A Survey of Preferences for Estate Distribution at Death
Part 1: Spouses and Partners

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Abstract. This is the first of two papers presenting the results of a nationally representative survey of 9,000 American adults in which we asked people how they want to distribute their property when they die. In this first paper, we focus on gifts to spouses and nonmarital romantic partners. We find that people give much less to their spouses than conventional wisdom and prior empirical studies would predict. In a traditional family with children, the Uniform Probate Code gives 100% of an intestate decedent's estate to her spouse. Our respondents prefer to give only about 52%. We also find that people give much more to their nonmarital partners than conventional wisdom would predict. Under the laws of intestacy, no state gives anything to a nonmarital partner. But in our sample, the average gift to a live-in nonmarital partner is 43% for respondents without children and 58% for respondents with neither children nor living parents. We further find that preferences are powerfully correlated with race, class, and gender. Preferred gifts to spouses and partners are lower among women, African Americans, and people of modest means and education.

Our findings highlight the limits of the empirical studies that underpin modern intestacy law. These studies, which examine the wills of deceased people, are incapable of registering the preferences of people without wills and people in unconventional families. They are also insensitive to differences by race, class, and other demographic characteristics. We show that although intestacy law is often said to implement majoritarian preferences, its content is more consistent with a mix of majoritarianism, paternalism, and administrative efficiency.

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Inheritance is complicated. Since before Jane Austen fretted about the fee tail and even before Louis the Pious divided Europe between his three sons, the passage of property at death has been an event of great consequence in settled civilizations. For the state, death is an occasion for taxation, regulation, and redistribution of property. For individuals, it is a moment to make meaning of life and relationships. It is a chance to establish who matters—and who does not—by expressing emotional legacies in material form.

This article explores how people think about the division of their property at death by offering evidence from the first large-scale nationally representative survey that asks people what they want. We surveyed a representative sample of 9,000 American adults about their families and prompted them to divide up their property among their relatives, friends, and others as if they were to pass away immediately. This is the first of two papers reporting our results. In this first installment, we analyze preferences for gifts to spouses and nonmarital romantic partners. In the second, we analyze gifts to other beneficiaries. Together, our two sets of results offer a unique window into how the changing character of the modern family is being written into the wills—and hearts—of Americans.

In this first paper, we find that people give much less to their spouses than conventional wisdom and prior empirical studies would predict. In a traditional family with children, the Uniform Probate Code gives 100% of an intestate decedent's estate to her spouse. Our respondents, however, prefer to give only about 52%. We also find that people give much more to their nonmarital partners than conventional wisdom would predict. Under the laws of intestacy, no state gives anything to a nonmarital partner.[2] In our sample, however, the average gift to a live-in nonmarital partner is 43% for respondents without children and 58% for respondents with neither children nor living parents.

We also find that preferences for gifts to spouses and partners are strongly correlated with race, class, and gender. Women, African Americans, and people of modest means and education want to distribute less of their estates to spouses and partners. These correlations hold across various types of families and among both people who have wills and people who do not. We do not know exactly why these correlations are so predictive. And we caution that they do not

[2] Some states provide for a domestic partner, but only in the unlikely event that the partnership has been officially registered with the state.

necessarily imply causation. But we do know that race, class, and gender tell us more about what a person wants than anything other than the structure of her family. We also know that even non-causal correlations are useful, since any factor that accurately predicts preferences can help tailor the law to those preferences, whether the predictive power is the product of a causal relationship or mere correlation.

These findings challenge the conventional wisdom of prior empirical studies and the policies they have inspired. Almost everything we know about how people wish to dispose of their property at death has come from studies of the wills of deceased people. But these studies have two limits. First, because these studies can only examine the small subset of decedents who make wills and go through probate, they employ highly biased samples. Our more representative evidence shows that these studies systematically discount the preferences of people of color and people of modest wealth and education—the very sort of people who are most likely to die without wills. Second, these studies are incapable of collecting data on unconventional families. Even when a decedent appears in a study of probated wills, researchers can only study the information that surfaces in probate records. Although probate records often include information about conventional family relations, such as spouses and biological children, they omit information about other family relations, such as nonmarital partners and stepchildren. Our study is thus the first of any kind to directly solicit the preferences of a representative sample of people living in nonmarital families regarding the distribution of their own property.

Our findings matter for both law and social science. For social science, they matter because they teach us about family relationships and how they are changing. Understanding these relationships is growing more urgent as marriage becomes less common and nonmarital romantic relationships take its place. The trend toward nonmarital cohabitation is growing among all demographic groups, and unmarried mothers accounted for 40% of all births in the United States in 2020 (Horowitz & Livingston, 2019; Osterman et al., 2022).

For law, our findings matter because they inform the rules of intestacy. Intestacy has long been understood as a system of majoritarian default rules whose purpose is to implement people's preferences. It is therefore important to know what people's preferences actually are. State laws vary a great deal, especially regarding gifts to spouses, and our findings speak directly to the disagreements. Our data also inform a growing debate about the treatment of nonmarital romantic partners. At present, no state offers rights in intestacy to a surviving unmarried romantic partner. But the Uniform Law Commission recently adopted a new statute—the Uniform Cohabitants' Economic Remedies Act—that would enforce equitable claims between unmarried romantic partners under certain circumstances, potentially including claims to rights of inheritance. The American Law Institute 2002 Principles of Family Dissolution would also grant certain unmarried domestic partners rights similar to those of married spouses upon dissolution of their relationships. Numerous commentators have proposed to treat nonmarital partners similarly to spouses for purposes of intestacy and other inheritance rights at death, as well as other rights (Waggoner, 1994, 2016; Spitko, 1999; Gallanis, 2004; Joslin 2019). Parts of Canada, Australia, and the United Kingdom already treat nonmarital partners like married spouses in certain circumstances (Spitko, 2018; Williams et al., 2008).

By showing that intestacy law is often at odds with people's preferences, we also make the case for understanding the law's purposes more broadly. Rather than just implementing preferences, we argue that intestacy law should also be understood to serve other goals, including administrative efficiency and a "nudge"-like quasi-paternalistic pursuit of the well-being of intestate decedents and their families (Thaler & Sunstein, 2009).

Our methods have several important limits. We perceive only our respondents' stated preferences, not their actual conduct. We also cannot distinguish between probate property (which passes through wills and the rules of intestacy) from nonprobate property (which passes through life insurance contracts, property deeds, and other arrangements independent of wills and intestacy). We ask people to dispose of their property only in abstract percentage terms, not to address specific items and their peculiar features. And we only perceive people's preferences at the time of the survey, not at the times of their deaths.

We first discuss the law and logic of testation and the limits of prior empirical studies. We next discuss our data and methods. Finally, we turn to our results.

1. The Law and Logic of Testation

In the United States, people generally have a right to what "free testation": A person can choose how she wants to distribute her property at death by making a will. The law distinguishes between a *testate* decedent, who has made a will, from an *intestate* decedent, who has not.

For an intestate decedent, the law supplies a set of default rules known as the law of "intestacy." Intestacy law is most important for the way it provides default rules to distribute the estate of a person who dies without a will. But even for a person who dies with a will, intestacy law can matter by providing standing in litigation to contest the will. If a will is held invalid, the decedent's estate usually gets distributed according to the rules of intestacy. Whether a person would take in intestacy therefore also determines whether she has standing to challenge the validity of the will in court.

In the parlance of law and economics, intestacy is widely regarded as a *majoritarian* default rule: It is usually understood to provide for an intestate decedent the outcome that most people in her position would have chosen if they had made wills. The Uniform Probate Code ("UPC") states this policy explicitly, declaring that a principal goal of the statute is "to discover and make effective the intent of a decedent in the distribution of the decedent's property" (Uniform Probate Code, § 1-102).

A key feature of intestacy law for the design of our study is that intestacy is not one rule, but many. Because it aspires to implement preferences, intestacy law provides a series of personalized default rules that tailor the law to a decedent's preferences by varying according to the character of the decedent's family (Porat & Strahilevitz, 2014). A decedent with children gets a different rule from a decedent without children, a decedent with living parents gets a different rule than a decedent with deceased parents, and so on. Intestacy also varies widely among the states. Although all states agree that close family members should take priority over friends and more distant family, they disagree on such fundamental matters as whether a surviving spouse in a traditional family with children should inherit the entire estate (the rule in 19 states), only half of the estate (21 states), or less than half (11 states).

The state of the art in intestacy law is currently embodied by the UPC. Adopted in some form in 19 states, the UPC and its intestacy provisions have been revised and updated many times—in part to reflect the findings of the prior empirical studies we discuss below. We thus use the UPC as our main benchmark for assessing intestacy law.

Our study raises several theoretical questions about the structure of intestacy law that transcend the search for specific preferences in specific situations. Although the law is designed to be majoritarian, we show that for most family types, no single outcome attracts a majority of respondents. This requires policy makers to think hard about what it means to achieve what "most" people want. Our study also raises questions about the optimal level of personalization and the kinds of characteristics that should factor into it. Intestacy tends to personalize its defaults based on the structure of a decedent's family, but we show that other demographic characteristics, such as race, class, and gender, are also highly predictive of personal preferences. The predictive value of these other characteristics raises hard question about the tradeoffs between the accuracy of preference-matching on the one hand and fairness and equality on the other. If race can accurately predict preferences, should it be built into the law? Finally, by showing that intestacy rules are often at odds with preferences, we suggest that the purposes of intestacy law should be understood more broadly. A mismatch with preferences does not necessarily make the law bad, but it may mean the law should be understood to serve other goals besides majoritarian preference-matching.

2. The Limits of Prior Studies

Most of what we know about individuals' dispositive preferences at death comes from studies of the wills of deceased people that have been filed and probated with state probate courts. Nearly a dozen of these studies have been performed over the years, beginning in 1930 and continuing as recently as 2020 (Browder, 1969; Contemporary Studies Project, 1978; Dunham, 1963; Friedman, 1964; Friedman et al., 2007; Glucksman, 1976; Powell & Looker, 1930; Price, 1975; Ward & Beuscher, 1950; Wright, 2020; Wright & Sterner, 2017). In these studies, researchers have examined probated wills to discover how people who died testate divided their property. Some of these studies also collected the limited demographic data available in probate records to compare the demographic characteristics of testate decedents to those of intestate ones. The most recent studies in this genre include Friedman (2007), which studied 513 probated testate and intestate records from decedents who died in 1964 in San Bernardino County, California; Wright & Sterner (2017), which studied 493 probate records of testate and intestate decedents who died in 2013 in two counties in Florida; and Wright (2020), which analyzed 408 testate and intestate probated estates from 2013 in a county in Florida.

The primary advantage of probated wills over our survey method is that a probated will expresses the actual decision of a decedent regarding her actual property at the time of her actual death (Johnson & Robbennolt, 1998). Our survey, by contrast, asked people only to imagine what they would want if they were to die today and required them to express their preferences in a stylized format that avoided real action and neglected the subtle complications presented by specific pieces of property.

Probated will studies, however, have many limitations, which our survey method avoids. The first is selection bias. Probated wills only reveal the preferences of testate people, which may be systematically different from the preferences of intestate people. Although some of the probated will studies have examined the demographic characteristics of intestate people using the limited information available in probate records, none of these studies has been able to study the actual preferences of intestate people since the preferences of intestate people were never expressed in wills. This limitation is serious because the main purpose of intestacy law is to implement the preferences of intestate people rather than testate people.

Probated will studies also have a selection bias even with respect to the preferences of testate people. Most states waive probate for small or uncomplicated estates, with the result that only the preferences of the people with the largest or most complicated estates appear in probate records. In Wright's study in Florida (2020), for example, only 23% of all decedents went through probate at all and only 17% showed up in probate as testate. A further source of selection bias is that, even when a will does go through probate, its content can remain hidden from researchers. Standard will-drafting practice now gives all or most of an estate to the trustee of a trust whose terms and beneficiaries are not part of the will and are therefore not part of public probate records. Yet another source of selection bias is the geographic concentration in will studies. A probated will study can only collect data from the one or two courthouses it examines. The results of these studies thus depict only the peculiar demographics and tastes of people living in a few modestly sized jurisdictions.

A second problem with probated will studies is that probate records do not contain enough detail to construct a comprehensive picture of a decedent's family or demographics. Probate records generally do not report information about a decedent's family other than whether the decedent had a spouse or biological or adopted children. Probate records omit stepchildren, nonmarital partners, parents, siblings, aunts, uncles, and cousins. Other key family data, such as how long a decedent was married to her spouse and whether the marriage was a first or second marriage, are likewise hidden from public view. Demographic data such as education and income are not collected at all.

Without knowing the full character of a decedent's family situation, we cannot say much about the decedent's preferences. To know how often decedents make gifts to a particular type of family member, we must first know how many decedents actually have these family members. If we look at a will and see no gift to a nonmarital partner or stepchild, for instance, we cannot say whether this is because the decedent preferred not to give to her partner or stepchild, or because she did not have a partner or stepchild to begin with.[3] The only way to answer this question is to collect data on the existence of partners and stepchildren for *all* decedents, whether they make gifts to particular types of beneficiaries or not.

A final problem in probated will studies is the small sample sizes. A proper study of preferences requires a very large sample size to ensure a critical mass of subjects in each of the various family types under study. As explained above, intestacy law offers different default rules for different family situations. To support confident conclusions about each type of family situation, a study of preferences has to include a sufficient number of subjects in each situation. A study must have enough married people with children, enough married people without children, enough people in nonmarital relationships both with and without children, and so on. A study of preferences thus becomes not one sample, but many subsamples, each corresponding to a separate family situation. Probated will studies are inadequate to address this challenge because the data on which they rely are too costly to collect and analyze.

In addition to the studies of probated wills, researchers have also produced a handful of studies using surveys. These studies each suffer from one or more of several limitations. The first is the use of unbalanced, non-representative opt-in survey panels (Hirsch, 2018; Fellows et al., 1998). These panels are cheap to recruit, but their limitations are severe and well documented (Yeager et al., 2011). They do not provide representative evidence.

A second problem is the use of hypothetical vignettes. (Poppe, 2021; Fellows et al., 1998). As explained above, studying preferences for estate distribution is hard because each family situation must be treated as a separate subsample. To avoid collecting huge samples or doing targeted sampling of rare populations at high cost, researchers using survey methods have chosen to ask respondents to react to family situations other than their own. Instead of asking

[3] Wright (2020) tried to reconstruct stepchildren and second marriages from circumstantial and ancillary records that were not required to report these relationships. But there remains no way of knowing how often this ad hoc method would be accurate.

respondents with spouses, for example, to say how much they wished their spouses to receive, Poppe (2021) asked all respondents—including unmarried respondents who had no spouses—to imagine that they were married and to decide how much they would wish their hypothetical spouses to receive. Rather than eliciting respondents' preferences for themselves, this method elicits respondents' conjectures about the preferences of others or about their imagined preferences in situations other than their own. This method is akin to predicting an election in Germany by asking people in Texas to say how they would vote if, hypothetically, they lived in Berlin. Such an exercise may or may not be useful, but it is surely not as useful as surveying actual Germans.

A final problem is the tendency of some surveys to record gifts in binary yes/no terms rather than percentages or other more detailed formats. Several surveys show only whether a respondent wishes to make any kind of gift to a category of beneficiary, not how much the respondent would like to give (Humphrey et al., 2010; Francesconi et al., 2015).

3. The Rise of Nonmarital and Nontraditional Families

Our study gains urgency from the rising popularity of nonmarital and nontraditional families. Under the laws of intestacy in the United States, nonmarital partners effectively do not exist. No state provides anything to an unregistered nonmarital partner in intestacy.

In society, however, nonmarital partners are becoming increasingly common. Between 1995 and 2019, the share of adults in the United States who were married declined from 58% to 53%, even as the share who were cohabitating increased from 3% to 7% (Horowitz et al., 2019). Although the total number of people cohabitating at any given moment is relatively small, the experience of cohabitation is widespread. The number of adults between 18 and 44 who have ever cohabited at some point in their lives now exceeds the number who have ever been married. Unmarried mothers accounted for 40% of all births in the United States in 2020 (Osterman et al., 2022). All of this has led sociologists to speak of a "cohabitation revolution" (Smock and Manning, 2010).

The rise in nonmarital families raises urgent questions for intestacy law because the people who tend most often to live in nontraditional families—Black and Hispanic people and people of modest means and education (Goodwin, Mosher, and Chandra, 2010)—are the also among the people who are least likely to make wills and most likely to rely on the default rules of intestacy law. Additionally, the preferences of people living in nonmarital families are hard to guess without high-quality evidence. If a couple decides not to take the formal step of getting married, then what are they likely to want: to be treated as a married couple, simple friends, or something in between?

4. Data and Methods

To avoid the limitations in existing empirical studies, we take our data from a large and nationally representative sample of American adults that asked the respondents how they wish to distribute their own property when they die. We drafted a custom online survey and administered it through YouGov to 9,000 respondents. Of these respondents, 8,500 were drawn from the general population. The remaining 500 were drawn from the population of people who lived with a nonmarital romantic partner.

For the sample drawn from the general population, YouGov interviewed 9,076 respondents who were then matched down to a sample of 8,500 to produce the final dataset. The respondents were matched to a sampling frame on gender, age, race, and education. The frame was constructed by stratified sampling from the full 2018 American Community Survey (ACS) 1-year sample with selection within strata by weighted sampling with replacements (using the person weights on the public use file). The matched cases were weighted to the sampling frame using propensity scores. The matched cases and the frame were combined and a logistic regression was estimated for inclusion in the frame. The propensity score function included age, gender, race/ethnicity, years of education, and region. The propensity scores were grouped into deciles of the estimated propensity score in the frame and post-stratified according to these deciles. The weights were then post-stratified on 2016 presidential vote choice, 2020 presidential vote choice, and a four-way stratification of gender, age (4-categories), race (4-categories), and education (4-categories) to produce the final weight.

For the augmented sample of the 500 respondents drawn from the population of people who lived with nonmarital romantic partners, YouGov interviewed 563 respondents who were then matched down to a sample of 500 to produce the final dataset. The respondents were matched to a sampling frame on gender, age, race, and education. The frame was constructed by stratified sampling from the full 2020 Annual Social and Economic (ASEC) Supplement sample with selection within strata by weighted sampling. The matched cases were weighted to the sampling frame using propensity scores in much the same manner as the sample from the general population.[4]

To determine the respondents' dispositive preferences, we asked them a series of questions about their families and demographics. We asked each respondent about her current relationship or partnership status, how many times she had been married, whether she had any children (separately asking about adopted children, foster children, stepchildren, and children from an unmarried partner's previous relationship), and whether she had any of a series of other relatives including siblings, parents, grandparents, aunts and uncles, nieces and nephews, and siblings- and parents-in-law. We collected further information about the details of the respondent's romantic and marital relationships, including length of relationship and, for nonmarital relationships, the characteristics of the relationship, such as whether the respondent and her partner lived together or owned a pet together. We also asked for details about children, including age and co-residency with respondents. We then asked a series of questions about the demographics of the respondent, including age, state of residence, income, spousal or partner income, educational attainment, political views, and religious observance.

Finally, we asked each respondent to determine what percentage of her total assets she would give to a set of possible beneficiaries in the event of her death. The list of possible beneficiaries was tailored for each respondent to include only those family members that the respondent previously indicated she had living. It also added "friends and acquaintances" and "charities, churches, schools, or nonprofits." Beneficiaries of a given type, such as "grandchildren" and "siblings," were grouped together.[5] The order in which the beneficiaries appeared varied randomly. If the respondent elected to leave assets to her spouse or unmarried partner, the survey additionally asked the respondent to specify an allocation while imagining that her spouse or partner had predeceased her. We include a screen shot of a sample version of the first allocation question in Appendix C.

The survey has some important limitations. It perceives preferences and testacy status only at the time of the survey, not at death. It also does not distinguish between probate property and non-probate property. Probate property includes property that is owned by a decedent during

[4] The weights for this augmented sample were not stratified on presidential vote choice.
[5] If a respondent elected to make a gift to her "biological children," the survey followed up by asking whether she would give to all of her biological children equally or unequally, and if unequally, for what reason.

her lifetime and disposed of by her will. Nonprobate property includes property such as life insurance and retirement accounts, which pass automatically at death through contracts and other arrangements established outside of a will. The survey also did not ask about specific items of property. It required respondents to reduce all gifts to percentages of their total wealth. We made these choices to maintain the survey instrument's simplicity and comprehensibility.

5. Results

5.1. Descriptive Statistics

Table 1 reports demographic statistics and testacy status for the respondents in our 8,500-person survey who indicated either that they were married or living together (i.e., cohabitating) with a nonmarital partner. The Table shows that respondents with wills were older, better educated, less likely to be African American, and much higher-earning. These statistics confirm the sampling bias inherent in existing empirical studies that examine only the preferences of people with wills.

Table 1. Summary Statistics for Key Variables, Married and Cohabitating Respondents, by Relationship and Testacy Status

	Relationship Status		Testacy Status	
	Married	Cohabitating	Intestate	Testate
Mean Age (years)	52.44	39.93	44.57	56.18
Mean Education (years)	14.09	13.5	13.65	14.4
African American (share of respondents)	0.08	0.13	0.11	0.06
Mean Annual Income ($)	$81,710	$43,300	$38,221	$129,325
Lacks Bank Account (share of respondents)	0.15	0.27	0.23	0.09
Observations	3671	1552	3380	1843

5.2. Preferences

We next turn to our respondents' preferred dispositions of their wealth.

5.2.1. Family Structure

Because intestacy laws have long tended to personalize default rules by the structure of a decedent's family, we divide the sample into four different subsamples based on a typology of families. In so doing, we roughly follow the intestacy rules of the UPC, which categorizes married decedents into different family types for purposes of calculating the amount that goes to a spouse. The UPC family types differ by the presence or absence of parents and of children from both inside and outside the marriage. Although we could divide families up in other ways, we follow the UPC's typology because the UPC is the most influential intestacy scheme and because its division is logically complete, in the sense that it provides exactly one outcome for every possible married decedent. We label the four family types with letters A through D.[6]

Although the UPC applies this typology only to decedents who are married, we also apply it by analogy to people who cohabit with nonmarital partners. To be clear, however, neither the UPC nor any other state provides any share in intestacy to an unregistered nonmarital partner.

For each family type, we present a histogram separately showing gifts to marital spouses and nonmarital partners in an overlapping presentation. The horizontal axis is the percentage of their estates that respondents wish to give to their spouses or partners. The vertical axis is the percentage of respondents in each part of the distribution.

Figure 1a presents a Type A, or "traditional," family. In this family, a respondent and her spouse or cohabitating partner have one or more living children from inside the relationship and neither spouse or partner has any children from outside the relationship. This category has a large number of married respondents, but many fewer cohabitating respondents, mainly because cohabitating partners more often have children outside of their relationships.

Despite the ubiquity of this type of family in the population, state intestacy laws disagree on how to treat it. The UPC allocates 100% of the decedent's assets to the spouse, as do 19 states.[7] Before 1990, however, the UPC allocated only the first $50,000 in assets to the spouse and then divided any assets in excess of that amount equally between the spouse and the children.[8] The comments to the UPC explicitly based the 1990 amendment on the findings of probated will studies.

[6] We omit the category of blended family that appears in UPC § 2-102(3) because it includes too few respondents in our sample.
[7] UPC § 2-102(1)(B) (2019). Our summaries of state intestacy policy are based on our coding of the summaries in Schoenblum (2020). State intestacy law is not standardized and varies in subtle ways that are hard to summarize in simple codings. Our summaries are thus best understood as rough approximations.
[8] UPC § 2-102 Comment.

The policy of an equal split between spouse and children remains popular, however, showing up in 21 states (including the District of Columbia), with 9 states splitting every dollar and offering a spouse no initial exclusive entitlement. Another 11 states, all in the South and West, provide a spouse less than 50% in most situations, with Arkansas and Kentucky providing a spouse nothing at all and giving everything instead to the children. The UPC's new policy of giving everything to a surviving spouse thus places the UPC in the minority among the states.

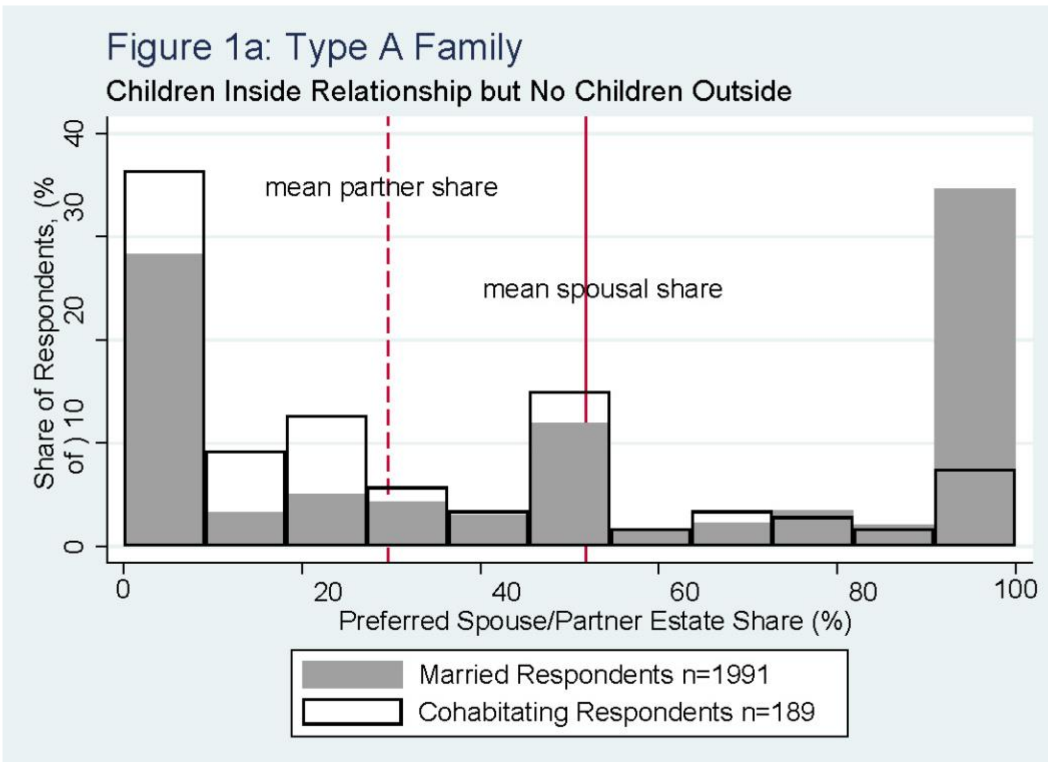


Figure 1a presents our results for the Type A marital family. It shows that married people prefer to give much less than the new policy of the UPC provides. The average gift to a spouse is very close to the equal split policy of the pre-1990 UPC, at 52%. For married people in Type A families, the distribution is trimodal, with concentrations at 0%, 50%, and 100%. Perhaps the greatest surprise is that although the most common gift for married people is 100%, 0% is almost equally popular. Relatively few married respondents prefer 50%.

As one would expect, unmarried cohabitants prefer to give less than married people. But they also give more than intestacy law provides (which is nothing) and more than conventional wisdom would predict. In Figure 1a, the mean gift to a cohabitating partner is 30%.

Perhaps more interesting than the mean is the overall distribution. Rather than giving nothing to their partners—as one might expect—cohabitating people often tend instead to make small gifts. Unmarried cohabitants rarely give 100%, but they often give between 10% and 50%. In fact, unmarried cohabitants are more likely to give 25% or 50% than married spouses are.

We next turn to blended families. In Family Type B, a respondent has at least one child from outside of the relationship.[9] In this type of family, the UPC provides the first $150,000 of the estate to the spouse and 50% of any remainder, with the other 50% of the remainder going to the children (Uniform Probate Code, § 2-102(4)). All but one of the states follow a similar policy of granting the surviving spouse 50% or less. But most states—36—treat the children more generously by providing the spouse no fixed initial entitlement before dividing up the estate. Fourteen states give the spouse less than 50%. Intestacy law is more generous to children and less generous to a spouse in a blended family than in a traditional family on the theory that the surviving spouse is less likely in a blended family to share inherited wealth with the decedent's children and the decedent's children are less interested in the surviving spouse's welfare.

[9] The couple may also have children from inside the relationship and the spouse or partner may also have children outside the relationship. But we include a respondent in family type B so long as the respondent has at least one child outside the relationship. In so doing, we follow UPC § 2-102(4). We omit the category of blended family that appears in UPC § 2-102(3). In this type of family, the respondent and her spouse have children together and the spouse (but not the respondent) has children outside the marriage. We omit this category because it produced too few observations in our sample: only 178 married people and 12 cohabitants.

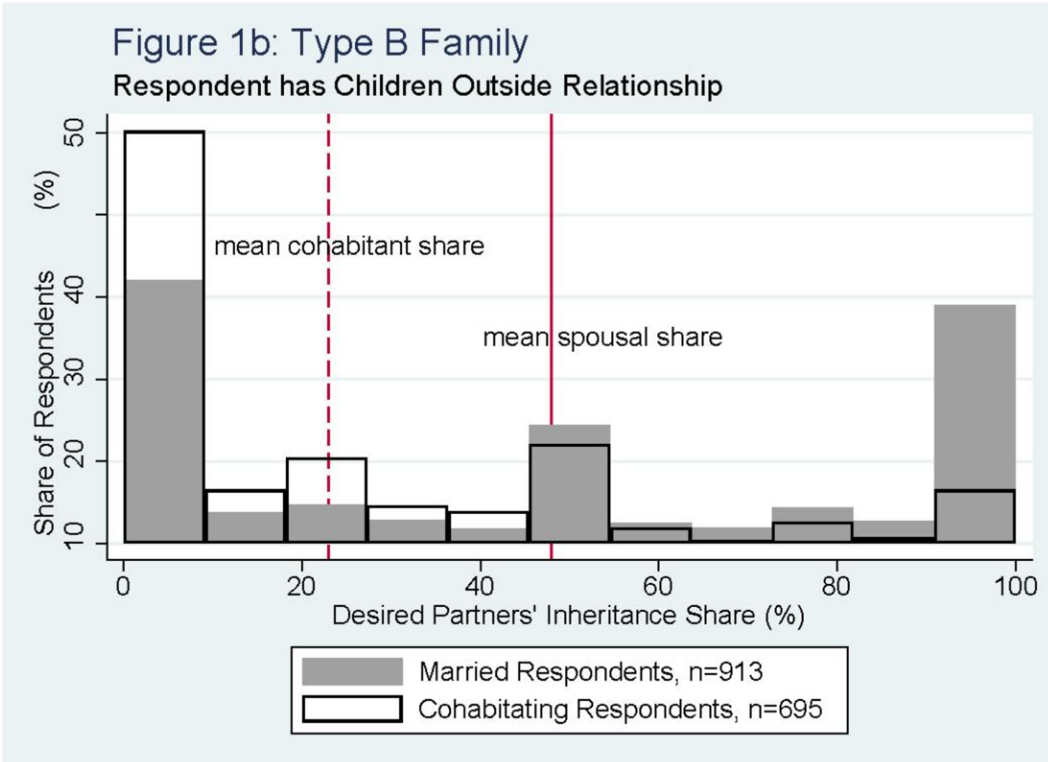
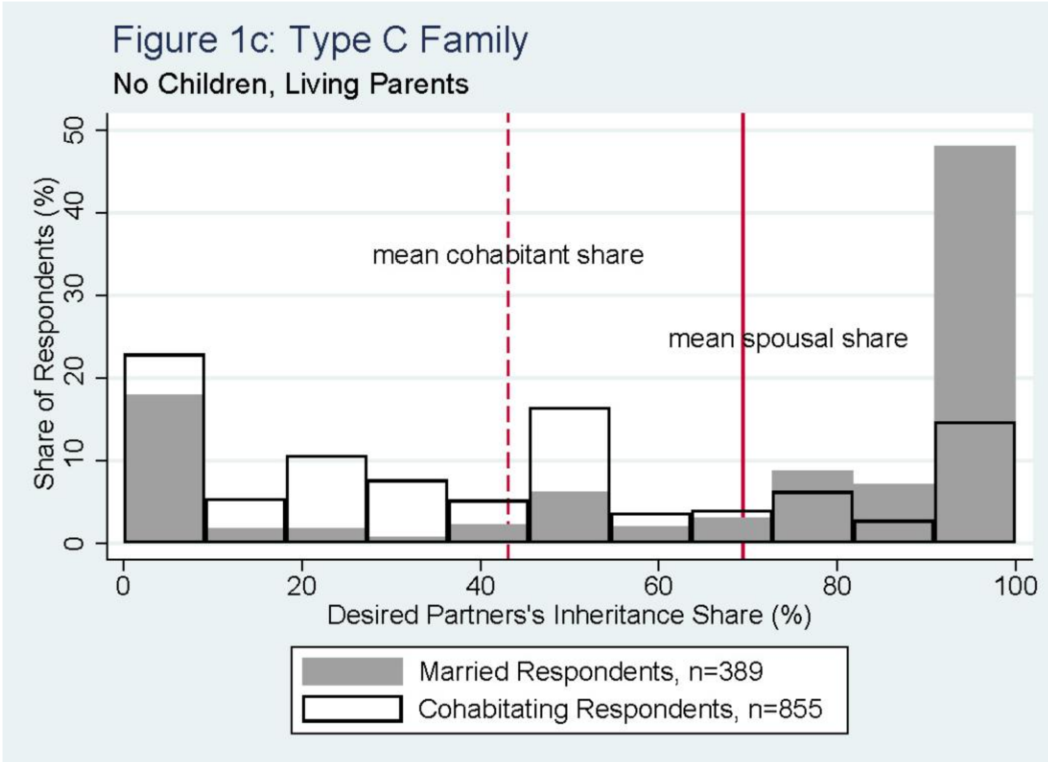


Figure 1b shows that, consistent with the law, in Type B families respondents give less to their spouses and partners than in Type A families, though the difference is not as large as the law would imply. Married people give on average 48%—about 4% less than in Type A families. Cohabitants give on average 23%—only 7% less than in Type A families.

The last two family types cover respondents who have no children. In a Type C family, a respondent has no children from either inside or outside the relationship but does have living parents.[10] In this situation, the UPC provides the surviving spouse all of the first $300,000 of the estate, plus 75% of any excess (Uniform Probate Code, § 2-102(2)). The remaining 25% of the excess goes to the parents.

Figure 1c shows the results. Consistent with the policy of the UPC, respondents give much more to their spouses and partners when they have no children. The average gift to a spouse in a Type C family is 69%, and the average gift to a partner is 43%.

[10] The respondent's spouse or partner may have children from outside the relationship.



The last family type, Type D, covers married respondents who have neither living children nor living parents.[11] Here, the UPC gives everything to the spouse (Uniform Probate Code, § 2-102(1)(A)). For the sake of brevity, we omit another histogram. But for the 226 married respondents in Type D, the mean gift to a spouse was 63% and for the 283 cohabitating respondents, the mean gift to a partner was 58%. It is surprising that the mean gifts are higher for Type D than Type C, since conventional wisdom would predict that the absence of living parents in Type D should direct a larger share to the spouse.

5.2.2. Personal Characteristics

In addition to varying by family structure, preferences also vary by demography and personal characteristics of a respondent. Figures 2a through 2c present histograms showing differences in preferences by testacy status, race, and gender. For these histograms, we include only married respondents in Type A traditional families, in which spouses' children were conceived or adopted exclusively within the marriage. We restrict the sample to respondents with similar family structures in this way to abstract away from the powerful correlations between

[11] This family type could include a respondent who has no children of her own but does have stepchildren.

family structure and demography and to make clear that preferences vary systematically by personal characteristics even among respondents who are treated identically by the law. We caution that the differences depicted in Figures 2a through 2c do not necessarily imply causation. The demographic features in these figures may be correlated with many other variables we do not observe and which may be more important causes of differences in preferences.

Figure 2a presents results by testacy status. It shows that, holding family type constant, intestate respondents in Type A families prefer to give less to their spouses than testate respondents. Intestate respondents are significantly less likely to give 100% and significantly more likely to give 50%. The difference observed in Figure 2a offers one explanation for the difference between the levels of spousal giving we perceive in our survey and the levels in studies of probated wills. Because studies of probated wills omit the wishes of people who die intestate, those studies are naturally biased toward the preferences of people who die testate. And our results show that testate people prefer larger spousal gifts than intestate people. Our regression results in Table 4, however, offer a more nuanced result, which we discuss below when we introduce Table 4.

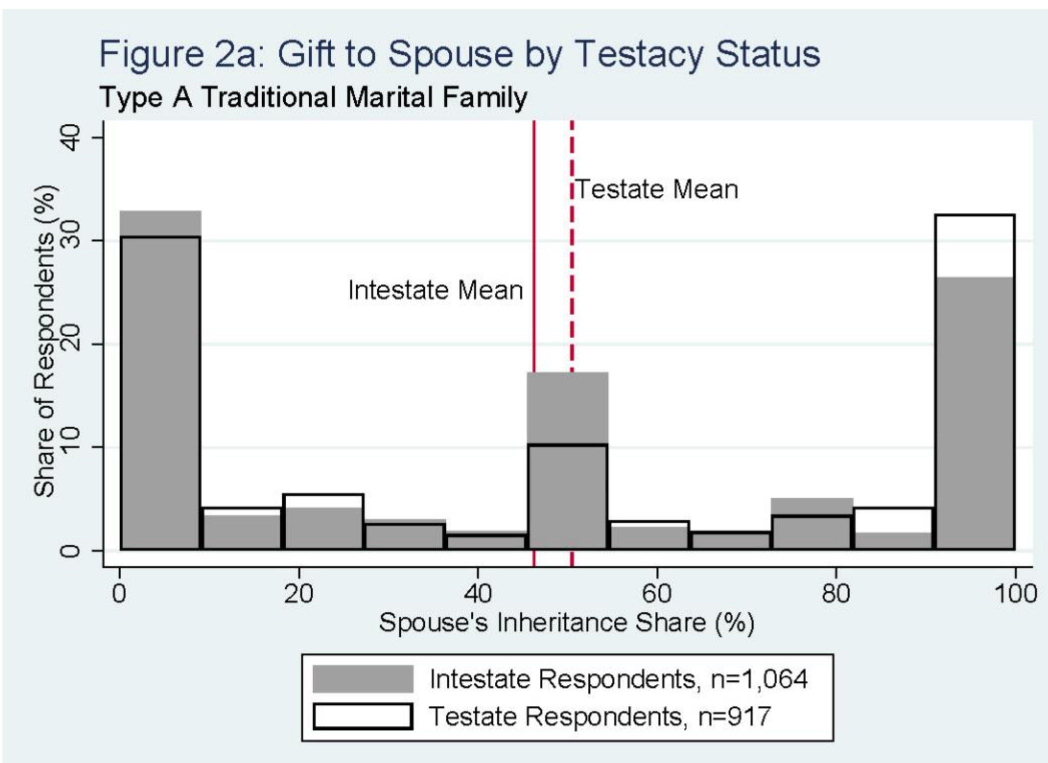


Figure 2b compares spousal giving by African Americans and others. It indicates that African Americans give significantly less to their spouses than people of other races. Surprisingly, this difference is driven mainly by a preference among African Americans for intermediate-level giving. African Americans are less likely to give gifts of either 0% or 100%, preferring instead to give gifts at higher rates in the range of 25% to 50%. We caution that the number of African Americans in Figure 2b is small because Figure 2b restricts the sample to Type A traditional marital families and African Americans tend disproportionately to live in nonmarital and nontraditional families. The results are nevertheless consistent with the results on the race variable in the regression in Table 4 below.

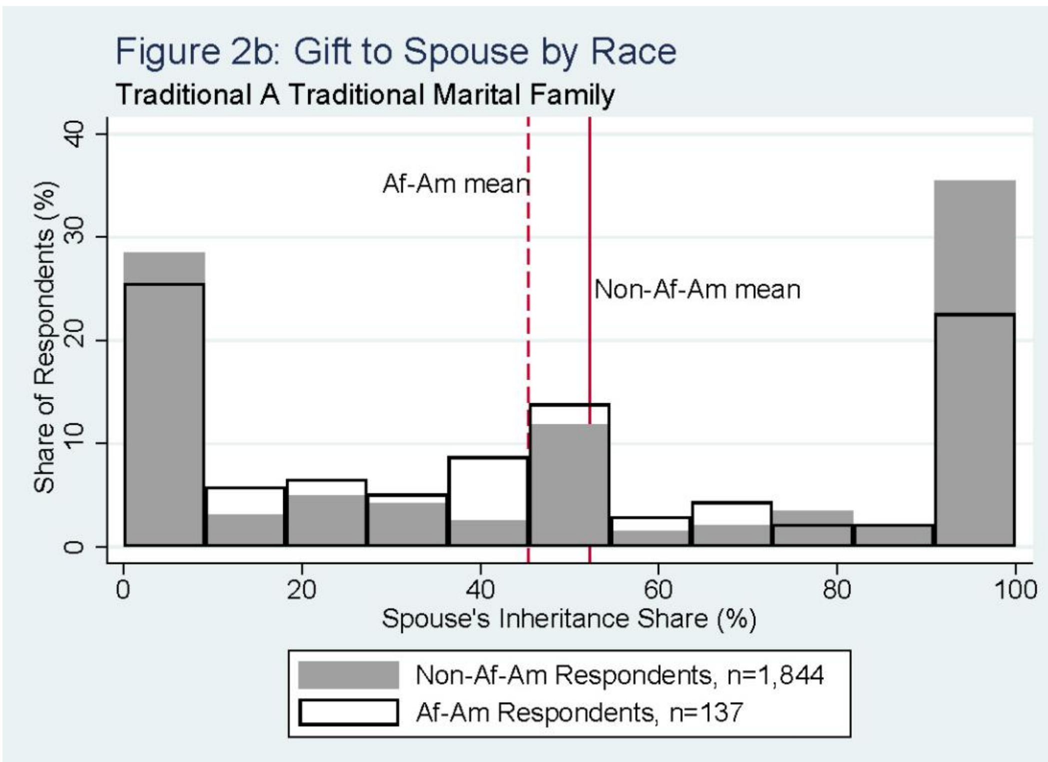
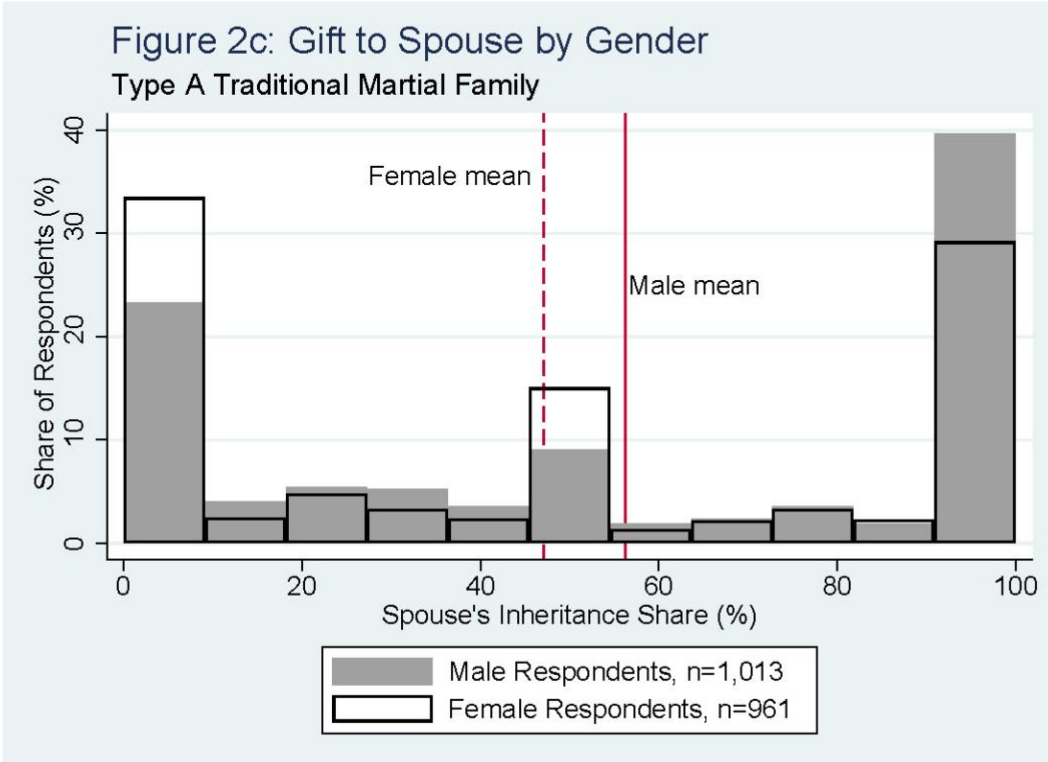


Figure 2c compares spousal giving between men and women. It shows that women give significantly less to their spouses than men. The difference comes from women's greater likelihood of giving 0% or 50% and their lower likelihood of giving any other amount (especially 100%). This result is also consistent with our regression in Table 4.



5.2.3. Same-Sex Relationships

We next examine gifts to spouses and partners by respondents in same-sex relationships. Table 2 presents mean gifts to spouses or partners among respondents who self-identify as lesbian, gay, or bisexual ("LGB"). Table 2 separates respondents by their gender and relationship status.

Table 2. Gifts to Spouses or Partners Among Lesbian, Gay, and Bisexual Respondents

	Mean Gift to Spouse or Partner (% of estate)	N
Male		487
Married	57.7	89
Nonmarital relationship		
Cohabitating	47.6	135
Not Cohabitating	31.2	34
Single	-	229
Female		472
Married	57.0	100
Nonmarital relationship		
Cohabitating	35.3	157
Not Cohabitating	20.3	44
Single	-	171

Table 2 shows that same-sex relationships largely parallel opposite-sex ones. Overall giving rates to spouses and partners are similar. And, as in the full sample, marriage is associated with larger gifts, even as gifts in nonmarital relationships (especially cohabitating relationships) remain surprisingly high. The findings around gender are ambiguous, however. As we saw in Figure 2c, in the full-sample, men give more to their spouses and partners than women. In the LGB sample with same-sex relationships, men and women give about the same in marriages, but men still give more in nonmarital relationships.

We note a few limitations on the data Table 2. First, we did not directly ask about the gender of spouses and partners, leaving open the possibility that some of the bisexual respondents in Table 2 are actually in opposite-sex relationships.[12] We also did not collect data on transgender status. Our question on gender identity included options for "Male," "Female"

[12] Our question on sexual orientation presented "Gay/Lesbian/Bisexual/Other" as a single option, making it impossible for us to count bisexual respondents separately from gay and lesbian respondents.

and "Nonbinary/other," but not for transgender male or female.[13] We also note that Table 2 is our only analysis that distinguishes by sexual orientation. All of our other figures and tables group LGB people with straight people.

5.2.4. Mortality Weighting and Gifts to Others

As explained above, one limit of our study is that it perceives only preferences at the time of the survey, not at the time of death. Table 3 thus provides a measure more sensitive to the proximity of death by showing mean gifts to spouses and partners using mortality-based weighting. The weights emphasize the preferences of older people by weighting respondents by the probability of death in the next year by age and gender (Social Security Administration, 2022). Table 3 divides the sample into married and cohabitating respondents and then further divides it into four different family types based on whether a respondent has children inside or outside the relationship.[14] We use a slightly different family typology here than in Figures 1a through 1d to provide additional perspective. Table 3 also presents mean gifts to children and other beneficiaries. We provide more detail on these children and others in our second paper.

[13] For "Nonbinary/other" people, we identified too few respondents in a marriage (13) or relationship (47) to warrant reporting results.
[14] The typology ignores whether a spouse or partner has children outside the relationship.

Table 3. Intended Gifts to Spouses/Partners and Other Beneficiaries Using Mortality Weighting

	Mean Gift (% of Assets)			
	Spouse / Partner	Children	All Others	N
Cohabitating Respondents				
Inside children only	36	39	25	193
Inside and outside children	29	44	27	447
Outside children only	23	41	36	125
No children	58	N/A	42	755
Married Respondents				
Inside children only	64	21	15	2097
Inside and outside children	56	24	20	617
Outside children only	69	17	14	285
No children	74	N/A	26	607

In general, the intended gift to a spouse or partner rises substantially when we weight by mortality. Recall from Figure 1a, for instance, that when we do not weight by mortality, the mean gift in a Type A family with only “inside” children is 51% to a spouse and 29% to a cohabitating partner. When we weight by mortality, the gifts rise to 64% for a spouse and 36% for a partner.

It is thus clear that older people wish to give more to their spouses and partners than younger people. This is another reason why studies of probated wills show larger gifts to spouses than our survey does: probated will studies disproportionately include older people who have recently died. We cannot say why preferences differ by age. It could be a lifecycle effect, reflecting a change in an individual’s preferences as she ages, or a generational effect, reflecting a permanent divergence of preferences across generations that will remain fixed as the generations age.

5.2.5. Multivariate Regression

We next use an ordinary least squares regression to estimate the correlation between gifts to spouses and partners and a broad set of other variables measuring characteristics of relationships and respondents. This sort of multivariate regression is not possible in studies of probated wills because the samples in these studies are too small and too biased. Probated will studies also lack data on most of the relationship and personal characteristics we examine here, including not just the presence of a nonmarital partner, but also the length of a marriage, income, race, and the presence of nonmarital children. As with all of our analyses, we caution that Table 4 should not be interpreted as evidence of causation.

Table 4 presents the results of the following OLS regression:

$$s_i = \alpha + \theta * FamilyStructure_i + \beta * PersonalCharacteristic_i + \delta * NonmaritalRelationshipCharacteristic_i + \varepsilon_i$$

In this regression, s_i is the percentage of her estate that respondent *i* wishes to give to her spouse. $FamilyStructure_i$ is a vector of indicator variables for whether respondent *i* is married and has children in the relationship. The term $PersonalCharacteristic_i$ is a vector of variables describing personal and demographic characteristics for respondent *i*. The term $NonmaritalRelationshipCharacteristic_i$ is a vector of indicator variables for various characteristics of a respondent's nonmarital relationship in our third regression specification. The term ε_i is a mean zero error term. The results in Table 4 use robust standard errors.

Column 1 of Table 4 includes married respondents. Column 2 includes unmarried respondents who cohabitate with a partner. Column 3 includes all unmarried respondents who indicate they have a partner, whether they cohabitate with their partners or live apart. Because column 3 tries to understand which characteristics of a nonmarital relationship predict giving to a partner, it is the only column that includes the *NonmaritalRelationshipCharacteristics* variables.

Table 4. OLS Regression of Spouse/Partner Gift Percentage on Family and Personal Characteristics, by Marital Status

	Married	Married and Cohabitating	Unmarried with Partner (Cohabitating and Non-Cohabitating)
Respondent is Married		13.98***	
		-1.57	
Years Married to Spouse or Together with Partner	0.21**	0.30***	0.32**
	-0.09	-0.07	-0.15
Respondent has Children or Grandchildren	-18.91***	-22.10***	-24.69***
	-2.62	-1.92	-2.3
Has Child with Partner	0.76	2.47	4.45
	-2.32	-1.86	-2.85
Female	-10.12***	-9.59***	-7.31***
	-1.63	-1.33	-1.8
Nonbinary/Other	3.26	-1.03	-4.02
	-15.03	-7.15	-5.57
African American	-8.05***	-8.86***	-7.77***
	-2.49	-1.93	-2.38
Years of Education	1.56***	0.95***	-0.80*
	-0.34	-0.29	-0.45
Lacks Bank Account	-8.05***	-4.43**	2.43
	-2.54	-1.91	-2.45
Income (ln)	1.96***	1.24***	-0.6
	-0.39	-0.34	-0.48
Respondent's Share of Household Income	-6.24*	-2.92	-0.08
	-3.22	-2.6	-3.19
Respondent is Testate	-4.47***	-3.67***	-4.17*
	-1.59	-1.38	-2.31
Age	0.45***	0.34***	0.22***
	-0.09	-0.06	-0.08
Respondent's State Distributes 100% to Spouse in Traditional Families	3.39**	2.62**	0.09
	-1.55	-1.26	-1.72

Partner is Beneficiary of Non-Probate Assets			12.18***
			-2.61
Respondent Lives with Partner			9.91***
			-1.89
Engaged to Partner			7.93***
			-1.93
Shared Pet			7.46***
			-2.21
Owns Home with Partner			5.84**
			-2.63
Intercept	8.81	13.87**	38.63***
	-7.03	-5.43	-7.54
Observations	3266	4620	1773
R-squared	0.12	0.15	0.23

Table 4 offers several insights. The first has to do with marriage. The key result here is in Column 2, which includes both married and cohabitating people. Not surprisingly, marriage is highly predictive, with married people giving on average nearly 14% more to their spouses than cohabitating people give to their partners. The length of a relationship matters as well, with a 30-year marriage in Column 1 predicting a 6.3% larger gift to a spouse than a brand-new marriage. The length of a relationship matters more in Columns 2 and 3 when we include people in nonmarital relationships, suggesting that, in relationships that lack the formal commitment of marriage, the length of relationship becomes more important than in more formal marriages.

The presence of children or grandchildren is also highly—and negatively—predictive of a gift to a spouse or partner. The presence of children has a larger and more statistically significant predictive effect than any other variable in the regression. Surprisingly, whether the respondent's children come from the current relationship or a prior relationship does not appear to significantly affect the gift to the partner. This cuts against the argument by Waggoner (2016) that the presence of a child inside a nonmarital relationship serves as an indicator of the relationship's seriousness and should therefore warrant a larger share for a partner.

The results for the demographic and personal characteristics are consistent with those in the figures and tables above. In each specification in Table 4, women give much less than men—

with the difference growing as large as 10% in columns 1 and 2. This result is consistent with Figure 2c. To test the hypothesis that women give less because they earn lower incomes, we include a variable expressing the respondent's income as a share of the total household income. This variable divides a respondent's annual income by the sum of the annual incomes of the respondent and her spouse or partner. The variable is not statistically significant, and it has the opposite sign of what we would predict.

African Americans also give less to their spouses and partners than do other people. The variable for race is highly statistically significant and surprisingly large in magnitude. This is consistent with the result in Figure 2b. Our variables for class are also predictive. Better educated people, higher-earning people, and people who have bank accounts give much more in Columns 1 and 2 than other people. These variables become less significant in Column 3 for reasons that are unclear.

Table 4's results on testacy are surprising. In Table 4, testacy predicts a lower gift to a spouse or partner than intestacy. This result is facially at odds with the result in Figure 2c, which shows higher levels of spousal and partner giving among testate people. The difference likely reflects Table 4's effort to control for other variables. As the descriptive statistics in Table 1 indicate, testacy is highly correlated with age, race, and class. These variables are also highly correlated with preferences, however, so that once we control for these other variables, the independent predictive effect of testacy becomes more complicated.

Not surprisingly, therefore, Table 4 shows that age is strongly predictive. In Column 1, an 80-year-old gives 27% more to her spouse or partner than a 20-year-old. This result is consistent with the mortality weighting in Table 3.

Table 4 also includes a variable for whether a respondent resides in a state whose intestacy law gives 100% to a spouse in a traditional Type A marital family. Recall that this is the policy in only 19 states (including states that have adopted the UPC). As one might predict, residents of these states give more to their spouses, though the magnitude of the effect is modest.

The final set of variables describes the characteristics of nonmarital relationships. We include these only in Column 3, which exclusively examines unmarried people in nonmarital relationships. Unlike a marriage, a nonmarital relationship is never marked by an official beginning or a formal transition into a state of lifelong commitment. Many nonmarital relationships move from casual to serious without obvious signs or transitional moments. Any policy that aims to take notice of nonmarital relationships thus must find some way of distinguishing between relationships that are committed enough to warrant legal acknowledgment from those that are uncommitted or nascent.

A prior draft of the Cohabitants' Economic Remedies Act offered a list of factors, instructing a court to consider, in addition to whether the couple lived together, the duration of the relationship, the degree of financial interdependence, and the joint ownership of property.[15] Waggoner (2016) has proposed a statute that would consider (1) the purpose, duration, constancy, and degree of exclusivity of the relationship; (2) the degree to which the individuals intermingled their finances; (3) the degree to which the individuals formalized their legal obligations to one another through devices such as beneficiary designations in life insurance policies, pension plans, and other nonprobate transfers; (4) whether the couple shared in parenting a child; and (5) the degree to which the couple held themselves out as committed or married to one another. Waggoner would restrict marriage-like treatment to couples who live together.

Table 4 presents measures of each of these factors. As we have already seen, Table 4 shows that the duration of a relationship is modestly important, with longer relationships associated with larger gifts. The presence of a child in the relationship, however, is not very important, probably because it is swamped by the negative effect of any kind of child (whether inside or outside the relationship) on giving to a partner.

The remaining relationship variables, which appear at the bottom of Table 4 as binary indicators for the presence of the listed characteristics, are all statistically significant and sizable in magnitude. Cohabitation predicts almost a 10% larger gift to a partner. Naming a partner as a beneficiary of a nonprobate transfer predicts a 12.18% larger gift. Engagement to be married indicates an almost 8% larger gift and joint ownership of a home predicts a 6% larger gift. Joint ownership of a pet is surprisingly predictive, indicating a 7.46% larger gift. All the results are statistically significant.

6. Discussion

Our results offer several insights for both social science and the law.

[15] Uniform Economic Rights of Unmarried Cohabitants' Act, December 6-7, 2019 Meeting Draft § 401(a)-(b).

6.1. Spouses

First, the respondents in our survey wish to give less to their spouses than did the decedents in prior probated will studies and the policies that were inspired by these studies in the UPC. The contrast is especially stark in traditional families, for which the UPC recently changed policy to provide more to spouses in an attempt to match the preferences reported by studies of probated wills. The difference between our results and the probated will studies holds across every demographic group and family type. The divergence is very likely a product of the sampling biases inherent in probated will studies.

6.2. Nonmarital Partners

Second, we find that unmarried people give less to their partners than married people, but more than conventional wisdom would predict. People are especially likely to give gifts to their nonmarital partners in intermediate amounts, such as 25% or 50%. Our results allow us to predict which unmarried respondents give the largest gifts. Childlessness is the main predictor, with childless cohabitating unmarried respondents giving their partners as much as 58% of their estates on average when we weight by mortality risk (in Table 3). Cohabitation, nonprobate giving, and engagement to marry also predict larger gifts to spouses.

These results suggest that the law's current approach of granting nonmarital partners nothing is not the right policy. But they also suggest that treating nonmarital partners exactly like spouses is probably not the right policy either. An intermediate strategy may be the wisest. A nonmarital partner might take more than nothing, but a smaller share than a spouse. And a partner might take only when circumstances indicate a high probability that a decedent would give to the partner: e.g., the couple cohabited, the decedent had no children, the decedent gave her partner a significant portion of her nonprobate assets, and the decedent and the partner were engaged to be married.

6.3. Race, Gender, and Class

Another key result is that African Americans, women, and people of lower wealth, education, and income give less to their spouses than other people. These results lead us to make two sets of observations—the first having to do with social scientific understanding, the second having to do with policy.

First, as a matter of social scientific understanding, the correlations we document around race, gender, and class throw into relief the sampling biases inherent in prior studies on probated wills. As explained above, probated will studies only examine the preferences of the narrow set of decedents who show up in these studies. Our results show that the omitted decedents likely have systematically different characteristics and preferences than the decedents who get included. This is unfortunate because it is the omitted people who are most likely to distribute their estates by intestacy.

Also as a matter of social science, we cannot dismiss the predictive value of race, class, and gender as an artifact of our respondents' failure to go through the deliberative process of making wills. Even when we control for testacy status, the correlations remain. The demographic differences in spousal gift-giving appear to be rooted in a real divergence of tastes and values, not the degree of care they have put into estate planning.

Our final social scientific observation is that we cannot say exactly why race, gender, and class are so predictive. With regard to gender, the most obvious explanation is that wives prefer to give less to their husbands because they earn less. But we find no evidence to support this hypothesis. In our multivariate regression, the variable on relative income between a respondent and partner is not significant. Another explanation is that women feel a comparatively stronger connection to children than husbands. We are not able to test this hypothesis. The ambiguous results around same-sex couples make an explanation for the gendered patterns of giving even harder to find, with gay and bisexual men showing higher generosity than lesbian and bisexual women in nonmarital relationships, but equal generosity in marriages.

With regard to race and class, one possible (and very anecdotal) explanation is that spousal giving tracks broader attitudes around intergenerational support. Black and Hispanic Americans are about twice as likely to live in multi-generational households as non-Hispanic White Americans (Cohn, Minkin, Fry & Hurst 2022) and Black elderly people are more likely to expect and receive other forms of financial support from their children than White Americans. (Mutran 1985). Upward-flowing financial support from children to parents is so common among minority families that it has often been identified as an important constraint on the ability of young minority adults to accumulate savings (Arnett & Schwab 2013; Jones, 2015). This cultural pattern may reflect an underlying economic reality: since lower-income people have fewer opportunities to accumulate savings during their working years, they may tend to tie support obligations to wage-earning rather than seniority, with working-age children carrying the burden for elderly adults as well as for children.

Perhaps, then, the preference for children over spouses among minorities and the working class reflects an assumption that adult children will support their parents rather than the other way around. It makes sense that a father would give his modest savings to his son rather than to his wife if the father expects the son to provide for the wife (i.e., the son's mother) after the father's death. Providing for children and providing for a surviving spouse merge into the same thing.

Another theory (which cuts in the opposite direction) is that in poorer families, the passage of assets to children is more urgent than in wealthier families. Children of high-income parents are likely to have high incomes themselves, so they may find it easier to wait for their inheritances until both of their parents have passed away. Poorer children may need the money sooner, making it more urgent to receive an inheritance from the first parent to pass away.

In addition to what they tell us about society, the correlations we perceive around race, gender, and class also say something about the law. First, the policy of the UPC and many other state intestacy statutes goes the opposite direction of our survey results concerning wealth. In many types of families, the UPC and other intestacy laws permit a surviving spouse to take 100% up to a fixed dollar value before splitting the remainder with others. The effect is to grant the surviving spouse a larger share of a smaller (i.e., poorer) estate than a larger one.[16] Our findings on income and bank account-holding indicate that this approach has things backward, at least with regard to people's preferences. Rather than giving more to their spouses, people who are likely to have small estates prefer to give less.

A second observation for law has to do with matching the preferences of women. Although it may be tempting to reduce gifts to surviving spouses to bring intestacy policy into greater alignment with the preferences of women, such a policy may ultimately do more harm to women than good. Because women in opposite-sex marriages are more likely to outlive their spouses than men, women are more likely to be harmed by a policy that reduces the amount of wealth going to surviving spouses than men are. Such a policy might come closer to matching the preferences of a woman who dies before her husband, but it would do so at the expense of

[16] Of course, the size of a probate estate is not a perfect proxy for total wealth. A person may have a small probate estate and a large amount of nonprobate assets. But the UPC's variation by size of probate estate plainly assumes that the size of a probate estate matters, independent of what may be passing outside of probate.

impoverishing a woman who dies after. The risk is especially grave since women tend to outlive their husbands.

A final policy observation is that the correlations we identify around race, gender, and class raise challenging questions about equality. Our results make intestacy policy into a kind of Rorschach test for attitudes about how to achieve equality and legal neutrality along contested categories. Consider what it would mean to personalize intestacy law on the basis of race. A law that grants less to the surviving spouses of Black people than the surviving spouses of White people would almost certainly violate the equal protection guarantee of the Fourteenth Amendment. But a policy that grants the same amount to the spouses of Black and White people also offers its own kind of discrimination. Because preferences differ by race, any policy that treats all races identically will necessarily match the preferences of some races more closely than others. Every possible policy discriminates in some way, whether by formal categorization or by practical effect. So long as preferences diverge by race, there is no way for the law *not* to treat different races differently. We could say the same about class and gender.

6.4. "Majority" Preferences in a Multi-Modal Distribution

Our analysis also highlights the theoretical difficulty of discerning majoritarian preferences in a distribution that has more than one modal peak. In none of the types of families we examine in Figures 1a through 1d do we see a single outcome that attracts a clear majority of respondents. We see instead a distribution with three different modes at 0%, 50%, and 100%, and in some of the histograms we see a distribution with preferences scattered widely across the range of possible gifts. Under these conditions, it is hard to find any single outcome that clearly stands out as indicating what "most" people want.

How then should we identify the "majoritarian" preference? One strategy would be to set the default as the outcome that attracts a plurality of support, even if not a majority. This would often tend toward giving a spouse 100%. As we have seen, however, this could leave a clear majority in every family type unsatisfied. Another strategy would be to take the average, thereby minimizing the total distances between every respondent's preferences and the default outcome. When a decedent has children, this would mean giving a spouse something close to 50%. This strategy reduces total dissatisfaction overall, but leaves few people with their actual preference, since 50% is a much less common preference in most family types than 0% or 100%.

Our results also highlight variation in preferences by age. The averages change significantly when we weight by mortality risk. If we want to implement people's wishes at death, then we should weight by mortality. If we want to implement the preferences of average people during life, then we should not.

6.5. The Purposes of Intestacy Law

Our results make clear that in many ways, the UPC and the laws of many other states do not achieve average preferences. The UPC clearly gives more to spouses and less to nonmarital partners in many types of families than the average person would want. One might be tempted to dismiss the divergence between average preferences and the law as the product of our respondents' failure to go through the deliberative process of making wills. But the gap between the law and our respondents' preferences persists even when we control for the making of wills.

One way to read our results is to interpret them as evidence that the law should be changed to match preferences more closely. But another way to read our results is to say that the purposes of intestacy law should be understood more broadly. Rather than just matching preferences, intestacy law might also serve other goals, such as administrative convenience and even an enlightened paternalism. If one has reservations about changing the law to match preferences, it may be because one thinks the law should serve other objectives in addition to preferences.

The policy favoring spouses, for instance, may be consistent with gender equality. It protects women in separate marital property states that grant disproportionate ownership of marital property to higher-earning husbands. This policy may also implement spouses' moral obligations to provide for each other and may prevent young children from having to manage large amounts of money. Similarly, the policy of granting nothing to nonmarital partners may serve administrative goals by avoiding disputes about fact-sensitive issues such as whether a couple truly lived together or were engaged to be married. Restricting inheritance by nonmarital partners may also encourage clear contracting and consent between couples by forcing them to opt into marriage if they want marriage-like treatment.

These are just a few of the possible objectives that the law of intestacy might serve. One could reasonably agree or disagree with any of them. Our point is not to endorse or critique any of these possible purposes, but simply to note that none of them has much to do with majoritarian preferences. They proceed from justice, administrative efficiency, and an experienced wisdom about what is best. These purposes are neither obviously bad nor obviously good. But none of them requires the matching of majoritarian preferences.

7. Conclusion

By providing the first large and nationally representative survey of people's preferences for the distribution of their own property at death, we close important gaps in understanding of family relationships and estate law. We avoid the sampling biases in studies of probated wills and provide the first statistically representative evidence on giving in nonmarital families.

Our findings suggest that people give less to their spouses than the UPC and many states provide and more to their nonmarital partners. We also find that women, African Americans, and people of modest means and education give less to their spouses. And we find that giving among nonmarital partners is powerfully and positively correlated with certain key relationship characteristics, including childlessness, cohabitation, and nonprobate giving. Our findings raise difficult theoretical questions about how to design a majoritarian policy when no single outcome attracts majority support and how to address differences by race, class, and gender without running afoul of different conceptions of equality. And our findings show that if we want to rationalize intestacy law as it currently stands, we must turn to a broader array of policy goals than merely the achievement of preferences. That intestacy law sometimes diverges from popular preferences does not necessarily make it bad, but it does make it more complicated.

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Appendix
Sample Estate Distribution Question

Please imagine for a moment what would happen if you were to pass away today. To whom would like to give your money and property? Tell us the answer by using the boxes or sliders below to indicate the percentage of your money and property that you would like each of the following people to receive. For example, if the total value of all of your assets is $10,000 and you would like to give a piece of jewelry worth $1,000 to one of your friends, then next to the category "Friends," enter 10%.

The percentages should total 100%.

Some people have more debts than assets and don't expect to have money left over to give away when they pass away. If that's the case for you, try to imagine what you would do if you did have some money left over.

	0 — 100	
Friends and Acquaintances		0
Siblings		0
Grandparents		0
Biological children		0
Charities, churches, schools, or nonprofits		0
Ex-spouse or ex-partner		0
		0/100

A Survey of Preferences for Estate Distribution at Death
Part 2: Children and Other Beneficiaries

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Abstract. This is the second of two papers presenting the results of a nationally representative survey of 9,000 American adults in which we asked people how they want to distribute their property when they die. In the first paper, we focused on gifts to spouses and partners. In this second paper, we focus on gifts to children, parents, siblings, and other beneficiaries. We offer several important findings. First, respondents depart to a surprising degree from the pattern of lineal familial descent favored by intestacy law. Respondents give much less to their parents than the law of intestacy currently provides and much more to siblings, extended relatives, and friends. Second, people are surprisingly generous to their stepchildren. Our respondents prefer stepchildren over every type of family member other than their spouses and their own children. This result starkly contrasts with state intestacy law, which almost never provides stepchildren anything. Taken together, our results suggest unexpectedly strong preferences for younger generations over older ones and for personal affinities over blood relationships. Our survey method improves upon prior empirical studies of probated wills by offering a less biased sample and by providing the first reliable data on unconventional families and less common beneficiaries.

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What do you want to do with your property when you die? This article reports the results of a survey in which we asked this question to a nationally representative sample of 9,000 American adults. We asked our respondents to describe their families and then prompted them to divide up their property among relatives, friends, and others as if they were to pass away immediately. This article is the second in a two-part series reporting the results. The first article analyzed gifts to spouses and nonmarital romantic partners. This second article examines gifts to children, parents, siblings, and other beneficiaries. Our results inform both the social scientific understanding of family life and the policies underpinning the law intestacy, which provides default rules to distribute the property of people who die without wills.

Our findings suggest surprisingly little commitment to the system of lineal familial descent favored by intestacy law. Our respondents are unexpectedly generous to their siblings as compared to their parents. In almost every state, when a person dies with neither a spouse nor children living, 100% of her estate goes to her parents. We find, however, that people in this situation actually prefer to give their siblings about as much as their parents and in some analyses they give their siblings even more. People are also surprisingly generous to distant relatives and non-relatives, often at the expense of parents and siblings.

Our results also show surprising generosity to stepchildren. In intestacy, many states provide nothing to stepchildren. And those states that do provide something to stepchildren tend to do so only when a decedent has no extended family living. In Maryland, for instance, a stepchild can theoretically inherit, but only if the decedent has no living spouse, child, parent, sibling, aunt, uncle, grandparent, niece, nephew, first cousin, or even third cousin once removed.[2] Our respondents are more generous to their stepchildren than these default policies, preferring stepchildren over any category of beneficiary other than their spouses and their own children. Our respondents prefer their stepchildren even over their parents and siblings, to say nothing of aunts, uncles, nieces, nephews, and more distant relatives. Respondents become more generous as their relationships to their stepchildren more closely resemble conventional parental bonds. Respondents are almost twice as generous to stepchildren they have lived with as to stepchildren they have never lived with. Respondents are also more generous to stepchildren when the respondents have no living children of their own.

[2] Mo. Ann. Stat. § 474.010 (West 2022).

Our findings inform both social science and law. For social science, our results teach us important truths about family relationships. The American family is changing rapidly, with fewer people marrying and more people repartnering after divorces and breakups. Step-relationships and nonmarital relationships are growing more important. For law, our findings matter because they inform the rules of intestacy, which are designed largely to implement majoritarian preferences. Since the goal of the law is to provide rules that comport with people's wishes, it is important to understand what people want.

Our methods have several important limits. We perceive only our respondents' stated preferences, not their actual conduct. We also cannot distinguish between probate property (which passes through wills and the rules of intestacy) and nonprobate property (which passes through life insurance contracts, property deeds, joint bank accounts, and other arrangements independent of wills and intestacy). We ask people to dispose of their property only in abstract percentage terms, without confronting the details of specific items of property. We only perceive people's preferences at the time of the survey, not at the times of their deaths. And when we observe correlations between preferences and demographic or personal characteristics, we cannot necessarily infer causation.

With these limitations in mind, we present our motivations, data, methods, and results. We keep the discussion of motivations, data, and methods brief. Readers who would like more detail on these matters may find it in our first article on gifts to spouses and partners.

1. Motivation

In the United States, a person can generally choose how she wants to distribute her property at death by making a will. The law distinguishes between a *testate* decedent, who has made a will, and an *intestate* decedent, who has not.

For an intestate decedent, the law supplies a set of default rules known as "intestacy." The default rules of intestacy are usually understood to be *majoritarian*: They provide the outcome for a decedent that most people in a similar family situation would prefer. The Uniform Probate Code ("UPC"), a model statute that has been adopted in some form by 19 states, makes this policy explicit by declaring that its goal is "to discover and make effective the intent of a decedent in the distribution of the decedent's property."[3]

[3] UPC 1-102.

Intestacy law tends to personalize its rules according to the character of a decedent's family. (Strahilevitz 2014). A decedent with children gets a different rule from one without children, a decedent with living parents gets a different rule from one with deceased parents, and so on. Intestacy varies widely among the states, with state laws disagreeing even on fundamental matters such as whether a surviving spouse should inherit all of a decedent's estate or only half of it.

The state of the art in intestacy law is the UPC. The UPC and its intestacy provisions have been revised and updated many times, in part to reflect the findings of the prior empirical studies we discuss below. We thus use the UPC as our main benchmark for assessing intestacy law, even as we also code and summarize the laws of all 50 states.

2. The Limits of Prior Studies

Most of what we know about preferences for the distribution of property at death comes from studies of the wills of deceased people that have been filed and probated with state and local probate courts. Nearly a dozen of these studies have been performed over the years, beginning in 1930 and continuing as recently as 2020. (Browder, 1969; Contemporary Studies Project, 1978; Dunham, 1963; Friedman, 1964; Friedman, 2007; Glucksman, 1976; Powell and Looker, 1930; Price, 1975; Ward and Beuscher, 1950; Wright, 2020; Wright and Sterner, 2017). In these studies, researchers have examined probated wills to discover how the wills divided their testators' property.

The primary advantage of probated wills over our survey method is that a probated will expresses the actual decision of a decedent regarding her actual property at the time of her actual death. Our survey, by contrast, asks people only to imagine what they would want if they were to die immediately and requires them to express their preferences in a stylized format that avoids real action and neglects the subtle complications of specific pieces of property.

Probated will studies, however, have their own limitations, which our survey method avoids. The first is selection bias. Probated wills only reveal the preferences of the subset of testate decedents who go through probate, which may be systematically different from the preferences of intestate people and even from the preferences of testate people who do not go through probate. These biases are serious because the main purpose of intestacy law is to implement the preferences of intestate people. As we show in our first article and in Table 1 below, testate and intestate people differ systematically by race, education, income, and other factors and testate people may have systematically different preferences even if we could control for demographics, since people may make wills precisely in order to opt for unconventional dispositions.

A second problem with probated will studies is that probate records supply only very limited data. They omit demographic and personal characteristics such as education, income, the ages of children, and the duration of marriages. And more importantly, they supply no data—not even biased data—on unconventional families or uncommon types of beneficiaries. Probate records usually tell us whether a decedent had a spouse and biological or adopted children, but not whether she had a nonmarital partner, parents, siblings, aunts, uncles, cousins, or stepchildren. The absence of data on these unconventional and less common beneficiaries makes it impossible to saying anything about how often decedents give to these beneficiaries. If we look at a will and see no gift to a stepchild, for instance, we cannot say whether this is because the decedent preferred not to give to the stepchild, or because the did not have a stepchildren at all.[4] The only way to establish how often people give to their stepchildren is to collect data on the presence or absence of stepchildren in the life of *every* decedent, including those who do not give to their stepchildren. This is a task probate records cannot perform. This problem is especially relevant to the challenges we confront in this paper, in which we investigate how decedents treat less conventional families and less common types of beneficiaries, such as siblings, parents, grandchildren, and stepchildren.

A final problem in probated will studies is the small sample sizes. A proper study of preferences requires a very large sample size to ensure a critical mass of subjects in each of the family types under study. As explained above, intestacy law provides different default rules for different types of families. A study of preferences becomes not one sample, but many, each corresponding to respondents in a distinct type of family. Such a study thus has to include a large enough total sample to ensure that each of the various family situations under study has a critical

[4] Wright (2020), for instance, tried to reconstruct gifts to stepchildren and second spouses from circumstantial and ancillary records. But these records were incomplete, making it impossible to know how many respondents had stepchildren and second spouses in the first place and therefore what portion of respondents with these family members were making gifts to them.

mass of subjects. To say something about how people divide between stepchildren and parents, for instance, a study must have a sufficient population of people who have both stepchildren and living parents—in addition to sufficient populations of people who have each of the other types of families under study. Probated will studies are inadequate to this challenge because the data on which they rely are too costly to collect and analyze. Once we start dividing up the samples in these studies, they become too small to say anything about unusual family types and characteristics.

In addition to the studies of probated wills, researchers have also produced a handful of studies using surveys. These studies each suffer from one or more of several limitations. The first is the use of unbalanced, non-representative opt-in survey panels. (Hirsch 2018; Fellows, et al., 1998). These panels are cheap to recruit, but their limitations are severe and well documented. (Yeager, et al., 2011). They do not provide representative evidence.

A second problem is the use of hypothetical vignettes. (Poppe 2021; Fellows, et al., 1998). Instead of asking respondents with nonmarital romantic partners, for example, to say how much they wished their partners to receive, Poppe (2021) asked all respondents—including married people and single people not in relationships—to imagine that they had a nonmarital partner and to decide how much they would hypothetically wish their imagined partners to receive. Rather than eliciting respondents' own preferences, this method effectively elicits respondents' conjectures about the preferences of others. This method is akin to predicting an election in Germany by asking people in Texas to say how they would vote if, hypothetically, they lived in Berlin. Hypothetical vignettes are attractive because they economize on sample size. A researcher can collect data on several family types from each respondent by asking each respondent to react to several family types other than her own. Our method, by contrasts, ask a respondent only to react to her own circumstance. The efficiency of the imagined-family approach trades off with its realism and accuracy.

A final problem is the tendency of some surveys to record gifts in binary yes/no terms rather than percentages or other more detailed terms. Several surveys show only whether a respondent wishes to make a gift to a category of beneficiary, not how much the respondent would like to give. (E.g., Humphrey, et al., 2010; Francesconi, Pollak, and Tabasso, 2015).

3. Data and Methods

To avoid the limitations in these prior empirical methods, we take our data from a survey of a large and nationally representative sample of American adults in which we asked them how they wish to distribute their own property when they die. We drafted a custom online survey and administered it through YouGov to 9,000 respondents. Of these respondents, 8,500 were drawn from the general population. The remaining 500 were drawn from the population of people who lived with a nonmarital romantic partner. We provide detail on the construction of this sample in our first article.

To determine the respondents' dispositive preferences, the survey asked them a series of questions about their families and demographics. We asked each respondent about her current relationship or partnership status, how many times she had been married, whether she had any children (separately asking about adopted children, foster children, stepchildren, and children from an unmarried partner's previous relationship), and whether she had any of a series of other relatives including siblings, parents, grandparents, aunts and uncles, nieces and nephews, and siblings- and parents-in-law. We also asked for details about children, including age and co-residency with respondents. We then asked a series of questions about the demographics of the respondent, including age, state of residence, income, spousal or partner income, educational attainment, political views, and religious observance.

Finally, we asked each respondent to determine what percentage of her total assets she would give to a set of possible beneficiaries in the event of her death. The list of possible beneficiaries was tailored for each respondent to include only those family members that the respondent previously indicated she had living. It also added "friends and acquaintances" and "charities, churches, schools, or nonprofits." Beneficiaries of a given type, such as "grandchildren" and "siblings," were grouped together.[5] The order in which the beneficiaries appeared varied randomly. If the respondent elected to leave assets to her spouse or unmarried partner, the survey additionally asked the respondent to specify an allocation while imagining that her spouse or partner had predeceased her.

The survey has some important limitations. It perceives only preferences and testacy status at the time of the survey, not at death. It also does not distinguish between probate property and non-probate property. Probate property includes property owned directly by a decedent during her lifetime that would be disposed of by her will. Nonprobate property includes

[5] If a respondent elected to make a gift to her "biological children," the survey followed up by asking whether she would make the same gifts to all of her biological children, and if not, for what reason.

property that passes automatically at death through contracts and other arrangements established outside of a will, such as life insurance, retirement accounts, and real estate held through joint ownership arrangements with rights of survivorship. Probate property is subject to the default rules of intestacy; nonprobate property is not. The survey also did not ask about specific items of property, instead requiring respondents to express gifts in percentages of their total wealth. We made these choices to make the survey instrument easier for our respondents to comprehend and to mimic the structure of intestacy, which allocates property in percentage terms, not by reference to specific items.

4. Results

4.1. Descriptive Statistics

Table 1 reports demographic statistics and testacy status for the respondents in our 9,000-person survey.[6] The Table shows that respondents with wills were older, better educated, less likely to be African American, and much higher-earning. These statistics are consistent with our concerns about the sampling bias in prior studies of probated wills.

[6] Here and in the rest of our tables and figures, we dropped 52 observations because the respondents did not answer the question on the preferred distribution of the estate.

Table 1: Summary Statistics for Key Variables, by Testacy Status

	Respondent has a Will	
	No (intestate)	Yes (testate)
Observations	6,283	2,664
Mean Income ($)	35,473	110,870
Mean Age (years)	42.81	56.45
Mean Education (years)	13.43	14.28
African American (share of respondents)	0.15	0.08
Married (share of respondents)	0.34	0.59
Mean Number of Children	1.21	1.72
Has Children or Grandchldren (share of respondents)	0.54	0.76
Has Living Parents (share of respondents)	0.62	0.33
Has Siblings (share of respondents)	0.75	0.7
Has Stepchildren (share of respondents)	0.08	0.14

4.2. Preferences

In our first article, we analyzed gifts to spouses and partners. In this article, we analyze gifts to other beneficiaries, including children, grandchildren, parents, siblings, extended family, friends, and charity. To sharpen the focus on beneficiaries other than spouses and partners, each of our analyses uses data that reflect only our respondents' intentions in the absence of a spouse or partner. For single people and married or partnered people who preferred to make no gifts to their spouses or partners, this poses no special problems: we use the data from the basic question on estate allocation. For married and partnered people who answered the basic estate allocation question by making non-zero gifts to their spouses or partners, we used data from a second question in which we asked respondents to allocate their estates a second time on the assumption that their spouses or partners had predeceased them. The structure of this question was the same as the first question on estate allocation, except for the omission of the spouse or partner from the list of possible beneficiaries and the instruction to assume the prior death of the spouse or partner.

We remove the possibility of gifts to spouses and partners for two reasons. First, as we showed in our first article, many people give the bulk of their estates to their spouses or partners, making gifts to other beneficiaries most likely when a spouse or partner has predeceased a respondent or when a respondent has no spouse or partner. This reality is reflected in the UPC, which in most circumstances makes large gifts to other beneficiaries only when a spouse is absent.[7] Second, the possibility that a spouse or partner might predecease a person is realistic. Spouses rarely die simultaneously. A well drafted will always names a contingent beneficiary in the event that a spouse or partner predeceases the testator. Life insurance contracts and retirement accounts often require policyholders to do the same. The counterfactual of a spouse's death is thus much more realistic than the hypothetical scenarios that some prior surveys on estate distribution have shown to their respondents, which ask people to imagine gifts to family members who have never existed.

Table 2 presents our most basic results by showing average intended gifts to beneficiaries in these categories. The columns in Table 2 show the percentages of their estates that our respondents wish to give to each category of beneficiary in the absence of a spouse or partner. Table 2 uses the term "descendant" to include both children and grandchildren. This usage parallels the terminology in many intestacy statutes. The rows in Table 2 sort respondents by the types of relatives they have. The first row shows respondents who have living descendants, parents, and siblings. The second row shows respondents who have living descendants and siblings, but not living parents, and so on.

The total number of respondents in Table 2 is less than the number of respondents in our sample because some small categories of respondents—such as people who have living parents, but not living siblings or descendants—are excluded for the sake of brevity. The "Other Relatives" category includes stepchildren as well as grandparents, aunts and uncles, cousins, nieces and nephews, mothers- and fathers-in-law, and sons-and-daughters-in-law.

Table 2 weights respondents by mortality risk. The weights express the probability that a person will die within the coming year, as determined by age and gender.[8] We use these weights to make our results relevant to the motivations of intestacy law: policies about the distribution of property at death matter most to people who are closest to death. The practical effect is to

[7] UPC § 2-102(a)(1)(A)-(B) (2019).
[8] We take the mortality data from the Social Security Administration at https://www.ssa.gov/oact/STATS/table4c6.html.

emphasize the preferences of older people and (to a lesser degree) men, who have slightly shorter lifespans on average than women.

Table 2. Average Intended Gifts by Beneficiary Type (Mortality Weighted)

Respondent Family Types	Descendants	Parents	Siblings	Other Relatives	Charity	Friends	N
Descendants, Parents, and Siblings	68.9	5.5	5.2	13.4	2.0	5.0	2019
Descendants but No Parents	79.2	-	5.2	9.4	3.1	3.2	2332
Parents and Siblings	-	24.5	30.5	24.0	10.1	10.9	2033
Siblings	-	-	43.4	27.7	16.6	12.3	528
No First Degree Relative	-	-	-	34.2	29.0	36.8	461

The main result in Table 2 is that people prefer their descendants over other beneficiaries much as one might expect. Respondents who have living descendants, siblings, and parents prefer on average to give 68.9% of their estates to their descendants and 5.5% and 5.2% to parents and siblings. Although descendants do not dominate completely, they clearly emerge as the largest beneficiaries. This result is consistent with intestacy law. Under the intestacy law of every state, including the UPC, if a decedent dies with living descendants, but no living spouse, the descendants take everything, to the total exclusion of all other beneficiaries.

For respondents who have no descendants, the results are more surprising. Respondents without living descendants demonstrate surprisingly little commitment to the pattern of lineal familial descent favored by intestacy law. In almost every state, the law of intestacy follows a strict order of familial priority when a person dies without a spouse or children.[9] Under this

[9] UPC § 2-102(1)(B) (2019). Our summaries of state intestacy policy are based on our coding of the summaries in Schoenblum (2020). State intestacy law is not standardized and varies in subtle ways that are hard to summarize in simple codings. Our summaries are thus best understood as approximations.

system, all of a decedent's assets go first to her parents. If she has no parents living, then all of her assets then go to her siblings. If she has no siblings, the assets then go to extended family, starting usually with grandparents and then descending through the generations to aunts, uncles, cousins, and their descendants. The characteristic elements of this lineal descent policy are its preference for closer relatives over more distant ones and its prioritization of older generations over younger ones. It is also characterized by its all-or-nothing approach and its avoidance of splitting. If a decedent has both parents living, then siblings get nothing.

Although this pattern of lineal descent is consistent across state intestacy laws, our respondents' preferences depart from it substantially. Most striking is our respondents' treatment of siblings and parents. Table 2 line 3 shows respondents who have no spouses or descendants living. These respondents treat parents and siblings roughly equally, with a slight preference for siblings. This generosity to siblings is clearly at odds with the nearly universal policy of intestacy law, which grants everything to parents to the complete exclusion of siblings.

Also remarkable is our respondents' generosity to extended family and nonrelatives. In line 3, in which respondents who have no descendants but still have living parents and siblings, respondents often spread their wealth beyond their parents and siblings, giving almost half of their estates to extended family and nonfamily. Line 5 reports that when respondents have no parents, siblings, or descendants, they mostly pass over their other relatives to give the bulk of their estates to friends and charities.[10] As we will explain below, much of the giving to "other relatives" in Table 2 may reflect our respondents' generosity to stepchildren, appear in the "other relatives" category.

Figures 1 and 2 move beyond the averages in Table 2 by presenting histograms showing gifts across the full distribution of the sample. The horizontal axis of each figure divides the range of possible gifts (0%-100% of an estate) into ten deciles. The vertical axis shows the percentage of respondents making gifts in each decile. Each figure simultaneously presents two different categories of beneficiaries. Like Table 2, these Figures use the data that exclude gifts to

[10] The questions that prompted respondents to divide their assets included two categories of nonrelatives: "Friends and acquaintances" and "Charities, churches, schools, or nonprofits." The available categories of relatives include siblings, grandparents, aunts and uncles, cousins, mothers- and fathers-in-law, and brothers- and sisters-in-law.

a respondent's spouse or partner. And the Figures only include respondents who have living relatives in each of the categories depicted.

Figure 1 displays gifts to children and grandchildren for the 2,143 respondents who have both children and grandchildren. Consistent with expectations, it shows that respondents strongly prefer children over grandchildren. Almost 40% of respondents wish to give 100% of their estates to their children, but only about 2% wish to give 100% of their estates to their grandchildren.

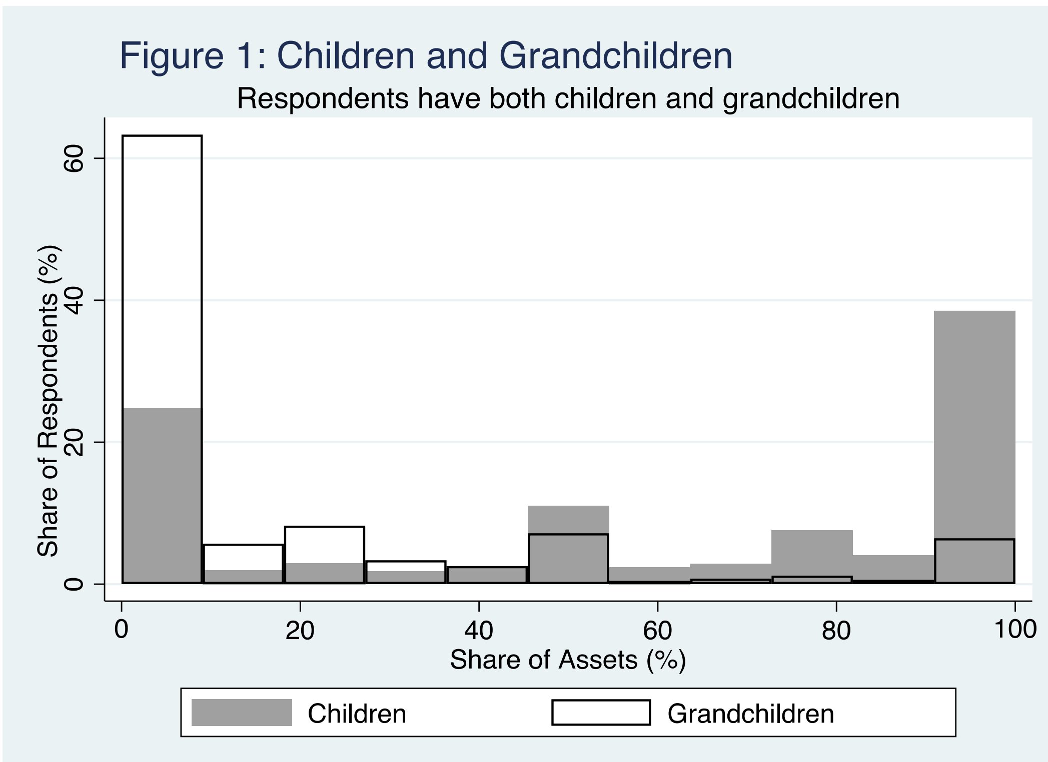
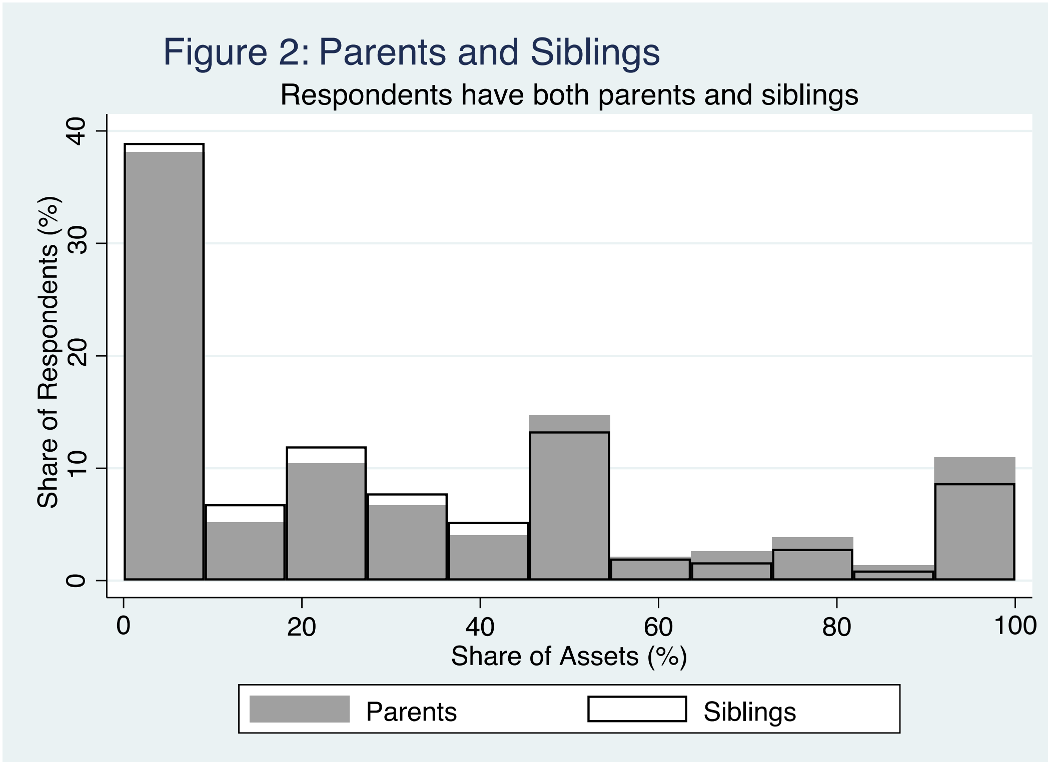


Figure 2 overlaps gifts to parents and siblings among the 2,085 respondents who have living parents and siblings but no living children or grandchildren. The results here are consistent with the generosity to siblings we saw in line 3 of Table 2. Figure 2 shows that gifts to parents and siblings are remarkably similar, not merely on average, but across the entire distribution. The Figure shows, for instance, that about 12% of respondents wish to give 50% of their estates to their siblings and about 13% of respondents wish to give 50% of their estates to their parents.



Next, we consider gifts to stepchildren. Stepchildren raise challenging questions for both concepts and law. Some of these have to do with categorization. In this paper, we distinguish stepchildren by the marital status of their parents. A *marital* stepchild is the child of a respondent's spouse; a *nonmarital* stepchild is the child of a respondent's boyfriend, girlfriend, or other nonmarital partner.[11] We distinguish both kinds of stepchildren from a *legal* child or *own* child, who is related to a respondent by biology or adoption.[12]

Both marital and nonmarital stepchildren have long been disfavored by intestacy law. Thirty-six states grant a marital stepchild nothing. Fifteen states provide a marital stepchild a portion of a decedent's estate, but only on condition that the decedent has no other living extended family. The boundaries of extended family are often expansive, making the probability

[11] Our questionnaire referred to nonmarital stepchildren as "Children of my partner from his or her previous relationship." Only respondents who indicated that they were in a relationship with a nonmarital partner were given the option to indicate the presence of a nonmarital stepchild. The questionnaire described marital stepchildren as simply "stepchildren."
[12] Because we exclude all of a respondent's adoptive children from the definition of a "stepchildren," we exclude by any child of a spouse or partner whom a respondent has legally adopted.

of inheritance by a stepchild remote. Some states refer vaguely to "kin" or "kindred."[13] Others specify numerical degrees of relatedness.[14] Still others identify descendants of the decedent's grandparents[15] or great grandparents.[16] If a decedent has at least one member of her extended family living at the time of a decedent's death, a marital stepchild receives nothing. In Missouri, for instance, a stepchild receives nothing if a decedent has at least one living third cousin once removed. Nonmarital stepchildren fare even worse. They receive nothing in any state under any conditions, regardless of whether the decedent has any living relatives.

Our respondents are more generous than these defaults. Table 3 summarizes the results. The table divides its columns into separate groups for marital and nonmarital stepchildren. The left group presents gifts when a respondent cohabitates (i.e., lives together) in a nonmarital relationship with the parent of the nonmarital stepchildren; the right group presents gifts when a respondent is married to the parent of the marital stepchildren. Within the marital and nonmarital groups, Table 3 divides further between gifts to a respondent's own legal children and the respondent's stepchildren. The rows further separate respondents who have their own legal children from those who have only stepchildren. All respondents in the table have at least one stepchild. As in the other tables, the results are weighted for mortality risk.

Crucially, the percentages in the table represent gifts on a *per capita* basis, not on a *total* basis. We take the total percentage that a respondent allocates to all children in a given category and then divide it by the number of children in that category. This technique normalizes the size of the gift by the number of children in each category to ensure that the results are not distorted by systematic differences in the number of legal children and stepchildren. If a respondent has three stepchildren and allocates 10% of her estate to each of them, the stepchild cell in Table 2 would report 10%, to reflect the gift per capita, rather than 30%, which would reflect the total gift. As in our other tables, these data present gifts in the absence of a spouse, which is the only scenario in which a stepchild ever inherits under state law and the only one in which a gift to a

[13] E.g., Va. Code Ann. § 64.2-200 (West 2022); Conn. Gen. Stat. Ann. § 45a-439 (West 2022).
[14] E.g., Mo. Ann. Stat. § 474.010 (West 2022); Ga. Code Ann. § 53-2-1 (West 2022).
[15] E.g., N.J. Stat. Ann. § 3B:5-4 (West 2022); N.M. Stat. Ann. § 45-2-103 (West 2022); Utah Code Ann. § 75-2-103 (West 2022).
[16] E.g., Md. Code Ann., Est. & Trusts § 3-104 (West 2022); Iowa Code Ann. § 633.219 (West 2022); Ark. Code Ann. § 28-9-214 (West 2022).

stepchild is realistically likely. When a spouse is still living, most decedents likely prefer the spouse over the spouse's children.

Table 3. Per Capita Gifts to Stepchildren and Own Children, Married and Cohabiting Respondents, Assuming No Gift to Spouse/Partner (Mortality Weighted)

	Gifts to Stepchildren and Own Children					
	Cohabitating			Married		
	Partner's Children	Own Children	N	Spouse's Children	Own Children	N
Respondent has no children	15.7	-	112	29.7	-	126
Respondent has children	8.2	30.0	193	13.2	25.7	590

Table 3 offers several insights. First, people are much more generous to their stepchildren than one might expect. When respondents lack spouses and legal children, as they do in our Table 3, the average gift per capita to each marital stepchild is 29.7%. Against the background of the intestacy rules that almost always grants a stepchild nothing, this level of generosity is remarkable. It becomes even more remarkable once we remember that the gifts in Table 3 include only the numbers per capita. The total gifts may be much higher when a decedent has more than one stepchild. If a respondent has two stepchildren and no legal children of her own, the total amount going to the stepchildren on average would be 60.4%—more than half of the respondent's estate.

A second insight is that people are more generous to marital stepchildren than nonmarital stepchildren. This is unsurprising. As we saw in our first paper, marriage is a stronger bond than nonmarital romantic commitment and the character of that bond appears to spill over to children.

Third, people prefer their legal children over their stepchildren and they are more than twice as generous to their stepchildren when they have no legal children to compete with the stepchildren. For marital stepchildren, the average gift per capita is 13.2% among respondents who have legal children of their own and 29.7% among respondents who do not have legal children. The difference is similar for nonmarital stepchildren.

To discern the motives that drive giving to stepchildren, we asked respondents whether they had ever lived with their stepchildren. Our hypothesis was that the experience of living together would produce a more conventional parent-child bond and motivate greater giving. The experience of living together may also be associated with the formation of stepparent-stepchild relationships at younger ages, which may also encourage stronger bonds. (Kalmijn, 2021; King, 2006). Table 4 displays the results. Like our other tables, the data in Table 4 are weighted for mortality risk and are taken from the question that asked a respondent to assume her spouse or partner had predeceased her. Table 4 includes only married respondents.

Table 4. Average Gift to Marital Stepchildren, Assuming No Gift to Spouse (Mortality Weighted)

	Average Gift (% of Assets)	N
Never Lived with Stepchildren	9.9	239
Lived with Stepchildren	19.7	472

Table 4 confirms our intuition. It shows that among respondents who had lived with their marital stepchildren, the average per capita gift was nearly 20%—much higher than the 9% average per capita gift among stepparents who had not lived with their stepchildren. Although no state intestacy law considers whether a stepparent and stepchild have lived together in the calculation of intestacy shares, one could imagine the law doing so. And this result suggests the importance of personal attachment, as distinct from blood relations, in motivating gifts to stepchildren. People give to stepchildren to whom they feel close.

We also attempted to compare how our respondents prioritized stepchildren relative to parents and siblings. This comparison is most meaningful when a respondent has no legal children. Otherwise, as Table 2 showed, the legal children tend to soak up the bulk of the estate. After we restrict the sample to respondents who have marital stepchildren but have no legal children of their own, the sample becomes fairly small—81 respondents. When we then further divide these 81 respondents based on whether they have siblings and parents living, the numbers become too small to reach confident conclusions. Even a sample of 9,000 is not large enough to confidently support a division into subsamples this granular. Still, for what it may be worth, we offer Table 5.

Table 5. Average Total Gifts to All Stepchildren, Parents, and Siblings, Respondents without Descendants, Assuming Spouse has Predeceased

	Stepchildren	Siblings	Parents	N
Parents and Siblings Living	40.8	7.2	10.5	36
Siblings but No Parents Living	30.7	15.7	-	32
Parents but No Siblings Living	36.7	-	30.7	14

Although the samples are small, the results in Table 5 are consistent and clear: people prefer their stepchildren to their parents and siblings and probably to other types of beneficiaries as well. We note that the amounts going to stepchildren in these analyses appear larger than the amounts in Table 4 because Table 4 reports only gifts to each stepchild per capita, whereas Table 5 reports gifts to all stepchildren in total.

5. Discussion

Our results offer several insights for both social science and the law. The first is that the law's preference for children in the absence of spouses and partners is well placed. As Table 2 indicates, when we ask respondents with children to assume the death or absence of their spouses and partners, they strongly tend to give the bulk of their estates to the children.

A second insight is that people are surprisingly generous to their stepchildren. Our respondents prefer their stepchildren over every type of beneficiary other than their spouses and their own legal children. When a respondent has marital stepchildren, but no living spouse or children, she tends to give on average nearly 30% of her estate to each stepchild—an amount that can add up to a very large stake when the respondent has more than one stepchild. We also identify some factors that predict generosity to stepchildren. A respondent is most generous when she has no biological or adoptive children of her own, when she relates to a stepchild through marriage rather than a nonmarital relationship, and when has had the experience of living with the stepchild. These results are consistent with prior studies of stepfamilies, which find that stepchild-stepparent bonds tend to be closest when they begin when children are still young and when stepparents and stepchildren have had some experience of living together. (Kalmijn, 2021; King, 2006).

Our results suggest possible need for reform of intestacy law. As explained above, intestacy laws almost always give a stepchild nothing. Though this treatment may still be warranted for nonmarital stepchildren, marital stepchildren may deserve a place in line. They should cleary not take on the same terms as legal and biological children. But there is a case to be made that they should sometimes take ahead of parents and siblings and an even stronger case that they should take ahead of grandparents, aunts, uncles, cousins, and other extended family. The law might also personalize the default rules around stepchildren by moving stepchildren up in line when circumstances predict a strong parental bond, such as when a relationship began when a stepchild was young, or the stepparent and stepchild lived together for a time in a manner resembling a parent and child. We note that others have also called for greater inheritance for stepchildren on grounds of theory and policy. (Gary, 2000; Gary, 2002; Hanson, 1995).

A third insight is that our respondents are surprisingly generous to siblings as compared to parents. As explained above, when a decedent has both parents and siblings living, no state intestacy law grants the siblings anything. In the absence of a spouse or child, parents take everything. Our results show that this outcome is clearly inconsistent with our respondents' preferences. In Figure 2, our respondents treat parents and siblings almost identically and in Table 2, they slightly prefer siblings. We do not know why our respondents are so generous to siblings, but the basic fact of their generosity is clear, making the law's overwhelming preference for parents hard to defend. We note that others have also called for diminishing the priority of parents over siblings (Scalise, 2006).

One might argue that popular preferences are not the only relevant factor in intestacy law. Perhaps a parent is a better recipient than a sibling because the parent can allocate the assets as appropriate among the decedent's siblings either during her remaining lifetime or when she passes away. In other words, the parent's can exercise some of the benefits of what trust and estate law calls a "power of appointment." Such an arrangement preserves flexibility, allowing the parent to choose which siblings are most needy or deserving. This arrangement may be even be consistent with what a majority of people would want if they had the benefit of sophisticated legal advice that could help them understand its logic.

This "power of appointment" argument has limits, however. Though a parent may choose pass assets inherited from a child on to the child's siblings, the parent may also choose to retain and consume the assets for herself. Granting assets to parents thus gives them financial and emotional power over siblings and slows the movement of resources to younger—and possibly needier—generations. And in any case, granting assets 100% to parents is clearly at odds with what the public has said through our survey. Even if granting parents a sort of power of appointment is good policy, it does not have much to do with what people say they want.

A final insight is that people are surprisingly generous to extended family and nonrelatives as compared to close relatives. Respondents who have no living parents, siblings, or children prefer to give the bulk of their estates—about 65%—to friends and charities rather than their other relatives. And even when people have siblings and parents still living (but no spouses or children), they often reach past their parents and siblings, giving nearly half of their estates to other relatives and nonrelatives.

The generosity we see toward extended family and nonfamily raises fascinating questions for social science. We might read it as evidence that when people have no spouses, partners, or children, their giving tends to be motivated by personal affinity rather than blood ties. That is, they give to the people to whom they have the strongest personal connections rather than the people with whom they share the most ancestry. It may be worth exploring whether this tendency is more pronounced among Black and Hispanic Americans, who are more likely to share resources and maintain stronger bonds with extended family than non-Hispanic Whites. (Reyes, 2018; Hurst, 2022).

6. Conclusion

Our study offers the first evidence on many of the most difficult questions in the law of intestacy and the social science of inheritance. We provide the first representative and reliable view into patterns of giving among many unconventional families and uncommon beneficiaries, such as parents, siblings, extended family, and stepchildren. Our evidence makes clear, among other things, that people prefer to share much more with their siblings and their stepchildren than previously believed.

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