

Everyday Libertarianism, Consequentialism and Income Tax*

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There is much I admire, and agree with, in Liam Murphy and Thomas Nagel's *The Myth of Ownership* (New York: Oxford University Press, 2002), but in this symposium I will focus only on a couple of key points where I have not yet been convinced by their claims, and on those points only insofar as they bear on taxation of *income*.

Here is how the main argument for one key point is rolled out in the first two chapters of the book. Private property is a legal convention, defined in part, at least, by the tax system. For this reason, no consideration of a just tax system can begin from, for example, what income earners supposedly own (that is, from what is theirs), because there is no natural right to property. People are neither entitled to, nor do they deserve, property in virtue of their productive activity; rather, what they own is determined by the legal system, including that part of it concerned with taxation. Taxes must, therefore, be evaluated in light of an assessment of the system of property rights. Hence, what is, for example, just or unjust in a taxation system can only be assessed in terms of the justice or injustice of the system of property rights. Indeed, it is incoherent, according to Murphy and Nagel, to think that productive agents have any entitlement to keep, or, deserve to keep, all that they can earn, because, in the absence of the state acting to establish laws, regulations and a social infrastructure, there would be no markets for goods and services, for labour, for financial transactions, and so on. Despite the Hobbesian echoes, it is important to stress that the argument they have advanced is not about how things would be in a state of nature, or about how they might develop out of such a state, but about how, logically, things *must* be in a flourishing, predominantly private enterprise economy like that of the United States, or Australia. The argument I have briefly recounted is used to criticise 'everyday libertarianism', the conviction that people either are entitled to, or deserve, whatever income the market delivers them prior to any levying of state taxation.

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I will claim, first, that the above argument does not establish as much as Murphy and Nagel contend, and, so, second, that if they are to sustain their position they must place greater reliance than they appear to acknowledge on a supplementary argument they introduce somewhat later in the book. I shall now elaborate on these claims in turn.

First, contrary to what Murphy and Nagel contend, it does not seem incoherent, for example, to hold that, other things being equal, if A and B expend quite different amounts of effort on a productive task, and A produces more that is beneficial than B, that A deserves to have more of the property produced than does B.¹ (Egalitarians of my stripe think that, in reality, other things are rarely equal, but that is not the issue here.) At times, Murphy and Nagel seem to be assuming that the argument against everyday libertarianism implies that income generated by economic activity *notionally* goes into a common pool (albeit, in the world as we know it, things are not like that in fact). According to them, there is no property that individuals may legitimately claim until the overall tax take has been determined,² so, when particular individuals make an effort, or a contribution, or whatever, strictly, they earn only their post tax income. What the tax take needs to be will depend on how much the state requires to perform its functions, while ensuring that there are sufficient incentives, that there are appropriate allowances for expenses incurred in earning income, and so forth. For present purposes, it is more important to recognise that since taxation is not income withheld from those to whom it belongs,³ it must be part of what belongs to everyone. Toward the end of the book, Murphy and Nagel bridle at this suggestion and say that it is a misperception to think that they hold 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’.⁴ To support this reply they say that the correct place for the observation that we don’t own each other 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. It doesn’t justify starting with pretax income — over which individuals *couldn’t, as a matter of logic*, be given full private control — as the baseline from which departures must be justified.⁵

¹ A similar response could, of course, be offered on the basis of entitlements established by way of a voluntary agreement.

² Liam Murphy and Thomas Nagel, *The Myth of Ownership: Taxes and Justice* (2002) 32ff, 63.

³ Ibid 33.

⁴ Ibid 176.

⁵ Ibid (emphasis in original).

Even if this is an effective reply to the everyday libertarian, I do not see how it gainsays the proposition that what is produced is part of a notional common pool until the state determines what it will take by way of income tax. It is not the spectre of Marx's 'Critique of the Gotha Programme' to which I wish to draw attention, but, rather, that to defeat everyday libertarianism is not to defeat a range of more nuanced claims that find a place for individual effort or contribution, for voluntary agreements, and so on.

It might be said in reply, that for Murphy and Nagel, individual responsibility is to be exercised within a framework that promotes overall welfare. Nonetheless, it still seems to me to be a weakness that when, in one section of the book, they focus directly on the issue of individual responsibility, they consider only one end of the range of opposing views. In the section I have in mind, they say:

To give priority to the maximization of individual responsibility in this sense, over other values with which it may conflict, such as the promotion of the general welfare and equality of opportunity, essentially amounts to denying that we have responsibility for one another through the agency of the state.⁶

The only sense of individual responsibility they can have in mind here is the one adopted by extreme libertarians, not merely everyday libertarians. I think it odd that they ignore other views that would allow a role, albeit a lesser role, for individual responsibility, would be consistent with the idea of a notional common pool, and would not lead to a denial of all responsibility for others. Consider, for instance, the view that acceptance of the idea of a notional common pool neither implies that the obligation to provide for each individual's welfare is unlimited nor that individual responsibility should not be taken into account in determining an appropriate limit.

I turn now to the second, supplementary argument, which I indicated previously I would discuss. In chapter three, Murphy and Nagel produce an argument in which they explicitly respond to the question of whether desert should have a role to play in the determination of a just system of property.⁷ They do not attempt to give a direct answer to the question but, instead, an indirect one by way of considering what they think of as a parallel case, namely, the justification of a fair system of criminal punishment. Like, for example, H L A Hart in *Punishment and Responsibility* (1968), they

⁶ Ibid 63.

⁷ I think this further argument plays a crucial role in their thinking (even though it is the earlier one we are constantly reminded about in the course of the book). Because there is insufficient time to develop that thought here I shall simply explain the use to which they put what I have called 'the supplementary argument'.

propose that the system (of punishment) as a whole can only be justified on consequentialist grounds, not on grounds of desert. In the supposedly parallel matter of property the line of argument yields a Hume-inspired consequentialist position, according to which, a system of private property is held to be just in virtue of promoting more desirable social and economic outcomes than any of the alternatives. (Those who wish to retain any sense of individual responsibility presumably should look to the use of individual incentives.) That is why, for Murphy and Nagel, it is an empirical, not a moral, issue whether a system is acceptable when some are paid (what I, as an egalitarian, consider) obscene salaries, because the test for acceptability is whether the system delivers more (to those not paid such salaries) than any alternative that seeks to take individual desert (or, entitlement) into account.⁸

Despite their attack on everyday libertarian ideas, Murphy and Nagel do not wish to challenge the existence of massive pretax differentials in income; indeed, they are prepared to accept massive post tax differentials as well (provided there is a decent social minimum safety net in place), because they do not think it is *psychologically* possible that citizens can be persuaded radically to set aside their own interests in favour of those of others.⁹ Their hope seems to be that the arguments they have given will have their greatest impact on the psychology of income earning tax-payers and, via that means, on political values. The position they end up advocating in relation to income tax is, in practice, unlikely to result in dramatic change to taxation policies. Perhaps they give a clue to their recognition of the moderate character of the project, in this respect, at least, when they declare (in a passage I found troubling) that '[i]ndividual freedom and responsibility are preserved so long as there is *some* system of private property and choice of employment'.¹⁰

⁸ Murphy and Nagel, above n 2, 62.

⁹ Ibid ch 9.

¹⁰ Ibid 63 (emphasis in original).