

Inheritance Laws in the Nineteenth and Twentieth Centuries

France • Germany • United States

March 2014



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Contents

France.....	1
Germany.....	6
United States	10

France

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SUMMARY Inheritance law in nineteenth- and twentieth-century France was largely a product of the French Revolution. Succession laws before the Revolution were extremely diverse, complicated, and inequitable. The revolutionaries created a greatly simplified and very egalitarian inheritance system. The Napoleonic Code brought reforms to the revolutionary laws, but largely respected the same basic principles. Beyond that point, French inheritance laws remained fundamentally the same, with only a few reforms aimed principally at improving the situations of surviving spouses and illegitimate children.

I. Introduction: Inheritance Law Before the French Revolution

Prior to the French Revolution, inheritance law in France was extremely complicated: different rules applied, depending on whether the subject was an aristocrat or a commoner, a serf or a member of the middle class, a native or a foreigner, a man of the cloth or a layman, etc. In addition, the law did not treat women and men, elder and younger children, and legitimate and illegitimate children equally.¹ Rules of succession could also differ according to the type of property in question. For example, specific rules applied to lands that were traditionally considered fiefdoms, whether or not these were still owned by an aristocrat or had been bought by a commoner.² Additionally, succession laws were not the same throughout the French kingdom; on the contrary, they varied significantly from region to region.³

II. The French Revolution and the Loi de Nivôse an II

The French Revolution brought enormous changes to succession law. While almost no one advocated entirely abolishing the concept of inheritance, much discussion was devoted to harmonizing succession laws with revolutionary ideals.⁴ As early as August 1789, the revolutionary assemblies agreed that distinctions between aristocrats and commoners, elder and younger children, and fiefdoms and other lands should be abolished.⁵ Furthermore, the revolutionary assemblies agreed that one set of laws should apply to the entire French territory, as opposed to the mosaic of local rules that existed under the ancien régime.⁶

¹ ROMUALD SZRAMKIEWICZ, *HISTOIRE DU DROIT FRANÇAIS DE LA FAMILLE* [HISTORY OF FRENCH FAMILY LAW] 60–61 (Paris, 1995).

² *Id.*

³ *Id.* at 62.

⁴ *Id.* at 88.

⁵ *Id.*; see also ERNEST VALLIER, *LE FONDEMENT DU DROIT SUCCESSORAL EN DROIT FRANÇAIS* [THE FOUNDATIONS OF SUCCESSION LAW IN FRENCH LAW] 193–207 (Paris, 1903).

⁶ SZRAMKIEWICZ, *supra* note 1, at 88.

The revolutionaries aimed to put absolute equality at the center of succession laws, and to end the “paternal despotism” exercised through a father’s last will and testament.⁷ Although this may have originally been born of sincere ideological motives, these aims quickly gained political significance as the revolution sought to entrench itself. Indeed, placing all heirs in a position of equality had a tendency to divide large fortunes and big estates into smaller ones, as each heir got an equal share.⁸ As the owners of large fortunes and estates were generally presumed to be more reactionary, dividing their assets was seen as favorable to the revolution’s long-term impact.⁹ The revolutionaries also sought to favor younger heirs over older ones who might be nostalgic for the days of the ancien régime, and to prevent fathers from disinheriting heirs who might be favorable to the new order.¹⁰

This led to the enactment of the Loi de Nivôse an II (Law of Nivôse, Year II, or January 1794, under the revolutionary calendar).¹¹ This law imposed strict equality among heirs. If a decedent had children, nine-tenths of his/her estate would be strictly divided equally among them. The testator had discretion on the disposition of only the remaining tenth of his/her estate (called *quotité disponible*), and even this discretion was limited to the extent that the testator was required to bequeath the *quotité disponible* to beneficiaries outside the family so as not to disrupt the equality among heirs.¹² If a decedent had no children, but had siblings, the *quotité disponible* was slightly increased to one-sixth, with the main body of the estate (five-sixths) distributed among the siblings and nephews.¹³ In the absence of both children and siblings, a decedent’s estate went to his/her parents, and then to his/her cousins, with an equal part going to the mother’s side and the father’s side.¹⁴ Surviving spouses were intentionally left out by the Loi de Nivôse an II.¹⁵

In an effort to undermine the aristocracy and promote equality, the authors of this law made it retroactive to all successions opened since July 14, 1789.¹⁶ This retroactivity was, in turn, cancelled by a new governmental regime in 1796, creating much confusion and many legal complications.¹⁷

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 88–89.

¹⁰ *Id.* at 89.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 89–90; VALLIER, *supra* note 5, at 185–88.

¹⁷ SZRAMKIEWICZ, *supra* note 1, at 90.

III. The Napoleonic Code

A. Initial Period

Just a few years later, in 1804, Napoleon Bonaparte brought about a new reform of French inheritance law through the adoption of his famous Code Civil (Civil Code, also referred to as the Code Napoleon).¹⁸ Indeed, a substantial portion of the Napoleonic Code applied to inheritance: articles 718–892 dealt with successions, and articles 967–1100 (as well as much of articles 893–930) dealt more specifically with wills.¹⁹

The authors of the Civil Code wanted to reconcile the various legal traditions that existed prior to the revolution, respect presumed “affections of nature,” and balance the rights of families with individual freedom.²⁰ Additionally, the authors of the Civil Code strived to produce a highly practical legal text.²¹ Inheritance law under the Civil Code was “a law of transaction, but as during the revolution, a uniform and egalitarian law (art. 745 reaffirmed the equality of shares) but with a greater freedom to dispose” for the testator.²²

Universal succession became the principle under the Civil Code, meaning that the heirs inherit both the rights and liabilities of the decedent.²³ The decedent’s property was (and still is) distributed to the heirs directly and immediately upon death, without the appointment of a personal representative or administrator.²⁴ Furthermore, the Civil Code essentially confirmed the general principle established in the Loi de Nivôse an II, according to which heirs should be designated by law.²⁵ This principle prevents a testator from disinherit his/her children, reflecting the importance of enforcing familial solidarity under French law.²⁶ Testamentary freedom was not completely abolished, however, and in fact, the Civil Code gave testators more discretion than the Loi de Nivôse an II by increasing the *quotité disponible*.²⁷ Indeed, article 913 of the Civil Code of 1804 provided that “free gifts, whether by acts during life, or by will, shall not exceed the half of the property of the disposer, if he leaves at his decease but one legitimate child; the third part if he leaves two children; the fourth part if he leaves three or more of

¹⁸ *Id.* at 91.

¹⁹ THE CODE NAPOLEON; OR, THE FRENCH CIVIL CODE, LITERALLY TRANSLATED FROM THE ORIGINAL AND OFFICIAL EDITION, PUBLISHED AT PARIS, IN 1804, at 196–302 (George Spence trans., The Lawbook Exchange, Ltd., 2004) (1804).

²⁰ SZRAMKIEWICZ, *supra* note 1, at 111.

²¹ VALLIER, *supra* note 5, at 247.

²² SZRAMKIEWICZ, *supra* note 1, at 111.

²³ Marie Goré, *Inheritance Law*, in INTRODUCTION TO FRENCH LAW 289 (George Bermann & Etienne Picard eds., Alphen aan den Rijn, 2012).

²⁴ *Id.*

²⁵ *Id.*

²⁶ MARIE-FRANCE NICOLAS-MAGUIN, DROIT DE LA FAMILLE [FAMILY LAW] 115 (Paris, 1998).

²⁷ SZRAMKIEWICZ, *supra* note 1, at 113.

them.”²⁸ Similarly, article 915 provided that the *quotité disponible* “shall not exceed a moiety of the property, if in default of children, the deceased leaves one of more ancestors in both the paternal and maternal line; and three fourths if he leaves ancestors only in one line.”²⁹ Furthermore, the prohibition on giving this *quotité disponible* to one of the default legal heirs, which was established by the *Loi de Nivôse an II*, was repealed by the Civil Code, which contained no such prohibition.³⁰

B. Evolutions

The Civil Code’s provisions on inheritance law remained largely unchanged throughout the nineteenth and twentieth centuries. Indeed, French law of succession “was one dimension of family law to have undergone relatively little reform for over 200 years.”³¹

What few reforms occurred mostly concerned the situation of the surviving spouse, and the situation of illegitimate children.

1. *The Situation of the Surviving Spouse*

Under the Civil Code, as under the laws of the *ancien régime*, the surviving spouse had very few rights to the inheritance in the absence of a will.³² Social norms of the time argued against the possibility of one family’s assets passing to another family, and it was also considered that the situation of a surviving spouse should have been considered in the marriage contract.³³ This began to change towards the end of the nineteenth century, however: in 1891, a law was passed guaranteeing the surviving spouse’s use (though not necessarily ownership) of a quarter of the decedent’s property.³⁴

2. *The Situation of Illegitimate Children*

The situation of illegitimate children was also very unfavorable under the original Civil Code. Indeed, article 756 provided that “natural heirs are not heirs; the law does not grant to such any rights over the property of their father or mother deceased, except when they have been legally recognized. It does not grant them any right over the property of relations of their father or mother.”³⁵ Article 757 then provided that, if the parents had legitimate children, an illegitimate child could only claim one-third of the hereditary portion that he/she would have had if he/she

²⁸ THE CODE NAPOLEON, *supra* note 19, art. 913.

²⁹ *Id.* art. 915.

³⁰ SZRAMKIEWICZ, *supra* note 1, at 113.

³¹ Helen Stalford, *Family Law*, in PRINCIPLES OF FRENCH LAW 262 (John Bell, Sophie Boyron & Simon Whittaker eds., Oxford, 2008).

³² SZRAMKIEWICZ, *supra* note 1, at 112.

³³ *Id.*

³⁴ *Id.*; VALLIER, *supra* note 5, at 378.

³⁵ THE CODE NAPOLEON, *supra* note 19, art. 756.

were legitimate. This share would extend to half if the parent had no descendants but many other immediate relatives, and three-fourths if the parent had neither descendants nor other immediate relatives.³⁶ This changed over time, first in 1896, with a law increasing the illegitimate child's legal share of inheritance, and then in 1907, with a law permitting the legitimation of natural children by the subsequent marriage of their parents. Further evolutions finally led to a 1972 law providing full equality to all children, legitimate and natural alike.³⁷

³⁶ *Id.* art. 757.

³⁷ SZRAMKIEWICZ, *supra* note 1, at 137–38.

Germany

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SUMMARY During the nineteenth century, German inheritance law was splintered into many territorial regimes that combined Germanic principles with the Roman law, as it was received in Germany from the sixteenth century onward. Throughout the nineteenth century, special succession regimes for the nobility and for the peasantry were in effect. Of these, some German state laws on the succession of farms by the entirety are still in effect today. Current German inheritance law was enacted in the Civil Code of 1896. It is based on classical Roman law while also containing some institutions of Germanic origin.

I. Introduction

Until 1900, the effective date of the German Civil Code, the numerous German principalities had their own laws of inheritance. These were either based on statutory or customary law, but in any event they were rooted in Roman law as it was received since the sixteenth century, in Germany¹ in the form of the European *jus commune* (*gemeines Recht*, common law) often under the influence of the earlier reception of Roman law in Italy and France.² Yet, despite the unifying influence of the underlying Roman law, the various German laws featured certain peculiarities that originated from Germanic law.³

In the nineteenth century, German law was not only fragmented by different territorial laws and different interpretations of the Roman-based *jus commune*, but also by special succession regimes for the nobility and the peasantry. Of these, the entailed estates of the nobility were abolished in the 1930s⁴ whereas laws to prevent the splintering of farms are still in effect today in some of the German states.⁵

II. Territorial Systems of the Nineteenth Century

Among the influences of German law that infiltrated the received Roman law of the *jus commune* were slight preferences for intestate succession over testamentary succession,⁶ the

¹ HANS PLANITZ, *DEUTSCHES PRIVATRECHT* 233 (3rd ed. 1948).

² FRANZ WIEACKER, *A HISTORY OF PRIVATE LAW IN EUROPE* 114 (Tony Weir trans., 1995).

³ Thomas Gergen, *Die gesetzliche Erbfolge einschliesslich des gesetzlichen Erbrechts des Staates und seine Bezüge zum Römischen Recht*, *ZEITSCHRIFT FÜR DIE STEUER- UND ERBRECHTSPRAXIS* (ZERB) 371 (2008).

⁴ OTTO PALANDT, *BÜRGERLICHES GESETZBUCH* § 2009 n.1 (70th ed. 2011).

⁵ PLANITZ, *supra* note 1, at 235.

⁶ According to a legal maxim, the decedent would die in peace if he left his estate to the rightful heirs. *See* PLANITZ, *supra* note 1, at 228.

permissibility of succession agreements *inter vivos*,⁷ joint wills of spouses, and the institution of the executor.⁸ Many of the German customary or written laws also diverged from the Roman law ranking of intestate heirs. All the territorial regimes upheld the principle that closer relatives precluded more distant relatives from inheriting while relatives of the same degree of relationship shared the estate equally,⁹ yet the often complex regimes differed from each other in various ways.¹⁰

Some modernization and streamlining of the principles of inheritance law occurred in the major codifications of the nineteenth century. Comprehensive systems of inheritance law were contained in the General Code of Prussia of 1794,¹¹ the Civil Code of Saxony of 1865,¹² and the Austrian Civil Code.¹³ Of these, the Austrian Code was the most concise and cogent. It was influenced by natural law, the thinking of the age of reason, and the French Civil Code.¹⁴

III. Succession Under the Civil Code

German inheritance law was first unified in the German Civil Code of 1896.¹⁵ It became effective on January 1, 1900, for the German Reich as it existed in 1871,¹⁶ while in Austria, which did not become part of the German Reich, the Austrian General Civil Code has continued in existence until now. The German Civil Code is also currently in effect, and the provisions on succession have undergone few changes since their original enactment, the most important of which were increases in spousal inheritance rights in 1957, the extension of intestate succession rights to children born out of wedlock in 1969 and 1997, and the granting of inheritance rights to same-sex partners in 2001.¹⁷

The succession law of the German Civil Code is based on a mixture of Germanic law and classical Roman law,¹⁸ yet it was also shaped by the changed social circumstances of the

⁷ Thomas Gergen, *Der späte Wegfall der Ungleichbehandlung der Geschlechter im Landwirtschaftlichen Erbrecht*, ZERB 225 (2010).

⁸ HELMUT COING, 2 EUROPÄISCHES PRIVATRECHT 596 (1985).

⁹ PLANITZ, *supra* note 1, at 231.

¹⁰ COING, *supra* note 8.

¹¹ Allgemeines Landrecht für die preussischen Staaten, June 1, 1794, pt. II, tit. 2, chs. 5 & 6, and tit. 9, ch. 8, German text available at <http://www.koeblergerhard.de/Fontes/ALR1fuerdiepreussischenStaaten1794teil1.htm>.

¹² Das Bürgerliche Gesetzbuch für das Königreich Sachsen, Jan. 2, 1863, §§ 354–456, reprinted in BERNHARD FRANCKE, DAS BÜRGERLICHE GESETZBUCH FÜR DAS KÖNIGREICH SACHSEN (1892).

¹³ ALLGEMEINES BÜRGERLICHES GESETZBUCH [GENERAL CIVIL CODE], June 1, 1811, JUTIZGESETZSAMMLUNG No. 946/1816, §§ 531–824.

¹⁴ WIEACKER, *supra* note 2, at 268.

¹⁵ BÜRGERLICHES GESETZBUCH [CIVIL CODE] Aug. 18, 1896, REICHSGESETZBLATT 195, §§ 1922–2382, translation of current version available at http://www.gesetze-im-internet.de/englisch_bgb/index.html.

¹⁶ Verfassung des Deutschen Reichs, Apr. 16, 1871, REICHSGESETZBLATT 64.

¹⁷ DIRK OLZEN, ERBRECHT 18–22 (2012).

¹⁸ Gergen, *supra* note 3, at 371.

outgoing nineteenth century under which urban populations increased and land ownership became less important, while extended families declined in favor of nuclear families—in particular spouses. The balance between these influences is shown in the treatment of testamentary freedom, which is a guiding principle of the Code while being tempered by compulsory portions to which some intestate heirs are entitled. The importance of the spouse is reflected in the granting of intestate succession rights as well as compulsory portion rights.

In the ranking of intestate heirs the Civil Code places descendants of the decedent in the first group, his or her parents and their descendants in the second group, grandparents and their descendants in the third group, and so on. Within each group, the heirs of the nearest generation preclude farther removed relatives. Those of the same generation inherit *per stirpes*, which means that the share of a predeceased member of the group devolves upon his or her issue by whom it is shared.¹⁹

The principle of universal succession, whereby an estate automatically vests in the heirs when the decedent dies without need of an executor, has been described as a characteristic feature of German inheritance law. In such cases, the heir or heirs are liable for the debts of the estate and for handing over any compulsory portions and bequests.²⁰

IV. Special Regimes for the Nobility

In Germany, the nobility retained the privilege of leaving their estate entailed (*Fideikomiss*) throughout the nineteenth century, even though the issue was hotly debated.²¹ In fact, the institution of the entailed estate was only abolished in 1939.²² The German version of the entailed estate allowed the decedent to bind the estate for generations by providing the order of succession, usually by insisting that the estate could not be partitioned and that it had to go to a male descendant or other relative.²³

V. Special Regimes for the Peasantry

Rules of succession that forestalled the partition of farms between multiple heirs date back to Germanic times. They continued throughout the nineteenth century,²⁴ and still exist today.²⁵ The Introductory Code to the Civil Code allows succession of farmland to be governed by state law,²⁶ and half of the German states still have such laws today. These laws provide that by

¹⁹ E.J. COHN, 1 MANUAL OF GERMAN LAW 260 (1968).

²⁰ GERHARD ROBBERS, AN INTRODUCTION TO GERMAN LAW 295 (2006).

²¹ COING, *supra* note 8, at 613.

²² PALANDT, *supra* note 4, § 2009 n.1.

²³ PLANITZ, *supra* note 1, at 235.

²⁴ *Id.* at 236.

²⁵ Gergen, *supra* note 7.

²⁶ EINFÜHRUNGSGESETZ ZUM BÜRGERLICHEN GESETZBUCH [INTRODUCTORY CODE TO THE CIVIL CODE], Aug. 18, 1896, REICHSGESETZBLATT 604 § 64, translation of current version available at http://www.gesetze-im-internet.de/englisch_bgbeg/index.html.

operation of law or by declaration of the owner, farms of a certain size may not be partitioned among multiple heirs but have to be left to one heir who in turn has to compensate the other heirs.²⁷

Until 1963, the farm succession laws contained strong preferences for male heirs, even though the Basic Law, the West German Constitution of 1949, prohibited sex discrimination.²⁸ In a landmark decision of 1963 the Federal Constitutional Court held that preferences for male heirs in these laws were unconstitutional,²⁹ and they now grant equal rights to male and female heirs.³⁰

²⁷ Gergen, *supra* note 7.

²⁸ GRUNDGESETZ FÜR DIE BUNDESREPUBLIK DEUTSCHLAND [BASIC LAW], May 23, 1949, BUNDESGESETZBLATT 1 art. 3(1), available in translation at http://www.gesetze-im-internet.de/englisch_gg/index.html.

²⁹ Bundesverfassungsgericht [Federal Constitutional Court] Mar. 20, 1963, 15 BVerfGE 337.

³⁰ Gergen, *supra* note 3.

United States

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SUMMARY Inheritance in the United States is generally a matter of state law. During the colonial period, the colonies adopted English inheritance law. Following independence, most states enacted statutes that codified common law with some modifications to English law and procedure. In the nineteenth century, with westward expansion, some territories entered the union as community-property states, adopting aspects of civil law. Most states adopted legislation giving married women control over and power to devise property they had inherited. Some differences are found between pre-1850 and post-1850 states concerning equality of widows' and widowers' intestacy rights. Over the course of the twentieth century, widows came to be treated more equally in inheritance compared to widowers, and spouses came to be treated more favorably in intestacy compared to children.

I. Introduction

Inheritance in the United States is generally a matter of state law, and each of the fifty states (as well as the District of Columbia and the US territories) has its own history of the law of inheritance. This discussion will provide a brief overview of highlights and general trends among these jurisdictions.¹

II. Colonial Period

A discussion of the law of succession in the colonial period in America is necessary for an understanding of later developments.

During the colonial period, the colonies adopted English inheritance law, largely replicating the mode of wealth transmission found there, including the power of a testator to dispose of real and personal property by will, subject to regulation by statute.²

As of 1720, while the colonies generally relied on common law with respect to inheritance, most had enacted statutes governing distribution of personalty, and had created procedures for

¹ A comprehensive treatment of the history of the law of inheritance throughout the US is CAROLE SHAMMAS, MARYLYNN SALMON & MICHEL DAHLIN, *INHERITANCE IN AMERICA FROM COLONIAL TIMES TO THE PRESENT* (1987), *bibliographic information at* <http://www.worldcat.org/oclc/14134770>. What follows is mostly derived from that work. Other relevant titles include LAWRENCE M. FRIEDMAN, *DEAD HANDS: A SOCIAL HISTORY OF WILLS, TRUSTS, AND INHERITANCE LAW* (2009), *bibliographic information at* <http://www.worldcat.org/oclc/259716073>, which discusses changes in aspects of the law of succession within their social context, and HENDRIK HARTOG, *SOMEDAY ALL THIS WILL BE YOURS: A HISTORY OF INHERITANCE AND OLD AGE* (2012), *bibliographic information at* <http://www.worldcat.org/oclc/774394439>, which focuses on the effect of inheritance law on elder care and family life in the US.

² SHAMMAS, SALMON & DAHLIN, *supra* note 1, at 23, 38–39.

probating wills and administrations (since they lacked ecclesiastical courts to handle probate like those in England).³

In some instances colonial legislatures passed statutes to alter common law on the descent of land, kin succession, and limitations on testamentary freedom. A majority of colonies rejected primogeniture and passed statutes to allow younger sons and daughters to receive shares of an estate.⁴

As to the rights of widows, most colonies followed the contemporaneous English practice granting testators freedom to will personalty, although two states, Virginia and Maryland, allowed widows to claim a share of personalty notwithstanding the will.⁵

III. Postrevolutionary Period

In the period following separation from England, most states enacted statutes codifying common-law provisions while making some changes to English law and procedure.⁶

Most 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 in real and personal property.⁷

Most states passed statutes providing for widows to receive cash sums in lieu of dower in the land, and statutes making explicit what a widow would receive upon renouncing her husband's will.⁸

A few states' statutes addressed the inheritance rights of illegitimate children.⁹

IV. Nineteenth Century

In the nineteenth century, as the US expanded westward, state laws on inheritance 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. Wives in community-property states automatically inherited one-half of community property—namely, that property acquired during

³ *Id.* at 31.

⁴ *Id.* at 31–33.

⁵ *Id.* at 35–36.

⁶ *Id.* at 63.

⁷ *Id.* at 64–67.

⁸ *Id.* at 63–65, 67–68.

⁹ *Id.* at 71–72.

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 community property went to her husband, whereas if he died first, she could only claim half, and he could bequeath his half to whomever he pleased.¹⁰

In the mid-nineteenth century, most states passed legislation giving married women rather than their husbands the ownership and control over all personal and real property they had inherited or been given. Married women's inheritances became separate property that they could bequeath as they wished. As of the 1890s, there was a general acceptance in all areas of the country, in both community-property and common-law jurisdictions, that married women should have the power to devise and bequeath property they inherited.¹¹

Differences are apparent between jurisdictions that entered the union before 1850 and those that entered thereafter. The post-1850 jurisdictions tended to make equal the intestacy shares given to husband and wife, either by increasing widows' shares to one-half or by reducing widowers' percentage to a third.¹² The post-1850 jurisdictions also replaced widows' and widowers' lifetime tenure in realty with fee-simple tenure.¹³ The post-1850 jurisdictions also typically made personalty and realty more similar by eliminating doctrines such as dower and curtesy, and certain intestacy-share provisions that provided for lifetime property use rather than absolute ownership.¹⁴

It also became more difficult to disinherit a child in many states, as the number of states that passed laws requiring parents to state in their wills their specific intention to leave out a son or daughter increased significantly.¹⁵

V. Twentieth Century

The twentieth century saw significant changes in most states' laws with respect to the equitable treatment of women in inheritance.

The trend begun in the nineteenth century of replacing spousal intestacy shares from lifetime tenure to fee-simple tenure continued. By 1935, 60% of the states had made this change, and by 1982 all states had.¹⁶

Over the course of the twentieth century, the proportion of a decedent's estate that under intestacy went to the spouse rather than to children or others increased in many common-law jurisdictions. While in 1935, over 90% of common-law states offered spousal shares lower than

¹⁰ *Id.* at 84.

¹¹ *Id.* at 83, 86.

¹² *Id.* at 85.

¹³ *Id.*

¹⁴ *Id.* at 86.

¹⁵ *Id.* at 100.

¹⁶ *Id.* at 164–65.

what would be awarded in community-property jurisdictions, by 1983, such jurisdictions were in the minority.¹⁷

The four community-property jurisdictions mentioned above that initially treated widows differently than widowers eventually amended their laws to treat widows and widowers the same.¹⁸

Another trend in the law among most American jurisdictions during the twentieth century was to treat spouses relatively more favorably than children and other relatives in intestacy statutes.¹⁹

By the end of the twentieth century, with respect to the right to devise property by will, while protection of children from disinheritance was “almost nonexistent,”²⁰ there was a diverse array of spousal protections that varied by jurisdiction:

[C]ommon law dower has been substantially retained by fifteen states; statutory dower, by which the widow is more generously allowed to take a fee interest rather than a life interest, exists in eight jurisdictions; ten states have done away with dower altogether and have created in its place an inchoate, statutory interest in the other spouse's property which is protected during coverture by the husband's inability to convey unencumbered title by his sole act; and the remaining states do not give the wife an inchoate interest during coverture but limit her instead to a forced share in whatever property the husband leaves in his estate at death. The present state of the law represents a jungle, with hardly two states to be found that are exactly alike, and there exists in reality fifty different schemes most of which, when analyzed, are not built upon a single adequate interest given the surviving spouse; but instead give her a bit of homestead, a bit of widow's allowance, and in addition a bit of dower or some statutory substitute therefor.²¹

¹⁷ *Id.* at 165.

¹⁸ *Id.*

¹⁹ *Id.* at 166–67.

²⁰ 1 WILLIAM H. PAGE, PAGE ON THE LAW OF WILLS § 3.13, at 116 (Jeffrey A. Schoenblum ed., rev. ed. 2003).

²¹ *Id.* at 117–18.