Taxation and Justice: A Classical Liberal Perspective

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Abstract

We attempt to present a classical liberal perspective on the subject of taxation and justice. We start by reviewing the development of the notion of justice over time and across various schools of thought. We then proceed to examine John Rawls’ theory of justice and its policy implications and economic theory of optimal taxation. After finding both approaches unsatisfactory, we defend a libertarian stand on the issue of justice. The main result of our reflections are three criteria which we afterwards use to examine normatively different ways of taxation. We conclude by saying that current tax systems satisfy neither of these criteria and deserve being changed.

1 Introduction

Are taxes “the price we pay for a civilised society” or are they rather an unnecessary evil which should be minimised, if not abolished altogether? What can be said about taxes from the point of view of ethics? Can they be just? If so, what are the necessary characteristics to make them just? How much should
different individuals pay in taxes? These and many other questions arise by contemplating the issue of justice and fiscal policies.

In a sense, to revisit this issue means to revisit the central questions of political philosophy because one’s ideas about taxation and justice are inseparable from what one thinks about the role of the state, ways how society should be organised and about equity in distribution of goods. We have no ambition to answer all of these immense questions in this essay, yet we would like to offer an outline of some of our reflections and to perform a review of the current state of knowledge concerning the relationship between taxes and justice.

It is a relatively easy task to define taxation. Taxes are coercive transfers of property from one individual or group of individuals to another. The purpose of taxation is thus to allow a different allocation of resources than the one which would otherwise have taken place. The difference between theft and taxation is in the fact that taxes are levied by governments and, in more civilised societies, are deemed to finance goods benefiting the population.

When speaking about justice, we inevitably raise normative issues. The common wisdom suggests that normative questions cannot be solved by rational deliberation. It is supposed that people differ in their visions of fairness and justice and these cannot be reconciled. Hence the only way these concepts of justice can be put into practice is by political process. It is obvious that such an approach is relativist and would make useless any debate about normative questions of economics and would make futile a large number of philosophical investigations. In contrast with this belief, we are convinced that rational deliberation can bring meaningful answers to such questions as which political and social institutions are just and even to the question of which tax systems can be considered just. Hence justice for us is a cognizable category which can be well defined and on which rational human beings can agree. In addition, justice means accordance with the necessary features of the human nature and the world. These include the fact that human beings are acting and rational creatures which operate in a world which can be best characterised by the category of economic scarcity. Thus the notion of justice is essentially the notion of accordance of human conduct or political institutions with the norms which can be deduced from these characteristics of human beings and the world. At this point we differ greatly from authors who try to define justice as an esoteric agreement of facts with a vague feeling of fairness, for the norms which can be deduced from these characteristics are essentially the well-known principles of private ownership.

This paper starts with a brief outline of the history of philosophical thought concerning justice. The purpose of this discussion is to set our subsequent debates about social justice, tax progressivity and various tax systems into a more general perspective. We then analyse John Rawls’ approach towards the notion of justice and briefly discuss his thoughts on optimal tax systems. After taking a fairly critical stand on his theory, we deal with economic theory of optimal taxation which endogenizes equity preferences. We then offer a classical liberal alternative to these concepts and try to defend the idea that taxes should be of very limited nature and destined to finance only the very basic functions of
the state. In the rest of the paper we normatively examine existing tax regimes.

2 Theories of Justice Throughout History

It might be interesting to put present debates about fiscal equity and fairness into a broader context, particularly by showing how the notion of justice developed over time and what are the historical sources for those who favour coercive redistribution and those who are in favour of a minimal state.

As a rule, authors who discuss evolution of a particular philosophical idea start by revisiting thoughts of the great thinkers of the ancient Greece. This paper is no exception and we think that there are good reasons for doing so – mainly the fact that contemporary theories of justice, state and redistribution are not and cannot be detached from Greco-Roman philosophical tradition and from the teachings of Christianity.

2.1 Ancient Greeks: Plato v. Aristotle

For ancient Greeks, the notion of justice is essentially a qualitative feature of a society – a good society being just and vice versa. Yet the most important Greek philosophers of the time greatly diverged on what can be seen as just and unjust.

An early definition of justice was proposed by Thrasymachus who perceived justice as whatever the strongest individuals decide it to be. There is no point in spending much time dismissing his definition; we will limit ourselves to saying that if this theory were true, then the whole body of philosophy and social sciences would be merely a part of zoology.

A much more sophisticated theory of justice was put forward by Plato. In the Republic, Plato understands justice (δικαιοσύνης) as the essential characteristic which binds societies together. To be sure, the idea of social contract was not known before him, yet his concept of justice was extremely idealistic or “virtue ethical.” For Plato it is not the purpose of justice to permit peaceful co-operation of individuals. Rather justice is a reflection of the vision of the good upon the soul of an individual. The good makes soul harmonious, strong, beautiful and healthy. Hence a just person is one whose deeds are consonant with such a vision.

This theory of justice is purely idealistic because it detaches actual acts from being just or unjust and bounds these characteristics to internal states of human soul. Hence to act justly does not mean to follow a set of well-defined rules but rather to feel in harmony with the idea of the good. It might be demonstrated that this theory of justice does not answer the most fundamental question it ought to answer – which social rules and institutions are just and which are not?

In contrast, for Aristotle justice was not merely an esoteric idea. Aristotle argued that justice is a set of rules of human conduct which are to be applied
in different contexts, such as distributive justice which deals with equity in
distribution of goods, restorative justice or retributive justice.

Perhaps the most important idea introduced by Aristotle was the notion of
equality and reciprocity. The notion of reciprocity can later be found in Kant
as the “golden rule” or the “universal imperative.” One should restrain from
doing things that he or she does not wish to be done unto him or her in similar
circumstances.

As far as distributive justice is concerned, Aristotle was referring more to the
society’s institutional arrangements than to psychic dispositions of individuals.
Societies and communities are just if the individuals are remunerated according
to their virtues and merits. Hence those who are more virtuous and more apt
deserve more than those who are less. A reasonable case can be made that this
position is at the beginning of modern classical liberal theories of justice and
sharply excludes all attempts to impose egalitarianism.

With respect to individual members of a society, a conduct is just from the
distributive point of view when the individual respects duly established and
just norms of distribution. Anyone who seeks more than his share of goods and
services has the vice of greediness (πλεονεχεία) and a just person is one who
recognizes the fair limits to the claims he can make on goods produced by his
fellow men.

It is true that, however innovative, Aristotle’s understanding of justice was in
several respects deficient. Just distribution depends on the virtue of individuals
and this virtue, on the other hand is related to one’s ability to recognize what
is his fair or just share. Hence the reasoning offered by Aristotle can be seen as
somewhat circular.

However that may be, the idea that there is no reason per se that goods
should be distributed equally among all members of the society and that they
should rather be appropriated according to well-defined merits of individuals is
the very basis of later, particularly classical liberal concepts of justice. One of
the important features of Aristotle’s approach was his rationalism – the idea that
justice is not merely a sentiment but rather a concept which can be discovered
by human reasoning, explained and made operational. It is of course true that
he did not find the criterion according to which we can say what the fair share
of goods and services is – this criterion can be discovered by grasping the notion
of private property, as demonstrated by classical liberal thinkers.

2.2 Christianity and Medieval Scholastics

It is usually believed that this feature distinguishes Aristotle’s theory of justice
– and with it its classical liberal follower – from the Christian concept of justice,
ultimately based on the idea of agapic love. From our point of view, there are
arguments why this needs not to be the case. The Book of Job for instance
embodies the idea that each man has rights given to him by God by the mere
virtue of his existence as a human being. And this assertion can be derived in
an utmost logical way from the assumptions that man has a constant nature,
that justice consists of applying the cognized truth, that universe operates in predictable way (as it was created) and that the nature of man implies free will and fallibility.

St Augustine thus interpreted justice as a set of immutable principles following from the divine reason and from the will of God. Hence states and laws which do not respect these principles are illegitimate. Likewise, St Thomas Aquinas saw justice as an imperative to render to everyone his due. With this perspective, one can act justly in every circumstance if he or she wills so.

To give to everyone his due is not a constant. Merits of persons change over time and so does scarcity of different goods and services. Hence Aquinas’ theory allows prices and wages to fluctuate not only across individuals but also over time. A disturbing feature of his theory is the endorsement of Aristotle’s extension of the reciprocity argument to market transactions – whatever is exchanged; to make the act of exchange just the value of goods exchanged must be equal. This paper has no ambition to describe the effects of this claim on further development of thinking in this area and finally on the science of economics, yet we must emphasize the unfortunateness of this approach.

2.3 Scottish Enlightenment

It might seem that the philosophy of 17th and 18th Century was a major bouleversement of the traditional notions of justice. This view, however, is very superficial, because both the French and the Scottish Enlightenment were simple extensions of the previous theories, be it platonic or aristotelian. This can be well seen on the example of two central figures of the Enlightenment, namely John Locke and David Hume.

Since the concept of justice is a major underlying theme throughout Locke’s political thought as a whole, natural justice sets the limits and provides the direction for civic justice via the concept of natural rights. Moreover, at its most basic level, Locke’s theory of justice is a natural law theory even more than a natural rights theory. Whereas individual rights are inalienable, they are nevertheless based upon, and limited by, the law of nature. According to Locke, justice is inconceivable without personal property – where there is no property, there is no justice. The essence of Lockean justice is the security of each person’s personal possessions as a right based on the law of nature. Lockean theory of property rights and the theory of justice which can be derived therefrom appears thus as a solid base for further refinement by following classical liberal theorists.

For Locke the existence and legitimacy of property rights is a necessary consequence of the nature of the world, a consequence which can be deduced by unaided reasoning. Now one should draw a distinction between justice in Lockean sense and morality as viewed by Hutcheson, Hume, Shaftesbury or Smith. For them, morality was a feature of sympathy or of the ideal of agapic love. For Hutcheson, universal benevolence is the highest and best of human motives, but we know this, not through reason, but through a moral sense (or sensitivity). Also, according to Hutcheson, the individual virtue of justice (ultimately)
consists in being motivated by universal benevolence, and he explicitly denies that benevolence can ever conflict with true justice. We think that by redefining justice as something based not on reason but solely on human benevolence, Hutcheson stands at the origin of a major semantic confusion.

Hume was as much as sentimentalist as Hutcheson, believing that judgments about virtue and rightness depend on our capacity for sympathy rather than on some form of reason (or on a distinct moral sense) and holding that being virtuous depends on feelings and motives like benevolence and sympathy rather than on reason. But he thinks that the sentimentalist owes us an account of how a sense of justice that is sometimes opposed to benevolence and sympathy can nonetheless develop out of such motives. Motives like benevolence, curiosity, and prudence Hume calls natural in the twofold sense: that they exist apart from social convention and that they do not require explicitly ethical reasoning in order to issue in action. But the virtue of justice is not natural and rather should be considered “artificial” to Hume, because it depends for its existence on human conventions and artifices and because the primary motive to justice is a sense of justice.

Now Hume thinks of the individual virtue of justice as comprising a certain kind of respect for property. The just person doesn’t steal from others and returns what he has borrowed (and Hume points out the similarity of this usage to the Aristotelian notion that justice consists in everyone getting his due, what he deserves). What Hume overlooks is the Lockean insight that the institution of private property is not an artificial one and is rooted in the nature of human beings and scarcity of resources. We will argue in following parts of this paper that there were other thinkers who grasped this fact better than Hume.

What is puzzling is that for Hume, fidelity to promises and law-abidingness and other virtues make part of justice and still cannot be explained solely by referring to property (while in fact fidelity to contracted promises is a logical extension of private property). Hence his attempts to root justice in the notion of property fail because he still considers justice as a virtue depending rather on spiritual characteristics of the individual than on actual acts and interactions between individuals.

On quite different grounds, David Hume rejects distributive justice as pernicious and government redistribution as impracticable.¹

¹He claims that:

"Ideas of perfect equality . . . are really, at bottom, impracticable; and were they not so, would be extremely pernicious to human society. Render possessions ever so equal, men’s different degrees of art, care, and industry will immediately break that equality. Or if you check these virtues, you reduce society to the most extreme indigence; and instead of preventing want and beggary in a few, render it unavoidable to the whole community. The most rigorous inquisition too is requisite to watch every inequality on its first appearance; and the most severe jurisdiction, to punish and redress it. But besides, that so much authority must soon degenerate into tyranny, and be exerted with great partialities; who can possibly be possessed of it, in such a situation as here supposed?" (Hume 1975, p. 194)
While his position is not exactly the same as the view of modern classical liberals, Hume raises a valuable argument against state involvement in redistribution. If the state was asked to ensure social cohesion and equality – or even to exercise utilitarian attempts to smooth the distribution of wealth in society – the expected outcome is well the one of unconstrained tyranny. In this regard, Hume anticipates Hayekian argument against soft versions of socialism as something which ultimately leads to serfdom.

Our historical review of various theories of justice might appear incomplete. We have not spoken about various thinkers of the 19th Century, most markedly the Utilitarians who did have an important impact on the current theories of justice. For different reasons we did not mention utopian approaches, neither did we treat various extreme theories such the Marxist, Leninist or Maoist. These omissions have been dictated by the limited format of this essay and by the fact that we tried to capture the basic structure of history of thoughts on justice without much of “beating dead horses.”

On the other hand, a different omission was intentional. We did not speak about the libertarian tradition which has one of its major sources in the figure of Frédéric Bastiat only to return to it at different points in this essay. In the meantime, we find it useful to explore the teachings of perhaps the most influential and definitely the most respectable proponents of welfare state and egalitarianism – John Rawls.

3 Modern Theories of Justice and Tax Systems: John Rawls‘ Revolt Against Nature

If one investigates different theories of justice, it is impossible to omit the writings of John Rawls. In fact, Rawls’ (1971) major work *A Theory of Justice* is a writing whose influence on political philosophy is difficult to compare with any other work in the past fifty years. It still remains to duly estimate the widespread effects this book had on thinking of many of our contemporaries. However, for reasons which we will explain in what follows, we are not those who would applaud this book.

In Rawls (1971) we can find an attempt to formulate a conception of social justice, which is primarily concerned with the justice of institutions or with the so called “basic structure” of society. Rawls intentionally refers to Kantian anti-sentimentalism when explaining the theoretical motives for constructing the two principles of justice, which emphasize the equality of basic liberties and opportunities and the distribution of goods in advantage of all in the society.

According to Rawls, distributive justice means that every person has a duty of fairness toward those people who are worse off. One way by which Rawls explains this duty is the idea that the benefits a person receives from the society are not products only of his efforts, but also results of contributions of other members of the society. The only way to harvest the fruits of ones labour according to Rawls is working within prosperous and productive society.
Another reason is the famous concept of “veil of ignorance.” For Rawls society should be organised according to an imaginary contract which would arise under counterfactual conditions of ignorance of individuals’ talents, sex, wealth, social status and so forth. Rawls argues that it is under these circumstances that all bias can be removed.

At this moment it can be emphasised that Rawls neglects that person can be productive in on his own. Furthermore, he completely omits the fact that within market interaction, individual contributions to overall productivity are well remunerated according to the marginal product of each factor of production. One may even feel that within a free market, there is no problem of distribution which would have to be solved, since distribution of wealth is an integral part of the process of its creation.

In the same manner, the notion of a veil of ignorance is a pure construction. It is an essential feature of human societies that they are composed of individuals whose abilities, intelligence, luck and subsequently income vary greatly. It is equally true, that individuals are aware of these differences and that they represent a natural fact of life. To say that social norms should be set as if they were not is completely arbitrary and cannot be defended on any ground.

Nevertheless, the assumption of the veil of ignorance leads to interesting conclusions. According to Rawls, if no one was aware of its potential position in the society than the obvious result would be an attempt to maximise the wealth of the poorest person. Hence according to Rawls, differences in wealth are justifiable only to the extent to which they make to poorest person better-off. In other words, society should be entitled to redistribute wealth up to the point in which the wealth of the poorest person attains its maximum. He admits that some degree of inequality is needed to preserve incentives for productive efforts.

This claim is again disputable. If the distribution of wealth in the Rawlsian “original position” was genuinely random, then one solution of ameliorating one’s position would be to maximise the mean income and to minimise its variance, the two optimisation problems being weighted according to the risk-aversion of the individual in question.

Maximising the welfare of the poorest person loses all justification when one abandons the assumption of veil of ignorance. Why should only the wealth of the poorest person be maximised at the expense of everyone else? Why not the wealth of the second poorest, of the thirty-fourth richest or of those whose name begins with a P? By what means does the poorest deserve to live at the expense of others? The answer is that there is no such justification readily available.

What are the tax policy conclusions of Professor Rawls’ theory of justice? These are several and, as we will show, they prove to be largely incoherent. First Rawls defends inheritance taxes on the basis that an unregulated transfer of wealth from people to their children would result in the entrenchment of wealth in particular segments of society. According to Rawls, individuals who are not fortunate enough to have wealthy parents do not merit worse starting

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2See Clark (1908).
points and worse life prospects than those who were so fortunate. At this point his theory rejects the notion of transferable property as a benchmark of justice, to which we adhere and which is aptly justified by a number of classical liberal authors. This is part of his larger belief that facts over which individual does not have full control should not be determinants of his well-being. Thus individuals do deserve neither their material heritage, nor their genetic endowment. According to Rawls, the fact that someone is by nature more productive and more handsome than someone else does not constitute a basis for rewarding him.

For many reasons, this is a theory that ought to be rejected. Firstly, one could raise the objection that there are no means to distinguish between true merits of a person and merits that are simply consequences of his natural endowment. Even if there were, by what means could we claim that the latter are illegitimate? Isn’t Rawls’ theory profoundly conceited when it considers individuals with their endowments being a simple material from which different features (natural endowment, one’s own efforts) can readily be distilled and the individuals treated accordingly? From this perspective, the following quote by Frédéric Bastiat seems to well characterize Rawls’ theory:

“En effet, ils [les socialistes] commencent par supposer que les hommes ne portent en eux-mêmes ni un principe d’action, ni un moyen de discernement; qu’ils sont dépourvus d’initiative; qu’ils sont de la matière inerte, des molécules passives, des atomes sans spontanéité, tout au plus une végétation indifférente à son propre mode d’existence, susceptible de recevoir, d’une volonté et d’une main extérieures, un nombre infini de formes plus ou moins symétriques, artistiques, perfectionnées.

Ensuite chacun d’eux suppose sans façon qu’il est lui-même, sous les noms d’Organisateur, de Révélateur, de Législateur, d’Instituteur, de Fondateur, cette volonté et cette main, ce mobile universel, cette puissance créatrice dont la sublime mission est de réunir en société ces matériaux épars, qui sont des hommes.” (Bastiat 1863b)

To sum up our main objections against Rawls’ approach, we would like to underline one feature of his theory. Rawls focuses on how wealthy individuals in different social positions are and how goods are distributed among them and from these observations he proceeds to establish rules for redistribution of wealth. But at the same time he ignores how individuals have acquired the goods in question. He completely disregards the question of legitimacy of one’s holdings. If one acquires property in a way which – by means of a general theory of property rights – is deemed just, then we can find ethical way to justify infringement on their possession in order to realise this or that redistributionist policy.

From a different point of view, we think that Rawls’ main fallacy lies in his confusion between fairness – in the sense of equality – and justice. World is inherently “unfair” in the Rawlsian sense, as people differ by their innate
abilities, talents and physical attributes. We, unlike Rawls, feel no call to qualify these natural differences as unfair. A simple way to put it is to say that the sole fact that one person is more talented or more beautiful does not distract any amount of these characteristics from anyone else. These more talented, wiser and more beautiful cannot be blamed for possessing these qualities in a larger extent than others. The fact that these differences exist is neither just, nor unjust, it is merely a fact of life.

And even if we did believe that such differences are sources of unfairness, we would not believe that it would be sensible to construct a theory of justice based on levelling them. The most important reason for it is the fact that such a levelling – and thus every attempt to bring Rawls’ theory to its logical conclusions – is indeed impossible.

3.1 What Would a Rawlsian Tax System Look Like?

Rawls didn’t say much about tax justice in particular, and what he did say is puzzling and inconsistent with basic tenets of his own theory of justice. For Rawls the tax system is just an instrument to achieve distributive justice and not a requirement of justice itself. Hence the tax should be a part of the governmental scheme that uses revenues to redistribute wealth to improve the position of the least well off person in the society.

From this perspective we would expect Rawls to prefer a progressive income tax. Therefore it is surprising that in his Theory of Justice he prefers consumption tax to an income tax and he proposes that it could have flat rates. This is rather interesting since we know that flat consumption tax would risk being regressive. Fried (1999) argues that the proposal of a proportional tax is illogical in Rawls’ theory and that it “stands as an island of deontological rights swamped by a sea of redistribution.” (Fried (1999, p.185)) Sugin (2004) says that it is not even necessary to explain how a flat consumption tax could fit into Rawls’ theory because Rawls’s enthusiasm for this type of tax may be exaggerated. In his Theory of Justice Rawls says: “Leaving aside many complications, it is worth noting that a proportional expenditure tax may be part of the best tax scheme” (Rawls, (1999, p.246)) Later in the text he says: “It may be better, therefore, to use progressive rates only when they are necessary to preserve the justice of the basic structure…” (Rawls, (1999, p.246)) and finally he concludes that if existing institutions are not just, then steeply progressive income taxes may be justified.

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3See Barbara Fried (1999).
4 The Theory of Optimal Taxation

It is commonly assumed that justice and economic efficiency are categories which are distinct, with economic science dealing solely with the issue of efficiency, while leaving the solution of the justice or fairness problem to value judgments of each individual. In the light of existing public finance theory, this is not entirely accurate.\footnote{See, e.g., Samuelson (1977).}

For a quite long time, economists have been incorporating society’s preferences about equity into the models of optimal taxation. Hence the results which these works yield should be perceived not only as answers to the question which tax is economically efficient (i.e. minimizing deadweight losses or being as neutral as possible) but also answer to the question which tax corresponds the best to society’s fairness considerations. Most of the works which incorporate society’s fairness preferences into the problem of finding optimal tax structure use a social welfare function for which the construction of the following weighted form of individual utility function is used:

\[ \Gamma(u) = \frac{u^\varphi}{\varphi}, \varphi \leq 1 \]

This function actually weights utilities of individuals in order to sum them into the utility of the society as whole. If the parameter \( \varphi \) tends to \( -\infty \), then is Rawlsian. This actually means that the utility of the society is affected solely by utility of the least well-off person. If, on the contrary, \( \varphi \) is close to 1, we have to deal with a utilitarian social welfare function which places the same weight on welfare of every individual.

We think that several points deserve to be made about this approach which might seem for many as a definite answer to the problem of fairness in economic science.

First thing to be said is that this approach does not justify steeply progressive tax systems as this recognizes that the poorer members of the society can only be made less well-off by high marginal tax rates on the richest individuals. In this regard, the most famous result is ascribed to Mirrlees (1971) who found that even a social welfare function which places a large weight on the welfare of the poor can be maximised by a tax which has marginal tax rate precisely equal to zero at the very top.

The second thing we wish to underline at this point is, that, although sophisticated and in many respects useful, theory of optimal taxation does not truly provide us with a solution to the problem of finding a fair tax. The parameter \( \varphi \) is to be set by the policymaker, according to his or her fancy and is thus completely arbitrary.

Furthermore, the maximisation of social welfare requires that a functional of the following form be constructed
\[
W = \int_{0}^{w_{\text{max}}} \Gamma(u(w))dF(w)
\]

Hence weighted individual utilities are aggregated into one functional which would measure society’s utility. From a methodological perspective, this must seem too difficult to swallow for anyone who knows that individual utility functions are ordinal and are defined only to an increasing transformation. Hence the cardinal values of \(u(w)\) are of no use whatsoever. In addition, basic tenets of microeconomics teach us that utility functions are individual and thus incomparable across different individuals. This invalidates the attempt to weight and aggregate them into one index.

Finally, can one truly think that the parameter of weighting individual utilities in order to aggregate them in one social welfare function has anything to do with the notion of justice or fairness, however broadly conceived? We do not believe so. From a philosophical perspective, the same objection that we used against John Rawls can be used against economic theory of optimal taxation. Neither justice nor fairness are functions of distribution of wealth in a society but only of legitimacy of holdings. The notion of fairness, as defined by Rawls and most of utilitarian thinkers should be rather called envy, for what else is the desire for other people’s rightfully acquired property?

5 Libertarian Paradigm

There is no point in insisting on the fact that we are not satisfied with the answers proposed by John Rawls and largely utilitarian modern theory of optimal taxes. We personally believe that a different approach towards justice and taxation is possible. As we will try to show in what follows, we adhere to the Aristotelian tradition which claims that there is a set of cognizable principle of justice which stem from human nature. And these principles are inherently connected with liberty and property. As Frédéric Bastiat used to put it:

"Existence, Facultés, Assimilation — en d’autres termes, Personnalité, Liberté, Propriété, — voilà l’homme. C’est de ces trois choses qu’on peut dire, en dehors de toute subtilité démagogique, qu’elles sont antérieures et supérieures à toute législation humaine." (Bastiat 1863b)

Indeed, the most persuasive objections against Rawls and his theory of justice – as well as against all other attempts to redistribute wealth – can be attained by providing a theory based on the principle that all human beings have absolute rights to their persons and to the fruits of their labour.

From the Lockean notion that everyone owns himself and that by mixing one’s labour with the material world, one can establish ownership of a portion
of the material world. Nozick (1974) explains that what is significant about mixing one’s labour with the material world is that in so doing a person tends to increase the value of a portion of the external world. He argues that in such instances, self-ownership can bring about ownership of a part of the physical world. The Lockean Proviso means: (1) that previously unowned property becomes owned by anyone who improves it; (2) that an acquisition is just if and only if the position of others after the acquisition is no worse than their position was when the acquisition was unowned or owned in common. In the same manner a transfer is just if it is based on the consent of the concerned individuals and the possessions being transferred have been acquired justly.

From this theory of appropriation and transfer of property it is not difficult to deduce Nozick’s best known argument is that taxation of labour is “on a par with forced labour.” The central idea in Nozick’s and Rothbard’s writings is that no one can legitimately interfere in someone else’s life. This principle is for Nozick prior to the existence of society and makes of individuals ends in themselves. One can see this approach as a reformulation of Kant’s categorical imperative, used to judge legitimacy of social and economic interaction of human beings.

If a person is forced to pay taxes from labour, he is in fact forced to work for someone else since part of his earnings will be taken from him even against his will.

“A slave told by his master that he can choose between chopping wood, breaking rocks, painting the house, or even painting a picture, but that he must do one of the other of these chores, would not be any less a slave.” (Feser, 2000, p. 221)

If a person decides to work any insignificantly small amount of hours or minutes, he still cannot escape from paying taxes.

“It is not quite the same as the general claim that taxation interferes with individual liberty insofar as its enforcement is intrusive and it prevents one from doing what he wants with a portion of his income, for there are many who would find such infringements of liberty acceptable but nevertheless consider uncomfortable the notion that taxation also amounts to forcing people to work.” (Feser, 2000, p. 221)

We may as well look at it as if the state was stealing labour from the person by taxing him and therefore we can speak about theft.8

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7 See Rothbard (2003).

8 “A slave may own no part of his master’s land or tools, and thus arguably he cannot own whatever he produced using them – vegetable, say – but he is nevertheless a slave, even if the is allowed to eat some of the vegetables and thus labours partly for himself. The master might even allow him to idle away the days if he likes, but insist that if he labours to any extend, some of his labour
To put the problem in a simpler way, it is possible to assert that one owns his labour. This can be concluded from the right not to work, as since no one can force anyone else to work if he decides not to. Since the employer owns a sum of money to pay for one’s labour, we come to the point that they can legitimately trade these two goods. Hence there is no justification for a state to interfere into this transaction.

Nozick maintains – incoherently perhaps – that the government is entitled to raise money to finance activities limited to the protection of property rights. This view rules out taxation for purposes other than property rights protection. It is thus not surprising that Nozick rejects taxation used to finance redistribution of income in a society. What might be surprising for some, however, is the fact that his reasoning in this regard is underpinned by a very solid theory of equality which entirely demolishes utilitarian as well as Rawlsian views concerning economic redistribution.

From the idea that individuals should exercise absolute control over their conduct and use of their talents and abilities – these being different for everyone – it follows that the true notion of equality must be that of equal treatment before the law. Hence all individuals should be identically subject to the same set of universal rules and the government should not grant special privileges nor impose special burdens upon no man or group of men. The contrary view is referred to by Nozick as “end-state equality” and involves every time a coercive interference with the process of voluntary cooperation to decrease differences between their incomes, wealth or standard of living. But to bring about more equality in this material sense, the government must treat its citizens unequally and discriminate against those with better voluntary exchange outcomes in favour of those with worse outcomes.

Hence these two theories of justice are incompatible and it is precisely for this reason that the end-state theory should be rejected. The equality before the law follows from a number of irrefutable axioms concerning legitimacy of holding and acquisition and if equality before the law excludes “end-state equality” then the “end-state equality” theory does not hold.

From a different perspective, libertarian theory does not make redistribution impossible and is far from being a selfish political philosophy. Once a person is in rightful possession of a certain thing, then he can legitimately transfer this property in whole or in part to whomever he pleases, including charitable organisations or simply persons in need.

must be for the sake of the master: if the slave grows tomatoes because he wants them, the master will take a portion of them; if he tries to grow only one tomato for himself, the master will nevertheless take a third of it; if to avoid giving the master that third he tries somehow to grow only two thirds of a tomato, the master will take a third of that tomato; and so forth. Insofar as the master “taxes” away a portion of the product of his labour, the slave has obviously been forced to work for purposes other than his own, even though he has no property right in the product of his labour.” (Feser, 2000, p. 222)
5.1 Which Tax System?

We should be made clear that the classical liberal theory of justice does not provide any justification for state being involved in redistributionist policies. One does not even need to adhere to the theory of justice, as proposed by Nozick and Rothbard, to see that redistribution leads to philosophical problems which cannot be solved.

But what is most important from our view, if one is a Rawlsian, a Utilitarian or an extreme version of Egalitarian, then one must adhere to a theory of just distribution of goods which contradicts the ethical foundations of liberty, as we outlined them in the preceding section. As far as one is not able to refute the principle of ownership and self-ownership, it is not justifiable to propose any other set of social rules which are in conflict with the ethical framework of a free society.

In a different context, the notion of “social justice” as basis for redistribution was investigated by probably the most important classical liberal thinker of modern times, Friedrich von Hayek who concluded that the whole notion is simply a mirage that has no meaning whatsoever in a society of free individuals.

“To discover the meaning of what is called ‘social justice’ has been one of my chief preoccupations for more than 10 years. I have failed in this endeavour - or rather, have reached the conclusion that, with reference to society of free men, the phrase has no meaning whatsoever.” (Hayek 1978, p. 57)

To say it from a practical perspective,

"when we ask what ought to be the relative remunerations of a nurse or a butcher, or a coal miner and a judge at a high court, of the deep sea diver of the cleaner of sewers, of the organiser of a new industry and a jockey, of the inspector of taxes and the inventor of a life-saving drug, of the jet-pilot or the professor of mathematics, the appeal to ‘social justice’ does not give us the slightest help in deciding." (Hayek 1976 pp. 77-78)

More than a century before Hayek, it was Frédéric Bastiat who warned that, once state becomes engaged in activities which serving this or that group of individuals – be it the poor or the disadvantaged – the result of such policy is a conflict which cannot be solved. Contrary to the common wisdom, redistribution is not a way to “social cohesion” but – being a process of coercive transfer of property from one man to another – leads only to a struggle between various interest groups:

"[T]ant qu’il sera admis en principe que la Loi peut être détournée de sa vraie mission, qu’elle peut violer les propriétés au lieu de les garantir, chaque classe voudra faire la Loi, soit pour se défendre contre la spoliation, soit pour l’organiser aussi à son profit. La question
politique sera toujours préjudicielle, dominante, absorbante; en un
mot, on se battra à la porte du Palais législatif. La lutte ne sera pas
moins acharnée au-dedans.\textsuperscript{11} (Bastiat, 1863b)

Hence in the light of classical liberal theory, it is sensible to say that the
purpose of taxation and state activities in general should not be to redistribute
wealth. But what should the government do and for what purposes should it
levy taxes?

The only imaginable purpose of government existence, besides the above
rejected goal of social justice, is to remedy the so-called market failures, i.e.
supplying public goods, compensating for externalities and struggling against
uncompetitive market structures.

We fear that all these three bases for government action are at least as
disputable as the mirage of social justice. When discussing government inter-
ventions remedying uncompetitive practices, one could underline that these are
based on very contestable idea of market competition, which insists on the num-
ber of competitors, market shares and technical characteristics rather that what
is truly essential, i.e. competition as a process of discovery.\textsuperscript{9}

When speaking about externalities and public goods there exists a good deal
of classical liberal theory about private solutions to the problem and about some
public goods not being public goods at all. The notion itself of a public good
is not straightforward and there are reasons to think that it cannot possibly be
made operational.\textsuperscript{10}

Having this in mind, some scholars have been lead to assert that in a society
based on individual rights and private ownership, there is no legitimate role for
the state. We must confess that we cannot object anything to this intellectual
position and that we even adhere to it. In this setting, the just tax system is
no tax system at all and the just tax is no tax.

We cannot stop our analysis here, however. Governments and taxes are
facts of life and nothing suggests that this might be changed in the near future.
Hence a topical issue to be addressed is what taxes and what tax systems can
be considered just – or the least unjust – provided the continuing existence
of government and its expenditures. These expenditures must be related only
to the most basic tasks one could ever demand of a state, i.e. public goods
provision in the form of providing security and enforcing property rights.

To be able to perform such analysis of tax systems, one has to know the
criteria according to which he or she will evaluate various tax systems. The first
and the most important criterion is readily available: provided that taxes are
inherently illegitimate and can be compared to theft, one can say that the lower
the tax burden is, the less unjust the tax system is. As a result, the lesser the
expenditures of the state, the more “just” the state is.

The second criterion which we would be prone to propose would be that
of equal treatment – if individuals receive the same amount of public goods in
“exchange” for their payments in taxes, than the amount paid should be the

\textsuperscript{9}See for instance Kirzner (1973) or Armentano (1986).
same. By the virtue of non-excludability and non-rivalry of public goods, it is not possible to evaluate the amount of public good which is consumed by each individual citizen. It is equally impossible to measure and compare utility which is each individual ascribes to the public goods he consumes – it is thus impossible to introduce the much desired Lindahl pricing of public goods.\footnote{See Lindahl (1958).} Hence the only commonsensical way how to escape this otherwise insolvable problem would be to say that everyone should pay the same amount in taxes – as everyone presumably consumes the same public goods as his fellow citizens. This criterion is somewhat more arbitrary than the first one – partly because as a rule individuals do not consume the same amount of public goods, partly because we are unable to evaluate the impact of provision of these goods on their welfare. Yet we do not see any other feasible way of determining how much should each individual citizens pay in taxes.

Speaking of practical matters, this reasoning would lead us to claim that the most just tax is a poll tax, i.e. a single amount paid by everyone. It is thus curious that in most models of optimal taxation the poll tax is excluded in the very beginning as politically unavailable. In addition, the poll tax has another virtue – it can be shown that it does not change relative prices of goods and does not induce deadweight losses. At this point, we are tempted to formulate a third criterion to evaluate existing tax systems – this is the degree to which taxes affect choices which are made by individuals and which concern the use of their property. This is approximately the same concept as the notion of tax neutrality, as employed in public finance literature. The difference between the traditional public finance literature and our present discussion is that we are not interested per se in economic efficiency of various taxes but rather in effects they have on private property and its use, as we believe that private property is the cornerstone of a sensible theory of justice.

### 5.2 Second-Best Choices

Unavailability of the poll, or head tax is a fact. Now what other tax instruments might be the closest to our understanding of justice? In one respect, as we already suggested, the lower the tax is, the more it is possible to reconcile it with ethical system based on property rights and this is true irrespective of the particular form of tax system. From a different regard, the tax system can be considered less unjust if all individuals are treated equally.

From this second criterion stems the requirement that taxes be not used to redistribute wealth. Hence tax systems which are less progressive approach this benchmark. It should be noted, that it would be equally unjust to encounter a tax system which would be regressive in absolute terms – there is no reason why the poor or the rich should pay more for consumption of the same public goods.

Having the criterion of equal treatment in mind, we can assert that the less progressive tax systems can be viewed as more just than those which are steeply
progressive. A linear tax (or a “flat tax”) can thus be seen as more just than a tax which imposes various rates on different income brackets. It is of course true that these judgments that one can make over different tax systems depend not only on an actual tax rates but also on the definition of tax base and – finally – on something which can be qualified as effective tax rates. By introducing a large number of deductible items for low-income groups, a linear tax can become more progressive – and thus less just – than a tax system which uses progressive tax rates.

By applying the third criterion we can qualify as unjust a large number of tax instruments. For instance if capital income is taxed, then intertemporal consumption decisions are biased. Generalised consumption taxation can bring about the desired result, as it would not change relative price of the present and future consumption and would be thus tax neutral. Our third criterion can well incorporate the requirement of production efficiency – that is the requirement that everyone faces the same prices. Thus a lot of other tax instruments can be rejected as well, including import tax incentives or sector-specific employment/investment incentives\(^{12}\).

Parenthetically, we would like to say that the third criterion we suggest contains in itself a requirement for simplicity of the tax system. If the simple operation of a tax system requires employment of thousands of public servants and tax advisors and if taxpayers bear not only the costs of public goods but if the costs of the tax system operation are considerable – that is if taxpayers must spent considerable amounts of their money and time on paying/avoiding/understanding existing taxes, then the tax system in question cannot be considered just, for he imposes additional burdens on individuals, which are not necessary to finance the spending the government intends to perform.

Hence a second-best tax system is one which taxes individuals lightly, as equally as possible and does not distort their decisions concerning their property or forces them to spend additional costs on tax advisory services just to be able to determine their tax liability. A good way to achieve it can be an introduction of one simple and general tax, such as a generalised tax on consumption.

6 Conclusion: Current Tax Systems and Justice

It is clear that currently existing tax systems cannot be perceived as just by any of our three criteria. Tax burdens across the world have been rising over the past century and nowadays often attain more than fifty per cent of the total income. Using Nozick’s terminology, this can be translated into a statement that from one half we are state’s slaves. Without having recourse to such harsh

\(^{12}\)This point was much emphasised by Diamond and Mirrlees (1971a and 1971b) who conclude by saying that an optimal tax system can be achieved by commodity taxes alone. While we do not entirely share the premises they use to define optimality of a tax system – as we showed at an earlier point in this essay - this conclusion can be a good proxy for a second-best tax system.
judgments, we can say that such level of taxation is disturbingly high and should be unacceptable for anyone who thinks that individuals should be left free to decide about their own destiny.

Tax systems existing in Europe and in the United States are progressive and largely destined to finance redistribution programmes. This can be well illustrated on the case of social insurance which is in fact nothing else than a form of income taxation used uniquely to finance redistribution.

There is no point in developing the point that existing tax systems are definitely not neutral and affect individuals’ behaviour in manifold ways. In addition, it is easy to observe tremendous direct costs associated with existing tax systems, which count dozens of different taxes with varying rates and complicated ways of defining the tax base. Millions of industrious individuals are employed as tax professionals, helping people to understand their tax liability and find ways how to not pay more than what is demanded by the existing legislation.

In a nutshell, existing tax systems are far from being efficient and just. The question is what can be done to approach the desired state of affairs in which the taxes are low, equal, simple and thus more just. One way of doing it might be through tax competition.\textsuperscript{13} When states are forced to compete over mobile tax bases, they will tend to reduce and simplify existing taxation of mobile factors. Unfortunately, many governments are successful in preventing tax competition by forming tax cartels and by threatening too competitive jurisdictions.

Another solution which has been proposed by a number of authors consists of limiting the possibility of government fiscal irresponsibility and ability to levy taxes by imposing a set of constitutional restrictions.\textsuperscript{14} This solution to the problem of fiscally irresponsible government and onerous and unjust taxation is worth of consideration but has one practical drawback. If politicians are fiscally irresponsible and tend to use their taxing power whenever it is possible, how can they be expected to constrain them in doing so? How would it happen that the same members of parliament who are the source of increasing taxes and growing deficits pass a constitutional amendment which would prohibit them from doing so? And even if it happens, what will prevent the newly elected politicians from abolishing these constitutional constraints?

Our answer to the problem of restraining government’s ability to tax and spend lies on the field of ideas. Politicians will not intentionally do anything which would displease their voters. And once the majority of voters believe that redistribution and high taxes are truly the price which must be paid for living in a decent society, only very dramatic events would force the politicians to act against this common belief. If classical liberals are to gain the battle of ideas and the support of the masses, they must not cease educating the general public and – in the first place – must not stop from to emphasize that a small state and low taxes do not mean the absence of solidarity and fraternity. On the contrary, as Frédéric Bastiat once wrote,

\textsuperscript{13}See Roháč (2005)

\textsuperscript{14}See particularly Chapter 10 of Buchanan (2000).
sans doute, la fraternité, c’est la chaîne divine qui, à la longue, confondra dans l’unité les individus, les familles, les nations et les races; mais c’est à la condition de rester ce qu’elle est, c’est-à-dire le plus libre, le plus spontané, le plus volontaire, le plus méritoire, le plus religieux des sentiments. Ce n’est pas son masque qui accomplira le prodige, et la spoliation légale aura beau emprunter le nom de la fraternité, et sa figure, et ses formules, et ses insignes; elle ne sera jamais qu’un principe de discorde, de confusion, de prétentions injustes, d’effroi, de misère, d’inertie et de haines. “ (Bastiat 1863a)

7 References

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