Liam Murphy and Thomas Nagel, *The Myth of Ownership: Taxes and Justice*. Oxford: Oxford University Press, 2002. Pp. ix, 228.

Tax: fundamental to justice, yet slighted by philosophers. Speech, religion, representation, and reproduction have been vetted by theorists concerned with the law. Yet the philosophical literature shows scant grasp of, or even awareness of, the basic issues of tax policy. This is regrettable since tax policy embodies deep assumptions about the legitimacy of the state's power over citizens, and the tax code structures each society's distributions of welfare, opportunity, and economic liberty. Liam Murphy and Thomas Nagel's excellent short book establishes the importance of tax policy as a field of philosophical inquiry and defines the bounds within which the debate should proceed.

The authors quickly break through the surface level of everyday talk about tax justice. For example they push aside George W. Bush's assertion that abolishing the estate tax is an issue of principle since it is unfair to tax any asset twice. Bush does not after all condemn sales and property tax. Nor is it only politicians who take a shallow view on tax justice. The authors demonstrate that the ordinary presumption that the fairness of a tax code is revealed by the structure of its marginal rates is three steps removed from reality. First, a focus on marginal rates ignores the fact that the entity that pays a tax may not bear its burden (for example, employers pass the costs of payroll taxes on to employees). Second, it is the average not the marginal rates that are significant since exemptions and credits greatly affect any ratepayer's overall tax liability. Third, even average tax rates are only important insofar as they affect the justice of overall distributions in terms of increasing or decreasing poverty, inequality, and so on.

This widening of perspective is characteristic of the authors' explorations of the legal and economic literatures on fair taxation. The bulk of Murphy and Nagel's book engages with these specialized literatures systematically and in some detail. In the main, the authors find these discussions unsatisfactory. They return repeatedly to what they perceive as two flaws in these literatures, one local and one global.

The local flaw in the literature is a pervasive assumption that taxpayers are entitled to their pretax earnings and that the government must justify taking these earnings from them. The authors pin the popularity of this assumption on an implicit libertarian view of property rights and desert: that individuals with strong natural property rights exercise these rights within a government-free market, creating a presumptively just baseline of entitlements that the state then disrupts through taxation. Yet this libertarian view, the authors insist, is illusory. Property rights are created by law, and taxes are part of any legal system that creates such rights. A pretax distribution of entitlements thus presumes the existence of government and tax and so cannot be used as a standard against which tax is to be measured. Some portion of any pretax entitlement is fool's gold: "There is no reality, except as a bookkeeping figure, to the pre-tax income that each of us initially 'has,' which the government must be equitable in taking from us" (36).

On this point Murphy and Nagel may still be fighting the last war (or designing their defenses against Wilt Chamberlain). Their arguments against the coherence of "extreme" libertarianism do not (as they claim) undermine an "everyday" libertarianism that accepts the state as necessary to define and enforce property rights and rejects preinstitutional desert. This everyday libertarianism views market outcomes as setting a just baseline for evaluating tax burdens, given that all market participants will be taxed equally to support the state's enabling of the market system. Assuming that the (post-tax) entitlements from the previous tax period were just, and that the state-set rules regarding the disposition of property in the current period are permissible, market income minus an equal share to run the system reflects the (conventionally defined) holdings that each participant (post-institutionally) deserves. The state here is like a casino that hosts a poker tournament. The casino decides what games will be played, sets the rules of each game, and charges players a fixed percentage of their chips at the end of the night. It is not incoherent for the players to believe that they are entitled to the chips they hold after paying the casino's charge. (Thanks to Mike Otsuka and G.A. Cohen for the casino analogy.)

Once this starting point is in place, the justice of the final distribution within this period will be the result of taxpayers making permissible use of their qualified, conventional property rights. Pretax income can in this way be considered an acceptable baseline for evaluating fair tax burdens because it reflects what those who hold (conventionally defined) entitlements (postinstitutionally) deserve.

However this may be, Murphy and Nagel are correct in their more general criticism that the justice of any tax system cannot be evaluated simply by looking at tax itself. The global flaw in the tax literature is a tunnel-view on the fairness of taxation that blacks out the benefits that the state provides and generates. For example, the common maxim that taxpayers should pay in proportion to the benefit that they derive from government is blinkered in this way. As the authors say, it would be senseless to provide income support to the poor and then tax this benefit away again. "What matters is not whether taxes—considered in themselves—are justly imposed, but rather whether the totality of a government's treatment of its subjects, its expenditures along with its taxes, is just" (25).

Having reframed the discussion of taxation in this broader perspective, the authors face a difficulty. Their conventionalism about property is a formal, negative position; and the larger questions about which distributive patterns are just are too controversial to be argued in a short book on tax. Murphy and Nagel surmount this difficulty by first setting out the values at stake in debates over taxes, for example, the capacity for providing public goods, the effects on equality of opportunity and incentives to work, respect for legitimate expectations, and the burdens of bureaucratic intrusion. They then draw from this list of values as they address the structural issues that all tax regimes will face. In their investigation of these structural issues, they attempt to find points of normative convergence among different distributive theories, such as the idea that individuals should have at least a decent standard of living and reasonable opportunities to improve their lives. While they make no secret of their own more egalitarian social democratic views, neither do they insist upon them.

What follows are tight and engaging discussions of progressivity, the tax base, tax discrimination, and inheritance. On the question of whether tax should target income or consumption, the authors find no issue of principle. Again, what matters is which type of tax leads to a better distribution overall; on this ground, they judge a move from an income to a consumption tax unjustified. Similarly, whether exemptions such as those for capital gains, charitable donations, and mortgage payments are justifiable depends on whether the government is pursuing a legitimate aim and on how these exemptions redistribute tax burdens. The authors find the recent rollbacks of inheritance taxes to be outrageous from almost any moral perspective and recommend instead an accessions tax with exemptions for educational expenses and small personal gifts.

The book ends with reflections on the politics of taxation in America. Murphy and Nagel lament the unthinking libertarianism that frames popular thinking about tax. (Tocqueville said that in epistemology Americans are natural Cartesians; so it seems that on property Americans are born Lockeans.) The authors gaze grimly on the lack of solidarity with the poor that makes it so difficult to ensure a tolerable standard of living and a decent chance of success for all. The best strategy for political progress, they write, lies in promoting programs (like Social Security) that help the poor but which also spread benefits widely enough to win the support of the selfish majority.

The political pessimism with which the authors end the book is well taken. In the absence of theories of distributive justice that have some traction on the public conscience, the battles to set tax policy will always be won by appeals to interest and efficiency. The pleasure of this book comes from watching two strong philosophers clear and plow the virgin terrain of fair taxation. Yet the meager seeds available for them to sow in the soil of public policy portend a lean harvest of just tax laws.

Leif Wenar

University of Sheffield