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Issue topic:
Intergenerational wealth transfers through inheritance and gifts

Table of Contents

Issue topic:
Intergenerational wealth transfers through inheritance and gifts

Editorial 39

Articles

Capital on the moral continuum: the UK, Sweden, and the taxation of inherited wealth
by Martin Eriksson, Asa Gunnarsson and Ann Mumford 40

Inheritances and Gifts: Possibilities for a fair taxation of intergenerational capital transfers
by Johannes Stößel, Julian Schneidereit and Sonja Stockburger 52

Mind the gap: inheritance and inequality in retirement wealth
by Oscar Stolper and Lukas Brenner 63

Book Reviews

Richard Breen and Walter Müller (eds.) (2020): Education and Intergenerational Social Mobility in Europe and the United States 73

Imprint 75

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Editorial

The intergenerational transfer of wealth and property attracts a fair amount of controversy. According to some, inheritance (at least when unregulated) is a source of arbitrary material inequality. When some inherit and others do not, the resulting inequalities are apparently due to differences in luck or circumstance. Inequalities of this sort may be harder to justify than those owed to differences in the life choices or levels of effort, such as the sorts of inequalities that might arise in a properly meritocratic labour market. A slightly different, though perhaps complementary view is that the practice of inheritance may, over time, be among the factors maintaining an objectionable class hierarchy. Again, such hierarchies might not be so profound in a society where all incomes were due to individuals' own efforts.

On the other hand, there are reasons to defend intergenerational wealth transfers as a means through which families can retain important assets, like a cherished home, and so that parents can exercise a degree of partiality towards their offspring or other chosen recipients. And then there is the long-standing idea that part of what it means to own something in the first place is to have the power to transfer it to someone else.

Current trends suggest that, independent of any moral analysis, the prospects of receiving an inheritance are becoming an increasingly significant determinant of people's material prospects. This is in part due to the stagnation of earnings from labour, increased life expectancy and cost of aged care, and the increased cost of homeownership for young adults. These facts also remind us that while the study of inherited wealth owes much of its motivation to a concern to work out the degree to which it is compatible with justice, much can be learned from an interdisciplinary approach in which the tools of political philosophy are combined with those of the social sciences. A comprehensive assessment of the place of inheritance in society will draw on some appreciation of such things as how much intergenerational transfers actually increase or decrease wealth inequality over time, the age at which people inherit and the impact it actually has on their lives, and the importance of a right to bequest in shaping the financial planning of older members of society. Similarly, proposals to tax or otherwise regulate inheritance need to be assessed not just in light of these background facts but in terms of what sort of legal reforms are defensible, how the relevant political narratives seem to evolve, and any likely impact on incentives in the jurisdiction in question.

This issue comprises three pieces that each offer contributions to an interdisciplinary approach to inherited wealth.

In the first piece, Martin Eriksson, Asa Gunnarson and Ann Mumford develop a comparative analysis of the history of inheritance taxation in the United Kingdom and Sweden, with some emphasis on recent trends. As they note, it may come as a surprise to some readers that, of the two, it is only Britain that still has any form of estate tax, with Sweden having abolished its inheritance tax early this century. (That it may be a surprise is due to the tendency to regard the Scandinavian nations as more egalitarian than Britain overall.) Here the authors argue that the Swedish abolition of the tax owes much to the way in which "the identity of the figurative taxpayer" has played a different role in the political narratives around inheritance taxation in both countries. They argue that inheritance taxes are inherently fragile. If this view is right, then both the abolition in Britain and the reinstatement in Sweden could happen in the future.

The second article in this issue, from Johannes Stößel, Julian Schneidereit and Sonja Stockburger, focuses on intergenerational capital transfers in Germany. Central to the focus in this article is the constitutional provision in Germany for the protection of family-owned businesses. They emphasise that any legislation, including tax legislation, is bound by the constitutional order and subject to the decisions of the rulings of the constitutional court. The rationale (roughly) for such protection is that an inheritance tax could result in the demise of family businesses when there is insufficient liquidity to pay the tax. The authors argue, however, that the continued existence of transferred enterprises could be secured with a lower level of preferential treatment than is currently the case.

Finally, the third article, from Lukas Brenner and Oscar Stolper, studies the relationship between the receipt of intergenerational transfers (bequests or gifts) and the recipient's private pension savings. Again, the focus is on Germany. Examination of data reveals that there is a sizeable difference in private pension savings between persons who inherit non-trivial fortunes and persons who inherit little or nothing. This suggests, in turn, that inheritance is a major factor in accounting for inequality among the retired segment of the population, something which ought to be of greater concern to political philosophers. The article makes an important contribution to the study of inequalities among people of post-retirement age. Such inequalities have typically been overlooked in political philosophy.

The contributions to this issue of the Intergenerational Justice Review represent the sort of work that can enhance the broader study of inherited wealth as a problem of distributive and intergenerational justice, but one where there is much to be learned from attention to the sort of details discussed in these articles.

Daniel Halliday, Guest Editor

Capital on the moral continuum: the UK, Sweden, and the taxation of inherited wealth

by Martin Eriksson, Asa Gunnarsson and Ann Mumford

Abstract: In this comparative analysis of the UK and Sweden, we consider, if inherited wealth is most deserving of redistributive taxation, then what lessons, if any, may be learned from the difficult paths faced by this tax in these countries. We conclude that the political momentum behind the Swedish family business was distinct, and, possibly, capable of travel to the UK.

Keywords: *Tax; Inheritance; Intergenerational justice*

Introduction

The morality of inheritance is difficult, and there are long-standing disagreements as to whether inheritance should be taxed. Piketty,[1] Beckert,[2] Halliday, White and others have considered the nuances of this question, whilst international organisations have taken a step further and emphasised connections between inherited wealth and persistent intergenerational inequality.[3] Is it possible to devise a tax on inherited wealth that would be accepted on a "global" scale? Inheritance taxation has developed in quite distinct ways in different jurisdictions, with significant legal differences (Beckert 2008).[4] The rate and extent to which inheritance taxation plays a meaningful role in the redistribution of wealth in different jurisdictions, naturally, varies. The evolution of, and indeed tolerance for, inheritance taxation in different countries is deeply culturally specific.

The fact of difference is a starting point for this article. The project comparatively will consider inheritance taxation in two jurisdictions, with the aim of identifying insights as to ways in which countries organise tax systems to respond to inherited wealth. This analytical approach acknowledges a debt to the tradition of Beckert, who constructed a similar, yet much more ambitious, expansive, and historical analysis of France, Germany and the United States (2008). Overall, this article provides a brief review of important, historical moments in the United Kingdom, and Sweden. This permits us to consider whether, if we accept the premise that, out of all other forms of wealth, inherited wealth is most deserving of redistributive taxation, the time has come to consider what lessons, if any, may be learned from the difficult paths faced by this tax in different countries around the world.

This article is in three parts. Following a review of the scholarly debate, inheritance taxation in the UK is introduced, largely with an eye cast towards historically significant moments of controversy.[5] Next, a review of Swedish inheritance taxation is conducted. Finally, points of convergence between the two systems are considered, largely for insights into the normative underpinnings of inheritance taxation.[6]

This paper aims to continue Piketty's project of identifying "belief systems" (2017). The methodology involves legal narrative, or storytelling. Key moments in the political and legal histories of the taxation of inherited wealth in the UK, and Sweden, are identified, considered and compared. The criterion for choosing these moments is the question: did this moment lead, in our view, to the tax surviving (UK) or not (Sweden)? If yes, then we explain our reasons for believing this, and consider the point of difference between the two countries.

Why a comparative review, and why the UK and Sweden?

Comparative analysis of histories in both the UK and Sweden reveals that different, figurative taxpayers have emerged as key focal points for debate during moments of change; and, we argue, this demonstrates that it is important not only to talk about the value of the tax, but also who will be seen to be paying the tax. Put simply, the identity of the figurative taxpayer is an important part of the story of inheritance taxes, in both the UK and Sweden.

> The particular significance of the comparative approach adopted in this paper is that it considers one jurisdiction which currently has a tax on inherited wealth (the United Kingdom) and one which does not (Sweden).

The particular significance of the approach adopted in this paper is that it considers one jurisdiction which currently has a tax on inherited wealth (the United Kingdom) and one which does not (Sweden). Despite this stark point of difference, there are many points of historical similarity between these countries. Thus, moments of convergence within these joint histories are identified within this article. The question we seek to answer is: given that Sweden and the UK are similar in a number of important ways, and yet different in others, what then is it possible to learn about the manner in which countries may organise taxes to respond to persistent inequalities in wealth?

This question is important, and a comparative approach is relevant, because of the significant role that Piketty has played in the emergence of an active, global discourse. His famous book *Capital* contains a great deal of engagement with both the history and economic thought behind inheritance taxation in the UK (2017). Simply, he considers this deeply specific British history to be globally relevant; and, as the OECD's proposal[7] indicates, his analyses are having a pragmatic impact.

The methodological approach adopted in this paper aims to challenge assumptions about the legal histories of the UK and Sweden. Legal narrative is well known for enabling (often, autobiographical) analyses of injustice (Culp 1997: 480), sometimes controversially so (Farber/Sherry 1993, 1995). The controversy largely occurred in the 1990s, as part of the resistance in some forms of legal scholarship to the "radical critique" of law, which argued that the very foundations of law – including legal schol-

arship – were insufficiently inclusive of the experiences of "different voices" (ibid.: 807). This dissension in the 1990s could trace its roots to the work of Cover in the 1980s, and, in particular, his famous proposition that "[n]o set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning" (1983: 4). The essence of the legal narrative, or legal storytelling, movement inspired by Cover, however, was a broad church, extending to examinations of rhetoric (Sherwin 1988), as well as the consideration of issues of legitimacy and indeterminacy in law (Winter 1989: 2226), among other issues. Here, legal narrative is employed simply to provide social, political and economic accounts of one tax, in two different jurisdictions, at significant points in their historical "stories."

Inheritance taxation in the United Kingdom

Estate duty

A significant proportion of the British history with which Piketty engages occurs within the (long-lasting) timeframe of the UK's estate duty, and, thus, this tax serves as the starting point for this analysis. Inheritance taxation in the UK, however, far pre-dates the estate tax. Indeed it is perhaps an understatement to suggest that the United Kingdom has a long history with taxation of inherited wealth. Looking back from the present, its modern inheritance tax was introduced in 1984 as a successor to the Capital Transfer Tax, which itself had replaced a 100-year-old estate duty. Before the Estate Duty, there was something else (in particular, and amongst others, probate, legacy and succession duties) – and it appears that there has always been some form of taxation of inherited wealth in the UK (even before there was a United Kingdom) (Daunton 2007: 225). In a modern context, the Estate Duty had a particularly long and impactful reign.

The Estate Duty itself was introduced by the Finance Act 1894, the main innovation of which was to replace a number of other taxes. The taxes it replaced had come to exist within an overall structure that, by the time of their repeal, had become fairly complex. The duty thus was a simplification initiative. The structure and foundations of the new Estate Duty prompted a vigorous, contemporaneous political discussion. Within this discussion, the idea of a tax on death was relatively uncontroversial. Churchill, for example, believed that the "psychological" impact of death duties was less "onerous" than that of income taxation. Indeed, Daunton reveals that Churchill supported, as a "political principle", the idea of increasing death duties so as to fund reductions in income tax (ibid.: 132).

Estate Duty aimed not only to pull the several existing duties under a singular tax, but also to introduce a tax which was "boldly and openly progressive".[8] *The Economist* described it as "[w]onderfully free from any electioneering taint".[9] This observation perhaps was offered in contrast to the period before the introduction of the Estate Duty, which had been marked by concerns both over the growing divide between wealthy property owners and the rest of the country, and uncertainty over whether a serious effort to redress this through taxation would interfere with law relating to property. In 1796 Pitt, and others, worried that a tax on property might interfere with the constitutionally guaranteed right to own land. Indeed, Jenkins explains that, in fact, there was "gross discrimination in favour of land" during this period (1998: 63). Thus it was against this background that Harcourt, who ultimately introduced the Estate Duty, wrote that he had "no doubt that we shall have a 'formidable enemy' in those who find themselves deprived of monopolies they ought never to have possessed, and the privileges which enrich them at the expense of their poorer fellows" (ibid.).

During this period, widows, in particular, were presented as having a *moral* entitlement to inheritance (id.: 227). And yet, despite concern over their welfare, death duties, collectively, continued to increase in importance during this period as a source of revenue for the government (Lee 2007: 681).[10] Lee explained that in fact it was the emerging clout of the "new money" class during the Victorian era that smoothed the way for the introduction of a tax which would ensure that "old money" classes bore a more equal share of the tax burden (ibid.). Thus, the Estate Duty was viewed as a tax which achieved "that elusive principle of taxing according to 'ability to pay'", given its foundation upon on a principle of proportionality (Sandford 1968: 11).

Probate, account and temporary estate duties were replaced with a single duty, which was then targeted at the aggregated value of all property left by the decedent. The opposition argued that it was unfair to assess a tax solely by reference to the estate of the deceased, with no consideration for the circumstances of the living persons who acquired the property.

How did it work? Probate, account and temporary estate duties were replaced with a single duty, which was then targeted at the aggregated value of all property left by the decedent (ibid.). Despite the apparent freedom from "electioneering taint", this simple structure had been condemned by the political Opposition, which had preferred a rather more straightforward inheritance tax (id.: 13). They argued that it was unfair to assess a tax solely by reference to the estate of the deceased, with no consideration for the circumstances of the living persons who acquired the property (id.: 15). To support their case, the Opposition argued that ten children who, as a group, inherited £100,000 from their father, each would pay more in tax than an only child who inherited £10,000 (id., citing the speech of Mr Jeffreys, *Hansard*, Finance Bill in Committee, 29 May, 1894). Thus, although this tax may be based on a principle of ability to pay (the argument ran), in this example it is the ability of the dead father which is the focus, which they suggested was difficult to justify (ibid., citing *Hansard*, Parliamentary Debates, 10 May, 1894).

Piketty, writing of this period in the UK, proposes that "[n]o other country devoted more thought to the taxation of inheritance in the twentieth century, especially between the two world wars" (2017: 674). The literature with which he engages largely criticises the evolution of the Estate Duty, and its persistently limited reach. Piketty, in particular, approvingly cites the writings of Josiah Wedgwood, who argued that wealthy, plutocratic classes had failed to prevent the rise of fascism in Europe; and, in fact, that lack of equality between the classes possibly had contributed to political instability (id., citing Josiah Wedgwood, *The Economics of Inheritance* (first edn, Pelican Books 1929)). Wedgwood, Piketty notes favourably, believed that a "progressive income tax" was the "main tool" for addressing this problem (id.).

Capital Transfer Tax

Harcourt's Estate Duty lasted until its repeal by the Finance Act 1975, which introduced the somewhat ill-fated Capital Transfer

Tax (CTT). Capital Transfer Tax was a direct response to perceived imbalances in wealth distribution that the Estate Duty had failed either to ameliorate or prevent.[11]

> In an oft cited statistic of the era, approximately 70% of the fortunes of the very wealthy in the UK were attributed to inherited wealth. The government's sense was that, by the early 1970s, the time had come for the 1894 Estate Duty to be the subject of a "thorough going review". In the end, a capital transfer tax, and not an inheritance tax, was introduced.

In an oft cited statistic of the era, by the late 1970, approximately 70% of the fortunes of the very wealthy in the UK were attributed to inherited wealth (White 2003).

The government's sense was that, by the early 1970s, the time had come for the 1894 Estate Duty to be the subject of a "thorough going review" (Davies 1972: 80). This was in spite of the fact that a period of heavy inflation was perceived as having increased the "burden" of Estate Duty (ibid.). This was because the tax was considered to be relatively easy to avoid, thus frustrating a fairer distribution of wealth (id.). The UK's accession to the European Economic Community in 1973 also increased the feeling that perhaps a review was necessary, as the Estate Duty felt a bit out of sync with other member states, many of which (then) had an inheritance tax (as opposed to an estate duty).[12]

A number of different options were considered. The innovation of the 1972 Green Paper, *Taxation of Capital on Death: A possible Inheritance Tax in place of Estate Duty*, which identified the operating principles of the Capital Transfer Tax, was to assess tax on the amounts received by beneficiaries, as opposed to the estate of a decedent (Cretney 1973: 285). The inheritance tax it proposed would have allowed consideration of the relationship between the decedent and family members, a line of thought which probably led to the 1975 Capital Transfer Tax's unlimited exemption for spousal transfers.

In the end, a capital transfer tax, and not an inheritance tax, was introduced. The CTT was "substantially different" from the Estate Duty it replaced (Wheatcroft 1974: 278). The rates differed, the unlimited spousal and charitable exemptions were comparatively innovative,[13] and (previously) reduced rates for agricultural and business property were abolished (ibid.).[14] The objective had been to introduce what could be described as a "unified transfer tax system", taxing transfers both at death and *inter vivos* (Maudsley 1975: 780). The taxation of *inter vivos* transfers was an important feature of the new CTT, as, previously, the UK had lacked any significant form of gift taxation (ibid.: 783). The CTT was designed to change the focus of the previous system, which had been easy to avoid for most, and yet "severe" in consequence for those unable to escape it (id.). The overall impression was that the process of dislodging the estate duty had been "fevered", with a sense that "[a]t times [capital transfer tax] had seemed to be heading for the Guinness Book of Records rather than the Statute Book" (Wilson 1975: 73). Yet with the Finance Act 1975 the CTT finally became law, almost a full year after its announcement in 1974.[15]

By 1980, however, worries that the CTT was no more effective in countering avoidance than estate duty were evident, along with suggestions that "exceptions, exemptions, and accepted avoidance devices" rendered the tax, on the whole, "ineffective" (Dobris 1984: 363). It, like the Estate Duty before it, was a "voluntary tax" (ibid.). Fears grew that the CTT burdened small businesses in particular; and, despite the introduction of (in some cases, quite generous) ameliorating measures meant to protect the inheritance of small family businesses, nostalgic and unfavourable comparisons with Estate Duty persisted.[16] Most problematically, wealth remained concentrated (Dobris 1984: 364), and compliance with the ever-elusive "ability to pay" principle remained just that (ibid.: 366).

Inheritance Tax

In 1984 CTT was repealed, and an inheritance tax finally was introduced (per Inheritance Tax Act 1984 c.54). The Finance Act 1986 introduced a tax which was assessed on "transfers of value" upon a person's death (ibid.: s.2). Yet, as the Special Commissioners involved in the case of *Holland* explained, the use of the phrase inheritance tax was a bit of a "misnomer", especially given the structure of the tax, which focuses on the threshold value of the estate (*Holland v CIR,* [2003] STC (SCD) 43 (11 December 2002) (Sp. Comm.)). The tax has had a somewhat contentious political history since; and, for now, perseveres.

> Finally, CTT was repealed, and an inheritance tax was introduced. The Finance Act 1986 introduced a tax which was assessed on "transfers of value" upon a person's death. Yet, the use of the phrase inheritance tax was a bit of a "misnomer", especially given the structure of the tax, which focuses on the threshold value of the estate.

Inheritance tax is intended to tax transfers of wealth at, or shortly before, death. The structure of the modern tax is outlined in the following box.

Inheritance tax is assessed as if, immediately before the decedent's death, a transfer of value had been made to the heir (Inheritance Tax Act 1984, 24(1)). Then, all assets which exceed the threshold of £325,000 are taxed at a rate of 40% (ibid., s.1, para 1). Estates which do not exceed £325,000 are not taxed. Finally, transfers which fall below a minimum threshold are not taxed.

A significant change introduced by the inheritance tax regime, effectively, was to end the taxation of lifetime gifts (Lee 2007). Thus, as a general rule, if transfers of wealth occur between three and seven years before death, they will be taxed at a reduced rate. If transfers are made more than seven years before death, they will not be taxed at all. Additionally, transfers between spouses and civil partners, and to political parties and charities, also are exempt from inheritance tax (Inheritance Tax Act 1984, s.18). Assets associated with small businesses and farms may receive relief, which is achieved by reducing the value of the asset between 50% to 100% (ibid., Part V). There have been a few changes in recent years, including the introduction of relief for residences and a promise of a simplification project from the Office of Tax Simplification,[17] but this simple, basic structure endures.

During the modern era, the Conservative Party long has campaigned[18] for the abolition, or significant curtailing, of the inheritance tax (Evans 2008), and in particular during the period in opposition when Tony Blair was prime minister. The Recession of 2008 generally is presumed to have protected the inheritance tax from any serious attacks since. Nonetheless, and amongst other

Box 1. The basic structure of inheritance taxation in the UK
Inheritance Tax is a tax on the estate (the property, money and possessions) of someone [who has] died.

There is normally no Inheritance Tax to pay if either:

- The value of [the] estate is below the £325,000 threshold
- you leave everything above the £325,000 threshold to your spouse, civil partner, a charity or a community amateur sports club

If the estate's value is below the threshold [one will] still need to report it to HMRC.
If [one] give[s] away [one's] home to [one's] children (including adopted, foster or stepchildren) or grandchildren [one's] threshold can increase to £500,000.

If [one is] married or in a civil partnership and [one's] estate is worth less than [one's] threshold, any unused threshold can be added to [one's] partner's threshold when [one] dies. This means their threshold can be as much as £1 million. The standard Inheritance Tax rate is 40%. [It is] only charged on the part of [one's] estate [that is] above the threshold.

Source: www.gov.uk/inheritance-tax

criticisms, a general sense that it is a "double tax" continues to haunt (Lee 2007). Additionally, increasing house prices, and evidence that wealth continues to concentrate, all contribute to the criticism that inheritance taxation fails to achieve its objectives (ibid.). Thus, although the tax remains, its future is by no means assured.

Inheritance taxation in Sweden

Whereas the previous section's review of UK inheritance taxation occurred in the light of Piketty's admiration for the quality of the political and philosophical discussion it has produced, this next section's analysis of Sweden occurs against a different backdrop – one of fame.[19] Sweden perhaps presents the model of the highly developed welfare state (Lindbom 2001). Taxation is crucial to that image; and thus the political discourse of tax reform in the United Kingdom often invokes the Swedish example.[20] It is not too much of an exaggeration to suggest that Piketty's proposal for a global tax on wealth feels like a Swedish idea. Certainly, the concept of deploying taxation as a tool either of redistribution or of economic rights appears to be an integral part of the social contract between voters and politicians in Sweden. In accordance with Dowding (2008) and Lindert (2004), it might be argued that the Swedish taxpayer in general has accepted high taxes on the basis that it provided those public and welfare goods that should benefit all citizens. Why, then, has the tax that might appear to be most justifiable on Piketty's morality continuum been repealed in Sweden? What sort of socio-political discourse preceded this? Why, conversely, has the inheritance tax, consistently at the centre of controversy, continued to persevere in the UK? The histories which are detailed below reveal that, in many key respects, the histories – embedded in continuing criticism – are quite similar.

It might be argued that the Swedish taxpayer in general has accepted high taxes on the basis that it provided those public and welfare goods that should benefit all citizens. Why, then, has the tax that might appear to be most justifiable on Piketty's morality continuum been repealed in Sweden?

*Inheritance **and** gift taxation*

The first Swedish inheritance and gift tax legislation was introduced in 1885. This was initially designed as an estate tax, where the size of the estate was used for determining the tax. However, from 1894 the inheritance tax was based on individual shares, rather than on the estate. Each beneficiary – heir or legatee – was taxed separately on the value of the property received from the deceased. In 1914 gift taxation was introduced with a primary objective of preventing avoidance through *inter vivos* transfers.[21]

In the early 20th century, tax rates were flat, and very low. At this point in time Swedish and British inheritance diverged substantially due to the different positions between the countries during the First World War. Whereas Sweden was a non-belligerent nation, the United Kingdom engaged in mass mobilisation. As a result, the top rate of inheritance taxation in Sweden was only 8% in 1920, while the corresponding figure for the United Kingdom was 40% (Scheve/Stasavage 2016: 82). In 1934, however, the Social Democratic government increased inheritance and gift tax rates, ultimately changing their role as a fiscal instrument. In the government bill introducing the rate change, Ernst Wigforss, the finance minister, argued that more revenue was needed to mitigate the effects of the ongoing economic depression. As revenue lagged behind economic growth, tax increases became necessary. Wigforss noted that while part of that increased tax burden already had been met by increases in income taxes and consumption taxes, a rise in inheritance and gift taxation remained necessary. He also argued that wealthier citizens should share their part of the increased tax burden that was necessary to deal with the crisis. The Social Democrats contended that the inheritance and gift taxation should be based on a progressive scale, wherein the amount taxed for the heir increased progressively with the size of the wealth inherited.[22]

The increased progressivity reflected a growing emphasis on equity and redistribution within tax policy, generally, as revenue was needed to cover the increase in public spending that had been developing since the 1930s.[23] This included not only the higher budget resources for active and interventionist macroeconomic policy, such as countercyclical and employment policy,

The Swedish inheritance and gift tax schedules, based on type of heir or beneficiary, in 1991.

Class I. Children, spouse, descendants

Taxable lot in Swedish Kronor		Tax SEK Percent
0 -	140,000	0 + 10
140,000 -	280,000	14,000 + 20
280,000 -	560,000	42,000 + 30
560,000 -	1,200,000	126,000 + 40
1,200,000 -	11,200,000	350,000 + 50
11,200,000 -		5,390,000 + 60

Class II. Brothers, sisters, parents and other heirs

Taxable lot in Swedish Kronor		Tax SEK Percent
0 -	35,000	0 + 15
35,000 -	70,000	5,250 + 25
70,000 -	140,000	14,000 + 35
140,000 -	280,000	38,500 + 45
280,000 -	2,800,000	101,500 + 55
2,800,000 -		1,487,500 + 65

Class III. Non-profit organizations

Taxable lot in Swedish Kronor		Tax SEK Percent
0 -	42,000	0 + 10
42,000 -	84,000	4,200 + 20
84,000 -		12,600 + 30

Basic exemptions in SEK for heirs and beneficiaries
Spouse: 280,000
Children: 70,000
Others: 21,000
Gifts: 10,000

Source: Du Rietz / Henrekson / Waldenström (2015): 47.

but, increasingly, greater tax revenue for the continued expansion of the welfare state, particularly universal social security and enhanced public services.[24]

Because the Social Democrats would have such long periods in government, this interpretation of the inheritance tax continued to dominate tax policy during the 20th century.[25] Box 2, which depicts the design of the Swedish inheritance and gift tax in 1991, is an illustration of the progressive structure of the inheritance tax and gift tax schedules within this Social Democratic tax policy. Both the tax bracket boundaries and the exemption rules reflect the original idea by Wigforss to transform the inheritance and gift taxes to a redistributive instrument in accordance with the ability-to-pay principle.

The Property Tax Commission

In January 2003 the Property Tax Commission published its first report on inheritance and gift tax, addressing inheritance between spouses specifically. As the government had waited until after the 2002 general election to appoint the members of parliament who were included in the commission, the first report was prepared at a relatively rapid pace. As such, its recommendations were simple and straightforward. The commission proposed that the government should entirely exempt inheritance tax for wealth inherited from a spouse.

This was a radical proposal for the time. The public justification was that an increase in taxation would force spouses who inherited the family home to sell this property, if they lacked capital or other assets to pay the inheritance tax. During this period, rising prices in the real estate market had led to an increase in taxation that was not matched by any corresponding increase in the home owners' incomes.[26]

In the period 1996–2001 the average value increase of a single family private home was 54%. The increase in city-regions such as Gothenburg and Stockholm was even more considerable: 63% and 99%, respectively.[27]

In October 2003 the government introduced a bill attempting to place the reforms suggested by the Property Tax Commission into law. It proposed that the inheritance tax on marital property would be abolished from 1 January 2004.[28] The bill passed in December 2003, with support from the Green Party and the Left Party. As part of the Parliamentary Tax Committee's report, members from both parties issued a statement of opinion (*särskilt yttrande*) in which they expressed their satisfaction with a repeal of inheritance tax between spouses, with the justification that this would benefit surviving spouses with low incomes, and houses that were likely to increase in value. The committee also apologised that the reform had taken so long to prepare. They suggested that it would have been preferable if the decision could have been implemented earlier in the year, but they had to accept the delay as part of their agreement with the Social Democrats (regarding the State budget and the related macroeconomic and fiscal policies).[29]

By 2003, debate about the future of the inheritance and gift tax evolved into one which focused wholly on tax competition, as a consequence of the government's interpretation of Sweden's position in relation to the policies of the European Union. In September of that year, the referendum on Swedish accession to the European Monetary Union (EMU), and the replacement of the Swedish Krona with the Euro, was held; and, the voters rejected Sweden's accession to EMU. The Social Democratic Prime Minister Göran Persson reacted to this outcome in his statement of government policy during the inauguration ceremony to the parliamentary session of 2003/2004. He declared that the fact that Sweden remained outside the Eurozone potentially could harm the Swedish economy and welfare state. As a consequence, compensatory macroeconomic policy measures needed to be devised, including revision of corporate and capital taxes to ensure that these did not diverge considerably from the economies within the Eurozone with which Swedish firms competed.[30] The prime minister's statement was a reflection of the close links the government had forged with the Confederation of Swedish Enterprise during the EMU campaign. Both the Social Democrats and the Confederation of Swedish Enterprise[31] were in favour of a Swedish accession to the EMU, and thus campaigned on a joint platform in the months leading up to the referendum.

Against this background, the government initiated "growth talks" (*tillväxtsamtal*) in the autumn of 2003. The Confederation of

Swedish Enterprise, the major labour unions and the associations representing the municipalities and county councils all were included. During these talks, the Confederation of Swedish Enterprise proposed a radical tax policy reform: the government would abolish inheritance, gift and wealth taxation if the employers agreed that this loss of revenue would be replaced by abolition of a tax credit related to employee benefits for the first five employees in every firm. This proposal was rejected.[32]

Even as the "growth talks", effectively, failed, several centrally placed stakeholders emerged in the aftermath. The Social Democrats and the Left Party indicated that they could agree on some kind of settlement. Within the private sector, the Confederation of Swedish Enterprise was the most important actor for the government to consider. Yet by the spring of 2004, it seemed that all actors remained uncertain about how to proceed. Media reports suggest that they adopted a "wait and see" strategy. The Confederation communicated that whilst they did not exclude any alternatives, they were not yet prepared to make any decisive commitments.[33]

In June 2004 the Property Tax Commission issued its second report on inheritance and gift tax. This report recommended several changes in the legislation, and proposed that intergenerational transfer of closely-held (non-public) family businesses should be exempt from inheritance tax. The gift tax for owners who chose to transfer such firms *inter vivos* also would be lowered from 30% to 15% of the net asset value (SOU 2004:66: 89-91). Additionally, gifts between spouses would be exempt from gift tax (ibid.: 18).

The Property Tax Commission worked towards achieving greater neutrality within the tax system, and towards correcting those distortions emanating from the many special incentives and exceptions that had been introduced over time. Two specific reforms were proposed (id.). First, the existing progressive inheritance and gift tax would be transformed to a proportional tax, where all subjects paid a 30% tax on inheritances or gifts. Second, it was proposed that the valuation rules, which varied according to the asset type under the current system, would be simplified. As a general rule, all assets and debts included in a bequest or gift would be valued at 50% of the market value. This would prevent strategies which focused on lowering the inheritance or gift tax by acquiring assets that had the lowest tax value. One example of this were shares quoted and valued on the different investment lists linked to the Stockholm stock exchange. According to the existing rules, such shares were subject to different inheritance and gift tax rates, depending on whether they were quoted on the "A" or "O" list. In turn, this meant that the owners of firms with shares quoted on the A list could move them to the O list in order to lower their tax. According to the Property Tax Commission, such strategies were considered to be unfair since they only benefited those groups who had access to tax planning (id.: 266-267; Swedish Parliament, Recording of Proceedings 2004/05:52 Thursday 16 December: 29).

Abolition and repeal

The publication of this report was the last major event that preceded the budget negotiations ahead of the State budget that would be introduced in the autumn of 2004. During these negotiations the Social Democrats, the Left Party and the Green Party agreed to abolish the inheritance and gift tax altogether. In the government bill, it was initially noted that the decision to repeal the inheritance and gift tax was a response to the criticism against it that had been voiced over the previous years. The arguments presented thus may be considered as a combination of those brought forward by the different actors dealing with inheritance and gift tax since the appointment of the Commission on Tax Mobility in 2000 (ibid.). The government noted that the inheritance and gift tax was considered to be unfair due to the extensive possibilities for avoiding taxation that existed for wealthy groups. In addition, the inheritance and gift tax gradually had targeted new groups of property owners and stock owners, which was perceived as an unwanted and negative effect.

> During budget negotiations in the autumn of 2004, the Social Democrats, the Left Party and the Green Party agreed to abolish the inheritance and gift tax altogether.

In practice, several of the arguments previously raised by the Left Party were used as a motivation for the repeal. These included the problems for surviving spouses in coping with increased inheritance tax due to the rising value of their real estate (which in fact had been addressed in 2003; id.). Additionally, however, and with an indirect reference to the private members' motion from the Left Party in 2001, the government emphasised the situation wherein increasing numbers of people had become active on the stock market, and the valuation issues that arose in connection with sudden shifts in the value of stocks after death (Government Bill 2004/05:25: 5).

From this perspective, it might be argued that a contributing factor behind the repeal of the inheritance tax was that it was becoming increasingly unpopular among taxpayers. A population survey of attitudes towards taxes in Sweden conducted in 2004 showed that close to two-thirds of the respondents wanted inheritance and gift taxes to be either reduced or removed altogether (Hammar et al. 2008). Contributing to this view was the fact that a growing percentage of middle-class heirs had to pay inheritance tax while legislative changes in the late 1990s combined with increasingly innovative strategies further enabled wealthy heirs to avoid the inheritance tax. This combination meant that the inheritance tax had started to lose its legitimacy among people because it became regarded as a voluntary tax for the very wealthy, while simultaneously hitting a large share of middle-class heirs (Henrekson/Waldenström 2016).

However, it must also be noted that the repeal was motivated, particularly, by the problems caused by inheritance taxation for intergenerational transfer of family businesses.[34] The criticism from the Property Tax Commission concerning valuation of shares and the related tax planning issues also was highlighted in this context. Surprisingly, a common understanding developed between the Confederation of Swedish Enterprise, the government and the Left Party regarding the significance of this argument, which is a very rare event in Swedish economic and political history. The Confederation of Swedish Enterprise, in a report for the Property Tax Commission, argued in support of a repeal of the inher-

> Around 140,000 firms faced the risk of a generational shift as many Swedish business owners were at least 50 years old. It was likely that those businesses would dissolve, as they would not be able to pay the gift and inheritance taxes as well as other, related taxes.

itance tax exclusively because of its impact upon family businesses (Government Bill 2004/05:25: 5).[35]

They urged that a repeal of the tax was becoming increasingly urgent, as many Swedish business owners were at least 50 years old. This meant that around 140,000 firms faced the risk of a generational shift. For a large majority of those firms, the existing inheritance and tax rules rendered intergenerational transfers uncertain. It was likely that those businesses would dissolve, as they would not be able to pay the gift and inheritance taxes as well as other, related taxes. The heirs who took over a family business would not only have to pay the inheritance tax, but also pay off the heirs who chose not to become partners in the business. Frequently, this forced heirs to sell part of the business in order to free up the necessary capital gains and dividends to fund such payments. This led to a further depletion of the business capital which ultimately threatened the existence of the firm. The Confederation also warned that an introduction of uniform and neutral rules for the valuation of shares proposed by the Property Tax Commission would increase the inheritance tax for those small businesses with a large degree of family ownership that were quoted outside the A list. This decision would affect the potential of many family businesses negatively as their future possibilities to attract capital would be constrained. This, in turn, threatened the overall prospects for growth and employment in the welfare state (Näringslivets Skattedelegation, Yttrande över betänkandet; SOU 2004:66, Egendomsskatter – Reform av arvs- och gåvoskatter: 2-3).
In the crucial parliamentary debate, Per Rosengren of the Left Party paid tribute to the role of small businesses in a growing economy. According to Rosengren, the repeal would not target traditional small businesses such as grocery stores or petrol stations which were protected by the exemption rules in the existing legislation. The general retail, wholesale and service level in the Swedish towns and cities would not have been threatened by a continued inheritance and gift tax. What Rosengren instead focused upon was comparatively larger, or growing, family businesses in the major cities, such as Stockholm, whose potential could be limited when owners used assets to pay inheritance tax, rather than invest them in order to expand. One case that was especially mentioned in this regard was a real estate developer in Stockholm who could have used the amount paid in inheritance tax to build 800–900 new apartments. Rosengren also noted that, since Stockholm was a substantial contributor to aggregate growth, it was in the national interest to support emerging actors in the advanced service sector such as consultancy firms (Swedish Parliament, Recording of Proceedings 2004/05:52 Thursday 16 December: 41).
It is obvious that changing attitudes towards the family business contributed to the repeal of the tax. The crucial issue became the intergenerational transfer, which was framed as a problem that threatened the potential contribution of family businesses to economic growth and the welfare state. During the years after 2000, the general tax situation of closely-held (non-public) firms was subject to several inquiries. These focused on the problem that such businesses may be regarded as a unit created to support a family, or an individual; and to accumulate individual or family wealth. Yet, as individual and business incomes are subject to different tax schedules, firm owners may be inclined to convert highly-taxed to low-taxed incomes/profits. It has therefore been necessary to control such tax planning through income-splitting within firms through legislation (Alstadsæter/Jacob 2012).
In 2006 the Social Democratic government introduced quite generous income-splitting rules for closed (non-public) corporations through a reform of the so called "3:12 rules". Through the introduction of a standard rule, a significant portion of the wage income became subject to a reduced capital tax – 20% instead of 30% (which is the standard capital income tax) (Lodin 2011; Government Bill 2005/06:40). From this perspective it appears that, as the family business became increasingly recognised within economic policy and tax policy, the perceived legitimacy of inheritance and gift taxation decreased even further. The interpretation of the family firm as a tax subject shifted drastically as efficiency arguments replaced equity arguments. The repeal of the inheritance and gift tax thus evolved into a crucial measure in the ongoing policy shift towards small businesses. The tax thus was repealed, and no serious discussion relating to its resurrection exists in Sweden today.

Inherited wealth on a (comparative) moral continuum

One commonality of the histories of inheritance taxation in the United Kingdom and Sweden is concern over a tax which is perceived as easily avoided. In the UK, anti-avoidance was a primary motivation behind the introduction of the Capital Transfer Tax.[36] In Sweden, the 2000 Commission on Tax Mobility noted a similar concern; and, in particular, identified the impact of inheritance taxation on small family businesses. This development largely has not captured the modern, public discourse surrounding inheritance taxation in the UK,[37] which until recently has been focused on geographic inequity, and the value (monetary, and otherwise) of the family home (Rowlingson 2012).

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In the UK, by far the most valuable asset that many people will own is their family home, which also is the case in Sweden. The likelihood that the value of the home will meet the UK's £325,000 pound threshold for inheritance taxation depends very much on where one lives. Persons living in the South East of England (and, in particular, anywhere near London) are far more likely to own a home which exceeds the value of the threshold (Seely 2018). The sense of inequity thus may be felt by persons in the South East of England who must pay the tax, compared to persons who live in other parts of the country. A reason behind this may be class identification. Simply because one lives in a home in South East England, it does not follow that one will not consider oneself to be "working class" (ibid.: 18). Inheritance taxation is perceived in the UK to be a tax for persons who have grand "estates" – not for a grandmother whose terraced house exists in an area that was working-class during her youth, but now has been gentrified due to its proximity to London.[38]
The Swedish focus on family businesses is an interesting point of cultural comparison, and is also a focus which may well travel to find a home in UK discourse. The question will be whether

small businesses manage to capture the focus of the discussion. By way of comparison, Freedman has argued convincingly that small businesses generally are neglected by tax and other legal frameworks in the UK (1994).

How a tax is perceived matters, in any country. It was Adam Smith who perhaps first argued that the tax system must be perceived to be fair, otherwise, the temptation to resist compliance would grow (Smith/McCulloch 1838)[39] And, indeed, it was the pursuit of fairness that influenced Sweden's decision to repeal a tax with high levels of avoidance. Similarly, in the UK, this pursuit influenced the shift to the Capital Transfer Tax in the mid-1980s. The principle of ability to pay also is significant, as it drove the expansion of the UK's Estate Duty for almost a century, even as it (generations later) fired concerns about the impact of inheritance taxation on small family businesses in Sweden.

> Piketty urges us to remember that "without taxes, society has no common destiny."

What is the significance of these commonalities of experience in the modern, post-Piketty era? The foundation of Piketty's thesis is that capital should not increase at a rate that is greater than economic output within the context of a system of legal rules (but cf. Murphy 2015: 613). He urges us to remember that "without taxes, society has no common destiny," and his proposal of a global tax on capital is a facet of this (2017: 493). He is arguing against the unfettered growth of the accumulation of capital, and in favour of the deployment of taxation as a tool to achieve this. And yet the comparative consideration of aspects of the taxation of inherited wealth in the UK and Sweden has demonstrated that perhaps the most significant commonality is that inheritance taxation laws can have fraught existences.

The coalition agreement by the Social Democrats, the Left Party and the Green Party in Sweden in 2004, supporting the abolition of inheritance taxation, is very evocative of the Conservative Party/ Liberal Democrat coalition formed six years later in the UK – with a key distinction: in order to form the coalition, and thus enter power, the leader of the Conservatives, David Cameron, was forced to abandon his promise to raise the inheritance taxation threshold to 1 million pounds.[40] The post-Recession economy of 2010, of course, was very different to the conditions which supported the Swedish coalition agreement of 2004, so it may have been that such an agreement would have been impossible, at that point, in many countries. The price of the UK Liberal Democrats' agreement was the introduction of policies of "workfare" and austerity (MacLeavy 2011). From different narratives, however, one can discern a common tax principle. The consideration of the "ability to pay" principle, in both countries, wavered in a confrontation with a new taxpayer: in Sweden, the "family business" emerged, in some ways, as a singular taxpayer with ambitions unto itself; and, in the UK, the recession-hit middle-income taxpayer prompted a complicated set of discussions.

Given that in Sweden, of course, taxation of inherited wealth was abolished – what, then, of these oddly parallel histories, with disparate outcomes, can be preserved for a discussion of principles, and Piketty? In both countries, the volatility of income (compared with capital) has produced volatile political responses, with more attention perhaps paid to the political power of tax than its capacity to effect social and economic change. Given the global reputation of Swedish taxation, the answer to the question "inherited taxation has been abolished in either the United Kingdom, or Sweden: guess which?", would, perhaps instinctively for the uninformed, be: Sweden. An argument for an opponent of inheritance taxation in the United Kingdom thus might run: taxing inherited wealth is such a bad idea, even Sweden has abandoned it.[41]

The retort to this argument is that consideration of the fragile histories of this tax in these two countries in some ways reduces the importance of repeal/persistence within these histories. Inheritance taxation appears quite fragile. Indeed, if the recession of 2008 had not occurred, perhaps inheritance taxation would have been repealed in the UK as well. If voting demographics had tended towards younger persons, as opposed to fifty-somethings, at pivotal moments in the Swedish history, perhaps the tax would have survived. Indeed, if, as in the UK, there had been a long existing exemption for spousal transfers in Sweden in 2003, then the domino effect of its repeal in the following year would never have occurred. With a fragile tax, any change can be important.

> Inheritance taxation appears quite fragile. Indeed, if the recession of 2008 had not occurred, perhaps inheritance taxation would have been repealed in the UK as well. If voting demographics had tended towards younger persons, as opposed to fifty-somethings, at pivotal moments in the Swedish history, perhaps the tax would have survived. If there had been a existing exemption for spousal transfers in Sweden, then its repeal in 2004 would never have occurred. With a fragile tax, any change can be important.

It is the points of convergence in these histories that are remarkable. Both countries have found that reform has been driven by taxation of specific classes of taxpayers – those with small family businesses, farmers, families inheriting a family home, etc. – who are perceived as uniquely disadvantaged by a tax on capital.

In Piketty's *Capital*, the classes are drawn along much broader lines: those with income from capital, and those without. Yet this article has demonstrated that, in the United Kingdom and in Sweden, lines such as these are drawn, in the sphere of public discourse, at levels of detail with much finer granularity. The question is not, thus: how are citizens with income from earnings treated as compared to those with income from capital? Rather, the question is: what about the small business person, the person who inherits grandmother's house, farmers, and more?

Conclusion

With inheritance taxation, benchmarks for social justice are pursued in concrete, quantifiable ways (Light 2005: 1647). Simply because the tax is abandoned, however, it does not follow that social justice has been abandoned – rather, different benchmarks come to the fore. The comparison in this article revealed similarities between the United Kingdom and Sweden, in the context of the challenges posed by persistent avoidance of inheritance taxation, and, yet, severe consequences for those unable to avoid the tax. It also revealed differences, perhaps most notably the point that the UK's focus on the language (estate/heir/capital transfer/ inheritance) of the tax appears not to be matched significantly within the modern Swedish history. Ultimately, this article sought to investigate: what is it about inheritance tax that makes the question of economic rights and distributive justice one on

which it remains difficult to reach and then to maintain social consensus? Comparison of two, different jurisdictions reveals an answer to this. The analysis here has revealed that the manner in which countries may organise taxes to respond to persistent inequalities in wealth may be more likely to represent collective responses to the challenges of *individual* taxpayers, and less likely to focus upon systematic responses to inequities in distribution of wealth.[42] Given this, perhaps it is not surprising that the response to Piketty's "call to tax" has been diverse: perhaps each reaction considers a different type of taxpayer who may be impacted by it. Indeed, the failure to realise which taxpayer a critic of the tax has in mind, as the histories of the UK and Sweden attest, may have significant consequences for the tax itself.

Notes

1 Thomas Piketty (1971–), professor of economics at the School for Advanced Studies in the Social Sciences (EHESS), whose book Capital in the Twenty-First Century (2013; 2014 (Engl. Transl.), Harvard) is the best-selling academic book ever published by Harvard University Press.

2 Jens Beckert (1967–), Professor of Sociology at the Max Planck Institute for the Study of Social Sciences in Cologne, and author of the highly influential Inherited Wealth (2004; 2008 (Engl. Transl.), Princeton).

3 Notably, the OECD have recommended inheritance taxation as a possible way forward in the effort to redress global wealth inequality. The Guardian 12 April 2018; OECD 2018. In the United Kingdom, in particular, the IFS has emphasised the growing inequality in parental wealth, suggesting that inequality of inheritance is a challenge for intergenerational equity (Bourquin et al 2020).

4 Beckert famously explained that "inheritance as a social problem emerges only when property rights are individualized and a purely family-based understanding of private property is transcended" (2008: 2-3). He was speaking of the transformation of the family unit, such that a member's death meant only that one no longer "shared" in the property, but no property was transferred outside of the unit, to individualised processes of "acquisition" (ibid.: 3).

5 This review primarily focuses on the individual taxpayer and does not consider the impact of inheritance taxation on choices made within the corporate structure. For a thorough analysis of this, see Cheffins 2007.

6 For further readings on the normative underpinnings of inherited wealth, see, inter alia, Halliday 2018: 74-95, exploring the connections between inheritance and understandings of luck; Halliday 2013, exploring whether inheritance taxation may be one of the least restrictive controls on inherited wealth, and thus may have much to recommend it; Pedersen 2018, providing a useful survey of common normative claims in inherited wealth; and White 2008, for an exploration of the common arguments against inheritance taxation.

7 Note 3, supra.

8 Sandford, describing the ambitions of Harcourt (1968: 11).

9 Ibid.: 10, citing The Economist, 21 April 1894, 476. Pitt's proposal during this period to introduce an additional tax on capital was attacked on the basis that taxes on property would threaten the freedom to own land (Daunton 2007: 226).

10 For criticism of the equality of opportunity argument, see, generally, Duff 1993: 49.

11 The promise to "tax the rich until the pips squeak" is often associated with the introduction of CTT (N.A., "Making the Pips Squeak: And a Lot Else Besides" 1975: 5). The Diamond Commission on the Redistribution of Wealth was established by the Labour Party in 1974, although, as Sandford emphasised, the government's commitment to CTT preceded the establishment of the Commission (1980: 292). He speculated: "However, if the Diamond Commission had no influence on the legislation introducing Capital Transfer Tax… perhaps they affected the modifications…?" (ibid.).

12 "There is no present requirement under the Treaties of the Community to harmonise death duties, but it is recognised that as the years go by, it will be increasingly difficult to subject a man who dies in the UK to a significantly different death duty regime from a man who dies in another EEC country. The basis of death duties in the EEC is the inheritance tax; the general principle is that tax on the transfer of estate to close relatives is relatively light" (ibid.; emphasis added).

13 The treatment of lifetime transfers, however, was significantly less generous under the Capital Transfer Tax than that under Estate Duty. (Wilson 1975: 77-78)

14 Reliefs for agriculture gradually were introduced, however, particularly in 1976 (N.A. 1976: 146-148). Wilson wrote that "[t]here are important reliefs for agricultural property and woodlands…but they are hedged round with conditions to prevent them enuring for the benefit of 'deathbed purchasers'" (Wilson 1975: 78). The Finance Act 1976 tried to redress this, and aimed to simplify and enhance reliefs for agricultural land (Peters and Eckford 1977: 218). Nonetheless, dissatisfaction with the tax remained, perhaps because of the sentiment that "[t]o claim, however, that a tax burden is lower than it might have been can hardly be said to advance the argument very far, particularly when the comparative ease of completely avoiding estate duty is remembered" (ibid.: 224). There is a case for suggesting that the long shadow cast by the (almost) century-long endurance of Estate Duty rendered any tax which followed it at risk.

15"…the Finance Bill had been preceded by a White paper on the tax published in August 1974; and the tax had to some extent been in force since March 26, 1974" (Wilson 1975: 73). This is because CTT had been "[e]ffective March 26, 1974, for lifetime gifts, and March 12, 1975, for transfers at death…" (Meyer 1978: 8). The transition to this new regime was not without difficulty and anomalous results, as a satirical account of a (fictional) case involving "Lucky" and his "reviving" domicile of choice attested. See Flesch 1980: 366. Finally, a proposal to introduce a wealth tax was included in the 1974 proposals (see Verbit 1980: 27-28, citing "Wealth Tax", Cmnd 5704 (1974)), which, in the end, was not enacted.

16 See discussion in Ashton 1978.

17 www.gov.uk/government/consultations/inheritance-tax-review-call-for-evidence-and-survey (last accessed 5 June 2019).

18 Consider, for example, David Cameron's rhetoric in a televised debate prior to the 2010 UK general election, in which he characterised inheritance tax as anti-work and saving, quite the contrast with the earlier claims attributed to Churchill. http://news.bbc.co.uk/2/shared/bsp/hi/pdfs/30_04_10_finaldebate.pdf (last accessed 22 October 2020).

19 "Everyone knows that Swedes pay a lot of tax; Sweden is as noted for its high personal taxes as it is for IKEA furniture and

ABBA." Why are Swedes OK with paying taxes? The Official Website of Sweden. https://sweden.se/society/why-swedes-are-okay-with-paying-taxes (accessed 19 November 2018).
20 Author's observation. In her experience of attending events in Parliament, the phrase "we cannot have a Swedish style welfare state with an American style tax system" is often repeated by (Labour) Members of Parliament.
21 Asa Gunnarsson, Skatterättvisa (Iustus förlag 1995), 221-222; Gunnar Du Rietz, Magnus Henrekson and Daniel Waldenström, Swedish Inheritance and Gift Taxation (1885–2004) (2015).
22 Government Bill 34/1933.
23 This approach could be described as "egalitarian liberalism" (Sampford 1991: 57).
24 Cf. Gunnarsson, Skatterättvisa, 190-191; Enrique Rodriguez and Den offentliga sektorns expansion, Offentlig inkomstexpansion : en analys av drivkrafterna bakom de offentliga inkomsternas utveckling i Sverige under 1900-talet (The expansion of public income: an analysis of the major forces underlying the development of public income in Sweden in the twentieth century), LiberLäromedel/Gleerup 1980, 201-204.
25 During the examined time period, the Social Democrats were in government office during the periods 1932-1976, 1982-1991, and 1994-2006
26 SOU 2003:3, 34-35.
27 SOU 2004:36, 26.
28 Government Bill 2003/04:15.
29 Swedish Parliament, Report from the Parliamentary Tax Committee 2003/04:SKU7, 9.
30 Swedish Government Offices, Statement of Government Policy 16/9 2003.
31 The Confederation of Swedish Enterprise is the Swedish business peak association and, as such, it represented both the general interest group for Swedish businesses and the main employers' organisation.
32 The concerns focused on the impact of the proposals on small businesses. Erik Fichtelius, Aldrig ensam alltid ensam. Samtalen med Göran Persson 1996-2006 (Norstedts 2007), 226-234.
33 See Mattias Håkansson, Egentligen borde förmögenhetsskatten bort (Flamman. 26 March. 2004); Åsa Brevinge, De skarpa förslagen dröjer. (Göteborgs-Posten. 27 March. 2004); Tidningarnas Telegrambyrå, Förmögenhetsskatten kommer att reformeras (2004); and, Nyhetsbyrån Direkt Nyhetsbyrån Direkt, Experter tror inte på sänkt skatt (2004).
34 The experience of Sweden in 2004 is evocative of Piketty's description of the evolution of inheritance taxation in France during the Third Republic, when "[m]any felt that it was a 'sacred duty' to ensure that 'a son would succeed his father,' thereby perpetuating the family property, and that such straightforward perpetuation should not incur a tax of any kind" (Piketty 2017: 664).
35 The concern reflected classic debates over taxation and equality of impact, on which see O'Kelley 1981: 13.
36 "[CTT]… is designed explicitly to tax the rich in a way they cannot avoid…" (N.A. 1975: Making the Pips Squeak: And a Lot Else Besides, Fortnight (101): 5-6).
37 The Business Property Relief has been designed to protect families from being forced to sell inherited businesses to pay tax. See Inheritance Tax Act 1984, Part V, Ch.1. This recently has come under attack as a too-generous form of relief, particularly given their interaction with Alternative Investment Market (AIM) investment funds (BPR extends to certain shares of companies listed on the AIM, where the shares have been held for more than two years). Lucy Warwick-Ching, "Is it time to reform inheritance tax?" (27 April 2018), Financial Times, www.ft.com/content/d38fb112-46df-11e8-8ee8-cae73aab7ccb (accessed 15 November 2018).
38 See also Asa Bennett, "Why everyone hates inheritance tax, even if they'll never pay it" (11 April 2016), The Telegraph, Opinion, www.telegraph.co.uk/opinion/2016/04/11/why-everyone-hates-inheritance-tax-even-if-theyll-never-pay-it (accessed 15 November 2018), arguing that "New Labour strategist Philip Gould…said the policy [in 1992, of introducing a new top rate of income tax] proved the party had 'failed to understand that the old working class was becoming a new middle class: aspiring, consuming, choosing what's best for their families.'"
39 "The tax which each individual is bound to pay ought to be certain, and not arbitrary. The time of payment, the manner of payment, the quantity to be paid, ought all to be clear and plain to the contributor, and to every other person." (Book V, ch.2, 1838).
40 "David Cameron sacrifices inheritance tax policy to win Liberal Democrat Deal," The Guardian (11 May 2010) www.theguardian.com/politics/2010/may/11/coalition-government-conservatives-lib-dem (accessed 24 May 2018).
41 Or, perhaps, that equality of income and wealth is desirable, but not necessary – in a repudiation of the Rawlsian position (1968: 53-54).
42 The conventional, normative tax discourse thus may be outdated, as Halliday argues (ch.8, 2018). Ultimately, we submit, the inheritance tax base is diverse. Piketty's call for a global tax, by contrast, may be grounded in an idea of capital as monolithic, and unconnected from the possibility of subsets of taxpayers, and subsets of taxpayer cultures.

References

Alstadsæter, Annette / Jacob, Martin (2012): Income shifting in Sweden: An Empirical Evaluation of the 3:12 rules, Swedish Ministry of Finance.

Ashton, Raymond K. (1978): Taxation and the Small Business Sector, with Special Reference to the Capital Transfer Tax. In: British Tax Review, 1978 (1), 30-46.

Beckert, Jens (2008): Inherited wealth. Princeton: Princeton University Press.

Bourquin, Pascale / Joyce, Robert / Sturrock, David (2020): Inheritances and inequality within generations. The Institute for Fiscal Studies. https://ifs.org.uk/publications/14949. Viewed 22 October 2020.

Cheffins, Brian R. / Bank, Steven A. (2007): Corporate Ownership and Control in the UK: The Tax Dimension. In: Modern Law Review, 70 (5), 778-811.

Cover, Robert M. (1983): The Supreme Court, 1982 Term. Foreword: Nomos and Narrative. In: Harvard Law Review, 97 (4), 4-68.

Cretney, Stephan. M. (1973): An Inheritance Tax. In: Modern Law Review, 36 (3), 284-287.

Culp Jr, Jerome M. (1997): Latinos, Blacks and Others and the New Legal Narrative. In: Harvard Latino Law Review, 2, 479-482.

Daunton, Martin (2007): Trusting Leviathan: The Politics of Taxation in Britain, 1799-1914. Cambridge: Cambridge University Press.

Davies, Alun G. (1972): Fiscal Revolution in the United Kingdom. In: Tax Executive, 25 (2), 77-88.

Dobris, Joel C. (1984): Marshalling the Arguments in Favour of Abolishing the Capital Transfer Tax. In: British Tax Review, 1984 (6), 363-378.

Dowding, Keith (2008): Why are Inheritance Taxes Unpopular? In: The Political Quarterly, 79 (2), 179–183.

Du Rietz, Gunnar / Henrekson, Magnus / Waldenström, Daniel (2015): Swedish Inheritance and Gift Taxation (1885–2004). IFN Working Paper No. 936. Stockholm: Swedish Research Institute of Industrial Economics.

Duff, David G. (1993): Taxing inherited wealth: philosophical argument. In: Canadian Journal of Law and Jurisprudence, 6 (1), 3-62.

Evans, Christopher (2008): Containing Tax Avoidance: Anti-Avoidance Strategies. Paper presented at the Musgrave Memorial Colloquium. Sydney. http://www.austlii.edu.au/au/journals/UNSWLRS/2008/40.html. Viewed 04 November 2020.

Farber, Daniel A. / Sherry, Suzanna (1995): Is the Radical Critique of Merit Antisemitic? In: California Law Review, 83 (3), 479-482.

Farber, Daniel A. / Sherry, Suzanna (1993): Telling Stories Out of School: An Essay on Legal Narratives, In: Stanford Law Review, 45 (4), 807-855.

Flesch, Michael (1980): Misleading Tax Cases – Absolutely No Capital Transfer Tax. In: British Tax Review, 1980 (4), 366-372.

Freedman, Judith (2003): Small business taxation: Policy issues and the UK. In: Warren, Neil (ed.): Taxing Small Business: Developing Good Tax Policies, Sydney: Australian Tax Research Foundation, 13-43.

Freedman, Judith (1994): Small Businesses and the Corporate Form: Burden or Privilege? In: Modern Law Review, 57 (4), 555-587.

Halliday, Daniel (2018): The inheritance of wealth: Justice, equality, and the right to bequeath. Oxford: Oxford University Press.

Halliday, Daniel (2013): Is Inheritance Morally Distinctive? In: Law and Philosophy, 32 (5), 619–644.

Hammar, Henrik / Jagers, Sverker C. / Nordblom, Katarina (2008): Attitudes towards Tax Levels: A Multi-Tax Comparison. In: Fiscal Studies, 29 (4), 523–543.

Henrekson, Magnus / Waldenström, Daniel (2016): Inheritance Taxation in Sweden, 1885–2004: The Role of Ideology, Family Firms and Tax Avoidance. In: Economic History Review, 69 (4), 1228-1254.

Jenkins, Roy (1998): The Chancellors. London: Macmillan.

Lee, Natalie (2007): Inheritance tax – an equitable tax no longer: time for abolition? In: Legal Studies, 27 (4), 678-708.

Light, Donald W. (2005): Contributing to Scholarship and Theory through Public Sociology. In: Social Forces, 83 (4), 1647-1653.

Lindbom, Anders (2001): Dismantling the social democratic welfare model? Has the Swedish welfare state lost its defining characteristics? In: Scandinavian Political Studies, 24 (3): 171-193.

Lindert, Peter (2004): Growing Public: Social Spending and Economic Growth since the Eighteenth Century. Cambridge: Cambridge University Press.

Lodin, Sven-Olof (2011): The making of tax law: the development of the Swedish tax system. Uppsala: Iustus förlag.

MacLeavy, Julie (2011): A “new politics” of austerity, workfare and gender? The UK coalition government's welfare reform proposals. In: Cambridge Journal of Regions, Economy and Society, 4 (3), 355-367.

Maudsley, Ronald (1975): The British Capital Transfer Tax, In: San Diego Law Review, 13 (4), 779-803.

Meyer, Charles H. (1978): Wealth Transfer Taxation: A Comparison of the Approaches in the United States and the United Kingdom. In: New York University Journal of International Law & Policy, 11 (1), 1-92.

Murphy, Liam (2015): Why Does Inequality Matter: Reflections on the Political Morality of Piketty’s Capital Twenty-First Century. In: Tax Law Review, 68 (3), 613-630.

N.A. (1976): Finance Bill Notes. In: British Tax Review, 1976 (3), 133-165.

N.A. (1975): Making the Pips Squeak: And a Lot Else Besides. In: Fortnight, No. 101, 5-6.

OECD (2018): The Role and Design of Net Wealth Taxes in the OECD. OECD Tax Policy Studies, No. 26, Paris: OECD Publishing.

O'Kelley, Charles (1981): Rawls, justice, and the income tax. In: Georgia Law Review, 16 (1), 1-32.

Pedersen, Jørgen (2018): Just inheritance taxation. In: Philosophy Compass, 13 (4), e12491.

Peters, G. H. / Eckford, J. C. (1977): Capital Transfer Tax and the Small Business – The Case of Agriculture. In: British Tax Review, 1977 (4), 215-235.

Piketty, Thomas (2017): Capital in the Twenty-First Century. Cambridge: Harvard University Press.

Rawls, John (1968): Distributive Justice: Some Addenda. In: Natural Law Forum, 13 (1), 51-71.

Rowlingson, Karen (2012): Policy Commission on the Distribution of Wealth – Wealth inequality: key facts. Birmingham: University of Birmingham.

Sampford, Charles (1991): Dworkin's claim to socialist inheritance. In: Bulletin of the Australian Society of Legal Philosophy, 16 (1), 37-70.

Sandford, Cedric T. (1980): The Diamond Commission and the Redistribution of Wealth. In: British Journal of Law and Society, 7 (2): 286-296.

Sandford, Cedric T. (1968): Estate Duty versus Inheritance Taxation 1894. In: British Tax Review, 1968 (1), 10-17.

Scheve, Kenneth / Stasavage, David (2016): Taxing the Rich: A History of Fiscal Fairness in the United States and Europe. Princeton: Princeton University Press.

Seely, Antony (30 April 2018). Inheritance Tax. In: Briefing paper. House of Commons.

Sherwin, Richard K. (1988): A Master of Voice and Plot: Belief and Suspicion in Legal Storytelling. In: Michigan Law Review, 87 (3), 543-612.

Smith, Adam / McCulloch, John R. (1838): An Inquiry into the Nature and Causes of the Wealth of Nations. London: A. and C. Black & W. Tait.

The Guardian (12 Apr. 2018): Use inheritance tax to tackle inequality of wealth, says OECD. In: The Guardian. https://www.theguardian.com/inequality/2018/apr/12/use-inheritance-tax-to-tackle-inequality-of-wealth-says-oecd. Viewed 15 November 2018.

Verbit, Gilbert P. (1980): Taxing Wealth: Recent Proposals from the United States, France, and the United Kingdom. In: Boston University Law Review, 60 (1), 1-45.

Wheatcroft, George S.A. (1974): First Thoughts on the Capital Transfer Tax. In: British Tax Review, 1974 (5), 265-281.

White, Stuart (2008): What (if Anything) is Wrong with Inheritance Tax? In: The Political Quarterly, 79 (2), 162–171.

White, Stuart (2003): The civic minimum: On the rights and obligations of economic citizenship. Oxford: Oxford University Press on Demand.

Wilson, Hilda (1975): Capital Transfer Tax – A Panoramic View. In: British Tax Review, 1975 (2), 73-78.

Winter, Steven L. (1989): The Cognitive Dimension of the Agon between Legal Power and Narrative Meaning. In: Michigan Law Review, 87 (8), 2225-2279.

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Inheritances and gifts: Possibilities for a fair taxation of intergenerational capital transfers

by Johannes Stößel, Julian Schneidereit and Sonja Stockburger

Abstract: In Germany, transfers of assets between generations are subject to inheritance and gift tax.[1] *However, there are different views on whether or not the present level of taxation is high enough. Our study looks at the potential for applying increases. We show that the constitutional framework does indeed allow for higher taxation in the case of intergenerational property transfers. We identify the essential points in current German inheritance and gift tax law, which make it possible to transfer large assets with no or low inheritance tax burden. For these points as well as the determination of tax rates, we propose reform approaches and present options for the use of possible additional income.*

Keywords: *Inheritance and gift tax; Intergenerational property transfers; Fair taxation*

Legitimacy and the necessity of reforming the taxation of intergenerational capital transfers

Wealth transfers between generations can have implications for both intergenerational and intragenerational justice. Such transfers may replicate or strengthen wealth inequalities and thus an unequal distribution of wealth may endure from one generation to the next. There are various positions as to whether such unequal distribution of wealth is permissible (e.g. Osterloh-Konrad 2017: 310-319; Rawls 1970; Dworkin 2000; Piketty 2020; Nozick 1974; Murphy/Nagel 2002). The possible effects of the unequal distribution of wealth, for example on health, political participation, social mobility, education, economic growth and social cohesion (e.g. Stiglitz 2012; OECD 2015; Osterloh-Konrad 2017: 310; WSI Distribution Monitor 2016: 19; Lampert et al. 2005: 7; Fratzscher 2016: 117 ff.; Öchsner 2016; Piketty 2020: 1198; Cingano 2014; Murphy 2015: 615; Nagel 2009: 117-118; Fratscher 2016: 91-92) can, in our view, be assessed as socially negative and unfair. Furthermore, we consider this to be a violation of equal opportunities, which are necessary within a well-functioning meritocracy. If this view is followed, the intergenerational transfer of wealth offers one of many possible starting points for using taxation to mitigate the prolonged unequal distribution of wealth and make a contribution to reallocation. This can be achieved by inheritance and gift tax. On the one hand, large assets may be reduced by tax at the time of transfer. On the other hand, tax revenues in particular can be used to mitigate wealth inequality and social injustices or a resulting lack of equal opportunities. From the point of view of intergenerational justice, an increased inheritance tax could also be justified by helping to hold the national debt at a moderate level for future generations. We start by setting out the constitutional limits of an inheritance and gift tax burden in Germany. Based on this, the most important components of current inheritance and gift tax law that prevent effective or higher taxation are shown and reform approaches are proposed.

> The intergenerational transfer of wealth offers one of many possible starting points for using taxation to mitigate the prolonged unequal distribution of wealth and make a contribution to reallocation.

If a view is taken that unequal distribution with its consequences has to be accepted, or if inheritance and gift tax is considered as the wrong starting point for a more comprehensive intervention (e.g. Birk 2005: 348; Eckhoff 2016: 224), then we consider there to be two reasonable options for the taxation of intergenerational asset transfers. Due to the high degree of complexity as well as regular constitutional criticism coupled with the relatively (very) low[2] tax revenue, inheritance and gift tax should either be abolished or, in the case of low tax rates, significantly simplified (as a proposal for this, see Kirchhof 2011: 582 ff.).

Constitutional framework of inheritance and gift tax

General information

Any (tax) legislation is bound by the constitutional order (Article 20 (3), Basic Law). In this context, the German Basic Law (Grundgesetz/GG), which came into force on 23 May 1949, sets the benchmark and basis for the legality of parliamentary laws which have been adopted, hence forming the cornerstone and framework for all positive law. Accordingly, tax law science can to a large extent be regarded as constitutional law science (cf. Seer 2018: §1 Rz. 3). Whatever objectives are pursued in the context of tax policy decisions, the constitutional basis thus always remains the same and must inevitably be considered.

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If a reformed inheritance and gift tax system wants to accord with legal requirements, it is above all necessary to analyse judgements explicitly declaring the *Erbschaftsteuer- und Schenkungsteuergesetz*, or ErbStG (German inheritance and gift tax law), as unconstitutional.[3] Specifically, this must be done so as to fulfil demands made by the *Bundesverfassungsgericht*, or BVerfG (German Federal Constitutional Court), for an inheritance and gift tax law that conforms with the Basic Law. As described earlier, this is one of the highest premises of tax law science, since above all the basic rights (Article 1 to Article 19, Basic Law), which are provided with the so-called eternity clause, must be regarded as an institution of legislation which cannot become subject to reform. In addition to the judgements mentioned above, even though in-

heritance and gift tax law has been featured in several decisions by the Federal Constitutional Court,[4] it is nevertheless the three explicitly mentioned rulings (see endnote 3) that define constitutional requirements and thus the scope for a new inheritance and gift tax system. Hence, in what follows these three relevant judgements (with corresponding references to further jurisprudence) are placed in a logical context so as to deduce the lines of argumentation developed by the constitutional judges. The aim here is to create the constitutional prerequisites for an inheritance and gift tax system that optimally bridges the gap between principles that the authors believe to be decisive for inheritance and gift tax law within the framework set by the BVerfG. As mentioned earlier, these are: (1) the principle of taxation on the basis of ability-to-pay (derived from the principle of equality (Article 3, Basic Law)); (2) the family principle (Article 6, Basic Law); (3) the protection of property and the right of inheritance (Article 14, Basic Law); and (4) the welfare state principle (Article 20 (1), Basic Law).

Three rulings define constitutional principles and thus the scope for a new inheritance and gift tax system. The principles are: (1) taxation on the basis of ability-to-pay; (2) the family principle; (3) the protection of property and the right of inheritance; (4) the welfare state principle.

Inheritance law and tax rate

Article 14, Basic Law provides a constitutional guarantee for the right to inherit. This principle, which is fundamental to inheritance law, also directly affects inheritance and gift tax law due to the fact that inheritance law is authoritative for inheritance and gift tax law. Article 14, Basic Law implies that it is possible to deduce from the right "to inherit something" that a complete "taxing away" of the inheritance cannot be permissible. The BVerfG itself deals with this Article exclusively in the first decisions from 1995 mentioned above. However, it is only in an abstract formulation that the limit of tax access is where an "excessive burden" occurs and the "accrued assets would be fundamentally impaired".[5] This is followed by the concrete formulation that the "tax burden must not make the inheritance appear economically senseless from the point of view of an economically thinking owner."[6] This chain of unspecific formulations leaves things open as to where exactly a constitutional maximum limit for inheritance tax rates lies.

Based on the considerations above, it can thus be concluded that no concrete limitation of the tax rate can be ascertained from Article 14, which explicitly concerns inheritance tax law, unless the inheritance is fully "taxed away". This is also reflected in the jurisprudence. Thus, the BVerfG considered a tax burden of 62% not to be unconstitutional, just as the German Federal Court of Finance (BFH) did not consider a tax burden of almost 70% to have a "strangling" effect.[7] If the inheritance tax burden is considered in isolation, this represents an incomplete recording. If, under the current system, a sale is made later than five years[8] after the transfer date relevant for inheritance tax, this may possibly result in a (substantial) double burden of inheritance and income tax (Stahl 2011: §35b EStG Rz. 10). Thus, a reformed inheritance tax system must also take into account interdependencies between income tax and inheritance tax. In this respect, the Federal Court of Finance grants a certain leeway in regard to its rulings on the latter. For example, in a ruling of 17 February 2010, the second senate[9] considered a burden of 33% inheritance tax and subsequently 46% income tax to be "no confiscatory"[10] burden.[11] Against the background of a maximum constitutional burden which is not explicitly specified, Articles 3, 6 and 20 of the Basic Law mentioned above are now becoming relevant when considering to what extent their partly conflicting and partly harmonising principles can create a framework for a constitutional and universally acceptable inheritance tax system.

Justification and necessity for tax exemptions: Basic information

The basic principle of Germany's tax system, taxation on the basis of ability to pay, is derived from Article 3 (1) of the Basic Law and can also readily be seen in the context of inheritance tax law. The only people to be taxed are those who actually have an increase in financial capacity through an inheritance or gifts. Moreover, this gain in financial capacity is taxed based on progressive tax rates.[12] However, in addition to taxation according to financial capacity, fulfilling the principle of equality (Article 3, Basic Law) also requires consideration being given to the general public and overall uniformity. Thus, tax has to be levied irrespective of characteristics such as origin, religion, profession and the like; furthermore, all economically identical circumstances have to be treated equally. Thus, the following question arises for an inheritance tax system:

In line with the principle of equality, can favouring different categories of assets ((residential) real estate, cash assets, business assets, etc.) and transfers depending on family relationships to different extents be justified from a tax perspective?

With this consideration it must be noted that questions regarding German valuation law, *Bewertungsgesetz* (BewG), which precedes the ErbStG, are excluded here. According to §9 BewG, common value is defined as the valuation principle. It is intended that this should reflect the value of common property as realistically as possible across all economic assets, pursuant to the BVerfG resolutions of 22 June 1995[13] and 7 November 2006.[14] In our opinion, this can be considered reasonable, albeit a more consistent implementation would be desirable here.

In principle, Article 3 (1) of the Basic Law (commonly referred to as the principle of equality) requires that all persons have to be treated equally before the law. Thus, essentially equal things are to be treated equally and essentially unequal things are to be treated unequally. This applies to unequal burdens and unequal privileges[15] and in particular does not require that everyone should make an equal contribution to financing the community. Hence, while all citizens should be equally involved in financing the state's tasks, it should strictly be in accordance with their ability to pay (principle of taxation on the basis of ability to pay).[16]

This principle of equal treatment is decisively overridden in inheritance tax law if two situations exist: either it conflicts with

This principle of equal treatment is decisively overridden in inheritance tax law if two situations exist: either it conflicts with another taxation principle established by the Basic Law; or the legislature wishes to promote or direct the behaviour of taxpayers for reasons of the common good. Here two decisive unequal treatments of the currently valid inheritance tax law can be identified: preferential treatment within the family; and preferential treatment for business assets.

another taxation principle established by the Basic Law; or the legislature wishes to promote or direct the behaviour of taxpayers for reasons of the common good.[17] Here two decisive unequal treatments of the currently valid inheritance tax law can be identified: preferential treatment within the family; and preferential treatment for business assets. The latter are to be favoured for reasons of the common good not only to create value and employment, but also to preserve jobs.[18] The necessity of these two restrictions in the principle of equality will now be assessed separately.

Protecting business assets

As discussed above, an unfair advantage for a category of assets can be justified only if it serves legitimate objectives. This raises two questions: what should the aim of inheritance tax be in this context, and does the objective pursued by current relief measures require such unequal treatment?

In regard to the latter question, it can be taken as established case law in this context that small and medium-sized enterprises are considered worthy of protection as guarantors of German growth and prosperity. Hence, they and the jobs associated with them should not be endangered.[19] In its 1995 judgement, the Federal Constitutional Court stated that the principle of equality already requires that the reduced (financial) capacity of heirs resulting from continuation of the business (as opposed to sale or abandonment) should be taken into account through a preferential treatment of business assets.[20] In its judgement of 7 November 2006, though, the Federal Constitutional Court then stated that any increase in (financial) capacity is measured by the (sales) price achievable under objective conditions[21] and thus preferential treatment is not justified by the principle of equality alone. Accordingly, the reasoning inherent within these three rulings, namely that the assets of small and medium-sized enterprises should be favoured for reasons of public welfare, remains since a transfer to the next generation should not result in any loss of jobs and jeopardise the enterprise's survival.[22] Thus, it seems that more generous solutions for benefiting these companies should be created/maintained. However, in our view protecting the continued existence of transferred enterprises can also be guaranteed in connection with a lower level of preferential treatment for business assets than is currently the case (see ch. *Benefiting business assets*) and thus less discriminatory for the heirs of non-business assets.

In its most recent judgement from 2014, the BVerfG states that the legislature has set limits on benefits that are contrary to Basic Law, so much so that the purpose of this support is contrary to other statutory provisions.[23] In this context, the question arises as to why the principle of the welfare state, laid down in Article 20 (1) of the Basic Law, has to date not been given concrete consideration in inheritance tax law and the BVerfG's relevant case law (outside of a special vote).[24] At best, it could only have an effect as a kind of "moderation norm" of tax law (Hey 2017: 20). This article, although it does not have "fundamental rights status" (Articles 1-19, Basic Law), together with Article 1 of the Basic Law, forms the core of the constitution declared to be unalterable by Article 79.3 of the Basic Law. That is why its provisions can also be described as the constitution's normative core (Grzeszick 2014: Article 20, Basic Law no. 3).[25] Inheritance tax should, above all, also be an instrument for promoting equality of opportunity or some other requirement distributive justice. It should thus also be the objective of inheritance and gift tax as an instrument of the welfare state to prevent wealth in the possession of a few from growing disproportionately on the basis of (social) origin or personal ties alone, which is why an associated equalisation is the responsibility of politics.[26] Beneficial treatments for corporate assets implemented by the legislator for reasons of the common good should therefore have its limits at least where another principle of the Basic Law triggers its scope. Insofar as the continued existence of a company and in particular its jobs can be secured, we believe that inheritance tax should above all be understood as an instrument of redistribution in order to do justice not only to the principle of equal treatment (Article 3 (1), Basic Law) but also the principle of a welfare state (Article 20 (1), Basic Law).

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Beneficiary transfer to family members

From a constitutional perspective stemming from Article 3 (1) of the Basic Law, taxation based exclusively on (financial) capacity is the key premise. The legislature's ability to implement an inheritance tax privilege for family members (lower tax rates; higher allowances) in the ErbStG is due to Article 6 which competes with Article 3 (Piltz 2018: 172). Provision in the former, which has the same rank as the latter, selectively overrides the principle of taxation on the basis of ability to pay and considers the protection of marriage and family as regulating the tax burden level.[27] In this context, the Federal Constitutional Court demanded in its judgement of 1995 that "The access to family members within the meaning of tax class I[28] (§15 (1) ErbStG) for inheritance tax purposes [...] must be moderated in such a way that each of these taxpayers benefits from the estate transferred to him or her – depending on its size – at least to a clearly predominant extent or, in the case of smaller assets, completely tax-free."[29] The BVerfG also requires "that inheritance for the spouse still remains the result of the marital acquisition partnership and that also a co-entitlement for the children to the family property, as laid down in inheritance law, is not lost."[30] Otherwise, the BVerfG's above-mentioned judgements make no reference to the family principle, which is why these unspecific formulations require interpretation by constitutional judges.

The special position of spouses (registered civil partners), children and other family members, whose existence is understood in the literature,[31] based on Article 6 (1) of the Basic Law, has a far-reaching legal tradition in German inheritance (tax) law.[32] Present differentiation of tax rates and allowances depending on the family closeness of a testator/donor is based on the above-mentioned BVerfG ruling of 1995.[33] In this context, the decisive question thus arises as to what constitutes a "clearly predominant" part of the estate. This depends to a large extent on the choice of scale. If a clearly predominant part of each estate (irrespective of its amount) has to be passed on, is this considered from a macroeconomic point of view, so that a clearly predominant part of the sum of (all) estates is affected, or is this to be considered from the point of view of an "average heir"? The latter would mean that the "average" inherited assets within "the family" can be transferred to the next generation largely tax-free (see also ch. *Personal allowances*).

The special position of spouses (registered civil partners), children and other family members based on Article 6 (1) of the Basic Law, has a far-reaching legal tradition in German inheritance (tax) law.

In addition to the Articles referenced in this section, Article 6 (1) of the Basic Law can also be taken into prior consideration with regard to tax exemptions (currently regulated in §§13 ff. ErbStG). Thus, concerning the transfer of assets within the family, constitutional conformity can be conclusively assessed only as a combination of tax exemptions (e.g. for family homes, transferred household effects and other objects), personal allowances and tax rates.

Constitutional conclusion

In summary, it can be stated that BVerfG case law provides more or less concrete framework conditions for an inheritance tax system. To date, these have comprised: formulating the principle of taxation on the basis of ability to pay (Article 3 (1), Basic Law), together with protecting marriage and family (Article 6, Basic Law) as well as the right to property (Article 14, Basic Law). However, in our view an inheritance tax system should above all take account of the welfare state principle contained in Article 20 (1) of the Basic Law, which places the legislature under an obligation to ensure that social differences are balanced out and thus a fair social order is provided.[34] Inheritance tax should therefore be an instrument of the state, which is used to compensate for unequal opportunities in life, so that an increasingly unequal distribution of resources does not cause the opportunities for social and political participation to drift further apart.[35] Inheritance tax should thus be used to counteract a consolidation of influence and power, irrespective of individual performance, and linked to "social origin".[36]

Approaches to reforming the inheritance and gift tax system

General background

In Germany, norms from the Inheritance and Gift Tax Act (ErbStG) contribute in many ways to the current unequal distribution of wealth not having at least been reduced over time. In particular, tax exemptions have predominantly privileged the "richest" members of society for generations (Beckert 2017: 27) and favour the concentration of wealth. The currently relatively minor social importance of inheritance tax in Germany is also reflected in the low level of inheritance tax revenues (see endnote 2). Inheritance tax is currently not a steering mechanism, a redistributive function or a recognisable justice factor (Eckhoff 2016: 233; Tipke 2003: 875). Indeed, it has been noted that the current inheritance tax leads to "a mere sham taxation" (Hey 2017: 18). In order to achieve a real distribution of property, which would allow all citizens to participate in the wealth and could remedy possible negative consequences of unequal wealth distribution, a higher inheritance tax burden for large properties could be one solution.

In Germany, norms from the Inheritance and Gift Tax Act (ErbStG) contribute in many ways to the current unequal distribution of wealth not having at least been reduced over time. In particular, tax exemptions have predominantly privileged the "richest" members of society for generations.

The following reform approaches for the German inheritance tax system demonstrate ways of improving intergenerational and, in particular, intragenerational justice, while fulfilling the constitutional framework set out in the chapter *Constitutional framework of inheritance and gift tax*. They will explain: which regulations in the current inheritance tax system make it possible to transfer assets to the next generation on a low or untaxed basis; to what extent these regulations could be changed; and ways in which additional revenue could be used. It is not our intention here to propose one final reform of the inheritance tax law to solve all known problems. Likewise, our individual proposals are not to be regarded as conclusive. Certain details would still have to be worked out or empirically verified before implementation.

It should be borne in mind that inheritance and gift tax is only one part of an overall construct that has an impact on intergenerational and intragenerational justice. Reform approaches are proposed which may be part of a system change with regard to the unequal distribution of wealth along with the resulting effects on intergenerational and intragenerational justice. Alongside adjustments to the inheritance tax system specifically, this would require further changes to the current tax system as a whole, together with further legal adjustments, which are not part of this study. In particular, it would also be necessary to consider maintaining and possibly even improving performance incentives. If a correspondingly large intervention in the economic and tax system is undesirable or is judged impossible through inheritance tax (Eckhoff 2016: 224; Birk 2005: 348), then the reform approaches could also lead to less invasive interventions. The result is a frame that can be filled out according to political and social will. At the appropriate points, reference is made to different options.

In essence, our proposed reform approaches are based on the elimination or reduction of material and personal tax exemptions, to be replaced or enhanced by the introduction of a progressive tax rate depending on average assets held by an adult in Germany. This will ensure that high assets are taxed more heavily, in line with their value. A personal tax exemption – also dependent on the average assets – satisfies the constitutional protection of family and property and ensures that small and medium-sized assets can be transferred with a low inheritance tax burden or in many cases none at all.

In essence, our proposed reform approaches are based on the elimination or reduction of material and personal tax exemptions, to be replaced or enhanced by the introduction of a progressive tax rate depending on average assets held by an adult in Germany.

Benefiting business assets

As the investigations on constitutional assessment in the previous chapter have already shown, one of the most controversial exemptions from inheritance tax concerns business assets. The current Inheritance and Gift Tax Act provides for extensive tax exemption norms (possibly 100% tax exemption) for the transfer of business assets. If business assets are classified as eligible for preferential treatment (§13b (1) and (2) ErbStG) and not as administrative assets[37] (§13b (3) and (4) ErbStG), an 85% exemption from inheritance tax (§13a (1) ErbStG) is possible up to a business asset value of 26 million euros. This exemption is dependent on wage bill development (§13a (3) ErbStG) and a five-year retention

period (§13a (6) ErbStG). If the administrative assets amount to less than 20% of total assets, then a 100% tax exemption is possible upon application (§13a (10) ErbStG). Between 26 million euros and 90 million euros, the tax exemption is reduced (§13c ErbStG). A ten-year period is considered for calculation of the 26 million euro limit. This makes it possible to transfer companies or shares in a company tax-free, even if they are worth a multiple of 26 million euros, as long as there are always more than ten years between the individual transfers.

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There are no other original exemption standards for business assets. Under §28a of the German Inheritance and Gift Tax Act (ErbStG), though, testing for exemption qualification in the case of business asset transfers valued at greater than 26 million euros can be carried out upon application. In this case, inheritance tax is waived on two conditions: the wage bill will be developed (§28a (4) sentence 1 no. 1 ErbStG); and there will be a seven-year retention period (§28a (4) no. 2 ErbStG). This is possible if the inheritance tax is not covered within ten years by half of the heir's assets which are not classified as beneficiary business assets (§13b (1) and (2) ErbStG) (§28a (2) and (4) no. 3 ErbStG). As a result, it is possible to minimise the inheritance tax burden very significantly by appropriate tax or asset transfer planning.

Business assets are predominantly owned by the richest 10% of the population and, for example, achieved the highest increase in value in 2017 compared with other asset components (Dao et al. 2019: 8, 21; Grabka/Halbmeier 2019: 742 f.). From this, it can be concluded that privileges for business assets make a major contribution to the unequal distribution of wealth.

The tax legislator's justification for preferential treatment is based on the avoidance of difficulties, particularly for small and medium-sized enterprises, in being exposed to the risk of liquidity problems due to high inheritance tax claims. Continuation of these businesses and the jobs created by them should not be jeopardised,[38] albeit whilst the fear is understandable there is no empirical evidence that the existence of companies is threatened by inheritance tax (scientific advisory board at the Federal Ministry of Finance 2012: 30). Hannes/Holtz also state that it is not an unobjectionable step to assign a special role to business assets in the inheritance and to give them tax privileges over other assets (2018: §28 ErbStG Rz. 1; also as a result, e.g. Birk 2005: 349 ff.). In our opinion, this line should be followed. A comprehensive preferential treatment of business assets can lead to a distribution of wealth that is not fair from a generational perspective.

The tax legislator's justification for preferential treatment is based on the avoidance of difficulties, particularly for small and medium-sized enterprises, in being exposed to the risk of liquidity problems due to high inheritance tax claims. Whilst the fear is understandable there is no empirical evidence that the existence of companies is threatened by inheritance tax.

Whilst we are concentrating here on German inheritance and gift tax law, a brief look at the equivalent laws in other European countries shows that business asset exemptions are not just a German phenomenon. For instance, a study by the auditing company PWC from 2015 should be noted, which clearly shows that many West European countries have specific tax facilities for business succession which include substantial allowances (de Lange-Snijders et al. 2015).

Possible approaches for reform

Accordingly, the question arises as to how much preferential treatment of business assets is necessary or which regulations are required to ensure that inheritance tax does not jeopardise the continuation of businesses. After all, an inheritance tax which would tend to make businesses unviable after the death of the owner could be socially negative. This must be prevented and furthermore constitutional law gives this order.[39]

It is questionable whether a business can be (successfully) continued only if its heir is exempted from inheritance tax. It is the business assets that must be protected and not the private wealth of heirs. Private assets can be used to pay the inheritance tax, if they are insufficient for this purpose. Deferral regulations could be used to ensure that the inheritance tax burden is bearable and does not have a negative impact on companies' investments. Hence, under certain conditions the state should grant a deferral of inheritance tax upon application. The payment of inheritance tax per se is possible for heirs of companies that have a positive value according to the income capitalisation approach, as future profits can be expected – albeit with risks. In our opinion, a lump-sum remission such as is currently provided for under §28a ErbStG should therefore be rejected except in cases of hardship, or at least made subject to much stricter and more restrictive conditions.

Deferral regulations could be used to ensure that the inheritance tax burden is bearable and does not have a negative impact on companies' investments. Hence, under certain conditions the state should grant a deferral of inheritance tax upon application.

A prerequisite for deferral should be a deferral requirement assessment. This means that the acquiring person must prove that the inheritance tax cannot be paid from other available assets. If the inheritance tax exceeds available assets, the excess must be deferred upon application. Moreover, available assets must be clearly defined. For example, it might be possible for owner-occupied residential property or retirement provision contracts to be excluded and only a certain percentage of the other available assets to be taken into account. The deferral could be linked to reasonable conditions in terms of generational justice (e.g. job preservation, environmental protection, etc.).

In addition, an heir is always free to sell the company (or whichever share of it they inherit). As a supplement or alternative aimed at reducing the strong unequal distribution of company assets, there are also pre-acquisition rights for employees.[40] This would enable them to participate in their own company's future increases in value and profits. In addition, employees with a stake in the company should have more of an interest in its long-term success, as their personal financial gain is linked to the company's success. Furthermore, a (partial) change of ownership could also be good

for new entrepreneurial input. In addition, there is no apparent evidence supporting an idea that the best alternative for continuing a business is always to pass it on exclusively to the next generation of the family (Birk 2005: 349; Tipke 2003: 902; Houben/Maiterth 2009: C5; Mill 1852: 373). Companies can also break up due to family disputes and/or the incompetence of family successors (for this also: Tölle 2020: 10). Empirical studies even argue against favouring family-run or heir-run companies.[41]
Furthermore, extensive preferential treatment in conjunction with retention periods create economic pressure on an heir not to sell, but continue the business regardless of any prevailing circumstances. However, in the long term this might even work against the goal of preserving jobs.

A (partial) change of ownership could also be good for new entrepreneurial input. There is no apparent evidence supporting an idea that the best alternative for continuing a business is always to pass it on exclusively to the next generation of the family.

In regard to the creation and implementation of a system for the protection of business assets, it is also important to consider that any compulsion to limit and dispose of assets resulting from a restrictive (higher) inheritance or gift tax burden can create niches and opportunities for young entrepreneurs (Hannes/Holtz 2018: §28 ErbStG Rz. 1). If, for example, this were to be accompanied by additional (income) tax relief on company profits, it could serve as motivation and thus a catalyst for such entrepreneurs.
If preferential treatment for business assets is desired or, for example, is deemed necessary in connection with possible high tax rates in order not to jeopardise continuation of the business, inheritance tax should be used for (generationally equitable) steering purposes. Thus, in addition to the current qualifications for tax benefits (preservation of jobs, company size), further conditions could be applied for economic reasons or issues to do with generational equity (e.g. closing the digitalisation gap; minimising CO2 emissions; ecologically sustainable production). However, high planning and monitoring costs for both the state and the company must also be taken into account.
The question of how much protection should be provided for the continuation of businesses depends essentially on the basic levels of tax rates (see ch. *Tax rates*) and must be chosen accordingly. If necessary, different preferential treatment or deferral options must be determined depending on the size of an enterprise in order to honour the greater need for protecting small and medium-sized enterprises as comprising an established constitutional requirement (see ch. *General information, Protecting business assets*). Here, valid studies must also be prepared which show the possible burdens relating to tax rates and their consequences together with the effectiveness and feasibility of protection measures mentioned here. In this context, consideration may also need to be given to any adjustments which could be considered necessary in coordination with income tax positions (currently §35 EStG) in order to avoid unwanted double taxation.

A moral approach to the higher taxation of company assets

One specific point should be taken into consideration when transferring businesses to the next generation. Heirs to businesses inherit not only property but also power in the form of authority (Locke 1691: §91 ff.). Although this issue can also arise with other types of assets, it seems most pressing in the context of business transfers, albeit largely to do with businesses of a certain size.
Here, a certain distinction must be drawn from a moral perspective, in that goods and power need to be differentiated (Locke 1691: §91 ff.). There is no moral right to transfer so-called rule or dominion (Locke 1691: §93 ff). The right to inherit property does not automatically give rise to the right to inherit power (Locke 1691: §97 ff.). There is no reason from which it can be deduced that power should be hereditary (Locke 1691: §93 ff.; §123 f.). In addition, there is no such right derived from the German Basic Law.
Furthermore, the question is prompted from macroeconomic and social points of view as to whether or not it is morally or legally legitimate to pass on companies from generation to generation within a family. For this to happen, the condition would have to be met that an heir possesses not only the entrepreneurial skills but also the ability to deal sensibly with this inherited power (Locke 1691: §123 f.). If these skills are available in the family, it would at least seem reasonable to conclude that the heir has learned what is required from previous generations. However, at the same time it must not necessarily be assumed that an heir is the best candidate or at least one of the best to hold any power associated with the company.
Summarising, there are significant arguments which speak against the inheriting of companies, or at least those businesses which are large enough to give their owners authority over a large body of employees. Moreover, it is questionable whether inheritance tax is the right instrument for resolving such an issue.
Conversely, complete expropriation (even with compensation payments) would be difficult if not impossible to justify under the present terms of the German Basic Law. It would also lead to numerous complex concerns and further questions about implementation and realisation that would need to be settled.
However, the problems presented above could at least be limited by the application of inheritance tax, if it led say to a partial sale of the company and the power of authority were consequently divided. From this moral perspective a certain level of inheritance tax which would trigger at least the partial sale of any company should be evaluated positively. This applies in particular when employees could be given opportunities to acquire company shares.

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Favourable treatment of owner-occupied residential property

A tax-free transfer of owner-occupied residential property from parents to their children (currently 100% under the conditions of §13 No. 4c ErbStG[42]) strengthens inequality of wealth between property owners and persons without residential property. This is particularly true for valuable properties. In addition, the tax exemption of residential property gives a certain preference to certain assets. It seems simpler and fairer therefore to set a general personal tax allowance for children, which *inter alia* can then be used for residential property (see ch. *Personal allowances*).

If homeownership is nevertheless to be comprehensively favoured, as is currently the case, then a right to choose between the general allowance and exemption for residential property should be introduced. Double preferential treatment, as in the case of current inheritance tax law, should be avoided in order to limit the untaxed transfer of large assets. Likewise, in our opinion there is no need for protection in the transfer of residential property which is above average in value. In current inheritance tax law, there is a size limit (200sqm living space according to §13 No. 4c EStG), but no value limit. In addition, there are legal possibilities to transfer non-leased properties in general tax free (Blank 2020: 2179). These should be abolished.

Personal allowances

The level of personal allowances pursuant to §§16 and 17 ErbStG is justified in particular by observing constitutional requirements covering the rights to property and family protection, as discussed above. The current levels for children (400,000 euros) and grandchildren (200,000 euros) correspond approximately (and depending on the concept of wealth used[43]) to double or equivalent to the average wealth (arithmetic mean) of an adult in Germany (Shorrocks et al. 2019: 48), respectively. This means that well over 60% of all adults can probably transfer their assets to a child without having to pay inheritance tax (Shorrocks et al. 2019: 48). Hence, in our view these tax allowances appear beyond doubt to be compatible with the protection of marriage and family as set out in Article 6 of the Basic Law and also as required by the German Constitutional Court in its judgement of 22 June 1995[44] (see ch. *General background*). It is of course debatable as to whether or not the level of existing allowances could be reduced. However, at least the absolute allowance (400,000 euros for children and 200,000 euros for grandchildren) does not contribute to the tax-free transfer of extremely high assets. In principle, a regular and automatic adjustment to the development of average assets is considered sensible. Alternatively, tax allowances could be set in relation to the median at around 32,000 euros (Shorrocks et al. 2019: 48), so that the distribution of wealth is better taken into account.

In our view, the decisive factor in this context is that the personal allowances apply to all purchases by a person and can also be applied only once (in a lifetime). In addition, they must be offset against each other, so that in total it will never be possible to use tax allowances in excess of 400,000 euros. If, for example, a tax allowance of 20,000 euros (§16 (1) no. 5 ErbStG) has already been "used up" by an acquisition from a third party, only a further tax allowance of 380,000 euros can be used in the case of a later acquisition, for instance from parents (and vice versa). This is intended to avoid multiple use of different tax allowances. At present, it is possible to use the respective tax allowances pursuant to §16 (1) ErbStG for acquisitions from different persons, which means that the different allowances can be cumulative. In addition, the tax allowances can be used again after 10 years have elapsed (§14 (1) ErbStG) for the same testator. As a result, it is possible to use tax allowances cumulatively several times using suitable tax planning in order to transfer large assets without a tax burden.

A (non-economic) reason why (higher) inheritance taxes for wealth transfers within families are refused relates to the morality of parental partiality. It is considered a duty or virtue to exercise partiality to one's own children and hence to bequeath them assets. The state should not intervene in this (critical discussion: Brighouse/Swift 2014: 123-148). Brighouse and Swift show that even without asset transfer, important (non-economic) goods can be transferred from parents to their children (Brighouse/Swift 2014: 125). Moreover, they explain that gifts and inheritances are not especially crucial in maintaining a valuable bond between parents and children, or at least that they could still do so if heavily taxed (Halliday 2018: 8). Hence, a high taxation of (high) wealth seems justified.

These thoughts can also be found in constitutional law. As explained above, this calls for a certain untaxed transfer of assets to the children (protection of marriage and family), but also applies high tax burdens on significant assets.

Tax rates

In addition to the overall base – in particular tax-free elements – tax rates comprise the essential element in determining the burden of inheritance tax. Thus, they become decisive in designing an inheritance tax system that is fair. In combination with a tax-free allowance that does justice to the protection of the family, in our view top tax rates beyond 50% are also possible, provided that companies succeed in finding ways of continuing their business despite the high inheritance tax burden (see ch. *Inheritance law and tax rate*). If tax rates far beyond 50% were to be considered desirable, the restrictions imposed by Article 14 of the Basic Law (see ch. *General information, Inheritance law and tax rate*) must be clearly specified.

In addition to the overall base – in particular tax-free elements – tax rates comprise the essential element in determining the burden of inheritance tax.

The current tax rates, in accordance with §19 ErbStG, are in the form of a progressive graduated marginal rate tariff depending on the degree of kinship. Current tax rates range between 7% and 50% depending on the value of taxable acquisition and degree of kinship. However, since tax liability can be severely restricted by tax planning, as explained above, particularly in the relationship between (grand)parents and (grand)children, tax rates in the current inheritance tax system are not of great significance in the context of an overall view that is detached from the individual case. As a matter of principle, the tax rates should also be adjusted to average assets or the distribution of assets (Piketty 2020: 1206). This could, for example, be structured as follows:

Up to the value of the taxpayer's acquisition depending on the multiple of average assets (before personal allowance application)	Value of taxable aquisition in Euros
1	200,000
2	400,000
5	1,000,000
10	2,000,000
100	20,000,000
1,000	200,000,000
10,000	2,000,000,000
> 10,000	> 2,000,000,000

The progressive rate structure in conjunction with tax allowances ensures that low and medium assets (compared with average assets) are not taxed or subject to only light taxation and that high assets are taxed more heavily in line with their higher performance. The choice of tax rates is a political and social issue. It essentially depends on the extent to which redistribution through inheritance and gift tax is to be achieved, how much funding is needed to create equal opportunities and if necessary to what extent other taxes or social security contributions are to be reduced in return. Despite very high tax rates in percentage terms for large assets, such assets could still be transferred to the next generation in nominal terms. Thus, despite high tax rates, there would not be a total equalisation of wealth. However, the massive differences would be reduced or taken more into account in taxation. As with tax allowances, the median of wealth distribution (approximately 32,000 euros) could be chosen as the basis for a rate curve instead of the average wealth.
If a less severe intervention in the unequal distribution of wealth through inheritance tax is desired, this could be achieved by applying lower tax rates. In our view, though, a progressive rate depending on average assets is the best way to ensure that the ability-to-pay principle is properly taken into account and at least partially reduces the wealth inequality instead of establishing the inequality.[45]

Current tax rates range between 7% and 50% depending on the value of taxable acquisition and degree of kinship.

Use of (additional) inheritance tax revenue
In addition to the amount and basis for assessing inheritance and gift tax, as already mentioned it is the use of (additional) tax income that is decisive in the effects of inheritance tax on generational justice. This is particularly improved if the funds are used to reduce inequality of distribution or to combat its negative symptoms. Of course, whilst inheritance tax plays its part, it is merely one instrument and hence cannot alone ensure this comprehensively. Moreover, if the funds are (additionally) made available to the general state budget, equality can be achieved only to a limited extent. There are many concrete possibilities which can be used. In particular, investments in education, health and infrastructure that specifically compensate for the disadvantages of poorer sections of the population appear to be sensible. In the tax field, additional revenue could be used to reduce the income tax on small and medium incomes. This could also be achieved, for example, by lowering VAT or consumption taxes, especially on non-luxury goods. Also conceivable would, for example, be: an exemption from real estate transfer tax for residential property up to a certain amount; a refund of VAT or consumption tax; subsidies/negative taxes for certain investments, homeownership, say; old-age provision; or the reduction of social security contributions for small and medium incomes. In the entrepreneurial sector, especially in small businesses, increased special depreciation or subsidies to the employer's social security contribution are possibilities for the use of funds. For reasons of intergenerational justice, repayment of the national debt, insofar as it is considered restrictive and negative, is also a possibility.
Piketty's proposal dealing with a capital endowment for young people (2020: 1204) also seems worthy of discussion. Here the state would pay out a certain amount of money to everyone, for example at the age of 25. This would make a strong contribution to the diversification of property ownership and enable everyone to participate in the economy and society, at least up to a certain point, thereby significantly improving the current situation.

Conclusion
Inheritances and gifts (transfer of assets to the next generation) that are not taxed, or are taxed at too low a rate, create or promote wealth inequality, respectively. Possible consequences are that this could be classified as unjust or undesirable against the background of intergenerational justice. This would be reduced by a higher inheritance and gift tax burden on capital transfers and a corresponding use of funds. The constitutional framework for achieving this has not yet been exhausted. A broader assessment of basis and tax rates depending on the distribution of wealth could lead to a taxation system that is more closely based on the ability-to-pay principle (derived from Article 3, Basic Law), since an enormous gain in performance at certain points would be taxed more heavily. In addition, a cross-subsidy could provide relief for lower income earners. It should be noted that a reduction in the unequal distribution of wealth would take greater account of the welfare state principle (Article 20 (1), Basic Law) than the current inheritance and gift tax. Despite the higher taxation especially of larger assets, a reformed inheritance tax system could also honour the constitutional right to property and thus inheritance (Article 14, Basic Law) as well as the protection of marriage and family (Article 6, Basic Law).

Notes
1 In Germany, the inheritance and gift tax law is referred to only as the inheritance tax law. Inheritances and gifts usually lead to the same legal consequences.
2 6.99 billion euros in 2019 out of a total revenue of 799.3 billion euros (NWB 2020, p. 1687).
3 The unconstitutionality of the ErbStG was established by the BVerfG in 1995 (BVerfG resolution of 22 June 1995, 2 BvR 552/91, BStBl. II 1995, 671), 2006 (BVerfG resolution of 7 November 2006, 1 BvL 10/02, BVerfGE 117, 1) and 2014 (BVerfG judgement of 17 December 2014, 1 BvL 21/12, BVerfGE 138, 136).
4 BVerfG resolution of 10 February 1976, 1 BvL 8/73, BVerfGE 41, 269; BVerfG resolution of 8 March 1983, 2 BvL 27/81, BVerfGE 63, 312; BVerfG resolution of 9 November 1988, 1 BvR 243/86, BVerfG 79, 106; BVerfG resolution of 22 June 1995, 2 BvR 552/91, BVerfGE 93, 165; BVerfG resolution of 28 October 1997, 1 BvR 1644/94, BVerfG 97, 1; BVerfG judgement of 18 January 2006, 2 BvR 2194/99, BVerfGE 115, 97; BVerfG resolution of 7 November 2006, 1 BvL 10/02, BVerfGE 117, 1; BVerfG resolution of 17 April 2008, 2 BvL 4/05, BVerfGE 121, 108; BVerfG resolution of 21 July 2010, 1 BvR 611/07, 1 BvR 2464/07, BVerfGE 126, 400; BVerfG judgement of 17 December 2014, 1 BvL 21/12, BVerfGE 138, 136.
5 Cf. BVerfG resolution of 22 June 1995, 2 BvR 552/91, BStBl. II 1995, 671, margin note 20.
6 Ibid.
7 Cf. BVerfG judgement of 18 January 2006, 2 BvR 2194/99, BVerfGE 115, 97; BFH judgement of 30 May 2001, II R 4/99, BStBl. II 2001, 606. With regard to this judgement of the BFH,

it must be noted that it applied the (fundamental) prohibition of arbitrariness and the principle of proportionality as yardsticks for the "strangling" effect. These limit an excessive tax burden (irrespective of the type of tax).
8 §35b EStG provides for a pro rata credit against the income tax that would result from a sale for a period of five years after the date of the contract which is subject to inheritance tax.
9 Cf. BFH judgement of 17 February 2010, II R 23/09, BStBl II 2010, 641.
10 A "confiscatory" tax burden is regarded as a tax with expropriating effect.
11 Note: an addition of the tax rates is not really possible here, as these relate to different tax bases.
12 The discussion held in this context as to whether taxation based on the efficiency principle requires a progressive tax rate is not considered further at this point.
13 Cf. BVerfG resolution of 22 June 1995, 2 BvR 552/91, BStBl. II 1995, 671, margin note 33 et seq.
14 Cf. BVerfG resolution of 7 November 2006, 1 BvL 10/02, BStBl. II 2007, 192, margin note 103 with citations.
15 Cf. BVerfG judgement of 17 December 2014, 1 BvL 21/12, BVerfGE 138, 136, margin note 121 with further references.
16 See BVerfG decision of 7 November 2006, 1 BvL 10/02, BStBl. II 2007, 192, marginals 157, 181, 200.
17 See BVerfG judgement of 17 December 2014, 1 BvL 21/12, BVerfGE 138, 136, margin note 121 with reference to BVerfG resolution of 22 June 1995, 2 BvR 552/91, BVerfGE 93, 165; BVerfG decision of 7 November 2006, 1 BvL 10/02, BStBl. II 2007, 192, margin note 98.
18 Cf. BT-Drs. 16/7918, 33.
19 Cf. BVerfG judgement of 17 December 2014, 1 BvL 21/12, BVerfGE 138, 136, margin note 133; BVerfG resolution of 22 June 1995, 2 BvR 552/91, BVerfGE 93, 165, margin note 30.
20 Cf. BVerfG resolution of 22 June 1995, 2 BvR 552/91, BVerfGE 93, 165, margin note 31.
21 Cf. BVerfG resolution of 7 November 2006, 1 BvL 10/02, BStBl. II 2007, 192, margin note 104.
22 Cf. for this: BVerfG resolution of 22 June 1995, 2 BvR 552/91, BVerfG resolution of 7 November 2006, 1 BvL 10/02, BStBl. II 2007, 192, margin note 97 et seq.; BVerfG judgement of 17 December 2014, 1 BvL 21/12, BVerfGE 138, 136, margin note 133.
23 Cf. BVerfG judgement of 17 December 2014, 1 BvL 21/12, BVerfGE 138, 136, margin note 138.
24 Dissenting opinion of Judges Gaier and Masing and of Judge Baer on the judgement of the First Senate of 17 December 2014, 1 BvL 21/12 BVerfGE 138,136.
25 In the context of a competitive relationship between Article 20, Basic Law and one of the fundamental rights provisions, none of the provisions must be given priority in the interpretation. See for this: Grzeszick, in: Maunz/Düring GG commentary, Article 20 GG, margin note 2 (December 2014). Article 20, Basic Law thus also makes it possible to restrict the scope of a fundamental right provision.
26 Cf. the differing opinion of Judge Gaier and Judge Masing and Judge Baer on the judgement of the First Senate of 17 December 2014, 1 BvL 21/12, BVerfGE 138, 136, margin note 5.
27 Cf. BVerfG resolution of 22 June 1995, 2 BvR 552/91, BVerfGE 93, 165, margin note 25; BVerfG resolution of 21 July 2010, 1 BvR 611/07, 1 BvR 2464/07, BVerGE 126, 400, margin note 99.
28 In the state of law in force at the time of the ruling, tax class I included the spouse, children and stepchildren as well as the children of deceased children and stepchildren.
29 BVerfG resolution of 22 June 1995, 2 BvR 552/91, BVerfGE 93, 165, margin note 28.
30 BVerfG resolution of 22 June 1995, 2 BvR 552/91, BVerfGE 93, 165, margin note 29.
31 Cf. BVerfG resolution of 21 July 2010, 1 BvR 611/07, 1 BvR 2464/07, BVerGE 126, 400, margin note 99 with reference to: Leisner, Constitutional Limits of Inheritance Taxation, 1970, 111; Löhle, constitutional leeway and limits in the taxation of inheritances and Donations, 2001, 25, 102 f.; Papier, in: Maunz/Dürig, GG, March 2010, Art. 14 Rz. 301 et seq.; Reinisch, Inheritance tax and constitutional law, 1999, 69 et seq.
32 See BVerfG resolution of 21 July 2010, 1 BvR 611/07, 1 BvR 2464/07, BVerGE 126, 400, margin note 98.
33 However, the absolute level has increased significantly over time.
34 Cf. BVerfG resolution of 18 July 1967, 2 BvF 3, 4, 5, 6, 7, 8/62; 2 BvR 139, 140, 334, 335/62, BVerfGE 22, 180, margin note 62.
35 Cf. the divergent opinion of Judges Gaier and Masing and of Judge Baer on the judgement of the First Senate of 17 December 2014 - 1 BvL 21/12, BVerfGE 138, 136, margin note 4.
36 Ibid.
37 Administrative assets according to §13 Abs. 4 EStG are e.g. real estate leased to third parties, investments in corporations of less than 25%, works of art, securities and surplus funds after deduction of a basic amount.
38 Cf. BT-Drs. 18/5923, 1 and 16.
39 Cf. BVerfG judgement of 17 December 2014, 1 BvL 21/12, BVerfGE 138, 136, margin note 140.
40 This may need to be further simplified by company law regulations.
41 For an overview of the Houben/Maiterth 2009 studies: C 5.
42 The residential property may not be larger than 200sqm and must be used by the purchaser for his own residential purposes for 10 years from the date of purchase. The testator must have used it for his own residential purposes until the testator's death.
43 State pension rights are not taken into account as they constitute insurance benefits.
44 Cf. BVerfG resolution of 22 June 1995, 2 BvR 552/91, BVerfGE 93, 165, margin note 25 et seq.
45 Looking at the absolute rather than the relative burden, it could also be argued that a proportional tariff trend is sufficient to reflect the performance principle.

References

Beckert, Jens (2017): Neid oder soziale Gerechtigkeit? Die gesellschaftliche Umkämpftheit der Erbschaftssteuer. In: APuZ, 67 (23-25), 23-29.

Birk, Dieter (2005): Die Erbschaftsteuer als Mittel der Gesellschaftspolitik. In: StuW 2005, 346-352.

Blank, Matthias (2020): Von der “Cash-GmbH” zur “Real-Estate-GmbH”: Gestaltungen in einem (weiterhin) verfassungswidrigen Erbschaftsteuerrecht. In: DStR, 2020, 2179-2182.

Brighouse, Harry / Swift, Adam (2014): Family Values: The Ethics of Parent-Child Relationship. Princeton: Princeton University Press.

BT-Drs., Doc. No. 16/7918, 33.

BT-Drs. from 07.09.2015, Doc. No. 18/5923, 1 and 16.

Cingano, Federico (2014): Trends in Income Inequality and its Impact on Economic Growth. OECD Social, Employment and Migration Working Papers, no. 163. Paris: OECD Publish-ing.

de Lange-Snijders, Renate / Welbers, Hartwig / Nieuwenhuizen, Jan / de Noojer, Casper / Velthuijsen, Jan Willem / Zandvoort-Gerritsen, Charlotte / Anthoni, Pjotr / Tydeman, Mitra / Jansen, Linda (2015): Western Europe aligned on tax treatment of Family Business transfer, Rotterdam: PWC.

Dworkin, Ronald (2000): Sovereign Virtue: The Theory and Practice of Equality. Cambridge, MA: Harvard University Press.

Eckhoff, Rolf (2016): "Steuergerechtigkeit" als verfassungsrechtliches und als steuerpolitisches Argument. In: StuW, 2016 (3), 207-225.

Fratzscher, Marcel (2016): Verteilungskampf. Munich: Carl Hanser Verlag.

Grabka, Markus / Halbmeier, Christoph (2019): Vermögensungleichheit in Deutschland bleibt trotz deutlich steigender Nettovermögen anhaltend hoch. In: DIW Wochenbericht, No. 40/2019, 735-745.

Grzeszick, Bernd (2014): Art. 20 GG. In: Maunz, Theodor / Dürig, Günter / Herzog, Roman (ed.) / Scholz, Rupert (ed.) / Herdegen, Matthias (ed.) / Klein Hans H. (ed.): Grundgesetz-Kommentar. Munich: C.H. Beck Verlag.

Halliday, Daniel (2018): Inheritance of Wealth: Justice, Equality, and the Right to Bequeath. Oxford: Oxford University Press.

Hannes, Frank / Holtz, Michael (2018): §28 ErbStG. In: Meincke, Jens Peter / Hannes, Frank / Holtz, Michael: Erbschaftsteuer- und Schenkungsteuergesetz Kommentar. Munich: C.H. Beck Verlag.

Hey, Johanna (2017): Zur Bedeutung des Sozialstaatsprinzips, Art. 20 Abs. 1 GG. In: ifst-Schrift 519, 2017, 20-22.

Houben, Henriette / Maiterth, Ralf (2009): Zurück zum Zehnten: Modelle für die nächste Erbschaftsteuerreform. Arqus Discussion Papers in Quantitative Tax Research Working Paper no. 69. Berlin: arqus – Working Group in Quantitative Tax Research.

Dao, Mai Chi / Perry, Victoria / Klemm, Alexander / Hebous, Shafik (2019): Wealth inequality and private savings in Germany. International Monetary Fund Country Report No. 19/214 2019. Washington, D.C.: International Monetary Fund.

Kirchhof, Paul (2011): Bundessteuergesetzbuch: Ein Reformentwurf zur Erneuerung des Steuerrechts. Heidelberg: C.F. Müller.

Leisner, Walter (1970): Verfassungsrechtliche Grenzen der Erbschaftsbesteuerung. Berlin: Duncker & Humboldt.

Locke, John (1691): First Treatise of Government. London: Awnsham Churchill.

Löhle, Annette (2001): Verfassungsrechtliche Gestaltungsspielräume und -grenzen bei der Besteuerung von Erbschaften und Schenkungen. Tübingen: Medienverlag Köhler.

Mill, John Stuart (1852): Grundsätze der politischen Oekonomie. Zweiter Band. Hamburg: Berthes – Beffer und Maufe.

Murphy, Liam (2015): Why Does Inequality Matter? Reflections on the Political Morality of Piketty's Capital in the Twenty-First Century. In: Tax law review, No. 68 (3), 613-629.

Murphy, Liam / Nagel, Thomas (2002): The Myth of Ownership: Taxes and Justice. Oxford: Oxford University Press.

Nagel, Thomas (2009): Liberal Democracy and Hereditary Inequality. In: Tax Law Review, No. 68, 113-119.

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

OECD (2015): In It Together: Why Less Inequality Benefits All. Paris: OECD Publishing.

Öchsner, Thomas (14 December 2016): Regierung strich heikle Passagen aus Armutsbe-richt. In: Süddeutsche Zeitung. www.sueddeutsche.de/wirtschaft/armut-in-deutschland-regierung-strich-heikle-passagen-aus-armutsbericht-1.3295247.

Osterloh-Konrad, Christine (2017): Zur Legitimation steuerlicher Umverteilung. In: StuW, 2017 (4), 305-319.

Papier, Hans-Jürgen (2010): Art 14 GG. In: Maunz, Theodor / Dürig, Günter / Herzog, Roman (ed.) / Scholz, Rupert (ed.) / Herdegen, Matthias (ed.) / Klein Hans H. (ed.): Grundgesetz-Kommentar. Munich: C.H. Beck Verlag.

Piketty, Thomas (2020): Kapital und Ideologie. Munich: C.H. Beck Verlag.

Piltz, Detlev J. (2018): Unternehmensbegünstigungen zwischen Leistungsfähigkeits-, Familien- und Sozialstaatsprinzip. In: ZEV, 2018 (4), 170-178.

Reinisch, Mark (1999): Erbschaftsteuer und Verfassungsrecht. Schwindegg: Reinisch.

Lampert, Thomas / Saß, Anke-Christine / Häfelinger Michael / Ziese Thomas (2005): Beiträge zur Gesundheitsberichterstattung des Bundes: Armut, soziale Ungleichheit und Gesundheit. Berlin: Robert Koch-Institut.

Rawls, John (1970): A Theory of Justice. Cambridge, MA: Harvard University Press.

Spannagel, Dorothe (2016): Soziale Mobilität nimmt weiter ab. WSI-Verteilungsbericht 2016, Düsseldorf.

Seer, Roman (2018): §1 Steuerrecht als Teil der Rechtsordnung. In: Tipke, Klaus / Lang, Joachim (eds.): Steuerrecht. Cologne: Otto Schmidt Verlag.

Shorrocks, Anthony / Davies, James / Luberas, Rodrigo (2019): Global wealth report 2019. London: Credit Suisse Research Institute.

Stiglitz, Joseph E. (2012): Der Preis der Ungleichheit: Wie die Spaltung der Gesellschaft unsere Zukunft bedroht. Munich: Pantheon Verlag.

Stahl, Rudolf (2011): §35b EStG. In: Korn, Klaus (ed.): Einkommensteuerkommentar. Bonn: Stollfuß Verlag.

Tipke, Klaus (2003): Steuerrechtsordnung. Cologne: Otto Schmidt Verlag.

Tölle, Wolf-Dieter (2020): Lösungsansätze aus rechtlicher und familienstrategischer Perspektive. In: NWB-EV, 2020 (1), 10-14.

Wissenschaftlicher Beirat beim Bundesministerium der Finanzen (2012): Die Begünstigung des Unternehmensvermögens in der Erbschaftsteuer. Gutachten des Wissenschaftlichen Beirats beim Bundesministerium der Finanzen, 1/2012. Berlin: Bundesministerium der Finanzen.

List of rulings:

BVerfG resolution of 18 July 1967, 2 BvF 3, 4, 5, 6, 7, 8/62; 2 BvR 139, 140, 334, 335/62, BVerfGE 22, 180.
BVerfG resolution of 10 February 1976, 1 BvL 8/73, BVerfGE 41, 269.
BVerfG resolution of 8 March 1983, 2 BvL 27/81, BVerfGE 63, 312.
BVerfG resolution of 9 November 1988, 1 BvR 243/86, BVerfG 79, 106.
BVerfG resolution of 22 June 1995, 2 BvR 552/91, BStBl. II 1995, 671.
BVerfG judgement of 18 January 2006, 2 BvR 2194/99, BVerfGE 115, 97.
BVerfG resolution of 7 November 2006, 1 BvL 10/02, BStBl. II 2007, 192.
BVerfG resolution of 17 April 2008, 2 BvL 4/05, BVerfGE 121, 108.
BVerfG resolution of 21 July 2010, 1 BvR 611/07, 1 BvR 2464/07, BVerfGE 126, 400.
BVerfG judgement of 17 December 2014, 1 BvL 21/12, BVerfGE 138, 136.
BFH judgement of 30 May 2001, II R 4/99, BStBl. II 2001, 606.
BFH judgement of 17 February 2010, II R 23/09, BStBl II 2010, 641.

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Mind the gap: inheritance and inequality in retirement wealth

by Lukas Brenner and Oscar Stolper

Abstract: Drawing on detailed German panel data, we find that gifts and inheritances substantially increase households' private pension savings in accounts which are costly or impossible to withdraw prematurely. Back-of-the-envelope calculations suggest that (a) the average difference in bequest-induced private pension savings between heirs and non-heirs accrues to more than 40,000 euros at retirement, and that (b) it would take an average non-heir household roughly 14 years to match this gap. The sizable difference in private pension savings between heirs and non-heirs persists when we take into account other investments of heirs and non-heirs potentially intended to provide for old age. Our evidence supports the impact of gifts and inheritances on inequality in retirement wealth highlighted in recent research on intergenerational justice. We discuss several policy implications of our results.

Keywords: *Household finance; Retirement saving; Private pension; Intergenerational wealth transfers; Bequest; Inheritance*

An online appendix to this article is available at www.igjr.org.

Introduction and related research

In most developed economies, gifts and inheritances play a major role in sustaining and increasing household wealth.[1] Early work by Kotlikoff and Summers (1981) and Kotlikoff (1988) documents that intergenerational wealth transfers account for a larger proportion of households' overall wealth than prescribed by Modigliani's life-cycle hypothesis. Subsequent studies for the US and Europe confirm that a considerable fraction of households' total wealth stems from gifts and inheritances (Fessler/Schürz 2015; Gale/Scholz 1994; Kessler/Masson 1989; Wolff/Gittleman 2014). With the baby-boomer generation retiring in the near future, this intergenerational stream of capital is likely to become even more important. In Germany, for instance, a recent study by Braun (2015) estimates that as much as 2.1 trillion euros will have been transferred in the ten-year period from 2015 to 2024. This would mark a substantial increase of annual gifts and inheritances by about 20% as compared to 2001.[2]

At the same time, sweeping pension reforms in many countries of the world have forced people to fund their own retirement through savings and investments earlier in life. Recent research in the field of intergenerational justice has thus highlighted the moral significance of inequality among retirees and, in particular, how this wealth gap is compounded by the added effect of gifts and inheritances on top of unequal earnings during working age (Halliday 2018; Wolff forthcoming). Specifically, it is argued that "[t]he economic consequences of inheritance are not a matter of how much people leave, but rather what people (expect to) receive" (Wolff forthcoming, p.9). Hence, intergenerational wealth transfers can have very important effects earlier on in life, especially when it comes to retirement planning, and, as a consequence, have the potential to reinforce the divide the economic wellbeing of retired citizens.

Recent research in the field of intergenerational justice has highlighted the moral significance of inequality among retirees and, in particular, how this wealth gap is compounded by the added effect of gifts and inheritances on top of unequal earnings during working age. It is argued that the economic consequences of inheritance are not a matter of how much people leave, but rather what people (expect to) receive. Intergenerational wealth transfers can have important effects earlier on in life, especially when it comes to retirement planning.

This paper takes this conjecture to the data and aims at providing quantitative empirical evidence as to the impact of intergenerational wealth transfers on the financial situation of retirees. Specifically, we investigate the fraction of gifts and inheritances households use for the purpose of old-age provision. While we also include alternative options for households to save for old age, such as investments in mutual funds or housing, the focus of this study is on private pension plans designed to provide secure funds during old age.[3] Why so? Unlike other savings and investments, these products are at least partially illiquid and incur substantial early withdrawal penalties (in addition to any applicable income taxes). Such stipulations may be regarded as self-commitment tools and we can thus be reasonably certain that private funds flowing into these illiquid accounts are indeed available for use in retirement, while this is not a foregone conclusion for savings and investments in non-commitment contracts which households may *intend* to consume in retirement but – frequently owing to self-control problems – liquidate early (cf. e.g. Beshears et al. 2015; Agarwal et al. 2019). Thus, the quantitative effect of intergenerational transfers which we document in this study may be regarded as a lower bound of the difference in savings accumulated at retirement between heirs and non-heirs.

In order to explore the relationship between gifts or inheritances and commitment savings for old age, we draw on household panel data provided by the German Central Bank, including detailed information on intergenerational wealth transfers. The panel structure of the data allows us to employ a difference-indifferences approach to examine the effect of bequest flows as well as to circumvent the issue of household heterogeneity by looking at within-household effects only.

Indeed, we document that heir households appear to have a head start when it comes to old-age provision. Our first set of results suggests that, all else equal, households who receive a gift or inheritance put on average 15,268 euros, i.e. more than four times as much money in their private pension accounts as their sociodemographic twins among the group of non-heirs. To capture the magnitude of this effect over the household lifecycle, we perform two back-of-the-envelope calculations.[4] On the

one hand, we compute the time it takes to accumulate the gap in commitment savings for households that have subscribed to a monthly savings plan. Assuming that the average household is able to allocate half of their monthly total savings of 250 euros to private pension accounts, it would take them roughly 14 years to accumulate the respective amount of old age provision. On the other hand, we are interested in an average assessment of what difference a gift or inheritance makes by the time the heir-household retires and find that the initial gap in commitment savings accrues to more than 40,000 euros at retirement for the average household under review. In further analyses, we show that this sizable difference in private pension savings between heirs and non-heirs persists even when we take into account other investments of heirs and non-heirs potentially intended to provide for old age. In particular, our results are not explained by non-heirs focusing on other means of asset accumulation, most prominently private housing, as a way to provide for old age. We examine the sum of outstanding mortgages on households' main residencies during our period under review to determine whether non-heirs pay down their mortgages rather than investing in private pension products. However, the difference in instalment amounts is statistically indistinguishable from zero.

> Households who receive a gift or inheritance put on average 15,268 euros, i.e. more than four times as much money in their private pension accounts as their sociodemographic twins among the group of non-heirs.

Our second set of results documents that heir households vary considerably in their use of intergenerational wealth transfers. Consistent with the literature (e.g. Wolff 2002; Elinder et al. 2018), we document that households with above-median income and wealth put a significantly higher percentage of any gift or inheritance in their private pension accounts. Notably, this difference is not explained by lower-income heir-households receiving smaller gifts and inheritances. Nor do we observe that heir-households with lower income and wealth levels use the wealth transfers to pay down any unsecured debt prior to increasing private pension savings. Quite to the contrary, we find that below-median income (below-median wealth) unsecured debt levels of heir-households slightly *increase*. In addition, the positive impact of receiving gifts or inheritances on private pension savings is almost exclusively driven by households in which the household member in charge of financial decision-making belongs to an above-median age cohort. This finding cannot be explained by younger households receiving smaller gifts and inheritances, either.

Third, we shed light on whether *expecting* a larger gift or inheritance in the future alters people's saving habits. In the vein of Börsch-Supan et al. (2016), who highlight that wrong expectations about future (public) pensions are a potential reason for under-saving for old age, we run an additional analysis, in which we focus on the potential impact of inheritances which the household under review anticipates, but has not received yet. Corroborating the earlier results, however, we find that the mere anticipation of receiving a gift or inheritance at some point in the future does not decrease the amount currently put in private pension accounts.

Fourth and finally, we find some evidence suggestive of a sustained long-term effect of intergenerational wealth transfers on individuals' private pension savings. Studying a subsample of households that received a large gift or inheritance in the 1990s and comparing these households with matched non-heir households in 2010 and 2011, we document a significantly higher level of funds accrued in commitment savings.

> Studying households that received a large gift or inheritance in the 1990s and comparing these households with matched non-heir households in 2010 and 2011, we document evidence suggestive of a sustained long-term effect of intergenerational wealth transfers on individuals' private pension savings.

Data

To investigate the impact of gifts and inheritances on individuals' private pension savings, we draw on the Panel on Household Finances (PHF) survey data provided by the German Central Bank, which is representative of the German population and provides us with detailed data on intergenerational wealth transfers. The PHF data are elicited via personal face-to-face interviews and cover a wide range of individual and household finances.[5] Interviews with the 3,565 households sampled in the first wave of the PHF were conducted between September 2010 and July 2011. The second wave was administered between April and November 2014 and samples 4,461 households. A total of 2,138 households participated in both waves and are the subject of our study. We exclude households in which the household member in charge of financial decision-making has either retired or changed between waves, which leaves us with a final sample of 1,254 households.

The PHF asks households about the three largest gifts or inheritances they have received at the time the interview is conducted, along with asset type and amount as well as the year in which these transfers were received.[6] Using this data, we generate our first key explanatory variable *Gift/inheritance received* which assumes a value of one for the 111 sampled households that received a gift or inheritance of at least 10,000 euros during wave 1 and wave 2 (henceforth referred to as "heirs") and zero for non-heirs.[7] We choose to define a wealth transfer to be significant if it amounts to a minimum of 10,000 euros. This classification is despite the fact that a few respondents who were asked if they had "received a *larger* gift of inheritance" indicated smaller amounts. Moreover, the PHF asks households to indicate if they anticipate a gift or inheritance in the future. Based on this item, we construct the second key explanatory variable *Gift/inheritance anticipated* which takes a value of one for the 185 households that stated in wave 2 that they expect to receive a gift or inheritance.[8]

We capture private pension savings so as to include state-subsidised pension plans as well as endowment life insurances and all other private pension plans. Unlike other savings and investments, the stipulations of these vehicles typically include substantial early withdrawal penalties designed to discourage households from mid-life spending (cf. Beshears et al. 2015). Only recently, Agarwal, Pan and Qian (2019) corroborated the importance of such self-commitment features in pension savings plans by investigating what happens if they are partially removed: exploiting an administrative regulation in Singapore which allows individuals to withdraw between 10% and 30% of their pension savings at age 55, the authors show that many of the consumers under review use the increase in disposable income to pay down credit card debt and forgo much higher interest rates in their retirement

accounts by leaving a sizeable chunk of their withdrawn funds in a low-interest-bearing bank account long after withdrawal. In a similar vein, studies examining the effects of 401(k) loans discuss that granting early access to these commitment savings tends to result in increased present consumption (e.g. Beshears et al. 2008, 2011; Fleming et al. 1998).
Heirs in our sample differ from non-heirs along several dimensions.[9] To circumvent a potential selection bias confounding our difference-in-differences analyses, we follow Andersen and Nielsen (2011) and apply a propensity score matching to identify the appropriate benchmark group of non-heir households. In doing so, we account for the fact that households with a higher education and income are, for example, more likely to come from a wealthier family background, which in turn increases the probability of receiving significant intergenerational wealth transfers. To provide an unbiased starting point for our matched sample, we remove households that have received a large gift or inheritance at some point before our first observation in 2010/2011. We end up with a sample of 118 households featuring data in both waves.

Table 1 reports summary statistics of the matched sample of households we use in subsequent analyses. In wave 1, the average household has 2.6 members and disposes of 3,623 euros in net monthly income (235,512 euros in net wealth); its member in charge of financial decision-making is about 44 years old and holds a university degree in 42% of cases. Moreover, 73% of households own private pension products and, if so, hold on average 30,952 euros in such contracts.

Additionally, table 2 provides summary statistics on the intergenerational wealth transfers under review. The average transfer amounts to 100,244 euros, and, notably, heirs with below-median household income on average receive larger gifts and inheritances (109,000 euros) as compared to households in the upper 50% of the income distribution (95,000 euros); 42% (58%) of transfers are gifts (inheritances), and the majority of assets (71%) are passed on by parents to their children.

To circumvent a potential selection bias confounding our difference-in-differences analyses, we apply a propensity score matching to identify the appropriate benchmark group of non-heir households. In doing so, we account for the fact that households with a higher education and income are, for example, more likely to come from a wealthier family background, which in turn increases the probability of receiving significant intergenerational wealth transfers.

Results

Univariate evidence

As an initial assessment of the impact of receiving a gift or inheritance on private pension saving, we follow Abadie and Imbens (2011) and calculate the average treatment effect (ATE). We calculate ATEs at two points in time: at wave 1, i.e. before any gift or inheritance is received by households in the treatment group, and at wave 2 after these households have received a gift or inheritance of at least 10,000 euros.

Table 1—Summary statistics (wave 1, matched sample)

	All			Heirs			Non-heirs		
	N	Mean	Std.-Dev.	N	Mean	Std.-Dev.	N	Mean	Std.-Dev.
Private pension ownership	118	0.729	0.446	55	0.727	0.449	63	0.730	0.447
Private pension (EUR)	118	22,558	35,195	55	20,452	29,153	63	24,397	39,873
Household net income (EUR)	118	3,623	2,952	55	3,754	3,342	63	3,509	2,585
Household net wealth (EUR)	118	235,512	604,679	55	266,595	809,878	63	208,377	342,224
Household members	118	2.585	1.208	55	2.564	1.151	63	2.603	1.264
Household members employed	118	1.551	0.853	55	1.564	0.788	63	1.540	0.913
Male	118	0.483	0.502	55	0.436	0.501	63	0.524	0.503
Married	118	0.661	0.475	55	0.673	0.474	63	0.651	0.481
Age	118	44.37	10.10	55	43.950	10.98	63	44.750	9.326
Unemployed	118	0.025	0.158	55	0.018	0.135	63	0.032	0.177
Self-employed	118	0.076	0.267	55	0.073	0.262	63	0.079	0.272
Financial literacy	118	2.831	0.399	55	2.745	0.480	63	2.905	0.296
University degree	118	0.424	0.496	55	0.418	0.498	63	0.429	0.499
Financial risk tolerance	118	1.602	0.587	55	1.564	0.601	63	1.635	0.576

Notes—This table reports descriptive statistics of households sampled from wave 1 of the Panel on Household Finances (PHF) administered by the German Central Bank. Households that received a gift or inheritance prior to wave 1 and households in which the financially knowledgable person has retired or changed between the two waves are excluded from the sample. 'Heirs' are defined as households that, for the first time, received a gift or inheritance of more than 10,000 EUR between 2011 and 2014. 'Non-heirs' are nearest-neighbor households (based on a propensity score matching) who did not receive a gift or inheritance of more than 10,000 EUR during the period under review.

Table 2: Gifts and inheritances

Panel A: Classification and donors

	N	%	Donor of gift/inheritance	%
All	55		Parents	70.5
Gifts	23	41.8	Grandparents	6.6
Inheritances	32	58.2	Other family	19.7
			No answer	3.3

Panel B: Amount and asset type

			Gift/inheritance (EUR)		
	N	%	Mean	Std.-Dev.	Median
All	55		100,244	131,737	46,000
including money	35	63.6	95,554	142,460	30,000
including real estate	25	45.5	150,360	166,051	90,000
including securities	1	1.8	70,000	n.a.	70,000
including other assets	3	5.5	49,333	26,858	38,000

Notes: This table reports summary statistics of gifts and inheritances received by first-time heirs during the period under review (2011-2014). Statistics on the amount and asset type of gift or inheritance in Panel B are not mutually exclusive by category. “Other assets” include (i) land (ii) jewellery/furniture/art and (iii) life insurance.

Table 3: Average treatment effect (ATE) on private pension (EUR)

	N		ATE	AI Robust SE	*z*	*p*-value
ATE: Wave 1	Total	880	2,511.38	3878.961	0.65	0.517
	Treatment	60				
	Control	820				
ATE: Wave 2	Total	880	10,764.56**	5024.869	2.14	0.032
	Treatment	60				
	Control	820				

Notes: This table reports average treatment effect (ATE) results of a propensity score matching (PSM) approach with nearest neighbours. The PSM approach excludes households whose FKPs (i) changed, (ii) retired, or (iii) received a gift or inheritance of greater than 10,000 euros prior to wave 1. The treatment group includes all households (N=60) who, between wave 1 and wave 2, received a gift or inheritance of greater than 10,000 euros for the first time. ATE shows the difference in private pension (EUR) invested by either group of households. Robust standard errors are calculated following Abadie and Imbens (2011). ***, ** and * indicate statistical significance at the 1%, 5% and 10% level, respectively.

Table 3 reports the corresponding results. Initially, the group of heirs holds 2,511 euros more in their private pension savings account as compared to non-heirs; however, this difference turns out to be statistically insignificant. By contrast, we observe a statistically significant and economically meaningful difference in the amount of money households hold in their private pension accounts at wave 2: pension savings of heirs are 10,765 euros larger than those of the average non-heir household. Thus, the wave 2 ATE provides preliminary evidence in support of the conjecture that households use the funds from gifts and inheritances to increase their private pension savings. In what follows, we examine if this relationship persists once we control for a battery of additional variables previously shown to explain individuals' likelihood of saving for old age.[10]

Main results

Our baseline multivariate analysis shows that households who receive a gift or inheritance during the three-year period between wave 1 and wave 2 put on average 15,268 euros more into their private pension accounts as compared to their sociodemographic twins among the non-heirs. Two simple back-of-the-envelope calculations illustrate the lifecycle effect of this difference. First, we might compute the time it takes to accumulate the gap in commitment savings for households that have subscribed to a monthly savings plan. Assuming that the average household is able to allocate half of their monthly total savings of 250 euros to private pension accounts, it would take them roughly 14 years to accumulate the respective amount of old age provision. Second, given that the average financial decision-maker in our dataset is 47 years old by the time she receives the intergenerational wealth transfer and assuming that she retires at 67, the average difference of 15,268 euros in commitment savings accrues to more than 40,000 euros at retirement.[11] This difference controls for time-variant covariates which capture the impact of potential changes in household characteristics between the survey waves. Specifically, Bucher-Koenen and Lusardi (2011) and Börsch-Supan et al. (2012) find that disposable income is positively related to private pension saving. Similarly, household size has been shown to be positively related to saving for old age (e.g. Börsch-Supan et al. 2008). Further, we control for a switch to self-employment of the household member in charge of financial decision-making between the two waves. Because self-employed individuals typically exit the state-granted pension system, they should be more likely to save privately for old age. Lastly, we include information on whether the household has received any professional financial advice in the last three years, since prior literature has shown that the use of financial advice has a positive effect on retirement saving (e.g. Shum/Faig 2006; Von Gaudecker 2015).[12]

Given that the average financial decision-maker in our dataset is 47 years old by the time she receives the intergenerational wealth transfer and assuming that she retires at 67, the average difference of 15,268 euros in commitment savings accrues to more than 40,000 euros at retirement.

Given that the average non-heir household puts a mere 3,548 euros in their private pension account between wave 1 (balance: 24,397 euros) and wave 2 (balance: 27,945 euros), funds from a gift or inheritance, all else being equal, increase private pension savings in commitment contracts by as much as 330%.

Regarding the additional time-variant household characteristics likely to determine private pension savings, our evidence largely confirms prior evidence, i.e. shows that an increase in income and household size is positively associated with an increase in the euro amount accumulated in the private pension accounts. Likewise, we find a positive relation between a switch to self-employment as well as the use of financial advice and the euro amount invested in private pensions.

Since most people inherit *something*, the dichotomy between heirs and non-heirs is admittedly somewhat arbitrary. Hence, to avoid obscuring the differences within the group of heirs, we follow Andersen and Nielsen (2011) and analyse how much of every euro in transferred funds is invested in private pension accounts. Univariately, this contribution amounts to a highly significant average of 10 cents per euro of wealth transfers. Even when we control for the above-mentioned changes in household demographics during our period under review, we find that roughly 8 cents out of every euro received in the three-year period flow into the private pension saving accounts of households and confirm that this remains a highly statistically significant fraction of the average inheritance.

Since most people inherit *something*, the dichotomy between heirs and non-heirs is admittedly somewhat arbitrary. Hence, we analyse how much of every euro in transferred funds is invested in private pension accounts. Univariately, this contribution amounts to a highly significant average of 10 cents per euro of wealth transfers.

Finally, we examine if the documented increase in private pension savings stems from more households starting to save for old age after having received wealth transfers (volume effect) or, alternatively, if the households that already save privately simply scale up their investments (value effect). We find that neither of the key explanatory variables impact the ownership probability of private pension products in any significant way. This suggests that the receipt of an intergenerational wealth transfer does not alter the initial decision of households to start investing in private pension products. Rather, our results point to a value effect, i.e. households that are already invested in private pension products use gifts and inheritances to increase their private pension savings.

Asset allocation of non-heir households

Of course, non-heir households might prefer to allocate their wealth to assets other than commitment savings, e.g. private property or investments outside of private pension plans. In this section, we therefore examine the possibility that the observed difference in private pension savings of heirs versus non-heirs is predominantly owed to the fact that non-heirs simply prefer alternative ways of investment. To this end, we compare the changes in securities investments (bonds, stocks and mutual fund shares) as well as homeownership of heirs and non-heirs, respectively, between wave 1 and 2.

We begin by investigating the securities investments of non-heir households. Straightforwardly, we choose the statistically and economically significant change in commitment savings between

our treatment and control group (14,909 euros) as a benchmark. Once we turn our attention to households' average allocation to investment funds, however, the difference between heirs and non-heirs is small and insignificant: while heirs increase their investments in mutual funds by 1,250 euros, non-heirs do so by only a slightly larger 2,366 euros. Similarly, our analysis does not suggest that non-heirs invest larger sums in stocks or bonds as compared to heir households. This evidence suggests that the strongly positive effect of gifts and inheritances on investing in private pension commitment savings is not attenuated by non-heirs simply choosing other financial products to save for old age.

Further, we are interested in whether those heir households who do not own any private pension products in wave 2 (22% of heirs) possibly use other financial investments to save for old age. To this end, we dissect heirs into the two subgroups of private pension holders and non-holders and compare their changes in other investment products over time. Due to the small size of this subgroup of households, we are careful not to overstate the explanatory power of this additional analysis. We do, however, observe that heirs who have not owned any designated private pension products *ex ante* increase their investments in funds and stocks by a larger magnitude than heirs who have already allocated some money to commitment saving products. In the case of allocations to investment funds, for example, an average increase of 2,433 euros among heir-households that previously were not invested in private pension products compares to an increase of merely 920 euros among heir-households with existing private pension accounts. Generally, this ties in with Brunnermeier and Nagel (2008) and Andersen and Nielsen (2011) who find a positive effect of inheritances on investments in risky assets. Clearly, there is a possibility for these non-commitment investments to serve as old age provision if households manage to refrain from mid-life spending prior to retirement. Yet the observed increase in holdings of mutual funds and stocks of heirs who do not save via private pension plans is small compared to the substantial growth of private pension holdings of heirs (14,909 euros).

Next, we investigate whether non-heirs disproportionately invest in private housing. Since 45.5% of all transfers include real estate (cf. table 2), the homeownership rate among heir-households – rather unsurprisingly – increases by 25 percentage points during the period in which they receive a gift or inheritance. By contrast, homeownership among non-heirs increases by a mere 2 percentage points, i.e. providing no support for the hypothesis that our control group of non-heir households simply prefers to provide for retirement by purchasing real estate. Additionally, we examine the sum of outstanding mortgages on households' main residences during the period under review to determine whether non-heirs pay down their mortgages rather than investing in private pension products. A total of 39 households (14 heirs and 25 non-heirs) had outstanding mortgages. However, the difference in instalment amounts is statistically indistinguishable from zero. Thus we rule out the alternative explanation that non-heirs focus on private housing as a way to provide for old age.

Taken together, the analyses reported in this section corroborate our main result that gifts and inheritances have a sizeable positive impact on households' old-age provision. This effect continues to hold even after controlling for other ways of investing the wealth transfers.

Our evidence suggests that the strongly positive effect of gifts and inheritances on investing in private pension commitment savings is not attenuated by non-heirs simply choosing other financial products to save for old age.

Long-term effects of intergenerational wealth transfers

The PHF data currently feature two survey waves covering a period of only three years. While the short panel presents a limitation, it still allows us to make inferences about a potential long-term effect of gifts and inheritances on private pension savings: we are able to identify households that received an intergenerational wealth transfer in the past and examine how this relates to their pension savings today. Looking at wave 1 households (surveyed in 2010/2011), we identify 228 non-retired households that received a gift or inheritance worth more than 10,000 euros between 1990 and 2000 such that the intergenerational transfer was received at least ten years prior to the interview date. We denote the respective subsample of households as *old heirs*. Since the matching approach ensures full comparability regarding identical household attributes, the distinguishing characteristic is that the group of *old heirs* received a large gift or inheritance at some point in the 1990s.

Three results are worth highlighting. First, the average sum of the intergenerational wealth transfer in our treatment group is similar in size (96,815 euros) compared to our main sample. Moreover, corroborating prior research (e.g. Joulfaian 2006; Westerheide 2005), household net wealth is still increased by more than the transfer amount ten years after the receipt. Second, as shown in the main results, private pension ownership appears to remain unaffected by a large gift or inheritance in the past. Third, at 16,425 euros, the treatment group of *old heirs* owns significantly more in private pension saving accounts in 2010/2011 when compared to the matched group of non-heirs. Hence, this supplementary analysis supports the notion that intergenerational wealth transfers feature a long-term effect for private pension saving in commitment accounts.

Anticipation of future gifts or inheritances

Prior research suggests that children who expect to inherit from their parents tend to build their lives in part around that expectation. Weil (1994), for example, finds that households that expect an inheritance increase their consumption even prior to actually receiving it by 5%. By the same token, households expecting future transfers might be less disciplined in putting aside money for their retirement. In what follows, we therefore investigate the potential impact of inheritances which the household under review anticipates, but, unlike in the previous case, *has not received yet*.

Prior research suggests that children who expect to inherit from their parents tend to build their lives in part around that expectation. Households expecting future transfers might be less disciplined in putting aside money for their retirement.

We address this question by leveraging the panel structure of our data and look at the subsample of households that switch from

"not anticipating a gift or inheritance" in wave 1 to "anticipating a gift or inheritance" in wave 2.[13] Note that, unlike in our baseline analysis, which examines the impact of a gift or inheritance *received* by the household under review at some point between the first and the second wave of the PHF survey – and for which we can consequently assume causality with reasonable confidence – the mere *anticipation* of a future transfer is likely impacted by unobservable factors. Specifically, it is possible that an omitted variable exists that influences both the expectation to receive a future gift or inheritance and the amount invested in a private pension. Braun (2015), for example, finds that households with more financial assets (*inter alia* private pension products) are more likely to receive gifts or inheritances in the future. Similarly, the literature confirms a positive impact of household wealth on private pension savings (e.g. Börsch-Supan et al. 2012; Bucher-Koenen/Lusardi, 2011). Thus, wealth in the household's family likely affects both the expectation to receive a future transfer and the amount invested in private pension, i.e. presenting an endogeneity issue which could bias our multivariate results.

In order to address this methodological problem, following Bucher-Koenen and Lusardi (2011) we apply an instrumental variables (IV) approach for which we make use of our households' place of residence. When constructing our IV, we exploit the peculiarity that Germany was partitioned into distinct socialist and capitalist states until October 1990. Owing to the different economic systems, families of individuals in West Germany are more likely to have accumulated wealth as compared to families of individuals who lived in East Germany. Thus, consistent with evidence presented in Braun (2015), we assume that individuals residing in West Germany are more likely to receive a substantial gift or inheritance and therefore *anticipate* receiving such a transfer more often. Further, we argue that the accumulation of private pension savings is uncorrelated to whether or not a given household had its residence in East or West Germany. First, the first PHF survey wave was elicited more than 20 years after the reunification of Germany, i.e. providing households from both parts of the country with a reasonably long period of time to accumulate assets in their private pension accounts. Second, important pension reforms in Germany that stipulated private pension savings were introduced in 2001 (Börsch-Supan et al. 2012), i.e. roughly 10 years apart from both the country's reunification and the first PHF wave.

Yet, our main finding is that the mere anticipation of receiving a gift or inheritance at some point in the future does not decrease the amount currently put into private pensions accounts. If anything, results point towards an increase in private old age provision.

Further analyses

Prior literature on private pension saving behaviour finds substantial differences in saving patterns depending on household characteristics such as prior education (Börsch-Supan et al. 2008), age (Börsch-Supan et al. 2012), or income (Bucher-Koenen/Lusardi 2011). Rather unsurprisingly, Wolff (2002) and, more recently, Elinder, Erixson, and Waldenström (2018) show that less wealthy individuals tend to consume a larger share of their inheritance, whereas the rich are more likely to save a major fraction. Thus, we investigate if and how the effect of intergenerational wealth transfers on the amount of private pension savings varies across subgroups of households.

At 22,647 euros (or 11 cents per euro in funds received), we first document that households with an above-median net income invest a significantly larger share of a gift or inheritance in their private pension accounts. Notably, this difference is not explained by lower-income heir-households receiving smaller gifts and inheritances. Second, we find that wealthier households, in particular, use the transfer receipts to scale up private pension savings. We test an alternative explanation of this result, i.e. that heir-households with lower income and wealth levels use the received funds to pay down any unsecured debt prior to increasing private pension savings. Specifically, we include unpaid credit card bills, overdrafts and consumer loans, which average approximately 4,000 euros across households under review. Counterintuitively, however, we find that below-median income (below-median wealth) unsecured debt levels of heir-households slightly *increase* by 456 euros (806 euros).

Moreover, households in which the person in charge of financial matters is aged above the median of 45 years put a significantly higher fraction of gifts or inheritances into their private pension accounts. By contrast, the impact is close to zero for younger heirs. This suggests that the effect of receiving gifts or inheritances on private pension saving is almost exclusively driven by households with financial decision-makers aged 45–65 years. Again, the difference cannot be explained by younger households receiving smaller gifts and inheritances.

> Households in which the person in charge of financial matters is aged above the median of 45 years put a significantly higher fraction of gifts or inheritances into their private pension accounts. By contrast, the impact is close to zero for younger heirs.

In addition, our results suggest that married households partially drive the effect of gift and inheritance on pension savings, albeit not statistically significantly so. This ties in with related research which documents that higher average wealth levels of married couples partly stem from larger private pension claims (e.g. Zissimopoulos et al. 2013).

Finally, first we test for potential heterogeneous treatment effects based on the nature of the gift or inheritance received. Indeed, we observe that real estate transfers lead to higher savings, which corroborates earlier evidence obtained by Westerheide (2005).

Second, we test whether the impact of receiving transfers on private pension saving is different if the receipt was anticipated by the heir household. Corresponding evidence from prior research is mixed. Brown and Weisbenner (2004) and, more recently, Wolff (2015) find that the mere expectation of receiving a gift or inheritance does not alter the households' decision to save more or less. Applying a particularly well-designed identification strategy, Elinder, Erixson, and Waldenström (2018) use the Swedish population register to examine if expected inheritances affect individuals' wealth and saving behaviour. Pairing decedents and heirs, they examine if an increase in decedents' wealth leads to dissaving for heirs, but find no evidence of a measurable impact. In a related study addressing the effect of inheritance receipts on individuals' probability of early retirement, Brown, Coile and Weisbenner (2010), for example, find that the likelihood of retiring early after an unexpected inheritance is twice as high as compared to an inheritance which has been anticipated. By contrast, Door-

ley and Pestel (2020) find no difference between expected and unexpected inheritances with respect to the households' decision to retire earlier. Extending this evidence, we report no significant difference in the effects of inheritances depending on whether or not the person in charge of financial decisions stated in wave 1 that the household expects to receive a gift or inheritance.

Discussion and concluding remarks

Using detailed household panel data, we investigate how gifts and inheritances affect the financial decision-making of households with respect to private pension savings. At this, we focus on private pension plans designed to provide secure funds during old age. Our main result is that, on the one hand, intergenerational wealth transfers do seem to provide the average heir household under review with a head start when it comes to old-age provision. All else being equal, households who receive a gift or inheritance during the three-year sample period between 2011 and 2014 make on average 15,268 euros (or as much as 330%) higher payments to their private pension accounts as compared to their sociodemographic twins among the group of non-heirs. This gap accrues to more than 40,000 euros at retirement and persists even when we control for other investments of heirs and non-heirs which may be intended to provide for old age, such as securities holdings or real estate (including mortgage down payments for existing housing).

On the other hand, we document considerable variation in the effect size of transferred funds with respect to heir-households' commitment savings for old age. First, heir-households with above-median income and wealth put a significantly higher percentage of a given gift or inheritance in their private pension accounts. Notably, this difference is not explained by lower-income heir-households receiving smaller gifts and inheritances – in fact, average transferred funds among households with below-median income are roughly 15% larger than those for higher-income heirs. In addition, we rule out other alternative explanations, such as the possibility that some heir-households wish to pay off their unsecured debt prior to saving by means of a private pension plan. Third, the positive impact of receiving gifts or inheritances on private pension savings is almost exclusively driven by households with financial decision-makers aged 45–65 years. Again, this finding cannot be explained by younger households receiving smaller gifts and inheritances.

Our findings contribute to recent research illuminating the role of intergenerational wealth transfers for intergenerational justice. Halliday (2018) argues that inherited wealth undermines social justice when it helps maintain group-based wealth inequalities over time. Indeed, intergenerational wealth transfers can be a mechanism by which economic segregation is created and transmitted over the generations. Wolff (forthcoming) worries that the retirement divide is one of the most notable examples of economic segregation in the UK. Corroborating this concern, prior empirical research documents that large proportions of gifts and inheritances are not consumed by the recipients. Westerheide (2005) finds that about 80% of an intergenerational wealth transfer is saved by the average heir and that gifts and inheritances considerably affect the wealth creation of households. Joulfaian (2006) confirms those figures using US estate tax records and finds that 79% of inheritances are saved and retained as wealth. Moreover, Braun (2015) documents that those who will inherit it are primarily the ones that already own higher-than-average wealth.

Halliday (2018) highlights that the cumulative effects of intergenerational wealth transfers, unless they are carefully regulated, threaten to erode the background conditions to social cooperation ("background justice") over time and discusses various different ideas on how to regulate large flows of bequest by means of taxation. In a related contribution, Pedersen (2018) provides a survey of key topics on just inheritance taxation. Wolff (forthcoming) proposes that "[u]sing the funds generated by these taxes to increase the state pension would mitigate the inequality in retirement to some degree" (p.11). Yet, he concedes that, although taxing inheritances might be just, it would most probably lack general public support.

Generally, there is a wide consensus among economists and social scientists that the intergenerational replication of inequality is real and that it might have previously been underestimated (e.g. Mazumder 2005). The mechanisms by which status and economic inequality reproduce over the generations, however, are less well understood. For example, it has recently been argued that the bigger cause of massive inequality today is very high earnings rather than inheritance (e.g. Piketty 2014). By providing a quantitative account of how gifts and inheritances affect inequality in retirement wealth, this study hopes to promote discussions on intergenerational justice in society and to provide new perspectives for policy-makers.

Notes

1 While we realise that a small fraction of gifts or inheritances might in fact be transferred within a given generation, we follow Brown and Weisbenner (2004) and Westerheide (2005) and use the terms "intergenerational wealth transfer", "gift", "bequest" and "inheritance" interchangeably.

2 Relatedly, Piketty (2014) estimates that annual bequest flows will amount to as much as 25% of the aggregate national income of France by 2050. Similar numbers have been found for the UK (Wolff 2015) and the US (Atkinson 2013).

3 Note that there are significant additional ways to save for retirement apart from private pension accounts. Clearly, these alternatives would need to be studied in detail as part of a more comprehensive analysis of the impact of intergenerational wealth transfers on old-age provision.

4 See section Main results for details on these calculations.

5 See Schmidt et al. (2017) and von Kalckreuth et al. (2017) for a technical documentation of the PHF.

6 The respective questions in the PHF are worded as follows: "Have you or another member of your household received a larger gift or inheritance, e.g. money or other valuables, from someone who does not belong to the household?"; "How many larger gifts or inheritances were there?"; "In what year did you receive the gift/inheritance that was the most important for your current financial situation?"; "What type was the gift/inheritance?"; "What value did the gift/inheritance have when you received it?" Table A1 provides descriptions of all variables used in the analysis.

7 We exclude observations of Gift/inheritance received whose distance from the sample mean exceeds three times the standard deviation.

8 The respective question in the PHF is worded as follows: "Does your household expect a larger gift or inheritance from someone

who is not a household member in the future?" Note: in order to make sure we capture the actual impact of expected gifts or inheritances, we further exclude households that already stated that they expect a gift or inheritance in wave 1 for the regression analyses. This reduces our initial sample from 185 households that expect a gift or an inheritance in wave 2 to 91 households that for the first time expect a gift or an inheritance in wave 2.

9 Table A2 and A3 report summary statistics of the sampled households.

10 For a comprehensive description of the econometric methodology as well as the detailed quantitative evidence generated in the multivariate analysis (including tabulated regression results), refer to the technical companion report: www.uni-marburg.de/de/fb02/professuren/bwl/behavioralfinance/forschung/artikel/brenner_stolper_mind_the_gap.pdf

11 The following data have been used: average monthly net incomes among the sampled non-retired households in 2011 and 2014 amounted to 2,466 euros and 2,679 euros, respectively (cf. Table A2). Average savings rates in Germany were reported to be 9.6% in 2011 and 9.5% in 2014 (Destatis 2018). Moreover, we apply the long-term average equity premium of 5% p.a. and assume payments are made at the beginning of each month. Finally, the 2018 Ageing Report issued by the European Commission (European Commission, 2018; p.56) forecasts an official retirement age of 67 years by 2030 in Germany.

12 Only recently, Dolls et al. (2018) show that being provided with personalised information about expected public pension payments stimulates individuals' private retirement savings.

13 We exclude households that already expect a gift or inheritance in wave 1, because (i) we do not know since when exactly they have been anticipating the money and (ii) we want to examine a quasi-treatment effect for those households making an active switch from not expecting in wave 1 to expecting in wave 2 (assumption: some event triggered households to start expecting a future gift or inheritance). We base our nearest neighbour propensity score matching on households that fulfil these criteria. Thus the matched sample contains households that anticipate a transfer, as well as sociodemographic twins not expecting a gift or inheritance who populate the control group.

References

Abadie, Alberto / Imbens, Guido W. (2011): Bias-Corrected Matching Estimators for Average Treatment Effects. In: Journal of Business and Economic Statistics, 29 (1), 1–11.

Agarwal, Sumit / Pan, Jessica / Qian, Wenlan (2019): Age of Decision: Pension Savings Withdrawal and Consumption and Debt Response. In: Management Science, 66 (1), 43-69.

Andersen, Steffen / Nielsen, Kasper Meisner (2011): Participation Constraints in the Stock Market: Evidence from Unexpected Inheritance Due to Sudden Death. In: Review of Financial Studies, 24 (5), 1667–1697.

Beshears, John et al. (2015): Self Control and Commitment: Can Decreasing the Liquidity of Savings Account Increase Deposits. NBER Working Paper No. 21474.

Beshears, John et al. (2008): A Primer on 401 (k) Loans. Unpublished Working Paper.

Börsch-Supan, Axel et al. (2016): The Development of the Pension Gap and German Households' Saving Behavior. MEA Discussion Paper 02-2016.

Börsch-Supan, Axel / Reil-Held, Anette / Coppola, Michela (2012): Riester Pensions in Germany: Design, Dynamics, Targeting Success, and Crowding-In. NBER Working Paper No. 18014.

Börsch-Supan, Axel / Reil-Held, Anette / Schunk, Daniel (2008): Saving Incentives, Old-Age Provision and Displacement Effects: Evidence from the Recent German Pension Reform. In: Journal of Pension Economics and Finance, 7 (3), 295–319.

Braun, Rainer (2015): Erben in Deutschland: Volumen, Verteilung und Verwendung. Deutsches Institut für Altersvorsorge. https://www.empirica-institut.de/fileadmin/Redaktion/Publikationen_Referenzen/PDFs/DIA_Studie_Erben_in_Deutschland_HighRes.pdf. Viewed 05 November 2020.

Brown, Jeffrey R. / Coile, Courtney C. / Weisbenner, Scott (2010): The Effect of Inheritance Receipt on Retirement. In: Review of Economics and Statistics, 92 (2), 425–434.

Brown, Jeffrey R. / Weisbenner, Scott (2004): Intergenerational Transfers and Savings Behavior. In: Wise, David A. (ed.): Perspectives on the Economics of Aging. Chicago: University of Chicago Press.

Brunnermeier, Markus K. / and Nagel, Stefan (2008): Do Wealth Fluctuations Generate Time-Varying Risk Aversion? Micro-Evidence on Individuals. In: American Economic Review, 98 (3), 713–736.

Bucher-Koenen, Tabea / Lusardi, Annamaria (2011): Financial Literacy and Retirement Planning in Germany. In: Journal of Pension Economics and Finance, 10 (4), 565–584.

Destatis (2018): Sparquote der Privaten Haushalte in Deutschland von 1991 bis 2017.

Dolls, Matthias et al. (2018): Do Retirement Savings Increase in Response to Information about Retirement and Expected Pensions? In: Journal of Public Economics, 158 (C): 168–179.

Doorley, Karina / Pestel, Nico (2020): Labour Supply after Inheritances and the Role of Expectations. In: Oxford Bulletin of Economics and Statistics, 82 (4), 843-863.

Elinder, Mikael / Erixson, Oscar / Waldenström, Daniel (2018): Inheritance and Wealth Inequality: Evidence from Population Registers. In: Journal of Public Economics, 165, 17–30.

European Commission (2018): The 2018 Ageing Report: Economic and Budgetary Projections for the EU Member States (2016-2070).

Fessler, Pirmin / Schürz, Martin (2018): Private Wealth Across European Countries: The Role of Income, Inheritance and the Welfare State. In: Journal of Human Development and Capabilities, 19 (4), 521-549.

Fleming, Michael J. / Bassett, William F. / Rodrigues, Anthony P. (1998): How Workers Use 401(k) Plans: The Participation, Contribution, and Withdrawal Decisions. In: National Tax Journal, 51 (2), 263-289.

Gale, William G. / Scholz, John Karl (1994): Intergenerational Transfers and the Accumulation of Wealth. In: Journal of Economic Perspectives, 8 (4), 145–160.

Gaudecker, Hans-Martin von (2015): How Does Household Portfolio Diversification Vary with Financial Literacy and Financial Advice? In: Journal of Finance, 70 (2), 489–507.

Halliday, Daniel (2018): The Inheritance of Wealth: Justice, Equality and the Right to Bequeath. Oxford: Oxford University Press.

Joulfaian, David (2006): Inheritance and Saving. NBER Working Paper No. 12569.

Kalckreuth, Ulf von et al. (2017): Panel on Household Finances 1. Welle [Data Set]. Deutsche Bundesbank.

Kessler, Denis / Masson, Andre (1989): Bequest and Wealth Accumulation: Are Some Pieces of the Puzzle Missing? In: The Journal of Economic Perspectives, 3 (3), 141–152.

Kotlikoff, Laurence J. (1988): Intergenerational Transfers and Savings. In: Journal of Economic Perspectives, 2 (2), 41–58.

Kotlikoff, Laurence J. / Summers, Lawrence H. (1981): The Role of Intergenerational Transfers in Aggregate Capital Accumulation. In: Journal of Political Economy, 89 (4), 706–732.

Mazumder, Bhashkar (2005): Fortunate Sons: New Estimates of Intergenerational Mobility in the United States using Social Security Earnings Data. In: Review of Economics and Statistics, 87 (2), 235-255.

Pedersen, Jørgen (2018): Just Inheritance Taxation. In: Philosophy Compass, 13 (4), 1-10.

Piketty, Thomas (2014): Capital in the Twenty-First Century. Cambridge, MA: Harvard University Press.

Shum, Pauline / Faig, Miquel (2006): What Explains Household Stock Holdings? In: Journal of Banking and Finance, 30 (9), 2579–2597.

Weil, David N. (1994): The Saving of the Elderly in Micro and Macro Data. In: Quarterly Journal of Economics, 109 (1), 55–81.

Westerheide, Peter (2005): The Importance of Intergenerational Transfers for Private Wealth Accumulation. In: Journal of Economics and Statistics, 225 (1), 459–481.

Wolff, Edward N. (2002): Inheritances and Wealth Inequality, 1989-1998. In: American Economic Review, 92 (2), 260–264.

Wolff, Edward N. / Gittleman, Maury (2014): Inheritance and the Distribution of Wealth or Whatever Happened to the Great Inheritance Boom. In: Journal of Economic Inequality, 12 (4), 439–468.

Wolff, Jonathan (forthcoming): Family Fortunes. In: Law, Ethics and Philosophy.

Zissimopoulos, Julie M. / Karney, Benjamin R. / Rauer Amy J. (2013): Marriage and Economic Well Being at Older Ages. In: Review of Economics of the Household, 13 (1), 1–35.

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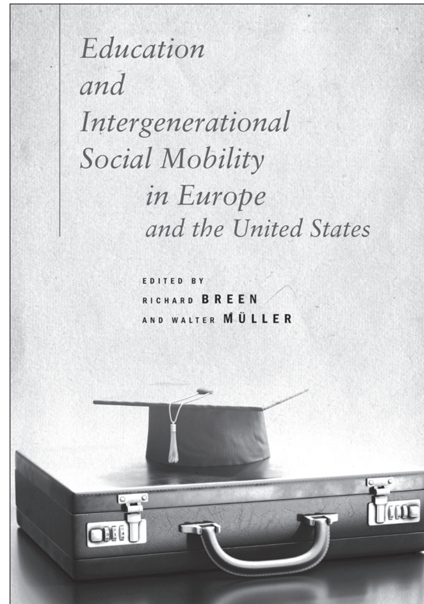
Richard Breen / Walter Müller (eds.): Education and Intergenerational Social Mobility in Europe and the United States

Reviewed by Veronica Coram



Since the great educational expansion of the 20th century, almost universal across the advanced industrial economies, education has been held out as the golden ticket to opportunity and prosperity for individuals. Educational expansion is implicitly assumed to be accompanied by equalisation of access, meaning there are no longer any barriers to the talented and meritorious, regardless of their class origins, rising through society's ranks and finding their rightful place – or so we are encouraged to think.

In this new volume edited by Richard Breen and Walter Müller, rigorous analysis of empirical data from across eight countries reveals that education's promise to deliver social mobility has become increasingly hollow. That investment in education is yielding diminishing returns for individuals is not a new story. Brown, Lauder and Ashton (2011) highlighted the way the increasing (and globalising) competition that has come to characterise the graduate job market has created a high-skill, low-wage workforce. More recently, Bessant, Farthing and Watts (2017) have exposed how deeply human capital theory and the commodification of the self are implicated in the neo-liberal project in countries such as the UK, the US and Australia.

Young people are expected to invest enormous resources in crafting themselves as skilled, knowledgeable and networked players in an overcrowded jobs market, but with the spoils increasingly monopolised by a shrinking elite many will find the investment does not pay off. The educational pathway to upward social mobility has been left behind in the industrial age. However, if individuals fall foul of the pervasive stagnation of wages and opportunities, they are held responsible rather than governments being accountable for structural inequalities reinforced by public policy.

What sets *Education and Intergenerational Social Mobility in Europe and the United States* apart from previous, less empirical, discussions is the way the bigger picture emerges from an analysis of large datasets. These data are drawn from a selection of European countries (Sweden, France, Germany, Switzerland, the Netherlands, Italy and Spain) plus the US. The book is methodologically rigorous, heavily referenced and data-rich, incorporating many detailed tables and graphs.

The volume is structured as a series of eight country chapters, preceded by an introductory chapter from the editors and a chapter which gives Professor Breen some latitude to explore his interest in quantitative methodologies, and followed by a concluding chapter from both editors. Some level of statistical knowledge is helpful in understanding the methodology chapter, which explains the models used throughout the country chapters: notably the odds ratio to measure social fluidity; the unidiff model to show associations between the key variables (origin class, destination class and education) and trends in fluidity; and simulations to triangulate the results.

The country chapters are effectively standalone case studies and very little comparative analysis is undertaken until the concluding chapter. The book's structure is somewhat fragmented as a result, but several factors mitigate this and ensure the volume works as a cohesive whole. One is the effort put into maintaining a high degree of consistency in the datasets and methodological approaches used across the country chapters. Another is the common themes that emerge repeatedly in a way that feels organic and driven by the data, rather than the data being selectively deployed to fit interpretations or frames imposed from the top down. Finally, the concluding chapter integrates the common themes very effectively and helps the reader put the pieces of the jigsaw puzzle together.

The US chapter is something of an afterthought (though strategically placed as the first country chapter) and feels like a concession to the American market. Little is made of differences or similarities between the US data and the findings from the other countries, making the US chapter seem unnecessary in a volume that is clearly focused on (Western) Europe rather than taking a global perspective. The European focus does not detract from the book's broader relevance. While there are plenty of idiosyncrasies in the individual countries' educational systems and the ways they experienced the structural economic changes of last century, the cases of exceptionalism serve largely to prove the rules.

Breen and Müller set themselves and their contributors a mammoth task and *almost* bite off more than any of us can really chew. They set out to assess whether social mobility (the difference between a person's class origin and their class destination) and social fluidity (relative mobility) increased during the 20th century, and if social fluidity is associated with educational expansion and/or equalisation. However, there are other relationships in play: class origins affect destinations directly (not just through the filter of education) and, because origins affect education, it is not clear how much of education's effect on destinations derives from education alone.

Further complications arise as social mobility, social fluidity and educational norms shift over time. The conditions prevailing when people are young adults will have a lasting effect on them. Older cohorts who are already comfortably ensconced in the labour market will be less affected by changes in education or social fluidity than young cohorts who are yet to settle.
Breen and Müller note that they aim to describe rather than explain, but there is an assumption implicitly being tested here: the dogma that educational expansion drives upward social mobility. The average level of education attained by young people increased massively across most of the industrialised world in the 20th century, though it must be noted that educational expansion is not the same as educational equalisation. Educational expansion may enhance the access of the higher classes to education much more than the lower classes, in which case expansion will help to reinforce rather than ameliorate class differences. In practice, educational expansion has tended to be accompanied by some degree of equalisation.
The data presented in this volume suggest that educational expansion is in fact associated with upward social mobility – but, critically, only under certain conditions and up to a point. Once that tipping point is reached, further educational expansion is associated with *downward* social mobility. The likelihood of children being worse off than their parents increases.
This is because when upward social mobility has been occurring for a while, more young people will have class origins at a higher level. Regardless of the levels of education they attain, there is nowhere for many of them to go except down unless the occupational structure in place continues to shift upwards. Under a stagnant occupational structure, mobility is a zero-sum game: anyone who does achieve upward mobility will be displacing someone with a higher origin class into downward mobility. As Breen and Jan Jonsson note in the Sweden chapter, "mobility is shaped by the available positions in the class structure." Educational expansion has continued while the shifting up of the occupational structure has stalled in most advanced industrial societies, so upward social mobility is limited despite high levels of educational attainment.
On this reading, educational expansion and equalisation may facilitate upward social mobility but they do not drive it. Rather, both educational expansion and upward mobility have been driven by a third factor, the upgrading of the occupational structure in mid-20th-century industrialised societies. Educational expansion has been necessary to feed the growing service class thereby produced.
If the upgrading of the occupational structure stops, so does overall upward mobility, regardless of whether educational expansion continues or not. Higher average educational attainment in a society does not magically generate the jobs to match, though educational equalisation may go some way towards influencing who secures the high-quality jobs that *are* available. Under these circumstances there may be fluidity as the link between origin and destination class continues to weaken, but the more lower-level people who rise up into the higher levels, the more higher-level people will be pushed down into the lower levels.
This raises the question of whether post-industrial societies still require high (or increasing) levels of educational attainment. There is something very perverse about demanding that young people invest more heavily in their own human capital than is required to meet society's need for educated labour, especially in countries with high education costs and limited public subsidisation of university fees. The tertiary education that once used to be an almost guaranteed ticket to upward mobility is now required merely to tread water: necessary to have any hope of maintaining one's origin class but less and less likely to permit upward mobility.
On the evidence presented in this book, the trajectory of modernisation plays out with sufficient inexorability to satisfy the most unfashionably teleological social scientist in search of a grand unified theory. Manufacturing grows as the agricultural sector contracts, then education expands massively to feed a burgeoning service class, which draws increasing numbers of women into the workforce. There are abundant opportunities for upward social mobility, especially for women. Society becomes increasingly open and prosperous, with benefits for all. And then, when it has barely begun, the party is suddenly over.
For the sake of simplicity, let's say the clock strikes midnight in the early 1970s for advanced industrial democracies. Manufacturing contracts sharply, economic shocks become global, productivity growth slows, gains become more concentrated among an elite rentier class, labour markets restructure and jobs are increasingly precarious. There are many more highly-educated graduates than there are good-quality jobs and opportunities for upward social mobility diminish. The party might burst back to life for brief periods, notably in the dying days of the 20th century in the US and some other countries, but the overall trend is clear. The rewards of industrialisation are not reaped indefinitely.
This is reflected in one of the key overall findings in this volume: across the European countries, men's social mobility remained stable or increased for cohorts born before the mid-1950s but declined for cohorts born thereafter (in the US it remained stable). In most countries, the risks of downward mobility remained constant or declined for men born before the mid-50s but increased for men born after. It was not only in France that the three decades following the Second World War proved to be an unrepeatable "les trente glorieuses", delivering economic rewards to the cohorts born in the 1920s to 1950s that have dried up for those born since.
This is not to say there aren't interesting variations on the theme highlighted in the country chapters of *Education and Intergenerational Social Mobility*. For example, the highly-stratified educational systems in Germany and Switzerland, in which students are early on directed down either an academic or vocationally oriented pathway, have tended to tamp down the educational equalisation–social mobility link compared to some other countries. Italy lags behind other developed nations in terms of tertiary education expansion and equalisation, and also experienced a more limited expansion of service-class positions during the 20th century, both of which have contributed to relatively low levels of fluidity and stronger links between origin and destination class. Spain is something of an anomaly amongst the European countries in the timing of its economic transitions, with the Civil War and Franco years delaying development in some respects.
A strength of the book is its foregrounding of the different experiences of women during the 20th century. Women have generally benefited more than men from the expansion of education and upward social mobility, and education is more strongly associated with mobility for women, though of course increases in education and upward mobility for women were coming off a low base. For example, in the chapter on France we find that women have

experienced a 42% increase in social fluidity since the 1935–44 birth cohort, while for men the increase ranged from 19 to 26%. The data for women is not as extensive as that for men. This is largely because only women in the labour force are included, and particularly in the older cohorts this comprises a smaller proportion of the female than male population. Female workforce participation also tends to fluctuate over time and between countries more than male participation. Notwithstanding these factors, the editors conclude that "the same trend towards an opening and closing of opportunities to enter the service class that we saw among men is also evident for women". The main difference is that for women, upward mobility tended to persist a little longer than for men, with the tipping point occurring after the 1955–64 birth cohort, while for men it was after the 1945–54 cohort.

For much of this book, it is difficult to see the forest for the trees. One of the main strengths of the volume is also a weakness: the exhaustive analysis of large quantitative datasets make this one for scholars, and scholars with methodological interests at that, rather than for a general audience. However, the final pages of the concluding chapter are redolent with insight emerging from the data analysis, painting a compelling picture of the decline of opportunity since the post-war boom. The editors conclude that "perhaps our most striking finding is the sharp contrast between the fortunes of people before and after the 1950s", and it is here that the deep relevance of the book for intergenerational justice becomes evident. The editors acknowledge that intergenerational mobility must be considered from a long-term perspective as any generalisations from snapshot data will not show what is really happening, and the volume reflects this with its inclusion of cohorts born from the 1920s to the early 1970s. Younger cohorts are generally not included because at the time the class data were collected they were under 40 and had not necessarily yet reached their final class destinations. However, some analysis of how the observed trends in social mobility and fluidity are likely to be affecting younger cohorts would have been a welcome addition to the book and enhanced its contemporary relevance. A more critical discussion of issues associated with measuring class by occupational category (as per the Erikson-Goldthorpe schema used for most of the country analyses) would also have been useful given how much importance is attached to the class datasets.

It must be recognised that the wave of structural change in advanced industrial democracies which benefited people born before the 1960s, lifting so many into positions of greater prosperity, is over. Further expansion and equalisation of education may have many benefits, but it is not going to give today's young people the same opportunities in life and work that their parents and grandparents enjoyed. As the editors of *Education and Intergenerational Social Mobility* note, this is of particular concern in countries such as the US, the UK and Australia which have more substantial income and wealth inequalities than most European nations, and where the impact of downward mobility is therefore especially damaging.

The most important contribution of this volume is to show that expanding and equalising education cannot be used to justify excessively unequal distributions of opportunity and resources: equality of opportunity (even if it actually exists) does not legitimate inequality of outcomes. The book also offers a timely reminder that we remain hostages to the fortunes of history as the life chances of a generation of young people are reshaped by their coming of age during a global pandemic and being disproportionately affected by the economic fallout. If older cohorts are better off than younger ones it has a lot more to do with having been born at an opportune time than studying or working harder.

Breen, Richard / Müller, Walter (eds.) (2020): Education and Intergenerational Social Mobility in Europe and the United States. Stanford, California: Stanford University Press. 360 pages. ISBN: 9781503610163. Price £60.

References

Bessant, J. / Farthing, R. / Watts, R. (2017): The precarious generation: A political economy of young people. London and New York: Routledge.

Brown, P. / Lauder, H. / Ashton, D. (2011): The global auction: The broken promises of education, jobs and incomes. New York: Oxford University Press.

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