Charities as Heirs

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Date : December 9, 2024

Adam J. Hirsch, *Beyond Privity of Blood: Intestacy and Charity*, 76 **UC L.J.** __ (forthcoming, 2025), available at SSRN (March 16, 2024).

Adam Hirsch's new article, *Beyond Privity of Blood: Intestacy and Clarity*, argues that intestacy statutes should sometimes give a share of the decedent's property to charity. To be honest, when I read his abstract, I found the idea far-fetched. But Professor Hirsch is one of the most-cited scholars in the field for a reason. By the time I'd finished scrolling through his draft, I'd seen the appeal of his creative thesis.

Calls for intestacy reform are common. Some authors have suggested that intestacy laws, which typically favor spouses and children, no longer reflect what most decedents want. Others have explored the idea of "personalizing" distributions based on factors such as the decedent's gender, age, or lifestyle choices. Both proposals urge lawmakers to use empirical evidence to update the rudimentary assumptions that underlie intestacy regimes.

Professor Hirsch takes this debate in a surprising new direction. He starts with a great hook: if intestacy laws are supposed to carry out decedents' preferences, and testators often leave money to charity, why don't intestacy statutes follow suit? He then argues that policymakers should consider allocating a portion of the estate to a charity when a decedent fits one or more of the following descriptions: they were (1) wealthy, (2) had no kids, (3) donated to charities during life, or (4) left no known relatives.

Professor Hirsch supports these claims with findings from surveys of dispositive preferences. For example, tax data reveals that, at least in some years, testators worth at least $20,000,000 gave a staggering average of 49% of their property to charity. Likewise, the Health and Retirement Study, which polls 20,000 Americans, reported that nearly half of all respondents aged 55 or over who owned $1,276,500 or more and had no children made charitable bequests. In the same vein, researchers discovered that 50% of childless individuals who'd recently donated $500 or more to charities also named charities as beneficiaries in their wills. And finally, a 2018 Qualtrics study determined that a healthy plurality of people making over $100,000 per year would rather that charities inherited their assets than friends or distant kin. This data supports the counterintuitive conclusion that, for intestate decedents in Professor Hirsch's four cohorts, allocating a share to charity would be majoritarian.

So how would the probate court select charities? Professor Hirsch's ideas here are especially imaginative. He explains that people typically give to the same causes throughout their life. Thus, he proposes delegating the task of identifying which charities should be heirs to the administrator of the estate, who, after all, is already duty-bound to pore over the decedent's finances.

Professor Hirsch also observes that there is precedent for permitting charities to be intestate heirs. He notes that twenty-eight American jurisdictions transmit escheated property to benevolent institutions. Some states even tailor these rules to specific decedents: for instance, Massachusetts provides that escheated property left by certain servicemembers flow to state-operated veterans' homes. Accordingly, his proposal would be less of a departure than it first seems.

Finally, Professor Hirsch observes that states once excluded nonmarital children, “half-blooded” siblings, and even widows. Thus, as he puts it, “[c]haritable heirs could be only the beginning.”

Editor’s note: Reviewers choose what to review without input from Section Editors. Jotwell Trusts & Estates Section Editor Adam Hirsch had no role in the editing of this article.

Cite as: David Horton, *Charities as Heirs*, JOTWELL (December 9, 2024) (reviewing Adam J. Hirsch, *Beyond Privity of Blood: Intestacy and Charity*, 76 **UC L.J.** __ (forthcoming, 2025), available at SSRN (March 16, 2024)), https://trustest.jotwell.com/charities-as-heirs/.