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The Longue Durée *of Inheritance Law* *

Discourses and Institutional Development in France, Germany, and the United States since 1800

The question of how to regulate the bequest of property has been an issue of great controversy in modern societies over the last 200 years. Far beyond what would be expected from the legal regulation of a specific realm of property rights, at different times the reform of inheritance law has stirred up intensive political and scholarly debates. In the mid nineteenth century John Stuart Mill ([1848] 1961, p. 889), an outspoken critic of inheritances, identified inheritance law as the most important legal realm, matched in importance only by contract law and the determination of the status of the laborer. Alexis de Tocqueville ([1835] 1945, p. 50) was convinced that the realm of inheritance was so crucial for social development that "the legislator may rest from his labor" once he had regulated the laws governing it. Though the transfer of property *mortis causa* is known to be a central cause of the intergenerational reproduction of social inequality (Arrondel, Masson and Pestieau 1997; Havens and Schervish 2003) and has resurfaced in current political debates (Gates and Collins 2003), it has received little attention in recent sociological scholarship (McNamee and Miller 1989). Studies in social stratification focus on the distribution of income but leave wealth and the bequest of property mostly unattended (Spilerman 2000).

* I would like to thank Patrik Aspers, Nina Bandelj, Marion Fourcade-Gourinchas, Oliver Gerstenberg, Frank Lettke, Stephan Lessenich, Kurt Lüscher and Richard Swedberg for their detailed commentaries on earlier versions of this paper. The paper was presented at the Center for European Studies, Harvard University, the 98th annual meeting of the American Sociological Association in Atlanta in 2003, the 15th annual meeting of the Society for the Advancement of Socio-Economics in Aix-en-Provence in 2003, and sociology departments at Berlin, Bremen, Konstanz and Reading. My thanks for all the valuable comments I have received from participants.

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Arch.europ.sociol., XLVIII, 1 (2007), pp. 79-120—0003-9756/07/0000-853$07.50per art + $0.10 per page

In this article I seek to bring the intergenerational transfer of wealth closer to the center of current sociological scholarship. I investigate discourses on inheritance law and legal developments in France, Germany, and the United States since the revolutions of the late eighteenth century. I argue that a different set of normative and functional issues relating to the bequest of property has emerged in each of the three countries and has expressed itself in the formation of specific discursive fields which "empower the creation of contingent, relatively autonomous meanings and values, [but] also express structural presuppositions as categorical limits in cultural action" (Spillman 1995, p. 129).

In the discourses on inheritance law, different "ways" of moral and political problematizing of inheritance appear, but various consequences are also ascribed by the actors to specific rules of inheritance law. I show that different "leading problems" (Kaufmann 2001) exist in each of the three countries for the regulation of inheritance law. These form a "discursive field", which is expressed in the justifications of actors for their acceptance or rejection of proposed institutional reforms. The notion of discursive fields indicates not a homogenous position within a country but specific cleavages in political controversies over the regulation of the bequest of property.

While all three countries belong to what Max Weber has called "modern occidental capitalism", discourses in France, Germany, and the United States present different orientations with regard to the moral, economic, social, and political implications of the bequest of property. In each of the three countries a distinct set of issues and arguments has developed that exercises a dominant influence over the perception of problems associated with the transfer of property *mortis causa* and the strategies deemed feasible to solve them. These "repertoires of evaluation" (Lamont and Thévenot 2000) were formed in the late eighteenth and early nineteenth centuries. While these national frames are not static, they do not change easily with altered social or political conditions and show a surprisingly stable pattern that can be recognized even in today's debates on the issue. The repertoires equip actors with patterns of justification for the support of or opposition to specific measures proposed in the political arena. Their specifications can be made visible especially from a comparative perspective.

The lines of conflict on inheritance law in the three countries are structured along the question of what intervention in the private disposal of property obtains legitimation. The position of unlimited power of disposal of testators over their wealth is opposed in all three countries. Yet actors who plead for intervention in this right resort to *specific*

arguments that differ among the three countries. By the term "notions of property", I denote the primarily mentioned *specific* justifications for the regulation of the individual disposal of private property *mortis causa* in the discourse on inheritance law of a country. I speak briefly of the *individualist-meritocratic* notion of property in the United States, the *family-social justice* oriented notion of property in Germany, and the *egalitarian-family* based notion of property in France.

The identification of different repertoires that express themselves in specific justifications for interference into the transfer of private property *mortis causa* and the demonstration of their significance for discourses on inheritance law in the respective countries is the first aim of this article. The second aim is to show that this cultural framing matters for the development of inheritance law and its long-term stability. This I refer to as the *longue durée* of inheritance law. I describe the central features and enduring differences that developed in the respective laws of France, Germany, and the United States and ask how this institutional development can be explained. I argue that the *longue durée* and the continuing legal differences in France, Germany, and the United States must be understood against the background of the respective repertoires of evaluation of inheritance law and the role this framing plays in the political and juridical process of law making. This follows Max Weber's insight that cultural phenomena (*Kulturphänomene*), including inheritance law, "simply cannot be explained in purely economic terms" (Weber [1922] 1985, p. 228) (1).

The article brings together research on repertoires of evaluation (Lamont and Thévenot 2000) with sociological institutionalism (Powell and DiMaggio 1991) and concepts of path dependence (Arthur 1989; Pierson 2000; Thelen 1999) through investigation of the evolution of a socially and economically important legal institution. My argument is also indebted to recent contributions from cultural sociology and economic history that explain cross-national differences in economic organization on the basis of cultural differences (Biernacki 1995; Dobbin 1994; Greif 1994). At the same time, I analyze institutional development not solely from a cultural angle but within a multidimensional theoretical framework that acknowledges the influence of culture and ideas, but also considers changing socioeconomic conditions and actor interests. The argument is theoretically based on the consequences that derive for actors from the uncertainty they face in situations in which means-ends relations cannot be unambiguously identified (Beckert 1996). The assumption is that under such conditions the anticipated effects of spe-

(1) If not quoted from an English source, translations from German and French texts are mine.

cific rules of inheritance law are constituted from the dominant repertoires of evaluation.

The article is empirically based on a qualitative analysis of historical documentary sources. Debates on inheritance law are followed from the stenographic minutes of parliamentary debates but also from contemporary books, articles, speeches and letters from politicians, legal scholars, philosophers, social reformers, and social scientists. These sources provide a broad basis of information on debates in different realms of inheritance law reform.

The article is organized in four sections. The first section provides a theoretical outline of why repertoires of evaluation play an important role in political debates on inheritance law. The second section discusses the different repertoires of evaluation regarding the problematic of inheritances in each of the three countries. In the third section I discuss legal changes and differences in inheritance law in France, Germany, and the United States and relate them to the different discursive structures. In the last part of the article I analyze on theoretical grounds how the *longue durée* of discourses on inheritance law and enduring differences in legal regulation between the three countries can be explained.

I
Inheritance and Modern Society

The bequest of property became an issue of intense controversy in Western capitalist countries with the strengthening of republican ideas of equality and the acceleration of economic development in the late 18th and early 19th centuries. The dynastic transmission of political and economic power, a central feature of feudal and aristocratic societies, stood contrary to republican ideals. In addition, the emergence of a more individualized understanding of property rights intensified the problem of how to divide private property upon the death of the owner (Weber [1922] 1985, p. 214). Property was no longer seen as being jointly owned by the wider family unit (*Hausgemeinschaft*), implying that upon the death of a member of this unit his or her "share" would automatically transfer to the remaining members. Processes of social differentiation – the emergence of individualized forms of labor, the separation of workplace and household, and the increasing significance of capital as opposed to land in the production process – led to this individualization of private property. Under these developments the regulation of inheritance became an issue of prime social concern.

In France, Germany, and the United States the basic features of the legal regulation of property bequests were formed during this time and have changed relatively little since. This holds true despite repeated fundamental shifts in political systems, power shifts between political groups, and fundamental transformations in the economies of the three countries. This is a surprising finding, at least against the background of efficiency- or interest group-based theories of institutional change. Efficiency-based theories (Williamson 1985) assume a flexible adaptation of institutional structures to modified economic conditions; while theories that argue on the basis of interest group strength (Baumgartner and Leech 1998) assume institutional changes in accordance with significant modifications in the distribution of political power. Both theories assume a process of convergence between different regulatory structures if functional demands and the distribution of political power in a set of countries are comparable. However, such processes have taken place only partially with regard to the institutional regulation of bequests.

1.a *The Functional and Normative Ambiguity of Inheritances*

I argue that an answer to this puzzle must take into consideration the ambivalent and often contradictory effects of inheritance law. The regulation of the bequest of wealth touches on crucial values of modern societies and has functional effects for the economy, the polity and the family. However, no "blueprint" for regulating the transfer of property *mortis causa* can be deduced from specifically modern value orientations, material interests or desired functional consequences. Specific institutionalizations are in accordance with some values but contradict others, functional consequences are often unforeseeable because causal relations are not known to actors. Preferences of actors for specific regulations are open to interpretation because of multiple or unforeseeable effects. The resulting normative and instrumental ambivalences play out in four discursive realms that dominate debates over inheritance law: 1) the relationship of legal regulations to social values, 2) economic effects, 3) consequences for the political order, and 4) effects for the family and its individual members.

1) *Social values*

In the regulation of property transfer *mortis causa* the values of equality and freedom clash. Modern societies justify the unequal distribution of wealth and income on the basis of the principle of indivi-

dual achievement. Inherited property, however, has been gained not through the owner's achievement but through the chance of being born into a wealthy family. It perpetuates the ascriptive distribution of wealth associated with feudal and aristocratic societies. Inheritances influence individual opportunity by allowing socially unequal starting points for members of society (2). They are a major source of social inequality (3) and normatively problematic since they erode equal opportunities in society.

This critical position with regard to the institution of inheritance, however, is not without normative qualifications. The radical restriction of rights to bequeath private property would reduce property rights to usufruct and thereby interfere with the individual freedom of the property owner (Friedman and Friedman 1990; Nozick 1974). From this equally liberal perspective, full property rights must include the right to dispose of possessions at death.

2) *Economic effects*

Economically, bequests allow the intergenerational accumulation of property (capital stock). This has been seen as an important prerequisite for capital formation, especially in societies which have not (yet) developed efficient capital markets operating independently of the family. If family-owned businesses could not be passed on, capital accumulation would be interrupted with each new generation. Especially in the nineteenth century the institutions of testamentary freedom, real partitioning, primogeniture, and entail (4) had great relevance for economic development because of the structure of capital markets and the overwhelming significance of land for employment.

On the other hand, capital allocation through bequest can have negative economic consequences if it leads to levels of wealth concentration that inhibit competition. In addition, the bequest of property is a

(2) John Stuart Mill was one of the harshest critics of compromising the principle of equal opportunity through inheritances. For him, the distribution of wealth based on the chance of being born into a wealthy family had no normative justification in a liberal society. Mill demanded a limit on the wealth a person could inherit to an amount that would allow a modest livelihood. This position and versions of it can be found throughout liberal discourse on inheritances up to the present (Chester 1982; Durkheim 1984, 1992; Erreygers 1997). It justifies the progressive taxation of large estates in order to achieve more equal starting points in each new generation.

(3) The distribution of wealth in society is far more unequal than the distribution of income. In American society the top 10 percent of wealth-holders own close to 70 percent of total private wealth. Gini coefficients for income distribution in industrial societies have a value of around 0.3 to 0.45. The same coefficient for wealth distribution has a value of around 0.8 (Keister 2000; Wolff 2002). According to cautious estimates, at least one third of all privately held wealth is inherited (Kessler and Masson 1988).

(4) Entail is a legal instrument to assure undivided bequest of landed property in perpetuity.

market-independent form of allocation of capital and thereby likely to be inefficient. Finally, inheritances yield contradictory economic consequences on the level of individual motivation: while the possibility to bequeath property can be an incentive for thrift and ambition, inheritances may also destroy these value orientations in the behavior of heirs (Carnegie [1889] 1992; Mill [1848] 1961; Holtz-Eakin, Joulfain, and Rosen 1993).

3) *Political order*

On the political level, dynastic wealth concentration may create economic power structures that can be harmful to pluralist democracy. Looked at from a different angle, however, inheritances are important for political stability precisely because they contribute to the intergenerational stabilization of a given distribution of power and the existing system of social stratification. Inherited wealth is a protective device of social belonging that supports social and political continuity (McNamee and Miller 1989, pp. 9f).

4) *Family and individual*

On the micro level, inheritances are an important material background of family solidarity (Le Play 1864; Kohli 1999). Solidarity – for instance, caring for an elderly parent or *inter vivos* gifts to family offspring – can be motivated by the expectation of an inheritance later in life, and the conditional promise to bequeath property to a child can be used to enforce compliance. On the individual level, inherited property can play a role as a symbol in identity formation (Carrier 1991; Langbein 2003). While the intrafamilial transfer of property can help to promote closeness among family members and help the creation of identities, it can also be ambivalent: disputes over estates are a significant source of family conflict and inheritances can be a burden for the heir.

I.b *Uncertainty and the Role of Cultural Beliefs*

These "clashes of value spheres" (Weber) and complex, often unforeseeable consequences of inheritance law in different social spheres provide a key for the understanding of the role of cultural repertoires in institutional development. Neither values nor clearly understood cause-effect relations or material interests can provide the basis on which to develop unequivocal strategies on how to regulate the bequest of property. Due to complexity and unintended consequences, actors are confronted with "critical situations" (Thévenot 2002, p. 181) in which

they cannot identify ex ante an institutional design that leads to their aspired-to goals. Under these circumstances interests alone do not provide a basis on which to form preferences for a specific institutional design. I argue that in such situations of fundamental uncertainty, the question of *which* institutional regulations actors demand can be answered only with recourse to their values and their *beliefs* or *ideas* on cause-effect relationships, that is, their culturally shaped frames of perception (Beckert 1996; Blyth 2002; Dobbin 1994; Swidler 1986). Max Weber (1986 [1920], p. 252) gave expression to these cultural underpinnings of action in the image of ideas as a switchman who guides an actor's motivations in specific directions.

The relevance of such frames has a further cause in that actors are forced to legitimate their demands in public discourse with reference not to their particularistic advantages but with reference to the general good. They must strive for "justifiable action" (Thévenot 2002, p. 183). There are no universally valid justifications, but only contingent justifications which prevail in a concrete political context. Legitimate institutional regulations must be understandable by actors as "realizations" of these concrete modes.

For these reasons, preferences for specific institutional regulations articulated by actors in political discourse are shaped by culturally anchored repertoires. The repertoires available to actors, I argue, are specific to (national) contexts. Not interests as such, but rather interests formed within the cultural context of ideas of justifiable action and perceived causal relations shape the articulated institutional preferences of actors. The repertoires form a cognitive background against which problems are perceived and propositions for specific legal regulations are justified. The definition of interests of social groups, the perception of the effects of specific provisions of inheritance law, and strategies and institutional forms deemed appropriate for achieving goals emerge through the filter of these repertoires. In this sense, national traditions expressed in the discursive field lead to specific perspectives on the problems associated with the bequest of property and at the same time suggest specific solutions, while others are not even regarded as serious alternatives.

Following Durkheim and Mauss (1963), we can speak of classification systems that organize patterns of perception socially and thus draw cognitive and normative boundaries. The significance of culture is thus seen essentially in the contribution of general systems of meaning to the fundamental views of social order and action strategies that prevail in social groups (Dobbin 1994, p. 2; Lamont and Thevénot 2000). Starting

with the assumption of the social construction of actor interests and strategies allows examining how the *specific* demands made by actors are constituted, even when "optimal" strategies cannot be deduced unambiguously.

II
The Discursive Framing of Inheritance Law

How did actors in the political and legal sphere deal with the plethora of possible but not certain consequences of inheritance law, multifaceted and partly contradictory normative implications, and incommensurable values? How did they reach their positions in political controversies and their proposals for the concrete legal regulation of the transfer of property *mortis causa*?

What constitutes justifiable action with regard to the legal regulation of bequests differs between the three countries investigated. I argue in this section that during the fundamental social and political upheavals that affected France, Germany, and the United States in the late eighteenth and early nineteenth centuries, a specific discursive field was constituted in each of the three countries which shaped debates on inheritance at the time and also influenced later debates on inheritance by providing references that directed attention to specific interpretations of critical situations and to particular institutional solutions (5).

The historical and hermeneutic method applied allows for an understanding the specific paradigmatic beliefs actors have in the three countries and their developments. In this part of the article the main contours of the discursive fields developing in the Unites States, France and Germany are sketched (6). In the next part (part 3) the discourses

(5) Following Émile Durkheim ([1912] 1965), the late eighteenth and early nineteenth centuries – especially the revolutionary upheaval in France and the United States – can be understood as a phase of "collective effervescence" in which value convictions and interpretations of means – end relationships were fundamentally transformed. These constitutive processes had a profound impact on societies' self-understanding, as expressed by politicians and intellectuals. For the theoretical argument on the role of collective effervescence in the constitution of values see Joas (2001).

(6) The debates on inheritance law stretch over the whole time frame of more than 200 years, although one can observe changes in relevant topics and periods of intensive political controversies, as well as periods during which the subject played practically no role in political discourse. The reform of inheritance law became a key political topic in the late eighteenth century and remained an important issue, albeit with some interruptions, until the

are then related to the specific regulations in different fields of inheritance law in France, Germany, and the United States and to the legal changes that took place.

II.a
United States: Freedom of Property vs the Critique of Dynastic Wealth Perpetuation

The long-enduring characteristics of the conflict surrounding the regulation of inheritance law in the United States emerged in the period during and shortly after the revolution. They consisted of two contrasting positions within a dominant national repertoire of individualism. On the one hand, proponents of unrestricted property rights interpreted the right to bequeath as an integral part of the right to freely alienate property. The most prominent representative of this position in the early nineteenth century was legal theorist James Kent who insisted that the state should not limit the right of the testator to freely alienate his property:

> [T]he right [...] to devise, and to transmit property by inheritance to one's descendants in regular order and succession, is enjoyed in the fullness and perfection of the absolute right. (Kent 1971, vol. 2, p. 265)

According to proponents of this position, interference with inheritance rights was seen as compromising property rights and, in consequence, endangering individual freedom. Property rights existed before society and it was for the protection of individual property rights that governments were created (Chester 1982, p. 40). This position is closely connected to economic liberalism in assuming that the protection of property rights from state intervention is the precondition for the development of market prosperity.

This position was countered by legal theorists and politicians who took a critical perspective on the role of inheritances for social and

1930s. Especially in the United States, it has received considerable attention again since the 1970s when estate taxation once more became a controversial political subject (Graetz and Shapiro 2005). Issues of debate during the late eighteenth and early nineteenth centuries were primarily the questions of the limits on testamentary freedom, rights of the surviving spouse and of non-marital or adopted children, primogeniture, and the abolition of entail. Beginning in the second half of the nineteenth century – but especially from the 1890s onwards – estate taxation became the prime issue of legal controversies over inheritances.

political development. Their main concerns were that the dynastic concentration of wealth would destroy the social bases of the republican order, and that inheritances would undermine the equality of opportunity as a "sacred" principle of the legitimation of social inequality. Proponents of this position defended the institution of private property, but they drew a sharp distinction between inherited wealth and property gained through individual achievement. Thomas Jefferson, who was the most important early representative of this position, saw existing inheritance laws as the cause of poverty and undemocratic political structures in Europe (7). In positive terms Jefferson saw the wide dispersion of property between independent, predominantly agrarian producers as a necessary condition for the republican order. The position of citizens as producers was thought to support republican virtues that made possible the precedence of the general good of society over particularistic private interests and thus secured the socioeconomic basis of the republic (8).

> The transmission of this property from generation to generation [through entail], in the same name, raised up a distinct set of families, who, being privileged by law in the perpetuation of their wealth, were thus formed into a Patrician order, distinguished by the splendor and luxury of their establishments.... To annul this privilege, and instead of an aristocracy of wealth, of more harm and danger, than benefit, to society, to make an opening for the aristocracy of virtue and talent, which nature has wisely provided for the direction of the interests of society, and scattered with equal hand through all its conditions, was deemed essential to a well ordered republic. (Jefferson 1959, p. 50-1)

Next to the concern for democracy it was the ideal of *equality of opportunities* which made Jefferson and other American revolutionaries distrust the perpetuation of wealth through bequests. The notion of equality emerging during the revolution did not have distributive equality as its goal but was anchored in the concept of private property. The crucial reference was John Locke's contract theory which sees equality in the state of nature as the prerequisite for the possibility of the

(7) Following Chester (1982, p. 35) for Jefferson "the essential natural freedoms of man were political and personal, and did not include unbounded use of property". His critique of inheritance finds expression, for instance, in a letter written to Madison in 1785, in which Jefferson identified the regulation of the bequest of property as a crucial instrument of social reform aimed at a more egalitarian distribution of wealth (See: Jefferson, Letter to Madison from October 28, 1785 *in* SMITH 1995, p. 390).

(8) American society remained influenced by the ideals of an agrarian democracy well into the second half of the nineteenth century. The associated concept of distribution included several elements: the idea, going back to Locke and Protestantism, that property would need to be appropriated through labor, the rejection of extreme forms of concentration of wealth and aristocratic strategies of wealth perpetuation, as well as the fear that the equitable distribution of wealth could be maintained only if population density remained relatively low (HUSTON 1993, pp. 1080ff). Hence, property rights had to be determined in such a way that these social preconditions could be maintained.

social contract and explicitly denies rights to distributive equality (Adams 1971, pp. 63ff). This shifted the political discourse toward the notion of equality of opportunity, which ensures that the social contract remains intergenerationally acceptable.

The two opposing positions can be understood as expressions of a single cultural frame dominant in the United States. In short I refer to this as the individualistic-meritocratic notion of property. It has its focus in the individual but at the same time supports contradictory propositions for the regulation of inheritance law: the demand for unlimited individual property rights applied to the bequest of wealth on the one hand, and the notion that wealth concentration caused by dynastic accumulation endangers individuality by being hazardous for democracy and by violating equal opportunities on the other (cf. Dahl 1985, pp. 162-3). The tension between these two poles of the discursive field has fueled conflicts over the regulation of inheritance law in the United States since the late eighteenth century. The cleavage emerged in revolutionary debates surrounding the abolition of entail and primogeniture, reappeared in the reform movements of the 1830s (Brownson [1840] 1978; Skidmore 1829), and was also maintained in the twentieth century (Paul 1954; Beckert 1999b).

The discursive continuity can be seen, for example, in the justification provided by President Theodore Roosevelt in his State of the Union Address of 1906, arguing for the introduction of a federal inheritance tax:

> It is most desirable to encourage thrift and ambition, and a potent source of thrift and ambition is the desire on the part of the breadwinner to leave his children well off. This object can be attained by making the tax very small on moderate amounts of property left; because the prime object should be to put a constantly increasing burden on the inheritance of those swollen fortunes which it is certainly of no benefit to this country to perpetuate. (Roosevelt 1909, p. 29)

In the 1930s President Franklin D. Roosevelt resorted to the possible endangerment of democracy by a monied dynastic elite once again when defending his proposal to increase the estate tax:

> Great accumulations of wealth cannot be justified on the basis of family and personal security. In the last analysis such accumulations amount to the perpetuation of great and undesirable concentration of control in relatively few individuals over the enjoyment and welfare of many, many others. Such inherited economic power is as inconsistent with the ideals of this generation as inherited political power was inconsistent with the ideals of the generation which established our Government. (Roosevelt *in* Congressional Record, vol. 79, n° 9, June 9, 1935, p. 9712).

When the abolition of the estate tax was debated in the 1990s and Congress finally voted in 2001 to phase it out, opponents of this legis-

lation frequently resorted to the very same arguments to support their position. This can be seen in a quote from Warren Buffet, an opponent of the estate tax repeal, who stated in obvious continuity with this line of argument which has been prominent in the United States since the revolution: "Without the estate tax, you in effect will have an aristocracy of wealth, which means you pass down the ability to command resources of the nation based on heredity rather than merit'' (*New York Times*, February 14, 2001).

However, the reference to a specific set of arguments over long time periods was characteristic not only of the discursive justification of estate taxation, but also of the position opposing such a tax. This resorted to arguments already formulated in the legal discourse of the early nineteenth century by James Kent, among others. Opponents of the estate tax emphasized the notion of private property by claiming that these rights would be compromised through the taxation of inheritances. In the 1920s, conservative politicians like the powerful treasury secretary Andrew Mellon (1924, p. 123) fought to repeal the tax, arguing that estate taxes interfere with economic freedom and are economically harmful. In the 1970s – and today – opponents of inheritance taxation used similar arguments referring to property rights and the harmful economic consequences of the estate tax (Gates and Collins 2003).

This continuity in the repertoire of evaluation is surprising, given the complete change of social and economic conditions over a 200-year time period. It does not imply that no other arguments for the limitation of private bequests of property – or against it – can be identified in the American discourse. However, the debates tend to focus on arguments of equality of opportunity and the possible negative effects of dynastic accumulation of wealth for democracy on the one hand and the defense of unlimited property rights for reasons of maintaining personal freedom and economic benefits on the other. As will be shown in the next two sections, the American emphasis on the alleged endangerment of democracy and equal opportunity through dynastic wealth accumulation distinguishes its discourses on inheritance law from those in France and Germany.

11.b *France: Individual Property Rights, Equality, and the Family*

In France, inheritance law also became an important focus of political debate at the time of the Revolution. Particularly, the institutions of primogeniture and entail were rejected as structural elements of the *ancien régime* which were seen as incompatible with the revolutionary

principles of freedom, equality, and fraternity. However, legislation on inheritance law also took on the issue of limiting testamentary freedom, that is, restricting the rights of the testator to bequeath his property freely (Giesey 1977, p. 276).

The discourse on inheritance had two poles that were in opposing ways oriented toward the principle of equality which informed the conflict as the principal national repertoire. On the republican side, which dominated the debate during the Revolution, the chief belief governing inheritance law reform was a positive orientation toward equality which should be enforced by the state. This notion was also individualist in the sense that it aimed at the equality of all citizens. It emerged from the fight against the privileges of the nobility and the Church, and legal inequalities within the family. The unequal legal treatment of different social ranks and of family members based on ascriptive characteristics was seen as a violation of natural equality. In consequence, not only the legal relation between the nobility and commoners set center stage but also the family became a crucial reference point in debates on inheritance law in France, while in the American debates it did not play any role. Moreover, the notion of equality differs strikingly from its use in the United States by focusing much more strongly on the role of the state in its task of enforcing equality. The state, however, was at the same time supposed to remain completely neutral with regard to the particularistic interests of individuals and social groups by treating its citizens strictly as equals in legal regulation (Badie and Birnbaum 1983). In this sense, equality was a sacred principle, informing controversies over the regulation of inheritance law in France well into the twentieth century. In short I speak of an egalitarian-family based notion of property.

The tension emerged with the conservative side, which represented mostly interests from the old elites. The conservatives were also oriented toward the principle of equality, although negatively. Equality would destroy the family, the economy, and individual freedom. Based on a positive orientation to the notion of individual freedom, conservatives set themselves against all proposals to curtail the right to freely bequeath property and to tax inheritances. The cleavage between the institutionalization of the principle of equality in inheritance law and fear of the destruction of freedom through the principle of equality has dominated French debates on the subject since the Revolution. It is informed by a controversy between the principles of equality and individual freedom as well as the conflict over the legitimate role of the state in the regulation of society.

The structure of the controversy can already be seen from the *grand débat* on inheritance law in the Assemblée Nationale in April 1791. Mirabeau, taking the first position, declared the limitation of testamentary freedom to be of constitutional significance because of its relevance for the principle of equality. For Mirabeau it was inconceivable that a constitution which named equality of all citizens as its first principle could be reconciled with an inheritance law which permitted the violation of the natural equality of all children through the device of testamentary freedom:

> I would not know, Gentlemen, how it should be possible to reconcile the new French constitution, where it heads with regard to the great and admirable principle of equality, with a law that allows a father, a mother, to forget in relation to their children, these sacred principles of natural equality, and to enlarge thereby in society the differences that result from the diversity of talents and from industry, instead of correcting them through the equal division of the household wealth. (Mirabeau *in* Assemblée Nationale, April 2, 1791, p. 513)

The position demarcating the other side of the controversy was advocated primarily in terms of opposition to the limitation of property rights through curtailing testamentary freedom, a justification that also plays an important role in the American debate. This argument was very pointedly expressed by the representative Mougins de Roquefort in the 1791 debate: "The testator exercises a law; this capability of the domestic legislator is inherent in the law of property, it is its protection and its support" (Roquefort in Assemblée Nationale, April 6, 1791, p. 617).

The second reference point of French debates on inheritance law was the effect of bequests on the family. The republicans justified curtailing testamentary freedom by arguing that the power of the testator gave the father despotic power over his children, which would be contrary to republican ideals of equality and in fact would cause the destruction of many families due to intense conflicts over the transfer of estates. The conservative side also referred to the family as a normative point of reference but emphasized the negative effects on a father's authority of the limitation of testamentary freedom, an equality-related measure that would ultimately destroy the family. Here one can see how both sides tried to justify their reform proposals on the basis of the reference to a common good (stability of the family) but arrived at opposite proposals for legal reform.

The *longue durée* of the dominating influence of the notion of equality and the role of family authority can be traced back to the revolutionary period and recognized throughout the nineteenth century and to the end of the Third Republic. It is visible not only in the conflicts on

limitation of testamentary freedom, but also in debates surrounding the abolition of entail (9).

During the Second Empire, the issue of inheritance law reform came to the forefront of the public agenda when demands to loosen restrictions on testamentary freedom that were codified in the Code Civil became stronger. Administrator, politician, and social scientist Frédéric Le Play was the most influential intellectual force in this debate. In his book *La réforme sociale en France* Le Play (1864) argued in continuity to conservatives during the time of the Revolution that the restrictions on testamentary freedom were to blame for the destruction of the unity of families, the pulverization of landed property and ultimately for the instability of French society. Le Play claimed that the restrictions on testamentary freedom in the Code civil would undermine paternal authority since children could not be disciplined by a credible threat to disinherit them. Moreover, equal partitioning destroyed the home of the stem family (*famille souche*), thereby fostering egoism and mobility which, in turn, undermined the family. In addition, restrictions on testamentary freedom were to blame for France's comparatively low birth-rate. The reason given for this was that the provisions of the Code civil (Art. 913) served as an incentive to have few children: the fewer children the testator had, the greater the freely disposable share (*quotité disponible*) and the easier it was to avoid the partitioning of the family property.

At the time references to the family were especially made by conservatives who used this line of argument to demand testamentary freedom, that is, the possibility to provide unequal shares to the children and thereby to curtail the legal influence of the state on family relations. However, all proposals to change the Code civil debated in parliament during the Second Empire and the Third Republic were rejected (Brentano 1899). The strongest force against expanding testamentary

(9) The entailing of land was outlawed in 1792 and the Code civil (Art. 896) maintained this prohibition. A specific form of entail, however, was reintroduced under the name of majorats by Napoleon, and in 1826 King Charles X attempted to re-establish central parts of the droit d'aînesse by reinstalling the old institutions of entail and primogeniture (Aron 1901; Brentano 1899). This was intended to bring about a return to the legal structures that assured the nobility a material power base under the Ancien Régime. In the debate in the Paris-chamber, defenders of aristocratic institutions argued primarily that entails were necessary to maintain the monarchist order and that they were a positive force for stabilizing the family against bourgeois individualism. Moreover, entail and primogeniture would prevent the negative economic consequences of equal partitioning of land. On the other hand, the opponents of the law resorted in their arguments to the principle of equality which they saw as violated by both institutions. The reintroduction of inequality through primogeniture and entail was seen as an onslaught against the central achievement of the Revolution: equality before the law.

freedom was the principle of equality. "Paternal authority and freedom of the proprietor did not return. They did not triumph over the republican principle of equality" (Gotman 1988, p. 97).

II.C *Germany: Private Property, Protection of the Family, and Social Justice*

Still another structure of the discursive field can be identified from debates in Germany. In the absence of a revolution in the late eighteenth century, the topic of inheritance law reform did not appear on the political agenda in Germany as suddenly as it did in the United States and France. Nevertheless, an intensive legal debate, especially on issues of testamentary freedom and entails (*Fideikommisse*), developed in Germany in the late eighteenth and early nineteenth centuries. During this time the decisive cleavages for later political debates on testamentary freedom, entails, and inheritance taxes were formed.

While the repertoires in the United States and France were both oriented towards the individual, the German debate shows a much more collectivist frame. Proponents differ primarily with regard to the relevant collectivity: they see it in either the family or the state. Positions focusing on the rights of the individual play a much more limited role.

The dominant cleavage formed first in conflicts over the role of the institution of last will in German law. The institution of last will came into modern law through Roman law and is generally associated with *individual* property rights since it gives the property owner the power to dispose of his property arbitrarily *mortis causa*. In contrast to this, the legal traditions of Germanic law did not recognize the institution of last will. Property was automatically bequeathed within the family according to the order of succession. This expresses a conception that viewed property not as individual ownership of goods but as *family property* (10). Debates in legal philosophy in Germany in the nineteenth century focused on the question of whether German civil law should be

(10) While the significance of the family in discourses on inheritance law shows clear parallels to France, there are also differences. One is that the father's position of authority was stressed by French authors much more frequently than by German ones, who tended to view this as despotism. The limitation of testamentary freedom was seen by Hegel, for instance, as a means of ensuring more equal family relations. The second difference is that family-related arguments were usually cited in Germany in opposition to absolute individual property rights. In France, by contrast, authors like Le Play, who saw the preservation of the family unit as dependent on the uninhibited power of the father, were more influential.

modeled after Roman law or in accordance with the Germanic tradition (*Romanisten vs Germanisten*) (Schröder 1981). This conflict also shaped discourses on inheritance law.

Hegel, in his *Philosophy of Right* (Hegel 1986 [1821]), expresses the Germanic legal argument most succinctly (11). For Hegel, the basis of inheritance law was not the intention (*Wille*) of the deceased, but the family. This principal position had its roots in Hegel's notion of the *Sittlichkeit* (morality) of the family and a corresponding concept of property. According to Hegel, the arbitrary element of abstract property – that is, the situation in which the individual fulfils his or her individual desires through the appropriation and alienation of goods – was eliminated once this appropriation was motivated by concern for the family. Property became family property – in contrast to individual property – which implied that regulations regarding its alienation must have the interests of the family as its moral basis. In consequence Hegel rejected, except in certain limited cases, the institution of the testament as a means to regulate the transfer of property *mortis causa*.

From the 1830s on, Hegel's writings became a prominent reference point for legal theorists arguing against the rooting of inheritance law in the rights of the individual property owner (Klippel 1984, p. 128). The notion of family property constituted a decisive discursive angle in conflicts over inheritance law. More generally, it expressed a deep skepticism toward the development of an unfettered individualism and showed the (ideological) importance of the family, conceived as a crucial institution of social organization due to its embodiment of *Sittlichkeit*.

Nevertheless, Hegel's position conflicted with the liberal position advocating testamentary freedom. Many German legal theorists used arguments based on Roman law and testamentary freedom was the legal rule in civil law of almost all German states. The defense of individual

(11) The critique of an individualized understanding of property rights and the institution of last will was widespread at the time. Another influential representative was the political Romanticist Adam Heinrich Müller who defended entails against Prussian reform attempts in the early nineteenth century. Müller (1922, pp. 172ff) saw entail as an institution for protecting the family against bourgeois individualism. For him, entails incorporated the idea that the individual was embedded in preceding and succeeding generations. These fixed surroundings bound the individual and entail was a legal institution that protected this anchoring of the individual. The positions advocated by Hegel and Müller received increasing support in the early nineteenth century. Müller's position was directed against Enlightenment ideas that rejected the notion of any individual being bound in a non-voluntary contract. It therefore stood in direct conflict with Jefferson's doctrine that the earth belongs to the living. This argument – protection of the family against an exaggerated individualism – was articulated in defense of Fideikommisse throughout the nineteenth century in Germany.

property rights through the institution of testamentary freedom was in Germany, as in the USA and France, one counter-position.

A second angle, specific to the German debate, consists of the connection between inheritance law reform and social policy. Here the reference point is the larger collectivity of society. This link becomes visible especially in debates on inheritance taxation. As in France and the United States, the political debate on the introduction of a federal inheritance tax gained momentum in the last decade of the nineteenth century. However, the discursive structure was significantly different. Arguments based on individual property rights, the political dangers of dynastic wealth concentration, or egalitarianism were not in the foreground. Instead, conservatives rejected the tax primarily on the grounds that it would destroy the family. Proponents of the tax, on the other hand, referred to the ideal of *social justice* and claimed that the taxation of wealth transfers would be an appropriate means of addressing the *soziale Frage* (social question).

This idea dates back to the 1840s. During this period (Pfizer 1842; Hilgard 1847; Stichling 1850), and up to the present, commentators suggested that the proceeds of an inheritance tax could be used to provide social welfare, generate the means for free education, or help people to emigrate from Germany. Note the difference from the arguments made at roughly the same time by Thomas Skidmore (1829) and Orestes Brownson ([1840] 1978) in the United States who advocated inheritance taxation to create *equal opportunities*. In clear contrast to this, scholars in Germany justified the tax with reference to distributive *results*, desirable for the achievement of social justice. Not equal opportunities but social policies to correct socially problematic *outcomes* of the emerging market order were the justifying rationale.

Adolph Samter (1879, p. 253), a member of the *Verein für Socialpolitik*, expressed this view by referring to a "double principle" of property that was expressed in the limitation of testamentary freedom: property was not only individual, but also social in character. By limiting testamentary freedom it would become possible for the state to interfere in private property transfers *mortis causa* and to promote goals of social policy. The justification for the introduction of inheritance taxes was typically based on recognition of the changing role of the state, which was seen as increasingly taking over functions previously fulfilled by the family (see Wagner 1879, pp. 477-8).

Conservative opponents of the tax countered this argument by referring to the Germanic notion of the family as something unlimited in scope. From this perspective any substantial federal inheritance tax

TABLE I
Inheritance Law: Repertoires of Evaluation and Legal Regulations

	Dominant discursive framing	Institutional characteristics		
Country		**Testamentary freedom**	**Abolition of entails**	**Inheritance taxation**
USA	Defence of unlimited property rights. Equality of opportunity (input oriented). Prevention of dynastic wealth concentration to protect democracy. Concern about the endangerment of the work-oriented (Protestant) values of children.	Emphasis on testamentary freedom. Possibility to disinherit children.	Abolition of entails after the revolution. Few conflicts. Almost unanimous rejection.	Federal estate tax introduced in 1916. Estate tax implies that there is no differentiation in progression rates according to kinship relation. By far the highest progression rate of all three countries until early 1980s.
Germany	Primacy of family over individual property rights. Position that defends individual property rights strongly contested. Normative orientation toward social justice (outcome oriented).	Principle of testamentary freedom. But forced share provided for direct descendents and spouse (50% from share according to intestacy law).	Abolition only after the revolution in 1918. Very controversial issue throughout nineteenth century. Parts of bourgeoisie defended entails.	Federal inheritance tax since 1906. Low progression rates. No redistributional intentions. Close family members (spouse and children) not taxed for long periods. Today still taxed at low rate and with high exemptions.
France	Notion of equality as expression of fight against privileges. State can interfere in family relations but must do so by maintaining strict neutrality with regard to particularistic interests. Endangerment of individual freedom and family through equality. Demographic concerns.	Strong limitation of testamentary freedom. Estate is transferred in equal parts to children of deceased. Testator has possibility to distribute *quotité disponible* by will. If the deceased has children this part is 50% or less.	Abolition in 1792. Re-installment under Napoleon (1806) and Charles X (1826), final abolition after Revolution of 1848. Conflict between Republicans and Restoration forces.	Progressive inheritance tax since 1901. Still strong elements of proportionality. Low maximum progression rate but during time of intense crisis in 1920s. Originally no exemption for spouse. Demographic element until 1950s.

would destroy the "sense of family" (*Familiensinn*). A typical example of the arguments used is the following quote from the Prussian minister of finance von Rheinbaben during a parliamentary debate in 1906:

> Gentlemen, in Germany, in most of its parts, it is believed that it does not conform to the sense of family, the dutiful caring of the father for his wife and his children, if the few things that he has earned during his life, will in part be taken away from his children later. (von Rheinbaben *in* Deutscher Reichstag, 1906, vol. 214, p. 167)

Again, to stress the significance of family-oriented arguments in German debates on inheritance taxes does not imply that no other arguments were made. However, one can recognize that family-related

arguments had a dominant significance and established a particular discursive structure that stands in stark contrast to debates in France and the United States. Liberal arguments based on uninhibited individual property rights exercised much less influence in Germany compared to France and the USA. If made, they were countered by an understanding of property rights that emphasized their social anchoring in the family and the state's task of interfering in property relations in order to achieve greater social justice in society. From this background I speak of a *family-social justice*-oriented notion of property in the German debates on inheritance law. The principles of equality and equality of opportunity, and also the question of redistribution of property to support democratic structures that figure so prominently in France and the United States play only a marginal role. This discursive structure endures even today. In the latest parliamentary debate on inheritance tax reform in Germany in 1996, family-related arguments were the most significant ones for legislators who argued for a reduced inheritance tax, while proponents of the tax resorted to arguments based on social justice (Deutscher Bundestag, 1996, vol. 180-186).

III. *Discursive Structure and Inheritance Law Reform*

So far, I have argued that in the United States, France, and Germany conflicts about the regulation of property transfer *mortis causa* had distinct discursive cleavages, reflecting distinct cultural repertoires. In all three countries defense of the unlimited power of disposal of testators over their wealth – that is, uninhibited property rights, aimed at guaranteeing individual freedom and economic prosperity – has played a prominent role. This position finds opposition in all three countries. Yet actors who plead for restrictions of individual disposal rights resort to *specific* justifications that differ among the three countries, but also exhibit a great long-term continuity within each country (see table 1). By the late eighteenth and early nineteenth centuries these structures formed and informed the discourse in the subsequent key debates on legal reforms of inheritance law. We can see in part to this day the same argumentative patterns that were relevant during the French and American revolutions, as well as in political debates on inheritance law conducted at around the same time in Germany.

To what extent, however, did the specific framing of the bequest of property in the United States, France, and Germany influence inheritance law? While the identification of different repertoires of evaluation

is already an important finding it does not address the relevance of these cultural frames for institutional development. The comparative perspective makes it possible to recognize the commonalties and differences in legal development and to relate them to the different discursive structures, as well as to economic, political, and social conditions.

Discussion in this section focuses on the three main conflicts over inheritance law taking place in the three countries since the late eighteenth century: the regulation of testamentary freedom, the abolition of entail, and estate taxation. I will discuss these reform projects in turn, describing the prevailing legal regulations, as well as their development in each country. I offer explanations for the observed developments and enduring differences, showing the impact of the respective repertoires of evaluation relative to other explanatory aspects.

III.a *Testamentary Freedom*

Testamentary freedom refers to the rights of a testator to devise his property by last will. Regulations on testamentary freedom must strike a balance between the two extreme points of complete freedom of the testator to transfer his property and rejection of any testamentary discretion. If one compares the three investigated countries along these lines, one finds that testamentary freedom is least restricted in the United States and most limited in France.

In the United States only the surviving spouse of the deceased has an entitlement to a share of the estate. This implies the possibility of disinheritance of the children of the deceased in American law (12). In France, by contrast, children are entitled to a forced share of at least 50 percent of the property of their parents and the *quotité disponible* (the freely disposable share of the estate) becomes smaller the more children the deceased has (13). In Germany the *Pflichtteil* (forced share) of the children and the surviving spouse is half of the entitlement according to intestacy law. This leaves, in the case of two children and a surviving spouse, a forced share of 12.5 percent to a child and 25 percent to the spouse. Although this amounts to a significantly smaller entitlement compared to the French Code civil it still guarantees a share of the inheritance to every child. In France these regulations have remained

(12) This is not the case in Louisiana where the French Code civil was adopted as its civil law.

(13) A surviving spouse is entitled to receive one half of the marital acquests in France (as in community property states in the USA). In addition, depending on claims from the surviving kin, between one-fourth of life interest in the estate and the whole estate will go to the surviving spouse.

largely unchanged since the early nineteenth century. American common law institutions of dower and curtesy, which protect the interests of the surviving spouse, have been substituted in most states by provisions such as indefeasible share, community property, homestead or family allowance which guarantee either a fixed sum or a fraction of the estate. This development has restricted testamentary freedom somewhat more in the USA compared to the early nineteenth century (14). In Germany the *Pflichtteilsrecht* (provision for a forced share) is part of the civil code that was introduced in 1900, but very similar legal entitlements to shares of property upon death existed previously for the spouse and children.

How can these legal differences in testamentary freedom among the three countries be explained? The first observation refers to the *longue durée* of legal traditions. The existing differences reach even further back than the late eighteenth century. Unlimited testamentary freedom came to the United States via British common law, in which complete testamentary freedom became the general rule in 1724 (McMurray 1919, p. 110) (15). By contrast, the parts of Germany and France which were governed by Roman law as well as those ruled by the *droit coutumier* put strong limitations on the use of testaments. Hence, in each of the three countries the distinctions concerning rules on testamentary freedom developed along enduring trajectories pointing to the role of path dependence in institutional development (Thelen and Steinmo 1992; Pierson 2004).

However, the rules came under intensive political scrutiny in all three countries at least once and explicit political decisions were made on testamentary freedom. I argue that the decisions made during these key phases of legal development can be explained in part by the prevailing social and political conditions. However, they also reflect the notions of property expressed in the discursive cleavages particular to each of the three countries.

In France, the legal restrictions on testamentary freedom introduced during the Revolution pursued a multiplicity of goals both political and social. Enforcing equal partitioning was a means of breaking up the concentration of economic power of the *ancien régime* to secure the power of the state against the forces of the old nobility and to enhance equality among children (Steiner 2005, pp. 137ff; Weber [1922] 1985,

(14) In addition, courts in the USA enforce moral norms by insisting on strict compliance with Wills Acts. Wills that do not comply with prevailing normative views are often not upheld by the court, which effectively reduces testamentary freedom (Leslie 1996).

(15) The instrument of strict settlement was used to protect the interests of family members.

p. 415). In a society in which economic status depended largely on the (inherited) ownership of property, the rules of partitioning of family property *mortis causa* was of crucial importance for children's life chances. Actual legal changes found a supporting basis in the changed power structures after the revolution.

At the same time, the social and political interests in the limitation of testamentary freedom found support in the value of equality that, it was argued, was violated by the possibility of unequal treatment of sons and daughters, as well as first born and later born children. The strong belief in the value of equality exercised influence on legal development by providing legitimation to those groups that advocated the restriction of testamentary freedom. This finds support in the fact that in Germany, with its comparable socioeconomic situation, equality was not enforced in inheritance law to a similar extent as in France. Moreover, it can be observed that the principle of equality prevailed over the widespread perception that the partitioning of property was economically and socially disadvantageous because it led to the "pulverization" of land. Despite this emerging "functional need" for legal change, all attempts to permit greater testamentary freedom were resisted in France during the nineteenth century based on the strong influence of the principle of equality (Gotman 1988, pp. 96-7). The rules of the Code civil regarding equality among the children of a testator were seen as one of the "sacred" accomplishments of the Revolution. The cultural framing of the problems regarding testamentary freedom in the context of a discourse on equality stabilized the existing legal regulation, although many economic and family related arguments were raised against it.

The situation in the United States differs from France in at least one crucial respect: the goal of breaking down existing wealth concentration and the legal enforcement that property would be bequeathed to all children in roughly equal shares had less significance in a society which had an abundance of land that could be appropriated with relative ease. Life chances in the United States were much less dependent on the inheritance of land, compared to the situation in Europe. This is expressed in Tocqueville's observation concerning the United States that wealth "circulates with inconceivable rapidity, and experience shows that it is rare to find two succeeding generations in full enjoyment of it" (Tocqueville [1835] 1945, p. 53). This is a crucial explanatory factor in respect of why proponents of the principle of equal opportunity did not make the restriction of testamentary freedom a major point of debate, despite the importance of equal opportunities as part of the cultural repertoire.

There is, however, an additional explanatory factor. The strong statist tradition in France, which continued after the Revolution, had no parallel in the United States. The severe restriction of testamentary freedom would have encountered much greater resistance in the United States on the ground that it would have been seen as an undue interference by the state in the private affairs of the citizens. Although Jefferson was a proponent of equality in inheritance law he also supported a concept of the state which limited it to a minimal role (Katz 1977, p. 28). It was only during the time of the *Progressive Movement* that a more positive evaluation of the role of the state in enforcing equal opportunities emerged in the United States (Huston 1993, p. 1103), but at this time reform initiatives focused on estate taxation and not on testamentary freedom. Hence, the two conceptions of property existing side by side in the United States came into conflict with the changing socioeconomic situation and changing interpretations of the causes of social inequality that emerged, however, only during the last part of the nineteenth century.

In Germany, no revolutionary political situation comparable to those in France and the United States emerged in the late eighteenth century. The situation of decision-making where the different positions clashed was the development of a unified civil law after German unification in 1871. When the *Bürgerliche Gesetzbuch* (German civil law) was worked out in the late nineteenth century, it was explicitly stated by parliament that the new law should only unify the dispersed regulations of (inheritance) law in the German states, but that no political and social reforms should be initiated by the legal codification (Schröder 1981). The issue of testamentary freedom played mostly an indirect role since it was seen as the most visible indicator of whether inheritance law was based on Germanic or Roman legal traditions. The proposed limitations of testamentary freedom caused little controversy since they were considered by both sides as an acceptable compromise between individual property rights and the legitimate rights of close relatives. Enforcement of equality between heirs was at no point widely supported in the German debates. The fact that the issue of testamentary freedom nevertheless attracted a lot of scholarly attention in Germany reflects the fact that it framed an underlying debate on the use of inherited property as a means of responding to the *soziale Frage* (16). Only if it could be maintained in

(16) Schröder (1981, pp. 161ff) alluded to the political dimension of the confrontation between Roman and Germanic legal traditions. The proponents of the Germanic position wanted to pave the way to the use of inheritance law for social reform by assurances that the uninhibited individual's rights did not rank highest in inheritance law, but the interests of society.

civil law that the rights of the individual property owner found their limits in the rights of the family (and in the rights of the state as the institution which takes over tasks formerly performed by the family) would a legal basis be established which would justify the escheat of the property to the state or the taxation of inheritance for purposes of social reform.

III.b *The Abolition of Entail*

The second major political conflict in the realm of inheritance law concerned the institution of entail. If property is bequeathed in *fee tail*, the heir and all subsequent heirs are prevented from selling the property or bequeathing it in a will. It can only be passed on to the next generation as determined by the original testator, that is, usually to the eldest son. It cannot be sold, but it also cannot be burdened with debt, since it cannot be used as collateral. This has enormous economic consequences since property in fee tail is excluded from market exchange (Bayer 1999; Brentano 1899; Brewer 1997; Eckert 1992). In Europe the privilege of dynastic perpetuation of wealth through the institution of entail was granted and guaranteed by the monarch. In conjunction with the provision of positions for the later born children in the state administration, the military, and the church, it was an instrument to secure the loyalty of the nobility.

It is obvious that this institution of aristocratic privilege came under immediate political pressure during the French and American revolutions. In America, entail was abolished by most states in the 1780s and in France *substitutions* were outlawed in 1792 (Eckert 1992, pp. 219ff). In France, however, the institution was re-established, first under Napoleon in 1806 and then under Charles X in 1826. This was a direct expression of the Restoration in France. After the February Revolution, entails were finally abolished in 1848. In Germany, however, *Fideikommisse* – that is, the analogous institution in German law – were maintained throughout the nineteenth century and only abolished after the revolution of 1918. During the second half of the nineteenth century an increasing number of *Fideikommisse* were established, mostly by the nobility, which attempted to protect its wealth against the imponderabilities of an increasingly dynamic, market-driven economic order. This led to the highly conflictual situation of expansion of an institution which sealed off landed property from market processes, thereby protecting a privileged class, just as market relations were increasingly determining social and economic life (Eckert 1992).

The time span of 140 years involved in eliminating entail in the three countries demonstrates a relative immunity of inheritance law with regard to economic changes. Although the economic dysfunctionality of entail (Weber 1904) provoked intensive political controversies, especially in the last quarter of the nineteenth century, it did not lead to the abolition of the institution. What then explains the huge time span of 140 years in the abolition of entail in the three countries? The most important explanatory factor undoubtedly seems to be political regime changes. In all three countries the institution of entail was abolished when a republican political order emerged. In France *substitutions* were re-established for a short time after restorative regime changes and were outlawed again during the Second Republic in 1848. In Germany the *Paulskirchenversammlung* also decided on the abolition of entail in the constitution it drafted in 1848. The political failure of the revolution, however, prevented the enactment of this measure and *Fideikommisse* survived until the collapse of the Empire in the Revolution of 1918 (Eckert 1992, pp. 445ff).

Although the strict correlation between the abolishment of entail and political regime changes puts the changing power of political groups to the center of an explanation of the wide time span in abolishing entail in the three countries, the correlation expands to the different discourses on entail. The institution found more support in discourses in Germany than in the other two countries. Of course, German liberals and social democrats condemned the institution without ambivalence, but conservatives defended it with arguments that referred not only to the stability of the monarchy, but also to the notion of family property, as can be seen from proponents of political romanticism (Müller [1809] 1922), but also in later political debates in which defenders of the institution resorted frequently to family-oriented arguments (Bayer 1999; Eckert 1992). This allowed them to frame their support for the institution not as the expression of the particularistic interests of the nobility but as a defense of the institution of the family, that is, as "justifiable action" referring to the common good. Hence, the specific framing in the cultural repertoire of the understanding of property rights within the context of family continuity provided legitimacy for the institution.

This constitutes a significant distinction to the other two countries. Though the abolition of entail was also controversial in the United States (Baltzell 1964; Brewer 1997; Myers 1969) it did not find legitimizing support in the repertoire focusing on individual freedom. Entail contradicted the liberal-egalitarian tradition represented by Jefferson, *as*

well as the market-liberal conceptions of property that saw entail as an institution preventing the development of efficient real-estate markets. Even conservative legal scholars like James Kent ([1827] 1971, vol. 2, p. 20) opposed entail. Hence, entail was unisonous characterized as an expression of particularistic interests and not as "justifiable action" serving the common good.

The same is true of France, where the institution was completely discredited after the Revolution. This can be seen from the debate in 1791 in which the demand for the abolition of entail was so overwhelming that it did not even provoke a controversy (Beckert 2007). It can also be observed in the resistance of both houses of parliament in the debate of 1826 when the executive branch tried to reestablish it, along with primogeniture (Eckert 1992). Public opinion resisted this intended reintroduction of the *droit d'aînesse* vehemently (Brentano 1899, p. 103). The proposed law was seen as a frontal onslaught on the core principle of the Revolution: equal rights.

If one looks at the prevailing notions of property in the three countries, only the German understanding of family property provides legitimizing support for the institution of entail. Although the direct impact of these cultural differences for actual legal development can hardly be measured, the collectivity-directed property concept and the assumed role of the family as a counterbalance to the effects of modernization prevailing in Germany provided legitimating support in political conflicts that was largely absent in the other two countries.

III.c *Estate Taxation*

Estate taxation is the most recent area of conflict in the field of inheritance law and the one that stands in the foreground of current debates on the topic. The key period in which estate taxation became a major political issue in all three countries was between 1890 and 1935. Especially in the United States, however, the issue has re-emerged since the 1970s as an important item on the political agenda (Gates and Collins 2003; Graetz and Shapiro 2005). The simultaneous materialization of conflicts over inheritance taxation in all three countries during the late nineteenth century and the almost parallel introduction of the tax already provide an important explanatory clue. All three countries experienced a dramatic expansion of state functions and state expenditures during this period. Much of the expenses were related to military build-up, but they also reflect growing expenses for infrastructure and social services. The existing revenue systems reached their limits and

new sources of state income had to be found in order to solve the emerging fiscal crises.

However, the introduction (in the case of France, the reform) of federal inheritance taxation cannot be explained solely by increased fiscal needs as this leaves unanswered the question of why estates were used as the source of increased revenues. A second coincidence between the three countries consists in the forceful emergence of reform movements in the late nineteenth century that denounced the existing systems of taxation – which relied heavily on indirect taxes – as unfair. The poorer citizens paid a disproportionately higher share of their incomes in tax. Reform-oriented parties considered taxation of inheritances as an especially well suited source of fiscal income since it would affect wealth that had been received without effort. Hence, any explanation of the introduction of progressive inheritance taxation in France, Germany, and the United States at the beginning of the twentieth century must be based on recognition of the coincidence of at least two factors: increased fiscal needs and social reform movements.

However, this still does not explain the *specific differences* in inheritance taxation which emerged among the three countries. It is here that the different cultural frames regarding the perception of "unearned wealth" matter. This can be deduced from correspondences of the respective discursive fields and the particular institutional forms of inheritance taxation that have been introduced in each of the countries. To argue this point I will first highlight the differences that were established in inheritance taxation.

Inheritance taxes in Germany, which were introduced in 1906, did not tax property bequeathed to the children and the surviving spouse. This left an estimated 80 percent of all bequeathed property untaxed (Schanz 1906, p. 198). Even when these inheritances were finally taxed in 1919 – though inheritances to the surviving spouse were again not taxed between 1922 and 1951 – progression was kept at a very low rate. Except for two short periods (1919-1922 and 1946-1948), it never exceeded 38 percent and remains at 30 percent for inheritances which are valued at more than 25 million euros today (17).

Support for the tax was weakest in France, which introduced progressive inheritance taxation in 1901. While the socialists and radical republicans demanded the introduction of progressive inheritance taxation, there was hardly any scholarly support for it and widespread skepticism prevailed across most of the political spectrum. The

(17) Progression rates for inheritances to distant collateral heirs and to strangers are significantly higher (maximum 50 percent).

explanation for this lies not only in strong mistrust of progressive taxation as a violation of the principle of equality, but also the comparatively slow industrial development and, consequently, the greater importance of landed property as a source of employment and a basis of wealth in France. In addition, France had a significant and influential class of *propriétaires* that relied on capital revenues for their income throughout the Third Republic (Haupt 1989). Nevertheless, the tax was voted into law after a lengthy conflict between the lower house and the senate. Rates were kept low at the beginning. Unlike in Germany, property bequeathed to the surviving spouse and the children was taxed from the outset. While the highest progression rate for heirs in the first degree (children, spouse) is 40 percent today and therefore comparable to that of Germany, there are three significant differences. First, throughout the twentieth century France drew a much clearer distinction between the rates applicable to heirs in the direct line and those applying to collateral heirs. The progression rate for siblings is between 35 percent and 45 percent, while in Germany it is between as little as 12 percent and 40 percent. These spans create incentives, especially for less affluent wealth-holders, to bequeath property in the direct line. This reflects a strong tendency in French inheritance law to encourage the transmission of property in the direct line of descendants and reflects a more modern understanding of the family. Second, the French system still includes elements of proportional taxation for collateral heirs. For siblings, only two progression rates (35 percent and 45 percent) exist and inheritances to heirs in the fourth degree pay a flat rate of 55 percent. Non-related heirs pay a flat rate of 60 percent. Moreover, France is the only country that has tried to use inheritance taxation as an instrument of population policy. To increase birth rates, tax rates were lower for heirs with more siblings from the 1920s to the 1950s.

Inheritance taxation in the United States has two significant specifics. First, the tax, which was introduced in 1916, was designed as an *estate tax*. This means that the estate as such is taxed but not the property received by the individual heir. In consequence it is not possible to distinguish different progression rates depending on kinship relations. Second, the American estate tax had much steeper progression rates compared to the two European countries for much of the twentieth century. Between 1940 and 1981 the highest tax rate stood at 77 percent. Even after the tax reforms which went into effect in the 1980s, the highest rate remained at 55 percent, until the current phase-out of the estate tax went into effect.

These differences in the structure of inheritance taxation between France, Germany, and the United States correspond closely to the discursive structure in each of the three countries discussed in the previous section. The relevance of the family-oriented understanding of property in Germany corresponds to overall low inheritance tax rates and the original exemption of children and surviving spouses, whose inheritances are taxed at a low rate even today. The relatively low rates for direct heirs in France also show the relevance of the family in the structure of inheritance taxation. However, the much higher rates for collateral heirs – as well as the escheat to the state of intestate bequests, starting from the sixth degree – also correspond to an understanding of family that is oriented more towards the core family unit than to the extended kinship group. In addition, the strong elements of proportional taxation correspond to the resistance in France to progressive taxation which has been criticized as a violation of the principle of equality (18). In the United States the design of the tax as an estate tax corresponds to the irrelevance of family-related arguments in inheritance law discourse and to the individualistic cultural repertoire. It makes no difference for taxation purposes whether the heir is a close relative or a complete stranger (19). Even more importantly, however, the much higher progression of the American estate tax for very large estates reflects the influential liberal-egalitarian mistrust of dynastic perpetuation of wealth and the resistance to compromising equal opportunities through (large) inheritances. Only the United States attempted to use the estate tax for the redistribution of wealth, pursuing the goal of maintaining a merit-based distribution of property and equal opportunities. The state-critical position so clearly manifested in the statements by Jefferson played much less of a role in the early twentieth century when a new understanding of the role of the state in relation to equal opportunities formed (Huston 1993).

IV
Why is There a Longue Durée *of Inheritance Law?*

The development of inheritance law in France, Germany, and the United States shows significant differences. At the same time, it exhibits

(18) The principle of equality is also reflected in the lack of any exemptions for small inheritances when the tax was introduced.

(19) Kinship relations, however, do play a role in exemption rates. Up until the 1980s exemption rates stood at a maximum of USD 60,000, meaning that this instrument for differentiating between close and distant kin was not actually used.

an enduring continuity in each of the three countries, not only with regard to the law itself but also in terms of political discourses on the issue. I argued first that based on distinct cultural repertoires specific discursive structures developed and expressed themselves in parliamentary and scholarly debates on inheritance in all three countries. In the subsequent part I demonstrated, on the basis of a discussion of legal developments in three areas of inheritance law, that one can identify correspondences between the structures of the respective repertoires and actual legal development (see table 1). How can the recognition of cultural repertoires contribute to an explanation of the *longue durée* of inheritance law?

The explanation of the stability of existing institutional regulations despite economically more efficient or politically more effective alternatives has been the object of theories of path dependence which argue that once a certain technology has achieved an initial advantage it will prevail over more efficient alternatives because of positive feedbacks that lead to a lock-in (Arthur 1989; David 1985). This argument has been taken up by political scientists, especially by historical institutionalists (Thelen and Steinmo 1992; Hall and Taylor 1996; Thelen 1999; Pierson 2000), who point to the weight of path dependence in the explanation of institutional continuity. Institutions are inclined to be inert because the distribution of resources tends to produce the kind of political decisions that reinforce them.

The explanation of the *longue durée* of inheritance law supported here follows theories of path dependence in emphasizing the role of existing institutional structures, but does so on the basis of a different understanding of institutions and actors, and the interaction between the two. Theories of path dependence in political science have a propensity to make use of an objectivist notion of institutions, where a given institutional setting determines actor behavior and explains the reproduction of institutions. This tendency to ascribe not just an influencing, but also a determining role to institutions diverts attention from the role of political actors (Thelen and Steinmo 1992, p. 15) and disregards the social construction of institutions (Dobbin 1994, p. 7) (20).

The introduction of the notion of repertoires of evaluation makes it possible to connect institutional continuity to the culturally shaped interpretations of social problems and perceptions of effects of institutional rules. Repertoires lead to specific joint orientations in complex

(20) Thus, institutional theory becomes a theory of structure, which gives up consideration of the contingent decisions of actors for the explanation of macrosocial processes of development – except at "critical junctures".

social situations and thereby provide components for agency from which interpretations of situations and strategies of action are derived (Swidler 1986). These cultural structures are "an integral part of institutions [...] affecting the evolution and persistence of diverse societal organizations" (Greif 1994, p. 914). In consequence path dependence and institutional change can be explained also from a cultural perspective by including the ideas entailed in repertoires (Blyth 2002; Campbell 2004; Hall 1989; Jones 1999).

In this section I first discuss the question how the long term stability of discursive fields can be explained. Subsequently I will explicate the mechanisms by which the stability of repertoires of evaluation is connected to the reproduction of legal institutions.

IV.a *Stability and Change of Discursive Frames*

The explanation of the stability and change of discursive fields can be based on four mechanisms: 1) cognitive switching-costs, 2) functional differentiation, 3) the influence of existing law, and 4) the pressure from the broader political culture of a country.

1) First, institutions create "cognitive switching-costs". Following Bourdieu (1987, p. 69 quoted from Schultheis 1999, p. 77) the perception of the problems connected with inheritance law of politicians, legal scholars, and social scientists always refers to the "sedimentary products of the works of their predecessors". This means that any understanding of the problems associated with inheritance law goes back to previously existing views on the issues, which provide a structure for current perception. This "generational transmission" (Zucker 1977, p. 728) is based on the enculturation of the young by the previous generation. Legal scholars derive their perspective on inheritance law largely from what has been conveyed in their national educational institutions. "Each generation simply believes it is describing objective reality" (Zucker 1977, p. 728). Naturally, this does not mean that existing perspectives cannot be deviated from. However, existing argumentations have a position of "cognitive privilege" since they find an easier connection in political discourse. This is seen counter-factually in parliamentary debates when speakers refer to rules of inheritance law in other countries but either encounter hostile reactions or do not find resonance at all (21).

(21) The speakers cite these rules either with a critical intent to assert a difference between "their own" and a "foreign" law to be rejected. Or, when they refer positively to the rules of foreign law, the opposition often rejects the proposal as "culturally alien". The argumentative deviation can thus contribute to reinforcing "one's own" traditions. Another

"Cognitive switching costs" lead to the reproduction of certain perceptions of problems associated with the regulation of inheritances in a given national context and contribute to what could be called "perceptual bequests".

2) Second, the self-referentiality of discursive structures is also reinforced by the increasing differentiation of society and the accompanying unfolding of cognitive idiosyncrasies. Legal discourses, and other discourses in society, become semantically more separated and thus increasingly immune to social changes, a point to which Max Weber already alluded: "The power of the unbridled, purely logical demands of legal theory and the practice of law that prevails because of them can result in a far-reaching avoidance of the needs of interests as a driving force in shaping law" (Weber [1922] 1985, p. 459). Inheritance law is perceived by dominant actors in the context of legal dogmatic debates and is closed against reforms that contradict this logic (22).

3) Third, existing law claims "an enormous power of definition concerning all subjects of the social world" (Schultheis 1999, p. 72). Discursive patterns are influenced not only by the perception of legal problems, but also by existing law. Hence, not only ideas influence institutions but also vice versa existing institutions have a mediating influence on the perception of problematic situations. This mutual influence can be identified in debates on estate taxation in Germany. To establish their position, opponents of this tax refer regularly to the protection of property rights in Article 14 of the German Basic Law in connection with the protection of the family according to Article 6. Hence, existing legal regulations are themselves a basis of reproduction of repertoires of evaluation, in this case the perception of the problematic of inheritances in close connection to property rights *and* the family. In addition, court decisions reinforce discourses on law. This influence has also been shown by studies on other legal subjects (Ferree *et al*. 2002, pp. 120ff). Court decisions, however, can also contribute to discursive changes, as can be seen from decisions by the supreme courts of Germany and the United States on the issue of estate taxation since the 1970s (Graetz and Shapiro 2005; Kahrs 1996).

pattern of reaction to external contexts of argumentation is ignorance. For example, the American institutionalist Richard Ely's (1891) adoption of Blutschli's family-oriented arguments simply fizzled out in the American discourse on estate taxation and thus remained ineffective.

(22) The debate between Romanists and Germanists in German legal thinking of the nineteenth century is a good example. Another example is the debate on the justification of the transmission of property based on natural law or positive law.

4) Finally, the perception of the problems associated with the regulation of bequests is embedded in the broader political culture. This embedding contributes to the stabilization of discourses on inheritance law despite political and economic changes which suggest institutional adaptations. This can be explained by pressures for "cognitive complementarities" that derive from the broader political culture. Thus the French concept of family suggests a specific relationship between state and family which is then *also* translated into the perceptions of the problematic of inheritance law. Similarly, the notion of equality of opportunity in American political culture is not limited to the regulation of the transfer of property *mortis causa* but has many other applications. The cultural "masterframe" contributes to the specific perception of problems associated with the bequest of property.

However, the significance of more general cognitive contexts also gives an indication of the causes of changes in repertoires of evaluation. Thus, the debate on estate taxes in the United States shows that, since the 1970s, this issue has been perceived much more strongly in terms of economic efficiency and less in terms of equality of opportunity. This goes hand in hand with an equal reorientation of political debates on macroeconomics in which state interference in the economy is now viewed as detrimental to economic efficiency (see Blyth 2002). Hence, the change of a "masterframe" of the political discourse has had repercussions for the dominant repertoire used in debates on the estate tax in the United States from the late nineteenth century onwards. This transformation, however, led to a change in the relative weight of positions already established within the discursive field rather than to the emergence of completely new positions.

IV.b *Repertoires and the* Longue Durée *of Inheritance Law*

These mechanisms help explain the long-lasting continuity of repertoires of evaluation regarding the bequest of property, as well as the reproduction of distinct discourses in the three countries investigated. This still leaves open the question of what mechanisms can explain the influence of repertoires on institutional design and institutional stability.

Legal institutions and their reform must be understood as the outcome of interest struggles between political carrier groups (Weber [1922] 1985) which shape law by influencing and enacting legal reforms. Politicians, legal scholars, lobbyists, social movements, and other competent participants involved in the political process represent such groups (Willekens 2006).

Rational actor theories and interest group theories in political science assume that actors have certain preferences and knowledge of optimal strategies in pursuing their interests. Preferences are defined *ex ante* to a particular application (Levi 1997, p. 24). At the same time, the theories remain silent on the constitution of these preferences (Campbell 2004, p. 91; Woll 2005). Distributional outcomes and institutional designs are thus explained by exogenously given preferences and the resources individuals or groups command. But why do actors pursue certain interests and why do they attempt to realize them the way they do? The answer to this seemingly obvious question is not so obvious if actors are confronted by vastly ambiguous, multifaceted, uncertain, and partly contradictory functional and normative consequences of their actions – as they are in the case of the regulation of the bequest of property.

It is at this point that repertoires of evaluation and the *longue durée* of inheritance law coincide. Repertoires allow actors to reduce the complexity confronting them by providing specific views on what is problematic in the regulation of bequests and which institutional rules seem normatively appropriate, as well as instrumentally successful solutions to the envisioned problems (Beckert 1999a; Blyth 2002). This links the constitution of interests in the regulation of bequests and support for specific political demands to repertoires available to actors in their specific social surroundings (Lamont and Thévenot 2000). Preferences and strategy choices are contextualized within the cultural knowledge actors have. Action takes place in a culturally structured field of legitimate normative goals and social values, as well as specific perceptions of causal relations by which actors conceive consequences of legal reform, and thereby mediates the political process (Campbell 2004, p. 108). To step outside them violates taken-for-granted assumptions within the discursive field. For action that finds no cultural backup one must expect less support or even strong resistance.

This theoretical consideration finds empirical support in the analysis of inheritance law. In many instances *what* consequences might be expected of a specific legal measure was controversial in debates. And it was through cultural repertoires that this functional ambiguity could be reduced. One example of this is the debate on the effects of land partitioning in France. Whether the forced partitioning of land increased or decreased economic efficiency was a matter of intense controversy. The argument of a loss of economies of scale was countered by the argument of a more efficient use of the smaller property units. Under this impasse the predominant concern with equality could be mobilized by political actors to prevent legal reform for more than one hundred years despite

strong economic arguments for ending the partitioning of land (Brentano 1899; Gotman 1988). A second example of the ambiguity of effects of legal regulations refers to the consequences of testamentary freedom for the family. While German politicians and scholars overwhelmingly saw the limitations of testamentary freedom as a protection for families against the arbitrariness of the individualism of the testator, their French counterparts looked at testamentary freedom as a precondition of protecting the family against undue individualism because it would make it possible to shield the stem family from the effects of modernization (Schröder 1981; Gotman 1988).

Why did French and German commentators develop such opposing views on the same issue? The answer is that in their responses to problems of the family coming up in the process of modernization actors resorted to their respective repertoires that directed them to an individualistic solution in France and to a collectivist solution in Germany.

The cross-national differences imply not only different perceptions of causal relations but extend also to distinct normative goals to be pursued with the regulation of transfers *mortis causa*. While equality of opportunity plays an important role in the American discourse, this value finds little resonance in German debates. In Germany, the goal of socially just distributions has figured much more prominently in the debate. These differences in repertoires provided legitimation for certain demands and thereby supported specific positions in political interest struggles (23).

Moreover, the deep entanglement of inheritance law with the cultural and political identity added to the difficulties for political actors to mobilize support for substantial changes without simultaneously generating fierce resistance. Resistance could easily be mobilized against all envisioned changes. The stability of repertoires operates as a conservative force against discontinuous institutional change (Campbell 2004, p. 93).

Hence, the significance of discursive fields does not imply that changes in socioeconomic conditions and political power, including the institutional rule-structure of the political system itself, have had no effect on the regulation of inheritance law. This can be seen from the practically simultaneous introduction of progressive federal inheritance taxes in France, Germany, and the United States which followed the

(23) The differences do not merely reflect special interests that actors want to conceal by referring to consequences that appeal to the general good. This is demonstrated by the country-specific differences in the interpretation of causal effects which cannot be attributed to different class positions.

need for increased state revenue and the strengthening of social reform movements. The responses to these new demands were, however, country specific and the way they were realized corresponded to the repertoires prevailing in each country.

This calls into question functionalist and interest group theories of institutional development which predict the efficient adaptation of institutional structures or explain institutional change on the basis of the distribution of power between political groups. If legal development were explainable solely in terms of interest group strength or efficiency, enduring differences in legal structure would need to be explained either by such differences or must be irrelevant to outcomes. This, however, cannot be recognized in the case of inheritance law. An explanation that sets out from the contested character of the perceived functional and moral consequences of specific regulations in inheritance law and the constitution of specific discursive fields seems better equipped to explain the differences and their endurance.

Conclusion

In this article I have argued that one can identify different repertoires of evaluation in France, Germany, and the United States that have structured discourses on the regulation of the transfer of property *mortis causa* since the late eighteenth century. These repertoires correspond to the regulation of inheritance law in the three countries investigated. This observation is explained on the basis of the role played by perceptions of problems associated with the regulation of bequests in the political process. Political actors perceive the problems associated with the transfer of property *mortis causa* through the lens of a specific repertoire which influences demands for institutional regulations and blocks other options through lack of legitimacy or failure of perception. Repertoires allow the reduction of complexity and provide legitimacy to some institutional regulations but not others. The perception of interests itself takes place within a social context that contributes to the formation of goals that are seen as desirable and the assessment of strategies which will fulfill the criterion of rationality (Dobbin 1994). In this sense, interests and preferences for specific institutional regulations are inherently connected to the cultural world of actors. While these aspects help explain why regulations of inheritance law have remained distinct between the three countries, they also help to understand the path dependency of inheritance law by showing the processes of cognitive privileging of existing institutional arrangements. Ideas matter because

they produce "cognitive lock-ins" *and* standards of legitimacy that inform actors and enable them to act coherently despite the contingency of causal effects.

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