

ENTITLEMENTS AND THE THEFT OF TAXATION

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AS DID THE TELEVISION ANCHORMAN in the movie *Network*, Howard Jarvis, author of California's Proposition 13, came on to the national scene in the 1970s shouting, "I'm mad as hell, and I'm not going to take it any longer!" The "tax revolt" that began in California has been called a "revolt against spiraling taxes and profligate government spending, the renunciation of big-government politicians, a reaffirmation of free-enterprise priorities";¹ but the campaign against taxes has been conducted much like a crusade by people who have felt that they have been "morally wronged" by the government that was supposed to serve them.

Proposition 13 effectively cut property taxes by two-thirds of their level in 1978 and placed stringent restrictions on the ability of the state and local governments to raise property taxes in the future and to substitute other taxes for the revenues that had been lost. In approving Proposition 13 by a more than two-to-one majority, the voters of California, like everyone else in other parts of the country, were concerned with their own welfares and their ability to spend their own incomes. Undergirding those concerns, however, was the more fundamental question, How large should the government be? Where should we draw the line between public and private decisionmaking? How do we control the government that is supposed to provide for the general welfare? And is taxation not a form of theft?

This paper is concerned with all of those questions indirectly, but it is directly concerned with the last question, the theft of taxation. The immediate interest of the taxpayers in California in 1978 was the rather large increase in their property taxes that resulted from an increase in the tax rate and a dramatic increase in the assessed value of the taxable property. Property values, at the time, were rising in many areas of California by as much as 20 percent a year. Since property tax revenue is tied to the dollar value of property, the local governments in California experienced increases in their tax collections without explicit action on the part of political

representatives. There was, in effect, a form of "taxation without representation."² Some may regard such increases in tax collections as a form of "theft" by local government, as something that is morally wrong and should be changed; the issue of theft and taxation considered in this essay, however, is more fundamental: the issue is whether or not and under what conditions do taxes of any form take on the characteristics of theft.

NOZICK ON TAXATION: TAXATION IS THEFT

Robert Nozick, a Harvard philosopher, has developed an "entitlements theory of distributive justice" that has caused philosophers and economists alike to reexamine the morality of taxation.³ Succinctly, Nozick's theory justifies taxation only to the extent that the "minimal state," which is limited to establishing and enforcing property rights, is maintained. Taxation beyond that level can be construed as theft simply because it involves the type of coercion that a common thief exerts over his victim. Nozick writes:

Taxation of earnings is on a par with forced labor. Some persons find this claim obviously true; taking the earnings of n hours labor is like taking n hours for another's purpose. 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. But 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. . . . Furthermore, people envisage a system with something like a proportional tax on everything above the amount necessary for basic needs. Some think this does not force someone to work extra hours, since there is no fixed number of extra hours he is forced to work, and since he can avoid the tax entirely by earning only enough to cover his basic needs. . . . The fact that others intentionally intervene, in violation of a side constraint against aggression, to force to limit the alternatives, in this case to paying taxes or (presumably the worse alternative) bare subsistence, makes the taxation system one of forced labor and distinguishes it from other cases of limited choices which are not forcings.⁴

Nozick goes on to point out the inevitable benefit gained from an income tax system by a person who likes leisure. A person who does not work, because he likes leisure or likes the things that leisure time affords, does not earn a money income that is subject to taxation. He gets the benefits of non-work but does not have to pay taxes on those benefits, simply because the benefits are not in money income terms that are taxable. On the other hand, the person who prefers goods—whether Shakespearean plays or suits of clothes—must give up leisure and the things that he can do with leisure time in order to earn the necessary money to buy goods; the money income that is earned is taxable, whereas the leisure, as noted, is not. The person who likes goods must either work longer, because of taxes, in order to obtain a given amount of goods or must forgo some of the goods he planned to buy. Nozick adds:

Given this, if it would be illegitimate for a tax system to seize some of a man's (*forced*) labor for the purpose of serving the needy, how can it be legitimate for a tax system to seize some of a man's goods for that purpose? Why should we treat the man whose happiness requires certain material goods or services differently from the man whose preferences and desires make such goods unnecessary for this happiness? Why should the man who prefers seeing a movie (and who has to earn money for a ticket) be open to the required call to aid the needy, while the person who prefers looking at a sunset (and hence need earn no extra money) is not? Indeed, isn't it surprising that redistributionists choose to ignore the man whose pleasures are so easily attainable without extra labor, while adding yet another burden to the poor unfortunate who must work for his pleasures?⁵

To Nozick, taxation is characteristically similar to theft because the implied coercion causes one person to gain at the expense of another in much the same way that a mugging causes the mugger to gain at the expense of the person who is mugged.

KEARL ON TAXATION: TAXATION IS NOT THEFT

In an important counterargument, J. R. Kearl attempts to dispute Nozick's argument. He writes:

I will suggest in this essay that private rights over property, which are essential to the efficient use of resources in a price-market system of allocation, are socially defined. If one then

accepts Nozick's rationalization of the minimal state and its monopoly position in "protection," the minimal state has a claim to social output. Moreover, this claim would allow it to engage in redistributive activities other than those necessary for maintaining the enforcement apparatus of the minimal state. Hence, taxation is not theft and limited redistribution is not immoral.⁶

With the use of the numerical example relating to a newly discovered fishing grounds, Kearl makes what is now a standard argument that, under common property rights (in contrast to private property rights), individual producers will ignore the external effects of their own fishing activities on the productivity of other fishermen: individual fishermen will not consider the cost they impose on each other and will therefore tend to "overproduce." When a fisherman goes out to fish in the "common fishing grounds," he must consider his expenses in labor and equipment in determining how long to fish and how many fish to catch. When the fishing grounds are common property, however, there is one cost that he is unlikely to consider: the increased difficulty that others will have in catching fish. Because some fish are caught, other fishermen will have more difficulty, incur greater costs, to catch their fish. In this way, the actions of any fisherman imposes an *external cost* on others. If the individual fisherman had to incur the external cost, then he would catch fewer fish. Indeed, all fishermen would have higher cost structures, the price of fish would rise, and fewer fish would be caught and sold on the market.

When access to the fishing grounds is "free," which it is when the grounds are common property and when there are many fishermen, each individual fisherman is unlikely to restrain his own fishing for two basic reasons. First, any one fisherman is unlikely to affect significantly the total quantity of fish on the market or the market price for fish. He simply isn't large enough when the group is large; therefore, there are no realized benefits to the *fisherman* for cutting back *his* production; the benefits are external, received by others who find fishing easier. Second, the individual fisherman can reason that, if he cuts back his production, some other fisherman will very likely come into the fishing grounds and take the fish that he does not take. If the stock of fish is being depleted by "overfishing," then the actions of the individual fisherman will not materially affect that outcome.

Furthermore, an individual fisherman is unlikely to do anything

to contribute to the procreation of fish in the common grounds. If he does make any investment to increase the stock of fish, the cost of fishing to others will be reduced and others will tend to fish more, negating the "good intentions" of the individual who undertook the investment. From this line of reasoning, we can deduce that the common grounds will be "overfished" and nothing will be done by individual fishermen; all will tend to "free ride" (or will attempt to "free ride") on the efforts of others. By assigning private rights (presumably, territorial rights) to individual fishermen, use of the fishing grounds will command a price, production will be reduced, and net social product will rise.

Kearl argues that, because the collectivity must be involved in any such assignment of rights or entitlements, the collectivity is productive and has legitimate claim on the *increased* output of society: "We must acknowledge that a minimal state which does nothing more than define and protect private rights over property has a rightful claim to real output."⁷ The state can, therefore, become more than "minimal" and remain moral; it can take a part of the greater social output from those who receive it and transfer it to those who are deemed in need or, perhaps, to those who may lose because of the initial assignment of private property rights.

CAPITALIZED ENTITLEMENTS: A CRITIQUE

Nozick and Kearl present sharply contrasting arguments on the moral merit of taxation. Taken in isolation, each argument seems to have a great deal of merit. This is partly because each does not deal directly with the issues the other raises. Nozick is concerned with the morality of the coercive power of government and how it is used in collecting taxes. Kearl, however, points out a situation in which all parties can agree to distribute private property rights and to use some of the increase in social product to distribute to the "poor." Indeed, although Kearl does not raise the point, it can be noted that, in order to get the agreement of the "poor" to *the* distribution of private property rights, those who get the rights and are "rich" may have to give up some of their income to the "poor" in the form of income grants or other welfare programs. The "rich" may not want to do that, but they may reason that they will be better off by having private property and by being "taxed" than by not having the private property and the resulting higher income levels.

Kearl's argument also has weaknesses. Although the contractarian perspective he employs is useful to gain insight about the

moral merit of taxation, his argument is for several reasons open to criticism. First, it assumes that property rights are defined and protected solely by the state. Hence, the implication is that the state has a significant claim on the social product, a claim that enables the state to expand beyond Nozick's minimum. But that conclusion does not necessarily follow from Kearl's analysis. Property rights—that is, socially recognized limits to individual and collective behavior—have frequently existed prior to formal government.

Further, the property rights that have been recognized have been protected, not by the state, but by individuals. Even when a state exists as an enforcer of property rights, those rights are only marginally protected by the state; they are overwhelmingly protected by individuals who have a private stake in the retention of those rights. A person's "right" to his household furnishings, for example, is typically far more dependent upon his willingness to install locks on the doors and windows of his house than it is on the state's police force. In a study of business contracts, Stewart Macaulay found that 85 percent of the contracts evaluated were actually unenforceable in the courts. The contracts had force, however, because of the parties' private interests in a continuation of their mutually beneficial business relationships.⁸ Granted, the state may add to the security of property and may therefore enhance, as Kearl argues, the social product. If we are to follow the spirit of Kearl's argument, however, we must conclude that the state has a claim on only the *marginal increase* in the social product that results from the state's *marginal contribution* to the definition and protection of property.

Looked at this way, there is no reason to believe that the state's claim to the social product is sufficiently great to enable the state to expand beyond Nozick's minimum. True, the claim may be sufficient for the state to engage in redistributive activity, but Kearl's argument does not really demonstrate that that is the case. Given the monopoly position the state has in the definition and protection of property rights, we cannot be sure that the state will operate efficiently in carrying out its basic function and that the state's legitimate claim to the social product, if there is one, will enable it to do more than protect basic rights.

Second, Kearl implicitly assumes that the state is an agent that exists prior to and independent of the people who wish to have property rights defined and protected; he assumes the state holds the rights before the initial distribution and that the state, not the property owners, is therefore "entitled" to a fraction or all of the expansion of the social product that results from the definition and

enforcement of property rights. If the state is viewed, however, as an agent of the people who collectively agree, in a social contract setting, to define and protect property, then it does not necessarily follow that the state is "entitled" to any claim on social product: the people who take the necessary steps to have property defined and protected—who set up the state—are the ones who are responsible for what the state does. Therefore, one can reasonably argue that the property owners themselves have full claim to the fruits of the property they own.

Third, Kearsal implicitly assumes that the state, as an independent agent, contracts with property owners for a portion or all of the increase in the social product that results from the state's definition and protection of property. There need not be any such contract. The state, as an independent agent, may act "out of the goodness of its heart," relinquishing all claim to the social product. If there were a contract, there would be no reason to believe that the contractual payments made to the state would be sufficient to allow the state to expand beyond Nozick's minimum. Indeed, Nozick seems to suggest that a social contract conception of the state would and should hold the state to a minimal set of activities. If the state has a contract that gives it a claim to the social product, then property owners, even in Nozick's theory of justice, would have an obligation to make the payment. But, we must ask, Where is the contract? The fact that the activities of the state are "productive," in the sense that they contribute to economic efficiency, does not, in and of itself, give the state entitlement to anything, much less a "rightful claim to real output" for purposes of income redistribution.

Fourth, Kearsal implicitly assumes that taxation and the assignment of rights are separate and not interrelated events. In organizing the criticisms presented here, assume, as does Kearsal, that markets work reasonably well, if not perfectly, to reflect the value of the entitlements that have been granted. When markets work well (and Kearsal's purpose was not to argue otherwise), the value of the private property (or wealth) initially distributed will tend to be the equivalent of the present value of the future income stream that can be received from the entitlements possessed. (People will simply base their bids for the property on how much income or benefits they can expect to receive from owning the property; at the limit, in a competitive market people will bid prices that equal the expected value of the future income stream.) If at the time of the initial distribution of property rights, the state gives clear notice of any plans to tax

away a portion of the greater social output that results from the assignment of rights, then no harm will be done: redistributing future income will not be a problem. This is because the state has not fully distributed^d all the rights (or entitlements) that are available; it has not given people *full* claim to the existing fishing grounds, to use Kearl's example. The capitalized value of the rights that are distributed will reflect the claim of the state to the future income stream from the property and will thus be less than it would have been in the absence of the state's claim or threat of taxation. What the state has not given, it cannot take away in an overt or covert manner.

Taxation may become, however, the practical equivalent of theft and morally suspect when clear notice of the state's intentions at the point of initial distribution of rights is not given. For example, if at the time of the initial distribution the state does not assert its claim to the increase in social output and does not reveal its intentions to tax away a part of the increase in social output, then the state has effectively distributed all entitlements and has reserved nothing for itself. The capitalized value of the fishing grounds, or anything else subject to distribution, will reflect the full value of the rights that have been distributed: the capitalized value will be greater than it would have been in the above case in which the state asserts its residual claim.

As time goes by, the rights subject to the initial distribution will be traded for prices that approximate their capitalized values. If the state, at some future point in time, asserts claim to the greater social product that results from the initial assignment of rights, then markets will adjust to what amounts to a redefinition and redistribution of rights. The market value of the assigned segments of, for example, the fishing grounds will fall, reflecting the lower net, after-tax income of the property. The people involved suffer a wealth loss: that which has been effectively given is taken away. Even if the people have adhered fully to the principle of justice in transfer they may have collectively accepted at the time of the initial distribution, the property is taken anyway, albeit covertly, via the market's reevaluation of the entitlements that remain. It is in this sense that taxation can take on characteristics of theft.

In addition to coercion, the act of theft can suggest total or partial deception or secrecy. If at the time of the initial distribution the state discloses its intentions to tax future income streams, either immediately or at some future point in time, then theft cannot be

involved in taxation and no harm is done to future holders of the entitlements. Holders of property rights then know the full scope of the rights they hold. The market price of the rights then reflects what the state discloses about its claim to future income. (The market price of the property will be lower, the closer to the present the state plans to begin taxation.) People who buy property will pay only a price that reflects the present value of the future net, *after-tax* income stream. When taxation commences, entitlement holders will lose nothing in the way of wealth for which they have "justly" paid. The principle of justice in transfer will be fully operative.

The analysis of this section suggests that Kearl's argument is defective because it fails to account for the fact that future income streams are capitalized into the value of the rights that are subject to transfer. Furthermore, the analysis suggests that redistribution of wealth (from that which occurs at the time of initial distribution) can only occur when the intentions of the state to tax and redistribute income are, to one degree or another, kept secret. Taxation is objectionable to many simply because they prefer to keep that portion of the greater social output over which the state has an *announced* claim; the morality of state action is not *necessarily* at issue in such objections. Taxation can, however, become morally questionable and pejoratively equated with theft when the intentions of the state are not announced.

Furthermore, it should be understood, the state has reason, albeit weak, to hide its intentions to tax in some future time period. Taxes (other than lump-sum or perfectly general taxes) at levels that go beyond the function of the minimal state to provide protection of private property rights dampens productive efforts and thereby keeps the net social product from reaching the levels it will otherwise reach. This is one of Nozick's points. If the state assigns rights and at the same time announces its intentions to tax away a portion of the greater social product, then the social product, as Kearl suggests, can be greater than otherwise. The point suggested is that the social product will be even greater if the state's intentions to tax are kept secret. This is because the net marginal return to effort will be *perceived* to be greater than it actually is. When this happens, the state has not fully eliminated the problem of overproduction, which the assignment of private rights is intended to solve. Put bluntly, and less kindly, the state knows that by keeping secret its intentions to tax, there will be more to steal when its intentions are not fully revealed.

SUMMARY AND CONCLUSION

Kearl concludes that "the state can, in fact, use its coercive apparatus to force some individuals to help others, since within the limits we have defined, it has been a contributor to the fruits of their labor."⁹ The lesson of a "capitalized entitlements" approach to the question of taxation can be put succinctly: Before we can comment on the morality of taxation, we need to know more than the fact that governmentally defined and protected property rights contribute to economic efficiency. We need to know exactly what rights are distributed initially and the announced or unannounced taxation intentions of the state.

Having recognized those basic points, on the other hand, we are led to consider another question—How can the state know, when it is constructing a constitution like the one for the United States, what its taxation intentions will be tens or hundreds of years in the future? Perhaps, all that can be done is to let people know initially that taxation is at least possible, if not probable. This all brings us back to Howard Jarvis and people's current concern over the taxes they are paying. Many people have become distressed about their taxes because they have been led to believe that the property they acquired would not be taxed to the extent that it has been. Accordingly, they have paid prices for the property that have reflected those expectations. They may be "mad as hell" simply because they feel that they have been misled by their government and that they not only have had to give up taxes but also have had to give up wealth in terms of reduced market prices for their property. A common thief does not typically act with greater force or stealth.

* I am indebted to an anonymous referee for helpful comments.

1. Richard Boeth et al., "The Big Tax Revolt," *Newsweek*, June 19, 1978.
2. For further comments on this thesis, see Holley Ulbrich, "The Message from California," *Collegiate Forum*, Winter 1979, p. 9.
3. Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974).
4. *Ibid.*, p. 169.
5. *Ibid.*, p. 170.
6. J. R. Kearl, "Do Entitlements Imply That Taxation is Theft?" *Philosophy and Public Affairs*, Fall 1977, p. 76. For additional comments, see J. S. Coleman, "Rawls, Nozick and Educational Equality," *Public Interest*, Spring 1976, pp. 121-28.
7. Kearl, "Entitlements," p. 81.
8. Stewart Macaulay, "Elegant Models, Empirical Pictures, and the Complexities of Contracts," *Law and Society Review*, Winter 1977, pp. 507-28.
9. Kearl, "Entitlements," p. 81.