

CHANGE IN THE AMERICAN FAMILY AND THE  
"LAUGHING HEIR"

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SCHOLARLY research has assembled abundant proof of the intimate relationship between the organization of the family in any given society and the laws of that society with respect to succession of property upon death. There is no reason to suppose that that relationship no longer prevails, although the complexity of contemporary society may have in some measure attenuated it. We can, therefore, expect that the changes in the structure and life of the American family which are now taking place will in time be reflected in our laws of succession. If we are to utilize this knowledge, we must not merely await the event; it is essential that we scrutinize current changes in the family to detect wherein they dictate or suggest alterations in our rules of testamentary and intestate succession.

The process of readjustment is already taking place. The past century has witnessed a profound change in marital relationships which has in part prompted, in part been effected by, changes in the legal relations of husband and wife with respect to property and contract. True, the repercussion of this social change upon the law of succession has not been as significant as in the field of transactions *inter vivos*. Yet the common law rights of dower and courtesy have been abolished or modified in many states, and new restrictions on testamentary freedom have been devised for the protection of widows.<sup>1</sup> The surviving spouse to an increasing degree is accorded recognition as an heir of the deceased spouse, either equal or immediately subordinate to lineal descendants. The gains of the married woman in other fields of the law have, however, mitigated to a considerable degree the need for change in the law of succession. The *femme covert* of today, who can acquire a separate estate by her own exertions and whose economic autonomy after marriage is not dependent

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<sup>1</sup> See Reports of the Commission to Investigate Defects in the Laws of Estates, N. Y. Leg. Doc. (1931) No. 69, at 295 *et seq.*

on the generosity of her kin, is perhaps less in need of restrictions on the testamentary freedom of her husband than was her Victorian ancestor.

But this paper is directed to another problem in the law of succession: to what degree of kinship should the right to succeed to the property of an intestate extend? At the outset it must be conceded that the very existence of this problem is today accorded scant recognition.<sup>2</sup> Except in Maryland,<sup>3</sup> the only limitation upon the right of a remote collateral to succession in default of closer kin seems to be that posed by difficulties in proof of relationship. Revisers of our canons of descent and statutes of distribution have directed their efforts to simplification in statement, to the elimination of the increasingly anachronistic distinction between the rules of succession to real and to personal property. They have not questioned the right to succession of any collateral, however remote the degree of his kinship. Indeed, the requirement of consanguinity has been waived in some

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<sup>2</sup> Proposals for limitations upon the right to collateral succession are no new thing. Bentham advocated drastic limitation with his customary vigor. 1 Bentham, *Theory of Legislation* (1914 ed.) c. 20. See also Bentham, *Supply Without Burden or Escheat Vice Taxation*, 7 Works (Bowring's ed. 1839) 585. Mill could see "no reason why collateral inheritance should exist at all." Mill, *Principles of Political Economy*, Bk. II, c. II §3. Limitation was considered by the Royal Commissioners appointed in 1828 to inquire into the laws of real property. See Tyrrell, *Suggestions Sent to the Commissioners, Etc.* (1829) 77. No action was taken. England, in the *Administration of Estates Act, 1925*, 15 Geo. V, c. 23, pt. IV, discussed *infra*, page 212, has taken a modest step in this direction. A somewhat similar limitation appears in the Swiss Civil Code. No effort will be made here, however, to consider the treatment of the problem by Continental jurists and legislatures.

Aside from the Maryland statute discussed in the succeeding footnote, no American legislation limiting collateral succession has come to the attention of the writer. However, the desirability of such legislation here has been urged from time to time. Professor Ely characterizes the unlimited right as an "absurd anachronism" in his chapter on the regulation of inheritance in *1 Property and Contract in Their Relations to the Distribution of Wealth* (1922) 447. See also Morton, *The Theory of Inheritance* (1894) 8 Harv. L. Rev. 161, 165; Ballantine, *Our Grotesque Inheritance Laws* (1913) 25 Green Bag 253, 255.

Of course, discussion of the desirability of limitations upon inheritance generally has produced a literature of voluminous proportions. The broader problems posed in that discussion are not considered here.

<sup>3</sup> In colonial days a limitation upon collateral succession appeared in the laws of Maryland. Md. Laws 1719, c. 14. This statute provided that personalty of persons dying without kin within the fifth degree of consanguinity should be

states to extend the right of succession to the family of the deceased spouse and, with greater justification, to step-children of the intestate.<sup>4</sup> Yet it is my belief that there are in process changes in the structure of the American family which, coupled with considerations of convenience, will force to the fore the question of the desirability of drastic limitations on the right of remote kindred to succession upon intestacy.

## II

The most striking of these changes is the diminution in the bonds of kinship which the conditions of modern life are progressively working. Outstanding among these forces is the shift from rural to urban habitation.<sup>5</sup> The social contacts of the farm family are with the families of the neighborhood. The same families remain there from year to year. Marriage takes place within the neighborhood group, and the families thus related remain in contact with each other. Their ways of life are similar; they attend the same schools and churches, frequent the same markets. The situation is propitious for the development and maintenance of clan feeling. The village and the small town, to only a slightly lesser degree, present the same conditions.

Urban life, on the other hand, affords a sharp contrast. Economic considerations tend to dictate the selection of the dwelling-place, and changes in that dwelling-place are not only fre-

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applied to the use of the schools. The fact that relationship is calculated in Maryland by canonical law, *i. e.* by counting the degrees from the common ancestor in the longer line, renders the limitation of little practical consequence. It has, however, remained in the Maryland law to the present day. Md. Ann. Code (Bagby, 1924) art. 93, §124. In 1916, it was extended to realty. *Id.* art. 46, §1. The history of this Maryland law to 1876 is sketched in *Rock Hill College v. Jones*, 47 Md. 1 (1877). See also *Thomas v. Frederick County School*, 7 G. & J. 369 (Md. 1837).

<sup>4</sup> The right of the kindred of a deceased spouse was enlarged in New York in 1930. See N. Y. Cons. Code (Cahill, 1930) c. 13, §83 n. This right is recognized in a few states. See 1 Stimson, *American Statute Laws* (1886) §3123. Ohio recently added step-children to its distributees. Ohio Gen. Code (Page, 1931) §10503-4. In *McCall and Langston, A New Intestate Succession Statute for North Carolina* (1933) 11 N. C. L. Rev. 266, 290, both these additions are proposed.

<sup>5</sup> The urban population of the United States (persons resident in cities and towns of over 2,500 inhabitants) increased from 35.4 per cent of the total population in 1890 to 56.2 per cent in 1930. 2 Fifteenth U. S. Census (1933) 9.

quent<sup>6</sup> but often result in the disruption of the social ties which had been created there. Within large cities, difficulties of transportation often operate to isolate related households as effectively as though the distance between them were many times as great. But more effective to this end are the diverse distractions of city life which result in an increasing reliance upon public centers of recreation, rather than upon inter-family contacts, for the spending of leisure time. Cooperation with kindred for the attainment of common ends dwindles to an insignificant level.

The urban worker, moreover, tends to migrate from city to city.<sup>7</sup> If he is in the salaried group, opportunities for advancement often induce such changes. As industry concentrates in corporate units, national in scope, these opportunities are augmented. The wage-earner in many trades has always been migratory, following the shifts in demand for his skill. The automobile and the motor-bus, by diminishing the cost of transportation, accentuate this tendency.

We have, therefore, a dispersion of families over wide areas. Marriages by members of the same family are contracted with persons springing from widely differing environments. Since, among city workers, men migrate more frequently than women<sup>8</sup> and since migration is most likely to occur before marriage, such

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<sup>6</sup> A vivid indication of the tendency of the urban American to change his place of residence is indicated by the experience of a large insurance company which writes a great volume of "industrial" insurance. "One of the large companies with approximately thirty millions of policies on its books found that, on the average, the number of weekly changes of address involving the transfer of the collection from one agent to another was 200,000. This means upwards of 10 million changes of address in a year, one policyholder out of three making an annual move."

<sup>7</sup> Statistics to corroborate this commonly observed phenomenon are not available. Some light is cast by the United States census statistics as to the number of native born persons born in a state other than that of residence. In 1930 the percentage of such persons was 20.7 per cent of the total population. In 1900 the percentage was 17.8; in 1850, 21.3. 2 Fifteenth U. S. Census (1933) 139. The relative constancy of this figure, however, is not conclusive as to the frequency of change.

<sup>8</sup> This assertion is made without statistical evidence, but its soundness as applied to the urban population seems substantiated by common observation. The 1930 census, however, shows only a small preponderance of males over females in states other than those of birth. *Id.* at 184. The high ratio of males to females in rural areas, *id.* at 108, 109, suggests that the latter preponderate in migration to the cities.

family social relationships as develop after marriage tend to be with the relatives of wives. Marriage operates, therefore, to widen the breach between the migrant and his own kin.

As circumstances grow increasingly unfavorable for the maintenance of actual contact with kindred, the sentiment of relationship diminishes accordingly. Family pride, a potent factor in linking the fortunes of the various branches of a clan, loses force as a member settles in a region where his name awakens no sense of respect in those whom he meets. His place in society becomes dependent on his own exertions, and such calls for assistance as may be made upon him by his relatives are viewed as obstacles to his personal success. Their success, in turn, reflects little glory on him.

As this condition becomes more general and more evident, it will become increasingly incongruous that those to whom a man is linked by bonds so tenuous should succeed to the property which he has amassed in the event that he die intestate and without lineal descendants or ascendants—or, if he die testate, have the power to challenge the validity of his will. But the exceptional character of the circumstances in which this privilege or power operates may suggest that the situation is sufficiently unusual to warrant dismissal as being without social significance. In this connection another trend in the American family becomes relevant.

The fact of a declining birth rate is too familiar to call for demonstration, but its importance with respect to intestate succession may well have been overlooked. As the American family grows smaller<sup>9</sup> the likelihood of succession by collaterals increases. This would not be true if the decline in the birth rate were counterbalanced by a still greater decline in the mortality among children. This is not true. The net decline, after allowance is made for the advances of medical science and in public

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<sup>9</sup> Statistics as to the average size of the American family are not satisfactory. The census "family" is determined by reference to the household and includes the servants, lodgers, and relations who form a part thereof. This unit shows a progressive diminution since 1850. The figures for the census years are as follows: 1930, 4.10; 1920, 4.34; 1910, 4.54; 1900, 4.69; 1890, 4.93; 1880, 5.04; 1870, 5.09; 1860, 5.28; 1850, 5.56. See Ogburn, *The Family and its Functions*, 1 *Recent Social Trends* (1933) 661, 681. See also Parten, *A Statistical Analysis of the Modern Family* (1932) 160 *Ann. Am. Acad.* 29.

health, is considerable. The proportion of the population in the age groups below 20 is growing steadily smaller.<sup>10</sup> Consequently, the number of children per family who attain majority is decreasing; and, since the life expectancy of the older groups has not been materially increased,<sup>11</sup> the likelihood that these adult children will survive their parents is little greater than in the past. Hence we are facing the probability of a marked increase in the frequency of claims by collaterals at a time when an important justification for such claims is rapidly diminishing. The problem is intensified by the fact that the incidence of both tendencies is greatest upon the same group—the city dweller.<sup>12</sup> Moreover, the diminution in the size of the family is most marked in that portion of the urban population likely to leave property at death.<sup>13</sup>

### III

As the German's pungent phrase, "*der lachende Erbe*" (the laughing heir), so aptly indicates, succession by one who is so loosely linked to his ancestor as to suffer no sense of bereavement at his loss arouses a certain resentment in society. His good fortune is begrudged as undeserved. But so long as the "laughing heir" represents the exceptional instance, that resentment will be directed against the individual, not against the institution of which he is the unintended beneficiary. As the "laugh-

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<sup>10</sup> "The aging of the population is not a new process, but one that has gone on for more than a century. What is new is the greater speed in recent years. . . ." Thompson and Whelpton, *The Population of the Nation, 1 Recent Social Trends* (1933) 1, 26. For the first time in our history, an absolute decrease in the 0-to-4 age group took place between the census years of 1920 and 1930. *Ibid.* That the rate of decline has accelerated rapidly since 1930, see U. S. News, Nov. 26, 1934, at 11.

<sup>11</sup> Thompson and Whelpton, *Population Trends in the United States* (1933) 240. No great improvement in expectancy for these groups is anticipated. *Ibid.* See also Sydenstricker, *The Vitality of the American People, 1 Recent Social Trends* (1933) 605.

<sup>12</sup> While it seems probable that the rate of diminution in children per family may in the future be greater in the country than in the city (*cf.* Thompson and Whelpton, *op. cit. supra* note 11, at 276), we shall for some time in the future feel the effect of the shift in population from the rural to urban areas where the birth rate is much lower. As to the differential birth rates of rural and urban population, see Thompson, *Population Problems* (1930) 97 *et seq.*

<sup>13</sup> As to the differential birth rates of various occupational groups, see *ibid.* See also Ogburn, *op. cit. supra* note 9, at 686.

ing heir" becomes a more common phenomenon, however, the rules of succession which permit these resented windfalls will be subjected to reappraisal and ultimately to revision.

The proponents of this reform will not have to rely solely on the social injustice of inheritance by the "laughing heir" to sustain their case.<sup>14</sup> As has already been pointed out, the remote heirs of a decedent have in their power to contest the validity of his will, an opportunity to capitalize their relationship even where there is no intestacy.<sup>15</sup> Moreover, the circumstances surrounding testamentary dispositions where there are no close relatives tend to foster such contests. The contestants are undeterred by affection for the testator or sympathy for his wishes. The testator who has outlived his closer kin is likely to be well on in years, and the books bear ample testimony to the relative vulnerability of the wills of the aged. Bequests for charitable purposes not infrequently afford opportunities to the litigious to attack their validity with some color of justification in law. The fact that many of these attacks on wills and bequests may ultimately be repelled does not eliminate the problem. The contestant is often well aware of that fact. But he is equally aware of his nuisance value, and its potency to extract settlements from an

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<sup>14</sup> Although a steady increase has been noted in the proportion of wills probated as against grants of letters of administration, the former still seem definitely to preponderate. The most comprehensive study indicates that, to take the terminal years, in 1914, of all adult deaths in New York County, wills were probated for 9.21 per cent, letters granted for 19.20 per cent; in 1920, the percentages were 12.51 and 20.68 respectively. Powell and Locker, *Decedents' Estates—Illumination from Probate and Tax Records* (1930) 30 Col. L. Rev. 919. Although statistical material is not available, unquestionably property passing by will is far greater in value than that passing by intestacy. Nevertheless, the volume of intestate property administered in any given year must reach very substantial proportions.

<sup>15</sup> The study cited in the preceding note refutes the fallacy that a substantial proportion of wills are successfully contested. Powell and Locker, *supra* note 14, at 930 *et seq.* Yet the number of contests begun is by no means negligible, and available data do not reveal the number of settlements made to avert contest. Data are equally lacking as to the volume of litigation instituted by heirs and distributees attacking provisions in wills, rather than contesting probate. Since there is far more litigation over the construction of wills than as to their validity, *id.* at 932, it seems likely that the litigious heir may more frequently resort to this line of attack.

estate. The notorious *Wendel* case<sup>16</sup> is a forcible illustration of the reality of this danger.

The case for revision is fortified also by another social tendency quite distinct from the changes in family structure already alluded to. The state, which would be the most immediate beneficiary of the reform, has come to achieve a place less antagonistic to the individual citizen than it has occupied since the breakdown of the feudal organization of society. It is paternalistic in a sense lacking the invidious connotations of that term. The eleemosynary and educational institutions which it maintains contribute directly to the welfare of the citizen, and, perhaps more important in this connection, these institutions are scarcely distinguishable from those which have traditionally been the objects of testamentary bounty. The proponents of limitations upon the right to succession could utilize this fact most effectively by advocating provisions that where property passed to the state in default of successors it would be earmarked for the use of such institutions.<sup>17</sup> It might well be found desirable to devote a portion of the property thus acquired to uses localized in the decedent's domicile.<sup>18</sup> If such provision were made, it is not unreasonable to suppose that many persons, hav-

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<sup>16</sup> Miss Wendel, an elderly recluse whose family had amassed a fortune in New York realty, died in 1931, leaving the bulk of her fortune to charity. Her executors in filing her will stated that she left no relatives. See N. Y. Times, Mar. 24, 1931, at 1. Some 2300 persons strove to establish themselves as entitled to join in the assault on her will. In June, 1933, four claimants, conceded to be relatives in the fifth degree, accepted \$2,000,000 in consideration of their agreement not to contest the will. They are believed to have agreed to share this sum with sixty or seventy relatives in the sixth, seventh, and eighth degrees. See *id.*, June 30, 1933, at 19. One claimant was convicted for having fabricated evidence that he was the testatrix's brother's son, and Surrogate Foley referred the activities of six other claimants to the Grievance Committee of the Bar Association. See *id.*, July 7, 1933, at 19.

<sup>17</sup> A provision of this character is contained in the Maryland statute discussed in note 3, *supra*. In North Carolina all real estate accruing from escheats is vested in the University of North Carolina. N. C. Code (Michie, 1931) §784. Unclaimed personalty may also be recovered by the University. *Id.* §§5785, 5786. Cf. note 4, *supra*.

<sup>18</sup> The present Maryland statute, *supra* note 3, provides that such property should pass "to the board of county school commissioners of the county wherein letters of administration shall be granted. . ." Obviously, if at least a portion of the property is devoted to local uses, the likelihood of collection will be materially enhanced.

ing no relatives within the privileged degrees, would be content to allow their property to devolve upon the state.<sup>19</sup>

Another argument, which would not be without weight to those who deal in real estate, is that a restriction of the class of those entitled to succession would remove an important source of uncertainty in titles to land. Where a decedent leaves no close kindred it is often difficult to ascertain whether the persons who first assert their claim may not later be obliged to yield in precedence to the long lost cousin from Australia.<sup>20</sup> (It may be remarked at this juncture that the desire to maintain the ancestral homestead in the family, once a sentiment deeply charged with emotion, is rapidly losing force in a day when urban land has become an article of commerce and farm land a bone of contention among lien-holders).<sup>21</sup>

Other nuisance taxes are exacted by the unlimited right to succession even where land is not involved. Investigations to determine those entitled to succession may be costly, and the internecine strife among competing claimants often delays the settlement of the estate—*vide*, again, the *Wendel* case.<sup>22</sup> The

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<sup>19</sup> The success of "The Community Trust" provides an encouraging analogy.

<sup>20</sup> Statutes of limitation, with their liberality to the disabled, do not afford adequate protection. Even in the case of wills, this uncertainty may be prolonged. See Quinn, Land Titles in Illinois and Indiana as Affected by Infant-Disability Statutes (1924) 18 Ill. L. Rev. 447. Statutes authorizing decrees of distribution are a more effective device to this end. They exist in about two-thirds of the states, but in a number of these they are not conclusive in effect. The case for such statutes is ably put in Ladd and Brooke, Decree in Probate Proceedings Determining Heirs, Distributees and Distribution (1931) 16 Iowa L. Rev. 195.

Although a limitation upon the right to collateral succession would be prospective in application, all outstanding claims of collaterals might be barred after a reasonable period of time by a special statute of limitation containing no disability exemptions.

<sup>21</sup> "An examination of the records of the Surrogate's Court of New York County, in the estates of persons dying without a will, reveals that almost 96 per cent of all such persons leave personal property only. In other counties of the State and even in the rural districts almost as large a percentage would probably be found upon investigation." Report of the Commission to Investigate Defects in the Laws of Estates, N. Y. Leg. Doc. (1928) No. 70, at 8. It seems questionable, however, that the latter statement could be substantiated on a nation-wide scale.

<sup>22</sup> *Supra* note 16. The prevalence of such litigation was remarked in 1829. Tyrrell, *loc. cit. supra* note 2.

procedure of estate settlement is often burdened by profitless procedural gestures to remote collaterals even where the decedent dies testate. Unclaimed bank deposits are held for years where it is known that their former owners left no close relations. The credulous fall victims to swindlers who dangle before them the chance to lay claim to the fortunes of the distant, and possibly mythical, kinsmen.

#### IV

How drastic a limitation should be placed upon the right of collaterals to succession is a question to which different responses are likely to be given by the states which initiate this change. Perhaps so modest a reform as that effected by the English Administration of Estates Act, 1925,<sup>23</sup> will constitute the first step. Under this statute, the most remote collateral kindred entitled to take by succession are those claiming through the grandparents of the deceased. First cousins or their children will most frequently succeed in this line.<sup>24</sup> In those states where the process of disintegration of the clan has not proceeded apace, succession by persons thus related might not be regarded as socially undesirable. However, it seems unlikely, once reform in this field has been undertaken, that it will stop at this point. A limitation on collateral succession which would confine the privilege to the decedent's brothers and sisters and their children would seem ultimately to be necessary if the law is to conform to the effect of current tendencies operating to isolate and to reduce in size the family units of the clan.

The adoption of so drastic a limitation upon the right of collaterals to succession would give rise to certain subsidiary problems. Among these are the following:

(1) Should reference to "heirs" or "next-of-kin" in instruments of conveyance *inter vivos* or wills be construed as subject to the statutory limitation? The English Act provides that, as to instruments operative after the commencement of the Act, the statutory definition shall prevail, "unless the context otherwise requires."<sup>25</sup>

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<sup>23</sup> *Supra* note 2.

<sup>24</sup> The not uncommon American practice of restricting representation among collaterals is not followed in England. *Ibid.* This restriction substantially diminishes the number of remote claimants.

<sup>25</sup> *Id.* §50.

(2) What protection should be provided to prevent the probate of invalid wills where the testator leaves no successors entitled to contest them? This risk seems sufficiently substantial to require the erection of statutory safeguards. Perhaps, where the proponent was unable to establish the existence of successors, service of notice of the probate proceedings upon an appropriate state officer or the public administrator would suffice.

(3) Should the same limitation of the right to collateral succession be maintained where the decedent died in infancy before he had attained testamentary capacity? Here a qualification would appear to be appropriate.<sup>26</sup> The incompetency of the deceased to make a will, coupled with the fact that in all probability his property was acquired through gift or inheritance from his ancestors, suggests that in such a case the right to collateral succession should be extended to the third parentelic group, *i. e.* to the collaterals claiming through the grandparents, thereby embracing those who would have taken had the decedent been survived by his parents.<sup>27</sup> Where the decedent's incompetency was extended beyond infancy by a supervening disability a similar rule might be applied.

(4) Should provision be made, as in the English Act, that when property passes to the state, it may provide out of such property "for dependants, whether kindred or not, of the intestate, and other persons for whom the intestate might reasonably have been expected to make provision"?<sup>28</sup> Clearly here is a discretionary power which might on occasion be abused. Yet its intelligent administration could go far, not merely toward mitigating the occasional harshness of a limitation upon collateral succession, but in achieving ends which the rules of intestate law as now constituted often fail to accomplish.<sup>29</sup>

<sup>26</sup> Even Bentham in his "Principles of the Civil Code" suggested a relaxation in this situation in favor of the uncle. See Bentham, *Theory of Legislation* (1914 ed.) c. 20, at 239.

<sup>27</sup> The willingness of collaterals to maintain a home for the infant orphan would be promoted by a qualification of this sort.

<sup>28</sup> 15 Geo. V, c. 23, §46 (i) (vi).

<sup>29</sup> Proximity of consanguinous relationship may serve as a rough approximation to the wishes of the decedent, but not infrequently persons without this relationship are bound to him by closer ties of affection and dependency. *Cf.* Ely, *op. cit. supra* note 2, at 441 *et seq.* So long as our population assays so great a proportion of the superstitious and procrastinating, reliance cannot be

## V

Consideration must be given to the objection that the social injustices of succession by remote collaterals can be removed by discriminatory taxation. Today, it is true, death duties are generally increased in proportion to the remoteness of the beneficiary's relationship to the decedent.<sup>30</sup> No differentiation between persons taking by will and by intestacy seems to have been attempted. This, of course, could be done. But sharply discriminatory rates would undoubtedly arouse resentment. Bentham's paradoxical "Better to have nothing than to have a share" which he urged in support of a radical extension of the law of escheat in lieu of succession taxes seems a psychologically sound objection to this alternative.<sup>31</sup> Moreover, certain other advantages to the limitation upon collateral succession do not accrue to the tax device, *e. g.*, the protection against the "strike" will-contest, the added certainty to land titles, the facilitation of estate administration, and the stimulation of "gifts" by intestacy to educational and eleemosynary institutions where statutes provide that these shall be the beneficiaries.

## VI

Too many social injustices, too many problems of adapting the law to the needs of our times press for solution to allow one to indulge the fancy that a wave of popular indignation will one

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placed on the will to correct the injustice of depriving the deserving of a share in the decedent's property. To recognize their claims as of right would, however, introduce serious complexities in the administration of estates.

<sup>30</sup> Variations in classifications and rates make generalization as to the degree of increase impossible. Since, under present laws, the higher rate of tax must apply equally to distantly related but collateral beneficiaries under the decedent's will and to the "laughing heir", the differential cannot well be extreme.

<sup>31</sup> His argument on this point is both characteristic and psychologically interesting. A passage may be quoted: "Under a tax on successions, a man is led, in the first place, to look upon the whole in a general view as his own; he is then called upon to give up a part. His share amounts to so much—this share he is to *have*; only out of it he is to pay so much per cent. His imagination thus begins with embracing the *whole*; his expectation fastens upon the whole: then comes the law putting in for its *part*, and forcing him to quit his hold. This he cannot do without pain." 7 Bentham, Works (Bowring's ed. 1839) 585, 590. This distress he contrasts with the equanimity with which a man regards an estate which has been limited away from him altogether. "He never looks at it."

day submerge the "laughing heir". Social change in matters of this sort is effected less dramatically. Belief in the essential rightness of an institution erodes under the friction of maladjustments created by altered conditions of life. So imperceptibly is its sustaining popular sentiment worn away that when, under the attack of the reformer, it suddenly collapses, those who have failed to observe the process closely are taken by surprise.<sup>32</sup>

Thus, I believe, it will be that the alteration in our laws of intestate succession will be effected. The role of the former will not, in all probability, be played by a Bentham of the future. Doubtless, the work will be accomplished, rather prosaically, by some law revision commission. When it is done, we shall wonder why it was not done sooner.

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<sup>32</sup> Perhaps no more striking illustration of this process can be found in the law than the wave of statutory reforms in the common law which began in the second quarter of the nineteenth century, scarcely two generations removed from the complacency of Blackstone.