Wealth, Privilege, Power, And Opportunity

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Allison Anna Tait, *Inheriting Privilege*, 106 **Minn. L. Rev.** __ (forthcoming 2022), available at SSRN.

Over one's lifetime, advantage processes have a cumulative and potentially significant impact on inequality. The notion of cumulative advantage, or behavior processes whereby wealth continues to fall into the hands of individuals based upon how much they have already accumulated, is a concept to which many labels are applied: preferential attachment; "the rich get richer"; the Matthew effect. Most law school courses on trusts and estates consider (to some extent) the privilege, power, and opportunity that flows from economic wealth. Conversely, inherited social and cultural capital create advantage processes that are arguably no less significant, driving behaviors that produce tacit economic benefits—the parent who pays for extra tutoring so that a child may outperform peers on an entrance exam; the professional able to develop an instant sense of rapport and connection with other successful professionals; the job candidate who comports herself with high cultural knowledge (*au courant* but appropriate attire, elegant table manners, knowledge of fine arts, broad functional vocabulary). Although the intergenerational impact of inherited cultural capital is fascinating and relevant as an advantage process, the implications have been largely overlooked by legal scholars contemplating inheritance frameworks. *Inheriting Privilege* by Allison Anna Tait considers the family trust as a mechanism for intergenerational transfer of privileged social standing and cultural hierarchies.

The article encourages us to think more broadly about patrimonies: family resources usually considered by legal scholars in the narrow context of financial assets. Social and cultural capital is manifest within the patrimonies of the wealthy, with season tickets to the polo club, country club memberships, fee-paid legacy status within initiation-based social clubs, or box seats to performing arts events. Cultural objects, heirloom possessions, and shared rituals may also be part of the patrimony. Notably, treasured collectibles may sometimes be a part of *both* the economic patrimony and the family's cultural capital. Trust beneficiaries may have access to priceless antiquities without ever investing capital to purchase them ("only middle-class people buy furniture (because upper-class people inherit it)"). Access to high-value antiquities, artwork, and social memberships—or any of the conspicuous markers of elite white culture—is a mantle of privilege and one inherits unearned opportunities when cloaked with this mantle. Professor Tait's argument that young people are paid more and promoted far earlier when they possess a wealth of social capital is thoroughly supported.

The family trust may facilitate control over a patrimony for centuries. The structural flexibility of a trust arguably allows it to operate as both sword and shield when it comes to protecting the capital within the patrimony. The power of a trustee to treat the trust principal as sacred, allowing distributions only from income generated by the principal, allows wealth to be preserved for as long as the state's perpetuities will permit. Settlor-imposed restrictions that micromanage spending may be so explicit as to place the trustee in the position of substitute parent to the beneficiaries. And with a properly drafted trust, the assets within the trust may not be reached by generations of beneficiaries' creditors. Professor Tait takes examination of family trusts a step further and considers the specific ways in which structural flexibility allows social and cultural capital to be protected and preserved: restrictions may be placed upon the trustee to preserve family assets and preclude their sale or disposition (e.g., vacation homes, farm properties, closely-held businesses, art collections, family heirlooms); a statement of values may be incorporated in the preamble of the trust, as a way of setting forth some sense of shared identity among family members; and, wielding both carrots and sticks, incentive provisions may be incorporated into a trust to encourage socially productive behavior, specific educational outcomes, or mandate philanthropic involvement.

Professor Tait notes that seven of the twenty wealthiest families on the Forbes Richest 400 list have inherited intergenerational wealth that was “strategically transferred . . . from one generation to the next through a complicated system of trusts, charitable foundations, and corporate entities.” She observes that to the extent trusts play an important role in preserving and concentrating wealth for an elite segment of society, conversations about structural inequity must necessarily involve trust law. This well-researched journey through the trust as a “unique catalyst of inequality” shifts gears and then reimagines the family trust as a tool for equality. Professor Tait contemplates the use of “citizen trusts” to address the needs of historically marginalized or vulnerable persons or communities. By way of a model, the article considers the First Nation Settlement Trusts in Canada, which are currently used to manage, preserve, and protect settlement funds received by displaced aboriginal communities, and the Alaska Permanent Fund, which has grown from $900 million in 1980 to $60 billion in 2017 and is used to support the community-at-large in Alaska.

This type of scholarship serves as a departure point for important conversations that need to happen in the classroom about the benefits and disadvantages arising from the plasticity of the family trust, and the ability of the trust to preserve intergenerational wealth and privilege. Professor Tait has also made an extraordinarily important contribution in helping to frame a pivot: harnessing the advantages of the trust enjoyed by the wealthy to advance community-supported causes. An article is a noteworthy contribution when it leaves us with new thoughts and ideas of our own, and when we are inspired to incorporate those ideas into our classes.

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