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'Queering Genealogy Through Wills'

Abstract: Wills are an overlooked source. Alongside birth, death and marriage certificates they are official legal texts that provide a record of families, kinship and personal life. They have a particular significance for research about gender and sexuality. This paper, by Daniel Monk, highlights some of the insights that they can provide and discusses the methods (and associated pitfalls) for accessing and reading them.
Keywords: Wills; gender; sexuality; legal research

INTRODUCTION

Wills are curious documents, both official and public and at the same time deeply personal and taking many forms. The public/private boundary is never stable or consistent in law and in this context gives rise to debates about the extent to which testamentary dispositions should be subject to human rights provisions[1] and indeed whether or not wills should be available to the public.[2] The reasons why UK wills are public documents are complex and it is not the case in many other jurisdictions. But the fact that they are is the starting point here for suggesting that they are an important but all too often overlooked archive for a variety of types of socio-legal research about gender and sexuality that can create a fruitful dialogue with biographical, historical and sociological studies.

LEGAL SCHOLARSHIP AND PRACTICE

In legal studies wills are most often encountered in the extensive case law relating to inheritance disputes. Here a complex body of doctrinal rules about 'certainty', 'capacity', 'undue influence', 'revocations' and 'conditions' are applied; and legal scholars debate ways to read and interpret wills, which are often critical to the outcome.[3] For practitioners these cases, and the commentaries about them, are crucial in endeavouring to ensure that the testamentary wishes of their clients are 'watertight' – that they can withstand challenges after their death. Here it is the practical implications of the cases that are important and not so much the personal details or characteristics of the parties. More critical scholarship, particularly from the US but arguably equally applicable here, has suggested that the two cannot be so neatly distinguished. For while upholding the principle of testamentary freedom is the rationale for many of the doctrinal rules, the formal concern about individual testators masks the upholding of social norms and judicial valued judgments.[4]

This is particularly important for anyone whose testamentary wishes are in any way 'unconventional', which in this context means those wills which challenge inheritance through blood lines and marriage. That this can and has had a particular impact on gays and lesbians was brought into stark focus during the late 1980s and early 1990s. 'AIDS victims Wills under Attack' was a headline in *The New York Times* in 1987. And while the headline refers to AIDS, what led to these challenges was not the virus but the fact that the gay men dying were often disinheriting their biological families in favour of their 'families of choice'.[5] Many similar challenges occurred in the UK and the Terence Higgins Trust – the UK HIV/AIDS charity – offered a specialist will writing service to help, largely gay men, in this position.

There is however nothing new here, for case law about contested inheritances has long provided insight into shifting ideas of family and kinship and 'legitimate' heirs. An evocative example is the case of *Re Swartz' Will* 79 Okla 191, 192 P. 203 (1920). Here the nephews of a brothel owner challenged their aunt's will that bequeathed her estate to the women who worked for her. In deciding against them the judge held that:

> 'The testatrix and the proponents of the will have become social outcasts, and had wandered far from the paths of rectitude . . . They are shunned by people of respectability, they have no one to associate with except those who, like them, have departed from a life of virtue . . . the testatrix had cast her lot among these kind of people; they were of her world; her days were lived among them; she died among them . . . we are not prepared to say that the proponents would be the unnatural objects of the bounty of the testatrix' (at 206)

Case law sometimes presents an initial window into a dispute where sexuality or gender (explicitly or implicitly) plays a role. After reading a case more is sometimes revealed by going to the probate registry and accessing the will referred to. An example of this is the case of *Re Jones (deceased); Midland Bank Executor and Trustee Co Ltd*

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v Jones and Others [1953] 1 All ER 357 where the deceased stipulated that his daughter would be partly disinherited if she had a, 'social or other relationship with [G]'. Turning to the will itself reveals the name of the woman and it is possible to piece together a story – not unusual in the past and still possible now – of a will being used by a father to control the life of an unmarried daughter.

HOW TO FIND A WILL

The key date to note in looking for wills is 1858. After that date the process is relatively straight forward as records for people who died after that date are kept by the Probate Registry of England and Wales. All the information required is the deceased's name, date of birth and date and place of death. Armed only with some of this information it is still possible to locate a will – depending often on how common a name is. The search process is confidential. No permissions are required and no one is informed that you have made a search. The search, which can be undertaken online or in person, costs £6 per person and provides the grant of probate and will. If there is no will it will provide you with Letters of Administration. For full information see: http://www.justice.gov.uk/courts/probate/copies-of-grants-wills\.

For people who died before 1858 the process is more complicated as records were kept by individual church courts. The National Archives provides an accessible and informative guide at: http://www.nationalarchives.gov.uk/records/looking-for-person/willbefore1858.htm.

WHAT WILLS CAN (AND CAN'T) TELL YOU

While it is – at least with deaths after 1858 – easy to find wills, it is not always clear what one can learn from them. The most important, and arguably the first, UK socio-legal research that used wills was undertaken in the 1990s by Janet Finch, Jennifer Mason, Judith Masson, Lorraine Wells and Lynn Hayes.[6] It is the starting point for anyone researching in this field. Their research was based on an analysis of a random sample of 800 probated wills. This method is useful in addressing some issues relating to gender, but less effective in the context of issues relating to sexuality; for the very simple and obvious reason that a will reveals the former but not the latter. An alternative method is to research the will making process, for example by interviewing lawyers who write wills.[7] An alternative method is to find the wills of known individuals; and examples of what this can reveal are discussed below. But it is important to acknowledge what wills cannot tell you. First of all in the context of making any broad arguments about social patterns is the fact that large numbers of people do not make wills. This is a particularly important issue in the context of debates about intestacy reform, which have been informed by significant recent empirical research.[8] Moreover wills relating to very small estates do not always require probate as some banks will transfer legal title without this. But even when wills are public they are never accurate representations of the properties, homes, wealth and relationships of the testator. And who is not mentioned in a will is sometimes hugely significant. Wills can be understood to be a form of 'life-writing'; and as with everything that falls within this genre is simultaneously a form of self-definition and self-deception[9] as well as being written for a particular audience.

FOUR WILLS

The will of the writer E M Forster (1879–1970) was written by a lawyer in accordance with strict conventions. Some have argued that the professionalisation of will writing by lawyers has had a negative effect and that testators should be encouraged to use language that is 'more individualized, evocative, and expressive'.[10] Yet Forster's will can be read as a 'posthumous publication' as rich and revealing and in some ways very different to the ideas in his novel *Maurice* – which he withheld publication of until after his death (and was consequently published soon after his will was also made 'public'). The will complements his interest in inheritance, which is evident in his novels, and while skillfully negotiating a public and private readership it paints a complex picture of friendships, lovers, belonging, connectedness and an engagement with the future without children. It is a text that contributes to both biographical and literary scholarship about Forster and to sociological literature about 'intimate citizenship'.[11] This reading of his will owes much, indeed is dependent on, existing literature about Forster. But in other wills the provisions themselves are sometimes revealing.

The artist Gluck (1895–1978), like Forster, lived at a time when being open about her sexuality was far harder than it is today.[12] Her will – many pages long – amongst other things provided a space for her to acknowledge her relationship with her lover Edith Shackleton (Heald). She does this in two provisions:

1. 'To Mrs Griffin for her kindness to the late Miss Heald and myself the sum of £500'
2. 'The items which I inherited from Edith Shackleton Heald . . .'

What is significant here is that there is no functional or legal reason for the inclusion of these references to Shackleton who predeceased her. And yet she is there, named, her significance acknowledged in an official public document. The reference to Mrs Griffin is also significant. In part the inclusion in a will of a domestic servant or employee conforms to an earlier era when such testamentary gifts were far from unusual, but it also attests to the possibility of wills being used to express ethics of care and in doing so acknowledge the inevitability of dependency.[13]

The will of Radclyffe Hall (1880–1943) a famous contemporary of Gluck, reveals how probate records

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provide alternative tales to genealogical records such as birth, death and marriage certificates. In searching for her will the records identify her in bold capitals as **'SPINSTER'** and her beneficiary and executrix Gertrude Troubridge – **'WIDOW'**. The fact that Radclyffe Hall and Troubridge were lovers is both officially masked and at the same time visible. The legal and affective statuses tell different stories. Her will also acknowledges her younger lover and in the following provision she negotiates her sense of obligations to her alongside her enduring connection to Troubridge as she requests the latter:

> 'to make provision for our friend Eugenie Souline as in her absolute discretion she may consider right knowing my wishes for the welfare of the said Eugenie Souline'

The final example comes from the will of the early gay rights reformer George Cecil Ives (1867–1950). His will includes numerous codicils. These offer rich pluckings for researchers as they reveal the shifting affections of a testator often over a considerably long period. Consequently from Ives' will we discover reconfigurations of lovers, household members and a shifting sense of obligation to blood relatives and chosen intimates. It also offers sometimes tantalising glimpses of connections such as the following gift which was subsequently revoked in a codicil:

> 'To Charles V. Drench who at one time worked at The Spread Eagle Hotel Midhurst Sussex and who lately was at 1 Greek Street, Soho, London W.1. the sum of Ten Pounds'

As the historian Matt Cook notes:

> 'we can't know the dimensions of those meanings for Ives and the recipients but we can note the importance of material things in the way relationships were remembered and also how bequests might touch desire'.[14]

INHERITANCE MATTERS

Anthropologists have always been attentive to the fact that the ways in which people negotiate death is an immensely revealing and significant vantage point for examining the practices and making of kinship. Historians – especially of early periods – have utilised wills to examine shifting gender roles and religious practices.[15] Reading wills is consequently not new. The aim here is to suggest that we revisit them afresh alongside and to complement lines of enquiry about gender and sexuality; to argue that wills are a resource that can add a new dimension, an alternative perspective, and that inheritance matters.

Footnotes

[1] D Monk, 'Sexuality and Succession Law: Beyond Formal Equality' (2011) *Feminist Legal Studies* 19(3) 231–250 at 236–239.

[2] J Jaconelli (2012) 'Wills as public documents: privacy and property rights'. 71 *Cambridge Law Journal* 147.

[3] R Kerridge, (2009) Parry and Kerridge: *The Law of Succession*. London: Sweet & Maxwell, 12th edition.

[4] S Blumenthal 'The deviance of the will: policing the bounds of testamentary freedom in nineteenth-century America' (2006) 119 *Harvard Law Review* 959; MB Leslie 'The myth of testamentary freedom' (1996) 38 *Arizona Law Review* 235; KN Maillard 'The colour of testamentary freedom' (2009) 62 *Southern Methodist University Law Review* 1783; Fellows, M.L., 1991. Wills and Trusts: "Kingdom of the Fathers". *Law and Inequality*, 10, 137–162; D Monk, 'Sexuality and Succession Law: Beyond Formal Equality' (2011) *Feminist Legal Studies* 19(3) 231–250; Sherman, J.G., 1981. Undue Influence and the Homosexual Testator. *University of Pittsburg Law Review*, 42 (1), 225–246.

[5] K Weston (1997) *Families We Choose*. New York: Columbia University Press. See also J Weeks, B Heaphy and C Donovan (2001) *Same Sex Intimacies: Families of Choice and Other Life Experiments*. London: Routledge, pp 51–76; K Plummer (ed) (1992) *Modern Homosexualities: Fragments of Lesbian and Gay Experience*. London: Routledge.

[6] J Finch, J Mason, J Masson, L Hayes and L Wallis (1996) *Wills, Inheritance and Families*. Milton Keynes: Open University Press. See also J Finch and J Mason (2009) *Passing on Kinship and Inheritance in England*. London: Routledge.

[7] D Monk (2014) 'Writing (Gay and Lesbian) Wills' in D Monk and D Hacker (eds) Wealth, Families and Death: Socio-Legal Perspectives on Wills and Inheritance *Oñati Socio-legal Series* [online], 4 (2), 306–322. See also Hasson, E., 2013. 'Where There's a Will There's a Woman': Exploring the Gendered Nature of Will Making. *Feminist Legal Studies* 21 (1), 21–37.

[8] Law Commission Intestacy and Family Provision Claims on Death (Law Com 331, 2011); Douglas, G, et al., 2011. Enduring Love? Attitudes to Family and Inheritance Law in England and Wales. *Journal of Law and Society*, 38 (2), 245–271 A Humphreys, L Mill, G Morrell, G Douglas and H Woodward (2010) Inheritance and the Family: Attitudes to Will-making and Intestacy. London: NATCEN; C Williams, G Potter and G Douglas (2008) 'Cohabitation and intestacy: public opinion and law reform' (2008) 20 *Child and Family Law Quarterly* 499.

[9] W H Gass (1994) '*The art of self: autobiography in an age of narcissism*'. Harpers 43.

[10] DS Gordon 'Reflecting on the language of death' (2010) 34 *Seattle Law Review* 379, at 394. See also D Hacker (2010) 'Soulless wills' 35 *Law and Social Inquiry* 957.

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[11] D Monk (2013) 'E M Forster's Will: an overlooked posthumous publication'. *Legal Studies* 33 (4), 572–597.
[12] D Souhami (2001) *Gluck: Her Biography*. London: Phoenix Press.
[13] See D Monk, 'E M Forster's Will: an overlooked posthumous publication'. *Legal Studies* 33 (4), 572–597s, at 588–9.
[14] M Cook (2014) *Queer Domesticities: Homosexuality and Home Life in Twentieth-Century London*. London, Palgrave at p111.
[15] See N Goose and N Evans 'Wills as an historical source' in T Arkell, N Evans and N Goose (eds) *When Death Do Us Part: Understanding and Interpreting the Probate Records of Early Modern England* (Oxford: Leopard's Head Press, 2000); J Whittle 'Housewives and servants in rural England, 1440–1650: evidence of women's work from probate documents' (2005) 15 *Transactions of the Royal Historical Society* 51; J Craig and C Litzenberger 'Wills as religious propaganda: the testament of William Tracy' (1993) 44 *Journal of Ecc History* 415.

Biography

Daniel Monk is a Reader in Law at Birkbeck, University of London and Director of Birkbeck Gender and Sexuality (BiGS). His research explores a wide range of family law issues about children, schools, sexuality, education and inheritance.

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The Scene of The Crime: Police Photographs, Visual Culture and Sexuality

Abstract: Visual materials are often neglected by legal researchers. However, as Dominic Janes explains, attitudes to appearances played an important role in the way in which many criminal investigations were undertaken, notably in the years prior to the Sexual Offences Act (1967). Analysis of aspects of visual culture played a role in the detection of many forms of illegal behaviour and the resulting materials provide a valuable resource for the contemporary researcher. These issues are explored through a case study that involves reading between a painting by the British expressionist Francis Bacon (1909–92) and a photograph in the National Archives taken during a police raid on a London flat in 1927.
Keywords: art; law; evidence; homosexuality; police; visual culture

Training on sources and methods in law, gender and sexuality involves a wide range of issues including engagement with inter-disciplinary perspectives. This is of particular importance when it comes to aspects of the archive which are relatively neglected by legal researchers. One such key area, which possesses considerable potential, is that of visual materials. These are often most prominent in legal records in the form of police photographs of 'the scene of the crime'. These were often included in the evidence presented in court and provided important corroboration of verbal testimony. In the case of certain crimes, notably those involving homosexuality, visual

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