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Amsterdam, 7-9 July 2011

**Housing Inheritance and Succession among Pioneer Squatters and
Self Builders: A Mexican Case Study**

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Paper presented at the International RC21 conference 2011
Session: 24 - Housing and Belonging in Latin American Cities

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Introduction: Property and Inheritance among the Urban Poor?

Despite the revived interest on poverty, particularly on the “new” challenges facing the urban poor, an important feature of low-income households has been greatly neglected: housing inheritance among the urban poor in Latin America, particularly among original pioneer squatters and self-builders. Indeed, at first glance the idea of property inheritance among the urban poor might be construed as an oxymoron. Until relatively recently in Mexico and elsewhere in Latin America it was largely a non issue among urban households. Today, however, many low income families own property that they acquired illegally through squatting or land subdivision, making housing the most widespread asset held by households in Latin America today (Gilbert and Ward 1981; Solimano 2006). So while a considerable proportion of the population (69 percent) owns their home, making home ownership relatively uniform across various socioeconomic sectors in Latin America, for many of the urban poor this is their only asset. This is particularly the case of the first generation of pioneer squatters and self builders in Mexico who over a period of more than thirty years have created consolidated working class settlements and built an important asset base for themselves and their families (Ward 2005).

Since these housing assets can now be sold or bequeathed to their heirs, this paper stresses that self-help housing is no longer simply a path to home ownership that freed the urban poor from rent payments and provided a sense of stability and a much needed space in which to raise a family (Gilbert 1999; Turner 1968). Instead today that housing asset also forms part of the residential calculus for home ownership among second and third generations of low-income urban residents. Indeed many second and (even) third generations are already de facto enjoying that patrimony, even before their parents have passed away. Yet little is known about how lot and dwelling sharing and the use of residential space shape the expectancies that adult children (stakeholders) have in the parental home. Nor do we know much about how succession and inheritance of these properties in the lower end of the housing market are managed and adjudicated, either informally by family agreement, or formally under the law.

The contemporary emergence of such a sizable low-income property market throughout Latin America, and the clearly expressed intention of homeowners to be able to leave something to their children – or expressed in their words: “*tener un patrimonio para los hijos*” – are the point of departure of this paper in which I have three main aims. First, the paper seeks to provide insight into the nature of asset building embedded within the first generation of self-help consolidation dating back to 1960s and 1970s, and to the emergence of living arrangements and future expectancies of the second and third generations who were raised on those lots over the past 30 years. While we know that urban development and informal housing provision has created millions of new home owners in the region (Solimano 2006; Varley and Blasco 2000b; Ward et al. 2011), there has been little discussion about how property ownership and inheritance arrangements are being negotiated between different generations and stakeholders who ultimately have different housing needs, trajectories, and expectancies. Second, I explore the nature of marital and inheritance regimes in contemporary Latin America as a backdrop to a more detailed analysis of the processes and patterns of property inheritance as these are unfolding in

Mexico today. Here I provide a brief summary of how the Mexican civil code frames marital and inheritance regimes, particularly because the regulatory environment can ultimately provide or block access to assets and hence asset accumulation (Moser 2008). Third, and in this context, I will explore different scenarios of actual and potential intra-family conflict that may emerge as members of the second and third generations assert their inheritance rights. While there is a general lack of empirical data on urban housing inheritance and family relations in the academic literature, particularly in the developing world, here I present a series of inheritance scenarios in order to illustrate how inheritance is actually unfolding today, and how such processes may affect intergenerational asset accumulation in consolidated self-produced settlements.

As this paper will show, very few people in Mexico execute a will largely due to cultural considerations (i.e. tempting fate) or because there is no perceived need of executing one. Instead, people often bypass the probate process on the whole by relying on informal arrangements such as leaving adult children or spouses informally in possession of the family house after the title holders die. Based on the empirical results of a multi-city Latin American housing research project from 2007 to 2010, I argue that while the first generation of squatters and home builders in Mexico managed to secure a significant housing asset for their families through their own self-help endeavors and government intervention in the form of tenure regularization and infrastructure provision, many of these now consolidated and legalized properties will return to a state of informality in the near future. As Varley argues with respect to conventional regularization efforts in the region, “formalization produces a freeze-frame image of property holdings at a particular time but cannot prevent life, death, and property relations” from moving forward, and thus does not provide the “definitive resolution of tenure” that some had expected (2010: 92). The new informality due to clouded title, as Varley also notes, results from failing to conceptualize property rights in the home as embedded in social relations “based on a principle of belonging and comprise a web of overlapping entitlements that are to some extent negotiable” and in flux. As such, inheritance of the family patrimony can be understood as immersed in a much deeper complexity of property relations in the home. In the next few sections I briefly provide the backdrop to home ownership and asset accumulation in informal settlements in Latin America, as well as the nature of inheritance and marital regimes in contemporary Mexico as a segue into a more detailed analysis of the processes and patterns of property inheritance as these are unfolding in Mexico today.

Research Design

The data analyzed below form part of a broader multi-site study and housing network concerned with the rehabilitation of older squatter and self-help settlements located in the “innerburbs”¹ (former suburbs) of major Latin American cities. These peripheral self-help settlements began as shantytowns in the then suburbs, but with city expansion and growth, many are now situated in the inner or intermediate rings of city development. After decades of intensive use, these areas and dwellings are heavily deteriorated

¹ See the Latin American Housing Network at www.lahn.utexas.org for more details regarding the multi-site research project and definition of “innerburbs” as proposed by Peter M. Ward.

physically; have high population and lot densities; and are the locale of intense social problems born of a “new poverty” that is now embedded with these communities (Ward et al. 2011). Working to a common methodological framework, major surveys were conducted from 2007 to 2010 in a number of consolidated settlements in twelve Latin American cities in nine different countries. A second phase of analysis in some of these cities comprised intensive case studies of a small number of “interesting” cases drawn from the original survey, from which we sought to gain greater insights about physical dwelling and household expansion over time and across generations. These were the basis for some of the specific family inheritance scenarios discussed later.

Included here are data from a 2007 restudy of México City that was conducted of 253 low-income owner self builder households across 5 settlements or *colonias populares* in Mexico City that were first interviewed in the 1970s as part of a major housing study conducted by Gilbert and Ward (1985). Although not strictly following a longitudinal panel study methodology (Moser 2009; Perlman 2010), the idea was to return to the same exact dwellings and lots that were interviewed more than thirty years ago when these *colonias* or self-help settlements were incipient or beginning to consolidate physically and test a series of hypothesis related to residential mobility. It was in the process of undertaking the first round of research in 2007 that the trans-generation nature of sharing, and the stakeholder expectations (and conflicts) of adult children and grandchildren began to emerge, and eventually became an important element in the wider multi-site research project that now encompasses twelve cities in nine countries in the region.

Asset Building in the Midst of Poverty: The Case of Mexico City, Monterrey and Guadalajara

In order to better understand the trans-generation inheritance processes as they are unfolding today in older informal settlements in the region, I discuss some of the empirical data and general findings drawn from the 2007 and 2009 surveys conducted in three Mexican cities, mainly México City (restudy 2007), Guadalajara (2008-2009), and Monterrey (2009).² The first major finding has to do with the lack of mobility among owners, confirming Gilbert’s early work that for low income self-builders of the 1960s and 1970s “a home is forever” (Gilbert 1999). Gilbert argued that while we know little about the residential trajectories of people residing in these consolidated settlements, a high level of residential stability and immobility is noted. In the restudy of five settlements or *colonias* in México City, for instance, over 80 percent of the original householders were found to be still living on their lots some thirty-five years later, even where the original pioneer parent(s) had since died (Table 1:[a]). In the case of Guadalajara and Monterrey, owner households reported living on their lots well over 25 years (see Table 1:[d]).

<Table 1 about here>

² While the *colonias* studied in Guadalajara (3 settlements including 243 self builder households), and Monterrey (2 settlements including 129 self builder households) in 2009 are also included in the analysis and tables, the data is not always comparable since different questionnaires were used in Mexico City than in Monterrey and Guadalajara.

The second finding has to do with high or sustained population densities due in part to adult children (2nd generation) sharing the family dwelling with their parents, often in independent units on the same lot and with their own young children (3rd generation). So whereas the average number of families living on each lot in Mexico City was 2.4, the results for Guadalajara (1.5) and Monterrey (1.3) are considerably lower (Table 1:[1e]), with an average of 9.22, 5.86, and 5.09 persons living on the lot in each city, respectively (Table 1: [1g]). In the case of México City, this is almost double that of 30 years ago (when there were mostly nuclear families). Here sub-division of the lot as well as of second and third stories, were commonplace; no less than 40 percent of lots had 3 or more families living on the lot, which is considerably higher than in Guadalajara and Monterrey (Table 1 [1f]). While only around a third of all lots recorded a single family residence in México City (35%), Guadalajara (68%) and Monterrey (74%) reported much higher levels of single family residence. As we compare these data with Guadalajara and Monterrey (as well as other cities in Latin America) it is apparent that México City has considerably higher densities and a much greater degree of lot sharing (Table 1:[i]). It appears that housing competition and the operation of the land market is considerably greater in the case of Mexico City – a point described by Gilbert and Ward (1985) in their study of México City and Bogotá. As for Monterrey and Guadalajara, the data suggest that there has been greater ongoing access to informal self-help settlements, such that the need to remain living with kin is lessened.

<Table 2 about here>

The third main finding relates to the new informality of clouded title where the person deemed to be the de facto owner was not the de jure owner and named titleholder. In the three cities the vast majority of titles were reported to be in the name of the original owner dating to the time of the regularization which in most cases occurred sometime during the 1980s (Table 2:[a]). In the case of México City, where the same family had lived on the lot for many years and the title was in the name of a deceased or permanently absent spouse, there was little evidence that the name on the title had been changed. This is also true for Guadalajara and Monterrey where roughly 95 and 90 percent of titles remain in the name of the original owner dating back to the time of regularization. The final finding relates to the relatively high (self-assessed) value of these properties. Given the modest cell size in certain cases since many respondents claimed to have no idea what the property was worth, partly because they have no desire to sell, caution is in order. In México City the median value was almost \$91,000 US, while in Guadalajara the median is almost \$38,000, and \$22,600 for Monterrey. The evidence from these and other cities in Latin America clearly demonstrate that over thirty years the first generation of irregular settlement owners have been quite successful in creating a significant asset from their self-help housing endeavors. Although such findings point to the existence of substantial property wealth among the urban poor in México, many self-builder families of yesteryear emphasize the use value (for raising kids, family patrimony, etc.), rather than exchange or market value.

Property and the Regulatory Environment in Mexico

Marital and Inheritance Regimes in Theory

Latin American family law and civil codes are derived from the Luso-Hispanic legal tradition and colonial rule (Deere and Leon 2005).³ Despite an initial continuity with the corpus of Hispanic law and colonial legal traditions, Latin American countries began to assert their own legal personalities and thus embark on increasingly divergent paths with respect to marital and inheritance laws in two key areas. First, while all South American countries preserved their colonial marital regime – partial community property in the case of Spanish America and full common property in Brazil – México and Central America parted ways by establishing the separation of property regime, either as another option for couples or as the default regime in cases where a deliberate preference was not declared. During the colonial period, the default marital regime in Spanish America was that referred to today as *gananciales* (participation-in-profits or partial community property) which consisted of all jointly-held property excluding any inheritances or donations acquired before or during the marriage (Korth and Flusche 1987). Second, whereas South American countries for the most part maintained the colonial inheritance regime of restricted testamentary freedom (i.e., forced heirship), Mexico and Central America opted for full testamentary freedom, where a competent testator, as opposed to a court or legislature, by way of a will decides who should benefit from his or her estate post mortem. While the question of why Latin American societies took such divergent paths with respect to family law is beyond the scope of this article (see Deere and Leon 2005), the point here is that such regional variation in relation to marital and inheritance laws continues today and will inevitably come to bear upon the property ownership prospects of both men and women in the region, either through marriage and/or inheritance.

While historians and legal scholars tend to credit the Mexican Revolution with initiating the modernization of Mexican family law, major innovations with respect to marriage and inheritance date back to the republican private law of the nineteenth century (Arrom 1985a). One of the earliest changes is the creation of a new option in marital regime, that of the separation-of-property. This provision, embodied in the 1870 and 1884 Civil Codes, for the first time allowed couples to choose whether to marry under separate property (requiring a prenuptial agreement or *capitulaciones matrimoniales* with an inventory of individual and jointly-held assets) or partial community property (Arrom 1985a). Previously under colonial private law, couples were only allowed to marry under partial community property in which the spouse's assets were pooled. Separation of property thus allowed married women to administer and retain an interest in their own property and in exchange, forego their half share of the community property.⁴

Another important change is the abolition of colonial restrictions on the right of individuals to dispose of their property (Deere 2007).⁵ Under colonial inheritance law, legitimate heirs automatically

³ Peninsular legislation, particularly Castilian private law, derived primarily from Germanic, Roman, and canonical precepts, and in some instances, from Jewish and Arabic-Islamic influences. Since the body of law developed for Spain's American colonies, *Derecho indiano*, did not touch on family private matters such as marriage and inheritance, Spanish private law filled the gap. See Korth and Flusche 1987, and Arrom 1985.

⁵ Spanish rules of inheritance are to be found in the *Leyes de Toro* which stipulated that if a person died intestate or without a formal will, his/her legal heirs included: (1) children (or their descendants through

inherited four-fifths of their parent's estate (*legítima* or reserved inheritance) since parents were only allowed to dispose freely of one-fifth (*quinto*) of their property (Arrom 1985b). Under Spanish private law children – irrespective of gender – inherited equal shares from both parents⁶, and widows could at times inherit from their spouse's estate if they proved to be in greater need (Korth and Flusche 1987; Lavrin and Courturier 1979).⁷ By 1884, however, the civil code did away with the forced heirship provision of the *legítima* by introducing full testamentary freedom (Arrom 1985a). Indeed, many Mexican legal scholars and lawmakers believed colonial inheritance provisions mandating the subdivision of property among legal heirs ultimately contributed to economic backwardness (Dore 2000). This change was seen as one of the most radical reforms of the 1884 Civil Code, since not only children were rendered more vulnerable, but the very institution of family which in the past had protected each of its members (Ibid., 314).

The conclusion I wish to draw from this discussion is that the nineteenth century brought about important changes and ultimately, produced two rather distinct paths in Latin America with respect to marital and inheritance regimes. The 1870 and 1884 Mexican Civil Codes not only adopted the separation of property regime as an option for marrying couples, but also eradicated the principle of equal partition and inheritance dating back to Hispanic and colonial private law of the *legítima* by introducing instead full testamentary freedom. As such, some argue that provisions such as that of full testamentary freedom which ended obligatory partible inheritance reduced the legal protection that women had historically enjoyed during the colonial period, particularly the right to a share of family property (Dore 2000). South American countries, for the most part, maintained the system of reserved portion and limited freedom of testation dating back to the *quinto* or unrestricted fifth of the estate during the colonial period.⁸

<Table 3 About Here>

Marital and Inheritance Law Today

As can be observe in Table 3, Mexico's 31 states and the Federal District all have their own legislation with respect to marital property and inheritance. Generally speaking, marital regimes tend to follow three main patterns: (1) full community property where all assets acquired prior to and during marriage are pooled; (2) partial community property where individual assets that are acquired prior to marriage, as well as any subsequent inheritances and donations (or the product of these) are excluded from marital property; and (3) separation of property which allows spouses to retain individual ownership of all individual assets. The default regime in Mexico if spouses do not choose one is that of partial community

rights of representation); (2) parents (or other ascendants in their absence); and (3) siblings and other collateral kin. See Deere and León 2003.

⁶ Testators could reward a particular child or the spouse through the use of the *mejora*, which was restricted to a third of the *legítima*.

⁷ Upon death widows automatically received half of the community property (*gananciales*). However, if a man died intestate and lacked other heirs, his widow inherited the entire estate.

⁸ The *quinto* or unrestricted fifth, the share testators were free to will, was later increased in the Bello codes from the colonial one-fifth to one-quarter of the estate (see Deere and León 2005).

property, which has two variants: *sociedad conyugal* (conjugal partnership) and *sociedad legal*⁹, both of which are more akin to a participation-in-profits regime than a full community property regime (Deere and Leon 2005; Varley 2010). Under partial community property any proceeds and products that derive from individually and jointly-held properties (excluding gifts, bequests, and donations, and the products of these), as well as any goods acquired by either or both spouses during the marriage are placed in a joint marital fund. In this regime each spouse has a right to half of the marital property in case the marriage or recognized consensual union dissolves, due to separation, divorce or widowhood (see Tables 3 and 4). Although the default regime in most states is that of partial community property, about a quarter of them establish separate property as the default option (See table 3).¹⁰

As with marital regimes, laws of testation are enacted at the state level, but with minimal variation across the different states (see Table 3 & 4). In general terms, inheritance rights are secured through two legal channels: intestate or legal succession, and testamentary succession. As noted earlier, while testamentary freedom allows individuals to decide how they are to dispose of their estate post mortem through the execution of a formal will, laws of intestacy systematize inheritance transfers at death if and when a will is not executed. Today, the testamentary freedom principle applies in all Mexican states, with the only restriction being that of providing a pension or *alimentos* to the widow or widower¹¹ (if he or she is destitute or lacks assets) and minor children. When individuals do not make the necessary arrangements before dying such as taking out a will, compulsory intestacy statutes are designed to approximate people's intentions regarding the disposition of their property at death and thus in effect create a statutory will (Sussman, Cates and Smith 1970). In such cases, it is the civil code of each state that determines the dispositive terms, as in who (legal heirs by order of succession) gets what (and in what proportion) (see Tables 3 and 4). In most states the succession line is as follows: descendants, spouses, ascendants, collateral kin (up to fourth degree), and concubines,¹² where the most proximate

9 The main difference between the two variants of partial community property in Mexico is that with *sociedad conyugal* spouses are required to execute a prenuptial agreement or *capitulaciones* to establish the management and ownership arrangement of their assets, whereas with *sociedad legal* a prenuptial contract is not necessary.

¹⁰ Campeche, Coahuila, Guanajuato, Guerrero, Hidalgo, Edo. de México, San Luis Potosí, Tlaxcala, Yucatán, and Zacatecas. In the case of the Federal District and the State of Nuevo León (Monterrey), their civil codes allow couples to pick between *sociedad conyugal* (conjugal partnership) and separation-of-property, with a possible third option of a mixed property regime by way of *capitulaciones* or prenuptial agreement (Civil Code for the Federal District 1928, CCDF, Article 178; Civil Code for the State of Nuevo León, CCNL, Articles. 178 & 179). In Jalisco (Guadalajara) couples can choose between three marital regimes, mainly *sociedad conyugal o voluntaria*, *sociedad legal*, and separation-of-property (Civil Code for the State of Jalisco, CCJ, Art. 282). When spouses do not explicitly declare a preference, the default regime is *sociedad legal*, which does not require a prenuptial agreement. In the three cities, unless otherwise stated in the *capitulaciones*, upon marital dissolution spouses marrying under partial community property – be it conjugal partnership or *sociedad legal* – are entitled to half of the marital property.

¹¹ The surviving spouse retains his or her share of community property; this is irrespective of any potential inheritance prospects.

¹² The intestacy statutes of most states in Mexico recognize the inheritance rights of the survivor of a non-marital (cohabitating) committed relationship. Couples do have to meet a series of conditions such as living

exclude the rest, and those within the same degree inherit in equal shares (CCDF, Art. 1604; CCJ, Art. 2911.1; CCNL, Art. 1499.1). Descendants are first in line in the intestate succession formula and inherit equally irrespective of gender. Surviving spouses, although next in the succession line, are only entitled to share of the decedent's estate (equivalent to a child's inheritance share) if he or she lacks assets altogether, or if the sum of these are less than what a child is entitled to via laws of intestate succession (CCDF, Art. 1624 & 1625; CCJ, Art. 2930 & 2931; CCNL, Art. 1521 & 1522). In either case, the surviving spouses' inheritance share cannot exceed that of a child's portion of inheritance.

The Probate Process in Mexico

In general terms, the probate process – whether through a will or laws of intestacy – comprise four basic stages.¹³ The first phase entails locating the legal heirs, or in the case of testamentary succession, the will beneficiaries. Regardless of the type of succession, a public notary or judge has to ensure that if a will was executed, that it was the last will the testator executed, and that it is valid according to the provisions stipulated by the civil code.¹⁴ If the person dies intestate or without a valid will, the intestacy laws of the given locality will prevail, and the judge (or public notary) will proceed to locating all legal heirs. Once all of the heirs or will beneficiaries are located and contacted, phase two focuses on the collection, inventory, and appraisal of all assets that are subject to probate. Here heirs are asked to name an executor or *albacea* to take an inventory and appraisal of the estate, which then has to be presented before a judge or public notary for the heirs to accept or repudiate the inheritance. The third phase includes all administrative procedures that must be addressed prior to the partition of the estate. These include covering all the costs and expenses related to the administration of the estate, funeral expenses, outstanding debts, and taxes (state or federal). Finally, the fourth stage is that of partition and the formal transfer of estate property according to the will or by the state laws of intestacy (*sentencia de adjudicacion*).

Given the efforts made in the last few years by the federal and state governments in Mexico to foment a “testamentary culture” and promote the idea of will-making and estate planning¹⁵, intestate succession is generally frowned upon by policy makers. Some of the discussion surrounding will-making has to do with: (1) the high costs associated with intestate succession; (2) the length of the intestate succession process vis a vis the testamentary route; and (3) the potential for family conflict as a result of

together (uninterrupted) for a given amount of time, usually 5 years or less if the couple has children together, and exclusivity (see Table 3).

¹³ Primary data based upon interviews with a number of public officials during the second half of 2007 and during 2009, including interviews with notary staff at the Secretariat of the Interior or *Secretaría de Gobernación*, Lic. Juan Ambrosio, *Dirección General de Compilación y Consulta del Orden Jurídico*; *Subsecretaría de Asuntos Jurídicos y Derechos Humanos*; Notaria 51, Lic. Carlos Catano Muro Sandoval. Notario 51 del Distrito Federal

¹⁴ As in the United States, any adult with the mental capacity required to execute a will can opt out of the intestacy system.

¹⁵ These efforts include reducing the cost of will-making in half (from \$2,500 to \$1,200 pesos) or in some instances more if testators are of low socioeconomic status or elderly. See www.colegiodenotarios.org.mx for more information regarding the different state and federal programs related to will-making and estate planning in recent years.

unclear property ownership arrangements and expectancies among the different household members. In terms of costs, the director of the land regularization agency of the Federal District (*Dirección de Regularización Territorial del Distrito Federal*) argues that in failing to execute a will, families will pay up to twenty-five percent of the total value of their property in trying to resolve the succession by way of intestacy (Grajeda 2006). If individuals choose the testamentary route, executing a will costs only \$1,200 pesos or roughly \$100 USD at the reduced rate, and approximately \$12,000 pesos or \$1000 USD to settle the testamentary succession process in the Federal District (Liceaga 2006).

In terms of time, intestate succession is said to be much lengthier because it has to be presented before a civil court, thus often lasting several years.¹⁶ Testamentary succession is said to be more straightforward, often lasting less than six months, if the will is declared valid and is unchallenged. Unless it is challenged, apportionment of the estate can be adjudicated by a public notary, so the whole process is much more undemanding. With respect to the potential for family conflict over inheritance, the director of the land regularization agency claims that people are often unaware of the fact that a will does not have legal effects until after death of the testator, and that when contemplating taking out a will people worry about being deprived of their estate or kicked out of their homes prematurely. She also claims that not executing a will is potentially more problematic for families than making the necessary provisions since heirs, regardless of their contribution to the estate or sentimental ties with parents, will inherit in equal shares. Laws of intestacy, in other words, are based on the principle of equality, not meritocracy. Testamentary succession on the other hand distributes resources according to the merit of individuals, and thus testators can reward (and punish) household members as they so choose.

<Table 5 about here>

Attitudes towards Will Making and Estate Planning

In terms of wills, the data for Monterrey and Guadalajara demonstrate that only 8 and 12.8 percent of all owners have executed a will (Table 5:[a]). Still, although only a handful of people mentioned having executed a will, it is interesting to note who they listed as their main beneficiaries. In Guadalajara, for instance, out of the 31 respondents claiming to have a will, 20 of them listed their children as beneficiaries, and only two mentioned their spouse as the sole beneficiary; 6 respondents mentioned both children and spouses. In the case of Monterrey (N=9), six respondents mentioned their children as beneficiaries in their wills, and only one mentioned their spouse. Despite the small universe of wills in the two cities, the responses reveal a preference for children vis a vis spouses, a finding that has also been noted by others (Deere and Leon 2001; Varley 2010). Furthermore, a significant portion of respondents, 44 percent in Guadalajara and 35 percent in Monterrey, who had not executed a will said they had made some form of arrangement or given instructions concerning the future of the home, (Table 5:[b]). When respondents were asked who would be the likely beneficiary of their estate even if a will was not formally

¹⁶ The Federal District has simplified the probate process in cases of intestacy when there are no competing interests, third party claims, or family disagreements over the partition arrangement of the estate. This process allows probating the estate to be done before a public notary as opposed to a civil court. See www.colegiodenotarios.org.mx.

executed, the vast majority pointed to their children. This is not surprising since as Varley (2010) noted in her study in Guadalajara, women's property rights are tied to broader family relationships, as mothers, daughters or spouses, and thus their rights are never fully individualized. As such, widows¹⁷ are viewed more as custodians of the family home as it transitions from one generation to next than as owners in their own right.

When respondents were asked why many people shun formal estate planning mechanisms such as will-making, the majority said it was for cultural reasons (i.e. tempting fate and death is "unimaginable") or indecisiveness or "*desidia*" (Table 5:[c]). The 'tempting fate' response is particularly telling since here most people said that by executing a will, one could very well be provoking it: "People think that in executing a will, one is getting ready to die [*porque la gente cree que si hace testamento ya va a morir*"]. Related to this is the idea that estate planning (and death) is the exclusive domain of people in later stages of the life-cycle. Here answers such as: "We are young, we do not want to speak of death [*somos jóvenes, no queremos hablar de la muerte*]" were common. Another common concern was the potential for family squabbles over housing inheritance, particularly among adult children. One respondent argued that will-making was too problematic for families and that "later they [the children] will be killing each other" over the inheritance. Not being able to discuss such matters with family, or not coming to a consensus about who should get what [*no ponerse de acuerdo con los hijos*] is thus a source of friction for many families. One respondent in México City, for instance, mentioned that all of his children "feel entitled to my [his] house", and that they fight over what should happen to his estate [*todos los hijos quieren la casa y se sienten con derecho, incluso discuten sobre el destino de la propiedad*]. A woman in Guadalajara mentioned that this is a very difficult subject and source of much conflict with her husband's family since he lives in the United States, and she is reluctant [*no se atreve*] to even suggest executing a will for fear of upsetting his entire family. Another woman claimed that while wills are important, they can also give people the power "to exclude others"; such is the case of her husband, who thinks of himself as the sole owner of the family home [*se siente el dueño absoluto*] to the extent of wanting to exclude her from his will.

A considerable number of households also mentioned the notion that will-making leaves them [the elderly] in a vulnerable situation. Men, for instance, seem to be concerned with being "treated poorly or kicked out [*tengo miedo a que me traten mal y que me echen fuera*]" of their homes, or simply being considered a nuisance [*pasar a ser un estorbo*]. Such concerns were also noted by others (Varley 2000; Varley 2010; Varley and Blasco 2000). Other respondents gave idiosyncratic reasons for not leaving a will, from laziness to no need because they had little property to bequeath. A woman from Guadalajara, for instance, mentioned that there were simply too many families on the property, and that she would not know how to "divide the things up" in a proper manner [*aquí viven muchas familias, ¿cómo se reparten la casa?*]. The range and depth of answers in regards to distributive preferences and will-making

¹⁷ Most men in Mexico marry younger women and have a lower life expectancy than their spouses. See McKee, Douglas, and Beth Soldo. 2008. "Do Good Kids Finish First? Characterizing the Bequest Motive in Mexico." in *Population Association of America*. New Orleans.

perceptions suggest that housing inheritance and expectations among the different household members and stakeholders is already a subject of much discussion (and a source of friction) in many low-income households today.¹⁸ To put all of these findings in perspective, the final section presents four case studies and vignettes in order to examine how inheritance and succession is actually unfolding in México today.

Inheritance and Succession in Practice

Scenario # 1: A Mixed Probate Process

The first of the four case studies presented here involves a modest dwelling in the self-help settlement of Isidro Fabela in México City where the original owners (Sr. & Sra López) had died many years before leaving behind five surviving adult children. Sra. López is the named titleholder despite having passed away some 14 years earlier. Sra. López, unlike most Mexicans, executed a will before dying naming her five surviving children as universal heirs of her estate (half of the joint marital property), each entitled to one-fifth of her assets. Sr. López, however, did not execute a will for his estate, and as such, their surviving children would have to undergo a “mixed” probate process since only the mother’s share (50 percent of the joint property) is accounted for by her will, the rest will have to be resolved through laws of intestacy.

Not too long after both spouses passed away, Sr. López’ son Juan – product of an extramarital affair – initiated the succession process by asking for his share of his father’s estate. As the only surviving son of the late Sr. López, Juan firmly believed that his property rights were paramount to the López sisters. Such assertions are illustrative of popular beliefs that render male head of households as the “real” owners of the family home, despite the state’s marital laws that establish common property as the default regime, and hence such property is jointly-held.¹⁹ Elena, one of the couple’s surviving children now lives on the lot and her sisters (co-owners) believe she should be the sole beneficiary of their

¹⁸ McKee and Soldo (2008), using a population-representative sample of bequests and bequest intentions of parents in Mexico, found similar patterns as those highlighted here. For instance, with respect to the coresidence and lot sharing, McKee and Soldo found that coresidence of adult children with elderly parents is quite common with 60 percent of respondents living with at least one adult child. They also found that 58 percent of the analysis sample owned a house. In terms of estate planning and will-making, they reported that approximately 39 percent of the deceased respondents in the sample had made arrangements ahead of time for the division of their estate. 85 percent of these individuals (deceased respondents) left their entire estate to their children, with 21 percent dividing their estate unequally between children, usually in favor of one particular child. According to their findings, coresidence predicts a 10 to 11 percent increase in the likelihood of getting a larger than equal share of the bequest, which could be due to live-in children being in most need of help, or because they provide their parents more assistance than non-resident children. Finally, when looking at bequest plans of surviving respondents, the authors find that parents are constantly “updating” their bequest plans on a regular basis to reward (and punish) children that are providing help at any given time. As noted by others (Deere and Leon 2001; Robichaux 1997; Varley 2010), males are more favored in rural areas, while frequent contact is more heavily rewarded by parents residing in urban areas. Still, while the majority of bequests (80 percent) observed by McKee and Soldo are characterized by the equality principle of equal distribution across children (probably due to intestacy laws), their findings suggest that individual behavior does influence the bequest plans and actual bequests of parents when there is a will or informal arrangement in place.

¹⁹ This is assuming it was not an inheritance, and that the property was acquired when the couple was already married.

parent's entire estate [the family home] since she cared for them in old age. They also claim it is the morally right thing to do as Elena is unmarried and has no other living prospects. Still, while Juan cannot ask for the entirety of his father's estate, he is legally entitled to one-sixth. Even if Elena's siblings perceive her to be the "rightful owner" of their parent's estate given that she cared for them in old age, the Mexican civil code is clear in cases of intestacy: all descendants inherit in equal shares. As this case shows, unless both spouses execute a will, a mixed probate process involving both intestate and testate succession will ensue.

Scenario 2: Informal Arrangements and Laws of Intestacy

This case is also from the Isidro Fabela in Mexico City and illustrates how ownership expectations are created out of informal housing arrangements that had been maintained for years, even if there is no will in place to substantiate these claims. The late owner Sr. Toribio died without a will after informally subdividing his property to create a dwelling structure to accommodate his growing family's needs.²⁰ Toribio's four adult children, now in their late forties currently live on the lot with their own families and children. While Sra. Toribio has also since died, both spouses had agreed that the property would go to their adult children equally, and so they did not bother changing the title from Toribio's name to their children's names (to reflect the new ownership arrangement) since everyone agreed with the informal living arrangement. A will or formal transfer of ownership (*traspaso*) was not contemplated because the family never experienced any type of conflict as a result of their informal housing and "inheritance" arrangements. The conflict emerged when one of the grandchildren Toño began to assert his claim to the family home through "representation" even if his father passed away "renouncing" his share of the inheritance. Toño, however, lives in Cancun and only visits once or twice a year. The three surviving children of the late Toribio strongly believe that only they are entitled to the family home because they have stronger claims than the grandchildren.

There are a few issues that are worth highlighting. First, repudiation of an inheritance has to be expressed formally before a judge public notary, even in cases of intestacy. The repudiation also has to take place after the death of the decedent, and not before since individuals cannot dispose of assets they do not legally possess. Second, although in the first case it was an adult child (2nd generation) that was claiming his share of his father's estate, here it is the grandchild (3rd generation) who is asserting his rights to the family patrimony home through legal representation of his father or *representación sucesoria* (CCDF, Art.1609). So if Toño's father Paco would still be alive today, the inheritance would have to be divided in four equal parts, each adult child inheriting a quarter of the estate. However, because only

²⁰ Where a will is lacking, declared void or invalid, revoked and/or contested, intestacy laws will prevail. Given the prominence of intestacy in Mexico, it appears that most low-income households with property are likely to resort to informal inheritance mechanisms of property transfer such as lot subdivision or oral promises of ownership. Such informal arrangements, however, often do not comply with the norms of a legal conveyance and title provision and can be a major problem if there is an intention to sell the property or to formally transfer it to another titleholder. It can also be problematic if there is disagreement among the heirs as described in the next case.

three children remain, Toño can now legally “represent” his father Paco in the succession process, and take his father’s share of the inheritance.²¹²² Thus, while laws of intestacy in Mexico are relatively unproblematic in theory in that they establish a uniform formula of succession, in practice this may be difficult to operationalize when there are multiple stakeholders with competing interests and ownership expectancies.

Scenario 3: Gender, Property Rights and Remittances

María del Socorro is the current owner of a home in the *colonia* Valle de Santa Lucia in Monterrey. Being a single mother, she migrated to the United States to work in 1976 and her remittances paid for the lot purchase and for the later house construction (which her father oversaw). While Maria returned to Monterrey regularly to visit, her parents and daughter lived in the home. The title, however, was put in her mother’s name since her father had died. When Maria’s mother died intestate, her two brothers recognized that the property was hers given that she had paid for it, but nothing was put in writing to that effect, There was no attempt to change the title to her name either. One of her brothers, who lived in the border city of Matamoros, has since died, and the other, who lives locally, has indicated his willingness to formally cede his share of the inheritance to her. However, two of Matamoros brother’s ten children (her nieces) are claiming the third due to their defunct father. As things stand, by law, if they pursue their claim then 1/3 of the property will need to go to that side of the family (to be split 10 ways if all claim their inheritance). Unless they come to some negotiated agreement, Maria cannot proceed to change the name of the title, secure the home, or sell it, so the situation is at an impasse.

Scenario 4: Conflict-free Succession

This case exemplifies how intestate succession cases can be made to work (albeit very slowly) where the heirs are in agreement. It comes from *colonia* Santo Domino in the south of Mexico City. When Sr. Bravo passed away many years ago, Sra. Bravo, with the assistance of her children, initiated the succession process in order to leave everything in order [*dejar las cosas en orden*]. A few years later, when the succession process was well underway, Sra. Bravo passed away and her adult children had to restart the succession process for their parent’s entire estate. Because they could not afford an attorney, the court assigned them with an *abogado de oficio* or court appointed lawyer in order to execute and finalize the probate process. While they are still in the middle of the process, they have decided that the children residing in the family home should be the title holders, while the others have formally renounced any claim to the estate.

The four cases and scenarios discussed above provide just a few pointers to many of the key issues that we can expect will become commonplace in the future: how to dispel popular stereotypes or poor understandings of the inheritance process; how to resolve conflicts between heirs, especially those who have an equal and legitimate claim but who do not wish to live on the property; and how to reconcile the different stakeholders’ ownership expectancies. This article suggests that it is safe to assume that in

²¹ If Toño had other children besides Paco, they too would have a right to a share of the estate, but would have to divide the quarter of the inheritance equally among each other.

the near future a sizeable portion of low income Mexicans residing in now fully consolidated (self-help) settlements will die intestate, and hence their families will be faced with decisions over the family home. Still, some families will forgo the formal probate process altogether by resorting to informal arrangements. Oral agreements or promises of ownership, for instance, are not uncommon, particularly when ageing parents are attempting to negotiate care for future ownership. These oral “contracts” may be accompanied by a series of conditions in anticipation of future assistance.

In one such case in the study settlement of Isidro Fabela, the original male owner had “bequeathed” his property to his nine adult children through an oral agreement. In their view, they had inherited *en vida* or inter vivos before the “testator” had even passed away. The property owner had subdivided the lot in order to build nine different apartments, which he said now belong to his nine children. Such informal inheritance arrangements are quite common, but ultimately they may create ownership expectations that, if tested legally, could be found to be groundless. Although such practices are not uncommon, some respondents did say that they were uncomfortable with the idea of prematurely transferring their property to one or more “heirs” for fear of being driven out and/or lose the pressure that can leverage over sons and daughters (especially) to look after them in their old age.²³

Given the relatively advanced age of many of these owners, and the complicated living arrangements that have evolved, it seems likely that further research will reveal many more additional scenarios and probably very complex ones at that. Also, once the final parent dies it seems inevitable that there will be an increasing number of conflicts between would-be heirs and claimants, not least because the spirit of the civil code is that of equal partition in adjudicating between siblings in cases of intestacy (as was shown here). Whether any such breach in the spirit of fairness will transfer into legal proceedings, remains to be seen. But where conflicts arise, there will be a need for low-key arbitration mechanisms to effect conflict resolution. Hopefully further research will better inform our understanding about sensitive policy making for cross generational transfer and subdivision of family homes. Meanwhile, however, we may expect to see the promotion of orthodox inheritance systems, in particular that of testamentary succession.

CONCLUSION

This paper has shown that the large majority of low income households who acquired land and self built their homes in irregular settlements some twenty or more years ago are today sharing and bequeathing those homes with their adult children and grandchildren. And while not all children benefit or expect to benefit in this way, many do. Often already living on those lots with their own young families, there is an urgent need to renovate and retrofit the dwelling structures in order to accommodate to the new multiple household arrangements that were described in the earlier part of this paper. An important normative

²³ Even though these arrangements can be revoked (where justification is proven), few homeowners appear to know about the provision, and those that do often remain skittish about the idea. In an effort to dissuade the elderly from resorting to informal inheritance and ownership arrangements, the federal government, through its institute for the elderly (*Instituto Nacional de las Personas Adultas Mayores* or INAPAM), has launched a series of low-cost will-making programs to encourage estate planning for this sector of the population.

question for the future will be how second and third generation living arrangements will translate into future ownership, the routes that will be offered in order to enhance inheritance and succession, and the nature of shared property titles that are likely to come on line in response to the findings outlined above. This paper has probably only begun to scratch the surface of what is expected to become an important arena of future household and property relations among lower income families. Owning and disbursing property will bring an ever increasing proportion of Mexican society into the inheritance process – usually as beneficiaries or as claimants. Thus it will be important to have a deeper and broader understanding of inheritance processes and practices, particularly among low income populations who after many years and hard work have managed to achieve home ownership, and now risk falling back into informality. Unless this is undertaken, a patrimony for the children may become a burden for these households, as well around that of local government.

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