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ANARCHY, STATE, AND UTOPIA THIRTY YEARS LATER: NOZICK ON TAXATION

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It is hard to believe that Nozick's *Anarchy, State, and Utopia* [hereinafter ASU] was published over thirty years ago. We might compare its career with that of Nozick's colleague John Rawls' *A Theory of Justice*, which has sold a million copies or so since its publication. No such sales figures hold for ASU, though its influence has been immense. ASU's main influence in the philosophical world has been to cause people to equate Nozick's ideas with libertarianism—so much so that just about any discussion of libertarianism in the academic journals since then has been a discussion of Nozick. While Nozick was certainly a brilliant spokesman for libertarianism, this wholesale equation of Nozick's ideas with libertarianism is probably on the whole not a good thing. It would be nice if the philosophical world paid more attention to Nozick's theory itself—especially since much of the attention has been to selected passages that lend themselves rather readily to caricature.

Libertarianism without Foundations?

ASU appeals forthrightly to intuition: "Individuals have rights, and there are things no person or group may do to them (without violating their rights)."¹ That pronouncement is pretty vague. It does not say *which* rights we have, and the thesis that there are things you can't do without violating them would surely be one of the defining characteristics of a right. What sense, after all, would it make to have a right that no one could violate? But the second sentence is more interesting: "So strong and far-reaching are these rights that they raise the question of what, if anything, the state and its officials may do."² Proponents of a very different scheme of rights would answer this question very differently from Nozick. They would say that the fact that we have rights is precisely what *justifies* the state, and not merely the sort of "minimal" state Nozick argues for, but rather a very extensive state, bent

¹ ROBERT NOZICK, *ANARCHY, STATE, AND UTOPIA* ix (1974).

² *Id.*

on redistributing income and wealth in order to feed the hungry, elevate the poor to the middle class, guarantee equality of something-or-other for everyone, provide scholarly support to needy academics, and much, much more. The question of who is right about the nature of rights remains in the forefront for many of us. It does not remain so for the great majority of contemporary social philosophers. They find the latter view all but self-evident, and treat the libertarian idea as merely a whipping-boy or a straw man. Meanwhile, both sides (or rather, the many "sides" ranging from full agreement to full disagreement with Nozick's ideal) appeal, generally speaking, to intuition. Little or nothing is said in real support of one or another position on the matter, and there seems to be a general sense that no such support is really possible. Intuition rules the day.

Discussions of Nozick, as I noted, tend to be discussions of caricatures, or are passed off in brief question-begging sentences, such as these:

Libertarians object to welfare rights as requiring impermissible taxation. Nozick, for example, says that 'Taxation of earnings from labor is on a par with forced labor.' This view is vulnerable to an attack asserting two things. First, taxation is permissible when used to discharge the duties of taxpayers, when, for example, it is used to support government-organized systems of humanitarian assistance that fulfill more effectively duties of assistance that all individuals have. Second, property rights are not so strong that they can never be outweighed by the requirements of meeting other rights.³

Well, those are the sort of things that deny Nozick's idea, to be sure. But they aren't the sort of things you should be able to simply *assert*, though I suppose you can say them almost anywhere in the halls of philosophy nowadays without much fear of contradiction. It really does need to be argued for, and not just asserted, for example, that there *are* duties of humanitarian assistance of the kind justifying compulsion. And while it is fashionable to deny that property rights have much weight—as indeed they do not when dealing with governments—they deserve a lot more attention than a flat dismissal. The sheer fact that theft is all but universally condemned when committed by individuals, even those with wonderfully benevolent motives, should surely be enough at least to raise the question why what appears to be very much the same thing is nevertheless permissible when it is done by governments. As Anthony de Jasay has observed, "government protects everyone against everyone—except itself."⁴

Supplying the Foundations

Still, I think it fair to say that Nozick's view is also largely asserted, just as is his opposition's. Is there a clear and non-question-begging argument for property

³ James Nickel, *Human Rights*, STANFORD ON-LINE ENCYCLOPEDIA OF PHILOSOPHY, <http://plato.stanford.edu/entries/rights-human/> (last visited Oct. 1, 2005) (internal citations omitted).

⁴ Anthony de Jasay, remark made in a symposium at Nuremberg, 2003.

and against its forcible transfer to someone else? It seems to me that there is, and that the argument for it underwrites an institution that is stronger than what proponents of taxation have to offer against it. That basic argument for property is also the argument for individual freedom, an idea now generally given little shrift in the halls of philosophy. And the argument that can be made for individual freedom is very strong indeed. It is, moreover, a genuine argument, not just another assertion.

Indeed, the attitude that one can't really argue for basic theses in normative ethics seems to me wholly mistaken, and accepted for the wrong reasons by many who accept it. Aristotle and Mill, for example, are famous for saying such things. Thus, Mill writes: "Questions of ultimate ends are not amenable to direct proof. Whatever can be proved to be good, must be so by being shown to be a means to something admitted to be good without proof."⁵

This commits what I shall call the chocolate-versus-vanilla fallacy. Questions of *ultimate ends* would no doubt have the feature Mill describes by definition—what else could "ultimacy" be? But we should not think that questions of morals and politics *are* questions of ultimate ends. Indeed, we may cite Mill again in this connection: "The likings and dislikings of society, or of some powerful portion of it, are thus the main thing which has practically determined the rules laid down for general observance under the penalties of law or opinion."⁶

This is scarcely enough. My likings and dislikings, of course, do have major influence on my conduct. But questions of morals are not matters of individual psychology, and thus out of bounds to questioning. For in claiming that I'm doing what I ought to be *allowed by you* to do, I am making an appeal for *your permission*, and to expect your permission solely on the basis of my own likings is irrational. To base that permission exclusively on your untutored likings and dislikings is equally, and for the same reason, irrational. It is hard to see how that could be disputed, and we must take it that those who proclaim that their "intuitions" support this or that think that those intuitions amount to more than the "likings and dislikings" of which Mill complains. But how do you show this if you also claim that these intuitions are basic and incapable of being supported by anything further?

Red Herrings in Moral Theory

Morals and politics cut across personal lines. If they are to be rationally based, that basis will have to be something common to the persons concerned: it cannot be *only* the "ultimate ends" of any one or some few of them, taken in isolation from the others. But if there is any recognition of this obvious truth in the familiar literature of moral philosophy today, it is obscured by a supposed contrast between two sorts of moral theory: "deontological" versus "consequentialist," the

⁵ JOHN STUART MILL, *UTILITARIANISM* 13 (Prometheus Books, 1987) (1863).

⁶ JOHN STUART MILL, *ON LIBERTY* 66 (Penguin Books, 1974) (1859).

latter often being equated with utilitarianism. As they stand, these terms are useless for the purposes in question. Deontology is normally defined as pertaining to rights and wrongs based on features of acts having nothing to do with consequences, whatever that could possibly mean. (It could possibly mean something, I suppose. Perhaps someone, somewhere, imagines that the wrongness of murder has nothing to do with the fact that the victim *ends up dead*.) It is equally absurd to talk about appeal to consequences as an "ism." We are always, in practical discussions, talking about what happens if we do this or that—but to talk to some point, we are going to have to decide which of those eventualities matters for the purpose. Calling them consequences gets us nowhere on that question, even though it is the only question there is in this field.

An individual acts on the basis of a set of valuations, assessments of what matters to him or her. Among the things that so matter are, of course, things that other people can and possibly will do to him or her. To pay no attention to such things is absurd. But what we do to each other is rarely a matter of immediate untutored impulse—happily, we can think about such things, and sometimes alter our intentional behavior for the better. There is a general form, in fact, for interpersonal transactions: cooperation, or, the Common Good. Cooperation has the advantage that the two or more agents involved act voluntarily, and are able to coordinate their behavior. Cooperation improves the situations of both parties involved, thus supplying each with reason to engage in the activity in question. It's very difficult to see, at least at the formal level, how you could do better than that. It is also difficult to see why a contrast of the "deontology-teleology" variety is relevant here. In cooperating, we frequently make agreements, and the fact that Jones has agreed to do something is indeed taken as a basis for inferring an obligation upon him to do so. But neither Jones nor anyone else makes agreements in a vacuum—and when making decisions, consequences play a role. On the other hand, not all consequences are equally relevant—in fact, most consequences for most people will be plainly irrelevant. Cooperative ways of doing things have the enormous advantage that they enable us to ignore a great deal, to focus on what matters, and thus to get things done that we want done.

But now have a look at all the familiar current ideas about social justice. They all—with the unique exception of the libertarian view—call for patterns of activity that are *not* cooperative. Some, of course, insist that cooperation is what they are calling for, but if one needs lots of coercion to enact one's favorite view, it's clear that something other than cooperation is at work. Equality, of the kinds that people call for these days, is something a lot of people have no interest in. Equal opportunity? Who is to provide it? And why will they do so? Current theorists are

ready to let the state take out its cudgels in pursuit of this will-o-the-wisp, but they're not much at explaining why we should be encouraging them to do so.⁷

Nozick on the "more extensive state"

The rights that the classic liberals—and Nozick—proclaim are all what we nowadays refer to as "negative" rights. They call upon others to *refrain* from acting in such a way as to interfere with the rightholder's activities; they do not call upon others to *help*. If I am compelled to assist you to do something, then the claim that we all have a "right" to do the thing in question is a very different claim from the same right described as a negative right. Once compulsion is at work, one cannot appeal to the idea of mutual benefit—cooperation—that a regime of pure negative rights can enlist. In ASU's astonishing chapter "Demoktesis" Nozick raises the question whether we might, by legitimate steps, move from a condition where we all have the general negative rights to our lives, which he claims to be ours by nature, to the ultimate condition where everybody owns everybody equally— "ownership of the people, by the people, and for the people."⁸ This, he notes, is the modern democratic state. The key to the derivation would be a judgment by each particular person that trading 100% ownership of himself for 1/n ownership in everyone would be a good deal. If we started with the reverse situation where you are a total slave, and the slavery is relaxed and socialized so that in the end, you are merely under the absolute control of a corporation that includes everyone, including yourself, all of whom get to discuss what shall be done with you (and everyone else), and then put the matter to a vote, including yours as one among the rest, then at what point along the way did you cease being a slave? The question to be asked is: why assume that 1/1th control over myself is not as good as $n \times 1/n$ th control over *everybody*?

That is, after all, exactly what the democrat *does* assume. He doesn't say: "Here, take your choice: you can either just arrange with interested others how some matter affecting each of you should be done, or you can agree to put the whole matter to a vote by all, whether interested or not." Instead, he forces you into the voting option. For how many issues would many in their right minds actually choose the voting option? Nozick may think that the choice is invalid even if I *do* make it, but we needn't settle that one, for at the least it is surely invalid if I *don't*—as I haven't, and neither, I trust, have any of you. This basic difficulty in justifying democracy on the only terms on which democrats themselves could rationally justify it should make one pause before assuming that taxation is automatically justified so long as it is imposed by a majority of our fellows.

⁷ The list of philosophers taking this view is virtually coextensive with the rosters of contemporary Anglo-American philosophers specializing in social philosophy. See, e.g., RONALD DWORKIN, *SOVEREIGN VIRTUE: THE THEORY AND PRACTICE OF EQUALITY* (2000); G. A. COHEN, *SELF-OWNERSHIP, FREEDOM, AND EQUALITY* (1995); BRIAN BARRY, *JUSTICE AS IMPARTIALITY* (1995).

⁸ NOZICK, *supra* note 1, at 290.

The "Myth of Ownership" Myth

In some quarters it is held to be a mere "myth" that we own anything at all.⁹ But the idea that property is mythical has the same level of credibility as Quine's claim that physics is a myth on a par with the gods of Homer. Those who say such things are quick to add that physics is a much better myth, of course. But the same holds true of property. As David Hume put it,

It may appear to a careless view ... that there enters a like superstition in all the sentiments of justice.... I may lawfully nourish myself from this tree; but the fruit of another of the same species, ten paces off, it is criminal for me to touch.... But there is this material difference between *superstition* and *justice*, that the former is frivolous, useless, and burdensome; the latter is absolutely requisite to the well-being of mankind and the existence of society.¹⁰

We must, of course, show that property rights are indeed requisite, and that is what is at issue here. That individual ownership of whatever any individual is able to create or discover is "requisite to the existence of society" might be a matter of semantics, but that isn't what is at issue here. What is, is whether it is requisite to the existence of the kind of society in which one *would want to live*. Putting it that way makes it a matter of taste, and there seem to be those whose tastes are different on the issue, as witness the tastes of many current members of the American Philosophical Association. However, the problem is that on this kind of issue the tastes of those who object to individual ownership somehow manage to outweigh the tastes of those who don't. If that is thought sufficient to settle the point, the question about democracy has been well and truly begged at the outset. It's not sufficient of course. Even a majority of professors of philosophy must make arguments to support their views on such matters.

Now, Hume, to be sure, also thought that the state was "necessary for society,"¹¹ and without taxation there is no state. Something has to give: we can't have both complete property rights for all and also genuine taxation. Hume's way, however, gets it right: there is what we may call a presumption in favor of private property. Calling this a presumption is a way of saying that as between state control and individual control of what the individual in question has acquired by finding, making, or trading, a case must be made for the former, and not for the latter.¹² Still, I

⁹ See generally LIAM MURPHY & THOMAS NAGEL, *THE MYTH OF OWNERSHIP* (2002) (arguing for such a position).

¹⁰ DAVID HUME, *AN ENQUIRY CONCERNING THE PRINCIPLES OF MORALS* 94 (Hackett Publishing Co. 1983) (1751).

¹¹ DAVID HUME, *Of the Original Contract*, in *ESSAYS MORAL, POLITICAL AND LITERARY* 465, 481 (Eugene F. Miller ed., Liberty Classics 1985) (1777) ("If the reason be asked of that obedience, which we are bound to pay to government, I readily answer *because society could not otherwise subsist*.").

¹² Murphy and Nagel do think they make such a case by arguing that "almost no one suffers a net burden from government" — however, it is clear that they don't feel that they can rely on this argument to carry the day, as they go on to criticize the idea that there is "some morally privileged hypothetical dis-

agree that a case does have to be made even for the institution of private property. But this case can indeed be made, and it is *prior* to *any* case for government. Of course, some deny this as well. Do they deny it for good reason? I think not, and will so argue below.

Government as Logically Secondary

The "everyday libertarianism" of which Murphy and Nagel complain has it that the story of property versus the state is this: *We make it; you take it*. Here Everyman, I think, has the philosophical case basically correct: Government can proceed *only* by commandeering something created by others—that is to say, by people acting in nonpolitical capacities. The claim that it *prima facie* belongs to those others is based on the fact that they made it, or got it by voluntary arrangements with others who made it, etc.¹³ Government acts as an external agent in all matters. And in the liberal view of the political world, government ought to be our servant, not our master—and for precisely that reason. We really *did* get here first. In fact, we created the government while we were at it, though whether or not as a matter for subsequent regret remains to be seen.

The foregoing is meant to be a philosophical point. To be a government is to be an agency with socially recognized power to coerce behavior via general rules of its making. If such organizations "make" anything, it is strictly *per accidens*, and eminently criticizable as such: if government is going to behave like just another agent in the market society, it will correctly be perceived either as playing the game unfairly (the other players, after all, are obliged to operate at a profit, and aren't even allowed to enforce their interests against others) or as behaving in a completely pointless and redundant, way, or both. In short, government should rule, not produce.

Can it be true that such human institutions as property and the market are the creatures of government? Rousseau makes a useful distinction here: government, he claims, turns *possession* into *property*.¹⁴ That is to say, legislated law can undertake to recognize certain claims to possession, and not recognize others. It could also derecognize some claims that citizens antecedently held to be legitimate. When it does so, there is surely room to ask which claims are correct. The question of who owns what must not simply be arbitrarily decided by legislative fiat; if gov-

tribution of welfare or resources [that can be used as] the baseline against which to assess the burdens of government." MURPHY & NAGEL, *supra* note 9, at 15.

¹³ Criticisms of the Nozick/Locke account of "original acquisition" tend to go on about the end-of-the-line condition where the rule of first occupancy—finders, keepers—applies. Such criticisms are so close to totally irrelevant as to be best left on one side nowadays, when original acquisition of the find-it-keep-it type applies only to things requiring enormous technical savvy to "find." In any case, as will be noted below, the rule of finders-keepers is in fact the perfectly apt rule for the purpose, and for that reason universally respected, except by governments and contemporary social philosophers.

¹⁴ JEAN-JACQUES ROUSSEAU, *THE SOCIAL CONTRACT* 64–65 (Maurice Cranston trans., Penguin Books 1968) (1762).

ernment is to overturn the prevailing conventions on such a matter, it had better do so for good reason—that is, for reasons antecedently recognized to be relevant. Which is to say, again, that the subject has to be appraised in terms that arise prior to acts of legislation. There is ample room to hold that government, far from being necessarily right about these matters, has an excellent chance of being wrong.

Anthony de Jasay has recently discussed the point with his usual elegance.¹⁵ Citing Hume's dictum, that "the stability of possession, its translation by consent, and the performance of promises ... are ... antecedent to government" he goes on to point out that the claim that property is a "legal convention" is a contradiction in terms.¹⁶ Legal rules are deliberately propounded by some authoritative body; conventions are understandings among the members of some social group, no one being recognized as their author, and typically self-reinforcing (always so, if by this is meant that they are reinforced socially, without government).¹⁷ The "conventions" of promise and contract, and of recognition of first occupancy, are in general self-reinforcing because they are optimal. When A and B agree to do things for each other, they are better off, and no one (normally) is worse off. When Jones takes possession of what is previously unused, he is better off, and no one is worse off. Later-comers might be unhappy—but if our first-comer had waited for them, the item would have remained unused in the meantime. Nor, of course, is there any reasonable way of assigning any other rule to the matter.¹⁸ In short, the conventions of property have everything going for them, and the proposed alternatives have nothing to be said for them: they appeal to the artificially designated gainers and create losers who have no reason to support them.

Bad Arguments for Intervention

Nozick devotes a good deal of ASU to discussing supposed cases for a "more extensive state." One of these we have already noted above. Another is in his classic discussion of John Rawls,¹⁹ a discussion widely neglected in the literature—to my mind, neglected because it is definitive. Rawls, as we all know, proposes that the terms of his "difference principle" are *fair* from the points of view of all concerned. How so? Well, "since everyone's well-being depends upon a scheme of cooperation without which no one could have a satisfactory life, the division of advantages should be such as to draw forth the *willing cooperation of everyone taking part*"²⁰

This sounds good enough. But what are those terms of cooperation? Well, as Nozick says, in effect they are these: the less well endowed say to the others,

¹⁵ Anthony de Jasay, *Property and its Enemies*, 79 *PHILOSOPHY* 57 (2004).

¹⁶ *Id.* at 63 (quoting DAVID HUME, *A TREATISE OF HUMAN NATURE* 242 (David Fate Norton & Mary J. Norton eds., Oxford Univ. Press (2000) (1739)).

¹⁷ *See id.* at 64.

¹⁸ As Hume has also notably argued. *See HUME, supra* note 10, at 94–96.

¹⁹ NOZICK, *supra* note 1, at 195–97.

²⁰ JOHN RAWLS, *A THEORY OF JUSTICE* 15 (1971) (emphasis added).

"Look, better endowed: you gain by cooperating with us. If you want our cooperation you'll have to accept reasonable terms. We suggest these terms: We'll cooperate with you only if we get *as much as possible*."²¹

How could Rawls say that that kind of proposal represents a "fair agreement"? What he says is that it is the best agreement "on the basis of which those better endowed, or more fortunate in their social position, neither of which they can be said to deserve, could expect the willing cooperation of others when some workable scheme is a necessary condition of the welfare of all."

Going on in this vein, Rawls suggests that, "[o]nce we decide to look for a conception of justice that nullifies the accidents of natural endowment and the contingencies of social circumstance . . . we are led to these principles."²²

Nozick's decisive criticism can be generalized. For Rawls has here committed a huge and widely imitated fallacy, one of fundamental consequence. The premise is this: the principles of justice are to be the same for all—universal. Those principles cannot, of course, be biased or partial—they cannot load the dice in favor of some and against others. So far, so good. But Rawls, actuated by the worthy motive of capturing this essential and important aspect of the idea of justice, proposes to put those in his "original position" behind a "veil of ignorance." Now, everyone behind that veil is by definition *absolutely the same*. Of course, the people on behalf of whom they are trying to legislate these principles are anything but the same—they are all particular individuals, with a huge variety of attributes of all sorts, including those that are likely to lead to enormous differences in things like productivity. In proposing principles that "nullify" the "accidents of birth," we run the danger of nullifying *us*—the very people these principles are supposed to be *for*. The Rawlsian interpretation of the Veil, which is also, I fear, the usual interpretation, succumbs to that very danger.

The principles of justice have no business "nullifying" anybody, whether talented or untalented, brilliant or dull. We should take people as they are, and impose such rules on them (that is to say, on us) as will solve problems that people have when they interact in society—solve them to the best interests of *all* (all actual people), not all dwellers behind Veils of Ignorance. In Rawls's early formulations of his "second principle" he is careful to stress that departures from the kind of equality that his first principle is supposed to provide for must be to everyone's advantage.²³ And the "everyone" referred to there must be every real person—not everyone who happens to have absolutely no idea who he (or she) is, what his (or her) talents are, or anything else of the kind that enables real people to make decisions in the world they live in. This much must be obvious. Since it is, however, Nozick's

²¹ NOZICK, *supra* note 1, at 195.

²² RAWLS, *supra* note 20, at 15.

²³ *Id.* at 60.

point now takes on devastating force. How, we must ask, is it "to the *advantage*" of the clever, the talented, the energetic, and so on, to be saddled with the burden of seeing to it that the "worst off" people in society are "as well off as possible"?

Of course, as I have elsewhere pointed out, the idea of "maximin" is a conceptual loose cannon.²⁴ For if we are to minimize the difference between two variables, what we get is absolute equality at the limit — *not* some kind of moderate welfare state in which the gap between rich and poor is only just so big. Philosophers in the literature have walked right into this trap. Everyone seems to think that Rawls's principle actually means something. It does not, and only some kind of predisposition to defend things as they are can motivate people to think it does. Meanwhile, we need only point out that anything done in the name of this absurd principle is necessarily going to be to the disadvantage of those "more talented" persons who will pay the bills. And that, as we have seen, violates fairness as characterized by Rawls.

That justice should be better for all is not just some sort of noble but unattainable ideal. It is a practical idea which animates our ordinary dealings with each other all the time. This is well recognized by Rawls himself when he says, for example, that "[i]t may be expedient but it is not just that some should have less in order that others may prosper"²⁵ and that "no one has reason to acquiesce in an enduring loss for himself in order to bring about a greater net balance of satisfaction [for all]."²⁶ I don't know whether Rawlsians have noticed this, but 40% of my income for my entire working life looks quite a lot like an "enduring loss." And you have to misread the first quote in a way that biases the idea toward the worse-off if you think that what is wrong is only that those with *not very much* should be required to contribute to the wealth of those with a lot more. An unbiased, impartial principle, by contrast, would simply say that *no one* may be compelled to have less in order that *anyone* else should have more (as compared with what he otherwise would have had).

In short, the Rawlsian paradigm, as we may now call it, is an impossible mess on the face of it and flatly inconsistent with its own premises. Nozick's point has never to my knowledge received a satisfactory reply, and certainly not by Rawls himself.

Taxation as Forced labor?

We have unfinished business to complete in regard to Nozick's thesis, mentioned previously, that taxation is "on a par with forced labor."²⁷ He adds, "some persons find this claim obviously true: taking the earnings of *n* hours labor is like

²⁴ JAN NARVESON, RESPECTING PERSONS IN THEORY AND PRACTICE 13–33 (2002).

²⁵ RAWLS, *supra* note 20, at 15.

²⁶ *Id.* at 14.

²⁷ NOZICK, *supra* note 1, at 169.

taking n hours from the person; it is like forcing the person to work n hours for another's purpose."²⁸ But he goes on to say that, "others find the claim absurd. But even these, if they object to forced labor, would oppose forcing unemployed hippies to work for the benefit of the needy. And they would also object to forcing each person to work five extra hours each week for the benefit of the needy."²⁹ Despite their objection to that, "a system that takes five hours' wages in taxes does not seem to them like one that forces someone to work five hours, since it offers the person forced a wider range of choice in activities than does taxation in kind with the particular labor specified."³⁰

I am sure Nozick is right about this last point. The question is how much difference it makes. To many people, I suspect, it makes all the difference: people are ready to submit to taxation who would not be ready to submit to forced labor. We may well ask, why?

One thing that has lately become an object of fancy for this writer is the new Acura RL. In Canada, one of these highly desirable automobiles will set me back \$70,000 (in Canadian dollars—but it's still money!). In my current (or any past) circumstances, this is something I judge that I simply can't afford. If my income were quite a bit higher, I think I could, and possibly would, buy one, but as things are, unless I win a lottery, it just isn't in the cards. However, the several governments which have jurisdiction over what I think of as *my* pocketbook have taken from my gross income an amount very much more than sufficient to have purchased such an automobile over the past few years (three, by my estimate). How much different would my leisure activities be if I had an RL? I don't know, though quite a few of them would be a lot nicer than they are in the current situation, with my ancient Mercury. It remains, however, that the effect of all this taxation on the number of hours I work, or for that matter the character of that work, is negligible. That's the way it is with us academics. We like what we do, and so in doing it we do what we like, and if somebody is willing to pay us quite a lot to do it, that's icing on the cake.

Though this is true for me, is the government entitled to see it that way? No. What it is in a position to do is to notice that sedentary, meek academics such as myself are easy pickings. We are not about to advance on the Parliament buildings with pitchforks raised in protest. Some few people are ready to do that, and have, indeed—but not very many, and their threat is, if not exactly idle, at least one that politicians can live with pretty well. Besides, many more protesters agitate for higher taxes than for lower ones these days—an interesting phenomenon of our times.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

According to Murphy and Nagel, “[s]ince income gives rise to clear moral entitlement only if the system under which it is earned, including taxes, is fair, entitlement to income cannot be used as an assumption to evaluate the fairness of the tax system.”³¹ This theme is repeatedly asserted by the authors, but the idea is easily misunderstood. Evaluation must decide how “mine” and “yours” ought to be determined; it cannot start with a set of assumptions about what is mine and what is yours. It is erroneous to suggest that the entitlement theorist denied this. The justification of tax schemes “may refer to considerations of individual liberty, desert, and responsibility as well as to general welfare, equality of opportunity, and so forth. But it cannot appeal, at the fundamental level, to property rights.”³² Again, we should say, “Of course it can’t—no rights, property or otherwise, occupy the ‘fundamental level.’ Property rights, like any rights, must be derived, justified. In the foregoing parts of this address, I supplied the relevant argument for property. We have also had a look at Rawls’s case for society’s favoring the worse-off, a case that looks to be deeply flawed—once fallacies are set straight, nonexistent. The correct, unbiased principle of justice will leave us with the Libertarian Idea, according to which in the ideally just society *all* relations are *voluntary*. Relations between persons and nature, of course, are typically not voluntary. It does not follow, and it is not true, that on that account we get to descend on beneficiaries of this relationship and abscond with gains thus derived. Another of the fallacies due to Rawls, I suspect, more than to any other is that if you don’t “deserve” something, then it’s fair game for the rest of us.”³³

How to Try to Justify Taxation

Equipped with that general idea, it is plain that there is a major problem justifying taxation—as there should be. The idea apparently advanced by Murphy and Nagel, in perhaps an unguarded moment, that “there is no market without government and no government without taxes; and what type of market there is depends on laws and policy decision that government must make”³⁴ appears, to put it bluntly, downright fascist, though not so intended. A good thing, then, that it is based on basic errors about economics and politics.

It does leave us with the question of what the touchstone would be for just taxation. One option is to insist that all taxes are inevitably and necessarily unjust, and that anarchism is the way to go. While I am rather sympathetic to that idea, in principle, we need to do much better than simply make contrary philosophical as-

³¹ MURPHY & NAGEL, *supra* note 9, at 74.

³² *Id.* at 75.

³³ *Id.* at 32 (“Since nobody denies that these kinds of luck at least partly determine how well a person fares in a capitalist economy, a simple and unqualified desert-based libertarianism can be rejected out of hand.”). But libertarianism is not in that sense ‘desert-based,’ nor does the “everyday” version hold it to be so. Everyday common sense is well aware that we do not deserve to be the people we are, but for all that, we certainly have the right to be. That molestation by gangs claiming to represent the public is perfectly OK just because our hair-color or our IQs or whatever are “undeserved” is not a credible idea.

³⁴ *Id.*

sertions about the matter. At any rate, I think that there is a touchstone of the kind we need. It sets up a criterion that, I think, makes sense, and could perhaps serve as a guide in these matters.

Assessing Government

Government allegedly provides us with services. The claim is that these are genuinely *services*, that is, things that we really do want. The question is whether we get our money's worth (or, since many costs will not be monetary, whether we get value for costs of all kinds).

A crucial aspect of the matter is that government's supplying of these services is done via an advantage over all potential competitors. Unlike anybody else, government can compel support. It doesn't ask whether we'd like to support this or that venture—it just goes ahead and charges us for it. This huge and peculiar advantage is the source of the justificatory problem: on the face of it, government is taking our money without asking, and that evidently puts it in the same category as the mafia. Government of course *claims* to do better than that, and so do its numerous philosophical supporters.

Supporters of government have a way of trotting out lists of things that "we" get for our money. The possibility that maybe we don't *want* them, or at least not at the prices asked, should surely occur to them. Of course, our position assumes that the market is the right paradigm. No apologies there: that's because it *is* the right paradigm. There is none better, and none remotely equal to it. We do, of course, as Murphy and Nagel say, need a proper theory underlying government action. But it now seems right to say that the market is that proper theory—the benchmark from which departures must be justified.

This being so, what we need to do is to apply market criteria to what government does. We get services that we had no choice but to pay for. The right question, then, is this: *would* we be willing to pay *that much* (at least) for that service if we got the service if and only if we paid that much for it—and we were able to compare it with all the options for provision by other means?

Friends of government claim that it's justified because it's good for us. We should agree that *if it is* good for us, then it is indeed justified. But being justified in market terms can mean one and only one thing: the costs are worth it to each individual concerned (namely, everyone) for the benefits received, in relation to alternatives.

One problem with applying this criterion is that often there are no alternatives. But the reason for that is not, as supporters of government claim, that the thing can't be had in any other way. Rather, it's that government sees to it that there aren't, by forbidding competition. This puts one in mind of Thrasymachus'

definition of justice: justice, says he, is the interest of the stronger party.³⁵ But friends of government surely claim to do better than that! Obviously one dialectically terrific maneuver is to prevent one's opponents from even being able to speak up, or in this case to display their wares or even to produce them.

Fortunately, things aren't quite so bad. We don't really have to acquiesce to this dirty pool. We have lots of information about alternatives, all over the place. Assessments often are possible, in realistic terms. To take one small example, we know that private schools cost less per pupil than public schools, even while doing a better job of educating children.³⁶

My aim here is not to show that the anarchists are right—that would require showing that in every single case, non-government suppliers would win this test. I merely suggest that this is an important, indeed the presumptively decisive, test for the purpose. Those of us who find Nozick's case for the state unsatisfactory and contrived may well think that the issue can be more relevantly argued in the terms just set forth. Who knows? Maybe there really is something the state can do better than anyone else. If so, we should cheerfully accept the state. It isn't likely to be much like the one we've got, to be sure, and for those for whom confirming the status quo is the name of the game, that won't be much consolation. But for serious students of the subject, it would appear to be the only game in town. Government is either justified *to us*, or it isn't justified, period.

In Memoriam

Among contemporary professional academic philosophers, Nozick has done more than any single theorist (or any ten, probably) to get some of us thinking about abandoning our dogmatic slumbers in support of the state. I take that to be a considerable credit to him. It's a shame that he is not still among us to do these things with his unique kind of brilliance. We all miss him. But let's not quit for that reason. It's the theory, not the theorist, that counts in the end—as Nozick would have been the first to agree, I'm sure.

³⁵ PLATO, *THE REPUBLIC*, Book I, 338c (G.M.A. Grube trans., Hackett Publishing Co. 2d ed. 1992).

³⁶ See, e.g., Patrick L. Anderson et al., *Private School Costs v. Public School Costs*, Mackinac, Nov. 13, 1997, available at <http://www.mackinac.org/article.aspx?ID=1118> (addressing the case of the state of Michigan, and finding a disparity of over 2:1 for public school costs over private).