Chapter 13

Freedom of Testamentary Disposition in American Law from the Comparative Perspective

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INTRODUCTION[1]

In its national anthem, the United States of America is referred to as 'the land of the free.'[2] Acknowledgment of such freedom takes place within numerous legal instruments, from what are almost stereotypical ones (as perceived, for example, in Poland) such as access to weapons, to less obvious ones, such as freedom of testamentary disposition. As this chapter reflects, the liberal and individualistic attitude as derived, for example, from Locke, Bentham, and Jefferson[3] encompasses American inheritance law so deeply that it allows for nearly unlimited freedom of testamentary disposition, a feature unique among the laws of the Western world.[4] Also,

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[2] Francis S. Key, "The Star-Spangled Banner" (1814).

[3] Rosalind Croucher, "How Free is Free? Testamentary Freedom and the Battle between 'Family' and 'Property,'" *Australian Journal of Legal Philosophy* no. 37 (2012): 13; Ronald J. Scalise, "Family Protection in the United States of America," in *Comparative Succession Law*, vol. 3, *Mandatory Family Protection*, eds. Kenneth G. C. Reid, Marius J. de Waal, and Reinhard Zimmermann (Oxford: Oxford University Press, 2020), 538.

[4] Scalise, "Family Protection in the United States of America," 534.

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such a position has been traditional for American law since it was based on English law at a point when English law also did not limit such freedom.[5]

Therefore, this chapter firstly invokes the general position of American law on freedom of testamentary disposition and its justification, as well as positioning it against other available solutions restricting this freedom across the jurisdictions. Secondly, it refers to the various instruments of American law that may restrict freedom of testamentary disposition and explains their legal nature, proving that freedom of testamentary disposition is, despite these restrictions, truly nearly unlimited. Thirdly, it observes the extent to which the American solution may (or may not) appear useful for adoption in other countries when their existing mandatory family protection system is disputed.

GENERAL POSITION OF AMERICAN LAW ON FREEDOM OF TESTAMENTARY DISPOSITION

As mentioned in the introduction to the Restatement of Law (a core systemic description of American law), the freedom of dispositions is the 'organizing principle' of the law of testaments and lifetime donations.[6] It goes on to state that eventually property owners are 'nearly unrestricted' in their dispositions, both lifetime (*inter vivos*), and with the effect on death (*mortis causa*). The legal doctrine supplements this position, invoking the 'extreme tolerance for individual control over property,'[7] which results in 'unfettered freedom of testation.'[8]

To some extent, this meaning of freedom of testamentary disposition is reflected in the inheritance law terminology. Thus, the statutory inheritance taking place in case of a lack of a valid testament, in American law is referred to as 'intestate' (e.g., Section 2-101(a) Uniform Probate Code, hereinafter as UPC), clearly prioritizing testation against statutory inheritance. It is even more clearly expressed by the doctrine meaningfully referring to statutory inheritance as a case when 'the state will write your will for you.'[9]

Such freedom of disposition is reflected in lacking mandatory family protection after the death of the disposing party in American law, contrary to what is seen in all European and nearly all jurisdictions or the Western world as well as beyond, as proven in the complex comparative research on mandatory family protection ed-

[5] Scalise, "Family Protection in the United States of America," 538.

[6] *Restatement of Law, Restatement Third of Property*, Westlaw 2022, Introduction, para. 3.

[7] Ronald Chester, "Should American Children Be Protected Against Disinheritance?", *Real Property, Probate and Trust Journal* 32, no. 3 (1997): 406.

[8] Scalise, "Family Protection in the United States of America," 545.

[9] Norman F. Dacey, *How to Avoid Probate?* (New York: Crown, 1983), 13.

ited by Kenneth G.C. Reid, Marius J. de Waal, and Reinhard Zimmermann.[10] Their work indicated the utmost common existence of such protection either in the form of fixed share (forced share), namely of (1) forced heirship, or (2) compulsory portion (legitim claim), or (3) no longer fixed, but discretionary family provision. In those systems, at least spouses and children[11] are guaranteed any of the following: aa (1) forced status of heir in a certain share as, for example, traditionally in French law and still currently in Italian law, or (2) a claim amounting to the value of a certain share (legitim claim) as in, for example, Polish or German law, or (3) a claim subject to further alimony-based premises analyzed by the court as in English law, for example. Therefore, from the perspective of European lawyers, this solution in American law may come as a surprise.[12]

At the same time, such a unique attitude of American law not granting mandatory family protection is accepted in nearly all its states. Inheritance law is thus the subject of states' legislative power, but in cases of mandatory family protection, the particular legislative solutions are significantly similar, and in this case, it is not yet the result of unifying state inheritance laws by means of the UPC from the second half of the twentieth century[13] but derives from much more traditional development.[14] Therefore, this chapter will primarily refer to UPC as a model legislation commonly used among states, as well as the example of New Jersey law, which appears to be exemplary, given the existence of all instruments known to American law that may restrict freedom of testamentary disposition. The only exception is the law of Louisiana (articles 1493–1514 of Louisiana Civil Code) with the forced heirship-based system derived mostly from French and also Spanish law.[15]

The lack of mandatory family protection of spouses raises doubts due to the legal character of elective shares. Still, as shown in the analysis later, this instrument should not be perceived as the limitation of freedom of testamentary disposition.[16]

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[10] Kenneth G.C. Reid, Marius J. de Waal, and Reinhard Zimmermann, "Comparative Perspective," in *Comparative Succession Law*, vol. 3, *Mandatory Family Protection*, 742.

[11] Reid, de Waal, and Zimmermann, "Comparative Perspective," 753.

[12] Wojciech Bańczyk, *Opinia prawna biegłego sądowego ad hoc w przedmiocie 1) roszczeń, jakie dzieci spadkodawcy mogą zgłaszać wobec majątku spadkowego lub spadkobierców, jeżeli nie uzyskały przysporzenia z takiego majątku inter vivos albo mortis causa oraz w przedmiocie 2) wydziedziczenia dzieci—obydwu w stanie New Jersey*, Circuit Court of Wrocław-Śródmieście in Wrocław, case no. IX C 8/19 (2021), 1.

[13] Richard V. Wellman, "Recent Developments in the Struggle for Probate Reform," *Michigan Law Review* 79, no. 3 (1981): 501–02.

[14] Scalise, "Family Protection in the United States of America," 538.

[15] Jacqueline Asadorian, "Disinheritance of Minor Children: A Proposal to Amend the Uniform Probate Code," *Boston College Third World Journal* 31, no. 1 (2011): 108; Deborah A. Batts, "I Didn't Ask to Be Born: The American Law of Disinheritance and a Proposal for Change to a System of Protected Inheritance," *Hastings Law Journal* 41, no. 5 (1990): 1210; Scalise, "Family Protection in the United States of America," 556, 561.

[16] See here, part 2.

At the same time, it is the example of disinheritance[17] of children admissible in all jurisdictions but Louisiana's that underlines the utmost specificity of American law, which 'nearly alone among modern nations allows parents to disinherit their children,'[18] a fact well proven by the abovementioned comparative research.[19] This position is perceived as traditional and since as early as in 1877 New Jersey judicature permitting to disinherit a child absolutely[20] has been explicitly kept in the much more modern jurisprudence.[21] Yet this approach happened to be criticized.[22] Said critique was partly grounded in the position of Locke, who (despite being liberal) still had faith in family inheritance.[23] Sometimes even adopting the Louisiana approach to family mandatory protection in American law is suggested more broadly.[24]

INSTRUMENTS OF AMERICAN LAW THAT MAY RESTRICT FREEDOM OF TESTAMENTARY DISPOSITION

The first instrument of family protection in American law is elective share. This allows (section 2-202(a) and 203(b) UPC) for the surviving spouse of a decedent to elect (instead of the testamentary share)[25] to take an elective share of up to 50% of the value of the marital property portion of the estate depending on the duration of the marriage. For example, in New Jersey law, the instrument serves to protect the domestic partner, too (section 3B:8-1 of Administration of Estate). This is frequently underlined as a solution available in the systems of separation of marital property that substitute a marital community system in which the surviving spouse, follow-

[17] Although disinheritance in Polish law may be associated with deprivation of legitim only, see Paweł Księżak, *Zachowek w polskim prawie spadkowym* (Warszawa: LexisNexis, 2010), 62–64, from the perspective of American law it means deprivation of all benefits in a testament, see Scalise, "Family Protection in the United States of America," 536.

[18] Chester, "Should American Children Be Protected Against Disinheritance?", 406.

[19] Reid, de Waal, and Zimmermann, "Comparative Perspective," 759.

[20] Judgment of Court of Chancery of New Jersey from October 1, 1877 in the case *Stevens v. Shippen*, 28 N.J. Eq. 487, 535.

[21] Judgment of Superior Court of New Jersey, Appellate Division from November 13, 1992 in the case *Matter of Will of Liebl*, 260 N.J. Super. 519, 529.

[22] Batts, "I Didn't Ask to Be Born: The American Law of Disinheritance and a Proposal for Change to a System of Protected Inheritance," 1269; Ralph C. Brashier, "Protecting the Child From Disinheritance: Must Louisiana Stand Alone?", *Louisiana Law Review* 57, no. 1 (1996): 26; Chester, "Should American Children Be Protected Against Disinheritance?", 436.

[23] Asadorian, "Disinheritance of Minor Children: A Proposal to Amend the Uniform Probate Code," 101.

[24] Asadorian, "Disinheritance of Minor Children: A Proposal to Amend the Uniform Probate Code," 127.

[25] Scalise, "Family Protection in the United States of America," 542.

ing the death of their spouse, is left with half of the community estate.[26] Then, the marital assets are equalized.[27] At the same time, for example, in Polish law, which is a community marital property system, the death of the other spouse provides the surviving spouse with both the community property share[28] and the fixed share of the remainder of the estate. Therefore, this instrument of American law should not be mistaken for forced heirship, as even one significant comparative work does.[29]

The second instrument refers to the omitted or, otherwise speaking, pretermitted heir. According to section 2-301 (a) (1) and (2) UPC, relating directly to premarital testament (premarital will), if the testator marries after execution of the testament in which such a testator fails to provide for this spouse, such a spouse is in most cases entitled to a share in the estate unless, for example, the testament was made in contemplation of this marriage, or intended to be effective notwithstanding any subsequent marriage. Similarly, section 2-302 (a) and (b) UPC on omitted children refers to the same share of an omitted child if a testator becomes their parent after the execution of the testament, unless the omission was intentional, for example. This prevents unintentional disinheritance of children, resorting to the presumed will of the testator to benefit the subsequently born child.[30] At the same time, the intentional disinheritance is fully admissible. This instrument is present, for example, in New Jersey law (section 3B:5-15 and 16 of Administration of Estate), in which it additionally protects domestic partners regarding testaments executed before the formation of said partnership. Moreover, it corresponds with the Roman law of formal inheritance against the will (*contra tabulas*)[31] that demanded that the testator list particular persons that were their statutory heirs only in order to disinherit them (proving that the disinheritance was not only accidental and that the consequences of the disinheriting testament were at least considered by the testator).[32]

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[26] *Restatement…*, para. 9.1, Comment a; John H. Langbein and Lawrence W. Waggoner, "Redesigning the Spouse's Forced Share," *Real Property, Probate and Trust Journal* 22, no. 2 (1987): 305; Frank G. Opton, *Decedents' Estates, Wills and Trusts in the U.S.A.* (Deventer: Springer Netherlands, 1987), 62; Scalise, "Family Protection in the United States of America," 543; Robert H. Sitkoff and Jesse Dukeminer, *Wills, Trusts, and Estates* (Los Angeles: Aspen Publishing, 2022), 532. See also Wojciech Bańczyk, "Pozaspadkowe sposoby kształtowania następstwa na wypadek śmierci—o przełamaniu monopolu prawa spadkowego" (unpublished PhD thesis, Jagiellonian University, 2021), 448; Wojciech Bańczyk, *Postmortal Succession on the Example of Polish Law in a Comparative Perspective. Between Inheritance Law and Nonprobate Transfers* (Göttingen: Vandenhoeck & Ruprecht Verlage-Universitätsverlag Osnabrück, 2023), 60.

[27] *Restatement…*, para. 9.1, Comment b.

[28] Bańczyk, "Pozaspadkowe sposoby kształtowania następstwa na wypadek śmierci—o przełamaniu monopolu prawa spadkowego," 352.

[29] Reid, de Waal, and Zimmermann, "Comparative Perspective," 744.

[30] Scalise, "Family Protection in the United States of America," 548.

[31] Judgment of New York County Surrogate's Court from January 22, 1915 in the case *In re Sauer's Estate*, 89 Misc. 105, 107.

[32] Franciszek Longchamps de Bérier, "Spadki," in *Prawo rzymskie. U podstaw prawa prywatnego*, eds. Wojciech Dajczak, Tomasz. Giaro, and Franciszek Longchamps de Bérier (Warszawa:

The third group instrument comprises numerous family allowances which are, at the same time, of distinctly 'American origin.'[33] These ensure very basic (referred to even as 'absurdly small'[34]) but still socially important[35] protection of the closest family members against numerous economic difficulties caused by testation in favor of the other person and liability for inheritance debts[36] that could mostly affect their continued existence in the household. Among the possible options according to the UPC is an allowance for the surviving spouse or minor or dependent children in the form of a homestead allowance up to the value of $22,500 (2-402 UPC), in addition to household furniture, automobiles, furnishings, appliances, and personal effects to a value not exceeding $15,000 (2-403 UPC), as well as an additional reasonable allowance in the form of money during the period of the external administration of the estate but no longer than a year (2-404 (a) UPC). Those rights are also prioritized against creditors' claims to the estate (2-402 sentence 3; 2-403 sentence 4; 2-404 (a) sentence 5 UPC). Then, New Jersey law regulates the **e**xemption for the benefit of the decedent's family (section 3B:16-5 Administration of Estate), which includes wearing apparel and personal property up to the limit of $5,000.

The fourth group of instruments serves as restrictions on the freedom of testamentary dispositions only de facto since protecting the family is not their fundamental aim. Thus, the lack of adequate recognition of the family (especially of children) in the testament is even referred to as an 'invitation' to contest the will on the basis of flexible instruments, according to which judges challenge any improper expression of the testator's will by means of lacking testamentary capacity or of defects in consent, such as undue influence or fraud.[37] Thus, such testaments are at least 'susceptible' to such challenges.[38] This does not mean, though, that similar challenges are automatic, and in New Jersey judicature it was proven that even disinheritance of a family member due to 'hatred for bad reasons' including 'unreasonable discriminatory prejudice' still allows for testation as long as there were no above-mentioned grounds for invalidity.[39] Then, the American law solution appears to be similar to the *querela inofficiosi testament*,[40] which was a Roman law

Wydawnictwo Prawnicze PWN, 2009), 328; Reinhard Zimmermann, "Protection against Being Passed Over or Disinherited in Roman Law," in Comparative Succession Law, vol. 3, *Mandatory Family Protection*, 4.

[33] Scalise, "Family Protection in the United States of America," 549.

[34] Sitkoff and Dukeminer, *Wills, Trusts, and Estates*, 575.

[35] Opton, *Decedents' Estates, Wills and Trusts in the U.S.A.*, 55.

[36] Scalise, "Family Protection in the United States of America," 549.

[37] Sitkoff and Dukeminer, *Wills, Trusts, and Estates*, 577.

[38] Scalise, "Family Protection in the United States of America," 545.

[39] Judgment of Superior Court of New Jersey, Appellate Division from November 13, 1992 in case of *Matter of Will of Liebl*, 260 N.J.Super. 519, 530.

[40] Scalise, "Family Protection in the United States of America," 545.

solution for challenging testaments lacking the effectuation of the family's 'duty of care' (*officium pietatis*).[41]

At the same time, the frequent analysis of such circumstances during the probate proceeding makes the latter much more complex and long-term, which is one of the reasons for searching out opportunities to avoid it (by non-probate mechanisms).[42] It has also been argued that the freedom of testamentary disposition in American law is too broad.[43]

THE USEFULNESS OF COMPARATIVE RESEARCH ON AMERICAN FREEDOM OF DISPOSITION

Such a position of American law supposedly calls for wider adoption to support voices against mandatory family protection in other countries, including Poland. Thus, societal and family changes call for reconsideration of primarily fixed share systems in numerous jurisdictions.[44]

Polish law contains numerous positions against the legitim system, not as far-reaching as rejecting any such protection but being in favor of limiting mandatory family protection and adopting discretionary family provision instead, which especially underlines the changing societal and family structure.[45] However, there are voices in favor of broadening such protection and introducing forced heirship, too,[46] as well as calling for retaining the current solution.[47] This shows that the legitim system in Poland is not commonly accepted. At the same time, in German law, for

[41] Longchamps de Bérier, "Spadki," 328; Zimmermann, "Protection against Being Passed Over or Disinherited in Roman Law," 7.

[42] Dacey, *How to Avoid Probate?*, 14; John H. Langbein, "The Nonprobate Revolution and the Future of the Law of Succession," *Harvard Law Review* 97, no. 5 (1983–1984): 1117. See also Bańczyk, "Pozaspadkowe sposoby kształtowania następstwa na wypadek śmierci—o przełamaniu monopolu prawa spadkowego," 639–40; Bańczyk, *Postmortal Succession on the Example of Polish Law in a Comparative Perspective. Between Inheritance Law and Nonprobate Transfers*, 25–26.

[43] Ronald J. Scalise, "New Developments in Succession Law: The U.S. Report," *Electronic Journal of Comparative Law* 14, no. 2 (2010): 9.

[44] Reid, de Waal, and Zimmermann, "Comparative Perspective," 776.

[45] Anna Paluch, "System zachowku w prawie polskim—uwagi de lege lata i de lege ferenda," *Transformacje Prawa Prywatnego* no. 2 (2015): 28; Mariusz Załucki, "Przyszłość zachowku w prawie polskim," *Kwartalnik Prawa Prywatnego* no. 2 (2012): 558–61. As in Maksymilian Pazdan in *Zielona księga. Optymalna wizja Kodeksu cywilnego w Rzeczypospolitej Polskiej*, ed. Zbigniew Radwański (Warszawa: Oficyna Wydawnicza MS, 2006), 192; Mariusz Załucki, *Wydziedziczenie w prawie polskim na tle porównawczym* (Warszawa: Oficyna a Wolters Kluwer business, 2010), 469–70.

[46] Jakub Biernat, *Ochrona osób bliskich spadkodawcy w prawie spadkowym* (Toruń: Adam Marszałek, 2002), 134; Maria A. Zachariasiewicz, "Zachowek czy rezerwa? Głos w dyskusji nad potrzebami i kierunkami zmian polskiego prawa spadkowego," *Rejent* no. 2 (2006): 199.

[47] Księżak, *Zachowek w polskim prawie spadkowym*, 97; Teresa Mróz, "O potrzebie i kierunkach zmian przepisów prawa spadkowego," *Przegląd Sądowy* no. 1 (2008): 90; Konrad Osajda, *Ustanowienie*

example, there is rather no such far-reaching criticism of the legitim system per se, but if so, this is only of its detailed solutions.[48]

However, it may need to be borne in mind that Polish law traditionally (tracing back from the period before 1795) did not recognize freedom of testamentary disposition, and for a long time only provided for forced inheritance in favor of family members (not in a different way to numerous European laws of the time).[49] Modern Polish law of legitim, shaped by nineteenth-century European codifications, does not fully follow this development, however.[50] Yet the choice of a legitim system,[51] and not of forced heirship, which was also widely supported,[52] was subject to vivid discussion prior to the adoption of the Polish Civil Code of 1964. Thus, even though the 1946 Polish Decree on Inheritance Law chose the legitim system (Article 145, however, the naming was more similar to the forced heirship system), the 1954 Draft of the Polish Civil Code moved towards the forced heirship system (Article 788, however the naming here was similar to the legitim system). Moreover, the choice of legitim is not demanded under the Polish constitution[53] (unlike Germany's[54]). Then, there are no obstacles to changing the legitim system in Poland.

As proven above, the legitim claim system is not the only available solution that might be considered for Polish law and is itself not well-grounded enough in its legal history or current needs. However, placing Poland among the legal cultures of Europe demands some form of mandatory family protection. Partly it is because it dates back to the late development of Roman law that eventually introduced a system similar to mandatory family protection.[55] Primarily, though, the reason therefore lies in fact that the laws after the collapse of the Roman empire fully disregard-

spadkobiercy w testamencie w systemach prawnych common law i civil law (Warszawa: Wydawnictwo C. H. Beck, 2009), 218.

[48] Reinhard Zimmermann, "Compulsory portion in Germany," in *Comparative Succession Law*, vol. 3, *Mandatory Family Protection*, 316.

[49] Wojciech Bańczyk, "Entailed Estate in Polish Law from late 15th to the 20th Century: Exception from General Succession Law and Perpetuation of Estate," *Studia Iuridica* no. 80 (2019): 18; Stanisław Płaza, *Historia prawa w Polsce na tle porównawczym*, vol. 1, *X–XVIII w.* (Kraków: Księgarnia Akademicka, 1997), 296–304.

[50] Załucki, *Wydziedziczenie w prawie polskim na tle porównawczym*, Zakończenie, footnote 80.

[51] Jan Gwiazdomorski, "Rezerwa czy zachowek?", *Prawo i Życie* no. 12 (1959): 3.

[52] Kazimierz Przybyłowski, "Rezerwa czy zachowek?", *Gazeta Sądowa Warszawska* no. 21 (1939): 291; Seweryn Szer, *Prawo spadkowe* (Warszawa: Państwowe Wydawnictwo Naukowe, 1955), 101. See also Anna Moszyńska, *Geneza prawa spadkowego w polskim kodeksie cywilnym z 1964 roku* (Toruń: Wydawnictwo Naukowe Uniwersytetu Mikołaja Kopernika, 2019), 322.

[53] Judgment of Polish Constitutional Tribunal from January 31, 2011 in case of P 4/99, no. 133.

[54] Judgment of German Federal Constitutional Court from April 19, 2005 in joint cases of BvR 1644/00 and 188/03.

[55] Longchamps de Bérier, "Spadki," 330; Zimmermann, "Protection against Being Passed Over or Disinherited in Roman Law," 18.

ed testaments[56] and favored far-reaching family protection in the form of forced inheritance. Eventually, traditionally family protection prevails beyond freedom of testamentary disposition under Polish law and many continental European laws. Thus, within civil law jurisdictions, it is even referred to (but still probably in a too far-reaching way) as family property-oriented, and not as individual property-oriented as in common law.[57]

After all, introducing a system similar to the American one in terms of freedom of testamentary disposition into Polish law is not justified. Moreover, it should be doubted whether undeniably valid reasons to rethink particular solutions of legitim law in Poland already justify suggestions that this system (grounded in the legal system) as a whole should be changed. When the legitim system was chosen under Polish law, it was primarily an exception from further-reaching family protection and not an exception from the freedom of testamentary disposition. Of course, the legitim system is an exception from the full freedom of testamentary disposition, too,[58] but historically this system aimed rather to broaden such freedom.

CONCLUSIONS

American law shows an interesting example of uniquely favoring freedom of testamentary disposition to such an extent that it has no mandatory family protection. Thus, even instruments that may restrict this freedom do not have a function similar to mandatory family protection as seen in all laws of the Western world.

At the same time, even though mandatory family protection in its current shape is currently doubted, the adoption of an American-law-based solution is not justified. The example of Polish law proves that even though the legitim system is not the only admissible one, it rather should be retained. However, even if it is rejected, the development of Polish law within the legal cultures of Continental Europe demands some mandatory family protection to be guaranteed, and the traditional development favors rather more far-reaching family protection than greater support towards freedom of testamentary disposition as under American law.

Summary: The chapter addresses the issue of fundamental conflict in inheritance law values—the freedom of disposition of own property, as well as the protection of close relatives. Typically, state regulations in the United States (with the exception of Louisiana law)

[56] Thomas Rüfner, "Customary Mechanisms of Family Protection: Late Medieval and Early-Modern Law," in *Comparative Succession Law*, vol. 3, *Mandatory Family Protection*, 40.

[57] Croucher, "How Free is Free? Testamentary Freedom and the Battle between 'Family' and 'Property,'" 26.

[58] Księżak, *Zachowek w polskim prawie spadkowym*, 33.

do not envisage institutions similar to the continental law's concepts of legitim or forced heirship, but rather a significantly different so-called elective share as a solution from marital property law or protection against the accidental omission of children (omitted children), corresponding to the Roman formal will contestation. This leads to a very broad protection of the testator's freedom of disposition in American law, yet close relatives still seek alternative solutions to protect their rights (e.g., challenging the validity of wills that overlook them due to lacking testamentary capacity or defects in consent). Although the regulation of American law may seem foreign to continental legal systems, which protect the freedom of disposition, but only within limits of family protection, it could be viewed differently when the institutions of legitim or forced heirship are increasingly questioned in contemporary socio-economic realities. However, the history of continental law should not be overlooked.

Keywords: American law, inheritance law, testamentary freedom, elective share, mandatory family protection

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