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The abolition of the inheritance tax by some autonomous administrations and its possible discrepancy with articles 31 and 133 of the Spanish Constitution

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CITATION

Martínez Cristóbal D. (2024). The abolition of the inheritance tax by some autonomous administrations and its possible discrepancy with articles 31 and 133 of the Spanish Constitution. *Journal of Infrastructure, Policy and Development*. 8(14): 9452. <https://doi.org/10.24294/jipd9452>

ARTICLE INFO

Received: 4 October 2024
Accepted: 25 October 2024
Available online: 22 November 2024

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Abstract: This study aims to analyze the current situation of inheritance taxation in Spain and evaluate the legitimacy crisis surrounding the decision of whether to tax mortis causa transfers, as well as the scope and conditions under which such taxation should occur. The Inheritance and Donations Tax (IDT) frequently sparks debate, and this paper aims to analyze its evolution since its transfer to the Autonomous Communities, tracing its development to the present day. A thorough examination is essential to clarify its significance within a modern tax system, its role in the new system of regional financing, and the reforms necessary for its potential continuation, while also assessing the level of public dissatisfaction it provokes. The methodology employed in this paper involved a review of the existing literature, current legislation, and available scientific-academic resources relevant to the topic. The approach is predominantly theoretical and intentionally cross-disciplinary, aimed at enhancing accessibility and comprehension.

Keywords: tax; inheritance; ideology; regional competencies; fiscal harmonization

1. Introduction

Inheritance taxation has been part of the Spanish tax system since the late 18th century, making it one of the oldest taxes (Suárez Pandiello, 2019a, p. 314). Since its implementation, the tax has undergone various names and regulatory formulations but has remained almost permanently present in the Spanish tax system. It has established itself as a valid instrument for resource acquisition by the administration (García de Pablos, 2010, p. 15).

With the approval of the Spanish Constitution of 1978 (SC) and the consolidation of democracy, a tax reform was deemed essential by all parliamentary groups to modernize the Spanish tax system and align it with those of other European countries. This consensus was reflected in the Moncloa Pacts of 1977 and materialized that same year with the approval of the Urgent Measures of Tax Reform Law, established as the first democratic law of the Constituent Courts (Martín Moreno, 2007, p. 174).

Within this fiscal reform framework, parliamentary groups also agreed to simplify the Inheritance and Donations Tax regulations and effectively coordinate it with the Wealth Tax. However, the approval of a new normative text regulating the inheritance tax was delayed until the approval of the IDT Law in 1987, during which the 1967 Consolidated Text remained in force (Martín Moreno, 2007, p. 173).

The delay was primarily due to specific disagreements among parliamentary groups about its contents, technical issues such as the introduction of the multiplier coefficient based on the recipient's previous wealth, legal uncertainty in the process of determining the taxable base, and circumstantial problems related to parliamentary

processing times, leading to the expiration of the first bill presented to the Courts in 1977 (Martín Moreno, 2007, pp. 174–175).

Additionally, this legislative process was influenced by the intense and delicate political negotiations between the central government and the *Generalitat* of Catalonia during the process of shaping and structuring the autonomous state. The Catalan government demanded tax collection competencies over the IDT. This demand was partially satisfied with the approval of Organic Law 8/1980, of 22 September, on the Financing of the Autonomous Communities (LOFCA). This law extended the transfer of these competencies to all Autonomous Communities (AACCAACC) still in the process of recognition and constitution, delaying the processing of the new normative text to include this transfer (Hierro Recio, 2019).

Upon the approval of the IDT Law in 1987, it not only incorporated the historically attributed features of this type of taxation, such as its direct and subjective nature (Article 1) and its redistributive character (Preamble), but also transferred its tax collection competencies to the AACC as provided in the rules regulating the transfer of state taxes to the Autonomous Communities, with the scope and conditions established by the Transfer Law, according to Article 2.1. Thus, what began as a demand of Catalan nationalism to gain some recognition of its sovereignty by the central government ended up linking all the autonomies through the LOFCA and the IDT Law.

Consequently, the *Generalitat* government again demanded greater competencies over this type of taxation, specifically certain normative competencies to allow it to modify, at least partially, the tax burden in its territory. José María Aznar, the Popular Party (PP) candidate for the Presidency of the Government, and Jordi Pujol I Solei, President of the *Generalitat*, agreed within the framework of the Majestic Pact to undertake the necessary legal modifications for this transfer. These modifications were implemented the same year, once Aznar had assumed the Presidency of the Spanish Government, with the approval of Law 14/1996, of 30 December, on the transfer of state taxes to the Autonomous Communities and complementary fiscal measures.

As with the transfer of regulatory competencies a decade earlier, the transfer of normative competencies over the IDT to the *Generalitat* of Catalonia was extended to the rest of the AACC with the approval of Law 21/2001, of 27 December. This law regulated the fiscal and administrative measures of the new financing system for the common regime Autonomous Communities and Cities with Statutes of Autonomy. Unlike the previous instance, this transfer took place at the request of the PP and with an absolute majority in the Spanish Courts (Hierro Recio, 2019).

The transfer of normative competencies legally enabled the regional governments to approve special regimes of reductions and tax credits, allowing them to effectively nullify the IDT in their territories in subsequent years. This led to a “race to the bottom” in taxation, causing a blatant situation of fiscal discrimination among Spanish citizens. In recent years, this situation has significantly increased societal antipathy toward this type of taxation, leading to a severe legitimacy crisis that seriously threatens the survival of the IDT as part of the Spanish tax system (Barberán Lahuerta, 2003; García de Pablos, 2010, p. 9).

During the economic crisis of 2008, many citizens were forced to renounce small inheritances because they could not afford to pay the capital gains tax, which was

indistinguishable from the IDT for the average taxpayer due to sheer ignorance. This fiscal misperception caused many citizens' antipathy to focus on the IDT instead of the capital gains tax, not knowing that the latter had nothing to do with the inheritance tax (Hierro Recio, 2019). The inability to adequately distinguish between the Inheritance Tax and the municipal capital gains tax (Suárez Pandiello, 2019a, p. 336), combined with defective property valuation systems that repeatedly valued properties above their actual sale price, widespread discontent stemming from the crisis (Hierro Recio, 2019), and an evident lack of updates to its tax bases, rates, and essential structural elements (Ruiz-Huerta Carbonell et al., 2022, p. 687), substantially increased societal antipathy toward the IDT.

In this context, the PP constructed an ad hoc argument to justify the abolition of the IDT, primarily based on a forced reinterpretation of the content and limits of the right to private property and its transmission (Tapia Nieto, 2007). This argument was used in successive regional campaigns until the PP became the main detractor of the tax. Consequently, regional PP governments were compelled to implement these fiscal mechanisms, with Esperanza Aguirre being the first to approve a tax credit of up to 99% for transfers between direct relatives (Hierro Recio, 2019; Tapia Nieto, 2007).

Since then, the political instrumentalization of the IDT tax has led to its increasing denaturalization, potentially contributing to its gradual disappearance without a thorough academic debate assessing its current role and future objectives (De Pablos Escobar, 2006, p. 8; García de Pablos, 2010, p. 10).

Whenever political parties face elections, a debate arises over the appropriateness of certain taxes, such as the Inheritance Tax, which was initially designed to redistribute wealth and reduce social inequalities. While right-wing parties tend to advocate for its abolition or reduction, left-wing parties support maintaining or increasing the tax rate.

The current legitimacy crisis it faces began relatively recently, specifically in the 2000s, as a consequence of the social antipathy it generated during the economic crisis and its political instrumentalization by some political forces. It should also be noted that the future of inheritance taxation in Spain cannot be resolved without first addressing other debates that also polarize Spanish society and are closely linked to it, such as the model of territorial political organization and the model of regional financing.

Beyond the political debate, taxation experts highlight the inefficiencies of the current tax collection system, which disproportionately benefits high-income individuals and suffers from poor management (Martín Queralt et al., 2019, p. 128). Rather than focusing solely on raising or lowering taxes, the central issue is the fair distribution of the tax burden to prevent advantages for wealthier taxpayers. As a forward-looking proposal, experts suggest differentiated treatment based on economic activity or the source of income.

2. Materials and methods

The current state of the IDT has been examined, taking into account both its theoretical aspects and practical application within the Spanish tax system, given the controversial nature of this tax. An evolutionary perspective is used to explore the

changes the tax has undergone, along with the growing movement towards its abolition, as assets are already taxed during the owner's lifetime. The primary criticism centers on the obligation to pay taxes again on these same assets when ownership changes, despite taxes having already been paid.

The ongoing controversy is analyzed through a detailed and thorough review of the arguments most commonly presented by critics to justify the abolition of the IDT. The goal is to assess whether these arguments are well-founded or unfounded, and whether they contribute to or distort the public debate. This analysis, in turn, helps to identify the aspects of the IDT that are genuinely harmful and warrant greater attention in any potential reform.

The numerous criticisms of the existing disparate regulations raise doubts about whether the current approach is effectively aligned with its intended objectives. These criticisms have led to suggestions that, in the near future, efforts may be directed towards a form of functional recovery, from both fiscal and non-fiscal perspectives.

3. Results

The fiscal principle outlined in Article 31 of the SC establishes the obligation of all citizens to contribute to public expenditure in accordance with their economic capacity. This principle binds public authorities and shapes the nature of the tax relationship, ensuring the protection of the freedom of establishment and the free movement of individuals. It also limits the granting of tax benefits based on the location of an activity, tax domicile, or the retention of assets within a particular Autonomous Community (Rogel Vide, 2017, p. 68).

The current state of the tax reveals significant dysfunctions due to the extensive use of powers granted to the Autonomous Communities (AACC), which have been utilized to reduce the tax burden in each region. Article 133 of the SC states that the original authority to impose taxes lies exclusively with the State, while the Autonomous Communities and Local Authorities may establish and collect taxes in accordance with the SC.

This situation has undermined the tax's function and led to socially and politically questionable outcomes. Although these outcomes are not unconstitutional, they have further diminished the regard for this tax and, for some, strengthened the argument for its abolition (Martín Queralt et al., 2020, p. 257)

One of the core principles is the benefit principle, which views the tax as compensation to the State for the services that facilitate the transfer of property rights. The social function of the law should not be confused with the law being subsumed into the social function. The SC, in Article 31.1, prohibits the tax from being confiscatory, while Article 39.1 strengthens the social, economic, and legal protection of the family.

4. The current controversy over inheritance taxation in Spain

The current debate revolves around two hegemonic, antagonistic, and seemingly irreconcilable positions: the political right, which advocates for abolishing the inheritance tax, and the left, which favors keeping it, albeit with certain reforms. In the middle are the citizens, who, with varying degrees of interest, witness a barrage of

attacks employing all kinds of rhetorical arsenals, ranging from undermining its philosophical foundations to highlighting weaknesses observed in its specific regulation as a ceded tax (Suárez Pandiello, 2019a, p. 314). The direct and detrimental consequence of this situation is that it becomes very difficult to distinguish the reasons that genuinely justify a review of this type of taxation from those that are deliberately invoked with malicious intent to justify its abolition, focusing solely on economic and electoral purposes.

4.1. Technical arguments

4.1.1. Tax duplication with other taxes such as IRPF or IP: Including inheritances in the concept of income

One of the most widespread arguments in favor of abolishing the Inheritance and Donations Tax (IDT) in recent years, primarily due to its technical nature, is the alleged situation of tax duplication or double taxation. This argument claims that the assets being taxed have already been subjected to taxation when they were acquired by the decedent through income or wealth (Hierro Recio, 2019; Suárez Pandiello, 2019a, 2019b). For instance, an heir who must pay taxes on an inherited estate for which the decedent already paid taxes during their lifetime argues that the same asset or wealth is being taxed twice.

The primary issue with this argument is that it lacks a legal foundation because it is based on a conceptual error, ignoring the fact that taxes are paid by people, not assets. Since the deceased and the heir are different individuals, double taxation is materially impossible (Hierro Recio, 2019). In other words, the person paying the tax has not previously paid anything for the obtained assets, and the taxes that the decedent had to pay are irrelevant in this context (Suárez Pandiello, 2019a, p. 317). Thus, this is not a valid argument and, far from contributing to the health of public debate and deliberation, it undermines them, to the detriment of the quality of Spanish democracy (Ruiz-Huerta Carbonell et al., 2022, p. 696).

Another related argument, without necessarily invoking the existence of fictitious double taxation, advocates for the abolition of the IDT and the inclusion of inheritances as taxable events under the Personal Income Tax (IRPF). This position is based on the patrimonial theory of income, which conceives income in its broadest sense, encompassing all increases in wealth or value regardless of their form or source (García de Pablos, 2010, p. 44). From this perspective, since receiving an inheritance increases the economic capacity of the heir, inheritances should be taxed under the IRPF.

However, including inheritances as income also presents clear problems. Beyond increasing the heir's economic capacity, *mortis causa* transfers have specific characteristics that many scholars believe justify their separate treatment from income. These characteristics include their occasional nature, as inheritances are received sporadically and singularly during a person's lifetime, unlike labor or capital income, which is received periodically and more consistently. Additionally, the recipient does not typically participate in generating the inherited estate, unlike labor income, where the individual is directly involved in its creation.

Moreover, including inheritances as income would pose significant technical problems related to proper valuation, the choice of the tax period, and the determination of tax liability. These issues could substantially affect the equity of the overall tax system. Therefore, it is understandable why most scholars prefer to maintain a separate treatment for inheritances (García de Pablos, 2010, p. 45).

Given these circumstances, multiple international organizations and bodies have favored maintaining a separate inheritance tax rather than taxing inheritances through income tax. Specifically, they support an inheritance tax that considers the wealth received by each heir, taking personal circumstances into account (OECD, 2021, p. 10; Ruiz-Huerta Carbonell et al., 2022, p. 695). This approach advocates for a tax system inspired by the Neumark model, which includes a general income tax, a corporate tax, a general wealth tax, a general consumption tax, and an inheritance tax (Neumark, 1974, p. 157; Ruiz-Huerta Carbonell et al., 2022, p. 686).

4.1.2. Economic growth impediment and disincentive for capital accumulation

Another widespread argument for abolishing the Inheritance and Donations Tax (IDT) is that it hinders economic growth by disincentivizing capital accumulation (Rubio Guerrero and Álvarez García, 2015, p. 120; Gutiérrez Salcines, 2017, p. 12) and savings (Suárez Pandiello, 2019a, p. 315). Additionally, it has negative effects on small properties and businesses (Rubio Guerrero, 2022, p. 500).

Primarily presented from an economic perspective, this argument is based on the premise that one of the main incentives for parents to work and save is to leave an inheritance to their children (Rubio Guerrero and Álvarez García, 2015, p. 120; Gutiérrez Salcines, 2017, p. 12). It assumes that people tend to accumulate wealth not only for their own enjoyment but also to bequeath it to their successors (Suárez Pandiello, 2019a, p. 315). This view considers it inconsistent and unfair that individuals can spend their wealth during their lifetime but are fiscally penalized for transferring it through inheritance (Rubio Guerrero, 2022, p. 495).

The main issue with this argument is that the motivations behind leaving an inheritance are complex and involve many factors and variables. The difficulty in determining these motivations makes it challenging to predict how and to what extent the IDT affects savings and consumption decisions. It could be expected that the influence of the IDT would be concentrated on the selection of assets to determine their taxable estate. Taxpayers are likely to allocate their wealth to assets that offer greater tax reductions, driven by the desire for tax savings (García de Pablos, 2010, pp. 126–127).

However, beyond the allocation of assets, it cannot be affirmed that the expectation of bequeathing accumulated wealth significantly influences capital accumulation and savings more than other tax measures like the IRPF or the IP (OECD, 2021, p. 27). This is particularly true considering that the timing of death does not seem to be influenced by tax motivations (Suárez Pandiello, 2019a, p. 317). Consequently, there appears to be no room for tax planning or manipulation regarding the decision to die (Gutiérrez Salcines, 2017, p. 11). It is suggested that the primary and most influential motivation for the decedent might be their wealth level, as wealthier individuals are more likely to bequeath because they have more assets than they need to finance their retirement (Burman et al., 2018, p. 8; Kopczuk and Lupton,

2007, p. 223; OECD, 2021, p. 54), making it a decision more related to material circumstances than mere personal choice.

Regarding the decisions of heirs, the IDT cannot be attributed with greater influence than other taxes. Even if it were, some experts argue that it would operate in the opposite direction to what its detractors assume. If the heir does not expect the inheritance, receiving it unexpectedly should not change their behavior (García de Pablos, 2010; OECD, 2021, p. 58). Conversely, if the inheritance is expected, it would incentivize consumption instead of savings for those heirs who plan to inherit, making it an effective instrument to avoid such consumption and encourage savings (García de Pablos, 2010, p. 200). In this circumstance, the effects of the IDT would favor savings among heirs, as the certainty of inheritance might otherwise incentivize increased present consumption (García de Pablos, 2010, p. 201).

Additionally, some experts suggest that the IDT acts as a compensating factor for the distortions on labor effort caused by both income tax and general consumption taxes (López and Durán, 2008, p. 3; Suárez Pandiello, 2019a, p. 315). In other words, taxing inheritance transmissions compensates for the disincentives that other taxes like the IRPF or VAT impose on work and consumption, respectively, encouraging heirs to save more and make better use of productive resources (García de Pablos, 2010, pp. 125–126). From this perspective, the existence of an inheritance tax is justified to equalize the conditions between inheritances and income from labor or savings (OECD, 2021, p. 43).

Moreover, the abolition of the IDT could cause significant harm since it would not distinguish between the payment capacity of someone who obtains € 300,000 from a lucky night at a casino, substantial work remuneration, or through inheritance. This lack of distinction in the origin of taxed wealth, besides being contrary to the meritocratic logic of personal effort often cited by liberals (Suárez Pandiello, 2019a, p. 317), could discourage effort and work. It would offer more favorable taxation to those who acquire their fortune purely by chance or birth than to those who achieve it through high income from their effort and work according to Meade Report in 1978 (Suárez Pandiello, 2019a, p. 317).

Political parties often use the abolition or reduction of taxes to attract voters, aiming to win elections and increase their majorities, with vote-winning taking precedence over the economic needs of the Autonomous Communities (AACC). While the PP and Vox advocate for lowering taxes, the PSOE and Sumar have supported measures to increase tax progressivity. Additionally, Sumar has called for the regional harmonization of the IDT, proposing the establishment of a minimum rate across Spain that the Autonomous Communities would not be permitted to reduce.

The transfer of the IDT to the Autonomous Communities (AACC) has enabled them to regulate certain aspects of the tax, which, over the years, has led to inequalities between regions. Although the IDT does not generate significant revenue, taxpayers in regions where the tax is imposed often feel a sense of injustice compared to those living in AACC where the tax is either not levied or where the amount payable is minimal.

4.1.3. Discrimination or comparative grievance among Spanish citizens

Another seemingly technical argument used by opponents of the IDT to justify its abolition is the claim of fiscal discrimination among citizens due to the current distribution of competences. This argument criticizes the comparative grievance caused by the differing tax burdens on citizens depending on the region, colloquially expressed as the fact that in some Autonomous Communities (AACC), taxes are paid, while in others, they are not (Hierro Recio, 2019).

It is evident and undeniable that there is a situation of fiscal discrimination in Spain regarding inheritance taxation. Currently, seven AACCs (Andalusia, Madrid, Cantabria, Canary Islands, Murcia, Castile and León, and the Valencian Community) have practically abolished the tax on mortis causa transfers between direct relatives, mainly due to the approval of 99% or even 100% quota bonuses. The rest have measures that, while not resulting in almost complete tax exemption, reduce the applicable tax on inheritances between direct relatives. The immediate result is that today, it is perfectly feasible for a Spanish citizen to pay thousands of euros or just a symbolic amount for accepting the same inheritance, depending on the AACC where the deceased had their habitual residence.

Supporting the abolition of the tax based on this circumstance seems inappropriate because it deliberately ignores that the cause is none other than the transfer of normative competences regarding the tax to the autonomous regions, carried out by the Aznar Government, and the subsequent application of tax reductions and bonuses by the PP regional governments in those AACCs where they govern. These actions have significantly reduced the tax burden and enabled fiscal competition among the Communities, which is not positive for the tax's permanence (García de Pablos, 2010, p. 9). This leads to preferential treatment concerning people, types of wealth, and even economic and business sectors (García de Pablos, 2010, p. 12).

This process of tax reduction, driven by an unbridled race to the bottom due to the fiscal competition generated by some AACCs, has also fostered tax planning practices, such as the movement of residences and wealth between territories, justified only by the different tax burdens (Rubio Guerrero, 2022, p. 497). Some studies have concluded that the number of wealthy individuals in the Community of Madrid has increased by 10% compared to other regions, as it serves as an internal tax haven with a 0% tax rate (Agrawal et al., 2020, p. 40; OECD, 2021, p. 57).

Therefore, it does not seem appropriate to use this argument to justify the abolition of the tax. Instead, the comparative grievance caused by the unequal tax burden among Spanish citizens should serve as a basis for arguing the need to address a reform of the most harmful aspects of the tax. Additionally, it should promote a rethinking of the limits of the principle of financial autonomy to avoid its conflict with the principle of equity and the generality in contributing to the financial needs of public administrations (Barberán Lahuerta, 2005, p. 98).

The disparity in regulations, along with the variation in revenue collection across the Autonomous Communities (AACC), has reignited calls for recentralizing the tax, citing concerns over alleged fiscal dumping. Territorial harmonization, through a unified regulation for the entire country, could prevent inequalities between the

AACC. However, it would also result in the loss of the tax autonomy that has been devolved to the regions (Martínez Lafuente, 2018).

4.1.4. Limited redistributive effect due to its low revenue-generating capacity

The last of the seemingly technical arguments used by the tax's detractors pertains to its low revenue-generating capacity and how this limits its redistributive effects. They argue that the disadvantages it causes to taxpayers are not offset by the collective benefits that theoretically justify its existence. Given its supposed ineffectiveness in adequately fulfilling wealth redistribution (Rubio Guerrero, 2022, p. 495), they contend that the IDT loses all legitimacy and should be abolished. Wealth redistribution policies are essential and must be equipped with the appropriate resources to combat poverty, prevent social exclusion, and promote greater equality of opportunity. This will ensure that public spending provides society with high-quality goods and services.

This argument is based on the relationship between the revenue-generating and redistributive capacities of taxes, which manifests in such a way that lower revenue collection results in a reduced ability to redistribute socially and it refers to the amount of revenue that can be collected through a given tax system, along with optimal enforcement efforts. Furthermore, the revenue obtained via the IDT in Spain, although higher than in most OECD countries, does not constitute a significant volume compared to total tax revenues (García de Pablos, 2010, p. 192) or the revenues obtained through taxes on other forms of wealth, such as the IRPF.

Currently, it is evident that establishing a tax exemption threshold that allows small inheritances to be transmitted tax-free, combined with a scheme of progressive tax rates, in which the tax rate increases as the taxpayer's income level rises, can substantially reduce absolute and relative wealth inequality (OECD, 2021, p. 44). Moreover, its long-term redistributive effects can far exceed its moderate or limited immediate redistributive effects (Cowel et al., 2017, p. 3; OECD, 2021, p. 44), especially in the case of large inheritances (Nekoei and Seim, 2018, p. 29; OECD, 2021, p. 44).

In many cases, factors such as fraud, tax evasion, and the multitude of applicable reductions and bonuses significantly undermine the tax's revenue-generating capacity and, consequently, its ability to fulfil its redistributive goals (García de Pablos, 2010, pp. 127–128). This consideration is particularly noteworthy given the discrimination faced by Spanish taxpayers due to the unique regime of reductions and bonuses applied by the autonomous regions, which has often encouraged changes in residence to those AACCs with lower tax pressure.

In any case, the redistributive effect of inheritance taxes depends on how they are structured. While they are among the most progressive elements of tax systems, their effective progressivity is often reduced by their design (Piketty and Saez, 2007, p. 8; OECD, 2021, p. 43). This means that their effects on wealth concentration will depend on their specific design and should not be evaluated without analyzing this aspect.

Simplified, this data can be interpreted to mean that the IDT could see its revenue-generating and redistributive capacity increase if the relevant modifications were introduced, as the problem lies in its configuration and not the tax itself.

4.2. Arguments of an ideological nature

4.2.1. Infringement on the right to private property and its transfer

The main ideological argument for the abolition of the IDT is that inheritance taxation represents an illegitimate state interference in the private sphere of individuals because it restricts the free exercise of the right to private property and its transfer. This argument is rooted in the enduring debate about the limits that should be imposed on state intervention to guarantee individual freedom, without necessarily renouncing the achievement of social goals shared by the community. This debate revolves around the antagonism between liberalism and interventionism, and between individualism and collectivism.

The primary issue with this argument is that it is frequently invoked in the name of liberalism, in its broadest sense, which is a blatant contradiction since the laws regulating property and inheritance in contemporary democracies are philosophically inspired by liberalism (García-Olivares, 2014, p. 20). In fact, if we review the tenets of some of the most influential liberal thinkers of the 18th and 19th centuries, we find that the fathers of liberalism not only did not deny the state's legitimacy in imposing a tax on inheritance transfers, but some even actively advocated for its implementation.

John Locke developed a contractalist theory based on the idea that the state was the result of the voluntary association of individuals to exercise their rights with the freedom they lacked in the state of nature, understood as the imaginary or fictional scenario before any civil society was ever constituted. From this perspective, the role of the liberal state was subordinated to the protection of individual rights and freedoms, especially the right to private property, which he considered a natural right inherent to human beings even in the state of nature (Rivero, 2002).

Given that Locke's concept of the natural right to private property included not only a right to possession and use but also to its transfer (García-Olivares, 2014, p. 20), and that he gave it special prominence over other rights, it can be admitted that Locke was a staunch defender of the right to property and inheritance. However, he advocated for the establishment of an inheritance tax conceived as a kind of protection fee or compensation for the protection granted by the state, assuming that without it, the heir could never have received the inherited estate (Hierro Recio, 2019).

Similarly, Adam Smith determined that for the effective fulfilment of its functions as a guarantor of private property, the state needed to establish measures that would allow its peaceful enjoyment. He argued that the establishment of an inheritance tax would compensate the state for the expenses incurred in maintaining the regime of transfers. Such a tax would be legitimate, provided it had proportional, and not progressive, rates (García de Pablos, 2010, p. 131).

Thus, Locke and Smith considered it legitimate to tax inheritance transfers as long as the ultimate purpose of the tax was to cover the costs incurred by the state in protecting private property. This concept is similar to how Emperor Augustus originally conceived it in Ancient Rome and how it was conceived in Spain during its implementation in 1879.

Other liberal authors like Jeremy Bentham, the father of utilitarianism, defended an inheritance tax with rates high enough to make it clear to citizens that property was

inherited merely by the benevolence of the state that allowed it (Hierro Recio, 2019). His disciple John Stuart Mill, influenced by the triumph of the French and American liberal revolutions at the end of the 18th century and by the social inequalities generated by the consolidation of the market as a fundamental exchange institution (Rivero, 2002, p. 107), advocated for a type of equality more elaborate than mere equality before the law, such as equality of opportunity (García-Olivares, 2014, p. 21). This type of equality required a quasi-confiscatory inheritance tax that only allowed inheritance to direct relatives and limited the amount to what was necessary to maintain a dignified life (Hierro Recio, 2019). Mill argued that no one should be allowed to inherit more than necessary to live with moderate independence (Mill, 1848, part 1; García-Olivares, 2014, p. 21).

Both authors not only defended the state's legitimacy in taxing these types of property transfers but also attributed other purposes to it beyond merely obtaining resources for the public treasury, such as wealth redistribution and social justice. Therefore, although there is no single form of liberalism, because ideologies do not constitute perfectly articulated and coherent totalities but rather quite the opposite (Rivero, 2002, p. 106), a review of the tenets of some of the most influential liberals leads to the conclusion that, just as inheritance taxation had a place in liberal ideology since its inception, reducing its critique to terms such as an infringement on the right to private property is an extreme simplification based on a distorted review of their arguments. This simplification is insufficient to categorically justify the abolition of this type of taxation.

4.2.2. Infringement on meritocracy and equal opportunities

Meritocracy acts as a mechanism for legitimizing societal differences, where inequality is justified based on individuals' merits and capabilities (Uña Juárez and Martín Cabello, 2009, p. 216). This premise holds that with equal opportunities and similar starting conditions, individuals can attain a social position commensurate with their demonstrated merit, thereby assuming a deserved role in society. This argument posits that the IDT undermines meritocracy because it limits the testator's ability to bequeath the wealth earned through their efforts to their descendants or heirs. Critics of the IDT argue that inheritance taxation contradicts the distribution of wealth and property based on merit.

The main inconsistency with this argument is that it abstracts from the individualistic perspective inherent in liberal political philosophy. Considering the individual as a central and fundamental element in liberal society (Rivero, 2002) implies, in relation to meritocracy, that merit is confined exclusively to the individual. Therefore, the merit earned during the testator's life cannot and should not be extended to their descendants or heirs merely by virtue of their relationship, which would be the case if inheritance taxation were eliminated.

Additionally, given that inheritances play a significant role in the persistence of wealth across generations (OECD, 2021, p. 42) and can grant heirs an advantageous position that does not necessarily align with their personal effort, it can be argued that abolishing the IDT would substantially diminish equal opportunities (Alstott, 2007, p. 471; Boadway et al., 2010, p. 794; OECD, 2021, p. 41). Moreover, since in Spain the tax does not target the wealth creator, who is beneficial to society, but rather the heir

(Tapia Nieto, 2007), its abolition would undermine meritocratic principles rather than support them, as its detractors claim.

The relationship between inheritance taxation and meritocracy, and its importance in equalizing individual conditions, increasing equal opportunities, and enhancing social mobility for stability and social cohesion, was outlined by American liberals. Their political thought likely emphasized personal effort, which is inconsistent with the zero-cost transfer of property generated without the active involvement of the beneficiary (Suárez Pandiello, 2019a, p. 316). They rejected the idea that children should benefit from their parents' accumulated wealth without actively participating in its generation.

In this context, in 2001, hundreds of American millionaires sent a letter to then-President George W. Bush, requesting that the estate tax not be eliminated despite being the primary beneficiaries of such a measure (Hierro Recio, 2019). The Rockefellers, George Soros, Warren Buffet, and William Gates publicly acknowledged that abolishing inheritance taxation would not only be hypocritical from the meritocratic perspective that justified their vast fortunes but would also jeopardize social stability and the legitimacy of the system itself.

Adopting the perspective of American liberalism, if the IDT is maintained in the Spanish tax system, it must be remembered that its objective is to tax the intergenerational transfer of significant wealth to uphold basic social principles such as equal opportunities and personal effort as foundational values for sustaining democratic and socially advanced societies (Rubio Guerrero, 2022, p. 497). In Spain, of the 100 wealthiest individuals, only 26 can be considered first-generation entrepreneurs (Hernández, 2021). This largely explains Spanish society's resistance to this type of taxation compared to other countries where the percentage of wealth from inheritance is much lower (García Aller, 2017).

4.2.3. Infringement on the traditional family as a social institution

Another argument posits that taxing inheritance undermines the traditional family. This argument, inherited from 20th-century liberal-conservatism, is based on the notion of inheritance as a post-mortem donation, representing the will of the testator. It suggests that while a parent could have spent their assets during their lifetime, they chose not to, instead bequeathing them to their descendants. Therefore, taxing inheritances not only violates the testator's right to bequeath but also diminishes intrafamilial altruism within the traditional family structure (Colombatto, 2007, p. 62; Baqués Quesada, 2020, p. 8).

Similarly, some authors argue that since children assist their parents in old age, they are the most deserving beneficiaries of their parents' accumulated wealth, regardless of their own merits. They claim that inheritance tax is counterproductive because it harms the family as a social institution, independent of the paternalistic state, by preventing it from fulfilling its role as an economic and moral support for its members (Friedman and Friedman, 1980, p. 153; Baqués Quesada, 2020, p. 8).

Even if a child receives an inheritance without having earned any merit that justifies profiting from the inherited wealth, it does not mean that other people's children have the right to such wealth. "This is what would happen if the legislator

required the parent, at the time of their death, to transfer part of their assets to the community” (Hayek, 1978, p. 137.; Baqués Quesada, 2020, p. 8).

From this perspective, 20th-century liberal conservatives prioritized protecting family wealth through inheritance over any collective goal that state taxation might serve. They also placed it above the meritocratic principles upheld by more progressive liberal currents, inadvertently reducing the crucial role of the family in the socialization process to the economic resources and properties it could offer its members. However, it is important to note that they never advocated for the outright abolition of inheritance tax. Instead, they warned against its confiscatory nature and argued for applying the same logic to inheritance tax as to income tax: a substantial reduction in tax rates (Baqués Quesada, 2020, pp. 8–9).

It is important to emphasize that this argument is evidently reactionary because it ignores the transformations that the concept of family has undergone during the 21st century and the fact that the current regulatory framework for inheritance tax is already based on a familial social model. This model includes modulation according to the degree of kinship and, particularly, through significant tax reductions applied to so-called family businesses.

In fact, the European Commission has repeatedly supported such reductions, encouraging member states to alleviate the tax burden on heirs to ensure the continuity of businesses (Ruiz-Huerta Carbonell et al., 2022, p. 699). This support persists despite the lack of evidence supporting the supposed detrimental effects of inheritance tax on the traditional family. In contrast, evidence confirms a correlation between the resources of the family one is born into and an individual’s ability to accumulate greater wealth during their lifetime. Being born into a wealthier family is often associated with achieving a higher level of education and easier access to business networks, which significantly facilitate this task (Hartmann, 2010, p. 112; Wright Mills, 1956; García Olivares, 2014).

5. Fiscal harmonization and future alternatives for inheritance tax in Spain

The analysis of the arguments presented leads to the conclusion that the abolition of the Inheritance and Donations Tax (IDT) should not result in maintaining the status quo without changes, as the tax has serious problems that must be addressed urgently to reinforce its legitimacy and ensure its survival; otherwise, it will be doomed.

However, the aspects of the tax that need modification and the direction of these changes will be closely related to one’s stance in the debate on the territorial model of the Spanish State and the needs of the current model of autonomous community financing. This includes whether more importance is given to the principle of equality among Spanish citizens or to the principle of financial autonomy of the Autonomous Communities (AACC).

In this regard, the different positions adopted by those who support maintaining the IDT can be categorized into three groups: those who advocate for the complete recentralization of its regulatory powers, thereby subordinating the fiscal autonomy of the AACC to the principle of equality among citizens; those who propose a generalized reduction in tax rates in defense of the fiscal autonomy of the AACC, even at the

expense of the tax's revenue-generating and redistributive capacity; and those who support fiscal harmonization as an intermediate path based on the medium- and long-term expectation of normative convergence or interterritorial homogenization.

5.1. Complete recentralization of regulatory powers

The first reform proposal, though supported by a minority of experts who favor maintaining the IDT, advocates for the complete recentralization of its regulatory powers, meaning taking them away from the Autonomous Communities (AACC) and returning them to the central government. Proponents of this approach are convinced that the legitimacy crisis of the tax is caused by the consequences of the current distribution of its competencies and that the central administration is best positioned to develop redistributive policies and combat widespread fiscal populism driven by downward tax competition (Suárez Pandiello, 2019a, p. 325).

From this perspective, they argue that the recentralization of regulatory powers would eliminate the controversy by standardizing the tax across the territory and ending the unfair treatment among citizens caused by the current and varied regime of reductions and fiscal bonuses applied in each AACC.

The most obvious drawback of adopting this proposal is that the principle of financial autonomy of the AACC would be subordinated to the principle of equality among citizens, thereby undermining the principles of the autonomous state. Therefore, it is firmly rejected by both defenders of the decentralized political-administrative model and those who openly embrace federalism. Furthermore, it does not seem to have a future in Spain's autonomous regions, where the trend appears to be the opposite.

5.2. General reduction of tax rates

On the opposite side of recentralization are those who advocate for a reform based on combining a broad tax base with the application of a reduced tax rate, ranging from 5-10%. They argue that broadening the tax base would achieve significant gains in both vertical and horizontal equity and that reducing rates would avoid both the disincentive effects on capital accumulation and the problems of tax evasion and competition (Rubio Guerrero, 2022, p. 501).

From this perspective, the fiscal and financial autonomy of the AACC is prioritized over any attempt to forcibly standardize the tax burden to alleviate the current discrimination faced by taxpayers. Proponents argue that prioritizing the autonomy of subcentral governments to conduct fiscal policy brings more benefits than drawbacks to society as a whole (Bernaldo de Quirós and Gómez Agustín, 2022; Rubio Guerrero, 2022).

Among the benefits that defenders of this approach attribute to a substantial increase in the tax autonomy of the AACC are greater budgetary discipline, a brake on spending expansion, and, consequently, a positive contribution to the stability of the finances of all Public Administrations. First, when an autonomous region decides to forgo revenue—in this case obtained via the IDT—it imposes on itself the obligation to manage its resources more efficiently and rationally (Bernaldo de Quirós and Gómez Agustín, 2022, p. 535).

Second, the less dependent the AACC are on transfers from the central government—achieved by increasing their tax autonomy—the fewer incentives they will have to expand their spending policies (Rubio Guerrero, 2022, p. 492). In this way, citizens would benefit from a more efficient administration and disciplined budget execution.

They also argue that an increase in the fiscal autonomy of the AACC would allow the governments of AACC with lower GDP to have greater capacity to act in the field of tax policy, thereby stimulating work, savings, and investment, as well as attracting capital and labor to converge in real terms with the richer regions. Given that in AACC with higher GDP per capita, the cost of living is significantly higher, they believe that a truly redistributive fiscal policy should translate into lower taxes in high-income AACC (Bernaldo de Quirós and Gómez Agustín, 2022, p. 535).

In this sense, a general reduction in rates, accompanied by an expansion of the tax base, would allow some homogenization of the tax burden without undermining tax competition between regions. This approach could trigger interterritorial redistributive effects that should be seriously considered in a Spain with increasingly unequal regions.

However, the benefits of a reduction in tax rates do not imply that their evident drawbacks should not be considered, particularly the significant reduction in the revenue-generating and redistributive capacity of the tax resulting from the generalized decrease in the tax burden on the entire Spanish population, which would undermine the purposes that legitimize its existence. Therefore, this approach is not much different from the stance of those who advocate for its abolition.

5.3. Fiscal harmonization as a proposal for interterritorial homogenization in the medium and long term

The proposal for fiscal harmonization represents a middle ground because, while it recognizes the necessity of equalizing the tax burden across taxpayers to enhance equality among citizens, it also views any reduction in the fiscal autonomy of the AACC as counterproductive. Fiscal harmonization aims to achieve uniformity in the tax system without entirely stripping the AACC governments of their ability to implement fiscal policies within their territories and without undermining the foundational principles of the autonomous state.

In this context, the Committee of Experts established by the Ministry of Finance and Public Function in 2022 supported the path of fiscal harmonization. They proposed a reform of the tax system that includes simplifying the regime of reductions, modifying the exemption threshold, reducing the tax brackets and rates, eliminating the multiplier coefficients based on the acquirer's prior wealth, and making payment terms more flexible (Ruiz-Huerta Carbonell et al., 2022).

5.3.1. Simplification of the reduction regime

The proposal involves simplifying the regime of applicable reductions, as its complexity is one of the main sources of growing antipathy towards the tax in Spanish society. Specifically, it proposes tightening the requirements for the reduction for the transfer of a family business, increasing the current maximum amount for the reduction for the transfer of the primary residence by making it mandatory that it

remains occupied by the person who already resided there with the decedent, eliminating the reduction for amounts received through life insurance contracts, which are deemed unjustified at present, and eliminating the special valuation of household goods due to their lack of objective basis in real economic capacity and because they mostly consist of items with little value (Ruiz-Huerta Carbonell et al., 2022, pp. 701–702).

These modifications would result in a substantial simplification of the applicable reduction regime while retaining those reductions deemed most relevant for their contribution to the protection of business continuity and the family as a social institution. Their application would be restricted to avoid the high litigation generated by the current tax regulation (Ruiz-Huerta Carbonell et al., 2022, p. 700) and the engagement in tax planning and avoidance techniques primarily available to individuals with higher purchasing power. This would result in an increase in effective progressivity and vertical equity (Dherbécourt, 2017; Ruiz-Huerta Carbonell et al., 2022, p. 697).

5.3.2. Modification of the exemption threshold, simplification of the applicable tariff, and elimination of multiplier coefficients based on prior wealth

The proposal also includes simplifying the applicable tariff, maintaining its progressive nature and redistributive purposes while mitigating the incentivizing effects on tax evasion or avoidance caused by excessively high rates applied to certain transfers (OECD, 2021, p. 123, Ruiz-Huerta Carbonell et al., 2022, pp. 695–696).

Specifically, the proposal suggests eliminating the obsolete reductions for kinship, updating the exemption threshold to a range between 120,000 and 250,000 euros for Groups I and II and between 20,000 and 50,000 euros for Groups III and IV, and reducing the brackets and rates of the tariff to a range between 5% and 15% for Groups I, II, and III, with three differentiated brackets for the first and second groups and two brackets for the third group. The rates would increase up to 20%–25% for Group IV.

With these modifications, the tariff would be simplified while retaining its progressive nature. The tax burden would increase in those AACCs that have completely exempted Groups I and II from taxation. In contrast, in the rest of the AACCs, although their revenue might initially decrease, they could restore it through the subsequent exercise of their competencies (Ruiz-Huerta Carbonell et al., 2022, pp. 703–705).

There is also a proposal to study the possible elimination of the multiplier coefficients based on the prior wealth of the heir or beneficiary, arguing that the existence of a tariff applied in conjunction with corrections for the prior wealth of beneficiaries results in bracket creep and very high rates (Ruiz-Huerta Carbonell et al., 2022, p. 704). However, this is more of a suggestion than a firm proposal, as the significant negative impact it would have on the redistributive capacity of the tax would require more exhaustive study and evaluation.

5.3.3. Payment flexibility to avoid liquidity problems for the heir or beneficiary

The proposal for a general relaxation of the deferral and instalment payment regime aims to alleviate liquidity problems for taxpayers. It suggests extending the instalment period and making the instalment amounts more flexible. This approach

would allow for smaller payments in the initial years, giving heirs time to liquidate some assets and thereby facilitating compliance with the payment deadlines (Ruiz-Huerta Carbonell et al., 2022, p. 706).

This measure stands out from the previous ones because it enjoys broad support, regardless of whether proponents favor the recentralization of competencies, a general reduction in rates, or the harmonization of the tax. All sides agree that the inability to defer payment or to pay in instalments is one of the most harmful aspects of the tax, as it often forces taxpayers to sell their assets at a loss or reject the inheritance due to the inability to meet the tax obligation (Hierro Recio, 2019; Suárez Pandiello, 2019a, 2019b). Some authors even advocate granting taxpayers a grace period of one or two years and an extended payment period of five or six years (Hierro Recio, 2019).

5.3.4. The possible effects of adopting these measures

Experts conclude that harmonizing the tax can lead to gains in terms of horizontal equity among territories, though at the expense of vertical equity and overall regional revenue, similar to what would occur with a general rate reduction. In terms of wealth redistribution as the primary support for the current tax, the proposal represents a step backward, although the extent of the regression would vary depending on kinship groups and the stringency of the regulations in each region (Barberán Lahuerta and Trueba Cortés, 2018, p. 63). However, all taxpayers would benefit compared to the application of Law 29/1987, of 18 December, on Inheritance and Donations Tax, as it constitutes a general reduction in the IDT's requirements, which, if implemented, would allow for better social acceptance and thus ensure its survival (Barberán Lahuerta and Trueba Cortés, 2018, p. 62). Ultimately, this proposal aims to minimize the tax burden to alleviate the antipathy it generates in Spanish society, similar to the general reduction of rates, albeit to a lesser extent.

On the other hand, harmonizing the tax by introducing a mandatory national minimum rate would also reduce the fiscal autonomy of the AACCs, although evidently less so than the complete recentralization of their normative competencies (Bernaldo de Quirós and Gómez Agustín, 2022, p. 534). In this context, proponents of a general rate reduction extend many of their arguments against the recentralization of normative competencies to the harmonization of the tax. Among them is the claim that preventing regional governments from implementing fiscal policy goes against efficient resource management, budgetary discipline, accountability, and fiscal competition, which is considered beneficial for interterritorial redistribution (Bernaldo de Quirós and Gómez Agustín, 2022; Rubio Guerrero, 2022).

Some even describe it as a slightly milder variant of recentralization, based on the medium-term expectation of general convergence toward that minimum (Suárez Pandiello, 2019a, pp. 325–326). They argue that, since it is based more on desired trends than on certainties, harmonization is a temporary fix and not a definitive solution to the IDT's legitimacy crisis.

Therefore, this is an intermediate approach between both positions, receiving criticism from both sides without satisfying either, which demonstrates once again that the controversy surrounding the IDT's legitimacy is predominantly political and ideological, despite attempts to frame it as a technical issue. Consequently, since the survival of the tax appears to be uniquely conditioned by its social acceptance over

technical requirements, fiscal harmonization, as an intermediate position, may be the only viable proposal, as it can achieve some degree of agreement among all parties, albeit with substantial political will.

5.3.5. Comparative review of inheritance taxes in the EU

International experience reflects the controversy surrounding this tax, with some countries having abolished it, while others maintain and strengthen it as a symbol of wealth redistribution and equality of opportunity. Outside the EU, in countries considered emerging economies, inheritance tax is not part of their fiscal systems. With economies in constant growth, these countries tend to view such taxes as discouraging wealth creation and counterproductive to the accumulation of capital necessary for economic expansion. As a result, the tax does not exist in China, India, or Russia, while others, such as Brazil, apply it at very low rates.

The debate centers on whether an inheritance tax or an estate tax is preferable, with the latter being less complex to administer as it affects fewer people. Most states that have established such taxes continue to uphold them, although there is a tendency to reduce or exempt close relatives of the deceased from payment, or to make the tax payable only upon the realization of assets. This approach prevents heirs from being forced to sell inherited assets to cover the tax (López Fernández, 2023).

In the EU, the Inheritance Tax is present in 19 of the 27 member countries, although in nearly all cases its quantitative significance is minimal, with revenue accounting for barely 1% of total taxation, except in Belgium and France. The tax structures adopted by the various countries differ significantly.

Since 2022, eight EU countries—Austria, Cyprus, Slovakia, Estonia, Latvia, Malta, Romania, and Sweden—have had no inheritance, estate, or donations taxes. Additionally, Norway does not impose taxes on asset transfers. Five countries have abolished their wealth or inheritance taxes since 2000 (Austria, the Czech Republic, Norway, Slovakia, and Sweden), while Estonia and Latvia have never implemented such taxes (García Carballido, 2024).

In France, different rates are applied to transfers between ascendants and descendants, between siblings, to blood relatives up to the fourth degree, and to all others. In 2022, the maximum inheritance tax rate ranged from 4% in Croatia to 88% in Spain, depending on the region (Álvarez, 2023).

From a comparative international perspective, the study of its enforcement in neighboring countries reveals that its application is widespread. Most countries adopt the conventional approach, with variations in the structure of its essential elements to benefit certain situations and specific groups. Notably, in the majority of countries, close family members are either exempt from the tax or benefit from significant reductions.

6. Conclusions

Analyzing the most frequently cited arguments in favor of the abolition of the IDT leads to the conclusion that there are no compelling reasons to justify its outright elimination. Firstly, many of these arguments have been forcibly given a technical appearance that they do not in fact possess, taking advantage of taxpayer ignorance. Examples include the reference to an alleged double taxation that does not actually

exist or the denunciation of a fictitious incompatibility with the recognition of the right to private property and its transmission. Secondly, other arguments, also seemingly technical, such as the reference to the existing fiscal discrimination among Spanish citizens depending on the AACC or the limited redistributive effect of the tax due to its low revenue capacity, have also been constructed by trivializing the issues and deliberately ignoring the fact that both circumstances are merely adverse effects of the current regime of competence distribution.

The result of combining these technical and ideological arguments, politically constructed ad hoc to gain electoral profit from the social antipathy the tax generates and to attract investment by engaging in a race to the bottom in fiscal competition among regions, is that it becomes increasingly difficult for taxpayers to form an opinion on the best possible reform for the IDT. It is challenging to distinguish between genuinely founded reasons that require its revision and those that are fictitious or unfounded.

Against this backdrop, through the analysis of possible future reforms of the IDT, this paper concludes that the best alternative will be one that focuses on the simplification and updating of the tax, as well as the prompt resolution of specific and harmful aspects such as the inability to defer payments or pay in instalments, and errors in the asset valuation systems.

The path of fiscal harmonization, criticized by proponents of recentralization as well as by advocates of a general reduction in rates, is an intermediate solution that, in the medium term, can alleviate the crisis faced by the tax. However, it will not replace the necessary debate that must take place within Spanish society about whether to increase the autonomy of regional entities at the expense of national homogeneity.

Conflict of interest: The author declares no conflict of interest.

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