DiLorenzo offers me almost nothing. At only one point do I think I have caught him out. In reply to those who criticize Dunning for racism, since he doubted the wisdom of at once extending the vote to uneducated blacks, DiLorenzo notes that these same critics "virtually deify" Lincoln (p. 204). But Lincoln was a white supremacist of the first order. To be consistent, must not those historians who dismiss Dunning's interpretations as racist "be just as skeptical of what has been written about Lincoln over the past 100 years and even reevaluate much of their own scholarship?" (p. 204).

I like to charge authors with having committed logical fallacies; but DiLorenzo offers me almost nothing.

So drastic a conclusion does not follow. Consistency requires these historians only to discount Lincoln's racist remarks; they may admire Lincoln for other reasons, without sinning against logic.

A few minor points: it should have been noted that some states opposed the Virginia and Kentucky Resolutions. (p. 111); not all Whigs favored the American System: John Tyler was a Whig as well as Henry Clay (p. 235); and the author of the article discussed on p. 231 was Stanley Coben, not "Cohen." My frustration at being able to find so little wrong with the book will not prevent me from congratulating Professor DiLorenzo for a magnificent contribution to history, vital reading for anyone concerned with the defense of liberty. ✦

Property: Convention or Right?

The Myth of Ownership: Taxes and Justice

Liam Murphy and Thomas Nagel
Oxford University Press, 2002
ix + 229pgs.

The Myth of Ownership stands out from most works of analytic philosophy. Usually, works by eminent philosophers cannot easily be dismissed. You may, for example, disagree with Rawls's *A Theory of Justice*, and believe that it contains poor arguments;

but after you have said this, something remains of the book. It reflects a fundamental moral vision that, however mistaken, is more than a logical fallacy.

The present book is an unhappy exception to my generalization. Thomas Nagel ranks as one of the foremost contemporary philosophers, and Liam Murphy is a young legal philosopher of fast rising reputation. Nevertheless, the central argument of their book rests on a simple confusion.

Oddly, Messrs. Murphy and Nagel fall into error precisely as a result of their attempt to clear up what they

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deem a wrong way of thinking. Many people, they claim, foolishly resent taxes. By what right does the government take away part of what we own? Is this not legalized theft? The government may claim that it needs the funds to provide essential social services: are the poor to be left to starve? But these assertions do not justify its policy of forcible seizure. Is it not up to each owner of property to decide what, if anything, he wishes to donate to charity and other good causes?

You might guess that the authors will respond, along conventional leftist lines, with a denial that property rights are absolute: you do not have the right to keep all that you own, if the government's exactions are devoted to a good purpose. Quite the contrary, they adopt a much more radical stance. You are not giving away anything at all to the government when you pay taxes, since you own only what the laws say you do.

Our authors are nothing if not direct on this point: "If there is a dominant theme that runs through our discussion, it is this: Private property is a legal convention, defined in part by the tax system; therefore, the tax system cannot be evaluated by looking at its impact on private property, conceived as something that has independent existence and validity. Taxes must be evaluated as part of the overall system of property rights that they help to create. . . . The conventional nature of property rights is both perfectly obvious and remarkably easy to forget . . . We cannot start by taking as given . . . some initial allocation of possessions—what people own, what is theirs, prior to government interference" (p. 8).

An example quickly discloses the authors' fallacy. Suppose that the government banned advocacy of libertarian property rights. Against those who claimed that this interfered with free speech, advocates of the new measure replied in this way: "Don't you see the obvious conceptual error that underlies your protest? 'Free speech' is a legal category. People have no independent liberty of speech, apart from

what a particular legal system grants them. Your opposition is absurd: away with you!"

I doubt that Murphy and Nagel would display much patience for this sophistry. Legal rights indeed depend on the specifications of a particular legal system; but it is perfectly in order to say that people have moral rights, not created by the legal system, that the law ought to respect.[1]

In like fashion, opponents of taxation are guiltless of the conceptual error our authors impute to them. They maintain that people possess property rights that the government ought to recognize. Why is the falsity of this view "perfectly obvious"? It is rather Murphy and Nagel who have lapsed into grievous error: they confuse legal with moral rights.

The authors at one place acknowledge the point at issue: "[D]eontological theories hold that property rights are in part determined by our individual sovereignty over ourselves. . . . On a deontological approach, there is likely to be a presumption of some form of natural entitlement that determines what is yours or mine and what isn't, and this prima facie presumption has to be overridden by other considerations if appropriation by taxes is to be justified. On a consequentialist approach, by contrast, the tax system is simply part of the design of any sophisticated modern system of property rights" (pp. 44–45).

Our authors of course reject the entitlement view, but they have here made a crucial admission. Given that this theory exists, is it not evident that their earlier account is false? The alleged error that opponents of taxation commit is present only if the conventionalist theory is true. Supporters of Lockean entitlements to property may be incorrect, but they at least have a theory: they stand acquitted of simply failing to grasp a conceptual point, the charge that Murphy and Nagel bring against them. Do they think the Lockean account obviously incoherent? They say nothing against it but instead go on interminably to accuse opponents of their view of confusion.

People have moral rights, not created by the legal system, that the law ought to respect.

The conventionalist theory they support leads quickly to disaster. Is it not "perfectly obvious" that it makes us all slaves of the government? Once more, Murphy and Nagel acknowledge

[1]According to some versions of natural law, ostensible regulations that violate justice do not count as laws at all. I ignore here complications that stem from this contention.

the objection. Their view "is likely to arouse strong resistance" because it "sounds too much like the claim that the entire social product really belongs to the government, and that all after-tax income should be seen as a kind of dole that each of us receives from the government, if it chooses to look on us with favor" (p. 176).

In response, they say, "It is true we don't own each other, but the correct place for this observation is in the context of an argument over the form of a system of property rights that gives due weight to individual freedom and responsibility" (p. 176). Elsewhere, they express sympathy for the "Hegelian" view that individuals need private property in order to express their personalities, but they do not think this limits the tax structure.

They fail to see that their admission gives away the game. If, as they admit, individual rights require some degree of private property, then the government cannot morally tax away this property. If so, there *are* moral limits to the taxing power, and it is not "a matter of logic" that there cannot be a pre-tax income over which persons retain full control (p. 176).

Murphy and Nagel are pure conventionalists about property when this enables them to attack libertarians.

Murphy and Nagel are pure conventionalists about property when this enables them to attack libertarians. How is this tension in their presentation to be resolved? I suspect that in practice they would not deviate very far from the total subordination of property rights to the state. They consider endowment taxation, in which people are taxed, not just on their income, but rather on their potential to generate revenue. Someone who abandoned a multi-million-dollar business career in order to become a Trappist monk might on the endowment account be taxed as if he continued to receive his former high income. Our authors eventually reject this monstrous proposal, though not on the grounds that it compels people to work.

To reject the proposal because it compelled people to work would put them suspiciously close to a famous argument, advanced very effectively by Robert Nozick, that income taxes are akin to forced labor. Of course our authors cannot accept so libertarian a view; "we may assume that this argument is not dispositive against taxation of earnings" (p. 122). Since taxation is acceptable—this we know a priori—no argument that holds it illegitimate is right. But then we cannot reject endowment taxation if we reason in a way that would also condemn the income tax. "[T]here is no intrinsic moral objection to taxing people who don't earn wages" (p. 124). We can,

then, maintain that endowment taxation is "too radical" an interference with autonomy; but we cannot in principle reject it.

As everyone knows, I am always fair to my authors; so I hasten to present another way of understanding their claim that pretax property rights are incoherent. (They might also intend this as a separate, though related, argument.) Here, the principal claim is that, if there were absolute rights to property, a market economy would need to exist independent of government. Otherwise, these property rights could not be defended. But no such economy can exist: thus the notion of absolute property rights must be cast aside.

I think it obvious that Murphy and Nagel have not benefited so much as they might from the works of Murray Rothbard and Hans Hoppe, if indeed they have seen them at all. These authors, as it seems to me, have made an excellent case that a free-market society can operate without a government. But I shall here set this point aside, lest our authors dismiss me as a hopeless extremist.

Suppose, as I do not for a moment believe, that they are right: the free market cannot exist without a government. Why should this induce us to throw out property rights to pretax incomes? From the alleged fact that property rights could not be defended without a state, it hardly follows that these rights exist only as the government defines them.

Perhaps, though, our authors intend a simpler point. If we must have a government, the services it offers must be paid for; how then can property rights be absolute? First, even if one grants the need for a government, taxation need not come in its wake. Why cannot a limited government be financed through voluntary contributions? Even if this possibility is rejected, the authors' case cannot stand. The fact, if it is one, that compulsory contributions are needed to finance the activities of a minimal government leaves property rights otherwise untouched. A limited government with taxation leaves intact the possibility of almost absolute property rights.

The Myth of Ownership is not altogether worthless. The authors very effectively argue that the standard criteria of justice in taxation, such as the benefit and ability-to-pay principles, fall victim to a fatal defect. Justice in taxation cannot be assessed apart from a general theory of property rights. "Tax justice must be part of an overall theory of social justice and of the legitimate aims of government. Since that is so there can be no blanket rule that people with the same pretax income or level of wealth must pay the same tax" (p. 38).[2] Unfortunately, our authors, as I have endeavored to show, hold wholly incorrect opinions about the nature of such an overall theory. ✦

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[2]Murray Rothbard, whom our authors do not cite, long ago showed in *Man, Economy, and State* that the conventional criteria of justice in taxation are invalid.

Don't Dream the Impossible

The Ideal of Equality

Edited by Matthew Clayton and Andrew Williams
St. Martin's Press, 2000
ix + 230 pgs.

This useful anthology contains the single most deplorable comment on a philosophical topic that I have ever encountered. But before I get to it, I must first set the stage.

The anthology collects a number of influential articles about equality, by such eminent philosophers as John Rawls, T.M. Scanlon, Derek Parfit, and G.A. Cohen. All favor egalitarian measures, but the book offers excellent material to those inclined in a libertarian direction. In their attempts to demonstrate the merits of equality, these distinguished thinkers succeed only in showing how weak this alleged ideal is.

Derek Parfit, in particular, devastates egalitarianism with his Levelling Down Objection. If you say that equality of wealth or income is an imperative of morality, are you not committed to the following strange consequence? A state of affairs in which everyone lives in poverty ranks morally superior to one in which a group of people in the society have risen to wealth. In the latter situation, the remainder of society stays poor and inequality has thus increased. Even though none is worse off in the changed circumstances and some have gained, our egalitarian dogma requires us to remain content with universal poverty. The benefits of the altered situation are bought at too high a price.

Parfit states the essence of his argument in this way: "Suppose that those who are better off suffer some misfortune, so that they become as badly off as everyone else. Since these events would remove the inequality, they must be in one way welcome . . . even though they would be worse off for some people, and better for no one. This implication seems to many to be quite absurd. I call this *the Levelling Down Objection*" (p. 98).

These distinguished thinkers succeed only in showing how weak their alleged ideal is.

Egalitarians might at first be tempted to counter Parfit by appeal to the supposed malign effects of inequality. What if the poor found that the prosperity of the newly fortunate lowered