

Sir Josiah Stamp has in this book re-written for the English public Professor Rignano's important work on a reform of the Law of Succession.

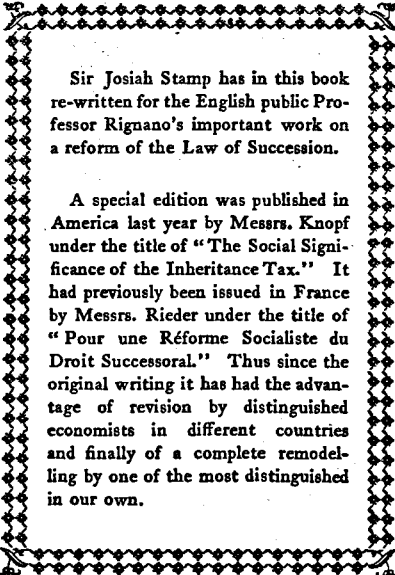
A special edition was published in America last year by Messrs. Knopf under the title of "The Social Significance of the Inheritance Tax." It had previously been issued in France by Messrs. Rieder under the title of "Pour une Réforme Socialiste du Droit Successoral." Thus since the original writing it has had the advantage of revision by distinguished economists in different countries and finally of a complete remodeling by one of the most distinguished in our own.

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THE  
SOCIAL SIGNIFICANCE  
OF DEATH DUTIES



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SOCIAL SIGNIFICANCE  
OF DEATH DUTIES

*adapted from Dr. Shultz's translation from the  
Italian of Eugenio Rignano by*

SIR JOSIAH STAMP, G.B.E., D.Sc.



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## INTRODUCTION

My friend, Professor Seligman, has recently prefaced Dr. Shultz's translation of Professor Rignano's work for American readers. I should like briefly to set forth why I count it an obligation to introduce that work to a British public, which, so far, only knows Professor Rignano through the references of other writers. It is in order that he may speak to them for himself, and so that his ideas may have a fair hearing and, if rejected, be rejected only after mature and proper consideration free from prejudice and misunderstanding. Those ideas are, at any rate, sufficiently novel, and, if acceptable, sufficiently important, to warrant a deliberate judgment. Moreover, it is by no means to be thought that what may be good in one country is necessarily satisfactory in another with different traditions and constitution. Again, it is by collective convergence of thought from a number of different viewpoints, rather than by the wishes or inclinations of a single class, that such a judgment can be formed.

Death Duties on their present principles in this country have now existed for thirty years, but the severe progression in their rates is of more recent

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establishment. In each instance fiscal needs, rather than any conscious political desire to interfere with liberty of bequest, or to redistribute wealth, have been the prime factors towards change. It is doubtless possible on general grounds of equity and justice in taxation alone to justify a considerable degree of progression, but it is by no means certain that the general assumption that the effects are leading ultimately to the greatest common advantage is going to be made good. The saving of capital resources for increased production, with a growing population, is a most vital element in our social economy—doubtless at its point of maximum benefit if the saving can be made widespread and general, but by no means to be gainsaid or dispensed with even if the saving should be “registered” in the name of but a few. The nineteenth century acquiescence in the personal accumulation of extreme riches on the tacit condition that the owner did not himself enjoy, by consumption, the interest or produce, but “turned it in” again into the productive field, has been eloquently described by Mr. Keynes as an essentially unstable situation. But the process, whether right or wrong, did at least raise the national productivity and standard of life of the whole community in unexampled fashion. In so far as high progression in taxation interferes with the old rate of capital accumulation, it prompts two very critical questions in the general social interest:—

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- (a) Are those sections of the population whose saving capacity is not impaired by high taxation, *i.e.*, in whose favour wealth is being redistributed, taking the place (as savers) of those who are being heavily taxed and, by a multiplicity of small savings, providing the requisite capital accumulation ?
- (b) Has the *incentive* to saving, owing to heavy Death Duties, on the part of those with considerable incomes, been impaired ?

If the answer to (a) is found to be negative, and to (b) affirmative, we may well conclude that the future accumulation of capital is in serious jeopardy. Statistical indications in the first case are scanty, but as far as they go, they lead to the view that, important though the savings of the lower classes may be, they are not adequate to "fill the gap." As regards the second point, either the incentive to save is seriously affected by Death Duties, or those duties are actually avoided by the distribution of wealth during lifetime. We have the dilemma of either a social or a fiscal evil.

Professor Seligman says : "The new feature in Professor Rignano's ingenious suggestion is that the graduated principle of taxation, which has hitherto been applied only to the amount of the inheritance and to the degree of relationship, should now be extended, in the interests of society as a whole, to the time or the period when the property

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was acquired. Professor Rignano, in short, contends that while all the property acquired by an individual during his life and by his own exertions should be virtually free from taxation, that part of the estate which he has inherited from someone else should be subject to heavy taxation. By increasing the rate according to the degree or time of acquisition, the result would be an automatic turning over to the Government of a continually increasing fund of capital.

“The author endeavours to attenuate the radical implications in his suggestion by emphasizing the fact that in his opinion this will strengthen rather than weaken the incentive to work, to save, and to accumulate.”

Professor Rignano's work will, it seems to me, appeal to three different classes of thinkers. First, it is of interest to those who regard death duty taxation as a valuable part of our fiscal system, but who would like to be able to raise an undiminished sum on principles which will have less harmful economic influences either upon savings or in the direction of fiscal avoidance. For example, Professor Pigou says (*Economics of Welfare*, p. 676) : “If the various technical difficulties that present themselves could be adequately dealt with, it should be possible, by the Rignano plan or some variant of it, to raise a substantial revenue from rich persons without restricting savings even so much as they are restricted

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by the existing system—indeed there is much force in the contention that his plan would actually lead to an increase of saving.” Secondly, it will appeal to those who regard Death Duty taxation in the ordinary course as “ eating into the national capital ”—an attitude which, as I have shown elsewhere, may easily degenerate into pure fallacy—but who would willingly raise as much as possible by inheritance taxes *for the redemption of debt*. Third, it is directed to those who would use the fiscal engine for purposes *beyond* the fisc, and avowedly for socialistic aims, either to redistribute individual wealth, or to accumulate State wealth.

It is not necessary for one to share Professor Rignano’s ambitions under the third head—indeed one may be quite hostile to them—in order to assess the value of his principal idea for the purposes of the first two objects above mentioned. One may be entirely out of sympathy with his desire to secure progressive socialization of wealth, and yet look, in the milder application of his principle, for some amelioration of the economic drawbacks of the present taxation system. For example, Professor Henry Clay illustrates the principle (*Property and Inheritance*, p. 33) by a scale of 20 per cent. at the first transmission, 40 per cent. at the second ; 60 per cent at the third ; 80 per cent. at the fourth, and 100 per cent. at the fifth. In other words, the fate of an estate built up at the present time to £2,000,000,

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and being left every thirty years under existing rates and under such a scale as Clay suggests, would be respectively as follows (ignoring legacy and succession duties) :—

AMOUNT OF ESTATE LEFT AFTER TRANSMISSION IN THE YEARS :

	1940.	1970.	2000.	2030.	2060.
Existing method and scale.	1,200,000	816,000	587,520	434,775	330,429
Rate per cent.	40	32	28	26	24
Rignano method.	1,600,000	960,000	384,000	76,800	nil.

It will be seen that the Rignano scale, while much less severe to begin with, would in seventy-five years' time leave less than the existing scale, and in 135 years' time would extinguish the present £2,000,000 estate, while our existing system would still leave £330,000 of it to the fifth successive inheritor.

In considering his ideas we have to answer three questions :—

- (1) Are they *primâ facie* "unnatural" ?
- (2) Are they against fiscal or economic principles ?
- (3) Are they administratively practicable ?

*Is complete freedom of bequest a natural right ? Is Death Duty taxation an interference with that right ?*

Although some have attributed the growth of Death Duty taxation to the spread of democratic ideas, it is at least arguable that this apparent con-

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nection may not be due to a conscious democratic mastery of the political theory of inheritance, so much as to the force of example in the search for new sources of revenue to meet an increasing growth of expenditure which depends not on the form of government so much as on the growing economic complexity of the modern State. Or at any rate we may say that the need for money has acted as an incentive in the search for an appropriate political philosophy. Nevertheless, there are striking instances where the observation of the results of the principle of inheritance in the modern State have prompted the idea of State restriction by the engine of finance and where the raising of revenue has not been the immediate objective. Thus three great Americans in a short period of time unite on this line of thought ; Taft regarding it as one of the ends of government to make the State share largely in the accumulations it has helped to bring into existence ; Roosevelt being desirous of making it impossible for an enormous fortune to be handed on to a single individual ; and Carnegie finding it difficult to prescribe a limit to the extent to which the State should go in sharing a rich estate.

When taxation is levied upon *things*, in a general belief in diffusion of incidence, quite different considerations arise as compared with its imposition if it is regarded as falling upon persons. The more advanced fiscal conception that, however much taxes

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may *appear* to be levied on things, they are actually paid by persons, leads to more elaborate ideas in taxation. For the thing or the property, the tax *in rem*, can clearly not be complex in character. But the individual is so various in his circumstances and in his relation to the property, that there is room for a wide variety of rates and scales. When property passes at death one may think chiefly of the personal circumstances of the deceased, and the amount of wealth which he is privileged by the State to will by personal direction, that personal direction being protected and backed by the whole force of the State's law and order. One can look *from* whom it goes, or one can look *to* whom it goes. The personal circumstances of the recipient who benefits by the bequest, whether he be rich or poor, and whether the amount coming to him be large or small—these are factors which may serve as variants in a scheme of taxation. Or again one may consider the *distance* which the bequest has to cover, measured in the nearness or remoteness of kinship. It may seem a less remarkable service for the State to perform when it protects the passage of a man's wealth to his widow or his sons, than when it secures the more artificial rights of a distant relative or complete stranger. It may seem again that the element of expectation on the part of a distant relative should be so much less, his surprise so much more, than that of the immediate family, that the State could, without hardship, call



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upon the former for a more substantial sacrifice. In fact, it will be found that schemes of inheritance taxation in different countries are based on one or other of these principles, and frequently blend two of them. The factors which determine the basis have sometimes been mere historical accidents, but more often the determining causes are to be found in the prevalent ideas either on the principles of taxation or the political theory of inheritance.

It is instinctive for the people of any one country to look upon their ideas concerning inheritance as the normal or natural ones. If indeed they are conscious that different ideas and practices prevail elsewhere, they regard them as abnormal, at any rate, as being so much less "natural" as to require justification. As a matter of fact, political ideas upon this subject are so varied as to show clearly that there is no one nation which is inherently right, either in the nature of things or by demonstration from political theory.

In the philosophical theory of property held by Locke, he regarded the English freedom of bequest as a natural right. But even in his time the right was limited, and the power to will lands had only recently been conferred by Statute. In intestacy then, as now, three different systems prevailed in England, for in addition to the general primogeniture, the principle of equal division (gavelkind) obtained in Kent, and in other places the custom of borough

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English gave the property to the youngest son. "Locke would probably have urged that these were modifications of the law of nature introduced by the State-made or civil law which derived its authority from the social contract. But it is not apparent how the contract, the obligation to keep which itself rests upon a principle of natural law, can override other laws of nature which are (according to Locke) as sacred and absolute as the law that contracts shall be kept" (Rashdall, *Property*, p. 45). One branch of the theory of property conflicts with another. "The rights of property supposed to be derived from a man's natural right to the fruits of his labour involve the negation of that right in the non-inheritance of property." The same writer concludes: "I am myself disposed to think that the institution of property cannot bring with it its full advantages, economic, moral, and social, without *some* form of capitalization and *some* rights of inheritance, however much these rights may be curtailed by the State."

Dr. Dalton has very well said: "Most Englishmen who have not studied comparative law, will think it natural that the ownership of their property after their death should be governed by their Last Will and Testament. Most Frenchmen, in like case, will think it natural that the operation of their will should be subject to the law of the legitime. But many Indians, far from thinking the disposition

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of property by will to be natural, will find great difficulty in understanding what the mere idea of a will signifies and implies. Indeed, Maine has pointed out that to the vast majority of mankind throughout recorded history the idea would be quite incomprehensible." The right to direct the ownership and use of property after a man's death is not found in early communities, nor could it be expected where ownership is in common by the family or by the tribe. Its origin lay not so much, however, in full individual ownership during life as in religious belief. Maitland says that as late as the sixteenth century the right of bequest was the power to purchase the repose of their souls. Intestacy was an ecclesiastical rather than a political affair. In England the right is by no means absolute, for a man may not direct that his property shall be wasted, nor can he direct a perpetual accumulation, nor a succession of ownerships after him beyond a period of twenty-one years after the death of persons alive at his own death. But his right of disposing of his property extends to practically the whole of it, and with insignificant limits he can ignore all those who appear to have most claim upon him. The British speaking peoples, in the main, have similar ideas, whether in the Dominions or in most of the United States. But in continental countries the practice, of course, is quite different. Close relatives have definite rights. Even in the United States a widow

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is generally entitled to one-third of the personal property and a life interest in a third of the real property. In Italy one-half of the property follows a settled rule independent of the desires of the deceased owner, and in France the power of free disposition is confined to a fraction which diminishes with the number of children, *i.e.*, if there are eight children, the right of bequest extends only to one-ninth of the whole. In Russia, inheritance is abolished, the property vesting in the State, subject to certain provisions for supporting dependents at the direction of local tribunals.

Nor is there any fixity of idea in point of time in any one country. France formerly had greater freedom which became curtailed and narrowed down by the Code Napoleon to its present form, and the breadth of practice in Quebec is derived from the earlier form. Britain, on the other hand, had formerly much narrower limits, for until recent times children had fixed rights, and the limitations on freedom of disposition (which still prevail in Scotland) varied in different parts of the country. In York in 1692 the rights were widened to prevent the widow getting too much and to benefit younger children, but in fact they allowed the latter to be ignored altogether. Legal authorities abound in illustrations which show that there is no fundamental or "natural" idea on inheritance.

It is obvious that where a man dies without

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expressing any wish as to the disposal of his property, the rules made by the State may vary very widely, although the common principle is a division between the immediate members of the family, with such special exceptions as the British law of primogeniture.

The economic or social effects of these different practices are clearly different. The compulsory divisions along the lines of the French system are generally supposed to make for a wide diffusion of wealth. It may make for discontinuity in control of production and a lessened production, except so far as this is offset by the advantages of more even distribution. Complete freedom leads, of course, to aggregation of fortunes. One cannot be dogmatic in the abstract, as to the greater diffusive tendencies of the principle of legitim.<sup>1</sup>

The right of disposition is doubtless a powerful incentive to effort and capital accumulation. Economists have speculated on these influences, and Sedgwick surmised that while limitation of rights would make the testator save less and work less, complete freedom to him would tend to make his inheritors save and work less instead. But the claims of individual liberty as against State rights can hardly be put so high as to say that the State may not so modify the individual's rights by rule so as to give a nearer approach to maximum social advantage. If such interference involves cutting out some of

<sup>1</sup> Vide Dalton, *Inequality of Incomes*.

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the more remote individual rights by diversion of part of the estate to itself, it is hardly to be regarded as an offence against the natural rights of man unless in so doing the State goes to such a length as to commit economic suicide by thwarting individual initiative, and drying up the springs of social action. Mill's proposal to limit the amount any one person could receive by inheritance might have gone far in this direction. Rignano himself has objected to Mill's proposal that it might make more idlers than complete freedom would do. Dr. Johnson said primogeniture was good because it made only one fool in a family.

*The Principles of Death Duties.*—Graduation of Death Duties is now well nigh universal in advanced communities, but there is considerable diversity in the results according to the principles upon which the schemes are based. There are four distinct principles :—

- (a) Graduation according to the total amount of the estate.
- (b) Graduation according to the amount of the *portion* of an estate left to each beneficiary.
- (c) Graduation according to the relative poverty or wealth of the recipient.
- (d) Graduation according to the nearness or remoteness of the relationship between the testator and the beneficiary.

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The British Estate Duty follows mainly the first principle, and a large estate is taxable at a very high rate, even though it may be divided into a thousand small portions and left to comparatively poor people.

But the legacy duty, much less onerous, embodies the second and fourth principles. Pitt in 1796 switched over from graduation by amount to graduation by consanguinity, and the latter is almost entirely the most dominant principle. In 1886 Randolph Churchill contemplated revising the Death Duties so as to rely on the second principle, and deal only with the amount of the bequest to a beneficiary.

These different principles find their several types of justification in different doctrines of incidence. Some people regard Death Duties as a kind of deferred income tax, so that any arguments for progressive taxation of incomes apply, with moderate directness, to such a deferred tax. The net fortune that the testator leaves would then be comparable with what he would have left had he been subject annually to a higher income tax. In so far as it is the practice of individuals to provide for the duty by annual payments of insurance (or by *additional* annual saving that could not otherwise have been made) then indeed the duty does assume this character. The simple character of the principle is, however, rather marred by the fact that the accumulation (or insured fund) itself becomes liable to tax, and so enhances the value of the estate, so that the

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principle involves in practice a tax upon a tax. In so far as the action of the testator in saving is not affected by the prospect of the inheritance tax, it may be said that the incidence is not consciously upon him. It is said, in consequence, that in such a case it must be upon the beneficiary who receives less than he would have done if there had been no tax. According to the principle of faculty or ability to pay, which is considered to increase progressively with the amount of an individual's resources, it is fair to impose a graduated scale on such inheritances. But to a son, an inheritance is an expectation, to a remote relation it is rather in the nature of a surprise or windfall, and windfalls are considered to possess a special "ability to pay."<sup>1</sup> Here we derive the idea of graduation by degree of consanguinity. Again the remote relationship gives far less prescriptive right to the fortune, and the boon conferred by the State is correspondingly greater. Whether we look at the "privilege" theory or the "special faculty" theory, graduation by consanguinity is intelligible.

As a supporting feature of the theory that the incidence is upon the testator may be taken the view so commonly expressed down to 1907 that the graduated death duties were required in order to round off our whole system—to supply a progressive element in the taxation of income, and to provide a differentiation in taxation between earned and un-

<sup>1</sup> Stamp, *Fundamental Principles of Taxation*.



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earned income. In general discussion the Death Duties were always called in aid to justify the existing scheme of income taxation.

But with the advent of a highly progressive scale, and differentiation against investment income, within the scheme of the income tax itself, this argument for the Death Duties as a "back tax" is rendered of little importance.

Death Duties applicable to the property as such have been justified on the *diffusion of wealth* theory. The distribution of wealth by the appropriation of accumulated wealth is said to require "no further justification seeing that such taxation provides not only a direct link in a chain towards effecting in an ordered and lawful manner that narrowing of the gulf between the very rich and the very poor which otherwise, perhaps, might only be bridged by political revolution, with all that that involves ; but also a means by which the very rich are enabled to pay to the State, which has nurtured and protected them, some part of the great debt which they are alleged to owe but to be unable ever adequately to repay.<sup>1</sup> But this involves the whole question of the extent to which the State may legitimately go beyond necessary State expenditure in the direction of so-called "amelioration" of conditions, and begs the question that a more even distribution is actually in the long run an amelioration of social conditions.

<sup>1</sup> Soward and Willan, *Taxes on Capital*.

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Many economists consider the disintegrating effects of interference with the legitimate ambitions of the saver of capital far outweigh, even in a commercial sense, any immediate advantages of equalization.

The next principle called in aid has been the "cost of service." But this would lead to a progressively smaller proportion being charged upon the larger estates, and is, therefore, by practical application, out of court.

Pierson proposed to recognize both relationship and faculty by dividing the rates of tax into two parts, the first attributable to consanguinity and the second to "ability to pay" treated as an amplification of the income tax. Another theory: the *sequence of inheritance theory*, finds its origin in the teaching of Bentham, linking fiscal principles with the law of inheritance. He proposed to limit the power of disposition to distant relations, and to extend the law of escheat and thus throw larger portions of intestate estates into State ownership. Professor Seligman says it was but a step to the juster and more practicable scheme under which the State takes but a small part from property left to direct relations and an increasingly large sum from remote relations. The French carry the principle to the point of having heavier rates in the direct line, *i.e.*, grandchild or grandparent paying more than child or parent.

Professor Rignano adds to these several principles upon which progression may be based, progression

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by *distance of time* or *number of successions*. This may operate by itself, or in conjunction with the others. For example, a certain *scale* of rates applicable to certain amounts of fortune might be increased by  $x$  per cent. when the beneficiaries are of a second degree of relationship, and the resultant scale might be increased by  $y$  per cent. where the fortune is being left by a person who himself inherited it.

The third and perhaps the most vital aspect for consideration is *practicability*. This detailed treatment would lead me too far afield in an introduction. But I may at least outline the chief headings of such a consideration.

- (a) Changes in the value of money, or rate of interest, where the same real fortune may show a fictitious increase or decrease for taxation purposes.
- (b) The succession of life interests.
- (c) Changes in valuations of variables, etc., such as mines depending upon an estimate of length of life.
- (d) The impossibility of stereotyping the forms of wealth received as inheritance, and of holding to original valuations where the forms into which exchange has been made exhibit changes.
- (e) Rapid successions horizontally along the same generations, *i.e.*, from brother to brother.
- (f) Government life annuities to successors.

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These questions are too technical for a general treatise, but upon their successful solution rests the practicability of the "Rignano" scheme in British conditions.

This present work will, at any rate, serve to open or ventilate the subject, even if it can carry it to no final conclusion.

J. C. STAMP.

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Are the Death Duties a waste of national capital ?

. . .

Are they against the interests of Society ?

. . .

Is the present system the best that can be devised ?

. . .

Is the principle a right one ?

. . .

What part could a revision of the Duties play in solving our present economic tangle ?

. . .

These are some of the questions answered in this book.