

REVIEW SYMPOSIUM

Jens Beckert *Inherited Wealth*. Princeton, Princeton University Press, 2008

Keywords: wealth, inheritance, economic sociology, interests, culture, institutions

JEL classification: Z13 economic sociology, D31 personal income, wealth, and their distribution

Family values and the law of inheritance

Anne Alstott

Harvard Law School, Cambridge, MA, USA

Correspondence: aalstott@law.harvard.edu

Debate rages over the transmission of wealth from parents to children. On the one side, champions of private inheritance invoke the decedent's freedom to dispose of her money as she chooses. They praise the sense of family responsibility that leads property owners to provide for their heirs, and they worry that curbs on inheritance could break up family farms and damage the economy. On the other side, critics contend that inheritance bestows economic security and political power on the fortunate while shutting out others through the accident of birth. These debates tend to divide the middle class: while some oppose inherited privilege, others imagine that they and their children will someday join the elite.

A reader in the U.S. might suppose, reasonably enough, that the last paragraph describes the looming debate over the estate tax in the U.S. Under the second President Bush, the Congress reduced the federal estate tax and adopted legislation to repeal it—but only through the year 2010. Without further legislation, the tax will return at its original rates and exemption levels in 2011. The question

of estate taxation will likely occupy congressional time in the coming years, and the fight promises to be a vigorous one.

But in fact, the first paragraph equally well describes debates over the abolition of entailed property that took place in France, Germany and the U.S. during the period spanning the American Revolution to World War I. Economic elites defended hereditary privileges that kept land—and political power—within the dynastic family for generations, while liberal reformers and those excluded from the privileged class sought to break up concentrated wealth and power.

Jens Beckert's excellent new book *Inherited Wealth* helps explain how the values of liberty, equality, family and economic prosperity recurred in debates over entails and other issues across three countries and three centuries. Beckert's book focuses on legal debates over the rules of succession and taxation in France, Germany and the U.S. from the eighteenth century to the twenty-first. The book considers the development of the law of wills, intestacy, entails and inheritance taxation, with close analysis of the arguments offered in parliamentary debates over key pieces of legislation. Translated into English and aimed at an academic audience, this volume draws on a wealth of French and German sources not readily accessible to Anglophone scholars and offers an unusually comprehensive comparative analysis.

Inherited Wealth conveys both the continuity of values across time and the cultural and social nuances unique to each setting. While similar themes arise in debates occurring in different legal regimes, in different political climates and across 350 years, Beckert takes care to convey the cultural, economic and political context of each legal reform. For example, the value of equality has been understood in individualistic terms in the U.S.: the ideal is equal opportunity for every person, and the key metaphor is the level playing field. In the U.S., individual merit remains a core value, and re-distribution via government is not always a trusted vehicle for ensuring equality. In contrast, according to Beckert, equality talk in Germany has been—and continues to be—interpreted by reference to a solidaristic conception of social justice, and the government is understood to have moral authority in establishing programmes that implement justice (pp. 143–144).

Conceptions of the family provide one of the most fascinating strands in Beckert's analysis. Modern-day Washington lobbyists are not alone in invoking family values to oppose the 'death tax'. The historical debates are full of claims about how different inheritance regimes support or undermine the family, even as conceptions of the family and its personal and political meanings have changed. Consider three examples.

1. Entailed property and the aristocratic family

The institution of entailed property, which existed in various forms in all three countries in the eighteenth century, reflected a dynastic and political conception

of the family. ‘Family values’ in these debates were less about family love, nurture and care than about preserving the ownership of large tracts of land in order to retain aristocratic social status and political power for an unbroken succession of male heirs.

Very generally, entailed property (a term Beckert uses to describe not only the English common law institution but also the French *substitution* and *majorat* and the German *Fideikommiss*) arose when a property owner undertook legal action to restrict the power of later owners to sell, mortgage or make testamentary transfers. Commonly, entailed land could not be sold during the owner’s lifetime and was required to pass at the owner’s death to the eldest son (or otherwise according to the rules of primogeniture). Entailed land thus remained within a family (thanks to transfer and inheritance restrictions), undivided (because it could not legally be divided among multiple heirs), and isolated from owners’ debts, changing land values and other market forces (because it could not be sold or seized by creditors).

But while entailed property tended to preserve dynastic wealth, it did so at the cost of excluding younger sons and (all) daughters from sharing directly in that wealth. By tradition, younger sons were sent off to careers in the army, the church or the government. Family norms called for sons to care for widowed mothers and for daughters to gain economic security through marriage. Still, excluded spouses and children could face economic insecurity: recall the Bennet family in Jane Austen’s *Pride and Prejudice*. The Bennets have ample income as long as the father remains alive. But at his death, the entailed property will pass to a male cousin, leaving the wife and five daughters with few options unless the daughters marry well—a prospect made more difficult because the entailed property cannot be settled on the daughters.

According to Beckert’s work, the drama of excluded upper class children was more than just fodder for literature. His analysis suggests that the early demise of entails in the U.S. compared to France and to Germany occurred in part because the young American republic did not provide ready-made positions for excluded heirs: with no official church, a tiny state bureaucracy and a small professional army, the traditional sinecures used to reconcile the upper classes to the regime of entails largely did not exist (p. 162).

Along the way, Beckert explains that the middle class was often ambivalent on the abolition of entails. In some contexts (notably the American and French revolutions), the rising middle class took the expected line, calling for equality and opposing entails along with other forms of economic privilege for the landed gentry (pp. 188–189, p. 119). But at other times, ‘this clear battle line was blurred by the fact that the motivation of the dynastic formation of wealth, the attainment of power and social prestige, certainly did find favor also in the eyes of the bourgeoisie’ (p. 119). Napoleon used entails to elevate from the

middle class a new set of aristocrats to support him (pp. 123–124). In Germany as well, new wealth sought to use entails to buy into the prestige, security and political power of the landowner class (p. 152).

2. Testamentary freedom and the clash between family morality and ‘bourgeois individualism’

Some debates, particularly in France and Germany (but far less so in the U.S.), juxtaposed family morality with ‘immoral’ bourgeois individualism (p. 126) and ‘the individualism of enlightenment thinking’ (p. 118). Families were portrayed (rather romantically, one suspects) as a locus of paternal authority that could keep children obedient and productive and ensure care for the young, the weak and the ill.

In nineteenth-century France, for example, testamentary freedom ignited a debate over equality (embodied in the equal division of wealth among heirs) and family values. Beckert recounts how proponents of equal division invoked natural equality, while those favouring testamentary freedom worried that mandatory inheritance rights would undermine paternal authority and that the fragmentation of wealth would make it impossible to maintain a ‘secure home’ to which all might retreat in times of need (p. 41).

In nineteenth-century Germany, Beckert suggests, testamentary freedom invoked a different constellation of family values. In the German tradition, wealth was seen as family property rather than individual property: family members had a ‘right’ to the assets left behind by the testator, a right that individual testators should not be permitted to abrogate (p. 50). Claims to testamentary freedom, then, seemed to threaten the ‘family as the moral foundation of society’ and to enshrine an ‘immoral’ individualism (p. 50).

3. Intestacy and the rise of the affective family

Beckert’s account of the evolution of intestacy law helps illustrate the sea change in the understanding of the family from the eighteenth century to the present. Gradually, and in all three countries, the dynastic family defined via primogeniture gave way to the nuclear family, with surviving spouses given strong entitlements, heirs treated equally regardless of gender and close relatives advantaged relative to distant ones. Continuing the trend towards the ‘affective family’, in the twentieth century, intestacy law ultimately expanded to recognize non-marital children and same-sex partners.

At one time, primogeniture privileged male heirs born within marriage, often providing little or nothing directly for a surviving wife, for daughters and for non-marital children. To be sure, norms of family conduct suggested that

responsible fathers and sons would make some provision for such dependents. But over time, the law of inheritance changed along with conceptions of the family to give women and non-marital children direct claims on wealth. Indeed, the change was so great that one imagines a time traveller from the eighteenth century dumbfounded by the conception of the family as reflected in intestacy laws today, where male heirs share equally with female, surviving husbands and wives inherit on equal terms, and the law recognizes all children—whether adopted or biological, male or female, marital or non-marital.

Beckert's thesis is that the law of intestacy came to give primacy to emotional attachments: an 'affective' view of the family imputed to the decedent a wish to care for loved ones (p. 85) that trumped his desire for dynastic wealth placed into the hands of a single male heir. At the same time, the law adopted a more gender-egalitarian stance towards women and accorded greater importance to the 'conjugal family' (compared to the family as defined by bloodlines; pp. 90–91).

4. Conclusions

Inherited Wealth offers a fascinating account of the law's evolving understanding of the family over time and across countries. Whether in revolutionary France, nineteenth-century Germany or the twenty-first century U.S., questions of inheritance law implicate the role of the family in society.

What is striking to a modern reader in the U.S. is the repeated clash between family values (loyalty, solidarity, entitlement and continuity), on the one hand, and individualistic values of freedom and equality on the other. In the ongoing debate over the estate tax in the U.S., by contrast, family values tend to be invoked along with individualism to oppose state-mandated re-distribution.

The tradition of testamentary freedom, which Beckert identifies as particularly strong in the U.S., remains central in the estate tax debate. The government, opponents of the estate tax claim, should have no say in the disposition of a life's hard-earned wealth. Thus, re-distributive estate taxation appears (to some) to be an unwarranted intrusion into individual liberty.

Family values also tend to appear in the estate tax debate on the side of those opposed to taxation. Decedents often are portrayed as naturally choosing to leave their property in ways that exhibit family loyalty, promote enterprise in the next generation or implement values of care. Indeed, many of the touching stories used to combat the 'death tax' involve hard-working parents eager to pass on a family enterprise to equally hard-working children.

As Michael Graetz and Ian Shapiro (2006) have documented, these debates have so far been decisively won in the public and political eye by opponents of the death tax. Accordingly, these debates rarely engage with the potential clash between testamentary freedom and family values: lobbyists typically do not

bring forward adult children who will not inherit the family business or farm or who could not attend college because their parents refused to support them. Nor has the debate considered how ‘the government’ might use estate tax revenues to implement family values of care and responsibility by funding welfare programmes, child health care, education or other public programmes.

Reference

Graetz, M. and Shapiro, I. (2006) *Death by a Thousand Cuts*, Princeton, NJ, Princeton University Press.

How societies come to regulate wealth transfer—about social structure, political culture and legal-economic institutions

Marion Fourcade

Department of Sociology, UC Berkeley, CA, USA

Correspondence: fourcade@berkeley.edu

There are two main reasons why we read academic books: to get information, and to help us think. Most of these books, of course, strive to fulfil both of these imperatives. But this is a difficult goal to achieve. Thus, our field abounds with sophisticated but often self-referential ‘theoretical’ enterprises, and solid descriptive accounts that cry out for a good, substantive finale. Only rarely do books strike the right balance between sustained argument and thick description, while at the same time tickling our minds with brilliant insights that open up new horizons. *Inherited Wealth*, however, is such a book: a sweeping, meticulously researched analysis of the discursive justifications for inheritance law in the U.S., France and Germany over the last 200 years.

To begin with, of course, is the topical importance of intergenerational transfers of wealth to the study of inequality and social stratification. We may puzzle at why it took sociologists (and particularly economic sociologists) so long to produce a major opus on the subject. But we may also rejoice that a major opus it is—so valuable and ambitious, in fact, that the outcome might even rectify the wait.

‘Everyone who dies leaves something behind’ (p. 1): Jens Beckert sets the tone in the first paragraph, by framing the broad social relevance of inheritance law in no uncertain terms and multiplying references to sociological theory. From Émile Durkheim comes the ambition to connect the legal regulations of inheritance to the moral communities that formulated them, both in cross-section and over the *longue durée*. From Max Weber comes a ‘multidimensional heuristic that incorporates economic interests, demands by the state and the role of social institutions, as well as culturally-based values that are expressed in the discourse on inheritance law’ (pp. 5–6). From Jürgen Habermas and Hans Joas comes the centrality of communication and argument to processes of institutionalization and cultural sedimentation. The purpose is not simply to document national patterns of wealth transmission, but to explain them: this makes *Inherited Wealth* a book about social structure, political culture and legal-economic institutions.

For believers in a natural rights perspective, the transmission of property *mortis causa* should occur in such a way as to guarantee individual freedom in disposing of one’s assets: no one else but owners should decide what is to become of their possessions after they die. As it turns out, however, the *practice* of inheritance does not conform to this model: even where it is stronger (as in the U.S.), the natural rights view was never dominant. Rather, inheritance displays the classic characteristics of a Durkheimian ‘social fact’: (a) every society regulates inheritance in some way or another; (b) no two societies regulate it the same way; (c) the social regulation of inheritance changes over time. As such, it ought to be studied as a social fact: by looking at its variations in relation to other collective phenomena—that is, in relation to ‘the general conditions of collective life in the social type under consideration’ (Durkheim, 1982, p. 97).

To get a practical grasp on this vast topic, Beckert focuses on four specific, empirical manifestations of inheritance: the degree of testamentary freedom, the legal rights of the testator’s relatives, entails (or the intergenerational binding of property) and inheritance taxation. However, rather than simply examining the historical transformation and cross-national variations of institutions (e.g. laws) in these four domains, in a way similar to Durkheim’s in the *Division of Labor in Society* (1899), Beckert focuses on the *controversies* these questions generated by carefully comparing the arguments brought up in parliamentary debates across time and across nations. This is crucial: by allowing the production of legal rules to appear as a discursive, contested and ultimately political process, Beckert manages to avoid the simplistic equation between social institutions and social morphology that often plagues even the best of Durkheim’s works. Yet by identifying the central argumentative tendencies in what he calls the ‘discursive field’ in each country, Beckert still manages to retain enough generalizability that the connection between discourse over

inheritance and social structure remains a critical contribution of the book. This is a fine line to walk, and he walks it brilliantly. The question of testamentary freedom, for instance, was debated in reference to the individual right to dispose of one's property (an especially prominent concern in the U.S.), the equal rights of children (in France) and the protection of the family as a corporate unit (in Germany). In debates over inheritance taxation, arguments about the protection of capital accumulation faced arguments about the undemocratic character of 'unearned wealth', the need for state resources and re-distributive social goals, with the latter two reasons being particularly salient in Europe. For each matter of controversy, then, Beckert reconstructs not a *national* view, but a *distribution* of views in each national discursive field, with varying degrees of influence over formal (legal) outcomes.

The methodological and theoretical emphasis on parliamentary debates makes *Inherited Wealth* an unusual book in economic sociology and in political economy more broadly. But this research strategy presents two key advantages: first, it allows Beckert to concentrate his analytical attention on those moments in history when the different dimensions of inheritance law come into public focus. This means that depth of analysis does not have to be sacrificed to historical breadth. Second, it brings into sharp relief Beckert's key concept of the 'discursive field', or the idea that cultural frames are never anything more than frames that are *dominant* within a broader space of discursive positions.

Beckert explains his partiality to discourse as a logical corollary of the analytical position known as the 'new sociological institutionalism' and argues that it can be more broadly understood as a working out of a cultural view of institutions (pp. 281–282). However, the picture painted in *Inherited Wealth* is, I think, a more complex and novel one in which '*culture*' itself is treated as a *field*. It is a space of political struggle in which a set of fairly stable discursive positions get periodically reactivated, or—in a more Durkheimian formulation—symbolically recharged, depending on historical conditions. Furthermore, it is precisely their very contentiousness that explains the continuity of these orders of justification over the long run. Here the reference to Habermas and Joas is fundamental: what we call 'culture' works itself out and is transmitted through processes of communication and discursive conflict. This is because each discursive position within a field is always the product of a structure of relations vis-à-vis other discursive positions. Thus, the contentiousness of debates may in fact mask a strong, implicit agreement on the rules according to which debates may be conducted and the topics they must draw attention to. Put another way, the discursive field in each country gravitates around what Bourdieu, following Husserl, calls a '*doxa*'—assumptions, taken for granted, about how the core questions in the

field are to be approached.¹ What we call ‘culture’ may, after all, be nothing more than the field-like expression of a ‘doxic’ consensus.

Inherited Wealth presents two major conclusions. First, it offers a reformulated Durkheimian thesis regarding the connection between the transformation of legal structures and the transformation of social structures. Buttressing Durkheim’s argument is the unmistakable long-term tendency towards statutory equality in inheritance law: thus, over the course of the period under consideration, and sometimes before it, all three countries abolished rights of inheritance based on ascriptive status markers (e.g. primogeniture, gender, nobility) and increasingly recognized the legal rights of spouses, domestic partners and illegitimate children. Yet Beckert’s empirical examination of both controversies and legal rules about inheritance suggests that much more was at play in this evolution than a growing sacralization of the individual as an abstract category. Far from privileging the claims of increasingly equal individuals above everything else, the social regulation of inheritance shows evidence that modern societies also strive to balance the interests of their ‘communal’ institutions by adapting, in particular, to transformations in the role of the state (e.g. the latter’s involvement in social policy) and in the structure of families (e.g. the movement from lineage to nuclear structures). The transformation of ‘social solidarity’ should thus be thought of in these much broader terms.

How societies come to regulate wealth transfers also depends closely on the structure of their discursive field about inheritance and, beyond it, on each country’s political institutions and culture. Hence, the book’s second major contribution is its comparative analysis. Here, Beckert analyses inheritance discourses and practices as somehow revealing implicit tensions within the social order, between individual freedom and equality, on the one hand, and between individual and community on the other. Beckert recognizes perceptively that these tensions may never be fully resolved, and that different aspects of inheritance law may articulate contradictory elements of the discursive field. Americans, for instance, are most concerned about not only individual free will, as evidenced by their weak limitations on testamentary freedom, but also meritocracy and equality of opportunity, as evidenced by the higher nominal progression of the estate tax in that country. As for Germans, their main dilemma throughout (as revealed, for instance, in their attitudes towards entail or testamentary freedom) has to do with the proper way to support ‘community’ against the

¹This book also strongly echoes Ann Swidler’s view of culture, as expounded, for instance, in *Talk of Love* (2003). In this work, Swidler shows that the very different and seemingly contradictory discursive justifications middle-class Americans provide for their love relationships (e.g. faith, utilitarian benefits or expressive authenticity) still revolve around a common frame of voluntarism which allows people to reconcile the cultural imperative of commitment as expressed in marriage with the no less powerful cultural demands for personal autonomy and fulfilment.

dangers of an unbridled individualism. But this immediately creates a conundrum: should the family take precedence over the broader society, or should the reverse happen? Here again, different aspects of the law were tailored so that both communal orders can be sustained at the same time. Thus, the abolition of entailment was delayed until after World War I while social policy considerations loomed large in justifications for inheritance tax. In France, finally, revolutionary rhetoric strongly supported formal political equality in the family as the building block to political equality in the broader society. This justified both a strict partitioning of estates among heirs and the absence of exemptions from the estate tax; yet such a policy could also find itself in sharp contradiction with economic efficiency and place an especially high burden on large families. Beckert takes great pains to be specific: while the protection of the family figures prominently in both German and French discourses about the transmission of wealth, its articulation in the two countries is very different: oriented towards the collective unit as an intermediate social order in the first case, and more towards its constituent parts in the other.

Through its in-depth analysis of the discursive conflicts from which the social regulation of inheritance emerged, *Inherited Wealth* demonstrates better than any comparative book I know of ‘the correspondence between the structure of the normative problematization [...] and its actual institutional expression’ (p. 283). By doing so, it reaches new levels of sophistication in the analytical demonstration of the independent role of culture in structuring economic institutions. It also helps clarify and explain the *effects* of these institutions, by providing valuable information on how people in different countries understood the problems posed by intergenerational wealth transmission and the instruments they saw as most legitimate to address these problems. Did they aim to make society more equal? To contribute to harmonious intra-family relations? To protect individual free will?

Of course, an exercise such as this book review almost implies that a few small quibbles must be raised. Most regrettable is the fact that, in a book whose central (but never fully defined) concept is that of ‘discursive field’, the author completely overlooks the potential benefits to his analysis that could have been derived from the theories of Pierre Bourdieu and Michel Foucault. Had Beckert paid more attention to the latter, two fundamental elements would have appeared. First, Foucault’s insistence that social reality is, in fact, constituted in discourse provides, I think, a very natural justification for Beckert’s intellectual enterprise. Second, following Bourdieu, the sociological underpinnings of the structure of each discursive field could have received more attention. A discursive field is not simply a flat surface for different ‘logics of justification’ to express themselves (Boltanski and Thévenot, 2006);

rather, it is itself powerfully structured by institutions and broader (i.e. political, economic) patterns of social relations.²

But are these references really necessary? Probably not: they would mainly highlight the chicken-and-egg nature of the theoretical question being addressed here, or the eternal—and unsolvable—dilemma between culture and social structure. Wisely, Beckert chooses to focus on a piece of the problem and carry out a precise and, therefore, deeply satisfying demonstration. From that point of view, *Inherited Wealth* is perfectly self-sufficient. It manages to navigate its own theoretical path with uncompromising skill, intelligence and nuance. Max Weber would not have been ashamed to have written it.

References

- Boltanski, L. and Thévenot, L. (2006) *On Justification. Economies of Worth*, Princeton, NJ, Princeton University Press.
- Bourdieu, P. (1996) *The Rules of Art: Genesis and Structure of the Literary Field*, Stanford, CA, Stanford University Press.
- Durkheim, E. (1982) *The Rules of Sociological Method*, New York, NY, Free Press.
- Gorski, P. S. (2006) 'Bourdieuian Theory and Historical Analysis: Maps and Methods'. In Gorski, P. (ed) *Bourdieuian Theory and Historical Analysis*, Unpublished Manuscript.
- Swidler, A. (2003) *Talk of Love. How Culture Matters*, Chicago, IL, University of Chicago Press.

Transfers of wealth *causa mortis*—interests and comparative economic sociology

Philippe Steiner

Centre d'Études Sociologiques de la Sorbonne, Université de Paris—Sorbonne (Paris IV), Paris, France

Correspondence: philippe.steiner@paris-sorbonne.fr

Jens Beckert's book (Beckert, 2008) starts from a Durkheimian hypothesis according to which law is considered as a proxy for the social solidarity at

²See, for example, Bourdieu (1996) for a particularly nice example of the genesis and change of the literary field, and Gorski (2006) for a systematic elaboration of the use of Bourdieusian concepts in comparative and historical analysis.

work in a given society. Then, he takes into account the linguistic turn, so important in contemporary social sciences, in order to supplement the Durkheimian approach by considering the legitimating processes thanks to which social solidarity became a part of the institutional setting in France, Germany and the U.S. Beckert demonstrates carefully how values shaped the debates on the transfer of wealth *causa mortis* in the three countries over two centuries—in this respect, the book could be read as an essay in the manner of Boltanski and Thévenot's approach to the sociology of critique (Boltanski and Thévenot, 1991). Values are related either to the political underpinnings of the nation (equality of opportunity in the U.S., social equality in France), the role of the family (particularly important in Germany) or the property rights of the individual (equally important in all three countries). Differences with respect to values and norms do not prevent similarities between the three countries, notably during the twentieth century when inheritance became a source of income tax for the welfare state. Beckert shows convincingly that whatever the differences in the nature of the tax (estate tax or inheritance tax proper) and the legitimating process, there were strong similarities in the evolution of the rate of taxation, with a sharp decline of the tax rate in the last few decades.

In a Durkheimian sense, Beckert's book is a study about the way people—mainly politicians and experts—think and feel; but, one may ask, what about the way laypeople feel and act? What about the way political discourse and its outcomes (the law) are implemented? Beckert does not consider this dimension of the issue, and it could be useful to gather some evidence related to French history showing significant discrepancies between political discourse and social behaviour. As late as the middle of the twentieth century, while studying peasant families living in the south-western part of France (Béarn), Pierre Bourdieu mentioned the fact that, contrary to the *Code civil* requiring the equal treatment of children in terms of inheritance, land and agricultural wealth were concentrated in the hands of the eldest son (Bourdieu, 1962 [2002]). Jean-Pierre Hirsch's study of the Lille textile trade in the nineteenth century explains how merchant and industrial families managed to keep industrial assets within the family thanks to contracts between the spouses carefully written to prevent wealth from being divided, whether through a divorce or the death of the owners (Hirsch, 1992). Finally, as evidenced by recent decisions at the Ministry of Finance and in Parliament, conservative French politicians are weakening the role of the law of bequest by permitting *inter vivos* transfers of wealth free of tax. As a consequence, notably after Sarkozy's intervention in 1994, the amount of wealth donated was on par with the amount of wealth transmitted *causa mortis*. This means that in important respects, the law of bequest should be considered along with other laws since the latter may significantly impinge on the functioning of the former.

The book's arguments are convincing, and I have no objection to its major findings. The exception comes with a disagreement on the place given to the State in the French case. Debates on inheritance and the law of bequest take place between three main forms of justification: the individual and his economic interests, the interests of the family and the social interest. This is one major finding of Beckert's study, and my own study on this issue in nineteenth-century France agrees with it (Steiner, 2008). However, is the social interest more prominent in France than in the two other countries? The textual analysis of parliamentary debates in the nineteenth century does not show a dramatic difference between France and Germany where family is concerned; and when the issue of taxation comes in, Beckert grounds his conclusion in a single quotation from a liberal economist according to whom taxation would jeopardize the growth of national wealth. At the least, this characterization of the French situation would require further evidence in order to stand on firm ground.

According to my reading, the most exciting aspect of the book is its invitation to develop a comparative and historical approach in economic sociology. Beckert's study is a major achievement in the sense that it retraces the parallel evolution of a given institution in three countries. It makes clear that three interests are involved, with different emphasis placed upon them in each country. The individual interest was prominent in the U.S., the familial interest in Germany and the national interest in France. I take this distinction to be a simple but powerful point of departure for an analytical and comparative approach to transfers of wealth *causa mortis*.

The law of bequest is only one social device that is at work when the transfer of resources happens after the death of the owner. Life insurance contracts are now the most common such transfer of resources. I would also add organ procurement in the case of transplants since human body parts can be considered as social resources required in a situation of final-stage renal failure or to extend significantly the life of people suffering from heart, lung or liver failure. To be sure, the amount of wealth transmitted through bequest and donation far exceeds the amount of wealth and resources transmitted by the two earlier-mentioned social devices. Nevertheless, it is useful to examine the three of them together, comparing how the different interests balance each other out in the different settings.

First, it should be clear that surgeons have for some time been seeking stable social institutions in order to know how and when it is possible to harvest organs. As death plays a crucial role in the process—putting aside living donations, which are important only in a limited number of countries and significant only for kidneys, somebody must die before a transplant occurs—it is not a surprise that the law of bequest was considered as a legal resource when transplantation reached the status of a medical service and when it became clear that health systems could not bear the skyrocketing costs of dialysis. In this respect, the

French presumed consent law (*loi Caillavet*) was a legal fiction similar to the fiction at the root of the French *ab intestat* law of bequest: it stated that French citizens were presumed to have agreed to the harvesting of their organs unless they had made clear that they objected to it—just as the father was supposed to have loved his children equally so that the wealth was to be divided in equal portions. However, familial interest does play a role since the surgeons are required to ask members of the family of a brain-dead person if they have information about his or her view on organ procurement. Individual, familial and social interests are at work in this case as they are in the law of bequest studied by Beckert. The same can be said when life insurance is concerned, as it was nicely shown in Viviana Zelizer's path-breaking study of this institution in the nineteenth-century U.S. (Zelizer, 1979 [1988]). This is the axiological framework within which *causa mortis* transfers of resources occur.

The subject can be examined further once one notices that equilibria between the three interests differ in bequest, insurance and transplant: the law dominates in the first case, the market in the second and a set of strongly connected organizations in the third.³ In the case of organ transplants, legislators have difficulty with individual interest. First, the dead person can in no way benefit from the transfer of his or her body parts to living patients; second, all empirical studies have shown that the vast majority of people living in countries in which organ transplants are performed as a common therapeutic practice fail to make clear their wishes about the harvesting of their organs. As a consequence, familial interest plays an important role. Unfortunately, this situation does not provide the quantity of human body parts necessary for patients needing a new organ. Too often, grieving families decline the request for organ donation. The situation does not differ whether the country has enacted presumed consent law or not. Empirical enquiries have demonstrated that *contra legem* surgeons do not proceed to harvest organs from the dead body when family members object even when a presumed consent law exists. Thus, the familial interest and the social interest are in conflict.

It is not necessary to go into the details of this issue. It is, however, useful to consider some recent developments in the light of the three interests and the legitimating discourses in the U.S. and France. Both countries are making efforts to increase the volume of body parts available. Both countries are thus confronted with familial interest and both try to circumvent it, but they do not follow the

³Time constraints and legal requirements are most stringent: a heart must be grafted to a patient no longer than 3–4 hour after harvesting, and the whole procurement process occurs under the supervision of a centralized organization (UNOS in the U.S., l'Agence de la biomédecine in France, etc.). Since there is a ban on markets for organs, the production and distribution of body parts are managed by a set of tightly coordinated organizations.

same path. In the U.S., to date, 43 states have enacted laws stating that families cannot reverse the wish of a relative who had stated his or her desire to be an organ donor. In France, the legislative debate that ran from 2002 to 2004 ended with a more stringent presumed consent law, according to which surgeons had to inform the family of their intention to harvest organs and were allowed to proceed unless they were told that the dead person was opposed to it. Thus, legislation in the U.S. is moving in such a way that the familial interest loses its strength to the benefit of the social interest in the name of the individual interest. The same outcome is aimed at by French legislation, with a strengthening of the grip of the social interest through a stricter application of the presumed consent law.

To conclude, similar discursive legitimizing processes (*ways of thinking and feeling* at the level of the medical profession and politicians) are affecting the behaviour (*ways of feeling and acting*) of laypeople confronted with the issue of transfer of resources *causa mortis*. These transfers entail an unstable equilibrium between three interests, and Beckert's study of the law of bequest could be expanded to cover other forms of *causa mortis* transfer of resources as well. Moreover, the interplay between the three interests must be studied both historically, since the evolution of legal decisions is related to the implementation of precedents, and analytically, in order to understand the unstable equilibria within which these devices must function.

References

- Beckert, J. (2008) *Inherited Wealth*, Princeton, NJ, Princeton University Press.
- Boltanski, L. and Thévenot, L. (1991) *De la justification. Les économies de la grandeur*, Paris, Gallimard.
- Bourdieu, P. (1962 [2002]) *Le bal des célibataires. Crise de la société paysanne en Béarn*, Paris, Seuil.
- Hirsch, J.-P. (1992) *Les deux rêves du commerce. Entreprise et institution dans la région lilloise (1780–1860)*, Paris, Edition de l'EHESS.
- Steiner, P. (2008) 'L'héritage au XIX^e siècle en France. Loi, intérêt de sentiment et intérêts économiques', *Revue Économique*, **59**, 75–97.
- Zelizer, V. (1979 [1988]) *Morals and Markets. The Development of Life Insurance in the United States*, New Brunswick, NJ, Transaction Books.