Inheritance in Australia: family and charitable distributions from personal estates

Christopher Baker and Michael Gilding

Abstract
This article provides unique empirical evidence of post mortem giving in Australia, through a random sample of probate records in Victoria in 2006. The records show that decedents overwhelmingly leave their estates to their immediate family; first spouses, and then children in equal measure. They also show that there is a significant discrepancy between common practice in the transmission of estates and intestacy laws; that about one in five decedents exercise some measure of testamentary freedom; that about one in twenty decedents leave a charitable bequest; that more than two in three charitable bequests are left by decedents without surviving children; and that (unlike in the United States) wealthier decedents leave a smaller proportion of their estates to charity than their less wealthy counterparts. The article provides an empirical foundation for debates around the relationship between charitable giving and social capital, civil society and the role of government in advanced capitalist societies.

Keywords: charity, giving, philanthropy, inheritance, family, probate
Introduction

In the past few decades there has been more attention to the importance of charitable giving in Australia. This is understood sometimes in terms of the regeneration of social capital and civil society (Lyons et al. 2006); and sometimes in terms of the ascendancy of neoliberalism and its attack on government taxing and spending (Anheier & Leat 2006; Barraket 2008). Either way, there is an emergent body of research which addresses the structure of charitable distributions in Australia. This is exemplified in the 2005 Giving Australia report, commissioned by the Australian Government, which describes a ‘growing proportion or rate of giving and increasing generosity in giving’ in Australia (Giving Australia 2005: vii). Yet the report overwhelmingly addresses inter vivos giving, largely overlooking post mortem giving. This article redresses the gap in the research. It examines how Australians bequeath their estates, with particular attention to charitable giving. In doing so, it addresses post mortem giving on the basis of actual behaviours rather than reported intentions. It thereby provides a robust empirical foundation for debates around how charitable giving articulates with social capital, civil society and the role of government in advanced capitalist societies. It also provides the basis for more informed public policy on charitable giving, taxation, family provision and intestacy.

The article first discusses the literature around charitable giving and post mortem distributions. It then introduces the method employed in the current study; that is, a random survey of probate records in Victoria, Australia, in 2006. The findings and analysis distinguish between intestate decedents who did not make a will; ‘first estates’ where there is a surviving spouse; and ‘final estates’ where there is no surviving spouse. The discussion highlights the overwhelmingly familial organisation of post mortem distributions in Australia. Yet it also observes the persistent claims of testamentary freedom (the rights of testators to leave their estates as they choose) and charitable bequests, which qualify normative distributions of personal estates. In turn, this suggests that the tendency of Australians to leave their estates exclusively to their families and exclude charitable provision is contestable. Specifically, the prevailing norms in relation to family inheritance are not monolithic, and do not deny the potential for more decedents to leave more charitable bequests while still leaving the majority of their estates to their families.

Philanthropy and charitable giving

There are two long-standing traditions in the study of philanthropy and charitable giving in advanced capitalist societies. One tradition understands philanthropy and charitable giving in the context of class power in capitalist society. This tradition includes socialist and social democratic perspectives, and exercises a pervasive influence in the social sciences. From this perspective, philanthropy and charitable giving provide a vehicle for elite self-organisation; they provide residual relief at best from the damage of capitalist society; and they serve to legitimise existing social arrangements (Breeze 2006; Ostrander...
Lyons and colleagues observe: ‘Social science research in Australia has generally been a champion of progressive movements and giving, along with the reverse side of its coin, fundraising, was clearly a reactionary albeit fading presence in society’. As a result, social science has paid the ‘scantest attention’ to charitable giving (Lyons et al. 2006: 389). This tradition is routinely sceptical of the growing attention to charitable giving in Australia. Specifically, it is understood as the outcome of the neoliberal ascendancy, whereby private agencies are celebrated at the expense of government involvement (Connell 2004).

Another tradition understands inheritance and charitable giving in terms of civil society and social solidarity. The intellectual architects of this tradition include Emile Durkheim and Marcel Mauss; more recent thinkers include James Coleman and Robert Putnam. From this perspective, philanthropy and charitable giving promote obligations, reciprocity and social ties, above and beyond the individual. Mauss (Durkheim’s student and nephew) described gift exchanges as “total” social phenomena, governed by complex interaction of social norms and obligations (Mauss 1990[1925]: 76). Coleman (1988, 1990) and Putnam (2000) elaborated on the concept of social capital, whereby trust arises in complex societies through participation in voluntary associations – both through the giving of time and resources. The small body of research in Australia on charitable giving mostly locates itself within this tradition. For example, Lyons and colleagues describe how the 700,000 nonprofit organisations in Australia are ‘an important site for the generation and regeneration of social capital and constitute the core of civil society’ (2006: 386). They also note that Milton Friedman, the architect of neoliberalism, described corporate philanthropy as theft from shareholders. From this perspective, charitable giving demands a more complex, nuanced approach than commonly employed in the social sciences.

Most of the world’s research on philanthropy and charitable giving is concentrated in the United States of America, which has a long tradition of charitable giving and large private philanthropic foundations (de Tocqueville 1966 [1840]; Ostrower 1995). An international comparison of charitable giving in the early 2000s shows that charitable giving in the United States amounts to 1.79 per cent of GDP, far ahead of any other country. By this reckoning, the United Kingdom is the next most generous country at 0.73 per cent, followed by Canada at 0.72 per cent, and then Australia at 0.69 per cent (Pharoah 2006). Even so, systematic research around philanthropy and charitable giving only took shape in the United States during the 1980s, and even now ‘the topic of charitable bequests remains grievously under-researched’ (Routley et al. 2007).

American research on post mortem giving draws attention to three key points. First, it demonstrates that self-reported intentions are a poor guide to bequest behaviour. For example, one study shows that less than half of the respondents who reported that they would make a charitable bequest one year before they died actually did so (James 2009). Second, American research indicates that the interaction of estate, gift and capital gains taxes informs the choice between gifts.
and bequests and their timing (Joulfaian 2005). This finding has implications
for Australia, given the absence of inheritance taxes. Finally, the literature
consistently shows that as the value of estates increases, so does the proportion
given to charity (Clotfelter 1985; Havens & Schervish 1999; Schervish 2003;
Schervish et al. 2006). For example, an analysis of US federal tax returns in
2003 shows that charities received 5 per cent of the value of smaller estates,
17 per cent of estates valued at $10 million to $20 million, and 32 per cent of
estates with a value of more than $20 million. Further, 43 per cent of the total
amount bequeathed to charities – according to 2003 tax files – came from 1.1
per cent of all estates (Schervish et al. 2006: 12).

In contrast, there is only a small stream of research on philanthropy and
charitable giving in Australia. Lyons and colleagues observe that this research
is characterised by ‘disproportionate interest in volunteering’ (Lyons et al.
2006: 385), or the giving of time. They also observe that the landmark Giving
Australia Project corrects this bias, providing a benchmark for the giving of
money and time. It shows that in 2004 13.4 million Australians (87 per cent
of all adults) gave $5.7 billion to charitable causes, mostly through nonprofit
organisations, and another $2 billion through charitable fund-raising activities.
Around 6.3 million Australians (41 per cent of all adults) gave 836 million
hours of time to charitable causes, the equivalent of another $14.6 billion in
wages. Australian businesses also gave $2.3 billion in money and $1 billion in
goods and services (Giving Australia 2005: vii). The report shows that charitable
giving in Australia is increasing, although still well behind the United States.
It concludes: ‘A diverse and healthy nonprofit sector contributes to a stronger,
more prosperous and cohesive civil society’ (Giving Australia 2005: 49).

Although the Giving Australia report redresses a long-standing research gap
on the giving of money, it focuses overwhelmingly on inter vivos giving and
dedicates less than one page to post mortem giving. The report observes that
there are no reliable estimates of charitable estate distributions in Australia. In
this context, it uses household survey data to estimate that 58 per cent of adult
Australians have a will, of which 7.5 per cent include provision for a charity
(2005: 39). In other words, there is a large discrepancy between inter vivos and
post mortem giving. Most Australians give to charitable causes when they are
alive, but only a small minority do so in their wills. The relative insignificance of
post mortem bequests in relation to charitable giving begs closer inquiry.

In this spirit, Madden and Scaife (2008) compare the attitudes and behaviours
of 1,000 Australian charity donors, of whom about half include a bequest in
their wills. They report that charitable bequesters explain their bequests in terms
of family responsibilities: they have either made adequate provision for their
families, or have no family responsibilities. In turn, bequesters are more likely
than non-bequesters to say that they can afford a bequest (90 per cent versus
41 per cent); more likely to describe ‘no constraints’ in making their wills (23
per cent versus 12 per cent); more likely to describe making a bequest as ‘easy’
(86 per cent versus 41 per cent); and more likely to report larger charitable gifts
Madden and Scaife also report that non-bequesters are undecided rather than negatively disposed as to whether making a bequest is easy, and whether they can afford one.

Madden and Scaife suggest the tantalising possibility that the discrepancy between *inter vivos* and *post mortem* giving is contingent, rather than fixed. In order to explore this suggestion, more baseline data on *post mortem* distributions is required. More than this: it is necessary to better understand the broader context of *post mortem* distributions.

**Post mortem distributions**

While there is a growing body of contemporary research about charitable giving, research about *post mortem* distributions remains thin. Perhaps this is because it is assumed that *post mortem* distributions are routinely directed towards immediate family. Yet even distributions within families vary substantially across cultures and over time; as demonstrated, for example, in the decline of primogeniture in European societies several hundred years ago, and the increasing rights of women and ex nuptial children over the past century (Beckert 2007). Moreover, the small body of research in the field indicates significant scope for tension and negotiation around *post mortem* distributions within families.

A patchwork of studies in the United States, the United Kingdom and Australia consistently shows that most decedents leave their personal estates to their spouses first, and then their children in equal measure (Finch & Mason 2000; Menchik & David 1983; O’Dwyer 2001). This regime does not apply to business assets, especially in the farming sector (Barclay et al. 2007: 60-1; Mulholland 2003: 71-2). It is also at odds with how parents distribute their assets when they are alive, during which time they give more to their poorer children (Chang 2007; Dunn & Phillips 1997). Further, there is a tension between the normative regime of equal inheritance and the principle of testator freedom. Finch and Mason (2000: 180-1) report that the principle of testator freedom is ‘highly prized’ in England, even when ‘choices’ seem predictable. This is because it allows flexibility, deployment of assets as required, and consideration of specific moral dilemmas. In turn, Finch and Mason observe that amongst the English interviewed for their study inheritance is commonly described as a ‘bonus’, not an entitlement (2000: 110).

A growing body of policy literature suggests that testators may be more often exercising their freedom before they die. In Australia, Olsberg and Winters (2005) report that older citizens are moving away from a sense of obligation to their children when it comes to estate transfer. In the United Kingdom, Finch and Mason (2000) describe widespread agreement across generations that older people should be free to use their assets, including their homes, as they see fit. Similarly, Rowlingson and Mackay (2005) describe baby boomers’ insistence that they will ‘enjoy life and not worry too much about leaving a bequest’
The shift in attitudes is consistent with rising life expectancies, higher health expenditures and more financial products which allow older people to draw on their accumulated wealth, including their homes.

In Australia testator freedom is qualified by family provision legislation, whereby a Court can vary the provisions of a will if it is judged that insufficient provision has been made for family members. Family provision legislation – which originated in New Zealand in 1900 – was adopted by all Australian states and territories between 1906 and 1929. A recent review of all the major family provision cases involving charitable bequests finds that family members are now more liable to challenge charitable bequests and courts are more liable to uphold their claims. The trend is amplified ‘as the [legal] concept of “family” has been extended to include de facto partners, same sex partners, wider family, and various dependents not envisaged by the framers of the original legislation’ (McGregor-Lowndes & Hannah 2008: 10). In turn, ‘the primacy of family claims has become even more difficult for charities to overcome’, and testamentary freedom, ‘although never completely dominant in English law, is now seriously challenged in Australia’ (2008: 10).

The absence of inheritance taxes is another distinctive consideration in the Australian context. Inheritance taxes once provided concessions for charitable bequests. Australian governments abolished the taxes in the late 1970s and early 1980s, making Australia the only advanced capitalist country in the world without such taxes (Pedrick 1981). Of 34 OECD countries, four others have since followed suit – but not the world’s major economies, such as the United States and United Kingdom. The abolition of inheritance taxes removed inducements for both succession planning and charitable bequests.

Briefly, family bequests provide the context for charitable bequests. There is a normative regime in relation to family bequests, but there are numerous points of tension and ambiguity. In order to understand these points of tension and ambiguity, we need a more precise understanding of how Australians bequeath their estates. This article is dedicated to this end.

**Method**

Probate is the legal authority of a duly designated court to enable the administration of a deceased person’s estate. Generally, a grant of probate is not required where assets such as real estate are held in joint names. In such circumstances assets will automatically be transmitted to the surviving joint owner upon supply of a death certificate. Other instances where probate may not be required include the transfer of chattels, small holdings in bank accounts, and cash in hand. Otherwise, the transfer of assets from the previous ownership of a deceased individual in Australia requires an order under the auspices of the Supreme Court of the relevant state.

The responsibility for processing probate is state-based and there are no consolidated holdings of probate files nationally. Detailed probate information is not retained in any existing databases. Consequently, the only way of gathering
data on the actual practice of estate transmission and associated *post mortem* charitable giving in contemporary Australia is by way of on-site, detailed examination of individual, paper-based probate files. For this study, data was captured from probate files processed in Victoria: Australia’s second most populous state with 5.1 million residents as at 30 June 2006, just under 25 per cent of the nation’s total resident population. Victoria is broadly characteristic of Australia with 13.5 per cent of its population aged 65 years or older (ABS 2008a), against an Australian average of 13.1 per cent (ABS 2008b).

The information recorded in probate files includes a valuation of the assets of deceased estates. In most circumstances, retirement-specific superannuation funds are specifically excluded from the estate, as by law the distribution of superannuation is the legal responsibility of the Trustee of the fund. Probate files include a copy of the death certificate, and the last will where one exists. The death certificate includes basic biographical information including the marital status of the deceased, and the age and gender of surviving children at the time of death. Significantly, Victorian death certificates do not record *de facto* relationships or step-children, notwithstanding the reform of intestacy laws in 1997 to acknowledge the legitimate claims of family members in *de facto* and step relationships. This makes it impossible to gauge the effects of family change – notably divorce and informal cohabitation – through probate records. In close connection, the list of surviving children identified on the certificate is not necessarily comprehensive as it does not include step children adopted in the course of family reconfigurations.

In the absence of a will, state law specifies the distribution of estates. In Victoria, under the Administration and Probate Act 1958, the first claim belongs to the spouse (legally married, or *de facto* if the relationship has been for two years or longer). In the absence of children, the spouse inherits the entire estate. When there are children, the spouse inherits the first $100,000 and a third of the rest of the estate: the other two-thirds go to the children, or if a child has died, their share goes to their children (the grandchildren). In the absence of a spouse, the estate goes equally to the children, or if children have died, their share goes to their children (the grandchildren). In the absence of a spouse, children and grandchildren, the estate goes to family members in the following order; parents, siblings, nieces and nephews, and finally grandparents. Where none of these family members survive, the estate goes to the state.

In 2006 15,850 probate files were processed in Victoria by the Probate Office, Supreme Court of Victoria. Of these files, a sample of 1,699 files (10.7 per cent) was selected for analysis. A random sample was generated by way of sorting through probate files batched in boxes of approximately fifty. As the Probate Office files applications in order of processing, the way in which applications are stored is intrinsically random, with no batching by way of location, applicant, size of estate, or complexity of estate. The files were overwhelmingly for individuals who had died in 2006 (1,410; 83.0 per cent) and 2005 (281; 16.5 per cent), but included a small number of estates dating back much further.
The coding of charitable gifts is somewhat ambiguous. For the purposes of this study, a liberal interpretation was adopted, whereby all bequests that might be understood as for charitable purposes and/or organisations were coded as ‘charitable gifts’. For example, distributions for as little as $100 to a parish priest for the designated purpose of saying mass for the repose of the soul of the deceased were coded as charitable. No transfers to family members were deemed as charitable. Distributions to named individuals (with no indication as to the familial or other relationship to the deceased) were not coded as charitable gifts, unless specified.

Probate data has two intrinsic limitations, both substantial. First, wealthier households are less likely to hold assets in the names of individuals, and more likely to hold them through separate legal entities such as discretionary trusts. Consequently, probate data is under-representative of the true wealth of affluent individuals (Rubinstein 1979). In turn, it does not provide a true indication of the association between wealth and charitable giving.

Second, probate data pertains largely to older generations. Life expectancy in Australia is among the highest in the world: 81.9 years (at birth) compared with an average of 67.2 world-wide, 79.4 in the United Kingdom and 78.2 in the United States (ABS 2008b). In the case of Victorian probate applications processed in 2006, more than 80 per cent of testators were from a cohort born in or before 1930, and their mean age was 81.3. The data cannot necessarily be projected to the intentions or future behaviours of younger generations. At best, it identifies prevailing post mortem charitable giving norms for personal estates.

Findings

Of the 1,699 files, 1,011 (59.5 per cent) of decedents were female, and 688 (40.5 per cent) were male. The difference occurs because men more often die before their wives, and jointly-owned assets are often transferred without probate. On this account, probate is more commonly required for a ‘final estate’, where there is no surviving spouse.

The 1,699 estates combined left a total net value of $872.5 million, of which $495.2 million (56.8 per cent) was held in real estate. There was tremendous variation in the value of the estates. Precisely three-quarters (1,274; 75.0 per cent) had a net value of less than $500,000 (Table 1). Almost 15 per cent (253; 14.9 per cent) were worth between $500,000 and $1 million. The remaining estates (172; 10.1 per cent) were worth $1 million and over. The largest estate was valued at $77.6 million; the next largest estate was valued at $9.5 million. The former was excluded from all (non-descriptive) statistical analyses on account of its extreme outlier status. Given extreme outlier values, the median value of $281,902 provides the best indication of the typical estate.
Table 1: Estates by value (N = 1,699)

<table>
<thead>
<tr>
<th>Estate Type</th>
<th>Number</th>
<th>Per cent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than $500,000</td>
<td>1,274</td>
<td>75.0</td>
</tr>
<tr>
<td>$500,000-$999,999</td>
<td>253</td>
<td>14.9</td>
</tr>
<tr>
<td>More than $1 million</td>
<td>172</td>
<td>10.1</td>
</tr>
<tr>
<td>Total</td>
<td>1,699</td>
<td>100</td>
</tr>
</tbody>
</table>

Of the 1,699 estates, 115 (6.8 per cent) were intestate, 282 (16.6 per cent) were first estates (where there is a surviving spouse), 1,297 (76.3 per cent) were final estates (no surviving spouse), and 6 (0.4 per cent) were anomalies which did not fit these classifications (Table 2). All types of estates are relevant to the analysis insofar as they constitute part of the overall capacity for giving. Yet intestate decedents leave nothing for charity by definition, and United States research indicates that first estates are routinely left to spouses in their entirety (Schervish et al. 2006: 11). The findings of this study confirm that charitable bequests are concentrated in final estates. Of the 1,699 estates, 91 (5.4 per cent) included a charitable bequest, of which 89 (97.8 per cent) were final estates and 2 (2.2 per cent) were first estates (Table 2). On this basis, the different types of estates are considered in turn.

Table 2: All estates: estate types by charitable bequests (N = 1,699)

<table>
<thead>
<tr>
<th>Estate Type</th>
<th>All estates</th>
<th>Charitable bequests</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>Intestate estates</td>
<td>115</td>
<td>6.8</td>
</tr>
<tr>
<td>First estates</td>
<td>282</td>
<td>16.6</td>
</tr>
<tr>
<td>Final estates</td>
<td>1,296</td>
<td>76.3</td>
</tr>
<tr>
<td>Anomalies</td>
<td>6</td>
<td>0.4</td>
</tr>
<tr>
<td>Total</td>
<td>1,699</td>
<td>100</td>
</tr>
</tbody>
</table>

1. Intestate estates

The aggregate value of the 115 intestate estates was $25.4 million, or 2.9 per cent of the total estates sampled. Intestate decedents had a distinctive profile compared with those who left a will, in four ways. First, they were younger – which is not to say that they were young. The mean age of intestate decedents was 66 (M=66.29, SD=20.14, N=112), compared with 82 for those who left a will (M=82.36, SD=11.46, N=1562). An independent groups t-test shows that the difference is statistically significant: t(116.21)=-8.45, p<.001.

Second, intestate decedents were poorer. The mean value of their estates was $221,004 (SD=270,566, N=115), compared with $486,113 for those who left a will (SD=677,897, N=1583). An independent groups t-test again shows that the difference is statistically significant: t(238.11)=-8.71, p<.001.

Third, intestate decedents were disproportionately without surviving children. Specifically, 47.0 per cent of intestate decedents had no surviving children, compared with 21.4 per cent of decedents who left a will. As a corollary, 53.0 per cent of intestate decedents involved surviving children, compared with 78.6
282


per cent of decedents with wills. A Chi-square test for independence (with Yates
Continuity Correction) indicates a significant association between intestacy and
having no surviving children: $\chi^2(1, N=1698)=38.15$, $p<.001$, $phi=.15$.

Fourth, intestate decedents were disproportionately men. Specifically, men
constituted 62.6 per cent of intestate decedents, compared with 38.9 per cent of
decedents with wills. Conversely, women constituted 37.4 per cent of intestate
decedents, compared with 61.1 per cent of decedents with wills. Another
Chi-square test for independence (with Yates Continuity Correction) indicates
a significant association between intestacy and gender: $\chi^2(1, N =1698)=24.00$,
$p<.001$, $phi=.12$.

There is some interaction between these variables; most obviously, between
gender and age, insofar as men on average die younger than women. Even
so, all variables have a significant independent effect upon the likelihood of
intestacy.

2. First estates
The aggregate value of the 282 ‘first estates’ was $138.4$ million, or 15.9
per cent of the total estates sampled. Of these estates, more than four-fifths
(235; 83.3 per cent) were directed primarily to surviving spouses, who were
more often female (167; 59.2 per cent) than male. Of the estates not directed
primarily to surviving spouses, more than a third (19; 6.7 per cent) involved
more complex distributions, usually involving a combination of spouse and
children. Otherwise they were mainly directed towards children in equal shares
(21; 7.4 per cent), and de facto partners identified as such (4; 1.4 per cent).

Only two first estates (0.7 per cent) made post mortem charitable bequests; one
for $2,000$ and another for $1,000$, amounting to 0.02 per cent of the value
of aggregate charitable bequests. These results replicate United States findings
(Schervish et al. 2006), and direct our attention towards charitable bequests
from final estates.

3. Final estates
The aggregate value of the 1,296 final estates was $705.4 million or 80.7 per
cent of the total estates sampled. Consistent with United States and United
Kingdom studies, equal division of the estate among surviving children was
a ‘default’ position which is best understood as normative. For the 978 final
estates with surviving children, the overwhelming majority of cases (856; 87.5
per cent) distributed the larger part of the estate (90 per cent or more) equally
among children (Table 3).
Table 3: Final estates with surviving children by primary beneficiary (N = 978)

<table>
<thead>
<tr>
<th>Estate Type</th>
<th>Number</th>
<th>Per cent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Children equally</td>
<td>856</td>
<td>87.5</td>
</tr>
<tr>
<td>Children unequally</td>
<td>49</td>
<td>5.0</td>
</tr>
<tr>
<td>Complex distributions</td>
<td>41</td>
<td>4.2</td>
</tr>
<tr>
<td>Grandchildren</td>
<td>20</td>
<td>2.0</td>
</tr>
<tr>
<td>Charity</td>
<td>2</td>
<td>0.2</td>
</tr>
<tr>
<td>Other</td>
<td>10</td>
<td>1.0</td>
</tr>
<tr>
<td>Total</td>
<td>978</td>
<td>100</td>
</tr>
</tbody>
</table>

As the mean age of the testators of final estates with children was 84.7, the children to whom they left their estates were middle aged and sometimes elderly. The oldest child beneficiary was aged 80, and the mean age of all children identified in death certificates was 53.5.

Notwithstanding normative distribution to children in equal share, roughly one in five testators of final estates exercised their discretion – and by implication, their testamentary freedom – to some degree. There were two main ways in which this occurred. First, of the 856 final estates left equally to the children, 73 (8.5 per cent) left small bequests to other parties, especially grandchildren. Second, of the 978 final estates with surviving children, 110 (11.2 per cent) did not distribute their estates equally to their children. In particular, they left their estates to children in unequal measure (49, 5.0 per cent), they mandated more complex distributions (41; 4.2 per cent), and they made grandchildren primary beneficiaries (20; 2.0 per cent). More complex distributions most commonly involved larger shares to grandchildren. Unequal distributions involved a variety of circumstances, including passing the farm to a son, taking outstanding debts into account, and writing one child out of the will.

Among final estates where there were no surviving children, family relationships still dominated bequests. There were 318 final estates with no surviving children, but valid data is available for 235 estates only. Of these estates, most (166; 70.6 per cent) left the larger part of their estates to other family members, notably nephews, nieces and siblings (Table 4). Otherwise, estates were mainly directed towards named individuals (42; 17.9 per cent), charities (15; 6.4 per cent), and more complex distributions (12; 5.1 per cent).

Of the 1,296 final estates, 89 (6.9 per cent) included a charitable gift of some kind, including 17 (1.3 per cent) which made charity their main beneficiary. The aggregate value of these gifts was $11.8m, or 1.7 per cent of the total value of final estates. Fisher’s Exact Test (two-tailed, p<.001) shows a significant difference between charitable bequests from first and final estates. The largest post mortem charitable bequest was $2.5 million; the second largest was $1.4 million. The largest bequest amounts to 20.9 per cent of all charitable bequests; the two largest bequests combined amount to 32.8 per cent. Given extreme outlier values, the median value of $20,500 provides the best indication of the typical post mortem charitable bequest.
Table 4: Final estates without surviving children by primary beneficiary (N = 235)*

<table>
<thead>
<tr>
<th>Estate Type</th>
<th>Number</th>
<th>Per cent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Family members</td>
<td>166</td>
<td>70.6</td>
</tr>
<tr>
<td>Named individuals</td>
<td>42</td>
<td>17.9</td>
</tr>
<tr>
<td>Charity</td>
<td>15</td>
<td>6.4</td>
</tr>
<tr>
<td>Complex distributions</td>
<td>12</td>
<td>5.1</td>
</tr>
<tr>
<td>Total</td>
<td>235</td>
<td>100</td>
</tr>
</tbody>
</table>

*An error in transcription of data meant that the beneficiaries of 83 final estates without children were not recorded.

For the 89 final estates which included a charitable gift, the mean proportion gifted to charity was 28 per cent, with substantial variation (SD = 38) and high positive skewness. The data does not meet the requirements for a linear regression, but it is possible to perform a non-parametric test. Estates were separated into four groups, with roughly equal numbers of charitable gifts in each group (less than $175,000, $175,000 to $299,999, $300,000 to $499,999, and $500,000 or more), and the medians for each group were compared (Table 5). A Kruskal-Wallis Test of sampling distribution revealed significant evidence ($\chi^2=10.627$, p=.014) that the distribution of the four samples are different from one another. A Mann-Whitney pairwise comparison revealed that the proportion donated from estates of less than $175,000 is significantly (p=.002) greater than the proportion donated from estates with a net value of at least $500,000. This is in contrast to findings in the United States where the proportion of estate value bequeathed to charitable purposes is greater among higher value estates (Clotfelter 1985; Schervish et al. 2006).

Table 5: Median proportion of estates donated to charity by value of estate (N = 89)

<table>
<thead>
<tr>
<th>Net Value of Estate</th>
<th>Number</th>
<th>Median %</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt;$175,000</td>
<td>24</td>
<td>23.04</td>
</tr>
<tr>
<td>$175,000-$299,999</td>
<td>17</td>
<td>4.01</td>
</tr>
<tr>
<td>$300,000-$499,999</td>
<td>15</td>
<td>5.82</td>
</tr>
<tr>
<td>$500,000+</td>
<td>33</td>
<td>1.38</td>
</tr>
<tr>
<td>Total</td>
<td>89</td>
<td></td>
</tr>
</tbody>
</table>

Charitable bequests were distributed very unevenly between estates with and without children. Of the 978 final estates with children, 953 (97.4 per cent) left nothing to charity, 23 (2.4 per cent) made charity a secondary beneficiary, 2 (0.2 per cent) made charity their primary beneficiary, and the median charitable bequest was $5,000 (Table 6). Of the 319 final estates without children, 255 (79.9 per cent) left nothing to charity, 49 (15.4 per cent) made charity a secondary beneficiary, 15 (4.7 per cent) made charity their primary beneficiary, and the median charitable bequest was $62,111. The mean charitable bequest of estates with children at $23,920 ($D=55,344, N=25) was significantly below the mean bequest of estates without children at $175,774 ($D=378,886, N=64): t(69.526)=3.122, p<.01. A Chi-square test for independence (with Yates Continuity Correction) indicates a significant association between having no surviving children and making a charitable bequest: $\chi^2(1, N=1298)=112.8$, $p<.001$, Cramers $V=.30$. 
Table 6: Final estates: charitable bequests by surviving children (N = 978)

<table>
<thead>
<tr>
<th>Estate Type</th>
<th>Surviving children</th>
<th>No surviving children</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>Nothing left to charity</td>
<td>953</td>
<td>97.4</td>
</tr>
<tr>
<td>Charity as secondary beneficiary</td>
<td>23</td>
<td>2.4</td>
</tr>
<tr>
<td>Charity as primary beneficiary</td>
<td>2</td>
<td>0.2</td>
</tr>
<tr>
<td>Total</td>
<td>978</td>
<td>100</td>
</tr>
<tr>
<td>Median charitable bequest</td>
<td>$5,000</td>
<td></td>
</tr>
</tbody>
</table>

Independent-samples t-tests show other patterns (Table 7). First, charitable bequests are not associated with age of death: \( t(1275) = -1.85, p > 0.05 \). Second, decedents who left a charitable bequest had a significantly greater mean estate value than those who did not: \( t(90.78) = -2.56, p < 0.05 \). This finding is consistent with United States data. An additional calculation of the effect size (eta squared: \( \eta^2 \)) found the magnitude of the differences in this study was very small (\( \eta^2 = 0.005 \)). Third, the mean time elapsed between the final will and death was on average less for decedents who left a charitable bequest than those who did not: \( t(103.07) = 4.44, p < 0.001 \). The effect size was small (\( \eta^2 = 0.02 \)). This finding is consistent with the embedded, normative quality of family bequests, and the discretionary quality of charitable bequests. Fourth, among decedents with children (N = 977), there was no association between the number of children and the making of a charitable bequest: \( t(24.55) = -0.17, p > 0.05 \). Again, this is consistent with the embedded, normative quality of family bequests, over and above the actual financial needs of children.

Table 7: Final estates: means, standard deviations and values for independent-samples t-tests (N = 1,295 with outlier removed)

<table>
<thead>
<tr>
<th></th>
<th>Charitable bequest</th>
<th>No charitable bequest</th>
</tr>
</thead>
<tbody>
<tr>
<td>Age at Death (yrs) (N = 1,295)</td>
<td>86.1</td>
<td>9.5</td>
</tr>
<tr>
<td>Estate value ($) (N = 1,295)</td>
<td>824,256</td>
<td>1,331,293</td>
</tr>
<tr>
<td>Gap b/w final will and death (yrs) (N= 1,295)</td>
<td>6.8</td>
<td>6.6</td>
</tr>
<tr>
<td>No. of Children &gt;0 (N=977)</td>
<td>2.8</td>
<td>2.3</td>
</tr>
</tbody>
</table>

A multiple regression analysis was conducted to assess the predictability of making a charitable bequest from a final estate using a linear combination of six predictor variables: first, the net value of an estate; second, the number of surviving children; third, the gap between the finalisation of a will and death; fourth, age at death; fifth, gender; and sixth, whether the decedent was born in Australia. Accordingly, the analysis is of a small sample: those final estates which did include a charitable bequest (N=89). Assessment of the correlations matrix revealed that only the size of an estate had a significant correlation with making a charitable bequest, where individuals with a greater estate value are more likely to leave a charitable bequest \( (r=0.19, p=0.04) \). As no other variables had significant correlations, no further regression analysis was performed.
Discussion

This study provides the most detailed data available to date on post mortem distributions from personal estates in Australia. It confirms that inheritance in Australia is overwhelmingly a family affair. First estates overwhelmingly pass to spouses; final estates with surviving children overwhelmingly pass to children in equal measure; final estates without surviving children largely pass to second-degree relatives. Notwithstanding high participation rates in inter vivos giving, the claims of charity on the personal estates of Australians are very weak. There is immense discrepancy between the estimated 87 per cent of the adult population who made inter vivos gifts to charity in 2004 (Giving Australia 2005: vii), and the 5.4 per cent of Victorian estates which made a post mortem charitable bequest in 2006. On this basis, post mortem giving in Australia – unlike volunteering and inter vivos giving – makes little contribution to social capital and civil society, and is barely significant in mitigating the role of government. In close connection, it overwhelmingly reproduces existing patterns of privilege.

The findings show a significant gap between the common practice of first estates and intestacy laws. More than four in five first estates pass primarily to surviving spouses. Yet intestacy laws in all states but New South Wales require that first estates are shared between spouses and children. In 2010, New South Wales revised its intestacy laws to better ‘reflect community attitudes with regard to who should benefit’ (Hatzistergos 2009), whereby first estates now pass to spouses in full. The drivers of changing attitudes and practices presumably include rising life expectancies, changing family values (around marriage and parent-child relationships), and the higher status of women. Whatever the case, the findings provide strong support for law reform in the other states, following the lead of New South Wales.

The overwhelming weight of familial bequests suggests a powerful normative regime. So does the routine transmission of first estates to spouses; the widespread observance of equality among children in final estates, irrespective of different circumstances; and the widespread distribution of final estates without surviving children to second-degree kin. The fact that those who finalise their wills earlier are less likely to leave a charitable bequest is also consistent with the embedded quality of family bequests. Intestacy laws, family provision legislation and the absence of inheritance taxes all provide institutional reinforcement to the powerful claims of families on personal estates in Australia.

There are ‘chinks’ in this normative regime. Most obviously, testator freedom represents a challenge to family bequests. One in five Victorians exercise some measure of testamentary freedom in relation to their families; declining to leave their estates to their children in equal measure, or leaving small bequests to other parties, especially grandchildren. Other chinks include persistent donations to charity, especially among decedents without children; the increasingly complex variety of family forms (not well captured in probate data); and the
ethos of self-fulfilment among baby boomers, their growing life expectancy, rising health expenditures and new financial products designed to ‘unlock’ the value of fixed assets, notably homes.

Almost one in fifteen final estates includes charitable provision. It is noteworthy that, unlike in the United States, wealthier estates make proportionally less provision for charity than more modest estates. The claims of charity are especially strong when family claims are weaker (in the absence of surviving spouses and children), but they persist in the event of surviving children. The fact that those who finalise their wills later are more likely to leave a charitable bequest is consistent with the discretionary quality of charitable bequests. It is also consistent with the suggestion of Madden and Scaife (2008) that people who have not made provision for charity in their wills are not fixed in their commitments.

This article also lays the foundation for more fine-tuned inquiry into post mortem family and charitable giving. In particular, probate records do not capture changing family structures, such as divorce, informal cohabitation, gay relationships and non-marital births. Nor does it capture the interactions of these changes and charitable giving. These are obvious fields for future research.

References


Giving Australia (2005) Giving Australia: research on philanthropy in Australia, Prime Minister’s Community Business Partnership, Department of Family and Community Services, Australian Government Canberra.


**Endnotes**

1Email advice received from the Probate Office, 26 November 2009.

2An error in transcription of data meant that the beneficiaries of 83 final estates without children were not recorded.

3Residence was not included as a variable in this analysis as the residence listed was frequently that of the hospital, hospice or residential care facility where the individual had spent the final part of his or her life.