ARGUMENT

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1.

Succession exposes private law to recurring pressures: the need to distribute value while preserving the viability of productive assets. At the point of succession, assets that have been organised as a working unit (land, buildings, machinery, a firm's shares and management prerogatives) are reclassified as distributable value. What has been held together by a single will, or by a stable governance arrangement, becomes exposed to the ordinary logics of inheritance: division among heirs, valuation and compensation, compulsory shares, creditor claims, and, not least, the centrifugal pressures of family disagreement. A farm may remain "in the family" and yet become economically non-viable once it is broken into parcels or burdened with compensation obligations. A family company may survive the transfer of ownership only to be immobilised by fragmented shareholding, conflicting strategic preferences, or the absence of a recognised centre of decision-making. These outcomes are rarely intended; they are frequently the predictable by-product of legal structures that treat productive assets as ordinary property at precisely the moment when their organisational character matters most. As Alexis de Tocqueville (1805–1859) stated in his Democracy in America (1835),

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> *in virtue of the law of partible inheritance, the death of every proprietor brings about a kind of revolution in property; not only do his possessions change hands, but their very nature is altered, since they are parcelled into shares, which become smaller and smaller at each division. This is the direct and, as it were, the physical effect of the law. It follows, then, that in countries where equality of inheritance is established by law, property, and especially landed property, must have a tendency to perpetual diminution. The effects, however, of such legislation would only be perceptible after a lapse of time, if the law was abandoned to its own working; for supposing the family to consist of two children (and in a country such as France the average number is not above three), these children, sharing amongst them the fortune of both parents, would not be poorer than their father or mother. But the law of equal division exercises its influence not merely upon the property itself, but it affects the minds of the heirs, and brings their passions into play. These indirect consequences tend powerfully to the destruction of large fortunes, and especially of large domains. Among nations whose law of descent is founded upon the right of primogeniture landed estates often pass from generation to generation without undergoing division, the consequence of which is that family feeling is to a certain degree incorporated with the estate. The family represents the estate, the estate the family; whose name, together with its origin, its glory, its power, and its virtues, is thus perpetuated in an imperishable memorial of the past and a sure pledge of the future. When the equal partition of property is established by law, the intimate connection is destroyed between family feeling and the preservation of the paternal estate; the property ceases to represent the family; for as it must inevitably be divided after one or two generations, it has evidently a constant tendency to diminish, and must in the end be completely dispersed.*

This book addresses this problem directly. It does not proceed from nostalgia for older social orders, nor from a romantic defence of family wealth. Its point of departure is analytical and comparative: legal systems have long recognised the disruptive potential of succession for productive assets, and they have responded with a repertoire of techniques designed to preserve unity, or at least functional integrity. The focus is therefore on instruments in the strict sense: identifiable legal forms: trusts, foundations, fideicommissary devices, substitution mechanisms, specialised farm succession regimes, shareholders' agreements, and the contractual architectures that supplement or counterbalance statutory rules. These forms invite a recurrent question of principle: to what extent should law permit one generation to structure the ownership and governance of assets for the next, and how should such permission be reconciled with alienability, equality among heirs, and the claims of third parties? Jeremy Bentham (1748–1832) wrote that "property and law are born together, and die together".

2.

"Unity" is itself an ambiguous objective, and the contributions in this volume treat it accordingly. Unity may denote an undivided title and a single owner. It may also refer to unity of control, governance, and strategy: a stable allocation of decision-making power, even where beneficial interests are distributed. A holding can remain formally intact while becoming functionally divided through overlapping rights of use, competing expectations, or financing structures that require leasing and external capital. Conversely, a business may pass to a single successor and nevertheless deteriorate if managerial authority is contested, if knowledge transfer fails, or if indebtedness forces liquidation. Unity, in short, is not reducible to the distribution of property rights: it is an organisational condition that law can facilitate but never secure on its own.

For this reason, the volume's instructive chapters approach legal instruments *as compromises* rather than as solutions. Each technique for preserving integrity trades one set of risks for another: continuity against circulation, intergenerational planning against the moral and political claims of equal treatment, private autonomy against public policy constraints, stability against the capacity to adapt. The chapters range across jurisdictions and periods, but they repeatedly return to the same structural dilemma. A legal system must decide whether productive assets are to be treated primarily as commodities, freely divisible and transferable, or as socio-economic units whose survival and functionality justify forms of continuity that constrain individual choice. The oscillations observed in many systems, like abolition of restrictive institutions followed by the emergence of new, more limited continuity mechanisms, are best understood as a response to the fact that neither pole fully answers the demands placed on property law.

The category "family business" can obscure rather than clarify these issues. It suggests a small, domestic enterprise, whereas family-controlled firms and farms often represent central components of employment, local development, land use, and long-term investment. Their governance relies in part on informal norms (trust, reputation, obligation, deference) whose operation is difficult to translate into legal categories. When such norms hold, they reduce transaction costs and encourage patient investment. When they falter, disputes are filtered through legal frameworks frequently designed for other settings: arm's-length transactions, liquidation and insolvency, the equal division of estates, or the abstract shareholder. One of the book's recurrent themes is the friction produced by this mismatch between the lived structure of family production and the categories through which law organises property and succession.

3.

The historical perspective offered here is especially valuable because modern legal forms have not eliminated the aspiration to continuity; they have altered its vocabulary and its techniques. Older instruments commonly justified restrictions through lineage and status, often sustained by formal hierarchies of gender and birth order. Contemporary instruments more often invoke stability, sustainability, employment, and long-term stewardship. The shift in language has been substantial, yet the underlying concern remains recognisable: the prevention of dissipation, whether by partition, forced sale, or (corporate) governance paralysis, of assets that function as coherent productive units.

4.

The common law contribution by Andreas Televantos illustrates this continuity of concern through the distinctive flexibility of the trust. As the jurist and historian Frederic William Maitland (1850–1906) considered: "if we were asked what is the greatest and most distinctive achievement performed by Englishmen in the field of jurisprudence I cannot think that we should have any better answer to give than this, namely, the development from century to century of the trust idea." In common law settings, restraints on alienation have long been viewed with suspicion, but the trust has provided a means of reorganising ownership incidents by separating legal title from beneficial interests. The historical use of testamentary trading trusts, allowing a business to continue for the benefit of a widow and children until a successor could take over, demonstrates how continuity could be secured without openly repudiating liberal property ideals. The chapter is equally attentive to the externalities of such arrangements, particularly the distribution of risk in insolvency and the implications for creditors. It therefore places the trust in its proper analytical setting: not as a technical device, but as a site where competing claims, between family continuity and third-party protection, must be weighed.

A similar ambivalence can be traced across civil law traditions, where continuity instruments have often been criticised as residues of feudal privilege, impediments to market development, or mechanisms that entrench inequality. Yet those same traditions repeatedly generated functional equivalents to mitigate the economic and social costs of fragmentation. The Austrian report by Gerald Kohl makes this pattern visible by moving from peasant inheritance laws and agrarian communities to entailed estates (*Fideikommiss*) and, in modern times, to private foundations. The narrative highlights the interaction of legal sources, such as custom, statute, contract, and the shifting alliances that shape them. Particularly instructive is the change in justificatory language:

dynastic continuity and social order give way to sustainability and long-term stewardship. The underlying problem remains constant, while the terms on which a legal order is willing to address it change with constitutional and political context.

From the German perspective, Martin Löhnig sharpens the analysis by contrasting the elaborate regulation of agricultural succession with the relative absence of a special statutory regime for non-agricultural family businesses. Agricultural law displays a long and complex development: hereditary farm laws, the Reich Hereditary Farm Act, post-war regional frameworks, and a contemporary mix of the Höfeordnung (a special inheritance regime for certain agricultural and forestry holdings to prevent farms from being broken up through succession and to keep them economically viable) and Civil Code mechanisms aimed at preserving viable farms while limiting excessive compensation burdens and indebtedness. In practice, the chapter underlines the importance of notarised *inter vivos* transfers, the agreements that combine succession planning with retirement provisions, sibling compensation, and waivers. Outside agriculture, by contrast, continuity depends largely on private ordering: wills, compulsory-portion arrangements, family foundations, and corporate governance tools. The comparison raises a point of general significance: legal systems appear more willing to treat land essential to production as basis for an exceptional regime, while hesitating to extend comparable exceptionalism to business assets, where the public interest is harder to articulate in traditional doctrinal terms.

These contrasts suggest that continuity becomes politically and legally defensible when it can be expressed in general terms: food security, rural stability, environmental protection, employment, and the avoidance of economically destructive fragmentation. Where such rationales command broad agreement, legislatures craft specialised regimes. Where they remain contested or diffuse, continuity is pursued primarily through important private instruments, like trusts, foundations, shareholders' agreements, and "family constitutions", that operate in the shadow of mandatory inheritance rules. The boundary between statutory exceptionalism and private ingenuity therefore reflects differences in the publicly recognisable grounds on which a legal order is prepared to accommodate constraints on alienability and equal division.

5.

The Italian chapters provide a particularly instructive demonstration of how ideology shapes the legal imagination of unity. Giacomo Pace Gravina follows the transformations of fideicommissary substitution from its liberal rejection in the nineteenth century, through its limited reappearance in the 1942 Civil Code under the political climate of fascism, to its reorientation after the 1975 family law reform as a mechanism directed primarily toward protecting vulnerable relatives rather than consolidating estates. The form survives, but its justification changes. Francesco Ciccolo complements this by examining how Italian private law, especially in the first half of the twentieth century, negotiated the relationship between property, production, and the family through emergency wartime measures, fascist ruralism, and doctrinal debates concerning the "function" of property. The chapter draws attention to a broader point: unity is protected not only through succession rules, but also through the legal conception of property itself, whether property is treated as a sphere of individual dominion or as an institution tied to social and productive aims.

Romania's experience adds a further dimension by showing how continuity mechanisms may be prohibited as anachronistic and later revived in adapted forms. Kinga Ilyés examines fiduciary substitution as a device capable of preserving family control over business assets across at least two generations and of being embedded in a "family constitution" that combines legal commitments with normative expectations. The trajectory described, respectively abolition in the name of liberal circulation, followed by a recent but selective reintroduction under different socio-economic pressures, resembles developments in other European systems, but it also shows a practical point: such instruments are rarely self-executing. Their effectiveness depends on governance design, enforceability, and a legal and family culture capable of sustaining them.

The Spanish *mayorazgo*, analysed by Marta Cantín Larumbe, returns the reader to one of the paradigmatic European institutions of unity: the entailed estate linked to lineage and primogeniture in the Crown of Castile. Its historical function was direct: to prevent partition and dismemberment and to exclude third-party intrusion, even at the cost of inalienability and formal inequality. Its abolition under liberal reforms illustrates the standard critique of dynastic property forms, while also clarifying why such devices were so persistent. Read against contemporary debates, the *mayorazgo* is less a historical curiosity than an illustration of the long-standing connection between continuity instruments and the social hierarchies they can sustain.

6.

The more contemporary regulatory approaches to agricultural holdings bring these themes into sharper policy focus. Zsófia Hornyák's account of Hungary's "farm transfer contract" (introduced by a 2021 Act and effective from 1 January 2023) shows an attempt to facilitate generational change through an *inter vivos* mechanism designed to keep holdings "in one hand", while regulating eligibility, continuity of production, and transitional cooperation. The chapter also highlights a conceptual difficulty familiar in comparative perspective: land-focused rules do not automatically produce a coherent holding-focused regime. If the aim is to preserve viable production units, succession policy must address not only parcels, but the organisational integrity of the holding as such.

7.

The volume's case studies, finally, show that continuity instruments operate under conditions of political and economic contingency that may overwhelm even the most careful planning. David Kolumber's study of the Baťa company analyses moments at which ownership and control were reorganised under severe external pressures: succession after Tomáš Baťa's death, the disintegration of Czechoslovakia, war, tax measures, offshore structuring, post-war accusations and disputes, and ultimately nationalisation. The study demonstrates that preserving unity may require a shifting portfolio of legal strategies rather than a single instrument. It also illustrates the ambivalence of some techniques: structures that protect assets against confiscation or political risk may generate opacity that later destabilises family governance and fuels litigation.

My chapter on the Renner Leather Factory offers a similarly concrete picture from interwar Transylvania, centred on the 1926 syndicate (shareholders') agreement. In a corporate environment marked by bearer shares and fluid ownership, unity was pursued through private governance: coordinated voting, transfer restrictions, deposit of share certificates with a custodian, and alliance structures designed to preserve control even as shares dispersed. The syndicate agreement appears here as a functional constitution of the enterprise, supplementing corporate law through contract. Yet it also illustrates the fragility of such arrangements: they require renewal, presuppose enforceability, and remain vulnerable to broader economic and political disruption.

8.

The closing expert opinion by Mircea-Dan Bob-Bocșan makes explicit what is already implicit throughout the volume: unity is never only a matter of doctrinal design. By revisiting interwar Romanian proposals for an inalienable and unseizable "family property" regime, and by tracing the reasons for their failure, the opinion places the problem in its political and institutional setting: agrarian reforms, shifting state priorities, and the limits of legislative will. The lesson is a sober one. Continuity mechanisms require not only technical feasibility, but also political support, administrative capacity, and a social consensus about the purposes of property.

9.

Several general conclusions emerge from these materials.

First, the unity problem is structural rather than exceptional. It arises whenever assets that function as productive organisations are embedded in households and transferred through inheritance rules designed primarily to *distribute* value. The organisational character of farms and businesses, requiring coherent decision-making, investment horizons, and managerial authority, creates vulnerabilities that are not captured by the ordinary language of partitions and shares. Recognising that organisational character is necessary, but it must be done without converting the family into a privileged constitutional subject whose internal hierarchy displaces individual rights.

Second, continuity instruments redistribute burdens. They may shift burdens among heirs through delayed or reduced compensation, shift risks onto creditors through asset shielding, or shift costs onto the state through supervision and registration. This distributive dimension is central, not incidental. Any legal accommodation of unity must be justified by a defensible allocation of costs and protections among those affected.

Third, the contemporary defensibility of unity depends increasingly on transparency and accountability. Private ordering can stabilise control but can also conceal it. The case studies show how opacity may protect assets in one phase and destabilise governance in another. Modern legal systems, especially in environments shaped by anti-abuse norms and financial transparency requirements, are cautious toward structures that combine long-term control with limited visibility. Sustainable continuity therefore depends on governance arrangements compatible with credible oversight, whether through registries, fiduciary duties, disclosure obligations, or internal mechanisms that reduce opportunism.

Fourth, durable arrangements tend to be hybrid and adaptive. Testamentary planning alone is often inadequate in the face of conflict, debt, and the practical problem of managerial transition. *Inter vivos* transfers can be more effective, but only if they anticipate changes in family structure, migration, remarriage, and market conditions. Foundations and trusts can preserve assets, but they risk freezing governance unless they incorporate amendment mechanisms. Shareholders' agreements can coordinate decision-making, but they require enforceability and periodic renewal. Across jurisdictions, promising designs are those that combine continuity with revisability: staged succession, conditional transfers, respectively calibrated compensation, governance frameworks, and time-limited restrictions subject to review.

Fifth, legal history is best read here not as a repository of templates. Instead, we should conceive it more as a record of consequences. According to Oliver Wendell Holmes, Jr. (1841–1935), "the life of the law has not been logic: it has been experience." The abolition of entails and fideicommissary forms did not merely "liberate" assets; it also produced patterns of fragmentation, indebtedness, and vulnerability that later prompted corrective legislation. Conversely, the reintroduction of continuity mechanisms has repeatedly generated new forms of conflict and inequality. The value of comparative legal history lies in its capacity to clarify what problems instruments were meant to solve, what incentives they created, what patterns of circumvention emerged, and why reforms were later demanded.

10.

A reader may therefore approach the volume as a set of dialogues across time. The trust and fideicommissary chapters illuminate different ways of structuring split ownership and the externalities such structures generate. The Austrian, German, and Hungarian materials show distinct models of preserving agricultural viability and the tradeoffs they entail. The *mayorazgo* and the Romanian regulation place continuity mechanisms within their political conditions of possibility. The Renner and Baťa case studies test doctrinal possibilities against historical volatility.

Underlying these dialogues is a question that remains unavoidable: when law preserves the unity of a family asset, what interests is it protecting? Sometimes the aim is functional viability, such as placing control with the person capable of sustaining production. Sometimes it is protection of vulnerable family members. Sometimes it is a public interest in stable employment and rural continuity. Historically, it could also be the preservation of rank and power, at the expense of those excluded. The same form may serve different ends, and the evaluation of continuity cannot be separated from the purposes it serves and the burdens it imposes.

These considerations apply with particular force to contemporary family structures. Families are plural and often unstable over time. Instruments that presuppose a single line of authority risk injustice or failure; instruments that are too permissive risk governance paralysis. The more defensible understanding of unity, in the context of this volume, is not the concentration of rights for its own sake, but the maintenance of functional control together with fair participation, credible compensation, and workable exit options. There is also a temporal question. Many older institutions aimed at indefinite control. Modern systems, wary of the dead hand, are more receptive to time-limited continuity and to mechanisms of revision. Time limits and review clauses are drafting choices, but they also express a normative stance that later generations retain a claim to shape their own economic life.

The chapters that follow do not present a uniform prescription, and they need not do so. Their contribution lies in assembling, with historical depth and comparative breadth, the principal ways in which legal orders and private actors have attempted to maintain the integrity of productive assets across generations, and in clarifying the costs and implications of each approach. Continuity in this field is neither a natural fact nor a simple good. It is a legal and institutional achievement, sometimes justified and sometimes not, whose conditions and consequences require the kind of careful analysis that this volume provides.