed under intestacy. There is a particular legal formula – *la donation aux dernier vivant* – that allows spouses to leave goods to whichever partner survives. The growing use of this – just over half of retired couples have made such an arrangement – appears to reflect an increasing tendency to favour the interests of spouses as against those of children, and with it an increasingly egalitarian emphasis within marriage. The donation applies, however, only to that part of the estate that is freely disposable (Laferrère and Verger 1993).

Just as the *Code Civil* entrenched the interests of children, so it set up a tax regime that overtly favoured the direct line. Tax on inheritance in France is not levied on the estate as a whole but on individual inheritances according to the nature of the relationship between the testator and the beneficiary. The rate of tax varies: in the direct line the average tax is currently less than ten per cent; in the indirect line (nieces and nephews for example) it is 49 per cent; and for those who are unrelated, 56 per cent. The tax regime is thus used overtly to favour the direct line. The principle was established during the French Revolution and has become more marked during the twentieth century

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(Arrondel and Laferrère 1991; Gotman 1988). As we shall note later, the French state has a long tradition of direct intervention in support of the family, and the rules concerning inheritance are part of this.

When one turns to the actual pattern of bequests in France, it is clear that the great majority of inheritance is in the direct line or between spouses (76 per cent to children and 14 per cent to spouses) (Laferrère 1994; INSEE, DGI 1987). Though the predominant pattern is one of equality of shares between beneficiaries, there is a small number of cases – about seven per cent – where the shares are unequal (though this, as always, applies only to the disposable part). These cases are often preceded by earlier gifts and to that extent do not come as a surprise within the family group but need to be seen as part of a longer-term strategy for the disposal of goods. Unequal inheritance is also associated with certain employment sectors, notably self employment and where the assets are difficult to divide or are by their nature not liquid, as in the case of a farm. It is more common for one child to be favoured than for one to be excluded. There is evidence of a slight advantage being given to daughters over sons, and to the last born, sometimes referred to as the 'props of old age'. This pattern of giving may reflect a wish to reward or compensate those who have been directly involved in caregiving.

There are regional differences in will-making that reflect the historically long-established distinction in France between the south – the Mediterranean-influenced culture of pays d'oc – and the north and west (Todd 1991). Thus – very broadly – there is a greater tendency in the north and west to favour the interests of spouses and to divide inheritance equally between siblings. In the south there is a greater use of unequal inheritance. These differences reflect patterns of landholding and use. In the south it is more common for the family to work the land directly, whereas in the north and west there is a greater use of rental. These regional differences are also reflected in the persistence of complex multigenerational households associated with Mediterranean family farms (Le Bras 1986; Todd 1991). Thus, older people in the south are much more likely to live with their children than those in the north and west, and this applies even in urban areas. Such cohabitation is almost twice as frequent in, for example, the suburbs of Toulouse compared with those of Paris or Lille: 39 per cent, 21 per cent and 21 per cent respectively (Cribier 1992).

Lastly, in the south west there is a survival of an older form of inheritance that is directly linked to caregiving through a formal procedure – *l'arrangement de famille* – sworn before a lawyer, whereby one member of the family is favoured in terms of inheritance

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provided he or she undertakes to support the parent 'in sickness or in health'. Directly linked to the wish to maintain the patrimony, it is an example of the survival of a form of caregiving contract that is found in a number of agriculturally-based societies (Sorensen 1989).

Legal definition of family obligation in England

As in France, there is a homology in England between the legal situation regarding family obligation and inheritance, though in this case the link is negative rather than positive. There is no general obligation under English law to support relatives, with the exception of spouses and under-age children. There is thus no direct equivalent to *obligation alimentaire* either now or in the historical past. The nearest parallel is with the liable relatives clause in the Poor Law. The Poor Law which was established in England in 1601, undergoing considerable revision in 1834, regulated the provision of parish relief until its final demise in 1948. The liable relatives clause encoded a responsibility to support kin in certain circumstances, and it provided the means whereby the cost of parish relief could be recouped from relatives.

The extent and significance of the obligations enshrined in the Poor Law have been the subject of recent historical dispute. Smith (1984), Laslett (1983) and especially Thomson (1986, 1991), have argued that the expectation of collective responsibility for 'the aged poor' was something that emerged early in England. From the early modern period onwards, they argue, there was a relatively clear expectation that the support of indigent older people would fall primarily on the parish, and that the expectation of support from younger kin was only weakly held. In support of this, Thomson points to the limited set of relationships recognized by the Poor Law as entailing obligation. In regard to older people, these included only adult children, and not siblings, nieces or nephews, or grandchildren. Unlike France, marriage did not create new obligations and could end some. Thus obligation did not extend to relations-in-law, and a woman's obligation to her parents ended with marriage. The rules only applied when the person was destitute and fell upon the parish; there was no obligation to give money where the person was merely poor or where there was a considerable disparity of fortune. Again, this is in contrast to the French tradition. As in France, the obligation to support was subject to having sufficient means and, in assessing this, the officers of the Poor Law took into account what were recognised as prior responsibilities to

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wives and children. Prosecutions in relation to the support of older people were in fact rare, and pursued by the authorities only with reluctance. Thomson (1986, 1991) argues that the magistrates did not really expect the children of the poor to support their parents, and that the real thrust of the liable relatives clause of the Poor Law was always against neglectful husbands and fathers.

Thane (1996) has challenged Thomson's conclusions, at least in relation to the dominant social norm. All the wider evidence, she argues, suggests that this was one of mutuality in which older people relied heavily on kin for material and care support. The fact that the liable relatives clause was rarely evoked does not undermine this assumption. The Poor Law guardians recognised that evoking the clause would have little effect in most cases and this, rather than any ideological doubts, was what restrained them.

It is important to emphasise at this point that the Poor Law as a legal code only applied to a particular class of persons: the poor. Its codification of family responsibility was limited to that group and it imposed no wider or more general obligation. This is in contrast to France where *obligation alimentaire* is part of a general codification of family relations that applied, and still applies, to all French citizens.

Inheritance in England

Just as the English law lays no general obligation on individuals to support their relatives, so too it leaves individuals free to leave their property as they wish. The principle of testamentary freedom emerged in England during the 18th and 19th centuries out of mediaeval restriction. The process reached its apogee in 1891, and between then and 1938, testamentary freedom was absolute in England (Oughton and Tyler 1984). Individuals were free to leave their property without consideration of rights or obligations towards their families. This, as we have seen, was in marked contrast to the French approach. The 1938 Inheritance (Family Provision) Act modified the situation by giving power to the courts to vary a will so as to be able to make provision for family members who had been dependent on the deceased: spouses, under-age sons, unmarried daughters and adult offspring with mental or physical disabilities, could apply for such provision. The law was further adjusted in 1966 and 1975 to extend the category of legitimate applicants to anyone who was dependent on the deceased. In the run-up to these reforms, the Law Commission considered alternative approaches, including that of the French tradition of fixed shares, but

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rejected these in favour of judicial discretion (Oughton and Tyler 1984). The English tradition thus remains one in which the law, in the form of the courts, intervenes to redress individual hardship. It does not, as in France, prescribe a particular set of family relationships. We shall return to this difference below.

Although testamentary freedom is the principle, the reality of English will-making is one of family solidarity. At an empirical level we do not have the same depth of detail as is available in France: the French data are systematic and exact precisely because of legal requirements regarding the family. The best source of information concerning England is Finch and Wallis's study (1994) of a sample of five hundred wills linked to a qualitative exploration of will-making within families. Finch and Wallis conclude that – as in France – most inheritance passes to spouses and children. Testamentary freedom and family reciprocity are not opposing principles, as they might seem from a French perspective. The reality of family obligation thus operates without legal constraint. The dominant cultural norm in England is one whereby inheritance should pass to children (after spouses), but that children should not assume such inheritance. The principle of equal shares between children is strongly held, with no preference according to gender, closeness to parents or involvement in caregiving (though there may be exceptions to this among certain sub-groups of the population such as the farming community). Finch and Wallis found no evidence to support the use of differential inheritance to reward or compensate for caregiving, and such a use was regarded by respondents as contrary to both the norm of equal shares and the principle that children should not expect inheritance in a crudely reciprocal way.

As we have seen within the English welfare state, individuals are not formally responsible and cannot be charged for the costs of the support of their older relatives. However, the social reality of intergenerational relations means that inheritance has increasingly become part of the debate about the costs of welfare. Increasing numbers of older people with capital assets in the form of the value of their house, together with the gradual withdrawal of automatic public support for areas of social care, mean that older people are more and more being required to fund their own long-term care, including that in institutional settings. This type of care in the past has been provided by the health care sector and thus formed a part of the welfare state that was provided on a universalistic, free-at-the-point-of-use, basis. Increasingly, the costs of such long-term care is being recouped from the capital assets of the older person.

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There are clear parallels here with the situation in France where, as we have seen, the point at which *obligation alimentaire* comes to bite is at the point when an older person goes into long-term institutional care. It is then that the alimentary credits are most commonly recouped by means of a charge against the estate. Because the inheritance is secure by the nature of French testamentary law, the charge can legitimately be seen as a delayed working of the principle of *obligation alimentaire*. In England, by contrast, where there is no legal security, recovery against the estate still operates, but with a different flavour. Here it is conceived more individualistically, simply as recovery against the assets of the older person. In practice, however, given the normal pattern of bequests, these sums do effectively come out of the inheritance of children. This social reality created pressure on politicians in England to increase the level of capital that older people are allowed to retain while still obtaining means-tested social assistance in order to protect the possibility of inheritance.

Thus, although there are differences in the ways in which French and English law regard family obligation, the realities of intergenerational relations and the operation of welfare states together mean that there are also considerable similarities. As in France, it is at the point when an older person comes into the orbit of the means-tested part of the welfare state that the contributions of relatives, now or implicitly in the future after the death of the parent, come into play. In both countries this usually happens at the point of transition into institutional care with the steep increase in costs that that typically involves.

Structural similarities

We started this paper from an observation of difference, from the fact that in France relatives are legally obliged to support their kin financially while in England this not the case. At first this appears to undermine the broad assumption that in modern societies families are no longer expected to provide for elderly relatives financially (Twigg 1996). In practice, as we have seen however, the growth of old age pensions has meant that the income needs of older people are now largely met by the state, and the realities of obligation in the two countries are not greatly different. To this degree, therefore, the French case does, after all, confirm the broadly convergent picture whereby the institution of a modern welfare state results in the financial

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independence of older people and with it the end of any significant obligation upon families to provide for their income needs.

If we turn to the issue of care, however, the picture is different. Most care given to frail older people is still provided by their families and the welfare state has made only limited inroads into this traditional area of family obligation. This applies as much in England as it does in France. In neither country is such care support enjoined by law, and its provision rests on personal and cultural assumptions of love and duty rather than legal sanctions. It is in this area that financial contributions as well as those of direct care may be relevant.

Contrasting policy discourses

Despite these broad structural similarities between the two welfare states, there are also differences, particularly in relation to their legal and policy discourses. The first of these relates to the role of law in France and England. As David argues in his exploration of the nature of French law, there are fundamental differences between the tradition of codified law found in France and other continental countries like Italy and Germany, and that of the common law tradition found in England and in countries like the USA, Australia and Canada whose legal traditions descend from that of the English common law (David 1972; Weston 1991). Law in the French tradition is seen as encoding the general principles that guide society. Embodied in the *Code Civil*, law is 'that which provides for the ordering of relationships within society' (David 1972: ix). It comprises the rules devised to establish the structures of society and regulate individual conduct. As Weston (1991) observes, many of these rules cannot give rise to an action directly in the courts but are nonetheless seen as basic to the organisation of the state. Law thus has a wider declatory purpose within society. The French do not regard law as something of interest only to lawyers; rather, it involves the whole of society. Indeed, as David declares, it embodies the 'very principle of social order' (1972: 73). It is in keeping with this approach that the general section defining the nature of family obligation is located almost at the start of the *Code Civil*.

The English conception of law is by contrast more circumscribed. The common law, having its roots not in a code but in the courts and in the procedures developed there for the redress of grievances, is pragmatic. It is aimed at resolving concrete difficulties rather than declaring general principles. Law in England is much more confined to that which can be enforced in the courts. It is not in general concerned

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to enunciate wider principles for ordering society (David 1972). It is unsurprising, therefore, that the law in England lays no general obligation on individuals concerning family relations, for this is not seen as part of its proper task, unless some dispute or grievance arises requiring redress. French law by contrast regards the enunciation of family obligation as part of its role.

The second contrast concerns the discourse of social policy. Spicker (1995) characterises the tradition of French social policy as one in which individuals are seen as being incorporated into solidaristic networks of obligation and reciprocity – this is how the French welfare state with its dense web of insurance funds is perceived – and those who are not so incorporated need to be assisted by the state to become so. Thus, French anti-poverty strategies deploy a discourse of social exclusion in which the remedial task is one of social insertion. This concept of networks of duty and responsibility draws additional strength from Catholic social teaching which has been influential in French social policy and, through it, in the social policy of the European Commission. This contrasts, at least at the level of discourse, with the more individualistic English tradition which draws on a liberal conception of the role of the welfare state. It is important not to exaggerate such differences, since the social reality of both countries is one in which people are incorporated into social networks and in which kinship obligation is of central significance in the support of older people. At the level of discourse, however, there are differences and these have a bearing on the way family obligation is presented in the two traditions.

The third area of contrast concerns the role of family policy itself. France has a long tradition, rooted in the pro-natalist concerns of the 19th and early 20th centuries, of the state intervening to promote and support family life (Hantrais 1993). The importance of having a family policy unites left and right and is not regarded as contentious. The endorsement of *obligation alimentaire*, the related laws on inheritance and the taxation regime favouring the direct line, all need to be seen in the context of such a policy tradition. In England by contrast there has not been the same tradition of overt family policy. From an English perspective such family policy smacks of undue interference by the state in the autonomy of the individual and the privacy of the family – this is certainly how any constraint on testamentary freedom would be regarded – and governments are cautious in making pronouncements in this area. This is not to say that the state does not have a family policy, but that it is piecemeal – family policies rather than policy – and its enunciation has not been part of the official discourse of social

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policy in the way that it has been in France. In relation to community care and the involvement of families, its operation has been implicit, embodied less in declarations concerning involvement – though there have been those – than in its expectations. Family policy in England is traditionally 'enforced' less through pronouncements than through an absence of alternatives.

Conclusion

As we have seen, there is a homologous relationship between law concerning family obligation and inheritance in both France and England. In the case of France the legal obligation to support financially is paralleled by legally enforced security of inheritance. In England there is no legally defined obligation to support, but nor is there any certainty of inheritance. The article has touched on some of the historical and cultural reasons why the two societies may have developed in different and parallel ways.

A closer exploration of the ways in which obligation and inheritance actually work and in particular the interaction of legal obligation and the modern welfare state, however, suggests that some of the differences are less ones of substance than of discourse. What seemed at first to be a striking contrast between France and England over *obligation alimentaire* turns out in practice to be less so. The development of the modern welfare state has resulted in the financial independence of older people and with that the end of significant obligation to support financially in both countries. The persistence of legal obligation in the *Code Civil* needs to be interpreted in the light of the different role of law and of explicit family policy in the French system. The one point at which *obligation alimentaire* does come to have real force is at the point of institutionalisation. Here there is a contrast with England, though, as we have seen, the interaction of long-term care costs and inheritance means that the two countries are nearer on this point than might at first appear.

In a similar way, French rules concerning inheritance are significantly different from those of England, constraining the testator in ways that might appear unacceptable to English eyes. The social reality of English will-making, however, means that the final pattern is not greatly different. Most property is left within the family and according to fairly conventional patterns of equality.

Lastly, we should note once again the significance of caregiving for the support of older people. In neither country is this enjoined by law

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and its provision rests on social and cultural assumptions concerning the nature of family relations, albeit ones that operate in the context of the structure of formal provision. There are thus important differences between France and England in regard to inheritance and the definition of family responsibility, but these differences need to be interpreted against a wider context in which the overriding reality is a shared one.

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