

The Abolition of Death Duties in Australia: A Comparative Perspective

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Abstract

In 1978 Australia became the first rich country in the world to abolish death duties. In liberal circles their abolition was commonly understood as an anomaly which would soon be overtaken by history. As more countries follow Australia's example, the question arises whether it is more a harbinger than an anomaly. Jens Beckert's analysis of inheritance law in the US, Germany and France provides a framework to understand the Australian experience from an international perspective. This paper follows Beckert in tracking legislation, coding parliamentary debates, and examining public debate in Australia to identify discursive fields and their enduring influence. It argues that Australia was unusual – although not an anomaly – insofar as its distinctive discursive field made the abolition of death duties relatively uncontroversial. It was a harbinger insofar as the abolition of death duties signalled their material failure to achieve liberal objectives.

Keywords: inheritance, death duties, estate taxes, inheritance taxes, discursive fields, liberalism

Introduction

In 1978 Australia became the first rich country in the world to abolish death duties – that is, taxes upon the estates of decedents, or the inheritance of beneficiaries. In liberal circles their abolition was commonly understood as politically regressive, an anomaly which would soon be overtaken by history (Pedrick 1981: 115). Thirty years later and the situation seems more complicated. Israel abolished the taxes in 1981, New Zealand in 1992, Sweden in 2005, and Austria and Singapore in 2008. From 2003 the US progressively cut its top rate for estate taxes. According to current legislation, the top rate of earlier times will be reinstated in 2011. This timetable guarantees that estate taxes will stay on the political agenda in the US for the next few years at least (Beckert 2008b). As more international scholars turn their attention to the field, the time is right to reconsider Australian regulatory frameworks in comparative context. Perhaps Australia was not so much an anomaly as a harbinger.

The Sociology of Inherited Wealth

In the nineteenth and early twentieth centuries nations turned to inheritance as a source of revenue. In turn, inheritance became a ‘major topic of intense political, legal, economic, sociological, and philosophical debate’ (Beckert 2008a: 1). Once nations had stabilized their tax regimes, the study of inheritance became a ‘sociological lacunae’ (McNamee and Miller 1989). Yet there is now renewed interest in the field: partly because of the US debate (Graetz and Shapiro 2005); partly because of the effect of offshore tax havens on national revenues (Maurer 2008); and partly because the topic highlights ‘some of the core questions of sociological scholarship’ (Beckert 2008b: 521). This paper draws particularly on the work of Jens Beckert, whose analysis of inheritance law in the US, Germany and France provides a framework to understand the Australia experience from a comparative perspective.

Beckert observes that the US, France and Germany ‘confronted fairly similar functional problems’ during the late eighteenth and early nineteenth centuries, and ‘inheritance law might have developed in parallel ways’. Yet distinctive ‘discursive fields’ emerged in each country, establishing a ‘spectrum of problems’, ‘boundaries of discussion’, and ‘a basis of legitimizing support for, or opposition to, efforts to change inheritance law’

(Beckert 2008a: 2). Beckert identifies these discursive fields through content analysis of parliamentary debates, coding arguments for and against proposed legislation.

Beckert distinguishes between an ‘individual meritocratic’ notion of property in the US, directed towards equality of opportunity; a ‘family-social justice’ notion of property in Germany, combining insistence upon the primacy of family over individual property rights, and a normative orientation towards social justice in outcomes; and an ‘egalitarian-family based’ notion of property in France, combining commitment to equality before the law, and defence of individual freedom. In turn, different frameworks gave rise to distinctive trajectories. In the US Congress introduced an inheritance tax in 1916, took the top rate to 77 per cent during the 1930s and 1940s, and then scaled it back from the 1970s. In Germany a tax which exempted spouses and children was introduced in 1906 and changed little after the early 1920s, with top rates shifting between 15 and 38 per cent. In France there was relative indifference around inheritance taxes, which took their current form during the 1930s, including sharp distinctions according to degrees of kinship.

Beckert’s analysis directs attention to national and cultural frames of reference, over and above the universalism of rational utility maximization which has dominated public discourse in recent decades. According to the logic of rational utility maximization, inheritance law in the US, Germany and France should have converged in order to achieve optimal efficiency. Yet Beckert observes that the pathway to optimal efficiency is not self-evident. More fundamentally, different national and cultural frames of reference give rise to different understandings of efficiency and justice, different debates about how the law might be framed, and different institutional pathways in legal reform.

Australian exceptionalism

During the quarter century before World War One, there emerged a vision of Australia as a ‘social laboratory’ (Encel 1970: 200). During this era, women obtained the vote; the Commonwealth Government enacted what Francis Castles calls ‘the wage earners’ welfare state’ (1985: 103); and the states introduced family provision legislation designed to protect wives and children from inadequate provision through wills and bequests (McGregor-

Lowndes and Hannah 2008: 10). The introduction of federal estate taxes occurred at the end of the era. The institutional architecture created during the period had bipartisan support for the better part of the twentieth century. In the 1980s ‘the rise of neo-liberalism’ dismantled large parts of the wage earners’ welfare state and ‘ended the vision of Australia as a social laboratory’ (Connell 2004: 4). The abolition of estate taxes occurred at the dawn of neo-liberalism, and might therefore be understood as an ‘early strike’ in its ascendancy.

Yet the neo-liberal ascendancy was a ‘global event’ (Connell 2004: 2), whereas the abolition of estate taxes was local. The only substantial study of abolition – by William Pedrick, a US Professor of Law – made uniqueness its point of departure. Pedrick identified three main objections to estate taxes in Australia. First, the taxes ‘weighed heavily on even very modest estates, with inflation exacerbating the problem of low exemptions’ (Pedrick 1981: 119). Second, high land values and ‘assertedly low return on farming property’ caused particular agitation among farmers. Finally, estate taxes (in the words of a government inquiry) were ‘avoided by well-advised persons with ease’, and ‘paid principally from the estates of those who died unexpectedly or who had failed to attend to their affairs with proper skill’ (Pedrick 1981: 122). The objections, Pedrick argued, called for remedial action by government as occurred in the US in 1976, not abolition.

Pedrick proceeded to elaborate a classic liberal case for death duties. The taxes ‘symbolize their nations’ commitment to some modest redistribution of large inherited wealth in the interest of reducing the role of hereditary fortunes in society’ (Pedrick 1981: 126). Moreover, they are ‘an indispensable feature of a revenue system appropriate for a western industrialized society’ (Pedrick 1981: 128). Abolition could not be explained by the concentration of wealth in Australia, which was much the same as in other OECD countries. Ultimately, it could only be understood as a decision made in a ‘mood of “anti-tax” jubilation’, without due consideration (Pedrick 1981: 130).

Pedrick anticipated that the tax would come back. As it happened, the major political parties have barely mentioned death duties since then. More than this, other rich countries have followed Australia, and the abolitionist cause in the US has gathered traction.

The Current Study

The current study takes the formation of the Commonwealth of Australia in 1901 as its point of departure. Specifically, it replicates Beckert's study of inheritance law in the US, France and Germany through content analysis of parliamentary debates on estate taxes in the House of Representatives (HoR), the popular chamber of the Australian federal parliament. Debates in 1914, 1928, 1940, 1941, 1942, 1947, 1953, 1956, 1957, 1962, 1963, 1966, 1970, 1973, 1974, 1976 and 1978 were located through a search for key words in *Parliamentary Debates*.

Only the first and last of these debates were substantial and contested. Following Beckert, all speeches in the two major debates were coded: first general information such as date and speaker, and then 'individual arguments (positions) that were put forth by the speakers for or against a bill or individual sections of a bill' (Beckert 2008a: 296). This entailed identification of 'sentences that, alone or in aggregate, assume the structure of an argument' (2008a: 296). An argument repeated several times by the same speaker in the course of a speech was coded for each repetition, but when repeated in the same sentence it was coded once only. Then codes were assigned to 'justifications of an argument, that is, for the semantic expressions with which speakers justified their positions' (2008a: 296).

There were five types of justifications provided by speakers, identical to those identified by Beckert: legal, fiscal, political, economic and familial. Within these categories, arguments took forms which did not correspond with those identified by Beckert. In other words, coding itself highlighted the 'fairly similar functional problems' confronted by governments, and the distinctive 'discursive fields' in responding to these problems (Beckert 2008a: 2).

Creation

Estate taxes were the first significant direct taxes imposed in the Australian colonies, between 1851 in New South Wales and 1895 in Western Australia (Smith 2004: 24-7). Colonial assemblies understood the taxes as both a source of revenue and a Parliamentary

declaration of colonial prosperity and progress (Mills 1925: 83). The mobilisation of labour during the late nineteenth and early twentieth centuries reconfigured parliamentary politics, whereupon Labor politicians became the principal advocate of direct taxation. Following the outbreak of World War One, the Fisher Labor Government introduced the *Estate Duty Assessment Bill*, providing for a progressive tax ranging from 1 percent for estates valued £1000 to 15 percent for estates valued £70,000 and over, with a concession for widows, children and grandchildren at two-thirds of normal rates.

Government speakers adopted two main justifications for an estate tax. Above all, they justified it in fiscal terms (Table 1). Of 26 arguments for the tax, more than half (14, or 58 percent) emphasized the demand for revenue, especially in the context of war. The Federal Treasurer Billy Hughes, for example, observed that there was ‘no great principle’ in the measure, which was found ‘in almost every modern fiscal system’ (Australia, H of R, 15 Dec. 1914). Otherwise, Labor speakers justified the tax on political grounds. In particular, a quarter of the arguments (6) directed attention to the ‘idle rich’ and their determination to avoid paying their share of taxes. For example, a Sydney backbencher described how ‘accumulations of wealth, handed down from generation to generation, create an idle class, who are more pernicious in their influence on society than are the idle poor’ (Australia, H of R, 15 Dec. 1914).

Table 1: *Estate Duty Assessment Bill*, 1914: Reasons Offered by Speakers for and against the Introduction of a Commonwealth Estate Tax in the House of Representatives, Australia

	For tax (%)	Against tax (%)
Inherent in the Law	12.5	26.1
State imposts	0.0	9.0
Fairness of application	8.3	2.7
Law not carefully considered	0.0	4.5

Excessive compared with elsewhere	0.0	4.5
Penalties too severe	4.2	2.7
Other	0.0	2.7
Fiscal	58.3	28.8
Not needed	0.0	14.4
Wartime revenue	29.2	8.1
Tax revenue	20.8	4.5
Part of modern fiscal system	8.3	1.8
Political	29.2	28.8
Ideological hostility to landowners	0.0	15.3
Class taxation	0.0	9.9
Tax justice	25.0	0.0
Other	4.2	3.6
Economic	0.0	16.2
Disincentive to investment	0.0	6.3
Effect on capital flows	0.0	6.3
Other	0.0	3.6
Total	100 (N=24)	100 (N=111)

Speakers from the Liberal Opposition presented a wider range of arguments against the bill. Of 111 arguments against the tax, 29 (26 percent) addressed inherent aspects of the law, 32 (29 percent) were fiscal, 32 (29 percent) were political, and 18 (16 percent) were economic. Legal arguments maintained that estate taxes were essentially state imposts and the rate was excessive by international standards. Fiscal arguments disputed the need for the tax, notwithstanding the war. Political arguments claimed that the government was using the war as a pretext to advance its class agenda of confiscating wealth. Economic arguments claimed that the tax would penalise investment and redirect capital flows. For example, Sir Robert Best observed that the top rate in the ‘Mother Country’ was the same as the proposed rate, but applied at £1,000,000 rather than £70,000. Further, the Australian tax was compounded by the states, where top rates ranged between 10 and 20 per cent. The tax would discourage ‘the inflow of capital’, because ‘that timid bird is liable to be frightened away’ (Australia, H of R, 15 Dec. 1914).

Trajectory

In the wake of implementation, federal estate taxes largely enjoyed bipartisan parliamentary support. More than this, until the early 1940s there was bipartisan momentum towards their

consolidation and extension. In 1928 the Bruce Coalition Government closed tax loopholes to stem widespread evasion. In 1940 – following the outbreak of World War Two – the Menzies Coalition Government ramped up the impost across all tax brackets, taking the top rate to 20 percent. In 1941 the Curtin Labour Government increased the rates for the higher brackets, taking the top rate to 27.9 percent. It also introduced a progressive gift duty to further stem tax evasion.

The high water mark of federal estate taxes coincided with the introduction of a new logic into the system. The Menzies Liberal-Country Coalition Government introduced statutory exemptions for some beneficiaries in 1940; the Curtin Labor Government extended them in 1942. Thereafter bipartisan support effectively shifted from the extension of estate taxes to the extension of exemptions. A variety of logics were involved, but special consideration for family members was the most pervasive. The 1940 legislation privileged widows, children and grandchildren of lesser means; later increases in statutory exemptions followed the same logic. Post-war amendments took into account the claims of widowers (1953), step-children, adopted children, and children born outside of marriage (1957). In the 1970s the distinctive claims of surviving spouses received dedicated attention. Special consideration for family relationships was consistent with death duties and family provision legislation in the states.

From the late 1960s there was growing public acknowledgement that the collection of estate taxes in Australia was inefficient and unfair, and mounting political pressure to do something about it. In 1970 an independent stood successfully for the Australian Senate on the single platform for the abolition of death duties. In 1971 a newly-established Senate Standing Committee made death duties the subject of its first inquiry. Between 1972 and 1975 another government inquiry addressed estate taxes in the course of its investigation of the tax system. For the most part it was understood that the tax required an overhaul, but a case for abolition also took shape.

Abolition

In 1977 the Bjelke-Peterson Coalition Government in Queensland abolished state duties, and the Liberal Prime Minister Malcolm Fraser promised abolition of federal duties in his successful re-election campaign. The *Estate Duty Assessment Amendment Bill 1978* precipitated the first substantial debate on death duties since 1914. During the debate Labour Opposition speakers deployed the same mix of fiscal and political arguments as advocates in 1914, but with different emphasis. Of 50 arguments, 30 (60 percent) were political. Above all, speakers framed their case in terms of ‘equity’ and the moderation of accumulated wealth. Fiscal arguments (13, or 26 percent) emphasized that abolition would make Australia an anomaly among rich countries. For example, the Melbourne front bencher Ralph Willis observed that ‘at least in theory, estate and death duties play some role in restricting the growth of inequality of wealth distribution’, and this was ‘just another area in which we are proving ourselves to be the most right-wing country in the Western world’ (Australia, H of R, 10 May 1978).

In contrast, speakers from the Coalition Government were narrower in their arguments than the opponents of 1914. Their arguments were overwhelmingly economic (21, or 68 percent), celebrating small business and individual initiative against excessive regulation and taxation. For example, a Western Australian back bencher derided Labor’s ‘Marxist blinkers’, declaring that its ‘blind ideological contempt for and hatred of individual economic and financial success leads it to call for that success to be ground down and taxed into subservience’. There was no shame in Australia becoming an international anomaly:

When will the Opposition learn that progress as equated with socialism has long been discredited? If Australia is alone in its tax policies it is the case then that this country alone is moving towards the advancement of the individual citizen. That, in my view, is real progress. (Australia, H of R, 10 May 1978)

Table 2: *Estate Duty Assessment Amendment Bill, 1978*: Reasons Offered by Speakers for and against the Abolition of the Commonwealth Estate Tax in the House of Representatives, Australia

	For abolition (%)	Against abolition (%)
Inherent in the Law	3.2	10.0
Fairness of application	3.2	4.0
Other	0.0	6.0
Fiscal	6.5	26.0
Part of modern fiscal system	0.0	16.0
Tax revenue	0.0	8.0
Other	6.5	2.0
Political	9.7	50.0
Equity through the tax system	0.0	34.0
Against accumulated wealth	3.2	16.0
Other	6.5	10.0
Economic	67.7	4.0
Unnecessary tax burden	25.8	0.0
Harmful to business	16.1	0.0
Penalty on incentive	16.1	0.0
Less injurious than other taxes	6.5	2.0
Other	3.2	2.0
Familial	12.9	0.0
Harmful to the family unit	12.9	0.0
Total	100 (N=31)	100 (N=50)

Discussion

The trajectory of estate taxes in Australia most obviously resembles the US trajectory. Both countries introduced the taxes during World War One, extended them in subsequent decades, and then rolled them back. From this perspective, Australia – one of the ‘English-speaking family of nations’ (Castles 1993) – was precocious in its application of neo-liberal logic to estate taxes, whereas the US has taken much longer to approach the same end. This argument is consistent with the liberal-meritocratic sentiments of both advocates and opponents in parliamentary debates, the polarized debates of 1914 and 1978, and the economic narrowing of the abolitionist case in 1978.

Yet the argument does not bear close scrutiny. Following Beckert, there are two substantial differences between the discursive fields of Australia and the US. First, the discursive field in Australia places more weight on family provision. During the early twentieth century state-based family provision legislation in Australia privileged family

relationships in inheritance; between the 1940s and the 1970s the growing battery of deductions from estate tax liabilities had the same effect. As Beckert observed of France and Germany, estate taxes in Australia became an instrument of family policy.

Second, the discursive field in Australia attaches less symbolic weight to estate taxes as a vehicle for equality of opportunity. In the US the taxes symbolized a commitment to inter-generational equality of opportunity, which meant that their trajectory was more polarized. In particular, there was a backlash against the taxes following their creation, the top rate reached 77 percent, and there was enduring resistance to their dismantling. In Australia conservatives contributed towards the consolidation of the tax, the top rate peaked at 27.9 percent, and there was bipartisan support around their progressive curtailment. Ultimately all major political parties contributed towards their abolition. In this sense the discursive field in Australia was more akin to France than the US.

It is telling that Pedrick emphasized the symbolic significance of estate taxes in his account of their abolition in Australia. At a material level, the taxes failed profoundly. They made a relatively small contribution to state revenues. More to the point, they had little impact upon the distribution of wealth, notwithstanding punitive top rates in the US (and the UK). On the contrary, they gave rise to a new institutional architecture – including family trusts, family offices and family councils – directed towards the transmission of dynastic wealth (Harrington 2009). In this context, it is no surprise that the liberal defence of estate taxes in Australia was weak, and the social democratic defence was half hearted. In this sense the abolition of death duties in Australia was a harbinger of their abolition in other countries, where the taxes are judged for their effectiveness rather than their symbolic baggage.

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