Why Granny's Estate Is Not Yours: Justifying An Inheritance Tax From A Libertarian Perspective.

Le Goff, Corentine, Léa

Bachelor Thesis:

B.Sc. International Relations and Organizations

Why Granny's Estate Is Not Yours: Justifying An Inheritance Tax From A Libertarian Perspective.

Corentine Le Goff

s2459353

Supervisor: Josette Daemen

word count: 7997

Abstract

Many of us, in liberal societies, hold the practice of inheritance to be sacrosanct, and attempts to tax wealth transfers from one generation to the next are, therefore, often viewed negatively. In fact, it is often quickly assumed that the right to bequeath is entailed by the possession of a property title. Rather unsurprisingly, then, many on the right fringes of the libertarian school —i.e. the philosophical tradition dedicated to justifying strong property rights *par excellence* — have argued that an inheritance tax cannot be justified. Nonetheless, others working within a left-libertarian framework have also made great strides in challenging the assumption that a right to bequest is an integral part of private property rights. Working from these insights on the impermissibility of bequest, and emphasizing the autonomy-conferring purpose of property rights, this thesis argues in favor of the justifiability of inheritance taxation. Indeed, the crux of this essay revolves around the contention that libertarian authors fail to acknowledge autonomy as the rationale that grounds the bundle of rights which they defend, which makes them more easily oblivious to the fundamentally objectionable nature of a supposed "right" to bequeath. Furthermore, it is this right to autonomous living which ultimately predicates the justifiability of an inheritance tax as representing enforceable claims to the practice of private property.

Table of Contents

1. INTRODUCTION

It seems likely that few would refute the statement that our contemporary era has been marked by agitated debates about socioeconomic inequalities. While the urgency of other political issues may sometime overshadow such debates, they never fully disappear and often come back —sometimes violently— to the forefront of the political agenda. Indeed an illustrating example is France in 2018: as the country was still grappling with the security threats posed by terrorist groups, that year was marked by the Yellow Vests movement whose core demands centered around the idea of "socioeconomic justice". When considering the case of wealth inequalities, one may naturally be drawn to evaluating the role of income disparities, however, of no less importance —if not more relevant— are disparities in intergenerational wealth transfers. Studies have shown that inheritance —or the lack thereof — is a crucial determinant in one's likelihood of being part of, and remaining in, the most disadvantaged group of society (Morelli et al., 2021). Several scholars have therefore embraced the position that this situation is problematic. One of these prominent figures trying to "remedy" this problem is Thomas Piketty (2022). The economist proposes the adoption of a system of inheritance redistribution which would grant every citizen of France a minimal inheritance, a scheme that would notably be funded by a high progressive tax on bequests (p. 160). However his forward-thinking idea is far from being popular; as a matter of fact few support such an idea, and eight out of ten French persons even desire a diminution of the current rate of taxation on inherited wealth (Couet, 2022). Indeed, an overwhelming amount of people hold that it is "just for parents to transfer as much as possible to their relatives" (ibid.), thereby probing the question: is an inheritance tax, such as the one sketched above, justified?

Within the academic landscape on questions of justice, the space devoted to inheritance and bequest as phenomena demanding particular attention has been notably small (Halliday, 2018, p. 17). Such questions about inheritance and bequest tend to appear merely as points of interest within an overarching theory about income redistribution. To the extent that these phenomena have been explored, it appears that libertarian theories have engaged more easily than other theories with this topic —although the breadth of this analytical inquiry should not be overstated (pp. 161-162). Yet, it appears that in virtue of that school of

thought's insistence on property rights (Vallentyne, 2010), libertarianism is more amenable to discussing the legitimacy of certain types of property transfers, among which bequest may figure prominently. Admittedly, libertarianism is most often identified with its right-wing strand, leading to the somewhat misleading idea that all libertarians would give the same answer about the justness of an inheritance tax: if individuals hold property rights in something, then they are entitled to dispose of it as they wish, without interference from anyone (Waldron, 2020), and this includes bequeathing the above-mentioned property to their heir. Thus, *prima facie*, an inheritance tax appears to violate the property rights of individuals. However, if libertarianism's focus is on individual freedom, one has to grapple with the fact that full private ownership over an item—thereby allowing the owner to exclude others at will— essentially limits the freedom of everyone else to use it in ways that might be relevant to their plan of life. It is therefore no small contention to argue that private ownership may exist, without much consideration for the opportunity cost that this represents for others' freedom.

Among the authors that inspired both right- and left-libertarians, John Locke (2016) holds a particular place. Indeed, the thinker is known for having formulated the "labour argument" —i.e. one can acquire a property in an object by mixing one's labour with it— to which he added the stipulation that this can be so *only* if they leave "*enough and as good*" (p. 136) for others to do the same. Interestingly, some right-libertarians have interpreted this "Lockean proviso" in a rather lax way, as illustrated by Robert Nozick's (1974) contention that so long as there is the possibility that others use the property —with the consent of the owner— then this proviso can be considered to be satisfied (p. 176). However, some may remain quite unsatisfied with that statement, failing to see how use still guarantees the freedom to follow one's plan of life as they wish —i.e. not conditioned by the will of the actual owner of the property.

Key to our discussion of property rights and their transferability then hinges upon different interpretations of the Lockean proviso. Similarly to right-libertarianism, left-libertarianism puts a prime emphasis on the idea that we own ourselves and are entitled (at least to some extent) to the fruits of our labour (Vallentyne, 2000, p. 2) but this right is constrained by the fact that we are only free to acquire a limited share of the resources of the Earth (Steiner, 2000; Otsuka, 2000). It therefore appears that this branch of libertarianism

interprets the Lockean proviso more stringently. So far so good, but one may wonder where bequest and inheritance figure in this discussion. Steiner (2000) notably maintains that earthly resources ought to be viewed as common holdings to which each is entitled to a an equal share, and what is more, since death marks the end of this entitlement, the belongings of the deceased ought to re-join the pool of common resources (p. 95). In this context, an inheritance tax —even reaching a hundred percent— would appear to be a requirement of justice as a mechanism for equalizing natural resources between persons.

Consequently, the aim of the present research is to evaluate the justice of different ideas about inheritance transfers within the libertarian framework. Indeed, the debate may be re-cast as opposing those who favour inheritance transfers between relatives and those who argue that inheritance in effect should be redistributed across society by means of taxation. Thus, this bachelor thesis shall attempt to answer the question: *should libertarians favour an inheritance tax?*

In order to set the scene of the discussion, the subsequent chapter shall ask what ideals are embodied by libertarianism and what is entailed by the notion of property rights. Having explored some of the dimensions of the notion of private property, chapter 3 shall probe the question of how one can gain a property right in something, and how that account can be compatible with bequest. Mirroring the chapter that precedes it, chapter 4 shall explore the opposite question, that is, how an account of property-right acquisition can deny someone the right to bequeath to their chosen heir. Finally, chapter 5 will address the question of the justifiability of an inheritance tax in a more forward manner. Indeed, the beginning of the fifth section of this thesis shall be dedicated to a critical evaluation of both the right- and left-libertarian positions, which will enable me to argue that the libertarian commitment to property rights is ultimately motivated by a concern for the protection of individuals' autonomy. Doing so will make evident the incongruity of bequest transfers, thereby permitting me to continue ahead with a vindication of inheritance taxation as falling within the realm of permissible state action.

Importantly, this discussion shall be limited to Lockean-inspired conceptions of libertarianism. While not all libertarians subscribe to Locke's ideas, for the purpose of this research I shall concentrate on arguments that are not contradictory to this view. Indeed, due

to Locke's influence on the property-rights discussion, his theory appears to be an appropriate starting point.

2. A CLARIFICATION: LIBERTARIANISM AND PROPERTY RIGHTS

First, it might be good to remind ourselves what the key pillars of libertarianism are — regardless of one's endorsement of right- or left-libertarianism. To some extent one would not be completely off to assume that libertarianism seeks to maximize liberty for all individuals, but that would not be exactly true to the picture. Rather, it holds individuals to each have a "separate free standing importance", which entails certain rights that enable one to pursue their own ends, but also includes right-correlative restrictions with regard to others so that each enjoys the same relevant freedoms (Mack, 2009, pp. 121-122). Thus, one has a fundamental right to self-ownership but this surely does not mean that one is entitled to indulge every and any whims that might involve using others against their will (Vallentyne, 2010). Ultimately, what one is truly entitled to is the right to control what is done with one's own body, as well as acquiring property in external things (ibid). As alluded to, then, both right- and left-libertarianism view self-ownership to be a fundamental tenet; rather, the dissension occurs with regard to the types of property rights that one may hold in external objects.

It appears then that property rights enjoy a special position within libertarianism, but one might wonder what exactly is entailed by the concept of property, and how one might acquire a right to it. Property refers to "the rules that govern people's access to and control of things like land, natural resources, the means of production, manufactured goods, […]" whose purpose is to help manage conflict within societies (Waldron, 2020). Crucially, property is not necessarily synonymous with *private* property, the latter only being one instance of the former and involving the use of external objects and the power to exclude others from such use (ibid). Many philosophers have suggested that private property may be necessary for individuals to thrive, hence the special emphasis given to it within libertarianism most notably. Yet, despite fervent supporters, the notion of private property has not remained uncontested, and the rights entailed by it —e.g. an enforceable right to exclude others from use and management— are in constant need of justification as a consequence of their lack of sensitivity to others' needs for (scarce) resources, and the fact that public *force* may be deployed to enforce one's entitlement to objects of different natures (ibid).

Among the different accounts of the coming about of private property, Locke's surely stands as one of the most prominent ones —if not, the most (Waldron, 2020)— which is why we now turn to his discussion of the topic. In the fifth chapter of his Second Treatise, titled "Of Property", Locke (2016) starts off by asserting that God gave the Earth to mankind in common, and that "nobody has originally a private dominion, exclusive of the rest of mankind, in any [of the fruits of nature]" (p. 134). While such a claim may appear contradictory to the notion of private property, his aim is precisely to show how property may legitimately be acquired despite the fact of original common ownership of the world, and why the acquisition of such property need not require the consent of others (ibid). To begin with, while God "gave the world in common to all mankind", He also "commanded man […] to labour" (p. 137); the rationale being that for the commons to be of any use, appropriation must be in order, and a human's labour is what renders this annexation possible in virtue of the added value produced by the work upon the object (pp. 134-135). There is indeed much emphasis in the text on the fact that one owns their person, meaning that they must own the labour of their body (p. 35). From this flows this idea that through the exertion of oneself upon resources, one removes them from the state of nature and thereby acquires property in them (Ibid).

This may be well, but one may still wonder about the moral weight of the original common ownership condition. Locke's answer to this would be that consensus upon the use of the commons would be unfeasible, and that striving to achieve it would prevent us from actually using the resources that God has given us —precisely for us to work upon (ibid). However, no one is entitled to "engross [themselves] as much as [they] will" (p. 136), one must not acquire to the point that one's property spoils, and there must remain "enough and as good left […] for he that leaves as much as another can make use of, does as good as take nothing at all" (p. 137).

A key point of friction within libertarianism is notably raised by the interpretation of Locke's assertion that one may only appropriate external resources so long as there remains "enough and as good" (ibid) left for others. Indeed, most probably owing to the ambiguity of this short turn of phrase, much as has been said about what is actually entailed by what has come to be known as the Lockean proviso, despite finding little agreement on the final say. Admittedly, this has fueled the dispute over the justifiability of *full* private property rights —

while right-libertarianism tends to affirm that there are few restrictions on what can be done with one's property, left-libertarians are rather of the opinion that questions of equality restrict one's enjoyment of it. In fact, the basic definition of private property —i.e. that one possesses the liberty to use and manage a property as they wish, to the exclusion of others— allows for much leeway in its precise application. Indeed, one could imagine that there may be a number of constraints —such as time, legitimate conditions of transfers, acceptable size of one's holdings— which would not, per se, rid the notion of private property of its essence, but rather, define the appropriate framework within which this right may be practiced. These observations should prompt us to ask whether bequest falls within or outside the said appropriate framework, and whether inheritance taxation, as a consequence, can be construed as a justified practice within a private property regime.

3. RIGHT-LIBERTARIANISM, OR THE COMPATIBILITY BETWEEN PROPERTY RIGHTS AND BEQUEST

"Why would you be entitled to bequeath your property to your chosen heir ?" is certainly an inquiry of value to right-libertarians, and Robert Nozick's, Murray Rothbard's and Eric Mack's Lockean-inspired accounts of private property rights surely claim to provide the grounds for giving a positive answer to this question. However, let us first review how exactly Nozick, Rothbard, and Mack believe an individual can acquire a property right in something.

Arguably, there is much emphasis within right-libertarianism on labour-activities as conferring a property title in certain assets. Libertarianism's key axiom being a right against interference entailing a right to self-ownership, it is seen as logical that one's labour —involving the exertion of one's inviolable body upon objects— should give rise to property rights. As Nozick (1974) puts it, "ownership seeps over into the rest" (p. 175), meaning that one's ownership over one's body comes to "taint" the object thereby worked upon. However, nowhere is the importance of the so-called "labour argument" better exemplified than in Rothbard's (2000) text where the "enough and as good" proviso that is supposed to accompany the argument is effectively treated as being non-existent. On the other hand, while Mack (1990) also identifies labour as being a mechanism conferring property titles, his endeavour is slightly different from that of the other two authors. While Nozick and Rothbard's theories establish the right to property as stemming from the fact of self-ownership, Mack's attempt is to show that a right to property is actually derived from a prior right to pursue one's valuable ends —which also grounds the right to self-ownership— rather than being a direct consequence of the right to own oneself (p. 533). In doing this, Mack attempts to provide a broader framework to the right to private property, one that would not be restricted to ad hoc instances of labour-mixing activities —as might be the case with "standard" Lockean theories.

In fact, I would like to suggest that it is this representation of the individual as the maker of her own destiny —i.e. as an autonomous actor— which ultimately drives libertarian thinking on the topic of property rights in general. Without ever explicitly naming it, Mack's (2009; 1995; 1990) work indeed shows the notion of autonomy to be of prime importance by

tacitly admitting that it grounds the very notion of private property (Mack, 1990, pp. 532-533); which, upon reflection should not be so surprising. Indeed, considering the doctrine's emphasis on individual rights, coupled with the view that the function of rights is to "confer autonomy and control on the rightholder" (Martin, 2013, p. 4623), this emphasis appears to be perfectly appropriate. Thus, one would not be misguided in assuming that libertarians —like the authors under scrutiny in this section— are ultimately concerned with the notion of autonomy, since they hold dear to their hearts the very prototypical tool that protects one's autonomy: individual rights. Hence, terms such as "end-in-himself" (Mack, 1990, p. 521), "end-in-themselves" (Mack, 1995, p. 199), or "kindred right protective of the individual in his life and liberty" (Mack, 1990, p. 523), can be interpreted as suggesting that the value of any right —and in particular, the right to property— resides in the fact that it guarantees one's ability to pursue their own conception of the good —that is, to live one's life autonomously.

Additionally, there are indications that both Nozick (1974) and Rothbard (2000) recognize the autonomy-conferring value of property rights. Indeed, Nozick's (1974) talk of "having a right to decide what would become of himself and what he would do" (p. 171) is reminiscent of the idea of having a right to pursue one's conception of the good. Furthermore, it can be argued that by mentioning that private property enables some to liberate themselves from relying on others —by supplying individuals with "alternate sources of employment", or the possibility to make their own choices when it comes to investment and research (p. 177)—, he is implicitly recognizing that private property is key to the realization of one's own plan of life. As for Rothbard (2000), mentions of "act[ing] purposively" as well as "flourish[ing]" (p. 219) in relations to the right to "[grapple] with the earth" is a more explicit avowal that what stands at the heart of the labour-argument is the notion of autonomy.

Another point that seems to fetch broad consensus among this panel of authors is the idea that having a property in an object or land entails having the right to transfer it as one wishes. Thus, all view bequest a completely justifiable practice (Nozick, 1974, p. 157, p. 168; Rothbard, 2000, p. 227; Mack, 1990, p. 526). This line of thought seems to fit within a broader critique of egalitarian theories that are "receiver" oriented —by redistributing everyone's riches to the worst-off—, compared to right-libertarian theories which are said to be more "giver" oriented (Nozick, 1974, p. 168). In that sense, it appears that bequest is seen

as a special instance of gift-giving. Similarly, Rothbard has explicitly argued that since leaving one's property to one's offspring can figure as a great source of motivation in one's life —i.e. being a key element of their conception of the good—, there is no question that bequest ought to be just (Pederson, 2018).

In conclusion, for these right-libertarian authors, to establish that one has a right to own property naturally entails that the owner gains control over the object and may now decide what is to be done with it, including who shall take over the property title after they, themselves, have passed.

4. LEFT-LIBERTARIANISM, OR THE *IN*COMPATIBILITY BETWEEN PROPERTY RIGHTS AND BEQUEST

After having reviewed the right-libertarian position that sustains that an account of property rights should include the permissibility of bequest, one might be tempted to believe that our property should indeed go to our cherished heir at the time of our death. However, a critical look at Hillel Steiner's (2000) and Michael Otsuka's (2000) texts may invite the reader to cast a doubt on the justness of such a practice.

Despite the starkly different conclusions that these left-libertarians reach compared to Nozick, Rothbard and Mack, they too follow a Lockean account of property rights. That is, both Steiner and Otsuka view the activity of labour as giving rise to ownership titles in worldly resources through the expansion of one's self-owned body onto material objects (Steiner, 2000, p. 77; Otsuka, 2000, p. 157). However, Steiner's and Otsuka's Lockean accounts start taking a sharp turn from those of the right-libertarians once they investigate the conditions that the "enough and as good" proviso places upon acquisition and transfers of property. Indeed, both authors have a strict equalitarian interpretation of the stipulation that there must remain enough and as good for others to also acquire (Locke, 2016, p. 137). For Steiner (2000), this proviso means that "We are entitled to an equal share of (at least) raw natural resources" and that "Mixing our labour with more than this share constitutes a relinquishment of our titles to that labour" (p. 78). As for Otsuka (2000), his paper is dedicated to demonstrating the possible union between egalitarianism and libertarianism (p. 150), and he puts forward a reinterpretation of Locke's proviso —which he dubs the "egalitarian proviso"— claiming that you "may acquire previously unowned worldly resources if and only you leave enough so that everyone else can acquire an equally good share of unowned worldly resources" where "equally good share" is understood as entailing a "metrics of equality" (pp. 157-158). Furthermore, both authors draw inspiration from the egalitarian school of thought: Otsuka (2000) believes his proviso to be particularly suited for a conception of equality as welfare (p. 158), while Steiner (2000) subscribes to luck-egalitarian beliefs (p. 108).

Both Steiner and Otsuka are also committed to the notion of self-ownership, and the two spend a significant amount of time dissecting it. Indeed, Steiner (2000) ponders how our

children might be self-owners themselves when they are the produce of two self-owners, i.e. their parents (p. 79). As for Otsuka (2000), he argues for a strong —albeit less than full— self-ownership right that would not "prohibit unintentional incursions on one's body" (p. 152) in order to avoid some of the "fanaticism" (p. 150) associated with self-ownership. Interestingly, both authors identify a fundamental shortcoming in the standard definition of self-ownership, namely the fact that it fails to account for the human necessity to interact with objects external to one's body. Indeed, both Steiner and Otsuka argue that for the standard conception of self-ownership to be any value to living individuals, it should be supplied with a right to material objects —i.e. a right to property (Steiner, 2000, p. 78; Otsuka, 2000, p. 161). This line of reasoning is not without reminding us of Mack's (1995) own point that a self-ownership right had to be supplemented with a right to acquire property rights in external things to reckon with individuals' "world-interactive powers" (p. 186).

Here again, the concern for ensuring property-rights could be seen as arising from an underlying concern for autonomy. Steiner (2000) openly states that property rights are "action-spaces" which entail the exercise of "liberties and powers" (p. 78) —a reminder that rights empower one in the pursuit of their own goals—, while Otsuka (2000) motivates his choice for considering property rights to be constitutive of the concept of self-ownership by the fact that in this way "others cannot […] force one to come to the assistance of another via a sacrifice of life, limb, or labor" (p. 161).

Finally, the two left-libertarian authors also find themselves to be in agreement with regard to the question of bequest: both find this practice to be unjust. For Otsuka (2000), his egalitarian proviso entails that each generation should have an equal chance to appropriate, thus, to ensure that no grave wealth discrepancies between individuals arise out of inheritance, the author argues that there should be limits on bequest transfers (pp. 163-164). In fact, the author argues that to leave a chance for appropriation to each generation, it would be desirable for property to "lapse back" unto a state of unownership at one's death (p. 164). For Steiner (2000), while the conclusion is similar, the journey to it is starkly different. Indeed, for him the unjustifiability of bequest is to be found in an inability to establish from whom arises the claim-right to bequeath, or who's duty it is to enact it (p. 92). Borrowing from Hohfeld, Steiner essentially finds bequest to be an attempt to ascribe actions to the dead

—e.g. how can one be said to transfer their property if death deprived them of agency ?—, and it is not exactly clear what power would enable the executor to do it in their place (ibid).

To conclude, through their exploration of the limits of a private property regime, left-libertarians hint at the fact that establishing the justifiability of private property rights in general may not be sufficient to establish *bequeathable* property rights —that is, property rights that transcend death.

5. MOVING FROM BEQUEST TO THE STATE

A. A critical evaluation of Right- and Left-Libertarianism

Now that we have established what right- and left-libertarians both stand for, what are the key takeaways from their theories ? Indeed, while the right and left ends of the libertarian spectrum reach opposite conclusions about the justifiability of bequest, they share a common basis: first, when it comes to labour activities as giving rise to property rights, and second with regard to autonomy as being the implicit rationale behind their arguments. So, what should the reader make of this state of affairs ?

To begin with, I believe that left-libertarians are right in claiming that bequest is qualitatively different from gift-transfers, since the latter involves a transfer from living person to living person while the former includes a deceased person as one of the parties. It is for this reason that I find the Hohfeldian approach in Steiner's (2000) text to be particularly appealing: the exchange of correlatives from the giver to the receiver —namely the right to enjoy a possession and the duty not to interfere with another's enjoyment of the possession— is strictly absent in the case of bequest (p. 91). The type of "giving" involved in bequest does not involve any sort new duty on the part of the testator not to interfere with the heir's newly acquired right to enjoy the property. Furthermore, it should be noted, the rather metaphorical use of the world "giving" for bequest entails the ascription of agency to the dead, who are characteristically deprived of the possibility to act. Thus, it appears that someone else —a living person— has to enact the transfer from the testator to the inheritor. However, here again, the nature of the legal relationship leaves the meticulous observer perplexed, for it can hardly be viewed as a power possessed by the executioner —since it is conditioned on the death of the testator—, nor a duty —the death of the testator entailing the impossibility for a promise to be viewed as binding.

One might wonder why they should commit to this Hohfeldian critique. First, I believe that there are several indications that rights should indeed be conceived as necessarily entailing a relationship between two parties (Martin, 2013, p. 4628), which makes a critique of the inability to locate on who befalls the duty or the claim-right a perversive one.

Secondly, I believe that Steiner's (2000) "legal fiction" argument —i.e. that bequest involves the legal fiction according to which the inheritor and the testator are the same person in order to make it seem as though the property was never vacated (pp. 92-94)— lends additional support to the Hohfeldian critique, which boils down the point that bequest is incongruous.

That being said, while the different nature of bequest may be an overlook of the right-libertarian tradition, in trying to justify strong (full) property rights they accidentally provide us with the grounds for tracing the libertarian commitment to private property back to the notion of autonomy. Indeed, although arguments for the acquisition of property rights are often made in relation to the idea that one owns one's labour, they are often supplied with the more fundamental claim that having exclusive control over a piece of land or object is a crucial mean in achieving the true recognition that we each are ends-in-ourselves, and, *ergo*, have goals of our own that we are entitled to follow —without the interference of others. Thus, this enables me to purport that, ultimately, libertarianism is committed to the protection of individuals' autonomy —and the concepts of self-ownership or private property only appear to be the means to the end of autonomous living. The excerpts that I have highlighted in chapter 3, should therefore serve as evidence in support to this point.

The question of autonomy is indeed a real puzzling one with regard to right-libertarianism. While these authors try to defend strong property rights and a strong right to oneself, they fail to notice that the system that they attempt to justify —i.e. a system of property rights that includes bequeathable ownership— can easily lead to objectionable forms of exploitation of the propertyless. In a world where resources are not finite, the reader should be well advised to realize that bequest may lead to the concentration of one's wealth at the expense of another, thereby fatally forcing that other to submit to one's will in order to have access to valuable resources. Accordingly, bequest can easily be pictured as severely curtailing the autonomy-protective purpose of private property.

As for left-libertarians, I do not believe that strict equality is the necessary implication of Locke's "enough and as good" proviso. Indeed, it appears to me that an alternative interpretation of "enough" could very well be interpreted as meaning "sufficient", while "as good" could express something along the same line as the condition of no spoilage —that is, materials should not be in a state of deterioration before they come to be owned. Yet, it might remain true that even an interpretation of "sufficient" would entail a more spread out

distribution of property rights across the population, so as to ensure the good fortunes of everyone up to a necessary degree. In fact, I contend that the fact that they seek the support of egalitarianism is merely a way to palliate for the inconsistency that is generated by efforts to justify bequest within a libertarian framework.

Therefore, if we are to take autonomy seriously as a key pillar within libertarian thought, then we ought to argue that *all* should have a right to private property, and bequest is not a permissible practice.

B. Taxing the estate of the dead

Some, such as Twele (2022), might argue that showing the non-justifiability of bequest does not automatically justify an inheritance tax; for affirming that the bequeather should not have a right to choose a designated heir, to whom the fortune shall be transferred to, need not necessarily entail that the state should automatically be considered as the justified party in choosing what should be done with this fortune. However, it is my opinion that one can easily make such a jump from the non-justifiability of bequest to the justifiability of inheritance taxation, helped by our discussion on autonomy.

i. Autonomy and the right to private property

Let us consider an example: that of the property *x* that was owned by A. Unfortunately, individual A recently passed away due to old age; she is survived by a son named B. The question that I want to raise throughout the present discussion is: "who is entitled to the property *x* ?"

Surely, A is no longer entitled to the property, for, if we follow the Hohfeldian critique of bequest, the rights she used to hold over specific items cease to be upon her death. Thus, if she does not have a property right over the items, A is not entitled to decide that they shall be transferred to B.

Bequest may be objectionable from the point of view of justice, but what about inheritance ? Could it be that, no matter what A's wishes were with regard to the future of her property, B is the justified inheritor of it ? I think not. Ironically, by being so "giver-oriented",

it appears that right-libertarian theories take for granted that the designated heir should have a favorable access to the inheritance —in essence, these authors appear to fail to supply us with the moral justification for accepting such a state of affairs. Maybe, as suggested by Mack (1990, p. 527), the descendants' are entitled to the inheritance in virtue of the emotional work that they provided to their parents —by eliciting feelings of love, pride and joy in the latter— throughout their life. This effectively amounts to saying that inheritance is a form of appropriation through labour-mixing activities. However, accepting this postulate would lead us to accept inheritance transfers quite different from the ones that right-libertarians seem to favor. To begin with, the relationship between one parent and their child may be conflictual and the cause of considerable heartache; that is, the assumption that being someone's child entails the automatic performance of emotional work should be questioned. So, if emotional benefits were to condition access to one's family fortune, it can be imagined that a some children would not be entitled to it. Secondly, friends and caregivers also provide much emotional support to individuals. Indeed we often turn to friends in the good and bad moments of life, and we cannot ignore that in our western societies caregiving in old age is often delegated by children to professionals. Consequently, we can imagine that much of this emotional work that is provided from one generation to another would actually not be undertaken by one's relatives. If we were to accept the idea that inheritance is merely another instance of property acquisition through labour-mixing activities, then many individuals with a just claim to a deceased's property would not share any filiation with the person in question.

Now, admittedly, that descendants might not be the only justified inheritors need not be an issue, but, first, I believe that it is difficult to envision how emotional input would entitle one to the property of another in the first place. The idea that working towards making an individual such as A, joyful, prideful or relieved, would then entitle B to A's property upon her death seems like a stretch to me. Relationships —such as friendships or relationships between parents and children— are often characterized by a degree of reciprocity, so why should it be that the children's due for having participated to their parents' happiness should be an inheritance, when the parents themselves might have already reciprocated by participating to their children's emotional wellbeing —and if not *emotional* wellbeing, at the very least physical wellbeing— ? The point that I want to make is that, if B, as either a friend or child of A's, engaged in deep emotional work during the course of their relationship, it is

quite likely that A did the same with B, and I would argue that her reciprocal emotional investment in B is all that B was entitled to by his similar investment in her. Thus, an entitlement to A's former *property* upon her death would be superfluous for B has already received what he was owed by virtue of his emotional labour.

That being said, an even shorter route may be treaded in order to oppose the claim that B is the just beneficiary of A's wealth. Indeed, one need only recall our earlier discussion of bequest and the difficulty to establish on whom would befall the duty to provide if one is said to have a claim-right against another. Indeed, if death marks the impossibility for the parent to stand as a party within a legal relationship with another, it appears that B cannot be in a relationship with A where he would have a right to her property and she would have the duty to transfer it to him once she had passed away. Could the state be the other party on whom befalls the duty to enact the advantageous transfer ? It would seem quite strange if this were the case: if B needs the state to enact the transfer then it means that as of now, B is not yet the owner of the property and cannot decide what is to be done with the property. B therefore does not have the authority to mandate such a transfer, and the state is under no obligation —neither from A nor B— to execute it.

So who is entitled to the property-right in *x* if neither the testator nor heir hold it ? As would hopefully be clear by now, an important point that I have attempted to make is that if we are to take seriously the very rationale from which is derived the justification for private property rights, then we ought to argue that all, without compromises, should have access to property so as to ensure that each and every one of us is able to follow one's conception of the good. The implication from this statement is simple: each and every one of us is entitled to the bundle of property that used to be under A's ownership, to the extent that the amount of property under their ownership is not sufficient enough to ensure autonomous living.

Recall our discussions on right-libertarianism, in which we pointed out that there were strong indications that the rationale underlying the notion of self-ownership and the right to private property was the idea that individuals are entitled to live autonomously —that is, they should be free to make reasoned choices that enable them to follow their plan of life. Mack (1995) notably makes this particularly obvious by talking of the "equal indispensability of extra-personal objects in human goal-directed action" (p. 200), thereby showing the crucial link between property and the ability to act in ways that are the direct expressions of one's

own, separate, goals. Thus, remember, therein lies the issue with the right-libertarian authors that we have reviewed; their accounts are marked by inconsistency since they assert that the practice of private property is a natural right —meaning that it is shared by *every* individual — while also trying to legitimize a system of property right that, as it currently stands, allows property-deprivation. If I have a just claim to follow my plan of life, but I do not possess the means that actually enable me to do so, to what extent can I be said to actually enjoy that right ? Take the right to freedom of expression: if I seek to spread my ideas, but essentially find myself without any access to the media to broadcast it, this rids this right of any of its substance for it actually fails to perform its very *raison-d'être*.

If we were to live in a world of abundance, the issue of inheritance and bequest might not so be grave, since it would be quite possible for the property-less to simply go and appropriate what remains unowned in order to acquire the means to pursue autonomous living. However, in a world where virtually everything falls under someone's ownership, concern for equal access to the practice of private property —a concern that is *not* a synonym to equal access to equal portions of private property— is primordial. Thus, it would seem that a justifiable account of how property rights can arise, that is grounded in the notion of autonomy, cannot exist without a stipulation entitling each and every one of us to the required amount of private property that ensures us autonomous living.

ii. A just inheritance tax

Let us imagine that C is a new character alongside A and B. C happens to be entitled to A's former property, for the amount of property that she owns is so little that it does not shelter her from potential exploitation by others. However, she may have a claim to *x*, but how does she actually get *x* ? She wishes to expand her ownership titles, bu is not armed with the knowledge of A's passing —and therefore the vacant nature of *x*—, and others have already arisen, alleging to also have a just claim to *x*. So how is this property to reach C ?

I believe that one can make the case that the State should come in, to effectively "seize" the assets, and adjudicate how it shall be distributed among C and these others so as to ensure autonomous living to the greatest amount of people. It may be that 60% of the asset go to C, and 40% to D, another individual who had a similar entitlement-claim, although one

not so strong as C's. Here, the issue is indeed one of efficiency and wherewithal, since there is little doubt that few have the capacity of the State to identify who has a just claim to property, but one should not be too quick to dismiss it as purely utilitarian. The point is that we all have a *justice* claim to the practice of private property since it equips us with the means to live a life in autonomy. To possess such a right means that it is *enforceable*. Accordingly, I believe that the State is justified in enforcing one's claim to unowned property in virtue of their right to live an autonomous life. Thus, there in a sense in which the State's action with regard to C is justified in terms of the enforcement of C's right.

I find that it is no small achievement to establish that property *x* is not under either A's or B's ownership; for in having shown this, it can now be argued that the implementation of an inheritance tax would not violate the first libertarian axiom: that one's rights are encroached with. Indeed, Twele (2022) argued that "egalitarian taxation of the estate" could constitute a rights violation, I would therefore ask him: whose property rights is the State violating ? If *x* is no longer A's and is not automatically transferred to B, then how is the effective seizure of *x* —through an inheritance tax amounting to 100%—, in order to facilitate the transfer of property to those with a justifiable claim to it, a rights-infringement turned to a rights-violation ?

Furthermore, Twele (2022) maintains that "if spending more money on a property rights regime is not leading to more property rights being actually protected, the site has to lower taxes", adding that "what the state is not allowed to do is to use the revenue for egalitarian purposes". I would therefore first argue that taxing property *x* to transfer it to C is not done in an *egalitarian* measure *per se*, for the purpose is not for everyone to hold strictly equal bundles of property. Rather, this transfer of *x* to C is merely the strict application of a fundamental right to live autonomously through the practice of private property. This right is held by all, so, in a sense, it might be construed as being a held "equally" by all, but it is not a demand of equality. Secondly, I would retort that an ambitious inheritance tax such as the one described above arguably supports a private property regime. Indeed, the inheritance tax does not prevent A from enjoying property *x* as she wishes during her lifetime —she can even give parts of *x*, or even its entirety, to someone else—, her property right is therefore strongly protected. Moreover, in redistributing *x* so as to ensure access to the practice of private property to the greatest number of people, in the best case scenario, the tax leads to more

private property being created —if *x* is divided between several people—, or in the worst case scenario, the tax leads to an unchanged number of bundles of private property —if a single individual takes over *x*. Thus, I contend that there is the strongest reason to believe that a tax on *x* would lead to more property rights being protected under a regime of private ownership.

Now some may object that property *x* is not merely an object, it may hold a particular meaning to B, an emotional importance that C would not be able to appreciate and which would be unfairly dismissed if B were to be prohibited from inheriting *x*. However, I believe nothing in my argument prevents B from inheriting *x* if it did hold a special significance to him. Indeed, there are three cases in which B could come to possess *x*: 1) if B happens to have an amount of property that does not ensures his living autonomously, then he has a just claim to the property that used to be his mother's; 2) if everyone else owned sufficient property to ensure that they could follow their own goals in life, then nothing is objectionable if B were to acquire *x*; 3) if others stand with a stronger claim than his —e.g. if B already had reached the amount of ownership that guarantees his autonomy— then a "forgo" mechanism, whereby B would forgo some of his ownership rights to make some room within his bundle of property for *x*, could be put in place. This would allow B to acquire no more than what one is entitled to in a world of scarcity, where all stand with a right to practice of private property.

6. CONCLUSION

This thesis's aim was to answer the question "should libertarians favour an inheritance tax ?", which it achieved by putting forward evidence that bequest was not permissible, and by making evident how an inheritance tax can be thought of as embodying a respect for a universal claim to the possession of property. Throughout this discussion, the positions of right-libertarians and left-libertarians on the topic of property rights were reviewed and evaluated. By doing so, I was able to identify autonomy as being the notion that ultimately underlies libertarian thought. Emphasizing the importance of autonomy allowed me to make the jump from establishing that bequest is not justified, to arguing that levying a tax on what used to be the property of a deceased person is part of the realm of permissible State action. Indeed, each has a right to access property to a degree that guarantees their ability to follow their own conception the good, thus the state is entitled to transfer an estate that has lapsed back into a state of unownership to someone that has an enforceable claim to the practice of private property.

Considering the highly contentious topic that wealth distribution represents for most societies, any work in which the notion of property rights are discussed at length is certain to have direct relevance to current political debates. It was mentioned in the introductory chapter of this essay that Piketty's progressive inheritance tax was fervently opposed by many; however, what the present thesis hopes to have demonstrated is that libertarian critiques of such a scheme may be not as ironclad as they might wish it to be.

Convincing the reader of this much would indeed be a grand achievement, but few works reach perfection, and this one is no exception. Consequently, as a final word of caution, there are two aspects, meriting further attention, that I would like to mention. Firstly, I have dedicated only a few words —which some may deem as being insufficient— to the Hohfeldian critique of bequest despite being an important aspect of my argumentation. As a result, I believe that a stronger defense of Hohfeld's point could be undertaken to strengthen my own claims. Secondly, I recognize that I have merely brushed the surface of the conflict between the sentimental aspect of property and the existence of an inheritance tax by suggesting the implementation of a "forgo" mechanism. I see potential in this proposal, but the desired shape that this mechanism should take is still very vague. Relevant to this

observation is the question of compensation: could a financial compensation, amounting to a monetary evaluation of the value of a tangible asset, be sufficient to qualify as an instance of the “forgo” mechanism ? While this thesis could not adequately explore this question, further research on the topic may prove fruitful.

Reference List

Couet, I. (2022, January 17). Huit Français sur dix pour une baisse de l'impôt sur les successions. *Les Echos*. Retrieved from https://www.lesechos.fr/economie-france/budget-fiscalite/sondage-exclusif-huit-francais-sur-dix-pour-une-baisse-de-limpot-sur-les-successions-1379755

Halliday, D. (2018). *The inheritance of wealth: Justice, equality and the right to bequeath*. Oxford University Press.

Locke, J. (2016). *Two Treatises of Government* (L. Ward, Ed.). Hackett Publishing Company (Original work published 1690).

Mack, E. (2009). Individualism and libertarian rights. In T. Christianio & J. Christman (Eds.), *Contemporary Debates in Political Philosophy* (pp. 121-136). Blackwell Publishing.

Mack, E. (1990). Self-ownership and the right of property. *The Monist, 73*(4), 519-543.

Mack, E. (1995). The Self-ownership proviso: A new and improved proviso. *Social Philosophy & Policy, 12*(1), 186-218.

Martin, R. (2013). Rights. In H. LaFollette (Ed.), *The International Encyclopedia of Ethics* (pp. 4616-4631). Blackwell Publishing.

Morelli, S., Nolan, B., Palomino, J. C., & Van Kerm, P. (2021). Inheritance, gifts and the accumulation of wealth for low-income households. *Journal of European Social Policy, 31*(5), 533-548.

Nozick, R. (1974). *Anarchy, State, and Utopia*. Blackwell Publishing.

Otsuka, M. (2000). Self-ownership and equality: A Lockean reconciliation. In P. Vallentyne & H. Steiner (Eds.), *Left-libertarianism and its critics: The contemporary debate* (pp. 149-173). Palgrave.

Pederson, J. (2018). Just inheritance taxation. *Philosophy Compass, 13*(4).

Piketty, T. (2022). *A brief history of equality* (trans. S. Rendall). The Belknap Press of Harvard University Press.

Rothbard, M. (2000). Property and Exchange. In P. Vallentyne & H. Steiner (Eds.), *Left-libertarianism and its critics: The contemporary debate* (pp. 214-227). Palgrave.

Steiner, H. (2000). Original rights and just redistribution. In P. Vallentyne & H. Steiner

(Eds.), *Left-libertarianism and its critics: The contemporary debate* (pp. 74-121). Palgrave.

Twele, M. (2022). What libertarians (should) think about inheritance taxation. *Res Publica*. Retrieved from https://doi.org/10.1007/s11158-022-09562-3

Vallentyne, P. (2000). Introduction. In P. Vallentyne & H. Steiner (Eds.), *Left-libertarianism and its critics: The contemporary debate* (pp. 1-20). Palgrave.

Vallentyne, P. (2010). Libertarianism. *The Stanford Encyclopedia of Philosophy* (Fall 2010 Edition). Retrieved from <https://plato.stanford.edu/archives/fall2010/entries/libertarianism/>

Waldron, J. (2020). Property and Ownership. *The Stanford Encyclopedia of Philosophy* (Summer 2020 Edition). Retrieved from <https://plato.stanford.edu/archives/sum2020/entries/property/>