From Ch. 2 of Liam Murphy and Thomas Nagel, *The Myth of Ownership,* Oxford University Press, 2003. p. 28-37.

VII. The Problem of Everyday Libertarianism

We have said that the principle of equal sacrifice depends on the idea that the distribution of welfare produced by the market is presumptively just. That idea in turn implies that justice does not require a government to alleviate even the most serious inequalities that the market might produce, or to provide minimal subsistence for those who lack food, shelter, access to health care, or the means of buying those things.

Hardly anyone actually holds this radical view on distributive justice, but a muted version of it infects much everyday thinking about tax policy. Even those who believe that the principle of equal sacrifice is insufficiently egalitarian in its implications may persist with the notion that justice in taxation is a matter of securing a fair distribution of sacrifice as measured against a market-outcomes baseline. The mismatch between this way of thinking about tax policy and what people actually believe about distributive justice (let alone what it is most plausible to believe) is not just a harmless intellectual confusion. Unfortunately, it has great political significance.

Let us take a closer look at the market-oriented view of distributive justice required by the equal sacrifice approach. (The issues raised here are discussed in greater depth in the next chapter.) Libertarian views come in a variety of different forms, but the two that are most important for current purposes can be referred to as the rights-based and the desert- based.34 The former turns on a commitment to strict moral property rights; it insists that each person has an inviolable moral right to the accumulation of property that results from genuinely free exchanges.

The implication for tax policy of rights-based libertarianism in its pure or absolute form is that no compulsory taxation is legitimate; if there is to be government, it must be funded by way of voluntary contractual arrangements.35 On this extreme version of libertarianism we should never reach the issue of the fair distribution of mandatory tax burdens, because all such burdens are illegitimate. However, as explained in the previous section, a less absolute libertarian position would authorize compulsory taxation to support a government that permits the market to operate, and that would justify sharing out the burden equally.36

According to desert-based forms of libertarianism, on the other hand, the market gives people what they deserve by rewarding their productive contribution and value to others. Such a view would imply that the market-based distribution is presumptively just without raising any objection to compulsory taxation—provided, again, that the burden is shared out equally.

We discuss desert-based theories of justice in chapters 3 and 5. Here we note just one point. The notion of desert entails that of responsibility; we cannot be said to deserve outcomes for which we are not in any way responsible. Thus, to the extent that market outcomes are determined by genetic or medical or social luck (including inheritance), they are not, on anyone's account, morally deserved. Since nobody denies that these kinds of luck at least partly determine how well a person fares in a capitalist economy, a simple and unqualified desert-based libertarianism can be rejected out of hand.

Both forms of libertarianism have implausibly radical consequences. But there is a still more fundamental problem with this approach to tax justice—a conceptual problem. Our use of libertarianism to make sense of the equal-sacrifice principle has relied so far on the following assumption: That so long as government does not pursue redistributive expenditure policies, the pretax distribution of resources can be regarded as the distribution produced by a free market. But, in fact, this is deeply incoherent.

There is no market without government and no government without taxes; and what type of market there is depends on laws and policy decisions that government must make. In the absence of a legal system supported by taxes, there couldn't be money, banks, corporations, stock exchanges, patents, or a modern market economy—none of the institutions that make possible the existence of almost all contemporary forms of income and wealth.

It is therefore logically impossible that people should have any kind of entitlement to all their pretax income. All they can be entitled to is what they would be left with after taxes under a legitimate system, supported by legitimate taxation—and this shows that we cannot evaluate the legitimacy of taxes by reference to pretax income. Instead, we have to evaluate the legitimacy of after-tax income by reference to the legitimacy of the political and economic system that generates it, including the taxes which are an essential part of that system. The logical order of priority between taxes and property rights is the reverse of that assumed by libertarianism.

This problem could not be avoided by moving from a baseline of actual pretax incomes to a hypothetical baseline of incomes in a government-free market world. There is no natural or ideal market. There are many different kinds of market system, all equally free, and the choice among them will turn on a range of independent policy judgments.
A flourishing capitalist economy requires not only the enforcement of criminal, contract, corporate, property, and tort law. (Those laws themselves are not natural but include evolving and contested accounts of limited liability, bankruptcy, enforceability of agreements, contract and tort remedies, etc.) In addition, most economists assume, it requires at a minimum a regime of anti-trust legislation to promote competition, and control over interest rates and the money supply to alternately stimulate or retard economic growth and control inflation. Then there are such matters as transport policy, regulation of the airwaves, and the way government alleviates so-called negative externalities of the market, such as environmental degradation.

All these functions of government are taken for granted by even the most ardent market enthusiasts. The problem for the sacrifice view here is that the choices government makes in discharging these functions affect market returns. How much profit an iron-ore smelter can generate will depend on the prevailing regime of environmental law. A person's fortunes on the bond market depend on government-influenced interest rate fluctuations. The upshot is that even if the destitute are left to fend for themselves, it still cannot be said that pretax outcomes are simply market outcomes. They are, instead, the returns generated by a market regulated in accordance with a certain set of government policies.

Choices about these matters cannot be made without appeal to substantive social values that go beyond whatever internal logic there is to the idea of a competitive market. Since that is so, the idea of a politically neutral market world that can serve as the baseline required by the sacrifice approach to taxation is a fantasy. Any pretax distribution—real or imaginary—is already shaped in part by judgments of political morality, and it is impossible to address questions of tax fairness without evaluating those judgments.

Altogether, the case against using pretax outcomes as the baseline against which fairness in the distribution of tax burdens can be assessed is so strong as to make it puzzling how anyone could have been attracted to this way of thinking about tax justice. The answer lies in the enormous appeal of what we have called everyday libertarianism. Even though the two ideas of strict, unqualified moral property rights and desert in market rewards may not survive cursory critical reflection, they are hard to banish from our everyday thinking. In both cases, we believe, the illusion is supported by the illegitimate extension of more restricted concepts beyond the boundaries within which they actually apply.
Consider first the idea of moral property rights in pretax income. We all know that people have full legal right to their net (post-tax) income; subject to contractual or family obligations, their money is legally theirs to do with as they wish. A legal property right to net income is obviously not an absolute moral property right to anything (let alone to pretax market returns), but in daily life it is hard to prevent the strong sense of legal rights from sliding into a sense of a much more fundamental right or entitlement.

From this point of view, it isn't just that it makes good pragmatic or economic sense for government to protect our current legal entitlements; it isn't even that, having once created these legal rights, government is morally required to protect the legitimate expectations that those rights generate. At the everyday level of what it feels like to live and work in a capitalist economy, the sense of entitlement to net income is firmer than that—we are inclined to feel that what we have earned belongs to us without qualification, in the strong sense that what happens to that money is morally speaking entirely a matter of our say-so. Though everyone knows that even our right to spend the money in our pockets is circumscribed, for example, by the obligation to pay applicable sales taxes, the instinctive sense of unqualified ownership has remarkable tenacity.

If people intuitively feel that they are in an absolute sense morally entitled to their net incomes, it is not surprising that politicians can get away with describing tax increases (which diminish net income) as taking from the people what belongs to them. It is then a short step to the thought that tax cuts give us back "our money" [As George W. Bush has often said of the federal budget surplus: "The surplus doesn't belong to the government, it belongs to the people."] and indeed that all taxation takes what belongs to us; what we are fundamentally entitled to is our pretax incomes.

Of course, virtually no one really believes that all taxation is illegitimate because it takes what belongs to us without our consent. Everyday libertarianism is, as we have said, a muted or confused version of the real thing. Nevertheless, the confused idea that net income is what we are left with after the government has taken away some of what really belongs to us certainly helps explain the conviction that the pretax distribution of material welfare is presumptively just (how could a distribution that gives people precisely what they are morally entitled to be unjust?), and that the question of justice in taxation is therefore properly a question of determining what is a fair distribution of sacrifice as assessed from that baseline.

We can comment more briefly on the other powerful influence, the idea of desert. Market returns are to a certain extent affected by a person's effort and willingness to take risks. Since that is so, it can seem preposterous to those who are both better-off and very hard-working to suggest that they do not deserve to be paid more than others who may be lazy and unadventurous. And, perhaps because people care more about what unjustly harms them than about what unjustly benefits them, they can easily ignore the fact that some of the other factors contributing to their economic success are not in any sense their responsibility and therefore can be said to have produced advantages that are not deserved. The natural idea that people deserve to be rewarded for thrift and industry slides into the much broader notion that all of pretax income can be regarded as a reward for those virtues. Here too, a normative concept is being taken beyond the context in which it legitimately applies.

So the unreflective ideas that we have unqualified moral entitlement to what we earn in the market and that higher market returns are in some sense deserved as a reward arise naturally within the everyday outlook of participants in a capitalist economy. It is true that almost nobody follows through on the idea that a market-generated distribution of welfare is intrinsically just—nearly everyone accepts the need for some kind of public assistance to the destitute, and not even the most radically antiegalitarian politicians argue for a tax scheme without a significant personal exemption. Nonetheless, everyday libertarianism has a distorting effect, for these exceptions to the libertarian outlook tend to be regarded as charitable gestures that do not challenge the basic approach to distributive justice. By placing the burden of proof on departures from market outcomes, everyday libertarianism skews the public debate about tax policy and distributive justice.

Tax policy analysis needs to be emancipated from everyday libertarianism; it is an unexamined and generally non- explicit assumption that does not bear examination, and it should be replaced by the conception of property rights as depending on the legal system that defines them. Since that system includes taxes as an absolutely essential part, the idea of a prima facie property right in one's pretax income—an income that could not exist without a tax-supported government—is meaningless. There is no reality, except as a bookkeeping figure, to the pretax income that each of us initially “has,” which the government must be equitable in taking from us. It isn't that there are no questions of equity here—justice is central to the design of property rights—only that this is the wrong way to pose them.

The tax system is not like an assessment of members of a department to buy a wedding gift for a colleague. It is not an incursion on a distribution of property holdings that is already presumptively legitimate. Rather, it is among the conditions that create a set of property holdings, whose legitimacy can be assessed only by evaluating the justice of the whole system, taxes included. Against such a background people certainly have a legitimate claim on the income they realize through the usual methods of work, investment, and gift—but the tax system is an essential part of the background which creates the legitimate expectations that arise from employment contracts and other economic transactions, not something that cuts in afterward.

There is no default answer to the question of what property system is right—no presumptively just method of distribution, deviations from which require special justification. The market has many virtues, but it does not relieve us of the task of coming to terms with the real values at stake in tax policy and the theory of distributive justice. There are no obvious answers to the range of questions about distributive justice we will pose in the next chapter; but one thing that should be obvious is that those questions must be faced by tax theory.