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Intergenerational Wealth Transfer and the Need to Revive and Metamorphose the Israeli Estate Tax

Abstract: This article suggests enacting an accession tax instead of the estate duty – which was repealed in Israel in 1981. This suggestion evolves from historical and normative explorations of the tension between perceptions of familial intergenerational property rights and justifications for the “death tax,” as termed by its opponents, i.e., estate and inheritance tax. First, the Article explores this tension as expressed in the history of the Israeli Estate Duty Law. This chronological survey reveals a move from the State’s taken-for-granted interest in revenue justifying the Law’s enactment in 1949; moving on to the “needy widow” and “poor orphan” in whose name the tax was attacked during the years 1959–1964, continuing to the abolition of the tax in 1981 in the name of efficiency and the right of the testator to transfer his wealth to his family, and finally cumulating with the targeting of tycoon dynasties that characterizes the recent calls for reintroducing the tax. Next, based on the rich literature on the subject, the Article maps the arguments for and against intergenerational wealth transfer taxation, placing the Israeli case in larger philosophical, political, and pragmatic contexts. Lastly, it associates the ideas of accession tax and “social inheritance” with inspirational sources for rethinking a realistic wealth transfer taxation to bridge the gap between notions of intergenerational familial rights and intergenerational social justice.

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Introduction

A recent development in scholarly literature on intergenerational wealth transfer is the tendency to highlight and focus on emotional dimensions of

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inheritance.¹ A paramount example of this development from a legal perspective is Krecizer-Levy's conceptualization of inheritance as an intergenerational bifocal bond between the giver and the receiver, symbolizing continuity of identity, ideas, and relationships.² This conceptualization echoes the growing sociological interest in inheritance as an arena for negotiating kinship relationships and micro-interactions of memory, narratives, and emotional creativity.³ I myself have contributed to this "emotional trend" with my socio-legal study of inheritance in my emphasis on wills with and without a soul.⁴ A fascinating example of this development from a historical perspective is Hartog's study of inheritance disputes in New Jersey (from the mid-nineteenth century to the mid-twentieth century), as a field involving economic negotiations and expectations, as well as dependency, loyalty, devotion, and love.⁵ Recently, even economists have recently realized that inheritance cannot be understood without taking into account its function as a sign of parental affection.⁶

Notwithstanding the importance of such intellectual and empirical efforts, one must not forget that intergenerational wealth transfer, as shaped by modern capitalist and liberal legal systems in developed countries, is a major economic stratification mechanism that primarily benefits descendants of wealthy. In that respect, I endorse Noah Lewin-Epstein's criticism of the Israeli stratification discourse's negligence in addressing the family as a central actor in shaping

1 As recently as 1998, McNamee and Miller argued that "the symbolic meaning and emotional significance of inheritance" as well as its role in maintaining "familial attachment and generational identity" had not yet been systematically examined, see Stephen J. McNamee & Robert K. Miller, *Inheritance and Stratification*, in *INHERITANCE AND WEALTH IN AMERICA* 193, 199 (Robert K. Miller & Stephen J. McNamee eds., 1997); an exception to this observation is the groundbreaking study of Sussman, Cates, and Smith, reported in MARVIN B. SUSSMAN, JUDITH N. CATES, & DAVID T. SMITH, *THE FAMILY AND INHERITANCE* 166–70 (1970).

2 Shelly Krecizer Levy, *The Intergenerational Bond – Rethinking Inheritance* (2008) (Ph.D. dissertation, Tel Aviv University).

3 JANET FINCH & JENNIFER MASON, *PASSING ON KINSHIP AND INHERITANCE IN ENGLAND* (2000); this relatively new sociological move might be a part of a more general growing interest in interrelations between money and relationships. See VIVIANA A. ZELIZER, *THE SOCIAL MEANING OF MONEY* (1997); VIVIANA ZELIZER, *THE PURCHASE OF INTIMACY* (2005).

4 Daphna Hacker, *Soulless Wills*, 35 (4) L. & SOC. INQ. 857 (2010); see also Deborah S. Gordon, *Reflecting on the Language of Death*, 34 SEATTLE U. L. REV. 379 (2010–2011).

5 Hartog focuses on cases in which one party argues that she was promised an inheritance as a reward for the care she provided for the deceased in old age, and the other party argues that no such promise was given or that it was invalid. See HENDRIK HARTOG, *SOMEDAY ALL THIS WILL BE YOURS: A HISTORY OF INHERITANCE AND OLD AGE* (2012).

6 Douglas B. Bernheim, *Bequests as Signals: An Explanation for the Equal Division Puzzle*, 11 (4) J. POL. ECO. 733 (2003).

patterns of social inequality.⁷ Privileged parents not only assist their children by investing in their cultural and human capital but also through direct wealth transfer during life – and after death.⁸ Indeed, as McNamee and Miller argue, “inheritance produces a cumulative economic advantage, reinforcing and extending wealth inequality across generations.”⁹ Hence, there is a tension between the economic and emotional rewards of intergenerational wealth transfer on the familial level and the harsh consequences of this transfer on intergenerational equality and justice on the social level.

In this Article, I address this tension in order to suggest a worthy substitute for the Israeli Estate Duty, which was revoked more than 30 years ago. In this manner, I not only add to the understanding of the interrelations between tax law, economics, and emotions but also to its understanding as a cultural phenomenon¹⁰ related to an additional cultural phenomenon – the family.¹¹

The Article proceeds as follows: Section I illustrates the untold story of the rise, fall, and attempts to resurrect estate taxation in Israel. This historical piece shows the centrality of conceptions of familial entitlements in the Israeli discourse of estate taxation, which should not be ignored if proposals to reintroduce such a tax, or a similar one, are ever to gain momentum. Section II graphically maps the recent, vibrant scholarly and political debates occurring

7 Noah Lewin-Epstein, *Mobility*, in *IN/EQUITY* 291, 294–95 (Uri Ran & Nitza Berkovitz eds., 2006).

8 Moshe Semyonov & Noah Lewin-Epstein, *The Impact of Parental Transfers on Living Standards of Married Children*, 54 *SOC. RESEARCH* 115 (2001).

9 *Supra* note 1, at 194; Moreover, financial inheritance inequalities are often correlated with other social inequalities. In the US for example, the value of average inheritance is 50% higher for whites than for African-Americans, see Lily L. Batchelder, *What Should Society Expect from Heirs? The Case for a Comprehensive Inheritance Tax*, 63 *TAX L. REV.* 1, 23 (2009); This statistic notwithstanding, Wolff found that although richer households receive greater inheritances and gifts, bequests and other wealth transfers make the wealth distribution more equal, since as a proportion of their current wealth holdings, wealth transfers are actually greater for poorer households than richer ones. See Edward N. Wolff, *The Impact of Gifts and Bequests on the Distribution of Wealth*, in *DEATH AND DOLLARS: THE ROLE OF GIFTS AND BEQUESTS IN AMERICA* 345 (Alicia H. Munnell & Annika Sunden eds., 2003).

10 See Assaf Likhovski, *Chasing Ghosts: On Writing Cultural Histories of Tax Law*, 1 (3) *U.C. IRVINE L. REV.* 843, 854 (2011) (arguing that while historians of tax law focus on its political and economic factors, they neglect its cultural ones). As is elaborated below, this negligence is also apparent in the philosophical debates over estate and inheritance taxes.

11 By that, I join the evolving interdisciplinary field of the “new fiscal sociology,” which insists on the understanding of the social causes and effects of tax policies, as well as of their theoretical and economic dimensions, see Isaac William Martin, Ajay K. Mehrotra, & Monica Prasad, *The Thunder of History: The Origins and Development of the New Fiscal Sociology*, in *THE NEW FISCAL SOCIOLOGY: TAXATION IN COMPARATIVE AND HISTORICAL PERSPECTIVE* 1 (Isaac William Martin, Ajay K. Mehrotra, & Monica Prasad eds., 2009).

in other countries over the taxation of intergenerational wealth transfer. This part places the Israeli debate in a broader philosophical, political, and pragmatic context and allows me to state my own normative position while standing on the shoulders of notable authorities. The final section (III) delves further into the resistance, in the name of the family, to estate and inheritance taxes and leans on concepts of accession tax¹² and social inheritance to attempt and bridge the gap between notions of intergenerational familial rights and intergenerational social justice. This part concludes the Article by arguing for the introduction of an accession tax into Israeli law, from which revenues would be transferred to a government trust fund to be used to support “equalizing grants.”

The Birth, Death, and Attempts to Revive Estate Taxation in Israel

In this section, I analyze legal and legislative documents as well as three newspapers’ reports devoted to estate taxation, published between the 1948 establishment of the State of Israel and the mid-2012s.¹³ The aim of this analysis is to

12 While estate tax is on the value of the estate, as estimated after its owner passes away – regardless of number of heirs, inheritance tax is a levy paid by the heirs on their relative inherited share. Notwithstanding, as is explained below, in Israel the distinction between these two types of taxes have been blurred. This situation is apparent also in other legal systems and occurs when estate taxation takes into consideration, through exemptions and deductions, the familial relations between the heirs and the deceased. As is elaborated below, accession tax is a progressive tax on gratuitous receipts, whether gifts or bequests, imposed on the transferee over her lifetime.

13 The analysis included bills, laws, regulations, Knesset discussions, Knesset Committee protocols, and government committee reports. An attempt was made to recover all of these documents from the relevant archives, and most of them were indeed recovered, although some were lost due to inadequate care by authorities. In addition, three daily newspapers were analyzed: All articles in *Ma’ariv* newspaper on estate taxation were purchased from the publisher. This newspaper was chosen because it was continually in print throughout the period under investigation. It was the most popular newspaper in Israel until the 1970s and has remained one of the most popular newspapers until recently, and because during most of the research period it was without a declared left or right economic position. All articles from *Haaretz* on estate taxation were purchased from the publisher. This newspaper was chosen because it was also continually in print throughout the complete period investigated, and because it represents relatively right-wing economic views. Lastly, an attempt was made to find all articles on estate taxation from *Davar*, since it represented a relatively left-wing economic agenda. This newspaper closed in 1996, and articles were obtained from the Historical Jewish Press database, which only includes articles published until 1981. All these materials are in Hebrew and were translated by the author.

unravel the important legal historical events related to Israeli estate tax, as well as the relative dominance of familial-related rhetorical justifications in the legislative and media public discourses related to them. Following Assaf Likhovski,¹⁴ I do not argue here for a causal relation between the law and society's actual perceptions of notions such as "justice" and "family," but rather focus on the "rhetoric moves" within discussions over the tax. Notwithstanding, as is seen, the story of birth, death, and attempts to revive the estate tax is fascinatingly correlated to the dramatic economic and political changes within Israeli society.¹⁵

1949

By the end of the nineteenth century, the British Empire had adopted an estate or inheritance tax in the UK as well as in several of its colonies.¹⁶ However, it withdrew its intention to introduce such a tax in Palestine, apparently due to the religious objections of the Muslim population.¹⁷ Thus, the first Israeli government and Knesset (the Israeli parliament) had no local precedent to rely on and had to decide independently whether to enact a succession tax, as well as its particularities.¹⁸

Indeed, the first Israeli government was quick to introduce an estate tax to the Knesset on August 29, 1949, only 5 months after elections¹⁹; the law's bill

¹⁴ Likhovski, *supra* note 10, at 856.

¹⁵ Indeed, the modest ambition of this part does not mean that I do not think that tax law can reflect society's perceptions as well as be shaped by them. As will be elaborated in the following parts, to my understating, it can. Moreover, it might be indeed the case, that the Israeli estate tax policy was influenced by global macro-forces and not only by national and local ones. However, this possibility did not emerge from the materials that I have studied, and its study demands a separate and different methodological effort.

¹⁶ MAX WEST, *THE INHERITANCE TAX* ch. II (THE LAWBOOK EXCHANGE, 2003) (Columbia College, 1893).

¹⁷ *Will an Inheritance Tax be Imposed?*, MA'ARIV, Mar. 4, 1949, at p. 1; *Today the Government Will Decide on [An] Austerity Regime*, MA'ARIV, Apr. 24, 1949, at p. 3. (Unfortunately, in early days newspapers did not always publish the reporter's name).

¹⁸ THE TAXES MUSEUM, *THE STATE REVENUE ADMINISTRATION, THE HISTORY OF TAXATION IN PALESTINE AND ISRAEL* (1968).

¹⁹ The bill brought before the Knesset was the outcome of discussions within the Knesset Finance Committee and its Sub-Committee on Inheritance Tax in August 1949. In the context of this Article, it is relevant to note a comment of Dr. Bergman, the representative of the Ministry of Finance: "Our point of departure is that every Jew is a sensible man and will always give his estate to his family and not to strangers." See Sub-Committee on Inheritance Tax Protocol, Aug. 21, 1949, at 4.

was adopted by the Knesset on the same day it was introduced.²⁰ The new law imposed an estate tax on almost all assets owned by the deceased at the time of death, as well as assets s/he gave as gifts during the 3 years before her/his death. However, family was acknowledged by the tax, as the law exempted: the wife's *ktuba*²¹; insurance payments to the spouse, children and their offspring, and parents and dependents of the deceased; and furniture and housewares that were passed on to the deceased's spouse or children. Moreover, donations to public institutions of up to 10% of the estate's value were also exempt (after which the institution's share was taxed as a spouse's and offspring's).²²

The tax was imposed on estates larger than 3,000 Eretz Israeli liras (AIL),²³ and progressed from 5% to 70%, according to the estate's size and the heir's familial status. For example, an inheritance between 25,001 and 40,000 AIL that was bequeathed to a spouse or an offspring was taxed at 15%, while if bequeathed to parents and their offspring was taxed at 20%, and 35% if the heirs were neither.²⁴ Moreover, family members enjoyed an exemption in varying degrees. For example, a spouse enjoyed a 5,000 AIL exemption, a child and her offspring 3,000 AIL, and a parent and her offspring 2,000 AIL.²⁵ Thus, if the deceased had a wife and three children, the estate would only be taxed from 17,001 AIL and above. The duty to pay the tax was imposed on the estate's executor and heirs.²⁶ In order to prevent the sale of inherited assets below the market value, recipients could receive special permission to pay the tax in increments – up to a 5-year period.²⁷

20 *Haaretz* reported that the Finance Committee only finalized the law at the last minute, Knesset members did not have time to study the law in detail, and surprisingly, the opposition did not vote against the law but abstained, see *Estate Tax and Aliya Receiving Tax Were Approved in the Knesset*, HAARETZ, Aug. 30, 1949. (Unfortunately, in some of the newspaper clips purchased from the publishers, the page number of the article is not mentioned).

21 The *Ktuba* is a legal document that aims to protect a married women' financial security in case of divorce or widowhood and is given to the bride at the marriage ceremony. See Eliav Shohatman, *Women's Status in Marriage and Divorce Law*, in *WOMEN'S STATUS IN ISRAELI LAW & SOCIETY* 380 (Frances Raday, Carmel Shalev & Michal Liban-Kooby eds., 1995) [in Hebrew].

22 Estate Duty Law, 1949, SH No. 22, Sept. 7, 1949, art. 4(a)(2) (Isr.).

23 AIL is the currency that the State of Israel inherited from the British mandate. One AIL was equal to 1 £. In 1952, the coin was changed to Israeli Lira (IL). For an economic context, the average taxed monthly income was 386 IL, available at <http://ozar.mof.gov.il/hachnasot/doch97/part20.htm>.

24 Estate Duty Law, *supra* note 22.

25 *Id.* Appendix to the Estate Duty Law.

26 *Id.* art. 8.

27 *Id.* art. 21; Knesset discussions, Meeting No. 72, Aug. 29, 1949, at 1426.

Hence, the law was a mix of estate and inheritance taxes, since the estate was taxed regardless of the number of heirs and their economic standing, but the tax was sensitive to the familial relations between the deceased and the heirs and was imposed on heirs proportionally to their share.²⁸

Interestingly, when the Chairman of the Finance Committee introduced the bill to the Knesset, he did not state any reason for the tax apart from the fact that estate and inheritance taxes existed in other countries.²⁹ During the discussion on the law, in which only five other Knesset members participated, objections were raised about the retrospectivity of the law,³⁰ its exemptions of insurance payments, and the taxation of donations to public institutions. Moreover, one Knesset member suggested favoring female heirs in the light of Jewish religious sensitivities,³¹ one demanded more progressivity for small estates, another argued that the tax was higher than in other countries and would thus deter outside investment, and the next suggested an inheritance tax rather than a mix between estate and inheritance taxation. However, nobody raised substantial arguments either in favor of or against taxing intergenerational wealth transfer. It seems that the need to increase the Ministry of Finance's revenue was justification enough and needed no particular support. As the Chairman of the Finance Committee said in his concluding remarks, "The majority's proposal will grant money to the treasury; the dissenters' suggestions are nice declarations, but they will not bring income to the treasury."³²

Indeed, newspaper reports of the time revealed that the Estate Duty Law was part of a broader taxation program, aimed at balancing the young state's

28 HAROLD C. WILKENFELD, *TAXES AND PEOPLE IN ISRAEL* 34 (1973) (arguing that this hybridization is one reason for the tax failure in revenue collection).

29 Knesset discussions, *supra* note 27, at 1425–27.

30 The Law was applied retroactively to estates of those who died after Apr. 1, 1948; see Estate Duty Law, *supra* note 22, art. 1.

31 An interesting part of the history of the Estate Duty Law, which will not be told in this paper, is the religious parties' ongoing objections to the law's recognition of cohabitant inheritance rights.

32 Knesset discussions, *supra* note 27, at 1432; in other countries, the need to budget for war was often a catalyst for introducing an estate or inheritance tax, see JENS BECKERT, *INHERITED WEALTH* ch. 5 (2004). On the politics of war taxation in the US. See also STEVEN A. BANK, KIRT J. STARK, & JOSEPH J. THOTNDIKE, *WAR AND TAXES* (2008). Likewise, the need for budget resources due to the Independence War expenses is mentioned in Davar, see *Raising Wealth for the Building of the Country*, DAVAR, Apr. 14, 1948, p. 3 & 14; Braha Haves, *Meetings at Hakiryra*, DAVAR, Nov. 5, 1948, at pp. 3, 5.

budget.³³ The newspaper reports were even more agnostic toward the new estate tax and duller than Knesset discussions. It therefore appears that an estate tax was enacted in Israel with no substantial political or public debate.³⁴ This silence corresponds to the hegemonic power of the political leadership in the first three decades of the State of Israel – which was allowed to shape society’s collective identity and economic structure without any substantial opposition.³⁵ Notwithstanding, even in these early days, the legislator was sensitive to the familial aspects of intergenerational wealth transfer and shaped the estate tax in a manner that conformed to the Israeli society’s familism.³⁶ The Haaretz newspaper was nonetheless quick to announce that the tax was a disappointment, yielding only 3.5% of its expected revenue.^{37,38}

33 The broader program included three additional taxes: the Aliya (immigration) receiving tax, the land betterment tax and the luxuries tax, see *Luxuries-Tax was Published in the Formal Paper*, MA’ARIV, Feb. 2, 1949; *The First Annual Budget will be Submitted to the Knesset Today*, MA’ARIV, June 14, 1949, at p. 1.

34 In a later discussion over the tax in 1964, one Knesset member argued that there was a “big commotion, in a manner of organized spontaneity” over the proposal to enact an estate tax in Israel in 1949: “[A]rticles were written, pamphlets, statements and advertisements were published, memos submitted,” see Knesset Discussions, Meeting No. 391, July 30, 1964, at 2572. If indeed such a commotion did take place, it was not mentioned at the time in the Knesset protocols, nor in the three newspapers examined. I did find in *Haaretz*, however, a hint of what would later become a major political force opposing the law. It was reported that the Chairman of the Landlords Association in Jerusalem, Dr. M. Pomerantz, had argued to a conference of 300 delegates that the taxation program of the Government, including the inheritance tax, is a declaration of war against private ownership, see *The Landlords Call for the Abolishing of the Taxes Decree*, HAARETZ, Aug. 22, 1949.

35 Oren Yiftachel, *The Israeli Society and the Jewish-Palestinian Reconciliation: “Ethnocracy” and Its Territorial Contradictions* 15 (Negev Ctr. for Regional Development, Working Paper no. 12, 1999) [in Hebrew].

36 Fogel-Bijawi defines “familism” as “the centrality of the normative family in the lives of the individual and the collective.” See Sylvie Fogiel-Bijaoui, *Families in Israel: Between Familism and Post Modernism*, in *SEX, GENDER AND POLITICS* 107 (Dafna N. Izraeli et al eds., 1999) [in Hebrew] (arguing that the ongoing national conflict between Jews and Muslims and the use of the family and of family law as a symbolic national border line, are the main reasons for Israeli’s relative strong familism, when compared to the Western world).

37 Untitled, HAARETZ, May 12, 1950; Untitled, HAARETZ, Jan. 24, 1951; *The Estate Tax was a Complete Disappointment*, HAARETZ Mar. 24, 1951.

38 This might be more evidence for Assaf Likhovski’s argument in his study on income tax. See Assaf Likhovski, *Formalism and Israeli Anti-Avoidance Doctrines in the 1950s and 1960s*, 1 *STUD. HIST. TAX L.* 339, 368 (2004) (arguing that the government’s assumption that “every person in Israel should feel joy” in paying taxes to the young Jewish state did not reflect the true feelings of Israelis during the 1950s who supported tax evasion).

1959–1964

During the 1950s, only a few critical voices were heard in Knesset discussions over the minor changes in the Estate Duty Law,³⁹ but toward the end of the year 1959, a substantial discussion erupted when the government suggested revising it. This discussion delayed the acceptance of the law's amendment, which was not passed until 1964 after substantial changes were integrated into the original proposal.

When the Minister of Finance introduced the proposed amendments to the law, both in 1959 and in 1963 (the same Minister on both occasions, though there had been elections between the 2 years), he did not discuss the pros and cons of the tax itself, but rather ventured into bureaucratic details, stating simplification of tax collection as the only motive for the suggested amendments.⁴⁰ However, unlike the reserved, minor, and brief criticism voiced in 1949, the discussion over the proposal caused a public and political commotion.

The original amendment proposed imposing a tax on estates over 5,000 IL. Though this seems higher exemption than the 3,000 AIL exemption in the 1949 version of the law, it in fact reflected the substantial devaluation of the currency.⁴¹ In addition, the proposal offered fixed exemptions for a spouse and child under 20 years old, regardless the share of the estate inherited – to assist the authorities in calculating the tax on the estate. The proposal's other objectives included preventing tax evasion and it included measures such as taxing presents gifted up to 7 years before the deceased's demise (instead of three); allowing authorities to question those who had knowledge of the deceased's property; and allowing authorities to invalidate fictitious deals, conducted solely for the purpose of avoiding paying taxes.⁴²

39 During a discussion about tax exemptions for bequests ordered to foreign bodies, a socialist Knesset member said she could not understand why the revenue from the estate tax was so low, while it was clearly one of the most progressive taxes concerning social justice. Another speaker, from the liberal-right wing of the Knesset, argued that the tax was too high and, thus, caused people to worry and find ways to evade paying it, see Knesset Discussions, Meeting No. 318, July 2, 1957, at 2286–87.

40 Knesset Discussions, Meeting No. 12, Dec. 21, 1959, at 139–41; Knesset Discussions, Meeting No. 253, June 3, 1963, at 1937–39.

41 See the Central Bureau of Statistics Index Calculator 1951–1959 [in Hebrew], http://www.cbs.gov.il/reader/?MIval=%2Fprices_db%2FMachshevon_Results.html&MD=a&MySubject=37&MyCode=11120010&MultMin=19511016&MultMax=20120924&DateMin=16%2F10%2F1951&DateMax=24%2F09%2F2012&ssum=3000&koeff=10000&Days_2=24&Months_2=9&Years_2=1959&Days_1=16&Months_1=10&Years_1=1951.

42 Draft Bill Amending the Estate Duty Law (No. 3), 1959, HH 22, at 187.

Interestingly, as early as 1959, the Minister of Finance's tone seemed apologetic. He stated that the debate over the law was "interesting, good and instructive," though the personal accusations against him (that he had undermined the Knesset) were false and demeaning. He also recognized the possibility that changes would be introduced to the proposal and that on one matter particularly the government "will have to look for a convenient way to retreat." Moreover, in his concluding remarks, he no longer only discussed the bureaucracy, but mentioned that in addition to the existence of the tax in all modern countries, there was a basic dispute at the heart of the discussion: whether "the collective" has a right to individuals' estates or not.⁴³

Indeed, several Knesset members made it clear that the government's proposal to amend the law would be used by them to try and weaken the estate tax and even to question its legitimacy. MK Levin, from the right wing Herut party, was one of the proposal's harshest critics. He portrayed the tax as exploiting the poor widow and her children. The widow, he argued, who had not only lost her husband and must now earn her own living, now was also forced to sell her home in order to pay the estate tax. According to MK Levin, the deceased husband was also robbed by the tax, since he had worked hard all his life, paid his taxes as an employee, and managed to save a little so that his family would be able to maintain a decent standard of living.⁴⁴ He was the first to suggest that the estate tax be abolished, at least as an experiment for 2 years.⁴⁵ Others were not as radical at this preliminary stage of discussions, but labeled the proposed amendment as "totally ignoring the rights of the citizens," "unjust," and a violation of "individual privacy."⁴⁶

Things heated up even further in June 1963, when the government dared to resubmit the proposal to the Knesset. Though this amendment proposed a lower tax than the proposed 1959 amendment,⁴⁷ many Knesset members were not satisfied. This growing dissatisfaction could have been caused by the growing power of the economic right in the opposition. After the elections in 1961, the economic right gained six additional Knesset seats (out of 120), and the Progressive Party left the coalition to join the opposition while establishing the Liberal Party together with the General Zionists Party. Unlike Herut – which was

⁴³ Knesset Discussions, Meeting No. 12 Dec. 21, 1959, at 149–51.

⁴⁴ *Id.* at 141.

⁴⁵ *Id.* at 142.

⁴⁶ *Id.* at 143, 144, & 149.

⁴⁷ For example in the 1959 version the maximum tax was 55%, in the 1963 version it was 50%. While the 1959 proposal allowed authorities to demand information related to the deceased's estate, the 1963 version exempted confidential information protected by the fiduciary relationship between the two. See Estate Duty Law (amendment no. 3), *supra* note 42.

also part of the economic right, but emphasized its pro-nationalist agenda – the Liberal Party highlighted its declared *laissez-faire* ideology.⁴⁸

After the first debate over the renewed suggested amendments, the proposal was transferred to the Finance Committee for further discussions. Its sub-committee met 28 times to discuss the Law's proposal and eight additional meetings were held in the committee plenum.⁴⁹ During these yearlong discussions, the Prime Minister, David Ben Gurion, resigned, and Levi Eshkol, who had presented the original proposal as Minister of Finance, became Prime Minister heading the same coalition. However, more important to the history of the estate tax was the activity of a coalition of Economic Organizations against the proposal. This coalition included representatives of the Manufacturers Association, the Contractors Organization, the Merchants Association, and the Landlords Association – who lobbied the Knesset, demonstrated, published manifestos in the press, and threatened to strike if their demands to lower the estate tax were not met.⁵⁰ This coalition resembled the elite, wealthy interest groups that lobbied during the same period in other countries to abolish estate and inheritance taxation.⁵¹

Moreover, Haaretz, with its economic tendencies to the right, took an active role in the battle against the law, publishing dozens of articles attacking estate taxation during the first half of 1964, including a series of five long articles published during the 2 weeks following the last vote in the Knesset, arguing that the tax would destroy the private sector, tighten the grip of the leftist public sector, allow the State to expropriate private property, and was the highest tax globally.⁵² Davar, the leftist newspaper, was not impartial either, although it did

48 Interestingly, the debate over income tax, which also divided the Israeli economic right and left, had already begun in the 1950s. In this debate, both leftists and rightists wanted to ease the tax burden, the former on employees and the latter on the self-employed, see Likhovski, *supra* note 38, at 360–61.

49 *Id.* at 2589. Knesset Discussions, Meeting No. 391, July 30, 1964, at 2572.

50 *Id.* at 2589. *An Action Committee against the Estate Tax has been Established*, HAARETZ, Jan. 9, 1964; *A Delegation of the Chambers of Commerce Demands that the Finance Committee Change the Law Proposal*, HAARETZ, Jan. 13, 1964; *Actions related to the Estate Law Proposal*, HAARETZ, Feb. 5, 1964; Yair Kotler, *An Emergency Convention against the Estate Tax is Threatening Strikes and Demonstrations*, HAARETZ, June 30, 1964; *Estate Tax – Expropriation Tax*, announcements to the public no. 1, 2, 3, 4 on behalf of the Inter-Organizational Committee for Tax Matters in Israel, published in HAARETZ, June 17, 1964; June 18, 1964; June 19, 1964; June 21, 1964.

51 *Id.* at 2589. David G. Duff, *The Abolition of Wealth Transfer Taxes: Lessons from Canada, Australia and New Zealand*, 3 PITT. TAX. REV. 71, 93, 97 (discussing Canada), at 107 (discussing Australia) (2005–2006).

52 *Id.* at 2589. Yair Kotler, *Estate Tax – Its Purpose Is Expropriation (Part A). The Histadrut and the Kibbutzim Are Exempted*, HAARETZ, July 10, 1964; *Estate Tax – Its Purpose Is Expropriation*

not publish on the matter at the same rate as Haaretz. It published a few pieces supporting the estate tax as a means to minimize “easy enrichment” and social inequality and blaming the rich and the economic right for fighting for narrow class interests, while emphasizing that this tax would and should not affect “the little man” and his family members.⁵³

Knesset members were aware of this public and media commotion and mentioned it in their discussions on the bill.⁵⁴ Indeed, the outcome of these deliberations and public pressure was a substantial departure from the original bill. In July 1964, the Knesset voted for an amendment that only taxed estates over 10,000 IL, increased the exemptions for spouses and children, added an exemption for dependent parents, exempted a residential apartment from a certain value, and completely exempted soldiers’ estates, wedding gifts, donations to the State, public municipalities, State funds, and universities. The tax on gifts was set to only five, and not seven, years, prior to the deceased’s passing. Moreover, government attempts to enhance tax enforcement by invalidating “fictitious deals” were missing from the final version of the amendment.^{55,56} The Chairman of the Finance Committee stated that these changes would decrease the tax revenue, which he added, was already low.⁵⁷ Some Knesset members were not convinced and argued that under the revised proposal, the

(Part B). *The Ministry of Finance Will Expropriate Apartments and Houses*, HAARETZ, July 12, 1964; *Estate Tax – Its Purpose Is Expropriation (Part C). Towards the Extermination of the Private Market*, HAARETZ, July 13, 1964; *Estate Tax – Its Purpose Is Expropriation (Part D). All the Cards to the Government*, HAARETZ, July 15, 1964; *Estate Tax – Its Purpose Is Expropriation (Part E). The Tax in Israel – the Severest in the World*, HAARETZ, July 16, 1964.

53 Aharon Yadlin, *In This Way We Will Go On*, DAVAR, Oct. 7, 1963; M. D. Davar Today – *Estate Tax – What Is False and What Is True?*, DAVAR, July 21, 1964; *After the Union Convention*, DAVAR, July 27, 1964; M. D. Davar Today – *Social Taxation*, DAVAR, July 28, 1964.

54 *Id.* at 2589. Finance Committee Protocol, June 30, 1964, at 2; Finance Committee Protocol, July 24, 1964, at 4–5; Finance Committee Protocol, July 26, 1964, at 14; Knesset Discussions, Meeting No. 391, *supra* note 49, at 2572, 2577, 2581, 2583, 2592.

55 *Id.* at 2589. Draft Bill Amending the Estate Tax (No. 3), 1964, HH, at 2617–23 (Isr.).

56 My analysis of all Supreme Court cases related to the estate tax ($n = 28$) revealed that the issue of “false deals” was not brought to this highest legal authority by the bureaucratic tax authority. More importantly, David Gliksberg has recently found that while the success rate of the authorities in tax related issues adjudicated by the Israeli Supreme Court (1948–2008) is approximately 70%, it drops to less than 50% in estate tax cases. Gliksberg suggests that these data reflect the Court’s unease with the estate tax and in this manner sent a message to the parliament that the Estate Duty Law should be reformed. See David Gliksberg, *Does the Law Matter? Win Rates and Law Reforms* (2013, unpublished manuscript).

57 Knesset Discussions, Meeting No. 391, *supra* note 49, at 2571.

“vegetarian’ law has become a tiger,”⁵⁸ and that “the beast has not only turned from a vegetarian into a tiger, but it also has grown an appetite.”⁵⁹

Family interests and rights were again one of the central arguments in the Knesset against the bill.⁶⁰ Widows and orphans were referred to again and again, as having lost their homes and businesses due to the tax, and credited with deserving a lower tax rate than individuals without family relations with the deceased.⁶¹ For example, MK Avramov, from the Liberal Party, argued that the bill was

the fruit of a well-calculated investigation into how to extract money from the citizen, how to make the orphans and the widow a subject of tax; a very respectable piece of work, without saying that it strikes at the widow and the orphans, since to Jewish ears this does not sound right. They say they are only taking from the estates and not from the heirs. The estate does not feel, the estate does not weep, the estate does not sit Shivah.⁶²

Likewise, MK Ben-Meir of the religious party Ha’mafdal argued for substantial exemptions for children, even those who were not minors, since: “A man must die, and if he accumulates assets, he wants his children to receive them. ... After all, there is some connection between a man and his children. ... The argument is the natural bond argument.”⁶³ MK Bader from the Herut Party, added in the same discussion: “One cannot discount the public’s feeling and the natural feelings of a man. A family is not a fiction.”⁶⁴

Notwithstanding the familial arguments, when reading the Finance Committee protocols and the last Knesset debate over the amendment, it becomes evident that the debate over the tax had evolved into a battle between the Knesset’s economic left and right. Indeed, for the first time, supporters of the law linked estate taxation to the goal of preventing private wealth accumulation and argued that it was a social and progressive tax, and not just a channel for

58 *Id.* at 2574.

59 *Id.* at 2589.

60 Other arguments were that the tax was lower in other countries and higher than in the past due to inflation; that it would deter foreign investments; that it would damage the market and discourage savings. See Knesset Discussions, Meeting No. 253, June 3, 1963, at 1939–51.

61 Religious Jewish Knesset Members objected to the recognition of inheritance rights and tax exemptions of common-law spouses, see Knesset Discussions, Meeting No. 12, Dec. 21, 1959, at 148; Knesset Discussions, Meeting No. 253, *supra* note 60, at 949; Knesset Discussions, Meeting No. 391, *supra* note 49, at 2590.

62 Knesset Discussions, Meeting No. 391, *supra* note 49, at 2587; *shivah* is the Jewish term for the weeklong mourning period that takes place immediately after the burial, during which first-degree relatives gather at the deceased’s home and receive comfort from visitors.

63 Finance Committee Protocol, June 21, 1964, at 6.

64 *Id.* at 7.

revenue.⁶⁵ The Chairman of the Finance Committee, Israel Guri – who represented the socialist Mapai party, which was in power from the establishment of the State until 1977 – argued that “our goal is to nurture in the country a taxation regime that will prevent the growth of dynasties which accumulate too much wealth.”⁶⁶ Furthermore, as in previous discussions, he claimed that while the proletarian parties represented the nation’s general interests, the two opposing parties, Herut and the Liberal Party, only represented interests of a particular social class.⁶⁷

Indeed, representatives of the latter parties did not try to conceal their support for the private sector. On the contrary, they argued that the estate tax was discriminatory since it taxed only one-third of the market that was held in private hands, while exempting two-thirds of the market that were governed by State organs, kibbutzim, and the Histadrut – Israel’s largest labor union.⁶⁸ Notably, Israeli economy during this period was still very centralized and in the hands of the State and its organs. Privatization of the Israeli markets was still two decades away.⁶⁹ Interestingly, MK Avramov, the one Knesset member who argued that a concentration of wealth weakens democracy since economic power leads to political power, was one of the most vocal opponents of the amendment. He used this argument, usually found among supporters of inter-generational wealth transfer tax, to attack the concentration of wealth within the public sector and to warn the government against using the tax to “exterminate the private sector.”⁷⁰ Moreover, the struggle over the law was not only between the coalition and the opposition but became a personal, aggressive, and publicized dispute between MK Bader, from the Herut Party, and MK Avramov, from the Liberal Party – both adherents of the economic right wing.⁷¹

While the debate in the Knesset was harsh, with both sides presenting contradictory data on Israeli society and opposing normative worldviews, it seemed that there was a basic consensus. On the one hand, no one suggested revoking the tax, and on the other hand all agreed that the tax should target only wealthy estates. For example, MK Shem-Tuv from Mapam, a socialist party,

65 Finance Committee Protocol, Dec. 23, 1963, at 5.

66 Knesset Discussions, Meeting No. 391, *supra* note 49, at 2572.

67 *Id.* at 2595.

68 Finance Committee Protocol, Dec. 23, 1963, at 7–8; Finance Committee Protocol, July 26, 1964, at 9.

69 IZHAK KATZ, PRIVATIZATION IN ISRAEL AND THE WORLD (1997) [in Hebrew].

70 Knesset Discussions, Meeting No. 391, *supra* note 49, at 2585–86.

71 *Dr. Bader on the Struggle for the Amendment of the Estate Duty Law: “The Contribution of the Liberals was Worthless,”* HAARETZ, July 28, 1964; *The Liberals Reject Dr. Bader’s Claims related to the Estate Tax,* HAARETZ, July 29, 1964.

which was part of the opposition, argued that the tax was essential since “all accumulation of wealth in private hands is wrong, both in small or large measure, and at the expense of the public. Thus, the public, that is the State, has a right to take from the person’s estate when it is transferred to a new ownership.” However, he admitted that “of course there is a problem with this – ensuring that the estate tax ‘catch’ the big estates, and not the small estates or the medium ones, which are to a substantial extent, the livelihood of those who receive or inherit them.”⁷² At the same time, MK Sapir, from the Liberal Party, which belonged to the opposite ideological camp, argued:

No one ever objected to an estate tax, or inheritance tax to be precise. The problem is how to impose the tax, which tax, and what are the outcomes of the tax We suggest that it not be an estate tax but an inheritance tax; that there will be no differentiation between a child younger or older than 22 years, but between a wife, a child, a parent [on the one side], and a stranger [on the other side], and that the deductions be reasonable. We support such amendments that allow a business to pay [the tax] out of [its] income and that it not be ruined, forced into debt and brought to dissolution.⁷³

Finally, the revised amendment was passed as drafted by the Finance Committee, with 43 Knesset Members supporting and 29 voting against it. Israel still had an Estate Duty Law, but the public and political debate left a reduced and weakened law – exactly the opposite situation the government desired.

To 1981

Between 1964 and 1981, several additional amendments were introduced to the Estate Duty Law, increasing deductions for orphaned grandchildren of the deceased⁷⁴; raising exemptions allotted to estates of civilians killed in enemy attacks⁷⁵; and modifying deductions vis-à-vis inflation.⁷⁶ Since the mid-seventies, however, the discussions over these amendments had become broader in scope and included repeated calls to revoke the law altogether.

In 1974, MK Erlich, from the Likud party, which was created in 1973 through the unification of Herut and a splinter group of the Liberal Party, argued that the law should be abolished, since under existing inflation tax revenue did not

72 Knesset Discussions, Meeting No. 253, June 3, 1963, at 1945.

73 Knesset Discussions, Meeting No. 391, *supra* note 49, at 2577, 2581.

74 Draft Bill Amending the Estate Tax Law (No. 4), 1969, HH 824, at 158 (Isr.).

75 Draft Bill Amending the Estate Tax Law (No. 5), 1975, HH 117, at 230 (Isr.).

76 Draft Bill Amending the Estate Tax Law (No. 6) 1975, HH 791, at 79–80 (Isr.).

justify the funds spent on collecting it.⁷⁷ Indeed, MK Kargman, the Chairman of the Finance Committee and a member of the Mapai party, explained that Estate Tax revenue equaled 45 million IL – out of the State’s budget of 56 milliard IL (i.e., 0.08%), because unlike in other countries, estates were small and divided among multiple heirs.⁷⁸ However, in April 1974, a Haaretz newspaper article reported the resignation of the Head of the Estate Tax Administration who claimed that the government did not provide his unit with the necessary manpower to enforce the law and that the tax revenue’s potential was actually ten times its actual sum.⁷⁹

In 1978, after the historic 1977 election, which ended the hegemony of the economic leftist Labor Party (the successor of Mapai) and established a coalition under the Likud Party, with its economic rightist ideology, the discourse, as was expected, grew against the tax.⁸⁰ MK Shilansky, of the Likud Party, was one of the more eloquent speakers. He argued that while in theory estate tax aimed to prevent major accumulation of wealth in the hands of few and minimize the social gap between the classes, in practice the affluent is able to find ways to evade the tax and its burden fall on the middle class.⁸¹ Shilansky emphasized the rights and interests of the deceased in familial intergenerational wealth transfer:

The nature of things is that a man wants to leave the fruit of his labor, the fruit of his efforts, a fruit that sometimes grows out of a seed that multiplied from what he denied himself, from what he denied his own stomach, to his offspring, to the generations that follow him. Is it just that we should hinder that man? Is it just that we should force him towards one of these three options: squander his money, so that nothing is left for the tax; evasion; or avoidance of any other kind and by any other means, so the tax will not be paid?⁸²

77 Knesset Discussions, Meeting No. 88, July 24, 1974, at 2414.

78 Knesset Discussions, Meeting No. 245, Dec. 30, 1975, at 930; *See also* Yehudit Bok, *Estate Tax, in the Years 1964–1978*, 12(46) ISRAELI TAXES Q. 179–180 (1980) [in Hebrew].

79 Shimshon Erlich, *Defect in the Estate Tax*, HAARETZ, July 14, 1974.

80 *See, e.g.*, MK Berman opened the presentation of his proposal to amend the law, by stating that: “As a matter of fact, the Duty Tax Law should have been abolished,” see Finance Committee Protocol, June 12, 1978, at 3; MK Cohen agreed that tax should be abolished in a later discussion over MK Berman’s proposal, see Finance Committee Protocol, Nov. 20, 1978, at 2; MK Sharir argued in another discussion over the law that the tax should be abolished, opining that he opposed the situation that “when a man dies, the State enjoys it,” see Finance Committee Protocol, Aug. 15, 1979.

81 One known way to avoid estate tax, which is used by the wealthy, is to establish a trust. *See* Adam Hofri-Winogradow, *Professionals’ Contribution to the Legislative Process: Between Self, Client and the Public*, 39 (1) L. & Soc. INQ. 96 (2014) (discussing the inability of the tax authorities to tax private trusts of Israelis until 2002).

82 Knesset Discussions, Meeting No. 151, Nov. 6, 1978, at 92–93.

Shilansky further argued that parents place themselves at the mercy of their children when giving *inter vivos* gifts to avoid the tax. He concluded his speech before the Knesset by claiming that the meager revenue from the estate tax is disproportionate to the immense damages it causes.

However, a few Knesset members from the opposition supported the tax. Among them, MK Pa'il, from the economic left-oriented Sheli Party, who branded revoking the law “a scandal” and called for additional measures to tax wealth and those who profit from inflation.⁸³

It took a year and a half for the scandalous act to occur, but even before that, the government proved that it could “kill” the tax without first “killing” the law.⁸⁴ In its last weeks in power, the previous government, under the Labor Party, amended the law allowing the Minister of Finance, with the approval of the Finance Committee, to change exemption and deductions rates.⁸⁵ The new government took advantage of this option. First, the Minister of Finance issued regulations that raised the exempted estate value from 95,000 IL to 140,000 IL, and later to one million shekels, the new currency of Israel (one shekel = 10 IL), i.e., an increase of more than 1000%. Similarly, deductions were dramatically increased as well. For example, spousal deduction rose from 160,000 IL to 250,000 shekels (more than a 1500% increase).⁸⁶ These were the years in which inflation rates in Israel began to rise dramatically: In 1978, they were 48%; in 1979, 111%; and 133% in 1980. Yet, even these admittedly high figures still cannot justify the increase by hundreds of percent on rates that were determined only in 1977 by the previous Knesset. Under these circumstances, 98% of estates were completely exempt from the tax, compared to 85% before 1979.⁸⁷

Indeed, as early as 1977, the Ma'ariv newspaper reported that the Chamber of Commerce had approached the Chairman of the Likud Party requesting to revoke the estate tax and that the Chairman had sympathized with this demand.⁸⁸ In 1979, the Minister of Justice was quoted by the press stating that he was cooperating with the Minister of Finance to discuss repealing the

83 *Id.* at 89–90.

84 Indeed, as MK Flomin stated: “We can ‘kill’ the law by tripling and multiplying by four all the sums” [of exemptions], see Finance Committee Protocol, June 9, 1980, at 11.

85 Draft Bill Amending the Estate Duty Law (No. 7), 1977, art. 7, HH 1298, at 224.

86 Estate Tax Regulations (Change of Sums and Levels of Tax), 1978, KT 3814 (Isr.), Estate Tax Regulations (Change of Sums) (no. 2), 1979, KT 4019 (Isr.); Estate Tax Regulations (Change of Sums), 1980, KT 4140.

87 THE PUBLIC COMMITTEE REPORT FOR A REFORM IN INCOME TAX 114 (2000) [in Hebrew] [hereinafter the Ben Bassat Committee].

88 *Heavy Tax*, MA'ARIV, Mar. 26, 1977.

estate tax.⁸⁹ Interestingly though, it was four coalition members, and not the government, who introduced a private bill to revoke the law. The bill's preamble stated that

[d]uring the years in which the law had been enforced it became clear that the burden was mainly carried by heirs of small estates, while owners of assets having a high value avoided paying the tax by transferring the assets to their "heirs" while they were still alive. This fact not only causes injustice in allocating the tax burden, but also leads to low tax revenues – which are not worth collection expenses.⁹⁰

In the very short discussion over the bill, those who submitted the bill were accused of serving "a certain stratum within Israeli society"⁹¹ and protecting "the owners of large assets,"⁹² but at a pace resembling the legislation of the Estate Duty Law in 1949, it was put to death 2 weeks after the bill was submitted.⁹³ In this manner, Israel resembled Canada, which abolished federal and provincial estate taxes during the 1970s and 1980s, and Australia, which abolished its wealth transfer taxes in the late 1970s and early 1980s.⁹⁴ Interestingly, 1981 was the same year that President Reagan's tax reform dramatically weakened the U.S. federal estate tax.^{95,96}

89 Moshe Tamir, *We will Act to Abolish the Estate Tax*, MA'ARIV, Mar. 23, 1979.

90 Draft Bill Amendment No. 19, Repealing the Estate Duty Law, 1981, HH 1526, at 2931526, Mar. 16, 1981.

91 Knesset Discussions, Meeting No. 434, Mar. 17, 1981, at 2169.

92 Knesset Discussions, Meeting No. 439 Mar. 30, 1981, at 2414.

93 In fact, the tax was only completely revoked in 1987. Since the original repeal was not retroactive, estates of those who died before 1981 were taxed. By 1987, the tax yielded very little revenue but employed two tax clerks. See Finance Committee Protocol, Dec. 12, 1987, at 5; Draft Bill Repealing the Estate Duty Law HH 1860, at 80.

94 Duff, *supra* note 51, at 72. Notwithstanding, upon abolishing its estate tax, Canada introduced a capital gains tax and applied it to gains accrued on bequeaths and gifts, hence, see Richard M. Bird, *The Taxation of Personal Wealth in International Perspective*, 17 (3) CANADIAN PUB. POL'Y 322 (1991).

95 BECKERT, *supra* note 32, at 203.

96 Italy, Sweden, and Cyprus also revoked their estate laws during the first decade of the third millennium. However, several countries that repealed these taxes legislated others instead: for instance tax on capital profits that effect intergenerational wealth transfers. The continent countries maintain their estate or inheritance taxes, though revenue from these taxes has decreased over time. See Benny Calderon, *Taxation of Gifts and Bequests Parents Grant to Their Children* (Ph.D. Thesis, Faculty of Law, Bar Ilan University), at 15–18 [in Hebrew]; Lily L. Batchelder, *What Should Society Expect from Heirs? The Case for a Comprehensive Inheritance Tax*, 63 TAX. L. REV. 1, 44 (2009).

The New Millennium

In 1999, One Israel, a political party that unified the Labor Party with moderate religious parties, gained sufficient support in the elections to establish a shaky coalition that lasted less than 2 years. Three months after the elections, the Minister of Finance nominated a committee of experts, headed by Avi Ben Bassat, to examine all direct taxes.⁹⁷ The committee was asked to examine the tax system in the light of changes to the Israeli economy and its global context and suggest ways to increase labor and production, and at the same time pay “special attention to the inequalities in income in Israel.”

In May 2000, the Ben Bassat Committee submitted the following recommendations: (1) a 10% tax on estates larger than two million NIS⁹⁸; (2) a two million NIS tax deduction for the surviving spouse’s estate in addition to that part of the estate received from the deceased spouse and which will be determined at the demise of the surviving spouse; (3) gifts over 50,000 NIS per year be reported by the giftor – which in these cases is taxed at 10% when a person gives more than 2 million NIS during his lifetime on the sums above the 2 million. The committee further recommended a deduction for donations to public institutions. The committee justified recommending reviving the estate tax by arguing that inflation was low; it would minimize inequality in wealth transfer; improve equal opportunities in Israeli society, the social justice gained by the tax would justify enforcement costs, and it exists in many developed countries.⁹⁹ Indeed, Israel at the beginning of the new millennium was very different from when the estate tax was abolished, inter alia because it had become a radically stratified society with one of the greatest rates of income inequality, in comparison to other developed countries.¹⁰⁰ Recently, Shlomo Izhaki, a member of the Ben Bassat

97 Nomination letter by Avraham (Baiga) Shochat, Oct. 31, 1999. The media reported objections to the committee discussions over estate taxation since this was an indirect tax, see Ben-Zion Zeitlin, *Prof. Hadari: The Ben Bassat Committee has no Nomination Letter to Impose Estate Tax and Gifts Tax*, HAARETZ, May. 31, 2000; Ben-Zion Zeitlin, *Prof. Itzhaki: The Ben Bassat Committee Did Not Diverge from Its Jurisdiction*, HAARETZ, June 5, 2000.

98 In 1986, the Israeli currency was changed so that one New Israeli Shekel=1,000 Shekels.

99 Ben Bassat Committee, *supra* note 87, at 113–16; for a critical review of the Ben Bassat Committee’s recommendations for estate and gifts taxes, see Yehezkel Flomin, *Estates and Gifts Taxation*, 14 (3) MISIM A3-12, (2000) [in Hebrew] (arguing that this part of the committee’s report should be “buried and pass from the world like a bad dream”). *Id.* at A12.

100 OECD (2011) *Divided We Stand: Why Inequality Keeps Rising*, available at http://www.bmask.gv.at/cms/site/attachments/0/7/9/CH2267/CMS1343644102547/oecd_divided_we_stand_2011.pdf.

Committee, explained that the committee's recommendation targeted tycoons, as it aimed at minimizing the concentration of wealth in Israel.¹⁰¹

The government approved the committee recommendations soon after they were published and nominated a ministerial committee to initiate appropriate legislation.¹⁰² The media reported an almost hysterical reaction that started even before the recommendations were published, immediately after the possibility of taxing estates was leaked to the press: Company owners transferred shares to their children, bank account holders added their children to their accounts, and parents gave their children assets as *inter vivos* gifts – all in fear of the expected estate tax.¹⁰³ Likewise, lawyers and accountants were quick to brief the public on the tax and to suggest ways to avoid it, emphasizing the motivation of keeping the wealth within the family.¹⁰⁴ Moreover, Haaretz dedicated numerous articles against,¹⁰⁵ and (fewer) for,¹⁰⁶ the possible enactment. However, the mountain turned out to be a molehill when the Ben Bassat Committee's

101 Presentation at the Van Leer Institute Conference: "Taxation Policy in Israel," Dec. 25, 2012.

102 Moti Bassok, *The Government Approved the Ben Bassat Committee's' Reconditions in a Large Majority*, HAARETZ, May 8, 2000.

103 See, e.g., David Lipkin, *A Wave of Property Transfer to Heirs for Fear of Enactment of Estate Tax*, MA'ARIV, Apr. 10, 2000; David Lipkin, *Parents Join Their Children to Their Accounts in Order to Bypass the Estate Tax*, MA'ARIV, May 3, 2000; Shai Elias, *Towards Estate Tax: Company Stakeholders Transfer Shares to Their Children*, MA'ARIV, May 8, 2000; Yoram Gavison, *Arledan – The Reshef and Libs Families Are Preparing for the Estate Tax*, HAARETZ, May 4, 2000; Alona Koren, *Recanati and Carasso Transferred Most of the Holdings in I.D.B. to their Offspring* HAARETZ, June 3, 2000; Maor Ziv, *The Real Estate Market following the Ben Bassat Report: The Public is not the Only One Confused*, HAARETZ, May 8, 2000. After the public learned that no estate and gifts tax will be imposed, some turned to the authorities asking to undue legal acts they took to secure the wealth within the family, see Eynat Shai, *Annulment of Gifts in the Family*, HAARETZ, Dec. 17, 2000.

104 Avraham Alter & Helena Ben Baroch, *Recommendations Related to the Expected Implementation of Tax Reform*, 49 (3) ACCOUNTANT 269 (2000) [in Hebrew]; Amir Halevi & Smuel Bornstein, *Preparation for the Possibility of Estate Tax in Israel*, 420 YEDA LA'MIEDA 90–91 (2011) [in Hebrew]; Hagai Elmakaies & Ran Archi, *Planning in Advance for the Estate Tax Enactment in Israel*, 422 YEDA LA'MIEDA 202–03 (2011) [in Hebrew]; Ben-Zion Zeitlin, *To Divide the Estate While Alive*, HAARETZ, Apr. 16, 2000, at 7.

105 See, e.g., Yossi Shostak, *Leave the Estate Tax*, HAARETZ, Apr. 16, 2000; Ben-Zion Zeitlin, *Estate Tax – What Hides One of the Problematic Articles in the Ben Bassat Committee's Recommendations*, HAARETZ, May 1, 2000, at 8; Ben-Zion Zeitlin, *The Tax Reform/Most Experts' Arguments – Around One Article in the Ben Bassat Committee's Recommendations*, HAARETZ, May 21, 2000; Ben-Zion Zeitlin, *The Accountants Bureau Express Doubts as to the Estate Tax*, HAARETZ, May 21, 2000; Moti Bassok, *Home Owners: A Tax on Rent and Estates is a Decree that We Could Not Obey*, HAARETZ, May 31, 2000.

106 See, e.g., Nehemia Shtrasler, *The Estate Tax and Greed*, HAARETZ, May. 5, 2000; Guy Rolnick, *Comments on Ben Bassat*, HAARETZ, May 3, 2000.

recommendations regarding estate taxation were not implemented. According to the press, the Shinui Party, a small *laissez-faire* party that was part of the coalition vetoed the recommendations.¹⁰⁷ In addition, it was clear that the tax would receive neither the Finance Committee nor the Knesset's support.¹⁰⁸

Notwithstanding, it was subsequently discovered by Haaretz that the Ministry of Finance had conducted polls before and after the publication of the Ben Bassat committee report to evaluate the public's support for the reform; it found that more than 65% of the participants supported estate taxation. However, in another poll conducted in 2001, only 25% supported the tax.¹⁰⁹ Silvan Shalom, the new Minister of Finance from the Likud party – which returned to power after the previous coalition crumbled in the face of dramatic events, including the retreat from Lebanon, the failure of the peace talks in Camp David, and the second Intifada (Palestinian uprising) – ordered the third poll. This political instability was also connected to a peak in the process that began in the late 1970s and still continues until this day: the parcellation of Israeli society into acrimoniously divided groups according to ideological, religious, ethnic, national, and economic beliefs.¹¹⁰ Notwithstanding these rifts, this period is also characterized by the blurring of the distinction between the political right and left, including in the economic sense and by the almost complete dissolution of the economic left as a political force.¹¹¹

Surprisingly, or not, in 2003, it was the Likud Party and MK Netanyahu, then Minister of Finance, who returned the discussion to the estate taxation¹¹² and suggested enforcing a 10% tax on estates larger than three million NIS in order

107 Yossi Grinstein, *Persuasion Effort ...*, MA'ARIV, May 2, 2000.

108 Guy Rolmnik, *The Millionaires Knesset*, MA'ARIV, Nov. 13, 2000; Zvi Zeharya, *Shochat Will Submit Tomorrow a Law Proposal Regarding the Tax Reform*, HAARETZ, July 25, 2000; The Minister of Finance, Baiga Shochat, failed to pass the reform even after he agreed to pull out the estate tax, see Zvi Zharya, *Shochat Will Ask to Vote on the Reform Law Proposal – If a Majority will be Secured*, MA'ARIV, Nov. 11, 2000; Moti Bassok, *Shochat: The Reform Was Too Wide*, MA'ARIV, May 5, 2001; The Ben Bassat Committee recommendations even caused MK Yaacov Litzman to submit a law proposal according to which “No tax will be enforced on a deceased's estate, or on a gift a person gave,” with the reservation that this “no law” would be changed only with a majority of Knesset members. See Law Proposal: The Prohibition on Estate Tax and Gifts Tax, 2000/1855 [in Hebrew].

109 Moti Bassok, *The Secret Polls of the Ministry of Finance*, MA'ARIV, Mar. 3, 2002. In all three polls, the survey included a representative sample of 500 respondents.

110 Uri Ram, *Between Nation and Corporations: Liberal Post-Zionism in the Global Age*, 2 (1) ISRAELI SOC. 99 (1999) [in Hebrew].

111 GOLAN LAHAT, *THE MESSIANIC TEMPTATION, THE RISE AND FALL OF THE ISRAELI LEFT* (2004) [in Hebrew].

112 Yossi Grinstein, *The Ministry of Finance Promises: The Next Round is at the Expense of the Rich*, HADASHOT, Aug. 24, 2003, Mosaf p. 15 [in Hebrew].

to balance the state budget. According to the press, it was the Shinui Party again that prevented the estate tax from re-materializing by threatening a coalition crisis over the tax.¹¹³ In 2005 as part of the election campaign, MK Peretz, then leader of the Labor Party, promised to enact an estate tax of about 15% on estates larger than five million NIS. He and his associates clarified that the estate tax would only be imposed on millionaires and it would not harm the middle class.¹¹⁴ While the Labor Party was once again part of the coalition after the election, it was only a small part of a large government headed by a new party, “Kadima,” which did not endorse Peretz’s enthusiasm for estate taxation.

At present, MK Yachimovich is the most active Knesset member in favor of implementing an estate tax. In 2010, she mentioned the Ben Bassat committee’s recommendations in her bill to revive an estate tax. However, she suggested enforcing only a 10% tax on estates larger than 10 million NIS.¹¹⁵ In her 2012 proposal, after she was elected the head of the Labor Party, she retreated to a 5% tax on estates larger than 15–20 million, 7.5% tax on the next five million, 10% tax on the next five, and 12.5% tax on estates over 30 million.¹¹⁶

During the time between Yachimovich’s bills, the Trachtenberg Committee, established as a result of massive public protests for social justice that took place in Israel in the summer of 2011,¹¹⁷ published its recommendations. Interestingly, although the committee stated that inheritance tax was “very progressive” and hence “socially just, especially in the light of the centralization of wealth we are witnessing in the Israeli market,” it recommended not reviving an estate tax. The majority of the committee concluded that the disadvantages of inheritance or estate tax were greater than the advantage of the estimated revenue of one milliard NIS.¹¹⁸ Disadvantages included ongoing reporting by citizens to authorities on the receipt of gifts and bequeaths; a large and

113 Yossi Grinstein, *Netanyahu Surrendered to Shinui: There Will be No Estate Tax*, MA’ARIV, Aug. 25, 2003, Asakim at 2.

114 Nadav Eyal & Yehoda Sharoni, *Peretz Plans: Inheritance Tax for the Rich*, MA’ARIV, Dec. 5, 2005, at 4; Tally Lipkin Shahak, *This is not a Honeymoon*, MA’ARIV, Dec. 9, 2005, Mosaf at 6.

115 Estate Duty Law Bill, 2010,2180.18/

116 Estate Tax Bill on Large Legacies, 2012. This bill was also part of MK Yachimovich’s “Plan for A Decent Economy,” prepared for the 2013 elections, *available at* <http://www.shelly.org.il/sites/default/files/files/plan2013.pdf>, at 58–59.

117 To Do Things Different: An Outline for the Establishment of an Improved Society, the Social Protest 2011–2012 (Yossi Yona & Aviya Spivak eds., 2012) [in Hebrew]; ASHER SCHECHTER, ROTHSCHILD: A STORY OF A PROTEST MOVEMENT (2012) [in Hebrew].

118 The estimated income from all taxes in 2011 was 232.3 milliard NIS, *available at* http://www.mof.gov.il/BudgetSite/StateBudget/Budget2011_2012/Lists/List/Attachments/1/tahazit_2011_12.pdf.

expensive enforcement body; creation of tax evasion mechanisms; increased litigation between the citizens and the State; a burden on the middle class and those who suffer from the sudden death of the testator who did not have the means or time to evade the tax; and abhorrence by rich Jews to immigrate to Israel, as a death tax haven, with their fortunes.¹¹⁹ Indeed, although the press has published articles both objecting to¹²⁰ and supporting¹²¹ taxation of intergenerational wealth transfer since the social justice protest in the summer of 2011, neither estate tax nor inheritance tax have become a public demand; therefore it seems unlikely that the political system will enact any such a tax in the near future.¹²²

As can be seen from the historical review above, the story of the birth, death, and attempts to revive the estate tax in Israel is a litmus paper of the dramatic social, political, economic, and cultural shift that has taken place in its 65 years of existence – which is particularly a move from a hegemonic and centralistic nation state with an ethos of collectivism and socialism¹²³ to a fragmented society with a growing tendency to privatization, neo-liberalism, and individualism.¹²⁴ One outcome of this move is the growing inequality within Israeli society. Indeed, today Israel is characterized by extreme inequality in income,¹²⁵ with those in the highest decile earning on average 13 times more

119 The Tax System – Main Recommendations [in Hebrew] available at <http://hidavrut.gov.il/sites/default/files/taxs.pdf>, at 99–100. The motivation of constructing Israel as a tax haven for rich Jews from the diaspora was also apparent in the recent Israeli trusts taxation regime, see Hofri-Winogradow, *supra* note 81.

120 See, e.g., Avi Nov, *Opinion: Inheritance Tax Will Not Diminish Inequality*, YNET, Feb. 2, 2012, available at <http://www.ynet.co.il/articles/0,7340,L-4194905,00.html>; Tali Yaron-Eldar, *Who Will Carry the Burden of the Estate Tax? The Middle Class*, TheMarker, Aug. 28, 2011, available at <http://www.themarker.com/markets/1.1006516>; Motti Arnia, *Estate Tax Will Drive Away Rich Newcomers*, Mar. 8, 2013, available at <http://www.themarker.com/opinion/1.1659175>.

121 See, e.g., Shai Asperil, *The Rich Who Claim to be Patriots Should Support Inheritance Tax*, CALCALIST Aug. 4, 2011, available at <http://www.calcalist.co.il/local/articles/0,7340,L-3526795,00.html>; Yosef Shetah, *An Estate Tax Can be Enforced Without Harming the Middle Class*, THE MARKER, Sept. 1, 2011, available at <http://www.themarker.com/law/1.1182298>.

122 Avital Lahav, *Is Death Not Tax Free?*, YNET, Sept. 23, 2012 [in Hebrew], available at <http://www.ynet.co.il/articles/1,7340,L-4283966,00.html>.

123 Zeev Sternhell, *NATION BUILDING OR A NEW SOCIETY?*, 401–20 (1995) [in Hebrew] (arguing that Israel was never a socialist society and that the ethos of socialism misrepresents the leftist parties' resolution to prefer national causes, among other ways by cooperating with the middle class and allowing capitalism, over a true attempt to create an equal society).

124 Uri Ram, *supra* note 110.

125 Eyal Kimhi, *Income Gaps In Israel*, Ctr. Policy Paper no. 2011.05, available at <http://taubcenter.org.il/tauborgilwp/wp-content/uploads/H-Income-Inequality-2011.05.pdf>, at 104

than those in the lowest decile¹²⁶ and with a percentile that earns billions of dollars from capital rather than from labor.¹²⁷ Hence, while in the early years of the State, millionaires were very rare, today there are thousands of millionaires in Israel and an even larger sector of society that has substantial wealth ready to be passed on to the next generation. However, as the estate tax became more relevant economically, it has become less popular politically.

Moreover, the historical review above also points to the critical role familial ties play in the debate over taxing intergenerational wealth transfer. The spouse's and the children's needs, interests of family businesses, and the right to ensure that one's family is economically secure after passing were central arguments against the estate tax. Likewise, parents acted to protect familial intergenerational interests once they feared such a tax was to be revived. Indeed, the shift from collectivism to individualism has not destroyed Israeli familism.¹²⁸ The family is still an important economic and emotional sphere and a powerful rhetorical tool in the hands of those who oppose the tax.¹²⁹ From a comparative perspective, as Beckert's study illustrates, this emphasis on the family resembles the historical political discourse on inheritance taxation in Germany, while the additional recent emphasis on the very rich resembles the debate over the estate tax in the US, in which the "the great fortunes are always

126 Amnon Atad, *The Highest Decile Earns 13.4 Times More Than The Lowest Decile*, CALCALIST, June 27, 2001 [in Hebrew], available at <http://www.calcalist.co.il/local/articles/0,7340,L-3522325,00.html>; In the US, the chance that a child born to the highest decile will end up in this decile is fifty-three times greater than for a child born in the lowest decile. 30% of this correlation is explained by financial inheritance, see Batchelender, *supra* note 96, at 24.

127 Naama Sikoler & Hadar Kana, *The Good Life of The Upper Percentile: 32 Thousand Individuals Earn Like the Whole Security Budget*, CALCALIST, Aug. 22, 2011 [in Hebrew], available at <http://www.calcalist.co.il/local/articles/0,7340,L-3528861,00.html>.

128 Fogiel-Bijaoui, *supra* note 36; SYLVIE FOGIEL-BIJAOU, *FAMILIES IN ISRAEL: TENDENCIES AND CHARACTERISTICS* 12–14 (2009) [in Hebrew].

129 In 1912, Emile Durkheim predicted a shift from familial inheritance to organizational inheritance. He argued that in the industrialized era, the family is no longer suitable for ensuring the continuity of economic life. It is unstable and is not strong enough to link the generations. Hence, people will prefer to bequeath to organizations such as their professional society, a voluntary association, and public institutions such as hospitals and universities. The findings reported here provide more evidence to support the claim that Durkheim was in the wrong. See T. P. Schwartz, *Durkheim's Prediction about the Declining Importance of the Family and Inheritance: Evidence from the Wills of Providence 1775–1985*, 36 (3) *SOCIOLOGICAL Q.* 503 (1996). Durkheim's unfulfilled prophecy was linked to his position that individually inherited wealth is a breach of the social contract and a barrier to an egalitarian and just society. See Ann Mumford, *Inheritance in Socio-Political Context: The Case for Reviving the Sociological Discourse in Inheritance Tax Law*, 34 (4) *J. L. & Soc.* 567, 580–81 (2007).

the implicit point of reference.”¹³⁰ This move legitimates and protects familial intergenerational wealth transfers in general, while singling out and targeting taxation of only very rich families.

In the next section, I leave the Israeli case in order to return to it once again in the final section. The next section graphically maps the vibrant recent scholarly and political debates over the taxation of intergenerational wealth transfer and places the Israeli debate in a broader moral and pragmatic context. While the previous part demonstrates the importance of exploring the particularities of the legal history of a specific society, the more general and abstract discussion that follows is crucial for the normative section that closes the paper. Indeed, the lessons from the first two parts lead to a discussion on accession tax and of ‘social inheritance; as a means to link familial and social intergenerational wealth transfers, a link that might improve the chances of gifts and bequeath transfers being taxed in Israel.

For and Against the Taxation of Intergenerational Wealth Transfer

Political debates over intergenerational wealth transfer taxation have gained intensity in recent years. This growing dissatisfaction is manifest in the U.S.’s substantial weakening of its estate tax¹³¹ and in Italy, Sweden, and New Zealand joining Canada, Australia, and Israel in abolishing their inheritance tax during the first decade of the third millennium.¹³² These developments have mainly attracted the attention of legal scholars and economists, but also of scholars from other disciplines. I offer my humble contribution to this lively literature in the shape of an annotated graphic summary of the political and scholarly arguments for and against intergenerational wealth transfer taxation. These arguments can be divided into two main categories: moral and practical. As is elaborated below, both categories have unfounded rhetorical arguments that reflect the unpopularity of the “death tax” in many countries.¹³³ Indeed, even if

130 BECKERT, *supra* note 32, at 170.

131 MICHAEL J. GRAETZ & IAN SHAPIRO, *DEATH BY A THOUSAND CUTS* (2005).

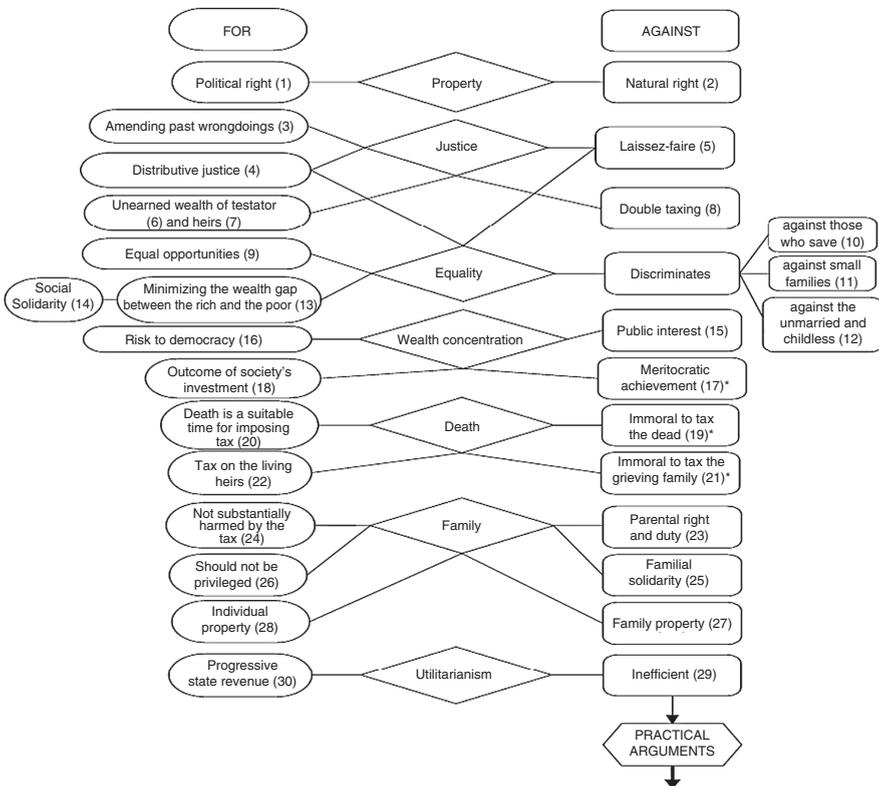
132 Duff, *supra* note 51; Natalie Lee, *Inheritance Tax – an Equitable Tax No Longer: Time for Abolition?* 27 (4) *LEGAL STUD.* 678 (2007).

133 On the unpopularity of the tax, see Calderon, *supra* note 96, at 118–22.

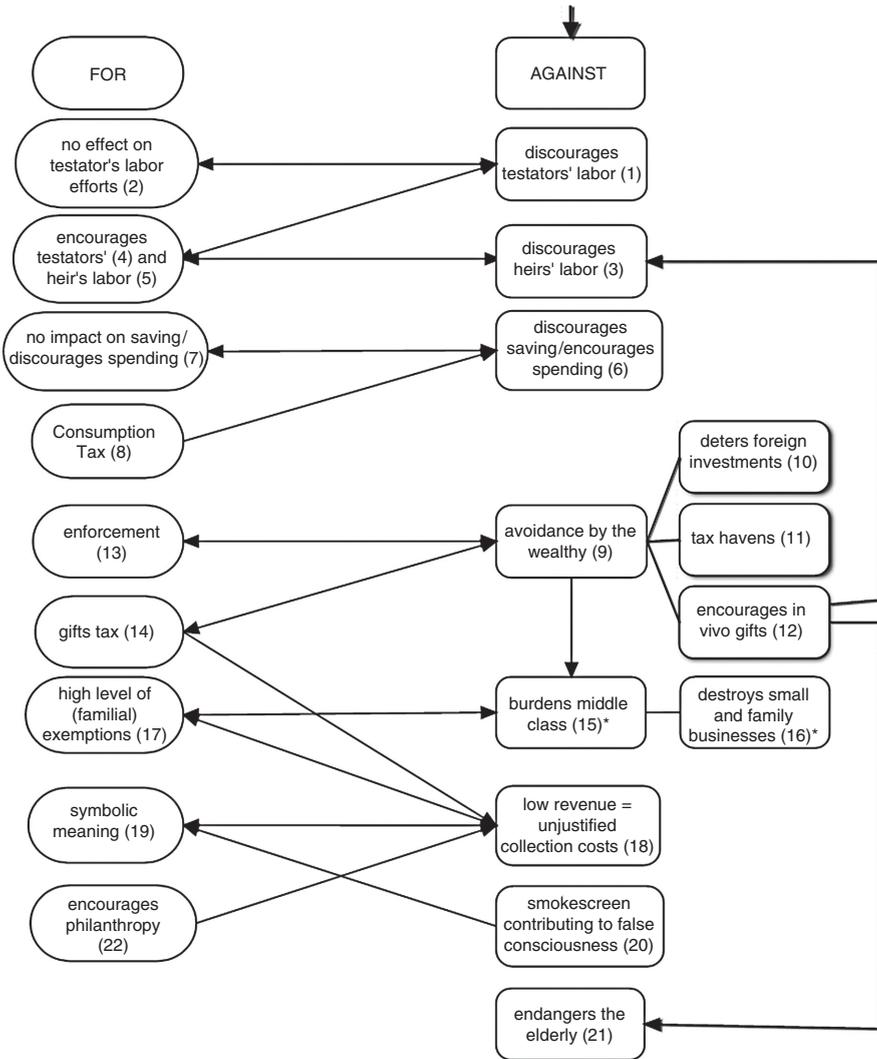
one is convinced that intergenerational wealth transfer taxation is moral, one must be convinced that it can achieve its moral goals as well as overcome the bad public relations from which it suffers.

The first graph below maps the moral arguments for and against estate and inheritance tax.ⁱ Those who object to the moral arguments must address the practical arguments raised against estate and inheritance tax, a discussion mapped in the second graph.ⁱⁱ The bibliography of both graphs and some elaborations of their arguments are found in two endnotes to this paper. An asterisk marks the arguments mentioned in the literature as arguments raised by a political actor or documented as a popular view, but not endorsed academically.

Moral Arguments For and Against Estate and Inheritance Taxation



Practical Arguments Raised Against Estate and Inheritance Tax



The debate mapped by the graphs reveals deep ontological and ethical controversies between advocates of the free market and those seeking distributive justice.¹³⁴ Briefly, supporters of intergenerational wealth transfer taxation perceive property as a political right that could be shaped by society through estate or inheritance tax to amend market failure to overcome privilege and luck, to prevent wealth accumulation that can be translated into political power, and to secure state revenue while taking from lucky heirs in order to benefit society as a whole. Opponents hold very different worldviews: Wealth is the outcome of individual and familial achievement, and its ownership and transfer are natural rights that should be protected from state intervention, especially at death. Moreover, the graphs and notes show that while most of the scholarly debates center around the meaning of equality in a liberal society and on the motivations to economize (see endnote i(9)–(10), ii(6)–(7)), the political and popular debates center around death and family (see endnote i(19), i(21), i(25)).

I agree with those who think that intergenerational wealth transfer taxation is the fairest mechanism for state revenue,¹³⁵ though the intellectual journey as is mapped above has caused me to abandon my former, and somewhat naïve, supportive starting point. Indeed, I am worried by the many practical arguments raised against the tax, not only because of the need to address them in order to gain popular and political support but also due to the risk of creating an illusory tax – in which the wealthy appear to pay their share, while actually managing to evade it. The final section of the paper briefly addresses these concerns, while focusing on the search for inspirational suggestions that could ease the tension between familial and social interests in intergenerational wealth transfer.

134 Interestingly, Mary Louise Fellows has recently argued that support for estate taxation can even be found in the writing of Adam Smith, “a twenty-first century icon of free and unregulated markets.” Fellows claims that Smith’s theory is distorted by free market advocates who oppose estate taxation, when ignoring his perception of sympathy and his distinction between self-interest and selfishness. See Mary Louise Fellows, *Eighteenth-Century Moral Sentiments in Defense of Twenty-First Century Estate Tax: What Adam Smith and Jane Austen Can Teach Us*, in *TAX LAW AND POLICY: BEYOND ECONOMIC EFFICIENCY* 79–102 (David W. Brennan & Karen B. Brown eds., 2013).

135 William G. Gale & Joel Slemrod, *Overview*, in *RETHINKING ESTATE AND GIFT TAXATION* 7 (William G. Gale, James R. Hines, Jr. & Joel Slemrod eds., 2001).

Bridging the Gap: Accession Tax and Equalizing Grants

Several scholars have addressed the paradoxical mystery of estate and inheritance taxes: While these taxes affect a small percentage of the population¹³⁶ and are aimed at benefiting the majority that is not taxed, they suffer from growing unpopularity.¹³⁷ Edward McCaffery argues that this unpopularity is a significant sign that the taxes are normatively wrong, but other scholars refuse to endorse his “social theory that looks for norms in society’s actual practices and beliefs,”¹³⁸ and argue that the unpopularity of intergenerational wealth transfer taxes is the outcome of misunderstandings,¹³⁹ effective political lobbying by private property interest groups,¹⁴⁰ and the “lottery hypothesis” (the popular belief among non-wealthy individuals that someday they might be wealthy enough to be taxed, although in reality there is very little chance that they will).¹⁴¹

This misconception notwithstanding, several scholars have recently acknowledged the importance of the link between the popular resistance to the tax and people’s conceptions of familial intergenerational wealth transfer rights and interests. For example, the economic and social researcher Rajiv Prabhakar reports that in the focus groups he has studied in the UK, “much of the hostility towards inheritance tax appears to arise from a view that the government was violating a natural impulse to give to one’s children,” and that “inheritance tax seemed to represent an attempt by an uncaring

136 During the mid 2000s in the US, the tax affected the estates of the richest citizens (1–2% of citizens), see GRAETZ & SHAPIRO, *supra* note 131, at 1; and in the UK, 5.4% of all estates paid the tax, see Prabhakar found that this argument was a major criticism raised by participants of focus groups he studied in the UK. See Rajiv Prabhakar, *Can Public Opposition to Inheritance Tax Be Weakened?*, 24 (3) PPA 227, 235 (2009).

137 GRAETZ & SHAPIRO, *supra* note 131, at 1; Martin O’Neill, *Death and Taxes’ Social Justice and the Politics of Inheritance Tax*, 15 (4) RENEWAL 62, at 62 (2007); Calderon, *supra* note 96.

138 Edward J. McCaffery, *The Uneasy Case for Wealth Transfer Taxation*, 1045 YALE L. J. 283, at 286 (1994–1995).

139 Lily L. Batchelder argues that the focus in the US on taxing the estate caused people to believe, wrongly, that the burden of the tax is borne mainly by the donor. See *supra* note 96, at 3; Gale & Slemrod argue that the popular objections to taxation at death are groundless and are used as a smokescreen. See Gale & Slemrod, *supra* note 135, at 32.

140 For a fascinating account of the political struggle against the estate tax in the US, see GRAETZ & SHAPIRO, *supra* note 132; for the role played by interest groups in the campaign against inheritance taxation in Canada, see Duff, *supra* note 51.

141 McNamee & Miller, *supra* note 1, at 209.

government to disrupt family bonds.”¹⁴² The socio-legal scholar Ann Mumford argues along similar lines: “To begin to understand the emotional reactions to inheritance tax, however, the relationship between economics and parenting requires consideration.” According to Mumford, the value parents put on providing for their children financially and the emotional attachment people have with the family home make any fear of losing that home a platform for resisting inheritance tax.¹⁴³ These observations correlate with findings of the above historical analyses of the estate duty in Israel. As we have seen, family-related arguments were central to the political debate over the estate tax until its abolishment, and the media reported parental action to secure wealth transfer to children when threatened with the possibility of its reenactment. Understood together, we return to the “emotional trend” described at the beginning of the Article, but now with a vivid example of the interrelations and interdependency between the economic and the emotional meanings of intergenerational wealth transfer and these interrelations embedded in the family as a cultural phenomenon.

Indeed, Benny Calderon has dedicated his dissertation to the centrality of parent-child relations to the formulation of inheritance and gifts taxes. Calderon argues that wealth transfers from parents to their children affect the parents’ benefit, since they enjoy securing their children’s wellbeing. Furthermore, such transfers are of a communal nature, since parents see their offspring as part of themselves. Finally, society has an interest in nurturing parental altruistic and communal feelings, as it relies on family to guarantee the proper survival of society and to provide a model for ideal social conduct, based on love, concern, and support.¹⁴⁴ Calderon fears that inheritance and estate taxes would contaminate the altruistic and communal nature of parental giving by stressing its economic and public aspects. To address this concern, he suggests progressive gift and inheritance taxes with relatively large deductions and lower rates when the heirs are the deceased’s children.¹⁴⁵

A radically different position is taken by Anne Alstott, who in the name of equal opportunity and choice argues that the “inheritance tax should tax bequeaths from relatives [including friends] in full and should exempt those

¹⁴² *Id.* at 239.

¹⁴³ Mumford, *supra* note 129, at 582–83.

¹⁴⁴ For a fascinating analysis of the sociological aspects of this child-centric familism and its historical roots. see VIVIANA ZELIZER, *PRICING THE PRICELESS CHILD* (1985).

¹⁴⁵ Calderon, *supra* note 96.

from non-relatives.”¹⁴⁶ Indeed, since most people bequeath to their children,¹⁴⁷ a total or even broad exemption to offspring would devoid the tax of economic and distributive value, as the Israeli case has clearly demonstrated. Likewise, Adam Swifts argues that while morally parents should be allowed to favor their children over others, they should not be allowed to bequeath to their children since it is not constitutive of a valuable familial relationship. According to Swift, such nonconstitutive favoritism should be prevented in name of social fairness and justice.¹⁴⁸

While I share Alstott’s and Swift’s moral position that familial inheritance must be restricted for social justice, I think, they belittle the emotional and cultural meanings of passing on familial wealth. Hence, they unjustly ignore the unlikelihood that a total or even a substantial succession tax will be accepted in democratic countries as well as the measures parents will take to avoid the tax, if enacted.¹⁴⁹ While I agree that endowment is not a necessity for familial positive and meaningful relations, as families lacking assets teach us, and while I agree with Ascher that meeting the maintenance needs of dependent family members is enough to maintain family values and stability,¹⁵⁰ I am convinced by the study in the previous sections that, at least currently, this is the minority’s opinion. Sadly, most people perceive bequeathal a parental right to care for their children and a right of children to receive their parents’ material legacy, and, therefore, a kind of an intergenerational bridge of immortal familial relations.¹⁵¹ Hence, if intergenerational wealth transfer tax is to be enacted in Israel, it should be tailored in a way that will not threaten these notions.

146 Anne L. Alstott, *Equal Opportunity and Inheritance Taxation*, 121 HARV. L. REV. 470, 507–12 (2007–08).

147 While men bequeath to their spouse more than to their children, it is with the understanding that their children will eventually inherit from the mother. Indeed, the major beneficiaries of women’s estate are their children. See Daphna Hacker, *The Gendered Dimensions of Inheritance: Empirical Food for Legal Thought*, 7 (2) J. EMPIRICAL LEGAL STUD. 322 (2010).

148 Adam Swift, *Justice, Luck, and the Family: The Intergenerational Transmission of Economic Advantage from a Normative Perspective*, in UNEQUAL CHANCES: FAMILY BACKGROUND AND ECONOMIC SUCCESS 256–76 (Samuel Bowles, Herbert Gintis, & Melissa Osborne Groves eds., 2005).

149 Striking evidence in that regard is Kopczuk & Slemrod’s finding that people manage to time their deaths according to changes in the estate tax system. They argue that testators managed to survive a bit longer to avoid a more significant tax and hence to enrich their heirs. Wojciech Kopczuk & Joel Slemrod, *Dying to Save Taxes: Evidence from Estate-Tax Returns on the Death Elasticity*, 85 (2) REV. ECON. & STATISTICS 256 (2003).

150 Mark L. Ascher, *Curtailing Inherited Wealth*, 89 MICH. L. REV. 69, 111–12 (1990–91).

151 Carolyn C. Jones, *The Moral Hazard of the Estate Tax*, 48 CLEV. ST. L. REV. 729, 735–41 (2000).

Similarly, while I agree with Calderon that taxation might enhance the economic aspects of parental giving, I would argue that this aspect is already apparent to family members, especially when they contemplate intergenerational wealth giving and receiving.¹⁵² I am also not convinced by Calderon's claim that the tax would negatively affect the communal and caring ideal embedded in parental giving. The literature review, detailed in the endnotes, reveals no evidence that parents will stop caring and saving for their children if a moderate tax is enacted on intergenerational wealth transfer. Furthermore, I perceive intergenerational wealth transfer taxation as a symbol and a signal of the importance of social solidarity and care, the same values Calderon wished to enhance within families. Hence, the challenge becomes one of tailoring an economically significant intergenerational wealth transfer tax that will enhance equal opportunities, while being mindful of the familial-emotional significance of that transfer. Here I turn to the ideas of accession tax and "social inheritance" for inspiration.

Joseph M. Dodge has recently developed the idea of an Accession Tax,¹⁵³ suggested by the ALI as long as 50 years ago,¹⁵⁴ though not yet implemented in current legal systems. While his proposal is seemingly neutral toward the relations between parents and their children,¹⁵⁵ in effect it meaningfully protects these relations as manifested in wealth transfer. An accession tax is a tax on gratuitous receipts, whether gifts from the living or material legacies from the dead (including trusts), posed over the transferee's lifetime. While it applies when the recipient receives each accession, it is calculated according to cumulative accessions, with its exemptions and rates applied accordingly.¹⁵⁶ It is different from an estate tax since it taxes the receiver rather than the giver and is proportional to the receiver's lifelong accumulation of unearned wealth rather than to the size of the estate. It is different from inheritance tax, since it includes a lifelong gift tax and is indifferent to the relations between the giver and the receiver.

As Dodge argues, the move from estate tax to beneficiaries who receive wealth, regardless if it is from a living or a dead beneficiary, can both overcome irrational resistances to double taxing and to "death tax," presented in the previous part, as well as highlight the element of significant unearned windfalls.

152 Ascher, *supra* note 150, at 112.

153 Joseph M. Dodge, *Replacing the Estate Tax with a Reimagined Accession Tax*, 60 *HASTING L. REV.* 997 (2009); *See also* Edward C. Halbach, Jr., *An Accession Tax*, 23 *REAL PROP. & TR. J.* 211. (1988).

154 John H. Alexander, *Federal Estate and Gift Taxation: The Major Issues Presented in the American Law Institute Project*, 22 *TAX. L. REV.* 635 (1967).

155 He offers, however, unlimited exemption for spousal transfers, *see* Dodge, *supra* note 153, at 1027–32.

156 *Id.* at 999; Halbach, *supra* note 153, at 212.

Moreover, though allegedly indifferent to the familial relations between the giver and the receiver, a lifetime perspective with a substantial exemption and progressive rates allows parents to guarantee that the state does not prevent their children from receiving gifts and bequeaths that will ensure a good start to life or ongoing ownership of a (small) family business and (average) home, while preventing excessive and stratifying wealth transfer.¹⁵⁷

Dodge offers an exemption of one to 1.5 million dollars per person plus a progressive rate starting at 10% and increasing to 90% for estates over 10 million. I leave the calculations of the sums relevant to Israeli society and economy to others, and only state my position that while they should reflect familial interests through universal substantial exemption and progressive rates, the tax should affect at least the upper decile of receivers, rather than the upper percentile of givers or the “tycoons” mentioned in current Israeli discourse. As we have seen, Israeli society is currently so drastically stratified that a child’s life opportunities are dependent on the decile into which s/he is born.¹⁵⁸ Moreover, unlike Dodge,¹⁵⁹ I agree with Halbach that assets should also be taxed, and not only cash or other liquid forms of assets.¹⁶⁰ This taxation would raise considerable evaluation problems, but I see no substantial difference between bequeathing an asset or money, and creating such a difference would lead to a very easy means of avoidance. On the one hand, Israeli law already includes taxes on gambling and lottery gains, prizes,¹⁶¹ stock market profit,¹⁶² profit from renting property,¹⁶³ and real estate transfers,¹⁶⁴ but fails to enforce income tax,

157 Its unique lifelong exemption and rate structure is also what differentiates accession tax from suggestions to tax unearned received wealth as an income. It guaranties that gifts and bequests will be taxed only if received by the rich and it prevents the collapse of the concept of gifts upon life and death as mere “income.” See Dodge, *supra* note 153, at 1005.

158 See Lewin-Epstein, *supra* note 7; Semyonov & Lewin-Epstein, *supra* note 8.

159 Dodge, *supra* note 153, at 1014–15.

160 Halbach, *supra* note 153.

161 Draft Bill Amending Law for Fiscal Recovery in Israel (no. 134), HH 1892, at 415 (Isr.). However, the ordinance exempts profits from prizes that where given “within a personal framework,” see art. 2A(b)(2). Assaf Lahovski argues that this exemption, as well as the non-taxation of estates and other potential “incomes” is embedded in the public/private dichotomy. The Israeli legal system, unlike others, is reluctant to tax what is perceived as a profit gained within the private sphere. See Asaff Lahovski, *Sex and Class Categories in Income Tax Law*, 24 (1) T.A. L. REV. 205, 219–21 (2000) [in Hebrew]. This might be yet another obstacle in persuading the Israeli public and legislator in the legitimacy of an accession tax.

162 Bill to Amend the Income Tax Ordinance (No. 132), 2002, S.H. 1863 (April 8, 2002), at 530 (Isr.).

163 Income Tax Ordinance [New Version], art. 2(6), at 120 (Isr.).

164 Real-Estate Taxation Regulations ((Improvement and Purchase) (Purchase Tax), 1974, SH 3239, at 140.

on the other hand.¹⁶⁵ Therefore, there is no reason that the accession tax enforcement challenge should not be added to these existing challenges. Israel might need to adopt an annual returns system, similar to the one used in the US. While such a system has its significant drawbacks, mainly increasing state and citizen costs and state intrusion, its effectiveness in preventing tax evasion and allowing a broader tax base, including through accession tax, outweighs these disadvantages.¹⁶⁶ Alternatively, specific mechanisms can be used to increase revenue while minimizing collection costs (including government breach of an individual's privacy), for example a fixed individual sum to pay (either once in a lifetime or periodically) to avoid government investigation into accumulated wealth through gifts and bequests.¹⁶⁷

Another inspiring proposal is to link estate or inheritance taxation with a form of “social inheritance.” In 1999, Bruce Ackerman and Anne Alstott suggested that each American citizen who reaches maturity should be granted \$80,000 by the government – to advance equal opportunity. They suggested that a 2% tax on nation's wealth would cover the cost of these grants (estimated at \$255 billion per year).¹⁶⁸ In a later work, Alstott calls this grant “a universal, public inheritance” and “social inheritance” and conceptually links it to inheritance tax. She argues that while the tax levels down resource inequality, the one-time “public grant” levels it up.¹⁶⁹

Indeed, Alstott is not the first to link intergenerational wealth transfer taxation with “equalizing grants.” Others have suggested a practical link between the revenue from the tax and its uses. For example, as Beckert found in his historical study, more than a century and a half ago, Orestes Browson, an American political, activist, suggested distributing estates to all citizens as private property¹⁷⁰ – meaning an estate tax of 100% and equal redistribution of the estate's worth among all in the succeeding generation with no special privileges to the deceased's offspring. Others have not conceptualized the link so directly, but have suggested channeling estate tax revenue to specific funds that enhance equal opportunity and social mobility. In 1934, for example, U.S.

165 Moti Bassok, *Doron Arbeli: We Will Collect Six Milliard Shekels from the Undeclared Capital*, THE MARKER, Feb. 3, 2013, available at <http://www.themarket.com/news/macro/1.1921097>.

166 Indeed, several Israeli committees and bodies of experts have recommended to enact a general returns system, see NOAM ZUSMAN & DIMITRY ROMANOV, GENERAL REPORT FOR ISRAEL: A PLATFORM FOR DISCUSSION, THE FINANCE MINISTRY ch. 18 (1998) [in Hebrew], available at http://ozar.mof.gov.il/hachnasot/doch97/part18_1.htm.

167 I thank Ariel Porat for this suggestion.

168 BRUCE ACKERMAN & ANNE ALSTOTT, THE STAKEHOLDER SOCIETY 104–05 (1999).

169 Alstott, *supra* note 146, at 472.

170 As discussed in BECKERT, *supra* note 32, at 173.

Senator Huey Long (Democrat), suggested a tax on estates over \$1 million that would provide \$5,000 for every family including free university education as well as other benefits.¹⁷¹

I would like to suggest a similar link between accession taxation and equalizing grants in the following manner: All revenue from this tax, as well as endowments received by the state from intestate estates with no relatives¹⁷² is to be channeled into a government trust to fund higher education, professional training, or seed money for small businesses (as per a reputable business plan). The grants would be given to citizens up to the age of 50 who, along with their parents, belong to the lower five deciles,¹⁷³ and be deducted from the accession tax exemption. Moreover, any person who has already received a gift or inherited more than the set exemption would be ineligible for the grant.

Theoretically, the narrow objectives for such a fund could be attacked as paternalistic¹⁷⁴ and discriminatory, since heirs can use their inheritance as they wish. Moreover, earmarking tax revenue for a specific cause runs counter to the State's interest in having a general budget that can be divided according to changing needs and priorities.¹⁷⁵ Notwithstanding these significant flaws, an equalizing fund could increase the public's acceptance of the accession tax since it highlights the correlation between accessions and opportunities and because its goal aims at improving variables directly affecting social mobility (education, professional training, and entrepreneurship).¹⁷⁶ Hence, it emphasizes the link between the tax and equal opportunities and its potential contribution to

171 As discussed in *id.* at 189.

172 The law states that the state inherits the estate of those who die with no legal heirs, and it can use what was inherited to fund education, science, health, and welfare, see Succession Law, 1965, art. 17, SH 446, at 63 (Isr.). Each year the state receives this way about one hundred million NIS (about 25 million dollars). The state established a committee to allocate these sums and restricted the applicants to NGOs only, *available at* <http://www.justice.gov.il/NR/rdonlyres/AB899580-DEOD-48A4-A82F-016ACD070A72/39157/1.pdf>. Recently the committee was criticized for favoring Ultra-Orthodox organizations, see Alfi Shauli, *Unequal Distribution of Estates In favor of Ultra-Orthodox*, YNET, Feb. 19, 2013, *available at* <http://www.ynet.co.il/articles/0,7340,L-4346084,00>.

173 An exception to this rule could be made in cases in which the applicant is from the lower five deciles and has been cut off by her parents who belong to higher social strata, for example due to religious conversion.

174 ACKERMAN & ALSTOTT, *supra* note 168, at 39–41.

175 It should be stated, though, that there are other *examples* of “specific cause taxes,” such as social security fees, and the broadcast toll.

176 O’Neill, *supra* note 137, at 66; Productivity Commission 2011, Vocational Education and Training Workforce, Research Report, Canberra, *available at* http://www.pc.gov.au/_data/assets/pdf_file/0009/108369/vocational-workforce.pdf.

the growth and effectiveness of the Israeli economic market. I believe this link would be especially attractive to a divided Israeli society in which there is a growing political movement against the burden on the productive sector,¹⁷⁷ caused by a growing Ultra-Orthodox community in which most men and women do not participate in the labor market and the Palestinian Israeli community in which most women are unemployed.¹⁷⁸ The “haves,” once again burdened by the tax, have a long-term interest in a more educated and productive Israeli society.¹⁷⁹

Conclusion

Every society and legal system needs to accommodate for the tension between familial interests in intergenerational wealth transfer and its social discriminatory effects. In this Article I suggest coordinates to ease the tension between the extremes of no wealth transfer taxation and confiscating estates. The Israeli case study demonstrates both the universal considerations relevant to this tension and the particular social, cultural, and political considerations that must be accounted for in its resolution.

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177 A governmental Committee for Burden Equality was established in May 2012; *see also* <http://www.shivyon.org.il/>. Equality in carrying the burden, especially in the military service, was a major part of the new Yesh Atid Party, that received significant public support in the recent election, *available at* <http://en.yeshatid.org.il/Our-Agenda>.

178 TZIONA KOENIG-YAIR, CHALLENGES FOR EQUAL EMPLOYMENT OPPORTUNITIES IN ISRAEL, EQUAL EMPLOYMENT OPPORTUNITIES COMMISSION, MINISTRY OF INDUSTRY TRADE AND LABOR 3 (2009), *available at* http://conferences.finances.gouv.fr/evenement/20100607/images/stories/documentation/Pays_etrangers/3_Israel/2._Challenges_for_equal_employment_opportunities_in_Israel.pdf.

179 If, on the other hand, the ultra-Orthodox lobby to recognize *halachic* studying as a funded cause (much like the benefits they receive now, *see, e.g.,* the Income Tax Ordinance, art. 9(29), *supra* note 162), the “haves” will have a legitimate reason to oppose the tax, as it would not be used for the causes embedded in its justifications.

Notes

i. **Moral arguments (Graph 1):**

- (1) Ascher, *supra* note 150, at 77 (discussing Blackstone’s perception of inheritance as “a custom turned into positive law”); *see also* O’Neill, *supra* note 137, at 65 (the right to property is a legal convention, which the tax system helps to shape); David G. Duff, *Taxing Inherited Wealth: A Philosophical Argument*, 6 CAN. J. L. JURISPRUDENCE 3, 44–45 (1993).
- (2) Nozick, as discussed in BECKERT, *supra* note 32, at 199. Ronald Chester argues that the American Supreme Court has recently adopted the view that the transmission of property at death is a natural right, rather than a right created and controlled by the legislator, *see* RONALD CHESTER, FROM HERE TO ETERNITY? PROPERTY AND THE DEAD HAND ch. 3 (2007).
- (3) Calderon, *supra* note 96, at 73–74.
- (4) Maureen A. Maloney, *Distributive Justice: That Is the Wealth Tax Issue*, 20 OTTAWA L. REV. 601(1998); Duff, *supra* endnote i(1), at 19.
- (5) Robert Nozick, Jan Narveson, & David Gauthier, as discussed in Eric Rakowski, *Transferring Wealth Liberally*, 51 TAX L. REV. 419, 430 (1995–1996).
- (6) In most cases, inheritance tax is paid out of property and capital rather than labor money, *see* Michael J. Graetz, *To Praise the Estate Tax, Not to Bury It*, 93 YALE L. J. 259, 276 (1983–1984) (most wealth of the very rich in the US is inherited or the outcome of enormous one-shot gains); O’Neill, *supra* note 137, at 64 (in the UK, much of the tax is payable on increased house value). Moreover, Maloney argues that wealth transfer taxation is justified, among other reasons, because even labor-earned money is the outcome of prior socio-economic stratification and luck rather than pure meritocracy, *see* Maloney, *supra* endnote i(4), at 614–17.
- (7) Duff, *supra* endnote i(1), at 17 (taxing inheritance is more just than taxing other kinds of income since the beneficiaries “have no prior expectations to be disappointed and no anticipatory commitments to be disrupted”). Moreover, since it is always the heirs who carry the burden of the tax, the double taxing argument has no merit since the heirs have never paid a previous tax on the sum inherited, *see* O’Neill, *supra* note 137, at 64 (this argument relates also to argument i(22)).

- (8) Political argument in the US, see GRAETZ & SHAPIRO, *supra* note 132, at 140–41; Political argument in the UK, see O’Neill, *supra* note 137. Prabhakar found that this argument was a major criticism raised by participants of focus groups he studied in the UK, see Prabhakar, *supra* note 136, at 234. A major political argument in Canada, see Maloney, *supra* endnote i(4), at 606. Interestingly, the double-taxing argument is popular in debates over “death tax” although it can be used against VAT, full taxes, cigarette duties, and other taxes we pay out of our labor-earned money, see O’Neill, *supra* note 137, at 64. While most scholars view this argument as unconvincing rhetoric, Natalie Lee agrees that inheritance tax causes problematic double taxation, see Lee, *supra* note 132, at 692.
- (9) Maloney, *supra* endnote i(4), at 611–12. One of the most challenging intellectual tasks for liberals is to mark the distinction between justified and unjustified inequality. John Stuart Mill is often cited as a liberal thinker who opposed the right to private inheritance beyond a minimal sum that will allow the beneficiary a moderate independence and argued that inheritance causes an unjustified inequality that runs against the principle of meritocracy, see BECKERT, *supra* note 32, at 167–68. See also Ascher, *supra* note 150, at 88–89; Rakowski, *supra* endnote i(5), at 430–31. Equal opportunity claims are related to autonomy claims: severe inequalities substantially limit the disadvantaged’s ability to fulfill their right to autonomy and freedom, see Duff, *supra* endnote i(1), at 25–26. Other liberals, however, argue that inheritance and its inequality outcomes should be tolerated as other “accidents of birth,” such as looks, see Milton and Rose Friedman, as discussed by BECKERT, *supra* note 32, at 199. Moreover, liberal thinkers have argued that intergenerational wealth taxation is a harsh violation by the sovereign of the right to property and a damaging interference in the free market, see *supra* endnote i(5), and BECKERT, *supra* note 32, at 168. Recently, the writing of John Rawls on inheritance have gained attention, as a liberal stance that considers the inequality outcomes of wealth inheritance to be just as fair as the unequal consequences of the inheritance of intelligence, but which nonetheless need to be somewhat limited in the name of liberty and equal opportunity, see BECKERT, *supra* note 32, at 208.
- (10) Edward J. McCaffery, *The Political Liberal Case against the Estate Tax*, 23(4) PHIL. & PUB. AFF. 281, 295 (1994).
- (11) This discrimination occurs only if the tax is based on a transferor-oriented system (e.g. estate tax) and disappears if the tax is

- transferee-oriented (e.g. accession tax), see Halbach, *supra* note 153, at 220–21.
- (12) Gale & Slemrod, *supra* note 135, at 31. This discrimination can be overcome by a tax that equalizes cohabitants' rights to those of married couples, and even more strongly if the tax is agnostic to the relationship between the testator and the heirs, as is the case in accession tax, see Alstott, *supra* note 146, at 512.
 - (13) Calderon, *supra* note 96, at 44–45.
 - (14) *Id.* at 45–44; Mumford, *supra* note 129, at 592.
 - (15) McCaffery, *supra* note 138, at 304–06 (capital formation and saving are important to all segments of society); Richard Wagner, as discussed in Berry W. Johnson & Martha Britton Eller, *Federal Taxation of Inheritance and Wealth Transfer*, in *INHERITANCE AND WEALTH IN AMERICA* 61, 85–86 (Robert K. Miller & Stephen J. McNamee eds., 1997) (wealth accumulation is necessary for investments that are beneficial to society as a whole).
 - (16) Duff, *supra* endnote i(1), at 24–25.
 - (17) BECKERT, *supra* note 32, at 197 (describing a discursive shift in the US from viewing the owners of large fortune as “robber barons” to perceiving them as an evidence of meritocratic achievements).
 - (18) Ascher, *supra* note 150, at 87 (wealth accumulation by an individual is not only the outcome of his efforts but also of public investments in him, hence society has a right to this wealth); Ackerman & Alstott, *supra* note 168, at 96–99. Seligman's counter-argument from 1893, that poor people receive more from the state than rich people and therefore should pay more tax (see, Mumford, *supra* note 129, at 577), cannot be found in more recent literature.
 - (19) Political arguments in the UK and the US, see Gale & Slemrod, *supra* note 135, at 1.
 - (20) *Id.* at 32 (probate process may reveal information about lifetime economic well-being that is difficult to obtain in the course of life; smaller disincentive effects on labor and savings than taxes on the living; allows total lifetime transfer assessment); Mumford, *supra* note 129, at 568–70 (arguing that inheritance tax should be supported since the deceased is not affected and since taxing the dead lessens the amount needed from living taxpayers). This argument can be made stronger by those who think that the dead cannot be harmed or hold rights, see Daphna Hacker, *Death and Dignity through the Prism of Inheritance Disputes* (2013) (unpublished manuscript).

- (21) Political argument in Germany, see BECKERT, *supra* note 32, at 211.
- (22) Batchelder, *supra* note 96, at 7; Joseph M. Dodge, *Estate and Gift Tax: Comparing a Reformed Estate Tax with Accession Tax and an Income-Inclusion System, and Abandoning the Generation-Skipping Tax*, 56 SMU L. REV. 551, 552–53 (2003).
- (23) Gale & Slemrod, *supra* note 135, at 31; John Locke perceived inheritance as a natural right of children, see Ascher, *supra* note 150, at 76.
- (24) Duff, *supra* endnote i(1), at 59–60. Ascher goes even further by arguing that inheritance harms families since it is used by parents to control children and cause children to torture their parents in order to secure their share. These outcomes can be avoided by a 100% tax with fixed exemptions for offspring. See Ascher, *supra* note 150, at 112, 122, 127–30).
- (25) Mumford, *supra* note 129, at 583, 592 (a widespread notion in the UK that inheritance tax is an insult to the family and a threat to familial solidarity). BECKERT, *supra* note 32, at 272 (in Germany, inheritance tax is attacked as harmful to “family spirit”).
- (26) Alstott, *supra* note 146, at 507 (Alstott goes further to argue that non-relatives should be exempted from tax while relatives should be fully taxed because relationships with non-relatives is an outcome of choice, see *Id.* at 511).
- (27) In Germany, the argument of the nuclear family as a property unit that should not be taxed was raised by the liberal thinker Paul Achatius Pfizer in 1842, and constantly used by subsequent opponents of inheritance taxation, see BECKERT, *supra* note 32, at 212, 223–24, 236.
- (28) Ascher, *supra* note 150, at 81–82.
- (29) For a welfare economic framework to assess estate tax, see Louis Kaplow, *A Framework for Assessing Estate and Gift Taxation*, in RETHINKING ESTATE AND GIFT TAXATION, *supra* note 136, at 164. More narrowly, the opponents of wealth transfer taxation point to the very low revenue it yields to support their argument that the tax “does not, in fact, appear to be working,” see McCaffery, *supra* note 138, at 286, 301, 303. For data on revenue rates from wealth transfer tax in different countries see Batchelder, *supra* note 96, at 103, Table A5. According to the objectors, even if the tax can be justified on a theoretical level and even if there are benefits to the tax, they are overridden by the (unintended) damage caused by its enforcement, detailed in Graph 2.

(30) See Batchelder, *supra* note 96, at 11–13; see also Duff, *supra* endnote i(1), at 6–9 (arguing that although the revenue from estate tax has diminished during the twentieth century (for example, in Britain: from 16.1% of total revenue in 1908 to 0.64% in 1985), this progressive tax can still be a significant source of state revenue). The utilitarian standpoint is of course relevant to other arguments discussed above. For example, Bentham supported state restrictions on inheritance since it harms the utility of all members of society by leading to an unproductive concentration of wealth and to unjustified enrichment of distant relatives, see BECKERT, *supra* note 32, at 212.

ii. **Practical arguments (Graph 2):**

- (1) McCaffery, *supra* endnote i(10), at 288,
- (2) Rakowski, *supra* endnote i(5), at 452–453; Ascher, *supra* note 150, at 100–02.
- (3) McCaffery, *supra* note 138, at 320.
- (4) Maloney, *supra* endnote i(4), at 614.
- (5) O’Neill, *supra* note 137, at 66.
- (6) Wojciech Kopczuk & Joel Slemro, *Tax Consequences on Wealth Accumulation and Transfer of the Rich*, in DEATH AND DOLLARS: THE ROLE OF GIFTS AND BEQUESTS IN AMERICA 213, 222 (Alicia Munnell & Annika Sunden eds., 2003) (empirical evidence that tax rates negatively affect the reported estate’s size of the richest 0.5% of descendants); see McCaffery, *supra* note 138, at 306, 311 (estate taxation deters savings which society as a whole has an interest in since saving reduces costs of capital and increases productivity, and ultimately results in higher wages). *But see*, Rakowski, *supra* endnote i(5), at 458–59 (arguing that McCaffery’s trickle-down affect argument is baseless). The practical argument of encouraging spending, as well as encouraging in vivo gifts (see endnote ii(12) below) is related to the moral argument of equality. The opponents of the tax claim that increased spending and giving sabotages the tax supporters’ aim of minimizing inequalities since it increases the rich’s and their children’s enjoyment of spending resources compared to the underprivileged, see McCaffery, *supra* endnote i(10), at 290–291; Alstott answers that a consumption of 100% will achieve the tax abolitionist goal, see *supra* note 146, at 492.
- (7) Duff, *supra* endnote i(1), at 12 (people save for many reasons other than bequeathing and so the impact of wealth transfer tax on saving is minimal. Furthermore, the tax might increase the testator’s

motivation to save “in order to maintain the transfer of a desired after-tax amount”). For an analysis of the literature on motives for wealth accumulation and the conclusion that “Egoistic and accidental transfer of wealth transfers appear to make up the majority of wealth transfers” see Batchelder, *supra* note 96, at 8–9. Finally, there are indications that a wealth transfer tax might encourage the testator’s children to save, see William G. Gale & Maria G. Perozek, *Do Estate Taxes Reduce Saving?*, in *RETHINKING ESTATE AND GIFT TAXATION*, *supra* note 136, at 216. But see, Robert H. Gordon, *Comment*, in *RETHINKING ESTATE AND GIFT TAXATION*, *supra* note 136, at 248 (agreeing that estate tax does not substantially affect parents’ saving, but arguing that it does reduce children’s saving).

- (8) Stuart White, *What (If Anything) Is Wrong with Inheritance Tax?*, 79(2) *POL. Q.* 162, 166 (2008).
- (9) McCaffery, *supra* note 138, at 313; See also findings reported by Johnson & Britton Eller, *supra* endnote i(15), at 85. Avoidance options are greater in the global era and due to the existence of countries that are happy to become a tax haven, see Douglas J. McCready, *Is Wealth Taxation a Plausible Reform?* 34 (2) *CAN. PUB. ADM.* 260, 265 (1991).
- (10) Calderon, *supra* note 96, at 104.
- (11) *Id.* at 105. However, Young and Varner have recently argued that there is little evidence on whether and to what extent high-income earners migrate in response to taxation. Furthermore, they found no impact of the new New Jersey tax on incomes over 500,000\$ on millionaires’ migration, see Cristobal Young & Charles Varner, *Millionaires Migration and State Taxation of Top Incomes: Evidence from a Natural Experiment* (2:1) *NAT. TAX J.* 255–84 (2011).
- (12) McCaffery, *supra* note 138, at 314–18.
- (13) ACKERMAN & ALSTOTT, *supra* note 168, at 105–07.
- (14) Norborn & Ohlsson argue that although altruistic parents would avoid estate taxation by transferring in vivo gifts to their children, this effect would disappear if estates and gifts were jointly taxed, see Katarina Nordblom & Henry Ohlsson *Tax Avoidance and Intra-Family Transfers*, 90 *J. PUB. ECO.* 1669 (2006).
- (15) Political argument in the UK, see Mumford, *supra* note 129, at 590.
- (16) Political argument in the US, see BECKERT, *supra* note 32, at 201; Johnson & Britton Eller, *supra* endnote i(15), at 86. Political argument in Canada, see Maloney, *supra* endnote i(4), at 601.
- (17) Maloney, *supra* endnote i(4), at 630–31 (in the US and Canada, wealth transfer taxation hardly ever causes forced liquidation).

Maloney goes further by arguing that the selling of small businesses and farms should not be seen as an evil since in many cases the heirs of the owner fail to run the business efficiently, see *id.* at 632.

- (18) McCready, *supra* endnote ii(9), at 262–63; Lee, *supra* note 90, at 700–01.
- (19) Duff, *supra* note 51, at 119 (arguing that the emphasis should be shifted from revenue to the symbolic and social function of wealth transfer taxes to lesson inequalities and unequal opportunities).
- (20) Denis Kessler argues that the effect of the current inheritance taxes in many Western countries is so minimal that it can be understood as a symbolic tax used by politicians to reassure pressure groups and segments of the electorate concerned with equality. See Denis Kessler, *The Taxation of Wealth in the EEC: Facts and Trends*, 17 (3) CAN. PUB. POL'Y 309, 320 (1991). See also Lester Thurow, as discussed in McNamee & Miller, *supra* note 1, at 209.
- (21) Jonathan S. Feinstein & Chin-Chin Ho, “Elderly Asset Management and Health”, in *RETHINKING ESTATE AND GIFT TAXATION*, *supra* note 136, at 457, 409. (Estate tax encouraged the elderly to give in vivo gifts, and there are indications that those in poor health are pressured to give more, which might leave them without the necessary resources to care for themselves toward the end of life).
- (22) Kopczuk & Slemro, *supra* endnote ii(6), at 223–30.