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UDC: 347.65/.68(410+73)
347.68(73)

# KARAKTERISTIKAT THEMELORE TË SË DREJTËS SË TRASHËGIMISË NË VENDET ME SISTEMIN ANGLO-AMERIKAN, ME THEKS TË VEÇANTË NË SHTETET E BASHKUARA TË AMERIKËS DHE LIRINË E TESTATORIT

# ОСНОВНИ КАРАКТЕРИСТИКИ НА НАСЛЕДНОТО ПРАВО ВО ЗЕМЈИТЕ СО АНГЛО-АМЕРИКАНСКИ СИСТЕМ, СО ПОСЕБЕН АКЦЕНТ НА СОЕДИНЕТИТЕ АМЕРИКАНСКИ ДРЖАВИ И СЛОБОДАТА НА ЗАВЕШТАТЕЛОТ

# BASIC CHARACTERISTICS OF INHERITANCE LAW IN COUNTRIES WITH THE ANGLO-AMERICAN SYSTEM, WITH SPECIAL EMPHASIS ON THE UNITED STATES OF AMERICA AND THE FREEDOM OF THE TESTATOR

**Abstract:**

The world's legal systems show great differences in the regulation of inheritance, reflecting their historical traditions and philosophies on property and family. The common law system, developed in England and later spread to the USA, is based mainly on judicial precedents and the principle of testamentary freedom, while the civil law system of the continental tradition is based on written codes and guarantees the necessary share of the heirs.

The development of inheritance law in the USA describes a particular process, from the colonial period to the present day, moving from practices inherited from England towards a model with a strong emphasis on individual freedom. After the abolition of primogeniture

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and the establishment of gender equality in inheritance during the 19th century, the 20th century brought a consolidation of the position of the spouse and a further liberalization of wills.

Today, the USA is an exception compared to most other countries, as it allows the testator almost absolute freedom in the distribution of wealth, without recognizing forced shares for children, with the exception of Louisiana which preserves elements of the French civil system. This model, based on individualism and the right to property, has been the subject of extensive academic debates, with some authors defending it as an expression of personal freedom, while others criticize it due to social consequences and the violation of family ties.

Comparative analysis shows that the USA represents a unique direction in international inheritance law, focusing on testamentary freedom in the face of forced protection of heirs.

***Keywords:*** *common law, civil law, inheritance, testamentary freedom, United States of America.*

## 1. The colonial period and legacy in the USA

The colonies adopted English inheritance law, largely replicating the manner of conveyance of property found there, including the power of a testator to dispose of real and personal property at will, subject to regulation by statute. By 1720, while the colonies generally relied on the common law system regarding inheritance, most had adopted statutes governing the distribution of personal property and had established procedures for the formal probate of wills and administrations (since they lacked ecclesiastical courts to handle formal probate like those in England). [2] In some cases, colonial legislatures passed statutes to change the common law system in terms of who should inherit and the limitations on testamentary dispositions. A majority of the colonies rejected primogeniture and passed statutes to allow younger sons and daughters to share in the decedent's estate.

As for widows' rights, most colonies followed contemporary practice by giving testators discretion over personal property, although

[2] Carol Berkin, Christopher Miller, Robert Cherny, James Gormly- Making America- A history of United States, Legal Reforms page 150, 1967, a book.

two states, Virginia and Maryland, allowed widows to claim a share of the decedent's personal property, regardless of the testator's will.[3]

## 2. The post-revolutionary period and legacy in the USA

After separation from England, most states adopted statutes codifying provisions based on the common law system, while also making some changes to English law and procedure. The larger states abandoned primogeniture and provided statutes to address the division of land among children. By 1800, in most states, sons and daughters received equal shares of inheritance, both real and personal property. Most states adopted statutes providing for widows to receive cash payments in lieu of a share in land, and the statutes also made clear what a widow would receive after renouncing her husband's last will and testament.

During this period, several state statutes also addressed the inheritance rights of illegitimate children.[4] In the 19th century, as the United States expanded westward, state inheritance laws continued to evolve. Eight western territories, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, and Washington, entered the Union as community property states. Community property states derived aspects of their inheritance laws from civil law. Women in community property states automatically inherited half of the community property—that is, property acquired during the marriage and which neither spouse had received as part of an inheritance or gift. However, in four of the community property states, California, Idaho, Nevada, and New Mexico, if the wife died first, all of the community property (community property) was inherited by her husband, while if he died first, she could claim only half of the inheritance and he (the decedent-husband) could leave the other half to whomever he wished.[5]

[3] Amber Kamp- Common Law Female Property Rights from Early Modern England to Colonial Virginia; A Senior Thesis submitted in partial fulfillment of the requirements for graduation in the Honors Program Liberty University Spring 2008; page 4-30.

[4] Browne C. Lewis - Children of Men: Balancing the Inheritance Rights of Marital and Non-Marital Children; UNIVERSITY OF TOLEDO LAW REVIEW, vol. 39, fall 2007; page 3. For Statistical Abstract of the United States about illegitimate children see: Section 2. Vital Stallstics, at 69 (2000), available at http://WW\\'.ccnsus.gov/prod/2001 pub~/statab/scc02 .pdf

[5] Peter Ward- sc.pap. Inheritance and succession among second and third generation squatter households in Mexico city- Article in: Latin American Research Review, January 2012; page 139=159. Online Verzion: https://www.researchgate.net/publication/307590236

### 3. The Nineteenth Century and Legacy in the USA

In the 19th century, most states passed legislation that gave married women more property rights than their husbands, and gave them primacy in controlling all personal and real property they inherited or were given during their lifetime through gifts.[6].

During this period, too, the inheritance of married women became separate property that they could inherit as they wished. By 1890, there was a general acceptance throughout the country, both in community property jurisdictions and in the common law system, that married women should have the power to make wills and to leave their property by their liberty of testamentary disposition to their heirs. The differrences are evident between jurisdictions that entered the union before 1850 and those that entered after.

Jurisdictions after 1850 tended to bring about equality in intestate inheritance between women and men, either by increasing the widows' share of the inheritance by half or by reducing it by one-third. Post-1850 jurisdictions also made the concept of real estate and personal property and the inheritance of the same more similar, as well as the emergence of certain provisions on legal (non-testamentary) inheritance that provided for the use of property throughout life rather than the same appearing as absolute ownership.

Also, in many countries, through legal provisions, the conditions under which the testator's children could be deprived of their right to inherit were made more difficult, as the number of countries that adopted these provisions increased so much that most of them required in their provisions that parents express in their will the specific reason why their children could not inherit.[7]

### 4. The 20th and 21st centuries and legacy in the USA

The 20th century saw significant changes in the laws of most states regarding equal treatment of women in inheritance. By 1935, 60% of states had made this change, and by 1982 all states had done so.

[6] Susanna Blumenthal- THE DEVIANCE OF THE WILL: POLICING THE BOUNDS OF TESTAMENTARY FREEDOM IN NINETEENTH-CENTURY AMERICA - 119 Harvard Law Review (forthcoming, 2006) , [Vol.113:1], page 13, 17, 58, 68-79.

[7] Lawrence M. Friedman - American Law in the Twentieth Century( a book ) 2002 ; Published by: Yale University Press; pages 578, 600; 653; 700; 722, 723, 737. And also see: Hanita Kosher • Asher Ben-Arieh Yael Hendelsman- The History of children's rights; 2016 - ISSN 2195-9749 ISSN 2195-9757 (electronic) ; Library of Congress Control Number: 2016948270.

During the 20th century, the proportion of a decedent's estate that passed under intestate succession to the decedent's spouse rather than to children or other heirs increased in many common law jurisdictions.[8]

Another trend in the law among most American jurisdictions during the 20th century was the relatively more favorable treatment of spouses than of children and other relatives in intestacy statutes. [9]

Therefore, knowing the origin and escalation of inheritance law through the centuries in the common law system, we can also bring the characteristics of the (complete) freedom of testamentary dispositions in the Anglo-American system.

Through essential doctrines and procedural mechanisms, the US legal system has absolute testamentary freedom under control and has implemented it.

Absolute testamentary freedom means that the testator has the right to dispose of his property without limiting this right for the benefit of any of the heirs. Thus, legal institutions in the US, when it comes to absolute testamentary freedom and the reasonableness of approving this way of functioning of testamentary dispositions, bring it to the fore through the doctrine of unnecessary influence from outside (necessary heirs in the case of countries with a Continental system); rules regarding mental capacity and fraud as well as obligations that may eventually be made to the testator.

In separate articles published in the 1990s, Melanie Leslie and Ray Madoff[10] argued that courts tend to manipulate the doctrine of undue influence to undo testamentary dispositions that fail to provide sufficiently for the testator's "natural" objects.

The doctrine of undue influence allows courts in the United States to set aside provisions of a will when a beneficiary or an intervening party has interfered with the testator's competent will by substituting his or her wishes for those of the testator. Although the doctrine can be applied in favor of children or other relatives as well as parties who are not closely related to the testator, in practice courts tend to find undue

[8] Lawrence M. Friedman,* Christopher J. Walker,** & Ben Hernandez-Stern***

[9] Joan R. Gundersen- A book - Women and Inheritance in America' - Virginia and New York as a Case Study, 1700–1860; pp. 91-118.

[10] Melanie B. Leslie - The Myth of Testamentary Freedom, Arizona Law Review, Vol. 38:235, 1996; page 238; 242, 244, 245,246.

influence only when the beneficiary is not related to the testator. [11]If the testator leaves most or all of the estate to a spouse or blood relative, the court is more likely to consider the threat "natural" and will not overturn it on the grounds of undue influence. The doctrine of undue influence, therefore, can in reality serve as a check on testamentary freedom. A similar analysis can be applied in litigation where the issue is the estate and testamentary dispositions involving mental capacity, fraud, or contingent obligation placed on the testator.[12]

All of these doctrines allow courts to invalidate testamentary dispositions that do not provide for the testator's children or close relatives of the testator the right to inherit. [13]

Although litigation involving testamentary dispositions in some way imposes a minimal burden on the full freedom of testamentary dispositions, their importance in the United States should not be exaggerated.

A 1987 study of evidence records found that litigation involving testamentary dispositions and the testator's absolute liberty occurred in less than one percent of cases. [14].There are many reasons why children or grandchildren do not initiate civil proceedings over the testamentary dispositions of the testator (the heir). These include a perception that the reasons for not being entitled to an inheritance, even in part, were

[11] Michelle Cottier - Adapting Inheritance Law to Changing Social Realities: Questions of Methodology from a Comparative Perspective; Oñati Socio-Legal Series, Vol. 4 , No. 2, 2014; Section 2, Anglo-American legal thought and the ideal of evidence-based law reform, page 199.

[12] In Southern Development Co. v. Silva, 125 U.S. 247, 8 S.Ct. 881, 31 L.Ed. (1887), the U.S. Supreme Court defined the legal elements of a civil fraud as follows: • The defendant has made a representation in regard to a material fact Note: Statements that express an opinion or judgment, honestly entertained, are excluded. It is not fraud when an investment adviser causes big losses with a bad recommendation, as long as everything in the deal is aboveboard. Statements made during commercial exchanges have special protection. Only deliberate misrepresentations are actionable as fraud. -The fraud trial- ACFE ( Association of Certified Fraud Examiners - World Headquarters • the gregor building 716 West Ave • Austin, TX 78701-2727 • U ; page 5 & 6.

[13] Michael J. Higdon - Parens Patriae and the Disinherited Child; Washington Law Review, 2020 (Forthcoming)
University of Tennessee Legal Studies Research Paper No. 382; page 35 to 46. Social Science Research Network Electronic library at: http://ssrn.com/abstract=3413747

[14] Jeffrey A. Schoenblum,- Empirical Study- 1987' Will disputes in the US have occurred more in the early periods and that is found in the legal archive; The Inheritance Process in San Bernardino, State of California, 1964: A Research Note, 43 HOUS. L. REV. 1445, 1453, 1467-69 (2007) (finding only seven contested wills in a sample of 342 files from San Bernardino County in 1964) and with Kristine S. Knaplund, The Evolution of Women's Inheritance Rights, 19 HASTINGS WOMEN'S LJ 3, 30-31 (2008) (finding that 11 of 108 wills examined in Los Angeles in 1893 were formally contested and seven other cases resulted in a distribution of the estate different from that contemplated in the will).

to prevent the bad reputation that could be brought against the family in court or a lack of knowledge of the legal avenues available.[15]

Furthermore, a skilled estate planner can always take steps to make a will contest less likely or less likely to succeed. For example, planners can gather evidence of the testator's capacity before death by ensuring that potential witnesses see that the testator is competent. They can also draft an effective non-contestation clause in the will. Thus, a good estate planner can make disinheritance of children or grandchildren effective unless the testator clearly lacks testamentary capacity or the ability to freely express his or her will.[16]

Thus, those who prefer a more family-centered inheritance model criticize the ability and willingness of the testator to exclude their descendants from inheritance in the United States of America absolutely (except in the state of Louisiana). When the state of Louisiana changed its compulsory inheritance scheme to exclude adult descendants, i.e. those without disabilities, Katherine Shaw Spaht, a professor at Louisiana State University, stated that: Compulsory inheritance, which is an institution tested over centuries, remains a sound social policy to this day because it helps preserve and strengthen the family by reminding parents of their social responsibilities and by binding and bringing family members closer together throughout life and beyond.

According to her, other countries must understand that the rampant disintegration of the family is not linked to legal institutions that foster selfish individualism by praising unlimited freedom of choice. [17] Several other American experts have made similar arguments about the disadvantages of complete testamentary freedom. Vincent Rougeau[18], for example, has closely linked forced inheritance in Louisiana to "the weakening of the bonds of kinship, love, and friendship in cultural life."

[15] Ronald J. Scalise Jr., New Developments in Succession Law: pg.2-17; The U.S. Report, vol. 14.2 ELECTRONIC JOURNAL OF COMPARATIVE LAW, (October 2010),

[16] Jeffrey A.Cooper, John.R.Ivimey and Katherine Coleman- Developments in Connecticut Estate and Probate Law - Villanova Law Review, Vol. 51, No. 2, Forthcoming. marxh 2015; Testamentary Capacity in Bassford v. Bassford, where the superior court undertook a detailed analysis of the testamentary capacity required to execute a will. Although the court's analysis was based on the facts, it also provided useful guidance on applicable legal standards and best practices for attorneys overseeing will executions, pp. 1-80.

[17] See: Katherine Shaw Spaht - The Aftermath of the "Revolution": 1990 Changes to the New Forced Heirship Law, Heirship Law, 51 La. L. Rev. 1991
https://digitalcommons.law.lsu.edu/lalrev/vol51/iss3/6

[18] Vincent D. Rougeau - No Bonds but Those Freely Chosen: An Obituary for the Principle of Forced Heirship in American Law , Civil Law Commentaries, Vol. 1, No. 3, 2008 ,Notre Dame Legal Studies Paper No. 09-18; page 23.

Some other American jurists have focused on the natural bond between parent and child, viewing the non-inheritance of children as unnatural. Not surprisingly, some of the same commentators and legal experts have recently proposed alternatives to the rule of the United States inheritance system generally supported by either the family maintenance ideology or the compulsory inheritance system. Thus, the family maintenance ideology legal expert Ronald Chester favors the legal-inheritance system in Canada and Colombia[19].

Chester has also argued that the British Columbia system is predictable and generally respectful of the testator's wishes and has asserted that the flexibility of the family maintenance system is preferable to the forced inheritance regime. [20].

However, Chester has recently acknowledged that problems in the inheritance system, and above all with regard to the absolute freedom of the testator in the United States, call into question the viability of a family maintenance scheme in the United States, and he now seems to favor the approach over compulsory inheritance. Deborah Batts, who was a university professor before becoming a federal court judge, has argued in favor of a slightly modified compulsory inheritance scheme. Batts' proposal, which she calls "protected inheritance," differs slightly from the regime of modern civil law jurisdictions in that it gives priority to children who are dependent or disabled. [21]

Where there are surviving children of any age, the Batts scheme would allow them half of their statutory share (similar to the compulsory share of inheritance in countries practicing the Continental system), regardless of the terms of the will, and the children's share would take precedence over that of any other heir, including the surviving spouse. The needs of dependent or disabled children would take precedence, but adult and non-disabled children could still receive a

[19] Ronald Chester- Disinheritance and the American Child, An Alternative from British Columbia, 1998 UTAH L. REV. 1, 32-35; (proposing a discretionary scheme to allow courts to address the individual needs and circumstances of children who disinherit).

[20] Frances H. Foster- The Family Paradigm of Inheritance Law- North Carolina Law Review, 12-1-2001; vol.80, nr.1, page 226, - Chester "and Jan Ellen Rein have recommended the adoption of foreign models of family maintenance, which would give the courts the discretion to provide relief to a wider circle of family dependents - the decedent's spouse, children (including natural, adopted, illegitimate, and grandchildren) as well as parents.

[21] Deborah A. Batts, I Didn't Ask to Be Born: The American Law of Disinheritance and a Proposal for Change to a Sytem of Protected Inheritance, Hastings Law Journal, vol.41(1990), iss.5.

share, from the fixed statutory share. [22]. While legal experts Batts and Chester protected adult children from disinheritance due to the testator's absolute testamentary dispositions, Ralph Brashier limited the protecttion of the right to inheritance only to minor children. Thus, Brashier proposed as an alternative to American intestacy rules, a system that attempts to preserve the essence of testamentary freedom. Brashier suggests that existing inter vivos child support statutes be extended to apply even after the testator's death so that minor children are entitled to support from their parents' estate. This alternative, Brashier argues, poses no less of a threat to the American ideal of testamentary freedom.[23] Moreover, it fills a current hole that has existed in the U.S. intestacy system, ensuring that parents do not leave minor children destitute upon their death. With the possible exception of Brashier, who acknowledges the importance of testamentary freedom to the American psyche, those proposing changes to the American rule in recent years have not shown any valid contemporary justification for a broad power to disinherit; that is, for limiting the testator's full testamentary freedom. However, advocates of reform do not always confront these arguments. Nor do they often consider whether testamentary freedom can serve a useful purpose in modern society.

On the contrary, those proposing alternatives to the U.S. rule convey the impression that the original reasons for the rule are no longer valid today and that any new justification is not worth discussing. These authors argue that attention should instead be focused on developing an alternative regime that will protect family ties easily broken by absolute testamentary dispositions in the United States of America.[24]

From the analyses conducted, we can see that complete testamentary freedom is present in almost all countries on the American continent.

Thus, by the end of the 20th century, complete freedom of will was the norm throughout Canada as well. This freedom could, of course, be abused, allowing a testator to ignore his family members even if they were dependent on him. However, there were also some minor safeguards against this. One was the ancient law known as the law of dower, which in Canadian common law sought to give the widow some

[22] Shelly Kreiczer-Levy-Deliberative Accountability Rules in Inheritance Law: Promoting Accountable Estate Planning - University of Michigan Journal of Law Reform; vol.45-4; 2012; page 940.
[23] Ralph C. Brashier - a book - Inheritance Law And The Evolving Family; 2004; page 140-199.
[24] Caroline Guibet Lafaye - Ethics of Inheritance; Philosophy Today, 2008, 52 (1), pp.25-35. ffhal00346951f; page 14.

kind of compensation for even 1/3 of the land held by her husband. [25] This type of compensation was not active until the death of the husband, but was also effective against the transfer by legal work inter vivos of the husband, unless the wife joined in the transfer. This third-party effect, however, was abolished in England by the Dower Act 1833,[26] which meant that it was not considered in those parts of Canada that adopted English law after that date. Furthermore, there were various ways to circumvent this law since it did not apply to every type of interest in land. And since it was never enforced except for freehold interests in land, it provided no benefit where the wealth was in cash or securities. The western provinces of Canada began repealing this law in the late 19th century, in part because they were establishing registered land systems and were concerned about avoiding hidden interests in land.[27].

To counterbalance this, these provinces enacted homestead legislation that gave the surviving spouse a life interest in the family home, most of which is still in place. However, the protection was minimal-a home is of little value if it cannot buy food. Canadian legislators, first in the West, took note of the New Zealand innovation, which gave courts the power to provide security for dependents in appropriate cases.

The first Canadian provinces to enact such legislation were Alberta and Saskatchewan. [28] However, these statutes were narrower than New Zealand legislation; they protected only widows by specifically addressing the issue in which a widow received less if a will was left than she would have received if the testator had left no will. [29]

Over the decades that followed, each of the common law provinces enacted its own version of this legislation. British Columbia's statute extended jurisdiction to children. The early statutes were

[25] Province of Alberta (a province in Canada) - DOWER ACT - Revised Statutes of Alberta 2000 Chapter D-15 Current as of May 14, 2014, pg-2 to 24.
[26] See: LAW or REAL PROPERTY. (Law of Dower) - HC Deb 14 February 1833 vol 15 cc655-9 - https://api.parliament.uk/ & Richard H. Chused - Married Women's Property Law: 1800-1850; at THE GEORGETOWN LAW JOURNAL ; Vol. 71:1359 ; 1983; page; C. THE LEGAL STAGE IN 1800; pg.1365.
[27] Sarah A. Carter - Capturing Women: The Manipulation of Cultural Imagery in Canada's Prairie West ( a book-1997 ); page 193.
[28] Married Women's Relief Act, SA 1910 (Second Session); The MWR act, SA 1910 (second se.).
[29] The Manitoba Statute of 1919 (Dow. Act, SM 1919, c 26) extended to both widows and widowers, and provided that they were entitled to one-third of the estate, unless they had inherited above a certain monetary threshold.

updated over time, and most now follow this model..[30] Thus, today the jurisdictions of some states in the USA usually allow the court to provide provisions that are 'adequate'. In Canadian legislation, this area of law or right is generally called 'relief' of dependents[31], which in some respects is similar to the institution of the indispensable part of the inheritance. But despite all attempts to approach the institution of the necessary share of inheritance, in a modified way, we can say that inheritance law in the United States of America is characterized by the principle of complete testamentary freedom, the unrestricted right of a person to dispose of his/her property in the way he/she wishes. This right to control the disposition of property at death is fundamental to the American psyche.

While people are often vague in their understanding of many aspects of the law, one thing that is clear in their minds is the right to write a will that controls who will and who will not receive their property after they die. In this way, property owners can control much more than just their property. Through their right to control the disposition of property at death, they can control the behavior of others during their lifetime.

Absolute freedom of testamentary dispositions has also produced another trope, namely the surprise ending in which the protagonist ends up disappointing his family by writing a will very different from the one they expected. These tropes would not be possible unless absolute freedom of testamentary dispositions existed.

This ability to control property at death has been accelerated by the rules that govern inheritance in various ways. First, the U.S. Supreme Court ruled as a constitutional matter that the right to transmit property at death is a fundamental right in the "pack of sticks" that we call property rights[32].

[30] Other original statutes were: Columbia: Testator Family Maintenance Act, SBC 1920, c 94; Ontario: Dependents' Relief Act, 1929, SO 1929, c 47; Nova Scotia: Testator Family Maintenance Act SNS 1956, c 8; Prince Edward Island: Testator Dependents' Relief Act, SPEI 1974, c 47. Also the territory of Nunavut which was created in 1999 from the Northwest Territories and adopted the latter's law.

[31] WILLS AND SUCCESSION ACT (CANADA ) - Statutes of Alberta, 2010 Chapter W-12.2 Current as of April 1, 2020- Part 5 Family Maintenance and Support.

[32] Hodel v. Irving, 481 U.S. 704 (1987) - Hodel v. Irving - No. 85-637 - Argued October 6, 1986 -Decided May 18, 1987 -481 U.S. 704; online version at: https://supreme.justia.com/cases/federal/us/481/704/ is a court case in which the U.S. Supreme Court ruled that a statute mandating the retention of fractional interests in real estate bequeathed to members of the Oglala Sioux tribe was unconstitutional and required only fair compensation.

Second, courts have consistently held that children are not entitled to inherit property. As one court put it: Essentially, the right to inherit property under a will is a creature of law, and is not a natural right or guaranteed or protected by the constitution of Ohio or the United States. There is a fundamental rule of law in Ohio that a testator may lawfully exclude his children from inheritance altogether[33].

Ohio is not alone in this view. Thus, there are no state or federal laws that protect adult children from disinheritance. Moreover, in forty-nine of the fifty states (the exception being Louisiana), testators have considerable latitude to exclude their minor and dependent children from inheriting.

This emphasis on complete freedom of testamentary dispositions can be explained in part by the fact that the United States (with the exception of Louisiana) is largely a common law country. The common law system is based on the ideology that property is owned by individuals (traditionally men) and that families have little claim to the husband's/father's property[34].Common law countries differ from civil law countries (such as France) because civil law countries view property as something that is owned by a family unit - as opposed to an individual[35].

As a result, individuals are limited in their ability to transfer property away from the family unit.

However, the fact that the United States is a common law country does not tell the whole story, as most common law countries other than the United States have modified their laws to provide greater protections for families by adopting family maintenance statutes[36].

These statutes allow family members and other dependents to petition the court to receive more than was intended for them under the testator's will.

[33] Judith G. McMullen - Keeping Peace in the Family While You Are Resting in Peace: Making Sense of and Presenting Will Contests; Marquette University Law School
Marquette Law Scholarly Commons; 1-1-2006; MARQUETTE ELDER'S ADVISOR [Vol. 8 ], page 65.

[34] Oliver Wendell Holmes, Jr. - The common Law (a book); Possession, page 183.

[35] Simon Deakin - Law as Evolution, Evolution as Social Order: Common Law Method Reconsidered; Centre for Business Research, University of Cambridge Working Paper No. 470; AUGUST 2015, page 20-40 Research Paper Series can be found at http://www.law.cam.ac.uk/ssrn/

[36] For more see: LAWS OF TRINIDAD AND TOBAGO (South America); FAMILY LAW (GUARDIANSHIP OF MINORS, DOMICILE AND MAINTENANCE) ACT ,CHAPTER 46:08, amanded by 66 of 2000.

Thus, in civil law and common law countries around the world, children are protected from disrespecting their parents by being left without a share of the inheritance, either by securing a certain portion of the parents' estate (through a compulsory inheritance) or by giving them the right to bring a legal claim against the decedent's estate (through a family maintenance statute).

However, in the United States, a child who does not inherit is largely left without recourse. The ability to avoid leaving anything to children, especially minor children, is particularly surprising in light of the fact that virtually every state requires parents to support their minor children throughout their lives[37].

Furthermore, in most American jurisdictions, a parent who fails to support their child during their lifetime can still inherit from the child in the event of the child's death.[38]

So, from all this analysis, we can say that Louisiana is the only state in the United States of America that provides a protective statute for children in the form of "forced inheritance", which we will discuss in the next chapter.

## Conclusion

From the historical and comparative analysis of the development of inheritance law in the United States of America, it is clear that this legal system has undergone a long and complex evolutionary process, which from the colonial period to the twentieth century has experienced fundamental changes. Initially influenced by the common law tradition, inheritance law began to be modified in the first colonies to reflect the social and political circumstances of the new country. The abolition of primogeniture, the equality of sons and daughters in inheritance, and the definition of widows' rights are indicators of an early process of democratization and social justice in the field of inheritance.

[37] J. THOMAS OLDHAM - What Does the U.S. System Regarding Inheritance Rights of Children Reveal about American Families? Family Law Quarterly, Vol. 33, No. 1, Child Support Symposium (Spring 1999), pp. 265-275.

[38] Paula A. Monopoli - Should Support and Inheritance Be Related? 49 U. MIAMI L. REV. 257, 259–60 (1994).; There are generally two situations in which parents may inherit substantial assets from their children. The first is when a child has no assets during his or her lifetime, but upon his or her death his or her assets have value as a result of a wrongful death claim. The second situation is when a child accumulates substantial income or receives a substantial personal injury or death benefit (usually for the death of a parent) - p. 265; from the same source cited above.

Over time, American inheritance law gradually moved away from the traditional restrictions of English law, orienting itself towards a more individualistic concept, in which testamentary freedom acquired an absolute character. In the 19th and 20th centuries, despite some jurisdictions attempting to bring about greater equality between spouses and children in inheritance, the idea that the testator has the right to dispose of his property according to his free will, without being bound by legal obligations to include descendants, remained dominant. This principle has been institutionalized and strengthened by American courts, which have considered testamentary inheritance as an essential element of property law.

However, despite this absolute testamentary freedom, American jurisprudence has developed corrective doctrines, such as that of undue influence, fraud, or lack of mental capacity of the testator, which function as protective mechanisms against the abuse of this freedom. Likewise, academic discussions and proposals for reform – ranging from the introduction of a compulsory inheritance to the concept of "protected inheritance" – show a persistent concern about the risk that unlimited testamentary freedom could weaken family cohesion and ignore the real needs of dependent descendants. In summary, the American legal system in the field of inheritance is characterized by the principle of absolute testamentary freedom, which has become an inseparable part of the legal and cultural identity of this country.

This principle reflects the essence of American individualism and the unlimited right of the owner to control the fate of his property after death. However, theoretical debates and reform proposals show that this freedom is not uncontested and that challenges regarding the balance between individual autonomy and the protection of family interests still remain relevant in American inheritance law.

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