

**ERASMUS PROGRAMME IN LAW AND ECONOMICS
2000-2001**

PHILOSOPHY OF LAW AND ECONOMICS

**Professor Frank van Dun
Ghent University, 4, April 2001**

Karin Granbom

Wilhelm Heutz

Paper:

Is it justified to tax people in order to redistribute?

Table of contents

1. Introduction	2
2. The purposes of taxation	3
(1) the provision of public goods or other similar public provisions	3
(2) giving incentives for desired behaviour: correction	4
(3) the purpose of redistribution	6
3. Concepts	6
4. Redistributive Taxation and Justice	8
5. Does redistributive taxation violate natural rights?	10
6. Conclusion	13

1. Introduction

In order to answer this question one needs, first of all, to talk about the purposes of taxation as they are commonly understood nowadays. Second, a brief overview of the with the topic of taxation and especially redistributive taxation closely related concepts of society, equality and freedom will be given as they are important to understand the following analysis. Third, redistributive taxation is nowadays said to be done to promote social justice or distributive justice. We will discuss the goals of social justice and distributive justice and analyse whether they can serve as a justification for redistributive taxation. Fourth, taxation as an instrument of redistribution might well violate the natural rights of an individual taxpayer and, as such, might be impermissible. This requires taking a look at taxation from an natural law perspective.

2. The purposes of taxation

Taxation serves three major purposes: (1) to finance government provision of public goods or other similar public provisions, (2) to give incentives for a certain desired behaviour and (3) to redistribute parts of the tax revenue.

Of these purposes the first one, the financing of public goods, is the least controversial one. The second purpose, giving incentives for desired behaviour, is more disputed. Hotly debated, is the third purpose of taxes, the redistribution of wealth. This paper will mainly focus on this third purpose of taxation and ask how and whether it can be justified.

(1) the provision of public goods or other similar public provisions

A considerable part of the tax revenue is spent by the government on the provision of public goods. In economic theory, public goods are characterized as a commodity having two closely related features: First, the consumption of a public good by one person does not leave less for any other consumer (non rivalrous consumption) and, second, non-paying beneficiaries of the good cannot be excluded from its consumption due to high costs of exclusion (non-excludability)¹. The classical example for a public good is national defence. A national defence system, for example the protection by an “atomic shield”, protects all individuals living within one country, citizens as well as non-citizens. No individual can technically be excluded from enjoying the protection through the atomic shield. Also, the enjoyment of this protection by some individuals does not diminish its value to other individuals.

So, if national defence is a public good, which has to be provided by someone, why should it be up to the government and not to private companies? The answer is, that private firms or the market in general would fail to provide either sufficient quantities of a certain good or would fail to provide all sorts of public goods needed. As the providers cannot, technically, exclude people from enjoying the benefits of public goods without paying for it (problem of “free riders”), those people willing to pay for the good will perceive the price charged for the public good as too high due to the free riders and decide to demand less of the provided good. Consequently, privates tend to provide less than optimal amounts of public goods. To correct this so called **market failure** the government can step in and ensure sufficient provision of public goods. It can do so either by subsidizing private provision through the tax system or by

¹ Robert Cooter/ Thomas Ulen, Law and Economics, p. 42

providing the public good itself². Examples for public goods provided by the government are national defence, domestic order, security, maintenance of the legal system or clean environment, of which the last one is one of those amenities which have been perceived as public goods only since recent times.

In addition to these real public goods the government provides services which are, on the one hand, similar to public goods as they are meant to benefit the general public, but, on the other hand, fall short of meeting both requirements for public goods. These similar services are for instance a public health care system, public libraries and museums, public schools, universities and so forth. The problem with these similar services is, that, as they are no pure public goods, they could be and to a certain extent they are offered by privates. Private health insurances, private museums and private schools and universities do exist and they function quite well. Technically there is no problem of excluding non paying beneficiaries. Consequently, privates would offer enough of these services to meet the demand on the market. There is no market failure in respect to these services. Clearly, if everybody would be willing and able to pay a considerable amount of money for a university education, privates would supply enough places at private universities to meet this demand. Of course, this is not what happens in reality, but only in economic theory, because in reality not everybody can afford a university education. However, the conclusion from this shortage of university education or, more generally speaking, from the shortage of provision of certain “public services” (which do not qualify for being a public good) must be, that government, in fact, does not correct a market failure, if it provides these services, but rather tries to achieve redistributive goals. Making a school and university education available to those who cannot pay for it means taxing the more wealthy in order to spend the tax revenue on education also for the poor. Thus, only if government provides real public goods, which due to the problem of excludability or rivalry cannot sufficiently be provided by privates, it acts to correct market failures. Otherwise, when it provides goods or services, which do not meet the requirements for a public good, it redistributes. Redistribution will be dealt with later on in this paper.

(2) giving incentives for desired behaviour: correction

Very often the government does not tax people in order to raise money for the provision of public goods but in order to deter a certain behaviour and to give incentives for a behaviour

² Cooter/ Ulen, p. 43

considered more desirable by the government. Thus, this purpose of taxation can be referred to as corrective. The mirror image of taxing to correct behaviour is, of course, granting tax-deductions or tax exemptions for desired behaviour.

Examples of corrective taxation are abound: taxing the consumption of petrol to reduce harm to the environment due to too much driving, taxing the keeping of dangerous dogs to reduce the risk of harm inflicted on other people by these dogs, taxing the consumption of cigarettes and alcoholic beverages to avoid adverse effects on the public health, granting far reaching tax-deductions for acquiring or purchasing a family home to promote family homes.

Economic theory favours corrective taxation in order to solve the problem of externalities. Externalities are costs to or adverse effects on third parties resulting from the action of a person that do not show up as part of the market price³. For example, without government intervention, a power plant will most likely not take into account the environmental damage it causes by emitting CO₂. Consequently, the plant will have a higher output than is socially desirable (the social optimum is calculated by taking into account the cost of pollution and the benefits from operating the plant). One solution of this market failure is to tax the polluter to the amount he causes the pollution.

No economic justification is available for those corrective taxes who do not address the problem of externalities. However, it has to be admitted that the concept of externalities is very vague. It might not be a feasible criterion at all to limit corrective taxes. By levying corrective taxes the government claims that the taxpayer from now on has to internalise some costs the government thinks she causes to society. It is within the discretion of the government to say who should be responsible for internalising what costs. The vagueness of the concept of externalities results from the fact that in reality adverse effects on a third party or on the environment are very difficult to estimate and causal links are hard to establish.

The advocates of corrective taxes would probably argue that each corrective tax is addressing a problem of externalities, whereas opponents would question the existence of externalities or the desirability of finding a remedy to the problem.

Still, there is a case for corrective taxation if the alternative to taxation would be outright administrative regulation or criminal sanction. Compared to those corrective measures taxation is less intrusive and leaves to the individual the choice either to avoid a certain behaviour or to pay the tax and not to adapt one's behaviour.

³ Pindyck/ Rubinfeld, Microeconomics, p. 296

(3) the purpose of redistribution

The third commonly recognized but also highly controversial purpose of taxation is to redistribute wealth from those who are already wealthy to those who are considered to be in need of government help. The common justification for this is that certain sorts of social and economic inequality are considered to be unjust or otherwise undesirable leading to the conclusion that there is an obligation to those so-called disadvantaged to rectify or alleviate their problems. Redistribution can take on a form where the government uses the tax revenue to finance help for poor people who are not paying taxes themselves. This is a very direct form of redistribution: someone is taxed but the revenue is spent on some purpose which does not benefit the taxpayer and the beneficiary of the government aid has not contributed in financing the aid. An example for this direct form of redistribution are welfare programs by the government.

But there is also a more indirect, less visible form of redistributive taxation. Very often the government finances services which are accessible to everybody, for example free public schools or universities, public health care, clean environment. So one might ask, why is there still redistribution involved, if everybody, meaning the poor as well as the wealthy, will benefit from the government provided service? The answer is, first, that the tax rates are higher the more wealthy one is (progressive taxation) while at the same time some people are tax exempt because their income remains below a certain minimum, and, second, enjoyment of the government service is of higher value to the poor than to the more wealthy (in economic theory this basic concept is referred to as the decreasing marginal utility of wealth). The redistributive purpose of taxation is highly controversial. Whether it can be justified on grounds of justice or natural law will be the focus of this paper.

3. Concepts

Before we go more in depth it is important to clarify some concepts. To be able to understand a discussion on redistribution, justice and natural law one must know the correct meanings of the terms used. Therefore, we will first discuss concepts of society which will lead us to a discussion on structure for order in human relationships. We continue by explaining the different meanings the word equality can have and finally we will also deal with the notion of freedom.

There are two distinct concepts of society. In the Dutch language they are easily distinguished because there is a word for each of them, namely “een samenleving” which we in English will call society-as-symbiosis and “een maatschappij” which can be called “society-as-company”. **Society-as-symbiosis** is a society in which free persons live among their likes in peaceful relationships, no one is commanding anyone or expecting anything from someone without consent. The only exception is that people count on other people’s respect of other people’s rights and freedom. There is no formal membership and organisation. People participate in the society without participating in the *action* of the society, because there is no common goal of the people in the society and hence people are not a part of a whole but stand on their own in case they do not want to co-operate with others. **Society-as-company** on the other hand, is a society in which leaders direct actions of followers. The living is not characterised by peace. There is a clear distinction between members and non-members. Each member is supposed to play its prescribed part in action of the whole. The people are supposed to live from a single, common source of income. It may be worth mentioning the etymology of the word “maatschappij”. “Maten” literally means people who share their meat or eat from the same table.

In other words, one of the most striking differences is the **horizontal** relationship existing between people in the society-as-symbiosis and the **vertical** relationship between the members in the society-as-company. This leads us to bring up the important distinction between *ius* (horizontal relationship between people) and *lex* (vertical relationship). **Ius** comes from the word “iurare” –to swear or to speak in a solemn way revealing commitment and obligation. In its original meaning it stood for “a bond” or “a connection”. *Ius* is law between independent people obliging themselves. The commitment following is accordingly mutual, natural, and voluntary. A *ius* can be said to stand in stark contrast to right-as-might (might gives right) which on the other hand is a good description of the vertical structure defined as *lex*. **Lex** is related to the Latin word “legere” which means to collect, to pick up, or even to steal. A *lex* thus gives someone power over someone else. It is important to grasp that this is an asymmetrical, commanding relationship. Most often it refers to decisions of authorities binding subjects. It is easy to relate *ius* and *lex* to the discussion above on society. The *ius* structure exists in the society-as-symbiosis, while the *lex* structure dominates in the society-as-company.

Equality can, just as the notion of society, be divided into two totally different meanings. The first meaning can be called equality as **likeness**, or **equity-as-similitudo**. The etymological root is body or physical shape. Likeness refers to the fact that people are of the same shape,

same physical sort. Equality with the Latin origin **aequalitas** does not refer to people as similar due to the fact that they are humans but consider measures of achievement and abilities. It defines relationships between people within a defined group. There is no universality of this notion as there is in likeness. Likeness with its universality and horizontal relationship can easily be connected to *ius* and society-as-symbiosis, while equality in the sense of *aequalitas* can be said to regard a vertical, *lex* relationship found in society-as-company. It may be possible to remove inequality in the sense of *aequalitas*. Equality as likeness is more or less a fact. Humans are defined as humans due to the fact that they have the shape of a human.

Finally, we will deal with the concepts of freedom. **Liberty** is a legal notion which suggests membership in a society where people have different ranks. Liberty is a right to a status and membership in the society given to a person as a birthright. However, a person is not free in the sense of being free as a natural person, as in contrast to a citizen (a legal and fictional person). **Free** is derived from the Indian word “*priya*” which means “self” or “one’s own”. Latin transformed it into words like “*privare*” and “*privatus*” which at least by extension can mean “personal” and “not owned by the state”. “Free” focuses on a person and his/her property. A free person exists by his/her efforts and freedom denotes leading one’s own life. There is no correlation to status and consequently no connection to *lex* or society-as-company. However, the notion has clear correlation to *ius* and society-as-symbiosis.

Freedom in the sense of free can furthermore be divided into two subcategories: **real freedom** and **organic freedom**. Real freedom is given to a person by birth and cannot be taken away. It denotes a person’s own being. Organic freedom denotes activity and the outcome of that. Organic freedom can be said to be the right to work and no one has the right to infringe on this right.

As a short summary of this part we can divide these concepts into two categories in which each of the concepts are closely connected: In a **society-as-symbiosis**, **ius** relationship exists between people who live together as **likes** respecting each other’s **freedom**. In a **society-as-company**, a **lex** structure is prevailing between **equal** people granted **liberty**.

4. Redistributive Taxation and Justice

Redistributive taxation is most often justified by the goal of distributive justice or social justice. So, first, we need to define those concepts in the overall context of justice. Then we can see, whether they can render a justification for redistributive taxation.

The concept of **distributive justice** relies on the unequal distribution of resources according to some criterion of merit, which is determined by the prevailing morality or the authorities. To be more precise, there are several theories of distributive justice. They include (a) views that require additional procedural conditions, such as some positive form of equality of opportunity, for instance through education, health care, child care support, (b) utilitarian views that require transfer of resources from the more wealthy to the poor because of the economic theory established law of the diminishing marginal utility of wealth⁴.

Whereas the concept of distributive justice is already known since Aristotle who dealt with it in his fifth book, called *On Justice, of the Nicomachean Ethics*, the idea of social justice is a rather modern thought developed by Roscoe Pound in the 19th century. **Social Justice** aims at the equalization of everybody's desires, wants or needs. The nowadays most famous concept of social justice can be found in John Rawls' *A Theory Of Justice*. Rawls asks how hypothetical social contractors, operating behind a veil of ignorance, would agree to allocate among themselves all the wealth either already produced or in the future to be produced within their, to them temporarily unknown, territories. His conclusion, called the Difference Principle, is that inequalities are permissible only to the extent that either directly or indirectly they redound to the advantage of the least advantaged group in whatever particular society is under consideration⁵.

As distributive justice and social justice seem to only address certain aspects or ideas of justice while at the same time obviously excluding some other aspects, the concept of justice must be broader. The traditional definition, given by Plato in *The Republic*, suggests that **justice** means "to render to everyone their own, their due".

It is often assumed that justice requires also an element of equality as it is seen to presuppose general rules which must be applied equally to every case which satisfies their terms (equal treatment of all). However, justice as the equal application of general rules is not consistent with our findings on the concepts of society. Equal application presupposes a society as a closed group (society-as-company), all its members in the same relationship to the same distributive agent who stands above the others (vertical relationship, lex). Justice as the principle of rendering to everyone their due, their own is related to the concept of ius, a horizontal relationship between equals (society-as-symbiosis). A concept of justice containing equal application of general rules is only thinkable in a society-as-company.

There are major **criticisms** against the aims of distributive justice and social justice. Distributive justice is being criticized from an libertarian point of view on grounds that there

⁴ Liam Murphy/ Thomas Nagel, *Justice in Taxation*, chapter 4: Redistribution and Public Provision

is no faulty distribution for which a redistribution by the tax system would be needed⁶. According to this point of view, a distribution of the social product is just provided it is arrived at under conditions of natural freedom, i.e. through uncoerced economic transactions and free gifts and exchanges under a system of law that permits everyone to participate and enforces their property rights equally⁷. The conclusion to be drawn from that argument would be that taxation should not redistribute, but only provide public goods.

The second criticism against redistribution focuses on the delegitimization of the prior claims of the taxpayers to what is redistributed. One cannot pretend that the tax revenue which is to be distributed is free from claims by the taxpayers, the people who have produced the wealth by their own labour, the tax revenue is not, as famously expressed by Nozick, “manna from heaven”⁸. This argument refers to a discussion of natural law, which will be rendered in the next chapter of this paper.

The same criticisms can be put forward against the goal of social justice. Social justice also presupposes that there is an initial faulty distribution of wealth in society and fails to delegitimize the prior claims of the tax payers.

Social justice and distributive justice as goals of taxation require a society with a vertical relationship between a ruler and the followers (society-as-company, lex). In a society-as-symbiosis there could be no strive for social justice and redistributive justice.

It seems that redistributive taxation can only be justified on grounds of distributive justice or social justice, if one considers the initial distribution of wealth or resources in society as unjust. Furthermore taxation and especially redistributive taxation raises an issue under natural law, which will be discussed in the next chapter of our paper.

5. Does redistributive taxation violate natural rights?

To answer this question we must be familiar with a few more concepts. Therefore we will deal with the question what law and what property mean and how property according to natural law should be acquired. We finish by drawing some conclusions on the justification of redistributive taxation from a natural law point's of view.

⁵ Nigel Ashford/ Stephen Davies, “Justice”, “Tax”

⁶ Ashford/ Davies, „tax“

⁷ Murphy/ Nagel, idem

⁸ at Ashford/ Davies, „Tax“

In everyday language law often means the laws passed by legislators commanding people to do something. That is not how we will use the word. Law is a description of an order of how human beings should behave. Law is a natural fact which no human can change. Natural law implies a peaceful, free symbiosis of people living in respect of each other. Law has been violated when people stop respecting real and organic boundaries separating people. It has nothing to do with morality and legal codes.

Organic freedom is the source of right which leads us to the discussion of property. The word right has its origin in the Latin word “regere” which can be extended to “rectum” which means “that which is governed or under control of someone”. A person’s right is consequently that which is under his control. But how does one get control of something? The original word of property is the Latin word “auctoritas” which comes from “to grow or to make something”. The original ground of lawful ownership is accordingly to produce something. John Locke has made important contributions to the thought of property as a natural right belonging to the person who has created it through his/her body or work. In his book *Second Treatment of Government* he writes:

“Though the earth and all inferior creatures be common to all men, yet every man has a “property” in his own “person.” This nobody has any right to but himself. The “labour” of his body and the “work” of his hands, we may say, are properly his. Whatsoever, then, he removes out of the state the Nature hath provided and left it in, he has mixed his labour with it, and joined to it something that is his own, and thereby makes it his property. It being removed from the common state Nature placed it in, it hath by this labour something annexed to it that excludes the common right of other men.”

Locke says that a person has a natural right to use his body and the work provided by this is owned by the individual himself. A thing created by a persons work is an extension of himself and can therefore be called his property. It can also be said the other way round; property belongs to the maker.

As a **conclusion** we will elaborate two arguments why taxation is a violation of natural law:

In the part where concepts were explained we learnt that the original meaning of the word free was “one’s own” and “not owned by the state”. We also found that “free” focused on a person and his/her property. Later on we saw that John Locke stressed the importance of organic freedom, i.e. the fact that a person owns the fruit of his work. In other words, that which is

created by a person's labour is his property and nobody has a right to claim possession or ownership of someone else's property.

Today we live in a well-developed monetary society. When we do an effort for someone or trade with someone we are rarely paid with a good but in money. Therefore, a great part of our property exists in form of money. Money can be said to be dormant goods or services which easily can be transformed into what the owner desires. Taking away money is consequently taking away property. Taxation is one word for "taking away money". The previous sentence consequently says "taxation is taking away property". According to natural law every person can use what is strictly his work in the way that pleases him. A person has no duty to share his property with someone else. Natural law also says that no person has a right to what belongs to someone else without the other person's consent. This leads us to the conclusion that redistributive taxation is against natural law since taxation means taking away a person's property without his consent and no one has the right to force anyone to share his property with anyone else which is the purpose of redistributive taxation. Taxation in general (not redistributive taxation) might be consistent with natural law, if its purpose is only the provision of public goods because every reasonable person would probably consent into this as long as the government can provide the goods more efficiently (which is in economic theory already presupposed by the definition of public goods, see above).

The second argument focuses on the form of relationship natural law prescribes between people. In a society where natural law is prevailing people live among other people as likes. They form a society called society-as-symbiosis which in the concept part was described as a peaceful society where no one is commanding anyone or expecting anything from someone without consent. People in this form of society are of the same status or rank. The relationship between people can be described as a *ius* relationship said to be a relationship resting on voluntary commitment respecting the boundaries of others.

Taxation is, as before mentioned, not voluntary. The state commands its citizens to pay taxes. A *lex* relationship is installed with the government at the top and the citizens at the bottom, forced to obey the commands. Another kind of society is formed where people no longer live as likes. Income is taken and distributed on grounds not according to natural law. Consequently, redistributive taxation and the way it is collected is against the way of living prescribed by natural law.

To sum up, we can state that redistributive taxation violates natural law in two ways: first, the government is not respecting the taxpayer's exclusive right to his/her own property, second, taxation imposes on the individuals an unlawful, coercive, vertical relationship.

By the description given of society-as-symbiosis and society-as-company we can say that the latter has more resemblance with the society in which we live in today. However, this does not preclude a vivid discussion based on arguments of natural law.

6. Conclusion

The question our paper seeks to answer reads: "Is it justified to tax people in order to redistribute?". To build a basis for an answer we first explained different purposes of taxation to make clear that taxation can have different purposes, but also to serve the purpose of being able to evaluate any difference in justification due to the motive of taxation. With natural law and considerations on justice as the measure for evaluation we come to the conclusion that the first purpose of law, the provision of public goods or other similar public provisions, is not particularly unlawful and can consequently be said to be justified. This not only on the grounds of economic efficiency (rational persons would agree to the provision due to the fact that public goods are beneficial to the individuals but would not be produced in other equally efficient ways than as by the government) but also on the ground that provision of some public goods, as for example defence system, police and courts, serves as the guard upholding and defending natural law.

The second purpose of taxation, giving incentives for desired behaviour, i.e. correction, is more questionable. Whether it is justifiable, depends on what behaviour is corrected. If behaviour harming people's freedom and rights is corrected, the purpose of the law (correction) is consistent with natural law.

The third purpose, the purpose of redistribution, was the main focus of our paper. It is often defended by arguments saying that it can be justified on grounds of redistributive justice or social justice. However, these two concepts can be criticised by arguing first, that the initial distribution of resources and property is not unjust and second, redistributive justice as well as social justice requires vertical (lex) relationships which is against the organisation of free people. When we go deeper into natural law, we find that taxation for redistributive purposes clearly denies individuals exclusive right to decide upon the use of their property and just as

before mentioned the act of taxation implies that the state forms an unlawful structure in which the individual is forced to take part.

Consequently, after discussing justice and natural law, the answer to the question we raise in this paper can be said to be “no”, meaning that we consider taxation for the purpose of redistribution as not justified.

Ghent, 4, April 2001

Karin Granbom, Wilhelm Heutz

Short List of Material used:

- Frank van Dun, Philosophy of Law and Economics, Ghent 2000-2001, Reader (special references in the paper omitted)
- Nigel Ashford/ Stephen Davies, A Dictionary of Conservative and Libertarian Thoughts (1991)
- Robert Cooter/ Thomas Ulen, Law and Economics, 3rd edition (2000), Addison-Wesley
- Liam Murphy/ Thomas Nagel, Justice in Taxation, early draft material (for a book) published in the Internet
- Robert S. Pindyck, Daniel L. Rubinfeld, Microeconomics, 4th edition (1997), Prentice Hall