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Taxation, Forced Labor, and Theft

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EDWARD FESER

The injustice of taxation—of taxation per se, not merely of this or that particular tax policy or of especially high levels of taxation—is a familiar theme of popular libertarian rhetoric. Curiously, it is less evident in the more sophisticated statements of libertarianism emanating from libertarian political philosophers and economists, who tend to base their arguments on appeals to more abstruse considerations of utility maximization, rights theory, and the like. To be sure, a critique of current tax policies, perhaps even of most taxation as such, may often follow from some of those more fundamental considerations; but even so, the connection often has the appearance of an afterthought, something to be passed over quickly on the way to treating more pressing matters. One simply does not find many libertarian intellectuals—certainly not many libertarian *academics*—insisting that the institution of taxation that sustains the Leviathan state they oppose is *clearly and fundamentally illegitimate*: illegitimate not merely as currently administered, nor only for reasons that are inconclusive and in any case highly derivative from other considerations only slightly less inconclusive; but illegitimate for reasons that do not require a great deal of argumentation and are difficult in good faith to avoid recognizing—illegitimate for the same sorts of reasons that slavery is illegitimate.

Two important scholars who have insisted on this illegitimacy, however, are Robert Nozick and Murray Rothbard, who presented in their paradigmatic forms the main libertarian arguments against taxation. Strangely, however, those arguments have not been widely discussed even by other libertarian intellectuals. Whatever the reason for that neglect, it has nothing to do with the quality of their arguments. These arguments can be defended against the objections made against them by the (relatively) few

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critics of libertarianism who have paid them any attention, and they themselves provide a powerful *prima facie* case for libertarianism.

Nozick on Taxation, Forced Labor, and Self-Ownership

Nozick famously defended the claim that *no* state more extensive than a minimal state—one that protects individuals from force, fraud, and theft, and that enforces contracts but does little or nothing else—can be morally justified, but he also argued that *at least* such a state can be justified. In line with this argument, his rejection of taxation is not absolute. He allows for whatever taxation is required in order to fund the activities of the minimal state. He does, however, intend to show that taxation of one's earnings from labor for any purpose beyond that of funding the minimal state—taxation to fund welfare programs, social insurance, the arts, scientific research, and so forth—is morally illegitimate. Therefore, his arguments, if they succeed, carry us far toward a general critique of taxation as such. (As shown later, Rothbard's arguments—and *perhaps* even Nozick's arguments, if carried through consistently—get us the rest of the way.)¹

Nozick minces no words in introducing his discussion of taxation: "Taxation of earnings from labor is on a par with forced labor" (1974, 169). This argument is Nozick's best-known objection to taxation and the one he stresses most; he also has a second related but different and philosophically more fundamental objection that such taxation is inconsistent with self-ownership.

Taxation and Forced Labor

Nozick's first argument (1974, 169–71) can be summarized as follows: when you are forced to pay in taxes a percentage of what you earn from laboring, you are in effect forced to labor for someone else because the fruit of part of your labor is taken from you against your will and used for someone else's purposes. Of course, the taxpayer is not forced to perform a *specific kind* of labor and, in fact, is more or less allowed to perform any kind of labor he likes, but that is not relevant: despite the fact that you

1. Nozick's defense of the minimal state in part 1 of *Anarchy, State, and Utopia* rests on the idea that such a state could arise from anarchy in a way that violates no one's rights and in the form of a (voluntarily retained) private protection agency that becomes dominant in a geographical area. The clients of this agency are ultimately required to fund, through their payment of fees to the agency, the protection of those nonclients in the same area to compensate them for the agency's de facto monopoly of protection services. Nozick's position seems to be that because the payment for the protection of others—a kind of taxation—arises from a process that violates no one's rights and in particular as a result of some persons' *voluntarily* retaining the protection services of an agency that later becomes dominant, his critique of other forms of taxation does not apply to it. This argument implies, however, that if what he asserts about other kinds of taxation does indeed apply to the taxation required to fund the minimal state, Nozick would also reject the latter type of taxation (and presumably the minimal state along with it, unless—although this outcome seems unlikely—it could be funded without taxation, for example, by user fees or lotteries). To show fully that Nozick's arguments can, all by themselves and without the supplementation of Rothbard's, provide a completely general critique of taxation would thus require a detailed evaluation of Nozick's case for the minimal state, which falls outside the scope of this article.

may love pumping gas, if you pump gas for three hours *for someone else's purposes* and do so *involuntarily*, your labor has been forced. A slave told by his master that he can choose between chopping wood, breaking rocks, painting the house, or even painting a picture, but that he must do one or the other of these chores, would not be any less a slave. Nor is it relevant that someone could (unlike a typical slave) choose not to work at all, or at least not to work beyond what is required to meet his basic needs, and is taxed only on the income produced beyond that point. The basic condition remains: if you work at all, or at least if you work beyond the point required to meet your basic needs, you will be forced to work part of the time for someone else. The part of your labor that generates the money paid as taxes is labor you would not have performed voluntarily. If the taxes on eight hours of labor amount to three hours worth of wages, then for those three hours you worked involuntarily for another's purposes. By working only five hours, you could not have avoided paying the taxes and thus have avoided working for another's purposes, for then the state would simply have taken instead the same percentage of the earnings from five hours labor and likewise for any lesser number of hours.

It is important to understand how this argument differs from other libertarian arguments against taxation. It is not quite the same as the general claim that taxation interferes with individual liberty insofar as its enforcement is intrusive and it prevents one from doing what he wants with a portion of his income,² for there are many who would find such infringements of liberty acceptable but nevertheless consider uncomfortable the notion that taxation also amounts to forcing people to work. The argument also differs from the objection that taxation amounts to theft in that forcing someone to labor and stealing from him are different offenses (although, if we take the former to involve specifically the *stealing of labor*, the difference between the objections may be one only of generality).

Nonetheless, it is sometimes suggested that Nozick's argument is essentially concerned with the violation of property rights or with theft, rather than with forced labor in that Nozick presupposes that one has a property right in the portion of one's earnings the state takes in taxes, a right his critics claim he fails to establish (Kymlicka 1990, 107–18; Michael 1997, 141; Weinberg 1997, 336; Otsuka 1998, 71).³ Nozick's argument, as stated previously, nowhere explicitly appeals to any claim about property rights, and it is by no means obvious that an argument objecting to some practice on the grounds that it amounts to forced labor needs even implicitly to do so. Clearly, I might still be forced to labor for someone else if I labor at all, even if I have

2. See Kymlicka (1990, 146–47), Wolff (1991, 90), and Rieber (1996) for discussion of this (less-conclusive) sort of argument against taxation.

3. An anonymous referee objects, "Isn't the 'theft' charge, in fact, more accurate (because your labor isn't [generally] what is wanted, only the money you earn)?" But that conclusion doesn't follow. If I force you to work on my farm, what I really want is the vegetables, not your labor, but you have been forced to labor all the same.

no property right in the product of the labor: a slave may own no part of his master's land or tools, and thus arguably he cannot own whatever he produced using them—vegetables, say—but he is nevertheless a slave, even if he is allowed to eat some of the vegetables and thus labors partly for himself. The master might even allow him to idle away the days if he likes, but insist that if he labors to any extent, some of his labor must be for the sake of the master: if the slave grows tomatoes because *he* wants them, the master will take a portion of them; if he tries to grow only one tomato for himself, the master will nevertheless take a third of it; if to avoid giving the master that third he tries somehow to grow only two-thirds of a tomato, the master will take a third of that tomato; and so forth. Insofar as the master “taxes” away a portion of the product of his labor, the slave has obviously been forced to work for purposes other than his own, even though he has no property right in the product of his labor (the portion of it he is allowed to eat also belongs to the master).

It might be replied that this example would be analogous to taxation in modern liberal democracies only if the slave were allowed to leave the master's property and work somewhere else, as a citizen is typically allowed to leave the state in which he finds himself and thus avoid its taxes. Also, in such a case he would be dubiously considered a slave or forced laborer (so the example would show taxation to amount to forced labor only in a country that generally did not allow emigration, such as the former Soviet Union). Fair enough, but the example would not be analogous to the situation in modern liberal democracies because it would leave us with a picture of the state as somehow the rightful owner of all land and other property in its domain, which it merely permits us to use at its discretion. If we accepted that picture, then Nozick's critics could perhaps defend taxation on the grounds that the products of labor are made from elements that the state owns and to which we have access only as it allows, so that it is within its rights to take a part of the products of our labor. However, in fact, the state (at least in modern liberal democracies) is not and is not considered to be the rightful owner of everything. Moreover, it seems *prima facie* implausible to suppose that the state *should* be, and inevitably any society in which it is rightful owner of everything would be a totalitarian one, as no doubt even Nozick's critics would acknowledge.⁴

If they do acknowledge it, their objection to Nozick's argument can have no force, for although that argument does presuppose that the state does not own all property, that is all it presupposes by way of a theory of property rights. It does not presuppose any tendentious theory of the sort Nozick's critics claim it does; it assumes only that individual citizens own *some* property, and it shares that assumption not only with Nozick's critics but with the state itself. In allowing its citizens to keep

4. Some of Nozick's critics seem committed to something close to state ownership of everything. For example, Will Kymlicka (1990, 117–18) suggests that natural resources are jointly owned by everyone, which, in practice, would imply state control of all such resources. I consider the ownership of resources and respond more fully to this sort of view when I discuss Rothbard's views.

at least a portion of their income, the state recognizes that they are the rightful owners of that income; indeed, if the state took more than the portion stipulated by the tax laws, a citizen could sue to get it back—not on the humanitarian grounds that he needed the extra income, but on the grounds that *the state had no right to it*. More to the point, in allowing my employer to keep at least the portion of his income remaining after he pays his taxes, it recognizes that he is the rightful owner of that part of the income; and because the state does not force me to work if I do not want to work, it implicitly acknowledges that I have a right to my labor. But if my employer owns the income net of tax payments and I own my labor, it follows that we can do as we like with them, including trade them. So the state has no grounds for complaint if we do so and no justification for interfering with our transaction. Yet if I labor in exchange for a portion of my employer's income, the state will take some of it in taxes—hence Nozick's complaint.⁵

Some would argue that taxation of earnings from labor is not theft because the actions of the state, unlike those of a thief, are predictable and governed by law, the state's powers to take income being limited and the citizen being fully aware of what is in store for him when he gets paid. Moreover, unlike the typical thief, the state uses the money it takes for the benefit of its "victims." One might even suggest, given what I stated earlier, that because the state has implicitly recognized my right to the income I get from my employer, it cannot plausibly be viewed as stealing from me; it is taking only what it sees as in some sense due it, perhaps for services rendered (though of course, only a very few or even none of the services the state renders using my tax money can plausibly be regarded as services for me personally). That the taxpayer benefits from some of what the state does with his taxes is irrelevant to whether taxation is forced labor, however, for insofar as his tax money is used for functions that benefit not him but others, then he has been forced to labor for those others. Even the services that do benefit him are not necessarily services he voluntarily supports, for he may prefer to try to get them elsewhere. (Again, a slave who gets back from the master some of the vegetables he was forced to grow is still a slave.) Thus, Nozick's argument does not and need not presuppose that taxation is theft, nor does it rest on any controversial theory of property rights.

Some critics of Nozick's argument do not quibble over whether it presupposes some theory of property rights, and they more or less grant its main contention. Jonathan Wolff (1991) concedes at least that taxation "has some resemblance to forced labour" (92). Alan Haworth (1994) is even more forthcoming, stating that "it is *just plain true*" that the labor expended to pay taxes is forced labor (92). But these critics defend such forced labor regardless of such concessions, taking Nozick's objection to

5. An anonymous referee objects that this argument presupposes "the propriety of self-ownership and ownership of private property," which haven't been defended. But this objection misses the point, which is that *the state itself*, through its actions, implicitly grants the propriety of both, at least to an extent sufficient to support my argument. In any case, I defend both self-ownership and property ownership later in the essay.

it in this case to be overwrought. A sardonic remark of Haworth's reveals why: "For Nozick, the horror [of forced labor] . . . manifests its presence each time a millionaire is taxed a penny" (1994, 71).

The quip may be funny, but it misses the point. Wolff and Haworth would insist that the infringement of liberty involved in taxation, though real, is relatively trivial, and therefore it is an acceptable price to pay for the benefits they would allege the state provides. But even they would object, it seems, to being forced to give up a penny—much less the thousands of dollars most people pay in taxes or the millions the very wealthy pay—to someone on the street who *demand*ed it at gunpoint, even for a use of which they otherwise would approve. Our sense that forced labor is unjust stems not merely, or even primarily, from imagining forced labor as strenuous; it also stems from the *involuntary* character of that labor, from our belief that no one has the right to force another person to labor if that person does not want to do so. Slavery is slavery however well the master treats the slave.

This intuition naturally brings us to an even deeper objection to the taxation of earnings from labor.

Taxation and Self-Ownership

Nozick's second argument (1974, 171–72) is essentially that each individual owns himself—his body and its parts—and his labor. He is entitled to do with them anything he wishes and (unless bound by contract) to refrain from doing with them anything anyone else wishes that he do with them. In G. A. Cohen's words, he "possesses over himself, as a matter of moral right, all those rights that a slaveholder has over a complete chattel slave as a matter of legal right" (1995, 68). This declaration is the *thesis of self-ownership*. But taxation of earnings from labor is inconsistent with the thesis, especially when that taxation is justified by moral principles requiring that a certain distribution of wealth obtain or that the state provide certain services to its citizens. In granting citizens an entitlement to certain services or to a certain share of "society's" wealth, such principles in effect require that any time you labor, you must labor in part for the purposes of the state or for the purposes of those who benefit from the state's largesse because the state must redistribute part of the product of your labor to meet those entitlements. In other words, such principles entail that the state and its beneficiaries have an entitlement or enforceable claim to and thus at least a partial property right in *your labor* and therefore in *you*. They are *part owners of you*. But no one can be even the partial owner of anyone else. We are self-owners, and, as such, we must reject taxation as deeply immoral.

Although this argument is related to the forced-labor argument, it is clearly set off from the latter in Nozick's text, and the charge that taxation amounts to the partial ownership of taxpayers is clearly stronger than the charge that it amounts to forced labor. Even someone willing to allow a little forced labor must surely find uncomfortable the notion of partial ownership of other people—even a Haworthian penny's

worth of ownership. Forced labor can come in degrees of severity and duration, and therefore the defender of taxation can convince himself that he need not essentially be committed to stripping people of their right to self-determination, but only to inconveniencing them. But it is difficult to make ownership of other people, even partial ownership, sound palatable. Nonetheless, the sort of forced labor involved in taxation, given the absoluteness of the state's claim over a portion of one's earnings from labor, amounts precisely to the partial ownership of other people. Those who dismiss Nozick's views of taxation on the grounds that a little forced labor may be a good thing thus fail to deal with the heart of his case.

Oddly, the writer who seems most impressed by this argument not only is not a libertarian, but a Marxist of sorts: G. A. Cohen, who finds it a daunting challenge to his project of rescuing socialism from the ash heap to which history has apparently consigned it. Cohen is convinced that it is futile to attempt to show that taxation, despite appearances, does not amount to forced labor and therefore does not really conflict with self-ownership:

Suppose that whenever I scratch my back I am required by the state to scratch someone else's. It surely follows that I lack full ownership of my hand. And the implication of non-(full) ownership survives when we suppose that if I scratch your back in return for scratching mine, then some further scratching of the backs of third parties can be exacted by the state from each of us, after the manner of redistributive income taxation. (1995, 220–21)

To avoid Nozick's conclusion that such taxation is immoral, only one option remains open to Nozick's critics: they must, Cohen asserts, try to undermine the thesis of self-ownership itself (1995, 229). Of course, that thesis has a tremendous *prima facie* plausibility, as Cohen himself recognizes. His aim is in fact not to refute it—he denies that it can be refuted—but only the more limited task of showing that we need not accept it.

Typically, libertarians do not argue for the thesis of self-ownership to any great extent, for the obvious reason that it seems as plausible a moral first principle as one could hope for, something that seems just intuitively true. Most people would agree with the thesis on considering it, and the libertarian's hope is to convince them that because they (at least implicitly) accept it, they ought to accept also the libertarianism that follows from it. Nevertheless, libertarians have attempted such arguments. They generally proceed by trying to show that the thesis of self-ownership is something we must accept if we are to justify other widely shared fundamental moral commitments. For instance, nearly everyone would accept that slavery is immoral, not just in cases where the slave is treated badly, but in *every* case. It is not just the maltreatment of other persons one owns that is morally offensive, but the fact of ownership itself. It seems obvious that no one has the right to own another person, and the most plausible

explanation is that each person *owns himself*, has a right over himself that no one else can usurp.

Another argument for self-ownership concerns the famous “eyeball lottery” scenario: even supposing it were possible to remove painlessly one eyeball from everyone who has two so that the extra eyeballs could be redistributed via lottery to those who by accident of birth have no eyeballs, we would still find such a practice abhorrent, for even though it might be kind for someone voluntarily to give up an eyeball for the sake of a blind person, it would be immoral to force him to do so. And the reason why is surely that they are his eyeballs to do with as he pleases; he *owns* them, along with his other body parts; indeed, he *owns himself* entirely.

In rebutting such defenses of the thesis of self-ownership, Cohen’s strategy is to try to show that we can account for the immorality of slavery and of eyeball redistribution without committing ourselves to the thesis—that one can consistently be against them without being for self-ownership.

Cohen begins by trying to show that you can accept redistributive taxation without accepting either slavery or self-ownership. He suggests that it is possible that you may have obligations to others from which the state has no right to absolve you and indeed has the duty to enforce via taxation (1995, 234). In this case, you would not have a right, derived from self-ownership, to refrain from surrendering part of your income to the state; however, neither would the state have the rights of a slaveholder over you, because it could not do whatever it wanted with you, but only what is required to enforce the presumed moral obligation.

An objection to this argument, which Cohen himself notes, is that whether or not *the state* has the powers of a slave owner over you, from *your* point of view your condition might nevertheless be little better than that of a slave, for you have, in the case Cohen describes, as little power over the labor that goes toward paying taxes as you would if the state were a slave owner (1995, 235). But if the thesis of self-ownership is true, you do have power over this labor and thus the right not to pay the taxes. So it appears unavoidable that one can reject self-ownership only at the cost of accepting slavery.⁶

Cohen’s response to this difficulty seems little more than a counteraccusation. First, he argues (as does Nathanson 1998, 78–79) that Nozick himself, being a minimal-state libertarian rather than a libertarian anarchist, allows taxation for the purpose of funding police, courts, and the like, and that the condition of the taxpayer in this case

6. Another obvious objection to the argument would be that, whether or not it shows that one can consistently reject both slavery and self-ownership, it is useless as a defense of taxation unless one also shows (a) that there *are* obligations to others of the sort by which taxation is typically justified, and (b) that the state has a right to enforce such obligations any more than anyone else does. Insofar as (a) is defended by an appeal to “social justice,” no such appeal can succeed (Feser 1997, 1998). We shall see later that (b) is unfounded.

is as slavelike as it is in the case of taxation for the purpose of helping the needy. One could press the quibble that the taxpayer's condition is less slavelike from his own point of view in the first case insofar as he is at least being forced to fund services that directly benefit him. But the main problem with Cohen's response is that it simply does not show that the taxation he wants to defend does not amount to slavery. At best, it shows only that even the taxation Nozick would allow also amounts to slavery. If Cohen is right in this regard—as Rothbard and other libertarian anarchists would say he is—then the self-ownership advocate's response would have to be not to accept Cohen's favored forms of taxation, but to reject *all* taxation as immoral.

Cohen also suggests that because Nozick allows that one could voluntarily enter into a condition of full slavery, he cannot plausibly object to the involuntary partial slavery entailed by taxation, which is arguably less harsh. But like his first reply, this one does nothing to show that taxation does not amount to slavery. In any case, Nozick is wrong to hold that an individual could voluntarily enter into slavery, not because he could not enter into a condition in which he would behave in a slavelike manner for the rest of his life, but because if he did so voluntarily, his condition would not be slavery. Cohen argues that if Nozick accepts the *possibility* of voluntary full slavery, he should accept also the legitimacy of involuntary partial slavery. But there need be no inconsistency in the libertarian position on slavery. Self-ownership rules out *all* slavery.

Cohen's attempt to deal with the eyeball-lottery scenario is no more compelling. His approach is to develop examples that are similar to it but (he alleges) do not imply the thesis of self-ownership and to argue that the eyeball-lottery scenario is, despite appearances, also best accounted for in terms that do not involve self-ownership. First, we are to imagine a case in which people are born without eyes, and the state provides artificial ones that are implanted at birth and become workable only when used by an individual from infancy to adulthood (1995, 243–44). Suppose occasionally an adult, through no fault of his own, loses his artificial eyes, and the state takes one from someone else to give to him (because only those eyes used from infancy are of any use). Surely we would object to this transfer just as strenuously as to the eyeball-lottery case. There is no question of these individuals' owning the artificial eyes because the state may well retain ownership of them. So our objecting to the practice cannot have anything to do with ownership; it springs instead from the excessive interference in people's lives the practice would involve—and the same can plausibly be said of the original eyeball-lottery case. We can object to eyeball redistribution, then, even if we reject the thesis of self-ownership.

The problem with this response is that it is not obvious that serious interference with people's lives is *all* we object to in eyeball-lottery-type cases. Suppose someone was unknowingly the recipient of an eye stolen from someone else, and the original owner demanded that the eye be returned. Surely, however much we sympathized with the unwitting transplantee, we would agree that he should give up the eye to the original owner. Both parties will have had their lives radically interfered with, but it is

nevertheless clear that one has suffered a greater wrong, and surely the reason why is that he is the *owner* of the eye. It even seems plausible that Cohen's example is at least slightly less horrific than the eyeball-lottery scenario precisely because these people were granted their eyes at the discretion of the state, which thus has some say over who gets them and under what terms. One is tempted to say, "Well, they *are* the *state's* artificial eyes, I suppose, so perhaps it is acting within its rights, but *still* . . ." Nonetheless, the two cases seem indistinguishable unless we assume that the reason the original eyeball-lottery example is (at least slightly) more horrific is that people are the rightful *owners* of their body parts.

Cohen's other example presents most newborn infants as receiving eyes when passing under "ocular trees" on which eyes grow and from which they fall, but some unlucky infants pass under the trees when nothing falls and therefore they receive no eyes (1995, 244). Cohen maintains that no one, neither lucky eyeball recipients nor the state, would own the eyes, yet we would still object to eyeball redistribution; hence, it is not self-ownership to which we are committed in rejecting such redistribution. But this example is ambiguous. If we think of the ocular trees as easily manipulable external natural resources that can come to be owned (perhaps by the state) as other natural resources are, then the scenario is more or less identical to Cohen's first one and has the same problems. But if we think of the trees on the model of the genetic factors responsible for eyes in the actual world or even as similar to conditions in the womb, then the scenario is more or less identical to the original eyeball-lottery example, in which case it gives no non-question-begging support to the notion that we need not account for the immorality of the example in terms of self-ownership.

In sum, Cohen has failed to undermine the arguments usually given for the thesis of self-ownership, a thesis that hardly requires much argument and is as self-evident as a fundamental moral principle can be. We tend intuitively to take the thesis of self-ownership to be true; and if we do, as Cohen acknowledges, we must also reject taxation of earnings from labor as immoral.

The reader will no doubt have noticed the qualification—taxation *of earnings from labor*—that has appeared in my discussion (as it does in Nozick's). Is the libertarian case against taxation incomplete? Does even the self-ownership argument condemn labor-income taxes but leave open the possibility that other forms of taxation—for example, tariffs or property taxes—might be legitimate? Perhaps not, for it is plausible that other taxes, though less regular and less directly tied to labor, differ from the taxation of labor earnings only by degree. We might argue that in collecting a sales tax every time I buy certain products or in collecting an inheritance tax when I try to leave something to my heirs upon my death, the state is once again claiming a slaveholder-like right over the product of my labor, even if it does so intermittently and inconsistently.

If this suggestion fails to convince, however, the libertarian hostile to taxation in all its forms has another weapon in his arsenal, a more general argument against taxa-

tion: taxation of *any* kind is a straightforward violation of property rights. *Taxation is theft.*

Rothbard on Taxation and Theft

Rothbard's argument ([1982] 1998, chap. 22)—which he adopts from the nineteenth-century anarchist Lysander Spooner, although the same idea has appeared in various forms in countless libertarian and anarchist tracts—is simplicity itself: when the state collects taxes of any sort, its action differs in no relevant respect from that of a robber; it *steals*, it takes by force property that does not belong to it. Just as the everyday robber threatens your life or liberty if you do not surrender to him what he demands, the state threatens imprisonment and ultimately death (because you may be killed if you resist arrest) if you fail to surrender to it what it demands.

One cannot, Rothbard asserts, get around this claim by suggesting that taxation, at least in typical Western countries, is really voluntary because citizens, through voting, have power over the taxation system. Those who vote *against* a particular tax or against any taxation at all are, when outvoted by the majority, as coerced into paying taxes as they would be if they had no vote. I am no less coerced when a majority of citizens imposes a tax on me than I would be if a single dictator did so. Would anyone have the temerity to suggest that if the majority voted to have me gratuitously imprisoned or executed and proceeded to do so, I could not complain because my misfortune resulted from a democratic process in which I had a vote?

The reply that the state does not really steal from us because it provides services in return (Kearl 1977) also fails, even if we grant the controversial assumption that the average citizen really does get back from the state services commensurate to the amount he is forced to pay. After all, the Mafioso providing “protection services” in return for extorted payments may in many cases really protect his clients from other criminals, yet we would not count his actions any less illegitimate for that reason. The upshot is that, whether or not I am given anything in return for my tax dollars, those dollars are still taken from me *involuntarily* even if I do not want the services provided or would prefer to get them elsewhere. No one would consider the local florist any less a thief if, after taking some of my property by force, he sent me flowers.

Taxation and Property Rights

Some have tried to resist this argument in another way, by suggesting that what is taken by the state in taxes is not property citizens had a right to in the first place. The idea is that all property-rights claims rest ultimately on a theory of *original acquisition*, an account of how previously unowned parts of the natural world can justly come to be owned. If all previously unowned natural resources had been appropriated by their original owners in a just manner and then passed down (along with the wealth generated by the exploitation of those resources) in a just way, then plausibly the state

would have no grounds for appropriating some of the wealth of its citizens via taxation for redistributive purposes. But, in fact, defenders of taxation say, most natural resources were not (or probably were not) justly acquired initially, nor have all transfers of wealth been just. Therefore, the state is fully justified in taxing its citizens in order to correct those injustices. It is not stealing from its citizens, but merely giving back to some citizens property to which they have a right, property that has come unjustly into the possession of other citizens.

Insofar as some property has come to be held unjustly through illegitimate *transfers* of property (as opposed to initial *acquisitions* of unowned resources)—for example, as a result of theft or fraud—no libertarian would deny that rectification is in order. There will, of course, be difficult cases and, in principle, even grounds here and there for considerable redistribution of wealth where past injustices in transfer have been egregious. At the end of the day, however, all of this cleanup is consistent with the continued existence of poverty, inequalities of wealth and income and so forth, which defenders of taxation are really interested in eliminating. The case for the legitimacy of taxation must rest on some theory of original acquisition that justifies the state in *continuously* taxing its citizens (not just definitively once to remedy this or that illegitimate transfer) to make up for some unjust initial distribution of unowned resources.⁷

One well-known libertarian theory of acquisition, going back to John Locke, is roughly this: one owns one's labor and comes to own a previously unowned part of the natural world by "mixing" his labor with it, with the qualification (the "Lockean proviso") that in doing so one leaves resources for others to appropriate that are as good and as plentiful as those one has appropriated. This theory raises all sorts of questions, but it is usually understood to allow for the radical inequalities in wealth that defenders of taxation are eager to eliminate, and some version of its basic idea underlies most libertarian theories of original acquisition, including Nozick's (to the extent he has such a theory).

Theories of just initial acquisition, libertarian or otherwise, are notoriously problematic, however, and therefore such a theory seems ill-suited as a foundation for a decisive argument against taxation. But libertarian theories certainly do not lack for competitors.

Michael Otsuka, for example, suggests what he calls an "egalitarian proviso," which requires that any acquisition of previously unowned resources be consistent with every person's being capable of bettering himself to the same extent as every other person (1998, 79–81). To the extent that some members of society are inca-

7. Notice that even if this approach succeeded, it would justify *only* taxation aimed at correcting such injustices and *not* taxation for the purpose of funding the arts, research, and the like, or even the funding of defense, courts of law, and other functions that the taxpayer is supposedly funding for his own purposes.

pable of bettering themselves to the degree others are, then we may regard the initial acquisition of unowned resources in the state of nature to have been unjust and hence require the state to redistribute wealth via taxation so as to equalize people's chances.

I find this theory implausible. To begin, there is no sense to be made of the claim that inequalities in capacities for bettering oneself, financially or otherwise, are *as such* either just or unjust (Feser 1997, 1998). Furthermore, the radically egalitarian redistribution Otsuka's principle would call for seems clearly infeasible from an economic point of view, and it would surely produce conditions even worse than those he wants to mitigate. Also dubious is the idea that the justice or injustice of my acquiring resources here and now should in any way depend on the capacities for self-betterment of persons who do not yet exist.

But even if libertarian theories of just acquisition generally are far less problematic than egalitarian ones, this superiority is cold comfort to anyone looking for a decisive Rothbard-style argument against taxation. Even the best theories of just initial acquisition are simply too controversial to do the job required. Does this situation entail that Rothbard's case against taxation, even if it has not been refuted, must wait for widespread agreement on some (libertarian) theory of just acquisition, acceptance of which will nevertheless always remain too tentative for Rothbardian polemical purposes? Not at all.

Fortunately, libertarians do not need a theory of just initial acquisition, because in fact there is *no such thing* as just or unjust initial acquisition. The real flaw of libertarian theories of just acquisition—and all other theories of just acquisition—is that they offer a solution to a problem that does not exist.

My reason for making this (admittedly bold) claim is as follows: To say that A committed an injustice against B when he acquired a previously unowned resource R implies that B had some right over R that A violated. But B had no such rights because *no one*, prior to A's acquisition, had any rights over R—it was, after all, previously unowned. The first person who *could* claim any rights to R, the violation of which would constitute an injustice, is the person who first came to acquire R. Depending on the circumstances, we may count B as unlucky or take him to have suffered a misfortune because of A's action; we may even justifiably claim that A has been callous or unkind to B. But there are nevertheless no grounds for claiming that B has suffered an injustice.

We may nonetheless want a theory of original acquisition: questions do arise about how exactly one comes to own something. Mere declaration of ownership is clearly insufficient. To suppose, for example, that I can come to own Saturn's moon Titan just by declaring that I own it seems absurd. But it seems so not because it would be unjust for me to make such a declaration, but because my declaration would be manifestly ineffectual. In what sense could I be said to own Titan, given that I have never been there, cannot get there, and cannot influence what happens there in any way? If, however, a corporation were to send a ship to Titan and proceed to mine it,

that company's claim of ownership (at least over the portion of the moon to which it was able to gain access) would not be at all absurd, even if one disapproved of it. Having access to something, being able to manipulate and alter it, and so forth are typical marks of the ownership of it, just or unjust—hence the lingering sense that, whatever its problems, Locke's "labor-mixing" theory has *something* right.

But such marks of ownership are nothing more; they do not signify initial ownership that is just, because there is no such thing as just or unjust initial ownership. Justice comes into play only after initial ownership has been established. Justice becomes relevant only in the theory of transfer of what has already come to be owned. Theories of initial acquisition are not, properly speaking, theories of justice at all. The question of what counts as an initial acquisition of unowned resources is a question of *logic*, not of morality, a matter of the analysis of the concept of acquiring something.⁸

There is no question, then, of the justice or injustice of the initial acquisition of unowned resources, and therefore no grounds exist, or can exist, for the claim that in taxing its citizens, the state is merely rectifying an injustice in the original appropriation of resources from the state of nature. One cannot avoid the conclusion that taxation is theft merely by appealing to a theory of initial appropriation.

Justifying Taxation and Justifying the State

Rothbard's argument may have force, however, even if the argument given in the last section be rejected. In defending the claim that taxation is theft, Rothbard does not appeal only to a theory of property rights, but also to the similarities between the state's actions in collecting taxes and the robber's actions in robbing. He considers not merely the nature of *what* is taken but also the *manner* in which it is taken, insisting that the manner is the same whether the state or the robber does the taking. Of course, the rightful owner of property might also use force in retrieving it, but (to use vaguely Randian language) he does so in a retaliatory way, only after force has been used against him by the robber. The state, like the robber, initiates the force.

It might be replied that we can count the state as initiating force only if we assume that it takes property that rightfully belongs to the taxpayer, so the question of property rights cannot be avoided. But no one would accept as justifying a highwayman's actions the claim that he was robbing only to return to the poor the resources to which they have a right under an egalitarian theory of initial acquisition, even if the claim were made sincerely. We regard him as a robber anyway—as having taken what was not his to take—not only because he had no right to the *property* taken, but because he had no right to the *action* taken, the action of threatening force to right an injustice.

8. These ideas first occurred to me as a natural extension of F. A. Hayek's views about the inapplicability of the concept of justice to the results of an impersonal process such as that of the market (see Hayek 1976 and Feser 1997, 1998). Anthony de Jasay (1997, 171–76) has also argued along similar lines; and, of course, related ideas are to be found in Hume's writing.

Part of Rothbard's point is that the state has no more right to take this sort of action than anyone else does. The question of the legitimacy of taxation does not hinge only on the issue of property rights, but also on the issue of the legitimacy of the state itself, or at least on the legitimacy of its taking on the role of rectifier of injustices.

It would be begging the question to argue that taxation is illegitimate *only* on the grounds that the state has no right to rectify such injustices, while claiming that it has no such right because exercising it would involve taxation, which is illegitimate. But then the critic of taxation is not the one who needs to do the arguing in the first place, for Rothbard's point, in part, is surely that given the similarity between what the robber does and what the state does, the *defender* of taxation must bear the burden of proving that it is legitimate.

Of course, most people *suppose* taxation, at least in general, to have a legitimacy that robbery does not, especially given its legal status, but that prevailing supposition proves nothing. In some societies, most people at one time erroneously supposed that ownership of blacks had a legitimacy that ownership of whites did not. A neighborhood plagued long enough by Mafia racketeers may eventually come to take their "protection services" for granted and come to rely on them for protection against other thugs, perhaps even eventually regarding them sympathetically, but the Mafia's extortion would be criminal nonetheless. In general, it is not difficult to think of cases in which people have become so inured to an injustice that they cease to think of it with horror. At least a veneer of legitimacy can settle on even the most appalling policies when they are promulgated by a recognized authority. By almost anyone's reckoning, Hitler's Germany would be viewed as an utterly criminal, illegitimate regime, unworthy of allegiance or obedience. Yet, at the time, many Germans took even some of the most brutal Nazi policies as having a legitimacy they would have lacked but for their sanction by the state. Loren Lomasky, himself a libertarian, thus seems wrong to claim that taxation is not theft because citizens do not generally *treat* it as they do theft (1998, 362–64).⁹

The defender of taxation cannot avoid the obligation of producing a defense of the legitimacy of the state's acting in a way no citizen is allowed to act. In the modern era, this defense will typically involve an appeal to the consent of the governed. But where consent is the touchstone of legitimacy, the libertarian, whose case against taxation has always rested on the state's nonconsensual nature, surely has the upper hand. As Herbert Spencer argued (1995, chap. 19), no appeal to consent can fail to smack of sophistry if it insists that a man who explicitly resists a policy,

9. Contrary to Lomasky's suggestion, considering taxation to be theft does not entail that we must treat taxation-supporting fellow citizens as we would the accomplices to a great criminal enterprise. Washington, Jefferson, and the other Founders were great men, despite their benighted participation in the institution of slavery, the fundamental immorality of which is no longer in doubt. Nothing bars defenders of Rothbard's or Nozick's arguments from treating citizens who disagree with them as similarly benighted, as in profound error, but as, when acting in good faith, nevertheless entitled to respect.

whether imposed by the will of a tyrant or by the vote of the majority, has nonetheless *implicitly* consented to it in the latter case. If we take consent seriously, then anyone who disagrees with the will of the majority must be allowed to “opt out” of taking whatever course that majority has decided to follow; and if this opting out entails his complete withdrawal from the state and its services, so be it. If he no longer desires the services the state claims to provide to him personally (police protection, social insurance, or whatever), he must be allowed to withdraw from them and must no longer be taxed to support them.

If the state does have consent, it might seem that in effect it is not really a “state” at all, but a private protection agency of the sort Rothbard and other libertarian anarchists would make a replacement for the state. Even unjust initial acquisitions (if there really were such things) could legitimately be dealt with only via recourse to private institutions, presumably the private protection agencies, private law courts, and so forth of libertarian-anarchist (or “anarcho-capitalist”) theory (Friedman 1989, Rothbard [1982] 1998). The rejection of taxation would thus appear to go hand in hand with anarchism—that is, the rejection of the legitimacy of any state whatsoever.

But the matter may not be so clear-cut. States do, after all, sometimes respect a demand for consent by allowing local governments and even individual citizens (for example, the Amish) to opt out of certain programs and policies; they sometimes allow private agencies to engage in activities typically thought definitive of the state, such as providing security and protection services. Yet they do not cease being states. Nor would the elimination of taxation appear, strictly speaking, to entail the elimination of the state. It is at least arguable that the state could be funded through means other than taxation—for example, user fees, lotteries, and the like. Of course, if such alternatives turned out to be impracticable (as they probably would), anarchism would indeed appear to be the inevitable practical consequence of the elimination of taxation. But the point remains that nothing in the argument *requires in principle* a commitment to anarchism. The defender of Rothbard’s argument need not object (as Rothbard does) to the very existence of the state, but only to its claiming for itself the exclusive right to rectify alleged injustices, its forcing of *some* to fund, via taxation, the rectification of such injustices suffered by *others*, and so forth.

Conclusion

Nozick’s and Rothbard’s arguments together show taxation as such to be fundamentally morally illegitimate. Because those arguments entail that the activities of the modern state to which libertarians object are themselves illegitimate insofar as they are funded via taxation, the arguments also constitute a powerful case for libertarianism and possibly (perhaps inevitably) a case for anarcho-capitalism. Whether they must entail anarcho-capitalism and whether an anarcho-capitalist society would be feasible are matters that cannot be settled here. In any case, the immorality of taxation implies that such a society is at the very least an ideal we should strive to approximate.

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