

ble epistemological entity.⁶⁷ Developmental psychology emerged concurrently with similar approaches, subdividing the course of life into distinct stages assumed to be significant for the understanding of individual genesis.⁶⁸ Ethnology at this time also discovered age groups (“age-sets,” “age-classes”), which gradually superseded the hitherto prevailing concept of kinship systems in part.⁶⁹

(2) The second part of this part project delineates along historical lines how age groups were increasingly claimed as agents of social and cultural change, and how they were progressively conceived as competing groups with conflicting interests in particular since the 1940s and 50s. Sociology, which emerged during this period, has persistently called upon this scheme to explain social processes. Within sociological theory, this trend becomes evident in Talcott Parsons’s attempt to allocate “roles” and “functions” not merely to individuals but also entire age groups.⁷⁰ Another aspect of this trend concerns the gradual convergence of the classic notion of “generation” with the newly established “age groups.”⁷¹

(3) The central part of this part project explores the gradual emergence of *thinking in generational terms in economic analysis* since World War Two. The Nobel laureate Paul Samuelson’s “Overlapping Generations Model” is paradigmatic here.⁷² The economics of “intergenerational transfer” is another case in point of how economics today not only assumes a transfer of positive wealth across generations but even employ concepts like the “inheritance of inequality.”⁷³

(4) *Interdisciplinarity*: The history of the concept of age-groups involved factors beyond the borders of economical theory and sociology. These include (a) the *familiarisation of economics*: the generationalisation of economics is couched largely in terms relating to genealogical circumstances, behind which lies a “familiarisation” of economic relations within society, while a reverse order of the “family” in terms of general economic principles appears in parallel (“the economics of the family”).⁷⁴ Furthermore, (b) the *interplay between economic theory and demography* is decisive: the current debates on gen-

⁶⁷ Pearl 1925; Lotka 1925; Pearl 1939.

⁶⁸ See Spranger 1921; Wexberg/ Adler 1926; Bühler 1933, 1934.

⁶⁹ See Radcliffe-Brown 1942. For a rare early example see Schurtz 1902.

⁷⁰ See Davis 1940; Parsons 1942; Eisenstadt 1956.

⁷¹ See Benedict 1942.

⁷² See Allais 1947; Samuelson 1958. See also “Generational Accounting” in Auerbach 1991; Koltikoff 1992.

⁷³ See Loury 1981; for a sociological perspective, see Jencks 1979.

⁷⁴ See Becker 1991.

erational justice and the intergenerational contract combine economic-mathematical models (for example, “overlapping generations”) with demographic data for the purpose of forecasting the future. This method contains a circular argument, at least when considered historically, since the model itself was devised on the basis of specific assumptions about generational dynamics. Equally, (c) the *interplay between biology and demography* also shows that demographic data rests on an array of assumptions about how populations grow “in nature” (most recently, such growth is subject to systematic “biodemographic” investigation, a new experimental science). Behind such research lies the endeavour to identify “a universal set of population principles,”⁷⁵ predominantly on the basis of experimental models of other organisms. Finally, within (d) the *interplay between economic theory and ethnology*, the analytical scheme of generations and age groups is often projected onto “primitive” societies in order to thus generate hypothetical economic-demographic universals, such as about inheritance or savings.⁷⁶ Defining macroeconomic theory in temporal terms is suggestive in this regard, whereby intergenerational dynamics serves as the criterion for such temporalising.⁷⁷ Indeed I can be argued that “Generational accounting” has substantially altered the notion of the *homo oeconomicus*: what was once a timeless figure has become an ageing subject belonging to a particular generation.

PP 3: “Social and Economic Developments and their Impact on the Law of Succession”

(Prof. Dr. Peter Breitschmid, Law)

Statutory inheritance law, determined by the late nineteenth-century concept of the family, has proved extraordinarily stable (and stabilising). Notwithstanding proven basic principles, its parameters have changed considerably both at an individual level (such as the enhanced significance of social contacts entered to at liberty rather than “instilled,” a dramatic increase in life expectancy, altered attachment behaviour, lifelong education) and overall (such as spatial-ideological mobility, improved health and social conditions, responsibility shifts from the individual / family to the state). Against the background of such changes, and the resulting claims to individuality and planning

⁷⁵ See Carey/ Vaupel 2005, p. 626.

⁷⁶ See Walsh 1983; for the ethnological perspective, see Bernardi 1985.

⁷⁷ Today, the issue of “overlapping generation” is considered part of the larger field of “intertemporal macroeconomics.” On this, see Azariadis 1993.

volition, what were hitherto hardly debated inner-family accomplishments, such as caring for relatives, are now either increasingly monetised or questioned altogether.

This part project considers the impact of these developments on inheritance law (also known as the law of succession). While the right to a compulsory portion as well as partial aspects of the (subsidiary) statutory order of succession are currently under jurisprudential review on the one hand,⁷⁸ it is noteworthy on the other that in legal reality – also in view of uppermost divorce rates - favouring spouses has remained a key concern (even in same-sex partnerships, considered the “most modern” form of life) and that the scope available for testamentary capacity is hardly being exhausted.⁷⁹ With a view to reconciling these theoretical and practical observations, the project reconsiders inheritance law – not to reconceive it from scratch but rather to realign it with altered framework conditions:

(1) With regard to terminology, the legal *terminus technicus* “inheritance law” (the title of the fifth book of the German Civil Code BGB) raises the question whether this does not rather denote “the rights of the heirs” or “a right or entitlement to inheritance” in common usage, although it effectively refers to the transmission of duties and rights within statutory universal succession, that is, the succession of those persons deemed responsible either by the decedent / testator or the law. In conceptual terms, allowance must be made for inheritance as an obligation rather than a privilege, often leading to the renunciation of succession rights.⁸⁰ Inheritance law is not only a source of wealth, but also a debtor risk, whose macroeconomic significance has hardly been grasped and whose legal implications, in particular for smaller and medium-size businesses, needs to be clarified.

(2) Higher life expectancy in a globalised, mobile society has also affected relationship behaviour. On account of their various phases, constraints, and opportunities, contemporary life courses cannot sustain the concept of “status” whereas inheritance law is determined largely by the status accorded to individuals by the registry of births, mar-

⁷⁸ Most recently, among others, at the 64th Conference of German Jurists in Berlin in 2002, see esp. Martiny/ Fuchs 2002.

⁷⁹ This also has to do with the particular fiscal consequences, since these severely penalise claims to testamentary freedom. It would be worth considering at least sanctioning individual arrangements made by the decedent in terms of staggered tax bands.

⁸⁰ See §§ 1942ff. BGB (German Civil Code): Renunciation of Succession Rights (Ausschlagung einer Erbschaft).

riages, and deaths. Should this be upheld? And if so, how consistently? What are the views of those concerned, and what alternative action could they take?

(3) Project findings will help answer the initial question about adjusting statutory inheritance law to non-status relations. They will also reveal that status is not a privilege *per se* (in that the coincidentally final status at the moment of death is not singularly effective) but rather that various “circumstances” (in the sense of life phases) bear upon the statutory transfer of assets (and liabilities) in the form of encumbrances and opportunities. Whereas marriage law has long been based on a single monogamous life phase, inheritance law is a “photo finish” registering an accidental point in time rather than mapping the alignment or matching of all relevant life events in slow motion. Solutions need to be developed to resolve these matters.

(4) Finally, this part project inquires into how the formation of individual volition is safeguarded in an individualised society. While the law relies largely on the independent functioning of a family network, there is reason to reconsider the legal framework of family-internal agreements and contracts (such as those involving close emotional ties between individuals, akin to family bonds). The significance of such arrangements has grown whilst accentuating their risks. Which claims to information can be made concerning transactions with testators prior to decease, both with regard to their financial circumstances and future plans?



(5) Another question concerns to what extent decedents should be protected against themselves, such as falling victim to legacy hunting, or where elderly care providers, business associates, or staff members, to whom the decedent owes quality of life in the

last stages, are favoured in statutory terms.⁸¹ Should personal feelings clash with family or public interests, it is equally a matter of considering whether or not aged persons are *compos mentis*, that is, capable of undertaking a balanced assessment of their feelings, or rather to what (quantitatively limited) extent they are considered thus in each individual case, and whether gradual testamentary capacity could be deduced therefrom, and which consequences such considerations would have for the involvement of aged persons in legal affairs.

PP 4: "From Generation to Generation: Family Business Succession" (Prof. Dr. Martin Kohli; Nicole Schmiade Dipl.-Soz., Isabell Stamm M.A., Sociology)

Considering the significant economic weight of such companies,⁸² family business succession from one generation to the next is both a key research area in business studies as well as a popular subject of self-help and how-to manuals.⁸³ Not that such attention exhausts its significance. For the social sciences and cultural studies, family business succession is a prism spotlighting various quintessential questions concerning generational succession, inheritance, social continuity, and innovation. Particular attention should be paid to how those involved negotiate terms, conditions, and concepts (age, generation, inheritance). These questions are linked to other part projects and associate them with a sociological-empirical dimension. In sociology, the family business stands crosswise to customary assumptions about the structure and culture of contemporary societies. Two paradigmatic processes at the heart of sociological theories of modernisation – functional differentiation and individualisation – apply neither to the family-business linkage nor individuals whose life planning attains fulfilment in this linkage.⁸⁴ On the other hand, many current approaches make evident that many a cultural tradition could indeed contribute to resolving unresolved succession difficulties within these two processes ("tradition as a resource"). Research on intergenerational family transfer shows that whereas parents tend to (altruistically) direct *inter vivos* transfers towards meeting their children's respective needs, the highest (and effectively prevailing)

⁸¹ See also the controversial ruling of the Federal Supreme Court of Switzerland (BGE 132 III 305/315) in the matter of the estate of the widow Kirchbach and Dr. Stauffacher, her solicitor and beneficiary. See Peter Breitschmid's discussion of this case at <http://www.successio.ch>, 2007/ 1.

⁸² See Freund 2004.

⁸³ Köppen 1999; Klein 2004.

⁸⁴ Büttner 2002.