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Edited by Jack Goody, Joan Thirsk and E. P. Thompson

Excerpt

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Introduction

JACK GOODY

TO MANY READERS THE IDEA OF EXAMINING SYSTEMS OF INHERITANCE will smack of dull legal records, of outdated practices such as gavel-kind and tanistry, of customs and codes formalized by hair-splitting lawyers. Such a picture is not altogether incorrect. Yet transmission *mortis causa* is not only the means by which the reproduction of the social system is carried out (in so far as that system is linked to property, including the ownership of the means by which man obtains his livelihood); it is also the way in which interpersonal relationships are structured. I mean by this that since inheritance normally takes place between close kin and affines, the emotional tone and reciprocal rights characterizing such critical relationships are often influenced by the possibility of pooling or dividing the farm or by the anticipation of future gains; the plots of many plays and novels make the point in a more dramatic way than is available to the historian and the social scientist. Consequently a different quality of relationships, varying family structures, and alternative social arrangements (e.g. greater or lesser migration, age of marriage, rates of illegitimacy) will be linked to differing modes of transmission, whether transmission is primarily lateral or lineal, whether agnatic or uterine, whether to females as well as males, whether equal or unequal. All these and other factors will be related, in complex, subtle and sometimes contradictory ways to the social and cultural patterns, to the institutions and *mentalités*, to the formal and informal structures of the people who practise (or are forced to practise) particular ways of passing down rights over material objects.

The inheritance system of any society (and it clearly may be more or less 'systematic') is the way by which property is transmitted between the living and the dead, and especially between generations. It is part of the wider process whereby property relations are reproduced over time (and sometimes changed in so doing), a process that I speak of as devolution. That is to say, devolution describes the inclusive transactions that take place between the holder of rights in property and those who have continuing interests in such rights. To put the matter in a less guarded way, whether the transfer of property between father and son, or

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father and daughter, takes place on the attainment of adulthood, upon the marriage of the heir or upon the death of the holder is not, from our standpoint, of critical importance as far as it concerns the reproduction of the social system (or the continuity of particular social relationships over time). These transactions should be seen as a whole over time; whether a son or daughter receives a 'portion' by dowry or by inheritance is, from the standpoint of equity, of little importance; the fact is that the child of either sex shares in the parental wealth.

From another angle the timing is of critical importance. An endowment at marriage is more likely to be of movables than of land itself. While the unity of the agricultural holding may be preserved, both in the case of farms (as the chapter by Howell on the English Midlands clearly shows) and of aristocratic estates (as we see from Cooper's examination of the situation in England, Spain, Italy and France), this unity is often achieved at the expense of burdening the productive unit with heavy debts. Out of the future proceeds of the farm the heir is obliged to service the mortgage entered into on behalf of his 'non-inheriting' siblings. Indeed, despite the norm of primogeniture, younger sons and even daughters sometimes received land. It is the solution to the problem of allocating resources to the siblings who 'inherit' as well as those who do not (either because they leave the farm or else because they remain as unmarried co-parceners) that forms the basis of Yver's analysis of French customals, so interestingly generalized in the chapter by Le Roy Ladurie. It indicates some of the many ways in which differences in the timing and finality of a distribution of 'familial' property is linked with a particular type of socio-economic system. Thus the seigneurial system of open fields in the champion country is distinct from the less dependent tenures of the woodland country, with its scattered farms and enclosed farmlands, the former tending towards the inheritance of the farm by one heir, the latter towards division. This is a theme which is taken up again in Berkner's chapter comparing inheritance system, land tenure (in its widest sense) and the structure of the household over time in two German parishes in the seventeenth century, an essay that makes full use of the model of the developmental cycle of domestic groups developed by Fortes¹ in order to illuminate a long-standing historical con-

¹ M. Fortes, 'Time and Social Structure: an Ashanti Case Study', *Social*

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trovsky on the distribution and incidence of the 'stem-family' and its relationship with the dominant mode of transmitting 'family' property.²

The linking of patterns of inheritance with patterns of domestic organization is a matter not simply of numbers and formations but of attitudes and emotions. The manner of splitting property is a manner of splitting people; it creates (or in some cases reflects) a particular constellation of ties and cleavages between husband and wife, parents and children, sibling and sibling, as well as between wider kin. Cooper has drawn attention to the possible connection in Italy between lateral inheritance, the *fratelanza* (Fr. *frèreche*) and the relationship between brothers and cousins. He might equally have quoted the observations of Francis Bacon on the Italian family:

The Italians make little difference between children and nephews and near kinsfolk; but so they be of the lump, they care not though they pass not through their own body (*Essays*, 'Of Parents and Children').

The mode of tenure and system of inheritance are linked not only to household structure but also to a whole constellation of 'demographic' variables, factors which affect growth of population and preferences for male or female children. The ways in which these links occur are many and complex. Suffice to say that where marriage for men is delayed through the Irish type of retirement system, there will tend to be either more spinsters or more widows (and hence more orphans) in the particular community. But late marriage also implies a certain degree of sexual abstinence on the part of males, a subject that has recently been examined in a particularly interesting way by Flandrin.³ This topic is one that has not been explored in the present volume but certainly merits the attention in other parts of Europe that has already been given to the subject by French scholars.

The question of population growth may be more directly affected

Structure, ed. M. Fortes (Oxford: Clarendon Press, 1949), reprinted in *Time and Social Structure and Other Essays* (London: Athlone Press, 1970).

² See, for example, P. Laslett and R. Wall (eds), *Household and Family in Past Time* (Cambridge University Press, 1972).

³ *Les Amours paysannes (XVI^e-XIX^e siècle)* (Paris, Gallimard-Julliard, 1975); 'Contraception, mariage et relations amoureuses', *Annales E.S.C.*, 1969, pp. 1374-7; 'Mariage tardif et vie sexuelle', *Annales E.S.C.*, 1972, pp. 351-78.

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by the type of inheritance. Hallam claims that partible inheritance in Lincolnshire, in an area which lay outside the normal Midland pattern of open field agriculture and impartible transmission, meant denser populations; the question of partibility ‘largely determined the structure and mobility of the population’,⁴ a suggestion that is supported by Habakkuk.⁵

A further aspect of the interaction between inheritance and population, touched upon in this volume in Cooper’s paper, arises in connection with the strategies that an individual adopts in the absence of an heir, or an heir of the preferred sex. This absence may be circumvented by ‘lineage type’ rules, i.e. by the passage of property to collaterals. Even so, if the old are to benefit, then they need a presumed heir before their death rather than afterwards; help with the farm may involve a transfer of residence. Alternatively the heirless couple can hire labour, though this seems an improbable solution among the poorer groups; or they can rejoin dispersed kin (e.g. a married daughter), selling their own plot; or they can live out their lives as widows or widowers on the family land, given some help (as the reports of French *charivaris* indicate) by the other villagers; or finally they can ‘adopt’ an heir from another family.

The relationship between ‘practice’ and ‘mentality’, raised by Flandrin (1975) in matters of sex, is the subject of Sabeau’s chapter, which calls for more systematic research into the whole area. For this we need to examine not only the material on national law and local customals prepared by legal historians, but also adequate examples of ‘trouble cases’, to use the phrase of Llewellyn and Hoebel, in order to ascertain the nature of local norms, rules or customs, as well as the conflicts to which these give rise in operation. Indeed the development of national laws and written customals introduced further possibilities of conflict, not just between one idea and the next, between the principles of equity (division) and unity (impartibility), between the operation of norm and practice, but by bringing about ‘the conflict of laws’ on various levels of jurisdiction. The complexity, conflict and resolution of the processes of transmission is neatly illustrated in

⁴ H. E. Hallam, ‘Some thirteenth century censuses’, *Econ. Hist. Rev.*, x (1958), p. 341.

⁵ H. J. Habakkuk, ‘Family structure and economic change in nineteenth-century Europe’, *Jnl of Economic History*, xiv (1955), pp. 1–12.

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Douglass's recent study of a Basque village. He notes there are three main sources of law for inheritance. Firstly, the Spanish Civil Code, which dictates that all legitimate offspring share equally in the estate. Secondly, the local laws or *fueros* which take precedence over the national code and guarantee 'the donor couple's right to name a single heir to the *baserría*', without specifying which one, nor mentioning any compensation to the other children. But the third element, local custom, 'resolves both of these issues. In Murelaga there is a preference for male primogeniture; the remaining siblings of the heir are compensated with dowries.'⁶ Very similar types of resolution are reported by Cooper in the transmission of aristocratic estates as well as by Spufford for smaller holdings in Cambridgeshire and by Howell for the English Midlands. The resolution often differed of course as between large landowner and small proprietor, the former tending towards primogeniture, the latter towards partibility. It also differed over time. But as Thirsk's chapter indicates, the continuing ideological debate clearly recognized the injustice of preferring one member of a sibling group all of whom were in other respects equally deserving. The specific reasons for such preference differed for large and for small holdings, but there is some evidence that similar tensions to those exhibited by the upper classes in the literary debate also manifested themselves in the oral discourse of the peasantry. Indeed the nature of the conflicting pulls for any 'estate manager' is clearly brought out in a recent study of the southern Tyrol by Cole and Wolf.

He would like to see every daughter well married and every son with land enough to support a family. Then too, he would like to see the holding that he has maintained against the world for a lifetime remain essentially intact to provide a material basis for perpetuation of the family line. However, the meagre resources at his disposal are, more often than not, insufficient to fulfill both these goals. He must balance his desires to perpetuate his name against the future of his children.⁷

This whole question of the resolution of conflict raises the question of whether the differences in custom that emerge from

⁶ W. Douglass, *Death in Murelaga* (Seattle: University of Washington Press, 1968), p. 98.

⁷ J. W. Cole and E. R. Wolf, *The Hidden Frontier: Ecology and Ethnicity in an Alpine Valley* (New York: Academic Press, 1974), p. 176.

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documentary sources do in fact reflect differences in practice; if all eventuate in similar resolutions, then we need discuss only the quirks of innumerable lawyers and the irrelevance of praxis to theory. Such a view has something to be said in its favour; from a wider perspective, the transmission of property in Europe displays many common features (in contrast to much of the rest of the world). Moreover the differences that do exist are not as absolute as terms like primogeniture and impartibility suggest. If they are not so absolute, neither are they necessarily so permanent, an observation that constitutes one of the themes of my own contribution. Nevertheless, the constellation of relationships in Europe certainly differs significantly from those in other parts of the world, with important effects on the structure of roles and the quality of intercourse; the contrast with Africa comes out particularly clearly in the interaction between men and women, whether as husband and wife, parent and child, brother and sister, indeed over the total range of cross-sex relations. Moreover, even the smaller differences that do exist within Europe, though they may be less pronounced and less permanent than they sometimes appear, have important links with the socio-economic system on the one hand and with the network of nuclear relations on the other. I would see all the contributions to this book as providing evidence of this association.

One other point to come out of the essays on English villages is the significance of the custom whereby the senior generation handed over the control of farms to their sons (and sometimes sons-in-law or 'adopted' sons) during their lifetime, in return for their bed and board. Both in Cambridgeshire and the Midlands this custom, that I have elsewhere referred to by the Czech name of *výměnek*, had an important bearing upon the transmission of property and the handing over of domestic authority. For example, those who had handed over their rights in their lifetime did not need to make a will; they became 'sojourners', as Spufford points out. Contrary to expectations that it is the rich who make wills, she finds that it was the small man who tended to do so, those with less property, who had not handed over control in their lives and who still had children to provide for. By retirement the parental couple had already handed over their property by pre-mortem transfer, frequently creating a kind of 'stem-household', with effective control in the hands of the junior generation. But

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whether any contemporary listing specifies a joint or extended household may depend upon the physical form of the farmstead, the nature of the cooking arrangements or the categories of a particular recorder.

In speaking of the transmission to heirs both before and after death, we do well to pay heed to Thompson's reminder that property is not an undifferentiated concept. Rights relating to material objects constitute a 'bundle' (to use Maine's phrase) that can vary over time, vary with the object of rights, with the technology used in the productive enterprise, and with the hierarchy of class or strata that dominates the social system. More concretely, land differs from movables in the kind of rights (i.e. property) that can be established over it; these rights again differ depending upon whether the productive system utilizes hunting and gathering (as in parts of eighteenth-century Berkshire and in the fen country around Willingham), or whether the farm is cultivated by hoe, plough (*araire* or *charrue*) or by tractor; and the more complex the productive system, the more likely one is to find the bundle of rights split up in accordance with the hierarchy of status, class or government. The way in which the balance is distributed at any one time is described by terms such as share-cropping, tenancy and ownership, though clearly different views of the nature of an individual's specific rights may be held by the 'tenant' and the 'owner', and the resolution of this particular difference may sometimes lie outside the realm (or even the shadow) of the courts of law, depending rather upon the subtleties of local reciprocities, the vaguer rights *in personam* rather than the more precisely defined rights *in rem*. Both tenancy and ownership are themselves a variable bundle of rights and duties, whose transmission concerns both parties; and even the offspring of a share-cropper may inherit some limited right of continued service or a yet more shadowy right to work the land in the district in which he was born. Of course, at the end of the continuum are the landless peasants, the rural proletariat, the permanent 'younger sons', whose numbers varied from region to region, but who came to dominate many parts of rural Europe after the agricultural changes of the eighteenth century. The studies in this book do not deal with transmission among this important element in the population of the countryside, an element that had little to pass on but their need to work for others. And while some of the studies refer to those

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who exercise rights to the common resources of forest and stream to provide a livelihood (and where again continuity of claim is of some considerable importance), they say nothing about transmission in a pastoral economy. In parts of Scandinavia, at least in the period before 1800, cattle-raising rather than land formed the cornerstone of the rural economy; as movable inheritance, this basic productive resource was transferred more easily to daughters than land,⁸ as indeed is the case with Lapp reindeer herders in the same country, where men without an adequate labour force used sons-in-law to help, a system that inevitably involves the distribution of livestock to women as well as men.⁹

We need then constantly to remind ourselves of the differing quantum of rights, and especially rights in the basic resources of livelihood, that are indicated by terms such as property and ownership. The limiting case of 'absolute' ownership is rarely if ever found; rights in land are usually distributed in a complex hierarchy that represents the political/legal/economic system of the society. When we get beyond hoe farming into more advanced agriculture, a wider variety of man-land relationships are found that range from the absence of any continuing use right (as with landless labourers), to limited 'garden' rights, to more extensive crop-sharing, to peasantries involved in a wide-ranging variety of relations with landlords, to peasant proprietors and large land-owners. The range is wide. But each property relationship is preserved by a particular mode of inheritance or devolution that serves to reproduce this central aspect of rural society.

The theme of this volume is in line with the work of Bloch and Homans, as well as with that of the great sociolegal historians of an earlier period, of Vinogradoff and of Pollock and Maitland. These writers too made use of comparative material to throw light on the European experience, in the spirit of Kiernan's wide-ranging essay on 'Property in History'. But apart from the light thrown on European society by placing it in contrast with Africa or India, we are now able to draw upon an increasing number of works that deal with the problem of devolution in contemporary European villages. While Bloch called upon his own experiences in the French

⁸ For this comment, I am indebted to O. Löfgren of the Institute of European Ethnology, University of Lund.

⁹ See R. N. Pehrson, 'The bilateral network of social relations in Kōnkämä Lapp district', *International Jnl of American Linguistics*, 23 (1957), part 2.

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countryside, Homans drew upon the work of Arensberg and Kimball on County Clare. Since that day much new work on inheritance practices has appeared in English, among the best of which is Barnes on northern Norway, Friedl and Campbell on Greece, Pehrson on the Lapps, Davis on southern Italy, Loizos on Cyprus and most recently Cole and Wolf on the Tyrol.¹⁰ It is in the combination of insights from historical and contemporary studies that the future surely lies.

¹⁰ C. M. Arensberg and S. T. Kimball, *Family and Community in Ireland* (Cambridge, Mass.: Harvard University Press, 1940); J. A. Barnes, 'Land rights and kinship in two Bremnes hamlets', *Jnl of the Royal Anthropological Institute*, 87 (1957), pp. 31-56; E. Friedl, *Vasilika: A Village in Modern Greece* (New York: Holt, Rinehart and Winston, 1962); J. K. Campbell, *Honour, Family and Patronage* (Oxford: Clarendon Press, 1964); J. Davis, *Land and Family in Pisticci* (London: Athlone Press, 1973); P. Loizos, *The Greek Gift* (Oxford: Blackwell, 1975).

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1. Inheritance, property and women: some comparative considerations

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If one looks in a broad comparative way at systems of agricultural production, one of the significant features of European societies, as indeed of the major states of Asia, is the fact that the property from some kind of conjugal estate devolves on both men and women, either by inheritance or by some form of pre-mortem endowment. From the standpoint of social organization, the implications are extensive and can best be brought out in drawing a contrast with other agricultural societies, such as those in Africa. One implication is that even when a certain type of property (such as land) is restricted to males, women are nevertheless seen as the residual heirs in preference to more distant males. This diverging system of devolution is in stark contrast to most of traditional Africa where, if a man did not have a male heir, then a search would be made among the male children of his brothers (or of his sisters in a matrilineal society). Virtually everywhere the rule existed that property descended from males to males and from females to females. In Europe, however, women became heiresses to land even when they were not entitled to inherit immovable property in the first instance. Roughly 20 per cent of all families would have daughters and no sons; the former would therefore be heiresses who could attract men to them as marriage partners and perhaps to live with them in uxorilocal residence, giving rise to the institution of in-marrying sons-in-law (e.g. the *primak* of rural Russia).

Where women receive land, the basic means of production, either as a dowry or as part of their inheritance (that is, even when they have brothers), the social implications are greater because its ownership is drastically reorganized at every generation. Land changes hands between the sexes at every marriage or death, and large quantities of land may come under the direct or indirect control of women. It has been estimated that almost half the agricultural land in Sparta was held by women by the fourth century B.C. In England of the early eighteenth century, the importance of the 'female presence' is brought out in Thompson's chapter in this volume.