

Testation, Empiricism and Gender Equality

Author : Paula Monopoli

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Daphna Hacker, *The Gendered Dimensions of Inheritance: Empirical Food for Legal Thought*, 7 **J. of Empirical Studies** (forthcoming 2010), available at [SSRN](#).

There is a distinct lack of empirical research in the area of inheritance law. Domestically, inheritance law is the province of fifty different states. Thus, conducting an empirical study of testamentary patterns is a painstaking process that requires fieldwork in multiple probate courts, often consisting of a tedious review of individual probate court case files or records. And among the studies that have been done over the years, few have focused on the role of gender in our field. That gap is the focus on [Daphna Hacker's](#) new article, *The Gendered Dimensions of Inheritance: Empirical Food for Legal Thought*, in the [Journal of Empirical Legal Studies](#), a peer-edited, peer-refereed, interdisciplinary journal. Hacker is an Assistant Professor at the Buchman Faculty of Law, Tel Aviv University where she is also a faculty member in the NCJW Women and Gender Studies Program.

In her article, Hacker identifies four historical trends which have created the conditions under which women may exercise broader freedom to bequeath property at death. These include laws which allowed women to own property in their own right, the abolition of rules that prevented women from inheriting property, the enactment of laws allowing women to be full participants in the labor force and the trend toward recognition of marital property rights in both spouses. After identifying these trends, Hacker poses the following questions which empirical research could help us answer if it were more widely conducted: Do women take full advantage of this power to bequeath property? Do they use this power to bequeath wealth as they wish? Are there gendered dimensions to intestate succession? And are there differences between the structure and content of men and women's wills?

Hacker reviews twenty-three studies that offer some answers to those questions because they include gender as a focus, including her own empirical study. (Hacker conducted a qualitative and quantitative study of the inheritance procedures of the Jewish population in the central region of Israel in which she examined 743 inheritance files and conducted in depth interviews with litigants and lawyers involved in probate disputes.) The premise of her article is that gender matters in inheritance but that we know surprisingly little about its impact since it has received scant attention as an area of empirical research.

In her review, Hacker draws conclusions from the findings in the twenty-three studies including the observation that wills are more likely to be challenged when daughters rather than sons are beneficiaries. She offers normative suggestions about reform that take into consideration the tension between equality and some of the cultural differences in inheritance law, including the preference for sons as heirs. Empirical work can have a powerful effect on policy. A prominent illustration of this observation in recent years is Rob Sitkoff and Max Schanzenbach's study, [Jurisdictional Competition for Trust Funds: An Empirical Analysis of Perpetuities and Taxes](#), investigating whether capital moves from one state to another as a result of abolition of the rule against perpetuities. The migration of capital that they documented offers support for those who argue that a state's economy benefits from such legislative change. I would agree with Hacker that the existence of empirical work is crucial for those interested in achieving gender equality through policy reform at both the domestic and international levels.

In addition to providing an important review of empirical studies available in our field, Hacker also provides a comparative view of inheritance law globally which also suffers from a lack of attention in the existing literature. Finally, she notes the importance of the expressive dimension of inheritance law in terms of telling us much about spousal, inter-generational and other family and community relationships. In each of these ways, she persuades the reader of the importance of conducting more empirical work in the area.

The only flaw in the structure of the article is its wide scope. Hacker could have easily split the piece into two separate articles. Her own empirical study of gendered patterns of inheritance generated through a review of Israeli family court records gets a bit lost in the overall review of the twenty-three studies. Her study is timely and interesting and I would have liked to have seen it be the focus of its own article. Apart from that minor criticism, Hacker has done an very useful service for inheritance law scholars in pulling together all of these studies into one place and demonstrating how much work we still have to do. At a time when legal scholarship is focused increasingly on empirical work and methods and on comparative approaches in a global framework, inheritance law scholarship would do well to move further in these directions.

As Hacker says, “the scant empirical investigation of the possible gendered aspects of inheritance is . . . surprising, although typical of the general sociological neglect of inheritance.” In her very interesting new article, Daphna Hacker takes a significant step toward remedying that neglect. She has indeed given us much food for thought about gender differences in inheritance patterns, comparative approaches to inheritance law and the many rich empirical questions in our field that remain to be studied in the years to come.

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