
UC DAVIS LAW REVIEW

VOL. 53, NO. 5



JUNE 2020

Symposium: Empirical Analysis of Wealth Transfer Law Introduction

*Adam J. Hirsch**

In 1943, a leading inheritance scholar of his era, Professor William H. Page, wrung his hands: “[W]hether [rules] achieve the desired result in the majority of cases or whether they defeat it, is rarely learned by courts or legislatures On a *priori* theories our law is largely built up; and a *priori* our theories often remain from start to finish.”¹

Times have changed. Empirical legal studies has emerged today as a prominent mode of policy analysis.² And because wealth transfer law is largely composed of default rules, the significance of empirical evidence of benefactors’ intent has impressed itself on scholars. Quantitative studies within the field began as early as the 1950s.³ Much of the early work sought to determine optimal rules of intestacy. Those studies

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¹ William H. Page, *Ademption by Extinction: Its Practical Effects*, 1943 WIS. L. REV. 11, 38.

² The methodology developed in fits and starts, mostly in the second half of the twentieth century. See Michael Heise, *The Past, Present, and Future of Empirical Legal Scholarship: Judicial Decision Making and the New Empiricism*, 2002 U. ILL. L. REV. 819, 822-26.

³ For a pioneering study, see Edward H. Ward & J.H. Beuscher, *The Inheritance Process in Wisconsin*, 1950 WIS. L. REV. 393, 393 (echoing Professor Page’s concerns).

marshalled survey evidence to identify the sort of estate plan that would correspond with the preferences of a majority of intestate decedents.⁴

More recently, empirical scholarship on wealth transfers has branched out in several respects. The issues addressed within the literature have begun to disperse. And so have the data sets drawn on by empiricists. Studies now employ questionnaires, telephonic surveys, electronic surveys, probate records, accumulations of published cases, and more. Step by step, scholars are answering Professor Page's call for evidentiary testing of inheritance law's *a priori* theories. But this project still has a considerable way to go.

This symposium issue of the *UC Davis Law Review* strives both to focus attention on the project and to advance its agenda. The symposium assembles an original collection of empirical studies within the field of wealth transfers — covering a wealth of topics and mining a wealth of alternative troves of data. It is the first such collection within this field.

The symposium features contributions by thirteen prominent academics who presented papers at a conference held at the University of California, Davis, School of Law in October 2019.⁵ Two of those contributions are followed by comments by other scholars.⁶ The principal papers range widely from rights of surviving spouses, to charitable transfers, to do-it-yourself estate planning, among other subject matters. Worth noting in particular is that eight of the papers in this collection delve either directly or tangentially into aspects of trust law. Among the topics addressed thus far within the empirical literature of wealth transfers, trust law has received relatively scant attention. This symposium helps to rectify that imbalance.

In the pages that follow, readers can witness the progress empiricists are making in their quest to test the soundness of existing rules of wealth transfer. Doubtless, readers may also find inspiration herein for

⁴ See, e.g., Allison Dunham, *The Method, Process and Frequency of Wealth Transmission at Death*, 30 U. CHI. L. REV. 241, 241 (1963) (observing the usefulness of quantitative evidence for crafting rules of intestacy); Mary Louise Fellows et al., *Public Attitudes About Property Distribution at Death and Intestate Succession Laws in the United States*, 1978 AM. B. FOUND. RES. J. 319, 323 (same).

⁵ The organizers gratefully acknowledge a grant from the ACTEC Foundation in support of this conference, without which it would not have been possible. This comprises the ninth in a continuing series of academic symposia devoted to wealth-transfer law sponsored by the ACTEC Foundation. The complete series is noted at: <https://actecfoundation.org/resources-for-law-students>.

⁶ The organizers wish also to thank Professors Jane B. Baron, Andrea Cann Chandrasekher, Christopher S. Elmendorf, Menesh Patel, Shayak Sarkar, and Donna Shestowsky for serving as commentators on other papers at the conference.

new avenues of research. And lawmakers as well may discover in these pages food for thought. Like other arms of policy analysis, empirical studies aim, first and foremost, to improve our law. Each of the contributions to this symposium has something to say about that.