

Inheritance and the Family

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ABSTRACT *Inherited wealth will be of increasing importance in years to come. Yet inheritance taxation is unpopular, and part of this unpopularity is due to family concerns. Such taxation is seen by many as morally problematic because it is taken to violate important family values. In this article, we explore five family arguments against inheritance taxation: firstly, whether we have a right to benefit our children; secondly, whether it is a virtue to benefit one's children; thirdly, whether children have a right to their parent's belongings, due to common ownership; fourthly, whether inheritance taxation may impair a vital sense of continuity and belonging; and lastly, an argument from incentives that appeals specifically to the relation between parents and children. We conclude that none of the arguments provide strong objections against a moderate or even a high inheritance tax rate, at least not when special provisions are made for things like family houses or farms. However, since the arguments all introduce concerns that should be assigned some weight, it would be unjust to abolish inheritance entirely.*

1. Introduction

Recent research in economics suggests that inherited wealth will be of increasing importance in years to come. This, together with reports of growing inequality in most OECD countries, has made inheritance taxation an urgent issue.¹ Inheritance taxes are, however, controversial. These controversies are driven by a deep tension between different normative ideals. On the one hand, many feel that there is something clearly unjust about some children getting a significant head start in life simply because they happen to be born into wealthy families. From an egalitarian perspective, variation in children's prospects should not depend on variations with respect to the amount of wealth in their family background. On the other hand, many also feel that it is not right for the state to intervene in the family by hindering or taxing an internal transfer of property. In other words, many of us are attracted to both equality of opportunity and the protection of family autonomy. In this article, we explore the latter half of this tension, and ask whether family concerns provide normatively sound arguments against inheritance tax.

Our point of departure is that there is in most countries strong opposition to taxing inherited wealth, even though, on most schemes, a clear majority will not be subject to such a tax.² An important part of this opposition stems from familial considerations: that inheritance tax is seen as troublesome because it is taken to violate important family values. Yet even though arguments appealing to family values are common in public debate on inheritance tax, it is not always clear exactly what is meant by family

values, nor why such values make it inappropriate for the state to tax inheritance. What we might call a *blanket* family argument, that the state has no right to interfere in the private sphere because family matters are the family's business alone, does not seem correct. Most of us will agree on reflection that the state may properly intervene in family life in at least some cases, most obviously in the case of abuse. There are more nuanced arguments, however, that are worth philosophical attention, although they are often left quite vague in public debate. Our aim is to spell out these arguments and to assess their validity.

We distinguish five kinds of family arguments against inheritance taxation. In the first section, we consider the view that we have a right to benefit our children, and that the state should not impede us in doing good for them. A reply is provided by the philosophically most detailed and subtle account of the family, that of Harry Brighouse and Adam Swift.³ According to them, we not only have no unconditional right to confer advantage on our children, inheritance should not be protected as a right at all, since it is not necessary to realize essential family goods. Therefore, the state may tax inheritance quite heavily, if doing so serves distributive justice. However, their argument does not solve all problems. In the second section, we discuss Thomas Nagel's claim that it is a *virtue* to benefit one's children, and that the state should therefore encourage it instead of hampering it with taxes.⁴ We argue that although Nagel's claim is intuitively plausible, it does not support substantially limiting the inheritance tax. In the third section, we move on to a quite different kind of argument, namely, that children have a *right* to their parent's belongings. This argument involves a different idea of the family, where it is seen as an economic unit with common ownership. We discuss whether common ownership can justify substantially limiting the tax, and conclude in the negative, although we later concede that a just tax scheme may make certain provisions for items like family houses or farms.

In the fourth section, we examine the thought that inheritance taxation may impair a vital sense of continuity and belonging. This argument comes in two versions. The first argument is that parents should be allowed to transfer what they have created to their children since this may express relational bonds and create a sense of extended identity between them. The second argument holds that children experience a sense of continuity and belonging with past generations when they inherit objects such as a family house or a farm. We dismiss the former argument and argue that the latter should be met by providing special arrangements such as allowing children to live in a house they have grown up in, provided they do not sell. In the fifth section, we look at a variation of the well-known argument from incentives, one that appeals specifically to the relation between parents and children. It holds that parents are motivated by a concern for the future welfare of their children and that inheritance taxation will therefore reduce parent's willingness to work and save. Here we draw on recent empirical research to argue that it is unlikely that inheritance tax will have substantial negative incentive effects.

Debates on inheritance taxation deal with a number of different issues which we will not enter into here. First, we shall not cover in much detail arguments *for* inheritance taxation. We shall simply assume that such taxation promotes an important value, namely, equality of opportunity.⁵ Instead, we shall concentrate solely on assessing arguments *against* inheritance taxation. Moreover, we shall not consider general arguments, for instance from property rights, economic efficiency, double tax, or death

tax. We are concerned exclusively with whether there are distinctively *familial* concerns that make inheritance taxation morally problematic.⁶ Whether people have *general* rights, for instance over property, that *also* give them the right to dispose of their property as they see fit, and thus to make tax-free provisions for it after their death, is not on the table here. Such arguments do not appeal specifically to the fact that donor and donee are often in family, and if an argument applies equally to bequests to friends or strangers, it is not a family argument in our terminology. We are concerned only with the normative, justificatory weight of family relationships, most often parent-child relations. In other words, our question is whether there is something about this kind of relationship that makes taxing inheritance particularly problematic.⁷

We shall also make two crucial assumptions in the following discussion. First, we assume that there is something normatively distinct about inheritance taxation that is worth discussing on its own. This accords with much of public debate, where different arguments are often employed for and against different taxes. In a consequentialist welfare-economic framework, on the other hand, where the only aim is to optimise the tax and transfer system as a whole, in order to maximise utility or welfare, no tax on its own raises particular problems. This leads us to the second assumption. In modern states, inheritance taxes, where they exist, are just one small part of a large and complicated system of taxes and transfers. This means that even if our discussion leads us to support a higher inheritance tax rate than usual, the conclusion may be different all things considered. Other things equal, a higher tax rate is preferred, but how high exactly obviously depends on other tax rates, for wealth and income in particular (with a high wealth tax rate equality of opportunity may be well enough served for inheritance taxes not to be necessary), as well as other mechanisms of distribution within society. Taken together, the two assumptions we make hold that inheritance taxation raises issues that are normatively distinct, but that all-things-considered arguments cannot isolate the inheritance tax, but must evaluate it in the context of the overall tax system (and the overall distribution in society). For the same reason we will operate only with terms like low, moderate and high tax rates, instead of exact percentages. What exactly will count as low, moderate, and high obviously depends on many contextual factors that we cannot go into here.

2. A Right to Benefit

We start by considering the view that we have a right to benefit our children, which may be grounded in a duty to benefit them.⁸ Since the state should not impede us in doing good for our children, inheritance taxation is morally dubious. The state may legitimately stop us from doing bad things to our children, but ought not interfere when we are simply doing our job as parents and helping them as well as we can.

Now it seems obvious from the start that the right in question cannot be unconditional: in normal circumstances I cannot bribe, steal or kill in order to benefit my children. So the question is really how we should balance the right to benefit against other moral concerns, particularly, in our context, equality of opportunity. An attempt to provide guidelines for this balancing act is the most influential account of the family within moral philosophy, that of Harry Brighouse and Adam Swift.⁹ Their account is a liberal and egalitarian defence of the family that tries to balance the concern for

liberty and the concern for equality in a morally defensible way. By avoiding blanket appeals to parental rights it provides us with a criterion for what exactly should and should not be within the scope of rightful parental liberty.

According to Brighthouse and Swift, moral questions about the rights of parents (and children) must proceed from the more fundamental question of the value of the family, that is, the question of why there should be families in the first place. After all, it may seem fairer and better for their optimal development if children were raised by professional child-rearing specialists in safe, warm, and stimulating institutions, where they receive according to their needs rather than who happened to take part in their conception and gestation. Brighthouse and Swift deny this. The family realises certain relationship goods that are of immense and irreplaceable value for both children and parents. It is good for both children and parents to take part in this kind of intimate relation, where they share their lives with each other but where parents also have considerable authority over their children. It is this combination of intimacy and authority that characterises the (ideal) family, and that constitutes family values properly understood. We shall not go into the details of how exactly family arrangements serve the interests of children (and parents), but in short Brighthouse and Swift hold that families are vital for children's physical, cognitive, moral and emotional development, as well as contributing strongly to the wellbeing of parents, in a manner that other ways of organising child-rearing cannot provide.

Only with this understanding of the value of the family as a basis can we understand which rights parents have over and on behalf of their children. As parents we have the right to do those things for and with our children that facilitate or are essential to the realisation of those relationship goods that justify the family in the first place.¹⁰ If a certain practice is *not* necessary to realise the family values they identify, *and* it conflicts with other weighty moral values or principles, such as equality of opportunity, the latter will have the upper hand. If it is necessary, on the other hand, the relationship goods will win out, since they are, according to Brighthouse and Swift, 'more important' to human flourishing than equality of opportunity.¹¹

On this account, parents do not have an unconditional right to confer advantage on their children. It may therefore have to give way when it clashes with other important moral concerns, such as equality of opportunity. However, conferring advantage may be a byproduct of things that parents *do* have the right to. Reading bedtime stories, encouraging them to read, and discussing the news with them over dinner, give children advantages in life that violates fair equality of opportunity. Yet having the space and liberty to do things like that is required in order to realise distinctive family goods, which for Brighthouse and Swift are more important than fair equality of opportunity. In short, if we didn't have the discretion to do such things, family life as we know it, and as we value it, would be very difficult. Sending your kids to an expensive elite school, on the other hand, is not necessary to realise the said family goods, and can therefore be restricted in the service of equality of opportunity. After all, we have to assume that people who live in countries where such schools do not exist, have equally valuable relations with their children as in countries where they do.

The crucial point now is that bequeathing property is in the same moral boat, as it were, as elite private schools in the theory of Brighthouse and Swift.¹² Tax-free bequests do not seem necessary to the realisation of familial relationship goods. A high or even confiscatory inheritance tax rate does not seem to threaten the possibility

of loving, intimate, and spontaneous relations between parents and children. Parents, therefore, have no right *as parents* to bequeath property to their children. This implies that the state may regulate or restrict parents' scope to transfer property to their children, if it conflicts with other important moral concerns, such as equality of opportunity, which it obviously seems to do – bequests are not just benefitting one's children, they also confer advantage on them, relative to others, for instance in the education or housing market. At most parents may transfer what is necessary to discharge their duty of care, for instance in the case of expensive illnesses and/or in the case of a parent dying before children reach maturity. There is, however, no unconditional right to benefit one's children that can be used to undercut inheritance taxation from the start.

We support the main thrust of this argument. However, one might argue that the theory of Brighthouse and Swift is of limited relevance to questions of inheritance tax today, since most inheritance now occurs between parents and adult children and their theory is about pre-adult children. This is not the place for a general assessment of the Brighthouse-Swift account, but we think the objection can be met by the following line of reasoning: if the relationship goods realised in the very close and special bond obtaining between vulnerable pre-adult children and parents cannot serve to justify an unconditional right to benefit them that can undercut inheritance taxation, it is *prima facie* even less reason to think that the somewhat weaker bond between non-dependent adult children and parents can do so. Certainly, without a thorough analysis of the relation between adult children and their parents we cannot outright exclude the possibility that there may be some relationship goods that obtain exclusively between them, e.g. growing out of their common love for and interest in their children and grandchildren, that may then be used to justify tax-free inheritance. So far, though, we have failed to find any such relationship good that can do this job.¹³

Seen on its own, the Brighthouse-Swift account seems to imply a close to confiscatory tax rate, since inheritance does not appear necessary to realising essential family goods. Does this mean that we also support a confiscatory tax rate? Not quite, since there may be other arguments that carry some weight against confiscatory taxes. Such a weighted model seems more appropriate in cases like inheritance taxation, which precisely allows for different degrees of taxation rather than a mere question of whether to have it or not. We shall now go on to explore some of those other arguments against taxing inheritance and see how they moderate the confiscatory conclusion that seem to follow from the Brighthouse-Swift account.

3. The Argument from Virtue

The next argument to consider is one formulated, albeit briefly, by Thomas Nagel. The essence of this argument is that it is a *virtue* to bequeath property to one's children. According to Nagel, being partial towards one's own children is a virtue, and bequeathing wealth is a way of being partial which justifies limiting or removing taxation of inheritance.¹⁴ Nagel compares this with making charitable contributions, which is a virtue that should be encouraged by tax exemption. Likewise, bequeathing to one's children is a virtue that should be supported by the state, not thwarted by taxing

it. Note that this argument is not refuted by the Brighouse-Swift account. Even if Brighouse and Swift are right that there is no unconditional right to advantage your children, we may still allow bequests on the basis that it is a good thing that parents have the space to exercise the virtue to make gifts to one's children (and we value this virtue more than other moral concerns, such as equality of opportunity).¹⁵

In assessing this argument, there are two questions we need to address. First, is it really a virtue to bequeath property to one's children? Second, even if it is to some extent a virtue, does it exclude moderate to high inheritance tax rates?

Regarding the first, it is at least not obvious that bequeathing property to one's children is a virtue. John Stuart Mill, for instance, argued that large bequests should be restricted because of the risk of producing idle and unproductive individuals who ultimately would not be able to enjoy one of the higher pleasures in life.¹⁶ To Mill, the development of individual character is a higher pleasure compared to a life without a constant effort of self-improvement. If this argument is correct, and there is some empirical evidence supporting it (as we shall return to in the section on incentives), conferring major advantages to children through bequests should be seen, not as a virtue, but as a shortsighted and misconceived idea of what really is best for them. Some may even go further and claim that demanding the space to bequeath as one likes, is not so much a virtue as a vice, an attempt to maintain control over resources after one's death, perhaps even using it as a lever to manipulate one's children while still alive. These considerations are clearly not exhaustive, but they do at least show that it is not obviously true that making bequests is virtuous.

Moreover, even if we grant that it is more virtuous to bequeath property than to squander it, it seems even more virtuous to bestow it on those who need it the most, say, children in need.¹⁷ Here we should also note what Rawls calls the natural duty of justice, which requires us to 'further just arrangements not yet established': this seems to imply that you should promote fair equality of opportunity by either willingly supporting a high inheritance tax rate or make gifts to those with fewer opportunities in life.¹⁸ This is also why Nagel's comparison of bequests with charity is misleading.¹⁹ Bequeathing is presumably considered a virtue because instead of consuming wealth herself, the donor transfers it to her children in a way that is considered altruistic and on a par with donating wealth to charity. Yet bequeathing large sums to one's children creates morally problematic inequalities in the next generation, whereas charitable donations usually do not have the same moral costs (although that obviously depends on what counts as charity here). As pointed out above, bequeathing is not only benefiting your children, it is to advantage them compared with others. It gives them the edge in the competition for positional goods, for instance in education or the housing market, and in this way it actually *harms* those who do not receive bequests.

Secondly, even conceding that bequeathing is to some extent a virtue, it does not justify *abolishing* inheritance tax. As long as the inheritance tax is not confiscatory, there will, strictly speaking, be room for parents to exercise the virtue, if it is indeed a virtue. True, one might reasonably claim that an inheritance tax rate of 99% would make the exercise of the virtue close to meaningless. All the same, a moderate or even fairly high tax, with moderate exemption levels, would still leave ample space for exercising the virtue. Hence, the Nagelian argument does not prove inheritance taxation morally wrong, but at most shows that it should not be so demanding as to make intra-familial gifts meaningless.²⁰

4. The Argument from Joint Ownership

Another kind of argument holds that children have a *right* to their parents' belongings, since it is already theirs. From this perspective, the question is not whether parents have a right to confer advantage on their children, but whether children have a right to their parents' property. Legally, inheritance is a transfer of property rights from the parent(s) to the children, but normatively there is an argument that the property is rightfully owned by the family in the first place, so that the transfer that takes place in inheritance is a mere formality. In the same way that the law often treats married couples as an economic unit so that tax is not levied on the one when the other dies, this argument implies that children should be treated in the same way.²¹

Arguments like this often go together with a distinctive view of the family. Alstott refers to this as the 'conventional' ideal of the family.²² According to this ideal, the family should be considered a single unit, defined, not by individual choice, but by 'a web of obligations that bind the members of the family together'.²³ As Beckert has demonstrated, this ideal of the family has been particularly strong in Germany, and was influentially articulated by Hegel, who claimed that family resources 'are common property, so that no member of the family has particular property, although each has a right to what is held in common'.²⁴ This means that when a person dies, no genuine *transfer* of assets occurs. Instead, the remaining members of the family keep what is already theirs:

The natural dissolution of the family through the death of the parents, particularly of the husband, results in inheritance of the family's resources. Inheritance is essentially a taking possession by the individual as his own property of what in themselves are common resources.²⁵

The question to ask here, though, is whether the idea of joint ownership rests on an historically outmoded idea of the family. One might argue that what we above called the conventional family is simply not in keeping with the realities of modern family life. This objection was voiced already by Mill. For him, the idea of common ownership belongs to the past and has no force in the modern world, and accordingly, 'property is now inherent in individuals, not in families'.²⁶

Yet even though the property in question is today formally and legally the parents', there might still be some normative force left in the idea of common ownership. In fact, as Alstott has argued, recognising this force might help to understand the opposition to inheritance taxation. For example, opponents of the tax typically refer to examples where previous generations have worked hard on a ranch or a business that the family sees as collectively owned.²⁷ It would therefore be too precipitate to dismiss the idea of common ownership and the corresponding normative claim of children having a right to their parent's belongings. Moreover, European law, which holds that the testator cannot disinherit their children in their will, may be understood as incorporating parts of this idea even today.

Still, the idea that children already own their parents' property needs an argument. It is not sufficient simply to state it. On what exactly does the children's claim to their parents' belongings rest? Justifying joint ownership may be viable in the case of a traditional family life and economy, one where, say, the family worked and lived together on a family farm, but it is harder to justify with a modern division of labour. At most, it applies to things like family houses, which children can be said to have a claim to in

virtue of having lived there for many years (ownership by use) or family farms or businesses where they have worked, perhaps unpaid, while growing up. It is harder to see how we can substantiate that children ‘already own’ parts of mum’s job income or dad’s stock holdings. There are also serious feasibility concerns here: with modern, complicated families, where people divorce and remarry, it will be very hard to separate out who is party to the joint ownership.

We also need to be careful not to treat spouses and children as communal owners in the same way. A married couple can be said to have common ownership over their belongings due to an implicit agreement of division of labour, for instance in a traditional family where one person is the ‘breadwinner’ and the other takes care of the house and the family. Both are important functions of family life, and it is fair to hold that they should have equal entitlements to the income and wealth created. In some of what Alstott termed conventional families there may arguably be a similar division of labour between parents and children. However, children in modern Western societies normally do not participate as equals when it comes to sharing the burdens of work in the family. If this is correct, it is reasonable to hold that children do not have the same claim to family assets as spouses.

Another, though much weaker, way of arguing that children have a rightful claim to parts of their parents’ property, is advocated by Locke, who held that parents have an obligation to preserve their children, and this obligation gives children a right to inherit.²⁸ However, since this only applies to the portion of family assets that are necessary for the child to *survive*, it seems less relevant for contemporary questions about inheritance taxation. Even a quite low exemption level combined with confiscatory rates above that level will be compatible with the Lockean view, it seems. Admittedly, it should be noted that what it takes to survive is context-dependent. In welfare states, subsistence will generally be secured. However, in other contexts children might need to inherit a substantial sum to guarantee their subsistence.

5. A Sense of Continuity

The next argument in favour of inheritance that we shall explore builds on the view that transferring property from parents to children increase children’s sense of unity with the past, in particular with their deceased parents, but perhaps also with earlier generations. We shall distinguish two different versions of this argument.

Robert Nozick argues for the importance of allowing tax-free transfers from the creators of wealth to their children. Nozick claims that the bonds between parent and child constitute the strongest bond that exists, even to the point of saying that children are part of their parent’s substance.²⁹ When the child grows up, however, these bonds are not as strong as they used to be and the need may arise for something to symbolically substitute for them. Bequeathing can be considered an expression of love, according to Nozick, and thus it may reinforce intergenerational bonds, and even create a sense of extended identity between parent and child. However, the right to transfer must be limited to the creator of the original property, Nozick argues:

Many philosophers – Hegel, for one – have commented on the ways in which property earned or created is an expression of the self and a component of it,

so that one's identity or personality can become imbued or extended in such a creation. When the original creator or earner passes something on, a considerable portion of his self participates in and constitutes this act, far more than when a non-earner passes something he has received but not created.³⁰

The core of Nozick's argument is that inheritance is justified because it strengthens the ties between donor and donee. By receiving something the donor has created and imbued with herself, the receiver takes part in that self. It is thus not only property that is being handed down – a part of the donor's self is also taken over by the donee. In this way, intergenerational transfers create continuity through identity.

The other variant of this kind of argument is provided by Brighthouse and Swift. Among the core familial relationship goods they count not only the distinctive form of interaction between parents and children (the combination of intimacy/love and authority/discretion), but also the sense of continuity and belonging.³¹ The family gives children a sense of continuity with the past and a feeling of belonging in something that spans several generations, mediated by their relation to their own family members. Such a sense of continuity may be hugely important to people, and for most of us the family is in a prime position to provide it, although other groups may supply something of the same (e.g. a nation or a profession). And as Brighthouse and Swift note, at least certain kinds of inheritance may indeed seem to promote such a sense of belonging.³² Inheritance of, say, a family house that you grew up in, like your parents did before you, or a family farm or business, founded and run by ancestors for generations, may give you a feeling of identity, a feeling of being part of something bigger than yourself. Without this transferring of property over generations, each generation would, as it were, be isolated and rootless, and the sense of continuity would be diminished.

Brighthouse and Swift seem to grant the validity of this argument. Inheritance can realise an important familial relationship good, and should therefore, according to the logic of their account, be protected as a right. However, two arguments may modify and soften this conclusion.

First, the force of the argument depends on whether there are alternative ways of realising the relevant family good, viz. continuity. If there are alternative ways of realising it which are not as disruptive to equality of opportunity, it might lead us to question whether it should be protected as a right after all. And indeed, it does seem as though there are other ways of cultivating a sense of continuity and belonging in children, such as family pictures, the telling of stories, and so on. Still, even though inheriting a family house does not seem *necessary* to create a sense of belonging, it does undeniably seem to facilitate or promote such a sense.

However, even if the argument is left standing so far, the validity of the appeal to familial relationship goods in the case of inheritance does not rule out the possibility that the state can try to reduce the *competitive advantages* of inheriting e.g. a family house. It may, for instance, reduce the way in which the inheritance of a family house may be converted into financial advantage. Brighthouse and Swift seem to support this conclusion:

Requiring that the beneficiary actually live in the house, taxing the financial benefit (including any eventual sale of the house) at 100 per cent, so that only

the sentimental benefit is realised, is entirely consistent with recognising the relationship goods case for permitting the bequest.³³

Likewise, there are ways of designing inheritance tax that makes it easier to transfer farms and family businesses to the next generation.³⁴ For example, if the farm or business is kept within the family for a given number of years after the transaction, the amount which is to be levied in tax could be reduced by 10 per cent each year.³⁵ Hence, we concur that the argument from continuity has some weight, and that inheritance tax laws should be designed in such a manner that does not make it impossible or exceedingly difficult to inherit property that supports this value. However, it is more difficult to see how it applies to the transfer of money or shares, or any other stuff that the beneficiary does not have any real connection with.

Hence, this strategy is not as easily adapted to answering Nozick's version of the argument. The Brighthouse-Swift argument is focused on what we might call material continuity: It is a good thing to be able to continue living in the house that you grew up in, or to be able to keep the family business that has been running for generations. Nozick's account, on the other hand, is more spiritual, as it were: By receiving something of which the creator has put himself or herself into, the receiver takes part in the creator's self. Contrary to the Brighthouse-Swift account, the *creation* of the good is of the essence. And, contrary to the compromise solution we argued for above, where one distinguishes between kinds of assets, for Nozick it is not the type of object that matters, but the fact that it was created by the donor. It does not matter whether the bequest consists of a house or a number of shares – what matters, and what makes a difference for tax purposes, is that it has been created by the donor.

However, Nozick is well aware of the inequalities that can result from allowing tax-free transfers. Therefore, he holds that only the creator of an asset should have unlimited right of transfer, whereas wealth that was not created by the holder can be taxed in order to avoid perpetuating inequalities.³⁶ With this twist, Nozick is able to provide an argument to limit dynastic wealth transfers, but allow transfers of created wealth, and thus maintain the sense of spiritual continuity that he deems so important.³⁷

Still, for those of us with egalitarian sympathies even this Nozickian scheme is not entirely satisfactory, despite being far more ambitious than most tax jurisdictions today. Allowing transfers the way Nozick proposes will obviously conflict with equality of opportunity. The child of, say, Mark Zuckerberg will, under Nozick's tax scheme, inherit large sums which will give her a competitive advantage compared to almost everybody else (even though that child's own children will not enjoy the same advantages). Here, the Brighthouse-Swift strategy may be useful against Nozick's scheme as well. Following the same logic as above, we should ask whether there are alternative ways for securing the spiritual continuity that Nozick is after. Our suggestion is that there are. Through spending time with their children, talking to them, doing things with them, being a role model for them, parents have a better way of assuring that their self is, in Nozick's sense, transmitted to their children. These activities might of course also give children a competitive advantage over others. They should, however, be seen as contributing to distinct family relationship goods, and therefore enjoy protection, whereas the transfer of assets does not have the same status.³⁸

6. Incentive Arguments

One of the most influential arguments against inheritance taxation is that it creates negative incentive effects: a tax scheme with substantial wealth transfer taxation is likely to reduce people's motivation to work and save. As it stands, this argument is quite general in form, and does not appeal specifically to family concerns, but it seems reasonable to hold that it gains much of its weight and relevance from the motivational force of familial relationships: since parents are likely to be particularly motivated by the opportunity to enhance their children's future welfare, taxing inheritance might create disincentives. Society would be at peril, one might argue, if it failed to design a basic structure that did not utilise these very powerful motivations.

Incentive arguments are consequentialist in nature and must be assessed empirically. Fortunately, there exists an increasing number of empirical studies on this issue. Two studies suggest that the tax burden effect on the donor's willingness to work and save is minimal. Quoting work by Holtz-Eaking, Murphy and Nagel conclude that 'the consensus seems to be that a tax burden on gifts and bequests has little or no proven impact on donors' decisions whether to work or save'.³⁹ In a more recent review of the literature, Alstott notes that 'the existing empirical studies, limited as they are, suggest that inheritance taxation would have modest negative effects on work, savings and capital accumulation, but there is still significant uncertainty'.⁴⁰ These studies are about incentive effects of inheritance taxation in general and not merely on the specific effects on parents, but given the fact that most bequests are between parents and children, it seems reasonable to infer that their conclusions apply to parents as well.

An often-quoted study adds some nuance to this picture. In 2001, Kopczuk and Slemrod found that the tax might have an impact. They concluded that 'an estate tax rate of 50 percent would reduce the reported net worth of the richest part of the population by 10.5 percent'.⁴¹ However, they were unable to determine whether this was due to tax avoidance strategies, or if it was actually due to reduced work and savings. Thus, there is considerable uncertainty about the effect that wealth transfer taxes have on donors' willingness to work and save. However, as Kopczuk and Slemrod note, 'almost no empirical evidence supports claims of a large effect or of a negligible effect'.⁴²

Another possible negative consequence of inheritance tax should also be considered. Fleischer argues that a complication with the inheritance tax is that it might lead upper-middle class families to consume more. And since that consumption is likely to include spending money to increase their children's human capital, such as private schooling and fancy camps, an unintended consequence is that the tax can in fact exacerbate inequality of opportunity.⁴³ In our view, this seems at best highly uncertain and at worst implausible. Spending on private schools and fancy camps will most likely happen before parents are fifty years old, and as Caron and Repetti have argued, it is not likely that people 'would care much about wealth transfer taxes that will only affect them in the distant future'.⁴⁴ Hence, it does not seem plausible that inheritance taxes will influence this kind of spending. Indeed, it seems more plausible that it will *reduce* it, since it will reduce capital accumulations over generations.

In order to have a complete picture of the incentive effects we also need to examine the consequences for children who inherit large amounts (how bequests affect the receiver is also relevant to whether it is a virtue to leave children inheritance). Andrew Carnegie famously claimed that 'the parent who leaves his son enormous wealth

generally deadens the talents and the energies of the son, and tempts him to lead a less useful and less worthy life than he otherwise would'.⁴⁵ A study by Holtz-Eakin *et al.* supported Carnegie's claim: they concluded that large inheritances would 'decrease a person's labor force participation. For example, a single person who receives an inheritance of over \$150,000 (by 1992) is roughly four times more likely to leave the labor force than a person with an inheritance below \$25,000'.⁴⁶ Furthermore, in a recent review of the literature, Joulfaian concludes that 'large inheritances speed up retirement'.⁴⁷ If this is correct, and if Mill is right to insist that it is of great importance to a person's wellbeing that she is able to create her own success in life, it speaks against allowing large wealth transfers. According to this argument, parents put their children's happiness in jeopardy through large bequests.

We should, however, be careful not to overstate this argument. Clearly, contributing to society through paid employment is not the only thing that matters for wellbeing. A person who has received a large inheritance might dedicate herself to charity work, which may enhance her wellbeing as well as overall social utility. The point we want to make is that it should not be assumed that large bequests are always beneficial for the recipient, and they might also be detrimental to society.

7. Conclusion

We have considered five family arguments against inheritance taxation. None of the arguments provide strong objections against a moderate or even a high inheritance tax rate, at least not when special provisions are made for things like family houses or farms. We therefore conclude that arguments appealing to the family does not provide conclusive arguments against taxing inheritance in a way that promotes equality of opportunity.

However, since the arguments all introduce concerns that should be assigned *some* weight, it would be unjust to abolish inheritance entirely.

Finally, we would like to emphasise that although we have here concentrated on discussing family arguments *against* inheritance taxation, there are also arguments *in favour of* such a tax that appeal specifically to the family. First, as Brighthouse and Swift argue, family goods should not only be seen as constraining distributive measures, but also as distribuenda in their own right.⁴⁸ Inheritance taxes may reduce inequality, and thus make it easier for *others* to realise family relationship goods. Parents who have to work three jobs in order to stay afloat will, after all, find it difficult to cultivate those goods properly. And the anxiety that parents may feel when their children lose out on the education or housing market due to the lack of inheritance may also put a strain on their family life. Secondly, the possibility of free inheritance may allow for threats, blackmail, and manipulation (call this the Scrooge McDuck-syndrome), to the detriment of the relationship between parents and children (as well as creating disputes between siblings). We do not know how often this in fact happens, but it does give parents a degree of power over children that may have negative unintended and perhaps even unconscious effects.⁴⁹ This may be solved by restricting testamentary freedom, but usually the guaranteed portion is quite small, so that such laws are not sufficient to avoid manipulation.

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NOTES

- 1 Thomas Piketty, *Capital in the Twenty-First Century* (Cambridge MA: Belknap Press of Harvard University Press, 2014); Thomas Piketty & Emmanuel Saez, 'A theory of optimal inheritance taxation', *Econometrica* 81,5 (2013): 1851–1886; Anthony Atkinson, *Inequality. What Can Be Done?* (Cambridge MA: Harvard University Press, 2015).
- 2 In the US, the tax has been unpopular despite the fact that it affects only the richest 1–2 percent (Michael J. Graetz & Ian Shapiro, *Death by a Thousand Cuts. The Fight Over Taxing Inherited Wealth* (Princeton NJ: Princeton University Press, 2005), p. 3). This unpopularity also holds for the UK, where there is a 'baseline hostility' to inheritance tax. See Miranda Lewis & Stuart White, 'Inheritance tax: What do people think? Evidence from deliberative workshops' in W. Paxton, S. White & D. Maxwell (eds) *The Citizen's Stake: Exploring the Future of Universal Asset Policies* (Bristol: Policy Press, 2006), p. 34.
- 3 Harry Brighthouse & Adam Swift, *Family Values* (Princeton NJ: Princeton University Press, 2014).
- 4 Thomas Nagel, 'Liberal democracy and hereditary inequality', *Tax Law Review* 63,1 (2009): 113–121, at p. 120.
- 5 For a general discussion of fair equality of opportunity and inheritance taxation, see Anne L. Alstott, 'Equal opportunity and inheritance taxation', *Harvard Law Review* 121,2 (2007): 469–542.
- 6 Our approach has some affinity with Stuart White, 'Moral objections to inheritance tax' in M. O'Neill & S. Orr (eds) *Taxation. Philosophical Perspectives* (Oxford: Oxford University Press, 2018). White is also primarily occupied with arguments against inheritance taxation. However, White's approach differs in outlining three arguments in favour of such taxation, and, more importantly, White's focus is not strictly limited to family concerns. When it comes to arguments in favour of inheritance taxation, see Jørgen Pedersen, 'Just inheritance taxation', *Philosophy Compass* 13,4 (2018) <https://doi.org/10.1111/phc3.12491>.
- 7 We shall leave open whether the definition of inheritance also includes gifts, and thus whether our argument applies only to transfers by death or also to in vivo gifts. The relation between the two is too complex to enter into here. For a useful discussion see Hillel Steiner, 'Three just taxes' in P. Van Parijs (ed.) *Arguing for Basic Income* (London: Verso, 1992), pp. 83–84.
- 8 In the context of inheritance, we find it more natural to discuss the *right* to benefit rather than a possibly *duty* to benefit our children, since it is less common to argue that we have a duty to bequeath.
- 9 Brighthouse & Swift op. cit.
- 10 Brighthouse & Swift op. cit., p. 118.
- 11 Brighthouse & Swift op. cit., p. 143.
- 12 Brighthouse & Swift op. cit., p. 123.
- 13 We owe thanks to an anonymous reviewer for pressing this point. For a criticism along these lines, arguing that a justification of the family should be based on relationship goods that extend across the whole history of the family, see Luara Ferracioli, 'Why the family?', *Law, Ethics and Philosophy* 3 (2015): 205–219. Her candidate for such a good is parental love, but this does not seem to us to give us any better

- basis for tax-free inheritance, since such love can obviously co-exist with a high inheritance tax. We shall return to a similar point in discussing the continuity argument.
- 14 We should emphasise that Nagel is not an opponent of taxing inheritance. His claim is rather that the argument from virtue is 'the most significant legitimate value in support of limits on the taxation of inheritance' (Nagel op. cit., p. 120).
 - 15 Nagel also refers to the double utility of a transfer made for altruistic reasons. The parent gets utility from bequeathing and the child from receiving wealth. This provides a utilitarian argument in favour of restricting inheritance tax.
 - 16 John Stuart Mill, 'Principles of political economy' in J.M. Robson (ed.) *The Collected Works of John Stuart Mill* (Toronto: University of Toronto Press, 1965). For a completely different objection to the idea that bequeathing is good and consumption is bad, see Bertrand Russell, *In Praise of Idleness and Other Essays* (London: George Allen & Unwin Ltd., 1954), pp. 24–25.
 - 17 These are, obviously, complicated matters. For instance, we have heard people arguing that there is something cold and distant, even if morally strictly correct, about the parent giving all of his money to charity and none at all to his nice and loving children.
 - 18 John Rawls, *A Theory of Justice* (Cambridge MA: Harvard University Press, 1971), p. 115.
 - 19 Nagel op. cit., p. 120.
 - 20 For a more nuanced discussion of the argument from virtue see White op. cit., pp. 177–180. For a broader discussion of egalitarianism, family and inheritance that discusses Brighthouse and Swift's account, see Daniel Halliday, *The Inheritance of Wealth. Justice, Equality and the Right to Bequeath* (Oxford: Oxford University Press, 2018), especially Chapter 6.
 - 21 For a recent discussion on the right to inherit which is akin to the idea of common ownership see Iain Brassington, 'On rights of inheritance and bequest', *The Journal of Ethics* 23,2 (2019): 119–142. Lewis and White show that people refer to this kind of argument when discussing inheritance tax in focus groups: when confronted with the argument that inheritance tax is just because inherited assets are not deserved, 'participants in effect replied that it is the family rather than the individual that is the relevant unit of reward when it comes to wealth. Hence, wealth should be permitted to stay within families as they have worked to deserve it' (Lewis & White op. cit., p. 27).
 - 22 Anne L. Alstott, 'Family values, inheritance law and inheritance taxation', *Tax Law Review* 63 (2009): 123–138, at pp. 129ff.
 - 23 Alstott 2009 op. cit., p. 130.
 - 24 Georg Wilhelm Friedrich Hegel, *Elements of the Philosophy of Right*, A.W. Wood, ed. (Cambridge: Cambridge University Press, 1991 [1821]), § 171, quoted from Jens Beckert, *Inherited Wealth* (Princeton NJ: Princeton University Press, 2008), p. 53.
 - 25 Hegel 1991, §178, quoted from Beckert op. cit., p. 53.
 - 26 Mill op. cit., p. 219.
 - 27 Alstott 2009 op. cit., p. 130. Jeremy Bentham provides a similar argument which explains why inheritance taxation is unpopular 'Under a tax on successions, a man is led in the first place to look upon the whole in a general view as his own: he is then called upon to give up a part. His share amounts to so much: this share he is to *have*; only out of it, he is to pay so much *per cent*. His imagination thus begins with embracing the whole: his expectation fastens upon the whole: then comes the law putting in for its part, and forcing him to quit his hold. This he cannot do without pain: if he could, no tax at all, not even a tax on property would be a burthen: neither land-tax nor poor's rate could be too high': Jeremy Bentham, 'Supply without burthen. Escheat vice taxation' in W. Stark (ed.) *Jeremy Bentham's Economic Writings* (London: The Royal Economic Society, 1952 [1795]), p. 292). Applied to family concerns, children will often feel that they own what is held by their parents.
 - 28 John Locke, *Two Treatises of Government* (Cambridge: Cambridge University Press, 1988), p. 88; Robert Lamb, 'Inheritance and bequest in Lockean rights theory' in J. Cunliffe & G. Erreygers (eds) *Inherited Wealth, Justice and Equality* (London and New York: Routledge, 2013), p. 45.
 - 29 Robert Nozick, 'Parents and children' in P. Vallentyne & H. Steiner (eds) *Left-Libertarianism and Its Critics: The Contemporary Debate* (Basingstoke: Palgrave, 2000) p. 291.
 - 30 Nozick op. cit., p. 293.
 - 31 Harry Brighthouse & Adam Swift, 'Legitimate parental partiality', *Philosophy and Public Affairs* 37,1 (2009): 43–80.
 - 32 Brighthouse & Swift 2014 op. cit., pp. 139–40.
 - 33 Brighthouse & Swift 2014 op. cit., p. 140.

- 34 Barry Bracewell-Milnes, 'The hidden costs of inheritance taxation' in G. Erreygers & T. Vandeveldel (eds) *Is Inheritance Legitimate? Ethical and Economic Aspects of Wealth Transfers* (Berlin: Springer, 1997), p. 179.
- 35 For a similar argument, see D.W. Haslett, 'Is inheritance justified,' *Philosophy and Public Affairs* 15,2 (1986): 122–155, at p. 151. In general, as one reviewer pointed out, exemptions for family houses and farms might encourage tax evasive shifts of assets into these types of property. To what extent that would happen is an empirical question, and if it turns out to be a serious problem, it must be balanced against concerns for continuity. However, a condition for exemption from tax is that the person has grown up with and thus has sentimental ties to an object, and that makes tax evasive shifts less likely in this particular instance.
- 36 Nozick op. cit., p. 292.
- 37 Nozick's proposal is similar to Rignano's scheme. See Eugenio Rignano, *The Social Significance of the Inheritance Tax* (New York: Alfred Knopf & Co., 1924). For a recent attempt to revive the Rignano scheme, see Halliday op. cit.: as Halliday notes (p. 167), it is not clear if Nozick is aware of Rignano's writings.
- 38 One objection that has been put to us is that continuity could be catered for by a lifetime ceiling which specifies how much an individual can inherit. Continuity, the objection goes, will have to be expressed within that ceiling. This, it is argued, is a more neutral way to meet the continuity concern than identifying particular things like houses and farms that will be subject to differential treatment. This suggestion fails, however, to differentiate between assets that have emotional value and assets that don't. In our opinion, therefore, it fails to sufficiently recognise the force of the continuity argument.
- 39 Liam Murphy & Thomas Nagel, *The Myth of Ownership. Taxes and Justice* (Oxford: Oxford University Press, 2002), p. 152.
- 40 Alstott 2007 op. cit., p. 497.
- 41 Wojciech Kopczuk & Joel Slemrod, 'The impact of the estate tax on wealth accumulation and avoidance behaviour' in W.G. Gale, J.R. Hines Jr. & J.B. Slemrod (eds) *Rethinking Estate and Gift Taxation* (Washington DC: Brookings Institution Press, 2001), p. 339.
- 42 Kopczuk & Slemrod op. cit., p. 300.
- 43 Miranda Perry Fleischer, 'Not so fast: The hidden difficulties of taxing wealth' in J. Knight & M. Schwartzberg (eds) *NOMOS LVI: Wealth. Yearbook of the American Society for Political and Legal Philosophy* (New York: New York University Press, 2017), p. 298.
- 44 Paul L. Caron & James R. Repetti, 'Occupy the tax code: Using the estate tax to reduce inequality and spur economic growth', *Pepperdine Law Review* 1,1 (2013): 1255–1290; James R. Repetti, 'Democracy, taxes and wealth', *New York University Law Review* 76 (2001): 825–873.
- 45 Douglas Holtz-Eakin, David Joulfaian & Harvey S. Rosen, 'The Carnegie conjecture: Some empirical evidence', *The Quarterly Journal of Economics* 108,2 (1993): 413–435.
- 46 Holtz-Eakin et al. op. cit., p. 413.
- 47 David Joulfaian, *The Federal Estate Tax. History, Law, Economics* (Washington DC: US Department of Treasury Office of Tax Analysis, 2013). Retrieved from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1579829
- 48 Brighouse & Swift op. cit., p. 147.
- 49 For similar worries, see Nozick op. cit., pp. 293–294, and Steiner op. cit., pp. 83–84.