IS INHERITANCE JUSTIFIED?

A preliminary sketch

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1. Inheritance as a problem of justice

This essay is concerned with the question of whether it is just that people inherit property. What should happen to private property after the death of the person owning it? Should the owner, while alive, be entitled to transfer their property holdings for the time after their death, to a person of their choosing? Is such a right to pass one’s property on posthumously a part of the right to private property?

The intuition I want to begin to explore states that the common social practice of inheritance (embodied in law and institutions) is in fact pro tanto unjust, since it confers an unjust advantage on the beneficiary. The first step, as undertaken in this essay, will be to ask, very abstractly for now, whether bestowing or receiving an inheritance or a bequest is just. This part of the inquiry, then, is situated within the realm of abstract and ideal Political Philosophy or Theory.

If the thesis I tentatively advanced – that inheritance is pro tanto unjust –, should turn out to be viable, several qualifications would still be necessary, because other, crucial parts of the inquiry remain unfinished. I shall list some of the questions that would have to be answered. One, might there be certain restricted cases in which inheritance is justified? Particular (types of) goods and limits on the amount to be transferred come to mind. Two, would abolishing inheritance even be feasible under non-ideal conditions? Three, in terms of politics, how would one deal with the fact that while some of us may think inheritance is unjust – at a minimum, the readers of this essay who are persuaded by its reasoning –, the vast majority of citizens do not think it is unjust? Four, what should be done with property after the death of the owner, if inheritance is not an option? Should it be confiscated by the state, to be redistributed in accordance with the principles of the best theory of social justice? Or should the then owner be allowed to have it donated to a charity after his or her death? Five,
how would possible restrictions on inheritance, or its abolition, affect our economies? This might even have to be studied empirically. Will the incentive structure encourage people to economize effectively? Will their motivation to achieve, their propensity for saving, etc., be negatively affected to the point of endangering the economic system? Or would, over all, the redistribution of all the wealth that would otherwise be inherited add up to a greater economic benefit for everyone? Six, how should individuals who are convinced that inheritance is unjust act under a property rights regime, determined democratically in accordance with the will of the majority, in which inheritance is allowed in general, and in particular instances only weakly taxed? May individuals justifiably continue to take advantage of this practice as long as it exists, by continuing to bestow and to inherit property? Seven, how would we work out robust rules of inheritance that would, if justified and democratically decided by the majority, also be politically feasible, ensuring in particular that the compliance rate would be sufficiently high? All of these unsolved problems, and other follow-up questions, fall outside of the scope of this essay, yet their answers would have to be taken into account in order to reach an all-things-considered judgment. Here, I will only address the justifiability of the practice (or institution) itself.

Arguments for and against inheritance can rarely be found in political philosophy or theory today. There is however detailed comparative sociological analysis of the laws regulating inheritance and bequest in France, Germany and the United States.¹ If there is moral opposition to inherited wealth it is becoming an increasingly beleaguered position. Inheritance tax is often presented in neoliberal circles as a cruel injustice. In a pre-election debate in Britain, David Cameron claimed: “If you work hard and save money… and pay down your mortgage on a family home, then you shouldn’t have to sell that or give it to the taxman when you die. You should be able to pass it on to your children. It’s the most natural human instinct of all.”² Precisely because inheritance seems so “natural,” it often remains insufficiently examined and is seen as not in need of any justification. Even in philosophy or political theory, although the question of inheritance is clearly central to any account of legitimate ownership or property and any theory of (distributive) justice, it is rarely subject to sustained theoretical scrutiny.³ This, in itself, should suffice to justify addressing it now – or indeed, to demand that it be addressed.

And in fact, the question of inheritance could not be more topical. After a century in which two world wars as well as inflation acted as great equalizers, destroying many large fortunes, we are now on the brink of a major inheritance wave. This will add significantly to the inequality of opportunity that would have been present anyway in the starting conditions of this new generation. There will be a class of inheritors who already have a lot of wealth starting out and who can live off their capital gains. Everyone else, who only has their hard work and their individual talents to throw in the balance, will find it much harder to to reach an averagely sufficient level of wealth.

Besides skewing the balance of opportunities, another major effect of inheritance is a substantial increase in the inequality of distribution of income from capital – firstly, due simply to the transfer of wealth itself, and secondly, due to the fact that capital is more lucrative than income under our current system. This is why, after inheritance levels have risen steadily since the 1980s, the concentration of wealth in Germany is now quite high, once more. It is estimated that 10 percent of the population own, depending on the study, between 60 and 75% of the overall wealth. Worldwide, the picture is even worse: A recent Oxfam report shows that the wealth of the poorest half of the world’s population has fallen by a trillion dollars since 2010, a drop of 41 percent. This has occurred despite the global population increasing by around 400 million people during that same period.

Meanwhile, the wealth of the 62 richest persons has increased by more than half a trillion dollars to $1.76tr. This means that in 2015 the poorest half of the world’s population owns no more than just 62 super-rich people. The global inequality crisis is reaching new extremes. The richest 1% now have more wealth than the rest of the world combined. Power and privilege is being used to skew the economic system to increase the gap between the richest and the rest.

That inequality is increasing globally has mainly to do with an unjust global tax regime. The rich globally make their money more and more not through income earned through work as reward for merit and desert but through interests and dividends for wealth. In the upper stratosphere of society, wealth is increasingly passed on

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as a fortune others worked for, but that requires no work from the beneficiaries themselves.\textsuperscript{6} The already wealthy have benefited from a rate of return on capital via interest payments, dividends, etc., that has been consistently higher than the rate of economic growth.\textsuperscript{7}

So if we really want to deal with economic inequality today, we must look not only at the distribution of income, but even more so to the distribution of wealth. Wealth is distributed far more unequally today than is income, and this inequality in the distribution of wealth is the driver of the continuing increase of economic inequality around the globe. The vast inequality in the distribution of wealth is (according to the best estimates) due at least as much to inheritance as to any other factor.

Egalitarian theories of justice have long refrained from formulating an ideal and abstract theory of distributive justice to simplify the distribution of material wealth, exclusively focusing on the problem of a just distribution of income.\textsuperscript{8} The concepts of wealth and possessions enter into such theories only indirectly, in that one is free to do as one likes within a framework determined by justice with one’s just income. It can be used to acquire property and to build wealth.\textsuperscript{9}

But recent studies, especially Piketty’s well received book \textit{Capital in the Twenty-First Century},\textsuperscript{10} show that global economic inequality is mainly driven by wealth and only to a much lesser degree by income. There is increasing awareness that theories of justice, especially egalitarian ones, should focus their concern more on the injustice of the production, acquisition and distribution of wealth.

Inheritance is a prime candidate for an unjust acquisition and distribution of wealth. This is why I think we need an inquiry into whether the worldwide phenomenon of inheritance is just. In order to get into a position that lets me answer this question I will, in the next part (2), present the premises of my argument: in particular, the assumption of a well-ordered, fair society (2.1) and a functional theory of private property based on freedom.

\textsuperscript{8} John Rawls argued that questions about the system of ownership are secondary or derivative questions, to be dealt with pragmatically rather than as issues in political philosophy (Rawls 1971, p. 274).
\textsuperscript{9} In such theory, complications arise from the fact that one might use the capital to oneself generate further income. The redistribution of those earnings, however, is regulated indirectly through the progressive tax regime justified by the theories.
(2.2). After that, (3) I will consider the main arguments against inheritance from a justice perspective. Finally (4) I propose a term restriction on the right to private property.

My essential conclusion will be this: To secure that people start out with equal opportunities, the bundle of rights that entitle someone to property must be limited by considerations of justice. In particular, I argue that ownership must be term-limited to one’s own lifetime, and that its transfer by way of gift-giving, bequest or inheritance must be restricted.

2. Premise: A well-ordered, just society

2.1. Ideal Theory

This is a philosophical inquiry within ideal justice theory. That means, firstly, that it is done in the abstract, without taking into account many practical distinctions that might become morally relevant in particular cases, and thus could change one’s judgment in those specific cases. It is also concerned with an ideal situation, which means it accepts certain idealizing and/or counterfactual assumptions and premises, and simply asks what judgment would be warranted from a justice perspective under those ideal conditions. Finding out whether the obtained result would change under non-ideal circumstances, given more realistic assumptions, would be a further, second step which will not be taken in this essay.

These, in essence, are the idealizing assumptions and premises I will accept for now: Let us assume, counterfactually, that we live in a well-ordered society, and leave open the exact shape and organization of the state; in our society, the most important principles of justice have been ascertained, are known, have been institutionalized and are complied with in practice. This is a useful philosophical fiction. We assume, hypothetically, that all rights, duties and material goods are justly distributed. In an inaugural assembly– so we assume – all basic questions are decided on in a procedurally fair manner: What would be fair rules of living together? How should opportunities and resources be distributed at the beginning of life, and how should advantages and disadvantages be distributed in terms of an individual’s economic fortune, as well as in terms of the economic system we share? Different answers to these questions lead to competing theories of justice.
For the purpose of this inquiry, each reader is free to imagine that their preferred theory, if they yield patterned\textsuperscript{11} principles of justice, has been realized in this hypothetical scenario.\textsuperscript{12} Any such theory of distributive justice would work for the purpose of this inquiry, as long as it devotes attention to the question whether the outcome distribution of goods (in a wide sense) is itself just, rather than focusing narrowly on whether it has, historically, evolved from a just original distribution through property transfers that were also just.\textsuperscript{13}

In addition, we assume that the rules established in response to those basic questions of distribution are generally and mutually justified, such that they could not be reasonably rejected by any of the autonomous individuals affected, each equally entitled to dignity as a matter of principle. We proceed from the idealizing assumption that regarding the distribution of rights and obligations, some particular theory of justice has been generally and mutually justified and is now realized in this society in practice and in terms of policy. We have, then, a just distribution of rights and obligations, of goods and burdens, and of the resulting freedoms, entitlements, duties and opportunities.

Taking into account rules and institutions shifts the focus of a justice theory significantly beyond the distribution of goods. Every outcome resulting from these rules and social constellations is just. In other words, if any such outcome is unjust, the rules must be changed accordingly. Theories of distributional justice only concerned with output fall short if they ignore the way wealth is produced economically, or disregard the role institutions with legislative power and/or the public discourse of clashing groups and classes have in generating, stabilizing or indeed changing the circumstances of distribution and production.\textsuperscript{14} When justice theories take note of the way injustices might be produced, they aim at overcoming contributing social conditions and the disparity at the origin of an increasingly grotesque inequality of distribution. In this vein, this essay is meant as a critique of certain original conditions resulting in inequality, in particular the way inheritance is accepted as a matter of course.


\textsuperscript{12} In particular, this applies to liberal equality approaches, such as "equality of welfare", "equality of opportunity for welfare", "equality of resources", "equality of capability to function"). Cf. G.A. Cohen, "On the Currency of Egalitarian Justice"

\textsuperscript{13} Like Nozick’s entitlement theory. Cf. Nozick, Robert: \textit{Anarchy, State, and Utopia}, New York: Basic Books 1974

2.2. A functional theory of private property based on freedom

Let us assume, furthermore, that the members of our society approve of the institution of private property and have institutionalized it. More specifically, we assume that the members of society have generally and reciprocally accorded themselves a moral right of property. This moral right is meant to enable each person to exercise their freedoms in whatever way they prefer, provided that the range and the type of freedom can be reciprocally justified to all. Since acquiring and exercising discretionary control over extrapersonal objects can be seen as a necessary condition of the possibility of exercising one’s freedom in one’s preferred manner, and of pursuing one’s own conception of the good, the members of society decide to institutionalize and to codify a right attributed to all, stating that they must not be excluded from privately acquiring, and then using more or less exclusively and at will extrapersonal objects, as well as having the option of alienating these goods. Every person must be treated as an autonomous individual with equal rights, entitled to determine their own welfare and to autonomously choose as well as freely realize a suitable conception of the good, as long as all this is compatible with according that same freedom to all others. This means that society must adopt rights and rules that enable each person to freely choose a way of life. It must, by way of guaranteeing rights within a certain framework, secure this freedom by stopping others from interfering with a person’s capacities and opportunities for achieving their goals, and by protecting all persons from being subjugated. If we assume that the members of society share a classic liberal position and want to safeguard it, we can advance a functional argument for private property on the basis of freedom: Individuals live their own lives in their own chosen ways in and through the purposive utilization of objects in the extrapersonal world. Let’s assume that people agree that this is greatly facilitated by their acquiring and exercising ongoing assured discretionary control over extrapersonal objects—in contrast to individuals’ having merely a liberty temporarily to put objects to use. Let’s further assume that it can be plausibly shown that the possibilities for individuals’ acquiring and exercising ongoing assured discretionary control over extrapersonal objects is greatly extended by the presence of a rule constituted practice of private property. A practice of private property is an artificial extension of the means available to individuals to acquire, enjoy, and exercise discretionary control over portions of the extrapersonal world. From these premises the conclusion can be drawn that each individual is to be allowed to live her own life in her own
chosen way with this natural right of property. Such a moral right of property is not to be confused with a moral right to property— which would be an original, nonacquired right to some specific extrapersonal objects or to some share of extrapersonal objects.\(^{15}\) So, the members of society consider a natural right of property to be justified and necessary, but this does not assume a natural right to property. Our historically evolved rule-constituted practice of private property can thus constructively be justified by their function to enable personal freedom.

Rule-constituted practices of private property will vary in how successfully they fulfill their function of creating an environment in which individuals can (more readily) acquire, enjoy, and exercise discretionary control over (and transfer and relinquish, etc.) extrapersonal objects. However, our discussion about whether inheritance is just as a matter of principle, can now proceed on the assumption that all goods are subject to just rules as private property, which includes certain attributed rights of usage. The only question remaining open and in need of an answer is whether the original owner may bequeath or otherwise leave (private) property to an heir after their death.

Any property right is actually a bundle of rights, organized around the idea of securing, for the rightholder, exclusive use of or access to a thing. The notion of full liberal ownership comprises the following components, elements, or "incidents":\(^{16}\) rights to possess, use, and manage a thing; the right to the income from its use by others, and the right to the "capital" (i.e., the right to sell it, give it away, consume, modify or destroy it); the power to transmit it to the beneficiaries of one's will; the right to security, or immunity from expropriation. Adjuncts to these Hohfeldian rights of various sorts are certain structural necessities of any system that recognizes ownership, although they are not themselves integral elements in the owner's array of powers and rights. These are the prohibition of harmful use, the residuary character of ownership (laws specifying rules of

\(^{15}\) Cf. Mack, Eric. „The natural right of property." *Social philosophy and policy* 27.01 (2010): 53-78. Hegel broached the idea in his *Philosophy of Right* (1821) that the appropriation of things was a necessary feature of the expression of human personality, and that the necessity for such expression created an "absolute right of appropriation." Hegel’s account has been explored and defended at length by Jeremy Waldron, *The right to Privat Property*, Clarendon Press 1990.

ownership in cases of lapsed or lesser interests in a thing), and the liability to execution (expropriation) in cases of debt or insolvency. Each of these eleven incidents may occur in a wide variety of forms.

Most of these rights, liberties, and powers in the bundle concern interests of owners to control the asset in question. “Control” here refers to the ability on the part of a person to be the final arbiter over what is to be done with a thing, unless this is contracted away. Control rights, in particular, are aspects of the person's independent powers over the thing owned; that is, these rights are not conditional on the consent of others, except perhaps the recipient to whom one alienates something or any other persons with whom one wants to use one's property. The central idea of these rights is that the owner maintains primary say over what is to be done with the thing insofar as this affects only the owner.¹⁷

The right to private property doesn’t rule out collective control. On the contrary, since the institution of private property laws consists of rights granted by the members of society to each other, even a moral right private property (if there is any) requires for its very existence public rules designing the content, shape and scope of the bundle-rights in question. Until possession is guaranteed by social rules, there is no determinate relation between person and thing, since that relation is a matter of social rules and conventions. Property thus is (to at least a significant extent) the product of social rules. Therefore, normative thinking about the former must be preceded by normative thinking about the latter. As Hume notes:

“Our property is nothing but those goods, whose constant possession is establish'd by the laws of society; that is, by the laws of justice. Those, therefore, who make use of the words property, or right, or obligation, before they have explain'd the origin of justice, or even make use of them in that explication, are guilty of a very gross fallacy, and can never reason upon any solid foundation. A man's property is some object related to him. This relation is not natural, but moral, and founded on justice. Tis very preposterous, therefore, to imagine, that we can have any idea of property, without fully comprehending the nature of justice, and shewing its origin in

¹⁷ The other major incident in contrast to control rights, is the right to the income from assets. These rights are of concern for a theory of just income. The source of justification for income rights will necessarily be principles that govern the pattern of distribution of goods in the economy. This is argued in Christman, John, “Self-Ownership, Equality and the Structure of Property Rights”, Political Theory Vol. 19 No. 1, (1991) 28-46.
the artifice and contrivance of man. The origin of justice explains that of property. The same artifice gives rise to both.”

Even if property depends on social rules and positive law, we have pre-conventional moral reasons to grant and secure property. Out of these moral reasons, reasons we all can share, concrete property rights and laws may be derived. In a well-ordered and just society, the right to acquisition of private property, including the right to the income from assets, will be subject to a fair system of distribution.

3. Arguments pro and contra inheritance

Assuming this ideal scenario, in particular that all conditions for justice are met: what arguments are there for or against inheritance? Many people believe that ownership implies inheritance. Although there are various forms of bundles of property rights most people assume that rights to security in ownership, transmissibility (after death), and absence of term (specifying absence of temporal limitations on ownership) are part of the full bundle of rights to property. If that is the case, the owner is legally empowered to transfer the whole bundle of rights in the object she owns to somebody else—as a gift or by sale or as a legacy after death. With this power, a private property system becomes self-perpetuating. After an initial assignment of objects to owners, there is no further need for the community or the state to concern itself with distributive questions. The claim that ownership actually does imply posthumous transmissibility is nevertheless presented by Honoré simply as an obvious truth, one apparently demonstrated by the existence of inheritance laws in modern legal systems: beyond this fact, he provides no moral, legal or political justification or argument for its inclusion. This

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18 Hume 1978 [1739], p. 491. This argument denies any pre-social natural right to ownership, even the one to self-ownership.

19 For the purpose of this paper I will not distinguish between the concept of bequest and inheritance since the difference is not relevant for my arguments. But others like Cf. Lamb, Robert: “The Power to Bequeath”, in: Law and Philosophy. Dordrecht: Springer 2013, do: “Although subject to frequent colloquial conflation, one may distinguish the concept of bequest from that of inheritance, as the two moral practices have different justificatory implications. When understood narrowly, inheritance refers to the right to receive the private property owned by a spouse, parent or family member on the event of that person’s death. The recipient of an inheritance is determined by her satisfaction of a specific, established relational criterion and is therefore completely independent of any desires held or expressed by the owner while alive. Bequest can be understood to denote a quite different, more capacious concept than inheritance. It can be understood as the power to alter legal relations of ownership such that a person’s property can be posthumously transferred to any person or institution of choice, regardless of any familial (or indeed any specified relational) connection. Questions about the legitimacy of and grounds for inheritance need not make any reference to the moral relevance of a proprietor’s final will and testament, whereas questions about the legitimacy of and grounds for bequest hinge entirely on such moral relevance.”
approach is unsatisfactory, insofar as such a view of the concept implies that there is an over-arching, stable concept of property ownership, rather than a number of competing conceptions of a contingent social practice.

In this essay I want to question the assumption that ownership entails inheritance, i.e. the right to transmit the property to whomever one chooses after one’s death. A social practice may be taken for granted for centuries before humanity finally comes to realize it cannot be justified, e.g. political power by heredity. But might not the inheritance of economic power be equally unjustified? This is the question to be examined here.

3.1. Inheritance is not analytically entailed in the concept of private property

According to a very common understanding of the concept, the right to leave an inheritance is a core right included in the bundle of rights to property comprising ownership. Abolishing or restricting inheritance is therefore routinely rejected (often with a certain indignation) on the basis that, after all, this is personal private property one has rightfully acquired and for which one has always paid fair taxes, as required by the prevailing rules. Obviously one is therefore entitled to give it away as a gift, or to bequeath it, which, after all, is itself a type of gift!

And indeed, in the generally accepted analysis of property, bequest is seen as part of the bundle of ownership rights one can have towards extrapersonal objects. Honoré, for one, in his (already mentioned) seminal analysis, derives a right to bequeath one’s property from the usage of the term in society and in the legal system as an analytical truth. In any case, his analysis, and others of the kind, offer no argument justifying it, other than this. However, this implies that we have some universal concept of ownership. Whether this concept supports the practice of inheritance depends entirely upon whether our “right to property” should be viewed as incorporating the practice of inheritance. But whether our right to property should be viewed as incorporating the practice of inheritance is just another way of stating the very point at issue in this investigation.

Property rights are not normally viewed as being unqualified, nor, certainly, should they be. On the contrary, property rights normally are, and certainly should be, viewed as having built into them a number of qualifications or exceptions: an exception for taxes, an exception for uses which pose a danger of injury to others, an exception for eminent domain, and so on. Any definition of private property that implies that a
The proprietor has absolute control over his resource rests on a mistaken conception. In every modern society, property has to be governed by common property rules. There are variations in the degree of freedom that a private owner has over the resources assigned to him or her. Obviously, an owner's freedom is limited by background rules of conduct: I may not use my gun to kill another person. These are not strictly property rules. More to the point are things like zoning restrictions, which amount in effect to the imposition of a collective decision about certain aspects of the use of a given resource. The owner of a building in an historic district may be told, for example, that she can use it as a shop, a home, or a hotel but she may not knock it down and replace it with a skyscraper. If one owns a historic and valued piece of art in Germany one may not destroy it, disfigure it, or even sell it outside Germany without special permission, since it is regarded as national heritage that should be preserved for the general public and future generations. There are a lot more familiar cases like these. In such cases, we may still say that the piece of art or the historic building counts as private property. If, however, too many other areas of decision about its use were also controlled by public agencies, we would be more inclined to say that it was really subject to a collective property rule (with the “owner” functioning as steward of society's decisions). There seem to be no sharp lines demarcating where private property ends and public or collective property begins. This is the case because a full/complete bundle of property rights to a certain good is the rare exception. In standard cases, some of the rights in the bundle of property rights are restricted and even others totally missing. That a society guarantees the right to private property cannot mean that society is granting the proprietor always the full bundle of rights to his property. That would be absurd, since not all rights (of the bundle) make sense for all kinds of goods or all situations. Thus society has to decide, for types of goods to be privately owned, how extensive the bundle of rights in these cases should be. The citizens of a society therefore have discretion in a property regime to decide how the bundle of rights should be constructed for various types of property, depending on the cases, their function, and general consequentialist concerns, etc.
If this can be agreed upon, the important lesson to be learned is the following: One could easily construct a conception of property in which inheritance would play no integral part. In support of this general point John Stuart Mill observed that the idea of private property implied only ‘the right of each to his (or her) own faculties, to what he can produce by them, and to whatever he can get for them in a fair market; together with his right to give this to any other person if he chooses.’ He said that passing the property of individuals who made no disposition of it during their lifetime to their children ‘may be a proper arrangement or not, but it is no consequence of the principle of private property’.21

The only way to determine whether property rights should incorporate the practice of inheritance is by examining, the various pros and cons of abolishing inheritance.

3.2. The practice of inheritance violates three principles of justice

There are three pro tanto reasons that speak against inheritance. These arguments are rather simple and straightforward. Inheritance contravenes three principles of justice: a) the principle of equal opportunity, b) merit principle and c) principle of liberal-egalitarian responsibility.

Most of our current societies live with a big internal inconsistency. On the one hand society strives to realize the principles of justice in a well-ordered society. There is a certain disagreement about which are the correct principles of justice. However, almost all people in liberal democracies at least see the principle of equal opportunity as one of the basic requirements of justice. If people live in a capitalistic market society most of them see merit as one of the major criteria for a justified distribution. Liberals support the idea that social justice requires some kind of redistribution to equalize income and wealth to a certain degree. But quite obviously inheritance contravenes these the principle of equal opportunity as well as of merit. Not quite so obviously, it also stands in a certain tension with the principle of liberal-egalitarian responsibility. I will discuss all three conflicts in turn.

3.2. a) What equality of opportunity means in practice, that is, in our social lives, depends on what those opportunities should allow one to achieve. From a social justice perspective, relevant opportunities are primarily

21 Mill 1994 [1848], p. 28.
22 E.g. Rawls difference principle or Dworkins equality of resources.
those to do with income and wealth within the economic market sphere, as well as with positions in society, higher offices, professional standing and social status. Fair equality of opportunity requires at least that those with similar abilities and skills should have similar life chances. Those who are at the same level of talent and ability, and have the same willingness to use them, should have the same prospect of success regardless of their initial place in the social system.\textsuperscript{23} While formally, the competition for offices and positions may offer the same chances to everyone, one’s social environment and background can still be of advantage to some, while impeding others from fully realizing their talents. Their chances, therefore, are actually very unequal. Such original disparities between those competing for positions be precluded by the principle of fair equality of opportunity. It is meant to counter the very real advantage of those better situated socially and materially, who are therefore better able to develop their talents and thus get better results under the principle that careers should be open to those with the same talent and ability, which is unfair. Tuition fees for schools and universities should not block the children of poor families from attaining an adequate education, nor should prejudices block women from the same, especially as education is a crucial factor when competing for more senior positions.

When applied to social positions and offices, the principle of fair equality of opportunity demands that we organize society in such a way that everyone has the same rights to desirable social positions, that all careers must be open to capable people, and that everyone is entitled to start out under equal conditions. Beyond a certain legal framework, fair equality of opportunity requires comprehensive sociopolitical measures. These should be aimed at dismantling existing types of social disadvantage and discrimination. In addition, they must provide the material circumstances necessary for everyone with the same talents and the same motivation to have the same opportunities, regardless of any social differences.

That inheritance violates the (crucial) ideal of justice, equal opportunity, becomes, I take it, visible if one admits that wealth is opportunity.\textsuperscript{24} Wealth is the opportunity to realize one's potential—for a career, success,


\textsuperscript{24} I should point out two limitations to this: this is true only if we accept that the principle of equal opportunity requires equality of material resources. But that isn’t completely obvious; for example, some may have social privileges regarding education, and equality of opportunity might then require that they have fewer economic resources than others who lack those educational privileges. Also, in principle, inheritances need not be vastly unequal, so the practice of inheritance need not exacerbate economic inequality. In a society where everyone owns roughly the same and where everyone inherits (but not more than once) inheritance wouldn’t be a cause of inequality. That is not a realistic scenario, but it shows that inheritance as such does not conflict with
income—or can at least be easily transposed into opportunities. Inheritance distributes wealth and therefore opportunities very unevenly. Therefore, inheritance violates equality of opportunity.

3.2. b) The principle of fair equality of opportunity justifies excluding primary discrimination, or any advantage or disadvantage based on morally irrelevant criteria like gender, appearance, or social and ethnic background, making success or failure depend solely on one’s own achievements. It should be “earned” or “merited”, rather than being “inherited” or awarded based on social position, gender or background. This principle is meant to ensure that a person’s fortune depends only on the person themselves, or more specifically their decisions, rather than on something beyond their control, such as life circumstances for which they bear no responsibility. In a society constituted in accordance with the principle of equality of chances, the unequal distribution of positions and offices is fair because they “deservedly” go to those who “merit” them on account of being more qualified. The core idea of fair equality of opportunity is therefore meritocratic and can be phrased like this: unequal shares in social positions and offices are fair if they have been earned and if those positions and offices are distributed according to qualifications. Advantages and disadvantages on account of arbitrary and unearned social differences are unfair. Inequality of the outcome (ex post inequality) is thus permissible, provided that everyone had the same opportunity (equality ex ante) of obtain those position – if, in other words, the social environment is not taken into account, but only their own qualification for the position in question.

According to any reasonable interpretation of “merit,” the wealth people get through inheritance has nothing to do with having earned something through productivity and achievement. On the contrary: inherited wealth is undeserved in the sense that it is not the product of one’s own effort. Whether and how much one inherits is rather a matter of arbitrary and undeserved social or material familial differences.

3.2. c) In addition (and in fact in connection with the principles of desert or merit), if one accepts the (controversial) egalitarian notion that, if individuals start out under the same conditions, they can be held

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25 It is an open question what the adequate criteria and conditions for merit or desert are and whether they are fulfilled in current capitalist market economies. There are reasons to doubt whether the dominant principle of distribution in the market, i.e. supply and demand, do go hand in hand with principles of desert and merit. See Gosepath, “No Pain, No Gain”, a talk at A Night of Philosophy in UNESCO, Paris, November 18th, 2016.
responsible for what they achieve, then one should also consider them entitled to the fruits of those actions they undertook on their own account. According to this principle of liberal-egalitarian responsibility, one person being at a disadvantage compared to others (in terms of their shares in the resources available) is unjust, unless this is the result of circumstances for which they themselves are responsible, in other words a result of their own free decisions or of avoidable mistakes. Inequality, then, is only justified if those worse off are responsible for their own situation. Conversely, it follows from this principle that one is indeed oneself responsible for certain inequalities that result from freely made decisions, and therefore should receive – except for minimal emergency provisions – no compensation for them. However, those inequalities that are not the result of certain choices, should be compensated. There is tension between this principle of liberal-egalitarian responsibility and the practice of inheritance, because receiving an inheritance is, from a moral perspective, completely accidental. The beneficiary had no hand in having been born into a rich family rather than a poor one, that is, into a family capable of transferring property to them, rather than one incapable of this.

It’s not fair for the children of poor parents to have much worse prospects in life than the children of rich parents merely because of the family they were born into. Posthumous transfers frustrate the achievement of these principles. The transmissibility of ownership rights facilitates unjustifyably inegalitarian outcomes. Therefore, inheritance is not justified. Because of this, posthumous transfers should be at least significantly curtailed or even prohibited entirely. Only the abolition (or for that matter steep taxation) of inheritance will in the long run increase the widely accepted and supported equality of opportunity and any (more controversial) luck-egalitarian principle of equality.

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4. The case for a term restriction on the right to private property

In light of the internal inconsistencies of standard liberal thinking in matters of distributive justice, I would like to propose to think about abolishing inheritance. The thought would be that all our principles of justice in a well-ordered society would remain the same. Principles of distributive justice would frame and constrain an economic market system with the principle of demand and supply. Society guarantees the right to property as well. Both the market system and the property regime should be regarded as liberty enhancements.

According to the best theory of property (as indicated above), it is a guarantee of one’s own liberty. Property is a necessary condition of the possibility to live one’s own life without unjustified hindrances and arbitrary domination. But if that is the case, then property is (only) a necessary means for one’s own liberty. When one dies one has no more liberty. After death, a person stops existing (at least in a worldly sense). She can no longer enjoy any freedoms and so there is no more need for any conditions securing their possibility. A fortiori the dead do not have a right to private property. Thus, the potential donor of inheritance has after his or her death no justified claim to what was formerly their rightful property. In addition, society has good reasons to abolish inheritance, since from the recipient’s perspective it constitutes a matter of inter-generational luck that contravenes equality of opportunity, merit- or desert- based principles and luck-egalitarian concerns. Taken together, both sides, the donor and recipient side of the argument speak in favor of abolition of inheritance.

After one’s death one’s property could be confiscated by the state and be sold by auction. However, this proposal would be subject to one qualification: any person specified by the decedent in his will shall be given a chance to buy any property specified by the decedent in his will before it is put on the market. This qualification is designed to alleviate slightly the family heirloom and business problem. The price to be paid by this person shall be whatever the property is worth (as determined by governmental appraisers, subject to appeal).

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29 There are in fact some examples of this: In China for example property of land lasts only 99 years, after that it falls back to the state and will be sold at an auction again.
**The difference between inheritance and gifts**

There are reasons to be dissatisfied with arguments that urge the prohibition of posthumous transfers on egalitarian grounds. Probably the most striking one is the lack of an obvious reason not to extend the egalitarian proviso to all forms of gratuitous transfers. If the moral objection to posthumous transfers is that they result in material inequalities, this is clearly just as applicable to inter vivos gifts. If it is accepted that posthumous transfers treat third parties unfairly or result in unequal distributive shares, such a conclusion undoubtedly applies to cases in which the giver of the gift in question is still alive.

Proposals to end or restrict the practice of inheritance are often met with the following kind of argument, suggesting that opposition to inheritance arbitrarily restricts just one of the many ways in which a person might dispose of their private property.\(^{31}\)

(i) Passing on one’s property as an inheritance or a bequest is just one among many ways of disposing of it.

(ii) Many other ways of using one’s property are such that it’s hard to justify their restriction.

(iii) There are no relevant differences between leaving one’s property to designated beneficiaries and the alternative uses accounting for (ii).

(iv) Therefore, it is hard to justify any large restriction on freedom of inheritance.

To answer this argument, then, one must attempt to show that there is something morally distinctive about inheritance after all. What a successful response must do is identify some morally interesting property of the practice of inheritance that serves to distinguish inheritance from other uses of property.

 Otherwise, the justification for bequests would be ultimately not different in any morally relevant sense from that of gifts. In this case, both types of property transfer should be thought equivalent when theorizing about distributive justice, such that the interest they serve is sufficiently strong to undermine any case for their prohibition and that regulation through taxation is a suitable normative conclusion for liberal egalitarians.

One way to deal with this objection would be to acknowledge and in fact embrace it by widening the scope of the argument to suggest that all forms of gratuitous transfers should be prohibited.\(^{32}\) Any proposal for

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31 The following argument stems from Halliday, Daniel: “Is Inheritance Morally Distinctive?,” in *Law & Philosophy* (2013). 32: 621. However, he states the argument in terms of bequeathing.
abolishing inheritance would thus include the abolishment of all large gifts as well – that is, gifts which might serve as alternatives to inheritance. If such gifts were not abolished as well, any law abolishing inheritance could be avoided all too easily.

However, most of us would not want to abolish along with these large gifts such harmless gifts as ordinary birthday and Christmas presents. This, however, raises the problem of where to draw the line. To avoid an obvious loophole, gifts of a certain magnitude and in a certain time would have to be abolished along with inheritance. My ideal would be to allow for gifts, but only of a certain amount. Since, as argued earlier, property rights should be restricted to the life time of the owner, the amount of goods a recipient should be allowed to receive should be such that they can make use of during their own lifetime. In addition, when an old person gives large presents to young persons, there is the strong suspicion that the try to circumvent inheritance. In cases like these, gifts might be treated like inheritance resp. bequest. Thus a tempting compromise proposal would be to place a limit upon the amount in gifts any one person could receive in a lifetime. In other words, this proposal calls for the establishment of a lifetime accessions quota.

To conclude: For those who, like myself, are inclined to support the results of this investigation, the reasons against inheritance form strong pro tanto reasons that inheritance is unjustified. But these are only pro tanto reasons—none of them are absolute. Therefore, there might be objections to the abolition of inheritance that are strong enough to override the pro tanto reasons against inheritance. The prior and more significant problem seems to be whether this kind of restriction on liberty or autonomy (or whatever other interest grounds private property rights) could (ever) be justified, all things considered. Aren’t there other and possibly weightier reasons that will (perhaps even always) tip the balance in favor of not abolishing inheritance?

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32 Michael Otsuka, Libertarianism without Inequality, p. 38, suggests that while ‘there would be little reason from an egalitarian point of view to interfere with the worthwhile practice of modest gift giving on special occasions which do not, in the aggregate, have a significant effect on the distribution of opportunity for welfare’, any ‘less modest’ gifts given on non-special occasions are objectionable and should be prohibited.

33 E.g. in Germany, in such cases the gift tax is just as high as the inheritance tax.

34 Haslett, D.W., “Is Inheritance Justified?”, in: Philosophy & Public Affairs, Vol. 15, No. 2 (Spring, 1986), pp. 122-155, here 152. In a marriage, viewed as a joint venture, both members, whether or not one stays home tending to children while the other earns money, have an equally important role to play. Neither, therefore, should be deprived of enjoying fully any of the material rewards of this venture by having them taken away at the spouse’s death.