

**Liam Murphy & Thomas Nagel,**  
***The Myth of Ownership. Taxes and Justice,***  
**Oxford/New York: Oxford University Press, 2002, 228 p.**

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Forthcoming in *Disputatio*

How can philosophical theories of justice possibly translate into fully-fledged fiscal proposals? Reading Liam Murphy and Thomas Nagel's *Myth of Ownership* will definitely be of great use to political philosophers interested in answering this key question. The book is organized around two central (sets of) claims, that repeatedly resurface across the chapters. The first idea consists in a rejection of myopia, i.e. of the view consisting in analyzing the fairness of a given level and distribution of the tax burden without looking at the distribution of tax benefits. For instance, the authors rightly stress the fact that "a tax burden that is matched by an equivalent transfer is not in the relevant sense, a burden at all" (p. 14). The second key claim is that it is meaningless to examine separately the legitimacy of the tax system and the system of property and pre-tax income. This second claim is actually twofold. One idea is that in the absence of a state, there would be no market and no system of property to pre-tax income. Since there is no state without taxation, such market and property could not conceivably exist without taxation. The other side of the second claim – the baseline claim – is that justice « is not a matter of applying some equitable-seeming function to a morally arbitrary initial distribution of welfare » (p. 30). Hence, the very existence of property to pre-tax income depends on the existence of taxation. And the fairness of a given level and pattern of taxation cannot be assessed independently of an assessment of the legitimacy of the pre-tax property and income. In a nutshell, the twofold nature of this second claim is clear: « (...) the pre-tax distribution of welfare is both entirely imaginary and morally irrelevant (...) » (p. 99). Moreover, a proper assessment of the pre-tax distribution is only possible if we get rid of our natural inclination to constantly slide from legal rights on our pre-tax income to moral rights (e.g. p. 34).<sup>1</sup> For pre-tax income and property should not be seen as what people are morally entitled to since this can only be defined after a fair tax system has imposed its burden. In short, there are two key (sets of) claims, about the non-separability of burdens and benefits on the one hand, and the property and the tax system on the other.

The authors's two claims call for a broad-minded approach to issues of taxation of justice. This is a point that is actually relevant to most issues of distributive justice. For example, when it comes to employment policy,

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<sup>1</sup> A parallel can be drawn with approaches to other concepts, as illustrated by the Cohen-Dworkin disagreement on the notion of freedom (see A. Swift, *Political Philosophy. A Beginner's Guide for Students and Politicians*, Cambridge, Polity Press, 2001, pp. 68-71) or Ogien's discussion on the definition of pornography (see R. Ogien, *Penser la pornographie*, Paris, Presses universitaires de France, 2003, chap. 2).

whether e.g. seniority rules in cases of layoffs are fair should be assessed not merely in a good-specific manner, i.e. by looking at the rule's impact in terms of distribution of access to employment among those who are currently working, but also in an all-things-considered manner, i.e. taking into account the rule's impact in terms of productivity and, as a result, on all members of society, through tax and transfers. In a way, this amounts to stressing the limits of "local justice" approaches "à la Elster".<sup>2</sup> Yet, this does not rule out the efforts of explicitly second-order theories of justice analyzing the fairness of tax burden whenever changes in the distribution of tax benefits are politically out of reach. It only entails that, even when we propose fiscal reforms focusing on the burden side only, we should take into account the distribution of tax benefits as it exists.

This being said, the authors begin with a chapter devoted to traditional criteria of fiscal justice (Ch. 2). Hence, Murphy and Nagel examine in turn (1) the idea that the taxpayer's contribution should be proportional to the benefits she gets in return, (2) the justice-based and/or efficiency-oriented view that those with a better ability to work and earn money should pay more taxes (even if they actually do not want to unfold these skills in a remunerative manner) (see as well pp. 121-125), (3) the claim that those who actually earn more should pay more taxes, which as the authors show can be understood in two significantly different ways (e.g. pp. 24 and 29). Each of these traditional criteria is rejected by Murphy and Nagel - even the third one -, in part for reasons that have to do with the two (sets of) claims identified above, in part for reasons specific to each of the criteria. They then move on to an examination of various standard philosophical theories of justice (chap. 3). Philosophers should not expect anything new here. Still, it is a great achievement to present clearly and in only nine pages (pp. 50-58) a series of important views on justice: (1) pareto-optimality (and its incompleteness), (2) utilitarianism (as the standard aggregative view), (3) an aggregative view that gives special weight to the improvement of the situation of the least well off (the "pure priority view"), (4) Rawls's difference principle granting absolute priority to the improvement of the situation of the least well off (which is an aggregative-distributive view this time), (5) the idea of a decent minimum (a threshold-based aggregative-distributive view) and (6) the idea of equality of opportunity (a distributive view presented as less redistributive than Rawls's principle since differences in natural abilities are left uncompensated).

Moreover, taxation cannot be assessed without an idea of the role of the state, a question addressed in chapter 4. One of the important points that Murphy and Nagel make is that two essential questions need to be answered. First, what should be publicly provided (e.g. education, health care) and what should be left to private individuals (the "public-private" division)? Second, how should we share the social product, i.e. both what is publicly provided and what remains within the scope of private initiative (the distribution issue)? They stress that "big government" (which could actually consist in an extensive civil service and/or a large budget) is often associated with a strongly egalitarian regime. This is a mistake. As they rightly put it, "One might favor a strongly egalitarian distributive policy of money transfers or cash subsidies while being against all but a minimal level of public provision (...) On the other hand, one might be in favor of a high level of public provision (...) while not being in favor of any redistribution, except that which occurs as an inevitable side-effect of the

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<sup>2</sup> See J. Elster, *Local Justice. How Institutions Allocate Scarce Goods and Necessary Burdens*, Cambridge, Cambridge University Press, 1992.

financing of these goods by the unequal taxation of persons with unequal resources” (p. 77). Yet, to the extent that private ownership entails constraints on our ability to redistribute the relevant goods, the “public-private” and the “distribution” issues cannot be addressed independently.

The discussion on public goods in the same chapter is also of great interest. Too often do we disregard the fact that the benefits of public goods are actually not uniformly distributed. This is true in two ways. First, an inlander does not benefit much from a lighthouse funded by all (an issue then left aside by the authors). Second, even when it is distributed in a geographically uniform manner, the level welfare derived from public goods may not be uniform across the different wealth levels, given the idea of diminishing marginal utility. A very interesting discussion follows on the implications of such “unequal distribution of benefits” for both the level and the financing of public goods provision (pp. 83-85). Yet, there are less convincing developments in this chapter as well. The discussion on cash/kind is a bit short (pp. 90-93). And the notion of “public duties” - referring to a type of good « which is neither a good for particular individuals in the society nor a public good for all of them, but rather a good in itself » (p. 93) is unconvincing when the authors put issues of foreign aid, of support for the arts and sciences and of protection of endangered species under this heading.

From chapter 5 onwards, the authors look at key ingredients of any tax system, starting with the tax base. A comparative assessment of income v. consumption tax ends up with a rejection of the latter. In the course of this discussion, some attention is given to the “fairness-to-savers” argument (besides others such as Kaldor’s common pool argument focusing on efficiency). Let us introduce the issue as follows. In asking whether, in the case of a consumption tax, it would be fair to tax food more than clothing, hence « penalizing those who prefer to eat well relative to those who prefer to dress well » (p. 104), Murphy and Nagel’s main argument consists in saying that « it is only if relative market prices for food and clothing are, in some sense, what they should be, that it could be unfair to anyone to alter them through taxation » (p. 104). This strategy is in turn applied to both the “fairness-to-savers” objection to taxation on capital income and – later - to the “fairness-to-donors” objection to a substantive inheritance tax (e. g. pp. 144 and 154). In both cases, the tax base chosen is supposed to favour – respectively - saving over current consumption, and post-mortem donors over ante-mortem donors or non-donors.

Admittedly, it makes sense to argue that the pre-tax market prices of food and clothes are not necessarily just, and that those who prefer clothes did not necessarily benefit from the same initial resources as those who prefer food. Yet, this does not close the issue. If two equally - and ex hypothesi - fairly wealthy people (before tax) have different preferences regarding current consumption v. savings (or regarding pre-mortem v. post-mortem donation) and if there is no reason to believe that the return on savings is unfair as compared to the price of consumption goods, the issue still remains. As a matter of fact, there could clearly be a case to favour savings over consumption (e.g. because their relative impact on the economic situation), or pre-mortem donation over post-mortem one (e.g. because of the growing age-gap between parents and children). But this case is not made in the book. In fact, in chapter 8 in which the authors come back to the issue, they seem to rely on an additional strategy to reject arguments of the “fairness-to-savers” type. They claim that “A modern tax system cannot hope to be neutral in its incentive effects with regards to people’s economically significant decisions about work,

leisure, consumption, ownership, and form of life. If there is a requirement of neutrality, they must be rather special and related to fundamental matters like sex, race, or religion. There would be nothing unfair, for example, in a tax on chocolate ice cream but not on vanilla, though it would be arbitrary” (p. 170). The authors add that they “also tried to explain why the discrimination against savers taken by itself is a spurious moral issue – about as serious as would be the issue of discrimination against childless couples (...)” (p. 171). This calls for two remarks. While one may share the author’s “fatalism” with regard to the impossibility of fully reaching fiscal “neutrality in effect”, one would expect at least an argument identifying the precise reasons explaining such impossibility. Second, Murphy and Nagel also downplay the importance of concerns for “fairness-to-the-childless”, implying that this would not be a significant issue, hence treating it somehow at the same level as issues of fairness-to-gastronomes (v. clothing fans) or fairness-to-chocolate-lovers (v. vanilla addicts). This is far from being fully convincing.

Chapter 6. is devoted to the issue of progressivity. One of the interesting discussions is about the empirical evidence from the optimal taxation literature. The suggestion is that there would not be any significant effect of increasing the marginal tax rate on high income earner’s willingness to keep working as much as they do. At the same time, the effect of increasing the progressivity on the level of taxable income may be significant. This is relevant e.g. for egalitarians familiar with the so-called “argument from incentives”.

As to chapter 7, it deals with the inheritance tax. The authors convincingly reject the “double taxation” argument that amounts in this case to pointing at the fact of an inheritance tax being imposed on money that has already been taxed earlier through an income tax. Equally convincing is Murphy and Nagel’s defence of an inclusion of gratuitous receipts in the taxable income of donees, hence making the taxation level sensitive to the economic circumstances of the latter. This is central as equality of opportunity among the inheriting generations is always the triggering concern behind advocating a strong inheritance tax. And it allows to deal adequately with cases involving e.g. a very rich donor benefiting a very poor donee who would still remain rather badly off despite having inherited. In addition, they also argue that donors should not benefit from tax deductions. And they reject the strict fairness argument for applying a heavier taxation rate to gifts and bequests, as compared with other sources of income.

Finally, in chapter 8, the authors address worries of horizontal justice (i.e. justice between categories of taxpayers once we leave aside the income level variable – which is the business of vertical justice). By way of illustration, they deal with the issue of “marriage penalty” and “marriage bonus”. They offer an enlightening account of the difficulties involved in trying simultaneously to treat the singles and the married equally, and the one-earner and two-earners equally. For in the US as in many other countries, the current situation is that “the combined taxes of two single persons each earning  $X$  are less than the tax of a married couple each of whom earns  $X$ , which is equal to the tax of a married couple one of whom earns  $2X$  and the other of whom earns nothing, which in turn is less than the tax of a single individual who earns  $2X$ ” (p. 167).

To conclude, this book is extremely welcome. It brilliantly instantiates the kind of input philosophers can have in public policy debates (taxation being one of the most significant domains), by trying in a well-informed

way to keep things in the right perspective. It is an invitation to philosophers to go and look behind technical matters that are apparently of no philosophical significance. There is no doubt that the book is primarily interested in framing the issues in a proper manner, in calling for a “gestalt shift” (p. 175) rather than in providing fully-grounded and definite substantive views on the different problems at stake more than as a way of illustration (see however the book’s conclusion). And one may of course regret a few more things such as the choice of title, the absence of developments on Rignano’s original inheritance tax proposal, on the Tobin tax, or on fiscal competition. At the same time, there are also a number of small things to be learnt on top of the central points described above. Let us mention e.g. the proposal of a retributivist notion of property (p. 61), the authors’s stress on the regressive nature of a consumption tax – since the proportion of consumption over savings tends to decrease as the income increases (p. 112 f.), or the developments on why we should apply a flat rate tax credit rather than a deduction to contributions to charitable organizations (127-128). All in all, we recommend this book without any hesitation to political philosophers, but also to tax policy designers, tax law students and to taxpayers. It is very clear and well informed. And it is definitely insightful.