Is the Death of Inheritance Tax Inevitable? Lessons from America

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The mysterious case of estate tax repeal

In 2001, George Bush repealed estate tax in America. Runciman¹ has characterised the process leading up to repeal as a 'mystery story': 'how did the repeal of a tax that applies only to the richest 2 per cent of American families become a cause so popular and so powerful that it steamrollered all the opposition placed in its way?' The mystery does not solely lie in the fact that the tax applied to so few; it had also been on the statute book for nearly a hundred years and it seemed to fit with the popular view of the American Dream: that people should make their own way in life and not rely on inherited privilege.

So how do we solve the mystery? Fortunately, Michael Graetz and Ian Shapiro have done much of the detective work for us,² concluding that the key to the repeal campaign was a moral case against the tax, illustrated with a few well-chosen narratives. The opposition fought back, ineffectively, with pragmatic arguments and statistics.

The moral argument: principles not pragmatics

From the late nineteenth century onwards, the moral high ground had been occupied by those in favour of estate tax. People were expected to make their own fortunes rather than rely on inheriting the fortunes of their parents. Bequests were thought to make young people idle

and profligate. And rich people were expected to give their money to good causes rather than hoard it for their own children. Society was seen to have a claim on inherited wealth because it had provided the markets, rules of law, security and enforcement to allow wealth to grow. Of course, there was always some opposition to the tax and in the mid-1920s there was a push to repeal it, but John Dewey and others argued on moral grounds to keep it. A leading tax economist, Thomas Adams, argued that 'if we must tax, it is better to tax him who merely receives than him who earns'.3 Economists argued to use revenue from estate tax to reduce other kinds of taxes, and so inheritance tax was discussed in relation to the tax system as a whole rather than becoming an isolated target of repealers.

However, during the 1990s, those wishing to repeal estate tax began to gain a foothold on the moral high ground by arguing that the wealth accumulated during a lifetime was the sovereign possession of the owner, to dispose of as he or she liked.

One of the mechanisms for changing opinions on this particular issue was to re-label estate tax as the 'death tax'. One of the slogans of the repealers was: 'You shouldn't have to visit the undertaker and the taxman on the same day.' By referring to it as the 'death tax', repealers portrayed the tax as a penalty on a lifetime's hard work rather than a tax on unearned wealth. A further moral argument was put forward by Grover Norquist, President of the *Americans for*

Tax Reform organisation, and a leading repealer. He took an absolute stand against the principle of double taxation:

'You shouldn't be double-taxed when you die': That's principle.

'Well, taxes shouldn't be quite so high when you die'; that's special pleading.

The American people like principled arguments. They do not like special pleading.⁴

Repealers therefore presented reform as a principled struggle for justice and so were not willing to accept anything less than total repeal. This was, potentially, a gamble and, in the end, they had to accept a phased repeal and a sunset clause rather than a permanent raising of the threshold or reduction in the rate of taxation. They preferred the former to fit with their moral case and for reasons of self-interest (discussed below).

The use of evidence: 'stories trump science'

The repealers did not rely solely on a moral case. They also used evidence to back their arguments. In particular, they drew on narratives—or 'stories from the grasstops', as Graetz and Shapiro label them. These included 'horror stories' about family farms and family businesses. For example, John Kearney was a prime example used by the repealers as evidence for their case. His father had built up a Ford Dealership and John had worked in the business from an early age. The family engaged in tax planning, but the father would not sign over enough of the business during his lifetime to avoid estate tax and so, on his father's death, John had to use his own son's college fund to pay it or otherwise have to sell the business. Another example was Chester Thigpen, an African-American 'grandchild of slaves', who had worked hard to build up a farm. Chester was in his eighties and was worried about what would happen when he died.

These stories were powerful because they stimulated empathy. They involved relatively average Americans, not multimillionaires. They involved people who had worked hard and had strong family values. These stories were not necessarily representative or common, but they struck a chord with a wide range of Middle American residents, as well as those with great wealth. Narrative accounts are likely to be particularly powerful with issues that people find complex and boring (such as detail around tax). They may also play an increasing part in political debate, as the electorate is bombarded with increasing information via numerous channels such as the Internet.

A powerful, large and diverse lobby

The moral arguments and narrative accounts attracted a large and diverse lobby. Public opinion surveys were used by repealers to demonstrate widespread support for their cause. However, the findings from such surveys depend crucially on the context within which guestions are asked and the wording of the question. For example, while large proportions of the population felt that estate tax was unfair and should be repealed, when they were then asked whether it was more important to make Medicare and Social Security more secure, people preferred to do this rather than repeal estate tax.

Surveys also found that the estate tax was especially unpopular among disadvantaged minorities, because it could be portrayed as penalising those, like Chester Thigpen, who had overcome many obstacles to accumulate their wealth. One of the most prominent repealers was the African-American billionaire Bob Johnson, who financed a series of newspaper adverts that condemned the tax as an attack on 'the entire black community'. He claimed that estate tax was racist and abolition would reduce the

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wealth gap between African-American families and white families.

Similar arguments were used to win the support of gay men and lesbians, who would also have to overcome barriers to accumulate wealth and who were then doubly discriminated against due to their inability to take advantage of marital tax deductions. Surveys found that 82 per cent of lesbians and gay men were in favour of estate tax repeal, even though the vast majority were also supporters of Al Gore in the 2000 presidential elections.

The lobby was also powerful with many very rich Americans financing the campaign, though doing so fairly quietly to avoid the accusation of self-interest. In particular, the super-rich strongly used their wealth to campaign for outright repeal rather than reform—and while their arguments drew on moral principles, it is perhaps no coincidence that only outright repeal would benefit them financially.

The failure of the opposition

So the repealers had moral arguments, narrative accounts and strong support from a large, diverse and powerful lobby. What about the opposition? Graetz and Shapiro argue that the anti-repeal (or pro estate tax) campaigners were not a very sympathetic bunch. People such as William Gates Sr were considered elitist and labelled 'limousine liberals'. And some of those who apparently supported estate tax were actually somewhat ambivalent. For example, both the insurance industry and the charitable sector stood to lose out from repeal, but they did not want to be too outspoken on this in case they upset the wealthy people that they benefited from.

Rather than construct a positive moral case for inheritance tax, the anti-repealers tended to call on self-interest. For example, they argued that only 2 per cent of Americans had to pay it, so it would not affect many people. There

was also little attempt to put forward a strong moral case. And there was also little attempt to produce other narratives. Graetz and Shapiro argue that the antirepealers could have targeted the apparently idle and undeserving rich, such as Paris Hilton. Runciman⁵ doubts the value of this particular narrative but, instead, argues for pointing to well-known criminals who have inherited large sums (such as Michael Skakel-a member of the Kennedy family who was convicted of murder). The anti-repealers could also have tried to counter the label 'death tax' by talking about a 'windfall' tax. But the battle over language was lost and contributed to the loss of the wider campaign.

Part of the anti-repealers' campaign involved drawing on research by think tanks and the Brookings Institute produced various analyses. But their main report ran to 515 pages and the repealers engaged alternative economists to produce a different statistical picture. Few members of the public were interested or able to weigh up this statistical evidence.

The UK scene: learning lessons from America

The case of estate tax repeal in the US is interesting in itself and provides various lessons. For example, moral arguments around taxation can be powerful, and the public responds well to narrative case studies around taxation rather than streams of complex and disputed statistics. The question for this article is how far, if at all, do these lessons apply to the UK? In particular, does the American experience suggest that the UK equivalent of estate tax (known as inheritance tax) will go the same way and be abolished?

In learning lessons from other countries, it is important, of course, to bear in mind differences in terms of political, economic, social, cultural and historical

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factors. The US and the UK share many similarities in respect to these factors, but also important differences. For example, inherited wealth is a more established part of British socio-economic history than it is in America (which might suggest greater opposition to inheritance tax in the UK). But the UK has also had a far stronger labour movement than the US, along with a greater consciousness of class difference and stronger support for state intervention to reduce inequalities (which might suggest greater support for inheritance tax).

More recently, the 1980s saw a shift to the right in the UK in terms of views about the role of the state, redistribution and wealth ownership, but there has been some shift (back) from the late 1990s onwards to supporting investment in health and education rather than cutting taxes. This shift back to support for state intervention has not been accompanied by explicit support for redistribution, but there has been some 'redistribution by stealth'.6 There are also signs in more recent years of concern about growing wealth inequality, even though Tony Blair, at least, has repeatedly stated that he has no interest in curbing the income or wealth of the very richest.7

Inheritance tax in the UK has a long history, dating back in various forms to 1796, when Legacy Duty was introduced. It is worth summarising some key points about inheritance tax in the UK:⁸

- In 2006–7, inheritance tax affected estates that were valued at more than £285,000, but the government intends to further increase the threshold to £350,000 by 2010.
- A 40 per cent rate of tax is levied against assets above this threshold.
- The number of people who have paid inheritance tax has more than doubled since 1997, with some 37,000 paying it in 2005–6, up from 18,000 in the year in which Labour came to power.
- About 6 per cent of estates paid inheri-

tance tax in 2005-6, raising an estimated £3.2 billion¹⁰ in revenue from 2005-6.

The rest of this article seeks to apply to the lessons from America to the current debate about inheritance tax in the UK.

Moral arguments

In the UK, there has been considerable campaigning against inheritance tax and the campaign has drawn on a variety of arguments including, though not exclusively, moral claims. For example, an online petition¹¹ submitted by a *Daily Express* journalist states:

Inheritance tax is an immoral form of taxation that penalises hard work and thrift. By raising a 40% levy on earned assets, it is also effectively double taxation. It frequently piles financial misery and distress on families already suffering the pain of bereavement; that is nothing less than grave robbery. Over the last decade, millions of households have been drawn into the death duty trap by steadily rising property prices. Often, people are forced to sell their family homes to pay the duty. The burden of death duty largely falls not on the super rich, who can often afford to use tax avoidance schemes, but on millions of hard-pressed families struggling on modest incomes. For all the anguish it causes, inheritance tax raises a tiny proportion of the Government's revenue, less than one per cent. Supporters of this petition believe that inheritance tax is inherently unfair and should therefore be abolished outright in the Chancellor's forthcoming Budget.

As we can see, this petition begins by claiming that inheritance tax is 'immoral' on the basis that it may penalise hard work. Similar claims could be made about income tax, probably with even greater justification. And taxes on savings could also be seen as 'immoral' in terms of penalising thrift. The implication is, surely, that all taxes are immoral. The petition then makes the claim about 'double taxation', suggesting that inheritance tax is a levy on 'earned assets' whereas,

for the recipient of any inheritance at least, this money is surely an unearned bonus. The petition uses highly emotive language such as 'grave robbery', 'misery and distress', 'anguish' and so on. The term 'death duty' is also used twice in an attempt to establish more negative language here. The petition moves away from moral claims when it exaggerates the scope of inheritance tax. While it may be true that millions of households own homes that would be subject to the tax if their owners (and spouses) died tomorrow, it is nevertheless the case that a very small percentage of estates (6 per cent) and a very small number (37,000) pay inheritance tax at the moment. The campaigners are deliberately focusing on average house prices overall, rather than the average house prices of those who die (which will be very different due to a mix of cohort and ageing effects). The use of the term 'modest incomes' is also an attempt to appeal to a wide group of people, even though estates currently paying inheritance tax are almost certainly within the very wealthiest estates and therefore hardly 'modest'.

Richard Madeley (TV presenter and *Daily Express* columnist), speaking on the Channel 4 *Richard & Judy* programme in February 2006, ¹² has also been part of the campaign against inheritance tax. He has used the 'double taxation' argument: 'This is money which has been used to buy the house, in many cases it has been taxed at 40% and you also have to pay stamp duty and then you get hit beyond the grave.'

The *Daily Express* has not been alone in putting forward moral arguments against inheritance tax.¹³ For example, in August 2006, a former New Labour cabinet minister, Stephen Byers, echoed the newspaper when he called inheritance tax: 'a penalty on hard work, thrift and enterprise'.¹⁴ Byers also, however, appealed to self-interest, arguing that increasing house prices would bring many more within the scope of inheritance tax. He

told the *Sunday Telegraph* that abolishing the tax would show middle-class Labour voters they had not been forgotten.

The main group campaigning against inheritance tax is the Taxpayers' Alliance, whose Director, James Frayne, has said on their web site: 'Inheritance tax is unfair and it is starting to hit more and more ordinary families across the country, rather than the rich who have the funds to come up with ways of avoiding it. Unless the leadership of all the main parties commit themselves to abolishing it as part of a programme to ease the tax burden they are going to find themselves increasingly out of touch with voters.' The statement that 'inheritance tax is unfair' is not supported with any detailed logic.

Narratives or statistics?

The UK campaign against inheritance tax has attempted to employ narrative case studies, though not, perhaps, with as much success as in the US. For example, in 2002, Peter Clarke of the *Scotsman* wrote:¹⁵

My mother-in-law lives with impressive frugality on a modest pension. On her expiry, Gordon Brown will take 40 per cent of her estate. She is not a wealthy person. In terms of income, she is demonstrably a low earner. Her problem is that her house, bought in the 1950s, represents a capital sum rather more than she can comprehend. She knows she is far from rich and cannot believe much of her assets will fall to the Treasury.

This narrative provides little personal detail and therefore fails to inspire much empathy. There is no small business/farm dimension, as was the case with the most successful US narratives and, given that it is based on the journalist's own mother-in-law, it could be accused of being motivated out of self-interest rather than genuine concern.

Another narrative case study that has received more media attention was the

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case of two elderly sisters (Joyce and Sybil Burden), who fought for the same inheritance tax rights as married and civil partnered couples. The sisters had lived together since birth, but were concerned that when one of them died the other would have to pay inheritance tax on her sister's share of the estate. They feared that this might necessitate sale of the family home to pay the tax bill. The sisters decided to take action after the Civil Partnership Act 2004 came into operation. It granted the same rights to civil partnered gay and lesbian couples as married couples had. The Burden sisters believed that this amounted to discrimination under the terms of the European Convention of Human Rights. Their case went all the way to the European Court, which ruled against the women in December 2006 by a majority of four to three—but with strong dissenting judgments—and the sisters are now appealing to the Grand Chamber. This narrative, potentially, has more power as it concerns two elderly people (elderly people are likely to engender more sympathy than younger ones?). There is personal detail about their situation, raising concerns that one may have to lose the family home due to inheritance tax.

The UK lobby against inheritance tax

So the UK campaign against inheritance tax draws on moral argument while also making some use of narrative case studies. It has also received quite diverse support from, among others, *The Daily Express*, Stephen Byers, Channel 4's Richard and Judy and The Taxpayers' Alliance. It is probably no real surprise that newspapers such as *The Daily Express* and *The Sun* are calling to 'Axe the Tax' (March 2002) and the *Daily Telegraph* had front-page news with '4 in 10 Caught in Death Tax Trap' in January 2007, but the *Observer*'s campaign against inheritance

tax is perhaps more surprising. Their particular concern is over 'discrimination' against cohabiting couples who face the tax when married, while civil partnered couples do not. To some extent, this links in with the Burden sisters' case mentioned above. Inheritance tax has also been attacked by followers of New Labour.

But how widespread is support for this campaign? What about the general public? Independent survey research¹⁶ found that the public were concerned about 'double taxation' and, as far as inheritance goes, half the population (51 per cent) said that 'no inheritances should be taxed'. Younger people, and those in social classes IV and V, were most likely to support the abolition of inheritance tax. It is very interesting to find that those in the lowest social classes, with the least likelihood of ever paying inheritance tax, were most opposed to it. This may be linked to the finding¹⁷ that those with the least to leave were nevertheless the most supportive of the principle of leaving a bequest to the next generation. They may, therefore, be most resistant to the principle of having any bequests taxed.

However, Prabhakar¹⁸ found that the deep dislike for inheritance tax became tempered when faced with concrete proposals to increase income tax to fund the abolition of inheritance tax. Other research¹⁹ also found that attitudes to inheritance tax changed when research participants were given further information and asked to consider broader issues about the tax system as a whole.

We might expect political leadership on this issue to come from the Conservative party but, until October 2007, they had not yet made any concrete proposals in this area. In October 2006, the Conservatives' Tax Reform Commission²⁰ suggested replacing inheritance tax with a capital gains tax on death, which would not be levied on principal residences. But George Osborne, Shadow Chancellor, speaking on 'WebCameron'²¹ in October

2006, said: 'Economic stability is our number one priority. We are not going to take risks with people's mortgages, we're not going to promise unfunded tax cuts at the election.' One year later, and struggling in the polls, Osborne announced to his party conference that the threshold for inheritance tax would be lifted to £1 million. He said that this would be paid for through taxes on non-domiciles. This very popular policy proposal may have been the key moment when Brown decided to delay calling an election.

The supporters/defenders of inheritance tax

The campaign against inheritance tax in the UK is therefore popular and diverse and has now gained support among political leadership. One of the lessons from America was that such a campaign could gather momentum and be successful if those supporting inheritance tax underestimated it and failed to respond early enough. In such circumstances they could become seen as 'defending' rather than 'supporting' inheritance tax. So who are the supporters of inheritance tax in the UK and how are they approaching this task?

One of the main supporters has been the Treasury, which responded to the attack on inheritance tax by Stephen Byers in October 2006 by saying, 'Inheritance tax is a fair and necessary means of raising revenue for public services, and only affects the top 6% of all estates.'22 The mention of 'fairness' suggests a moral principle underlying inheritance tax, but the Treasury give no detail about what that means. The Treasury also point, as did the anti-repealers in the US, to the small percentage of estates that pay inheritance tax (a more pragmatic than principled argument). The Treasury spokesperson also went on to say that 'Anyone who wants to abolish it needs

to explain exactly how they plan to fund the £3.6bn cost—the equivalent of more than 1p on income tax, or 18p on petrol duty, and almost double what we are spending this year on counter-terrorism and security.' This is, perhaps, an astute move, as the research evidence quoted above suggests that people are less willing to support the abolition of inheritance tax when faced with the dilemma of either cutting services or increasing taxes elsewhere. The Treasury has responded to concern about the growing reach of inheritance tax by planning to raise the thresholds significantly over time, to £350,000 by 2010. However, far from defending inheritance tax, the Chancellor of the Exchequer, Alistair Darling, responded to the Conservative party proposals in October 2007 (mentioned above) by doubling the threshold for married couples and civil partners.

The other main group supporting/defending inheritance tax is the Institute for Public Policy Research.²³ It does, however, call for reform of the system in terms of a progressive banding of inheritance tax, action to reduce loopholes, and exemptions and other reforms to make the system fairer. It puts its case in support of the principle of inheritance tax against the backdrop of increasing wealth inequality.

Other groups that we might expect to defend inheritance tax are calling for the tax to be replaced by other forms of wealth taxation. For example, The Fabian Society has called for a shift in the point of tax from the estate of someone who has died to the people who inherit the money: a capital receipts tax.24 Patrick and Jacobs argue that the growth of house prices has little to do with individual effort. They point out that people who earn £275,000 in a single year would be taxed at 40 per cent on most of it, so why should someone who received a windfall of the same amount receive it untaxed? They also argue that most people benefit from state education, a national health service, a

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regulated market and economic growth, and so on, and so the state has a rightful claim on any wealth we accumulate during our lives. But Maxwell²⁵ is concerned that other forms of wealth taxation, such as a capital receipts tax, could be expensive to run and subject to compliance issues. There is therefore disagreement within the left about the appropriate basis and form of a wealth/inheritance tax.

In March 2007, the Liberal Democrats also called for the abolition of inheritance tax, to be replaced by a new 'wealth tax'. They have argued that people owning homes worth £1 million or more should face a 'wealth tax'. Treasury spokesperson Vince Cable has been quoted as saying that he wants to hit 'obscenely large' property investments and believes that an annual 1 per cent levy could be the solution. The Liberal Democrats have estimated that £1 billion would be raised through this levy, and this would be used to cut inheritance tax and stamp duty bills for the less well off.

It is difficult to place the Fabian Society and the Liberal Democrats in this policy area, because while they wish to see the end of inheritance tax they also wish to see new wealth taxes, which would achieve similar ends. However, there is a danger that their views may split any campaign to defend inheritance tax.

Conclusion: is the death of inheritance tax inevitable?

There is clearly a growing campaign against inheritance tax in the UK. It receives widespread, popular and diverse support, drawing on moral and pragmatic arguments. The use of narrative accounts has been fairly limited and there is now support from political leadership such as the Conservatives (though not yet for outright abolition). What about Labour? Would they abolish inheritance tax? New Labour advocates of abolition such as Stephen Byers do

exist and the recent reform (doubling the threshold for married couples) suggests that Government support for inheritance tax is, at best, lukewarm. Labour seems to think that raising inheritance tax thresholds will keep opposition to the tax at bay. And further changes would have to be paid for through other tax increases or cuts in public spending. In the current economic climate, it looks unlikely that there will be scope for further tax cuts, let alone outright abolition. But this would be a very popular policy for any party wishing to improve its electoral prospects—and so the death of inheritance tax may not be inevitable, but it is in the balance.

Notes

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- 10 http://www.hm-treasury.gov.uk./ media/26E/0F/bud06_completereport_ 2320.pdf
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