CONTROVERSY

Taxation, Forced Labor, and Theft: Comment

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Libertarianism is not as monolithic an ideology as many people believe. Although all libertarians would agree that taxes should be low, there is a strong purist view that taxation itself is illegitimate. As Edward Feser notes in the fall 2000 issue of *The Independent Review,* however, one finds few libertarian academics supporting that view. Feser then explains and analyzes the arguments of two prominent academics, Robert Nozick (1974) and Murray N. Rothbard (1982), who have taken the position that taxation is illegitimate per se because it constitutes forced labor, presumes partial ownership of the person by the state, or is a form of theft. Feser also rebuts, with some success, several of their critics.

From considerations similar to those of Nozick and Rothbard, modified in the light of a Jeffersonian and Madisonian minarchist view that some government is necessary (and must be adequately financed) in order to preserve individual rights and freedom, I once proposed a radical method of financing government without taxation (Edwards 1984–85). Here I argue, however, that libertarian objections to taxation for the finance of pure public goods can be met. Indeed, the striking thing about Feser's otherwise excellent discussion is that he never comes to grips with the nature of public goods or with the rationales for taxation both logically and empirically inherent in the existence of such goods.

Suppose we take seriously the minarchist notions that an institution such as government is necessary for the maintenance and preservation of the free society that all

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libertarians value, and that government is literally productive in the optimal provision of such public goods as systems of criminal and civil law, enforcement of law and contract, protection of property rights, and national defense. That is, the provision of such public goods arguably has effects similar to those of money. They reduce transactions costs and allow an extension of the division of labor, simultaneously releasing for other productive uses the private resources that otherwise would have to be employed in self-defense. On this basis, given the inherent properties of public goods, libertarian objections to the minimal taxation necessary for the provision of such goods lose their force.

Public Goods, Free Riding, and Theft

The basic properties of public goods are well known. In stark contrast to private goods, public goods are nonexcludable and nondepletable. Once a public good has been provided, everyone can obtain its benefits without paying. In many cases, such benefits accrue automatically. Additional users cannot be excluded, and hence they cannot be charged for their use on a voluntary fee basis. Additional users do not deplete the available supply. Moreover, public goods are often "system" goods, in which the different units must be part of a single coherent system so that the provider is a natural monopoly. National defense is a perfect example. Once it has been provided, all persons are defended whether they pay their fair share of the cost or not, and population growth does not deplete the existing supply. Because defense must be organized and coordinated, separate units must operate as parts of a single system. Contrary to the view espoused by anarchocapitalist utopians, competitive provision by independent private firms to voluntary purchasers, excluding nonpayers, is precluded virtually by definition.

For the same reasons, systems of criminal and civil law and the enforcement of such law are public goods. Everybody benefits from the reduction in crime, increased production, and lower prices that result from the maintenance of civil order and the enforcement of laws. For this setup to work, there must be a single system of laws (which is not to say there cannot be variations among the states) and a hierarchy of authority in the courts. Separate police agencies must have defined legal jurisdictions in the overall system of law enforcement. Some other government operations such as contract enforcement and property registration also provide general benefits.

Most true public goods are precisely those that protect individual rights, property, and freedom. They motivate people, by threat of forcible sanction, to respect each other's rights and to interact on a mutually voluntary and hence mutually beneficial basis. A few other things, such as road provision, might also qualify as public goods. Virtually everyone benefits from the interstate highway system, even those who do not drive, because it reduces the transportation costs and hence the prices of nearly all goods people buy, ceteris paribus.

The crucial observation, which many authors make, is that if government-supplied public goods were financed by means of voluntary contributions, many people would refuse to contribute, choosing instead to “ride free” on the contributions of others because free riders cannot be excluded from the benefits. The usual conclusion is that tax collection for the financing of such goods is necessary to force everyone to pay his fair share for a good from which everyone benefits. Libertarians such as Nozick, Rothbard, and Feser, of course, object to such forced payment, but taxation can be given a libertarian justification in such cases.

Notice that when a public good is financed by voluntary contributions, income is redistributed from the contributors to the free riders against the will of the contributors and at the will of the free riders. Contributors must pay more to obtain any given level of protection precisely because others gain without contributing. Put the other way, whatever the amount they choose to donate, contributors get less of the good for their contribution than they would have if everyone had paid (and hence if more had been provided) precisely because the nonpayers get more than they pay for. Free riding is clearly a form of theft, and libertarian theory itself admits the legitimacy of using government force to stop thefts, even where they are occurring through stealth rather than force.

If taxation in some form is thus justified for the provision of genuine public goods, it does not follow that taxation in all forms is justified. As Richard Epstein (1985, 297–303) has emphasized, taxes properly should be proportional rather than progressive because people benefit from the provision of public goods in proportion to their income and assets protected. Nor does it follow that just any arbitrary magnitude of the proportional tax is justified. Even a flat tax employed solely to provide true public goods might be established at excessive levels, such that the marginal addition to aggregate output generated by the marginal unit of public goods was zero or negative. My unpublished research on the member nations of the Organization for Economic Cooperation and Development in the 1980s indicated that any persistent aggregate average tax rate greater than approximately 15 percent reduced national economic growth. Gerald Scully (1989), Charles Plosser (1992), and others have obtained similar results. An upper limit on a proportional income tax should be fixed constitutionally at a rate no higher than 15 percent.

It should also be admitted that public-goods arguments can be and have been horribly abused in order to extend the reach and power of government. A good example is that government ownership of the electromagnetic spectrum, with its consequent licensing and regulation of broadcasters, has been justified on the grounds that signal reception is nonexcludable and nondepletable. Broadcasters, however, do not charge for signal reception; they charge for broadcast time, which is both excludable and depletable. Another good example is the oft-made claim that lighthouses must be publicly provided, but historical facts show that claim to be false (Coase 1974). Many other alleged public goods, such as education, are not actually public goods (High and Ellig

1988). Compulsory government income-transfer programs in particular have no genuine public-good characteristics. They are designed specifically to benefit some citizens at the expense of others, and they have demonstrable negative net effects.

The Consent of the Governed

At one point, Feser (2000, 223) touches on public goods, but only to deny that a person's benefiting from the provision of a government service justifies taxing that person: such taxation is still forced labor, and the person may wish to obtain the good elsewhere, apparently from a private provider. Although Feser ignores the issue of free riding in the voluntary finance of necessary public goods and hence fails to see either the associated theft or the libertarian justification for tax finance of public goods that such theft implies, he may still have a point. At least some people who refuse to contribute may themselves not appreciate the theft involved, and they may genuinely believe that such goods could and should be provided privately. It is unfortunate to have to impose a labor obligation on unwitting thieves who have clear consciences, but theft is still wrong, whether witting or not, and eliminating such theft through taxation is justified.

Still, some may disagree, and here the issue of consent becomes critical. Feser (2000, 234) argues that if we take consent of the governed seriously, anyone who disagrees with the will of the majority must be allowed to opt out, even to withdraw completely if necessary, from the state and its services. He seems to miss two considerations.

First, it is in the nature of many public goods that people who remain in the area over which such goods have effect cannot entirely opt out. They obtain the benefits in any event, at least in part. How does one remain in the nation and not benefit from protection by a military that is inhibiting the aggression of foreigners? Again, one might (if allowed) eschew police services, even formally and contractually, but one still gains from their provision by virtue of the lower crime rates and higher resulting production.

Second, ultimately such questions answer themselves. It has always been one of the main characteristics of free societies, in contrast to totalitarian ones, that they do not forbid emigration. Hence, that ultimate avenue for opting out is always open. And, indeed, it is often chosen. Recall the thousands of young men who went to Canada in the late 1960s and early 1970s to avoid the military draft in the United States. Nobody need be subjected to forced labor for the provision of public goods if he does not want to be, so taxation for the provision of genuine public goods is justified to stop theft by noncontributors. Given that the exit option is available, it seems likely that virtually everyone tacitly supports, or at least accepts, taxation, with genuine reservations regarding only its form, magnitude, and uses. Of course, if practical, noncoercive, alternative methods of finance for public goods can be found, such methods would be preferable.

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