**Do Property Rights and Equality Make Good Bedfellows ?**

**European Perspectives**

I would first like to thank the organisers and the Presidents of the UIPI and the SNPC for having invited me to appear as keynote speaker in the framework of this *Property Day.*

I was asked to speak at this event to offer some reflections on private property as the fruit of a lifetime of work and investment for millions of European families.

Quite an ambitious undertaking ! Nonetheless, I will offer you thoughts on this fundamental right which is the right of ownership by comparing it with the right of equality.

How do we reconcile the right of ownership with that of equality ?

This is the question I’m asking today while accepting as a precondition that private property is the fruit of a lifetime of work and investment for millions of Europeans and that it plays a vital role in today’s societies.

I’ll divide my answer into three parts. First, I will place the question in a meaningful context. Second, I’ll answer it using three types of examples. Third, by way of conclusion, I’ll suggest a reflection based on political theory.

**This brings me to the Part One – Contextualising the Issue**

The right of ownership has traditionally been considered a fundamental right. By way of example, I refer to Article 17 of the Universal Declaration of Human Rights which provides: “1. Everyone has the right of ownership alone as well as in association with others […][[1]](#footnote-1). The right of ownership is also enshrined in many European Constitutions.

The right of ownership was legally established and is protected because of the fundamental role it plays in economic terms. So, since the physiocrats, property has been considered in some economic trends as the foundation of every economy. For some authors, private property combined with market logic contributes to an optimal allocation of scarce resources. It gives economic actors the incentives to create, innovate and value assets. The property is thus a precursor to economic growth[[2]](#footnote-2).

Marxist critique does not share this opinion since, according to Karl Marx, human rights are focused on the inviolable nature of property rights[[3]](#footnote-3). They would only be those of “the egoistic man, […] as a member of civil society, […] wholly preoccupied with his private interest”[[4]](#footnote-4). According to Karl Marx, the supposed universal rights of the abstract individual would in reality promote the interests of the individual possessive of capitalism[[5]](#footnote-5).

Nonetheless, within the European Union, seven in ten people (69.4%) own the property in which they live[[6]](#footnote-6).

Certainly, property is a fundamental right and freedom for European citizens. Some of our political representatives should moreover pay greater attention to it.

How then do we reconcile the right to property with equality ?

**This brings me to the Part Two – Attempt at Answering with Examples**

I’ll try to answer this by considering three examples that are in the news in various European countries.

*Example number one – Expropriating vacant buildings*

An issue has resurfaced in the news recently: the expropriation of vacant buildings. Many are vacant urban dwellings while there exists a demand for housing. The demographic perspectives should also be considered. In the next twenty to thirty years, it will certainly be necessary to tackle a growing demand, taking into account in particular the increase in single-parent homes.

Let us consider for a moment a Belgian example. In July 2017, a liberal mayor of a commune in the Brussels region expropriated a private building to rehouse 65 undocumented individuals by resorting to his administrative policing power[[7]](#footnote-7). Within this framework, he asked the Belgian Parliament to adopt a law to regulate the expropriation of private buildings[[8]](#footnote-8).

The mayor’s procedure was particular in that the policing making power is already regulated by the law[[9]](#footnote-9) and the owner of the building did not oppose the procedure.

The expropriation of vacant buildings seems to me to be a challenging issue because it raises fundamental questions with respect to equality.

First, in Belgium, the national union of owners and co-owners has emphasized that this kind of procedure should also be possible for vacant public assets and be implemented on them first[[10]](#footnote-10). In this matter, the vacant public assets should be treated in the same manner as private assets. Generally, public owners are failing to lead by example and tend to “cover” each other. Thus, the Walloon municipalities received no taxes for vacant public buildings even though they are imposed by regulations.

Second, if an owner has difficulties occupying his asset, it may be valuable to rely on the services of social perhaps public institutions. In Belgium, social estate agencies can deal with the rental of private property, at a lower cost and in the name of the owner, while guaranteeing payment of the rent and covering rental damage. In November, the City of Brussels used the “right to public management”[[11]](#footnote-11) and intensified the search for vacant dwellings. The right of management also allows public bodies to appropriate, by means of coercion, an empty dwelling, to carry out any work necessary, and then to manage the rental until the investment has been absorbed [absorbed] by the rent. The owner may only recover his rights over time or if he repays the investments made[[12]](#footnote-12).

Third, regardless of the method suggested for dealing with vacant buildings, the main issues remain. For example, who will pay the property taxes ? What will the owner have to disclose ? On what basis is the rent fixed ? The owner should not be adversely affected.

Nevertheless, if the property is active in economic growth and contributes to optimal allocation of scarce resources, vacancy of real estate should not lead to market distortions that can prejudice the parties, owners and renters alike. Moreover, the vacancy of certain buildings could be the source of annoyance for neighbouring owners.

The expropriation of vacant buildings can be practicable if an equality of conditions is guaranteed for the exercise of property rights. Expropriating vacant property should not be a way for discriminating between private owners and public owners. The rights and obligations of owners must be strictly formulated to prevent prejudice.

*Example no. 2 – Airbnb*

One rental scheme that raises many questions for owners, co-owners, tenants and public authorities in various European countries is the rental scheme developed on the Airbnb platform.

In an ideal vision, this system should allow private individuals to let (even sublet) their personal home to other private individuals. Over time, this platform has ended up serving the popularity of owners (or renters) who have created a fully-fledged business activity and who own many apartments or buildings, like professional rental agencies.

An example from Spain illustrates the possible abuses of this system. In June 2017, an owner in Barcelona discovered that his tenant was subletting the apartment to tourists, without the owners’ agreement and without a tourism licence. He was pocketing 8,000 euros per month. The tenant stopped showing any sign of life. So the owners decided to rent the apartment for one day via the Airbnb platform. Once inside, they changed the locks on the doors to reappropriate the property[[13]](#footnote-13). This example may be iconoclastic but it does demonstrate a major abuse of this system. In this way, in Barcelona, the authorities estimate the number of unlicensed tourism rentals to be between 10% and 15%[[14]](#footnote-14). The problem has become just as critical in Germany. In this way, it is important to point out that Berlin decided to prohibit rentals via Airbnb and impose a 100,000 euro fine. This pure and simple prohibition was relaxed following a decision by the Administrative Court in Berlin which authorised owners in the German capital to rent out their properties on a temporary basis[[15]](#footnote-15).

I can take another example. A recent survey carried out by several European dailies (*Le Monde*, *Süddeutsche Zeitung*, *L’Écho*, *De Tijd* et *Trouw.nl*.) demonstrated that in twenty French towns, “one in five ads is now issued by owners of several properties. […] If the average ‘hosts’ earn around 175 euros per month, the more active may earn as much as 2,200 euros per month on average”[[16]](#footnote-16). Another striking figure, “over 87% of dwellings rented per year through Airbnb are in fact small, while properties of this size make up only 12% of French real estate”[[17]](#footnote-17).

This letting, even subletting, scheme raises several questions in terms of equality.

*First*, the strong emergent competition comes from, on the one hand, traditional ownership position which remains subject to the legal provisions related to tenancies, and, on the other, the hosts who use the Airbnb platform to (sub-)let their property to clients of the platform.

*Second*, they are problems caused by the platform for the co-owners of a building, especially in some of the more touristic cities. In fact, these may undergo inconveniences related to the constant flow of tourists through their buildings, considered as primary residences.

*Third*, the subletting scheme results in a reduction in the number of residential homes on the market and causes an increase in rent for these dwellings.

*Fourth*, they are discriminations between on the one hand owners of hotels and bed and breakfasts and, on the other, hosts who use the Airbnb platform to (sub-)let their property to customers of the platform.

*Fifth*, they are different sanctions that may or may not be applied to the platform or to certain hosts.

In the end, examining the Airbnb scheme reveals the potential market distortions that prejudice owners.

The abuses flowing from the Airbnb scheme should be limited. The Airbnb subletting scheme must not become a powerful means to create several types of owners (those who profit from the scheme and those who are victims of it, for example), thereby breaching the principle of equality.

*Example no. 3 – Conveyance of the estate*

Property is the fruit of a lifetime of work and investment for millions of European families. More broadly, being an owner involves the accumulation of capital and property.

Being able to convey property tomorrow to one’s heirs cannot be neglected on the level of societal dynamics, individual motivation, entrepreneurial spirit and creation of values.

Historically, Thomas Piketty, French economist, demonstrates through his work, *Le capital au xxie siècle*, that the accumulation of property underwent significant declines following World War Two, allowing for the redistribution of wealth in Europe[[18]](#footnote-18). At the moment, inheritance is regaining the importance it enjoyed in the 19th century since the amounts inherited, in France, now represent a quarter of the total resources received by a generation, as much as after the French revolution[[19]](#footnote-19). But the situation has changed. We have moved “from a society with a small number of major renters to a society with a much greater number of smaller renters”[[20]](#footnote-20).

By contrast, a major inequality will, from now on, be making a greater appearance : generational inequality.

In fact, still in France, people between the ages of 60 and 69 possess estates that represent about four times that of people aged 30 to 39 years[[21]](#footnote-21). Furthermore, European citizens are inheriting later and later since on average we are 50 years old when our parents die (while in the 70’s, we were 40 years old)[[22]](#footnote-22).

To reduce generational inequalities, the French political scientist, Frédéric Laloue proposes sharing inheritance amongst the generations within the families:

It involves substituting one succession in which all the assets are granted to the first degree (children) for a succession in which the estate is distributed between the two degrees of the first order (either the children or the grandchildren). […] Sharing the estate amongst the generations would tangibly change the distribution of wealth in France, revitalising growth and reducing inequalities[[23]](#footnote-23).

Sharing estates should not, in my opinion, constitute a social policy of redistribution and of reducing inequalities observed in society. It should be considered a family practice.

In that respect, the methods of passing on the estate open a vast array of questions that merit discussion in a public forum[[24]](#footnote-24).

Distribution of the estate may constitute a way to adjust imbalances within the family by guaranteeing the youngest owners more equal conditions for exercising the right of ownership.

**The Third Part – Reflection Based on Political Theory by way of Conclusion**

How do we reconcile the right to ownership with the right to equality ?

This is the question I asked this morning.

The right of ownership has historically been considered a fundamental right.

This fundamental right may only be guaranteed if there is greater equality amongst the owners and co-owners as regards the conditions for the exercise.

There is consequently a continuity between the right of ownership and that of equality.

The right of ownership may only be guaranteed as a fundamental right on condition that the exercise of this right is effective. For the exercise of this right to be effective, it must be possible for the owners and co-owners to be in the same position to exercise their right. This opinion is supported by three types of examples.

First, the expropriation of vacant buildings should not be a tool used to discriminate between private and public owners. The rights and obligations of the owners should be precisely formulated to prevent their infringement.

Second, the Airbnb system should not be a powerful means for creating several types of ownerships, hereby breaching the principle of equality.

Third, sharing the estate may be a way to adjust imbalances within the family by guaranteeing the youngest owners more equal conditions for exercising the right of ownership.

Finally, the right of ownership may only be considered a fundamental right if equal conditions for its exercise are guaranteed. This recognises private property as the fruit of a lifetime of work and investment for millions of European families.

Thank you.

1. Following article 1, « Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties ». For an explanation of the reach of this Article, see Grgic Aida, Mataga Zvonimir, Longar Matija et Vilfan Ana, *Le droit à la propriété dans la Convention européenne des Droits de l’Homme. Un guide sur la mise en œuvre de la Convention européenne des Droit de l’Homme et de ses protocoles*, Strasbourg, Conseil de l’Europe, coll. « Précis sur les droit de l’homme », n° 10, 56 p. [↑](#footnote-ref-1)
2. This short summary is drawn from Cailluet Ludovic et Saboly Michèle, « De la propriété à l’appropriation », Entreprises et histoire, 2007, vol. 4, n° 49, p. 5. [↑](#footnote-ref-2)
3. Lacroix Justine et Pranchère Jean-Yves, Le procès des droits de l’homme. Généalogie du scepticisme démocratique, Paris, Seuil, coll. « La couleur des idées », 2016, p. 229. [↑](#footnote-ref-3)
4. Marx Karl, La Question juive, Paris, Union Générale d’Éditions, coll. « 10/18 », 1968, cité par Lacroix Justine et Pranchère Jean-Yves, Le procès des droits de l’homme. Généalogie du scepticisme démocratique, op. cit., p. 215. [↑](#footnote-ref-4)
5. Lacroix Justine et Pranchère Jean-Yves, Le procès des droits de l’homme. Généalogie du scepticisme démocratique, op. cit., p. 215. [↑](#footnote-ref-5)
6. Eurostat, « Statistiques sur le logement », Données extraites en février 2017, available here : <http://ec.europa.eu/eurostat/> (consultée le 15 août 2017). [↑](#footnote-ref-6)
7. Leprince Patrice, « 65 sans-papiers relogés dans un bâtiment privé inoccupé à Etterbeek », *Le Soir*, mercredi 26 juillet 2017, available here : <http://www.lesoir.be> (consultée le 27 juillet 2017). [↑](#footnote-ref-7)
8. Mikolajczak Charlotte, « Une loi pour régler la réquisition d’immeubles privés ? », *La Libre Belgique*, 26 juillet 2017, available here : <http://www.lalibre.be> (consultée le 27 juillet 2017). [↑](#footnote-ref-8)
9. This policing power is found in the so-call “Onkelinx” law that gives the Mayor a right to expropriate. See article 134bis of the Nouvelle Loi Communale and the Arrêté royal of 6 december 1993 réglant le droit de réquisition d’immeubles abandonnés (M.B. of 30 december 1993). [↑](#footnote-ref-9)
10. Coulée Philippe, « La lutte contre les propriétaires (privés et publics) de logements inoccupés est relancée », *Les Échos*, samedi 30 juillet 2016, p. 25 et Hamal Olivier, « Immeubles inoccupés, ça suffit : 254.000 € ‘partis en fumée’ à Ans », *Le Cri*, avril 2017, n° 413, pp. 3-4. [↑](#footnote-ref-10)
11. Ordonnance du 17 juillet 2003 portant le Code bruxellois du Logement (M.B. 18 juillet 2003), voy. spéc. les articles 15 à 19. [↑](#footnote-ref-11)
12. Sente Arthur, « Fait inédit, Bruxelles force la location d’un immeuble vide », L’Écho, jeudi 24 novembre 2016, p. 7. [↑](#footnote-ref-12)
13. Causanilllas Laura, « Barcelone : elle loue son propre appartement à Airbnb pour changer les serrures et chasser son locataire indélicat », *L’Indépendant*, vendredi 23 juin 2017, available here : <http://www.lindependant.fr> (consultée le 27 juillet 2017). [↑](#footnote-ref-13)
14. « Espagne. Barcelone hausse le ton contre Airbnb », *Le Courrier international*, 27 juin 2017, available here: <http://www.courrierinternational.com> (consultée le 27 juillet 2017). [↑](#footnote-ref-14)
15. « Interdiction d’Airbnb à Berlin : la ville admet une exception », *Le Figaro immobilier*, mardi 9 août 2016, available here : <http://immobilier.lefigaro.fr> (consultée le 27 juillet 2017). [↑](#footnote-ref-15)
16. Ferrer Maxime, Motet Laura et Travère Audrey, « Les dessous du système Airbnb », *Le Monde*, samedi 5 août 2017, p. 8. [↑](#footnote-ref-16)
17. *Ibid.* [↑](#footnote-ref-17)
18. Piketty Thomas, Le capital au xxie siècle, Paris, Seuil, coll. « Les livres du nouveau monde », 2013, p. 630. [↑](#footnote-ref-18)
19. Grimault Vincent, « Le retour des héritiers », *Alternatives économiques*, 2017, vol. 3, n° 366, p. 36. [↑](#footnote-ref-19)
20. *Ibid.* [↑](#footnote-ref-20)
21. Laloue Frédéric, « Partager les héritages entre les générations », *Commentaire*, 2017, vol. 2, n° 158, p. 389. [↑](#footnote-ref-21)
22. *Ibid.*, p. 390. [↑](#footnote-ref-22)
23. Laloue Frédéric, « Partageons les héritages entre générations », Le Monde, dimanche et lundi 30 et 31 octobre 2016, p. 27. It should be noted that the political scientist takes into account the traditional principle in notarial law, that is, the notion of per stirpes: “the amounts conveyed equally amongst the branches from the children of the deceased, regardless of the number of grandchildren of each. Let us take a simplified example of a person who dies leaving an estate valued at €200,000, having had two children who together had five grandchildren. The first branch, comprising the first child and three grandchildren, will collectively inherit half the estate, that is €100,000. The second branch composed of the second child who in turn had two children will also collectively inherit €100,000. Thus, the four persons making up the entire first branch will inherit, equally distributed amongst them, the sum of €25,000; while the three persons in the second branch will each inherit €33,333.” Laloue Frédéric, « Partager les héritages entre les générations », op. cit., p. 392. [↑](#footnote-ref-23)
24. Arrondel Luc et Masson André, « Taxer les héritages pour accroître la mobilité du patrimoine entre générations », *Revue française d’économie*, 2011, n° 2, vol. xxvi, pp. 23-72. [↑](#footnote-ref-24)