

Death by a Thousand Cuts: The Fight over Taxing Inherited Wealth. By MICHAEL J. GRAETZ and IAN SHAPIRO. Princeton, N.J.: Princeton University Press, 2005, pp. 372.

By most economic measures, the federal estate tax is fairly inconsequential. It brings in barely one percent of federal revenues, and it is paid by fewer than one in a hundred decedents. Moreover, it has no direct impact on lifetime expenditures, whether for medical care or vacations, or even post-mortem charitable bequests. Yet, at a time when economic inequality in the United States is increasing (Kaplan, 2003), the federal effort that tries to address this phenomenon in the context of inherited wealth is under assault and slated for complete repeal.

How this state of affairs has developed presents a conundrum to all students of public policy and political process, but especially to scholars who focus their work on how governments raise revenue. Into this fray now comes a fascinating study entitled *Death by a Thousand Cuts: The Fight over Taxing Inherited Wealth* by Yale University professors Michael J. Graetz (law) and Ian Shapiro (political science). Instead of rehashing the tired arguments about whether or not the estate tax should exist, these scholars undertook an incredible series of high-level interviews with the leading actors involved in this critical debate. The result is an easily accessible but highly insightful examination of the tax climate in early 21st century America. It is a book with harrowing implications for Social Security and for the role of government more generally. At bottom, it is an indispensable guide to the real-politik of modern tax policy and should be required reading for any analyst who

hopes to understand the current lay of the political land.

The book begins with a nine-page chapter that alone is worth the book's purchase price. Devoid of jargon, this chapter explains that the effort to repeal the estate tax is based on political, even moral, philosophy rather than contemporary economic self-interest, and that traditional analyses of this issue that stress economic incidence are just so last century. This chapter also makes the key point that wealth—even enormous wealth—has a very benign connotation in America today, in large part due to Microsoft and its ubiquitous products. People know the products, use the products, and do not resent its founder, Bill Gates. Moreover, the recent democratization of personal finance has led some 70 percent of Americans to own stock, as opposed to only 20 percent as recently as 1981 (Graetz and Shapiro, 2005, 8). Taken by itself, this change has staggering public policy implications, be they for the estate tax, capital gains taxation, dividend taxes, or even Social Security privatization. The authors note that what is at stake is nothing less than the entire premise of progressive taxation, that “those who have more should shoulder a larger share of the tax burden” (4). Anyone of any political persuasion who doubts this assessment or believes it to be rhetorical overkill badly needs to read this important book—perhaps out loud if that is what it takes to get its message.

Subsequent chapters detail the personalities, motivations, political connections,

and broad social changes that moved estate tax repeal out of far-right fringe elements and smack into the political mainstream. These chapters reinforce the observation from Carter Administration treasury official Daniel Halperin, now a law professor at Harvard, that in Washington, something that is impossible can very quickly become inevitable. But there is a much larger lesson here as well: estate tax repeal was championed not by the greedy super-rich who would be its obvious beneficiaries, but by a ragtag band of “true believers and crusaders, those who began not from a place of practicality but from one of conviction and even anger” (23). In short, ideas matter and greed is not enough.

Even an inveterate politics junkie who lived through the period covered by this book will appreciate the journalistic details and insightful perspectives that it provides. Government officials, commentators, think tank entrepreneurs, and others—some famous, most not—are interviewed and placed in context. The result is an intriguing account of how hardball politics is played and often misplayed.

Professors Graetz and Shapiro are not casual reporters, however. They dissect the myriad stories of estate tax trauma, pointing out their inconsistencies and often the outright falsehoods that have been propagated. At the end of this account, the prevailing notion seems to be that even if the stories were not true, they could have been true, and that is good enough. Thus, minority businesspeople, gay and lesbian property owners, farmers and automobile dealers, and others are persuaded that repealing the estate tax is *their* cause. In turn, they convince wayward Republicans and more than a few Democrats that repealing this tax will not be attacked as a sop to the rich but will instead be heralded as striking a blow for job creation and family values. Even the effort to recast this levy as the “death

tax” is accorded careful analysis, which is appropriate given its significant role in changing the tenor and tone of the whole debate. The fact that more than 99 percent of the people who die pay no estate tax is simply a semantic irrelevancy.

A major contribution of this book is its exhaustive description of how former House Speaker Thomas “Tip” O’Neill’s famous aphorism “all politics is local” plays out on the national stage. The issue at hand, of course, is the estate tax, but it could be almost anything. The organization and deployment of “local notables” are not unknown techniques, but their skillful exploitation in what the authors call a “grasstops” (in contrast to “grass-roots”) effort is truly a phenomenon to behold.

The book’s fine analysis of what worked is only half its value. The other half is what did not. Here we see efforts to demonize the wealthy, to link popular government spending programs to retaining the estate tax, to minimize its reach, and even to raise the estate tax exemption and/or lower the estate tax rates. In another time and place, these approaches might have been successful, but no longer. The pro-repeal forces did not get all exercised to take home half a loaf. They wanted the entire tax removed, pulled out by its roots, as former House Ways and Means Committee chair Bill Archer once declared about the income tax. This underlying sense of moral outrage is what leads African-American and Hispanic-American business owners to identify the estate tax as an assault on their *dreams*, as well as their personal finances.

Graetz and Shapiro dissect the flat-footed and ineffectual response of estate tax defenders with care. They show that incoherence and uncertainty were major aspects, as was a general disbelief that traditional allies, most particularly ethnic minorities and homosexuals, were abandoning estate tax defenders on this pivotal issue. Even years after the estate tax repeal

effort had gained mainstream traction, the Democrats tottered between incredulity and appeals to fiscal responsibility. The latter approach may, in fact, be sound, but Republicans discovered decades ago that castor oil economics (or budgetary rectitude, if one prefers that label) has little appeal to most voters.

At one point in the narrative, Graetz and Shapiro come very close to blaming the Democrats for not solving the problem on their watch. They note that the Democrats controlled both houses of Congress and the White House during 1993–94 and could have boosted the estate tax exemption or exempted family farms and closely held businesses outright (101). This is a harsh indictment, but one that I find plausible. Indeed, instituting an immediate exemption of nine million dollars would have recognized the change in gross domestic product that has taken place since the estate tax was first enacted without really changing the intended target of this tax (Kaplan, 2002, 20). But the essence of the Graetz–Shapiro analysis is that the campaign to repeal the estate tax was essentially theological and, therefore, impervious to halfway or even much-of-the-way approaches. Still, how different would history be if a genuine effort to limit the estate tax's reach had been accomplished?

The authors look at other would-be players as well, especially lobbyists. Indeed, one of the key features of this book is the prominence it gives to lobbying organizations, separate from think tanks and campaign contributors. The message is clear: like it or not, persistence in lobbying is a key ingredient to making political change.

Organized lobbyists would have had a much more difficult campaign, however, if vast swaths of the general public were not

on their side. Survey after survey showed huge majorities favoring estate tax repeal, despite the very low real incidence of this tax. Why this is so is a puzzle for cognitive psychology, but excessive optimism is surely one key factor (Fennell, 2003, 603–4). Various polls revealed that 40 percent of Americans believe that they are in the top one percent ranked according to wealth (119). Even the mythical Lake Woebegon of Garrison Keillor would be hard pressed to boast such numbers. But notwithstanding the unreality of these assessments, they make estate tax repeal politically feasible. In this context, the pain suffered by the few who are actually affected by the estate tax is not offset by any corresponding gain by the vast majority who are not. Indeed, that vast majority actually empathized with the affected minority out of a mistaken sense of self-identity (Bartels, 2005). As a result, the constituency that favored estate tax repeal was actually many times larger than what economic theory would have predicted.¹

At considerable length, Graetz and Shapiro detail the evolution of the 2001 tax legislation. There is an old adage that anyone who enjoys sausage should not watch it being made. The same rule applies to tax legislation. Nonetheless, the authors demonstrate the confluence of events, personalities, and presidential leadership that made this law a reality. Most of the 2001 statute did not pertain to repealing estate tax, but this feature was clearly integral to the passion that propelled its enactment. The authors explain the intricate process by which estate tax repeal was deferred until 2010 and then reversed the following year, and the resulting impact on this provision's associated revenue cost.² But the point is that repeal of the federal estate tax is now the law of the land, with

¹ Similarly, the California inheritance tax was repealed in 1982 with 64 percent of voters seeking repeal (100).

² Only slightly more than ten percent of the projected revenue loss over ten years of the 2001 tax act is attributable to estate and gift tax reform (202).

triggering mechanisms left to future Congresses. Whether a free-standing measure to repeal the estate tax could ever pass, however, is not considered.

One of the most fascinating sections of this book examines who won and lost. The standard political assessments follow, but the authors go further and suggest that the overwhelming majority of farmers and small business owners would actually have fared better under an immediate increase in the estate tax exemption rather than waiting for the tax's eventual repeal (215). The increasing concentration of wealth in this country suggests that this analysis would extend to other Americans as well. Indeed, one wonders whether a small business supporter who dies before 2010 regrets the nothing-less-than-total-repeal stance that the organizations purporting to represent small business folks took in this battle.

Some of the most troubling conclusions that are set forth by Graetz and Shapiro appear in their chapter entitled "Stories Trump Science." There, they single out a well-received volume of sophisticated economic analysis for being essentially correct but external to the policymaking process (226). No scholar with an interest in improving our tax laws can read this section and not be overcome with self-doubt. The authors never claim that the estate tax repealers had better data or stronger arguments; instead, they had "the power of compelling narratives" (231).

So, where were the counter-stories of spoiled brats inheriting outrageous sums and displaying no talent beyond self-indulgence? Curiously, Paris Hilton and her ilk never appeared as players in this drama. Graetz and Shapiro note this curious absence but make no attempt to

explain it (233-5). It may be that an increasingly anti-government populace would preference frivolous spending by natural heirs over the unfathomably wasteful profligacy of Congress.

In any case, there was no organized opposition of any consequence. Not only were there no politicians inveighing against the "malefactors of great wealth," in President Theodore Roosevelt's memorable phrase, but those groups that would be disadvantaged by repeal of the federal estate tax were strangely mute. Charities large and small took the calculated risk that the better course of valor was to avoid alienating current and future donors, possibly remembering the unfavorable reaction to charities' complaints in 1986 about that year's reduction in marginal income tax rates. Of all the direct beneficiaries of a federal estate tax, only life insurers made any effort to sustain their source of income. Estate planning attorneys, accountants, financial planners, and tax software companies were largely AWOL. In some cases, these advisors actually assisted the estate tax repealers. On the other hand, the incredibly complex carryover basis rules³ that accompany estate tax repeal should enable these groups to avoid any dire economic straits.

Graetz and Shapiro also challenge the traditional critique of money in electoral politics. They note at length that successful legislative initiatives require money, lots of money in fact—but not for campaign contributions, as is usually imagined (240). Instead, the money is needed for incessant advertising, website design and maintenance, political activism, lobbying, travel for the folks with those "compelling narratives," and so forth. By comparison, direct campaign contributions to estate tax repeal sympathizers were surprisingly

³ One particularly striking example is Internal Revenue Code section 1022(d)(3)(A), which authorizes the executor of an estate to allocate the \$1.3 million tax-free basis increase among an estate's beneficiaries however that person chooses to do so. The resulting potential for serious mischief and intrafamilial litigation is virtually unlimited.

small, even inconsequential (250). Nevertheless, the upshot of the authors' analysis is the impressive role that money plays in shaping public policy, as explained more generally by Kevin Phillips in his book entitled *Wealth and Democracy* (2002).

What, then, does the repeal of the federal estate tax portend for the future? Graetz and Shapiro devote their final chapter to this critical question, and their analysis is not for the faint-hearted. They contend that repealing the estate tax is just one part of a more ambitious goal of eliminating any form of progressive taxation. Skillfully drawing parallels to the estate tax repeal effort, the authors identify the income tax itself as the next target. This time, however, a replacement source of revenue would be needed, and the most likely candidate, they contend, is a state-administered nationally imposed sales tax. Promoted as the "fair tax," this levy would radically alter the administration of taxes by eliminating the always-despised Internal Revenue Service and would even more radically alter the distribution of the federal tax burden. Savers would benefit, spenders would suffer, and the size of government would likely diminish. Given the book's comprehensive analysis of the estate tax repeal effort, it is rash to dismiss this possibility.

Graetz and Shapiro frame what is going on as revisiting the policy consensus that has governed this country since the 1930s. The campaign to partially privatize Social Security can be seen as another part of this effort to essentially relitigate the New Deal. The fate of that particular

effort has apparently stalled, but *Death by a Thousand Cuts* clearly sounds a wake-up call to anyone who has not already seen how much the political center has shifted regarding the fundamental issues of what government should do and who should pay for it.

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REFERENCES

Bartels, Larry M.

"Homer Gets a Tax Cut: Inequality and Public Policy in the American Mind." *Perspectives on Politics* 3 No. 1 (March, 2005): 15–31.

Fennell, Lee Anne.

"Death, Taxes, and Cognition." *North Carolina Law Review* 81 No. 2 (January, 2003): 567–652.

Graetz, Michael J., and Ian Shapiro.

Death by a Thousand Cuts: The Fight over Taxing Inherited Wealth. Princeton, N.J.: Princeton University Press, 2005.

Kaplan, Richard L.

"Crowding Out: Estate Tax Reform and the Elder Law Policy Agenda." *Elder Law Journal* 10 No. 1 (Fall, 2002): 15–46.

Kaplan, Richard L.

"Economic Inequality and the Role of Law." *Michigan Law Review* 101 No. 6 (May, 2003): 1987–2006.

Phillips, Kevin.

Wealth and Democracy: A Political History of the American Rich. New York, N.Y.: Broadway Books, 2002.

