



# Erasmus Student Journal of Philosophy

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#14 | June 2018

## Editorial

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The dedication and enthusiasm of everyone involved in this fourteenth edition of ESJP was truly energizing. Once again, ESJP has proven to provide a learning experience for everyone involved. The edition started with enriching our experienced editorial board with motivated novice editors. We welcomed Natalia Derossi from EUC who has already proved to be an energetic and critical editor. Also Eline Wolfhagen immediately proved her potential by taking up the role of lead-editor without hesitation and by fulfilling it splendidly. Måns Abrahamson, a skillful EIKE student, is a true contribution to our team with his diligent and thorough comments. Finally, we are very fortunate that the very bright, full time philosophy student Jeltje van der Haer joined the team. Our newbies were welcomed in a team of reliable and devoted 'senior' editors: Dyonne Hoogendoorn, Merel van de Poel, Jonasz Dekkers, Linde van Noord, Öykü Ulusoy, Hidde Witteveen and Jamie van der Klaauw. Jonasz Dekkers keenly replaced Merel van de Poel as secretary. He quickly grasped the intricacies of the role and proved to be a great support. I genuinely could not wish for a better team and I am delighted with the effort everyone put in. Unfortunately, we had to say goodbye to Anne Albert van der Galiën. His absence is a true loss, as his comments are always thorough and constructive. I trust his comments will continue to rejoice and stimulate people in his future career.

The great efforts of the editorial board have not gone unheard. The contributing authors have expressed admiration for the quality of the comments they received. I take that going through the publication process at ESJP has been an educative experience for them as well. I am pleased that ESJP fosters deep philosophical discussion and engagement across many philosophical fields and across a diverse set of involved students. Because indeed, the contributions in this edition diverge quite a bit in terms of philosophical subfield, style and motivation and aim. For me, this is a fine reflection of the diversity of our students' interests and talents. It is my

hope that the ESJP will remain this a broad platform where many forms of philosophical engagements are stimulated and welcomed.

That might be a good note on which I can hand over the torch to my successor as editor-in-chief, as this was my last issue. I am thrilled that Jeltje van der Haer is eager to take over the torch. Jeltje will be a capable and motivating leader and I am confident that with her, ESJP is in good hands. Also for me, being part of the editorial board has been a great learning experience and I am happy to make way for a new generation of students to experience being part of the stimulating intellectual environment offered by the ESJP. I would like to say a sincere 'thank you' to everyone involved: the staff-members, the inspiring authors and the editors with whom I have had the pleasure of working as editor and editor-in-chief.

For this issue in particular, a big thank you to the Advisory Board, who supported me with all major decisions. Also, I would like to thank authors and potential authors, who dared to show their work to the outside world. Thank you teachers and PhD students, for sending nominations and for reviewing papers. Special thanks to the Bayle Bokaal Jury; Paul Schuurman, Katharina Bauer and Conrad Heilmann. Also, thank you Matthijs Geleijnse, who besides practical support, offered great moral support. Last but not least, thank you Thijs Heijmeskamp, the eternal collective memory of ESJP and also second time winner of the Pierre Bayle Trophy, congratulations!

Manon Dillen

*Editor-in-chief*

## About the Erasmus Student Journal of Philosophy

The Erasmus Student Journal of Philosophy (ESJP) is a double-blind peer-reviewed student journal that publishes the best philosophical papers written by students from the Faculty of Philosophy, Erasmus University Rotterdam and from the Humanities Program of the Erasmus University College. Its aims are to further enrich the philosophical environment in which Rotterdam's philosophy students develop their thinking and bring their best work to the attention of a wider intellectual audience. A new issue of the ESJP appears on our website every July and December.

To ensure the highest possible quality, the ESJP only accepts papers that (a) have been written for a course that is part of the EUC or Faculty of Philosophy curriculum and (b) nominated for publication in the ESJP by the teacher of that course. Each paper that is published in the ESJP is subjected to a double-blind peer review process in which at least one other teacher and two student editors act as referees.

The ESJP encourages students to keep in mind the possibility of publishing their course papers in our journal, and to write papers that appeal to a wider intellectual audience.

More information about the ESJP can be found on our website:

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Although the editors of the Erasmus Student Journal of Philosophy have taken the utmost care in reviewing the papers in this issue, we cannot exclude the possibility that they contain inaccuracies or violate the proper use of academic referencing or copyright in general. The responsibility for these matters therefore remains with the authors of these papers and third parties that choose to make use of them entirely. In no event can the editorial board of the Erasmus Student Journal of Philosophy or the Faculty of Philosophy of the Erasmus University Rotterdam be held accountable for the contents of these papers.

## In this issue

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In ‘Therapy or Enhancement? Sex Reassignment Therapy in the Context of Plessner’s Philosophical Anthropology’, Art van Houwelingen reacts to recent debates in medicine that sex reassignment therapy should be viewed as either a form of therapy or as a type of biomedical enhancement. With the use of Plessner’s Philosophical Anthropology, Van Houwelingen argues that sex reassignment therapy should be viewed as encompassing both therapy and enhancement.

In ‘The Internet: State of Nature or Artificial State? A Modern Reflection on Hobbes and Rousseau’, Eva Miléna van Reeven questions Internet governance from an early modern perspective, and highlights the importance of net neutrality in the global economy. Reflecting on Thomas Hobbes’ concept of the State of Nature, as introduced in his famous *Leviathan*, and on Jean-Jacques Rousseau’s concept of the corruption of the state, van Reeven concludes that the Internet carries elements of both philosophies. Governance in the digital realm may not resemble any traditional form of governance from the physical realm, but the Internet is subject to governance nonetheless. The preservation of net neutrality is crucial, for net neutrality could very well be the only thing keeping the Internet from resembling a Hobbesian State of Nature.

‘Productivity and Inheritance’ is Måns Abrahamson’s contribution to the topic of inheritance policy amidst growing concerns of rising inequalities in our contemporary society. Abrahamson takes a firm normative stance in Haslett’s rule utilitarian framework, which focuses on productivity due to its conduciveness to general welfare. With a clearly defined evaluative framework, Abrahamson sets out to unify Haslett’s lifetime inheritance quota and McCaffery’s consumption-without-estate tax. The result is a comprehensive tax policy that accounts for the productive incentives of both current and future generations.

# Jury report Pierre Bayle Trophy 2018

One trophy. Two editions of ESJP. Three philosophers in the jury. Four days into the month of June 2018. Five articles to select the winner from. Such was the setting of the deliberations for the Pierre Bayle Trophy 2018. After initial discussions, it was clear that there were two strong contenders. One was the article “The case of a fear of flying” by Thijs Heijmeskamp, the other the article “Invariance: an argument for historical specificity” by Anne Albert van der Galiën. A tough job for the jury!

Van der Galiën discusses the problem of “historical specificity” for economics. Simply put, any event that economists may care to analyse happens in a specific context, notably also within a specific socioeconomic system. Yet, economists typically aim to develop models and theories that hold generally, across a whole range of circumstances. How far to push the latter aim in light of the former consideration; in other words, how “historically sensitive” should economic theories be? The essay of van der Galiën contains a rich and fruitful treatment of this question. He shows that Woodward’s concept of invariance can be used to argue that historical specificity is a necessary feature of any causal generalization. He also argues that historically sensitive theories are actually not at odds with methodologies advocated by Machlup and Friedman. Developing these arguments, van der Galiën also nicely weaves in observations about the Methodenstreit. An essay worthy of winning the trophy? Yes, but there is another contender, and it is indeed that contender that the Pierre Bayle Trophy 2018 is awarded to.

Thijs Heijmeskamp’s essay may not quite cure your fear of flying. Nor does it aim at a psychological analysis of the fear of flying. Rather, it debates the question if and why exactly recalcitrant emotions – like phobias – can be judged as irrational and why they can sometimes be regarded as constructive experiences. The odds of dying in a plane crash are one in 11 million, while the odds of dying in a car accident are one in 5000. Most people – even those who are afraid of flying – would agree that a serious fear of flying is irrational. Take the terror attacks in the US in 2001. It is estimated that

there were between 1-2,000 additional deaths through increased car usage in the aftermath. These people were ruled by their anxiety against better judgment. Or were they? Heijmeskamp argues no.

He maintains that that the irrationality of recalcitrant emotions lies in limiting the scope of an agent’s actions; they thus interfere with an agent’s rational self-conception. He makes this argument by clearing up current debates about the irrationality of recalcitrant emotions. He shows convincingly that the irrationality is situated in “a practical conflict with a person’s goals”. He discusses emotions and their relation to judgments in terms of their function for (moral) agents: emotions are “actively creating meaning”, they “show us possibilities for action”, and they fundamentally shape our world and our agency. More consideration should thus be given to the relation of emotions to the goals of an agent, to the agent’s self-understanding, and the social context. Clarifying the debate about this type of emotion is an important task with impact on moral psychology, ethics, and our individual self-understanding as emotional and rational beings. Finally, Thijs Heijmeskamp’s essay also charmed the jury with its creativity and accessible style: “Your palms are sweaty, your mouth is dry; you feel dizzy as you breathe heavily...” – Have a good flight!

K. Bauer, H.C.K. Heilmann, P. Schuurman

*Jury of the Pierre Bayle Trophy 2018*

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## Therapy or Enhancement?

### *Sex reassignment therapy in the context of Plessner's Philosophical Anthropology*

Art van Houwelingen

*“Being man is not tied to a certain shape and might thus also happen by various shapes which are not congruent with those we know.”*

Helmuth Plessner (1975, p. 293)

The practice of medicine is a practice of judgement. When a patient presents himself to a doctor, the patient will first be subjected to anamnesis and physical examination. The outcome of this inspection constitutes the first judgment of the doctor: is the patient healthy or ill? Subsequently, a second judgement is made: does the patient have to be treated or not? Therefore, two central divides will be applied to patients when they enter the domain of medical healthcare: health versus disease and treatment versus no treatment. However, some patients present themselves with other intentions than being treated for a disease. Let us consider two medical fields in which these patients are encountered.

The first field is sports medicine. Professional athletes strive to be the best in their discipline. Therefore, all of their efforts are focused on *enhancing* the capabilities which are involved in their performances. Commonly, when an athlete achieves these enhancements through physical training, adhering to a strict diet and taking adequate amounts of rest, such improvements are considered as being *natural*. However, some athletes use performance enhancing drugs or technologies – labelled as doping – which present an advantage over their competitors. The Spanish sports doctor Eufemiano Fuentes is a well-known example of a doctor aiding in these kinds of practices. In the past decade Fuentes was involved in the administration of blood transfusions to road racing cyclists with the aim to increase oxygen levels in the blood circulation of athletes (Verschuren, 2016). These kinds of enhancements are, however, considered *unnatural*,

and each athlete being involved in these practices is judged a cheater with reference to the presupposed ‘normal’ conditions of his sport.

The second field is plastic surgery. In general, plastic surgery consists of two subfields: reconstructive surgery and cosmetic surgery. According to the American Society of Plastic Surgeons: “reconstructive surgery is performed to treat structures of the body affected aesthetically or functionally by congenital defects, developmental abnormalities, trauma, infection, tumors or disease. It is generally done to improve function and ability, but may also be performed to achieve a more typical appearance of the affected structure” (ASPS, n.d.-b). The procedures in reconstructive surgeries include, for example, skin grafting, skin cancer removal and cleft lip repair. Cosmetic surgery, however, includes “surgical and nonsurgical procedures that enhance and reshape structures of the body to improve appearance and confidence”, in which “healthy individuals with a positive outlook and realistic expectations are appropriate candidates” (ASPS, n.d.-a). This includes procedures as breast enhancements, facelifts and lower eyelid surgeries. It is evident from the objectives and procedures of these subfields that in the field of reconstructive surgery the intent is to restore *health* in patients, while treatments in the domain of cosmetic surgery are focused on the improvement of aesthetic bodily features, i.e. *aesthetical enhancement*.

The intention to *enhance* characteristics seems to be present in both sports medicine as well as plastic surgery. While the practice of traditional medicine revolves around the dilemma of treating or not treating a patient with a disease, contemporary medicine also has the option of enhancing certain characteristics of a patient without further regard to the presence of a disease. Therefore, medical enhancement seems to emerge as a separate

category of medical treatment, apart from traditional notions. Present-day medicine makes developments possible through which human functioning can not only be restored or prevented from disease, but can also be *advanced*. In this way, the practice of medicine seems to change from a practice of prevention and therapy into a practice of enhancement – whose aims are defined here respectively as the distinction between using interventions to restore or sustain health, or “to improve human form or functioning beyond what is necessary to restore or sustain health” (Juengst & Moseley, 2016). As such, doing *good* becomes doing *better*.<sup>1</sup>

A special case of the therapy-enhancement distinction becomes apparent in the debates surrounding sex reassignment therapy. Sex reassignment therapy involves all treatments that are needed for the physical conversion of male to female sex and vice versa. It has been discussed whether sex reassignment surgery, as part of sex reassignment therapy, is a form of therapy or has to be considered as a type of biomedical enhancement (Bracanović, 2016). This debate acquires significance when considering that sex reassignment surgery is performed only on patients that received approval from a psychiatric assessment. It has been argued that this process leads to the stigmatization and medicalization of transsexuals, whilst patients become part of the medical treadmill, and as such are being steered to receive a certain type of therapy, rather than being considered as taking part in some kind of medical enhancement (Bracanović, 2016, p. 89-92).

In current debates, two theoretical perspectives have been used to counter the position that sex reassignment surgery should be labelled as a form of biomedical enhancement (Bracanović, 2016). The first perspective is the nontherapeutic view that states that a treatment should be considered a biomedical enhancement when it “improves, augments or increases, above average, any physical or mental trait” (Bracanović, 2016, p. 86). According to the nontherapeutic account, sex reassignment surgery does not belong to the category of biomedical enhancements, since no mental or physical traits are altered beyond average. Therefore, the nontherapeutic view draws a sharp distinction between therapy and enhancement, in which sexual reassignment surgery needs to be labelled as therapy. The second perspective, the welfarist view, posits that there is no divide between therapy and enhancement. Both therapy and enhancement are consid-

ered to be “subclasses of enhancements”, because they both “increase the chances of a person leading a good life” (Bracanović, 2016, p. 95). Considering the autonomous choice of patients for medical interventions, sex reassignment surgery is readily recognized as a biomedical enhancement. However, whether sex reassignment surgery induces positive changes in well-being of patients can only be considered *post-hoc*. Furthermore, every account of increase in well-being is highly subjective. Therefore, there is no need to assume that every instance of sex reassignment surgery functions as biomedical enhancement (Bracanović, 2016, p. 96).

It may be questioned whether sex reassignment therapy, or procedures that are part of sex reassignment therapy, should be considered as either therapy or enhancement, or as a subclass of enhancement. In this essay I will argue that although both therapy and enhancement can be distinguished as two different types of medical intervention, sex reassignment therapy has to be labelled both as therapy and enhancement. For this, I will rely on the philosophical anthropology of Helmuth Plessner as presented in his *The Levels of the Organic and Man* (1928), in which the constitution of organic beings, and the human lifeform in particular, are central themes. In this work, humans are presented as beings that struggle continuously between experiencing their existence both as *living organism* as well as *reflexive being*. This mode of existence is characterized by Plessner as the *eccentric positionality* of man. Humans are in continual need of mediation between these two experiences, which is achieved through the use of technological or cultural artefacts. As such, Plessner describes humans as “artificial by nature”. With the use of these Plessnerian concepts – the *natural artificiality* and *eccentric positionality* of humans – as a starting point, the impact of sex reassignment therapy on both the physical and mental state of a patient can be assessed and placed in the context of the therapy-enhancement distinction.

My argument in this article will be developed in the following manner. First, I will introduce Plessner’s philosophical anthropology, and expand on the notion of *eccentric positionality*, to form a fundament for the consideration of *health* and *disease*. Subsequently, I will consider Plessner’s anthropology in the context of medicine and medical practice, by placing the notion of *eccentric positionality* in relationship to notions as

health and disease. Further, I will argue that sexual reassignment therapy not only affects the eccentric positionality of a patient but also induces a *meta-eccentric* change. Finally, I will consider a central problem of the *meta-eccentric* account and will propose an alternative to popular views about sexual reassignment therapy.

### Plessner's Philosophical Anthropology

Central to the philosophical anthropology of Plessner, as described in his *The Levels of the Organic and Man [Die Stufen des Organischen und der Mensch]* (Plessner, 1975) is his typology of various forms of existence that can be distinguished in organisms. Plessner discerns two types of bodies: *lifeless* and *living bodies*. To define these types of bodies Plessner refers to the physical boundary, or contour, of an organism. A living body has a boundary that separates itself into two spheres: an inner side (*Innenwelt*) and an outer side (*Aussenwelt*). Between these spheres, a transport is present over this boundary (*Grenzverkehr*). This *Grenzverkehr* can be assessed as having both a physical component and mental component, represented by respectively the intake and shedding of nutrients and fluids by organisms, as well as being both the source and receptor of experiences. Therefore, organisms have a certain relationship to both sides of this boundary, or in other words, a certain *positionality*. This distinction is denoted by Plessner as the *double aspectivity (Doppelaspektivität)* of an organism.

Plessner proceeds by making a further distinction in the types of positionality that exist in nature. The first type of positionality becomes manifest in a plant. A plant has a *Grenzverkehr* and therefore responds to internal and external influences as light, water and minerals. However, although a plant absorbs and secretes these components, it does not have a center that defines its relationship to its boundary over which these components are transported. Therefore, this type of positionality is defined as an *open positionality*.

This *open positionality* is followed by another type of positionality, denoted as *centric positionality*. This type of positionality is evident in animals. An animal stands in an active relationship with its own boundary. This particular form of existence can be described as *being* a body

(*Leib-sein*), as well as *having* a body (*Körper-haben*). An animal is aware of his body and actively engaged with his surroundings, using his body to achieve his aims. As such, an animal is an entity that is able to actively engage in and respond to his surroundings by means of being and having a body, e.g. an animal can direct his *Grenzverkehr* by searching for food.

The last type of positionality that Plessner distinguishes in *The Levels of the Organic and Man* is only present in humans. Humans have the most complex relationship to their own boundary. A human can be described as *being* a body, as *having* a body, and as *being outside of* his body. From this perspective, humans *are* not only living bodies, nor do they solely *have* living bodies; humans are aware of their experience as living bodies. In other words, humans are *reflexive* beings. This gives humans a special position: humans are inside as well as outside of their body. In the words of Plessner, humans have an *eccentric positionality*. This enabled humans to develop themselves in an unmatched manner and to subordinate lifeforms of the first two types of positionality. Being equipped with an eccentric positionality, humans are permanently trying to resolve the dichotomy they experience between being inside as well as outside of their bodies. In this process of self-realization, humans express themselves continually by means of culture and technology. This could for example take the form of wearing specific clothes, conforming to certain laws and using particular types of technologies. In this manner, humans try to mend the gap between their inner experiences (*Innenwelt*), the world of culture (*Mitwelt*) and the world of physical objects (*Aussenwelt*). This ongoing activity, however, is according to Plessner the practice of a dystopia: man will never “achieve his own oneness” (Tolone 2014, p. 164). Humans, as such, remain homeless (*Heimatlos*):

[Man is] between being in agreement with his own corporeality, like all the other animals, while at the same time never being completely in agreement with it, allowing a certain degree of external and internal distance. (Tolone 2014, p. 163)

Due to their *eccentric positionality*, which is apparent in the continual need to seek oneness, humans are condemned to *express* themselves. According to Plessner, in this process humans are subjected to three fundamental laws.

The first one is the law of natural artificiality. Humans are characterized by their use of supplements to express themselves as:

[an] [e]ccentric being, with no balance, no time or place, eternally exposed to nothing, constitutively out of his element, having to become something in order to find balance; he can only find it with the help of extra-natural things which derive from his creation. (Plessner, 1975, p. 334)

The use of *extra-natural things*, i.e. ‘tools’, is central to Plessner’s philosophical anthropology. The range of that which can be regarded as a ‘tool’ is extensive. Tools may encompass technological instruments as watches, surgical knives and cars, but may also include cultural expressions as language and music. As such, Plessner characterizes humans as “artificial by nature”.

All these tools give humans the ability to bridge the gap between the experiences of their *Innenwelt*, *Mitwelt* and *Aussenwelt*, and as such, to *mediate* their eccentricity. However, just as these tools are able to perform certain acts because of their *form*, humans are always mediated by their own corporeality. Plessner describes this aspect with his second law of *mediated immediacy*: although humans are immediately present in the world, they need the mediation of their body to be present, and act in the world. Therefore, the body is a prerequisite for humans to *exist* as well as to *act*. Or in other words, the body *mediates* human existence and handling. This is furthermore evident in the tools that humans produce and use. While tools are a form of mediation in their use, they are also immediate in their own existence.

Finally, in this mediated immediacy, humans seek to mediate their eccentricity by adherence to political or religious ideals. Plessner, however, believes that this will always result in a disappointment. No absolute goal, narrative or ideology will ever resolve the human burden of being an organism which neither completely ‘has a body’ nor ‘is a body’. A situation in which man either completely ‘is a body’ or ‘has a body’, would signify respectively the *rootedness* and *eradication* of the human lifeform (Tolone, 2014, p. 165). Humans are therefore condemned to Plessner’s third law of the *utopic position*.

Through technology humans are able to mediate themselves in many ways, e.g. using cars to transport themselves over long distances, brain-computer interfaces and using satellites to communicate. Because Plessner wrote his *The Levels of the Organic and Man* in 1928, it is reasonable to accept that the impact and developmental potential of many of these kinds of technologies could not easily be envisioned or recognized. While humans have always created tools to aid and enhance their functioning, innovations and developments in fields as neuro-engineering, nanotechnology, biotechnology, robotics and artificial intelligence are progressively able to change and enhance mental or physical human capacities. For example, deep brain stimulation or brain-computer interfaces are able to enhance cognitive capacity and motor modalities directly by affecting neural pathways. Consequently, technology is not only able to mediate the body, but it is also able to alter the mediation of the body itself. Through these contemporary technologies, which present unprecedented possibilities of mediation, the notion of human enhancement seems to gain another meaning.

These developments have also affected medical healthcare. Where a traditional divide of health and disease appointed the pursuit of ‘doing good’ as being the core principle of treatment, the arrival of a variety of technologies introduces a new category, namely ‘to do better’. From a medical perspective, many questions exist about the status of the human condition in relation to the use of technological treatments in clinical practice. How do mediation and technology relate to notions as health and disease? In the next section, I will argue how the philosophical anthropology of Plessner presents a model to assess the relationship between the notions of health, eccentric positionality and technology.

### **A medical-anthropological model for the relationship between health, eccentric positionality, and human enhancement**

Referring to medicine means referring to a field in which the notions of ‘disease’ and ‘health’ form the central dichotomy of clinical practice. Doctors may have an idea of what is meant by health and disease because of the medical knowledge and years of experience they possess. However, notions

of health and disease are difficult to define unambiguously. In this variety of definitions, the World Health Organization (WHO) has formulated a definition of 'health' in 1948 which is still widely used today in medical discourse:

Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity. (World Health Organization, 1948)

Two aspects are central to this definition of health. First, health is concerned with the condition of a human being as a whole. Not only the body determines whether a human is healthy. Therefore, in the examination of a patient, psychological, social, and physical factors all have to be assessed. Second, health is not defined in terms of *absence* of a disease. A person is unhealthy not only when a disease is present, but at times also in the absence of a disease.

This definition of 'health' corresponds to Plessner's phenomenological anthropology. From this perspective, health is not only confined to the *Innenwelt* (mental well-being), but also extends into the *Mitwelt* (social well-being) and the *Ausserwelt* (physical well-being). Moreover, the starting point of assessing health in the philosophical anthropology of Plessner is the examination of the eccentric positionality of man. In the double aspectivity of their existence, humans strive to oneness between 'being-a-body' and 'having-a-body'. For Plessner, 'disease' does not present itself when eccentric positionality bends more to 'having-a-body' than 'being-a-body', but becomes a reality in the total loss of eccentric positionality as such:

The two opposing poles immediately become dangerous and negative, should either of them be regarded as something absolute. To be wholly natural or wholly artificial, immediate or mediated, rooted or eradicated, any of these radical endpoints are bad for man's health. (Tolone, 2014, p. 165)

To remain healthy, man must therefore achieve a balance between 'being-a-body' and 'having-a-body'. At first glance, it may be especially surprising

that 'to be wholly natural' is being regarded as an unhealthy endpoint. However, in Plessner's *biological* view man is 'artificial by nature', as denoted by the first law of Plessner's philosophical anthropology. Consequently, this view has an implication for the practice of medicine as such:

The role of doctors and medicine is to guarantee harmony between being-a-body and having-a-body, to preserve the balance between each of the three spectrums: mediacy-immediacy, naturality-artificiality, and rootedness-eradication. (Tolone, 2014, p. 168)

From this perspective, the role of doctors and medicine is to promote health and prevent disease by achieving a harmonic balance between the three spectrums, as outlined in Plessner's three anthropological laws. As such, this aim is supported by a view through which the physical, mental and social well-being of patients with regard to 'health' and 'disease' can be considered from an anthropological perspective.

In the context of Plessner's anthropology, these remarks about health and eccentricity can be extended to the context of technology and human enhancement. Technology is related to the body in two manners (Spren, 2014, p. 427-428). First, technologies can be placed on the surface of the body. This placement is evident in the use of technologies such as the mobile phone, Google glass or smartwatches. Second, technologies can be integrated within the body. The scope of technological mediation is wide in this context, ranging from low-tech mediation as contact lenses to high-tech mediation as brain-body interfaces. The concept of the 'cyborg' – the physical synthesis of technology and man – appears in the consideration of technologies that mesh with the body in this manner. The public image of the cyborg, promoted by science fiction literature and movies, envisions radical forms of human enhancement and regularly appeals to ideas about the emergence of a posthuman species and the termination of human civilizations. However, technological interventions or human enhancements do not necessarily lead to the disappearance of man. As Plessner states, although man is able to appear in various and even unknown shapes, retaining his eccentric positionality makes him human:

Being man is not tied to a certain shape and might thus also happen by various shapes which are not congruent with those we know. Man is tied to the centralist way of organization which is the basis of his eccentricity. (Plessner, 1975, p. 293)

From the perspective of Plessner, health is defined as the harmonic interaction between 'being-a-body' and 'having-a-body', which is constituted by the continuous balance of mediacy-immediacy, naturalness-artificiality, and rootedness-eradication. This means that man must balance the treatment of his body as something he can *use*, with the view that his body is an entity which he *is*. Furthermore, humans must treat their existence both equally as naturally given and as inherently artificial. Finally, humans must not live unmoved in current conventions as well as not believe too much in some ideology that promises to mend their double aspectivity. If this balance is preserved, humans do not lose their eccentric positionality as such. This also includes human enhancement and technological interventions which, despite their potential to change the human lifeform considerably, fall under the scope of 'health' when used according to these balances.

Because of the possibilities that the above mentioned medical technologies offer, situations have risen in clinical practice in which it is unclear whether patients receive treatment for the promotion of their health or as a matter of human enhancement. Sex reassignment therapy, for example, rigorously changes the anatomy and physiology of the human body, whilst no disease seems to be present. At the same time, sex reassignment therapy does not seem to offer innately enhanced humans. In the next section, I will contribute to the debate and use sex reassignment therapy as a model for the therapy-enhancement distinction. First, I will introduce the current praxis of sex reassignment therapy in the medical domain. Using the philosophical anthropology of Plessner and the medical-anthropological model, as mentioned above, I will subsequently assess the effects of sex reassignment therapy on the eccentric positionality of patients. I will argue that sex reassignment therapy both preserves and fundamentally alters the eccentric positionality of patients. Next, I will claim that this fundamental alteration of eccentric positionality should be considered as a form of *meta-eccentricity*. Finally, considering the previous arguments, I will argue that sex reassignment therapy falls both in the domains of therapy as well as enhancement.

## Sex reassignment therapy and meta-eccentricity

According to the tenth edition of the International Statistical Classification of Diseases and Related Health Problems (ICD-10), transsexuality is a subset of Gender Identity Disorders and defined as "a desire to live and be accepted as a member of the opposite sex, usually accompanied by a sense of discomfort with, or inappropriateness of, one's anatomic sex, and a wish to have surgery and hormonal treatment to make one's body as congruent as possible with one's preferred sex" (ICD-10, 2016, F64.0). Diagnostic instruments have been designed to measure transsexuality on a spectrum. An example of such an instrument is the Benjamin scale, or Sex Orientation Scale (SOS), which categorizes transsexuality as having a non-surgical urgency (level IV), moderate intensity (level V) or high intensity (Level VI) (Benjamin, 1999, pp. 15-16). The SOS, however, is not in use anymore. In current medical practice, when a person expresses the desire to convert to his identified gender sexuality, a medical diagnosis of transsexuality can be made by an assessment from a medical health professional.

This diagnosis of transsexuality is required for the patient to attain the permission to receive hormonal replacement therapy (HRT) and sex reassignment surgery (SRS), which both constitute sex reassignment therapy. A common first step in this process is HRT, which consists of taking testosterone and estrogen supplements to aid the conversion from an assigned to an identified gender identity by gaining respectively male or female traits. The second step in this transition is SRS, in which the secondary sexual characteristics of patients are altered to match the sexual characteristics of their identified sex. These sex reassignment surgeries include procedures as penectomy, orchiectomy, vaginoplasty, and phalloplasty.<sup>2</sup> Both HRT and SRS have considerable effects on human physiology and anatomy. Considerable effects of HRT are for example changes in body hair growth, cardiovascular status, bone-density and brain structures (Giltay & Gooren, 2000; Wierckx et al., 2012; Pol et al., 2002).

Now, to assess the effects of sex reassignment therapy on the eccentric positionality of humans, and in consideration of the notion of 'health', let us use the balance of the three spectrums as defined by Plessner: naturalness-artificiality, mediacy-immediacy, and rootedness-eradication.

The natural artificiality of sex reassignment therapy is apparent: hormones and surgery are needed to transform the body of the assigned sexual gender into the identified sexual gender of the patient. With regard to the body as its own boundary, the use of treatments – Plessner’s ‘extra-natural means’ or ‘tools’ – have effects both in the domains of the inner world (*Innenwelt*) and outer world (*Aussenwelt*). Both hormone replacement therapy and sex reassignment surgery change the body from the *outside* (*Aussenwelt*), through the physiological effects of hormones inside the body as well as through the direct adjustment of secondary sexual characteristics, such as genital reassignment, at the surface of the body. Additionally, through adjustment of the hormonal balance, the inner world (*Innenwelt*) made up of experiences, emotionality and mood may also be affected.

Considering these changes, we can conclude that, although artificial means introduce rigorous changes in the body, the balance between artificiality and naturalness is preserved. First, although the body is altered in a rigorous manner, and the identified sexual gender is constituted through artificial means, the natural position of being a human with either a male or female genome is not changed. In other words, one becomes a male or female through identification and bodily transformations taking place through medical intervention, but one remains a male or female in a fundamental biological manner. Second, while using artificial means to transform the physical characteristics of patients, which are part of their assigned sexual identity, patients come closer to that position that they recognize as natural. Therefore, in both situations the balance does not tip to either side of the naturalness-artificiality balance and, as such, none of these aspects become absolute.

However, physiological and anatomical changes cause significant effects on patients’ relationship with themselves, as well as with the world. For instance, a transition from female sex to male sex through reassignment therapy, affects the potential to give birth without external interventions and, as such, to be present in the world as fertile. Therefore, the mediation of the body itself is mediated. Sex reassignment therapy does not affect the presence of the mediated immediacy of the body, but it does alter *how* the immediacy of the body is mediated.

Nonetheless, for transsexual patients this is in line with their wishes.

The patient wants to uproot his assigned sexual identity and transform to the physical makeup of his identified sexual identity. As such, the patient hopes to find a ‘home’. The *utopic position* of men presents itself here in a subtle way. First, the assigned sexual identity can never be eradicated as a whole. The stability of the genomic profile of the patient, for example, stays identical in sex reassignment therapy. Furthermore, patients will never be able to sexually reproduce in a way that is natural to their identified sex. Therefore, although the well-being and life satisfaction of the patient increases, the balance between rootedness – maintaining the genomic profile of one’s assigned sex – and eradication – losing one’s capability to procreate without external interventions – remains central to the life of the patient, which only emphasizes his utopic position.

Hence, as the assessment of the three anthropological laws with regard to sex reassignment therapy shows, the patient is not ‘wholly natural or wholly artificial, immediate or mediated, rooted or eradicated’. Therefore, the patient does not lose his eccentric positionality as such during sex reassignment therapy, and the medical professional treats the patient with regard to the principle of health. However, as the impact of sex reassignment therapy on the mediated immediacy of the patient indicates, sex reassignment therapy does alter how the immediacy of the body is mediated. Therefore, in the patient, eccentricity itself is altered. These considerations lie close to the notion of *meta-eccentricity* introduced by Verbeek (2014). Verbeek defines *meta-eccentricity* as:

A position from which humans not only relate to their centres, like in the case of the eccentric position, but also to eccentricity itself, in which they now can actively interfere. (Verbeek, 2014, p. 453)

*Meta-eccentricity* therefore signifies any attempt of humans to alter the manner in which they relate themselves to their centres. This includes sex reassignment therapy, through which the immediacy of the body becomes mediated in a fundamentally altered manner. However, for Verbeek this notion is closely tied to technologies that interfere with brain functioning and genetics:

But technologies such as psychotropic drugs, deep brain stimulation and genetic intervention play a completely different role in human eccentricity. These technologies all interfere – at least potentially – in human consciousness. Rather than influencing the centre from which humans act and experience, they influence the nature of human eccentricity: the way in which people relate to themselves. By influencing our moods, by altering our ability to concentrate or even by interfering with our character traits, these technologies change eccentricity itself. (Verbeek, 2014, p. 453)

I argue that this scope of meta-eccentricity is too narrow when it comes to the interference of technology used during sex reassignment therapy. Verbeek states that psychotropic drugs as well as deep brain stimulation have a profound impact on human consciousness and the nature of human eccentricity. To align these technologies with consciousness, Verbeek ascribes a primary role to the brain in affecting the eccentric positionality of humans. By referring back to the profound influence of the brain in affecting consciousness and eccentricity, there is a danger of creating a dualist conception that underlies meta-eccentricity. This would, however, be in conflict with the monist character of Plessner's philosophical anthropology, in which no difference is being made between the brain and body in the localization of the eccentric positionality of humans. As seen in the example of sex reassignment therapy, active interference should not only be identified through changes affecting the brain or genetics, but also through explicit bodily changes caused by the use of hormonal replacement therapy and sexual reassignment surgery.

## Conclusion

As we have seen, in order to consider health in the philosophical anthropology of Plessner, one has to start with an examination of the eccentric positionality of man. Following the three anthropological laws of Plessner as outlined in the medical-anthropological model, a balance between each of the three spectrums 'mediacy-immediacy', 'naturalness-artificiality', and 'rootedness-eradication' has to exist to preserve and promote health. As the assessment of sex reassignment therapy shows, eccentricity itself is not lost

in sexual reassignment therapy, and therefore adheres to the aim of treating a patient from a perspective in which health remains central. However, the impact of sex reassignment therapy extends further than the notion of eccentricity. The transition of sex implies an alteration of eccentricity itself, because of the rigorous changes it causes to the body. Therefore, sex assignment therapy also follows a meta-eccentric account of interference. The scope of the meta-eccentricity as defined by Verbeek is primarily confined to an account of the brain. However, as the discussion of sex reassignment therapy shows, meta-eccentricity is not a phenomenon that is solely dependent on the brain, but also pertains to the body.

Having covered how eccentricity and meta-eccentricity contribute to the discussion concerning sexual reassignment therapy, I make the case for a more nuanced vision about the distinction between therapy and enhancement, i.e. the distinction between using interventions to restore or sustain health or "to improve human form or functioning beyond what is necessary to restore or sustain health" (Juengst & Moseley, 2016).

Through Plessner's philosophical anthropology, this paper aims to add another position to this debate. As argued above, although there is a distinction between therapy and enhancement, sex reassignment therapy has to be labelled both as therapy and as enhancement. As seen in the previous paragraphs, the principles of both eccentricity – unified with the *preservation* and *restoration* of health – and meta-eccentricity – associated with the *alteration* of eccentricity itself – underlie the sexual transformation of a patient during sex reassignment therapy. Therefore, a patient is treated with the intention to restore or sustain health and "to improve human form or functioning beyond what is necessary to restore or sustain health" (Juengst & Moseley, 2016). Hence, the patient is treated within the context of both therapy and enhancement.

Even though this assessment of Plessner's philosophical anthropology in the context of sex reassignment therapy does not result in a practical guideline with defined acts for clinical practice, it supports a new paradigm in which this group of patients can be seen as taking part in therapy as well as enhancement. As for medical practice, a lot of these cases will therefore fall into a grey area in which both sides, therapy as well as enhancement, have to be taken into account and will be assigned their respective role in the treatment of a patient.

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## Notes

1. In medicine four ethical principles form the cornerstone of clinical ethical decision making: respect of autonomy, justice, non-maleficence, and benevolence. Medical enhancement seems to surpass that which is presupposed by the criterium of 'benevolence'.
2. Respectively being the surgical removal of the penis (penectomy) or ovaries (orchiectomy), or the surgical intervention to create a vagina (vaginoplasty) or penis (phalloplasty)

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# The Internet: State of Nature or Artificial State?

*A Modern Reflection on Hobbes and Rousseau*

Eva van Reeven

The principle of net neutrality implies that internet service providers must treat all information packet sets by content providers equally and free of charge (Calzada & Tselekounis, 2018, p.191). On December 14, 2017, the American Federal Communications Commission (FCC) repealed the rule that classified the Internet as a public utility under Title II of the 1934 Communications Act (passed by the Obama administration in 2015). This recent development concerning net neutrality in the United States has increased the tension between those arguing for the free flow of information and the business side of commercialized information technology (Yeh & Cheng, 2017, p.2). Critics view the FCC's decision as a threat to both the freedom of internet consumers and the progress of scientific discovery, but also as imposing a significant market disadvantage on small businesses. Free information flow is not considered a fundamental human right. However, the U.S. government does have an active legal duty to promote freedom of speech, which would be stifled by the elimination of net neutrality (Yeh & Cheng, 2017, p.16). Yet, freedom of speech is not necessarily equated with a free flow of information, as one is a fundamental human right recognized by law and the other an unofficial grant (in this case of Internet culture). Furthermore, net neutrality does not contribute to the development of broadband networks, and thus stifles their growth – which is perceived as detrimental in the capitalist paradigm of constant economic progression (Yeh & Cheng, 2017, p.17). In an increasingly knowledge-based economy, the elimination of net neutrality would ultimately create a competitive distinction between networking countries, and would increase the gap between the networked and other, isolated, countries, giving rise to information scarcity by making Internet access exclusive (Holderness, 2005, pp.38).

With the threat the elimination of net neutrality poses to online and (world-)economic participation in mind, it would be interesting to see whether the premise of the Internet being free and open to all is true, and whether or not that premise of freedom is a desirable one. This essay will be looking into the philosophies of both Hobbes and Rousseau, and link them to the digital realm. Thomas Hobbes and Jean-Jacques Rousseau have both theorized on the concept of governance, and have long adopted opposing views on the matter. The aim of this essay is to determine whether the Internet really needs governance – or if perhaps it has always been a governed state. The outcome of this analysis functions to determine the importance of net neutrality preservation on a global scale.

The essay is divided into three parts. First, the concept of the Internet as a State of Nature will be discussed by explaining Hobbes's *Leviathan* and applying this (or his) theory to the Internet. Second, the concept of the Internet as a state within a state will be discussed by going over Rousseau's critique on Hobbes and applying Rousseau's theory of the corruption of society to the Internet. Finally, a conclusion will be drawn based on the two opposing analyses of the Internet, determining whether the Internet falls into either one of these two categories. The conclusion ought to clarify the function of the Internet and whether it is subjected to governance – and, if so, *how*. Furthermore, the conclusion will explain the importance of net neutrality for the determination of the Internet as either a Hobbesian State of Nature or a Rousseauian artificial state – as well as the crucial importance of the preservation of net neutrality itself on a global scale.



## The Internet as a State of Nature

In 1651, the British press released the first official copy of Thomas Hobbes' *Leviathan* or *The Matter, Forme and Power of a Common-Wealth Ecclesiasticall and Civil*. In addition to its lengthy title, its frontispiece, etched by the French artist Abraham Bosse, very much appeals to the imagination. Prominent on the book's cover is the image of a sovereign, a king, crowned, and armed, towering over his kingdom. Looking closely, one can recognize that the giant king is entirely made up of small individuals, grouped together in order to give shape to this particular figure. The image reflects the concept of the *Leviathan*, introduced by Hobbes as the body that we as citizens create in order to regulate our relations with each other; a body on which society is centred. The artificial man depicted on the cover of Hobbes's book represents the commonwealth or the state. Hobbes says that this commonwealth came into being a long time ago when, metaphorically speaking, humans signed a contract, by which they agreed to give up their natural rights in order to be able to live with each other in peace (Skinner, 2008).

What was it that justified the full authorization of the Leviathan? According to Hobbes, humans had no other choice but to give up their natural rights to the artificial man; for these rights had always made the preservation of one's own life impossible. Back when this natural right prevailed, before the creation of the artificial state, man was living in the State of Nature (Lloyd & Sreedhar, 2014). In the State of Nature, we are all equal by our *jus naturalis*: our natural right. This natural right ensures that individuals have the equal right to go after their personal desires. People's highest good is taking for themselves what they happen to desire at a specific moment in time that will quench their insatiable thirst for *felicity*, or happiness. Man is naturally selfish, and completely justified in his pursuit of *felicity* by any means necessary. Any concept of morality does not exist until the contract is signed (Hobbes, 2004; Lloyd & Sreedhar, 2014). More often than not, individual desires overlap. When this overlap occurs, the scarcity of the objects of man's desire becomes prevalent. For it is man's natural *condition* to live together with other like-minded individuals; each driven by their selfish desire for *Felicity*. Ultimately, this problem of equal existence creates competition, competition for *power* in order to *overpower* others, which is necessary for survival. However, a permanent state of war

is not the desired environment in which to strive for self-preservation. In a world of no morals, humans will end up destroying each other. This goes against the *lex naturalis*, the law of nature, which states that each person cannot possibly engage in any activity that will endanger their life. Because humans are rational beings, Hobbes figured they would at one point come to understand the necessity of the creation of something that would ensure their peace. From this, it follows then that getting out of the State of Nature was a completely natural development in the history of humankind: the war of all against all legitimized the need for a sovereign. The birth of the Leviathan was the *only possible*, the *only natural*, the *only rational* conclusion (Hobbes, 2004; Lloyd & Sreedhar, 2014).

Hobbes' State of Nature embodies a certain state of anarchic chaos. While Hobbes' philosophy stems from the 17th century, we can still recognize its anarchic themes today, in a new world – one that lies beyond the physical realm, but whose influence *on* the physical realm has become detrimental to our reality. Much like Hobbes' State of Nature, the Internet is a lawless place, without a governing body. This is because the Internet was originally meant to function as a vehicle for military network research in the mid-1960s, and was designed to survive nuclear war. It was necessary that there was no central control present, so that any part of the Internet could inconspicuously be removed without damage to the whole (Langford, 2005, p.99). The Internet is believed to be the last place where this type of anarchic privacy and freedom still exists. There is not one person claiming ownership over the Internet; it is perceived to be like an open environment, which anyone can enter at any time. The Internet exists for no one in particular, and so people from all over the world are free to occupy its space (Axelrod, 2009, p.5).

How is this online freedom being utilized by Internet users? There are three fundamental differences between the physical world and the digital world that have helped shape the image of the Internet as a space with an “anything goes”-mentality, which is expressed through antisocial online behavior like cyberbullying, cyberstalking, and hate speech – to name just a few (Winter, 2018, p.186). Firstly, the Internet transcends all spatial boundaries: online, we have access to everything – and everything, in turn, has access to us. Secondly, identity is a fluid concept in the digital world:

appearances change, names are falsified, and any personal information for that matter is devoid of any traceable source, at least to any regular user. Finally, being online also enables people to let go of the inhibitions that are they encounter in society. This is because online there is a lack of physicality, and with that an absence of physical and verbal cues (Axelrod, 2009, p.14). Much like in Hobbes' State of Nature, on the Internet, users are free to act according to their “*jus internetalis*”. In fact, on the Internet, the boundaries of identity, and thus of responsibility and of consequence, have been erased by anonymity (Axelrod, 2009, p.5). The equal right of internet users to uphold their anonymous mask at all times creates an impersonal environment in which anything goes. Furthermore, there is very little difference between Internet users, as distance is no longer an issue: geography (physical location) has been replaced by “ideography” (ideological location) (Holderness, 2005, pp.36). People travel through cyberspace on unrestricted mode; there is no way to regulate who is online and who is not – especially not when individuals can move around largely undetected (Axelrod, 2009, p.58).

It is unsurprising that, ever since the Internet was created, it has been an attractive place for criminals to operate. Even though digital crime can do harm to the physical world, criminals are drawn to the internet because its anonymity offers them something that was not available in Hobbes' State of Nature: they are less likely to violate the *lex naturalis*, as it is harder to fight crimes that cannot be directly traced back to a physical person (Axelrod, 2009, p.6 & 13). As the Internet allows people to operate under the assumption that they are safe, it is arguably an even more dangerous place than Hobbes' State of Nature. People enter the digital realm from the privacy of their homes, and so the average user finds themselves in a world without the danger cues found in the physical world – danger cues that usually remind us to ensure our personal safety, which is no longer necessary when we assume to be safe already. Users who believe that, when they enter the Internet, they enter a space of trust are more easily subjected to perception (Axelrod, 2009, p.14 & 17). At least one would be able to hear the footsteps of an intruder in the State of Nature. On the Internet, however, we are not so lucky. Furthermore, because the Internet is an entirely virtual experience which is owned by no particular entity, we cannot simply apply the laws from the physical world onto the digital world

(Axelrod, 2009, p.75). The Internet functions as a State of Nature *within* the civil state, and requires an entirely different approach when it comes to legislation. What works in the physical world does not necessarily work in the digital world. For example, data mining cannot be approached in the same way as the robbery of a house, as these two crimes both have very different consequences for the victim.

From anonymous communication arose a rhetoric of the Internet as a space of equality: all users would be free to communicate without any limits. This freedom enables users to act naturally. According to Hobbes, all natural action is amoral (Hobbes, 2004; Lloyd & Sreedhar, 2014). The Internet has provided man with an entirely new object of *felicity*:

In an increasingly knowledge-based economy, information is becoming at least as important as land and physical capital. In the future, the distinction between developed and non-developed countries will be joined by distinctions between fast countries and slow countries, networked nations and isolated ones. – According to Baranshamaje et al. (as cited in Holderness, 2005, p.38)

Acquiring information has become the most desirable cause, because our participation in the world economy depends on it. However, the desire for information itself alone does not immediately create a State of Nature. There are two preconditions that jointly reduce humans to competitors: an overlap in desires (we all want to acquire the same information) *and* the scarcity of that information (Chadwick & Howard, 2010, p.324). Charging people for Internet use creates this scarcity – and so it seems that the only thing standing between the Internet and the State of Nature is net neutrality (Lloyd & Sreedhar, 2014). As long as net neutrality is preserved, the competition for information is prevented. Therefore, the authorization of the Leviathan does not arise.

Having discussed the philosophy of Hobbes and its relation to the Internet, the following paragraph will cover the contrasting idea of the Internet as being an artificial state (within a state) – based Jean-Jacques Rousseau's critique on Hobbes's theories. Finally, in the conclusion, the two concepts (the Internet as State of Nature vs. the Internet as artificial state) will be compared in order to determine which is the more promising conceptualization.

## The Internet as a State within a State

It is easy to assume that the internet is ungoverned, simply because it was intended to be that way when it was first created (Langford, 2005, p.99) – but is this still the case today? People have become accustomed to the idea that the Internet is the same open space it once was; its actions transparent and its products free. The Internet *ought* to be universal and evenly distributed (Franklin, 2013, p.2). However, the existence of the Internet is a bit paradoxical. We have created a (digital) world within a (physical) world. The digital world exists without substance or boundaries to govern it *within* a world that *is* governed by substance and boundaries: the physical world. Within the physical world, everything is bound to the laws of physics, including quantifiable physical space and limited resources. To claim that we have no control over the Internet, simply because it was intended to be ungoverned, makes it seem like we have created some sort of monster that has flown the coop – à la Frankenstein's experiment gone awry. However, the Internet exists within a world that revolves around the idea of control: we control the Earth and its resources, we control land and geography, we control entire populations, we fight to control others, we fight to control ourselves, and so on (Axelrod, 2009, p.5). Similarly, the ideal of the Internet as universal paradise is countered in practice by the constant attempts to control access and terms of use (Franklin, 2013, p.2). The fact that the Internet exists as a realm within a realm does not make it independent from the physical world; rather, the Internet functions as a virtual extension of human civilization: the information society as a spin-off from physical reality (Axelrod, 2009, p.12). If we can regard the Internet as an extension of civilization, we can no longer claim that it resembles a State of Nature. In fact, as discussed in the previous paragraph, the Internet as a concept cannot resemble a State of Nature as long as net neutrality is preserved – for it is scarcity combined with an overlap in desire that creates a war of all against all. Internet anonymity and the lack of centralized control may have created a desirable space for anti-social behaviour and crime to exist, yet these phenomena alone are not enough to qualify the Internet as a State of Nature as they do not account for a scarcity of information. Ultimately, net neutrality seems to be the only thing standing in between us and a constant war of all against all.

Turning away from Hobbes, the following paragraph will examine Rousseau's theory on the corruption of society. Rousseau criticized Hobbes, and others like Hobbes, claiming they had misunderstood the concept of the State of Nature. Hobbes' error had been to suppose that the state of war he described was the natural state of man. However, according to Rousseau, Hobbes had come up with solutions to problems that were caused by said solutions in the first place (Wokler, 2001, p.52). In their natural state, as envisioned by Rousseau, our ancestors had neither any need for the company of others, nor any wish to hurt them, for there were two traits all savage humans shared: *amour de soi* and *pitié* (Wokler, 2001, p.47). Naturally, man is always governed by self-love (*amour de soi*), the constant impulse to preserve one's own life, and at the same time by compassion (*pitié*) for the suffering of others (Wokler, 2001, pp. 47-54). According to Rousseau, Hobbes had ignored man's natural compassion, because he had misunderstood their self-love. In Hobbes' view, savage individuals could only preserve their lives by resisting the attempts of others to destroy them, leaving no room for any feelings of compassion. In contrast, Rousseau believed that self-love and compassion *together* were the key for human survival. What Hobbes had described in his State of Nature was not *amour de soi*, but *amour-propre*: a vanity created by a pitiless desire for security at the expense of others; a feeling implemented by society to turn individuals into competitors (Wokler, 2001, p.55). This vanity notion of self-love is a concept that is socialized – it is not originally present in people. According to Rousseau, all the arguments Hobbes used to envision his state of war were already rooted in civilization. Hobbes was describing not man's natural state but man's artificial state.

While it is true that there is no form of online centralized control, there are *thousands* of nodes within the network that present opportunities for authorities to impose order on Internet traffic through some mechanism of filtering and surveillance (Chadwick & Howard, 2010, p.324; DeNardis, 2014, p.10). Traditionally dominant institutions of power – nation states, religious institutions, multinational corporations – have lost some of their historic control over information flows. But does this mean that all control is gone completely? Perhaps a website cannot be made to not exist. However, websites created by individuals can be made unavailable by infor-

mation providers in certain locations – given those websites are deemed unsuitable by said information providers (Langford, 2005, p.106). The same technologies that have improved communication and information diffusion are also used by many types of governments to filter and censor information, to create systems of surveillance, and even to spread misinformation. The inability of governments to control the flow of information via mechanisms of traditional authority, such as laws, has shifted politics into the technical domain (DeNardis, 2014, p.10). The constant push and pull between national sovereignty and property rights shows us that all parties actually increasingly make efforts to control the digital narrative (Franklin, 2013, p.2).

According to Rousseau, people's initial state of being was propertyless. Furthermore, uncivilized man lived contentedly alone. Without any property to fight over, and without any neighbours to fight with, the state of war could not possibly have existed (Wokler, 2001, p.49 & 52). Hobbes' savage man had traits that could only ever be acquired in society – whereas in Rousseau's State of Nature, governance would not have been necessary, for man did not live together (Wokler, 2001, p.53). Thus from a Rousseauian perspective, the detection of any form of governing control on the Internet already proves that it does not resemble a State of Nature, as such need for governance already is an example of societal corruption.

However, again, the Internet is subjected to a different kind of control than the traditional expression of control, e.g. control expressed through laws. Internet governance is about *governance*, not *governments*. Traditionally, governance is understood as the efforts of sovereign nation states to regulate activities within or through national boundaries. As there are no such boundaries known in the digital world, much of Internet governance is enacted by private corporations and nongovernmental entities. Governments now ask search engines to remove links; they approach social media companies to delete certain content. In this fashion, censorship, surveillance, copyright enforcement, and even law enforcement have shifted governance from governments to private intermediaries (DeNardis, 2014, p.13). Even though forms of control on the Internet are not identical to the traditional forms of control in the physical world, the Internet is subjected to control nonetheless.

## Conclusion

Reflecting on Hobbes and Rousseau in the modern age, we can see that the Internet carries elements of both philosophies. Arguments for the Internet as a Hobbesian State of Nature are rooted in the assumptions that the Internet is lawless, free, open, universal – without any centralized form of government (Langford, 2005, p.99). It erases all the limits and boundaries from the physical world, while user anonymity enables us to act naturally as we move around this space in an unrestricted fashion (Axelrod, 2009, p.14). In a way, the Internet is an even worse place to be than Hobbes's State of Nature, as the Internet gives us a false sense of safety, and does not contain the danger cues present in the physical world, making us much more vulnerable to deception (Axelrod, 2009, p.14 & 17). However, the Internet is as anarchic as it is controlled, which directed us towards Rousseau and his theory of the corruption of society. Arguments for the Internet as an artificial (man-made) state *within* an artificial state are rooted in the existence of ownership online, which creates the need for governance. And, as argued by Rousseau, this mere need of governance alone already serves as proof that the true State of Nature (opposed to the Hobbesian State of Nature) in which man lived contentedly alone, has long ceased to exist (Wokler, 2001, p.53).

Perhaps this world within a world wavers somewhere in between what is natural and what is artificial. The Internet certainly is different from physical reality – but it is not and could never be completely independent from physical reality (Axelrod, 2009, p.12). So, perhaps we did not lose control online; we merely redefined its concept. Control in the digital realm may not resemble the traditional forms of control in the physical realm, as this power has shifted from centralized governments to private intermediaries, but the Internet is subjected to control nonetheless (Chadwick & Howard, 2010, p.324; DeNardis, 2014, p.13). The scary thing then about net neutrality is that, without it, the Internet could very well start to resemble a Hobbesian State of Nature due to the creation of scarcity. Furthermore, with the Internet being an extension of reality (Axelrod, 2009, p.12), and the world economy increasingly becoming knowledge-based, access to information is detrimental to national participation in the world economy. Without equal access, information becomes scarce and such exclusivity is bound to create an environment of competition. Eventually, the slower countries will sim-

ply fall off the bandwagon (Holderness, 2005, p. 38). So, the preservation of net neutrality does not just prevent the Internet from turning into a Hobbesian State of Nature; the preservation of net neutrality is necessary in order not to further split the world into the haves and have-nots.

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# Productivity and Inheritance

*Diminishing inequality without losing the incentives*

Måns Abrahamson

## I. Introduction

The legitimacy of inheritance has long been of interest for philosophers and economists alike (Vandeveld, 1997). Traditionally, the problem of whether inheritance should be limited has been a matter of conflict between freedom and equality (Pedersen, 2018). From the viewpoint of freedom, people who have justly acquired assets should also be able to dispose of these assets in whatever way they see fit. From the perspective of equality, unrestricted power on the transfer of assets will inevitably lead to inequalities in wealth. The extent to which we value freedom or equality plays a major role in determining our stance towards whether to limit inheritance. If we prioritise freedom over equality, we should support people's ability to bequest as it is just another transfer of assets. If we prioritise equality over freedom, we should act to limit inheritance since intergenerational transfers of wealth tend to result in the accumulation of wealth among a limited group of people and with that come greater inequalities in society (Pedersen, 2018).

The traditional debate between freedom and equality is a good starting-point in inquiring about *what* we value in relation to the practice of inheritance. However, it is important not to stop there. As noted by Fleischer (2016), when discussing wealth taxation more generally, we also need to inquire about *why* we value what we value. Only with a clear understanding of why we value what we value, will we be in a position to scope out a comprehensive policy for wealth taxation that aligns with our value judgments. Likewise, for inheritance policy more specifically, it is important that we ask ourselves why we value freedom or equality. Do we value freedom to transfer assets because we see it as a right of each individual, or because it is the most economically efficient way to structure our society?

Do we oppose inequalities in wealth because it is bad in itself, because it leads to unequal political power, or because it leads to inequality in opportunity? Our answers to these and similar questions will determine both if we are for or against limiting inheritance and what policies will serve our normative goals best.

In this essay, I will start the discussion on inheritance policy by evaluating different aspects of inheritance with respect to the viewpoint of rule utilitarianism. Following Haslett (1986; 1997), I will suggest that political units, i.e. legislative and policy-enforcing agencies, should strive to maximise general welfare in society. I will further posit that this ideal of welfare maximisation can be satisfied most efficiently by promoting productivity and equality of opportunity in society. I will therefore answer 'what we value' with 'productivity' and 'why we value it' with 'it maximises general welfare'. The reason for this narrow normative focus is that it shows how, by giving clear answers to what we value and why, we can reach a well-defined policy for inheritance that adheres to our assumed value judgements<sup>1</sup>. Fleischer (2016) notes that, while research on increasing economic inequality and inequality related policies has experienced a surge in later years, in large part due to Piketty's *Capital in the Twenty-first Century*, the discourse often ends up giving a generic proposal of "taxing the well-off more heavily". There is, however, a large spectrum of tax instruments available to reduce inequality that have very different implications. For example, picking an annual wealth tax as instrument for taxing the well-off implies the value judgement that it is wealth accumulation in itself that is problematic and should be the focus of regulation. Similarly, selecting an estate tax as instrument implies the judgment that intergenerational transfers of wealth are problematic. Concluding that we should tax the

well-off more heavily is, therefore, only the first step towards an inequality related policy. This step needs to be followed by a discussion of what specific areas of inequality we see as problematic and what values we seek to promote. The derivation of inheritance policy from a rule utilitarian framework in this essay can therefore be seen as part of a larger project to inform inequality related policy discussions with justifications for specific policies.

After introducing the rule utilitarian account that frames our analysis, we will proceed to examine and appraise two policies relating to inheritance that have been proposed in the literature: Haslett's (1997) lifetime inheritance quota and McCaffery's (1994) consumption-without-estate tax. While both policies were introduced more than 20 years ago, they represent major stances in the literature and continue to influence the debate on inheritance policy (Pedersen, 2018). By evaluating the two alternative stances on inheritance through our utilitarian framework, the following will be made clear: we cannot examine the practice and effects of inheritance as an isolated interaction between transferor and transferee. Solely focusing on limiting the intergenerational transfer of wealth will cause us to neglect how our policy affects behaviour in other domains in the lives of the affected individuals. If we limit people's ability to bequest, we will indirectly encourage transferors to make use of their wealth in alternative, potentially problematic, ways by altering the opportunity costs of different behaviour. I will therefore argue that we should take a comprehensive view over the different incentives we promote when we introduce different policies on the practice of inheritance<sup>2</sup>.

In light of this, I will suggest that Haslett's and McCaffery's proposals should not be seen as competing policies, but rather as complementary: Haslett's proposal to limit what a person can receive in gifts and bequests with a set quota promotes productive incentives in the generation that inherits. However, this limitation is also likely to incentivise some groups in the generation that first accumulate wealth to allocate part of their assets to consumption that is unproductive, i.e. relatively inefficient at increasing welfare. McCaffery's proposal to progressively tax consumption can make up for this shortcoming in Haslett's proposal and promote productive incentives for the first generation. This leads me to argue that a policy that

combines Haslett's and McCaffery's proposals is superior to the respective proposals individually in terms of promoting productivity and, with that, welfare in society.

The essay will proceed as follows. Section II introduces the rule utilitarian framework that will be used to answer which dimensions we should focus on when we evaluate inheritance and policies related to inheritance, and why we should focus on those dimensions. Section III follows with Haslett's (1997) and McCaffery's (1994) respective policies concerning inheritance. In Section IV, we will relate these policies to the rule utilitarian framework and evaluate their respective advantages and disadvantages in terms of promoting productivity. Section V describes what a policy that combines Haslett's and McCaffery's proposals would look like and why it would be better than the individual proposals at promoting productive incentives for both current and future generations. Section VI concludes with a summary.

## 2. A framework for appraising inheritance policies

To be able to evaluate the practice of inheritance and related policies, a framework is needed to determine which dimensions to focus on and why these dimensions are important. Following Haslett (1997), the analysis of inheritance in this essay will be based on a rule utilitarian framework that focuses on productivity under the presumption that it increases welfare in society. This rule utilitarian framework can be divided into two separate spheres; personal and political morality. This essay is concerned with the latter.

Political morality is, according to Haslett, governed by a number of norms, rights and ideals. Haslett means that the most fundamental political ideal is general welfare, which should be understood as the equally weighted concern for the well-being of all individuals in society. This concern, or ideal, is fundamental in the sense that all other ideals of political morality serve as guides on how to most efficiently promote general welfare (Haslett, 1986). These subordinate ideals can therefore be seen as *prima facie* ideals, in the sense that they are open to compromise; they should only be realised to the extent that they do not conflict with ideals that are

more conducive to general welfare (Haslett, 1986).

One of these subordinate ideals is what Haslett (1997, p. 136) calls the *productivity ideal of distributive justice*. This ideal is concerned with the optimal distribution of income and wealth in society, where optimal should be understood as most conducive to general welfare. The ideal can be summarised under the mantra: “to all people according to the productivity of their labour, or of the property they have acquired in return for the productivity of their labour” (Haslett, 1997). In other words, people should be rewarded with exactly what they produce, or its equivalent. Since most people are not self-sufficient but exchange money for other people’s productivity in the marketplace, we need to be more specific in how to correctly value people’s productivity; we need to translate the productivity ideal of distributive justice to the more specific principle of the *ideal monetary value of people’s productivity*.

Haslett (1997, pp. 136-137) states that this ‘ideal monetary value of productivity’ should be defined in terms of people’s fully informed preferences. A person’s productivity is determined by the extent to which she produces goods or services that people either really want, or really need. What people really want or need should, however, not be understood in terms of their actual preferences. Rather, it should be understood as their wants and needs if they had *correct* beliefs about what maximises their welfare. The reason for this can be traced back to the fundamental ideal of general welfare: only goods and services that are *de facto* welfare enhancing for people should be counted as productive, since we are only concerned with productivity insofar as it is conducive to general welfare. The notion of fully informed preferences is therefore an essential part of our framework and our attempt to derive inheritance policy, as it acts as benchmark for welfare considerations. This will be evident when we discuss the notion of ‘positional goods’ in relation to McCaffery’s policy proposal in the next section.

Fully informed preferences are, nevertheless, not enough to properly define the ideal monetary value of productivity. For the willingness to pay among fully informed consumers to correctly represent people’s productivity, there cannot be any unnecessary limitations on people’s opportunities to be productive (Haslett, 1997). Unnecessary limitations on opportuni-

ties are those that human beings are able to, and should, remove given the productivity ideal of distributive justice. They include limitations on opportunity created by discrimination, prejudice or stemming from social background. They do not, however, include limitations on opportunity created by the justified realisation of people’s productivity. That is, inequalities of opportunity that can be traced back to a person being productive. Neither do they include limitations due to differences in native talents, i.e. inborn abilities, insofar as we are unable to remove these differences, or it would be self-defeating in terms of general welfare to do so. Haslett assumes that it would, in fact, be self-defeating to redistribute most of these native talents as it would result in a negative net-effect on general welfare (Haslett, 1986). It is important to note that Haslett is not valuing equality of opportunity for its own sake. In the rule utilitarian framework, equality of opportunity is only of interest to the extent that it is conducive to productivity, which in turn is only of interest to the extent that it is conducive to general welfare.

The type of equality of opportunity that Haslett is supporting can be clarified in terms of Rawls’ formal equality of opportunity bundled together with fair equality of opportunity (Rawls, 1999). What is meant by formal equality of opportunity is that all advantageous, or desirable, positions in society are legally accessible to everyone; in short “careers open to talents” (Rawls, 1999, p. 62). This basic principle of equality is supplemented by fair equality of opportunity, which can be summarised as follows: “assuming there is a distribution of natural assets, those who are at the same level of talent and ability, and have the same willingness to use them, should have the same prospects of success regardless of their initial place in the social system” (Rawls, 1999, p. 63). In other words, only native talent and ambition should play a role in determining the prospects of success for people when competing for advantageous positions. This entails that all inequalities in opportunity that we can alter should be redistributed equally to the largest possible extent, so that everybody has the chance to fully develop their potential productivity.

The justifications for fair equality of opportunity can again be traced back to the ideal of productivity according to Haslett (1997). If we do not remove unnecessary limitations on opportunities, we will create artificial

scarcity of some goods and candidates for specific jobs. That is, people will not be paid solely in terms of their productivity, but also in terms of their unjustly attained opportunities. We will then collectively misvalue certain goods and careers in society, which leads to inefficient use of resources and with that, less overall well-being. An example can help to illustrate the proposition. Today we value doctors substantially higher than factory workers seen from a salary standpoint. Naturally, this is in large part due to the scarcity of the talent needed to pursue a career as a doctor, and an abundance of the talent needed to pursue a career as a factory worker. This natural scarcity of doctors is unproblematic for the ideal of productivity. People who have the natural capacity, or willingness, to do things that few people can or want to do, are doing something socially valuable (Haslett, 1986). They are being highly productive and, according to the productivity ideal of distributive justice, should also be highly rewarded. The discrepancy in valuation can, however, be problematic if barriers in society hinder some people from pursuing a career as a doctor. For example, the relatively high tuition fee for the medical programme can force some people to give up their goal of becoming a doctor and take up a job as a factory worker in order to provide for themselves and for their families. In this case, the financial situation of some individuals puts them in a position where they are unable to make use of all of their productive potential, which leads to inefficient allocation of resources and with that less general welfare.

This concludes the part of the rule utilitarian framework relevant for the analysis at hand. According to the framework, the fundamental ideal that all policies should strive to realise is maximisation of general welfare. This entails a productivity ideal of distributive justice, which posits that people should be rewarded exactly what they produce, or its equivalent. Since most products are traded on the market, the equivalent of productivity needs to be described in monetary terms. The ideal monetary value of people's productivity is then based on fair equality of opportunity and people's fully informed preferences. These two conditions guarantee that people both have the resources needed to develop their potential productivity and are incentivised to do so by being sufficiently compensated for their efforts. As we look closer at two specific policy proposals regarding inheritance in the following sections, we will examine to what extent they promote productivity and thus general welfare.

### 3. Two alternative stances on inheritance

In this section, we will examine Haslett's and McCaffery's alternative stances on inheritance. Haslett (1997), making use of the rule utilitarian framework summarised above, argues that inheritance tends to undermine productivity in society and with that general welfare; he therefore suggests that we should limit inheritance. McCaffery (1994), to the contrary, argues that limiting inheritance pushes people to make less productive use of their wealth. McCaffery therefore proposes that we tax consumption rather than inheritance.

#### 3.2 Haslett against inheritance

The implications of the framework above are clear for Haslett (1997). People can naturally only put their productivity, or property acquired through productivity, to use in a limited number of endeavours. As we seek to maximise general welfare, we want people to invest their capabilities in those endeavours where they will be the most productive. However, people's self-interest does not always coincide with general welfare in society and we cannot force people to use their abilities in the most productive way. The reason for this is simply that we cannot know exactly what potential productivity people have and when they are making the most efficient use of their productivity. Instead, we need to *motivate* people to make the most out of their abilities. This is naturally done by rewarding people exactly in line with their productivity, thereby incentivising them to be the most productive they can be.

With that said, according to Haslett, inheritance tends to undermine productivity. There are two reasons for this; the first reason is based on a direct effect of inheriting on the person who inherits, the transferee. The second reason is based on an indirect effect of inheriting that affects the generation of the transferee more broadly. The direct effect of inheriting affects the transferee's incentives to be productive. After inheriting a substantial amount, the transferee is naturally no longer forced to make as efficient use of her productive potential as before the transfer, since she already has the means to support herself and her family. Inheritance therefore affects the motivation to be productive for some individuals in society and, with that, general welfare. The second, indirect, effect of inheritance

refers to the inefficient allocation of resources in the generation of the transferee. The assets received by the transferee represent opportunity: wealth not only increases a person's opportunity to pursue the career of her choice, it also increases her ability to pursue it successfully (Haslett, 1986). For example, by inheriting an enterprise, or the funds to acquire an enterprise, the transferee can put herself in a position, say CEO, which she would not be able to attain if native talent and ambition were the only deciding factors. In this case, the transferee would have taken the advantageous position from someone else who would be more suitable for the position and who would have used the resources more efficiently. So, while in this case inheritance does not affect the transferee's incentives to work, it alters the opportunity landscape in society. People are unable to make the most of their potential productivity, which lowers overall productivity in society and with that overall welfare.

Due to these unproductive effects, Haslett (1997) argues that we should limit inheritance. More specifically, Haslett proposes that we should enforce the practice of *lifetime inheritance* quotas. The central idea behind this proposal is that we should set a cap on how much each individual can receive in gratuitous transfers throughout her lifetime. There are two key aspects to this proposal. Firstly, while Haslett calls the proposal an 'inheritance' quota, he is really concerned with all types of gifts, before and after the death of the transferor. Given the framework we described in Section II, it is a natural step to move beyond just inheritance to also include gifts made during the life of the transferor, i.e. *inter vivos* gifts. The reason is that all types of large gifts share the same offsetting effects on fair equality of opportunity and productivity that we described above: the direct effect on the transferee's incentives to be productive, as well as the indirect effect on the generation of the transferee more broadly, holds whether or not the transferor of the assets is dead. Moreover, a full abolishment of inheritance would not plausibly hinder a motivated transferor to gift her assets to the transferee. Instead, such a policy would only lead the transferor to gift her assets before her death, which, as noted above, would have just the same unproductive effects as a wealth transfer after death.

The second important aspect of the policy is that the quota is imposed on the transferee, rather than on the transferor. Both the direct and indi-

rect problematic effects of inheritance described above affect the generation that receives the gifts; it is therefore natural to focus on their assets, rather than the generation of the transferor. It is in this aspect that the strength of Haslett's proposal can be recognised: the quota forces the very wealthy to break up their fortunes, which mitigates both the direct and indirect unproductive effects of inheritance to some extent (Haslett, 1997). The direct effect is mitigated as the transferees will no longer be able to receive enormous fortunes. This leads to a distribution of wealth more in line with the productivity ideal of distributive justice as wealth transfers unrelated to the productivity of the receiver are constrained. The indirect effect is diminished as large fortunes are broken up and spread out over multiple transferees. This implies a more equal distribution of opportunity and with that more productivity and increased general welfare, according to our rule utilitarian framework.

### 3.3 McCaffery against limiting inheritance

McCaffery argues against taxation of inheritance, or more specifically current taxation of inheritance in the USA, in his article *The Political Liberal Case Against the Estate Tax* (1994). While I am not concerned with inheritance taxation as such in this essay, McCaffery's arguments against inheritance taxation also hold against limiting inheritance more generally.

The reason why McCaffery (1994) argues against inheritance taxation is threefold. Firstly, inheritance taxation pushes wealthy people to make large and frequent *inter vivos* gifts as they do not want to lose part of their gifts to the state. As noted above, a full abolishment of inheritance would not solve the problem of inequality of opportunity for the generation of the transferee, as the policy only pushes motivated transferors to make their gifts earlier.

Secondly, inheritance taxation encourages consumption over saving, or alternatively leisure over work. The reason for this is that the tax alters the opportunity costs of both consumption and leisure. A person who saves up to bequeath her fortune without any taxation, will naturally see her motivation altered if part, or all, of her fortune will go to the state instead of her heirs. The tax therefore incentivises to increase consumption, as the person is then able to enjoy the amount in full. Moreover, as the person

did not want to consume more in the original setting without tax, the additional goods that she will consume can be expected to be more skewed towards luxury, or positional goods. Positional goods can be understood as goods that give the user satisfaction, not in line with the absolute amount consumed, but in line with the amount consumed relative to other people that the user compares herself with (Hirsch, 1977). One classic example of a positional good is house size (Frank, 2005). When given the choice to either live in a world in which their house is larger than everybody else's, or to live in a world in which they have a relatively smaller house size than everybody else, while having a larger absolute house size than in the first world; people tend to go for the first world. In other words, people seem to care more about their relative position than their absolute level of consumption when it comes to house size. The problem with the consumption of positional goods is that it can easily lead to what Frank calls 'expenditure arms races'. In such arms races, people allocate significant resources to advance their relative consumption of a positional good. However, since other people are similarly concerned about their relative positions, they will also increase their consumption of the good. The end result is a situation in which the relative amount consumed by each person is much like the original position, but in which they all have less resources. The consumption of positional goods is, in these cases, problematic from the viewpoint of our rule utilitarian framework. Since the individuals are spending significant resources on consumption that do not increase their well-being, or increases it only marginally, they cannot be acting on fully informed preferences. If they are making choices on incorrect beliefs about what maximises their welfare, the consumption is not productive and the resources could have been spent more efficiently elsewhere.

A similar offsetting effect on productive incentives can be expected regarding the work-leisure balance for some wealthy individuals, according to McCaffery (1994). An individual, being sufficiently rich and having fulfilled all her needs regarding consumption, will have less incentives to work if she knows that part of her bequest will be taxed away. As with the balance between consumption and saving, inheritance taxation is expected to encourage unproductive allocations of resources and with that a decrease in general welfare.

Thirdly, and closely related to the second point, the decrease in savings among wealthy people will plausibly lead to a diminished capital stock (McCaffery, 1994). This decline in aggregate savings leads to a decrease in cheap capital available for investments. This could impair improvements in technology, thereby potentially decreasing productivity in society in the long run. All in all, a tax on inheritance skews people's incentives towards luxury consumption, less work, and less saving.

Based on these three reasons, McCaffery concludes that it is not the concentration of capital that is problematic from a societal standpoint, but rather the use of the capital. He therefore proposes that we should not tax inheritance, but rather consumption (McCaffery, 1994). More specifically, he proposes a progressive consumption-without-estate tax. The rationale of this policy is based on mitigating the problematic offset of incentives discussed above. By applying the tax to consumption instead of inheritance, people will be incentivised to save more, which is good for the capital stock and future investments. Moreover, it will discourage people from spending large amounts on luxury or positional goods, as the opportunity cost for such spending will increase due to the progressive tax.

#### 4. Intergenerational productivity and inheritance policy

Now that we have gone over Haslett's and McCaffery's contrasting stances on inheritance, we are in a position to evaluate their policies against the framework we defined in Section II. To recap, Haslett is in favour of limiting inheritance, as inheritance promotes unproductive incentives both directly, for the transferee, and indirectly, for society at large due to inefficient allocation of opportunities. McCaffery, on the other hand, is against the limitation of inheritance, as that would incentivise people to consume more, which leads to inefficient allocation of resources and less capital stock. Furthermore, limiting inheritance encourages some wealthy individuals to work less, which leads to less overall productivity in society. We can now relate these points by Haslett and McCaffery to the larger context of productivity maximisation under the presumption that it maximises general welfare.

Haslett's arguments against inheritance relate to the productivity of the generation of the transferee, the second generation. As we noted in Section II, the productivity ideal of distributive justice posits that we can best promote general welfare by compensating people with exactly what they produce, or its equivalent. What constitutes the 'equivalent' of a person's productivity is based on people's fully informed preferences of what they want or need, together with people having the opportunity to fully develop their potential productivity. Haslett's point is that people in the second generation will not have equal opportunity to develop their productive potential due to intergenerational wealth transfers. This will lead us as a society to misvalue certain goods and services, compared to the ideal state where all people are in a position to fully realise their productive potential. This entails a suboptimal allocation of resources from the perspective of productivity. Haslett's solution to this problem is to enforce the practice of lifetime inheritance quotas. With the introduction of this policy, we can break up larger fortunes and more evenly distribute resources to people in the generation of the transferees. The major advantage of Haslett's policy therefore lies in how it promotes more productive incentives and resource allocation for the second generation. The major shortcoming of Haslett's proposal, however, is its inability to mitigate the unproductive incentives that any policy limiting inheritance has. That is, the increased incentives for potential transferors to spend part of their wealth on consumption or to increase their relative amount of leisure over work.

McCaffery's arguments against limiting inheritance and for taxing consumption relate to the generation of those that accumulate the assets in the first place, the 'first generation'. By imposing tax or some other form of limitation on inheritance, we are offsetting the opportunity costs of different activities and are therewith altering the incentive structure that pushes people to allocate their resources productively. The opportunity cost for consumption and leisure decreases, which may lead to less productivity in both the short and long run. McCaffery's solution to this problem is to introduce a consumption-without-estate tax. The advantage of this policy is that we are promoting both incentives for saving over consumption and for working over leisure, which is primarily beneficial for the first generation, but has added benefit in the form of increased availability of capital for subsequent generations. The major shortcoming of McCaffery's pro-

posal is that it has no way to break up fortunes that accumulate over time and that will alter the opportunity landscape in society.

We have now seen that both McCaffery's consumption-without-estate tax and Haslett's lifetime inheritance quota have advantages and disadvantages. From the viewpoint of first-generation incentives, McCaffery's approach is preferable. By taxing consumption instead of inheritance, we are disincentivizing people from spending relatively more on consumption, while incentivising people to put more of their income into savings, which is good for the capital stock. From the perspective of second-generation incentives Haslett's approach is preferable. By enforcing a lifetime inheritance quota, we are forcing wealthy people to break up their fortunes into smaller shares, which benefit equal opportunity and productivity in later generations. The natural next step based on our aim to maximise general welfare through increased productivity is to combine the two approaches to account for both the productivity of the first and the second generation. This is exactly what we will do in following section.

## 5. A combined policy

In the previous section, we noted that Haslett's and McCaffery's proposals can respectively deal with some, but not all, of our concerns when it comes to promoting general welfare through productivity over generations. Combined, however, they can be used to create a more extensive policy that can promote productive incentives for both current and subsequent generations. In this section, we will take a closer look at what this combined policy would look like, and what it would entail.

The combined policy would first and foremost be based on the lifetime inheritance quota proposed by Haslett. As we saw above, there is a number of advantages to this proposal in terms of incentives that promote productivity. Compared to a taxation on inheritance, the lifetime quota has the advantage of not disincentivizing people to save up with the goal of bequeathing. The quota is not a tax, so heirs will still receive the full amount in the sense that nothing will go to the state. However, the transferees can only receive a set quota throughout their lives. This limit on the amount that people can receive, not just in terms of bequest but in terms

of different forms of inter vivos gifts, forces wealthy people to break up their large fortunes. This will keep opportunity, productivity and general welfare more stable over generations.

With that said, very wealthy people, who do not want to break up their fortunes into shares, or who simply do not have enough potential transferees that they want to bequeath, are still incentivised to spend the surplus of their fortunes on luxury or positional consumption. As we discussed, this type of consumption is problematic for general welfare as it leads to inefficient allocations of resources. Positional goods are used to signal wealth and the users derive value from their relative level of consumption compared to some reference group. This easily leads to arms races among wealthy people, which adds little productivity compared to the asset's alternative use in the hands of a financially less fortunate individual. To solve this shortcoming of the lifetime inheritance quota, we should supplement the policy with a consumption tax. The consumption tax should first of all be progressive. We are trying to rebalance the opportunity costs between consumption and savings after the introduction of the inheritance quota. From a productivity standpoint, we value savings over consumption as we want to increase the availability of capital for investments. We therefore want the marginal utility of consumption for the wealthy individuals in question to be sharply decreasing to a point where the consumption becomes very inefficient in terms of marginal utility for the society at large. Secondly, the consumption tax should focus on luxury goods. We are trying to mitigate the unproductive incentives that a lifetime inheritance quota could potentially promote for the wealthy. The type of goods that we attempt to disincentivize these people to buy will therefore be very expensive, with little added value in terms of productivity and general welfare.

## 6. Conclusion

In this essay we have examined Haslett's and McCaffery's seemingly contrasting stances on whether we should limit inheritance, together with their proposed policy measures. By positing productivity as the main focus of the evaluation due to its conduciveness to the guiding value of general

welfare, we were able to get a clear picture of the advantages and disadvantages of the individual policies. Haslett's lifetime inheritance quota promotes productive incentives for the second generation but is insufficient in the sense that it cannot mitigate the unproductive incentives it promotes for the first generation. McCaffery's consumption-without-estate tax, on the other hand, promotes productive incentives for the first generation but lacks in its ability to promote productive incentives for the second generation. In light of this, it was concluded that Haslett's and McCaffery's proposals should not be seen as competing policies, but rather as complementary. A combined policy can take a comprehensive view on intergenerational productivity and promote productive, and ultimately welfare-enhancing, incentives for both current and future generations.

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## Notes

1. Naturally, not all readers will agree with this focus, neither will they agree with general welfare being the guiding value when determining the relevant dimensions. The point of this essay is not to convince anyone that this is the case, rather the aim is to show how a focus on productivity can serve as a fruitful groundwork to systematically appraise policies on inheritance. We can then proceed to add concerns for other values on this groundwork, which, however, is beyond the scope of this essay.

2. Since we investigate inheritance policy from the viewpoint of maximising societal welfare through productivity; the main focus of the analysis is on the incentives that the different policies promote. The incentives that we make use of are theoretical incentives derived from the concepts and are, therefore, restricted in the sense that they are qualitative rather than quantitative. That is, no assumptions of the relative strength of the different incentives that are promoted are made, only information about the direction in which the promoted incentives plausibly direct behaviour is used in the analysis. For example, a tax on consumption will be assumed to lead to relatively less consumption. In general, this is a plausible assumption, however, there will always be exemptions. Moreover, informing the analysis with the relative strength of different incentives would enlighten the discussion and enable the description of policies closer to practical implementation. This, however, goes beyond the aim of this essay. The phratries, a larger form of association, refers to the social division within Greek tribes. Lastly, the polis, an even larger form of association, refers to the cities in ancient Greece.

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