The Bereaved Should Not Be Preyed Upon: Can the Tax System Help?

Author : Neil H. Buchanan

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Victoria J. Haneman, *Tax Incentives for Green Burial*, __ **Nev. L.J.** __ (forthcoming, 2020), available at SSRN.

Dealing with the death of a loved one is one of the most stressful and debilitating experiences in most people's lives. As Victoria J. Haneman summarizes some key empirical insights:

> "After a major loss, such as the death of a spouse or child, a third of survivors will suffer detrimental physical or mental health issues. One-quarter of surviving spouses will suffer clinical depression or anxiety within the first year of loss. Grief is frequently accompanied by weight loss, anxiety, despair, hypnagogic hallucinations, temporarily impaired immune response, disorganization, and/or disorientation." (P. 41.)

Setting aside the emotional turmoil, how do Americans deal with the practical side of these inevitable events? Not well at all. Vulnerable people are always the target of unscrupulous grifters – such as Ryan O'Neal's character in the classic film "Paper Moon," who exploits grieving widows in the Depression-era Midwest – but the bigger problem is that the nominally legitimate "death industry" (in Haneman's preferred turn of phrase) has at best a mixed record, often overcharging and upselling stunned family members who have much more important matters on their minds.

This article by Haneman on "green burial" will soon be joined by a companion article on "funeral poverty." She is doing important work on an underexplored area in which tax policy might have a surprisingly important role to play in protecting families from predators. I highly recommend her engaging and well written work.

In 1963, the muckraking journalist Jessica Mitford published *The American Way of Death*, which she revised and updated prior to her death, with *The American Way of Death Revisited* being published posthumously in 2000. Mitford's searing expose of the relentless and merciless emotional manipulation of devastated people in the pursuit of profit is unfortunately not of merely historical interest, despite a round of consumer protection regulations issued by the Federal Trade Commission in 1982. As Haneman notes, this manipulation continues to be a severe problem to this day.

This is a problem with a surprisingly simple economic explanation. To be clear, even though I am an economist, I am in no way saying that all social problems have simple economic explanations. People with training in economics (from a single college course up through a Ph.D.) almost cannot help but start to believe in the reductive view that human behavior can ultimately be explained by a simple textbook model of economics. That is emphatically not true.

Even so, there are some situations in which a basic economics-based insight goes a long way. And when a standard assumption of textbook economics is *not* met, there is often something important to be learned. Indeed, the entire field of health economics arguably cannot be understood by anyone who does not know that textbook economics assumes "perfect information" by consumers but that real-

world consumers are severely lacking in the necessary information to make savvy decisions about medical care and insurance purchases.

In the standard economic model – an approach that in its basic set of assumptions mirrors the rigid approach of formalist contract theory in law – potential buyers protect their own interests by informing themselves about the goods that they might buy (quality, price, alternatives, and so on). Crucially, walking away from the deal is assumed to be an option.

When is that assumption that buyers protect themselves least likely to be true? One example is when a person has fallen ill and is in an ambulance, when the last thing in the world they might be capable of doing is to negotiate and threaten to go to a different seller. Even a basic question like, “Which hospital do you want to go to?” – a question that could significantly change the costs to the consumer of the care that she receives – might be met with a blank stare (if, indeed, the patient is conscious at all). Because of this, good health care economists understand that the usual appeals to “market discipline” from other areas of economic analysis ring especially hollow when it comes to people supposedly engaged in bargaining for their medical treatment. Such patients are, to be blunt, sitting ducks.

If “When you might be dying” is the answer to the question, “What is the time when you are least likely to make a smart economic decision?” perhaps the next-worst time would be, “Right after someone you love has died.” This is what explains so much of what goes into Mitford’s books, which exposed high-pressure techniques that we generally associate with used-car salespeople being brought to bear on emotionally raw survivors. “Surely, you wouldn’t want to put your dad into a cheap casket. Here’s our most *comfortable* version. He would have liked that, wouldn’t he?”

Much of Haneman’s article focuses on how those decisions push people into making terrible decisions about the disposal of human bodies, where the harm is not just to the finances of the surviving family but to the environment. As she shows, the overwhelmingly most popular options of burial and cremation are surprisingly damaging to the planet:

> “Annually, in the 22,500 cemeteries in the United States, it is estimated that the following will be buried within the earth: 14,000 tons of steel vaults; 90,272 tons of steel caskets, 2,700 tons of bronze and copper caskets, 1,636,000 tons of concrete vaults, 30 million board feet of hardwood caskets, and, 827,060 gallons of embalming fluid. These statistics do not include the mercury from dental fillings and medical devices such as pacemakers, which may potentially leach into groundwater after human remains have decomposed.” (Pp. 22-23.)

A central argument of Haneman’s article is that this kind of environmental damage could be mitigated by a “green tax credit,” which she describes and defends well. My interest here, however, is not in the direct impact of the credit in generating environmental benefits – although that is surely a worthy goal – but in the point that she makes about how the creation of a credit could have an important ancillary effect of reducing people’s vulnerability to exploitation at the time of a loved one’s death.

Haneman ends the article by arguing that a green tax credit “is likely to generate consumer interest and investment into the creation of more accessible financial products to facilitate prepayment” of funeral expenses (P. 42), which ties back to her description of “the importance of pre-need or pre-death planning and prepayment to protect the grieving consumer.” (P. 4.)

In short, the idea is that creating a tax credit for “green burial” will give people an additional reason to think in advance about funeral planning, which people are understandably not eager to think about. That is, no matter whether the tax credit has any environmental benefits at all, some people will hear

that there is a tax boon available to those who set up a funeral plan in advance. That might not convince everyone to stop living in denial, but even if it encourages a few more people to take what amount to defensive measures against emotional exploitation, that would be a very good thing indeed.

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