

A New Central Principle for Inheritance Law?

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Felix B. Chang, *How Should Inheritance Law Remediate Inequality?*, 97 **Wash. L. Rev.** __ (forthcoming, 2022), available at [SSRN](#).

In United States inheritance law, we typically listen to what the person with the money wants. In his provocative essay, *How Should Inheritance Law Remediate Inequality?*, Professor Felix Chang challenges this bedrock principle of freedom of disposition and proposes a new vision of inheritance law that centers intergenerational economic mobility instead. By linking trusts and estates to other fields, such as business and tax law, this piece raises a host of interesting questions about whether inheritance law can truly address societal wealth inequality.

Chang starts by tracing the twin histories of inheritance law scholarship and estate tax policy. He starts in the 1970s, when the estate tax was relatively expansive, and the seminal scholarship of Professor John Langbein was just taking off. Much of Langbein's work concerns how to improve the inheritance law system by making it more faithful to testamentary intent. However, a lot has changed since the 1970s. The group Chang describes as The Repealers—a coalition of the ultra-rich, anti-tax activists, and Republican politicians—has largely been successful in significantly weakening the estate tax, as now a significant amount of intergenerational wealth escapes untaxed. At the same time, a new vein of critical legal scholarship has arisen in the legal academy. It is more concerned with questions of distribution¹ and notably more skeptical about promoting testamentary intent, at least when it serves to promote dynastic wealth and tax evasion.

The essay's basic descriptive thesis is that while inheritance law scholarship has changed its focus to inequality, the law of trusts and estates itself has not yet caught up. Chang's normative thesis is that it should. In other words, the central principle of inheritance law should shift from the freedom of disposition to intergenerational economic mobility, which Chang defines as "the ability of children to move beyond the economic station of their parents." (P. 3.) This would transform inheritance law into a "safety net" that might curb the excesses of the related fields of business and tax law, which allow the creation of great wealth but also great wealth inequalities. Chang sees these inequalities as normatively undesirable because they both constrain individuals' life opportunities and lead to political instability.

The role of a progressive inheritance law, on Chang's view, is to prevent these wealth inequalities from wholly being transmitted to future generations. He is careful to note that he is primarily concerned with intergenerational disparities in wealth rather than income, the latter of which he finds to be more easily defensible. As a practical matter, he believes that legal rules should both restrain the hyper-rich and boost low-income households as a way to promote "mean regression." This theoretical framing, in turn, brings together otherwise disparate calls for reform. For example, at the higher end of the wealth spectrum, this means targeting dynasty trusts, while at the lower end, it entails facilitating estate planning and promoting the transfer of assets between generations of low-income households. The tricky part, which Chang acknowledges, is that certain legal regulations may have unintended but deleterious consequences, particularly as the wealthy engage in strategic behavior in response to more restrictive legal rules.

Working out all of the details of an inheritance law focused on intergenerational economic mobility, however, is not the goal of the essay. Instead, it is to bring together the variety of legal fields that focus on wealth generation and transmission and to suggest a theoretical alternative to the policy and scholarly status quo. On that, Professor Chang has unquestionably succeeded.

1. See, for example, my own piece on these issues: Alexander A. Boni-Saenz, [Distributive Justice and Donative Intent](#), 65 **UCLA L. Rev.** 324 (2018).

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