Res Publica (2023) 29:89–110
https://doi.org/10.1007/s11158-022-09562-3

What Libertarians (Should) Think About Inheritance Taxation

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Accepted: 17 July 2022 / Published online: 5 September 2022

Abstract

Recently, there has been an effort to make libertarianism compatible with a redistributive inheritance tax: When the tax is levied, the taxpayer in question is already dead and as such she cannot be a bearer of rights. The state is therefore allowed to redistribute the (value of) the estate according to some distributive principle. I consider (and finally dismiss) four successive arguments, each concluding that the state is allowed to use the estate for redistributive purposes. I show that neither of them is able to reconcile (right-) libertarianism with a redistributive inheritance tax. Instead of trying to square the circle, proponents of such a tax should meet the theoretical essentials of (right-) libertarianism head-on.

Keywords Libertarianism · Inheritance tax · Redistribution · Egalitarianism

Introduction

In recent decades the inheritance tax has fallen out of favor with most of the general public.[1] In academic circles, however, there is a renewed interest in inheritance taxation as a desirable means to counter rising inequality within societies. The (implicit or explicit) normative backdrop for such an argument is usually some kind of egalitarianism: Luck-egalitarian, relational, (broadly) Rawlsian, or something in the neighborhood.[2] Some opponents of the tax share this normative backdrop, but reach

[1] See Sheffrin 2013, pp. 13–14 for the US; Prabhakar 2013, p. 144 for the UK and Beckert & Arndt 2016, p. 1 for Germany.

[2] For an (in part) luck-egalitarian defense of inheritance taxation see Halliday 2018. For a (broadly) Rawlsian defense see Michael B. Levy 1983; Bird-Pollan 2013b. For proponents of the tax who draw on relational egalitarian ideas see Dworkin 2000, p. 348; Nagel 2009, pp. 116–118; Schweiger 2013, pp. 49–53; Halliday 2018, chs. 5 and 6.

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different institutional and policy conclusions. Most opponents of the tax, however, draw on non-egalitarian reasons. A very common and philosophically comparatively respectable[3] argument rests on the idea that the inheritance tax violates moral property rights of the testator or the heir. The normative backdrop for such an argument is usually some kind of libertarianism.

Defenders of the tax have responded in two ways: They have either rejected the existence of such property rights out of hand (e.g. Murphy & Nagel 2004) or they have tried to reconcile libertarianism with the inheritance tax, that is, they have tried to show that—on closer look—an inheritance tax is allowed or even required from the libertarian perspective after all.[4] One important subclass of these 'reconciliation-attempts' builds on the (supposedly) *exceptional* character of the inheritance tax: 'Because the death of the individual property owner ends the moral ownership right of that individual, the estate tax is not "theft," as libertarians have often called all taxation' (Bird-Pollan 2013a, p. 28). In what follows, I argue that (the most promising of) these kinds of arguments fail. They are not able to show that libertarianism (at least in its 'Lockean'[5] variant) is compatible with an inheritance tax that is used for the purpose of egalitarian redistribution.

I begin with some thoughts on the nature of libertarian property rights and their relation to taxation more generally, and I will show why the default position is one of conflict 'Libertarian Property Rights and Taxation'. I will then assess four different arguments that those who seek reconciliation between the inheritance tax and libertarianism—on the grounds that the inheritance tax is exceptional—(could have) made: 'The Simple Argument', 'The Argument from Risk-prevention (the Simple Argument Improved)', 'The Argument from Rectification', and 'The Argument from the Strong Proviso'.

Libertarian Property Rights and Taxation

Since libertarianism is a broad (and still growing) family of views and each of these views has its own implications for a just or legitimate inheritance tax, a narrowing of focus is needed. I choose Lockean libertarianism as my object of inquiry because, *if one grants its theoretical foundations*, it poses the greatest challenge to a successful

[3] Compared to arguments that rest on the charge of double-taxation, horizontal, or vertical inequity (for a discussion see White 2018) or family values (for a discussion see Pederson & Boyum 2019).

[4] Three reasons for undertaking what I call the 'reconciliation project' come to mind: First, the tax's advocates may themselves feel the pull of libertarianism. Put roughly, they may be torn between ideals of property and equality and they therefore hope that a fully spelled out account of property rights turns out to be compatible with the inheritance tax. Second, they may be animated by purely pragmatic reasons, trying to bring about an overlapping consensus between egalitarians and libertarians in order to get the tax implemented. Third, they may be moved by a certain ideal of political legitimacy which holds that political institutions have to be justifiable from within a broad range of comprehensive doctrines.

[5] Some have criticized the label 'Lockean libertarianism' as inapt on the grounds that Locke hold quite different views from that of his self-proclaimed libertarian followers (Lamb 2013, p. 40). Alternative notions are 'hard libertarianism' (Brennan 2012, pp. 10–11) and 'strict libertarianism' (Zwolinski 2018).

defense of an inheritance tax used for egalitarian redistribution.[6] All other (non-Lockean) libertarian theories leave far more latitude in regard to this matter for reasons stated in the following paragraphs.[7] Furthermore, there are already authors (such as Jennifer Bird-Pollan and Stewart Braun) who (seem to) depart from Lockean libertarianism as well. In part, this paper is a response to their arguments.

Broadly speaking, Lockean libertarianism holds that there are fundamental, very strong (or even absolute) and far-reaching (or even 'full') property rights in one's own body (self/person) and legitimately acquired external objects. Libertarian property rights are *fundamental*, since they are not grounded in different (more fundamental) normative ideals.[8] The recognition of property rights is thought of as the immediate expression of respect for individuals, their dignity, personhood, autonomy, etc. (e.g. Nozick [1974] 2013, pp. 48–51). The rights are *strong* in the sense that they are not easily overridden by other moral considerations. They are *far-reaching* in the sense that they encompass a broad range of claims and powers that are associated with what Honoré has dubbed 'ownership in the full liberal sense' (1961), which include the normative power to transfer the (full) rights to third parties at will.[9] Taken together, these three features put libertarian property rights at odds with (redistributive) taxation in general.[10] If rights were far-reaching but

[6] 'Libertarianism' from now on.

[7] It goes without saying that probing other libertarian theories' implications for inheritance taxation is a worthwhile endeavor as well. See for example Åsbjørn Melkevic (2020, pp. 179–206) who makes a reconciliation attempt between egalitarian inheritance taxation and the classical liberal tradition (e.g. Milton Friedman and F. A. Hayek) by pointing out the tax's instrumental value for a well-functioning market economy. See also Rob Reich (2014) who defends inheritance taxation from within John Tomasi's 'neoclassical liberal' approach of a 'market democracy'—basically a libertarian reinterpretation of John Rawls which insists on conferring to economic freedoms the status of basic liberties (Tomasi 2012).

[8] Non-fundamental (derivative) versions of libertarianism are for example based on contractarianism (Narveson 2001), (rule-)utilitarianism (Conway 1995), ideas of 'social justice' (Tomasi 2012) or 'perfectionist' egoism (Rand 1964; Rasmussen & Den Uyl 2005). As already stated, it is an interesting question in its own right if those other strands of libertarianism are compatible with an inheritance tax or not. As long as the same rights (rights with the same strength and content) can be derived from such accounts (as for example Narveson believes about his contractarian version), the arguments that I put forward in this paper are relevant for those derivative libertarianisms as well.

[9] Some authors complain about missing 'foundations' of Lockean libertarian property rights in general (e.g. Nagel 1975) or of its specific components like the power to transfer. Understood as the epistemic concern that propositions about the existence or form of those natural property rights are neither self-evident nor can their truth be established via reflective equilibrium, this criticism is valid. If, however, the missing *axiological* or *normative* basis of those rights (or of specific components) is lamented, the criticism seems to be confused. To blame the Lockean libertarian for missing foundations in this further sense is tantamount to blaming the utilitarian for not providing a further (more fundamental) principle as grounds for the principle of utility.

[10] There is a broad consensus between libertarian and non-libertarian authors alike that not only (redistributive) taxation but a (non-consensual) state *as such* is unjustifiable on hard libertarian grounds (be it an 'ultra-minimal state', a minimal state, a welfare state, or any other kind of state) (Rothbard 1982; Simmons 2005, but see Mack 2011). As Nozick puts it in the beginning of *Anarchy, State and Utopia*: 'So strong and far-reaching are [libertarian] rights that they raise the question of what, if anything the state and its officials may do' (Nozick [1974] 2013, p. ix). His own justification of a minimal state is commonly taken to be unsuccessful (e.g Nagel 1975, p. 139, n.). It is therefore quite surprising that when it comes to public policy, many libertarian-leaning academics, politicians, and citizens take the justifiability of either a minimal state or a 'mutual advantage state' (that provides public goods) for granted.

weak, they may—in various situations—be overwritten by other (e.g. egalitarian) concerns that speak in favor of (redistributive) taxation. If rights were strong but not far-reaching, they may have no points of contact with certain kinds of taxes to begin with; if rights are both strong and far-reaching, however, one may expect (most of) taxation to be a wrongful intervention into the tax-subject's property rights. Furthermore, since the rights are fundamental, there is little leeway for arguing on (partly) empirical grounds that—given their consequentialist function—rights are less strong or far-reaching than their proponents claim them to be.

Given this rigorous understanding of property rights, it is natural to suggest that a (redistributive) inheritance tax is a violation of rights. On closer investigation it may turn out that it is *not*, which explains why some engage in the 'reconciliation project', but at least *prima facie* a conflict is to be expected. The gateway for reconciliation is not the strength or fundamentality of rights but their scope (their 'far-reachingness'). Libertarians are adamant about the first two features but often somewhat vague about the third.[11] Accordingly, defenders of the tax have been eager to show that libertarian rights are less far-reaching than usually assumed. More specifically, they have tried to demonstrate that *post-mortem transfer* is not entailed by libertarian property rights and based their case for the compatibility between libertarianism and the inheritance tax on this very assumption.[12] In what follows, I will scrutinize (and finally dismiss) four different arguments for the compatibility of libertarianism and the egalitarian inheritance tax that its advocates have (or could have) made and that proceed from the premise that post-mortem transfer is not part of property rights.

The first two arguments can be called *external,* insofar as they rely on an additional normative standard which they combine with libertarian property rights. The last two arguments are *internal,* insofar as they exclusively rely on libertarian premises. All four arguments, however, are made 'from within a libertarian framework', which means that each of them takes the existence (and priority) of libertarian property rights as a given.

Footnote 10 (continued)
For the purpose of this paper I will accept that a (non-consensual) minimal state can be just and that non-consensually only a minimal state can be just. Not because I think any of the arguments for a minimal-state to be successful, but because most libertarians—for reasons not too transparent—hold on to such a state themselves. I will draw on Mack's justification of a minimal state later on.

[11] Peter Vallentyne, for example, defines full ownership as 'the strongest bundle of property rights over a thing that is compatible with someone else having the same bundle of property rights over everything else (other than one's person and the space that one occupies)' (Vallentyne 2018, p. 102). Formulations like these still leave it open, what *exactly* full ownership entails.

[12] Libertarians on their part have either ignored the question, if property rights encompass the power of *post-mortem* transfer, or (more often) they just have taken for granted that property rights do encompass it. Two lines of thought might explain this nonchalance. First, libertarians may think that *post-mortem* transfer is part of property rights as a matter of definition (compare John Stuart Mill 2004, II.ii.27; Honoré 1961). But this seems mainly a terminological dispute and shouldn't bear to much on *normative* analysis (see Lamb 2014, p. 630). Second, libertarians may think that *post-mortem* transfer is a transfer just as any other. Since (for libertarians) the power of *inter vivos* transfer is part and parcel of property rights, they might just have assumed that the same is true for transfer 'after death'.

Two External Arguments for the Egalitarian Inheritance Tax

It is safe to say that a majority of the inheritance tax's advocates follow an egalitarian agenda. In light of these commitments (and if reconciliation is aspired), it is crucial to show that not just any inheritance tax but (what I call) an *egalitarian inheritance tax*—one that would follow from egalitarian principles—is compatible with libertarian tenets.[13] Two authors who have recently followed this endeavor are Jennifer Bird-Pollan and Stewart Braun. Bird-Pollan claims that '[a] libertarian position on property rights […] is consistent with a robust estate tax, reaching even 100%' (2013a, p. 28). Furthermore, 'the estate should be held up as a model of a libertarian tax' (ibid 2013a, p. 28). Similarly, Braun declares that 'entitlement theorists should not object to the taxation of bequest. If anything they should accept it as a unique way to improve the material conditions of the living without violating their own tenets' (Braun 2010, p. 713).[14] The authors seem to share the following argument:

The Simple Argument

P1: At her death the testator loses the moral property right in her estate. For this reason the inheritance tax does not infringe on the property rights of testators.
P2: Since a legitimate transfer of property has happened neither before nor at or after the testators death, the inheritance tax does not infringe on the property rights of heirs.
P3: If neither testators nor heirs have property rights in the estate, the state is allowed to use it for egalitarian purposes.
C: The state is allowed to use the estate for egalitarian purposes.

The first premise states that the inheritance tax is no infringement on the property rights of the (by now) dead *testators*. There are at least two ways to argue for this. First, it can be argued that the dead no longer have any interests or subjectivity

[13] By 'egalitarian principles' I mean principles such as political equality, strong equality of opportunity, social equality, and strongly prioritarian principles (that have resources, basic goods; capabilities or well-being—or some such—as their currency). Whatever inheritance tax (if any) would follow from any of these principles is—as a matter of definition—an *egalitarian* inheritance tax. It is possible that *no* inheritance tax follows from any of these principles. It is also possible that the inheritance tax that follows is such that its revenue is earmarked (or at least 'supposed to be used') for something different than 'egalitarian purposes'. To keep things simple, I will presuppose that an inheritance tax *does* follow and that it will be one which is directly geared towards 'egalitarian purposes'.

[14] Both authors pursue egalitarian objectives. Jennifer Bird-Pollan insists that her 'decision to focus [...] on the estate tax rather than the individual income tax stems from the primarily redistributive purposes of the estate tax [which is to break] up large concentrations of inter-generational inherited wealth and using those funds (along with other funds) to support federal government spending, including spending on welfare programs' (Bird-Pollan 2013a, p. 11). Stewart Braun also follows an egalitarian agenda: 'The issue of whether there exists a moral right to make a bequest is important. In the United States and Britain wealth distribution is disturbingly unequal. [...] A strong and efficient tax on bequest could help limit this inequality by reducing the wealth of family dynastic units' (Braun 2010, p. 696).

or capacity for choice that could ground their status as right-holders (Bird-Pollan 2013a, p. 25). Second, it can be argued that the interests (etc.) of the dead can ground no moral status or moral rights, *even if they existed* (Braun 2010, p. 698). Both arguments reach the same conclusion: The testator loses her property right in her estate at the moment of her death.[15]

The second premise states that nobody can raise a valid claim to the dead testator's former estate *qua legitimate heir*. The reasoning here is as follows: As long as the testator is alive no transfer of property has taken place. A written will of the testator has to be understood as either an expression of a *post-mortem* interest or an announcement that the testator intends to pass on her property. It is *not* a transfer of the property itself, since the testator is capable of retracting from it anytime she deems fit. (Besides, if it were a transfer, it would be an *inter vivos* and not a *post-mortem* transfer.) (Steiner 1995, p. 91; for discussion see Fabre 2001; Lamb 2014.)[16]

As soon as the testator dies she loses the property right and the accompanying normative power to transfer, so no transfer of property takes place at or after her death either (Bird-Pollan 2013a, p. 25). It follows that there was no transfer of the estate whatsoever, which means in turn that there is no heir with a legitimate (moral) claim to the property.[17] One can, of course, hold that wishes of the dead should be honored (independently of whether a transfer of the property has actually happened or not). But from such a duty it does *not* follow that other individuals are vested with property rights in the estate. The most that follows is that the new legitimate owners have a duty to (voluntarily) pass on their right to those individuals selected by the testator.

Understood as a strict implication, premise 3 would obviously be false: The fact that neither testator nor heir have a property right in the estate does not *strictly imply* the state's permission to levy a tax on the dead persons property (and use it for egalitarian purposes). To reach this conclusion, a crucial argumentative step is still missing. It has to be demonstrated that by levying such a tax the state is not

[15] It is worth pointing out that among libertarians this is a minority view. Most think that property rights *do* entail the normative power of *post-mortem* transfer. (While it is often *left*-libertarians—see section 3.2—who reject this component, the question is *theoretically* independent of the right–left divide.) Note, however, that the question whether post-mortem transfer is entailed by property rights or not cannot be decided by normative reasoning alone. Both sides of the debate have to rely on metaphysical considerations on the interests/rights of the dead. Given the complexity and controversy of this long-lasting discourse, it will not be part of this paper. Let me just state that the success of the simple (and the following) argument(s) party depends on the outcome of metaphysical debates on the interests/rights of the dead more general.

[16] It is of no help to insist that by signing a will the testator contracts into transferring the right later on. For one thing, that is not what the testator is doing, otherwise she could not just retract from (signing) the will. For another thing, by contracting into transferring at a time when no transfer is possible, the testator (possibly) wrongs the (putative) heir but she does not thereby affect the future transfer.

[17] It is sometimes argued that no individual but rather the *family as a whole* is the rightful owner of the estate and that for this reason 'there is no "transfer" from one tax unit to another upon which to levy any tax' (Duff 1993, p. 61). But aside from the fact that there is nothing like a worked-out account of family property rights, I am going to show that no such account is needed in order to reject any of the arguments dealt with in this paper. (The need to reject such arguments seems to be the main motivation for libertarians to draw on the idea of family property.)

violating property rights of *third parties* (i.e. other parties than the putative testator or heir). Understood more loosely—holding only under the background assumption that there are no such third-party rights—the premise may be correct but then the background assumption itself would be in need of vindication.

In my critique, I will neither engage with the first nor with the second premise (others have already done this[18]), but I will focus exclusively on the third premise. I will argue that the simple argument is not successful *even if* the libertarian concedes that neither the (dead) testator nor any (putative) heir has a property right in the estate. A first and quite obvious reason for this is that libertarians subscribe to a principle of (first) *acquisition* or *appropriation* (Nozick [1974] 2013, pp. 174–178). Individuals do not have rights in external resources *just like this*. Instead—along with their self-ownership—they have the normative power to acquire such resources if nobody else acquired them before.[19] Furthermore, the right of self-ownership provides the appropriator with negative claims against others, not to be interfered with (many of) the respective appropriative action(s).[20]

Two things follow from these theoretical reflections: First, if somebody appropriates the estate before the state itself does, the state has no (normative) liberty to use the estate for redistribution. Rather it has to leave it with (or give it back to) its new rightful owner. If the state levies a tax nevertheless, it violates the new owner's rights. Second, if the state prevents individuals (by violent means or by other physical interference or the threat of either, say by adopting a corresponding law) from acquiring the estate, it violates the (self-ownership) rights of would-be appropriators. Bird-Pollan is quite aware of this implication:

> A[nother] possibility is that the Lockean-Nozickian result would be to allow assets that are freed up upon the death of the property holder to revert to nature. On this view, the true Lockean result would be to allow individuals to come forward to mix their labor with these goods, thereby establishing new moral claims over the assets. (2013a, p. 26).

As becomes apparent from the quote though, she believes this to be not a necessary corollary of libertarianism but only *one* theoretical possibility among others. The

[18] For a critique of the first two premises see, for example, Lamb (2014). Lamb argues that, if libertarians commit themselves to an interest theory of rights instead of a will theory, they can make sense of a *post-mortem* transfer of property, because for such a transfer to become effective, there is no need for an act of will (on the side of the testator). The existence of a morally significant *interest* is sufficient for such a transfer to take place. Furthermore, Lamb does not assume that the dead can have interests. He believes that it is the *ante-mortem interest of the once living individual* (that certain important plans of her are realized after her death) that justifies the *post-mortem* transfer.

[19] In addition, most libertarians think that the appropriation is conditional on a so called 'Lockean Proviso'. See section 'The Argument from the Strong Proviso'.

[20] One could insist that libertarians usually only talk about *first* appropriation and that it remains an open question whether the same rules apply to second (third, and so forth) appropriation. But even if libertarians are notorious for omitting or under-theorizing important parts of their theories, it is hard to believe that they would not have said something about the workings of 'second' (and so forth) appropriation if they believed it to be very different.

only reason she invokes for rejecting the 'true Lockean result' is a consequentialist/contractualist thought:

> [the] possibility of reverting to a war of all against all each time a member of society dies is strongly reminiscent of the Hobbesian state of nature. […] However, since Locke believes that an individual agrees to give up certain rights upon entering society, his view of property rights does not require this result. (2013, p. 26)

The thought is consequentialist in the sense that it points to the bad consequences that a 'first come, first serve—rule' would have for everybody involved. It is contractualist in the sense that it assumes that—as a matter of prudence—individuals would contract into a different rule which would obviate the bad consequences. Irrespective of what Locke thought about this matter, the main target of Bird-Pollan's analysis, Robert Nozick, as well as most other libertarian theorists would not be impressed with this kind of 'hypothetical contract' solution. If one dispenses with the contractualist baggage, however, there is another argument in the making.

The Argument from Risk-Prevention (the Simple Argument Improved)

P1: The state is allowed to intervene in risky actions.
P2: Acts of appropriation are risky.
C1: The state is allowed to intervene in acts of appropriation (from P1 and P2).
P3: The prevention of appropriation is successful (no appropriation takes place).
P4: If the state is allowed to prevent and successfully prevents appropriation, the state is allowed to use the estate for egalitarian purposes.
C2: The state is allowed to use the estate for egalitarian purposes (from C1, P3, and P4).

The best way to conceive of the argument from risk-prevention is as an improvement of the simple argument. The argument from risk-prevention presupposes the first and second premise of the simple argument (otherwise there would be no opportunity to appropriate property to begin with) and it reaches the same conclusion. In addition, it provides a reason why the state is at liberty to intervene in acts of appropriation and keep the estate 'for itself' (it specifies certain background conditions under which the third premise of the simple argument is supposed to hold).

The first premise can probably be based on considerations that Nozick unfolds in the fourth chapter of *Anarchy, State & Utopia*. Here he seems to acknowledge that rights are less strong (or far-reaching?) than his initial statements indicate. Rights can legitimately be infringed upon, so Nozick argues, if their exercise involves a (medium to strong) risk that others are put in jeopardy. Premise 2 consists in the empirical claim that acts of appropriation are indeed risky (that they come with a medium to high risk that somebody's rights are violated in the process). In Bird-Pollan's words: they are leading to a 'war of all against all'. Not only would there

be violent disputes over who was the first at the scene. In addition, some individuals might be incentivized to kill others who will leave behind a huge fortune (in hope that the killing will stay unnoticed and they will be the first to acquire the property).

Premise 3 is also vital. Even if the state prohibits the acquisition of estates (and is morally at liberty to do so), this does not guarantee that no *normative* appropriation takes place. After all, the success of such an appropriation does not depend on the state's blessing. Depending on the 'theory of acquisition', in order to establish property rights in a thing, it is sufficient that one is the first who (i) 'mixes one's labor' with a thing, (ii) uses a thing, (iii) occupies a thing, or (iv) merely claims a thing.[21]

One can try to rebut the argument from risk-prevention by denying any of its empirical premises (2 and 3). One could also reject the first premise on the ground that it is not true to the libertarian spirit (see Mack 2011). The real troublesome aspect of the argument, however, is premise 4. And the worry that it raises is quite similar to that concerning premise 3 of the simple argument: The fact that the state does not violate property rights of appropriators (*qua* appropriators) does not establish a liberty on part of the state to use the estate for egalitarian purposes. The relevant question to pose is whether there are still other libertarian rights that the state would violate by raising the tax. I will argue that—less obvious than in the case of the rights of appropriators—there are indeed other rights that stand in the way of the legitimate *egalitarian* taxation of the estate.

To appreciate this point, one has to look more closely at the rationale that underlies the libertarian case for the minimal state, 'limited to the narrow functions of protection against force, theft, fraud enforcement of contracts, and so on' (Nozick [1974] 2013, p. xix). As I see it, the most promising rationale for the minimal state—and one that arguably fits Nozick better than his own—is given by Eric Mack. According to Mack's account of 'attenuated rights', rights-infringements are (all-things-considered) allowed if necessary to reduce overall rights-violations *for the same person* (the person whose rights are infringed).[22] Here libertarian rights are conceptualized not as strict deontological constraints but as patient-relative restrictions that allow for intra- (but not inter-) personal rights aggregation (e.g. Mack 2011, pp. 109–114).[23] Furthermore, Mack claims that such an understanding

[21] Nozick calls such a theory a 'theory of *just* acquisition', but this seems to be a misnomer. An action is just if it does not violate property rights and unjust if it does violate property rights. In contrast, Nozick's 'theory of just acquisition' specifies the conditions under which an act constitutes a *normative* acquisition of a thing (an exercise of her normative power to establish a moral property right in a thing), *whether or not the acquiring action is just*. Neither does the action's injustice undermine the success of the appropriation (for example, under a labor-mixing theory of appropriation, the wood that went into building a hut with help of a stolen saw has been normatively acquired by the hut-builder via building the hut—*even if the saw was stolen*) nor is the justice of a *descriptive* acquisition sufficient to vest somebody with property rights in the thing (e.g. non-violently occupying a piece of land might be just but—under the labor-mixing theory—not sufficient to be vested with property rights in the land).

[22] It is not altogether clear how this conceptualization of rights, which is developed in Mack 2011 relates to Mack's at least partly conventionalist account of property rights in Mack 2010. What is clear is that Mack believes his 2011 conception to be 'the best Nozickian response to the anarchist challenge [that no non-consensual state can be just]' (Mack 2011, p. 89).

[23] This account of rights differs significantly from what Nozick calls a 'Utilitarianism of Rights', where rights can be aggregated not just intra- but also *inter*-personally (Nozick [1974] 2013, pp. 28–30).

of libertarian rights can explain why a minimal state is just while any 'more-than-minimal state' is unjust. A minimal state is just because—although it maintains a monopoly on the use of force and taxes individuals (without their consent) in order to fund its protective services—this does not amount to a violation of property rights.[24] This is so, since the state's (non-consensual) monopoly on the use of force as well as the taxing are (arguably) *necessary* to reduce overall rights-violation for each individual so subjected and taxed (Mack 2011, p. 113). I will not go into the details of Mack's justification for the minimal state nor criticize it but point to some of its implications that undermine the argument from risk prevention—more precisely, its fourth premise.[25]

One has to bear in mind that the inheritance tax is usually not the only tax that a (minimal) state has implemented. In order to fulfill the task of protecting everyone's rights, the state already raises other kinds of taxes. If used for the general protection of property rights *and if necessary for this purpose*, these other kinds of taxes are—on Mack's account—legitimate rights-infringements (or more accurately: no rights-infringements after all). The point I want to press is the following: As soon as the state disposes of the proceeds from the inheritance tax, some amount of taxes that has been deployed for the general protection of property rights and that has been necessary to protect property rights at the given level is not necessary anymore, since the proceeds from the inheritance tax could be used for this very purpose instead. As soon as the state disposes of the proceeds of the inheritance tax and uses those proceeds for egalitarian purposes, the act of levying the excess amount of those other taxes turns from a legitimate rights-*infringement* into an outright rights-*violation*. What the state could legitimately do is to use the revenue from the inheritance tax for the protection of property rights *at an even higher level*. Yet, if spending more money on a property rights regime is not leading to more property rights being actually protected, the state has to lower other taxes. In any case, what the state is not allowed to do is to use the revenue for egalitarian purposes.[26]

[24] From a libertarian perspective, the state's claim to a monopoly on the use of force is *prima facie* objectionable because a) it interferes with individual's protecting their own rights (or instructing others to do so) and b) it interferes with individual's offering rights-protecting services to third parties.

[25] Mack's justification for the minimal state seems ultimately unsuccessful because even if *for each and every* individual there is a (realistic) state arrangement which improves her situation (in terms of the reduction of rights-violations that she herself suffers) *and where no more rights of hers are infringed than necessary for such an improvement*, it does not follow—and it is not the case—that there is a state arrangement which does this for *all* individuals simultaneously. For the sake of this and the later arguments, I will just assume that a (non-consensual) minimal state can be just and that (non-consensually) only a minimal state can be just and—since Mack's justification is the most sophisticated and promising—that it can somehow be improved to avoid this kind of objection.

[26] There is an interesting argument claiming that a certain level of welfare provision is part of the most effective crime-fighting strategy and would therefore be legitimate even from a libertarian standpoint (Wündisch 2014, pp. 33–42). But even if such provision would lead to a Pareto-superior situation (in terms of the absence of—indiviudually overall—rights-violations), the resulting policies would probably be less ambitious than those favored by the adherent of the egalitarian inheritance tax.

Two Internal Arguments for the Egalitarian Inheritance Tax

As we have seen, even if the simple argument is theoretically enriched by considerations of risk-prevention, the argument fails as a defense of the thesis that the state is allowed to levy an *egalitarian* inheritance tax. To be sure, the argument is capable of defending *some* inheritance tax—as long as the revenue is effectively deployed for the general protection of property rights. But, of course, this is not what the argument's proponents had intended to show. There seems to be a systematic reason for the argument's failure. If the state is allowed to infringe on property rights only so far as is necessary for the purpose of protecting libertarian rights, the state is never allowed to redistribute property for libertarian-*external* purposes. If egalitarians want to reconcile libertarianism with an egalitarian inheritance tax, a change of strategy is called for. They have to demonstrate that some genuine libertarian considerations, i.e., considerations *internal* to the doctrine of libertarian rights, *overlap* with an egalitarian agenda. The underlying idea is that—maybe on closer inspection—libertarianism is approving of or even demanding an egalitarian redistribution just by itself (for libertarian-internal reasons). I will discuss two different arguments that are based on this very strategy: The 'Argument from Rectification' and the 'Argument from the Strong Proviso'.

The Argument from Rectification

The argument from rectification calls attention to the fact that, under realistic (non-ideal) circumstances, most legally recognized property rights do not coincide with morally valid libertarian property rights. This fact (supposedly) opens the floodgates for redistributive intervention. In its most general formulations the argument from rectification is meant to defend—from a libertarian vantage point—state-backed egalitarian redistribution (via taxation) *in general* (Nozick [1974] 2013, p. 231; Wündisch 2014; Zwolinski 2018, pp. 333–335). In what follows, the argument is tailored toward defending an egalitarian *inheritance* tax. The argument has to be conceived as a further enhancement, building on the argument from risk-prevention, which—in turn—constitutes an improved version of the simple argument.

P1: History is full of (non-rectified) violations of property rights. The victims of those violations have enforceable claims to rectification against the perpetrators, who in turn have enforceable duties against the victims.
P2: Claims and corresponding duties are transferable to others and (would) have been transferred to later generations up to this day.
C1: The bulk of currently existing legally recognized property rights comes with enforceable moral duties to rectify past injustices on the part of the bearers of those legal rights against the proper moral proprietors (from P1 and P2).
P3: The state has a (pro tanto) duty to enforce duties of rectification of its 'subjects'.

P4: The most efficient means to satisfy this (pro tanto) duty is to redistribute economic resources according to an egalitarian (maximin/leximin) principle.
C2: The state has a (pro tanto) duty to redistribute economic resources according to an egalitarian (maximin/leximin) principle (from C1, P3, and P4).
P5: The only tax that is morally qualified as a means to this purpose is the egalitarian inheritance tax, since all other taxes would amount to (direct) rights-violations by the state.
C3: The state has an all-things-considered duty to levy an egalitarian inheritance tax (from C2 and P5).

The first premise combines empirical and theoretical assumptions. The empirical assumption is that—in a historical perspective—non-rectified rights violations abound. So much is uncontroversial and libertarians should be among the first to agree, not least because recent human history is a history of 'more-than-minimal' states that are violating rights on a continuous basis and a huge scale (Perez 2014, p. 128). The theoretical assumption is that the original victims of rights violations have (or rather had) claims to rectification toward the perpetrators. This is simply the *principle of (justice in) rectification* to which libertarians unanimously subscribe (e.g. Nozick [1974] 2013, pp. 152–153).

The second premise—in contrast—should be highly controversial. Before saying how it can be criticized, let us have a look at how it is spelled out by one of its proponents:

> [T]he property right of the original victim to a part of the assets of the perpetrator does not erode over time and is transferable at will. [...] If the assumption is warranted that the victim has bestowed the assets under her immediate control onto her children, it is reasonable to assume that she would have done likewise with her compensation. In such cases claims to compensation can reasonably be expected to pass from one generation to another via rights to inheritance (Wündisch 2014, p. 116).

The flip-side of this is that descendants of perpetrators have inherited (part of) the corresponding duties to rectify injustices committed by their ancestors:

> [I]f a title is held against the property of an original perpetrator on grounds of an original wrong, the assets affected by that title can not be rightfully bequeathed. Accordingly, the descendent's possession of those assets continues to be subject to the title held against them and is, therefore, unjust. If compensation is demanded from the descendant then such a payment is justified. (Wündisch 2014, p. 119).

I see two problems with these claims. First, libertarians are usually no friends of hypothetical consent. It is therefore unclear whether they would be willing to grant hypothetical transfer of compensatory-titles much weight. After all, the original owner *might* have done all kinds of things with her property besides passing it on

to her children.[27] Second, at least in the above quote, emphasis is put on the idea of a transfer through *inheritance*. Yet, proponents of the argument from rectification cannot rely on (hypothetical) inheritances, since they believe inheritances to be no morally valid transfers to begin with.[28] This narrows the set of relevant (hypothetical) transfers even further, namely to *inter vivos* gifts 'between generations'. Both problems can be avoided by focusing on normative transfers that *actually* happened. But now the amount of relevant transfers will probably be vanishingly small and is even harder to ascertain than hypothetical (*post-mortem*) transfer.

Premise 3 should again be uncontroversial among libertarians: The state's monopoly on the use of force is only justified if the state protects the property rights of *all* its citizens. Since claims to rectification of past injustices are part of the bundle of property rights, it follows that the state has a (pro tanto) duty to enforce these duties. (For a more systematic grounding of this duty one could draw on Mack's justification of a minimal state.)[29]

Premise 4 is in need of explanation. What speaks in favor of the claim that a redistribution which gives strict priority to the worst-off is the most efficient way for the state to comply with its (pro tanto) duty to enforce the rectification of past injustices? Proponents of the argument from rectification find unexpected support for this claim in some remarks of Nozick where he conjectures that

> lacking much historical information, and assuming (1) that victims of injustice generally do worse than they otherwise would and (2) that those from the least well-off group in the society have the highest probabilities of being the (descendants of) victims of the most serious injustices who are owed compensation by those who benefited from the injustices [...] then a *rough* rule of thumb for rectifying injustices might seem to be the following: organize society so as to maximize the position of whatever group ends up least well-off in the society. (Nozick [1974] 2013, p. 231).

In other words, what Nozick is suggesting here is that following a maximin/leximin principle of distributive justice might be the best option for the state to (as good

[27] One may insist that *under the specific circumstances where actual (normative) transfer is absent due to injustice and the original owner dies*, hypothetical transfer is indeed a plausible alternative to actual transfer. But it seems a bit *ad hoc* to assume that 'hypothetical consent' has moral authority in this case while it has no authority *whatsoever* when the owner is still alive or the injustice has not occurred (for a similar point see Waldron 1992, p. 10).

[28] Of course, this is not to say that rectificatory arguments *as such* have to reject post-mortem transfer. It is the specific argument at hand (building on the simple argument and the argument from rectification) that has this implication. More specifically, premise 5 of the above argument presupposes the non-existence of (the normative power to) post-mortem transfer. Otherwise, the inheritance tax would *not* be the only tax that could be used for rectificatory purposes, since it would be (or seem to be) a rights-violation just as any other tax.

[29] Libertarians usually hold that (libertarian) rights are 'compossible' (can be realized all at the same time). This requirement seems to be at odds with a *pro tanto* understanding of rights. Yet, even libertarians can profit from the talk of *pro tanto* rights, using it as a mere *heuristic* as long as it is unclear how exactly rights interlock.

as possible) approximate a state of affairs where everyone's rectificatory duties are met.[30]

Even if an inheritance tax is a suitable instrument to redistribute economic resources to the worst off, why should libertarians think that the inheritance tax is the *only* justified means when it comes to taxing individuals for the purpose of rectification—as claimed in premise 5? Let us first see why one may come to think that *taxes in general* are *not* justified for this purpose. Many libertarians believe that the state is allowed to rectify a past injustice only at the cost of the person who committed the injustice (Narveson 2009, p. 4; Vallentyne 2018). While '*anybody may* [enforce rectification] against the appropriately guilty parties [...] *nobody* may [enforce] it *against anybody else*' (see Narveson 2009, p. 4). One may want to add that rights-violators 'have to pay for the enforcement costs associated with their rights infringement' (Vallentyne 2018, p. 100). The crucial point, however, is that non-violators have neither duties of rectification nor duties to bear the enforcement costs. As Narveson puts it: 'Other persons than the guilty parties are, by hypothesis, *not guilty;* therefore, we may *impose no costs* on these other parties. That includes the cost of helping out with the detection and imposition of rectifications on the guilty parties' (Narveon 2009, p. 4). The talk of 'guilt' is somewhat misleading, since not everybody who holds other people's property is *eo ipso* guilty (e.g. if she does not know to whom specifically the property is owed or if she lacks the means to make it available to the rightful owner). Accordingly, the reason that we may not impose costs on those other parties is *not* the absence of their guilt but the fact that they do not hold property that rightfully belongs to someone else.[31]

Yet, the general idea should be clear. The problem with feasible models of progressive taxation is that they are indiscriminate between those rich individuals whose property rights are (in part) conditioned on rectification and those rich individuals who have a 'clean slate'. Whatever tax the state relies on in order to bring about the desired (maximin/leximin) distribution, it seems to violate the rights of the latter group. Given her strongly 'individualist' orientation (which implies the prohibition of inter-personal trade-offs), the libertarian cannot rest content with such a broad-brush solution (Feser 2005, pp. 78−79; see also MacLeod 2012, p. 79; Perez 2014, pp. 128−129). So even if Nozick's suggestion is the optimal among actually administrable options ('optimal' in the sense that it approximates—as best as it can—a state of affairs in which the greatest amount of past injustices has been rectified), it would all-things-considered still be illegitimate, since it amounts to 'wholesale robbery of legions of innocents' (Narveson 2009, p. 4).

The inheritance tax, in contrast, seems unaffected by these worries—at least under the assumptions (made in the simple argument and the argument from risk-prevention) that neither testator nor heir has a property right in the estate and

[30] To take the leximin distribution *as a general rule* is not to foreclose the possibility that more fine-grained redistribution is called for in particular cases. For example (if we bracket the worry about hypothetical transfer) it is not unlikely that certain parts of the American continent can be identified as belonging to specific individuals or groups of Native Americans. If so, it is possible (and may be morally demanded) to combine the leximin strategy with more targeted interventions.

[31] Thanks to one of the reviewers for pointing this out.

nobody has a right to appropriate it. Based on these theoretical underpinnings, it seems to follow that *no tax but the inheritance tax* can permissibly be used for the purpose of rectification. What is more, the objection of indirect rights-violations (that ultimately undermined the argument from risk-prevention) does not seem to bite, because this time the tax's revenue is used for *genuine libertarian objectives*: the rectification of past injustices.

Yet, there seems to be an inconsistency in this reasoning. If one assumes that the state has a (pro tanto) duty to enforce duties of rectification, one better give an explanation from where this duty originates. For a promising explanation one might want to draw on Mack's account of right's attenuation and the just minimal state: The (pro tanto) duty of the state to rectify past injustices is a constitutive part of its duty to make everybody better off in terms of the absence of rights-violations. A duty which—in turn—derives from the state's infringement of everybody's rights by claiming a monopoly on the use of force (the claiming of which must itself be a necessary part of 'the action' that makes everybody better off). But if one defends premise 3 *on such grounds*, one has—by the same token—to reject premise 5. If one believes that there is a (minimal) state arrangement whose task it is (among other things) to care for the rectification of past injustices on the ground that this would bring about a Pareto-optimal solution in terms of (individual's overall) rights-protection, then it is quite unlikely that the inheritance tax would be the *only* tax that could be implemented for such a purpose. After all, the implementation of any tax whatsoever would be *no* violation of rights *if the revenue could effectively be used to improve the rights-protection of everyone*.[32]

To put it another way: If one accepts Mack's justification of the minimal state, the problem that Narveson and others point out does not arise as long as those who would be taxed for the purpose of funding the enforcement of the rectification of past injustices (and who have no corresponding rectificatory duties to discharge) would still be better off in terms of their *overall* protection of rights. Doubts are warranted that such a Pareto-optimal solution is possible, but if it is not possible the state would have to surrender its monopoly on the use of force—that is, it had to stop being a state—rather than abolishing (or lowering) taxes.[33]

[32] That in *principle* any tax may be used for the purpose of rights-protection does not mean that—from a libertarian perspective—all kinds of taxes are on a par in this regard. Many libertarians believe that—at least when historical injustice is absent—only *flat* taxes are just (since, against the benchmark of non-intervention, they 'burden' everyone to the same degree—in some normatively relevant sense of 'burden'). Also, some authors have argued that an inheritance tax is 'less of an intrusion' toward the original owner compared to *inter vivos* taxes (Halliday 2013, p. 643)—though the latter point hinges on the assumption that there is a right to bequeath in the first place, which this articles (for the sake of argument) denies. In any case, considerations on the difference in degree of taxes' intrusiveness may become relevant in an assessment of tax regimes against Mack's criterion as well.

[33] The fact that the state would have to give up its monopoly on force does not imply that all its 'second-best' options (remaining a state and deploy the tax money for rectification; remaining a state and deploy tax money in some other way) are morally on a par. One might hold that a situation that is no Pareto-improvement is morally less problematic (less wrong?), the smaller the harm to the most harmed individual, or the smaller the aggregated harm of all the harmed individuals taken together—though this latter suggestion appears rather 'unlibertarian'). Yet, the crucial point remains: The tax arrangement would have to be judged on its broader consequences in terms of rights-protection and not on whether it infringes on the rights of individuals who have no rectificatory duties to discharge.

What if one drops the premise that the state has such a (pro tanto) duty (on the ground that it would not be a constitutive part of the state's duty to make everybody better off in terms of the absence of rights-violations) and instead tries to defend the claim that the state is at least at *liberty* to use the revenue of the inheritance tax for the enforcement of rectification of past injustices? In such a case one would run into similar problems as with the argument from rectification: Even if the imposition of the inheritance tax would be no violation of property rights in a *direct* way (since neither the testator or heirs nor any new appropriator has a valid claim to the estate), the tax would be violating property rights in an *indirect* way, i.e., it would transform acts that have hitherto been legitimate rights-infringements (or alternatively: no rights infringement at all) into outright rights-violations. The reason for this is that instead of using the tax's revenue for the rectification of past injustices the state could use it for the general protection of property rights (as necessary to discharge its duty to make everybody better off in the sense that Mack's theory requires)—thereby lowering other taxes and making the 'excess' of those taxes dispensable. If the state uses the estate tax's revenue for rectificatory purposes it seems to violate the rights of those individuals *who have no rectificatory duties to discharge* and who would have to pay less taxes in total if the state were using the revenue for the general protection of property rights (other than the rectification of past injustices).

Where does this leave the argument from rectification? The crucial question to ask is not whether the rectification of past injustices is an infringement of property rights of those who have no rectificatory duties to discharge but whether everybody's rights are (overall) less infringed under a state arrangement that taxes individuals in order to fund (among other things) the enforcement of rectificatory duties of past injustices. If there is such a state arrangement, it is an open question what kind of taxes it would collect (though the *pro tanto* demand for the rectification of past injustices would most likely call for *progressive* taxation—at least if a leximin principle does indeed best approximate a state of affairs where historical injustice is remedied). There is no reason to think that the inheritance tax was the *only* tax that could be used to rectify past injustices or do whatever else the just minimal state is supposed to do.

To be sure, this is a result that most defenders of an egalitarian inheritance tax would probably be happy to accept (as long as redistribution to the worst off—here based on considerations of the rectification of past injustices—still plays a considerable role in the overall design of the tax system), but it makes the entire line of argument that has so far been developed superfluous: If the justness of taxation hinges entirely on its role of bringing about a Pareto-optimal solution in terms of rights-protection, it is neither here nor there if the testator is dead, a transfer to an appointed heir has taken place or if anybody has a *pro tanto* right to appropriate the estate. All that matters is whether rights of each individual are better (best?) protected under the arrangement in question.

The Argument from the Strong Proviso

The most common strategy to argue for an egalitarian redistribution on libertarian grounds is the *left-libertarian* strategy. Right- and left-libertarians converge on a strong and far-reaching right of self-ownership, yet they divide over the question if the power to acquire owner-less (natural or artificial) resources is conditional upon a so-called 'Lockean Proviso' and (if so) how strong the proviso is to be conceived.[34] In its most vague formulation the proviso states that an act of acquisition is just (or put more accurately: 'normatively successful') only if there is 'enough and as good' left for others. Libertarians on the right tend to support only a weak proviso. For example, Nozick (following Locke) believes that the proviso is satisfied as long as nobody is (overall) worse off than she would have been under the counterfactual situation where no appropriation of property has ever occurred—everything else as equal as possible. Moving further to the left, one finds 'sufficientarian libertarians' who believe that the proviso is satisfied if everybody's welfare (measured in preference- or basic needs-satisfaction or some other metric) is above a certain absolute threshold (e.g. Simmons 1992).[35] At the left end of the spectrum there are egalitarian libertarians who believe—roughly speaking—that the proviso requires everyone to have an equal share of resources (natural and abandoned artifacts) (Steiner 1995) or the share that is necessary to obtain an equal opportunity for well-being (Otsuka 2003). Naturally, the more we move 'towards the left', the better the prospects of defending an *egalitarian* redistribution on libertarian grounds.[36]

Other than the three forgoing arguments, the following 'argument from the strong proviso' is—strictly speaking—not an argument for an *inheritance* tax but rather for an *appropriation* tax. Just as the foregoing arguments, it relies on the assumption that neither the testator nor any (putative) heir has a property right over the estate. Otherwise there would be no (taxable) appropriation to begin with. And just like the argument from risk-prevention (and the discussed variant of the argument from rectification) it recognizes each individual's normative power to acquire the 'abandoned' estate. In contrast to the (two) latter arguments, however, it does not assume that the state is allowed to prevent (and successfully prevents) appropriation. Quite the opposite: It relies on the rejection of the argument from

[34] Again, the naming after Locke should not be taken to imply that Locke himself was a proponent of the Proviso as it is understood by modern-day libertarians.

[35] Fabian Wendt defends a Sufficientarian Lockean Proviso as well, but relies on Mack's practice-depended account of property rights in external resources. In addition he provides a helpful overview on different ways of combining sufficientarian concerns more general with libertarian property rights (cf. Wendt 2018).

[36] Bird-Pollan discusses an extremely strong version of the proviso. She seems to assume that *everyone* has to give her *actual consent* for the initial distribution of resources to be just (Bird-Pollan 2013a, pp. 23–24). Quite confusingly, she also seems to believe that this is what Nozick himself requires (on this point see also Rodgers 2015). Apart from the fact that unanimous actual consent is too strong a requirement on appropriation even for most left-libertarians (let alone right-libertarians) (Steiner & Vallentyne 2009, pp. 52–53), a case for the egalitarian inheritance tax can be made on various 'weaker' versions of the proviso.

risk-prevention, since it tells us how the state has to respond to (semi-)successful[37] acts of appropriation (of estates), to wit, with an egalitarian appropriation tax. However, just like the inheritance tax, the appropriation tax concerns the estate of the deceased, which makes it quite apt to discuss it under the heading of inheritance taxation.

P1: Each person has the legitimately enforceable duty to leave others a '(broadly) egalitarian' share of resources or make an adequate compensation.
P2: The state has a (pro tanto) duty to enforce legitimately enforceable duties of individuals.
C1: The state has a (pro tanto) duty to enforce the duty to leave others a '(broadly) egalitarian' share of resources or make an adequate compensation (from P1 and P2).
P3: The only tax that is qualified as a means to this purpose is an egalitarian appropriation tax, since all other taxes would amount to rights-violations by the state.
C2: The state has an all-things-considered duty to levy an egalitarian tax on appropriations (from C1 and P3).

The argument from the strong proviso is structurally very similar to the argument from rectification. I will therefore focus on the relevant differences between the two. Premise 1 is nothing other than the Lockean Proviso in its left-libertarian variant. An 'egalitarian' share of resources is not necessarily an equal share, but whatever share individuals could validly claim according to the relevant egalitarian principle. 'Broadly' is meant to include principles in the neighborhood of strict equality such as maximin, leximin, or (strong, but not strict) priority for the worst off. Premise 2 can be accepted for the same reasons as the second premise in the argument from rectification: If the state claims a monopoly on the use of force it seems reasonable to expect it to actually enforce those duties of individuals that are legitimately enforceable.

This leaves us with premise 3, which says that the appropriation tax is the state's only permissible means to satisfy the duty to enforce the proviso. The reasons to ascribe this exclusive status to the appropriation tax are different from the reasons to ascribe it to the inheritance tax. In case of the latter, it was assumed that the tax does not violate property rights, since (at the time of taxation) the object of the tax was nobody's property anyhow (though it has also been argued that the state is violating property rights in an indirect way, nevertheless). In the case of the appropriation tax the exclusive status stems from its apparent *accuracy*—there seem to be no 'false positives' (individuals who are taxed but should not be) or 'false negatives'

[37] The appropriation is 'semi-successful' because it is conditional upon a payment towards individuals with less than their fair share (settled by the proviso). The payment may be onetime or ongoing (cf. Vallentyne 2018, p. 105), but it does usually take place only after the appropriating act has been performed.

(individuals who should be taxed but are not). The tax seems to affect those and only those individuals who are meant to be taxed.

To see this, imagine a three-person society: For the purpose of the example, let us assume that the proviso requires an *equal* distribution of *external resources*. Let us further assume that the default distribution is one in which each individual commands 2 units of (relevant) resources. Person A dies. B is appropriating A's estate resulting in him having 4 units and being (relevantly) better off than C by 2 units. The act of appropriation leads to an unequal distribution between B and C which B is under an enforceable duty to offset. The state—itself having the duty to enforce proviso-based duties—is able to offset the inequality via the appropriation tax that—by its very nature—is taxing only appropriators. In the case at hand, the state can satisfy the proviso by levying a 100% tax, redistributing an equal amount to everyone, resulting in both B and C having 3 units each.

While this stylized example neatly demonstrates the key idea behind this kind of left-libertarian defense of the inheritance tax, it provides little guidance for a tax policy in the real world as it is here and now. As things actually are, we find the initial distribution (previous to the acquisition) highly unequal and—as a result of that—the (left-libertarian) proviso unsatisfied. This creates a problem for the tax's accuracy. If there was an unequal distribution before the death of the testator, there would have already been persons with proviso-based claims and compensatory duties. Under these circumstances, taxing new appropriator's property (and distributing the revenue 'fairly', i.e., according to an egalitarian principle, among everyone) may lead to a situation where some appropriating individuals have (because of being taxed) less than they would have had if everybody had paid their due (Feser 2005, p. 78). If the appropriator (after being taxed) has less than what she would have had if she had paid her due, one may reasonably conceive the act of taxing as a violation of the appropriator's property rights.[38]

One could object that the state may redistribute the revenue not according to an egalitarian principle but in just the right way, so that ultimately everyone commands exactly the amount that she is owed as a matter of justice. This means that appropriators—who before the appropriating act had less than their fair share (more precisely, the share they would have had under full compliance)—are made to pay the tax, *but get it back later at the exact amount they are entitled to*; partially (if, after appropriation, they hold more than their fair share), entirely (if they hold their exact fair share), or entirely with a surplus (if they hold less than their fair share and less than required by the distributive principle under partial compliance). But obviously this proposal fails, because the state lacks crucial information about individual cases and the means to obtain this information.

A better response is to either jettison the 'fair share' clause (i.e., accepting that for one's appropriation to be normatively successful one has to compensate beyond one's fair share if others are supplying less than the proviso demands of them) or to

[38] Admittedly, things are more intricate, because most appropriators do not pay their due voluntarily. Maybe an additional loss for *those* appropriators can thus be justified as an inadvertent side effect of meeting the proviso-based claims of others.

tax individuals only to such a degree as to guarantee that every tax subject who is below her fair share is allowed to keep the amount that brings her closer to her fair share.[39] In short, it is not impossible to justify the tax on left-libertarian grounds but its proponents have to make some theoretical and practical concessions.[40]

So far, I have implicitly assumed that the state is never allowed to infringe on property rights (not even to provide for the general protection of property rights). But what if one combines the left-libertarian position with Mack's theory of attenuated rights and the justification of the state that (supposedly) flows from it? According to this theory, the tax would be justified as long as a certain tax-regime would lead to a Pareto-superior state of affairs in terms of the non-violation of property rights *and the appropriation tax was part of that tax-regime*. As with the state's duty to rectify past injustices, the challenge would then still be to show that *everyone's* rights are indeed (overall) better protected under such a tax-regime. And again, it would follow that the proponent of the argument can no longer hold on to the *exceptional* character of the inheritance/appropriation tax (for reasons already stated in the last argument's discussion).

Another weakness of the argument from the strong proviso has to be mentioned. Proponents of the argument are eager to demonstrate the compatibility of the inheritance tax with libertarian premises. Against this dialectical background it is a significant drawback that the argument is only convincing to left-libertarians. Many left-libertarians consider their doctrine 'egalitarian' (Vallentyne, Steiner & Otsuka 2005, p. 212) and are supportive of an egalitarian inheritance tax anyhow. Yet, the initial target group of those who pursue reconciliation are not left- but right-libertarians. But—as a matter of definition—right-libertarians do reject the argument's first premise (the left-libertarian Lockean Proviso). For this and the aforementioned reason(s) I conclude that the argument from the strong proviso is barely helpful in making progress on the reconciliation front.

Conclusion

One of the most important arguments against inheritance taxation runs that such a tax would violate the property right of the testator or (more plausibly) of the rightful heir. The philosophically most elaborate underpinning of such a claim is (something like) Nozick's libertarianism. Advocates of inheritance taxation have responded by pursuing what I have called the 'reconciliation-project'. They

[39] To be on the safe side (i.e., to avoid taxing individuals who have a right not to be taxed) the state could fix an exemption threshold equivalent to the amount of the fair share (under full compliance)—thereby accepting inequalities between appropriators and non-appropriators that could easily be avoided (but only on pain of violating property rights of the appropriators).

[40] Note also that the argument needs to make some further assumptions to get off the ground. For example, that the state is allowed to enforce the proviso without authorization of the claim holders (cf. Vallentyne 2018, p. 100) and that the proviso may be enforced even if the duty-bearers are willing to comply with their duties voluntarily (e.g. because state distribution leads to better outcomes) (ibid., p. 106).

have tried to show that—against first appearance—libertarianism is compatible with inheritance taxation after all. I have surveyed four different yet (in part) consecutive arguments that are meant to demonstrate compatibility by exploiting the (supposedly) exceptional character of the tax. None of the arguments succeed. Proponents of the tax either have (i) to find another more convincing argument that demonstrates compatibility or (ii) to reject (hard) libertarianism altogether or (iii) to stop endorsing the tax.

Funding Open access funding provided by University of Bern.

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