

## **Property, Taxation, and the Budgetary Commons**

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The central concern of economic analysis has been to explain how a market economy generates an orderly pattern of economic activity even though there is no person or office that creates this order. The order that we observe emerges as if it were imposed by an invisible hand. Only there is no hand. Rather, many hands participate in the generation of orderly economic life. What promotes the coordinated patterns of our economic life is the framework of institutional rules within which people conduct their activities. This institutional framework is characterized mainly by the principles of private property and freedom of contract. Economics is centrally concerned with explaining how it happens that when economic relationships among people are governed by the principles of private property and freedom of contract, productive patterns of economic activity emerge and societies flourish.

One question that arises is how government relates to this institutional framework. Nearly all schools of thought assign to government an important role in maintaining and preserving this institutional framework. This leads to justifications for such things as military, police, and courts as instruments for preserving and maintaining this institutional framework. But modern governments do far more than this. Through their budgetary operations, governments provide a wide array of services, including parks, schools, retirement annuities, medical insurance, and weather forecasts, to mention but a few examples.

In this vein, James Buchanan (1975) makes the conceptual distinction between the protective and the productive states. By protective state, Buchanan refers to the state's maintenance of a framework of property and contract within which people relate to one another. It is helpful to think of economic life as a kind of game that people play, in which personal conduct is governed by rules regarding such things as property and contract. In a market economy, personal conduct is governed by the rules of private property and freedom of contract. In this setting, the protective state is a type of referee or umpire that seeks to ensure that people play by these rules. By contrast, the productive state is a player in the organization of economic activity. The productive state arises when people use their rights of property and contract collectively to form state enterprises. The formation of such state enterprises as schools and subway systems, according to the logic of the productive state, follows the same principles as the formation of such private enterprises as restaurants and hardware stores. People thus buy some services from privately organized vendors and other services from publicly organized vendors.

For the most part, the theory of public finance treats public budgeting as simply a different type of market transaction. Taxing and spending are treated as if they were merely different uses of property and alternative forms of contract. Public budgeting reflects simply different particular uses to which people put their property. People might buy shoes from a retail store, and at the same time they might buy parks from a city. Where they would pay market prices for their shoes, they might pay taxes for their parks. Taxation changes the identity of the vendor

from whom purchases are made and to whom orders for production are placed, and nothing more. It is simply one particular use that people make of their private property. Different rates of tax correspond to different collective choices regarding the uses to which people put what is still their private property.

This paper challenges directly this common institutional presumption about property and governance. It does so by treating budgetary operations as vehicles for transforming private property into common property, thereby changing the governance relationships that operate within a society. At its most fundamental level, taxation converts private property to common property, with the state serving as the arena where rules for governing the commons are made. The tax side of the budget is where obligations to stock the common stores are apportioned among the citizenry. The appropriations side is where citizens compete for access to those common stores. As a result of this competition, individual citizens differ in the amount of access they secure, just as they differ in the obligations to stock the commons that they are forced to bear. Where standard fiscal analysis treats taxation as one component of a private property order, here taxation is treated as a means of transforming property, as well as the associated patterns of governance, from private to common.

### **Taxation as a Use of Private Property**

It should be said at the outset that not all budgetary operations or processes necessarily convert private property into common. The history of fiscal scholarship contains a good number of formulations whereby state

budgeting is thought to act consistently with a framework of private property and freedom of contract. Surely the best known of these formulations is Knut Wicksell's (1896) contribution to justice in taxation. This formulation plays a central role in constitutional political economy, as articulated initially in James Buchanan and Gordon Tullock (1962) and as elaborated in Richard Wagner (1988).

Wicksell thought that it would be possible through proportional representation to select a parliament whose members would be broadly representative of the society from which they were selected. If the parliament were a small-scale replica of the society at large, and if members of parliament were subject to the same laws, obligations, and privileges as everyone else in society, a rule of approximate unanimity within parliament would correspond to approximate unanimity within the society at large. In this case, the conflict between private and collective property would be eliminated through the incorporation of the state into the order of private property. Political enterprises would compete on equal terms with private enterprises.

While Wicksell's formulation is best known in the history of fiscal thought, the Cameralist originators of the theory of public finance, who thrived throughout the Germanic lands from roughly 1650 to 1850, had a similar orientation (see Jürgen Backhaus and Richard Wagner (1987)). For the Cameralists, taxation was a last resort method of public finance. States possessed property, and the Cameralists argued that princes should be able to manage their property so as to generate sufficient revenue to provide public services throughout their lands. A

prince who resorted to taxation was a failed prince who at the same time was impeding the well being of those who lived within his lands. In the Cameralist orientation, as in the Wicksellian framework, state budgeting was conceived ideally as something that took place within the framework of property and contract, as against transcending or transforming that framework.

Site value taxation, as explored by Fred Foldvary's chapter in this book, in principle can operate as a variation on the Cameralist theme. To the extent that public services make location within the boundaries of that government more desirable, land values will increase. A government that finances its services from those increases in land values is actually charging people something like market prices for the services it provides. In this case, site value taxation becomes a form of market price. To the extent this happens, government is acting as but one participant among many within an economic process that is governed uniformly by the principles of property and contract.

### **Democracy and The Budgetary Commons**

Whether government acts within the rules of property and contract or whether it acts to transform those rules is a knotty institutional question that lies at the confluence of fiscal philosophy and fiscal practice. Just as we can distinguish between types of property, so can we distinguish between forms of democracy. Democracy is commonly taken to mean any system of governance where political offices are filled by periodic election. There is nothing particularly wrong with this minimalist approach to definition. Yet it is no more informative

than describing a group of people as "playing ball." When faced with such a statement, we may be sure that those people are not playing with cards. But we learn no more than this from this description.

Similarly, to hear that a system of governance is democratic tells us only that people are invited periodically to vote, which thereby tells us that they are not governed by generals or by royal families. While we learn something when we hear that people are playing ball or are being governed democratically, we do not learn much. If we wanted to learn more about their play, we would need to learn more about the particular types of ball they were playing. This desire would lead us into an inquiry about how different rules governing play correspond to different particular ball games. It is the same for systems of democratic governance. Different rules would generate different patterns of democratic governance and different political outcomes, partly because of differences in incentives that are created and partly because of differences in knowledge that are generated within different systems of governance, as explained in Dan Usher (1992).

With respect to democratic governance, what is of central importance is the relationship between property and democracy, as noted in the various essays in Charles Rowley (ed.) (1993). The fundamental disjunction lies in whether property is prior to and a limitation on democracy, or whether is a creation of democracy. The vision that dominated the American constitutional founding was clearly the former. People and their rights of person and property are prior to government. Governments are created to preserve and protect those rights.

The powers of government are derived from the consent of the governed. This is a vision of a limited government, with the limitation residing in the superior claim of people to their own property. In the limit, a government is treated as just another form of voluntary association. People may agree to join a swimming club, but the jurisdiction of the club is only what those people have agreed to. The club is in no sense a source of rights, but rather is merely a reflection of those peoples' uses of their prior and superior rights.

This principle of governance constitutes liberal democracy. Human relationships are governed within a framework provided by the legal principles of private property and freedom of contract, and government itself is constituted consistently with those principles. This framework for governance generates the pattern of commercial activities that constitute an open or competitive market economy. In such a system of freedom of competition, commercial activities are organized consensually. People are free to do as they choose within the framework of property and contract. Someone who wants to start a newspaper can do so, and there is no particular person or office of authority that can prevent that project from going forward. The publisher will have to convince all kinds of people, including writers, advertisers, and customers, to support his project if it is to be successful. But all of these choices are made voluntarily, and there is no particular person whose permission is necessary and without which the project cannot go forward. This freely competitive economy is the economic instantiation of a system of liberal democracy, where government itself acts within, and is limited by the principles of private property and freedom of contract.

If private property is instantiated politically as liberal democracy, social democracy is the political instantiation of common property. In this setting, property is held commonly and the state serves as the arena within which access to the commons is governed. What are treated as rights of property evolve out of the activities that take place within the arena that comprises the state. What is regarded as property in this case results either from a direct grant by the state or from a disinterest of the state in asserting its prerogatives. Property in broadcasting, to mention but one of numerous possible illustrations, comes through grants from the state. No one can broadcast without permission of the Federal Communications Commission. Property in this instance is more on the order of a usufruct. What can be done, or what must be done with that property is defined and controlled by the state, and may be amended pretty much at the state's choosing.

There are also many areas where the state shows no interest, at least to date, in exerting control. Grass cutting and baby sitting, for instance, are still organized through open competition within a framework of private property and freedom of contract. Even here, however, there is no principled reason under social democracy why the state could not exert control over these matters. The state simply cannot be involved in everything, so there will exist spheres of individual autonomy. What limits the reach of state action, however, is simply a calculus of state interest, and not some principled limit on the reach of the state.

A system of social democracy generates a system of regulated or closed competition, under which the principles of property and contract are relegated to



the background, as the foreground comes to be occupied by the relevant regulatory edicts. Some of these edicts will be general in their coverage, as in such things as the myriad rules governing discrimination. Other of these edicts will be specific to subsets of activities, as illustrated by marketing orders in agriculture or the creation of particular minimum wage requirements in construction, the proliferation of which are examined in Richard Epstein (1995).

There is an economic logic to the entire range of undertakings and outcomes of any political regime. The pattern of political activities conforms as fully to an economic logic as does the pattern of economic activities. This insight from the scholarship on public choice has now become common knowledge among students of political economy, as explained in William Mitchell and Randy Simmons (1994). Within the rules that characterize a particular political regime, there will exist a pattern of outcomes and policies that emerge from the interactions among the participants within those regimes. The set of rules that characterize a system of social democracy will generate a set of policy outcomes that has survival power within that regime.

Social democracy and liberal democracy are polar models of democratic governance, just as private and common property are polar models of property rights. The United States was founded as a system of liberal democracy, and has undergone a widespread transformation into a system of social democracy. This is not to say that this transformation has gone smoothly and without resistance. Nor is it to say that it is complete-or irreversible. There is resistance to that transformation, and in scattered places there are even signs of some

possible reversal. Still, recognition that there are two ideal forms of democracy corresponding to two ideal forms of property rights will be important in thinking through the relation between state budgets and market processes.

### **The Fiscal Commons**

For the most part, particularly at the national level of government, state budgeting transforms private property into common, as explained in Richard Wagner (1992). To be sure, not all collective budgeting takes place on a fiscal commons. A good deal of such budgeting takes place within a framework of private property. Among other things, there are a large number of clubs, civic associations, and even local governments that engage in budgetary operations without exhibiting phenomena associated with the tragedy of the commons. For the most part, common property budgeting arises at the level of the nation state.

With the fiscal commons, the produce from the commons is provided not by Mother Nature but through taxation. The fiscal commons is stocked through taxation, with the tax code stipulating the liabilities of different people within a society to contribute to that stocking. For instance, a flat-rate tax of 20 percent on income would require each person to devote 20 percent of his productive effort to stocking the fiscal commons. The spending side of the budget reflects the efforts of people and their interest groups to compete for shares of this budgetary commons. Those people who are more effective at political organization will fare better and gain larger shares of this budgetary commons.

To be extent public budgeting takes the form of a fiscal commons, we should expect to observe various phenomena associated with the tragedy of the commons. When property is owned privately, the owners of property individually bear responsibility for the value consequences of their actions. When property is owned in common, those value consequences are diffused throughout the relevant society. It is this diffusion of consequences that was described as the "tragedy of the commons" by Garrett Hardin (1968). While Hardin's essay attracted strong attention, the economic consequences of common property were explored well before Hardin, for instance by Frank Knight (1924) and H. Scott Gordon (1954). With private property, individual owners can exclude others from using that property without receiving the owner's permission. With common property, there is no such right to exclude. In some cases, access to a commons will be open to everyone. This situation is the pure or classic form of common property. More generally, common property refers to some form of collective ownership where property is held jointly by some collective body, and where ownership shares are not distributed severally among the members of that body. Governance of the commons thus takes place through some process of collective decision making (Ostrom (1990) and Yoon (2000)).

In the development of the economic analysis of common property settings, natural resource situations have supplied many examples. Oyster beds, as discussed by Angello and Donnelley (1975), provide an interesting illustration of the familiar "tragedy of the commons" model. Oyster beds within the United States are subject to private ownership in some states and common ownership in

other states. When oyster beds are owned privately, owners have a strong incentive to seek to maximize the value of the oyster bed. Among other things, this requires that owners avoid harvesting oysters that are immature. It also requires that they replenish the clutch, the deposits of rock or shell that are vital for the growth of oysters and which are scooped up along with the oysters.

Under common ownership, farmers have little incentive to return immature oysters or to replenish clutch. The bulk of any increased value that would result from doing these things would benefit everyone else who harvests the common oysters. States where common property is maintained have recognized these incentive problems, and have imposed restrictions on the minimum size of the oysters that can be harvested and have imposed requirements for the replacement of clutch. Regulations, however, can never replace fully the effectiveness of the incentives that private ownership generates naturally. Indeed, Agnello and Donnelley estimate that a conversion of commonly owned oyster beds to private ownership would increase the value of the output from the farming of oysters by about 50 percent.

In the presence of common property budgeting, as in the presence of common property generally, the self-interests of fiscal participants cannot be relied upon to promote good fiscal order. Individual oyster fishermen will not harvest oysters prematurely when they own the beds. When the beds are held in common, this is no longer true. The promotion of good economic order in this case requires auxiliary controls imposed by some regulatory authority. Such regulation, however, will never work perfectly and costlessly. Regulation will

impose its own costs, and it will follow a political calculus that may differ sharply from the economic calculus that private property entails.

The phenomena of common property budgeting occur on both the taxing and spending sides of the budget. The taxing side is a political arena where obligations to stock the fiscal commons are imposed. From an individual's perspective, the best tax is invariably one that other people pay. With wide differences in political effectiveness across people and the interest groups with which they are associated, widespread discrimination in the distribution of tax liabilities characterizes democratic processes, as Walter Hettich and Stanley Winer explain in their chapter in this book.

Through taxation, a structure of politically generated prices would replace the market prices that would arise under private property budgeting, a point that was set forward in Maffeo Pantaleoni (1911) and elaborated in Richard Wagner (1997)(1998). These political prices involve price discrimination, with those who are politically favored receiving lower prices. In turn, those lower prices are made possible by imposing higher prices on everyone else. To be sure, the state does not have unlimited ability to practice fiscal discrimination because people can to varying degrees withdraw their contributions to the tax base. Still, the state does have considerable ability to discriminate among taxpayers in ways that would have allowed opportunities for arbitrage in private markets.

Political price discrimination expands the scope for venality in politics. Political offices become more valuable objects to possess. The possession of an unlimited power to tax by the state increases the value of holding political offices

for two reasons, reasons that are political cousins to bribery and extortion. The political cousin to bribery is called "rent seeking" by economists. If tax discrimination is a permissible outcome of tax legislation, interest groups will seek to secure favorable tax treatment. This will take the form of exemptions, deductions, or exclusions from the tax base, the consequence of which is to generate a higher rate of tax applied to a narrower base. There will be, as it were, a market for tax legislation, whereby interest groups lobby for particularly desired tax provisions.

The political cousin to extortion is "rent extraction," which is explored in Fred McChesney (1997). Rent extraction is represented by threats to tax that are rescinded if the tax target responds as desired by the threatening politician. A possible change in a tax provision can be announced and a hearing scheduled, only later to be canceled if sufficient opposition materializes, with opposition being signified by such things as campaign contributions. In this case, money is being paid for nothing but a continuation of the present tax status. In contrast, with rent seeking money is being paid to secure some change in tax status.

At first glance it might seem as though legislative positions with responsibility for drafting tax legislation would be undesirable. It might seem to be far better to be able to hand out appropriations on the spending side of the budget than to collect revenues on the taxing side. Yet the facts are sharply the reverse. Members of the revenue-raising committees capture about twice the campaign contributions as other legislators. Members of the revenue committees also receive significantly larger honoraria and in-kind perquisites

than other legislators. The opportunities for fiscal discrimination that accompany the fiscal commons makes the opportunity to influence tax legislation particularly valuable. Citizens will pay for influence that might translate into favored tax treatment. They will also pay for influence that will prevent them from being on the losing end of tax discrimination. They will pay the political cousin of bribery to secure tax favors, and they will pay the political cousin of extortion to avoid tax harms.

On the expenditure side of the budget, life on the fiscal commons will also entail higher production costs than would be found with private property. Government is inherently a high-cost provider of whatever it provides, as compared with what would result under private-property governance. This theme is elaborated cogently in William Peirce (1999). The high-cost character of government enterprise is due to the separation of choice from liability that common property creates. Ordinary self-interest cannot be relied upon to secure efficiency on the fiscal commons. For instance, a government agency has few incentives to refrain from spending what has been appropriated because the savings cannot be carried forward to the next year. Moreover, a failure to spend the full appropriation may even be taken to indicate that the past appropriation was unnecessarily high. Additional layers of auditing, inspections, and other forms of bureaucratic control will be made necessary by common-property governance, and which will entail costs that are not present with the private ordering of economic transactions.

## **Property, Fiscal Sociology, And Tectonic Politics**

Carolyn Webber and Aaron Wildavsky (1986) argue that budgetary choices involve much more than a choice about how much people will spend at public goods stores relative to private goods stores. They are fundamentally conflict-laden choices among people over how we are to lead our lives. Private property and common property represent the basis for two alternative regimes for ordering human relationships, and these two regimes clash in important respects. Public spending takes place through various programs that constitute identifiable political enterprises, each with their particular clients and supporters. An interest group, moreover, has weak incentives to reduce its budgetary requests, because such reductions will simply leave more money available for other interest groups to harvest.

One implication of the relative inefficiency of the political enterprises that are established within the fiscal commons is that their very existence will create potential profit opportunities for competitive private enterprises. To the extent those private enterprises are able successfully to exploit those profit opportunities, the basis of support for the political enterprise will erode. To prevent this erosion, the political enterprises will have to erect auxiliary controls over the competitive efforts of private enterprises. For instance, in many cases political enterprises practice price discrimination. Through such discrimination, price reductions to favored clients are financed by the higher prices charged to other customers. Those higher prices, in turn, often create incentives for private enterprises to serve those customers at lower prices. Understandably, political



enterprises and their supporters seek to preclude such "cream skimming," for this would otherwise undermine the price discrimination that is essential for the support of the political enterprise. In any case, there will be a continual churning in the structure of regulatory restrictions within the fiscal commons, in response to the continuing cat-and-mouse game that the fiscal commons creates.

This clash between governing regimes can be illustrated by considering alternative approaches to the organization of transportation in urban areas. Such transportation could be organized wholly through private ordering. The mix among such things as cars, busses, and trains would depend on the choices of entrepreneurs, customers, and other market participants. It is surely conceivable that someone might invest in a fleet of busses. The success of this bus enterprise would depend on its ability to offer an attractive product to people who face such other options as driving their own cars, forming car pools, and moving closer to their places of work.

Suppose urban transportation had been organized wholly through private ordering, and now a publicly organized bus service is established. To the extent this bus service could not be competitive with private enterprises because of its higher cost character, the public enterprise could not survive competition with the private enterprises. For the public enterprise to become competitive, it will have to use political power to gain some competitive advantage. There are several ways this can be done. One is for the state to subsidize the public enterprise. This subsidy would allow the public enterprise to charge lower prices than it would otherwise have to charge, thereby strengthening its competitive position.

Another way is for the state to impose particular disabilities upon competitive private enterprises. Taxes can be imposed on private busses to increase their costs of operation. Regulations can be imposed that require drivers to be full-time employees, again increasing costs of operation and strengthening the relative competitive position of the political enterprise. Obstacles can also be imposed on services and activities that are competitive with the political enterprise. For instance, taxes can be imposed on private parking garages and restrictions can be imposed on the sizes of such garages. These taxes and restrictions increase the cost of using private cars, which again strengthen the relative competitive position of the political enterprise. An almost endless array of taxes, subsidies, and regulatory restrictions can emerge to strengthen the inherently weak competitive position of the political enterprise. This is an element of the dynamics of the mixed economy, as noted by Sanford Ikeda (1997).

### **Mitigating The Tragedy Of The Fiscal Commons**

Above the entrance to the headquarters of the American Internal Revenue Service is chiseled a quotation from Oliver Wendell Holmes: "Taxation is the price we pay for civilization." A surface reading might suggest that we should acquiesce in whatever taxes are imposed on us, because the alternative would be even more painful than the taxes we pay. A deeper reflection on Holmes' statement, however, reveals ambiguity about taxation. That some taxation may strengthen civil society does not mean that any and all taxation will do so. If

taxation is too heavy or is otherwise inappropriate, it will erode rather than support the flourishing of civil society.

Taxation most surely represents a form of Faustian bargain, for reasons presented by Vincent Ostrom (1987). Taxation is an instrument of evil, in that it injects the use of force into what should be peaceful, voluntary human relationships. We countenance the evil because we think the alternative will be an even worse evil. If the alternative to taxation is the absence of government and civil order, some taxation is necessary to provide a framework for good civil order. In this respect taxation is truly a price we pay for civilization. That some taxation works to our common benefit does not, however, mean that any and all taxation does so. We can acknowledge with Holmes that proper taxation may well be a price we pay for civilization, while at the same time recognizing with our forebears that taxation becomes destructive if it is too high or wrongly imposed.

Some taxation is surely necessary simply to secure an economic order grounded in private property. If taxes were replaced by voluntary contributions, it would be impossible for anyone to claim that the state was involved in expropriating private property. At the same time, however, people would have strong incentives to take free rides on the contributions of others. As a result, such common valued services as civil order and national security, which require expenditures on military, police, and courts, are likely to be underfunded.

Taxation thus represents a type of "forced exchange," as Richard Epstein (1985) notes. This term might appear a bit oxymoronic at first glance, but it conveys an important truth. Government is not limited to purely voluntary

exchanges, in part because of disabilities such as those posed by free riding. Yet, while government thus possesses a power to tax, the use of that power is limited normatively by the requirement that it conform reasonably well to the exchanges that ideally would have been made, but which were precluded by such things as free riding. Taxes should mirror the voluntary payments that would have been made were it not for the problems of free riding. The difficulty, of course, is that there is no way truly to know what the pattern of those voluntary contributions would have been.

The principle of forced exchange treats taxation as a means of pricing state-supplied services to the citizenry. This treatment of taxation comprises a long and respected tradition among tax philosophers, and has come to be known as the benefit principle of public finance. This treatment is useful because it recognizes that there is a purpose to taxation, which is to allow people to provide valued services for themselves that they would be unlikely to secure nearly so fully or efficiently if the state did not possess the power to tax. When Justice Holmes was speaking of taxation as the price of civilization, he was touching upon some of the central features of the benefit principle of public finance.

To speak of taxes as prices also has its problematical side, however, because this simile is easily corruptible (as noted in Racheter and Wagner (1999)). In some cases the forced exchanges that taxation makes possible will be beneficial to all. But in other cases, taxation will be used as an instrument for the deprivation and abridgement of property. The dark side of the Faustian bargain is that the power to tax can also be used to expropriate property, which

would never happen with truly voluntary contributions. Among three adjoining neighbors, two might steal asparagus from a patch owned by the third. Should the three neighbors comprise a government and the majority support a tax on asparagus, what otherwise would have been theft will have been converted into tax policy. The best tax, after all, is always one that someone else pays, and governments offer plenty of scope to do just this.

The central feature that enables government to abridge rights of property through taxation is its ability to practice tax discrimination. This can be seen by comparing a state that possesses an unlimited power to tax with one whose power to tax is limited by a constitutional requirement of generality or nondiscrimination in taxation (see Hutt 1975). It is a quite different matter to tax asparagus if only one neighbor grows it than if all three do so. In the former case, the majority is agreeing to tax the minority. In the latter case, it is far more plausible to claim that the three neighbors are agreeing to tax themselves.

A principle of generality in taxation leads naturally to support for broad-based taxation. Although broad-based taxation would not eliminate all possible claims of tax discrimination, it would severely restrict the practice, as examined, for instance, in James Buchanan and Roger Congleton (1998). A broad-based tax on income, where the entire base is taxed at the same rate, would conform to reasonable notions of generality in taxation. There would be no scope for political position to influence a person's tax liability. The same rate of tax would apply to everyone, and each person's tax liability would depend simply on his

own income or consumption in conjunction with the tax rate that was enacted through the political process.

Broad-based, nondiscriminatory taxation impedes efforts to use taxation to reward or punish certain forms of activity. The very principle of nondiscrimination is one that asks the state to be neutral toward all kinds of activities. Yet a great deal of tax legislation rewards or punishes specific forms of activity. The principle of nondiscrimination clashes with the use of taxation to punish and reward. Once a government acquires the habit of rewarding or punishing particular types of activity, the principle of broad-based, nondiscriminatory taxation quickly evaporates under the heat of politics. What results is an unlimited power to tax, where the only limit on the reach of the tax collector is the pragmatic one of political pressure and votes.

Economists use the prisoners' dilemma to illustrate situations where a sequence of choices may yield outcomes that are harmful to nearly everyone, even though each of the individual choices might have seemed wise to the person making the choice. A similar dilemma exists when approaching the issue of discrimination in taxation. A requirement of nondiscrimination would be a fairly strict limit on the power to tax, and would prevent progressive taxation, along with a plethora of exemptions, deductions, and the like.

There is no doubt that sincere people can come up with compelling reasons why exceptions to the principle of nondiscrimination should be made. Proponents of such purportedly good discrimination can find some support among the tax philosophers. Tax policy, however, is made by political realists

and not by tax philosophers. The elimination of nondiscrimination as a constitutional principle invites the political realists as well as the tax philosophers to think of ingenious ways to use taxes as a form of political and social control. Rent seeking and rent extraction will flourish once a principle of anything goes replaces nondiscrimination as a guiding norm. There is almost no cause that cannot be claimed to be a good one if it is supported by taxes placed on other people.

## References

- Agnello, Richard J. and Donnelley, Lawrence P. (1975) "Property Rights and Efficiency in the Oyster Industry." *Journal of Law and Economics* 18: 521-33.
- Backhaus, Jürgen and Wagner, Richard E. (1987) "The Cameralists: A Public Choice Perspective." *Public Choice* 53: 3-20.
- Buchanan, James M. (1975) *The Limits of Liberty*. Chicago: University of Chicago Press.
- Buchanan, James M. and Congleton, Roger D. (1998) *Politics by Principle, Not Interest: Toward Nondiscriminatory Democracy*. Cambridge: Cambridge University Press.
- Buchanan, James M. and Tullock, Gordon. (1962) *The Calculus of Consent*. Ann Arbor: University of Michigan Press.
- Epstein, Richard. (1985) *Takings: Private Property and the Power of Eminent Domain*. Cambridge: Harvard University Press.
- Epstein, Richard. (1995) *Simple Rules for a Complex World*. Cambridge: Harvard University Press.
- Gordon, H. Scott (1954) "The Economic Theory of a Common-Property Resource: The Fishery." *Journal of Political Economy* 62: 124-42.
- Hardin, Garrett. (1968). "The Tragedy of the Commons." *Science* 162: 1243-48.
- Hutt, William H. (1975) "Unanimity versus Non-discrimination (as Criteria for Constitutional Validity)." In *Individual Freedom: Selected Essays of*



- William H. Hutt*, Svetozar Pejovich and David Klingaman (eds.) (Westport, CT: Greenwood Press), pp. 14-33.
- Ikeda, Sanford. (1997) *Dynamics of the Mixed Economy*. London: Routledge.
- Knight, Frank H. (1924). "Some Fallacies in the Interpretation of Social Cost." *Quarterly Journal of Economics* 38: 582-606.
- McChensey, Fred. (1997) *Money for Nothing: Politicians, Rent Extraction, and Political Extortion*. Cambridge: Harvard University Press.
- Mitchell, William C. and Randy T. Simmons. 1994. *Beyond Politics: Markets, Welfare, and the Failure of Bureaucracy*. Boulder, CO: Westview Press.
- Pantaleoni, Maffeo. (1911) "Considerazioni sulle proprietà di un sistema di prezzi politick" *Giornale degli Economisti* 42: 9-29, 114-33.
- Ostrom, Elinor (1990). *Governing the Commons*. Cambridge: Cambridge University Press.
- Ostrom, Vincent. (1987) *The Political Theory of a Compound Republic*, 2<sup>nd</sup> ed. Lincoln: University of Nebraska Press.
- Peirce, William S. (1999) "Government: An Expensive Provider." In *Limiting Leviathan*, Donald P. Racheter and Richard E. Wagner (eds.) (Northampton, MA: Edward Elgar), pp. 56-73.
- Racheter, Donald P. and Wagner, Richard E. (1999). "Faustian Bargains and Constitutional Governance." In *Limiting Leviathan*, Donald P. Racheter and Richard E. Wagner (eds) (Northampton, MA: Edward Elgar), pp. 1-9.

- Rowley, Charles K., ed. 1993, *Property Rights and the Limits of Democracy*.  
Hants, UK: Edward Elgar.
- Usher, Dan. 1992. *The Welfare Economics of Markets, Voting and Predation*.  
Ann Arbor: University of Michigan Press.
- Wagner, Richard E. (1988). "The Calculus of Consent A Wicksellian  
Retrospective." *Public Choice* 56:153-66.
- Wagner, Richard E. (1992) "Grazing the Budgetary Commons: The Rational  
Politics of Budgetary Irresponsibility." *Journal of Law and Politics* 9:105-  
19.
- Wagner, Richard E. (1997) "Parasitical Pricing, Economic Calculation, and the  
Size of Government: Variations on a Theme by Maffeo Pantaleoni."  
*Journal of Public Finance and Public Choice* 15:135-46.
- Wagner, Richard E. (1998) "Social Democracy, Societal Tectonics, and  
Parasitical Pricing." *Constitutional Political Economy* 9: 105-11.
- Webber, Carolyn and Wildavsky, Aaron. (1986) *A History of Taxation and Public  
Expenditure in the Western World*. New York: Simon and Schuster.
- Wicksell, Knut. (1896; 1958) "A New Principle of Just Taxation." In *Classics in the  
Theory of Public Finance*, Richard A. Musgrave and Allan T. Peacock  
(eds.) (London: Macmillan), pp. 72-118.
- Yoon, Jong J. (2000). "Politics as Tragedy: The Logic of Common Access to  
Social Value." *Journal of Public Finance and Public Choice* 18: 23-34.