Rethinking wills

‘Make a Will Week’ is now a regular fixture in the UK. But a report by the National Consumer Council, which found that most adults do not have a will, suggests that it continues to fail to capture the imagination. Similarly, proposals to reform the intestacy rules (which stipulate what happens when you die without a will) are currently being debated in Parliament, but have attracted little attention.

This is a pity, for scholarship across a range of disciplines reveals that in the past, questions about inheritance had a far higher profile and wills offer creative possibilities for us all.

In Ancient Rome, wills were revised frequently, and as expressions of political, as much as personal, commitments attracted great interest. Both in post-revolutionary France and the US following the War of Independence, passionate political and philosophical arguments about inheritance laws were central to the project of ‘nation-making’. And the abundance of fictional wills in both English and French nineteenth-century literature reflected an awareness that these curious ‘last words’ could simultaneously communicate both individual moral character and social and political values. But while a literary critic in 1897 quipped, “Goodness only knows what novelists and dramatists would do without wills”, the same could not be said today. The reading of the will has provided high drama in television soaps such as Dynasty and EastEnders, but wills are now rarely utilised by ‘serious’ novelists.

Reading real-life wills as social and cultural texts, rather than as purely functional legal documents, raises particular challenges. For example, Shakespeare’s notorious bequest to his wife Anne of his “second best bed” continues to provoke conflicting interpretations. And while it is sometimes hard to identify the testator’s relationship with a named beneficiary, it is almost impossible to discover the identity — often equally significant — of those not mentioned at all. But wills can sometimes provide — intentionally or unintentionally — a unique insight into the life and mind of an individual. And in doing so, they complement but also trouble the genealogical certainties of birth, marriage and death certificates.

One such will is that of the writer EM Forster. Overshadowed by his posthumously published novel Maurice, his will has received little attention. Yet its 19 pecuniary legacies can be read as a careful reflection by Forster on his complex web of friendships, carers, lovers and biological as well as chosen or alternative families. Together with his gifts to the National Trust and to King’s College, Cambridge, the will speaks to both a public and private readership and provides a form of autobiographical self-representation that performs and expresses a commitment to a particular ethic of care and form of intimate citizenship. Like Maurice it too can be read as a posthumous publication.

Forster’s will is written in impersonal, conventional ‘legalese’, but it demonstrates the creative and expressive potential of wills and how will-writing can be a positive affirming practice in the negotiation of kinship and the making of personal identity. Perhaps highlighting the joys of will-writing, rather than focusing on the consequences of not making them, might incline more of us to write them.

Daniel Monk is a Reader in Law. His article, ‘Sexuality and Succession Law: Beyond Formal Equality’ was published in Feminist Legal Studies in 2011 and ‘EM Forster’s will: an overlooked posthumous publication’ will be published in Legal Studies in 2013.

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