

# Justice, héritage et famille Justice, Inheritance and the Family

14-15 octobre après-midis — October 14, 15 pm  
1:30 pm – 6:00 pm (CEST)

*Colloque en ligne — Online Conference*

**Pour s'inscrire — To register :**

<https://evento.univ-paris1.fr/survey/colloque-justice-her...-asxb1nr4>



*Comité d'organisation — Organization Team :*

Marie Bastin (Paris 1 Panthéon-Sorbonne)

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## **Argumentaire (*English below*) :**

De récents travaux d'économistes font état d'un « retour de l'héritage » : la part du patrimoine hérité dans les richesses détenues par les membres des démocraties occidentales a retrouvé un niveau comparable à celui du 19<sup>ème</sup> siècle, favorisé par une baisse de la fiscalité successorale dans ces pays (voir T. Piketty, *Le capital au 21<sup>e</sup> siècle*, 2015). Si l'on adopte une perspective de justice sociale selon laquelle personne ne devrait être « avantagé ou désavantagé par l'intervention du hasard de la nature ou des circonstances sociales » (John Rawls, *Théorie de la justice*, §4), le fait que l'héritage soit une source de richesse attachée au hasard de la naissance et qu'il soit très inégalement réparti semble profondément injuste. Pourtant l'impôt successoral reste très impopulaire, et ce dans tous les milieux sociaux. La défense de l'héritage prend appui sur un attachement à la liberté de transmettre ses biens, notamment lorsqu'il s'agit de favoriser ses enfants.

L'hypothèse de travail du colloque est qu'une analyse du sens et de la fonction du lien familial dans les réflexions normatives sur l'héritage est nécessaire pour éclairer et tenter de résoudre les dilemmes normatifs posés par l'héritage et sa taxation. Si l'on envisage la famille comme le lieu de comportements vertueux tels que l'altruisme ou l'amour, et si l'on considère que l'héritage est un moyen d'encourager ces comportements, alors on comprend comment la défense de l'héritage (et de sa non-taxation) peut se revendiquer d'une défense de la famille. Mais si la famille est considérée comme ce qui limite l'égalité des chances (au sens large) alors une forte limitation des héritages semble justifiée pour éviter la reproduction intergénérationnelle des inégalités socio-économiques. L'égalité des chances et la promotion de la famille sont-elles donc incompatibles, et le débat sur l'héritage est-il seulement un symptôme de cette tension ? Ou pouvons-nous la dépasser ?

Le colloque a pour objet de contribuer à ouvrir de nouvelles pistes, tant conceptuelles que normatives, sur ce débat ancien, et ce à la lumière des développements récents en la matière. Pour ce faire, le workshop se veut interdisciplinaire, en cherchant à favoriser un dialogue entre philosophie politique et morale normative, et sciences sociales, historiques, économiques et juridiques.

## **The Theme :**

Recent work by economists point at a comeback of inheritance: the share of inherited wealth in the wealth held by members of Western democracies has returned to a level comparable to that of the 19th century, encouraged by a reduction in inheritance taxation in these countries (see T. Piketty, *Capital in the 21st Century*, 2015). If one adopts a social justice perspective according to which “no one should be advantaged or disadvantaged by natural fortune or social circumstances” (John Rawls, *Theory of Justice*, §4), the fact that inheritance is a source of wealth attached to the chance of birth and that it is very unequally distributed seems profoundly unfair. Yet at the same time inheritance taxes remain highly unpopular, including the least well off. The defense of inheritance is based on an attachment to the freedom to transmit one's property, as a way of favouring one's children.

The working hypothesis of the conference is that an analysis of the meaning and function of the family bond in normative reflections on inheritance is necessary to shed light on and attempt to resolve the normative dilemmas posed by inheritance and its taxation. If we consider the family as the place of some of the virtuous behaviors such as altruism or love, and if we consider inheritance as a means of encouraging these behaviors, then we understand how the defense of inheritance (and its non-taxation) can claim to be a defense of the family. However, if the family is seen as what limits equality of opportunity (in a broad meaning), then a strong limitation of inheritance seems justified to avoid the crossgenerational reproduction of socio-economic inequalities. Are equal opportunities and the promotion of the family therefore incompatible, and is the debate on inheritance just a symptom of this general tension? Or are we able to go beyond that?

The purpose of the conference is to contribute to opening up new conceptual and normative avenues on this long-standing debate, in light of recent developments in the field. To this end, the conference is interdisciplinary, seeking to foster a dialogue between normative moral and political philosophy and social, historical, economic and legal sciences.

## Programme – Program

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**14 octobre / October 14**

*Fuseau horaire Europe/Paris (CEST, UTC+2)*

**Session n°1 (English): Inheritance and parental partiality**

1 : 30 pm – 3 : 30 pm

**Chair: Magali Bessone (Université Paris 1 Panthéon-Sorbonne)**

**- Serena Olsaretti (ICREA-Universitat Pompeu Fabra): “Liberal neutrality and parental partiality”**

What should liberal egalitarians who are committed to justificatory neutrality think about the legitimacy of parental partiality and about the justifiability of parents' conferring benefits on their children through gifts and inheritance? In the first systematic treatment of this question, Matthew Clayton (2012) has argued that a commitment to justificatory neutrality bars egalitarians from advancing certain familiar arguments regarding the grounds and limits of parental partiality, including arguments about family values, and that Ronald Dworkin's hypothetical insurance scheme can and should be used to determine what limits on gifts and bequests we should impose in the name of liberal equality. This paper examines the opening question and assesses Clayton's answer to it as well as competing ones.

**- Adam Swift (University College London): “Inheritance: “A Familial Relationship Goods Approach””**

I will set out and interrogate the approach to questions of inheritance developed in *Family Values: The Ethics of Parent-Child Relationships* (with Harry Brighouse, 2014). That approach treats "familial relationship goods" as the key to judging normative matters concerning parental partiality. Particular attention will be paid to (a) the implications of that approach for parents' permissions to bequeath property to their children in non-ideal circumstances and (b) the concern that the approach is problematically perfectionist.

**- Anca Gheaus (Central European University): “Parental partiality in unjust circumstances: the case of inheritance”**

One of the questions that needs to be settled by an adequate theory of justice concerns the extent of permissible parental partiality. As part of a general inquiry in this matter, the more specific issue of inheritance has recently drawn egalitarians' attention. They widely agree that the intergenerational

transmission of wealth represents a great obstacle to distributive fairness, and that states should therefore seek to interrupt such transmission by strict regulation of inheritance. Assuming this view is correct, there remains the separate question of what, if anything, are individual parents permitted to bequeath to their children in the absence of just redistributive policies. I argue for the following thesis: Parents who live in unjust circumstances (of a kind I specify) have at least a moral option, but possibly also a duty, to bequeath more resources than they would be permitted to bequeath if they lived in a just society. The amount of permissible parental bequest is determined by reference to what children need to either (a) avoid poverty; or (b) have the level of resources they would have if they lived in just circumstances; or (c) avoid coming to non-comparative harms. Depending on empirical and normative circumstances, these alternative criteria can justify as permissible various levels of bequest. But in unjust circumstances it is likely that even the most modest levels of justified bequest would considerably contribute to the perpetuation of distributive unfairness. I conclude that parents' permissible, or maybe even required, responses to unjust circumstances unavoidably perpetuate injustice.

Pause / Break: 3 : 30 pm- 4 : 00 pm

## **Session n°2 (English): Doctoral researches**

4 : 00 pm – 6 : 00 pm

**Chair: Emmanuel Picavet (Université Paris 1 Panthéon-Sorbonne)**

**- Catarina Neves (Universidade do Minho): “Reciprocity as a moral objection to inheritance tax”**

Inheritance is a major source of inequality, and evidence suggests that the more unequal a society is, the less supportive it will be to taxing it. (Nagel and Murphy, 2002). To attempt to explain this, the article will discuss Stuart White's account of the moral objections to inheritance tax (2018).

The article will start off by discussing White's virtuous objection to inheritance taxation, and discuss his counter argument on how intergenerational wealth transfers, through inheritance, should be restricted by the claims of equality of opportunity. Such discussion, brings us into the realm of distributive justice, where one can argue reciprocity is an important condition to the distribution of burdens and benefits in society, particularly if one follows Rawl's view of “society as a fair system of cooperation”(2001a).

However, when justifying one's right to unrestricted inheritance flows, one can claim that intergenerational reciprocity with ones' family (but also friends, or even institutions) might justify one's unrestricted right to transfer (or to receive) such inheritance. Moreover, reciprocity as a relational value (Lister, 2011), might further justify one's right to transmit or receive inheritance flows, according to one's family.

Hence, insofar as reciprocity within fellow citizens, and reciprocity to one's family or kinship group might justify both restricting or not inheritance flows, one might have competing reciprocities, and reciprocity might grant a moral objection to taxing inheritance. The article will close with a reflection on how these two types of reciprocity might compete with each other, and how in the context of unequal societies with highly competitive positions (Maurice Godelier, 1996), family bound reciprocity, and a principle and motivation for wealth concentration can be reinforced, as opposed to citizens' reciprocity and principles of wealth and burden sharing.

**- Leonardo Menezes (Universidade do Minho): “Family inheritance and taxation in light of (non-) ideal theory”**

John Rawls is not really concerned to make a particular point about inherited wealth but rather a more general point for which he is well known, namely that “The role of the institutions that belong to the

basic structure is to secure just background conditions against which the actions of individuals and associations take place” (1993: 265). However, Rawls clearly acknowledges that family is a central transmitter of advantages and disadvantages: “Even in a well-ordered society that satisfies the two principles of justice, the family may be a barrier to equal chances between individuals” (Rawls, 1971:301). One might reasonably say this formula sums up his suspicion on the principle of fair equality to justify family inheritance taxation - “at least as long as the institution of the family exists”. In this article, I argue that the aforementioned formula suggests two interrelated understandings – one on the basis of Rawls’s ideal theory and another on the basis of his non-ideal theory. Assuming that this formula expresses only an ideal scheme, I claim that we must also examine family inheritance under a non-ideal viewpoint. To substantiate this claim, my starting point is to know what causes of inequality are morally arbitrary. Even though I do not dismiss the centrality of family values when it comes to inheritance, I argue that taxing it may be justified under some specific conditions.

**- Marie Bastin (Université Paris 1 Panthéon-Sorbonne): “Does defending the family require defending the taxation of inheritance?”**

Based on an analytical approach to the family, that seeks to establish what in family relationships is of specific moral significance, I want to argue that defending the family requires defending the taxation of inheritance. In doing so, I will counter the family argument against inheritance tax, which argue that there is something morally relevant in family relationships sufficient to justify not (or hardly) taxing inheritance (Nozick 1989, Nagel 2009). But I will also depart from the usual strategies for responding to the family argument, which show that a defense of the family is compatible with, but does not go so far as to say that it requires, inheritance taxation (Brighthouse & Swift 2016). The challenge is threefold: to provide an additional order of justification for inheritance taxation, to move beyond the common opposition between the affective and sentimental on the one hand, and material wealth on the other, and to rethink the role of taxation by exploring its relational dimension.

**15 octobre / October 15**

*Fuseau horaire Europe/Paris (CEST, UTC+2)*

**Session n°3 (English): The familialist objection to inheritance taxation and the demographic effect of inheritance**

1 : 30 pm – 3 : 30 pm

**Chair: Axel Gosseries (UC Louvain)**

**- Stefan Gosepath (Freie Universität Berlin): « How to balance justice and the family? »**

A lot of people see inheritance and bequest as an (often necessary) financial tie between generations in a family. In responding to this strong objection, we have to balance two plausible intuitions. The first moral intuition is that the parent-child relationship is properly constrained by demands of justice, including the demand for equal opportunity, and that sets some limits on how parents can act to provide advantage for their children. The second intuition is that it is morally incredible to suppose that parents should not be allowed to do anything that results in their children having relative advantage over other children. I will argue that the family interest in wealth transfers does support a policy of exempting some level of bequest or capital receipt from tax, but that the exemption should be limited in order to accommodate (albeit partially) the claims of equal opportunity.

**- André Masson (CNRS): “‘I save for my kids’. Do we still need wealth transfer taxation nowadays?”**

Among (French) economists, a majority is against wealth transfer taxation as well as an annual wealth tax. Following Piketty, Saez and Zucman, an active minority is, to the contrary, strongly in favor of a highly progressive and inclusive annual wealth tax. Its reserved attitude towards inheritance taxation comes from the fact that the tax (1) comes too late owing especially to the rise in life expectancy (the Zuckenber case), (2) involves complicated family issues, (3) brings limited revenue while acting like a cleaver on families and generating horizontal inequalities, (4) and above all distracts from the most urgent and important task: creating a strong annual and progressive wealth tax. The revenue of this tax could help financing a universal capital endowment for any 25-year-old, that would remedy inequalities in life opportunities much better than an inheritance tax.

This leaves little room for advocates of a rise of the inheritance tax. Sometimes proposed, an acquisitions tax, which ignores altogether family links, appears both utopian and misplaced. Family relations and the ‘I save for my kids’ argument matter. Equity considerations are important but not sufficient nowadays. My view is to use increased wealth transfer taxation not only as a way to redistribute the cards at each generation but also as a strong incentive mechanism against post mortem bequests, encouraging seniors to give early and invest more in new long-term (possibly transgenerational) financial products that would be largely tax-exempted and dedicated to collectively profitable investments. Parents would then ‘save for their kids’ alright, while investing in the same time for the ‘common good’ of the society.

**- Paula Gobbi (Université Libre de Bruxelles): “Revolutionary transition: inheritance change and fertility decline”**

France's demographic transition occurred a century before any other country's. We test Le Play's hypothesis that this demographic transition was triggered by the harmonization of inheritance practices after the French Revolution. In 1793, the Loi de Nivôse of year II imposed the equality principle, effectively abolishing impartible inheritance practices that excluded non-heirs and women from inheriting. In regions that moved from impartible to partible inheritance, we expect fertility to decline if parents face a quantity-quality tradeoff. In regions that removed the exclusion of women, we expect fertility to decline because of women's empowerment and delay in marriage ages. To test these hypotheses, we will compile a harmonized map of inheritance practices before the French Revolution at a highly-disaggregate level. We distinguish between partible vs. impartible inheritance and practices that exclude vs. include women. To estimate the effect of these inheritance practices on fertility, we will use genealogical data and exploit the 1793 harmonization in a difference-in-differences framework. Finally, we will study whether the imposition of the equality principle in other countries through the Napoleonic code propagated the demographic transition outside France.

**Session n°4 (Français) : Héritage, famille et égalité**

4 : 00 pm – 6 : 00 pm

**Présidente de séance : Mélanie Plouviez (Université Côte d'Azur)**

**- Céline Bessière (Université Paris-Dauphine) et Sibylle Gollac (CNRS) : « Pourquoi il faut étudier le genre du capital »**

Le patrimoine et le capital sont revenus au cœur de l'analyse des inégalités. Si les publications de Piketty sur le capital au XXIe siècle ont fortement contribué à ce retour, elles ont laissé de côté les inégalités de

genre dans la constitution et la transmission du capital. C'est à ce point aveugle que s'attaquent Céline Bessière et Sibylle Gollac, nous rappelant que dans les familles bien dotées comme dans celles qui manquent de tout, les femmes sont toujours plus dépourvues que les hommes et que les analyses des inégalités de classe ne peuvent (plus) faire l'impasse sur les rapports de genre.

**- Gabrielle Radica (Université de Lille) : « Égalisations et rééquilibrages de la position des femmes au sein de la famille en contexte juridique inégalitaire : quelques arguments jusnaturalistes »**

Les jusnaturalistes classiques sont tenus par Alfred Dufour comme ceux qui ont promu de la façon la plus poussée qui soit les fondements théoriques de l'égalité juridique en famille à l'époque moderne. Et leurs propositions ne seraient devenues effectives dans les normes positives que très longtemps après avoir été formulées par ces derniers. Toutefois il conviendrait de corriger non seulement une vision uniforme du courant vaste et diversifié du jusnaturalisme, mais aussi et surtout une conception simpliste de l'égalité.

Tout d'abord, les premiers jusnaturalistes comme Grotius ou Pufendorf nous semblent moins audacieux en matière d'égalité entre les sexes que leurs successeurs moins connus comme Thomassius notamment, et pour ne pas être victimes de visions naïves des progrès historiques, il faudrait se demander si cela est imputable à la tension entre individualisme et holisme familial qui travaillent différemment dans leurs œuvres. Ensuite, et ce sera le cœur du propos, il conviendrait surtout de repérer, y compris chez les penseurs qui tiennent l'inégalité entre les sexes pour naturelle, les mécanismes et dispositifs juridiques de rééquilibrage des positions respectives de l'homme et de la femme au sein de la famille, et ce, via l'héritage et d'autres formes de redistributions monétaires ou patrimoniales apparentées (comme la dot) dont on peut se demander si elles ont des retombées sur les rapports entre les sexes, et sous quelles conditions précises. Ce sera moins l'égalité que les processus d'égalisation ou de rééquilibrage mentionnés par ces auteurs qui nous intéresseront.

**- Tiphaine Barthélémy (Université de Picardie Jules Verne) : « Persistances des transmissions inégalitaires en France (XIX<sup>ème</sup> XXI<sup>ème</sup> siècles) »**

Si le Code Civil met théoriquement fin en France, à partir de 1804, aux pratiques de transmission intégrale des patrimoines à un héritier, caractéristiques de certaines régions françaises sous l'Ancien Régime, les inégalités entre héritiers n'en ont pas moins persisté, du fait notamment des représentations de la famille en vigueur dans certains mondes sociaux, voire de structures socio-économiques (régimes fonciers par exemple) prégnantes dans certains territoires. Quelles formes ont pu revêtir ces inégalités ? Dans quelle mesure témoignent-elles d'une appropriation ou d'un contournement des dispositions légales et à quels héritiers ont-elles bénéficié ? Pour éclairer ces questions, nous présenterons brièvement ici, dans un premier temps, les travaux menés par les anthropologues sur les pratiques de dévolution à un héritier unique depuis le XIX<sup>ème</sup> siècle, avant de nous interroger, dans un second temps, sur un cas de transmission inégalitaire dans des familles issues de la noblesse.