

A Remarkable Book

A Review of *The Myth of Ownership: Taxes and Justice*, by Liam Murphy and Thomas Nagel.
Oxford University Press, 2002.

Winston Churchill in old age was presented by the House of Commons with his portrait, painted by Graham Sutherland, a well-known British artist. When the picture was unveiled in Westminster Hall, Churchill looked at it for a few seconds and then commented: “The portrait is a remarkable example of modern art!” Just what he meant by “remarkable” may be inferred from the fact that the picture has never been seen again (Clementine Churchill evidently burnt it). It is in this sense that *The Myth of Ownership* is a remarkable book.

It is a book about taxes and justice — with the emphasis on social (distributive) justice. In the course of their argument, the authors — both well-known legal philosophers at New York University — also make sweeping and largely undefended assumptions about morality, human nature and political economy. It dismisses much conventional morality and most common sense. It presumes to understand that most complex creation — human society — without the aid of any formal or exact scientific system. A few chapters of prose suffice to comprehend and prescribe the creation of wealth and its just distribution.

So why is this book worth a review? Because it contains the naked essence of the anti-liberty, anti-individual, and pro-state spirit that animates political elites in the majority of Western countries. Usually, these views are presented in emollient and sugar-coated form, but here, although the prose is academic, the core beliefs are stark:

The conviction that determines our approach...is that there are no property rights antecedent to the tax structure. Property rights are the products of a set of laws and conventions, of which the tax system forms a part. (p. 74)

Perhaps that’s not quite clear? Then how about this:

[I]ndividual citizens don’t own anything except through laws that are enacted and enforced by the state. Therefore, the issues of taxation are not about how the state should appropriate and distribute what its citizens already own, but about how it should allow ownership to be determined. (p. 176)

In short, the logic of the book is just this: Without government and law, there would be no economy. Without an economy, we would all earn nothing. Hence the government has first dibs on whatever we do earn, and “pre-tax” income has no special significance. “There are no property rights independent of the tax system.” (p. 58)

The authors sense that this argument may not appeal to everybody: “It sounds too much like the claim that the entire social product really belongs to the government, and that all after-tax income should be seen as a kind of dole that each of us receives from the government, if it chooses to look on us with favor.” (p. 176) Well, yes. Despite their protestations, they say nothing that effectively dispels this perception.

There are several problems with this extraordinary view. First, it ignores human nature. Even a dog has a proprietary interest in his bone. Even an infant feels ownership of her toys. Property is not, as the authors contend, merely a convention, something that could as well be one way as another, like the rule of the road,. People are not naturally as indifferent between “mine is mine” vs. “mine is the state’s” as they are between “drive on the left” vs. “drive on the right.” Thus, any attempt to change the sense of property in the way the authors propose is likely to be resisted. For change to occur, it will have to be imposed by force. Who will exert this force? How are *they* to be controlled?

Murphy and Nagel are unworried about this issue for two reasons. They believe in moral progress — what seems odd today may be mainstream tomorrow. They think that morality, like science, is cumulative. And, as a corollary, they seem not to believe in any fixed points in hu-

man nature. Kids and dogs may have an innate sense of property, but adults can evidently be educated out of this primitive state.

Progress in moral thinking is slow....We see how long moral changes can take by looking back on the abolition of slavery, the growth of democracy, and the public recognition of full sexual and racial equality. What is obvious to us was once far from obvious to many people...

In short, they believe our idea of property, which now seems so basic and even instinctive, is neither. In a few decades, it will seem as obsolete as Aristotle's notion that some men are born to be slaves. With the appropriate change in public consciousness, then, coercion will no longer be needed. We will no longer feel that pretax income is in any sense ours, and we will happily settle for whatever the tax structure leaves us.

But will we? Is morality really like science, able to advance endlessly? Is our present humanitarian, but also narcissistic and self-promoting, culture really a moral advance over previous generations? Are the ethics of Dr. Johnson demonstrably inferior to those of, say, Norman Mailer? The authors are not confused by such doubts. They are convinced that moral progress has occurred and will continue. This kind of happy progressivism once applied only to science. Now we are less sure. Many now doubt the value even of continued scientific progress. But faith in progress must burst out somewhere. Science may be failing us, but faith in neo-Marxist egalitarianism lives on.

Whether they are right about the psychology of the sense of property or not, the authors certainly feel that they have justice on their side. Apparently, the state — necessary if not sufficient for all wealth — has a right to do more or less as it likes, as long as it serves the cause of distributive justice (more on this in a moment). A second problem, therefore, is that the authors acknowledge no defined check on the reach of government. They note that “people are rightly jealous of their property rights in what is genuinely theirs...” But then it turns out that what is “genuinely theirs” is not what you thought, but “what the law puts under their discretionary control.” (p. 177) So, the law controls your property: but who controls the law? Apart from frequent references to “democracy” (but none to “tyranny of the majority”), we don't know, because they don't address the issues of stability and checks and balances.

Third, even if we accept some version of the idea that society's ability to generate wealth depends on some form of government, that does not by itself tell us how much the state should take. Just how much government is needed for society to be as productive as it is? Many think that the answer is “much less than we have” — in which case, taxes are too high. But of course the real answer is that we don't know. The authors seem to accept this. They are happy not to deal with the problem of exactly how much government contributes to a productive capitalist economy. They are much more interested in divvying up our money, and they think they know how to do it

[T]he question is whether a different [from the Marxist conception of equality] kind of egalitarian social ideal, one not intrinsically incompatible with capitalist economic institutions, can take hold in the Western democracies...a replacement for the old capitalist conception of responsibility for human welfare in terms of charity, understood as a morally motivated personal gift from the fortunate to the unfortunate — replacement by an understanding that legal institutions define who owns what and that those institutions must satisfy independent standards of distributive justice.” (pp. 188-9)

Private charity is already discouraged by the tax code: you don't get a tax deduction for giving money to a poor person, only for giving money to an organization that may then give some of it to a poor person. You are likely to know personally the circumstances of the object of your charity. The organization knows the circumstances of its beneficiaries only through the lens of a set of rules by which they may qualify for aid. Who is likely to be the more efficient helper: the individual donor or the tax-exempt charitable organization? Of course, we all the know the con-

straints that must be put upon the deductibility of charitable giving to prevent tax evasion. We also know that the motives of a functionary are not necessarily purer than those of a rich donor. But the information asymmetry between a large number of individual charitable donors and a much smaller number of bureaucratically motivated charitable organizations, both private and state-run, remains. It is not at all obvious that charity is better implemented by government, or by government edict, than through individual donations. Charity is a complicated issue. No matter; Murphy and Nagel dismiss private charity in a sentence in favor of government-run welfare.

So, the government will make all just. It is to do so not via outmoded notions such as “rights” or “principles” but in terms of *outcomes* — “collective social goals.” (p. 138) Although they nowhere state this view as clearly as their commitment to the arbitrariness of property, what the authors seem to want is for government to arrange the tax system so as to promote “a just overall outcome.” (p. 113) It’s not clear what they mean by this. In some places it seems to correspond to the idea that everyone should be equally happy about their financial situation, in the economic sense that the marginal utility for increases in income is the same for everyone. They seem to solve the (logically insoluble) problem of comparing interpersonal utilities by simply assuming the same (in some undefined sense) decreasing marginal utility of money for everyone. Whatever the details, equality of outcome and progressivity of tax are assumed.

Well, postulation may be to proof as theft is to honest toil, but it does move the argument along. So, let’s assume that Murphy and Nagel’s felicific calculus can indeed tell when a just overall outcome has been achieved. All we need now, is the economic principles that will predict the effects of any tax structure on the state of society. How much less will the rich work if they are taxed more? How much more will the poor work if taxed less? What will be the effect of the tax structure on the kinds of work that people do? On the rate of business and job creation? On the size of the black economy? And, finally, on the amount and distribution of wealth? Do we have such a set of principles? Do Murphy and Nagel explain them? No, and no.

In short, Murphy and Nagel propose to jigger the tax system to achieve an undefined end through the application of an undefined set of economic and political principles. If postulation is theft, their proposals are grand larceny.

Critic Anthony Lane began a *New Yorker* movie review, somewhat uncharitably, by asking “What is the point of Demi Moore?” I ask the same of this book. What is the point of it? Its arguments defy gravity; each paragraph makes sense; but the whole hangs together not at all. Why did Oxford University Press publish it? It is footnoted and cited just like a work of scholarship. But in fact it makes no coherent argument at all. It rests on a the blunt and oft-repeated denial of independent property rights, a principle almost built into the Declaration of Independence. It is in short much more a document of advocacy than of inquiry. But it advocates what many of the *bien pensant* believe. Marxism is discredited but the Marxist impulse lives on in this book, which might have been titled not *The Myth of Ownership*, but *The New Collectivism*. Its point, like Ms. Moore’s, is that it gives the right people what they want.

John Staddon