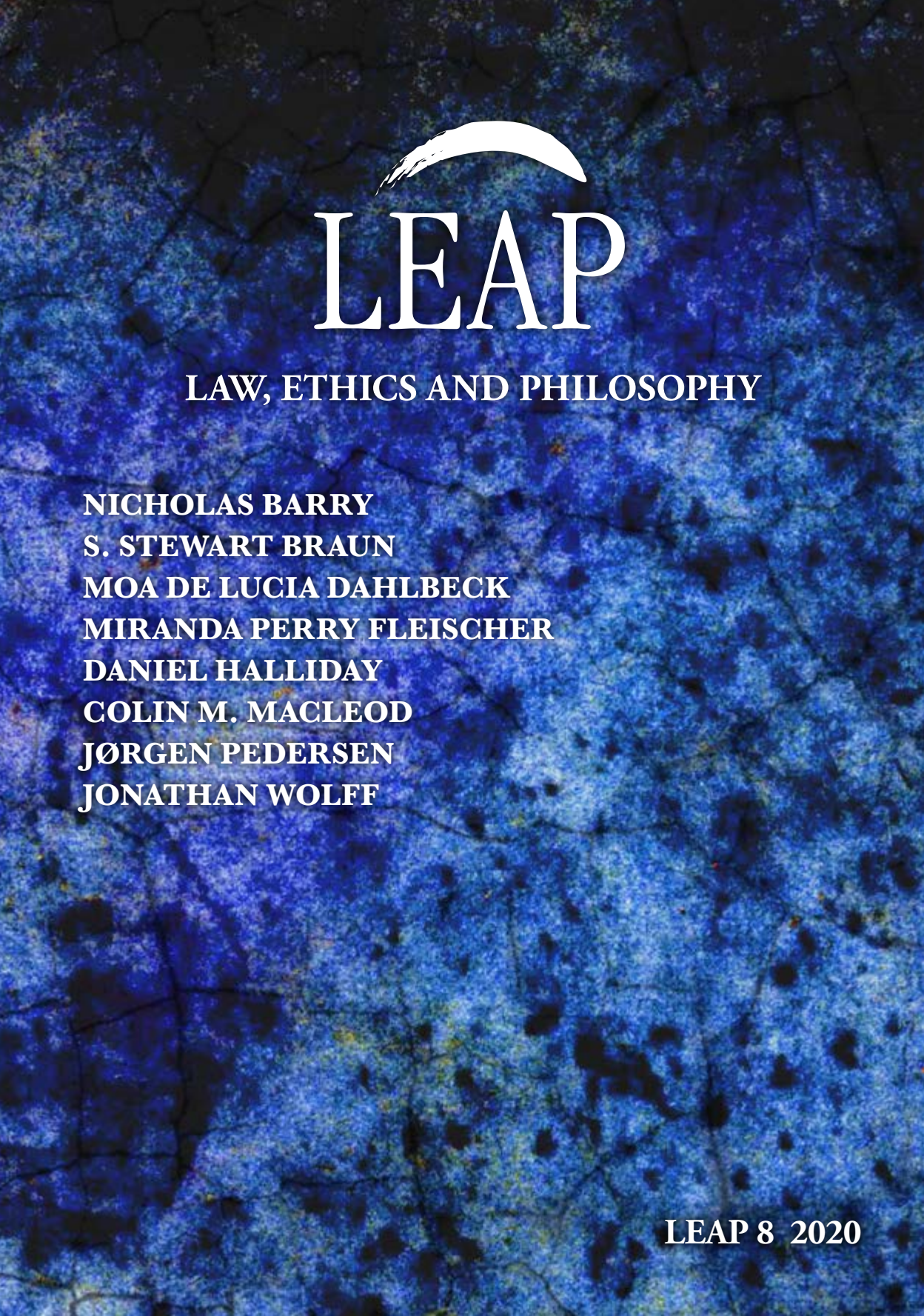
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Maimonides and a Legal Response to Artificial Intelligence*

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ABSTRACT

In the 13th century, Maimonides revolutionized Jewish jurisprudence by arguing that in contrast with traditional rabbinic views of the Torah's commandments (i.e. the written divine law) as ends in themselves, Scripture's commands were better viewed as means to the end of a truthful, rational understanding of the world. The material content of the law was always to be understood as accompanied by an additional layer of fundamental formulations of beliefs and opinions regarding God and nature. Maimonides' theory of law began with the idea that human nature was perfected to the extent that it achieved a rational understanding of things. By holding that the ultimate end of law was to function as a means for the realization of human perfection, Maimonides placed a tool for social stability at the heart of the individual striving for ethical flourishing. In this article, I argue that Maimonides' understanding of law's ultimate end may help us deal with the question of how to approach the phenomenon of an ever-increasing reliance on AI in modern life from the perspective of law. My argument suggests that AI can be understood as a threat to law's natural and (according to Maimonides) necessary participation in the ethical process towards intellectual perfection.

Keywords: Maimonides, artificial intelligence, Jewish jurisprudence, legal theory, law's ultimate end, ethical flourishing.

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1. ARTIFICIAL INTELLIGENCE AND THE QUESTION OF LAW'S END ULTIMATE

This article aims to show that, surprising as it may seem, a medieval conception of law's ultimate end developed in a religious context can help us grasp the challenges posed by the phenomenon of artificial intelligence (AI) to contemporary legal practices. The article will also suggest that flipping the focal points of the usual questions asked when reflecting upon AI's effects on law – from AI to law itself – may serve us in developing a considered legal response to a reality in which legal practices may involve agents and actors lacking human attributes.

Instead of focusing on the problems of application caused by (mostly self-learning and autonomous) AI when trying to come to terms with the use of AI within legal practices, I suggest placing the focus on law's ultimate end. Doing so while starting out from the instances in which AI seems to enhance rather than challenge the human ability to comply with laws, will enable an analysis of the impacts of AI on law that is not tied to a specific legal context or practical problem. We could imagine, for example, using AI to guarantee compliance with drunk driving laws. Cars could be equipped with an AI that takes over the function of driving manually whenever its sensory devices perceive an abnormal pattern of movement. Analyzing the legal effects of AI while keeping in mind instances such as this will help us outline a response to AI that is general enough to function as a starting point for any kind of specific discussion of encounters between AI and law.

The theoretical basis for this response is the medieval Jewish scholar Maimonides' (1135-1204) account of the ultimate end of law. Although it may appear far-fetched to turn to a medieval thinker to confront problems facing contemporary legal/technological discourses, the reasons are more straightforward than they may first seem. Because the aim of this paper is to find an appropriate legal response to AI through an outline that focuses on law's nature rather than that of AI, it will use arguments that concern the metaphysical relationship between human nature and law. Jewish jurisprudence, in general, is a valuable source for this kind of endeavor as it treats normative issues as parts of a greater ethical and metaphysical scheme (see Elon, 1985: 221). Maimonides' philosophy makes for a specially interesting focal point within this tradition as he explicitly infers his jurisprudential suggestion that law is a means towards a higher (beyond social) end from investigations into human nature (see Elon, 1985: 222-4; Dorff, 1978). I argue that some of Maimonides' metaphysical reflections on law may serve us in making a careful consideration of whether the legal discourse ought to be generally enthusiastic or skeptical towards an

increased use of AI-technology in human practices regulated by law. To be clear, my use of Maimonides' philosophy is to be regarded, not as an attempt to comprehensively account for his legal and metaphysical theories, but rather as a source of inspiration for an independent reflection upon law and its ultimate end.

In what follows, I will first extract two answers to the question of law's ultimate end from Maimonides' scholarly exchange with contemporary Jewish jurisprudence on the relationship between human nature and law. I will argue that a close reading of the two different positions deduced from these Rabbinic discussions reveals that Maimonides' immaterial concept of law's ultimate end (as a means to arriving at an end that is non-measurable in an empirical sense) gives a robust metaphysical account of the nature of law as well as the human being. Next, I will discuss how this account opens up for a critical understanding of the kinds of human interactions with AI that have generally been considered beneficial (or at least harmless) from the perspective of legal practice. Having laid out the potentially problematic aspects of apparently unproblematic human interactions with AI, I will argue that this enables a considered evaluation of whether legal discourse should side with those who are generally skeptical or enthusiastic towards the use of AI. Lastly, I will conclude by arguing that Maimonides' conception of law – as the bearer of an instrumental, as opposed to intrinsic, value – settles the question of legal response to AI in favor of the skeptical side. This leaves us with a warning against an unqualified embracement of the incorporation of AI techniques in legal practices.

Usually when contemplating AI, legal discussions tend to focus on cases involving a) AI that is complex enough to replace parts of, or the entire, human cognitive process *and* b) legal rules that depend on the evaluation of some form of subjective or mental criteria that originate from said process (intent, negligence, diligence, common sense etc.). This focus seems natural considering how the problems that these cases highlight often concern the application of norms involved in the administration of justice. In other words, they are problems that affect norms indispensable for a well-functioning civil, penal and humanitarian law. However, there are two factors that motivate a different focus when considering the impacts of AI on law. The first factor is the multifaceted nature of AI. The second is the inconclusive result that a principal focus on the legal problems caused by (mostly) complex AI may lead to. I will discuss each of these factors in turn.

Because of the lack of a universally accepted, informative definition of AI, it may seem difficult to argue for a legal response towards AI that does

not depart from particularities, such as the kind of legal norms affected or the form of AI involved. However, to do so conceals the fact that there may be problematic issues related to the incorporation of AI into law-regulated human activities that are neither immediately visible nor concerned with the application of law. Specifying the two factors mentioned above as motivations for an alternative focus when contemplating AI's impacts on law, will hopefully serve to clarify this further.

With respect to the first factor, it should be noted that technological development has generated a widening of the significance of the concept of AI. Today, AI interventions in human activities range from cases where the interaction between machines and humans is minimal (e.g. pattern analysis in big data) to those in which the AI is fully interactive (robotics and chatbots); from interventions that require no learning process at all (only the programming of inputs - outputs) to those that are entirely dependent on machinic self-learning; from interventions the decisions of which are taken by human authors, to those in which AI is acting autonomously. Naturally, cognitively sophisticated kinds of AI – the kind that can be understood 'as a growing resource of interactive, autonomous, self-learning agency, which enables computational artifacts to perform tasks that otherwise would require human intelligence to be executed successfully' – will cause more obvious problems for legal practices than the kind that amounts to technical improvements of human activities (Taddeo and Floridi, 2018: 751-752). It is not strange, then, that the discussion of AI from the perspective of law has been informed by a general fear of the ways in which AI may undermine a meaningful human control over events, such as the application of a given legal rule. However, the cases of human interactions with AI in which the effects of AI on legal practices are obviously problematic are not the only ones conceivable.

As for the second factor, so called "nudging" is one example of a state practice involving a mix of different kinds of AI which very rarely is met with resistance from legal scholars.[1] Nudges are by definition non-regulatory measures that aim to influence individuals to change behavior without removing their freedom of choice (Ranchordás, 2019). Strictly speaking, this means that nudges cannot be regarded as challenging to the concept of human agency in ways that could affect the application of laws. To this end, they constitute good examples of a public and normative use of AI that appears completely harmless for legal practices and therefore natural to endorse from a perspective of law. There are also examples of

[1] Nudging denominates incentives given by smart cities for people to act in certain determined way which they have established by way of employing the Internet of Things, big data, and algorithms (see Ranchordás, 2019).

legal contexts in which one and the same kind of AI-technology provokes both critical and endorsing stances (see, e.g., Cath, 2018; Floridi, 2018; Nemitz, 2018; Armstrong and Ray, 2019; Braun, 2019). This is visible within the discourse on international humanitarian law (IHL) and its attempt to determine the legal status of lethal autonomous weapons systems (LAWS). The legal debate on LAWS contains voices that express enthusiasm for AI (of a highly sophisticated, self-learning and autonomous kind) in so far as it may safeguard fundamental humanitarian principles and values (such as the principles of discrimination, proportionality and the prohibition of unnecessary suffering). The same debate also contains voices, however, that express skepticism towards the same kind of AI due to its alleged threat to the very same principles and values (ibid.). Since both stances are considered to be equally substantiated and well-argued, the result is a stand-still in the negotiations on a new legal regime dealing with LAWS (Sturken et. al, 2004; De Lucia Dahlbeck, 2020).

In sum, scholars have tended to adopt one of two stances within the legal discourse: a skeptical stance and an enthusiastic stance. The skeptical stance can mostly be seen in reflections on legal norms that incorporate a subjective mental criterion, the interference of which makes AI seem to undermine a legal requisite of necessary human control (Ormond, 2020: 5). The enthusiastic stance emerges rather from contemplations on the impacts of AI on laws that aim at establishing a specific conduct without an additional requirement of intent, will or neglect.[2] This stance is thus often a response to less sophisticated, more mechanical forms of AI that create low-level interferences with technical and non-cognitive norms, such as speeding or administrative matters (see Taddeo and Floridi, 2018: 752). The co-existence of both of these stances within legal discourse goes to show why it may be relevant for legal theory to seek an approach towards AI that does not depart from the questions of what AI is and does to law. To this end, it could be interesting to try out as new starting points the questions of what law is and what it needs from AI.

2. MAIMONIDES AND LAW'S ULTIMATE END

The Jewish tradition of thought has always treated normative matters as part of religious and thus metaphysical problems (Elon, 1985: 221). Arguably, this can at least partly be explained by the fact that the broadest definition of Jewish law – *Halakha* – encompasses legal as well as religious/

[2] A rule prohibiting driving a car after consuming (a certain amount of) alcohol is an example of what I refer to as the second kind of legal rule and a rule prohibiting the willful killing of another human being is an example of the first.

ethical matters. *Halakha* refers to both written versions of the *Mishnah* (the oral complement to revealed law: *Torah*), as well as to doctrine and jurisprudence (*Gemara*) on how to interpret, analyze, and explain the meaning of *Mishnah* in specific contexts (see, e.g., Butterworth, 2007: 219-250). Thus, the main source of Jewish law (the *Halakha*) teaches not only civil matters, but also issues concerning beliefs, rituals and ethics.[3] Menachem Elon (1985: 222) elaborates on the special character of Jewish theory by explaining that "critical analysis, legal terminology, methods of interpretation, and all the other methods of explication and legal creativity are common to all branches of *halakhah*". Supporting the idea that Maimonides was situated within a tradition of thought that both substantially and methodologically links legal (social and moral) matters with religious (metaphysical and ethical) convictions, he adds that

> anyone who has participated in a Talmudic discussion will realize that there is no difference between a discussion of civil law and a discussion of the law of sacrificial offerings or ritual impurity, as regards the use of legal concepts and terminology or in the way the laws are discussed. (ibid.)

It is evident from Elon's comments that medieval Jewish law distinguished law from faith in a very particular and, from a western secular perspective, highly unconventional manner. Because, as Charles Butterworth (2007: 219) clarifies,

> [p]roperly speaking, there is no philosophy of law in medieval Judaism and Islam. In its place is jurisprudence, that is, the art or science that seeks to explain what the revealed law of either tradition means with respect to one particular situation or another and how it is to be applied.

This jurisprudence (*Gemara*) amounted to a theoretical explanation of how to move from "what is explicitly spoken of by the particular revealed law to what is not – extending that law to new phenomena or new applications" (ibid.). In other words, law in medieval Judaism is "divine law handed down to a particular religious community by a divinely inspired law-giver, a prophet or a messenger of the Almighty" (ibid.). Understood in this way, law amounts to a description of the righteous way of living for a person faithfully committed to his or her religious community, whereas its surrounding jurisprudence will amount to theology, although a highly technical and philosophically oriented theology (see Butterworth, 2007:

[3] The most important source of *Halakhah* (the law) is the Talmud which contains the Mishnah: the first written down record of the oral law, and the Gemara: the record of the Rabbinic discussions following this writing down (see Elon, 1985: 222).

220). For Butterworth (2007: 221), even though it was generally recognized that there existed an alternative conception of law (one that saw law as a man-made vehicle for social stability), philosophers belonging to the medieval tradition considered only *divine* law worthy of investigation and commentary.

Maimonides, however, recognized another way of relating to the alternative conception of law as a political and man-made vehicle for ensuring social stability:

> The governance of the city is a science which provides its inhabitants with the knowledge of true happiness along with the way of striving to attain it; the knowledge of true misery along with the way of striving to keep it away; and the way of training their moral habits to reject the presumed kinds of happiness so that they do not take delight in them or covet them. It explains the presumed kinds of misery to them so that they do not suffer from them or dread them. Similarly, it prescribes laws of justice for them by which they can order their communities. The learned men of past communities, each according to his perfection, used to fashion regimes and rules by which their kings would govern the subjects. They called them *nomoi*, and the nations used to be governed by those *nomoi*. (Treatise on the Art of Logic XIV quoted in Butterworth, 2007: 222).

It is clear from this passage that Maimonides, in contrast to his historical predecessors, considered social law (*nomoi*) worthy of study as it clearly made for an integral part of how to live according to divine law (*halakha*). The governance of the city (i.e., law as a vehicle for social stability) "provides its habitants with the knowledge of true happiness *along* with the way of striving to attain it" (ibid, emphasis added). The question of faith does not seem to have been quite as naturally separated from political laws for Maimonides as it was for some of his contemporaries. This can also be deduced from how he described, in the quoted passage, man-made (political) laws as integrated means towards the fulfillment of the divine law's stipulation of true happiness. We can take this as an indication of the fact that Maimonides' understanding of the ultimate end of law emerges from his conception of the relationship between faith and legal compliance.

According to Moshe Halbertal (2016: 137), Maimonides demonstrated in the *Commentary on the Mishnah* that he broke with the Rabbinic tradition by not regarding "faith simply as confidence in God and dedication to Him and his word". Arguing that compliance with a given set of (divine) rules was not enough to demonstrate faith, Maimonides required that such compliance had to be complemented by a condition of

a wholehearted contemplation of a set of propositions and cognitive principles. According to Maimonides, these propositions and principles functioned not only as evidence of a persons' faith, but also as a precondition for *being a member of the Jewish society*; that is, as a precondition for membership in a particular – and by political laws (*nomoi*) – delimited social entity (ibid.).

Arguably, what made Maimonides take a position that dissociated him from the traditional Rabbinic understanding of how to demonstrate faith (as well as membership in the Jewish polity), was his involvement in "the cultural realm of Aristotle and his interpreters" (ibid.). Maimonides' rejection of the traditional rabbinic understanding of how to evaluate someone's membership to the Jewish community was thus a natural continuation of having altered the philosophical starting point for elaborations on the essence of human nature. Grounding his concept of faith (in both a social group and a given set of religious beliefs) in Aristoteles' philosophy of human nature had a direct effect on Maimonides' legal theory. It made him reject the Talmudic view that religious as well as cultural loyalty to the Jewish community was demonstrated through a considered compliance with norms and that no further intellectual predisposition was needed (see Halbertal, 2016: 136-137). In the *Essay to Resurrection* Maimonides (1985: 212-3) established that he "therefore published principles that need to be acknowledged in the introduction to the Commentary on the Mishnah regarding prophecy and the roots of tradition and what every Rabbinite had to believe concerning the Oral Law".

When contrasting Maimonides' position with that of his contemporary interlocutors, it is evident that Maimonides rejected their strict focus on the *application* of norms for determining someone's participation in legal and moral (religious) communities. Maimonides rejected this as the decisive criteria of membership in favor of one that added to it a certain – empirically non-demonstratable – intellectual predisposition (see Halbertal, 2016: 136-137). As mentioned, the immaterial aspect of Maimonides' proof of faith most likely originated in his "deep internalization of Aristotelian thought regarding the nature of the good life". This, in turn, brought "about a greater emphasis on *beliefs* as a central component of Jewish identity" (ibid., 138, emphasis added).

Accordingly, it can be read in the Introduction to *Maimonides' Commentary on the Mishnah* that man's "purpose is but one activity, and *all the other activities* are to maintain his existence so he can perfect that one activity, which is to apprehend the intelligibles and know the truths as they are" (1964: emphasis added). Further on in the same work (1964: 241), the same essential message is conveyed:

> It is proper for a person to deploy all the powers of his soul to advance knowledge … and to set before his eyes a single purpose, that is, apprehension of God, may He be glorified and exalted, in accord with a person's ability, that is, his knowledge. And he should apply all his actions, his movements and speech toward that purpose.

Drawing on this account, law – as the organizer of human activities *par excellence* – is always subordinated to the ethical goal of becoming more rational. To this end, law must be seen as having one direct purpose, to deal with bodily needs, and one indirect yet much more fundamental purpose, to make human beings become rational (i.e., to understand things according to their true causes).

On my reading of Halbertal's account of Maimonides' understanding of the ultimate end of law, legal theory must relate and function with respect to a three-level structure: the establishment of (a) *sociopolitical stability* aimed at facilitating (b) *the development of moral qualities*, which are necessary for (c) *the achievement of the highest human nature*. The law and its concrete norms (level (a)) constitutes a direct means for (b) the achievement of the development of moral qualities and are, as such, also indirect means for the achievement of (c) the ultimate end of a life of inquiry and contemplation. The creation of a stable society depends on the upholding of laws, which are both conditioned by *and* means for a successful inculcation of certain moral qualities among the subjects of a society thus formed. In short, the scheme can be summarized as follows. Norms, the application of which can be empirically measured, are means for inculcating behavior in accordance with certain given moral qualities in human beings. These moral qualities are, in turn, necessary both for continued respect of the norms as well as for the striving towards the end of rational understanding. Behaving in accordance with norms that reflect given moral qualities will make human beings appreciate these qualities. Once they appreciate them, humans will develop them further so as to use them to establish the bodily security necessary for turning society into a means for the individual's striving towards intellectual inquiry and contemplation.

Halbertal (2016: 139) writes that Maimonides by affirming the Aristotelian explanation of the human essence as a constant *striving* for virtues (knowledge being the highest of these), placed his metaphysical conviction "at the heart of Judaism" and that this, of course, "had a far-reaching effect on the status of *Halakhah*". This formulation seems to confirm my reading that Maimonides constructed a pragmatic link between law and religion as reciprocal tools for establishing obedience and social order in order to achieve a further end beyond the social.

Because *Halakha* contains both ceremonial (religious) and civil (social) prescriptions and prohibitions, Maimonides appears to have been writing about law in general when he suggested that we should regard it as a means to the highest human end of becoming a knowing creature.

From this brief review, it is possible to extract two different approaches to the question of law's ultimate end. On the one hand, we have seen the view represented by Maimonides' rabbinic interlocutors who regarded a correct application of the law's norms as sufficient proof of faith. According to Halbertal (2016: 139), they portrayed "man, alone among the creatures, [as] granted free will" and what characterized him as "the ability to use his will to subject his desires and lusts to laws and models of proper conduct". For a legal philosopher adhering to this view, "[i]t is [law] *halakhah* that directs man in doing so, and fulfillment of [law] *halakhah in all its particulars* is the essence of human distinctiveness" (ibid., emphasis added).

On the other hand, we have the Maimonidean conception of law's ultimate end as being entirely conditioned by Aristoteles' concept of human perfection as a striving towards a perfected intellect. A legal philosopher adhering to this view today is thus conditioned to consider law as a means for the fulfillment of an ultimate end beyond law. According to the understanding of law that Maimonides entertained, law is a necessary means for organizing human inter-activity meant to establish and uphold the moral order needed for human beings to individually approach the highest end of a true understanding of things. According to his perspective, then, a description of law's end as a striving for its own compliance is not necessarily erroneous, but it is insufficient. It is insufficient insofar as it fails to account for the ultimate purpose towards which any enforcement of any given law ought to be directed. A satisfactory general compliance with law can never be seen as more than preliminary evidence of the achievement of this higher end beyond the social. Halbertal (2016: 139) elaborates:

> He [Maimonides] therefore made fulfillment of the active commandments into a means rather than an end and supplemented the *halakhah* with what he took to be an additional, very important layer of effort: the binding formulation of proper and true beliefs and opinions regarding God and the world.

According to Halbertal, law does not hold an intrinsic value for Maimonides. The compliance with law does not suffice to prove a human being's virtue or perfected nature. Rather, this can only be measured by how well a given law functions as an instrument for instigating the intellectual process necessary for the individual formulation of such opinions and beliefs that

correspond to a true representation of things. To judge by Halbertal's interpretation of Maimonides' view on *halakha*, real faith (and, in extension, loyalty to a political body) can never be proved merely by a specific conduct. This is because proof of faith (and loyalty to a political body) is constituted by an intellectual, internal predisposition which lacks empirically measurable features. Conversely, the external features of the requirements of loyalty and faith do not in themselves suffice to prove the attainment of the end behind the requirements of faith or loyalty, because that purpose is empirically non-provable in its nature. To this end, conduct can only ever function as one – and never the sole – indicator of the existence of faith (or loyalty to a society held together by given laws).

Maimonides' affirmation of an Aristotelian concept of virtue, as a mental rather than a physical and thus empirically measurable quality, affected many aspects of his legal theory. For instance, it made him question the traditional conception of the immortality of the soul as a physical reward of sorts for hardship and dutiful compliance with the Scripture's norms during a lifetime. His altered understanding of human nature pushed him instead into perceiving immortality of the soul as the immediate – and immaterial – sensation related to understanding the nature of things (see Halbertal, 2016: 140). It follows from this that leading a life aimed at fulfilling the purpose of divine law meant something much more to Maimonides than merely occupying oneself with certain actions because they are thought to have an instrumental value in relation to one's position in the afterlife. For Maimonides, the act of complying with a (religiously or politically) ordained norm aimed at securing the fulfillment of the divine law played a direct part in providing the reward of fulfilling this law itself. This is so insofar as all laws are but means to disseminate and install, not a certain conduct, but the values necessary for beginning to approach the intellectual capacity required for experiencing true happiness (i.e., virtue); that is, the experience of knowing happiness according to the divine law.

On the same note, Albert Friedberg (2003: 248) writes that:

> Maimonides explains that the acquisition of metaphysical knowledge is often called "life". He further demonstrates exegetically that this acquisition of metaphysical knowledge is "good"; and "good" is synonymous with the world-to-come – a world that is entirely "good". (Quoting Halkin and Hartman, 1993: 249).

Concurring with this reading, Halbertal (2016: 143) points out that in both the *Commentary on the Mishnah* as in the later *Mishnah Torah*, Maimonides argued that Scripture's references to physical rewards and punishments for observance of, or non-compliance with, its commandments should be

understood as unrelated to the final purposes of these commands. These rewards and punishments should rather be understood metaphorically in relation to the substantial message of Scripture, whereas their literal meaning was to be read as applicable in relation to its *organizational function*; as a means for facilitating "man's pursuit of *his* true purpose – knowledge of the Creator" (ibid., emphasis added). Clearly Maimonides understood the Bible's social commandments – the law – as a tool corresponding to a goal much more fundamental than the mere establishment of the conduct prescribed by that law. In the *Mishnah Torah* (1974, 9:1) he wrote that God,

> has further promised us in the Torah, that, if we observe its behest joyously and cheerfully, and continually meditate on its wisdom, He will *remove from us the obstacles that hinder us in its observance*, such as sickness, war, famine, and other calamities; and will *bestow upon us all the material benefits which will strengthen our ability to fulfill the law*, such as plenty, peace, abundance of silver and gold. Thus we will not be engaged all our days, in providing for our bodily needs, but will have leisure to study wisdom and fulfill the commandments, and thus attain life in the world to come.

To judge by this passage, what may be perceived as the immediate and physical reward for a successful observation of Scripture's commands is, for Maimonides, nothing but the achievement of a particular state of being for those who find themselves bound by the commands. This would be a state of being in which the continued observation of the commands follows naturally for those observing them. The act of starting to observe the commands would liberate the intellectual energy and capacity needed to contemplate them further, and to attain a deeper understanding and affirmation of them. From this it is possible to conclude that, for Maimonides, leading a law-abiding life amounted to much more than merely acting in line with certain norms of conduct with the hopes of a future physical reward. According to Maimonides, the physical pleasures promised in the Bible for leading a virtuous and law-abiding life should rather be understood as preliminary and immediate rewards aimed at helping people reach the more fundamental goal of obtaining a deeper understanding of things.

3. TWO LEGAL APPROACHES TO AI

From Halbertal's examination of Maimonides' attempt to unify, compile and clarify *halakha*, I wish to take with me the description of two opposing ways of portraying the ultimate end of law. The first considers law's

ultimate purpose as achieved when its rules are complied with completely. This view emanates from an idea of human essence as distinguished by the existence and use of free will. It is by subjecting human desires and physical instincts to the control of the will – by for instance choosing to follow laws and rules that dictate a given conduct – that a human being can perfect her essence and achieve true virtue. According to this position, a perfect compliance with law can be regarded as proof of a society inhabited by law-abiding (perfect) individuals. This, in turn, indicates that human beings have found in law the only necessary means for attaining their true natures and highest level of virtue.

If we look at the possibility enabled by AI-technology for human beings to sometimes achieve perfect compliance with law (from the perspective of this conception of law's ultimate end) an enthusiastic stance towards AI seems appropriate. Going back to the initial example of AI taking over the human capacity to drive whenever it perceives drunk driving, it seems reasonable to hold that such a takeover will be applauded from the perspective of a legal theory that equals perfect compliance with law's ultimate end. From this perspective, the use of AI-technology demonstrates the fulfillment of human nature insofar as this nature amounts to the will to secure a perfect compliance with laws aiming at avoiding accidents and traffic infractions and at causing social stability.

Arguably, it could be objected that AI takes over, more than helps, humans in the task of willing the right thing according to this conception of law's ultimate purpose. This objection would be motivated if such a takeover would suspend the full realization of human nature, since that realization is conditioned by the deliberate use of the will to combat animalistic desires and instinctive and automatic behavior. However, this objection can be dealt with by reference to the fact that the use of the will seems not to be permanently trumped by AI. In fact, it is merely displaced from the actual moment of conduct to the moment of creation of machines and tools to be used in that conduct.

The other way to conceive of law's ultimate end which is discernable from the Maimonides–Rabbi discussion amounts to regarding the goal of a high degree of compliance (with divine as well as man-made laws) as preliminary in relation to the ultimate goal of making people think rationally. We may recall that according to this view, human essence consists in a constant striving towards understanding; a striving that manifests itself through an increase in the ability to determine the quality of ideas and distinguish between true and false accounts of the world. Although this view can easily be combined with an idea about the specific content of the understanding towards which human nature naturally

strives (which it indeed was in Maimonides' case), the perspective's focus is clearly not on a given physical result (as manifested by a stable society for instance) but on the process of complying with law and what this process would do to the human intellect.

If this view of law's ultimate end is respected when considering the possibility that AI may establish perfect compliance with law, the stance that follows will naturally be more skeptical. Its skeptical response to AI stems from the fact that this view emerges from a metaphysical conception of human nature as something essentially procedural, which cannot be empirically proven by a given state of affairs or behavior. This is to say that the metaphysical explanation of human nature, upon which this view hinges, contains a flexibility that must be respected even when dealing with derived concepts, such as the human highest good and the ultimate end of law. In accordance with the metaphysical idea of human nature that Maimonides relies upon in his discussion of *halakhah*, human virtue can never be attached to an empirically measurable variable such as compliance. Instead, becoming virtuous – as in perfecting one's nature – amounts to approaching a rational understanding, rather than becoming a being *whose behavior* corresponds to having acquired said understanding. This conception of the purpose of all human activities must alter the legal response towards AI. Its focus on process requires us to be more critical towards the fact that AI may render superfluous the active human participation in achieving law's preliminary goal of establishing a society populated by a certain kind of individual.

In removing the need for humans to participate in the *process* of establishing a society populated by individuals acting according to a given ideal, human beings are further removed from realizing the ultimate end of law which is to help perfect their own essences. They may indeed be brought closer to accomplishing law´s preliminary goal of social stability, but this goal is only valuable insofar as it actually constitutes a means towards the ultimate goal of making human beings more rational. According to the conception of the ultimate end of law that Maimonides defends, the result of introducing AI into legal practices is – even in those more obvious instances where AI complicates the application of a law – a paradox. In rendering the human ability to comply with laws less human, human beings remove themselves from the ultimate goal for which all law should be created.

To make this last point clearer still, let us go back once more to our example of cars taking over the capacity to drive from humans whenever these seem to have been drinking. People driving cars without an AI-technology in place are forced to reflect upon issues that are related to the

deeper social and moral reasons behind the law, to the extent that these issues are intrinsically connected to the considerations one is forced to make when contemplating using the car despite a norm prohibiting this. These issues vary from the socio-economical costs of having to face the legal consequences of breaking a law, to the emotional and moral cost of potentially having caused physical harm to other people if driving indeed leads to an accident. The reflections prompted by not having a technical device guarantying one's compliance with the law are perhaps not completely denied to people by the introduction of AI, but they are rendered unnecessary. And this is, for Maimonides, sufficient to make AI an obstacle for the achievement of law's ultimate purpose.

All in all, it would seem that we arrive at the following conclusion with respect to the question of AI's impact on law from the perspective of Maimonides' conception of the ultimate end of law. An uncritical endorsement of AI, even in those instances where AI does not jeopardize, but rather enhances, the human ability to comply with the law, risks making us blind to the fact that AI always obstructs the fulfillment of law's ultimate end. To this end, an uncritical legal endorsement of AI in cases when AI merely enhances human compliance with law does not consider Maimonides' notion of why we have laws geared at social stability in the first place. For him, we have laws geared at social stability to assist people in fulfilling their own existential purpose of becoming more rational. This is the most important conclusion that I would like to stress in relation to the encounter between Maimonides' idea of the ultimate end of law and an increased reliance on AI in different kinds of legal practices. In light of all of the above, my final reflection is therefore that Maimonides provides us with good arguments for considering all forms of AI – even simple AI that is inoffensive to human agency – as detrimental to the fulfillment of law's ultimate end *insofar as* that end is construed as a striving towards intellectual reflection, and not as a mere adaptation of behavioral patterns to a given ideal.

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Symposium on Daniel Halliday's *The Inheritance of Wealth: Justice, Equality, and the Right to Bequeath*

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Introduction

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Since the 1980's, wealth inequality has increased in Europe and the United States. In Europe, the top 1 percent owned less than 20 percent of all wealth in 1980, and this has increased to above 20 percent in 2015. In the US, the increase has been more substantial, from below 25 percent in 1980 to close to 40 percent according to the most recent data. In both places, the bottom half of the population own close to nothing (Piketty 2020: 423-4). Furthermore, the relative magnitude of inherited wealth in aggregate private wealth has increased both in Europe and in the US, and is currently above 50 percent (Alvaredo, Garbinti and Piketty 2017: 240).[1]

Despite growing wealth inequality and the growing extent to which these inequalities are the result of inherited wealth, inheritance taxation has declined in many countries in recent years (Bastani, and Waldenström 2019: 1). The tax has been abolished altogether in countries like Australia, Norway and Sweden, and reduced through high exemption levels in countries like the US.

Popular opinion seems to be well aligned with these changes: surveys document that inheritance taxation is unpopular in almost all countries, even when compared to other taxes (Piketty 2020: 978). Moreover, some familiar arguments for inheritance tax may no longer be valid: traditionally, the ideal of equality of opportunity has been employed in order to justify taxation of inherited wealth. It is unfair, the argument goes, that some people are given a better starting position in life compared to others. However, due to the fact that people now inherit later in life because of higher life expectancy, the argument from equality of opportunity is not as straightforward as it is sometimes assumed to be. If most people inherit when in their fifties, the inheritance does not have direct impact on their starting position.

[1] There are, of course differences within Europe. Focusing on the average of three large European countries - France, Germany and the UK - the share of inherited wealth has increased from below 40 percent in 1980, whereas in the US it has increased from approximately 50 percent to around 60 percent.

Both the unpopularity of the tax and the fact that the argument of equality of opportunity cannot be straightforwardly invoked in favor of the tax invite us to ask whether inheritance taxation is an appropriate tool to address growing inequalities.

Daniel Halliday's book *The Inheritance of Wealth. Justice, Equality & the Right to Bequeath* (2018) should be assessed in this context. Its ambition is to rethink the case for inheritance tax and to defend a version of such a tax able to resist skepticism. Halliday does so by examining influential historical contributions to the study of inheritance tax, and by drawing on recent egalitarian theory and sociology.

In his study of the history of inheritance tax schemes, Halliday finds the proposal by Eugenio Rignano particularly promising. Rignano's idea – presented at the beginning of the twentieth century – was to distinguish between old and new wealth and to tax transfers of new wealth less or not at all compared to old wealth. Thus, according to the Rignano scheme, in addition to (or as a substitute for) progressivity according to the size of a transfer, taxation of inheritance should also include an element of "progressivity over time". As an illustration: newly created wealth could be tax exempt, wealth inherited once could be taxed at 50 percent, and wealth that has been inherited twice or more could be taxed at 100 percent (Halliday 2018: 61-2). One important merit of the Rignano scheme is that it will incentivize people to work and save if they want to pass wealth on to their children.

Rignano was a utilitarian influenced by John Stuart Mill. Halliday defends the Rignano scheme, but downplays the utilitarian justification for it (Halliday 2018: 61). Instead, he looks to contemporary egalitarian theory to support it. Drawing on elements from both luck egalitarianism and social egalitarianism, Halliday argues that inherited wealth is unjust when it contributes to economic segregation. On this view, inherited wealth is not unjust only because it is due to chance and not to choice, as the luck egalitarian would argue. Instead, inherited wealth is unjust only if it leads to social groups being cut off from each other, which is in tension with social egalitarianism. This, in turn, has harmful consequences: it might make people ignorant of each other's life-conditions and lead to stereotyping of people outside one´s social group (Halliday 2018: 108). So, while it is brute luck to be born into a wealthy family, according to Halliday, such brute luck advantages is only normatively problematic if it contributes to social segregation. The Rignano tax is justified, according to Halliday, as a way to combat economic segregation and enable a society to be socially integrated.

Halliday´s concern with the role which inheritance plays in social

segregation is all the greater, given that the economic capital that is passed on in transfers such as inheritance tends to combine with other types of capital and thus to amplify segregation. Drawing on Elizabeth Anderson's Bourdieu-inspired work on segregation, Halliday holds that a normative justification of inheritance tax should not be limited to the importance of financial capital. Instead, it should also pay attention to how social and cultural capital tend to go together with financial capital and thus reinforce the economic inequalities due to inheritance. Social capital consists of valuable knowledge and opportunities, which gives access to networks and relationships. Cultural capital consists in certain behavioral norms or dispositions, exemplified by an ability to speak and act in a specific manner (Halliday 2018: 107). Halliday's concern is that social and cultural capital will cluster around wealth, but this will be a slow process, which means that the concentration of the various forms of capital will happen over several generations.

Equipped with these claims, Halliday evaluates the traditional way of justifying inheritance tax on equality of opportunity grounds. He criticizes sociological and political-philosophical theorizing for having offered a simplistic view of how inherited wealth can give the recipients a head start in life. This picture is simplistic precisely because it overlooks the fact that people now normally receive inheritance too late in life to directly influence their starting position. A more nuanced view, Halliday believes, must acknowledge the "delayed sociological impact" (Halliday 2018: 140) of inheritance, enabling an inheritor of wealth not to improve their own starting position but to do so for *their* offspring. If I receive a large bequest when I am 50 years old, it means nothing for my starting position, but it does mean that I can secure a substantially better starting point for my children. Again, according to Halliday, that is unjust if it leads to social segregation.

Halliday´s defense of the Rignano tax can thus resist some of the objections that are levelled against inheritance tax. If part of the popular opposition against traditional inheritance tax is due to the fact that such tax hinders "self made" people from transferring their wealth to their children, the Rignano tax might be able to overcome some of the opposition to tax inheritance. Moreover, Halliday´s main justification of the Rignano tax – the concern with social segregation – seems very pertinent today. In the current situation where polarization and lack of understanding between different social groups is increasing, there are good reasons to examine proposals such as Halliday's inheritance tax scheme.

The contributions to this volume all engage in that examination. The issues discussed range from the merits of the justification of the Rignano

tax Halliday provides, to whether the Rignano tax should be seen as preferable to traditional inheritance tax and to more technical issues of implementation. All contributors recognize the importance of inheritance to a theory of distributive justice, as well as the value of Halliday's contribution to a topic that has not received the attention it deserves.

The contributions by Nicholas Barry, Stewart Braun and Colin Macleod all examine the normative premises of Halliday´s case for inheritance tax.

Barry discusses Halliday's hybrid theory from the standpoint of luck egalitarianism. In Barry's view, Halliday´s hybrid egalitarian theory fails to do justice to what luck egalitarianism gets right. Thus, Barry defends a luck egalitarian view of inheritance tax, which justifies a 100 percent tax against two main objections Halliday raises against it. The first objection holds that luck egalitarianism is insensitive to the size of the bequest, and must condemn all inheritances regardless of the material advantage it confers. The second objection holds that luck egalitarianism leads, counter-intuitively, to the prohibition of all asymmetric transfers, i.e. transfers in which "someone is given something for nothing" (Halliday 2018: 78). Barry argues that the standard luck egalitarian position can withstand both these objections and should be preferred to Halliday's hybrid account.

Also taking issue with the normative foundations of a case for inheritance tax, Braun argues that Halliday's justification for inheritance tax should include solidarity. Drawing on Marx, Rawls, and Cohen, Braun holds that bequests "hinders the development of a community ethos and a sense of mutual support" (Braun 2020: 60). Communal solidarity is a good because it is necessary for human development and healthy human relationships. According to Braun's argument, Halliday's justification for inheritance tax would be stronger and more robust if he were to include a reference to community and solidarity.

Finally, Macleod raises a number of concerns about Halliday's ecumenical (or hybrid) egalitarianism, which he suspects might be ultimately a form sufficientarianism. Accordingly, Macleod finds that the Rignano tax defended by Halliday is insufficiently egalitarian. Macleod also makes a separate point, which casts some doubt on whether egalitarians should be especially concerned about inheritance: the question of inheritance taxation, Macleod suggests, must be understood in connection with other institutional arrangement. In a genuine egalitarian society with public health care and education, the inheritance tax is not as crucial as it will be in a hierarchical class-based society.

The two other papers in the symposium address questions about what kind of inheritance tax regime should be adopted, even granting Halliday´s

concerns, in light of relevant empirical evidence.

Jonathan Wolff's point of departure is that much theorizing on inheritance tax is carried out in ideal theory. Instead of following this approach, Wolff explores how to think about such taxes in non-ideal theory or "real world political philosophy". Using the UK as a case study, Wolff discuss whether moving to a Rignano tax would constitute an improvement. Due partly to the fact that "significant second generation inheritance is the exception rather than the rule" (Wolff 2020: 83), and partly to tax avoidance strategies, Wolff´s conclusion is negative: the Rignano tax is not likely to be an effective means to combat segregation. As an alternative, Wolff suggests that the focus be on reducing exemptions.

Finally, Miranda Perry Fleischer's article discusses whether and how a Rignano tax can be implemented. The many detailed questions of design are, Fleischer claims, only partially addressed by Halliday. Focusing first on what the tax base should be, Fleischer argues that a Rignano tax should be levied on gifts as well as bequests; it should tax receipts and not transfers, and include a small exemption amount. Focusing on the tax rate, Fleischer's tentative proposal is a zero rate on first generation transfers and 40-50 percent on subsequent transfers. Having discussed these design questions, as well as matters concerning the administration of the tax, Fleischer concludes that although a Rignano tax as suggested by Halliday involves enormous complexity, it is technically feasible.

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Egalitarianism, Inheritance, and Taxation: On Daniel Halliday's *The Inheritance of Wealth*[*]

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ABSTRACT

This paper offers a critical response to Daniel Halliday's recent book *The Inheritance of Wealth: Justice, Equality, and the Right to Bequeath*. It explores how background institutional arrangements affect the justification of any right of persons to bequeath wealth and suggests that the right to bequeath is weaker and more qualified than Halliday allows. The paper also examines the variety of egalitarian justice that Halliday adopts in the course of developing his novel treatment of inheritance taxation and raises some concerns about Halliday's formulation and interpretation of egalitarian justice. The egalitarian credentials of the Rignano scheme of inheritance proposed by Halliday are probed and the normative significance of the coercive dimension of inheritance tax is considered.

Keywords: inheritance, luck egalitarianism, relational egalitarianism, Rignano, taxation.

1. INTRODUCTION

Daniel Halliday's *The Inheritance of Wealth: Justice, Equality, and the Right to Bequeath* (2018) makes a valuable and much welcome contribution to political philosophy in a number of ways. It brings into sharp focus issues about inheritance and intergenerational justice that have not, in contemporary discussions, received the attention they deserve. It provides an interesting and helpful overview of the intellectual history of discussions of inheritance in political philosophy that gives special attention to the

[*] Many thanks to Ryan Tonkin for discussing the themes in Halliday's book with me and making many insightful observations.

views of early liberal writers such as John Locke, Adam Smith, William Godwin, Thomas Paine and J.S. Mill. At the heart of the book is a novel account of the manner in which an egalitarian conception of justice should understand the significance of inheritance. This account seeks to draw upon elements of both luck egalitarianism and relational egalitarianism in a way that can have broad appeal to those who hope that some synthesis of the compelling facets of these putatively antagonistic views can be achieved. Perhaps most strikingly, Halliday illuminates and defends a little-known approach to the taxation of inheritance due to the Italian early 20th century philosopher and social theorist Eugenio Rignano. In developing an egalitarian justification for a Rignano scheme of inheritance taxation, Halliday provides a subtle and interesting account of the manner in which inegalitarian effects of inheritance arise and can be compounded through time. The book is stimulating, informative and provocative. It deserves careful attention from political philosophers generally but especially from those interested in matters of justice and taxation.

There are many fascinating parts of Halliday's analysis with which one might engage but my focus in these comments will be quite selective. I want to concentrate primarily on his diagnosis of the challenge that inheritance poses to an expressly egalitarian conception of justice and his views about the merits of a Rignano scheme of inheritance taxation for addressing injustice generated via inheritance. By way of framing my discussion, I shall start with a few remarks about how puzzles about justice, inheritance and taxation seem highly dependent on specific features of the broader institutional context in which they are located. I suspect that Halliday will agree with much of what I have to say. So, these preliminary remarks are not designed as criticisms. However, I think they may help to set up some points aimed more directly at some of Halliday's arguments that I wish to raise.

2. SOCIAL INSTITUTIONS AND INHERITANCE: HOW IMPORTANT IS THE RIGHT TO BEQUEATH?

The first observation I want to make is that the degree to which inheritance poses a significant challenge for egalitarian theorizing depends a great deal on the character of institutional arrangements that provide the background for discussion. Consider for, instance, the normative importance of a right to bequeath wealth to one's children and the seemingly related right to confer advantages on them with the wealth one has. In a context in which access to decent life prospects for one's children is not reliably secured by well-functioning public institutions then parents may

understandably view opportunities to confer advantages on their children as extremely important. For instance, in a society that does not provide universal health care, first rate public education available to all, good public day care, affordable safe housing, good recreational facilities, paid parental leave and tuition free university education then parents will be highly motivated to protect their ability to secure their children's access to these goods via their own resources. Against such a background, protecting the prerogative of parents to bequeath wealth to their children and to confer advantages on them might seem allied with demands of justice that require that children have reliable access to these such goods and opportunities. However, in a society in which there is excellent and generous public provision of these goods and opportunities, the normative significance of inheritance or the prerogative of parents to confer advantages on their children will be much more modest. For instance, given dramatic educational hierarchies in the United States, American parents have reason to save for their children's education in a way that Finnish parents do not. Given the absence of decent public health care, American parents have reason to prepare for health emergencies in ways that Canadian parents do not.

In some parts of his discussion, Halliday seems to suppose that egalitarian theorizing about the inheritance of wealth must proceed against a background in which institutional arrangements that facilitate social hierarchy and economic segregation are taken for granted. Consider the case of education. Halliday is aware that the unequal provision of education contributes to economic segregation and he acknowledges that institutional reform of education can play a role in mitigating unjust inequalities. However, he is skeptical that institutional reform can effectively combat economic segregation. Indeed, part of the rationale for his focus on the inheritance of wealth as a source of unjust inequality is the putative inefficacy of institutional reform. He says "It is at least *often* true that wealth has a way of finding ways around attempts to make it less crucial in determining the life prospects of those who do and do not possess much of it" (2018: 111). However, in the case of education much of the evidence for this claim is drawn from the limited success of educational reforms in the U.S. to substantially reduce troubling class inequalities. Yet I am not confident that egalitarians have much to learn from the American example about the limited power of institutional reform simply because the very modest institutional measures that have been taken fall well short of the sorts of measures many egalitarians think are appropriate. I, for instance, believe that justice requires institutions that provide children with access to equally excellent educational resources and opportunities (Macleod 2012). Realizing that form of educational justice would require

changes to educational institutions and policies that go well beyond anything currently on the political agenda in America. And even the sufficientarian conception of educational justice defended by relational egalitarians such as Anderson (2007) and Satz (2007) requires massive restructuring of American education of a sort that would substantially reduce, though not fully eliminate, educational inequalities.

Of course, wealthy parents in current circumstances can purchase better education for their children either by sending their children to private schools or living in neighbourhoods with public schools that are well resourced. Similarly, the children of wealthy families can consider post-secondary education without worries about how to manage the high costs of such education which children from poor families face. But I contend that egalitarians genuinely committed to combatting unjust inequality would favor institutional reforms that are much more radical than any considered by Halliday. Such reforms would be designed to eliminate many of the main avenues through which the wealthy can currently secure unjust advantages for their children. For instance, Adam Swift argues that egalitarians should favor the elimination of advantage conferring private schools (Swift 2003). To this, one might add the proposal that post-secondary education should be tuition free. And so on. I readily concede that given the current political climate, such proposals appear radical and perhaps utopian. But I think serious consideration of them - rather than the modest tinkering with highly inegalitarian structures that currently counts as reform- is important not only to egalitarian theorizing about justice in general but also to Halliday's project of exploring the egalitarian significance of inheritance. The degree to which inherited wealth can be used circumvent egalitarian institutional reform depends crucially on the character of those reforms. For instance, if, as Halliday allows, one of the main means through which wealthy parents can confer unfair educational advantages on their children is by buying private education, lessons, tutoring and so on, then one way of addressing this is to: (1) eliminate or highly circumscribe private education and (2) ensure that public schools have excellent and well-provisioned music, sports and tutoring programs (Macleod 2012).

These remarks are not intended to challenge the normative importance of thinking about inheritance taxation against the background of the highly inegalitarian and unjust circumstances that we currently face. And Halliday does not think inheritance taxation is an egalitarian panacea or that institutional reform is unimportant. However, in gauging the role that inheritance taxation can play in combatting economic segregation, I worry that he underplays both the egalitarian significance of other institutional

reforms and the way in which the normative significance of any right to bequeath wealth is a function of background arrangements. On the latter point, for instance, Halliday allows that "first-generation inheritance may be a valuable means of promoting upward mobility" (2018: 154). Viewing the matter that way seems to treat the inevitability of significant class hierarchy as part of the rationale for defending a right to bequeath wealth to children. In my view, egalitarian theory should retain a more comprehensive concern about the existence of hierarchical class structures and the ways they unfairly constrain the life prospects of so many (Macleod 2002). So, even if, as Halliday allows, inheritance permits some poor children to escape poverty that fact, itself, can provide only a very limited and context specific defense of the right to bequeath. The general point is this: against the background of genuinely egalitarian institutional arrangements that reliably secure equal and good life prospects for persons, the right to bequeath significant resources to family members in the name of securing them access to crucial goods does not seem very important. Indeed, to the degree that protecting a right to bequeath disrupts egalitarian provision of basic resources then egalitarians should favor a highly restrictive conception of legitimate inheritance. Permitting modest inheritance of items that primarily have sentimental value and promote valuable affective connections between family members fits within an egalitarianism that permits expressions of parental partiality that secure family goods, such as intimacy (Brighouse and Swift 2014). But a stronger right to bequeath – one that permits substantial transfers of wealth between family members – lacks egalitarian credentials.

3. ECUMENICAL EGALITARIANISM?

This brings me to some questions about the broader character of Halliday's conception of egalitarian justice. His ambition is, I think, to advance an ecumenical form of egalitarianism that draws on facets of luck egalitarianism and relational egalitarianism. I am broadly sympathetic to this project partly because I think some depictions of the contrast between luck egalitarianism and relational egalitarianism are overdrawn. However, I am not entirely sure how Halliday's ecumenical egalitarianism should be interpreted with respect to the degree of inequality in the life prospects of individuals it tolerates. Here I wish to raise a couple of points.

The first concerns Halliday's diagnosis of the flaws of what he dubs naïve luck egalitarianism. He argues that the animating concern of luck egalitarianism to extinguish the effects of arbitrary differences in people's circumstances on distribution leads to implausible conclusions. He says:

"If I inherit my grandfather's old beer tankard, which has minuscule financial value, and you inherit nothing at all, that is still an unequal distribution of inheritance. Distribution has been sensitive to circumstance rather than choice, so it is unjust" (2018: 77). I agree that no sensible egalitarianism should be concerned about such trivial cases of inheritance even if they can be represented as arising out of brute luck. However, I am less sure that a luck egalitarianism that seeks to extinguish the ill effects of brute luck on the life prospects of people has reason to be concerned with such differences. That Halliday inherits a tankard from his grandfather and I do not has no plausible bearing on our respective opportunities to lead good lives and our comparative life prospects. So, if we accept that the arbitrary differences in the circumstances of people that we care about from an egalitarian point of view are those that have a significant impact on people's life prospects – i.e., their access to key goods such as health, education, income, leisure time, and housing– then differences in trivial holdings of resources that principally have sentimental value will not constitute unjust inequalities. However, differences in inheritances that generate arbitrary inequalities in the important life prospects should occasion egalitarian concern. So, I am inclined to think that Halliday's attempted *reductio ad absurdum* of luck egalitarianism misses its target.

The second point I wish to raise concerns the degree to which Halliday's view actually embraces any distinct relational egalitarian view. Whereas most relational egalitarians wish to reject the idea that justice is in any fundamental way concerned with extinguishing the ill effects of brute luck, Halliday seeks to retain the luck egalitarian concern with brute luck and yet restrict its focus. The idea that he seeks to extract from relational egalitarianism is its concern about economic segregation and group hierarchy. He follows relational egalitarianism in holding that some kinds of group hierarchy offend equality. He says: "Society is unjust when certain groups possess an arbitrary enjoyment of privileges and status that places them hierarchically above other groups" (2018: 152). Yet he retains the luck egalitarian impulse to extinguish some effects of brute luck but modifies its putative scope. "Inheritance is unjust when it allows some people to enjoy brute luck advantage, but the specific kind of brute luck advantage is understood in terms of group membership" (2018: 152).

One matter that Halliday is surprisingly silent on in this context is whether or not his view leads to a form of sufficientarianism. Relational egalitarians such as Elizabeth Anderson typically insist that providing all citizens with the social and material conditions in which they can meaningfully relate to one another as equals does not require distributive equality (Anderson 1998). Suitably egalitarian social relations can exist on

this view even if there are significant social and material inequalities between groups providing social institutions supply an adequate social minimum. This view does not require eliminating arbitrary access to privileges and status enjoyed by some groups. For instance, there is no requirement that educational opportunities for children of all economic classes be equal (Anderson 2007). Relational egalitarians hold that the rich are free to confer significant advantages on their children by sending them to fancy private schools and elite universities providing the caliber of education open to poor families is above a decent threshold. In this way, relational egalitarianism tolerates arbitrary inequalities in the life prospects of persons. The life prospects children from poor families will generally be worse than the life prospects of children from rich families. Halliday needs to clearly indicate whether or not his view tolerates such arbitrary inequalities. If it does, then the scope for acceptable inherited inequalities is much broader than the impulse to eliminate brute luck on economic segregation initially suggests. If it does not, then the sense in which Halliday's position constitutes a departure from traditional luck egalitarianism is less clear.

In response, Halliday might place emphasis on his focus on "group difference rather than differences that obtain between isolated individuals" (2018: 152). I agree that many injustices in the life prospects of persons track their affiliations with social groups and that we should be attentive to unjust group hierarchies. But I am not persuaded that the concern for group-based hierarchy should or can supplant a parallel concern with the life prospect of persons considered as individuals. After all, our concern for group-based hierarchies is ultimately a concern about the impact such hierarchies have on the life prospects of individuals. Moreover, some arbitrary differences in the life prospects of persons viewed as individuals can be unjust even when group based economic segregation is not directly at issue. For instance, an arbitrary decision of middle-class parents to leave all their wealth to one child and leave another child with nothing can have a significant impact on comparative life prospects of the children even if it does not contribute to or exacerbate group-based economic segregation. It seems reasonable to allow that an injustice can arise in this kind of case. And this seems consistent with some parts of the book. Thus, early in the book Halliday says: "the egalitarian complaint with inherited wealth is that it helps keep the life prospects of individuals unjustly dependent on being born into families that possess substantial wealth" (2018: 4). My point here is not to insist that Halliday is really a (naïve) luck egalitarian in disguise. Little if anything turns on the labels of positions. Rather I would like to know whether Halliday's ecumenical egalitarianism embraces some variety of sufficientarianism or whether it is more comprehensively

egalitarian in its concern to eliminate arbitrary differences in the life prospects of persons. The stance he takes will, I think, significantly influence what kind of inheritance tax scheme be justified. As it stands, his view seems equivocal.

4. INHERITANCE TAXATION AND EGALITARIAN JUSTICE

I now want to turn to some questions about Halliday's discussion of taxation. He contends that a Rignano tax scheme that taxes older wealth at a higher rate than newer wealth has an important egalitarian virtue that traditional forms of progressive taxation of wealth lack. The key to Halliday's egalitarian case for a Rignano scheme lies in his interesting analysis of how wealth permits parents to confer advantages on their children and how the capacity of wealthy parents to confer advantages on their children compounds over successive generations of wealth. Halliday identifies three main mechanisms through which wealth permits parents to confer advantages on children. First, there is the factor of time: rich parents can reduce participation in the labour market and can spend more time helping children acquire valuable nonfinancial capital. Second, wealth facilitates positional purchasing power: rich parents can buy expensive lessons etc. for their children that confer competitive advantages on children over poor children in the pursuit valued social and economic positions in society. Third, there is proximity to a reference point. In the identification and pursuit of positional goods, the conduct of the wealthy sets a standard for consumption that others seek to follow. This phenomenon can trigger counterproductive arms races for goods. For example, in educational markets a mad race for competitive advantage is generated and shaped by the cues provided by the expenditures of the rich. Halliday argues that the advantages that accrue to wealth are compounded via the social and cultural capital to which those families who have enjoyed wealth for successive generations have ready access. Simplifying somewhat, families with *old wealth* can confer greater overall advantages on their children than families with the same nominal amount of *new wealth* can confer on their children.

On Halliday's compounding hypothesis, bequests from 'older fortunes' are more disruptive to egalitarian objectives (e.g., of limiting the degree parents can confer unfair advantages on their children) than bequests from newer fortunes. For example, a bequest of say $1,000,000 to an heir from an old fortune permits the heir to confer more advantages on their children than the bequest of $1,000,000 from a new fortune permits the heir to confer on their children. We might say that being raised as an heir

to an old fortune is more advantageous than *being raised as an heir* to a new fortune.[1] Now the Rignano scheme, precisely because it targets older wealth, seems preferable to progressive taxation when it comes to the objective of mitigating the inegalitarian effects of compounding. Indeed, Halliday claims that that "any degree of compounding counts in favor of a Rignano scheme over traditionally progressive inheritance taxes" (2018: 142).

However, whether this claim is true or not depends on whether a Rignano tax scheme is presented as a strict alternative to progressive taxation or a supplement to it. Halliday often talks as though it is an alternative but early on in the book he allows that a Rignano scheme can be seen as a supplement to progressive taxation: "This book seeks to resurrect an alternative or supplementary proposal about how to calculate the tax liability of intergenerational transfers: inheritance should be taxed not simply in accordance with how much wealth is actually passed on but also in accordance with the wealth's age, assuming this can be measured" (2018: 2). Note, however, that as a technical matter, a Rignano tax scheme on its own need not have better egalitarian effects, even in the face of compounding, than a progressive scheme. After all, a very modest Rignano tax that imposed, say, a 1% tax on first generation inheritance and 2% tax on second generation inheritance would do less to mitigate the inegalitarian effects of inherited wealth than a progressive tax that began at a rate of 50%.[2] So, if Halliday's advocacy of a Rignano tax scheme is to succeed on egalitarian grounds it is best viewed as a possible supplement to progressive taxation of inheritance.

Setting aside this technical matter, we might wonder how appealing a Rignano scheme is from the egalitarian position championed by Halliday. Here I think Halliday's analysis may ignore some relevant possibilities. To see this, consider the following: Suppose we distinguish between the *expressive facet* of inheritance (e.g., in conveying sentiments of familial love, passing along social and cultural artifacts such as the treasured beer tankard or the family bible) and the *advantage conferring facet* of inheritance (e.g., the ways in which inheritance on Halliday's view helps to maintain economic segregation). It is very likely that the real monetary value of the expressive facet of inheritance would be quite low. The expression and maintenance of familial intimacy etc. does not depend on large expenditures. Parents can more than adequately express their love to their children and realize valuable family goods without bequeathing (or promising to bequeath) large sums of money to them. So, suppose we identify some rough amount of inheritance that is meant to ensure

[1] I owe this formulation of the point to Ryan Tonkin.

[2] Thanks to Ryan Tonkin for this example.

adequate opportunity for people to secure expressive goods – e.g., $50,000 – and inheritances of cash and assets up to that amount are not taxed. How should we treat any inheritance above that? Halliday seems to assume that we qua egalitarians concerned with economic segregation must choose between either: (a) progressive taxation (b) a Rignano scheme or (c) a hybrid scheme. But, on the assumption that there are arbitrary and problematic wealth disparities whose ill effects we wish extinguish, then surely an egalitarian should favor taxing inheritance above $50,000 at 100%. After all, Halliday's egalitarian is trying to eliminate the impact of inherited wealth on economic segregation and permitting inheritance above $50,000 only serves to perpetuate such segregation. (Now one might raise questions about incentive and productivity effects of taxation. But I want to bracket them for the time being both because it is not clear that such a tax would diminish productivity and because I want to focus solely on the egalitarian rationale for inheritance tax.) All this is compatible with old wealth transfers having (due to the compounding effect) worse effects on economic segregation than new wealth transfers. Yet the point remains that both old and new wealth transfers contribute to economic segregation. So, shouldn't an egalitarian try to stop both to the greatest extent possible? In this scenario, the Rignano scheme does not seem to have distinctive egalitarian advantages over a simpler but more aggressive tax.

5. TAXATION, COERCION AND JUSTICE

Now, one might reject such a tax scheme because one rejects the egalitarian conception of justice on which is grounded. But it seems that Halliday's own variety of egalitarianism justifies a more radical scheme of inheritance taxation than he considers. A different reservation about the scheme might be located in concerns about the putatively coercive character of taxation. Perhaps such a high tax strikes some as too great an exercise of the state's coercive power to acquire and redistribute the resources of the wealthy. In a number of places, Halliday notes the coercive character of taxation and he seems to treat it as a factor relevant in assessing the legitimacy of tax schemes (2018: 184-5, 208-9). I am not entirely sure how important Halliday thinks coercion is in this context. Halliday notes the important point made by Murphy and Nagel (2002) that it is a mistake to treat pre-tax income as entitlement that is threatened by taxation. On the Murphy/Nagel view, just taxation is not an infringement or limitation of rights of ownership rather it is a means through which the just entitlements of persons to resources can be realized. (This is emphatically not to say that current tax regimes succeed in securing the just entitlements of persons.) But if we take the

Murphy/Nagel point to heart, then the idea that just taxation is coercive in a way that is, even prima facie, troubling seems mistaken. In the context of the inheritance of wealth, the error here is to confuse *possession* of wealth with *entitlement* to wealth. Those who bristle at the taxation of their wealth tend to view their wealth as something to which they have established a justice-based entitlement, that is, as something they justly own. Taxation of wealth so construed appears, at best, to be a kind of coerced beneficence. The state coercively takes *my* wealth and directs it to projects that the state views as valuable in helping people with fewer resources. However, if just taxation of wealth is itself integral to securing a just distribution of resources (as Halliday's overall view seems to hold) then it is more fruitful to think of wealth that is taxed away as merely possessed by the wealthy rather than owned by them. But once we view wealth taxation in this way then it is hard to see how coercion poses a special justificatory problem for taxation. The point here is that any system of property will be coercive in some fashion. But that fact both usually goes unnoticed and does not usually trouble those who worry about the fact that taxation is coercive. A simple analogy can illustrate the point. Suppose I find your wallet containing a large sum of money and suppose the money is, given the reasonable scheme of property in place, justly yours. Justice requires that I return it to you and the mere fact that the wallet is my possession does not generate even a prima facie entitlement to keep it. Suppose I am reluctant to return your wallet. Then the state may justly force me to hand it over. Yet the coercive enforcement of your property right in this instance is not likely to strike us as problematic. No special justificatory issue about state coercion arises. The general point is simply that a scheme of just property is coercive in a way that parallels the coercive character of just taxation. Contrary to what is sometimes thought, there is no extra or special form of state coercion involved in just taxation. Halliday is not, of course, hostile to just taxation. Indeed, he is concerned to combat misguided hostility to inheritance taxation that many citizens harbor. But I wonder whether his emphasis on the seemingly special coercive aspect of taxation already concedes too much to those who have reservations about the taxation of inheritance.

6. CONCLUSION

In the foregoing remarks, I have tried to identify a few issues about which Halliday and I may disagree. But the points of potential disagreement are not profound and they are dwarfed by the points of agreement between us. There is much to be learned from careful study of Halliday's stimulating book.

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Luck Egalitarianism and Inherited Wealth*

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ABSTRACT

This article examines the innovative contribution to egalitarian theory made by Daniel Halliday in his recent book *The Inheritance of Wealth* and defends the relevance of the standard luck egalitarian approach to inheritance against Halliday's critique. The article argues that although Halliday's account of equality, which is focused on group economic segregation, initially seems an appealing hybrid of luck egalitarianism and social egalitarianism, it contains ambiguities. Closer analysis of the concept of economic segregation also suggests that Halliday's hybrid account will often produce similar results to standard forms of luck egalitarianism, and that in cases where they diverge, it is the latter that is intuitively more appealing. There are, therefore, good reasons for egalitarians to persist with the standard form of luck egalitarianism rather than adopting Halliday's hybrid alterative. The article then briefly examines the implications of the standard form of luck egalitarianism for inherited wealth, highlighting that it pushes in a more radical direction than the Rignano scheme Halliday endorses. The article goes on to defend the standard luck egalitarian approach to inheritance against two major criticisms that Halliday develops against it, arguing that it is sensitive to the size of bequests and largely avoids the problems that other asymmetric transfers confront. It thus represents an approach to inherited wealth that deserves further exploration.

Keywords: luck egalitarianism, justice, inequality, inheritance, Rignano scheme, Daniel Halliday.

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The taxation of inherited wealth is a topic that should be of central interest to egalitarian political philosophers, but despite a rich vein of work in contemporary egalitarian theory, it is yet to receive systematic treatment. For this reason, Daniel Halliday's book *The Inheritance of Wealth* is a welcome addition to the literature. However, it also makes a valuable contribution to egalitarian theory in its own right by developing an innovative account of egalitarian justice that aims to combine the appealing features of both luck egalitarianism and social egalitarianism, which are two of the most influential contemporary approaches. Halliday applies this hybrid account to the issue of inheritance, drawing on empirical data to establish a link between inherited wealth and economic segregation that has cumulative effects down the generations. Halliday uses this account to make the case for a Rignano scheme to tax inherited wealth. This scheme is named after Italian thinker, Eugenio Rignano, who held "that an inheritance tax should be sensitive to a fortune's age rather than its monetary value alone" which means, among other things, that there should be an increase in the rate of taxation that is paid as wealth is passed down the generations, becoming further removed from the generation who originally accumulated it (Halliday 2012: 61).

In this short piece, I focus primarily on evaluating Halliday's innovative hybrid theory of egalitarianism and his critique of the luck egalitarian approach to inheritance. I argue that his rejection of the luck egalitarian approach is too hasty and suggest that it has advantages over the group-oriented hybrid form of egalitarianism he supports. Beyond its relevance to debates in contemporary egalitarian theory, this conclusion is important because the standard form of luck egalitarianism would condemn inequalities in inherited wealth regardless of the age of the fortune that is inherited, thereby undermining the case for a Rignano taxation scheme.

The structure of the article is as follows. In the first section, I outline the key features of Halliday's hybrid theory of egalitarianism, focusing on the way it combines a modified version of luck egalitarianism with social egalitarianism, and explaining the implications of the theory for the taxation of inherited wealth. In the second section, I develop a critique of this theory, arguing that it contains ambiguities and may be less different from standard forms of luck egalitarianism than it first appears. Moreover, to the extent that there are differences, these differences make the theory less attractive than luck egalitarianism, which does not restrict its focus to group economic segregation. In light of this, I argue that there is a strong reason to adopt the standard form of luck egalitarianism over Halliday's hybrid theory. In the third section, I examine Halliday's critique of the luck egalitarian approach to inherited wealth, defending the theory against his

two central objections – the quantification objection and the asymmetry objection. Although hard cases remain, which require trade-offs between competing considerations, I argue that ultimately, the standard luck egalitarian approach to inheritance withstands Halliday's critique and deserves further consideration in future work on the inheritance of wealth.

1. ECONOMIC SEGREGATION

One of the notable features of Halliday's book is the innovative theory of egalitarian justice he develops to ground his case for a Rignano tax on inheritance. This theory is best described as a group-oriented hybrid of the two dominant theories in the exiting literature -- luck egalitarianism and social egalitarianism. Luck egalitarianism is a theory of egalitarian justice that is sensitive to considerations of individual choice and responsibility, holding that inequalities are unjust to the extent that they reflect the influence of brute luck, but just to the extent that they reflect the different choices individuals have made and the risks they have taken.[1] In contrast, social egalitarianism holds that "egalitarianism is fundamentally concerned with equality of social relationships" which means that its "aim [is] to replace social hierarchies with relations of social equality on the ground that individuals are fundamentally moral equals" (Anderson 2012: 40).

Halliday's theory is focused on the social egalitarian idea of social segregation, which is defined as the situation that arises "when social groups are cut off from each other" (101). Given the book's principal concern is with inherited wealth, Halliday focuses most of his discussion on *economic* segregation, which is a sub-set of the broader concept, referring to the "*type* of social segregation that occurs when groups have their boundaries defined by economic difference rather than by (e.g.) racial or religious difference" (102).

What distinguishes Halliday's approach from other theories of social egalitarianism is that he links the focus on social segregation to the luck egalitarian idea that brute luck inequalities are unjust. He argues that this may be one of the reasons that economic segregation (and social segregation more generally) is unjust:

> "economic segregation becomes normative when it is understood in connection with luck egalitarian claims about choice and circumstance.

[1] For key works in the development of the luck egalitarian tradition, see Dworkin (2000), Arneson (1989), and Cohen (1989). There have been a wide range of further articles and books written on the theory since these early works. For a good discussion of some of the key issues and debates that have emerged in the literature by one of the leading contemporary luck egalitarians, see Lippert-Rasmussen (2016).

> Economic segregation can occur when wealthier groups are able to retain wealth and privilege over time. Being born into one of these groups, as might happen by being born to parents who have inherited, and with some expectation of inheriting oneself, provides one with brute luck advantage. When construed in this way, economic segregation is an injustice in itself because it is a subset of the ways in which distribution is dependent on personal circumstance rather than personal choices" (103).

However, the version of luck egalitarianism that is at the core of the theory is a "restricted (i.e. logically weakened) form of luck egalitarianism" (111). Rather than applying the choice/circumstances distinction to individuals, as occurs in standard forms of luck egalitarianism, Halliday's theory applies the distinction to groups, reflecting the social egalitarian belief that "injustice is most plausibly construed in terms of group difference rather than in terms of differences that obtain between isolated individuals" (152). On this account, good brute luck is being born into a privileged, high status group in a segregated society, whereas bad brute luck is being born into a disadvantaged, low status group in a segregated society. Thus, Halliday "uses social egalitarian ideas to constrain the application of a luck egalitarian principle" (152).[2]

Having outlined this innovative hybrid, Halliday applies this theory to the issue of inequalities in inherited wealth. He argues that these inequalities are unjust when they lead to economic segregation. That is, inheritance is unjust when it "plays *some* causal role among the mechanisms enabling intergenerational replication of inequality to take place" (153). He presents an array of empirical data which suggest that it does play this role, although his focus is not simply on the immediate inequalities in financial capital it generates, but also on the inequalities in "nonfinancial capital" – both social and cultural -- that accumulate down the generations.

Halliday identifies two broad categories of nonfinancial "capital" that are linked to inequalities in inherited wealth. One category is the kind of prestige or status attached to families who have been wealthy for

[2] Although Halliday does not discuss the issue in any detail, the luck egalitarian and social egalitarian principles involved in the hybrid theory seem to be pitched as principles of justice rather than principles of regulation. This distinction was identified by one of the most important thinkers in contemporary egalitarian theory, G.A. Cohen (2008), who argued that ultimate principles of justice should not be constrained by empirical facts regarding technical feasibility, in contrast to principles of regulation, which modify these principles in light of these empirical constraints. Halliday then applies these principles of justice to a concrete issue – the taxation of inherited wealth. In doing so, he endorses a Rignano scheme, which is a technically feasible tax policy, but at this stage in the book he abstracts from other considerations that might compromise the scheme (e.g. economic constraints). I thank one of the journal's anonymous reviewers for highlighting the need to address this issue.

generations. As Halliday puts it, "in certain societies, status comes simply from old money… wealth confers additional status on its bearer just because it is old, i.e. has been passed down some sufficiently large number of times as inheritance" (149). This is "the sort of status associated with 'good breeding' or having come from old money" (128), and because it is based on a direct link between high status and the number of generations over which a family's wealth has been accumulated, Halliday argues that this justifies taxing inheritance through a Rignano scheme that taxes "inheritance… at a greater rate when it rolls over – when it gets passed down more than once" (8).

The second category of nonfinancial "capital" is the "informal" kind of social and cultural advantage that parents can confer on their children. Examples here "include familiar practices, such as reading to one's children, helping them with schoolwork, exposing them to forms of learning and culture, giving specific and sometimes expert advice, and enhancing their intellectual and social confidence through various forms of engagement, love, and affection" (128-9). Halliday draws on Annette Lareau's (2011) sociological work on social mobility, which highlights the extent to which middle class parenting entails forms of "concerted cultivation" which helps to equip children with the sort of attributes that are ultimately associated with educational and professional success. Halliday suggests there are (at least) three mechanisms which explain the link between financial capital and the conferral of nonfinancial advantage. The first is that having wealth reduces the amount of time individuals need to spend in the labour market, freeing up more time for parents to engage in the kind of activities that give their children an advantage over others (142-3). The second mechanism relates to the positional purchasing power that comes with wealth. This means that parents can afford the – often expensive – activities (such as cello lessons, for example) that are likely to give their children a competitive advantage. Linked to this is the third mechanism, which he refers to as "proximity to a reference point" (143). This refers to the way spending on nonfinancial advantages by wealthy parents creates a reference point, or standard, against which less wealthy parents judge their own parenting. Although they will not be able to match the spending of wealthy parents on expensive after-school activities for their children, the idea is that they will feel the need to try to get as close as they can. This leads to an "arms race for positional goods" driving up costs as parents spends more, motivated by the fear that their children will be left behind (144).

A final key feature of Halliday's account is his belief "that the parental conferral of advantage compounds over successive generations" (146). If

wealth is passed down from one generation (who accumulates the wealth) to a second generation, this may give the second generation more nonfinancial capital than the first generation, but the advantages that the third generation enjoys over the second generation are likely to be even greater. The same reasoning applies to the fourth generation, and then to subsequent generations as social and cultural capital compounds over time. For example, in terms of social capital, the second generation may have benefitted from their parents' professional networks, but they are likely to have further strengthened these networks, which can then be passed onto the third generation and used to help secure internships and other valued opportunities (146). Similarly, the first generation might not have enjoyed a high level of cultural capital as their parents were not able to afford cello lessons, for example. However, they can afford to pay for cello lessons for their children, who grow up with stronger cultural capital. This then leads to even greater advantages for the third generation, who can benefit from both cello lessons, and greater parental assistance because their parents can help them practice (147). In this way, "inheritance can have a delayed sociological impact … a person's accumulation of nonfinancial capital can be a long-run consequence of the history of inheritance flow higher up the family tree" (140). Halliday does not claim "that the compounding effect of iterated inheritance is massive… But as long as there is *some* compounding, there will be a corresponding case for attaching *some* greater liability to older fortunes than to similarly sized fortunes that are being bequeathed for the first time" (148). This provides a further justification for adopting a Rignano scheme with a tax rate on inherited wealth that increases over time.

In sum, the egalitarian approach to inherited wealth that Halliday develops in his book is an innovative contribution to contemporary political theory that deserves further development and exploration. The egalitarian theory at the core of his account has a number of central features: 1) it attempts to combine and reconcile luck egalitarianism and social egalitarianism; 2) it focuses on inequalities that obtain between groups rather than individuals; and 3) it is concerned with a particular kind of inequality -- social, particularly economic, segregation. Applying this theory to the issue of inherited wealth, Halliday argues that 4) inequalities in inherited wealth contribute to economic segregation between groups; 5) the economic segregation generated by inheritance compounds over time; and 6) this justifies the introduction of a Rignano taxation scheme. In the next section, I focus on the theoretical core of Halliday's account (features 1-3 above), raising several objections to his hybrid theory of luck and social egalitarianism.

2. EVALUATING THE HYBRID THEORY

One initial complication with Halliday's theory is that it is unclear whether the luck egalitarian or social egalitarian principle is primary. He states that it is an open question "whether it is distribution's sensitivity to circumstance over choice that explains the injustice of economic segregation, or the other way round" (103). However, if the choice/circumstances distinction is primary, then it is unclear why the focus of the theory should be restricted to economic segregation between groups in the way Halliday suggests. A proper application of the choice/circumstances distinction would classify brute luck inequalities as unjust, regardless of whether they relate to groups or produce segregation. All that matters on the luck egalitarian account is whether there is an inequality (in welfare, resources or some other metric), and whether it is the result of choice (individual decisions for which they can reasonably be held responsible) or circumstances (brute luck). If the choice/circumstances principle is primary, then restricting the egalitarian focus to group economic segregation does not seem to be justified.

One way around this problem would be to argue that the social egalitarian component of the theory should be regarded as primary, rather than the choice/circumstances distinction. This would justify restricting the focus of egalitarian justice to social and economic segregation between groups because economic (and social) segregation is inherently unjust, not because it generates brute luck inequalities. However, if the social egalitarian component is primary, then it is unclear why the theory only classifies economic segregation as unjust when it results from brute luck rather than classifying all forms of economic segregation as unjust. For example, imagine a (hypothetical) society where brute luck inequalities have been eliminated but where there is a large gap between the salaries of high income-earners and low income-earners as a result of option luck. In this society, further suppose that these two groups live in largely separate worlds and rarely interact with each other as equals. In other words, economic segregation exists that results from option luck rather than brute luck. If the social egalitarian component of the theory is primary, then this economic segregation should be condemned as unjust despite the fact it results from option luck rather than brute luck. However, this also means that the hybrid theory loses its luck egalitarian character as the choice/circumstances distinction theory ceases to be doing any work. This casts doubt on Halliday's attempt to develop a single egalitarian theory with unified luck egalitarian and social egalitarian components. If the starting point is the social egalitarian view that social segregation is inherently unjust then it is unclear why it matters whether social segregation is the

result of brute luck, and the theory seems to collapse into pure social egalitarianism. On the other hand, if the luck egalitarian concern with chance and choice is fundamental, then it is unclear why the focus should be restricted to social segregation, and the theory collapses into pure luck egalitarianism.

Leaving this objection about the grounding of the theory to one side and taking the hybrid theory as presented (with its narrower focus on brute luck social and economic segregation between different groups), further complications arise. Halliday suggests that his theory can avoid some of the major objections to standard forms of luck egalitarianism precisely because of this restricted focus (111-2). However, closer analysis of group economic segregation casts doubt on how distinct this restricted account is from standard (i.e. unrestricted) forms of luck egalitarianism. The first problem is that it is difficult to come up with a sustainable distinction between disadvantages that are attached to groups, and disadvantages that are attached solely to individuals (and not by virtue of their membership of particular groups). A victim of any brute luck disadvantage we could identify (illness, appearance, lack of lucrative talents, or a freak accident) could be regarded as a member of the broader class of people who are disadvantaged by the form of brute luck in question (i.e. by their illness, appearance, lack of lucrative talents or the occurrence of a freak accident). Thus, it is not clear that an adequate distinction can be drawn between group-oriented and individually-oriented forms of luck egalitarianism.

A similar problem affects the theory's focus on social and economic segregation. The problem is that most forms of significant inequality (including forms of brute luck inequality) seem likely to generate some kind of social or economic segregation. For example, in cases where someone is disadvantaged by a lack of lucrative "natural" talents, this reflects the social or economic structure, which values some talents more highly than others. In such a society, those with lucrative talents are likely to have opportunities to earn a high income that is not available to those with less lucrative talents. This will lead to further differences in the suburb in which they live and the kind of lifestyle they enjoy. Segregation might even arise in cases involving the kinds of brute luck inequalities that often feature in counter-examples to luck egalitarianism. For example, one objection to luck egalitarianism is that it regards inequalities between the physically attractive and the physically unattractive as unjust (e.g. see the discussion of "the ugly and socially awkward" in Anderson 1999: 305). However, this inequality could potentially generate social and economic segregation if it leads to significant differences in the opportunities

– personal and professional -- open to the groups in question. Thus, a restricted theory of luck egalitarianism that is focused on groups rather than individuals, and on social and economic segregation rather than brute luck inequalities in general, will often produce similar conclusions to standard forms of luck egalitarianism.

In addition, in cases where the hybrid account seems to produce different results from standard forms of luck egalitarianism (i.e. in cases where brute luck inequality arises that does not result in group economic segregation) it is the standard form of luck egalitarianism that will often seem to produce more intuitively appealing results. For example, imagine if an individual were to develop (for reasons beyond her control) a very rare illness that no other person is currently known to have (in that society).[3] Imagine further that the effects of the illness mean that the individual is in constant pain. The pain does not prevent them from being able to work or socialise with others, but it leaves them with a considerably lower-than-average level of well-being. Halliday's group-based theory would not classify this disadvantage as an injustice because it is experienced by an isolated individual rather than a group, and because it does not lead to their segregation. In contrast, a standard form of luck egalitarianism would recognise this disadvantage as an injustice and offer compensation because the individual is the victim of brute luck inequality. In this case, it is the standard form of luck egalitarianism that seems to produce a more intuitively compelling result than Halliday's hybrid account.

A critic might object here that the criticism in the preceding paragraph is wrong-headed. After all, Halliday deliberately restricts the focus of his theory to social and economic segregation between groups, so criticizing his theory's failure to provide compensation in the case above is "criticizing him for something he explicitly says he is not interested in doing".[4] However, contemporary theories of egalitarian justice, including Halliday's hybrid theory, are intended to be intuitively appealing accounts of the ideal of equality. The point of the objection above is to show that restricting egalitarian justice to brute luck economic segregation between groups produces counter-intuitive implications that standard forms of luck egalitarianism avoid. Furthermore, part of what seems so counter-intuitive about failing to provide assistance in this case is that it seems unreasonable to place so much weight on whether a disadvantage attaches to a group and whether it leads to economic segregation. One of the great strengths of the luck egalitarian approach is that it rejects these distinctions, adopting a

[3] Although the context is somewhat different, Anderson (1999: 303) uses the related example of a rare disability in her critique of one of the original luck egalitarians, Ronald Dworkin.

[4] I thank an anonymous reviewer for highlighting the need to address this issue.

consistent approach to egalitarian justice based on the intuitively compelling idea that inequalities are unjust when they result from factors that are beyond the control of the individuals who are affected by them.

In sum, Halliday's attempt to develop a hybrid theory with unified luck egalitarian and social egalitarian components is original and worthy of further development and exploration. However, in this section, I have highlighted ambiguities relating to its foundation principle and I have argued that if the choice/circumstances principle is primary, then it is unclear why the focus should be restricted to group economic segregation. Conversely, if the social egalitarian principle is primary, it is unclear why the focus should be restricted to forms of economic segregation that result from brute luck. A further complication is that once we analyse the notion of group economic segregation in more detail, the differences between the hybrid theory and standard forms of luck egalitarianism seem to narrow, and in cases where the hybrid theory produces distinct conclusions from standard forms of luck egalitarianism (as in the rare illness case above), it is the standard form of luck egalitarianism, which does not restrict its focus to individuals or to social and economic segregation, that seems to produce more intuitively compelling results.

Although providing a full defence of luck egalitarianism is beyond the scope of this paper, my arguments here show that there are good reasons to persist with a luck egalitarian approach to distributive justice instead of adopting Halliday's alternative theory. In light of this, focusing in more detail on how a standard form of luck egalitarianism would deal with the problem of inequalities in inherited wealth is a worthwhile endeavour. I turn to this in the next section.

3. LUCK EGALITARIANISM AND INHERITED WEALTH

Endorsing the standard account of luck egalitarianism over Halliday's hybrid alternative has important consequences when it comes to the taxation of inherited wealth. As mentioned above, Halliday's focus on economic segregation between groups and the cumulative advantages that are generated by wealth that is passed down through the generations, leads him to endorse a Rignano taxation scheme that charges a higher rate of inheritance tax the further the bequest is from the original generational source of the wealth. However, this is not the approach to taxation that luck egalitarianism would recommend. Other things being equal, inequalities in inherited wealth are paradigmatic cases of brute luck inequality from a luck egalitarian point of view. After all, if someone ends up better off than someone else because they inherit wealth, this is the

result of chance rather than the choices they have made. Although the effects of this inequality might well accumulate over generations, as Halliday suggests, the initial transfer of resources is itself unjust and should be completely corrected, either by prohibiting bequests or taxing them at 100 per cent tax. This means that the rate of inheritance tax should be set at the same rate – 100 per cent – for every generation, conflicting with the underlying motivation for a Rignano scheme.[5]

However, Halliday argues that standard forms of luck egalitarianism have unappealing consequences when applied to the issue of inheritance. His first objection is that this kind of luck egalitarianism is insensitive to the size of bequests/transfers (call this the quantification objection). In other words, the theory "appears to condemn *all* inheritance no matter its size, so long as it reflects the workings of circumstances rather than choice" (77-8). The example he uses to illustrate this is beer tankards – the fact that someone inherits more beer tankards than someone else generates an inequality that results from circumstances not choice, but it hardly seems appropriate to describe this as unjust.

Halliday's second objection is that luck egalitarianism seems to mandate "the abolition of all *asymmetric* transfers". An *asymmetric* transfer such as inheriting wealth through a bequest "involves no real exchange -- someone is given something for nothing" (78). Because such a transfer is initiated by another person, it is beyond the control of the recipient, and for this reason, the result of brute luck. This means that "[a]symmetric transfers will always maintain a situation in which some person's distributive position is influenced by their brute luck. The only way to prevent this is to somehow arrange things so that no person benefits from such transfers to a greater degree than anyone else, but there is no plausible way of doing this" (79). Halliday's argument here draws on Hugh Lazenby's (2010) work on luck egalitarianism and gift-giving, as gift-giving, like inheritance, is an example of an asymmetric transfer.

The conclusion that Halliday draws from this is that "[w]hen it comes to inherited wealth, *simple* luck egalitarianism may be too strong in its implications" (79). However, as the reference to *simple* luck egalitarianism indicates, he is open to the possibility that there are ways of refining luck egalitarianism to avoid requiring the prohibition of asymmetric transfers. In particular, one could draw on GA Cohen's (2008) idea that luck egalitarians should support a personal prerogative – "a sort of individual

[5] Of course, luck egalitarians generally recognize that there may be a need to take into account considerations other than luck egalitarianism when making public policy decisions, so in practice, there may be reasons to pull back from the demand for 100 per cent taxation. For examples, see n. 2 above and the discussion of gift-giving in section 3 below.

entitlement to exercise partiality, which may be weighed against demanding 'impartial' or 'impersonal' requirements, including any requirement to make a distribution to reflect choice but not circumstance" (Halliday 2018: 80-86, quotation at 80). In the context of inheritance, this means that the personal prerogative could be drawn on to defend the right to transfer property to others. However, Halliday argues that this move is unsuccessful. The right to transfer wealth comes at the end of a life that has usually involved many opportunities for acting partially towards those who are close to us, so it is unclear why it is enough to override the requirements of justice (81). This means that luck egalitarianism cannot draw on the personal prerogative to avoid the problem of asymmetric transfers.

However, these objections to a standard luck egalitarian approach to inheritance are less persuasive than they first appear. First, regarding the beer tankard example, it seems highly possible that inheriting a beer tankard would fail to increase a person's quality of life, which would mean that the beneficiary would not enjoy any advantage over others, and that luck egalitarianism would not classify the inheritance of a beer tankard as an injustice. Moreover, even if this is incorrect and inheriting a beer tankard does have some positive effect on someone's well-being, the positive effect is likely to be extremely small. The reason it seems so counter-intuitive to regard possession of a beer tankard as a matter of injustice is because of the triviality of the benefit involved in inheriting such an object. Halliday suggests that luck egalitarianism is insensitive to the size of a transfer, but there is no reason to think that this is the case. Luck egalitarians can recognise that possessing the beer tankard increases someone's quality of life by such a minute amount that the (brute) luck inequality it generates is trivially small, and therefore trivially unjust. The theory is ultimately concerned with the extent to which inequalities in the quality of life individuals enjoy is the result of brute bad luck rather than choice, so there is nothing that precludes it from recognising that the injustice is greater when the inequalities between people are greater. For example, if the value of the tankard were high rather than trivially low– for example, because it was ornamental and encrusted with expensive jewels – then inheriting the tankard would generate a more sizable inequality. Luck egalitarians can recognise that this would be more unjust than the inequality generated by a standard (and almost worthless) beer tankard, so it is false to suggest that it is insensitive to the size of a transfer.

In order to address the asymmetry objection, it is necessary to dig a bit deeper to identify Halliday's underlying concern with asymmetric transfers. He suggests that it is not "plausible" to prohibit asymmetric

transfers, but this idea could be understood in different ways. One possibility here is that on Halliday's view, prohibiting such transfers would not be *technically* feasible -- it would be impossible to prohibit individuals in the private sphere from engaging in such transfers, at least without an intolerable level of state monitoring of the private sphere. However, this does not seem to be such a problem when dealing with the kind of large wealth transfers that are of concern to luck egalitarians because these transfers will normally involve legal mechanisms (e.g. wills) and financial institutions (e.g. bank transfers), as Halliday himself notes, earlier in the book (18). Moreover, the luck egalitarian defence against the "implementation" objection is to adopt some version of the distinction that Cohen (2008) drew between ultimate principles of justice, which are insensitive to facts regarding technical feasibility, and principles of regulation, which put these principles into practice, taking into account these empirical constraints (see n.2 above). Luck egalitarianism is pitched at the level of ultimate principle, so the fact it is not technically feasible to implement in its pure form is not a decisive objection. For both these reasons, the technical infeasibility of prohibiting asymmetric transfers does not mean luck egalitarianism should be rejected, either in general or when applied to the issue of inheritance.

However, there is an alternative way of interpreting Halliday's claim about implausibility. It might be argued that prohibiting asymmetric transfers is implausible not because it is technically infeasible but because the idea of banning asymmetric transfers is so counter-intuitive. This is, in fact, Lazenby's (2010: 281) underlying concern in his original article on gift-giving and luck egalitarianism. As he puts it, if gift-giving must be prohibited, then

> "we arrive at a stark and dystopian picture of social life. If we could not give presents, hugs and kisses, useful pieces of information or physical assistance to each other, except when they were the result of the others [*sic*] 'calculated choices or deliberate gambles', it seems difficult to imagine how any sort of human relationship could be maintained or instigated".

In the context of inheritance, it might be argued that being able to bequeath resources to other people, particularly family members and friends, is an essential part of human life, as it is closely linked to maintaining close relations with others. To classify such bequests as unjust is implausibly counter-intuitive, just as it is counter-intuitive to ban asymmetric transfers such as gifts.

However, the powerful intuition underlying Lazenby's general critique of the luck egalitarian approach to gift-giving does not extend as readily to

the case of bequests. After all, a bequest is received after someone has died, so it is not clear why prohibiting them (or taxing them at 100 per cent) would damage meaningful and intimate human relationships. A bequest usually comes after a life that has involved many opportunities for close interaction and "acts of partiality", as Halliday himself points out (81), so there is no reason to think that banning bequests would create a dystopian world without intimate human relationships.

It might be objected here that there are certain cases where a bequest will be so closely connected to a human relationship that prohibiting it – as luck egalitarianism requires – would be counter-intuitive. An example here might be inheriting something that has great sentimental value – for example, a collection of old books or vinyl records that were loved by a close family member and the source of great memories to the beneficiary. Perhaps, for example, the beneficiary used to spend a lot of time sharing and discussing these books or listening to the records with the donor. In such cases, it might seem heartless to prohibit someone from inheriting the books. This is a stronger objection; however, it is not an insurmountable one. As Lazenby acknowledged in his original article, pluralist forms of luck egalitarianism can respond to the counter-intuitive implications of prohibiting asymmetric transfers by recognising the need to balance the demanding dictates of luck egalitarianism against other principles and values. In this case, it would mean we should strike a balance between preventing brute luck inequalities and allowing people to inherit items that have great sentimental value to them.

In making these judgements, the size of the inequality the bequest creates between the beneficiary and other citizens is, of course, a relevant consideration. For example, if instead of the books and record collection, the bequest involved a large mansion with river-front views, then the brute luck inequality it generates is likely to be sizable and therefore more concerning from the point of view of justice, and the case for prioritising luck egalitarianism would be stronger. However, even in this case, there might be a way of striking a middle ground. For example, the bequest might be allowed to proceed but the beneficiary would have to pay a sizable amount of inheritance tax on the property. Further work is needed to refine exactly how we would balance the relevant considerations here – it may be that luck egalitarians will never be able to work out a completely precise universal account of the relevant weightings that apply in every case. However, this is not a decisive problem. There are many areas of moral and political life where we need to balance competing values and considerations without being able to come up with precise weightings for the principles involved.

CONCLUSION

The Inheritance of Wealth is a welcome contribution to contemporary political philosophy, exploring the important but neglected topic of inheritance, while also making a substantial contribution to egalitarian theory by developing a hybrid account of luck egalitarianism and social egalitarianism. In this paper, I have begun the task of examining this innovative hybrid theory, highlighting some of its ambiguities and arguing that if the choice/circumstances principle is primary, then the theory's restricted focus on group economic segregation is not justified. This objection could be avoided by making social egalitarianism primary, but this leads to further problems because it would then be unclear why the hybrid theory only regards social and economic segregation as an injustice when it results from brute luck. I also argued that Halliday's theory, with its focus on group economic segregation, may be less different from standard forms of luck egalitarianism than it first appears, and that in cases where the implications of the two approaches differ, the standard (i.e. the non-restrictive) form of luck egalitarianism produces more intuitively compelling results. In light of this, I argued that there is a good reason for egalitarians to support luck egalitarianism over Halliday's alternative. This has important implications for how egalitarians should think about inequalities in inherited wealth because luck egalitarianism regards any inequality in inherited wealth as unjust, pointing towards a more radical form of inheritance tax than the Rignano scheme Halliday endorses. I concluded the article by defending luck egalitarianism against a number of objections that Halliday levels against it, arguing that luck egalitarianism is sensitive to the size of bequests, and that although bequests are asymmetric transfers, prohibiting them is much less counter-intuitive than prohibiting gift-giving. There will be hard cases that arise involving bequests that have great sentimental value, but these can be addressed by balancing the demands of luck egalitarianism against other values. More work is needed to develop a full luck egalitarian account of how to deal with inequalities in inherited wealth, but if the arguments of this article are correct, then it represents a promising future direction for egalitarian theorists who are keen to continue to pursue the important questions Daniel Halliday has put back onto the agenda of mainstream political philosophy.

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Solidarity, Dominance, and the Taxation of Bequests

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ABSTRACT

In his new book, *The Inheritance of Wealth,* Daniel Halliday (2018) argues that the taxation of bequest and inheritance is justified on the grounds of preventing dynastic concentrations of wealth harmful to both democratic equality and fair equality of opportunity. Although Halliday's claims are convincing, he neglects the role that solidarity should play in justifying a robust tax on bequest. In this paper, I develop an argument for taxing and regulating bequest on the grounds of solidarity, linking the argument back to the thought of both Marx and Rawls.

Keywords: solidarity, community, bequest, inheritance, domination, exploitation.

1. INTRODUCTION

Concerns regarding the impact of bequests and inheritance upon society are not new. For instance, philosophers as distinct as Mill (2004), Marx (1869 & [1867] 2000), and Rawls (1999) have all opposed unregulated forms of inheritance and bequest. However, there may be good reason for renewed worry since, as Thomas Piketty (2014) has famously shown, there is a real danger that the rapid increase in income and wealth inequality portend the transformation of many liberal democracies into oligarchic, rentier societies in which returns to capital outstrip labour in terms of national income. Absent a robust and effective tax on bequest and inheritance, that possibility becomes more likely.

There are several ways to justify *effective or robust taxation* ('regulation' or 'taxation' for short) of bequests and inheritances ('bequest' for short). For example, one could press a predominately economic argument that criticizes bequest on the grounds of purported inefficiency. Because bequest and inheritance are gifted largely regardless of financial acuity, the wealth could be squandered. Better to tax it, and use the proceeds in

ways designed to improve education, upgrade infrastructure, or provide start-up grants for deserving entrepreneurs.[1] Bequest could also be addressed as a matter of justice; there are several well-known ways to show that justice demands effective regulation or taxation of bequest. One option is to adopt the left-libertarian view that persons have an equal and original right to worldly resources and that, consequently, a tax on bequest simply returns resources to their natural, un-owned state.[2] Another way is to approach matters from a luck egalitarian perspective and claim that, because receipt of a bequest amounts primarily to a contingent and lucky occurrence, much of it can be taxed away.[3] Finally, one might also take a broadly Rawlsian approach (1999) and ground the tax on the concern that bequest perpetuates undeserved wealth inequalities damaging to the ideals of fairness and democratic equality.

In his timely and sure to be influential new book, *The Inheritance of Wealth*, Daniel Halliday (2018) largely follows the fourth, broadly Rawlsian path, arguing that an effective tax on bequest and inheritance is justified in order to prevent dynastic concentrations of wealth harmful to social equality. More specifically, Halliday contends that by its nature an inheritance is undeserved and that it causes economic segregation, which undermines democratic equality and fair opportunity.[4] Although Halliday's claims are convincing, he neglects to consider an alternative, but no less powerful approach that could be used to further strengthen the argument against bequest and inheritance.

That alternative approach is what I call the 'solidarity approach' because it grounds the regulation of bequest on the moral concern that large bequests undermine a society's sense of community and, ultimately, its ability to mutually support its members. This approach accepts Halliday's empirical claim that bequest creates economic segregation, but it differs insofar as it locates what is wrong with bequest in terms of bequest's negative impact on communal solidarity—not just its harm to equality of opportunity and democratic equality. Although I say more about the term 'community' below, I understand community as being characterized by two elements, namely, 1) a sense of mutual understanding and 2) a sense of common purpose or commitment. Accordingly, if a society lacks these communal elements, then its members will also lack an effective sense of

[1] The general idea that bequeathed property might not be productively employed is seemingly present in Smith's criticism of entails. Smith thought that by blocking the free dispersal or sale of land, entails prevented the land's productive employment. See: Smith (1981: 384 ff.)

[2] For instance, see: Steiner (1994: 258).

[3] For instance, see: Rakowski (1991) and Alstott (2007).

[4] As Halliday (2018: 152-3) notes, his argument combines both luck egalitarian and social egalitarian perspectives.

solidarity. Even though solidarity can itself be understood in various manners, the use of that term is intended to pick out the general idea that persons are mutually committed to the good of one another.[5]

As I go on to explain, concerns regarding bequest's impact on solidarity are operationalized by reference to relationships of economic dominance, which are themselves characterized by forms of exploitation and social alienation. So, unregulated bequest does not just allow "certain groups… *to monopolize superior life prospects* for their members," (*emphasis* mine) as Halliday (2018: 101) puts it, bequest also hinders the development of a community ethos and a sense of mutual support. The taxation or regulation of bequest may therefore be constructively understood as a commitment to communal solidarity because privately controlled wealth is re-invested back into the community. The regulation of bequest does not need to be understood solely or primarily in terms of securing fair competition for valued social positions or standing.

The solidarity approach is obviously influenced by Marxist concerns about community, as well as the negative impact of domination and alienation on communal solidarity. As such, the argument is grounded in a broader set of moral concerns that are not effectively captured by the liberal egalitarian focus on equality of opportunity or democratic equality. In that sense, the solidarity approach stands distinct from Halliday's approach. And even though, because he employs the concept of economic segregation, Halliday's argument is somewhat amenable to concerns about solidarity or community, it ultimately fails to adequately identify the negative impacts of economic segregation and to take full advantage of the critical power afforded by recognition of that problem. Unregulated bequest, through the economic segregation it creates and sustains, damages the fabric of community.

In what follows, I briefly examine the Marxist argument against bequest from which the solidarity approach draws inspiration. I then further develop the solidarity approach, demonstrating how it can be used to further the moral critique of unregulated bequest.

2. MARX ON BEQUEST AND INHERITANCE

Marx was clearly opposed to unregulated bequest. And, although he rightly did not view it as a cause of capitalists' private ownership over the means of production, he did think that it sustained the capitalist system. As he states (1869: 1), "Inheritance does not create that power of transferring the

[5] For a description of different approaches to understanding solidarity, see: Scholz (2015)

produce of one man's labor into another man's pocket—it only relates to the change in individuals who yield that power". For Marx, bequest was a legal convention developed to retain private control of capital and productive assets. So, even though in a communist society there would be almost no need for a tax on bequest—private ownership in the means of production being eliminated—regulating/ending bequest was still a potentially useful "transitory measure" to communism because it would prevent the maintenance of the capitalist system (1869: 2).

Although Marx paid almost no attention to bequest in *Capital*, he does note that the "division of property within capitalist families" plays a large role in the accumulation of capital ([1867] 1990: 776). This is important because according to Marx, "Every accumulation becomes the means of new accumulation. With the increasing mass of wealth which functions as capital, accumulation increases the concentration of that wealth in the hands of individual capitalists…" ([1867] 1990: 776). So, the point is that bequest or inheritance perpetuates the capitalist system by enabling donees or heirs to attain the level of wealth necessary to function as capitalists. Therefore, Marx's argument can be understood as demonstrating that large bequests both retain and reinforce the division of society into separate classes, namely, the workers and capitalist owners. This point is obviously commensurate with Halliday's claim that bequest creates economic segregation. The difference is, of course, the points of emphasis. Halliday emphasizes the negative impact of segregation on something like equal opportunity and political standing, whereas Marx focuses on how this division strips workers of the control of their labor and life activity, all to the detriment of a truly human community.

According to Marx, capitalists dominate laborers and thereby exploit them by preventing them from obtaining the means necessary to employ their labor freely and in a manner conducive to their self-development. As Marx states in *Capital*, "The capital relation presupposes a complete separation between the workers and the ownership of the conditions for the realization of their labor" ([1867] 1990: 874). To better understand this position, it is necessary to say something briefly about Marx's concept of alienation. As Marx saw it, capitalism prevented workers from acting as an autonomous "species being" that constructs social and material life in community with others. Marx ([1932] 1975: 276, 277) describes his thought as follows:

> Yet the productive life is the life of the species. It is life-engendering life. The whole character of a species—its species-character—is contained in the character of its life activity; and free, conscious activity is a man's species-character… It is just in his work upon the

> objective world, therefore, that man really proves himself to be a *species-being*.

And later in summary:

> In fact, the proposition that man's species-nature is estranged from him means that one man is estranged from the other, as each of them is from man's essential nature. The estrangement of man, and in fact every relationship in which man stands to himself is realized and expressed only in the relationship with which a man stands to other men. ([1932] 1975: 277).

So, the problem is two-fold. In the first place, because workers in a capitalist society lack control over their work and its product—laboring only for a wage—they lack autonomy and cannot properly develop their abilities, nor engage in meaningful activity. Second and relatedly, when workers are alienated, they stand estranged from their fellow society members. This is because Marx thought that only in a social relationship, where persons were not simply labouring for a wage, would the instrumental nature of work and much of life activity disappear, such that persons would appreciate their own activity and the activity of others as an expression of the value and capabilities of the person. In other words, only in relationship characterized by solidarity and common commitment—not one characterized by economic exploitation and the struggle for a living wage—could persons engage one another constructively and reciprocally so as to encourage the mutual development of self. To the extent that bequest enables the capital relation to perpetuate itself, it contributes to harms embodied in the concept of alienation.

So, looking back over Marx's criticism of bequest, we can observe that bequest is to be abolished or heavily regulated because it plays a role in securing the "capital relation" in which the worker is economically dominated and exploited by the capitalist owner. By perpetuating this relationship and the class division that follows from it, bequest harms the worker by leaving her alienated and unable to realize the value inherent in her own life activity and the activity of others. Therefore, although bequest is not the ultimate cause of social estrangement, it is a major contributing factor.

3. THE SOLIDARITY APPROACH

The problem with unregulated bequest is, as both Halliday and Marx point out in their own way, that it helps to sustain a wealthy, propertied class that possesses significant financial resources in comparison to the broader

population. In Marx's analysis, this leads to a relationship of exploitative domination and a society characterized by antagonistic social relations in which persons cannot come to recognize the value in other's activity, nor realize the value of their own activity. In Halliday's analysis, unregulated bequest leads to unjustified advantages that work against something like fair equality of opportunity. However, Halliday is also keenly aware of the impact of bequest on social relations. Important to Halliday's argument is his worry about how economic segregation can separate persons from different economic classes, especially the rich from the poor, such that the rich have little social interaction and cannot understand nor empathize with the situation of those living in poverty. According to Halliday (2018: 113), at its worst, this separation can lead to the "demonization of the poor" in which those living in poverty are depicted as lazy, intellectually slow, or otherwise somehow deserving of their condition. The end result is government policies that are either punitive or non-responsive to the needs of poorer members of society. What Halliday seems to find most objectionable about this situation is that it hinders the possibility that the poor will receive the assistance and support they need, and that, consequently, they will continue to lack meaningful opportunity and equal status. However, his perspective is also in line with Marx's worries. Economic segregation and the demonization narratives that accompany it, clearly damage social solidarity and the idea of mutual support by removing a class of persons from the ambit of social concern.

So, although Marx emphasizes more directly the problem of subjugation or domination, much of what Halliday says is consistent with that position. Nonetheless, Halliday does not really discuss the importance of community and solidarity. This is somewhat regrettable because it could serve as another plank in his argument against unregulated bequest and inheritance. Class division or economic segregation seems particularly bad, not just because it can negatively and unfairly impact the life opportunity and status of the impoverished *in comparison* to others, but precisely because it separates people from each other, i.e. from the good of community. I explain this thought more thoroughly below.

A community, as opposed to a formal political society, is characterized by two elements: 1) a sense of mutual understanding or shared ability to relate to fellow members and, 2) a common commitment or aim that serves to orient the wills of the individuals away from an exclusive focus on the self and toward a broader more comprehensive, shared goal. A community is, therefore, characterized by relationships of solidarity between its members because there exist shared understandings and a common aim which link persons together. All of this creates a sense of mutual

commitment and support.[6] But why think that community and the relationship of solidarity that it grounds are valuable?

I think there are two answers from within the Marxist tradition. The first is supplied by Marx himself and depends on the idea that humans are communal and find meaning or value through relationships and activities with others. In other words, communal solidarity is good because it allows for the development of the individual as well as the society of which he or she is a part. Therefore, community is both instrumentally and intrinsically valuable. It is instrumentally valuable insofar as it allows for and encourages the development of the individual, and it is intrinsically valuable because persons are interconnected and communal by nature—so community is a good itself. In a passage describing the communal nature of persons Marx ([1932] 1975: 298) declares:

> Just as society itself produces man as man, so is society produced by him. Activity and enjoyment, both in their content and in their mode of existence are social: social activity and social enjoyment. The human aspect of nature exists only for social man; for only then does nature exist for him as a bond with man—as his existence for the other and the other's existence for him".[7]

Marx's point seems to be that our understanding of ourselves, our plans, and projects—our life activity—cannot be comprehended apart from community. As much as humans create community, they are also created by it or may be understood partly as a product of it. Although this claim is primarily descriptive, it needs to be understood in the broader context of Marx's claim that the good for persons is tied to their activity as a 'species being' that finds purpose and meaning in the use of its productive and creative capacities in community with others. This allows for the inclusion of a strong normative element. So, if the descriptive claim that persons create and are created by community is true, then persons cannot be understood, nor find value in their lives—that is to say that they cannot properly self-develop or self-realize—without engaging in a range of mutually committed and meaningful human relationships because it is only through those relationships that value can be understood or apprehended. As Marx might put it, persons cannot be complete or truly human in the absence of communal relationships, and a society itself will be impoverished if it does not develop a sense of solidarity and mutual concern—it will not be a true human community.

[6] As Habermas (1990: 47) describes solidarity, it "concerns the welfare of consociates who are intimately linked in an intersubjectively shared form of life".

[7] What is referred to in the text as 'social' is what I am calling 'community'. Marx is discussing the social conditions that are necessary to community.

The second answer is supplied by G.A. Cohen who argues that a commitment to community is necessary for a truly egalitarian society. In his last book, *Why Not Socialism*, Cohen (2009) contends that an egalitarian society will necessarily be characterized by a community ethos. More specifically, he argues that inequalities must be constrained by a community principle that does two things: 1) limit inequalities (that result from option luck) so that persons are capable of relating to the daily experience of others, and 2) that opposes a strict market ideology, so that persons are motivated by the idea of serving one another from a genuine commitment to cooperation. As Cohen (2009: 18) puts this last point, "A nonmarket cooperator relishes cooperation itself: what I want as a nonmarketer, is that we serve each other…" For Cohen, then, an egalitarian society will be one in which community is valued and solidarity is present. This, however, does not mean that community and solidarity are purely instrumental values, useful only for producing equality. Rather, the point is that society cannot be truly equal unless persons understand community to be valuable itself. In other words, egalitarian social relationships, on Cohen's understanding, depend on community.

Although Marx and Cohen emphasize different elements of community—Marx tying it to human development, while Cohen links it more directly to equality—they both demonstrate that a sense of solidarity, arising from community, is necessary for the achievement of important human goods and a truly just society. More specifically, both agree that mutual commitment and cooperation are necessary elements in a morally justifiable society. A society lacking these elements will be less equal, less supportive of human projects, and, generally, a worse society.

So, the outlines for the solidarity approach should be coming into focus. In a true community there exists a sense of mutual understanding, commitment, and support that enables persons to approach each other as equals and to develop their projects and goals together in a vibrant society. In other words, a community is characterized by a sense of solidarity that benefits both individuals and the community itself. This means that in a community, members benefit not at the expense of, regardless of, or despite other members (as in an economically segregated society), but rather they benefit through and with others. An effective tax on bequest, which is properly redistributed to ensure that all persons have access to things like robust education and training schemes, access to productive assets or income bearing capital, housing, and opportunity for meaningful work, stands as a particularly concrete way to reduce domination and realize the

ideal of mutual support and solidarity that characterizes community.[8]

If particular members of a society have gained substantial amounts of wealth that can be passed on, a commitment to solidarity entails that this wealth should be used to promote the common good by upbuilding community infrastructure and assisting the vulnerable. By effectively taxing and redistributing large bequests, society can ensure that those who have done well from their productive engagement in society are helping those that for one reason or another lack access to valuable and productive resources. A society characterized by a strong sense of community and solidarity should be willing to institute policies that support less fortunate members, especially when any cost is easy to bear. Again, the taxation and proper redistribution of bequest epitomizes this idea. Since in a case of bequest the donor is deceased, the wealth clearly has not been used by the donor.[9] Consequently, spreading the benefits of that wealth to others stands as a clear way to promote community and cooperation by ensuring that all of society's members are capable of accessing the resources required to develop their abilities and participate productively in society.[10]

Another way of putting this point is to appeal to Cohen's (2008) idea of a "justificatory community". According to Cohen, a justificatory community is one in which there is a norm of comprehensive justification, by which he means that the members of the community are capable of interpersonally justifying a social policy to each other (2008: 42-43). A policy of not taxing or minimally taxing large bequests, given the argument above, cannot be comprehensively justified because the rich are preventing a fairer and more communally beneficial distribution of socially generated wealth. It is as if the rich are saying to the poor: 'Although I have benefitted from my engagement in society, I am not going to share my outsized returns despite your impoverished situation and the reality of broader community needs.' But as Marx has argued, persons and their productive activity are always tied up with and dependent on society. In rejecting an effective tax on bequest, then, the rich are unjustifiably ignoring the mutual engagement

[8] How much revenue could an inheritance tax expect to generate? Obviously, the answer to this question depends on the structure of the tax. However, as a starting point we could take Edward Wolff's (2015: 244) calculation that an inheritance tax with a $500,000 (USD) exemption and top marginal rate of 45% would raise $31.6 billion. Although the money raised is not insubstantial, a more progressive structure is almost certainly required to meet important moral concerns.

[9] For an argument detailing why the donor has no right to provide an unfettered bequest, see: Braun (2012; 2016).

[10] Because bequest is being taxed, not banned, persons can still express solidarity with others through charitable bequests. In other words, a tax on bequest does not leave the promotion of solidarity entirely in the hands of the impersonal state. I thank an anonymous referee for asking me to address this issue.

that allowed for their prosperity. Per Cohen's argument, then, unregulated bequest shows the rich to be out of community with the poor—the rich fail to take the poor's concerns seriously and indirectly cause, through the rejection of a tax on bequest, a continuation of the poor's situation.[11]

Although the solidarity approach provides a clear foundation for the taxation of bequest, it may be objected that it is infeasible because it is grounded on a moral attitude that might not be widely shared. As a critic might argue, we should not expect the bonds of solidarity to extend across a large and diverse society—it is simply too unrealistic. It could therefore be contended that it is a mistake to attempt to ground policies like the taxation of bequest on the idea of solidarity or community, since the requisite bonds simply do not exist or are not of sufficient strength. Although solidarity may be constrained in larger, more diverse societies, this criticism is radically overdrawn. In particular, it ignores three important points that demonstrate how solidarity can develop across a large society. First, it neglects the fact that solidarity need not require a shared identity and that local communities can provide the requisite connectedness for solidarity. Second, it tends to assume that members must share an external or overarching end that they all accept, when, in reality, community members' shared ends may be internally oriented. Thirdly, it disregards the fact that an individual's success depends to a substantial degree on the success of others. Each point is defended below.

It is true that the size and diversity of many modern states can work to hinder the development of a robust sense of community and solidarity, especially when it is understood simply as being grounded in a shared identity. However, that fact does not preclude the development of a local sense of mutual concern that can be extended to encompass the larger community. Persons are often rightly more connected to those in their local community with whom they have some contact. But given that a large society is composed of intertwined communities that confront similar social issues and concerns, a local sense of solidarity is capable of being extended through the larger community as well. For instance, although I may not know, nor share many commonalities with a miner on the opposite end of the country, I am much more likely to know or be aware of the situation of industrial workers in my city. The concern I feel about the situation and treatment of those industrial workers in my local area gives me the ability, although it may be more attenuated, to appreciate the plight of the miners confronting similar issues.

[11] One might ask how the rich cause the situation. I think it is beyond dispute that wealth grants political power. If the wealthy acquiesced to an effective inheritance tax it would be adopted. For empirical support, see: Winters (2011) and Piketty (2020).

So, it should be clear that I am not describing what Durkheim (1973: 84) has termed "mechanical solidarity," which he describes as a form of group cohesion based on a shared identity. That type of solidarity is probably a non-starter in a large community. Rather the point is that even in large diverse societies, there are linkages and interconnections between people, especially in their local community, that allow for mutual understanding and concern to develop. That concern can then be extended across the broader society as a result of persons' ability to empathize with and appreciate the difficulties faced by others.[12] In short, opponents of solidarity are wrong to think that it must be grounded in a shared identity. Although a sense of shared identity can help to facilitate solidarity, it is not necessary since solidarity can be developed through a recognition and appreciation of the needs and struggles of other community members, be they near or far.

Sometimes it is claimed that what binds persons together into community is a shared end. For instance, Rawls (1999: 462) has contended that in a society structured according to 'justice as fairness', persons share the end of a commitment to justice itself. As he states, "the successful carrying out of just institutions is the shared final end of all members of society". Those who wish to criticize the solidarity approach may assume, then, that this shared end must be an overarching or external end that is shared in common by all. For example, to have the most technologically advanced military in the world could serve as an overarching shared end. Given the size and diversity of modern states, it might then be argued that there is, in fact, no shared end. Hence, the community necessary for the development of solidarity is not possible.

But assuming it is true that a community must share an end of some type, it is not the case that this shared end must be overarching in the sense described above. As Daniel Brudney (1997: 397) and has argued in the case of both Marx and Rawls, community members may share an "internally oriented" end that is constitutive of their relationship and is not overarching. An internally oriented end is one that specifies the internal nature of society itself. It is not an external goal that all seek to promote, like the example of achieving the most advanced military, but rather an end around which social relations are oriented. For instance, deep or robust friendships are typically oriented around an internally shared end of mutual support that serve to structure and sustain the friendship. In contrast, a friendship based solely on a shared external goal is likely only to last until the goal is

[12] I take it that the human ability to empathize is non-controversial. However, this is not to deny that persons can do a better or worse job at it. For an initial discussion of how it might function, see Hume's (1998) discussion of what he calls "sympathy".

attained. As Brudney explains it, in a Marxist or Rawlsian society the shared end is to live in a community that embodies either Marxist commitments to self-realization or Rawlsian commitments to justice. This is an internally shared end that grounds a strong form of communal engagement requiring sustained interaction and cooperation. Consequently, since members of a Rawlsian or Marxist society hold internally oriented shared ends there is no reason to accept the criticism that solidarity or a sense of community is not possible.

The proposed criticism that solidarity cannot be developed or sustained in large diverse societies is also undermined by the fact that it adopts or presumes an individualism that is not borne out by reflection on human experience and activity. This is a point that Rawls (1999: 459) seems to be keenly aware of when he describes a social union as "the community of humankind the members of which enjoy one another's excellences…". (More below.) Marx is also clearly at pains to demonstrate this point in the *1844 Manuscripts*. According to Marx ([1932] 1975: 299), "the individual is the social being" and even when an individual is working largely independently, that individual's goals and the value attributed to the work are socially influenced. As Marx ([1932] 1975: 298) states in describing independent work, even though it is not performed in "direct community with others," it is still communal because "my own experience is social activity and therefore that which I make of myself, I make of myself for society…" Marx's point is that it makes no sense to speak of the individual as separate from the community because, as noted earlier, understandings of value and purpose are constructed through and in relation to social engagement. In other words, an individual can only identify him or herself as an individual with their own values in relation to the values and self-identity of others.

Given these three points, there is no reason to assume that the solidarity approach cannot be used to ground the regulation and taxation of bequest, even in large, diverse societies. Solidarity need not be based on a shared identity or culture, nor does it require a shared overarching end. It is grounded in the interaction of persons in the local community, the human capacity for empathy, our social nature along with our natural proclivity to engage in productive activity, especially as it relates to and is informed by others. The effective taxation of bequest frees up wealth that can then be employed to improve the situation of those in our communities that require additional assistance. A failure to do so *ipso facto* represents a lack of solidarity with, and commitment to, our fellow community members.

4. JUSTICE, SOLIDARITY AND BEQUEST

In closing, I want to say a few words about how the solidarity approach relates to Halliday's argument. Halliday's argument is largely an argument about the injustice of improperly regulated or taxed bequest. Large bequests, which by their nature are arbitrary and a fact of luck, lead to economic segregation that damages something like fair equality of opportunity and democratic equality. The first thing to say is that I think Halliday is absolutely right, viz. large, unregulated bequests clearly work against the idea of a fair and equal society. There is no good reason for countries like Australia and the U.S. to fail to properly tax and regulate bequest.[13]

However, Halliday's argument fails to appropriately recognize the full moral problem with economic segregation. The problem is not just that some persons suffer from a lack of opportunity and weakened status compared to others. Rather the issue is that economic segregation, aided and abetted by bequest, works against the formation and extension of community. As such, it leaves persons isolated from valuable interpersonal relationships and forms of cooperation. It also leaves them incapable of the development of self that goes with community.

Now, for the sake of argument at least, Halliday could hypothetically respond that from a liberal perspective community and personal development are of no interest or concern. However, I think that would represent an impoverished view of the liberal egalitarian tradition (and, of course, it may be a position Halliday himself rejects). Liberals no less distinguished than Mill and Rawls have emphasized the importance of community and self-development.[14] For instance, in an important footnote detailing the concept of a social union, Rawls (1999: 459-460, note 4) claims that "persons need one another since it is only in active cooperation with others that one's powers reach fruition. Only in a social union is the individual complete". So like Marx, Rawls identifies community as necessary and important to the individual. Without a reciprocal community, an individual's development is stunted and their ability to accomplish their aims are severely impeded. It is the acknowledgement of

[13] Australia lacks any direct federal tax on bequest and inheritance, and currently no states or territories have any form of direct taxation on bequest or inheritance. See: Australian Taxation Office (2019), Australian Government, Canberra, https://www.ato.gov.au/general/capital-gains-tax/deceased-estates-and-inheritances/. Although the U.S. does have an estate tax, for all intents and purposes it is rather useless since it grants an exemption of up to $11.4 million per individual donor. See: Internal Revenue Service (2019), United States Government, Washington , D.C., https://www.irs.gov/businesses/small-businesses-self-employed/whats-new-estate-and-gift-tax

[14] See: Mill (2004); Rawls (1999).

this type of mutual dependency and connectedness that can serve as the ground for solidarity and community. And as has already been discussed above, in a just, well-ordered society, Rawls views cooperation as an internally shared end. Moreover, Rawls also claims that the difference principle, properly understood, is consistent with fraternity because it encapsulates the general idea that in relationships characterized by mutual concern, persons will *not* accept benefits that leave others disadvantaged (1999: 90). So, although community is not something that is emphasized in liberal egalitarian thought, a concern for community does not run contrary to that strand of thinking (at least as community is conceptualized in this paper).

So, the point is that Halliday fails to fully recognize the harm done by bequest and, accordingly, misses an opportunity to further criticize the practice. And although, from his perspective he may not accept the more robust sense of community developed in Marxist thought, certainly an attenuated acknowledgment is within Halliday's grasp. At bottom, then, Halliday's argument could be strengthened or supplemented by an acknowledgement that the proper taxation of bequest represents a commitment to others in society and it should be welcomed on those grounds. A society that allows lucky heirs to benefit at the same time it ignores the needs of other portions of the population, is one that fails to display solidarity and mutual concern. In short, a society that fails to effectively tax or regulate bequest fails the test of community.

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Family Fortunes*

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ABSTRACT

In *The Inheritance of Wealth*, Daniel Halliday claims that contemporary societies are characterized by economic segregation that leads to highly undesirable cultural and social segregation. A new form of inheritance tax, inspired by Eugenio Rignano, is proposed, in which the longer wealth has been held in a family the higher the tax on inheritance. This, he argues, will go some way to mitigating economic segregation and its unwelcome consequences. Taking the UK as a case study, and looking at official statistics concerning inheritance, I cast doubt on whether such a tax could address the forms of economic segregation the UK currently experiences. Instead, I propose the closing of some tax exemptions and individualizing tax to the recipient, rather than taxing according to the size of the estate.

Keywords: Daniel Halliday, inheritance tax, economic segregation, Eugenio Rignano.

1. INTRODUCTION

The question of what should happen to a person's property after their death should be a central issue in the theory of distributive justice. Yet in contemporary political philosophy it has rarely been the subject of the level of detailed investigation provided in Daniel Halliday's fascinating work *The Inheritance of Wealth* (Halliday 2018). One possible reason for its relative neglect is that, from the standpoint of ideal theory, the issue is relatively straightforward, at least at first glance. The general thought is that the correct position on the question of inheritance should be a consequence of a broader theory of distributive justice. On this view, the question of inheritance is both derivative and relatively straightforward.

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For example, on a property-rights based libertarianism, such as that of Nozick (1974), there is a strong presumption that people should have the right to dispose of their property however they wish. Accordingly, any justified restrictions on inheritance would simply flow from other acceptable limitations on property ownership, such as those based on the Lockean proviso, ensuring that no-one is worse off than they would have been in some hypothetical situation.

By contrast, theories based on equality, desert, or need may find it hard to justify any significant gift or bequest, as these are likely to disrupt the pattern of distribution justified by the theory, as Nozick has pointedly also argued (1974: 168). These views would, or at least should, rule out inheritance perhaps beyond some token or symbolic level, and on a person's death all of their goods should revert to common ownership. Few, however in the current debate have had the courage to defend such a strict anti-inheritance position. If forced to set out a position they are like to appeal to some notion of priority to the worst off, or sufficiency, or a form of utilitarianism. On these views the issue of inheritance is largely instrumental to what is most likely to advance the goals of the theory. What system of inheritance would improve the income and wealth of the worst off, or bring them to a level of sufficiency or maximize utility?

Bentham, for example, in 'Supply Without Burthen' suggests that, from a utilitarian perspective, one promising proposal is a very high inheritance tax on the estates of those who die without close relatives, as few would have formed legitimate expectations around the prospect of receiving a windfall from a distant relative (Bentham 2019 [1793]). Hence the state can take that money without adverse consequences, which is not the case when children expect to inherit from their parents and have built their lives in part around that expectation.

Ideal theories of justice, then, will have implications for inheritance tax that follow from the theory. But if those who hold such theories want their theories to influence policy they need to move to another stage. Broadly speaking, when reflecting on policy, rather than theory, our topic is not how to defend the best possible system, but how to justify a change from the status quo. Historical circumstances will make different types of changes more or less feasible and more and less desirable. And here there are two complications when trying to give a general account. The first is the obvious point that inheritance taxation varies from country to country. It is relatively high, with a top rate of 55%, in Japan yet has been abolished entirely in Sweden and many other countries. The UK is somewhere in the middle; notionally 40% for estates over a certain size but in practice easy to avoid, at least in part, for the wealthy. A former head of the UK tax office

told me that he regarded estate duty as a 'voluntary tax'. Current UK law allows vast fortunes to be passed on with very little tax (Neate 2019, HMRC 2018b). Recommendations need to take into account current laws and facts, and as they differ from country to country, so must actual policy proposals. For this reason, it may be better to concentrate on just one system, and as I know most about my own, my focus will primarily be the UK.

The second complication is that estate duty is just one tax among many that any government needs to consider, and it would be too quick to jump to simple conclusions about the implications of a particular theory for inheritance tax alone. For example, it might be thought obvious that a property-rights libertarian would always argue for lowering all taxes, including estate duty, so that they are as low as possible, and ideally zero. Yet this may not be so. Many libertarians accept that at least a minimal state is justified and has some legitimate expenses (the army, the police, and so on) for which tax revenues can and must be raised. And looking at possible policy options, it could be that estate duty is the way of raising the needed money that will encounter the least resistance, compared to corporation, income, or sales taxes. Equally, a relatively egalitarian society may decide that if income tax is high enough estate duty can be reduced or disappear altogether, leading to a situation akin to that we find in Sweden.

For these reasons, from the point of view of ideal theory, estate duty is just one component in an overall scheme and hence not a separate topic in its own right, and as mentioned this could explain the relative neglect of the topic. But nevertheless, it is surprising that so little has been written about inheritance in the context of the overall theory. For example, in the copious literature on Rawls' theory of justice, inheritance tax seems rarely to have been given extended treatment.

If ideal theory leads to a degree of indeterminacy about inheritance tax, what about non-ideal theory, or, as I prefer to call it 'real-world political philosophy'? And indeed, Halliday does at times make clear that he is taking a real-world perspective in terms of policy proposals for the here and now, laying out, for example, in the final chapter, the types of conditions that fair and effective tax policy will need to meet, such as how easy it is to avoid. These issues are clearly important, and will need to be addressed before policies are recommended. However, before we get to questions about whether a tax can be avoided, and thereby fail to serve its purpose, we need understand what that purpose is. This, in turn, gives rise to a series of questions:

1. What are the purposes (and justifications) of (inheritance) tax policy?
2. What is the current situation?

3. In what way, if any, is the current situation defective relative to its purpose?

4. What policy options are available to address any such defects?

5. Which is to be preferred and on what grounds?

6. What steps need to be taken to make appropriate changes?

Within this 'real-world' frame we can see, as mentioned before, that what needs to be justified is not so much an ideal, but a change from the current situation (or how things will become if no action is taken). It may be, for example, that ideal theory would determine that a particular economic arrangement is the most just out of all possibilities, but, from the standpoint of where we are now, we may only have a vague idea of how to achieve it, or attempts to do so could be highly risky, and potentially counter-productive. This does not mean that the status quo must be preserved, or that no radical change is possible, but the challenge of making changes, and their possible unintended consequences, needs always to be kept in mind.

Let us return to the first question set out above: what is the purpose and supposed justification of inheritance tax? There are several possible purported justifications. One, as mentioned above, is simply that estate duty is part of a portfolio of taxes by which governments need to raise revenue, and there will always be a question about whether there are reasons of justice or efficiency to make adjustments within the package.

However, Halliday joins the debate in a different way. One claimed justification of inheritance tax is that is a remnant of a progressive view that wealth inequality, especially if passed on over the generations, is unfair, and the purpose of inheritance tax is a modest, but appropriate, step to mitigate such unfairness. After all, while there may be an argument that those who have legitimately built up wealth for themselves are in some sense deserving of that wealth, desert claims are harder to transmit over the generations. However, pretty much everywhere in the word inheritance tax, rhetorically renamed the 'death tax', has come under attack as an assault on property rights, and a particular insult to families with a sentimental attachment to such things as homes and family farms. Those who wish to retain, or even extend, inheritance taxes, have a pressing need to reassert and extend the progressive defense. And this is Halliday's entry point. He is concerned with what he calls economic segregation, and especially its reproduction over the generations. He plausibly suspects that inherited wealth is a mechanism by which such segregation is created and transmitted. On his view the institutions of inheritance tax need to be tailored in such a way as to counter such influence. This will also be my focus here.

2. ECONOMIC SEGREGATION

What is economic segregation, and why is it troubling? The key idea, so Halliday explains, is that 'certain groups are able to monopolize superior life prospects for their members, thanks to their ability to retain wealth over time' (101), including passing wealth on from generation to generation. Such hoarding of wealth and privilege means that people from different social groups live lives cut off from each other. This concern, of course, has been with us for some time. Matthew Arnold called it 'the religion of inequality', pointing out that members of the ruling class did not even as children meet the people they would one day come to rule over (Arnold 2008 [1879]). R.H. Tawney developed the point further, showing that important establishment positions in government and the judiciary were dominated by people from a narrow social circle (Tawney 1931). And the theme has been reprised by writers such as Robert Putnam, who points out that mechanisms such as 'assortative mating' – people marrying into their own social class – have become increasingly common, and tend to reinforce social stratification (Putnam 2015).

Although Halliday notes that economic segregation is closely related to social immobility and class hierarchy he also suggests that they are not the same, or at least he does not want to tie the analysis of economic segregation to any particular theory of class or social mobility defined in financial terms. Importantly, then, the social ill that Halliday is concerned with is not directly economic inequality. Rather, he says, 'of central importance to *economic* segregation is the concept of non-financial capital. Two types of such capital are most relevant. First, there is *social* capital. This consists in valuable knowledge and opportunities. Second there is *cultural* capital, which consists in certain behavioral norms or dispositions.' (107) Though analytically distinct, in practice social and cultural capital are often jointly exemplified in such things as dress, accent, education, and the company one keeps, but also, concerningly, inaccurate and demeaning attitudes to other groups (111-4), as well as substantially different group prospects and opportunities.

Halliday's ultimate aim is to suggest policy steps that will help achieve social integration, of which, he says 'in the sense relevant here, requires breaking up, or rendering inert, differential concentrations of nonfinancial capital' (110). He is fully aware that the argument that restricting inheriting wealth will help achieve social integration rests on a whole series of empirical claims (116). But let us turn now to his positive proposal before returning to the question of economic segregation, and the surrounding empirical questions.

3. HALLIDAY AND THE RIGNANO TAX

At the center of Halliday's recommendation is a resurrection of a proposal first developed at length by Eugenio Rignano, suggesting that the longer wealth has been in a family the higher it should be taxed when bequeathed (Rignano 1919, 1924, 1925). For example, wealth generated in the current generation can be treated more favorably than wealth that was received through inheritance itself. This will reduce the possibility of wealth cascading through the generations. As Halliday notes a brief but similar proposal appears to have been suggested independently by Robert Nozick (1989: 30-3).

This ingenious idea is a response to two types of consideration, some in favor of inheritance, some against. On the one hand there are at least two positive reasons for allowing inheritance. The first is that leaving things to your children is a way of expressing and reinforcing the bonds of affection and concern between parents and their children. It would, for many people, be very troubling not to be able to offer some support to one's own children after one's death. The second favorable reason is that people may be less prepared to innovate or work hard if they cannot pass on their acquired wealth to the next generation, and if this is so there are, therefore, reasons of economic incentive to permit inheritance. But on the other hand, it seems quite unjust if the fortunes of individuals are so strongly determined by the wealth of previous generations, especially for those who inherit little or nothing. As Hillel Steiner put it:

> That an individual's deserts should be determined by reference to his ancestors' delinquencies is a proposition which doubtless enjoys a degree of biblical authority, but its grounding in any entitlement conception of justice seems less obvious (1977: 152).

Accordingly, a Rignano tax is a pleasing way of allowing the sentimental bond to be expressed, and encouraging incentives, but at the same time reducing, if not eliminating, unfairness.

Halliday doesn't skate over – but equally doesn't fully answer – a series of practical questions about how such a tax could be implemented. Is there really such a clear distinction between wealth created in previous generations and in this one? Is, for example, profit on property bought with inherited money part of this generation's wealth creation, or simply deferred wealth creation from previous generations? Or in part both? Similarly, for a business built up with inherited capital and which would not have existed otherwise, or profitable risks taken only because of the cushion of inherited wealth. No doubt to implement such a scheme numerous rather arbitrary decisions would have to be made, but perhaps

this is always the case. Furthermore, Halliday doesn't make a concrete proposal for how exactly the tax will be formulated and implemented, as it will need to vary considerably by country, given their histories and particular circumstances. But the prior question is whether a tax of this nature could, even in principle, achieve its declared purpose of reducing social and cultural segregation.

4. CAN A RIGNANO TAX HELP OVERCOME SOCIAL AND CULTURAL SEGREGATION?

Halliday's project requires affirmative answers to the following three empirical questions.

1. Is there a significant link between inheritance and economic segregation?
2. Is there a significant link between economic segregation and cultural and social segregation?
3. Can inheritance tax be an effective way of reducing economic segregation, and its effects? (On these questions see Hannam 2019).

But first we need to return to the issue of economic segregation. What precisely is meant? After all, as Halliday points out, 'whatever social hierarchy is around nowadays lacks the binary character of society's pre-industrial division into aristocrats and landless peasants or artisans.' (124). And presumably the same holds for economic segregation. So, we are left asking: where is the dividing line? Are we talking about 'the few and the many'? Who are 'the few'? The top 10%, the 1%, the 0.1%? How do we decide? In terms of social segregation one of the key markers in the UK is private education. And here it is said the 'the independent sector educates around 6.5% of the total number of school children in the UK … with the figure rising to more than 15% of pupils over the age of 16.' (Independent Schools Council 2019). This provides two more possible suggestions for how to draw the segregation boundary. Note, though, that the line of segregation, or at least social and cultural segregation, is meant to track something socially real, in terms of patterns of inclusion and exclusion, and of looking up and looking down. Therefore, we cannot be satisfied with an entirely arbitrary line, although a vague one could be acceptable. We need something that tracks the (claimed) real distinction reasonably well.

Perhaps thinking about the question of how inheritance works in practice will allow us to consider how it could contribute to practices of

economic segregation. Possibly the answer to the question of where the boundary falls could be illuminated by understanding the consequences of actual inheritance.

How, then, might inherited wealth lead to economic segregation, in which people in different groups have significantly different life prospects? As Halliday points out, there is a popular conception of how this works which, in current demographic conditions, is rarely true. This popular conception is that at, say, early adulthood, people from wealthy families inherit large sums of money which allow them to do one or more of purchase houses, pay for private school fees, or take ownership of, or establish, a business. This is the 'inheritance can set you up for life' theory.

The objection to this picture is that things very rarely work out that way for the vast majority of families. Because of rising life expectancy, it is much more likely now that people will use an inheritance to fund their retirement than their first house purchase. Of course, some people do lose both parents early in their lives, but this is a tragic exception rather than the normal course of events. And some inherit large sums from their grandparents. But once more demographics makes this rare: grandparents would have to be very wealthy indeed, or to have few grandchildren, if they are to leave substantial sums to each of their grandchildren as well as their children. Of course, it does happen, but it is rare to be left a life-changing amount of money or property by a grandparent.

But as Halliday insists, the fact that inheritance comes late does not mean that it has no effects over the life-course. Consider, for example, three 'ideal-type' families. The first has a type of significant aristocratic wealth running through the generations, and never has to make tough decisions about money (the whole family travels business class on family vacations, for example). Inheritance is likely to be just one part of an ongoing transfer of wealth between generations throughout the life-course: people are gifted houses in early-adulthood, and grandparents pay for the private school fees of their grandchildren. Wealth may exist in the form of a family trust that generates income, or is held off-shore, in ways that avoid tax liability. This is a family suffused with wealth over several generations: the top 0.1%. It marks one possible line of economic, and with it, cultural and social segregation. The extreme wealth of the few.

The second ideal type exemplifies a much more common middle-class pattern in which the main family asset is a family home, bought on a mortgage (perhaps initially with family assistance) and paid off in full over time. There may also be other investments, such as a share portfolio, life assurance policies, or a second property either to generate income or as a second home. In current OECD demographics, it is likely that most

potential inheritors will be at, or close to, the end of their working life when they inherit these assets from the last surviving parent, and therefore, as noted, the inheritance will help fund retirement, rather than ease middle years.

A third case is that of those families who have no substantial estate to bequeath. It could be that they have been life-long renters, whether in the social or private sector, or do own a small property in an area where house prices are very low and have several children who will each only gain a small amount from the estate. Continuing to take the UK as an example, in the official figures, although only around 3% of people declared an estate literally worth nothing (or insolvent) in 2015-6, estates where the amount does not reach the current inheritance tax threshold of £325,000 (£650,000 for surviving spouse) makes up very great majority of estates in the UK (HMRC 2018a). Indeed, about a third of all estates in the UK in 2015-16 were below £80,000, with fewer than 2,500 (1%) estates valued at more than £2m. About 60% fell into the £100-500k rang (HMRC 2018b).

The economic consequences of inheritance are not a matter of how much people leave, but rather what people (expect) to receive. If we exclude the top 1% (I will return to them), what will people (expect to) inherit if tax rates are as they are and properly enforced? At the top of this 99% if the highest 1% is excluded will be a single child inheriting an entire estate, worth £2m gross, and around £1.3m net, if taxed in full. At the bottom there will people who inherit nothing.

But let us, for the moment, focus on the modal range of estates between £100k and £500k. Much of this would be tax free and any tax paid can be ignored for the purposes of this particular discussion. Within this range experience will vary tremendously. If, for simplicity, we assume that inheritance is inter-generational, and people live in traditional families with between 1 and 4 children, inheritance will vary from those who can expect £25k and those who can expect £500k. It is, I submit, within this range that a different type of economic differentiation (segregation could be too strong a word) takes places, although again this varies by location. Inheriting £100k in Central London is very different to the same bequest in a part of the country where it is possible to buy a house for that sum. But still, even in Central London, expecting to inherit £100k at some point later on may make people more relaxed about taking on more debt to fund their children's post-16 education or reducing working hours, for example, knowing that financial adjustments can be made later. Expecting ultimately to inherit £25k is much less likely to make a large difference to how one lives one's life now.

Halliday is quite right that believing that an inheritance is eventually

coming can have very important effects earlier on in life, especially, most likely, around retirement planning and spending on, and generosity to, children. But ultimately in the UK it is in the retirement years that the great divide comes home to roost. Those who have paid off their house, had a decent occupational pension, and then get the bonus of a bequest in the hundreds of thousands, can look forward to a relaxed retirement full of opportunity for high-quality leisure. But those with none of those things, and especially if they have spent decades in physically demanding work, may have a retirement of poverty and ill-health (Wester and Wolff 2010). This inequality of the retired requires attention it rarely gets. (I realise that experience in other countries will differ, but here I take the UK as a case study.)

My empirical claim, then, is that, even when putting inheritance aside, there is currently a divide in UK society between those who know they will retire in relatively financially sound circumstances, having paid off their mortgage and benefiting from an occupational pension, and those who will have to survive on a state pension, and other benefits, while still paying rent. Significant differences in inheritance, which we've seen even in the modal range are likely to vary between £25k and £500k, are likely to compound this difference, with those already doing better more likely to get more.

Of course, there will be relatively rare cases where inheritance bridges the gap rather than amplifies it; people having rented all their life inherit their first home (or the money to buy one) as they retire. This type of situation may well increase over the next thirty years as fewer people in this middle range are able to buy their own homes, and so there is a blurred middle ground. But it seems to me that Halliday is right that there is a type of social and cultural segregation, reinforced by economic factors, and, to a degree strongly compounded by inheritance, in a country like the UK. Speaking very roughly, those in the top 20-30% of income and/or wealth are likely to be above a line, the bottom 50% below it, and those between in a grey area, with some of the benefits and some of the difficulties. Few of those in the top 20-30% will regard themselves as rich, and many will have had a hard time managing a family budget at some point in their lives. But, so I claim, the divide is real, reinforced by patterns of inheritance, and exerts itself particularly in the difference between a comfortable and a struggling retirement.

Could reforming inheritance taxation help? Perhaps. Notice that the cases I'm currently discussing mostly fall below the level at which inheritance tax starts. To address this gap would require a reduction in the tax-free amount. It would also require a change by which the tax is levied

on individual receipts rather than (or perhaps in addition to) the estate as a whole. For a quarter share in a £500k estate creates less economic segregation than being the sole beneficiary of £300k. Using the funds generated by these taxes to increase the state pension would mitigate the inequality in retirement to some degree, and because of lower expectations for those who will inherit, it may also change behavior earlier in life, such as greater reluctance to take on debt to pay school fees. Yet it is hard to see that increasing inheritance tax on these estates in the modal range would generate general public support. Even those who would benefit from higher taxes may well be against such changes, if they hope their own children will acquire greater wealth than they have done themselves. Possibly the contribution may be rather small and out of proportion to the outage it would cause, even though there are justice based arguments for introducing such a tax.

But even putting opposition aside, what scope would there be for using a Rignano tax here? And at this point we can bring back into consideration the people in the top 1% (while continuing to exclude the superrich in the top 0.1%). Those in the top 1% leave an estate above £2m, and are generally liable to significant estate duty. What effect would a Rignano tax have?

In a country like the UK we need to ask what it is that has allowed people to build up a valuable estate. Much transferable wealth will be held in property (assets in pension funds cannot be bequeathed in perpetuity). A proportion of home owners in the current generation will have inherited or been gifted a house, or a significant part of the costs, but most will have paid for their own home through a lengthy mortgage, with a current asset value far in excess of the price initially paid because of property price inflation. Hence it is very likely for this current generation for many people, including many of the more wealthy, Rignano tax will lead to few changes, as significant second generation inheritance is the exception rather than the rule.

Turning finally to the top 0.1%, here the Rignano tax may seem to be in its natural habitat, as very large fortunes are passed down. But the very wealthy are likely to find ever-more sophisticated forms of avoidance, especially when it is possible to change domicile for tax purposes. How many families would stay and hand over a large portion of their wealth, if they have alternatives to move themselves, or their assets, elsewhere? Without global harmonization, high rates of inheritance tax will often be avoidable. Furthermore, it has been argued that the bigger cause of massive inequality today is very high earnings rather than inheritance (e.g. Piketty 2014). So, my estimate is that the Rignano tax will probably make little impression if introduced now and could even reduce overall tax take if wealth is moved off-shore.

5. ALTERNATIVE TAX PROPOSALS

In my view, economic segregation in the UK is real, though it cuts at several different places. One of the most notable is exemplified by the retirement divide mentioned above. My suggestion is that although some changes to inheritance taxation could mitigate the divide to some degree (even though it will be hard to gain popular support) the Rignano tax would not be particularly effective in the current UK situation. It may, however, be more appropriate in countries where inherited wealth has a different character, which I have not explored.

However, one of the most striking facts about the UK system of inheritance tax is, as noted, how easy it is for many large estates to manage to avoid inheritance tax entirely. For example, in 2015-16 25% of estates over £2m legally paid no tax at all. The average tax on estates in the £1m to £2m range was £284k, whereas a full liability should have been significantly higher, suggesting that there is significant use of legal exemptions (HMRC 2018b). The simple approach to inheritance tax reform would be to reduce the number and extent of exemptions, rather than propose a new form of tax that would be very complicated to implement. And if tax reform is to be pursued, lowering the tax threshold, and levying taxes on sums received, rather than sums bequeathed, would, it appears, go some way to achieving some of Halliday's aims. Perhaps, ideally, combining such reforms with a Rignano tax would be even better, but if we are moving incrementally closing exemptions is the easiest first step.

But there is reason to consider whether reform of inheritance tax is the right tool at the current time. We are in a changing world. Life expectancy has been rising rapidly, but is tailing off now, and even falling in the US (Case and Deaton 2017) even before the effects of COVID-19 are taken into account. New fortunes are being built up through such things as tech enterprise, but taxes are avoided in many countries, partly through very large philanthropic donations. Wealth is transferred within families, prior to death, both in the super-rich wealth aristocracy, and in the comfortable upper-band. There is urgent need to try to address this intergenerational transmission of advantage, and with it its effects on social and cultural segregation. And therefore, investigations like that of Halliday into possible policy responses are very welcome. But as will be clear, I think the policy of a Rignano Tax itself, unfortunately, will do little to address the social problems he identifies at least in my example of the UK.

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Taxing Old Money: Considerations in Crafting a Rignano Tax

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ABSTRACT

This article explores whether it is possible to tax "old money" differently than "new money". *In The Inheritance of Wealth*, Daniel Halliday proposes that we tax wealth more heavily the second time it is transferred than the first, and even more heavily the third time. He envisions something like the following: Grandfather builds a business from the ground up and bequeaths $10,000,000 to Mother. No tax is imposed, but if Mother does not create any wealth of her own and simply retransfers $10,000,000 to Daughter, all of Mother's estate is taxed. In contrast, if Mother creates new wealth, different portions of her estate are treated differently. The inherited $10,000,000 that Mother re-transfers is taxed, while any newly-earned wealth is not. Although Halliday offers a few broad structural suggestions, he does not detail how such a tax—referred to as a Rignano tax—would work. This article explores what implementing a Rignano tax requires. Crafting one is complex but feasible and requires six key design decisions. Drawing on experience with existing transfer taxes and Halliday's ethical premises, this article offers specific recommendations for each.

Keywords: wealth taxation, tax policy, equal opportunity, gifts, bequests, inheritance law.

1. INTRODUCTION

Should we tax "old money" differently than "new money"? Could we, if we wanted to? In *The Inheritance of Wealth*, Daniel Halliday (2018) proposes that we tax wealth more heavily the second time it is transferred than the first, and even more heavily the third time. Socialist philosopher Eugenio Rignano (1924) and the libertarian Robert Nozick (1989) have proposed similar structures. Writing from three distinct perspectives, these theorists envision something like the following. Grandfather builds a business from the ground up and bequeaths $10,000,000 to Mother. No tax is imposed, but if Mother does not create any wealth of her own and simply retransfers

$10,000,000 to Daughter, all of Mother's estate is taxed. In contrast, if Mother creates new wealth, different portions of her estate are treated differently. The inherited $10,000,000 that Mother re-transfers is taxed, while any newly-earned wealth is not. Proponents of a Rignano tax, as Halliday (2018: 59) deems this structure, argue that it balances the benefits of taxing wealth *transfers* with concerns that such taxes discourage wealth *creation*.

Not surprisingly—given their role as philosopher—these theorists do not detail how such a tax would work, although Halliday offers a few broad suggestions. This article explores what implementing a Rignano tax requires. Crafting one is complex but technically feasible and requires six key design decisions. Drawing on experience with existing transfer taxes in the United States and Halliday's ethical premises, this article offers specific recommendations for each. Highlights include:

— *Base*: Imposing a tax on gifts and bequests received by an individual when she is of the second generation in her family to inherit wealth;

— *Rate*: Levying a rate of 0% on first-generation transfers and a rate in the 40-50% range on other transfers;

— *Valuation*: Using the risk-free rate of return to determine what portion of a gift or bequest is second-generation wealth;

— *Frequency*: Taxing generation-skipping transfers;

— *Tracing*: Using a first-in-time approach to allocate second-generation wealth; and

— *Transition Rules*: Treating one-sixth to one-third of existing wealth as inherited.

This article proceeds as follows. Part 2 briefly recounts Halliday's argument for taxing successive wealth transfers progressively. Part 3 identifies the key design considerations that would shape a Rignano tax as a technical matter, and provides specific recommendations for each. Part 4 concludes by briefly identifying some considerations relevant to its political feasibility.

2. THE CASE FOR A RIGNANO TAX

Why tax wealth differentially according to its age? Halliday (2018: 4) starts from a familiar luck egalitarian premise—that it is unjust for life prospects to depend on the chance circumstances of birth. Most theorists then argue that gifts and bequests give recipients an unfair advantage, and that taxing

such transfers furthers equality of opportunity by limiting the head start of those born into wealthy families (See Alstott 2007).

Halliday proceeds slightly differently. Instead of focusing on the brute luck of receiving an inheritance, he focuses on the brute luck of being born into a family that has longstanding wealth and its accompanying social and cultural capital (which I term "wealth norms"). Consider Grandfather, who starts with nothing, builds a successful business, and bequeaths his wealth to Mother. Halliday argues that this bequest confers little or no head start on Mother, whose life prospects were largely shaped while Grandfather was still building his fortune, for two reasons. First, Grandfather's wealth did not yet exist to pay for expensive schooling or give Mother an advantage when starting her own career. Second, the fact that Grandfather is self-made suggests that Mother did not grow up in a family with wealth norms. Grandfather likely belonged to a bowling league, not the country club, and did not pass along the contacts and cultural norms of families with long-standing wealth.

The story changes, according to Halliday (2018: 7), once we get to Mother and Daughter. "Parental advantage compounds over generations", he writes. "Families that have been wealthy for a long time possess a greater range of powers that keep their children privileged". Grandfather's bequest to Mother does two things. First, it enables Mother to pay for advantages for Daughter, such as private schools, tutors, and expensive camps. Second, it signals that Daughter grows up in a family with wealth norms. By now, the family belongs to a country club and golfs instead of bowls. Mother knows people who can give Daughter an internship, and Daughter knows how to dress for the interview.

Halliday (2018: 101) sees the transmission of wealth across three generations as a contributor to economic segregation, which occurs when "certain groups are able to monopolize superior life prospects for their members, thanks to their ability to retain wealth over time". Focusing on the brute luck of being born into a group with nonfinancial capital, instead of on the brute luck of receiving an inheritance, enables Halliday (2018: 111) to differentiate among inheritances. In his view, small, first-generation inheritances are not only non-problematic, but may even reduce economic segregation by acting as a "safety net" that keeps the middle class afloat (Halliday 2018: 1-2). By maintaining a healthy middle class, some inheritances reduce the gap between the group with wealth norms and those without.

Although enticing, this argument is not impermeable. Because others will likely critique these holes in detail, I simply note a few. First is the assumption that Grandfather's wealth creates few advantages for Mother.

It is quite plausible that Grandfather adopted "old money" norms while he was still alive, and Mother was still young. The second is an inconsistency in Halliday's assumptions. He assumes that Mother inherits toward the middle or later third of her life, after which her life prospects have been largely set. But if so, Mother likely inherits too late to benefit Daughter greatly. If Grandfather dies at 90, Daughter could be as old as 40. She has already attended college and assimilated into the class norms of her youth. Mother may be able to help Daughter buy a house or start a business, but much of Daughter's path is set by this point.

Lastly, Halliday's proposal illustrates two difficulties in distinguishing earned and unearned wealth. Most importantly, it overlooks that creating wealth is easier when you start with it. Turning $10,000,000 into $20,000,000 is much easier than turning $1 into $10,000,000. It may also overstate how much of Grandfather's wealth is due to Grandfather and understate how much is due to Grandfather being lucky enough to be in the right place at the right time. To be fair to Halliday, however, he is not attempting to tax luck as such but rather the luck of being born into a family with wealth norms.

3. THE BUILDING BLOCKS

Although Halliday's goal is to justify a Rignano tax, not to design one, he offers a few rough suggestions. The tax that he envisions would apply only to bequests and would focus on receipts by a donee instead of transfers by a donor. Halliday endorses an unspecified per donee exemption level and rejects Rignano's suggestion that third-generation transfers be taxed at a rate of 100%. He does not specify, however, what rates should apply to second- and third-generation transfers and whether first-generation transfers should be totally exempted. Lastly, Halliday asks whether the age of the recipient and the time between transfers should matter.

Implementing this structure might sound simple to those unfamiliar with tax policy. Yet the devil is in the details. Implementing a Rignano tax requires resolving six design decisions, explored below: (1) the base; (2) the rate structure; (3) valuation; (4) frequency; (5) tracing; and (6) transition rules. Although a Rignano tax is possible, it involves enormous complexity.

3.1. The Base

Halliday's main argument – that the tax applies to bequests received by individuals whose parents or grandparents also inherited wealth – is really

a question about the proper base. This section addresses three base-related decisions: Should the tax treat gifts and bequests equally? Should it measure transfers or receipts? And should it contain any exclusions or exemptions?

3.1.1. Gifts

An initial decision is whether the tax should apply only to bequests or also gifts. Rignano (1924: 35) clearly suggests treating the two alike. Halliday (2018: 188-94) is more equivocal but appears to favor excluding gifts on administrative grounds. This equivocation is misplaced; a Rignano tax should apply to both. As Halliday notes, gifts are often received earlier in life. They create advantages for recipients sooner rather than later, likely magnifying economic segregation more than bequests of comparable size (Halliday 2018: 189). Moreover, their existence may signal that givers feel financially secure enough to part with wealth before death. This increases the likelihood that heirs have grown up in a family with wealth norms.

Even so, Halliday seems untroubled by gifts. He first argues that donors have strong preferences for bequests, such that taxing only bequests would not generate a shift toward gifts (2018: 191-92). As evidence, Halliday notes that many donors do not take full advantage of opportunities under current U.S. law to make tax-free gifts, and that many save beyond what is necessary to cover the expenses of old age. Yet as Halliday acknowledges, this data reflects decisions in an era of low transfer tax rates and likely underestimates the behavioral responses of wealthier families. Any estate planner will tell you that obtaining the numerous tax advantages of lifetime gifts is a key part of high net-worth estate planning. Indeed, much complexity in the U.S. transfer tax system stems from minimizing the ability of donors to characterize bequest-like transfers as gifts. The fact that donors do not maximize opportunities to make tax-advantaged gifts does not mean that donors ignore those advantages wholesale. Even if donors consider tax minimization alongside other factors when determining the timing of wealth transfers, excluding gifts from taxation altogether will almost certainly exacerbate this shift to gifts by the wealthy (Kopczuk 2013: 366-68). If Halliday's concern is transfers that create and maintain economic segregation, excluding gifts is counter-productive.[1]

[1] A similar concern is the impact that exempting gifts from transfer taxation would have on the income tax base. Without a transfer tax on gifts, individuals would almost certainly gift income-producing property to family members in lower income tax brackets to minimize income taxes. In fact, during the planned phase-out of the U.S estate tax in 2010, the gift tax was retained for precisely this reason.

Halliday (2018: 194) also implies that it is pointless to try taxing gifts. He correctly notes that bequests are documented in the probate process and hard to hide. At least in the United States, however, this is true only for transfers that pass via the decedent's will. In contrast, assets that pass via trusts or by other non-probate transfers are not documented in court as part of the probate process. Although he acknowledges that some gifts – such as real estate – will be hard to conceal, he overstates the ease of concealing other gifts. Banks track large cash transfers. Stock transfers are recorded. Even transfers of family jewelry generate records when recipients insure them in their own names. Halliday thus overstates the existence of records for bequests and understates the existence of records for gifts. To be sure, under-the-table gift giving does and will occur. But not to the extent that it renders attempting to tax gifts pointless. For the rest of this article, references to "bequests" or "inheritances" refer to gifts and vice versa.

3.1.2. Transfers or Receipts?

A second base-related decision is whether to tax receipts or transfers. An estate tax focuses on the total wealth transferred by a donor and generally does not differentiate among recipients (Fleischer 2016: 920). An accessions tax taxes an individual cumulatively on the gifts and bequests she receives over her lifetime; an inheritance tax is similar but imposed annually (Fleischer 2016: 921). Gifts and bequests could also be included in income. Although income inclusion and inheritance and accessions taxes represent distinct approaches, they are often confused. Halliday, for example, conflates inheritance taxes with the practice of including them in income (likely because Batchelder's "Comprehensive Inheritance Tax" (Batchelder 2009) includes gifts and bequests in income while imposing a surtax on them). An accessions tax on an individual's cumulative receipt of gratuitous transfers with two key modifications is the best solution.

As Halliday (2018: 197) suggests, focusing on *receipts* by individuals whose families have previously inherited wealth reflects his normative concerns better than focusing on *transfers* made by individuals who have previously inherited.[2] Compare the following scenarios in which Grandfather starts from scratch, earns $10,000,000, and leaves it to Mother: In *Childless*, Mother has no children and leaves her wealth to Friend's child. Friend neither inherits from Friend's parents nor bequeaths any wealth to

[2] As explored in Section 3.1.1., Halliday would likely focus only on bequests received while ignoring *gifts* received. As also argued in Section 3.1.1., however, the two should be treated interchangeably

Friend's child. In *Helping Hand Family*, Mother has a daughter, to whom she leaves her wealth. In one sense, both Friend's child and Daughter have inherited second-generation wealth; in each case, Mother inherited wealth and re-transmitted it.

But Halliday's concern is that Mother's inheritance either creates or signals economic segregation. In that sense, what Friend's child inherits is not second-generation wealth, since he is the first *in Friend's family* to inherit.[3] In contrast, Daughter is a member of the second generation *of Mother's family* to inherit. This is true even if Daughter inherits from someone other than Mother (unlikely as that may be). Daughter still grows up in a family containing inherited wealth and wealth norms, and then inherits her own wealth. Daughter is in the same position as if Mother had bequeathed her $10,000,000. Regardless of source, the first $10,000,000 inherited by Daughter should be considered second-generation wealth. Focusing on her receipts—instead of Mother's transfers—more accurately reflects this concern.

What is tricky is that we don't know exactly how much Mother will inherit – which affects the accessions tax imposed on Daughter – until Grandfather is dead. Mother might gift wealth to Daughter before Grandfather transfers wealth to her. What if Mother gifts Daughter $1,000,000 and five years later, receives $10,000,000 from Grandfather? Looking solely at the first transfer makes it appear to be newly created wealth that should enjoy the lower rate. But this does not reflect Halliday's concern, which is that Mother's inheritance suggests that wealth transfers to Daughter be taxed. Whether Mother inherits before or after the gift to Daughter seems irrelevant if successive inheritances are a class marker.

An accessions tax on recipients modified to account for prior intra-family transfers by those individuals addresses this possibility. When Daughter receives $1,000,000, the accessions tax applied to her would treat it as first-generation wealth because at that point, Mother has not yet inherited anything, and Daughter has made no transfers of her own. When Mother later inherits $10,000,000, the accessions tax as applied to her would treat $9,000,000 as first-generation wealth and any amounts previously transferred by Mother to Daughter – here $1,000,000 – as second-generation wealth. This serves as a "catch-up tax".

If Mother consumes the $10,000,000, she inherits and makes no further transfers to Daughter, then $11,000,000 has been transferred. Of this,

[3] If Mother inherited wealth, her friends likely have similar social capital. It is probable that Friend's child has grown up with wealth norms, even if Friend didn't inherit wealth. However, that is likely also true of the offspring of initial earners, and they don't seem to be Halliday's concern.

$10,000,000 is treated as first-generation and $1,000,000 as second-generation wealth. (Note that this possibility is what necessitates an accessions tax instead of an estate tax on transferors. If Mother consumes all $10,000,000 that she inherits, then she makes no transfers subsequent to her initial gift to Daughter to which the catch-up tax could apply.) If Mother re-transfers the $10,000,000 to Daughter, then the accessions tax as applied to Daughter should treat $9,000,000 as second-generation wealth and $1,000,000 as first (to reflect that $1,000,000 of Mother's inheritance has already been treated as second-generation). This accurately reflects that $21,000,000 has been transferred, broken down as follows: a $10,000,000 first-generation transfer by Grandfather, a $1,000,000 first-generation transfer by Mother, and a $10,000,000 second-generation transfer by Mother.

Halliday suggests the tax should apply to anyone whose parents or grandparents have inherited, even if the parents are not the transferors to that individual. That makes sense, given Halliday's concerns, but raises three additional issues. The first is identifying which family members should be looked at when determining how to apply the tax to Daughter. Parents only? What about step-parents? Aunts and uncles? This article does not resolve the issue but notes that the U.S. tax code defines family various ways for various purposes and this task is not unworkable. Second, the catch-up tax should apply to Mother only if she (or her spouse or parent) is the transferor of any out-of-order gifts to Daughter. It seems harsh to tax Mother more heavily because someone else makes a gift to Daughter, even if this leaves some amount of second-generation wealth unacknowledged. Third, the tax should incorporate anti-abuse provisions such as the reciprocal trust doctrine (see *Estate of Grace* (1969) 395 U.S. 316) to minimize taxpayers taking advantage of that and similar gaps.[4]

3.1.3. Exclusions and Exemptions

A final set of base-related decisions concerns exclusions and exemptions. First, as Rignano (1924: 102) and Halliday (2018: 65) both propose, each individual should have a (smallish) lifetime exemption amount. Assume

[4] The reciprocal trust doctrine precludes two individuals from setting up mirror image trusts for each other's benefit to avoid adverse tax consequences that would follow from setting up trusts for their own benefit. Consider a rule that taxes trusts set up for one's children. Without the reciprocal trust doctrine, Anna could set up a trust for Bonnie's children and Bonnie could set up a trust for Anna's children to avoid the tax. With the reciprocal trust doctrine, however, Anna is treated as creating the trust for her children, and vice versa. The proposed catch-up tax only applies if a parent makes an out-of-order gift to a child. Without a doctrine similar to the reciprocal trust doctrine in place, Mother could make a gift to Niece and Aunt could make a gift to Daughter to avoid the tax.

that Grandfather bequeaths $10,000,000 to Mother. Mother has several runs of bad luck, passing along only $1,000,000 to Daughter. It seems plausible to allow Daughter to inherit some amount of wealth tax-free, even if Mother also inherited. As Halliday emphasizes, smallish wealth transfers often enable one generation to help the next maintain middle-class status, whereas larger transfers augment and perpetuate old money wealth norms. Moreover, such an exemption would help mitigate the out-of-order problem identified above. Halliday does not specify what that amount should be, but something like $500,000 or $1,000,000 (which enables a family to purchase a house in most areas) seems plausible.

Second, current law in the U.S. provides an annual exclusion that shields gifts of $15,000 per year per donee without using up any lifetime exemption amounts. The stated purpose is to recognize that some intra-family gift giving is normal and simplify record-keeping; these concerns counsel including an annual exemption in a Rignano-style tax. The current $15,000 per recipient exclusion far exceeds what is necessary to shield regular birthday, holiday, wedding and graduation gifts and likely allows for much tax-free giving that exacerbates unequal opportunities (See McCaffery 1994b). A smaller exclusion likely better reflects Halliday's concerns, although specifying its exact size is beyond this article's scope.

A third issue concerns marital and charitable transfers. Transfers between spouses should not count, for they do not transmit wealth downward (See Rignano 1924: 102-3). If Grandfather bequeaths money to Grandmother, who spends it all and leaves nothing to Mother, nobody in Daughter's family should be treated as having inherited. Daughter is in the same position as if Grandfather spent all his money. Lastly, most – but not all – charitable transfers should be exempted. Many charitable transfers, such as a gift to a tutoring program for homeless children, further equality of opportunity along two dimensions. They both level down by removing wealth from a family and level up by improving opportunities for the least-advantaged. Yet other transfers may exacerbate inequality of opportunity, such as a contribution to a private foundation that employs family members or private school that provides few scholarships (Fleischer 2011; Fleischer 2007). A Rignano tax should therefore differentiate among charitable transfers where possible to reflect Halliday's concerns, although I shall not detail how that might work here.

3.2. The Rate

A key attribute of any tax is the rate. Although Halliday and Rignano (1924: 102-3) use an example in which first-generation transfers are exempted,

second-generation transfers taxed at 50%, and third-generation transfers taxed at 100%, Halliday does not endorse this exact structure. He rejects an ultimate rate of 100% and asks but does not answer whether a zero rate should apply to initial transfers and whether the tax should treat second- and later-generation transfers similarly to each other. This article proposes a zero rate on first-generation inheritances and something in the range of 40-50% on subsequent ones. This recommendation is more tentative than others in this article; although Halliday's arguments suggest that rates should rise with the age of a family's wealth, they do not point to specific rates. Nor does experience with existing transfer taxes reveal a given magic rate for inheritance taxes. More than any other design consideration, choosing a rate will likely reflect political considerations rather than technical knowledge. This contrasts with design elements such as taxing gifts or exempting marital transfers, where thinking through Halliday's concerns points us in a clear direction.

3.2.1. Initial Transfers

Consider first whether the tax should completely exempt initial transfers, or simply tax them at a lower rate. Halliday's arguments could support either solution. With respect to the former, a zero rate on initial inheritances reflects several of his concerns: (1) first transfers of wealth often expand or maintain the middle classes; (2) the beneficiaries of such transfers often receive them too late in life to alter life prospects dramatically; and (3) the lack of prior transfers within a family suggests the recipient did not grow up with wealth norms.

At the same time, one could argue that taxing large first inheritances—albeit at a lower rate than subsequent transfers and while exempting small first inheritances—also reflects Halliday's misgivings about wealth norms. Consider Alice, whose father creates and transfers $10,000,000 to her. It is quite likely that Alice's father began accumulating that wealth while Alice was growing up and that she at least partly grew up in a family with wealth norms, given the extent to which new money attempts to replicate old money norms. This is especially true when it comes to the opportunities provided to children. Although Alice's father may have grown up playing darts, it is more likely that Alice's father enrolled Alice in fencing lessons. Compare Bonnie, whose father creates and transfers to her only $1,000,000 at his death. Although not nothing, it is more likely that this wealth simply enabled her family to maintain middle- or upper-middle-class norms and that Bonnie's upbringing was not as infused with wealth norms as Alice's.

This article recommends imposing a zero rate on initial inheritances, although this suggestion is more tentative than others. Throughout *The Inheritance of Wealth*, Halliday focuses on the existence of successive wealth transfers within a family and on the age of a family's wealth much more than the size of a family's wealth. Although he occasionally refers to "small" or "large" inheritances, he makes little attempt to link the size of an inheritance to the creation or maintenance of wealth norms within a family. Instead, his main focus is the interaction of those norms with successive inheritances. Exempting initial transfers while taxing later ones provides a sharp, easy-to-understand distinction between stand-alone and successive wealth transfers. Given the cognitive biases that influence how individuals evaluate taxes (McCaffery 1994a), it is likely easier for the public to distinguish between not taxing first inheritances at all versus simply taxing them at a lower rate. This will most clearly convey the theoretical underpinnings of the tax to the public.

Moreover, a zero rate may better match the tax with public intuition. Although this article is focused primarily on technical—not political—feasibility, it is not inappropriate to take politics into account when breaking a tie between two plausible design decisions. Dislike for wealth and transfer taxes is particularly stubborn. The ability to work hard and pass along what one has built feels intuitive to many Americans. Despite scholarly arguments to the contrary, many believe that such taxes punish success and constitute double taxation. (I am not endorsing such beliefs, simply acknowledging their persistence.) It is plausible, however, that the public may accept a tax that exempts newly-earned wealth and thereby explicitly acknowledges the innate drive to work hard to benefit one's children. By sharply distinguishing between newly-earned wealth and previously-inherited wealth, perhaps a Rignano tax can gain traction where traditional transfer taxes have failed. Although this may undermine the theoretical purity of a tax designed to reflect equal opportunity goals, this may be an instance in which egalitarians should not let the perfect be the enemy of the good.

3.2.2. Subsequent Transfers

The zero rate would apply to all wealth inherited by someone who is the first generation in her family to inherit, as well as to wealth inherited by a later-generation recipient to the extent it exceeds amounts inherited by her parents. What of wealth that is inherited and re-transferred? Beyond rejecting Rignano's proposal to tax third- and later-generation transfers at 100%, Halliday (2018: 64-5) does not resolve whether the rate structure

should distinguish between second and later transfers. Given the strong practical reasons against and weak theoretical reasons for doing so, the tax should not. Consider theory first. Halliday argues that the advantages of wealth compound over generations. The rate of increase, however, likely diminishes over time. Revisit Grandfather, Mother, and Daughter. Mother grows up in a family with first-generation wealth. On Halliday's account, she enjoys substantially fewer advantages than Daughter, who grows up in a family with second-generation wealth. Yet it is unlikely that Daughter has substantially fewer advantages than her children. The marginal advantage of growing up with third-generation wealth as opposed to second is likely much smaller than the marginal advantage of growing up with second- versus first-generation wealth. Although there may be such an advantage (and therefore some justification for taxing third-generation inheritances more heavily than second), the case is much weaker than for distinguishing first transfers from later ones. On a practical level, treating second and third inheritances alike minimizes the valuation, tracing, and record-keeping concerns addressed below, as well as simplifying the administrability of the catch-up tax described above. All that need be determined is how much an individual's parents inherited.

What should that rate be? Halliday's theory provides no clear answer. As an initial matter, it is not 100% clear what Halliday hopes to achieve by taxing inheritances. Does he simply aim to raise revenue from those with wealth norms to fund programs that aid the less-fortunate? If so, then the rate should maximize revenue, which depends not only on the rate itself but also on individuals' motives for making bequests and the extent to which inheritance taxes distort economic decision-making and impact savings and investment.

Or does he aim to eradicate or limit successive inheritances within families, much like Pigouvian pollution taxes are designed specifically to limit pollution? A goal of entirely eradicating the ability to inherit and re-bequeath leads to a rate of 100% on second transfers, while a goal of limiting that ability leads to an indeterminate rate less than 100%. The higher the rate, the less the same wealth will be inherited and re-transferred. Again, consider a scenario in which Grandfather leaves $10,000,000 to Mother, who in turn bequeaths the wealth to Daughter. Taxing second transfers at a rate of, say, 40% means that Mother's bequest to Daughter will trigger a $4,000,000 tax and Daughter will only receive $6,000,000 of Grandfather's wealth instead of $10,000,000. Note however, that this does not guarantee Daughter will only receive $6,000,000. It is possible that Mother wants Daughter to enjoy the same amount of inherited wealth as she herself enjoyed and, as a result, creates $4,000,000 of her own wealth so that

Daughter still receives a total of $10,000,000. Although Halliday seems less concerned with second-generation inheritances that include some amount of newly-earned wealth, it is unclear why Daughter's receipt of $10,000,000 is less troubling to him when $4,000,000 has been created by her Mother. In both instances, Daughter grows up in a family with wealth norms and inherits $10,000,000.

Although theory does not provide clear answers, political feasibility suggests rates in the 40-50% range. Before 2001, the United States taxed estates at a top statutory rate of 55%. During this time, opponents of the estate tax successfully supported legislation that simultaneously increased exemption amounts and decreased top rates to the current rate of 40%. Even though average rates are lower—and would be even lower if first wealth transfers were completely exempted—the public tends to focus on top marginal rates (McCaffery 1994a: 1886-1905). It is likely that a top rate over 50% (which starts to feel confiscatory to some) would be hard to sustain, while something like the 40% currently in force in the United States would be feasible.

3.2.3. Adjusting for Age

One further adjustment may be warranted. As Halliday recognizes, wealth transfers received early in one's life alter life prospects more dramatically than later ones. A gift of $1,000,000 at age 25 provides seed money for a start-up, while inheriting such wealth at age 65 likely does no more than enable one to enjoy a more comfortable retirement. To that end, Halliday endorses adjusting the rates depending on the age of the beneficiary. This seems generally sensible and could be done by adapting rules similar to those crafted by the Meade Commission (1978), which proposed such a structure in England in the 1970s. The possibility of creating an exception when minors inherit because they have lost both parents is discussed in Section 3.3.2.

3.3. Frequency: Determining the Number of Transfers

A further issue is determining how many times wealth has been transferred. This article argues not only that generation-skipping transfers be penalized, but also that no adjustments be made for deaths in rapid succession as a general rule.

3.3.1. Generation-Skipping Transfers

Halliday (2018: 63) flags but does not tackle generation-skipping transfers. Imagine that instead of leaving $10,000,000 to Mother, Grandfather leaves $10,000,000 directly to Daughter. In the United States, current law imposes an additional tax on such transfers so that families face similar tax burdens regardless of whether their wealth skips generations or proceeds from one generation directly to the next. A Rignano tax should contain similar rules by treating a transfer from Grandfather to Daughter as a second transfer instead of a first. This prevents families from minimizing the number of transfers in order to evade the higher rates applicable to second transfers.[5] It also reflects Halliday's normative premises. If Mother is successful enough that Grandfather feels comfortable bypassing her and leaving his wealth directly to Daughter, that indicates the presence of the financial and social capital that concerns Halliday.

3.3.2. Transfers in Rapid Succession

Transfers that happen in rapid succession raise a related issue (see Halliday 2018: 63-4; Rignano 1924: 45). Imagine that Grandfather leaves his fortune to Mother, who dies unexpectedly one year later, re-bequeathing his inheritance to Daughter. Halliday hints that this should not be considered a second transfer: "A short interval between bequests may mean that a donor has had less time to save and accumulate due to an early death. It is harder to say, in that case, that this person's bequests should still be taxed as if he or she had remained idle" (2018: 63-4). Although it is true that Mother has had less time to augment Grandfather's inheritance *after* receiving it, she had time *before* either her or Grandfather's death to earn her own wealth. This is especially true as lifespans increase, and Mother may be well into her 50s or 60s at Grandfather's death. Any wealth created by Mother will be taxed as first-generation wealth. Counting each transfer thus does not distort Mother's incentives.

A stickier question arises when transfers occur in rapid succession because Mother dies young, when Daughter is still a minor. In such cases, the hardship of losing a parent so young likely offsets some or all of the benefits of inheriting wealth, especially if Mother's death leaves Daughter an orphan. Treating this the same as other double transfers seems especially unfair if the rates adjust for the age of the recipient, as suggested

[5] The existing generation-skipping transfer tax rules could be used to determine when a generation-skipping transfer has occurred. For example, if Mother predeceases Grandfather, no additional transfer would be imputed.

in Section 3.2.3. Two adjustments of varying strength exist. The "soft" option is to offset the increased rates that apply to transfers received at a young age. A stronger approach would be to not count wealth inherited due to the death of both parents before reaching a certain age (perhaps 21 or 25) as having gone through an additional transfer. Halliday's premises do not point strongly in either direction; as with rates, political considerations will likely play a large role in choosing between these options.

3.4. Valuation

An as-yet unidentified issue is how to value initial wealth transfers when they are re-transferred. Again, assume Grandfather starts with nothing and amasses $10,000,000, which he bequeaths to Mother. She dies with an estate of $50,000,000, which she leaves to Daughter. How much should be traced back to Grandfather? The simplest approach is that assumed by Rignano and Halliday. Without discussion, their examples suggest treating $10,000,000 as a second transfer and $40,000,000 as newly-created wealth.

3.4.1. The Problem

This obscures the fact that asset values fluctuate over time due to a mix of factors—inflation, the time value of money, changes in market conditions, and the owner's efforts. Take inflation. Assume that Mother invests Grandfather's bequest in an asset that keeps exact pace with inflation. $10,000,000 inherited in 1989 has an inflation-adjusted value of just over $21,000,000 now.[6] If she bequeaths the asset to Daughter, the Rignano/Halliday default treats the $11,000,000 increase as coming from Mother and only $10,000,000 as coming from Grandfather. Even though Mother adds no value – the asset simply keeps pace with inflation – she is still able to transfer more than what she receives with no effort.

3.4.2. Risk-Free Rate of Return as the Default Solution

This demonstrates that attributing only $10,000,000 of Mother's estate to Grandfather is overly simplistic. A better approach is to impute the real risk-free rate of return to Grandfather's bequest (that is, after taking into account inflation). This alternative best reflects the Rignano/Halliday desire to distinguish between Mother's earned and inherited wealth by acknowledging the existence of risk and choice. To illustrate, imagine that

[6] See U.S. Bureau of Labor Statistics (2020).

Mother inherits a building worth $10,000,000. She now has $10,000,000 that she can invest as she chooses – be it in stocks, bonds, or a risky start-up.

If she chooses to continue holding the building, some—but not all—of the building's increased value stems from Mother's choice. The increase has different components: the risk-free rate of return, a return to risk, and (occasionally) inframarginal returns (Brooks 2013: 261 n. 25; Cunningham 1996: 23; Weisbach 2004: 19). The risk-free rate of return represents the return for investing in a project with zero risk that offers a guaranteed return, such as a U.S. Treasury bond. It is a pure time-value-of-money return that is compensation for use of the invested funds and is sometimes referred to as the "return to waiting" (Brooks 2013: 261 n. 25; Cunningham 1996: 23). The return to risk is exactly what it sounds like—the "potentially greater, but more variable, return from investing in a risky asset, such as stock" (Brooks 2013: 261 n. 25). Some, but not all, investments also generate inframarginal returns, which are returns above and beyond the normal risk premium due to unique opportunities. As Brooks (2013: 261 n. 25) explains, "such returns are essentially economic rents due to market power, particular skills, particular access to investment ideas, or unique ideas." Regardless of what Mother would have invested in, Grandfather's wealth would have triggered the risk-free rate of return at minimum. Yet different investments yield varying returns to risk and inframarginal returns, such that any returns above the risk-free return should be attributed to Mother's choices.

The default rule should therefore be to attribute the risk-free rate of return—as measured by the average U.S. Treasury bond yield—to Grandfather's investment. For example, if Mother outlives Grandfather by 30 years, the average rate of return for a 30-year bond should be imputed to Mother's inheritance from Grandfather. Excess wealth transferred by Mother should be treated as new, first-generation wealth.

3.4.3. Complications

The foregoing assumes both choice and successful investments. What if those assumptions are incorrect? Take choice. Perhaps Grandfather bequeaths Apple stock to a trust with an independent trustee over whom Mother has no control. In that case, none of the stock's value is rightly attributable to Mother, since Mother had no choice in investing the assets and assumed no risk. The full value of the stock at Mother's death should be imputed to Grandfather. To determine when Mother lacks control, the Rignano tax could import the grantor trust rules used in the U.S. to

determine when trusts are treated as owned by grantors for income tax purposes.

Next consider success (or the lack thereof). What if Mother squanders Grandfather's fortune, but then earns her own fortune in an unrelated investment? Perhaps Mother invests Grandfather's $10,000,000 in Blockbuster Video and quickly loses it. Later, Mother gets in on the ground floor of Google and parlays a few thousand dollars into $10,000,000, which she leaves to Daughter. Is this a first- or second- generation transfer?

It should be treated as a second transfer for three reasons (Rignano favors this approach (1924: 52-3)). First, Mother is able to transfer $10,000,000 more to Daughter than otherwise. Grandfather's bequest allows Mother to start at $10,000,000; lose $10,000,000; re-earn $10,000,000; and end at $10,000,000. Without Grandfather's bequest, Mother starts at $0 and ends at $0 after losing and re-earning $10,000,000. Second, recall that if Mother successfully invests Grandfather's wealth, we credit her with any positive returns to risk. Parity suggests that she also bear the burden of unsuccessful risk-taking.

Third, what really concerns Halliday is the mere existence of Grandfather's bequest as a signifier of familial wealth norms. Treating Mother more leniently when she dissipates Grandfather's fortune before making her own fortune—as opposed to preserving or growing Grandfather's fortune while doing so—obscures the significance of the bequest's existence. The mere fact Mother receives an inheritance suggests she and Daughter are now part of a group with wealth norms. At minimum, Mother should not be treated as bequeathing only first-generation wealth to Daughter in such situations.

Indeed, the focus on wealth norms suggests that if anything, Mother should be treated more harshly if Grandfather's fortune dissipates because she spends it. Compare two scenarios, *Save* and *Spend*. In *Save*, Mother invests the inheritance and passes it along to Daughter at Mother's death – after Daughter's life prospects have largely been determined. In *Spend*, Mother spends the inheritance on a mansion in a gated community, country clubs, expensive cars, exclusive schools, and tutors, trips, and camps that give Daughter a leg up. In theory, Mother's actions in *Spend* perpetuate economic segregation more than in *Save* and should be taxed more heavily. The difficulty with making this distinction, however, is two-fold. First, distinguishing consumption from a poor investment can be difficult. What if, for example, Mother (and/or Daughter) love gourmet food, and Mother invests in a new restaurant? Given the notoriously low success rate of new restaurants, one might view this as consumption and not a responsible investment. Second, money is fungible. In *Save*, perhaps

the security of Grandfather's bequest frees Mother up to spend more of any wealth generated by Mother herself on consumption that benefits Daughter. Perhaps Mother buys a larger house than otherwise, or feels more comfortable springing for private school, knowing Grandfather's bequest is there if she saves less and spends more of her own money on Daughter. Regardless of how one feels about treating Mother more harshly when she spends down Grandfather's investment in lieu of maintaining it, there is no justification for treating her more leniently.

3.5. Tracing

A fifth issue—flagged by neither Rignano nor Halliday—is tracing Grandfather's wealth among multiple beneficiaries. Again, assume Grandfather bequeaths Mother $10,000,000, but now Mother has two children, Daughter and Son. In applying the tax to each, up to what dollar amount per recipient should be treated as second-generation wealth? The first $10,000,000 transferred to each, or a total of $10,000,000, allocated between the two recipients? On one hand, the former reflects Halliday's concern that what really matters is the existence of successive inter-generational transfers, because both children grew up in a family with wealth norms. Moreover, attributing $10,000,000 to each of Daughter and Son is simple. On the other hand, Halliday also expresses concern about the potential negative effects of taxation on the incentives of heirs to generate their own wealth, and the former structure arguably creates harsher disincentives: a mother of two or three has to double or triple her inheritance before she can pass along any wealth tax-free, whereas a mother of one can pass along the first dollar she herself earns. It seems plausible that Halliday would neither want to create such disparities in Mother's incentives nor create such a deep hole for parents of two or more children.

If Grandfather's bequest is to be allocated between Daughter and Son, the next question is how. Ideally, the bequest could be allocated to Daughter and Son equally, such that the first $5,000,000 transferred to each is considered second-generation wealth. If Mother makes no lifetime gifts and bequeaths them Grandfather's wealth at her death, it is simple enough to allocate the bequest in this manner. Lifetime gifts, however, complicate this. One possibility is allocating the bequest *pro rata* among Mother's children by giving them each a $5,000,000 "taxable amount" that would work as a mirror-image of existing exemptions. Transfers to Daughter and Son would be taxed until they reached $5,000,000 apiece; later transfers would be untaxed. This solution, however, undertaxes when Mother favors

one child. If Mother gifts $10,000,000 to Daughter and nothing to Son, only $5,000,000 would be treated as second-generation. Moreover, assigning a per-capita amount at Grandfather's death requires knowing among how many people Grandfather's bequest should be apportioned, which may be unknowable at his death.

A simpler solution is a first-in-time approach that treats the first $10,000,000 received by Daughter and Son as second-generation, regardless of how it is apportioned between them. This is essentially what the current system does with a donor's lifetime exemption amount and allows Mother to allocate the tax burden by deciding how to time her transfers.

3.6. Transition Rules

A Rignano tax contains a unique transition issue. Treating all transfers after the tax's imposition as first transfers essentially delays implementation for a generation. Only some transfers of existing wealth should be considered first transfers. As Rignano and Halliday note, a transition rule is necessary to determine what portion of existing wealth should be considered inherited. Rignano, for example, suggests assuming that one-third to one-half of current wealth is inherited (1924: 89-90). Empirical studies estimate that anywhere from 15% to 46% of current wealth is inherited (Kopczuk and Lupton 2005: 3); using a figure of one-sixth to one-third therefore seems plausible.

3.7. A Word About Administration

A Rignano tax requires more record-keeping than a traditional estate or inheritance tax, but this burden is not insurmountable. Return to the Grandfather/Mother/Daughter pattern. When Grandfather dies, his estate files a tax return. His executor would be required to make an election in order to treat any of his wealth as first-generation. If the executor makes no election, Grandfather's estate will be treated entirely as a second-generation transfer. Absent malpractice, Grandfather's executor will make the election; this creates a record for future reference. To calculate Daughter's tax liability when Mother transfers wealth to her, we need to know three things: the imputed value of the Grandfather/Mother bequest, the value of Mother's transfer, and the current value of any assets specifically bequeathed from Grandfather to Mother over which Mother had no control. The first we know by applying the real risk-free rate of return to the value of the Grandfather/Mother bequest at Grandfather's death, which is recorded when his executor makes the Rignano election. The second and

third present no more difficulties than under current law. The success of the current marital deduction rules, in which a decedent's tax consequences turn on the actions of a prior decedent, suggest this is workable.

4. CONCLUSION

This article explores whether it is possible as a technical matter to translate Halliday's ethical premises into reality and concludes that it is. Based on experience with existing transfer tax systems in the United States, it provides specific recommendations for doing so. Crafting such a tax, however, involves enormous complexity—more than in alternative taxes commonly proposed to address standard equal opportunity concerns, such as traditional estate or inheritance taxes and/or annual wealth taxes. Although occasionally nodding to politics (for example, by noting that the choice of rate largely turns on political rather than technical considerations), this article generally sidesteps questions of political feasibility.

Such issues are beyond the scope of this article, although I hope that other commentators—in this volume or elsewhere—will address them. For example, political reality in the United States and Europe suggests that public attitudes to wealth and wealth transfer taxes are enormously complicated. Is there an appetite for such taxes at all? If so, should the tax system distinguish between first and later-generation transfers as a normative matter? Put another way, is a tax inspired by Halliday's ethical premises the one that should be pursued in an ideal world? If so, is the design proposed herein the best way of pursuing those goals? Perhaps, for example, a simpler but less precise solution (such as a regular accessions tax with an unlimited exemption to individuals in the first generation to inherit wealth) gets "close enough" with much less complexity. Or perhaps an ideal inheritance tax would not exempt newly-earned wealth, but a Rignano tax provides a second-best solution. It may, for example, thread the political needle between competing intuitions that it is unfair for some to start life with a huge head start while recognizing that many hold an innate desire to work hard to benefit their own children. Given the technical complexities of a Rignano tax, a better sense of its political feasibility is necessary for a full evaluation of whether pursuing one is a worthwhile endeavor.

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On the Problem of Inherited Wealth in Political Philosophy: Replies to Fleischer, Wolff, Barry, Braun and Macleod*

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ABSTRACT

This is a response to five critical commentaries on my 2018 book *The Inheritance of Wealth*, these being the papers in this symposium from Miranda Perry Fleischer, Jonathan Wolff, Stewart Braun, Nicholas Barry, and Colin Macleod. After a brief review of some recent empirical data on inherited wealth, these replies concentrate on some central themes discussed by these authors. These include the question of how to connect inheritance with the longstanding theoretical efforts to properly interpret and contrast luck-egalitarian and relational-egalitarian theories of justice; the role of the concept of solidarity in evaluating tax policy; questions about how an inheritance tax would impact differently on the middle class versus the very wealthy; and the case for furthering the defense of a 'Rignano Scheme' on which second- or third-generation inheritance is taxed at a higher rate than the transfer of newly created wealth.

1. INTRODUCTION

I thank each of the symposium's participants for their charitable and yet forceful criticisms of the arguments I sought to develop in the book, and I thank the editors for their efforts in putting the symposium together. Further thanks are due to everyone involved for persisting with this work despite the unusually demanding conditions that have emerged while this symposium was being written.

Each critic is successful, I think, in bringing attention to questions that either received inadequate attention in the book or were omitted (perhaps

* I am grateful to participants in the Tax Research Seminar Series at Melbourne Law School in July 2020, for helpful discussion on a draft of these replies.

wrongly) from it altogether. I hope that the arguments in their papers will help attract some new researchers to the topic, particularly in political philosophy. Given the wealth of ideas that the critics have raised, I can't cover everything in these replies. I shall concentrate on where I might add something valuable in response.

I will begin with a few remarks about empirical work on inheritance that has appeared in the relatively short time since the publication of the book. This will help me at certain points with some of the rejoinders below. Recently reported data seems to confirm some already apparent trends, such as the rising importance of getting an inheritance in terms of life prospects of a recipient and the continued tendency for inherited fortunes to be unequally distributed. In Great Britain, inheritance in future decades is set to reflect the unequal distribution of wealth in the prior (i.e. bequeathing) generation. Of adults currently aged 30-40, around 20% can expect to receive no more than £10,000, whereas 25% can expect to receive at least £300,000, with the top 10% expecting £530,000 or more. While this unequal distribution of inheritance may be quite stable, the economic impact of inheritance may be increasing. For those fortunate enough to expect an inheritance, the trend is for inheritances to account for a larger portion of overall income than in the past.[1] This may reflect the relative stagnation of wages and salaries, with inheritance becoming more important as a result, though there is some sign that inheritances will be higher for those who enjoy higher earnings from the labor market. Those who earn the least are also likely to inherit the least.

Given these trends, it can come as a surprise to hear that inheritance is often found to have an equalizing effect on the overall distribution of wealth. This is largely due to inequality in the parental generation being smaller than that among the children's generation: Intergenerational transfers can do something to bring the larger inequality in the recipient generation closer to the smaller inequality among the parents. To say that inheritance has an 'equalizing effect' still has some potential to mislead or conceal important considerations: While inheritance may be reducing wealth inequality in terms of the relative share of total wealth (as reflected in the Gini coefficient), it may yet widen inequality in terms of the overall dispersion of wealth. In other words, inheritance can still 'widen the gap' by driving a concentration of increasingly higher levels of wealth in a small sector of the population. Britain's office of national statistics reports that

[1] For more details, see the recent report from Britain's Institute for Fiscal Studies: Bourquin, Joyce & Sturrock (2020).

the top 10% own 45% of the nation's wealth.[2] It is also worth noting that the equalizing effect in terms of relative share appears to be occurring by way of landing some wealth in the middle of the distribution, something that can cause a decrease in relative inequality without really helping those at the bottom.[3] Some people – typically those from families without much wealth – inherit little or nothing.

On the whole, though, the data suggest that an inheritance tax could work to worsen overall wealth inequality by taking wealth away from the middle class (something I described in the book as a 'feudalizing' effect.) A seemingly obvious rejoinder may be that these facts merely count in favor of making any inheritance tax progressive, perhaps with relatively high exemption thresholds, rather than favoring an abandonment of inheritance tax altogether as a device for promoting equality.

Overall, a plausible view is that inheritance may be doing something to enable families to retain relatively modest quantities of wealth accumulated in the parental generation, in an era of relatively slow economic growth and poorer opportunities for the next generation to accumulate wealth through other means. By and large, philosophical positions on the value of equality have attached significance to such factors. But the data should remind us that the role played by inheritance in driving enduring inequality is not entirely straightforward. It is worth remembering in any case that statistics about the impact of inheritance on wealth inequality do not by themselves settle questions about inheritance and justice. Whatever reasons may be given for regarding wealth inequalities as unjust when they are large, these will be tempered by considerations about people's right to bequeath wealth and any corresponding entitlement to receive an inheritance. Much also depends on the normative significance attached to inequalities in wealth compared with distinct inequalities in terms of other metrics (income, opportunities, or the more abstract metrics proposed in philosophical writings on inequality). Any plausible view is likely to depend not just on the role of inheritance in shaping wealth holdings but on the role played by wealth transfers in the more complex web of mechanisms through which people's life prospects are actually shaped, notably the distribution of educational and labor market opportunities, and the distribution of non-financial capital associated with that.

[2] Wealth shares are reported for deciles but not percentiles. See fig 4. At https://www.ons.gov.uk/peoplepopulationandcommunity/personalandhouseholdfinances/incomeandwealth/bulletins/totalwealthingreatbritain/april2016tomarch2018

[3] For a fuller explanation of these facts, and most of the claims in this paragraph, see Elinder, Erixson, & Waldenstroem (2018).

2. BARRY AND MACLEOD ON BACKGROUND JUSTICE AND LUCK EGALITARIANISM

The contributions from Nicholas Barry and Colin Macleod have some important points of overlap, largely because they seek to defend luck egalitarianism and its application to inherited wealth. I shall address their criticisms together.

A first question is whether egalitarians really need to engage with the problem of inherited wealth at the level of ideal theory. Macleod suggests "the normative significance of the right to bequeath is a function of background arrangements" (Macleod 2020: 34). The idea here is that a right to transfer wealth to children is somewhat easier to defend, while subject to difficult questions about how strong it might be, only when exercising this right serves as a sort of corrective against the failure of the state to respond adequately to what an egalitarian conception of justice would require. In anything approaching an ideally just egalitarian society, there would be fewer reasons to see the practice of inheritance as valuable. Ideal conditions of equality may yet be fragile enough that they could be eventually undermined by inheritance if it were not restricted under such conditions.

Should egalitarians view the problem of inherited wealth as only raising difficult questions under non-ideal conditions? I suspect this question is more complicated than it looks, due to difficulties in specifying exactly what counts as "background justice". Macleod seems to have mind the direct provision of goods and services by state institutions, or else the payment of subsidies and grants that help make such goods and services affordable to people who lack substantial prior wealth. Background justice remains absent so long as "access to decent life prospects for one's children is not reliably secured by well-functioning public institutions…for instance…universal healthcare, first rate public education available to all, good public day care, affordable safe housing, good recreational facilities, paid parental leave and tuition free university education" (Macleod 2020: 32).

Macleod's claims are representative of what egalitarians typically say about general requirements of justice. One problem, though, is in working out how strong these requirements are so as to determine whether any requirement governing inheritance should not also be given the same primary status. I think this remains an open question, at least until a much more specific, and likely controversial, account of background justice is put forward. Illustrative here is the problem of how strongly to construe a right to housing, which Macleod includes in his list of background requirements.

Evidence suggests that intergenerational wealth transfers are often decisive in enabling young adults to acquire a mortgage, particularly in regions that witnessed high growth in house prices in recent decades alongside stagnating wage growth.[4] For many parents, it is desirable to transfer wealth so that one's children can afford to get onto the property ladder. One view is that these conditions already indicate an absence of background justice. But this is not obviously plausible. Certainly, there is nothing strange about regarding some control on inflation (and associated phenomena, like the cost of borrowing) as being a matter of justice, particularly when it attaches to the cost of important goods like homes. But it is not obvious that an egalitarian requirement of access to "affordable, safe housing" should even be construed as a requirement about ownership, as opposed to conditions that make long-term renting more attractive and stable. If background justice requires the promotion of home ownership, then there may be a role for 'middle class' inheritance to play, though likely alongside measures that make home ownership more feasible for those who do not inherit. If background justice does not require this, then Macleod's position on inheritance is more plausible. This is a hard question to answer, and considerations may pull in both directions, perhaps guided by further work on the status of housing as a distinctive good.[5]

Talk of background justice also conveys something about some injustices having a sort of greater urgency or priority over others. This is another point of complexity quite apart from that of gauging the strength of any requirement assumed to have background status. Here it is helpful to consider Macleod's requirement of equal access to education.

In Australia, there has been no inheritance tax for several decades, but there has been a substantial amount of skilled migration. To simplify matters somewhat, this has led to a situation in which middle class migrant families often purchase private education to compensate their children for falling outside a peer group composed of individuals who stand to inherit non-trivial amounts of wealth thanks to Australian ancestors who invested in housing. (Other points bear on any egalitarian evaluation of private education in specific societies, for example the fact that private education is not quite as exclusive in Australia as it is in other countries, such as Great

[4] Here I follow the discussion in Koeppe (2018).

[5] The amount of political philosophy that analyses entitlements to housing is surprisingly quite limited. But according to Katy Wells (2019), the kind of considerations that ground a right to housing may only create an entitlement to relatively long-term rental leases as a sole occupant, falling short of ownership. If there *is* a right to home ownership, then I suspect that this may be in tension with the sort of egalitarian views about background justice to which Macleod subscribes, as the provision of free care and healthcare in old age may obviate the role of an owned home in freeing up cash upon 'downsizing'.

Britain, which might mean egalitarians can view it is as less objectionable.) In this case, it is unclear which out of inequalities due to inheritance and inequalities in access to education is most accurately described as more 'background'. It may be that some parental pursuit of private education plays the role of a corrective against the inegalitarian presence of inheritance. This would contrast with Macleod's view that it is rather inheritance that might allow some parents to do something about the fact that the state has failed to create proper equality of access to education. My point is not that egalitarians are *wrong* to insist on demanding requirements about equal access to educational resources. What I dispute is whether these requirements should have primacy over ones to do with the regulation of inheritance. On the assumption that egalitarians might have a problem with both private education *and* inheritance, it is not obvious which should be regarded as the more primary injustice, or indeed if it is right to assume that either has any sort of priority over the other.

In sum, I think that the idea of background justice is difficult to understand with sufficient precision to show that discussions of inheritance owe their urgency largely to the non-ideal conditions that most societies are in relative to the demands typically made by egalitarians. If I am right about this, then I think egalitarians will need to view inheritance as a practice that they need to think carefully about in its own right, and as something whose study can shape an understanding of what an ideally just society would look like in the first place. Questions about the relationship between equality and inheritance therefore deserve some parity with questions about equality's relationship with education, healthcare, and housing and other goods whose distribution is relevant to the pursuit of justice.

Both Barry and Macleod raise questions about the book's stance on the much-discussed distinction between luck egalitarian and relational egalitarian conceptions of justice. What I suggested in the book is that relational and luck egalitarian ideas can work together in such a way that relational egalitarian ideas constrain the application of a luck egalitarian principle. What this means (roughly) is that while inheritance has the effect of making people better or worse off than each other as a matter of brute luck, these effects are unjust only when inheritance also works to create the kinds of group differences such that being born into one group rather than another comes to be a substantial source of one's advantage or disadvantage. This is one way of combining an endorsement of both the idea that injustice consists in the unequal distribution of brute luck disadvantage and the idea that it consists in the presence of certain kinds of hierarchical group difference. One implication of this approach is that

small inheritances will tend to not count as unjust because, while they are a matter of brute luck and a source of some inequality, they do little to cause or maintain hierarchical group difference in the manner that large inheritances may do given sufficient time. This, I suggested in the book, was a theoretical advantage of my view.

Barry and Macleod want to hear more about which of the luck-egalitarian and relational egalitarian elements in my view is "primary" (Barry 2020: 56), and whether my attempt at combining two strands of egalitarian thought is ultimately "equivocal" (Macleod 2020:37). They are right to sense that no answer to this question can really be reconstructed from what was provided in the book. Defenders of luck egalitarianism may remain unpersuaded that their view needs constraining.[6] Proponents of relational egalitarianism, too, might wonder why the views need to be combined. Should not inheritance be regarded as unjust only to the extent that it plays some causal role in maintaining or exacerbating social hierarchy, independently of the fact that it may reflect unequal brute luck?[7]

While I continue to see an attraction in combining elements of luck egalitarian and relational egalitarian ideas, regrettably I won't offer any more expanded account here of which of these ideas, if either, should be considered dominant in their joint application to the problem of inherited

[6] I should make one comment, though, on Macleod's question about whether my endorsement of a relational egalitarian element "leads to sufficientarianism". Macleod correctly notes that some relational egalitarians endorse a sufficientarian principle with respect to the distribution of certain goods like education. To my mind it is unclear whether relational egalitarians who take this approach must necessarily apply a sufficientarian principle to *all* goods or to the wealth distribution overall. But even for goods like education, relational egalitarians might resist the sharply sufficientarian approach taken by authors like Elizabeth Anderson (which Macleod seems to take as representative). The range of ways in which sufficiency thresholds might be formulated are gathered together in Shields (2020). I might add that it is not obvious to me that relational egalitarianism strictly entails a commitment to sufficientarianism in general, as opposed to for some specific goods. But I agree with Macleod that sufficientarianism about the wealth distribution in general would likely have rather permissive implications for the right to bequeath, as the bulk of the inheritance flow is concentrated among those who occupy the higher positions in the wealth distribution.

[7] This leaves things open as to what should be said about large inequalities within sets of people occupying the same position in a class hierarchy. Such inequalities, by definition, do not extend between hierarchically separated groups. Macleod raises the interesting case of "an arbitrary decision of middle-class parents to leave all their wealth to one child and leave another child with nothing" (Macleod 2020: 36), which would plausibly make no difference to the presence of social hierarchy but nevertheless seems unfair and could probably be classified as unjust on luck egalitarianism. One view is that in such cases, both children will still benefit somewhat from whatever non-financial capital their parents might also have possessed, which might prove harder to withhold from one's children even when a formal wealth transfer is withheld. It is interesting to note that inheritance taxes might be defended partly as a means of preventing parents from being able to have the power of disinheriting offspring, something which might be used to objectionably influence a child's life choices.

wealth.[8] What I will do, instead, is address Barry and Macleod's contention that luck egalitarianism can work perfectly well on its own, without the help of any independent commitment to elements of relational egalitarianism. Central to this issue is whether luck egalitarians can find some non-arbitrary reason for not viewing small inheritances as unjust. Both Barry and Macleod seem to think that small inheritances make no difference (rather than just a small difference) to the overall distribution of advantage and disadvantage. This is evident in what they say about one of the book's examples, namely, the inheritance of a beer tankard. On this, Barry writes "it seems highly possible that inheriting a beer tankard would fail to increase a person's quality of life, which would mean that the beneficiary would not enjoy any advantage over others, and that luck egalitarianism would not classify the inheritance of a beer tankard as an injustice." (Barry 2020: 53) Similarly, Macleod claims that such inheritance "has no plausible bearing on our respective opportunities to lead good lives and our comparative life prospects" (Macleod 2020: 36). The inheritances that matter, according to Macleod, "are those that have a significant impact on people's life prospects – i.e. their access to key goods such as health, education, income, leisure time, and housing" (Macleod 2020: 35).

Now, I should emphasize that the debate is not really about beer tankards or any other single example, as I imagine Barry and Macleod would agree. We can simply stipulate that there are some cases where an individual receives a small but non-zero benefit in ways that render them marginally better off due to brute luck than individuals who do not receive a small inheritance of this sort. This creates (by stipulation) a small degree of brute luck inequality. It is not enough to disqualify this category of cases by suggesting that actually there is *no* disadvantage because the benefit is merely "sentimental" (Barry 2020: 55), or that the disadvantage, though real, does not have a "significant impact" or is not crucial in securing access to relevant "key goods". These rejoinders are unsatisfactory: Either an inequality is created or it isn't. And when it is, luck egalitarians need some way of explaining why small differences don't matter in spite of them reflecting a difference in circumstance or luck rather than choice. I described this problem in the book as the difficulty of getting a qualitative principle to do the ultimately quantitative work of saying why small (but

[8] See for example Kasper Lippert-Rasmussen (2015), on which I relied in the book, which deflates the concern that the two approaches express incompatible ideals rather than simply having different intellectual histories. I might also repeat the observation in the book that historic discussions of inheritance, such as R.H.Tawney's, seem to combine elements of what would now be labelled luck egalitarian and relational egalitarian approaches. This is not necessarily attributable to confusion or sloppiness, even if authors like Tawney had a less fine-grained taxonomy of egalitarian ideas than that now used by political philosophers.

non-zero) inheritances don't matter from the point of view of justice. I don't see anything in the criticisms from Barry and Macleod that really explains how there is a valid inference from any version of the choice/circumstance distinction to the claim that small (but non-zero) cases of brute luck disadvantage either do not matter or somehow do not occur. Of course, it is *intuitive* to say that small cases don't really matter, but the task for a philosophical conception of justice is to vindicate these intuitions by providing an explanation of why they are right, or else show that such intuitions must be revised.[9]

Prolonged discussion of how to distinguish tiny injustice from the absence of injustice may seem scholastic or tangential to what really matters. But both luck egalitarian and relational egalitarian approaches have an easy time saying what's unjust when it comes to the profound and egregious examples. It is on the more 'minor' cases, like the inheritance of small fortunes, where philosophical disagreements get worked out in such a way that the advantages of one approach become clear. I continue to maintain the position I took in the book, which is that the easiest way of discounting inheritances whose benefit is minor but non-zero is to rely on their being of no consequence when it comes to the persistence of social hierarchy or what I called 'economic segregation'.

3. BRAUN ON SOLIDARITY AND COMMUNITY

Stewart Braun raises interesting points about the relationship between taxation, inheritance, and community. While largely sympathetic to my attempts to characterize economic segregation as morally objectionable, Braun's criticism is that a stronger or more comprehensive diagnosis could be secured with the help of the concept of solidarity. (In addition, I should say that Braun's comments on Marx are valuable in filling a gap in the book's attempt to give some sense of the history of the debate, particularly in the 18th and 19th centuries.)

Braun's approach embodies a more aspirational than remedial account of why justice might require economic integration. Whereas the liberal egalitarian approach places emphasis on preventing the sort of objectionable hierarchies associated with conditions of segregation, appealing to solidarity puts the focus on what is attractive about integrated

[9] There are other ways in which luck egalitarians might try to disqualify cases involving small inheritance. Chapter 4 of the book discussed some possibilities that might be used to move away from what I called the "naïve" luck egalitarian commitment to an unqualified choice/circumstance distinction. Barry and Macleod, however, don't suggest which of these approaches, if any, they find attractive.

communities. In other words, the difference is that on liberal egalitarian rationales (such as that in the book), the ills of segregation consist largely in the fact that "some persons suffer from a lack of opportunity and status compared to others". This might omit some sensitivity to "the good of community", both in terms of commitment to a shared goal and the development of self that is made possible by one's membership of community. One worry I have about solidarity as a concept in political philosophy is that it is rather hard to pin down exactly what is distinctive about it beyond the idea that it is aspirational where other approaches have more of a remedial character.[10] This might account for why these other diagnostic approaches are more frequently endorsed in egalitarian political philosophy.

Braun, though, is helpfully precise about what solidarity means to him and how it is related to the regulation of inheritance and bequest. Under conditions of solidarity, citizens secure an ability to relate to one another in ways that shift their orientation away from, as Braun puts it "an exclusive focus on the self and toward a broader more comprehensive, shared goal" (p5). Perhaps most importantly, Braun maintains that "the taxation or regulation of bequest may…be constructively understood as a commitment to communal solidarity because privately controlled wealth is re-invested back into the community" (p2). Unregulated bequest is incompatible with all this because of the way in which it allows the rich to be, as G.A. Cohen would have put it, "out of community with the poor": By rejecting an inheritance tax, wealthy inheritors are complicit in maintaining the situation of the poor, perhaps especially so given conditions such as those we now seem to be living, under which those who do not inherit have fewer alternative means of wealth accumulation than might have been enjoyed during periods of faster wage growth and more affordable higher education.

Braun´s claims about inheritance and solidarity are interesting and retain a genuinely aspirational dimension even if Braun does not adopt everything that Marx or Cohen might have wanted to defend on grounds of the value of community. More could be said about why the taxation of inheritance might be especially solidarity-promoting. After all, arguably it is true of all taxes that they involve privately controlled wealth being re-invested back into the community. Perhaps what makes inheritance tax different from the likes of income and consumption tax is that there is more of a demographic divide between who pays it and who doesn't. Or perhaps (in addition) it matters that receiving an inheritance has little to

[10] That being said, influential statements of relational egalitarianism contain an aspirational element. Alongside the negative aim of "ending oppression", egalitarians aim "to create a community in which people stand in relations of equality". See Anderson (1999: 289).

do with what one has already done or not done to promote community. One pays income and consumption taxes partly as a consequence of choices that can impact on community, not least one's choice of profession. But this cannot easily be said of inheritance taxes, at least if construed as a tax on recipients who have done nothing to create that inheritance.[11]

It is also worth registering at least one specific case where the enjoyment of inheritance may have led some to engage in behavior that is anti-community. During parliamentary debates about how to approach the problem of negotiating Britain's exit from the European Union, much was made of a supposed trade-off between regaining 'sovereignty' and retaining some degree of the access to markets and trade deals that Britain had enjoyed as an EU member state. Anna Soubry, a Conservative MP and former Cabinet Minister, suggested that other Conservative MPs were in a position to prioritize the 'sovereignty' side of this tradeoff only because they were protected from the negative economic fallout by not needing to trouble themselves with getting a job. As she put it: "Nobody voted to be poorer, and nobody voted leave on the basis that somebody with a gold-plated pension and inherited wealth would take their jobs away from them".[12] This case may illustrate the way in which large inheritances ensure that some people end up having no skin in the game when it comes to exercising influence over the sorts of institutions on which others remain dependent for their material prosperity. The possibility of diagnosing an injustice here may indeed be more apparent on the analysis proposed by Braun than on the more liberal egalitarian analysis of segregation I made use of in the book.

4. WOLFF ON INEQUALITY AMONG THE OLDER GENERATION AND TAX AVOIDANCE

Jonathan Wolff agrees with the book's central causal claim that "inheritance is a mechanism by which segregation is created and transmitted" (p5), at least in the context of Britain. But he's skeptical that a Rignano scheme would do a great deal to combat what he takes to be the worst aspects of this. Wolff notes that much of the differentiating effect of inheritance is likely to be within a "modal range" (p9) covering a relatively large portion of the population whose members inherit between £25,000 and £500,000, and for whom receipt of inheritance comes typically around retirement

[11] As explained in the book, a Rignano Scheme offers one way of preserving an incentive to create new wealth through the way in which it imposes higher tax liability on the transfer of older fortunes that have been inherited at least once already.

[12] Hansard, 16 July 2018, Vol 645, column 83

age. For Wolff, a principal effect of these inheritances is to compound an existing divide between people who can expect a comfortable retirement in which they receive an industry or private pension after paying off a mortgage, and people who must continue to pay rent on a home and rely on what's left of the state pension.

It may be that the recipients in the modal range are among those whose inheritances account for the equalizing effect of inheritance when the entire wealth distribution is taken into account. However, recall from what was said earlier, such effects might be regarded as unjust when those who receive are compared with peers in the same age group who already have poorer prospects and who are further left behind by the fact that they stand to get no inheritance either. This is a reminder of how an equalizing effect overall might be compatible with the widening of more 'local' inequalities within the lower regions of the wealth distribution. Such cases force us to ask whether justice would be promoted by reducing this divide between poor and comfortable retirees, which a larger inheritance tax would probably serve to do, or whether there is something wrong with viewing these local inequalities in isolation, when we might attend to the wealth distribution as a whole. I will not try to settle this question, but I will say something about how a Rignano scheme might bear on these modal range inheritances.

Wolff notes that most of Britain's retirement age population are inheriting first generation bequests. Even if they were not, the boom in housing values during the late 20th and early 21st centuries may have done enough to ensure that this wealth, when bequeathed, would be treated largely as 'new'. Either way, a Rignano scheme would probably not impose much tax liability on inheritances within the modal range. This might count against the Rignano scheme's ability to address the way in which first generation bequests can compound injustice that is already around for reasons other than inheritance. But there remains the question of what happens next. By definition, a Rignano scheme is an idea for the long term: Inheritors in the upper part of the modal range will probably not consume all of what they receive before their death, and probably won't be able to do much to expand it either. And so, these modal inheritances will in due course become second generation. This is where the Rignano scheme would begin to have an impact. This is to concede, in effect, that a Rignano scheme would not address the "inequality of the retired"(p10), which Wolff plausibly believes we should be concerned about. But a Rignano scheme still offers a way of addressing what knock on effects there are of this inequality.

Wolff moves on to ask what is to be done about the very wealthy, who in

Britain possess a large share of the overall wealth. Here Wolff relies on the suggestion that the super-rich, perhaps some upper subset of the top 10%, are just too good at avoiding tax for a Rignano scheme to have much effect. Here, many would agree with Wolff that "the very wealthy are likely to find ever-more sophisticated forms of avoidance". But how much follows from this claim? In assessing this position, the key question is not whether a Rignano scheme would or would not stimulate tax avoidance given the remote possibility of "global harmonisation" of inheritance taxes. I agree it would, other things being equal. What's key is whether a Rignano scheme would stimulate enough successful avoidance as to result in a net loss to revenue, or to make it under-perform relative to some alternative like strictly progressive inheritance tax, annual wealth tax, or other measure aimed at capturing the wealth of the uppermost decile. Once we are in the territory of claims like a Rignano scheme "could even reduce overall tax take if wealth is moved offshore" it's important to pay some attention to what sort of wealth is possessed and how moveable it is. Wealth that is in land and buildings cannot, by definition, be moved offshore. The Office of National Statistics[13] reports that financial wealth, the most liquid and moveable category, accounts for less than a quarter of the wealth owned by the top decile. The remaining categories of wealth that is 'physical' or 'property' are harder (in some cases impossible) to get out of the country they're in. Of course much of this wealth can in principle be sold for cash, but in general it is hard to spend down a large fortune by way of consumption rather than re-investment in other wealth (though perhaps more geographically mobile wealth, or by way of purchasing physical property that is already overseas). In light of these considerations, I think it is not settled that a Rignano tax, or in fact any other tax that imposes greater liability on the wealth of the top decile, would be avoidable to such an extent as to defeat the case for having it, relative to other proposals for combatting extreme wealth concentrations.

While Wolff seems to have the movement of wealth offshore most in mind, it is not the only mechanism through which the wealthy can practice tax avoidance. One increasingly common practice is for the wealthy to create personal foundations, which enjoy favorable tax liabilities, or in some cases private companies, primarily for the purpose of ensuring that a legal person other than themselves can serve as the owner of wealth. Such organizations can even be used to employ one's children in return for little or no work, which is one way to keep the transfer of wealth within the family. And the fact remains that a company or foundation can simply be immortal, which is the best way to avoid an inheritance tax. Moreover, the

[13] See note 3, above.

fact that one's homes and contents have been transferred to one of these alternative legal persons does not stop one from living in them and carrying on in much the same way as if the transfer had not happened. Overall, the practice here is one of transferring property rights while retaining powers of control: While a personal foundation may be the legal owner of wealth, its primary controller can remain the principal beneficiary. Control rights can thus work just as well for a wealthy individual as property rights would have, with the cost of making the necessary arrangements relatively minimal given the amount of tax that might have been avoided.

The good news is that there are pathways to addressing the ability to get control rights over another legal entity's property to mimic property rights that one might have held in that same property. Foundations and companies are, after all, artificial entities and are the product of laws rather than merely a device to avoid the application of laws. Independent work, for example, on the regulation of foundations has already laid out some of the details as to how reform can do much to undercut efforts to turn them into tax shelters for high net worth families.[14] This is not to say that further avoidance strategies can't be devised. There may well be an arms race between the design of tax law and the capacity of the wealthy to find ways around it. But we needn't be fatalistic about tax avoidance so long as we can find arguments to be optimistic about scope for wider reforms.

I'll close with one further disagreement I have with Wolff concerning the philosophical background, particularly the question of why political philosophy has for at least half a century given much less attention to inheritance than to many other topics about distributive justice. Wolff suggests that the justice-based case for or against restricting inheritance has been (rightly or wrongly) seen as "derivative and relatively straightforward", having been regarded merely as "a consequence of a broader theory of justice". Some philosophers might have felt this way but I think many have not. The question of inheritance may *appear* straightforward on some views, such as the Nozick style libertarianism that Wolff mentions, though even here there was always a vexed question about how to correct for historic injustice like slavery and colonialism, which indeed helped establish many of the large inherited fortunes still being passed down in Britain. However, my own view is that the implications of theories of justice for inheritance are, on closer inspection, harder to establish than even the authors of these theories might think they are. This is often due to ways in which designing a theory to solve one perceived problem may have hidden effects for how, or whether, that theory is able to handle the regulation of

[14] See for example Reich (2019: ch.4).

inheritance (see especially the discussion of Kok-Chor Tan's institutional luck egalitarianism in the book's 4th chapter). I register this disagreement with Wolff not to develop any substantive dispute about appraising the recent history of political philosophy, but to again emphasize my earlier point that there is still philosophical work to be done in philosophy on inheritance. Working out what existing theories are actually committed to on inheritance, as opposed to what they appear committed to on superficial readings or based on what their proponents actually suggest in fleeting or footnoted remarks, is where such work can start.

5. FLEISCHER ON THE RIGNANO SCHEME

Miranda Perry Fleischer observes that the book, being a work in philosophy, shies away from many important questions relating to the actual design of a Rignano scheme as a piece of tax legislation. This is a generous way of alluding to the way in which works in political philosophy are not usually very attentive to the intricacies of tax codes, even if philosophers routinely presuppose that taxation has a role to play in promoting or impeding justice. Much of Fleischer's paper is expansive of the book's arguments and would be of great use to philosophers even ones not especially sympathetic to the idea of a Rignano scheme. Deferring to Fleischer's insights on how to take a Rignano scheme forward at the level of tax design (much of what she says about accessions tax and rate structures should be illuminating to philosophers), I shall touch on some of her points that are more critical of the book's arguments, or which focus on political feasibility.

In the book I rely quite heavily on an account of how the advantages associated with wealth possession (principally non-financial capital) compound down the generations. Granting that wealth gradually attracts valuable non-financial capital over time, there is a question about whether a Rignano scheme is properly sensitive to how fast this process occurs. Fleischer observes that "if Grandfather dies at 90 [bequeathing to Mother], Daughter could be as old as 40. Mother may be able to help Daughter buy a house or start a business, but much of Daughter's path is set by this point." (p3) In other words, the point is that much advantage has been conferred by Mother on Daughter well before Daughter gets her second-generation inheritance by way of actual wealth transfer following Mother's death. One could take this as a point against the Rignano scheme, i.e. as a reason to view it as coming in too late to address intergenerational transmission of advantage. One might thus favor the taxing of first-generation inheritance after all, as per any standard progressive inheritance tax, since this would reduce Mother's ability to benefit Daughter.

The quick (though concessive) way of responding to this concern is to note that a Rignano scheme need not give first-generation transfers a free pass, so long as it taxes them at a somewhat lower rate than subsequent transfers. Whether or not first-generation inheritance should proceed tax-free depends on weighing whatever might be said in favor of the tendency for non-financial capital to be accumulated quickly, versus what other considerations count in the opposite direction. The case for favoring no taxation of first-generation transfers at all may owe much to Fleischer's suggestion that political considerations (in the sense of what people might actually vote for) may carry the day. Political narratives against inheritance tax repeatedly appeal to the idea that such taxes unjustly burden people who wish to bequeath to their children what wealth they have newly created by a lifetime of hard work and saving that has enabled them to accumulate a modest fortune having started with nothing. A Rignano scheme is a very intelligible way of making it clear to voters that anyone whose bequest fits this popular vision will not be taxed, while increasing awareness that second generation (or older) inheritance is still very much a real phenomenon. Any politician trying to denounce a tax that can be framed as burdening people who are merely passing on what wealth they have sat on since they themselves inherited it will have a hard job, one would think, of being as successful as prevailing political narratives have been in entrenching the unpopularity of traditionally progressive inheritance taxes. The objection remains, however, that a first-generation bequest can still be extremely large and therefore raise a question about why it should incur no liability at all, particularly when large enough to dwarf plenty of second-generation transfers.

More could be said about the relationship between the basic Rignano idea of 'progressivity over time' and the role of exemption thresholds. It is worth noting that the Rignano scheme is basically an idea about the tax rate changing from one generation to the next, with the exemption threshold presumably being held constant. But this could, in principle, be reversed: Perhaps all intergenerational transfers are taxed at a rate of, say, 50%. At the same time, first generation transfers may have an exemption threshold of $2,000,000, with this dropping to $500,000 at the second generation, and then $25,000 at the third generation. This would be another way of achieving progressivity over time with respect to the effective tax rate. I am not aware of this idea having been discussed before, and it was not anticipated by Rignano himself, or any of the detailed contemporary discussions that emerged in the early 20th century. Fleischer notes rightly that "the devil is in the details" (p4), and she then goes some way towards dealing with them. Indeed it is for tax specialists, like Fleischer, to have the more authoritative say on this.

Once again I thank Fleischer, Wolff, Braun, Barry and Macleod for their fair-minded but illuminating criticisms, not all of which I have been able to address here.

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