Title: *Is Inheritance Morally Distinctive?*

Author: Daniel Halliday

Affiliation: Dept of Philosophy, University of Melbourne

Address: East Wing, Old Quad Building, University Of Melbourne, VIC 3010, Australia

Email: daniel.halliday@unimelb.edu.au

Tel: (+61) 3 8344 5877

Abstract: This paper examines an interesting but rarely-discussed argument for the right to bequeath wealth. This argument, popular among libertarians, asserts that opposition to the practice of inheritance is prone to over-generalize, such that opponents of inheritance cannot avoid condemning other uses of private property, like gift-giving. The argument is motivated by an interesting methodological claim, namely, that the morality of bequest ought to be evaluated from the perspective of the donor, rather than from a 'backward-looking' perspective. This paper argues that the donor-centric approach ultimately favors *restricting* the right of bequest. Specifically, I maintain that bequest generally carries a lower opportunity cost than other uses of property. Accordingly, inheritance tax is less coercive than other taxes, and bequest is less obviously as generous an act as gift giving. While the arguments made here will encourage traditional opponents of inheritance (such as egalitarians), I also suggest why they might be welcomed by at least some types of libertarians.

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Abstract: This paper examines a rarely-discussed argument for the right to bequeath wealth. This argument, popular among libertarians, asserts that opposition to the practice of inheritance is prone to over-generalize, such that opponents of inheritance cannot avoid condemning other uses of private property, like gift-giving. The argument is motivated by an interesting methodological claim, namely, that the morality of bequest ought to be evaluated from the perspective of the donor, and not evaluated in ways the presuppose the effects of bequest on the distribution of wealth. This paper argues that this donor-centric approach ultimately favors *restricting* the right of bequest. Specifically, I maintain that bequest generally carries a lower opportunity cost than other uses of property. Accordingly, inheritance tax is less coercive than other taxes, and bequest is less obviously as generous an act as gift giving. While the arguments made here will encourage traditional opponents of inheritance (such as egalitarians), I also suggest why they might be welcomed by at least some types of libertarian.

1. The problem

Moral opposition to inherited wealth is becoming an increasingly beleaguered position. Governments in modern western democracies continue to chip away at estate tax legislation, raising thresholds and increasing exemptions. Politicians frequently support these measures by portraying bequest as an admirable or virtuous practice. Accordingly, inheritance tax is increasingly being presented as a cruel injustice. In a recent pre-election debate in Britain, David Cameron claimed: “If you work hard and save money... and pay down your mortgage on a family home, then you shouldn’t have to sell that or give it to the taxman when you die. You should be able to pass it on to your children. It’s the most natural human instinct of all”¹. Most readers will also be familiar with reference to the ‘death tax’ - a popular rhetorical label for those seeking to oppose the taxing of estates. Certainly the political movement against the estate tax is now quite strong, especially in the United States². Such views, of course, are not wholly confined to politicians. The idea that bequest is an admirable sort of practice has a certain amount of currency in the minds of many people. Indeed, things that politicians say in defence of inheritance are, to some extent, attempts to exploit the sympathy for bequest that forms part of social attitudes towards inherited wealth.

¹ These remarks were made during a televised prime ministerial debate, April 29th 2010. Full transcript available at: http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/30_04_10_finaldebate.pdf (accessed August 6th 2012). Cameron’s remarks were qualified by the claim that inheritance tax “should be paid by the millionaire”.

² For an extensive discussion of how the political campaign against the estate tax has developed in the United States, see Michael J. Graetz & Ian Shapiro, *Death By A Thousand Cuts: The Fight over Taxing Inherited Wealth* (Princeton: Princeton University Press, 2005).

A degree of moral opposition to inherited wealth nevertheless endures. Such opposition is usually articulated through some combination of three roughly distinct claims. First, inheritance is often seen as anti-egalitarian: The practice of bequest helps concentrate wealth within small parts of the population. This contributes to high levels of material inequality, and arguably to inequality of opportunity as well. Second, it is sometimes said that the practice of inheritance conflicts with desert: Beneficiaries of inheritance often gain large amounts of wealth that they have done nothing to help create. It can seem, therefore, that inheritors of wealth are less entitled to it than those whose wealth was gained through burdensome work, or exposure to risk. Third, one might worry about inheritance on broadly consequentialist grounds: In one way or another, allowing people to bequeath wealth may simply lead to worse outcomes than those that could be secured by imposing some limit on bequest. Benefitting from inheritance might, for example, remove a beneficiary's incentive to engage in productive work. (Winston Churchill possibly held this third view, supposedly having claimed that inheritance tax provides 'a certain corrective against the development of a race of idle rich'.)

In principle, any of the three approaches mentioned above could be used to construct a moral case for restricting the flow of inherited wealth³. Any such attempt would need to rely on a

³ Many philosophical arguments against inheritance include some combination of egalitarian, desert-based, and consequentialist reasoning. Important examples include the arguments in Ronald Dworkin, *Sovereign Virtue: The Theory and Practice of Equality* (Cambridge, MA: Harvard University Press, 2000), esp. pp346-349, D.W. Haslett "Is Inheritance Justified?", *Philosophy & Public Affairs* 15(2) (1986): pp122-155, "Distributive Justice and Inheritance?", in Guido Erreygers & Antoon Vandevelde (eds) *Is Inheritance Legitimate? Economic Aspects of Wealth Transfer* (Berlin: Springer, 1997), pp133-155, Michael Levy "Liberal Equality and Inherited Wealth", *Political Theory* 11(4) (1983): pp545-564, Liam Murphy and Thomas Nagel, *The Myth of Ownership: Taxes and*

controversial moral principle, or controversial interpretation thereof. In this paper I am trying to avoid doing this. I will not be joining efforts to discuss the relation between inheritance and values like equality or desert, important and interesting as these discussions are. Instead, I want to address a certain other argument in favour of the right of bequest. The argument I have in mind works by asserting that anti-inheritance views are prone to over-generalise, irrespective of whether they are founded on an appeal to equality, desert, consequences, or something else. This argument has, as a matter of fact, often been used to defend extensive freedom of bequest. The purpose of this essay is to assess whether such support is really there. What I hope to show is that proper reflection on the argument in question actually should lead us to limit the right to bequeath wealth, rather than oppose such measures.

Let me begin, then, by outlining the argument I propose to discuss.

- (i) Bequeathing one's property is just one among many ways of disposing of it.
- (ii) Many uses of property (besides bequest) are such that it's hard to justify their restriction.
- (iii) There are no relevant differences between bequeathing property and the alternative uses accounting for (ii)
- (iv) Therefore, it is hard to justify any large restriction on freedom of bequest

Justice (New York: Oxford University Press, 2002), John Rawls *Justice as Fairness: A Restatement* (Cambridge, MA: Harvard University Press 2001) esp. pp160-161, Michael Otsuka "Luck, Insurance, and Equality" *Ethics* 113(1) (2002): pp40-54, "Liberty, Envy, and Abstraction" in Justine Burley (ed) *Dworkin and His Critics* (Malden, MA: Blackwell, 2006), pp70-78, and Stuart White, *The Civic Minimum* (New York: Oxford University Press, 2003).

For short, I'll sometimes refer to this argument as the 'libertarian argument'. Readers might recognise it from its frequent appearance in libertarian writings. Typically, however, the argument makes a very fleeting appearance. I shall begin by showing you two examples. First, Milton Friedman suggests that opposition to inheritance arbitrarily restricts just one of the many ways in which a person might dispose of their private property:

It seems illogical to say that a man is entitled to what he has produced by personal capacities...but that he is not entitled to pass any wealth onto his children; to say that a man may use his income for riotous living but may not give it to his heirs. Surely, the latter is one way to use what he has produced.⁴

The argument makes a second appearance in Robert Nozick's defence of a libertarian theory of justice, or rather his attempt to undermine what he sees as the egalitarian alternative. Nozick relies on the idea that egalitarian views seek to maintain a certain distributive pattern (one of material equality). He suggests that "to such views, families are disturbing: for within a family occur transfers that upset the favoured distributional pattern"⁵. Thus any view that restricts inherited wealth, says Nozick, implies that "loving behavior is forbidden"⁶. Nozick's is another way of (very quickly) arguing that opposition to inheritance commits its proponent to extending their opposition to some other (intuitively unobjectionable) practice.

⁴ Michael Friedman, *Capitalism and Freedom: Fortieth Anniversary Edition* (Chicago, IL: University of Chicago Press, 1962), p164.

⁵ Robert Nozick, *Anarchy, State and Utopia* (New York: Basic Books, 1974), p167.

⁶ Nozick, *Anarchy, State and Utopia*, p167. Actually, Nozick's conclusion is disjunctive: "Either families themselves become units to which distribution takes place (on what rationale?), or loving behavior is forbidden". It is worth mentioning that Nozick apparently relaxed his opposition to inheritance tax in later work – see *The Examined Life* (New York: Simon & Schuster, 1989), pp30-33.

Of course, there are differences between Nozick's and Friedman's views that aren't highlighted in the quotations I've selected. What I am calling the libertarian argument, however, is quite commonly alluded to across different libertarian writings (I shall highlight some further examples of libertarian reasoning later on). So, I will be assuming that one can discuss this argument in ways that do not require a complete account of what separates the different libertarian approaches in which some endorsement of the argument is found. (Having said that, I shall do more to acknowledge important differences between various libertarian authors when suggesting why it is that I think certain libertarians may, after all, be able to welcome my conclusions.)

The libertarian argument denies that there is anything morally distinctive about bequest. That is to say, the argument denies any moral justification for restricting the right of bequest *in particular*. If the argument is sound, then there's something wrong with singling out inheritance for moral condemnation. Any response to the argument, then, must consist in an attempt to show that there is something morally distinctive about bequest after all. What a successful response must do is identify some morally interesting property of the practice of inheritance that serves to distinguish bequest from other uses of property.

Now, it may look at first that the libertarian argument merely begs the question against anti-inheritance views. Premise (iii) risks simply denying what is affirmed by the relevant egalitarian, desert-based, or consequentialist positions. An egalitarian might respond that bequests maintain material inequalities in ways that aren't true of attempts to spend wealth on

whatever Friedman means by “riotous living”⁷. A desert-theorist might claim that premise (iii) overlooks the way in which inheritance is an asymmetric transfer (in the sense that the beneficiary doesn’t pay anything). This sort of desert-theorist could suggest that the purveyor of opportunities to live riotously may be presumed to have worked to create such opportunities for others, as have those who seek to purchase these services. Both parties therefore ‘deserve’ to be allowed to make the relevant exchange. Premise (ii) can look like it begs the question in a more general way: It ignores the explanation of *why* we protect uses of property, and thus ignores the possibility that this explanation might not *extend* to the protection of bequest.

The above points might tempt one to dismiss the libertarian argument quite quickly. Indeed, the fact that the argument has received relatively little attention suggests that many might have already dismissed it (setting aside, of course, those persuaded by it). However, the reasoning of the libertarian argument cannot be rejected quite so easily. This is because the argument may be accompanied by an interesting diagnostic suggestion. Approximately, this diagnostic claim asserts that a certain methodological oversight infects the opposition to inheritance that is found across non-libertarian views. This suggests that the libertarian does not

⁷ It’s a pity that Friedman didn’t unpack his point a bit more. Some may feel that it’s hard to defend a restriction on inheritance whilst retaining freedoms to purchase things like pornography, violent video games, or other goods and services that are arguably obscene or distasteful. So, Friedman’s point might ultimately rely on the idea that there is something virtuous or ‘loving’ about bequest (making it closer to Nozick’s point). Indeed, one might conceive a strengthened version of the libertarian argument, where premise (i) or (iii) asserts that bequest is a particularly virtuous act. I’ve chosen not to use this formulation, but I will discuss the relation between bequest and virtue later on.

beg the question, or even face much burden of justification, with respect to the argument's premises. A nice expression of this claim occurs in the writing of Murray Rothbard:

The libertarian answer [to the question of whether inheritance can be justified] is to concentrate *not* on the recipient, but to concentrate on the *giver*, the man who bestows the inheritance. For if [individuals] have the right to their labor and property and to exchange the titles to this property for the similar property of others, they also have the right to *give* their property to whomever they wish. And of course most such gifts consist of the gifts of the property owners to their children – in short, inheritance.⁸

Here, Rothbard repeats Friedman and Nozick's basic point that bequests are analogous to certain other uses of property (premise (iii)). But Rothbard adds that the justifiability of bequest becomes particularly visible if we focus on the facts concerning who bequeaths, rather than who inherits. (Other libertarians make similar claims⁹.) Generalising, the point is roughly this: Opposition to inheritance involves an inappropriate pre-occupation with the perspective of those affected by the practice of bequests, at the expense of attending to the perspective of those who seek to make bequests. This point could be applied to any desert-based, egalitarian, or consequentialist argument against inheritance. Each argument would in some sense count as 'forward-looking' – concerned only with facts pertaining to the effects of bequests, or facts about the affected parties.

For libertarians like Rothbard, a moral analysis of inheritance ought to be more 'backward-looking'. To save words, I shall call this methodological view 'donor centrism'. I

⁸ Murray Rothbard, *For a New Liberty*, 2nd Edition, (Auburn, AL: Ludwig von Mises Institute, 2006), pp49-50.

⁹ I present similar quotes from Nozick and Friedman in section (3), below.

shall take it for granted that donor centrism, if accepted, saves the libertarian argument from begging the question. That is, I shall accept that any attempt to deny its premises can be accused of privileging a ‘forward-looking’ moral evaluation of bequests. This accounts more fully for why I won’t seek to develop any of the familiar ways of articulating moral opposition to inheritance that were mentioned above. What I really want to do is subject this donor centric methodology to a more thorough test. I want to ask whether, upon reflection, focusing on the ‘giver’ is really something that counts in favour of protecting bequest. I shall argue, in due course, that there is less support here than libertarian authors have suggested.

Before saying any more about how I propose to examine the various aspects of the donor-centric view, let me say a few words about the motivations for my proposed inquiry. Certainly, my project retains a general motivation behind most other philosophical discussions of bequest, namely, the fact that inheritance tax is controversial enough on its own to warrant some sustained analysis of the relevant concepts and arguments. But I am motivated also by some more narrow considerations that are worth mentioning. First, a case against inheritance tax that emerges from the donor-centric perspective may have certain advantages that are not shared by existing anti-inheritance arguments. For one thing, such a case may avoid certain controversial commitments associated with egalitarian and other sorts of anti-bequest views. This may be regarded as an advantage. At least, an argument of this sort may be of interest to those open to some restriction on bequest, but suspicious of the general principles that are often used – as a matter of fact – in other arguments that support such a restriction¹⁰. (At the same time, the views defended in this

¹⁰ For example, the sort of egalitarian principles used to motivate opposition to unequal distributions of wealth might also commit their proponent to an (unwanted) opposition to gift-giving. For some good discussion see Hugh

paper are by no means unavailable to those who *do* happen to hold views that might independently count against the practice of inherited wealth – my arguments simply happen not to rely on any such views.) Finally, a more sustained examination of the donor-centric perspective might be valuable to those with more pronounced libertarian sympathies as well. As I shall suggest later on, there are some reasons why libertarians (at least of certain types) might accommodate, or even welcome, the kind of argument against bequest that I am concerned to provide. While this paper aims to raise objections to a certain libertarian defence of the right to bequeath, I am not trying to construct any more general case against libertarianism as a general view about justice. It is worth mentioning that, although libertarians tend to oppose inheritance taxes, it is not obvious that such opposition is essential to their view. After all, libertarians tend to be committed to some degree of permissible taxation. So, they have an interest in questions about what the most defensible tax base is. It might yet turn out to be the taxing of estates.

Let me now sketch the way in which the rest of the paper is constructed. Roughly, I am concerned to make two points – one about coercion, and one about the virtues. Both of these points count as proposals as to what makes inheritance morally distinctive, in the sense identified above. In section (2), I shall argue that if the facts about donors are what matter to a moral evaluation of bequest, then the act of bequest can be distinguished from other uses of property by way of its tendency to carry a lower opportunity cost. The moral significance of this point is then developed over the next two sections. In section (3) I argue that any restriction on bequest tends to be less coercive than restrictions on other uses of private property. This counts in favour of

relaxing our opposition to inheritance tax. In section (4), I shall examine the claim that bequest should be treated as a certain sort of virtuous or loving act. Here I shall argue that this claim turns out to be more difficult to sustain than one might think. In addition, I shall argue that when defence of inheritance invokes claims about the virtues, such defence often requires some sort of departure from the donor-centric perspective. This means that although the libertarian argument might appear to gain its strength from analogies between bequest and other uses of property, these analogies draw a significant amount of their force from the same methodological assumptions that the argument is supposedly avoiding, namely, some appeal to facts roughly about the consequences of bequests. Section (5) concludes, highlighting some relevant issues that couldn't be given a more extended discussion here.

2. Bequest and opportunity cost

I have said that moral opposition to inheritance tends to rely on some more fundamental moral principle about equality, desert, or suchlike. A satisfactory response to the libertarian argument must do something different from simply articulating one of these modes of opposition in a plausible way. A good response must show, instead, that opposition to bequest must avoid over-generalising. Now, I shall argue that, by adopting the donor-centric perspective, we should in fact conclude that the case for restricting inheritance may be substantial (although not absolute)¹¹. I would like to proceed by making use of the idea of opportunity cost. Roughly

¹¹ I should say that my proposals in this paper do not count as the first exception to this trend. Hillel Steiner has elsewhere developed a theory of rights whose details imply that there is no moral right of bequest – see *An Essay on Rights* (Malden, MA: Blackwell, 1994). Steiner's approach resembles mine insofar as he takes seriously what I've called the donor-centric perspective, and argues that there is no right to bequeath even if there is a right to make

speaking, an opportunity cost is what one misses out on as a consequence of making a choice. It is the cost of selecting some preferred option out of some larger set of options: As such, the size of an opportunity cost varies in accordance with whatever value attaches to the unchosen alternative(s). Most uses of property carry some sort of opportunity cost: If I choose to spend a dollar on a newspaper, for example, then the opportunity cost is equivalent to the utility I could expect to have gained from the next-best purchase I could have made with that dollar. The fact that some choices are rather difficult to make can very often be traced to the fact that one faces multiple options with similarly high values, meaning that one cannot make a choice without incurring a high opportunity cost. If I have a hard time deciding whether to buy a newspaper or a can of my favourite soda, this is probably because the utility I can derive from a can of that soda is very close to that which I can derive from having the newspaper. On the other hand, easy choices are often ones to which only a very low opportunity cost is attached. If the alternatives to buying a newspaper are various sodas whose flavour I don't particularly like, then choosing the newspaper is easy.

Now, the main point I want to make in connection with opportunity cost is this: The opportunity costs attaching to bequeathing one's property are generally lower than the opportunity costs attaching to acts of disposing of that property while alive. Although I shall qualify this claim in important ways, it turns out to imply something important: Taxing bequest tends to be less coercive than taxing income, or other *inter vivos* exchanges. In addition, the facts about bequest and opportunity cost should lead us to think carefully about whether bequeathing

inter vivos transfers of one's property. But apart from this, our approaches are very different – unlike Steiner I rely on no important claims about the nature of property rights.

wealth is especially generous, relative to other ways of donating it. These considerations count (somewhat independently) in favour of the view that inheritance is morally distinctive. Again, I shall aim to qualify these points as I work through the arguments of this section and the next.

The points I want to make about opportunity cost are easiest to see by comparing bequests with gifts. Suppose I buy a new car, leaving me with a choice to make about what to do with my old one. One option is to give you the car as a gift. But this prevents me from being able to rely on my older car as a spare for occasions when I can't use my new car, or just desire a change of vehicle. Giving you my old car also prevents me from renting it out, thereby getting some money that I could use to increase my well-being in some other way. The value of either of these alternatives could be treated as the opportunity cost of gifting you my car. If I don't want to give my car away as a gift, I could alternatively leave it to you in my will. And if I choose to bequeath my car to you, then I can still use it for various purposes while I'm still alive – uses that I could not access were I to give my car away. Choosing to bequeath my car rather than give it as a gift will, therefore, tend to carry a lower opportunity cost. Gifting requires me to forego a wider range of attractive alternatives, regarding how I might use my property, than bequeathing it requires. Crucially, gifting typically requires not just foregoing *more* alternatives, but *better* ones than one must forego if one instead chooses to bequeath later on¹². Bequeathing my car precludes only the alternatives that prevent the car from being part of my estate when die. This rules out selling the car or gifting it to some other person, but not a lot else. Indeed, some of these

¹² Note that 'wider' is distinct from merely 'smaller'. That is, I do not claim simply that bequeathing is subject to a smaller range of alternatives, but that the alternatives to bequeathing tend to be a proper subset of the alternatives attaching to acts of *inter vivos* transfer.

alternatives create different opportunities for bequest, such as passing on the wealth gained from selling the car.

I shall defend the above claims more fully in a moment. First, the meaning of a bequest's 'tendency' towards lower opportunity cost needs to be carefully qualified. I do not claim that bequests have *no* opportunity cost. If I want to bequeath some property, then it goes without saying that some work needs to be done to accumulate that property in the first place. I might have to do this work myself. Similarly, a bequest might carry a significant opportunity cost just because I might attach some value to using my property during life, in ways that prevent it from being preserved for the duration of my life. The simplest cases are those that involve my destroying my property. If I enjoy stock car racing, then I may stand to derive some utility from smashing up my old car in a race. Generalising, bequest carries an opportunity cost insofar as one might have to forego attractive options in order to both acquire *and* preserve property one wishes to bequeath. (Of course, not all bequests are like this: Plenty of inherited property has simply been inherited by successive generations. This counts against the possibility that the bequeather incurred any opportunity cost in creating it, although there will often still be some cost in preserving it.)

Thus, I speak of the 'tendency' of bequests to carry low opportunity costs, relative to *inter vivos* transfers, to avoid asserting that there is any conceptual truth that they do. An act's opportunity cost is, recall, a matter of how much utility one would derive from the next-best alternative act. Now, it's possible that the next-best alternative could be the *same* for an act of bequest as for an *inter vivos* transfer of the property in question. It might be, for example, that

smashing my old car at a stock race really is the most utility-conferring act I can perform besides transferring it as a gift or bequest. In this case, it may seem that bequeathing carries the same opportunity cost as gifting the car, since both acts require me to preserve it. However, this appearance might be misleading. This is because foregoing a next-best alternative need not always involve foregoing other alternatives that are still valuable, albeit less than the next-best one. This serves to distinguish bequest from *inter vivos* transfers even in cases like the one described: If I do not smash my car up in a race, there is (contingently, but almost always) much else I can do with it before I die. As I have said, I could rent it out, or use it as a spare. These are things from which I will derive utility, but I can only do them if I plan to bequeath the car. Gifting the car still costs me more than bequeathing it, even if both carry the cost of preventing me from doing what I would otherwise *most* like to do with the car.

Generalising, here is a more principled explanation of why bequests *tend* to carry lower opportunities than early acts of donation, rather than do so as a matter of conceptual truth. As I have said, an act's opportunity cost is subjectively determined by the individual in question: It is determined by how much value they attach to the foregone alternative(s). Given this, bequests only carry a lower opportunity cost (than gifts) if people prefer to bequeath property than dispose of it earlier in life. If a person prefers to give their property away prior to their death, then they judge the opportunity cost of giving to be *less* than the opportunity cost of bequeathing (otherwise they'd have waited, and bequeathed). Insofar as there are plenty of cases of gifts and similar *inter vivos* transfers of property, there's no conceptual fact about which act could be said to carry a higher opportunity cost. Things simply depend on the facts about how people choose

to dispose of their property: Bequests carry a lower opportunity cost for bequeathers, and gifts a lower opportunity cost for gift-givers.

The above point complicates things, but I would like to emphasise that the position already laid out in this section is equipped to accommodate it. Note that the point just made centres on a conditional claim: *If* a donor chooses to give rather than bequeath, *then* they must attach a higher opportunity cost to bequeathing than to giving. Now, one might just say that the antecedent of this conditional often fails in practice, at least in the sense that concentrations of property are so much more maintained by inheritance than by gifts. This claim (if correct) is one way of maintaining that bequests tend to have a lower opportunity cost than gifts. But a more principled response can also be given, on which I prefer to rely. It is helpful to think of bequests and gifts as opportunities that might be taken at different stages in the *same* life, rather than as thinking of bequeathers and gift-givers as distinct individuals (this accounts for my design of the car examples above). When we note that a bequeather and a gift-giver are both subjectively determining the value of transferring their property over the alternatives, we risk overlooking the way in which a bequeather will, other things being equal, have already had opportunity to derive utility from the property in question, when *they* occupied the place of the gift-giver. The fact that opportunities to give gifts *necessarily* occur earlier in life than bequests has significance: Typically, the alternatives that are absent at the bequest stage represent options that were in fact present earlier in life, when the option of gifting wasn't taken. This accounts for why, typically, the opportunity cost attaching to a bequest is lower than that attaching to some earlier act of giving. I acknowledge that this claim is contingent and, therefore, defeasible. (Because of this, I

shall later suggest that inheritance tax is hard to defend in cases of the donor's premature death.) But its contingency does not undermine its robustness.

To summarise: Although bequest doesn't *necessarily* carry a lower opportunity than other uses of property, the tendency for it to do so is very strong. This, I have argued, is for two reasons. First, when bequeathing, the set of options that are foregone are typically a poorer subset of the options that existed as alternatives to other opportunities to give. Second, bequests occur later than earlier opportunities to give, in ways that mean a certain amount of utility has been derived from the property, something which would not have been possible had the donor given that property away on an earlier occasion. As I have made clear, both of these features of bequest are ones that may fail to obtain: When utility is derived from destroying property, or when property is acquired only late in life, then it may be false that bequests carry a lower opportunity cost than some earlier opportunity to give. But, as I have explained, such defeating cases are rare. The fact that the practice of inheritance is such a large influence on the distribution of wealth is, of course, indirect evidence for this.

3. Bequest and coercion

The tendency for bequests to be subject to low opportunity costs might not immediately appear to have normative significance. We might still ask why an inheritance tax is easier to defend than any analogous interference with what an individual wants to do with their property while alive. This can be done by linking opportunity cost to the coercive aspect of taxation.

Libertarian opposition to taxation is typically articulated by presenting tax as a form of interference with personal choice. By taxing citizens' voluntary transfers and exchanges, the state meddles with the relative attractiveness of individuals' options. Specifically, the state threatens harm if citizens choose options that are not compliant with the state's tax law. This power to threaten enables the state to get its citizens to perform acts that they might not otherwise want to do¹³. Taxation means that citizens can participate in fewer desired transfers of property: Citizens must either forego some desired transfers altogether, or work longer hours (or seek less desirable but better-paying jobs) than if income from labour were untaxed¹⁴. By threatening to harm individuals who attempt to make an exchange without paying tax on it, the state lowers the value of this alternative to a level below its default opportunity cost, namely, the utility that would be derived from the exchange with the relevant amount of property surrendered¹⁵.

¹³ For a pithy rehearsal of this argument, see Murray Rothbard, *The Ethics of Liberty* (New York: NYU Press, 1998), p163. Identification of taxation with a form of coercion is familiar from other well-known libertarian writings. There is a certain amount of disagreement among philosophers (libertarian or otherwise) about precisely what makes coercion objectionable. For my purposes, disagreements at this level can be set aside.

¹⁴ Hence Nozick's (in)famous remark that "taxation of earnings from labor is on a par with forced labor" – *Anarchy, State, and Utopia*, p169.

¹⁵ Here I am suppressing the well-known problem of supplying an adequate theory of coercion. The approach taken in this paper *grants* that taxation is coercive and asserts that an exception can be made for inheritance tax. As such, no reliance is placed on any particular view about what coercion ultimately consists in. If it were to turn out that taxation were never coercive, then this might count against any attempt to show that inheritance is morally distinctive. However, it would only count against such a claim in ways that undermined a principal source of opposition to any sort of tax in the first place.

Let me explain how this analysis of taxation as a coercive phenomenon allows inheritance tax to be morally distinguished from other sorts of tax, given the argument about opportunity cost from the previous section. Suppose, again, that I intend to leave you my car in my will. We may assume that I have worked myself to accumulate this property, rather than received by way of a gift or bequest made by someone else. If an inheritance tax is imposed, then I am still free to make whatever use I want of the car prior to my death, since the tax does not take effect until then¹⁶. Other taxes generally aren't like this. Taxes imposed before death generally have a greater impact on the value of the various options open to an individual at the time the tax is imposed. If I am taxed on the income I earn in order to purchase and maintain the car, then I must work for longer hours, or in a better-paid job. Such higher-paid work may be presumed to be less pleasant, else I'd have preferred it by default. Alternatively, I can simply choose to keep my working habits as they are, and forego either the purchase of the car or the purchase of something else I value. Similar points could be made about taxes other than income tax, such as a consumption tax attaching to the purchase of the car itself.

Now, we can assume that an inheritance tax still forces people to work harder than they would if there were no tax at all¹⁷. If the state confiscates part of my estate, then I must work hard enough to make sure that my estate's post-tax value is at least as high as the amount I want to bequeath. But this is consistent with the claim I'm arguing for, namely, that an inheritance tax

¹⁶ I am here suppressing the distinction between taxing the recipient of a bequest and taxing the donor. My argument assumes that the donor is the person upon whom the tax burden falls, but it should be noted that this is itself part of adopting the donor-centric perspective.

¹⁷ Here I overlook the objection that a system of taxation is necessary for many labor opportunities to exist in the first place - see Murphy & Nagel, *The Myth of Ownership*, for a proper articulation of this point.

will tend to force an individual to do less of this compensating work than other taxes will. In other words, the required efforts to expand one's estate are not simply sunk costs in the way that the extra work motivated by an income tax might be. If I work hard enough to enlarge my overall pot of wealth by buying a house, for example, then this does more for me than simply expand the portion of my estate that I might bequeath. I also have a house from which I may derive utility during the years prior to my death. If I simply accumulate cash, then I will gain interest that I can spend and still have an amount left over to bequeath. Although inheritance tax may force me to work more than I otherwise would, the fruits of this work are not *immediately* confiscated, as they are in the case of income tax. This immediate confiscation (or, at least, confiscation within a tax year) is what makes income tax more coercive even if the total or proportionate amount exacted is the same¹⁸. Of course, it is not the immediacy that matters *as such*, but the way in which immediate confiscation rules out the possibility of deriving utility from what is confiscated – utility that might still have been derived if confiscation of remaining property had occurred later.

My main point about coercion, then, can be summarised as follows: Tax is coercive insofar as it increases the opportunity cost of using one's property: Because tax confiscates property, one must work harder to accumulate enough property for any specific use. One must forego more options in order to secure that use. Inheritance tax is like all taxes in raising the opportunity cost of the transfers it targets (i.e., bequests). But because it occurs only *after* one

¹⁸ Consumption taxes don't amount to immediate confiscation either, but are a sort of intermediate case where coercion is concerned: The point of confiscation occurs at some time between earning wealth and death, and thus will tend to rule out a larger set of alternatives than an inheritance tax, but smaller than an income tax.

might have made extensive incidental use of the fruits of securing the possibility of bequest, it does not raise the opportunity cost of bequest to the extent that other taxes do. This is what makes inheritance tax less coercive than other taxes. And this is what makes inheritance morally distinctive: The objectionable features of taxation obtain to a lesser degree with respect to inheritance than with respect to other restrictions of the use of property. This concludes my main response to the libertarian argument reconstructed in the opening paragraphs of this paper.

To clarify this conclusion, I will relate it more fully to what has been said about bequest by libertarian authors. Recall Milton Friedman's claim that bequeathing one's wealth is just another way of using what one has produced. This remark is strictly true, but only in a very trivial sense. Bequest is a use of property that one carries out only after exhausting all other uses that are compatible with the eventual transfer of that property to someone else. To describe bequest as 'just another way of using' misleadingly implies that alternative uses are straightforwardly foregone, as in the case of gifts, rather than simply no longer available. Bequest is more of a 'final use' than merely 'another use'. Writing in another book, Friedman asks:

Look at the...issue from the point of view of the parent. If you want to assure your child a higher income in life, you can do so in various ways. You can buy him (or her) an education that will equip him to pursue an occupation yielding a high income; or you can set him up in a business that will yield a higher income...or you can leave him property, the income from which will enable him to live better. Is there any ethical difference among these three ways of using property?¹⁹

¹⁹ Milton and Rose Friedman, *Free To Choose*, (London: Secker & Warburg, 1979) p136.

Here, Friedman simply overlooks the possibility that these three options might require different sacrifices from the parent. As argued above, the sacrifice attaching to certain options (i.e., their opportunity cost), is of significance when justifying taxing those options. And *that* is the ethical difference that Friedman rhetorically asks to see. We may say something similar about Nozick's comments on inherited wealth. Also echoing Rothbard's remarks in favour of the donor-centric stance, Nozick writes:

Discussions [of the morality of inherited wealth] tend to focus on whether people (should) have the right to inherit, rather than on whether people (should) have a right to bequeath or on whether persons who have a right to hold also have a right to choose that others hold in their place.²⁰

In this case, the phrase "hold in their place" gives the false impression that inheritance is an alternative to holding onto what one owns. But (unlike *inter vivos* transfers) it isn't.

As I have said, the points made here need not be taken entirely as a sort of attack on libertarian views. For all I've said, libertarians can still coherently say that inheritance tax is unjust. But they cannot say this by drawing any support from a tendency of anti-inheritance views to overgeneralise. This source of support, remember, is what the libertarian argument was supposed to establish. The fact that the argument fails is, interestingly, something we have learned by adopting the methodological stance that is supposed to make the argument harder to defeat. Focusing on certain facts about the 'donor end' of inheritance transfers highlights certain features that count against opposition to inheritance tax. So, if libertarians wish to oppose

²⁰ *Anarchy, State and Utopia*, p168.

inheritance tax, then they will have to rely on the idea that taxing bequest is *to some extent* coercive, ignoring the ways in which it tends to be less coercive than other sorts of tax.

Now, it's not even clear why a libertarian should really *want* to continue to oppose restrictions on bequest. Indeed, the argument of this section might in fact be viewed as one that is useful to libertarians, even if it requires some revision to be made to libertarian views as they are often understood. Libertarian opposition to taxation is typically not expressed in terms so absolute that taxation and justice are generally incompatible. Libertarians tend to be opposed to taxation for redistributive purposes, or for funding government projects that (say) might be excessively paternalistic. Taxation for other sorts of purposes may remain legitimate, if only to prevent libertarianism from collapsing into anarchism. Libertarians tend to agree that state coercion (and hence taxation) can be permitted for the sake of protecting certain rights of individuals, and so the state might defensibly exact taxation to fund really important public goods like national defence, law and order, and so on. In addition (although there may be more scope for disagreement among libertarians here), the state might use tax as a remedy for wider market failure, and so permissibly fund public goods beyond those that protect basic rights, on the assumption that everyone wants these goods to be provided even though they're not amenable to market supply (classic examples include street lighting and coastal flood defences)²¹. The point here is really quite simple: Given that libertarians are committed to there being some need to identify permissible taxation, any comparison between different ways of

²¹ Libertarians disagree about whether market failure alone is sufficient to justify coercion for the supply of the relevant goods (that is, where the market failure is not accompanied by some special role these goods play in enabling the state to protect individual rights).

taxing (in this case, between different kinds of tax base) is well-motivated. If the argument of this section is sound, then it may be instructive in guiding libertarian answers to the question of where to impose the degree of taxation that their view requires they must.

Of course, the interest of these positive remarks depends highly on the sort of libertarian one has in mind. Libertarians who assign a fundamental theoretical role to property rights (Nozick and Rothbard, say) might be unimpressed by attempts to morally distinguish different cases of coercion by appealing to utility-related differences. Other libertarians treat property as less fundamental, or leave some space for the significance of interests. This is evident in the willingness to condemn anti-competitive practices in, say, Friedman and F.A. Hayek's writings²², and the interest-based conception of rights offered by Loren Lomasky²³. Libertarians of this sort may be more open to permitting estate taxes as an alternative to, say, income taxes or consumption taxes. Suffice it to say that one can't really draw any detailed conclusions about this without a fuller account of where different libertarians disagree. I don't have space to do that here. But, insofar as libertarians permit some taxation and worry about how coercive it must be, there is some scope for them to welcome my conclusions about inheritance.

4. Bequest and the virtues

One other aspect of the morality of inheritance might be further illuminated by following the methodology of the donor-centric perspective. Libertarian authors often appeal to the way in

²² Friedman outlines a cautious opposition to monopolies in *Capitalism and Freedom*, ch. 8. For Hayek's apparently stronger position, see F.A. Hayek, *The Constitution of Liberty* (London: Routledge, 1960), pp33-34.

²³ Loren Lomasky, *Persons, Rights, and the Moral Community* (New York: Oxford University Press, 1987).

which bequest might be intuitively regarded as an act of love, or one that is particularly important to the integrity of families or personal relationships. Lomasky, for example, argues that inheritance tax is “equivalent to the violation of a deathbed promise”²⁴. In support of this claim, Lomasky says that:

[Inheritance tax] is an especially cruel injury because it deprives the dead of one of their last opportunities for securing the goods that they value. The dead can no longer offer loved ones their advice, their encouragement, sympathy in times of hardship, and joy when things go well; all they can do is pass on worldly goods to intended beneficiaries.²⁵

Permission to bequeath may indeed make for an individual’s last chance to pass on worldly goods. But – as I argued in section (2) – this would matter a bit more if it were also their first chance, or one of their only chances. But normally it isn’t. As I have been at pains to emphasise, bequeathers have very often forgone numerous opportunities to pass on what they have instead held onto until literally the last minute. And foregoing these earlier opportunities to transfer is often a means by which individuals can use their property to derive further utility for themselves. Here we might recall the comment made by the British prime minister: Even if it is a “natural human instinct” to pass on wealth to one’s offspring, it’s not obvious why it’s natural (or as defensible) to want to pass it on *only when you die*.

²⁴ Taken from the same page as the block quote, below.

²⁵ *Persons, Rights, and the Moral Community*, p270. To be fair to Lomasky, it is worth pointing out that his brand of libertarians does not rely strongly on opposition to coercion. Lomasky favors an interest-based conception of rights, rather than a choice-based one that is linked to a strong dislike of coercion. For more on what an interest-based conception of rights might imply about bequest, see Simon Braun “Historical Entitlement and the Practice of Bequest”, *Law & Philosophy* 29 (6) (2010): 695-715.

That said, Lomasky's point is not without merit, and I would like to recover a couple of insights from it. As I conceded above, bequeathing does not *necessarily* carry a lower opportunity cost than *inter vivos* transfers of property. And the claim that bequeathers have foregone a significant number of earlier opportunities for transfer does begin to look harshly inaccurate in cases of premature death. In such cases, inheritance might be regarded as a proxy for the valuable relationship that obtained between the donor and receiver when the latter was alive. (Of course, inheriting wealth is nowhere near a total substitute for the survival of a loved person, but even the most partial of substitutes might warrant protection.) Second, many goods are of the sort that, although a senior member of a family might be legally identified as the owner, the good's meaning and value are in some sense extended across the whole family. Blocking the inheritance of these goods may sometimes constitute an assault on family relationships²⁶. Granting the force of these points is one way of vindicating the intuition that it is sometimes cruel for an individual to *disinherit* their children, as is sometimes done when there is parental disapproval about an offspring's choice of spouse or career. Less sentimentally, a family's property may also be the basis of its livelihood, such as a farm or other small business.

²⁶ For a more general discussion of these sorts of goods, see Harry Brighouse & Adam Swift, "Legitimate Parental Patriality", *Philosophy & Public Affairs* 37 (1) (2005): 43-80. In her *Taking Responsibility for The Past* (Oxford: Polity Press, 2002) Janna Thompson develops the idea of a moral offence against a family line, and draws some conclusions about the morality of inheritance (chiefly in connection with compensation for the injustice done to past generations of non-European indigenous peoples). These considerations are worthy of more study than I can give them here. It is worth noting that the amount of inherited wealth might be morally relevant: Even if having a huge country estate is regarded as essential to that family's sense of identity, one might be inclined to take this less seriously than a small family farm.

Inheritance tax might indeed be cruel in these cases. But it does not immediately follow that such examples count decisively in favour of protecting a right of bequest. We might, of course, consider whether something other than a right to bequeath, such as state-provided help, might be made to apply in circumstances of this sort. And if the significance of certain property lies in the way it maintains a family's identity as a group, then it may simply be a mistake to treat this property as owned by a single family member (legally identifying a single owner might merely be a useful convention, given the other things we need from property law). So, the implications of any of these points might be up for some debate. I do not mean to deny that they offer some scope for granting exemptions to an inheritance tax, or that they might count in favour of maintaining a threshold such that the tax only applies to relatively valuable estates. But it is worth making the further point that general reflection on the importance of bequest to anyone other than the donor (construed in isolation from their family) threatens to depart from the donor-centric methodology that a defence of inheritance is meant to stick to. Once this methodology is abandoned for the sake of appealing to examples like those above, then it is open to the various opponents of inheritance to protest the accusation that they may have made any methodological oversight. After all, the effect of inheritance on family identity and continuity is like its effect on the larger distribution, in that both can have importance only in the relevant 'forward-looking' sense.

The point of the above remarks is really to highlight some doubts about whether a bequest is really the sort of virtuous act it is often presented as²⁷. This, recall, is hinted at in libertarian writings on inheritance, and is certainly prominent in political rhetoric (recall the earlier remark from the British Prime Minister). Intuitions about the generosity behind a bequest might of course vary in accordance with how much is being bequeathed and how much effort the donor had to make to accumulate the bequeathed amount, as well as (perhaps) how much utility they got from it in the course of their lives.

One point we might make is that libertarians ought not to be helping themselves to rhetoric about the virtuous character of certain actions. Insofar as libertarians see themselves as deontic rights theorists, the virtuous character of an action shouldn't be relevant to whether it should be protected or not. All that matters is whether such rights stand to be violated if the act in question is not protected. As I have noted, libertarian theories come in rather different versions. Accordingly, the force of this objection might vary with which version it might be aimed at. Still, there is something amiss about appeals to "loving behaviour" in the service of a theory whose

²⁷ Philosophers who study the virtues tend to regard virtue not as a property of acts as such, but as something more complicated, like the property of being disposed towards such acts (for discussion of some relevant formulations, see Christine Swanton, *Virtue Ethics: A Pluralistic View* (New York: Oxford University Press, 2003), ch.11. Given these complexities, the question may be not whether bequest is a virtuous act, but whether it is an act that a virtuous person would be disposed towards doing. My main points could be converted into this more sophisticated language if desired, but I shall aim to save words by speaking of virtue as a property of actions.

fundamentals lie elsewhere²⁸. In any case, the virtuous character of bequest can itself be called into question. Because a bequest typically carries a lower opportunity cost than an *inter vivos* transfer, it's not obvious what's really generous about bequeathing property *rather than* gifting it²⁹. People often talk about their desire to bequeath in terms like 'wanting to leave something behind for others when I die'. This is really a disguised description of wanting two things rather than merely one: Wanting to bequeath property, rather than giving it during life, reflects a desire to transfer one's property to someone else, but also a separate desire to get as much enjoyment out of it as possible during the time that one is alive. (If this seems intuitively harsh when applied to certain domestic cases, recall the earlier suggestion that the right conclusion might be to treat the family as the real owner of the property.) This is also a reflection of the tendency for bequests to carry lower opportunity costs than gifting property: If there was not this difference in opportunity cost, then people would lack an effective means to aim at satisfying both of these desires at once. It bears emphasising that income tax forces a person to work hard simply to satisfy at least *one* of these two desired uses of their property. Inheritance tax forces one to work harder only to satisfy *both* desires.

It's arguable that bequest is an act of generosity only insofar as it is an act of partiality. Partiality involves selection more than sacrifice. This is not to say that bequests don't count as

²⁸ Readers will recall that this point came from Nozick. For a more general study of Nozick's use of rhetoric, see Barbara Fried, "Begging the Question with Style" in Paul *et al* (eds) *Natural Rights Liberalism from Locke to Nozick*, (New York: Cambridge University Press, 2005), pp221-254.

²⁹ An interesting case might be one where an individual wants a beneficiary to be as old (and mature) as possible before receiving a bequest. This might be a case where bequest could be generous in a certain paternalistic way. But see the discussion of Ackerman & Alstott's view, below.

generous in *any* sense, but rather that they may lack the features of more sacrificial acts like gift-giving. The claim that strong generosity requires some sacrifice fits with Philippa Foot's suggestion that virtues have a certain "corrective" character³⁰. The idea here is that virtue implies some capacity to overcome regrettable features of human nature, such as a tendency to be selfish. Gift-giving is a clear case of a non-selfish act. But it is plausible that one can live an extremely selfish life and still bequeath wealth. On this view, bequest may count as a strongly generous act when some sacrifice is made in accumulating the wealth that is later bequeathed. But unlike gifts, such sacrifice is not entailed by the act of bequest as such. This is one further lesson of the observation that bequests tend towards lower opportunity costs. An act's opportunity cost is, after all, a measure of the sacrifice that one must make in performing that act.

I concede that it may be controversial to suggest that the exercise of virtues like generosity must be accompanied by some act of sacrifice. After all, a core idea of the virtue-ethics tradition is that exercising virtue enables one to flourish. On the other hand, we might point out (in the spirit of Foot) that many of us are not ideally moral agents and bear a cost when attempting to correct for this. In this way, the most virtuous acts may often be the ones that we (taken as we are) find harder to perform. The additional virtue in gift-giving may reflect the fact that (as I have argued) one must often sacrifice more to perform it than when one decides to provide for others in one's will. Again, I lack space to really explain these more theoretical

³⁰ See her "Virtues and Vices", reprinted in Stephen Darwall (ed) *Virtue Ethics* (Malden, MA: Blackwell, 2003), esp. pp111-116.

questions, much less defend a proper answer to them. Nevertheless, the claims I have made represent one way of applying the ideas in the virtue-ethics tradition³¹.

It is worth adding that the claims of this section actually enjoy some independent plausibility. The case for the altruistic bequest motive has been weakened by certain trends in empirical data. People are now living so long that bequests reach their offspring at an age increasingly beyond early adulthood. Young adulthood is typically the point at which the benefit of a bequest would be most felt³². Nowadays, people are benefitting from inheritance at a relatively older age, and this means that they're benefitting less. Crudely put, if parents wished to be generous, they'd do better by transferring their wealth much earlier in life³³. This may not

³¹ For more on why it might sometimes be burdensome to exercise the virtues, see the account of political virtue developed by Lisa Tessman, *Burdened Virtues* (New York: Oxford University Press, 2005). I should say that Tessman's account is confined to actions that don't include the transfer of private property, and she is therefore not committed to endorsing any of the claims I make here. Nevertheless, I have learned from her account of why virtuous activity may in fact be burdensome even if exercising the virtues might ultimately lead to living a better life.

³² This point is reported by Bruce Ackerman and Anne Alstott, *The Stakeholder Society* (New Haven, CN: Yale University Press, 2000), p36. In his *Fair Not Flat: How to make the Tax System Better and Simpler* (Chicago, IL: University of Chicago Press, 1996) Edward McCaffery suggests that the relative lateness of bequest is something to be welcomed: Since an inheritance tax would encourage the transfer of wealth to be made at an earlier time, the earlier receipt of wealth would cause beneficiaries to lose an incentive to produce at an earlier point in life. I shall comment more fully on this point in the final section, below.

³³ Indeed, this point also counts against the worry that, were a substantial inheritance tax to be implemented, bequeathers would respond by simply switching to gift-giving practices earlier in life. Since I have no argument for increasing gift tax, it may appear that my proposals are vulnerable to the worry that they have little practical benefit.

quite justify the extreme view that the promise of bequest is merely a form of insurance against familial abandonment during old age³⁴. But it further supports the viewing of bequest as an act of partiality rather than (sacrificial) generosity. Insofar as an analogy with gift giving is something that has contributed to the intuitive force of the libertarian argument, the distinction between generosity and (mere) partiality ought to help us see that the argument does not, after all, refute the moral distinctiveness of bequest.

5. Concluding remarks

I will conclude by first reiterating the limits of this paper's argument. As I earlier indicated, establishing that inheritance is morally distinctive falls some way short of establishing anything precise about the degree to which practices of inheritance may be permissibly regulated. As I have tried to emphasise, the problem is primarily about whether any degree of inheritance tax can be defended independently of any commitment to the regulation of other ways in which property is transferred and accumulated. My own suspicion is that, once its distinctiveness has been appreciated, quite a substantial restriction on inheritance could be

If Ackerman & Alstott are right, however, the bequest motive is already something of an exercise in partiality, that is, a preference for *who* receives one's wealth only *after* one has finished benefitting from it. In other words, if people were disposed to switch to gift-giving for the sake of benefitting their heirs, they'd have already done so. I don't deny that introducing a substantial inheritance tax might stimulate a degree of switching, but the evidence suggests that serious worries about this are founded on a doubtful view about where the bequest motive lies.

³⁴ See for example Hillel Steiner, "Three Just Taxes" in Philippe van Parijs (ed), *Arguing For Basic Income* (London: Verso, 1992) p83.

justified. Of course, the details will depend, as I have said, on where one sees grounds for exemptions, as well as what other reasons one might see for opposing inheritance. Nevertheless many arguments are made in defence of the right to bequeath that have nothing to do with arguments like the one on which I've focused. I would like to end by commenting on some of these.

There are of course serious arguments for retaining some freedom of bequest. People often defend inheritance by claiming that the prospect of bequeathing provides people with an important incentive to produce during their lifetime, since being able to pass on property is what makes people wish to work in the first place. To impose a significant inheritance tax stands to remove this incentive³⁵. Worse, it may cause the wealthy to dramatically increase their spending, in ways that have quite undesirable economic effects, many of which are bad for the poor³⁶. If people choose not to gift their property during life, then we may ask whether their own use of it is what really provides their incentive for accumulating it. Other opponents of inheritance have pointed out that persons' incentives to work derive largely from the sense of satisfaction that humans naturally gain from completing laborious projects, irrespective of whether they have

³⁵ This argument is familiar from attempts to defend permissible inequality on grounds that are not explicitly libertarian, but also appears within libertarian writings. See for example Hayek, *The Constitution of Liberty*, ch.6.

³⁶ This is one of the points made by Edward McCaffery in "The Political Liberal Case Against the Estate Tax", *Philosophy & Public Affairs* 23 (4) (1994): 281-312. By drawing on the incentive-effects of an inheritance tax, McCaffery assembles a number of arguments against taxing bequests, proposing increased consumption tax as an alternative.

heirs³⁷. Insofar as persons do gain an incentive from permission to bequeath, it is always possible to formulate tax law in ways that address this. One interesting option is to grant an exemption for bequests that split an estate evenly across some non-trivial number of beneficiaries³⁸. This option is particularly attractive from an egalitarian perspective, since it aims to break up the concentration of wealth within a small portion of the population. Section (4) made some allusion to the difficult question of exactly what the bequest motive really is. I suggested that the role of altruism in this motive might be more modest than sometimes suggested. My reflections on the relation between bequest and opportunity cost help support the view that bequests are an incidental consequence of persons' seeking to accumulate wealth for their own security, and then confronting the question of what should happen to this wealth once they can no longer use it³⁹. That said, study of the bequest motive is likely to remain rather fraught⁴⁰.

I will not try to venture any strong claims on these issues. It is an advantage of the view defended here that no particular restrictions on an inheritance tax are ruled out. Some inheritance might still be a good thing, or at least a permissible thing. An absolute tax has not been argued

³⁷ This argument occurs in Haslett "Is Inheritance Justified?", Similar doubts are expressed in White, *The Civic Minimum*, pp183-184.

³⁸ This proposal is owed to the British economist Julian LeGrand, whose views are presented in a recent BBC podcast, available at: <http://www.bbc.co.uk/programmes/b013835x> (accessed Sept 3rd, 2012).

³⁹ For more discussion, see Barbara Fried, "Who Gets Utility from Bequests?", *Stanford Law Review* 51 (4) (1999): 641-681.

⁴⁰ For a review of where the empirical literature stands, see Wojciech Kopczuk, "Economics of Estate Taxation: A Brief Review of Theory and Evidence" *National Bureau of Economic Research Working Papers*, February 2010. Available at <http://www.nber.org/papers/w15741.pdf> (accessed Sept 3rd, 2012).

for, but nor has it been ruled out. My main point has been that when inheritance is a bad thing, this is something we might be able say without being forced to accept potentially embarrassing implications. Understanding this point involves recognising that, as taxes go, an estate tax is rather less of an intrusion on individual freedom than alternative forms of tax. All things considered, this strengthens the case for getting tougher on inherited wealth.

ACKNOWLEDGEMENTS

Earlier drafts of this paper were presented to audiences at the Boston University Ethics Reading Group, and the Legal Theory Workshop at Melbourne Law School. I'd like to thank participants at these talks for their valuable feedback. For detailed comments and conversations, I owe special thanks to Johann Frick, Gaurav Khanna, Benjamin Miller, Cameron Rider, Daniel Star, and Lael Weis. The paper was also improved thanks to reports from two anonymous reviewers for *Law & Philosophy*.

*School of Historical and Philosophical Studies
University of Melbourne, Victoria 3010, Australia
E-mail: daniel.halliday@unimelb.edu.au*