**Inheritance**

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**Abstract**

Private property is normally thought to entail the ability to transfer that property as well as to use it. One form of transfer occurs upon death of the owner, when the decedent’s estate is transferred to heirs. Such transfer beyond modest amounts is typically accompanied by taxation, based either on the value of the estate or the value of the inheritances distributed from the estate. Such taxation transforms private property into collective property in direct proportion to the average rate of tax. The taxation of inheritance is often supported as a means either directly of promoting some equalization of opportunity or indirectly as a means of counteracting the perpetuation of familial dynasties. It is doubtful, however, that it is either of those, as this essay explains.

**Keywords**: inheritance; estate taxation; equal opportunity; property rights; private vs. collective property

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**Inheritance**

In the biological world, inheritance refers to the passing of traits from organism to organism. Humans exist in the biological world where traits are passed from parents to children, subject to random variation. As the social world is constituted through interactions among humans, inheritance is significant for societies as well as for biological organisms. But in what sense does inheritance operate in societies? Societies are not themselves genuine organisms, but rather are networks of interacting organisms each of which is subject to biological inheritance. There is no sense in speaking of society as an organism that is subject to inheritance because there is no society as such that gives birth to a subsequent society. Yet it is clear all the same that societies are involved in processes of evolution and inheritance across multiple domains as Meade (1973) examines. We can conceive of societies as existing at different points in time and with those societies exhibiting different characteristics at those different points.

With a society conceptualized as an object that undergoes change through time, some principles of inheritance can be brought to bear on that process of change. This process is the domain of theories of spontaneous order whereby many significant social configurations emerge through interaction among numerous participants as against being products of intentional choice, and with spontaneous order forms of theorizing exemplified by Thomas Schelling (1978). This type of theorizing, which is explored by Aydinonat (2008), recognizes that societies are objects that in large measure take their shape through interaction among choosing minds and not through choice by some single mind. This does not deny minds can differ in the influence they insert into social processes, but is only to note that social change comes about to a significant degree through interaction among individuals and the experiments they inject into society. Some of those experiments are emulated within the society and spread while others are not and disappear. At any instant, a society is a combination of experiments that have acquired strong support and so will change the future from what it would otherwise have been and of experiments that will be rejected, as Wagner (2010) explains.

Many experiments are technological in nature, as when automobiles were introduced in the late 19th century, airplanes in the early 20th century, and cell phones late in the 20th century. These products emerged through interaction among numerous participants, and they set in motion a continuing parade of commercial experiments that resulted in our contemporary world of superhighways, the ability to traverse the globe in a day, and the ability instantly to reach anyone from anywhere in the world. Had those experiments not been introduced when they were, our contemporary world would have a different character. There is technological inheritance at the societal level, though this form of inheritance differs from biological inheritance. There is also societal inheritance, as illustrated by the course of the welfare state since the late 19th century, including contemporary difficulties of restoring budgetary control despite the arithmetical simplicity of doing so.

There is little that can be done about genetic inheritance, save for eugenic programs of genetic manipulation that have appeared from time to time as part of an effort to select which genetic qualities are reproduced within a society. Such eugenic efforts aside, most concerns about inheritance within societies have concerned the treatment of material inheritance from parents to their children and other designated recipients. One extreme with respect to material inheritance entails an unlimited right to dispose of wealth, much as private property generally gives a right of unlimited disposition during life. The other extreme would convert private property to collective ownership upon death. As a practical matter, advocacy of such conversion is usually reserved for comparatively high levels of wealth, and then only partially, as illustrated by taxation at 50 percent and not at 100 percent.

**1. Private Property, Collective Property, and Inheritance**

A market economy is an abstract noun that describes the economic patterns that emerge when people relate to one another through an institutional framework characterized by private property and freedom of contract. Within this institutional arrangement, the owners of property can dispose of their property as they choose which would be either through sale or through gift. One aspect of private property is thus the ability of testators to designate the disposition of their assets upon death.

To be sure, societies are not governed exclusively through private property. A good deal of what can be called collective property is also present. In modern societies, the fiscal operations of governments create a form of fiscal commons. Taxation is the prime instrument by which the fiscal commons is stocked, while expenditure is the instrument by which the commons is grazed. Collective budgetary processes must thus wrestle with the tragedy of the commons, as Wagner (2012) explains.

Modern societies operate with two systems of property rights within the same social space, which sets in motion tectonic societal processes due to conflicts among the rationalities suitable for the different forms of property. There is a substantive rationality suitable for private property where the owners of property are residual claimants to the value consequences of their actions. There is a different substantive rationality suitable for common or collective property where those who are able to use that property are not residual claimants to the value consequences of their actions. Within a system of private property, an enterprise that increases the technical efficiency of its operation will experience an increase in its market value and, hence, the net worth of its owners. The pursuit of such technical efficiency is less likely within public bureaus and agencies because those enterprises have no market value that can be captured through the institutions and practices associated with residual claimacy. The substance of rational action differs as between collective and private property, and we may doubt that collective property generates the same efficiency properties as private property.

Walter Eucken (1952) recognized the possible incongruities that can arise between private and collective property, and proposed to mitigate those incongruities by instituting the requirement that state actions be conformable with the operating principles of a market economy. Otherwise, different and conflicting modes of operation would characterize enterprises operating under different forms of property. Among other things, private property tends to promote social relationships based on mutuality and equality because they work through mutual attraction. In contrast, collective property entails status-based relationships of superior and inferior because political entities can invoke orders to overcome what otherwise would be limited attractiveness. Collective property thus tends to inject feudal-type relationships into a society, unless collective property is limited by a requirement that it operates in conformability with the central principles of private property.

**2. Forms of Inheritance Taxation**

The taxation of inheritance represents a system whereby private property might pertain to the use of wealth by a living person, but that property is taken by the state upon death. To what extent that property is taken depends on the rate at which estates are taxed. For instance, if estates are taxed at a flat rate of 50 percent, the tax converts one-half of the assets held at death to collective property. As a normative matter, several arguments have been advanced in favor of and in opposition to the taxation of wealth transferred at death. For the most part, arguments in opposition to such taxation stress the negative effects of the taxation of successful entrepreneurial activity, as illustrated by Wagner (1977) while arguments in support of such taxation stress notions of fairness and equalization, as illustrated by Brittain (1978).

The taxation of wealth transfers can be based either on the value of an estate that a decedent leaves or on the inheritances that heirs receive. In the presence of flat-rate taxation, the same tax would be imposed under either form: a 50 percent tax collects the same revenue whether it is imposed on one estate valued at $10 million or five inheritances each valued at $2 million. But when the tax is imposed through a structure of progressively increasing marginal rates of tax, the estate tax will impose higher tax extractions, save when the entire estate is passed to a single heir.

Most argument in support of taxing wealth transferred at death is grounded in claims about fairness and equalizing opportunity. As a means of raising revenue, inheritance taxation generates but a pittance of the total revenues collected by governments today, so tax proponents have looked elsewhere to justify this form of taxation. The literature on inheritance has long contained claims that justify taxation on the grounds that distinguish between earned and unearned wealth, joined with a claim that earned wealth is morally superior to unearned wealth. In this respect, for instance, the approach to the taxation of inheritance associated with Eugeno Rignano (1924) proposed to tax inheritance at 50 percent the first time the wealth was passed and to tax it at 100 percent the second time. In this manner, what was thought to be morally inferior would be half-heartedly countenanced the first occasion of transfer but would be extinguished the second occasion.

It seems clear that contemporary sentiment places higher value on earned than on unearned wealth. Whether this has much if anything to do with the taxation of inheritance is a different matter. It is doubtful that there is much genuine distinction between earned and unearned wealth. Within a market economy, all interactions are governed by principles of private property and freedom of contract. The return generated from commercial activities depends on consumer valuation of those activities. Yet, capital must be invested in commercial activities prior to the market determination of the value of those activities by consumers. As an *ex post* matter, some activities will be evaluated highly while others are not. One entrepreneur will fare better than another even though both tried equally hard to produce well-received enterprises. It would make no great sense to apply the notion of deservedness to the result of this situation, as this pattern reflects the unavoidably kaleidic character of societies, as Shackle (1972, 1974) explains.

Down the road, the successful entrepreneur might establish a foundation to provide assistance for potential entrepreneurs who come from relatively poor backgrounds but who the entrepreneur thinks displays qualities that might lead to commercial success. So he provides what amounts to subsidized assistance as a form of quasi-capitalist might do. The assistance received by the recipients could be described as unearned wealth that resulted from inheritance and hence subject to tax. There is no question that the entrepreneur earned his wealth. The disposition of that wealth, moreover, takes place within the framework of private property. In this case, the wealth accumulated through entrepreneurial efforts is used to establish a foundation to aid people whose qualities the entrepreneur appreciates. While this situation is not normally described as involving inheritance, there is a clear transfer of wealth all the same, only that transfer is between strangers and not relatives. This situation can be stated in abstract language, as illustrated by A transferring to B. This qualifies as inheritance passed by A to B. This passing might occur during life, but it could also occur at death. What is there about death that constitutes a different view of the situation?

And what is there about state expropriation of wealth at death that qualifies as being deserved. Theft is not generally regarded as a deserving activity, and it might be wondered how the taxation of inheritance differs. The use of government to expropriate property through taxation is surely to acquire unearned wealth and for the officials who will subsequently make use of that wealth to advance their projects.

**3. Claims of Equal Opportunity**

The claim of equal opportunity attaches itself naturally to human sentiment. It is bound up deeply in human ideas about fairness. Yet these ideas of fairness quickly become elusive when examined closely. Equal opportunity is fundamentally a property of a market economy, though this claim is subject to a few exceptions. The principles of private property and freedom of contract provide a framework by which everyone has equal opportunity to establish commercial enterprises. To be sure, any such enterprise will require the willing participation by numerous supporters if the enterprise is to be successful. The budding entrepreneur will have to convince investors or lenders to supply capital, will have to convince various input suppliers to enter into contractual relationships with the enterprise, and will have to convince consumers to buy the product. Within a framework of open competition, all commercial activity takes place through voluntary interaction. No one is excluded from participating in commerce. Participation is equal to all on the same terms set forth by the principles of property and contract.

As noted above, no society is governed wholly by private property. Public ordering on the fiscal commons is also present. Such public ordering often acts to limit the domain over which the equal opportunity associated with market transactions weakens. For one thing, governments typically deal with and favor large and established enterprises over small and incipient enterprises, as well as favoring enterprises whose sponsors have strong political connections over enterprises where sponsors are but weakly connected politically.

It is well recognized that in large measure political processes operate to protect well established enterprises from competition by new entrants, as Mitchell and Simmons (1994) explain. Equal opportunity is an ideological construction that resonates warmly with contemporary sentiments, and yet actual political practice often clashes sharply with those sentiments. The sentiment behind equal opportunity envisions a state as promoting equality and openness in the pursuit of gain through commercial activity. The practice behind that ideological fog, however, shows the use of state power to protect many possessors of established wealth from incipient competition from those who would challenge those established positions.

While state activity, including inheritance taxation, is often justified as a means of promoting equality of opportunity, in many cases state activity works in the opposite direction. In this respect there is a significant distinction between state activity and the activity that takes place within the various precincts of civil society. The genuine domain of equal opportunity probably resides in civil society and not in state. State activity through inheritance taxation withdraws support that can be administered through the offices of civil society (Gellner 1996). Capital that might have been used to establish foundations to assist people with entrepreneurial ideas, but whose families lack significant wealth, is collected instead by state treasuries and devoted to uses that are able to have political support marshaled on their behalf.

**4. Free inheritance and human flourishing**

In her *Systems of Survival*, Jane Jacobs (1992) explained that a flourishing society requires an architecture that contains carriers of distinct moral syndromes, which she described as commercial and guardian. These syndromes do not map wholly into the distinction between commerce and government, but it is a close fit. Commercial entities will sponsor some guardian activity, as illustrated by such activities as auditing and inventory control which operate to secure truthfulness in firm activities as by preventing asset conversion by employees of the firm. Similarly, governmental entities will sometimes engage in commercial activity, as when they operate various utility services.

Yet the activities are distinct and they also involve margins of conflict, just as the imperative to human action differs as between private and common property. Some commingling of guardian and commercial enterprises is unavoidable and even necessary, but excessive commingling can generate what Jacobs described as “monstrous moral hybrids.” These monstrous hybrids are formed by actions by both commercial and political entities. From the one direction, commercial entities seek to invade the guardian domain as by offering to police commercial conduct in their sphere, thereby restricting the commercial activity of competitors, including incipient enterprises. From the other direction, political entities seek to invade the realm of market activity but lack the commercial tools, including alienable property through which enterprise values are established, as when political entities offer insurance to market entities not at genuine market prices but ay politically calculated prices that subsequently generate future problems as the resulting contradictions become visible, as Ikeda (1997) explains.

A dramatic and oft-seen satellite photo of the Korean peninsula at night tells the story of inheritance and human flourishing. In that photo, North Korea is dark and South Korea is brightly lit. While the contrast is not a perfect comparison of collective and free inheritance, it comes close. A flourishing society is one infused with an entrepreneurial spirit among the members of that society and not just among the few. The more fully inheritance is collectivized through taxation, the more circumscribed becomes the operation of the enterprising spirit within a society and the more commercial and political leadership becomes the province of a subset of people in society: in the case of North Korea, that subset is narrow indeed. In summary, it is free inheritance and not the collectivization of inheritance that lies on the path toward genuine societal flourishing.

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