Should We Inherit?
Professor Martin Daunton

16 February 2021

Doddington Hall in Lincolnshire is a fine Elizabethan house that I visited as we emerged from lockdown last summer.

It attracted my interest less for its architecture than the portrait of Sarah Gunman who inherited the house from her father in 1814. Probably at Bath, she met and in 1805 married a man 25 years her senior – James Gunman, a member of a wealthy business family in Dover.

At Dover, Sarah met the dashing military hero and widower, Lt-Colonel George Jarvis, the youngest of 21 children of the owner of a slave plantation whose wife Philadelphia was the daughter of London banker. After Waterloo, George became a banker in Dover and helped Sarah with financial difficulties relating to the estate. James Gunman died in 1824, and Sarah and George planned to marry. Sadly, she died of consumption in 1825. In her will, Sarah gave her mother the use of the house and estate during her life, and then 'gave, devised and bequeathed' them to 'my friend' George Jarvis and his heirs. He inherited in 1829 and on his death, it passed to his eldest son – entirely out of the family. Here is the point of my story. Sarah had complete freedom to do as she wished with her property – something that did not apply in France against which Jarvis spent many years fighting.

This could be a novel by Jane Austen or Thackeray. And disputes over wills and the vagaries of inheritance were staples of novels from Austen to Trollope. Wills were crucial in George Eliot's later novels: in *Middlemarch,* Will Ladislaw was disinherited by his grandmother; Dorothea hopes her husband Casaubon will change his will in favour of Ladislaw but Casaubon suspects he will marry Dorothea. He therefore made a will leaving all his wealth to Dorothea on condition she never marries Ladislaw. The will can be used as a controlling device beyond the grave. Some years ago, my fellow Gresham visiting professor John Mullan published a list in *The Guardian* of the ten best novels with wills as their plot. I will not follow his approach.

What I propose to do in this second lecture is consider how assets were passed from one generation to the next – the strategies adopted by families to handle their assets, and wider debates over the desirable form of social order and state structure. My aim is to show how inheritance practices have always been deeply contested and politicised, embedded in legal, social and political structures. This insight should make us more alert to the possibility of making change now, and not accepting that our present arrangements are sacrosanct.

I will look at three areas of contestation in the past in different societies:

- Should there be testamentary freedom or constraint?
- Should landed families be allowed to conserve their property into future generations?
- Should inheritances be taxed, and if so should the rate be sufficient to break up large fortunes?

I will draw on my own work on England and put it into a comparative framework of developments in France, Germany and the United States drawn from Jens Beckert.

Wills: Testamentary Freedom Versus Rules

Both the real-life story and fiction reflect a distinctive feature of English law - testamentary freedom – that was constrained in most European legal systems.

If England stands at one extreme, **France** stands at the other for testamentary freedom was initially removed in the Revolution and then only partly reinstated in the Napoleonic Civil Code of 1804.

Two conceptions of property were debated in the National Assembly in 1791:

Natural law: the state should not restrict the right of disposition. Cazalès: 'It is only with testamentary freedom that fathers rule their families; thanks to it they are accorded honour and respect by their children into old age, in a way that virtue would not be able to accomplish'.

Or **private property was a right granted by society**, and the state should give priority to the common good. Robespierre and Mirabeau opposed testamentary freedom and argued for positive law to shape transmission of property according to the principle of equality. Mirabeau in debate in 1791: 'I do not know how it should be possible to reconcile the new French constitution, in which everything is traced back to the great and admirable principle of political equality, with a law that allows a father, a mother to forget these sacred principles of natural equality when it comes to their children, with a law that favours differences that are universally condemned, and thus further increases the disparities brought forth in society by differences in talent and industry, instead of correcting them through the equal division of domestic goods'.

In 1791, equal division was only introduced in the absence of a will. Most middle- class families still wanted freedom to dispose of their assets as they wished, which was in tension with the principle of equality.

Reform was pushed ahead by the Jacobins. In 1793, testamentary freedom was abolished, except for a *quotité disponible* of one-tenth where there were direct descendants, and one-sixth there were no direct descendants – and this element of the estate could not be left to children to prevent a breach of equality.

What was the aim of this change?

- Alter family structures with equality between children which would remove the ability of the father to make arbitrary decisions. It was against patriarchy.
- Prevent dynastic continuity of noble families.
- Create conditions for new political structures: greater equality within the family would lead to greater equality in the state and to liberty.

After the demise of the Jacobins, the bourgeoisie pushed back to reassert freedom for their intergenerational transfers and to restore the autonomy of property owners.

In 1800, the *quotité disponible* increased to a quarter and it could now be left to a child – the basis of the Napoleonic Civil Code of 1804:

- with one child, testator could freely dispose of half of assets;
- with two children, a third,
- with three children, a quarter
- if no children, the testator had power over half to three-quarters.

The Civil Code rejected the 'natural law' justification of private right of inheritance in order to treat children equally and to prevent dynastic concentration of wealth.

The 1804 Civil Code remains largely in place today.

In France, testamentary freedom was rejected because it went against natural equality as the basis of social order in the family and the state.

In **Germany, t**he civil law codes of states at the time of unification in 1870 allowed testamentary freedom. Liberals continued to argue for unrestricted property rights on the basis of natural law but faced strong opposition.

Conservative critics claimed that testamentary freedom was associated with Roman law and was contrary to the Germanic legal traditions which defined property as belonging to the family and not the individual. They rejected testamentary freedom in order to protect the family as the moral basis of society.

This was the position of Hegel, 1821: the 'mere individual' is transcended by the family whose resources are shared in common: 'the family's resources are common property so that no member has particular property, although each has a right to what is held in common'. An individual has no right to dispose of property against the right of the family. 'The simple direct arbitrariness of the deceased cannot be made the principle of the right to make a will, especially if it is opposed to the substantial right of the family'.

The case against testamentary freedom was not equality as the basis of social and political order as in France. Rather, the family should be protected as the moral foundation of society against excessive bourgeois individualism.

The creation of a unified German civil code was debated between 1874 and 1896. Hegel's view was the main case against testamentary freedom – unlike the French stress on equality.

In 1889**, Otto von Gierke** rejected the more individualistic approach of the draft Civil Code. He was clear that 'we must never construct [inheritance law] on the basis of the individual will! The incomparably valuable social function and the immortal inner justification of inheritance law lies only in the realization of the succession of generations inherent in the natural structure of the family, in the assumption of the now empty place by those individuals most immediately destined to do so by virtue of the structure of the social body'.

The Civil Code of 1896 reached a compromise: it accepted testamentary freedom that existed prior to unification but laid down a compulsory portion of 50 per cent to which all legitimate heirs were entitled, even if they were excluded from the will. Individualism was constrained by a 'family-social' definition of property. It was taken further by the Third Reich: testamentary freedom was individualistic, and inheritance should be about the transmission of property in the family, clan and national community.

What of **England**?

In the absence of Revolution, the **natural law** approach was in the ascendant. In 1870, Chief Justice Cockburn adopted the standard defence of English testamentary freedom that 'the power of disposing of property in anticipation of death has ever been regarded as one of the most valuable of the rights incidental to property.' As he said,

> *'the English law leaves everything to the unfettered discretion of the testator, on the assumption that, though in some instances, caprice, or passion, or the power of new ties, or artful contrivance, or sinister influence, may lead to the neglect of claims that ought to be attended to, yet, the instincts, affections, and common sentiments of mankind may be safely trusted to secure, on the whole, a better disposition of the property of the dead, and one more accurately adjusted to the requirements of each particular case, than could be obtained through a distribution prescribed by the stereotyped and inflexible rules of a general law.'*

This dislike of standard, stereotyped laws was characteristic of the English common law tradition. Testamentary freedom was also justified as a way of creating a dynamic, flexible society in which wealth followed talent. The Royal Commission on Real Property, 1829: the power of disposition was 'required for the public good', for 'A testamentary power is given which stimulates industry and encourages accumulation;… property is allowed to be moulded according to the circumstances of every family'. This could be important in industrial or commercial families where the business asset could be left to the most capable family member, and other assets to those with less business aptitude.

Testamentary freedom also posed risks, as Lord Justice James pointed out in 1874:

> *'A man may leave his virtuous wife and deserving children penniless, and bestow the whole of his fortune upon the vilest companions of his profligacy, the most worthless partners of his vices, the most wicked accomplices of his crimes, and the law cannot gainsay him.'*

The case against natural law drew – as in France – on a desire to break the hold of the aristocracy, both for political reasons and economic efficiency: a free market in land would, so the reformers argued, complement free trade and competition in a dynamic economy.

The risk was that it sounded like French revolution. In 1830, Daniel O'Connell argued in the Commons to restrict testamentary freedom to ensure that the testator 'gave to each child a substantial share' and to remove the ability to favour one child over another; he accepted that he 'was taking from the parent the power of distributing his property. He readily conceded that cabining in parental power was his goal, because he knew that it was sometimes put up to auction, as it were in families, and otherwise much abused'.

O'Connell – the Liberator - supported emancipation of Catholics, the end of union with Ireland, and abolition of slavery – and his opponents saw a threat to social order and an attempt to 'assimilate our law to that of France'. Charles Tennyson feared the result

> *'would destroy the aristocracy and dislocate society. It would have a most prejudicial effect … on the industry of the people. Parents would not labour and accumulate to be the mere slaves of their children, and to deprive them of the power of disposing of their property would paralyse all their exertions, and be a serious blow to our national prosperity than all the commercial restrictions that were ever invented.'*

O'Connell had the support of many radical land reformers but his proposal failed and testamentary freedom continued, as it largely still does.

The Inheritance (Family Provision) Act of 1938 and Inheritance (Provision of Family and Dependants) Act 1975 did introduce some limitations on freedom: the court could vary the distribution of an estate where will failed to make reasonable financial provision to spouse, child or dependant. Otherwise, a will could be challenged in court on the grounds that the testator lacked mental capacity to make a rational disposition of property.

Much depended on the judge: in **Banks v Goodfellow, 1870,** Cockburn accepted that Banks, despite being confined to a lunatic asylum and convinced that he was pursued by evil spirits, was rational enough to disinherit his family. (We might note he never married, had illegitimate children, was refused a peerage by Victoria for his bad morals, and had such a bad temper his fellow judges doubted his sanity.) However, the judge in **Boughton v Knight 1873** ruled that 'it is so contrary to the whole current of human nature' to deprive children of their inheritance that 'such repulsion and aversion are themselves evidence of unsoundness of mind'.

But the main way in which testamentary freedom was constrained was inheritance of real property which was usually covered by settlements.

Settlements and Entails Versus Free Markets

Jane Austen understood another aspect of inheritance – the use of settlements. In *Pride and Prejudice,* Mrs Bennett complained 'bitterly against the cruelty of settling an estate away from a family of five daughters, in favour of a man whom nobody cared anything about'. Mr Bennett had a life interest in the estate and could not himself decide to whom to leave it which was determined by the settlement – the life interest would pass to the nearest male heir, Mr Collins. Austen had reason to understand the process, for her brother, Edward, inherited entailed estates from distant cousins. More recently, settlement was used to set the plot of Downton Abbey in motion: the fee tail or "entail" governing the Earldom of Grantham endowed both title and estate exclusively to heirs male – and the earl only had daughters.

Let us take a real example that will have resonance to anyone who visits the Wallace Collection in London. The 4th Marquess of Hertford had one son who was illegitimate – Sir Richard Wallace. When the Marquess died in 1870, he could leave his non-landed property – including his art collection - to Wallace, but not the entailed landed estate which went to a distant cousin – a descendant of a younger son of the first marquess who became the fifth Marquess.

How did the settlement and entail work? The fee tail or **entail** - from the Latin *feodum talliatum* - in contrast to fee simple or ownership - is a trust established by a settlement which restricted the sale or inheritance of real property and prevented it from being sold or bequeathed by the life tenant. It had to pass to a heir determined by the settlement deed.

The head of the family A made a settlement prior to the marriage of his eldest son B, providing B with a life interest on the estate on the death of A, with an entail to C, the eldest surviving son of B. The life tenant could not sell the estate by the 'trust to preserve contingent remainders': the rights of the contingent remainder C were protected by trustees, so that A was confident that the estate could pass intact to C.

This use of strict settlement and entail life estates was attacked by radicals for allowing the accumulation of great landed estates, preventing a free market in land and allowing the aristocrats to charge excessive prices for use of land that harmed enterprising members of society who were building factories or houses. George Brodrick in 1881: 'A land system founded on the Law of Primogeniture and guarded by strict family settlement has a direct tendency to prevent the dispersion of land'. Hence their attempt to break the system or – if not outlawing it – then at least to tax land as producing unearned/unmerited wealth.

Winston Churchill, 1909: the land monopolist 'renders no service to the community, he contributes nothing to the general welfare, he contributes nothing even to the process from which his own enrichment is derived'. 'every form of enterprise, every step in material progress, is only undertaken after the land monopolist has skimmed the cream off for himself'. Social and political stability rested on a wider dispersion of property among the people.

Were settlements as bad as the radicals believed? In reality, they were designed to deal with claims within the family rather than stitch up the land market. How did it work?

Under common law, the widow had a right to 'dower' – a third share for life in her husband's entire estate. This made management of the estate by the heir difficult: he could not dispose of part of the estate for the widow had an interest in the whole.

The jointure assigned a specific part of the estate to support the widow which allowed the rest of the estate to be managed more effectively. The jointure was usually less generous than the dower.
The settlement can be interpreted – as did Mrs Bennett – as a patriarchal device to protect the eldest son or male heir. But this is not necessarily the case. The land passed to the heir as a capital asset, but it was to produce income to be shared between family members.

Until the end of the 17th century, the allocation of the income was usually left to the life tenant; but from the early 18th century, the settlement usually contained a defined right to specified portions or annuities for the widow, younger sons and daughters, which became more egalitarian. Lord Winchelsea complained that the tenant for life became 'the slave of the family' – especially where the heir, like Mr Collins, was indirect. For example, in 1705 Lord Petre provided a portion of £15,000 to his daughter if his son inherited, but £30,000 if the estate passed to anyone else.

Henry Brougham, 1828: 'I consider the English law as hitting very happily the just medium between too great strictness and too great latitude, in the disposition of landed property'.

There was latitude:

- Could dispose of land at the point the settlement was made;
- Father might die before marriage of the eldest son who then had a free hand;
- Could keep some land outside the settlement;
- Estate could be mortgaged to keep up the portions, annuities and be bankrupted.
- Private acts to break the settlement, though expensive and could be refused (as on Maryon Wilson estate in Hampstead which is one reason for the preservation of the Heath).

What about other countries? The Roman law of *fideicommissum* –that is committed to one's trust – was similar to settlements.

In **France,** 'substitutions' were permitted for two generations. They were abolished in 1792 in order to remove the 'dead hand' and break up large aristocratic estates to create the basis of political liberty by a more equal distribution of property and dismantle the structure of absolutist state.

The system was reformed by Napoleon in 1807 as a way of securing support of the propertied elite in a new hereditary nobility: the ban on substitutions continued but he introduced a new Spanish term of *majorat* as an exception. The property would pass perpetually to first born sons, could not be seized by creditors, and could not be sold. The aim was to create a new elite and block the restoration of the old.

In 1826, Charles X, reintroduced substitutions to restore the old elite and contain the power of the bourgeoisie. To opponents, primogeniture and substitution attacked the principles of equality and liberty.

Only a temporary success – after the revolution of 1848, substitutions and *majorats* were definitively abolished.

In Germany, the system continued as a way of sustaining the family basis of order.

In **Germany**, the *Fideikommiss* was unlimited in time and was difficult to break under the Prussian law code of 1807: it needed the unanimous decision of the family council of all living claimants. It was more rigid than in France or England.

There were demands for change in response to the French revolution – for example, in 1792, Wilhelm von Humboldt called for a ban on restrictions to the freedom of the heir. The *Fideikommiss* was abolished in areas under French occupation, with a reaction after the defeat of Napoleon.

Fideikommiss was supported as a way of sustaining order and political stability. In 1821, Hegel supported it for reasons of state in providing the nobility with security to fulfil its public duties.

The *Fideikommiss* was attacked in the 1848 revolution as the basis of an absolutist state and hierarchical society. Abolition was agreed in the National Assembly in December 1848 – but individual states were to draft transitional rules. Little happened, and the measure was repealed in Prussia in 1852.

The legal device was only available to large landed and capital wealth – and once the estate was above a certain size, special permission was needed. In other words, it was designed to protect both the elite of the nobility and to guard the ruler against excessive domination.

The *Fideikommiss* was also a defence against bourgeois individualism; both the family and the state were intergenerational social institutions, and the living generation had only a lifetime interest in the property. It worked because younger sons could get service in army, civil service, and church as a balancing mechanism.

The *Fideikommiss* spread in the second half of the 19th century to protect large landowners Criticism continued, for example by the economist Gustav Schmoller who argued that it led to the unproductive use of land, concentration of wealth, and exclusion of a large part of the rural population from land ownership.

Defenders of the system insisted that it formed the basis of a contract between generations both in the state and the family as lasting entities. They were able to maintain the system as a result of the weaker political standing of the industrial and commercial bourgeosie than in France.

In 1919, the Weimar constitution stated that *Fideikommisse* should be dissolved – but as in 1848, it was to be implemented by the states which led to delays. By 1932, about two-thirds had been dissolved. The nobility hoped the Nazis would reverse the trend – but they favoured small family farms rather than large aristocratic estates. Authority to dissolve *Fideikommisse* was transferred to the Reich in 1938 and all were to be dissolved by 1 Jan 1939.

As with testamentary freedom versus rules for wills, so with settlements – the succession of generations varied between countries and reflected political structures, legal and social assumptions about what property was and who had claims on it – the individual, family or wider community. In the twentieth century, these debates took a different form: should inheritances be taxed, at what rate and on what basis?

To Tax or Not?

Should property passing between generations be taxed, at what rate, and for what reasons? These points have been the most contentious elements of inheritance in the 20th century up to the present. Let's consider three questions.

1. **Should the tax be paid on the total value of the estate that was being left or by the recipient, and should this be according by the closeness of the family relationship?**

Germany: the tax was on individual inheritances and not the total estate. The Reich inheritance tax of 1906 differentiated by kin, spouses and children were eempt or paid a low rate, and about 80 per cent of inherited wealth was exempt.

The attempt to introduce a tax on the totality of the estate failed in 1909 as a breach of the familial understanding of property. An estate tax was adopted in 1919 as a result of the costs of the war but repealed in 1922. The German system continued to rest on inheritance tax by family relationship, and with low progressivity, into the Federal Republic.

France: the inheritance tax of 1790 and was dependent on kinship. It became progressive – with higher rates on larger bequests - in 1901 and the tax was higher between 1917 and 1926 as a result of the costs of war; an estate tax was also introduced in 1917. The aim was to raise revenue rather than redistribution – and when the financial situation eased, rates were reduced and in 1934 the estate tax was abolished. Inheritances are still taxed on what is received, and by kinship.

United States: the tax was on the total value of the estate, not by what was received – unlike in both Germany and France.

Britain: both forms of taxation were used. The probate duty of 1694 was a tax on the estate; in 1796, Pitt added a legacy duty according to kinship. Both excluded land on the grounds it paid land tax, but radicals felt the incidence of tax was unbalanced. In 1853, Gladstone added a third tax: succession duty which applied to land and was, like the legacy duty, paid by the recipient according to kinship. His aim was to create a system that was balanced equally between all forms of income and wealth – not to redistribute.

In 1894, William Harcourt consolidated taxation and introduced progression which was increased further when the Liberal government returned in 1906. Legacies continued to pay rates dependent on kinship: in 1909, the legacy and succession duties were exempt or 1 per cent on lineal descendants, rising to 10 per cent on uncles, aunts and their descendants. They were abolished in 1949, so that Britain became like the US in only applying to the size of the estate.

2. Another issue was whether inherited wealth should be taxed to **rebalance between active and passive wealth.**

This taxation would not be at confiscatory levels. The argument was that it had not been earned by achievement and effort but was passive and might harm enterprise.

John Stuart Mill argued in his *Principles of Political Economy* in 1848 that,

> *'I see nothing objectionable in fixing a limit to what any one may acquire by the mere favour of others, without any exercise of his faculties, and in requiring that if he desires any further accession of fortune he shall work for it.'*

Churchill took the same line when appointed Chancellor of the Exchequer in 1924 SLIDE 14: 'the existing system of death duties is a certain corrective against the development of a race of idle rich. If they are idle, they will cease in a few generations to be rich.' The highest rate had risen to 40 per cent in 1919 to help pay for the war. In 1925, Churchill raised death duties in order to reduce income tax on the middle class. His aim was:

'an encouragement to people to bestir themselves and make more money while they are alive and bring up their heirs to do the same. The process of the creation of new wealth is beneficial to the whole community. The process of squatting on old wealth though valuable is a far less lively agent… We shall never shake ourselves clear from the debts of war and break into a definitely larger period except by the energetic creation of new wealth. A premium on effort is my aim and a penalty on inertia may well be its companion.'

3. Should the tax be used to break up large fortunes?

In Germany, progression was low: it was seen as against the family's ability to provide for surviving members. The maximum rate never went above 38 per cent.

By contrast, in the United States large fortunes were considered to be dangerous. Inheritances were taxed during the civil war to deal with the need for revenue. The situation changed at the end of the nineteenth century as a result of populist and progressive attacks on the Robber Barons. An estate tax was introduced in 1916. Democratic Congressman William Cox thought 'It is unjust, un-American, and undemocratic to let such tremendous fortunes…be transmitted". In 1925, the Republican secretary of the Treasury (and wealthy banker) Andrew Mellon failed in his attempt to abolish the tax, but he did secure a reduction.

It was reversed by Roosevelt in response to the depression: shifting wealth from the rich would increase purchasing power by the poor members of society to buy surplus output and end depression. He also needed to respond to Senator Huey Long who launched the Share our Wealth Society in 1934 which had 7 million members. Roosevelt's speech in Congress in June 1935 was a response:

'The transmission from generation to generation of vast fortunes by will, inheritance or gift is not consistent with the ideal and sentiments of the American People...Such accumulations amount to the perpetuation of great and undesirable concentrations of control…over the enjoyment and welfare of many, many others. Such inherited economic power is as inconsistent with the ideals of this generation as inherited political power was inconsistent with the ideals of the generation which established our Government.'

In 1935, the rate on largest estates went as high as 70 per cent. The aim was not to maximise revenue which would have been achieved by a higher rate of smaller estates – it was to break up dynastic wealth.

The rate remained high until the 1970s. A backlash started in 1976 and was taken further by Reagan in 1981 and by George W Bush who signed a law to phase out the estate tax completely by 2010. (It returned after a year at 40 per cent). Why this shift?

- In great depression, behaviour of wealthy could be blamed; in the 1970s, this was no longer the case and it seemed successful business were spreading benefits.
- Issue no longer to increase consumption of the poor but to ensure adequate investment which would come from the savings of the rich (the case of Milton Friedman).
- Inviolable nature of private property

Bush's policy led to wealthy individuals like Warren Buffett and George Soros to argue abolition as 'bad for our democracy, our economy, our society'. To Soros, "Without the estate tax, you will in effect have an aristocracy of wealth, which means you pass down the ability to command the resources of the nation based on heredity rather than merit."

Opponents of the tax referred to it as the ‘death tax’ which made it sound unfeeling; supporters called it the Paris Hilton tax…The debate continues.

Britain was like the United States in shifting to a redistributive agenda.

In the 1920s, Labour agreed with Churchill that death duties were ‘one of the most legitimate and socially beneficial forms of taxation’, but then went further, not only taxing inheritances but to argue that wealth was created b others and appropriated. The source of private wealth should be attacked by taxing profits and nationalisation, with capital available for public investment in a way that did not produce inequalities in future. Hugh Dalton thought an attack on inheritance was needed ‘to carry the inner citadel of Capitalism, to complete the work of Socialisation’. Ending large fortunes meant giving more weight to investment by the state. By contrast, Churchill wanted to reduce large fortunes and spread property to preserve capitalism.

Dalton acted on his views as Chancellor after the war.

In 1939, the highest rate was 60 per cent; in 1946, Hugh Dalton raised it 75 per cent, and in 1949 Cripps took it to 80 per cent after he ended the legacy duty. By 1969, the highest marginal rate was 86 per cent.

Clearly, a push back in Britain under Thatcher for similar reasons to the United States. The new attitude was captured by John Major’s speech to the Conservative conference in October 1991:

> *‘I want to see wealth cascading down the generations. We do not see each generation starting out anew, with the past cut off and the future ignored.*
> *… I believe that we must go much further in encouraging every family to save and to own. To extend every family’s ability to pass on something to their children, to build up something of their own – for their own.*
> *Labour have their eyes on the money stored in the homes in which millions of people now live – and in the businesses they have created. But I believe that what people have worked to build up in life, the State should never destroy.’*

The opposite view was expressed by Harcourt in 1894: ‘The right of a dead hand to dispose of property is a pure creation of the law, and the State has the right to prescribe the conditions and limitations under which that power shall be exercised’.

<u>Implications</u>

Taxation of estates and inheritance is no longer a major source of government revenue. Possibly less importance as a source of inequality. Before the First World War total wealth transmitted each year in the form of estates and (as far as can be determined) *inter vivos*, represented 20 per cent of net national income. This figure fell to around 10 per cent after the Second World War and below 5 per cent in the late 1970s, and Tony Atkinson points out that ‘a society where each year people can expect to receive in inheritance a sum of around a fifth of total income is very different’ from one where the sum was much smaller.

We have seen that systems of inheritance go beyond individual family decisions and have been related to normative choices about the preferred social, economic and political structures. Legal systems have changed over time and vary between places, and property is embedded in social systems.

Should not assume that the current order is natural and immutable – there are now calls for change. In some ways, the issue is returning to the problems addressed in the early twentieth century with

the concern of the populists and progressives about the aristocracy of wealth. Many economists – and businesspeople – fear that growing inequality is economically destructive, socially divisive and politically dangerous. I will point to a few recent books:

- inequality leads to a savings glut by the rich which leads to lower consumption which hits investment and employment; lead to trade wars in search of outlets. Shifting income and wealth to be more equal would increase consumption, provide an incentive for investment and increase employment: Matthew Klein and Michael Pettis, *Trade Wars are Class Wars*.
- As at the turn of the nineteenth and twentieth centuries, competition is declining and businesses are gaining from barriers to entry that allows them to make larger profits, as labour becomes weaker: Thomas Philippon, *The Great Reversal*.
- Not just inequality of wealth and income as shown by Thomas Piketty: also a fall in life expectancy in the US for the first time since 1918; capitalism that took people out of poverty now failing: Anne Case and Angus Deaton, *Deaths of Despair*

Is the answer to be found in return to higher rates of estate and inheritance tax?
In 1978, the report of James Meade and his colleagues suggested a two-pronged attack:

- An annual wealth tax on wealth: by falling on capital assets will increase incentives for most efficient use. There have been calls from various groups to adopt a wealth tax, in part to pay for COVID. This falls on both active and passive inherited wealth.
- And an accession tax on gifts and inheritance: imposed on the cumulative total received over the recipient's life, according to age.

But is this the way forward, and is it politically feasible?

- More possible to prevent large fortunes arising in the first place by restoring levels of competition and breaking monopolistic behaviour: the argument of Case and Deaton.
- Restore higher levels of progressive income tax and prevent corporations from eroding the tax base and shifting profits.
- Reform systems of remuneration.
- A recent book by Charles Goodhart also suggests that the balance between labour and capital will change: an ageing population means balance will shift as workers increase their bargaining power.

These are all issues on which we will make our own choices: inheritance across generations is only one part of the explanation of inequality within generations.

This evening, I have considered the ways in which individual or family wealth is passed between generations.

But there were also collective goods – forest resources, fisheries, climate. One generation can use them in an exploitative way that harms future generations – the classic case of Easter Island. How have collective goods been handled in the past, and what do now about climate change?

<u>Reading</u>

Stuart Anderson, ‘Succession, inheritance and the family’, in William Cornish, J Stuart Anderson, Michael Lobban, Patrick Polden and Keith Smith, *The Oxford History of the Laws of England, Volume 12: 1820-1914, Private Law* Oxford: Oxford University Press, 2010

AB Atkinson, ‘Wealth and inheritance in Britain from 1896 to the present’, *Journal of Economic* Inequality 16 (2018), 137-169

Jens Beckert, *Inherited Wealth* Princeton University Press: Princeton and Oxford, 2008

JP Cooper, ‘Patterns of inheritance and settlement by great landowners from the fifteenth to the eighteenth centuries’, in Jack Goody et al, *Family and Inheritance: Rural Society in Western Europe, 1200*-1800 Cambridge University Press: Cambridge, 1976

Martin Daunton, *Trusting Leviathan: The Politics of Taxation in Britain, 1799-1914* Cambridge University Press: Cambridge, 2001, chapter 8

Martin Daunton, *Just Taxes: The Politics of Taxation in Britain, 1914-1979* Cambridge University Press: Cambridge, 2002

David R. Green ‘To do the right thing: gender, wealth, inheritance and the London middle class’ in Anne Laurence, Josephine Maltby and Janette Rutterford, eds., *Women and their Money: Essays on Women and Finance* Routledge: London, 2009, 133-50

Thomas Piketty, *Capital and Ideology* Harvard University Press: Cambridge Mass., 2020

Rebecca Probert, ‘Freedom of testation in Victorian England’, in Katharina Boehm, Anna Farkas, and Anne-Julia Zwierlein eds., *Interdisciplinary Perspectives on Aging in Nineteenth-Century Culture* New York: Routledge, 2014

Brian Sloan ed., *Landmark Cases in Succession Law* Hart Publishing: Oxford, 2019