OH, TO DIE DOWN UNDER! ABOLITION OF DEATH AND GIFT DUTIES IN AUSTRALIA

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The Death Duty Abolition Movement in Australia

In 1969 a Justice of the Supreme Court of Western Australia, the Honourable Oscar Negus, died and in so doing reminded his younger brother, Sydney, of his own mortality. In early 1970, concerned about his own deteriorating health and the future security of his wife, Sydney Negus, formerly a skilled carpenter and later a smallish building contractor, undertook 'to get his affairs in order'. In the process he learned that, even in relatively modest estates, probate duties had a serious impact on property left to a widow. Filled with a sense of outrage and a great sense of mission he set out, like a modern Gideon, to sound the trumpet of alarm and rally the citizenry to the cause of abolishing death duties on bequests to widows. Other muted and sporadic voices had been heard earlier in Australia complaining about death taxes but it was in March of 1970 that the real campaign to abolish death and gift duties in Australia began.[1]

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The basic point of view on the role of death taxes in society here reflected was developed at greater length in the American context in my 1978 Rosenthal Lectures, published by C.C.H. as *Death, Taxes and the Living* (1980).

[The text of this paper is published in essentially the same form as presented to a session of the American Bar Association in Sydney in August 1980. For publication in the U.W.A.L. Rev. much of the original footnote documentation however has had to be omitted. Although this is to be regretted the unedited version of Professor Pedrick's paper is on file and copies of it may be obtained by writing to the Editor. —*Ed.*]

1 The factual information on Mr Sydney Negus's campaign is based on an interview with Mr Negus, conducted on 30 June, 1980 and on the newspaper files of *The West Australian*.

Like a man possessed, this West Australian of modest background and limited financial resources, set out to enlist the multitudes to his holy cause of abolition of death duties. In March of 1970 he began to take out advertisements in the local newspapers, inviting signatures on a 'Petition Against Probate and Death Duties', contending that 'bereaved and bewildered widows are being robbed of their just rights . . . by Probate Tax'. Contributions to help finance the campaign were solicited. The results were simply astounding. Thousands took the time to sign the petition form in the newspaper advertisements and, more significantly, to send in modest contributions. The Negus mail became a flood. One employed secretary, the Negus family of five and one or two dedicated friends of the cause joined together to open the mail and send acknowledgement of contributions. As the money flowed in and the thousands of petition signers were joined by still more thousands the Negus campaign went national, with placement of his newspaper advertisements in all the major cities. Sydney Negus became a celebrity, interviewed on television, written up in the press and invited to speak on abolition of death duties before a great variety of organisations all over the country. Ultimately, by Senator Negus's count, some 750,000 persons nationwide signed his 'abolish death duty petition' and mailed it in.

Convinced that the 'cause' had to have a voice in Parliament, and on learning that only a $200 filing fee was required, he decided to offer himself as an independent candidate for the Federal Parliament in an election scheduled less than six months later for November, 1970. With no professional campaign staff, and spending only $1500 on his campaign, he entered into a round of speaking engagements and a direct mail campaign, sending out mimeographed slips of paper giving his petition signers in Western Australia instructions on how to vote for Sydney Negus, Independent, in the 1976 Senate election. The candidate was not sanguine about his prospects but took a rather commonsense view that at least the campaign for the Senate would bring some public exposure and thus assist a probable later campaign for a seat in the Parliament of Western Australia, where he would pursue his abolition of death duties crusade at the state level. But when the votes were counted in November 1970, Sydney Negus became Senator Negus, elected to represent the State of Western Australia by a substantial majority under the proportional voting system — one of the few Independents ever elected to that House. Astonished himself at this turn of events he took his seat in the Senate in July of 1971 where he served only until the double dissolution election of 1974, when he was defeated in a partisan election. Although whilst in the Senate he did not succeed in bringing about abolition of death duties, his election was surely a catalytic factor. Election to the Senate of an Independent whose single issue campaign was the abolition of death duties was not lost on the more professional party leaders.

For many years farming groups in various parts of the country had expressed concern over the impact of death taxes on family farms. A hotbed of agrarian resentment against death duties was the State of Queensland, sometimes described as the Texas of Australia. By early 1971 the Country Party in Queensland (where Senator Negus had in fact made a number of speaking appearances), had formally endorsed the 'abolish death duties' campaign.[2] News stories and feature articles on the subject of abolition received substantial and continuing attention there in the press.[3] Expressing concern for farmers and small businessmen hit hard by probate duties, Premier Bjelke-Peterson of Queensland first supported exempting inter-spousal transfers from gift and death duties.[4] Then sometime in 1976, apparently without consulting his (Liberal Party) Treasurer in advance, the Premier embraced the 'total abolition' religion.[5] Astute politician that he was, Premier Bjelke-Peterson saw that Queensland, with the advantage of its Florida-like climate, could enlarge the attraction by offering a warm final resting-place (on this earth) completely free from state death duties to residents of other states. The cost to the Queensland treasury was to be about \$25m per year of lost revenue,[6] more than a bagatelle but tolerable to the Premier. Abolition became the official position of the Queensland Government over the budgetary misgivings of the then Treasurer and leader of the Parliamentary Liberal Party, Sir Gordon Chalk.[7] But the

[2] A letter to the Queensland Premier, Mr Jo Bjelke-Petersen, from the Treasurer of the Queensland Country Party, dated 10 April 1972, reported on a Country Party Conference in May 1971 in Rockhampton at which the Party had unanimously adopted a policy that probate duty should be completely abolished. Death duty was viewed by the Party as one of the causes of poverty!

[3] Probate duties with respect to hardship cases and with respect to abolition proposals were regarded by *The Courier Mail* as 'news' and given substantial and frequent coverage.

[4] See Queensland. Parliament, *Debates* 1975 at 1946-47 (14 Nov.) and at 2156-59 (21 Nov.).

[5] A news story detailing the surprise of the Treasurer, Sir Gordon Chalk, at the decision to totally abolish death duty in Queensland at a revenue cost of some \$25 to \$30m annually, and his reluctance to do so, appeared in the Brisbane *Courier Mail* for 3 Dec. 1976.

In personal interview with the writer, Sir Gordon Chalk explained that his concern in 1976 was with how the revenue lost from total abolition was to be replaced in the State budget, his area of responsibility.

[6] Queensland. Treasurer's *Financial Statement 1979-80* at 15 shows that for the 1975-76 fiscal year succession and probate duty amounted to \$26,824,878.

[7] See n. 5 supra.

Premier and his abolitionists won the day, first with a total spousal exemption from transfer taxes in Queensland in 1975,[8] followed in 1977[9] by total abolition of estate and gift duties in that State.

At that point in time, as they saw it, the competitive position of the five other Australian states was threatened. Under Premier Bjelke-Peterson, Queensland, through its official statements, its tourist bureau, its chambers of commerce and private developers was singing a siren song of the joys of escaping state death duties by investing in Queensland real estate or, even better, moving one's domicile there.[10] In other states there was very real concern about a flight of capital. Many observers thought the abolition of death duties in Queensland was in fact a significant factor in a movement of capital to the Gold Coast state.[11] An official study on death duties prepared in 1978 for the state government of Tasmania reported that some $11 million in capital was transferred in the one year of 1977 from Tasmania to Queensland as a result of the abolition of death duties in the latter state.[12] A domino effect commenced in the other states.

Victoria, New South Wales and South Australia first exempted inter-spousal transfers from death duties in 1976,[13] followed by Western Australia and Tasmania in 1977.[14] Total abolition was then adopted in

8 Succession Duties Acts Amendment Act 1975, effective as to decedents dying after 25 Sept. 1975. See s. 12(5) of the Succession Duty Act 1982 (Qld) as amended by the 1975 Act.

9 Succession and Gift Duties Abolition Act 1976 (Qld).

10 A 1976 Memorandum of 'Legal Information on the Abolition of Death Duties in Queensland' was described as 'prepared for the Gold Coast Visitor's Bureau'. It set out a table indicating that death duties for the State of Victoria on an estate of $100,000 passing to children or grandchildren would attract duty of $15,600 as compared to no state death duty in Queensland. The pamphlet went on to point out that residence in Queensland was not required to enjoy the Queensland estate duty relief—investment in real estate in Queensland would exempt that real estate from death duties—with a further observation that 'however, a person domiciled in Queensland will also have the benefit of having his personal estate capable of passing free of duties' The position of Queensland as an estate duty haven was described as 'unique'.

11 Various stories in newspapers, both state and national, indicate that many people in Queensland and elsewhere believed that abolition of death duties in that state brought very large amounts of new capital to Queensland. Despite the general impression that there had been a flight of capital from the other states, induced by the tax advantage, there are some skeptics, among them being Sir Gordon Chalk (interview with the author).

12 Tasmania. Parliament. *Report of the Board of Inquiry into Death Duties* (1978) at 6. (Graham Blackwood served as the sole member of the Board.)

13 Stamp Duties Act 1920 (N.S.W.) s. 101D(6); Probate Duty Act 1962 (Vic.) First Schedule 1(aa); Successions Duties Act 1929 (S.A.) s. 8(a) (as amended in 1976).

14 Death Duty Assessment Act 1977 (W.A.) s. 22; Deceased Persons Estate Duty Act 1977 (Tas.) Second Schedule (3).

1980 by South Australia and Western Australia,[15] in 1981 in Victoria and New South Wales, and in 1982 in Tasmania.[16]

The abolition movement was not limited, however, to the states. After Senator Sydney Negus had demonstrated the great political appeal of the death duty abolition issue, political recruits came from all directions. Relatively early in 1972 the Democratic Labour Party moved unsuccessfully in the Federal Parliament for abolition.[17] In 1975, in a bid to regain office following the dismissal of his government and the subsequent double dissolution of Parliament, the former Labour Prime Minister, Gough Whitlam, included in his campaign promises a commitment to abolish death duties if returned to office.[18] But the promise was to no avail and he was defeated in a landslide. When another Federal election was scheduled for 1977 the incumbent Liberal Prime Minister, Malcolm Fraser, in a policy speech of November 21 of that year, after cataloguing the achievements of his administration, observed that: 'Estate duty has caused distress and hardship to thousands of Australian families, to small business, to farmers.'[19] He then announced that 'as of that date' transfers of property between spouses and parents and children would be exempt from gift and estate duty and further promised that 'over the life of the next Parliament estate and gift duty will both be entirely abolished'.[20]

Though the size of the resulting victory returning Prime Minister Fraser's party to office in 1977 suggests that the estate and gift duty abolition promise was not politically necessary, it is easy to be wise after the event. Moreover, significant benefits from abolition would be enjoyed by agriculture and Mr Fraser, himself a wealthy grazier, was undoubtedly sympathetic to the long opposition of agricultural interests to death duties on farm land. Since the Federal government was not subject to the 'capital flight' pressure to which individual states were vulnerable once Queensland had taken the abolition step, the Fraser decision to promise abolition can only be viewed as a political decision to garner votes for the 1977 election, or perhaps as a commitment on a matter of principle, or a combination of the two.

Surprisingly, to an American at least, it seems that in Australia cam-

15 Death Duty Assessment Act Amendment Act 1980 (W.A.); Succession Duties Act Amendment Act 1979 (S.A.)

16 Probate Duty Act 1981 (Vic.); Stamp Duties (Further Amendment) Act 1980 (N.S.W.); Deceased Persons Estate Duty Act 1982 (Tas.).

17 See *Courier Mail*, e.g., 19 May 1971, 19 Oct. 1972.

18 See, e.g., Courier Mail 5 May 1974 which reported that Prime Minister Whitlam promised that the Federal Estate Duty Act would be amended to exempt the matrimonial home from duty when it passed to the surviving spouse.

19 Prime Minister's Office. Press Release of 21 Nov. 1977, at 6.

20 Id.

paign promises are sometimes kept. In April of 1978 a government-sponsored measure to abolish death and gift duties at the Federal level was introduced in Parliament by the Federal Treasurer, Mr John Howard.[21] In the ensuing debates the Labour Party strategy was embodied in a motion to withdraw the proposed bill 'until such time as an alternative form of tax on capital is introduced.'[22] Labour conceded in the debates that the Australian system of capital transfer taxation was in a shocking state, as well it was, with a dual system and state taxes at roughly twice the size of the Federal levy, exemption levels inadequately revised to reflect inflation, with genuine hardships for farmers and others and inadequate provision to cope with tax avoidance. In the debates the traditional case for death duties, or some form of wealth tax, was put forward by Labour spokesmen as being necessary to combat undue concentration of inherited wealth, to promote equality of opportunity and to provide needed revenue from windfall sources. The point was made again and again that with abolition Australia would stand unique in the industrialized western world as a country without any tax on capital—there being no capital gains income tax, no annual wealth tax and, if repeal proceded, no death tax. But the plea to defer abolition of death duties until an alternative tax on capital could be introduced was defeated along party lines and the bill finally to abolish the Federal estate and gift duties was adopted[23] to become fully effective on July 1, 1979.

The current position (in 1982) is that death and gift duties have now been abolished at the Federal level and in all of the six states.

Australian Abolition—Standing Alone

In its abolition of death and gift duties Australia has set out on a lonely trail. Whether it will lead the way for the rest of the world, as intimated in the heat of debate by one Federal M.P.,[24] may be doubted, although the U.S. has changed course also. It is true that Canada too has abolished death duties at both the federal and provincial level, but capital gains there are taxable as income and death is deemed to be a disposition of capital assets for income tax purposes.[25] New Zealand in

21 The full import of the Bill to amend the Estate Duty Assessment Act was given by the Treasurer in his second reading speech on 13 April, 1978: see Australia. House of Representatives. *Parl Debates* 1978 at 1506 (13 April).

22 Id. at 1505-06 (13 April); at 2143 (10 May).

23 Id. at 2143-57 (10 May) for the general debate in the H. of R.; see also Senate, *Parl. Debates* 1978 at 2158-81 (31 May).

24 As intimated by Mr Lusher (Hume) in H. of R. *Debates* 1978 at 2153 (10 May).

25 In Canada the Carter Royal Commission in 1966 recommended that the federal estate tax be eliminated in favour of treating inherited property as income to be sub-

1979 greatly increased the exemptions from death and gift duties, but (like the U.S.) the levy remains, at least for those in the higher brackets.[26] From whence came the wisdom that abolition of death and gift duties was the path of enlightened fiscal policy for Australia? Certainly not from the 1973 majority report of the Senate Committee set up to study the subject, recommending as it did that death and gift taxation be retained as a feature of the revenue system but at the state level with a uniform and modernized death and gift duty system to be administered either by the Commonwealth or by the states.[27] It did not come from the Federal Treasury or the Federal Commissioner of Taxation in their submission to the Asprey Committee in 1974 when they observed that: 'Estate duties are, however, important and basic in the system'.[28] And it certainly did not come from the Report of the Asprey Committee set up to review the Australian tax system. That Committee, in essentially conservative reports issued in 1974 and 1975, strongly supported retention of death and gift duties as having 'a quite essential role to play in the tax structure considered as a whole'.[29] That Committee's recommendation was for exclusive Federal administration of one death and gift duty system (with revenue-sharing) but modernised to minimise the opportunities for tax avoidance so that the tax would bear more evenly on those who should be subject it.

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ject to the income tax with averaging to mitigate the burden on one time receipts:see Canada. *Report of the Royal Commission on Taxation* 6 vols. (1966) ('Carter Report') vol. 3 at 465. Though the federal government gave up estate taxation, it did not tax inheritance as income. Thereafter, the provinces did progressively abandon estate taxation. The position in Canada is therefore that, contrary to the recommendations of the Carter Commission, inheritance is not taxed. Capital gains are deemed to be realized on death, however, and thus to that extent there is taxation of capital in Canada. For a detailed recounting of the history of the Canadian developments see Bird, 'Canada's Vanishing Death Taxes' (1978) 16 *Osgoode Hall L J* 133.

26 Under the Estate and Gift Duties Amendment Act 1979 (N.Z.) the level of the basic exemption was raised tenfold from $25,000 to $250,000. It was phased in over a four-year period and became operational on 1 April 1982. For comprehensive and very critical evaluation of this great increase in the exemption level in New Zealand see Green and McKay, 'The Estate and Gift Duties Act 1979: The Demise and Wealth Transfer Taxes' (1980) 10 *Vict. U of Wellington L. Rev* 227.

27 Australia. Senate. Standing Committee on Finance & Government Operations, *Report on Death Duties* (1973) (Parl. Paper No. 287) at 9 and 29-30,recommending a unitary estate and gift duty system. Of the Committee of eight, three Senators filed a dissenting report recommending that the Federal Government vacate the field and further that the states should reduce their death duties with an eye to eventual abolition.

28 Australia. Treasury, *Estate and Gift Duty; Purposes and Rationale.* (Taxation Paper No. 11 (Dec. 1974)) at 14. This paper was prepared for submission to the Asprey Committee 'in close consultation with, and with the detailed assistance of the Commissioner of Taxation and his officers'.

29 Australia. Treasury. Taxation Review Committee, ('Asprey Committee') *Preliminary Report* (June, 1974) at 114: *Final Report* (Jan., 1975) at 440.

Most certainly the abolition wisdom did not come from the mother country. The United Kingdom after extended and careful study, replaced its leaky death duty system with a modern and hard to avoid Capital Transfer Tax in 1975,[30] notable for enlarged concessions in the lower and middle brackets and a much tougher system for the upper bracket group. There is certainly no present prospect that that levy will be abolished. Nor could counsel for abolition have come from the United States where the Tax Reform Act of 1976[31] adopted as one of its features the enlargement of relief provisions for the lower and middle brackets, accompanied by a new set of provisions designed to make tax avoidance for the really wealthy through generation-skipping trusts much more difficult.

The wisdom that capital should not be taxed is certainly not derived from any example drawn from the modern industrialized countries that make up the Organisation for Economic Co-operation and Development. ("O.E.C.D.") Capital is taxed in all but one of the twenty-one member countries — the one lonely exception being Australia.[32] For that matter either an annual wealth tax or some form of death tax or both are to be found in nineteen of the other twenty member nations, with Canada having a capital gains income tax at death.[33]

30 Finance Act 1975, Part III, Capital Transfer Tax: see Wheatcroft and Hewson, *Capital Transfer Tax* (1975).

31 Even before the 1981 legislation, the Tax Reform Act 1976 (U.S.) had considerably amended the provisions of the Internal Revenue Code dealing with the federal estate and gift taxes to inaugurate an integrated transfer tax, cumulating life time transfers with the transfer at death, substituting an eventual credit (1980 figures) of $47,000 to replace the old exemption of $60,000. The other major structural changes effected included enlargement of the marital deduction for bequests to surviving spouse (to a limit of $250,000 or half the adjusted gross estate, whichever was larger). Thus, with the credit and a marital deduction, an estate of $425,000 will be free of tax on the death of the first spouse if that spouse receives a bequest of $250,000. A tax later payable on the death of the second spouse will be about $20,000 if matters have been properly arranged.

In addition, the 1976 legislation added a special and new Tax on Certain Generation Skipping Transfers, in Chapter 13 of the Internal Revenue Code. The target of Ch. 13 is trusts which provided benefits for successive generations, whether those trusts be mandatory or discretionary. But there were from the start substantial exceptions to the new tax for such transfers. A substantial literature developed on the operation and the merits of the 1976 legislation: see, e.g., Covey, *Generation Skipping Trusts* 4th ed. (1979). In Verbit, 'Do Estate and Gift Taxes Affect Wealth Distribution', (1978) *Trust and Estates* 674 at 676, the view is expressed that the tax on generation skipping trusts is not worth the bother; see also Verbit, 'Annals of Tax Reform: The Generation Skipping Transfer', (1978) 25 *U C L.A Law Rev* 700.

32 O.E.C.D. Committee on Fiscal Affairs. *The Taxation of Net Wealth, Capital Transfers and Capital Gains of Individuals* (1979) at 20.

33 Id. Of the Canadian system for taxing capital gains the report contains the following comment (at 136): 'Gains accrued at taxpayer's death are taxable, except for transfers to spouse, or transfers of farm to child or grandchild, in which case the transferee is treated as having acquired the asset at the original cost to the transferor'.

Objections to Death Duties in Australia

(a) Taxing the Small Estates

The vision of improving a modern industrialized state's fiscal system through abolition of its only tax on capital is a vision thus far seen only in Australia.

How was it that death duties came to be seen here, first by impressively large numbers of citizens, and then by political leaders as being so 'ghoulish', iniquitious, and 'counterproductive' as to deserve elimination, root and branch? Some light is to be had from a consideration of the monumental defects of the former Australian death and gift duty system. It was, first of all, a double or duplicative system. The Federal levy, with a basic exemption of only $40,000, produced approximately $100 million in 1977-78 in Commonwealth revenues.[34] The state levies on estate and gifts (with varying titles and with exemptions as low in the 1970s as $20,000 in some states)[35] in 1977-78 yielded some $240 million in revenue for the states.[36] Thus the state death levies were plainly the more important and they bore down quite heavily on some very modest estates, with inflation exacerbating the problem of low exemptions.

There were, in fact, cases of genuine financial hardship visited on surviving widows by state death duties in the 1960s and early 1970s which at that time featured very low basic exemptions and little or no special relief for interspousal transfers. Whereas the Australian Federal death duty system really touched only about 12% of decedents' estates,[37] in some of the states perhaps twice that percentage were taxable. Hardship cases involving persons of relatively modest means were featured in the press and, on at least one occasion, even in State election campaigns.[38]

Concern over death duties was widespread. A much larger portion of the general population than would in fact be subject to death duties nevertheless feared that even their modest estates would be caught in the estate duty trap. Only on that basis can one explain the hundreds of thousands of signatures amassed by Senator Negus from his newspaper

34 Australian Bureau of Statistics. *Taxation Revenue, 1977-78* at 8.

35 The Senate Report on Death Duties, supra n. 27, at 7, provides a chart showing the then current level of statutory exemptions under state death duties applicable when the estate passed to the surviving spouse.

36 See Taxation Revenue Australia 1977-78, supra n. 34, at 10.

37 The figure used in the Commonwealth Parliamentary Debates on abolition of the federal death duty was 12%, presumably a figure supplied by the Treasury or the Commissioner of Taxation: see H. of R. *Parl Debates* 1978 (10 May) at 2151 (Mr Howe); Senate (31 May) at 2178-9 (Senator Walsh).

38 E.g., the campaign by Mr Mike Evans, National Party candidate, in the 1976 Queensland by-election for the state seat of Clayfield.

advertisements and the financial contributions he received, sometimes from old age pensioners. Though the movement to modernise exemptions and to free inter-spousal transfers from taxation had in fact been largely accomplished by 1977, awareness of that relief was not general and fear of death duties by persons of modest or no wealth continued to be widespread. The case made on behalf of the hardship cases was surely compelling. In New Zealand,[39] in the United Kingdom,[40] and in the United States[41] it was in fact seen as compelling and as calling for appropriate relief—but only to the extent of interspousal exemptions and enlarged general exemptions, certainly not complete abolition.

(b) The Farm Problem

That estate duty was disproportionately heavy on farm lands, that farms had to be sold for death duties and that uneconomic fragmentation of agricultural holdings resulted were claims which were frequently made, but the data were sparse and mostly anecdotal.[42] Nevertheless

[39] The exemption was raised there to $250,000 for 1982, seen as inordinately liberal by Green and McKay, supra. n. 26.

[40] In the U.K. the Capital Transfer Act 1975 provided some relief for lower wealth citizens. Wheatcroft and Hewson, supra n. 30, at 3, suggest that 'the introduction of the capital transfer tax in replacement of death duty is favourable to those who could not use the loopholes. Hence the change, except in special cases, only adversely affects the really wealthy and should be seen as part of the Chancellor's objective to reduce large holdings of wealth in the United Kingdom'. There is some evidence in fact that individual wealth holding in Britain is now less concentrated than in former years: see *Report of the Royal Commission on the Distribution of Income and Wealth* (1979) (Chairman Lord Diamond) (1979 Cmnd 7595), Tables 4.4 and 4.5 at 93 and 95 show, for example, a decline in the percentage of wealth held by the top 1% from 44.5% in 1956 to 24.9% in 1976. There is some speculation however that this change may not reflect reductions in the concentration of wealth holdings by families, but rather a distribution of wealth holdings within families: see Verbit, supra n. 21. Interspousal transfers are completely exempt from the Capital Transfer Tax: see O.E.C.D. Report, supra n. 32 at 182.

[41] See n. 31 supra. In fact the Tax Reform Act of 1976 in its revision of the Federal estate and gift taxes sharply reduced the numbers of citizens subject to those taxes from about 7% to perhaps no more than 3%.

[42] See, e.g., Mr Lusher (Hume), Australia. H. of R., *Parl Debates* 1978 (10 May) at 2152-2156. There had been a few Australian studies endeavouring to measure the dimensions of the farm estate duty problem. They are summarized and extended in Cornell, 'The Impact of Death Duties on Farms in the New South Wales Sheep Industry' (1976) 29 *Qld J of Agr. Ec* Cornell's conclusion was that the most pressing problems could be alleviated by provision for extended payment of death duties. The Asprey Committee (Final Report), supra n. 29 at 447, discounted the necessity for any special treatment of farm property for estate and gift duty purposes. For New Zealand see Green and McKay, supra n. 26, at 242-251, where the view expressed was that a deferred payment option would provide all the relief for farming estates needed or justifiable.

In the U.S. a study by the economist James D. Smith, reprinted in Hearings before the Committee on Ways and Means on Estate Tax and Carryover Basis, etc. (Ninety the most potent force for repeal of death taxes was the farming bloc.[43]

The hardship claim advanced on behalf of farming interests was frequently based on the assertedly low rate of return on farming property in comparison to the high market value on farm land.[44] If in fact the rate of return on farming operations is disproportionately low (and that seems to be the case), then there is a case for death tax relief for property whose income potential is demonstrably lower than for other types of investment property. But the object ought to be to arrive at a burden level that is comparable to other property in terms of the profitability of the land and its farming use—not abolition of the entire system because of its past failure to take account of demonstrable differences in the intrinsic value of different classes of property. To tax farming property less heavily on a rationalization based on recognition of a generally lower rate of return does have the effect of protecting farm property from the full impact of market factors affecting investment. This course does involve political interference with market factor resource allocation and might well see farms retained by less efficient managers. But it would not be the first time political considerations have influenced resource allocation and may be justifiable to preserve the 'way of life' on the small and medium sized family farms. Acceptance of a political compromise that can be rationalized in terms of equality of treatment on a capitalization of earnings approach is surely more appealing than junking the whole death tax system.

A generous level of exemptions, free interspousal transfers, special valuation approaches to farm land[45] or rate reductions for specified types of property,[46] liberal provisions for extended long term payment

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Fifth Congress, 1st Sess. Serial 395-41), entitled 'The Impact of the Estate Tax: Only the Wealthy Feel its Bite' reported that: 'On the average almost 93% of farm and business estates encounter no liquidity problems. Even where the liquidity problem is worst—in estates in the $200,000 to $1 million range—about 90% of all estates escape difficulties.'

43 Some (limited) questionnaire evidence suggests that perceived hardship to farmers was a most important, if not the most important, factor fuelling the abolition movement.

44 See *Parl. Debates* 1978, supra n. 24, at 2155 (Mr Lusher (Hume)). A study by the Bureau of Agricultural Economics, 'The Australian Grazing Industry', (1977) 30 *Qld. Rev. of Agr. Ec* 281-309 (34, 1977) reported a rate of return on pastoral farming of 2.3%, on grain farming of 13.3% and on high rainfall farming of 2.4%.

45 See, e.g., s. 2032A of the Internal Revenue Code (U.S.) (as amended). There are of course a number of interpretative difficulties with these provisions.

46 The Capital Transfer Tax (U.K.), Schedule 8 provides for valuation of farm land in an estate on a capitalization of farm rental rates: see Wheatcroft and Hewson, supra n. 30 at 8.11-8.19. Under s. 9E of the now abolished Estate Duty Assessment Act 1914 (Cth) (as amended), a rate concession of 50% was provided for rural property the value of which did not exceed $140,000, with a reduced concession for larger estates.

of death duties,[47] with government financing available if desired,[48] are among the measures that might be utilised in some combination to assure that values based on income potential from farming properties could be subjected to a transfer tax at the death of the owner on a basis reasonably comparable to the burden visited on other inheritors.

(c) The Death Duty Avoidance Problem

Estate and gift duties in Australia were criticised, and justly criticised, as a system that was shot through with loopholes. It has been charged in the United States by Professor Cooper even after the Tax Reform Act of 1976 that the Federal Estate Tax in that country is a 'voluntary tax' payable only by the stupid and the patriotic.[49] Even the British Capital Transfer Tax of 1975 is said to be avoidable to some extent.[50] But the opportunities for tax avoidance in Britain and in the United States with respect to death duties pale in comparison with what could be done under the pre-abolition system of Australian death and gift duties.

As the Asprey Committee observed in 1975:

> It (the Australian death tax) is certainly at present a tax which can be avoided by well-advised persons with ease, and which might almost be said to be paid principally from the estates of those who died unexpectedly or who had failed to attend to their affairs with proper skill.[51]

The Committee did not overstate. Too many arrangements providing the substance of ownership fell outside the tax net. Discretionary trusts could be used to pass family fortunes down through the generations free from death tax.[52] The Federal death and gift duty system did not aggregate life time gifts with the estate at death and successive fresh starts at the bottom of the gift tax brackets could be had after a cooling off period of just eighteen months![53] Even then gift duty liability could be shifted to one or more corporations under a system that did not pierce the corporate veil for gift duty purposes.[54]

47 In the U.S. provision is made in ss. 6166 and 6166A of the Internal Revenue Code for long term payment of estate taxes on very favourable terms.

48 In New Zealand it seems that a government offer of favourable term loans for payment of estate duty found no takers over a considerable period of time.

49 Cooper, 'A Voluntary Tax? New Perspectives on Sophisticated Estate Tax Avoidance' (1977) 77 *Colum L Rev* 161 (1977).

50 Kay and King, *The British Tax System* (1978) Ch. 10.

51 Asprey Committee (Preliminary Report), supra n. 29, at 115.

52 G. Hill, *Death and Gift Duties* (1975) (Asprey Committee, Commissioned Studies) at 47 and 75-76.

53 Id. at 92 and 105-106.

54 See Gorton v F.C. of T. (1964) 113 C.L.R. 604: Pedrick, 'The Gift Duty Dance of the Corporate Veil', (1973) 11 *U W A L Rev* 75.

Imagine a death and gift duty system where transfers subject to a power of revocation were regarded as transfers completed for duty purposes at the time when the revocable transfer was originally made![55] Contemplate a system under which general powers of appointment exerciseable in favour of the holder were only taxable if exercised.[56] As far as the Commonwealth death and gift system was concerned, there were simply no provisions to deal with retention by the grantor of powers over the property put into his trust.[57] It was against this background that the editors of the leading service on estate and gift duties observed that:

> It may be possible . . . (through a trust) to retain sufficient control over the property (e.g., by being trustee, or by controlling or having his advisers control a company which is the trustee, or by having the power to remove and replace the trustee, or by having the power to consent to certain decisions in relation to the trust) for this to provide him (the grantor) with a satisfactory alternative to property ownership in its true sense.[58]

The structural and textual deficiencies illustrated by these examples were more than matched by the cruel treatment the Australian death and gift duties system received at the hands of the Australian High Court on more than one occasion. An American tax planner might not be too surprised at a decision that a non-interest bearing loan to a family member repayable on demand did not generate gift liability[59] —until, that is, there is added a further provision that on the death of the family creditor the principal is to be repaid only over a long period of years still without interest. The High Court decision in that case was that only the discounted value of the long term obligation was subject to death duty, so the largest part of the value of the loan had simply evaporated, escaped![60] Another High Court decision was to the effect that a corporate articles provision reducing the income and liquidation rights of the governing owner's shares just at the moment of his death, in favour of the other family member shareholders, effectively reduced the value of his shares for estate duty purposes.[61] This became known as

55 See Hill, supra n. 52, at 75.

56 Id. at 57-58.

57 Id. at 71-77.

58 C.C.H. (Australia), *Estate & Gift Duty Reporter* (1980) at 40-700.

59 Crown v. Commissioner (1978) 585 F.2d 234 (interest free loan repayable on demand of $18m is not gift taxable on value of use of funds at 6% or $1m for 1 year). The Australian decision holding a non-interest bearing loan non-taxable for gift duty purposes was Bray (No. 2) v. F.C. of T. (1971) 45 A.L.J.R. 224.

60 At least for capital transfer tax purposes: see Bray (No. 1) v. F.C. of T (1968) 117 C.L.R. 349.

61 Robertson v. F.C. of T. (1952) 86 C.L.R. 463.

'doing a Robertson' after the decision of the same name. One further illustration of the difficulties faced by the Commissioner of Taxation was the widely known and exploited *Gorton Case*. The sole shareholder of an investment holding company in that scenario transformed her shares into preference shares sharply limited as to dividends and on liquidation. Common shares subject to no such limitations were then issued to her nephew at a minute fraction of their asset value. The Commissioner assessed gift duty. In the view of the Chief Justice 'the question is not whether the substance of the transactions is within what may be said to be "the policy of the Act" or within its spirit or intendment'[62] but whether this patent tax avoidance scheme was covered by the literal language of a special tax avoidance provision. From that philosophical base it was not too surprising that he (and the majority of the court) found that the Aunt was not subject to gift duty. A decision some 9 years later that the corporation itself on such a 'Gorton scheme' was subject to gift duty on sale of its shares for an inadequate price did not wholly repair the damage.[63]

In other countries the courts have come to recognise that the legislative intention in tax measures must be to have the burden distributed fairly as between taxpayers. Although there are now definite signs of change, that view seems overdue in Australia.

(d) Other Objections

There were some other hardship claims. In a falling market an estate could find itself paying duties on values substantially evaporated by the time the settlement of the estate has arrived. There have been such cases but surely the wit of man could devise a system that would allow the estate the benefit of any fall in values during a reasonable period of administration? The Asprey Committee offered a deferred valuation date as one solution.[64] A comparable problem, the matter of keeping the level of exemptions and rates current in the face of continuing inflation, should be solvable by use of an appropriate wealth value index. Current levels of exemption and rates could be published by the revenue authorities in accordance with the prescribed index, dispensing with the need for recurrent legislative action, often too long delayed.[65]

62 Gorton v. F.C. of T. (1965) 113 CLR 604 at 624.

63 Ord Forrest Co. Pty Ltd v. F.T of C. (1974) 48 A.L.J.R. 48. For assessment of the decision see Pedrick, supra n. 54.

64 Asprey Committee (Final Report), supra n. 29, at 447.

65 In its recommendations the Asprey Committee recognised the need for adjustments in the level of exemptions and in the treatment of life time gifts under a cumulation system. The Committee was content to prescribe an annual review of the level of exemptions: Id. at 447-48. Securing the attention of the legislature for this sort of

One occasionally voiced objection to estate and gift duties concerned the asserted high cost of collection. On this ground it was charged that estate and gift duties were inefficient and uneconomic. But whilst it is true that estate and gift duties are somewhat more costly to administer than other relatively 'automatic' levies, the difference is not staggering. After collection costs at the federal level a dollar of revenue from the income tax shrinks to ninety nine cents. For a dollar of estate and gift duty the net after direct collection costs was ninety seven cents.[66] As remarked by one revenue official, the margin of profit was still very good!

Assessment of Abolition as Fiscal and Social Policy

The summary of the chief complaints against the former system of estate and gift duties in Australia reviewed above—hardship to beneficiaries of small estates, heavy impact of death duties on farming property, and the loophole-ridden nature of the system—all have force and appeal. But these considerations plainly called for remedial action—enlarged exemptions including relief for interspousal transfers, treating farm valuation somewhat differently if farm values are demonstrably different, providing for deferred payment of tax and shoring up the tax base to prevent easy tax avoidance to assure that the system would bear with reasonable uniformity on all property owners. Those were essentially the recommendations of the Asprey Committee in 1975.[67] That was the course taken both in the United Kingdom in 1975[68] and in the United States in 1976[69] where the political judgment has been that it is feasible to reshape death and gift taxation to largely ameliorate the objections while preserving a form of levy seen as essential to a modern revenue system. The Australian political decision to abandon estate and

administrative task is difficult. Proof of that is the long delay in adjusting for the effect of inflation. It is suggested that an index for certain types of capital should be developed. The revenue authorities could then be charged with the task of translating the formula into annual exemption figures for transfer tax purposes. A similar translation for purposes of cumulation of life time gifts could be arranged on essentially the same basis. An alternative could be a direct arthimetic relationship with the basic income tax exemption which does get annual attention.

66 Commissioner of Taxation, *58th Report* 1978-79 (1979) at 64 reports on the cost of collection of taxes administered by the Taxation Office. For Income Tax in the year ending 30 June 1979, collection costs were 0.998% of collections. For estate and gift duties that year the figure was 2.563% and for gift tax the figure was 2.381%. The figures for 1978 were 3.643% for estate duty and 3.416% for gift duty. In Western Australia for 1974-75, collection costs for probate duty was given as 3.06%: see State Taxation Department of Western Australia, *Fifth Annual Report for 1974-75* (1975) at 24. Informal advice from other states was to the effect that death tax collection costs at the state level were in the 2 to 4% range.

67 Asprey Committee (Final Report), supra n. 29, Ch. 24.

68 See n. 40 supra.

69 See n. 31 supra.

gift taxation and all other forms of taxation of capital not only makes that country unique but raises the question whether some social values prized in other democratic societies have been devalued in Australia.

The modern rationalization supportive of death and gift taxation has altered somewhat from the demagoguery of the nineteenth and early twentieth century. If, as argued by its earlier advocates, the object was to eliminate concentration of wealth ownership and bring about equality of opportunity, then death taxes clearly have not succeeded. The modern western industrialized societies are not egalitarian. They function with a system of rewards and chance that result in a considerable and continuing concentration of the ownership of wealth and in the distribution of income. In the United States the top one per cent of wealth owners hold some twenty-five per cent of the wealth of the country, with about half of that wealth believed to represent inherited wealth.[70] The situation in the United Kingdom is comparable, there being a slightly higher concentration of wealth ownership with the top one per cent owning about thirty per cent of that country's wealth.[71]

In both countries there are still family fortunes of huge size notwithstanding that these family fortunes have passed through several generations with death taxes featuring rates that reach to seventy per cent.[72] Plainly death taxes in the United Kingdom and in the United States have been avoidable with expert guidance. Some sceptics doubt that death taxes have contributed anything to the breaking up of large fortunes and redistribution of wealth.[73] The effect has assuredly been modest. Nevertheless substantial revenues have been collected over the years. Additional sums have been diverted to charities in the United States where that option is extended by the death tax system, with resultant stimulus to the charitable impulse of the ageing. Thus, death and gift duties have to some extent impeded growth of hereditary fortunes

[70] In the *Statistical Abstract for the United States, 1978*, Chart 3774 at 476 indicates that as of 1972 the top 1% of individuals owned just 20% of the wealth of the United States. That figure is substantially lower than other estimates. In L. Thurow, *Generating Inequality* (1975) at 15-16 it is stated that 'the share of the top 1% varied between 25 and 29%, between 1953 and 1969'.

[71] Great Britain, *Report of the Royal Commission Report on the Distribution of Income and Wealth*, (1979) at 115. Two figures, one at 28.1% and one at 32%, from different studies were simply averaged. That, as it happens, is also the figure given by Atkinson, *The Economics of Inequality* (1975) at 20, 133-134.

[72] In the U.S. the top rate reached for estates of $5m or higher is 70%: s. 2001(c) of the Internal Revenue Code. The top rate for the Capital Transfer Tax of the United Kingdom is 75% reached at £2m.

[73] See Verbit, 'Do Estate and Gift Taxes Affect Wealth Distribution?' (1978) *Trusts and Estates Magazine* 598 (Part I), 674 (Part II). Verbit's recommendation, however, is not to repeal the U.S. system of death taxes but rather to make it more productive as a revenue producer.

and contributed in the process to some modest redistribution of the wealth.[74]

The new and modernized levies in the United Kingdom and the United States should be somewhat more effective in the future in effecting more dispersion of wealth but they are not leakproof and probably never will be. They do symbolize a commitment to some modest redistribution of large inherited wealth in the interests of reducing the role of hereditary fortunes in society, thus furthering in a symbolic way the ideal of equality of opportunity. Those levies, moreover, represent an application of the ability-to-pay principle of taxation by requiring that large aggregations of wealth contribute to the cost of governance. Modern income taxes, apparently progressive in their rates, all too commonly yield to political pressures and turn out, on closer examination of sometimes complicated provisions, to offer dispensations enabling some income recipients to largely escape. The exemption of capital gains as such from income taxation in Australia[75] is a simple illustration. Estate and gift duties falling on large aggregations of wealth are paid only on behalf of the most affluent members of society and represent a last clear chance for the public fisc to levy on accumulations that may have escaped the income tax.[76] These taxes thus contribute a significant element of progressiveness to the tax system, ensuring that in the end substantial personal wealth will be shared in some portion with society.

It is true that death and gift levies do not in modern times raise a large portion of government budgets, but they do raise significant amounts—from one to three percent of tax revenue for budgets hard pressed to cover the costs of special programs designed to ameliorate the plight of those unfortunates who have no wealth and little income. The amounts in themselves are in fact significant:[77] for instance $340 million

74 Id. at 606-07.

75 C.C.H. (Australia), *1980 Master Tax Guide* at 257: 'There is no capital gains tax as such in Australia'. But s. 26AAA does catch some capital gains when realised within 12 months of purchase of the capital asset; see also s. 26(a).

76 Cf. Eisenstein, 'The Rise and Fall of the Estate Tax' (1956) 11 *Tax L. Rev.* 233 at 256: 'It is no secret that the income tax base is riddled with loopholes which I need not catalogue. In these circumstances perhaps the only practical solution is a vigorously effective estate tax . . . If the income tax fails to do its job only the estate tax can assure an eventual day of reckoning.'

77 In 1977 collections from the U.S. Federal Estate Tax, before the reductions effected by the Tax Reform Act of 1976 became operative, reached $7.4 billion: see *Statistical Abstract for the United States 1978*, Chart No. 434. In 1980 receipts from federal estate and gift taxes were reported as $5.7 billion with $6 billion expected for 1980. Capital gains income taxation of individuals in the U.S. yielded $7 billion of revenue in 1980 with $7.5 billion projected for 1981. Thus, estate and gift taxes and capital gains income taxes together yielded approximately $15 billion.

In the U.K. collections for Capital Transfer Tax at death for 1977-78 were reported as £240.4m for Capital Transfer Tax, with £23.1m for life time transfers, was raised under the state and federal Australian estate and gift duty system in 1977-78.[78]

To replace the revenues collected by these levies (in an era when reduction of total governmental outlays seems most unlikely) would call for hard choices. If replacement revenue was to be secured from the income tax would the increased burden be placed on low and middle income recipients or on the higher income brackets? It is unlikely that there would be great enthusiasm for giving tax relief to the wealthy through repeal of estate and gift duties at the expense of shifting the burden to those lower on the income scale. Alternatively if the wealthy were given a choice between making up the lost revenue through relatively substantial increases in current income tax rates or a one time tax of each generation on the transfer of wealth would not the later alternative clearly be the more attractive? It is certainly the alternative favoured by economists as less likely to impair economic incentive. Another possibility of course, would be to shift to taxes on consumption or, with luck, to revenues from government royalties on mineral exploitation. But these alternatives share again the common feature that relief from death and gift duties to be replaced by other revenues means that tax relief for the wealthiest segment of society would almost certainly be paid for to a considerable extent by others, namely the poor and the middle class.

It is considerations of the ability to pay, of modest redistribution of wealth by reduction of hereditary fortunes and collection of the useful amounts of revenues to be derived without undue impact on the economy that have led every thoroughgoing study of death taxes to conclude that taxation of wealth is an indispensable feature of a revenue system appropriate for a western industrialized society. That was the view of the Meade Committee in the United Kingdom[79] in 1978, of the United States Treasury Study of 1977,[80] of the Carter Commission in Canada in 1966,[81] the Ross Committee in New Zealand in 1967[82] and the Asprey Committee in Australia in 1975.[83]

plus further receipts from estate duty of prior years making a total of £397.9: *Inland Revenue Statistics 1979* at 89. This total is less than Estate Duty Collections for earlier years. By way of comparison stamp duties in Britain in 1979-80 yielded £550m and capital gain income tax yielded £390m: Id. at 7.

78 Australian Bureau of Statistics, *Taxation Revenue, 1977-78* at 5.

79 Institute for Fiscal Studies, *The Structure and Reform of Direct Taxation* (1978) Ch. 15.

80 United States. Department of Treasury, *Blueprints for Basic Tax Reform* (1977) at 12.

81 Supra n. 25 in vol. 3 at 473.

82 New Zealand. Taxation Review Committee, *Taxation in New Zealand* (1967) ('the Ross Committee') 1949.

83 Asprey Committee (Final Report), supra n. 29.

Is there anything in the nature of the Australian society that makes it different as respects the desirability of requiring wealth to bear a share of the revenue burden? It is sometimes suggested that Australia does not have the large fortunes to be found in older countries and consequently the modest redistributive function of death taxes is simply not needed Down Under. There is a kind of folklore to the effect that the Australian society, if not egalitarian, is at least more egalitarian than other industrialized societies. The myth is attractive but it does not conform to the facts.

Few studies have been made of the concentration of wealth ownership in Australia. With the demise of death and gift duties it is less likely that studies can be made in the future given that death tax data have been the most common base for these studies in the United Kingdom and in the United States. But the studies that have been carried out indicate that in Australia there is a considerable concentration of wealth ownership and income distribution, though not quite as great as in the United States and the United Kingdom. But the concentration, the disparities in wealth ownership and income distribution in Australia are nevertheless substantial.

One study indicates that the top one per cent of Australians own twenty-two per cent of the country's wealth, with the top five per cent holding nearly fifty per cent.[84] On the income side the available data indicate the top ten per cent of income recipients receive twenty-three per cent of total income.[85] The bottom twenty per cent of the Australian population, on the other hand, own one per cent or less of the country's wealth and receive less than two per cent of total income.[86] Like the United States and the United Kingdom, Australia is a nation of very rich, rich, middle class, working class and poor.

84 These figures on wealth concentration are based on projections from estate tax data as reported by Raskall, 'Who's Got What in Australia: The Distribution of Wealth', (1978)*Journal of Australian Political Economy* at 3. In comment Raskall observes, at 11, that 'available data reveal a distribution of wealth in Australia exhibiting extreme inequality'. Although there appears to have been a professional difference of opinion on the degree of wealth concentration in Australia, a study by Podder and Kakwani commissioned by the Asprey Committee shows shares of income by deciles of families: see *Commissioned Studies* (1975) 111 at 120, Table 8. This chart shows as to income for families (normally much less concentrated than ownership of wealth by individuals) a degree of concentration in the distribution of income fully comparable to that found in other developed countries. That conclusion is confirmed by the figures reported in the O.E.C.D. study by Malcolm Sawyer, *Income Distribution in OECD Countries* (1976) at 14: see also Rubenstein, 'The Distribution of Personal Wealth in Victoria 1860-1974' (1979) 19 *Australian Economic History Review*

85 Sawyer, supra n. 84 at 14: See also Australian Bureau of Statistics, *Income Distribution 1973-74*

86 Id.

In Australia, as in other advanced countries, there are individual fortunes of impressive size. In the year 1977-78 there were fourteen Australian estates over $1 million, reported as such for estate duty purposes.[87] How many more millionaire estates had been reduced to less than $1 million by estate planning devices is not known.[88]

Australia plainly has reached the stage where very large personal fortunes, though not common, are nevertheless a feature of the system. It would appear to be very much in order for the nation to determine its societal objectives as respects the role of large inherited wealth, of dynastic fortunes in the Australian society. Is it desirable in a democratic society to have a tax system that positively fosters growth and retention of very large hereditary fortunes? Will the tax free, windfall passage of large fortunes from generation to generation be good for the political system, good for the business community, good for those who inherit? Is taxation on the basis of the ability to pay to be abandoned as respects inter-generational wealth transmission on some theory that adequate capital formation can only proceed on this basis, overlooking the experience of the rest of the western world? And if on the contrary the wealthiest members of society are to contribute to the costs of the government in accordance with their means, is it better to further increase the income tax rates in the higher brackets (and endeavour to seal off the loopholes), levy an annual wealth tax (which in effect is much like an increase in the top income tax rates) or impose a one time levy on the inter-generational transfer of wealth?

If one can judge from a review of the Australian press, from the literature of the tax professionals and from examination of the parliamentary debates, those questions have not yet been given sufficient public consideration.[89] Instead, in a mood of "anti-tax" jubilation comparable to the psychology that produced Proposition 13 in California, Australia rushed pell-mell into *complete* abolition of estate and gift duties as its fiscal invention for the eighties.

87 Australia. Parliament. *Taxation Statistics, 1978-79* (1979) (Parliamentary Paper No. 162) at 174.

88 A prominent barrister in Melbourne interviewed on this matter observed on the subject of large wealth in Australia that one 'would be surprised at how many millionaires in Melbourne have made it to the over ten million net worth league — within the past ten to fifteen years.'

89 Although the press gave considerable attention to the abolition movement there were only a few stories or editorials endeavouring to assess the significance of abolition of death duties and of social policies towards wealth. By and large the abolition campaign did not generate very much by way of public discussion of the role of taxation of wealth in a modern society: but see 'Premature Cheer Over Death Duties', *Australian Financial Review* 23 Nov. 1977, suggesting that social considerations may well bring death duties or some substitute levy back to the Australian scene.

Australia As An Estate Tax Haven

An obvious by-product of abolition, not apparently considered at the federal level, is the possibility that Australia may, as one result, now become an estate tax 'haven' for the rest of the world. As a tax haven Australia would have undeniable attraction. For an American, it offers geographical expanse, a promising economic future, a way of life much like that of the United States, a nearly understandable language and income tax rates which, although high, are not too fierce. Should an American of very large wealth with an antipathy to payment of the United States (Federal) estate and gift taxes now give serious consideration to moving to Australia in his declining years to enjoy, not only the pleasures of the Australian beaches, but the indescribable pleasures to be had from contemplating one's own death free of transfer taxes?

No such exodus of death tax refugees from the United States has yet begun. There are a number of factors that make such an exodus unlikely. In the first place there is the effect of the very recent United States tax 'reform' legislation. In 1981 Congress enacted the Economic Recovery Tax Act, reducing income taxes to speed economic recovery. At the same time, assertedly for the same reasons, Congress enlarged the 'unified credit' (or exemption of the federal estate and gift tax) so as to relieve, by 1987, estates of $600,000 from duty (or $1,200,000 if the estates have been properly divided between two spouses). If not by name, repeal of the U.S. federal estate and gift taxes has therefore been accomplished for all but about one half of one percent of the population, although some state death duties do remain.

Secondly, simply moving property to Australia would not avoid liability for (U.S.) federal estate taxes on the part of the United States' citizen. For many years the United States has asserted tax jurisdiction on the basis of citizenship, even with respect to foreign real estate owned by Americans.[90] Whether a judgment for unpaid (U.S.) estate tax would be enforceable against property in Australia is doubtful. Conventional doctrine on the international enforceability of judgments for tax liability holds that such judgments are 'penal' in nature and hence not enforceable in another country.[91] This, in a day of recognised international interdependence, particularly among military allies, is plainly

90 Internal Revenue Code (U.S.) s. 2001 imposes the estate tax on the estate of 'every decedent who is a citizen or resident of the United States'. S. 2031 (as amended) includes in the gross estate 'all property, real or personal, tangible or intangible, wherever situated.' A credit for foreign death taxes is provided by s. 2014 and a number of estate tax Conventions with other countries, including Australia, are designed to relieve against double taxation.

91 P. Nygh, *Conflict of Laws in Australia* (1968) at 272-3: cf. *Dicey's Conflict of Laws* 8th ed. (1967) at 162,765 and 1019. See also Bath v. Malaysian Trustees, 90 W.N.

anachronistic. But even the bilateral treaty on death tax does not undertake to alter this ancient rule.[92] That rule would give slight comfort, however, to a United States citizen who continued to own property within the United States, for his property there would assuredly be subject to a lien in favour of the federal government for estate taxes not otherwise paid.

The would-be estate-tax-refugee might then wish to consider moving both himself and his wealth by 'capital flight' to Australia. Attractive investment opportunities are plentiful and the rate of return is surely as good or better than the return to be had in the United States. The investment, moreover, would be in a setting featuring a government of continuing stability and one that enjoys a military alliance with that country. Enjoying the benefits of the costly United States defence establishment without having to contribute to its cost might well appeal to the mentality of one who would be a refugee from the (U.S.) federal estate tax. But there are or may be problems in moving one's capital overseas.

Under section 2107 of the Internal Revenue Code on 'Expatriation to Avoid Tax' one who renounces United States citizenship and moves his residence abroad is subject thereafter for ten years to federal estate tax on United States property owned by any foreign corporation owned and controlled by the expatriate and his family (with a pro rata portion of the property taxable if only a portion of the foreign corporation is owned by the expatriate and his family).[93] But this provision is limited, it should be noted, to United States estate taxability of expatriate property within the United States, with a special provision to deal with the tax situs of ownership of United States property through a foreign corporation. Since any foreign resident is subject to United States federal estate tax on property within the United States, the point of section 2107 is its special provisions aimed at the use of a foreign corporation by a United States expatriate as a vehicle for continued ownership of property within the United States.

For the United States citizen willing to surrender his citizenship through renunciation and who is also willing to move all his capital

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(N.S.W.) 44. The rule within the U.S. is otherwise: Restatement, *Conflicts of Law* 2nd ed. (1971) s. 120.

92 The Estate Duty Convention (United States of America) Act 1953 (Cth). The Treaty itself appears as a Schedule to the Act. The extent of the obligation under Article VI is to exchange information—not to enforce the tax laws or the tax judgments of the other country. The common law of the non-enforceability of foreign judgments for taxes as 'penal judgments' is therefore unchanged by the Convention.

93 Internal Revenue Code (U.S.), s. 2107 (effective with respect to estates of decedents dying after 13 Nov. 1966).

from the United States to Australia, the way to the estate tax haven Down Under is open—at least under the present United States law. It might be noted that the British Capital Transfer Tax, enacted in 1975 and thus reflecting more recent legislative consideration of the problem of tax avoidance through emigration and renunciation of citizenship, takes a somewhat sterner approach. To escape Capital Transfer Tax not only must one get the property out of the country and also abandon British citizenship, one must in addition survive for at least three years thereafter or the move to foreign shores in effect will be regarded as a 'transfer in contemplation of death' to be disregarded for purposes of tax liability.[94] Any noticeable flow of American capital to Australia by very wealthy aged Americans would surely risk the prospect that section 2107 on "Expatriation to Avoid Tax" might be strengthened by Congressional action along the British lines. An alternative counter measure might be an impost on bequests received by a beneficiary resident within the United States in the nature of an inheritance tax. No jurisdictional difficulties would be involved. Such a provision could throw a considerable spanner into the works of the expatriate estate would-be estate tax avoider. Discretionary trusts might pose problems but a surtax on distribution from such foreign based discretionary trusts could reduce the utility of that device.[95]

But of course there is more to the business of living than simply trying to avoid death taxes. Family, friends, and a variety of ties make it unlikely that many would seriously consider avoiding the United States Federal estate tax—even though Australia as an estate tax haven has its attractions. In addition to these personal disincentives there is a further reason why it would be unwise for a wealthy American to endeavour to exploit the estate-tax free position of Australia. That reason is simple in the extreme. The present absence of death duties in Australia must surely be only an interim period, an interlude preceding the development and adoption of a modernized levy on death or other wealth tax. A number of considerations compel that conclusion.

Major Considerations for Australia

With respect to social concern over concentration of wealth, Australia is a country that adopted a national land tax in 1910 with gradu-

94 Finance Act 1975 (U.K.), Part III Capital Transfer Tax, s. 45(1)(a).

95 In the U.S. foreign trusts already receive some attention in the Internal Revenue Code for income tax purposes and may attract more: see Dunn, 'Another Look at Foreign Trusts, (1979) 118 *Tr. & Est.* 28; 'Note', (1977) 10 *Vand. J Tr. Law* 123; Zimmerman, 'Using Foreign Trusts in the Post 1976 Period' (1977) 47 *J. of Tax* 12 (1977).

ated rates to promote the break up of large holdings.[96] Upheld against a constitutional challenge in the High Court in 1911,[97] the Federal land tax was repealed in 1952 on the ground that significant redistribution of land ownership had taken place.[98] That a nation disturbed in its formative years over concentration of ownership of land will now be unconcerned that ownership of wealth and distribution of income are concentrated to a degree comparable with that of other advanced nations is simply not credible. Soon there must be a re-examination of the question whether it is to continue to be the public policy of Australia to foster the transmission of very large family fortunes from generation to generation, undiminished at the time of passage by any contribution to the public fisc. Is this to be the Australian response to the issue of the role of inherited wealth in society?

There is another policy consideration of a quite different sort. The administration of an income tax system to assure that it falls as fairly on all citizens as possible is a responsibility of the greatest importance. To try to administer the income tax adequately without the help of an accompanying estate and gift duty system (or an annual wealth tax) is to impose a grave handicap on the tax system.

Under any income tax system there is bound to be considerable leakage. Dispensations found in the income tax law itself mean that certain forms of income are simply classed as non-taxable. Capital gain in Australia represents one example. Income though taxable under the law may be devious and intricate arrangements become non-taxable or taxable at much reduced rates. Income tax avoidance planning has been brought to a high art in Australia, considerably aided by a philosophy that in tax matters it is not the substance but the form of the transaction that counts.[99] Revenue lost through 'tax avoidance' schemes in Australia has been variously estimated at up to and in excess of $1 billion per year.[100] Beyond tax avoidance there are also the tax cheaters who simply evade the income tax by concealing their incomes through unreported cash transactions and the like.

96 For a brief history of Commonwealth land tax in Australia see Woodruff and Ecker-Racz, 'Property Taxes and Land Use Patterns in Australia and New Zealand', (1965) 18 *Tax Executive* at 28-32.

97 Osborne v. Commonwealth (1911) 12 C.L.R. 321.

98 See Woodruff and Ecker-Racz, supra n. 96 at 31.

99 See the observations on substance versus form in Pedrick, supra n. 54, at 75, 85 and 90-91.

100 See the observations of the Treasurer, John Howard, in explanation of certain government proposals for legislation to counter tax avoidance: House of Representatives, *Parliamentary Debates* (1979) (4 April) at 1498; and the revenue loss estimates debated in the furore provoked by the revelations of the Royal Commission into the Federated Painters' and Dockers' Union of Australia ('the Costigan Reports') (1982) concerning so-called 'bottom of the harbour' schemes: *Parl. Debates* (1982).

A gift duty system can provide a significant deterrent or alternatively at least a substitute revenue for lost income taxes as respects income tax avoidance schemes that involve transfers of income-producing property in settlements or other arrangements. For those who build fortunes outside the income tax system by exploiting the non-taxability of certain types of income or by concealment of taxable income, a death duty provides the government with an opportunity finally to catch up and call the tax avoider to account with payment of the death duty and any income tax illegally avoided.[101] If for no other reason than its ancillary role to the administration of the income tax system, some form of estate and gift duty (or annual wealth tax) is essential in a modern revenue system.

Finally, there is the matter of the revenue to be derived from taxation of capital transfers from one generation to the next. Revenues from this source in the context of modern big government budgets do not and are not likely to represent a large element in government receipts. Since, however, a major function of such taxation is to reduce the intergenerational transmission of wealth at a level undesirable in terms of wealth concentration and undue advantage, transfer taxes need not be levied on small and middling fortunes but can be restricted appropriately to fortunes of significant size. That has been the path taken recently in the United States,[102] in New Zealand[103] and to some extent in the United Kingdom.[104] So limited, a tax on the intergenerational transfer of capital will not be a large revenue raiser for the simple reason that there are not a great many large and larger fortunes generated in society. But there are some and they are significant both in terms of numbers and size. Thus, a capital transfer tax aimed only at substantial estates can yield worthwhile, significant amounts of revenue—$6 billion annually in the United States[105] and £300 million annually in the United Kingdom.[106] The need for governmental revenues in Australia at every level of government in the 1980's is as pressing as it is elsewhere. In this highly prosperous country there are poor people—desperately poor people—just as there are in the United States and the United Kingdom. Governments in Australia at every level are critically short of funds for unemployed youth, short of funds for the aged, short of funds for provision of adequate medical care, short of funds for education and short of

101 Asprey Committee (Final Report), supra n. 31, at para. 24.5.
102 Supra n. 31.
103 Supra n. 26.
104 Supra n. 40.
105 Supra n. 77.
106 Supra n. 77.

funds for a range of programs to ameliorate the lot of the disadvantaged of society. Under such circumstances to continue to forego *all* taxation of wealth, a revenue source accepted (with whatever qualifications) in every one of the other advanced countries making up the O.E.C.D., would be shocking. It becomes the more so when it is recognised that a modern system of capital transfer taxation can be so designed as to avoid all the objections that led to its abolition in Australia.

Profile of a Modern Capital Transfer Tax

Building on the impressive work of the Asprey Committee of 1975 and the later experience with the 1975 Capital Transfer Tax in the United Kingdom and the 1976 Tax Reform Act in the Uited States, a modern capital transfer tax for Australia would surely include the following features:

(i) It would be a unitary, federally administered, integrated, capital transfer tax, cumulating life time gifts with the final transfer at death, aiming at equivalent transfer taxes as between the individual making life gifts and one who does not. (Whether life time gifts should be tax favoured to some extent is a policy issue to be resolved by political decision.[107] Revenue could be shared with state and local governments as political considerations dictated.)[108]

(ii) The basic exemption or threshold should be set at a level that would limit applicability of the tax to the wealthiest estates, perhaps the top 5% of estates. Since the object is taxation of intergenerational transfers there could and should be a further liberal dispensation for surviving spouses. The exemption level should be

[107] Whether the tax on the life time transfer should be included in the tax base, i.e. grossed up, as is the case with the death tax where the tax money is in the tax base, is a question that has produced different answers in the U.S. and in the U.K. In the U.S. the life time gift tax is not 'grossed up' with the amount of the gift itself and life time gifts are therefore a much more attractive proposition than death transfers: the tax rates are the same but the amount of the gift tax, except for gifts within the last three years of life, is not included in the gift tax base. Under s. 2502 of the Internal Revenue Code the gift tax is assessed against the amount of the gift. In the U.K. on the other hand the life time capital transfer tax is levied on the sum necessary to produce the gift and pay the tax. Under s. 20(2) of the Capital Transfer Tax 1975 a chargeable transfer is defined as any disposition that depletes a person's estate. Thus, in the case where the donor pays the tax, that sum plus the gift must be reported as the amount of the chargeable transfer: see Wheatcroft and Hewson, supra n. 30, at 1-22.

[108] Asprey Committee (Final Report), supra n. 29, at 453 recommended that there be only a federal estate and gift duty system but that the states should share in the revenues, at least to the extent of the revenues raised by the states which the federal levy would displace.

kept current with inflation through annual revision by the Revenue authorities in accordance with standards prescribed in the taxing act.

(iii) The tax rates should be related to and at least at the . level of the income tax rates. That would mean a beginning rate after a liberal exemption of 33%, a middle rate of 47% and a top rate of 62% on the basis of the present Australian income tax rates.[109]

(iv) Dispositions in favour of public service charities of defined nature should be non-taxable, offering an option to legally avoid payment of tax and achieve a greater contribution to the public good.

(v) Consideration should be given to the possibility of earmarking the modest revenues from taxation of capital transfers for programs that provide service for the disadvantaged members of society. Under such an approach capital transfer tax payments would come to be identified with the public benefit visibly provided.[110] Funding construction of a school, a nursing home, or a retirement centre through payment of capital transfer tax might appropriately bring recognition for a decedent supplying the funding under such a system—and Andrew Carnegie's dream of public recognition and appreciation for payment of substantial death duties could become a reality.[111]

(vi) Finally, the tax base for a modern capital transfer tax must be drawn broadly to minimise tax avoidance opportunities by reaching not only the conventional transfer of property but reaching as well the transfer or termination of rights and powers that represent the substance of continued enjoyment during life. All values enjoyed during life should be taxable at death. Values cannot simply evaporate under a properly drafted tax law.

A transfer to be taxable as a life time gift and not taxable at death would have to be 'out and out', with no powers or interests retained by the transferor.[112] This principle should be framed, either in the taxing

109 C.C.H. (Australia), *1980 Master Tax Guide* at 3.

110 A somewhat similar suggestion is offered in Verbit, supra n. 73.

111 Carnegie, 'Wealth', (1889) 149 *North American Review* 653 at 659-660: '. . . indeed, it is difficult to set bounds to the shares of a rich man's estate, which should go at his death to the public through the agency of the State, and by all means such taxes should be graduated . . . Nor need it be feared that this policy would sap the root of enterprise and render men less anxious to accumulate, for to the class whose ambition it is to leave great fortunes and be talked about after their death, it will attract even more attention, and indeed, be a somewhat nobler ambition, to have enormous sums paid over to the State from their fortune'.

112 As expounded by the Supreme Court (U.S.) in Estate of Church v. Commissioner, 335 U.S. 632 at 645.

act or in authorised regulations, so broadly as to reach any type of retained rights or powers whether through companies, contracts or trusts. Hence a discretionary trust administered by the grantor or a subordinate, non-independent trustee should be taxable not when set up but at the time of the transferor's later death at its then value. After the death of the grantor of a discretionary trust with no vested beneficial rights to benefits in any beneficiary, tax should be visited on the trust periodically as in Britain[113] or on the death of the discretionary beneficiaries as in the U.S.[114] To prevent tax avoidance and preserve equity as between tax payers, the tax avoidance provision will necessarily be complex. It takes sophisticated tax provisions to make tax avoidance extremely difficult if not impossible. The object after all is to preserve equity by preventing unwarranted advantage for the few.

No tax on the transfer of capital from generation to generation will be leakproof, if that were the object. The advantages of being born into a family of wealth, culture, education and attachment to the work ethic will see generations of descendants enjoying the material advantages of such a head start. In modern society it is not 'shirtsleeves to shirtsleeves in three generations'. Studies by John Brittain and other have confirmed that fact of life.[115] It must be accepted that some of the non material advantages that enhance the prospects for wealth can pass from one generation to the next without ever going through the capital transfer tax station. Even at the materialistic level some avoidance is certain. Low risk business opportunities can be channelled to children or grandchildren — perhaps with the benefit of parental guarantees of any necessary bank finance.[116] Such arrangements commonly involve a kind of entreprenurial apprenticeship, however, and perhaps deserve encour-

[113] For an explanation of the operation of the periodic charge under the U.K. legislation see Wheatcroft and Hewson, supra n. 30, at 6.27 and esp. at 6.41. For a comparison of the U.K. and the U.S. systems (prior to 1982) see Meyer, 'Wealth Transfer Taxation: A Comparison of the Approaches in the United States and the United Kingdom' (1978) 11 *N Y U.J. of Int. L & Pol.* 1.

[114] Internal Revenue Code, Ch. 13, ss. 2601-2622. Under Section 2611 the event triggering the special tax on certain generation-skipping transfers in trust is a 'distribution' or a 'termination'. By the terms of Section 261(d) a discretionary beneficiary is classed as one with an interest in the trust and thus the death of such a discretionary beneficiary is the termination of an interest — a taxable event. For further on Ch. 13 see Meyer, supra n. 113; Covey, *Generation Skipping Transfers in Trust* 4th ed. (1979).

[115] J. Brittain, *The Inheritance of Economic Status* (1976) and *Inheritance and the Inequality of Material Wealth* (1978); see also B. Atkinson, *Unequal Shares* (1972); Harbury, 'Inheritance and the Distribution of Personal Wealth in Britain', (1962) 72 *Economic Journal* 845; Harbury and Hitchens, 'The Inheritance of Top Wealth Leavers: Some Further Evidence' (1976) 86 *Economic Journal* 321.

[116] See Cooper, supra n. 49, at 263-4.

agement — to help develop the next generation of capital managers. In any event, the function of a capital transfer tax is to tax transfers of actual wealth not the prospects of the future. Nor is creation of an egalitarian society the goal.

A Bold Forecast and Drawing of a Few Morals

What then of the prospects for enactment of a modern capital transfer tax for Australia designed along the lines described?

In a paper presented to a recent conference on tax policy, Dr Russell Mathews, Director of the Australian National University's Centre for Research on Federal Financial Relations, on the subject of abolition of death and gift duties in Australia, trenchantly observed that:

> The taxation of accessions through gifts and inheritance . . . should be restored, at least for transfers to persons other than spouses, at a proportional rate consistent with the rate applied to income flows. The recent progress towards abolition of death and gift duties must surely rank as one of the most extraordinary developments in Australian taxation policy, judged by criteria of equity and efficiency.[117]

Perhaps the best thing that can be said for the political decision to abolish death and gift duties in Australia is that the former system was so bad, so defective that it had to go as the necessary precursor for adoption of a modern capital transfer tax. Judging from interviews conducted on the subject in Australia there is a growing acceptance on the part of sophisticated tax professionals that the present state of affairs must be seen as mere interlude, an intermission in the continuing drama of thrust and counter thrust in tax legislation. Introduction of some form of taxation of capital they see as inevitable, if the goals of equity as between taxpayers, taxation in accordance with the ability to pay, reduction of the role of large inherited wealth in Australian society and securing needed revenue are to be served. The choice may well lie between a capital transfer tax levied once a generation or an annual wealth tax or even a combination of the two, as in a number of European countries. Many agree with the Asprey Committee that the annual wealth tax is not an attractive alternative in terms of the complexities of its administration, its ineffectiveness as a brake on the intergenerational transfer of large fortunes and its probable negative effect on incentive, as it operates much in the nature of an increased rate of income tax on earnings from capital.[118]

117 R. Mathews, 'The Structure of Taxation' (1980) (unpublished) at 42.

118 Asprey Committee (Final Report), supra n. 29 at Ch. 26. The conclusions of the Final Report at 26.25: 'Rather than a wealth tax, the Committee concludes that it is better

Convinced of the inevitability of adoption in Australia of some form of taxation on the transfer of wealth, the author of a leading text on stamp and death duties, Graham Hill, of the Sydney Bar observes that:

> . . . death taxes were never popular; caused hardship in particular cases and were, in their form in Australia, sufficiently easy to avoid that they might well have justified the label of voluntary taxes. These criticisms were, however, capable of being met in ways that militated against hardship while eliminating the areas of avoidance. Instead, and one suspects for temporary political motives, politicians of both complexions committed themselves to complete abolition. Australia thus stands in 1979 as the only developed western democracy with no form of capital taxation other than state death duty in course of abolition in some states and already abolished in others.
>
> I would hazard a guess that the abolition of the sole form of capital taxation in this country will aggravate the tensions which have for years existed between the haves and the have nots which could at least be kept dormant by the verbal commitment to equality of distribution of wealth through death duty. Without wishing to be prophetic I suspect that ultimately capital taxation will return, whether in the form of death duty, in the guise of a capital transfer tax as in the United Kingdom (which is merely an integrated death and gift tax) or in the guise of a wealth tax or capital gains tax extending to certain unrealised gains. Whatever the substituted tax, Australians in the decades following the 70's will look back with envy on the days when death, estate and gift duties were levied. . .[119]

So the bold forecast is that within this decade life in Australia will be somewhat improved with the adoption of a modern capital transfer tax. Benefits will include improving the equity of the overall tax system, shoring up the administration of the income tax, impeding to some extent the transmission of large fortunes down through the generations, reducing a bit the concentration of wealth and generating modest but

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to concentrate on improving the estate and gift duty and to introduce a capital gains tax as these taxes can achieve broadly the same objectives as a wealth tax. In its view:

(a) An estate and gift duty can be made to serve the equity purposes of a capital tax more efficiently than a wealth tax.

(b) A reformed gift and estate duty would have substantially less adverse effects upon incentives to work and save, fewer liquidity problems and a less disturbing effect upon investment patterns than a wealth tax.

(c) Above all, an efficient annual levy upon wealth would involve administrative problems of insurmountable difficulty and be extremely costly to collect. For a somewhat more favourable view of the administrability of a net wealth tax see O.E.C.D. Report, supra n. 32 at para. 4.27; although see also para. 1.9.

119 G. Hill, *Stamp and Probate Duties* (1979 ed.), preface.

needed revenue for essential humanitarian programs. All of this will be done, moreover without any of the hardship cases and rank discriminations that characterised the old system. So the interment of the old Australian death and gift duty system in the 70's will in the end be seen simply as an execution required to enable birth of a better system of wealth taxation. The Asprey Committee transfer tax recommendations of 1975 will finally get their due.

If the prophecy is accepted a few morals can be drawn. For very wealthy Americans, Australia is not to be seen as an estate tax haven for an indefinite future. In the short run though, the situation is seductive. For the wealthy United States citizen resolved to die in the next year or so, expatriation of both person and wealth to Australia offers a transfer in contemplation of death that should succeed—if taxes are all that count and if death obligingly comes on schedule. For Australians it seems clear that to assure enjoyment of the benefits of abolition of death and gift duties one should arrange for an early demise, but that may be attaching too much importance to taxes for some.

For the professional advisor there are two opportunities. The first, in the short term, is to urge wealthy clients now, in this halcyon interim period, to make hay while the sun shine—that is to make their transfers, set up their estate planning trusts and other arrangements now in the not unreasonable hope that the new transfer tax, when it comes, will not upset prior expectations in that it will not be retrospective in operation. John D. Rockefeller did just that in the 1920s on the eve of the adoption of a United States federal gift tax by a gift to his son John D. Jr of a mere \$500 million.[120] It may also be particularly wise to urge now that a will for a truly wealthy client contain a power of appointment broad enough to permit substantial revision of the terms of any trust set up by the will, to accommodate to any new tax on wealth and accompanying intricate provisions on generation-skipping trusts.

The second opportunity for professional advisors, with the adoption of a modern capital transfer tax, will be to return to the practice of estate planning with an eye to the tax on wealth transfers. There will be new rules to be assimilated and new decisions to be made for clients conscious of tax consequences but under a system which is more honest, providing more square corners. But the system will still offer options, at a price, to be considered for the benefit of the clients and their families. So for the professional advisor the best days lie ahead, when we of all others will surely see most clearly that a modern capital transfer tax only advances the good life.

120 Collier and Horowitz, *The Rockefellers: An American Dynasty* (1976) at 135.