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ON SEPARATION OF STATE FROM TAXES

Master's Thesis in Philosophy

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## TABLE OF CONTENTS

Introduction.....	3
Chapter 1 The Justification of Taxless State.....	5
Section 1.1. Initial Position.....	5
Section 1.2. The Justification of the State.....	7
Section 1.3. Taxation and the law of nature.....	12
Section 1.4. Taxation and impartiality.....	16
Chapter 2 Practical Feasibility of Taxless State.....	18
Section 2.1. Sources of income of a taxless state.....	18
Section 2.2. Expenses of the taxless state.....	19
Chapter 3 Taxless State and the Ability to Track the Law of Nature.....	25
Section 3.1. The Tracking Mechanism.....	25
Section 3.2. Taxation, Free Rider Problem and Public Goods.....	29
Section 3.3. The Oligarch Takeover.....	33
Conclusion.....	36
List of references.....	37
Abstract.....	40

## Introduction

When we think about what kind of public institutions are justified, the state and taxes typically go hand in hand. In particular, the following two things are commonly assumed about their relation. Firstly, if you believe that the state is justified, then you must believe that it is justified in taxing its citizens. Secondly, the only way to deny that taxation may be justified is to be an anarchist and to believe that no possible states are justified.<sup>1</sup>

I believe that these two beliefs are false and that one can coherently hold the position according to which some possible states are justified but taxation is not.<sup>2</sup> This can be shown by demonstrating the truth of the following two claims.

(1) There is an argument which justifies the state but only if it does not engage in taxation.

(2) The argument described in (1) does not pick out an empty set of possible states.

In this work I will provide a defense of these two claims. I will show that if an argument justifying the state has a particular structure, then it will yield the result we need: that the state is justified but taxation is unjustified.

I will not be concerned with providing the reasons that the argument in favor of the state should have the structure which I will describe. My focus will be on what happens if it has such a structure. However, the argument, which I explore here, may be used to justify a surprisingly wide variety of states. It is not the case, for example, that taxless states are inevitably libertarian ones. This, I believe, makes my project interesting for a wider audience than just for those who have a vested interest in contesting the state's right to tax.

The thesis will be structured as follows. In Chapter 1 I will provide the defense of the Claim (1). The essence of my argument is that the state which follows natural law can be justified simply in virtue of this fact without any appeal to universal consent given to its rule or some kind of general obligation to obey state's laws. Such state, however, is limited in terms of things it is allowed to do and, in particular, it is not allowed to tax.

In the next two chapters I am dealing with Claim (2): can a justification which has such structure pick out any possible states?<sup>3</sup> This question is important: if the answer is

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<sup>1</sup> As a characteristic example, McGee (2005, 6) connects the belief that there is no duty to pay taxes with the belief that all governments are illegitimate.

<sup>2</sup> For a rare example of such position see Rand (1964).

<sup>3</sup> "Possible" here means that our justification does not put upon the state mutually incompatible requirements.

negative, the position that some possible states are justified but taxation is not will still be incoherent.

I believe that there are two considerations which may render the answer to this question negative. Firstly, it may be true that without taxation the state cannot possibly have the means to enforce the law of nature.<sup>4</sup> In that case the state we have described is an impossibility. Chapter 2 is dedicated to defusing this concern.

Secondly, it is possible that any mechanism which allows the state to actually follow the law of nature must include taxation. With this objection I will deal in Chapter 3.

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<sup>4</sup> Holmes and Sunstein (1999) provide an example of such argument.

## Chapter 1. The Justification of Taxless State

### 1.1. Initial position

My task is to find among the multitude of possible methods for justifying the state<sup>5</sup> those which also show that it is not justified to tax. In pursuit of this task I will focus on approaches which justify the state by bringing to our attention the problems which would exist in a stateless society, actual or hypothetical. Under these approaches the state is justified in virtue of its ability to resolve those problems.

As I will show below, the justification which would require a taxless state may be found on the basis of a particular conception of an initial position which is associated with Locke. The best way to illuminate its characteristic features is to contrast it with two other conceptions which I label “Hobbesian” and “Kantian”. The most relevant difference between these three conceptions is the set of assumptions they make about the law and rights in the initial position.

For Hobbes there is no room for law in a stateless society (Hobbes, 13:13). According to Kantian conception what exists in the initial position is a “pure system of private right” which, however, is incoherent without a corresponding system of public right to supplement it (Ripstein, 2009, 146).<sup>6</sup> In contrast to Hobbes, rights do exist without a state but, in respect to the rights on external objects, they are of a “provisional character”. Without the state they cannot be enforced (Ripstein, 2009, 165). According to Locke stateless society operates under the law of nature which endows all men with a set of natural rights and duties (Locke, §6).<sup>7</sup> Unlike Kantian “private right”, this stateless law of nature can function perfectly all by itself. Rights and duties which it specifies are not “provisional” but structurally similar to those we may have under written law enacted by the state.

This happens in virtue of what Locke calls “the executive power of the law of nature”, which is, basically, the right to enforce the law of nature and punish wrongdoers (§8). According to Locke this power belongs to everyone and does not merely amount to the right to self-defense: an individual may not only punish wrongdoings against himself

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<sup>5</sup> Throughout the text I understand the state in a Weberian way, as an organization which has a monopoly on the use of force on a given territory (Weber, 54-56).

<sup>6</sup> Throughout the text I use Ripstein’s “Force and Freedom” as a source on Kantian conception. This book supplies a nice outline of the position with which I want to contrast my own. It is irrelevant for my purposes whether this position is an accurate representation of Kant’s views.

<sup>7</sup> From now on all references to paragraphs are references to the Second Treaties of Government.

but also against the third parties, because a criminal is “dangerous to mankind in general” (§7).

Locke needs such executive power because he wants his initial position to have a complete system of law which includes not only material norms but also procedural provisions which regulate law enforcement. In this way “the law of nature”, which governs initial position, puts individuals under effective constraints: “all other laws that concern men in this world be in vain, if there were no body that in the state of nature had a power to execute that law” (§7).

By contrast, under both the Kantian and the Hobbesian conceptions, the initial position does not have a complete system of law which would place any effective constraints upon the behavior of individuals. When the state is added into the picture, it brings with it an additional set of rules, both material and procedural, which creates such constraints. The state, by being the source of the constraints, may reserve to itself the privilege to enforce them. Therefore, it should not be a surprise for us that the state has the right to, for example, imprison a wrongdoer, but no private individual has such a right.

For Locke this is not so. The constraints of the law of nature are the same both for the state and the individuals. This fact, however, needs to be reconciled with the generally accepted notion that the state is permitted to do things which no private individual has a right to do.

This tension between the fact that both the state and individuals seem to have similar legal status and the fact that the state has rights which individuals do not have is what makes the Lockean view on the initial position interesting for my purposes. Further below I will show how one may believe that it can be resolved for most of state's usual powers but not for taxation.

Before I proceed, however, I want to make clear that there are certain assumptions which Locke makes but I do not. Locke commits himself to a particular substantive view about the content of the law of nature (e. g. §6). I do not follow him here and instead leave the substance of the law of nature completely open. I do it because, as it will become clear in the next section, the justification of the state depends on formal features of the initial position, on the very fact that some kind of law of nature exists, but not on its substantive features. We may need to refer to such substantive features to determine what kind of state we want to have but we do not need such reference to conclude that having the state is more superior than anarchy.

This point completes the description of the Lockean initial position.<sup>8</sup> Now that our starting point has been duly established, we can address the next two questions: “how can such an initial position be problematic?” and “how can the state resolve respective problems?”

## **1.2. The justification of the state**

Under Lockean view the need for the state arises from an “inconvenience” which can be broken down into three aspects: lack of objectivity (§124), lack of impartiality (§125) and lack of power (§126) in the enforcement of the law of nature. There is a lack of objectivity in a sense that there is no common understanding of the law of nature. There is a lack of impartiality in a sense that everyone has to be “a judge in his own case” and thus application of the law of nature is tainted by self-interest. Finally, lack of power means that separate individuals lack resources to exercise efficient law-enforcement and have no access to benefits of the division of labor.

To justify the state under this approach means to show that it is able to resolve all these difficulties. Let us see how it may be done.

The state by definition has a monopoly on the use of physical force and specializes in application of such. This resolves the lack of power difficulty.

Impartiality is also not an issue as long as the state does not arbitrate disputes in which it is directly involved. Disputes in which it is involved are rare, episodic and, most importantly, do not by themselves create a separate type of dispute with specific legal properties: for example, commercial law does not need to contain provisions which specifically apply to state-owned companies because peculiar features of such companies are not legally relevant in commercial disputes.<sup>9</sup> It means that there is no necessity to adopt legal rules which specifically apply to disputes in which the state participates. Due to this last circumstance the state is able to render itself blind to the fact that it is a party in a given dispute: it can adopt positive law which makes no notice of this fact. In this way the problem of impartiality is also resolved.

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<sup>8</sup> For a more detailed analysis of Lockean state of nature - one that extends beyond what we need for our present purposes - see Simmons (1989).

<sup>9</sup> There is no contradiction between this claim and the fact that modern legal systems operate under a fiction that the state is a “party” in criminal and administrative cases. In those cases the state acts as a representative of “public” interest but is not an interested party itself. E. g., in a typical criminal case it makes no difference for the state, whether person X or person Y would be found guilty. In that sense such cases do not generate the problem of impartiality with which I am concerned here.

The problem of objectivity can be broken down into two further components: lack of “common understanding” and lack of “understanding of the law of nature”. The “common understanding” component is also addressed by enacting positive law as it allows the rules to be stated in an explicit, unambiguous form which can be similarly understood by everyone. The way to resolve the “understanding of the law of nature” part of the problem is not so obvious. What, exactly, is the relationship between the positive law, enacted by the state and the law of nature? Under Lockean approach only the last one intrinsically generates a duty to obey it, so if we want the positive law of the state to be binding, we need to connect it with the law of nature in some way.

To deal with this last difficulty Locke adopted the assumption that the law of nature allows individuals to cede certain rights and take upon themselves additional obligations by expressing consent to such changes in their moral status (§119). This makes it morally allowed for individuals to enter into a social contract by means of which they each cede to the state their right to self-defense and the right to punish criminals and take upon themselves the duty to obey the laws of the state (§128-130). This last duty allows the state to have rights which individuals in the initial position do not have. In particular, the state may have a right to collect taxes (§140).

Such a state, however, would require consent from each person over whom it extends its power. But no existing state has received such consent in an explicit way and this requirement appears impractical. Hence, we need to derive this consent indirectly.

Locke believed that citizens give the state “tacit consent” when they accept the benefits which it provides (§119). This approach to the problem is now known as “fair play” theory (Hart, 1955; Rawls, 1958; Klosko, 2005) and was subjected to withering criticism (Simmons, 1979, 2000).

Assume now that this criticism is fatal and there is no other satisfactory way to derive the consent to the state indirectly.<sup>10</sup> This means that Lockean approach to the justification of the state fails: he is not able to show how the state can resolve all three difficulties of initial position. Also assume that Lockean initial position is still the correct starting point for this task. I will now show that, given these assumptions, the state still can be justified.

Imagine a set of de facto states which enjoy the monopoly on the use of physical force, mediate disputes impartially between their subjects and have a system of positive

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<sup>10</sup> See Buchanan (2002, 698-703) for some general criticism of consent-based approaches to justification of the state.



law. As I have already explained, these states eliminate all difficulties that arise for a stateless society except the difficulty with objectivity. Now, within this set of states imagine a subset of states, positive law of which is in perfect harmony with natural law. This very fact allows these states to successfully solve the problem with objectivity without relying on the consent of the governed. Being subject to the power of such a state is indistinguishable from being subject to natural law which is already a feature of initial position. Such a state avoids the difficulty which Locke spells out in §95: that man cannot be “subjected to the political power of another, without his own consent”:<sup>11</sup> becoming a part of a stateless society does not require consent.

The above justifies the state power to enact and enforce laws. The demands of its laws always coincide with the demands of the law of nature and its power to enforce them is the same “executive power of the law of nature” which private individuals enjoy in the initial position. Any specific state powers: the power to legislate, the power to issue commands, the power to punish violators of laws can be reduced to this executive power. The state does not need any additional powers which private individuals would not have.

Just as in initial position you would not need any open-ended obligation to obey your neighbors to justify their right to punish your wrongdoings, a general obligation to obey the state is not required under proposed justification. It is still not clarified, however, why, in the absence of social contract, private executive power disappears after the state is instituted. I will now proceed to do it.

Natural executive power should come with an obligation to demonstrate to other members of the community that you use force to enforce the law of nature, not to violate it. Otherwise, your neighbors would not be able to distinguish the enforcement of the law of nature from unlawful violence and would be justified in stopping you from using your natural executive power, thus effectively nullifying it. In the initial position this duty is fulfilled by whatever *ad hoc* means are available. If, however, you have a functioning justified state, then the only acceptable way to fulfill such a duty is through the use of procedures prescribed by this state as those procedures coincide with the ones which the law of nature prescribes. In this way private executive power is effectively absent.<sup>12</sup>

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<sup>11</sup> Observe that my justification of the state does not generate a separate problem of legitimacy as it happens if we justify the state in a Lockean way (Simmons, 1999, 128-130). This is because any justified state will automatically be legitimate.

<sup>12</sup> Alternatively, an obligation to give up private use of executive power in the presence of the state may be derived, for example, from Wellman’s “samaritanian” approach to justification of political obligation (Wellman, 1996). This is not necessarily incompatible with my own proposal.

Observe that due to this last consideration the state has not only the right to enforce the law of nature but also an obligation to do it. Because if it does not enforce it, it means that private individuals are unable to turn to its procedures whenever they feel that the law of nature is violated. If state's procedures are unavailable to them, they get their private executive power back. The state's monopoly on the use of force is no longer justified.

This completes the model of justification of the state which I aimed to describe in this section. Of course, by saying the above I gave no explanation of the origins of the state or its internal features which would allow it to always act in compliance with the law of nature (in contrast to Locke who devotes a lot of attention to these problems). But these issues are not my concern here. What I am interested in is what the state can say to justify its power over individuals, if we give up the idea that it received consent from them. The alternative answer which I propose is such: the power of the state is justified by the fact that it demands from its citizens to do the same things which the law of nature would demand from them in the initial position and nothing beyond these.

It is instructive to contrast the proposed model of justification of the state with the one provided by Nozick, because he sets out to resolve essentially the same problem: to show how a justified state may appear in a Lockean initial position without any appeal to universal consent (though he never explicitly rejects this last option). His solution is to show how the state may be created in the initial position by acts of individuals which do not violate human rights (Nozick 1974, 12-25, 88-119). This procedure has been widely criticized (e.g. Miller, 2002, Schmidtz, 1990, 100) and this is not the procedure I use here. My justification of the state does not depend upon the way in which the state was or could have been created. It is not an emergent or counter-factual but rather a teleological justification.<sup>13</sup> The state is justified in virtue of what it is doing irrespective of how it came or could have come into being. The initial position serves not as a starting point of an actual or hypothetical historical process but as a standard regime of justice against which this state is evaluated. The state which solves particular problems which arise within it and is compliant with the law of nature is justified.

I believe that my approach is structurally similar not to that provided by Nozick but rather to that provided by Raz. According to Raz,

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<sup>13</sup> The distinction between emergent and teleological justifications is borrowed from Schmidtz (1990). Counter-factual justifications are introduced by Bader (2017). He defends Nozick's approach to justifying the state as an instance of such.

“the main argument for the legitimacy of any authority is that in subjecting himself to it a person is more likely to act successfully for the reasons which apply to him than if he does not subject himself to its authority”. (Raz, 1986, 70-71).

If you plug in “according to the law of nature” in the place of “successfully for the reasons which apply to him” (a suggestion which Raz would not endorse) and replace word “authority” with the word “state”, you will get what I believe to be my method of justifying the state: it is justified because a person subjected to it is more likely to act in accordance with the law of nature than a person not subjected to it.

The description of the state, which we may be able to justify in this way, is so far incomplete. Two important questions still remain unanswered.

First, what is the content of the law of nature which this state should follow? As long as we do not know how to answer this question, we do not have means to know which states are justified and which are not. Observe, that, by assumption, we need a conception of natural law which is robust enough to provide instructions for all necessary aspects of positive law – otherwise, the state will not be able to demand obedience to all its laws. In that regard it is useful to contrast my approach with, for example, Buchanan's (2002, 703-709). Our methods are similar in that we both ground state's legitimacy in its lawfulness, not in any specific legitimizing procedure. However, Buchanan does not assume a conception of a natural law which is robust enough to fully determine positive law. In place of the law of nature he has a conception of “basic human rights” which function as the proper end of and constraints for positive law but not as its guide. This is why he needs to justify an obligation to obey the state, even after already having assumed that it is lawful: the obligation to respect basic human rights is not co-extensive with the obligation to obey the laws of the state. As I have argued above, I do not need such obligation and this is the main advantage of my approach over the most of existing alternatives.

The second question is how it is possible for the state to keep its positive law in accord with the law of nature. In contrast to the previous one, we do not need to answer this question in order to be able to distinguish justified states from unjustified states. If we know what the requirements of the law of nature are, we may compare them with the rules which a given state enacts and enforces. If there is a perfect match, we know that this state is justified, even if we do not know how it is made possible.

Still, this question is important. A harmony between the law of nature and positive law is only possible if the state is guided by some mechanism which tracks the demands of natural law and adjusts positive law accordingly. If we want to be able not just to identify but to actually create a justified state, we need to understand the nature of this mechanism.

Also, the very fact that we need to have it constrains the set of possible states and we yet need to show that this set is not empty. I will have more to say on this question in Chapter 3.

These two questions are intentionally left open here. Different answers to them will pick out different sets of justified states. I, however, do not need to explore them further because at this point I have already established enough ground to argue for the following claim: the family of justifications which I have described will not be able to generate a justification of taxation. In the next two sections I will present two arguments in defense of this claim. The first one is that taxation cannot be grounded in the law of nature in the same way in which other state powers can. The second one is that taxation is incompatible with keeping the state impartial.

### **1.3. Taxation and the law of nature**

In contrast to Lockean state which receives from its citizens additional powers of contractual character, our state has literally the same powers which private individuals have in the initial position. Most notably, it makes use of the executive power of the law of nature. As any justified state function may be represented as a way of enforcing a particular natural right, the range of justified state powers varies dependent on what we believe natural rights are. The question which I want to explore in this section is whether there can be a conception of natural law under which taxation can be described in terms of the enforcement of a particular natural right.

Let us define taxation as a charge imposed by legislative or other public authority upon persons or property for public purposes. I believe that the concept of taxation defined in this way depends upon the concept of property rights: the word “charge” in this definition only makes sense if a transfer of property rights from a taxpayer to the “public authority” takes place. Therefore, taxation may only exist in those conceptions of the law of nature which include the idea of property rights.

But within those conceptions taxation also may not exist, because, as I will argue now, we cannot keep track of the distinction between taxes and theft when we are in an initial position.

Let us define theft as taking of a person's property without their permission.<sup>14</sup> Two essential features of theft are that it a) involves taking the property of another person and b) is done without this person's permission. Taxation has both of these features: the word "charge" implies taking of other's property and the word "imposed" implies that the transaction is involuntary.<sup>15</sup>

There are, however, two additional features which set taxation apart from theft: it is done "for public purposes" and by "public authority". In stateless society there is no public authority by definition. If we interpret the definition of taxation to mean that we need both additional attributes to get something different from theft, then our claim that there is no taxation in stateless society would be trivially true.

It is worthwhile, however, to explore a different interpretation: that if the property is taken with a "public purpose", then it is sufficient to constitute taxation, even if there is no public authority present.

I would argue that even in that case we would have no means to see the difference between theft and taxation without the state. We may be able to distinguish taxes from theft on ontological level: for example, if Sally takes someone's property without permission and then does something publicly useful with it (e. g. builds a free hospital), we may be able to say that what Sally has performed was taxation, not theft. However, without an authority whose judgments are recognized as correct by all members of the public, we will never be able to verify that what Sally did was in fact publicly useful. This is because to verify such claim we need to show that building a hospital has a higher utility than the way these resources were used by original owner. The only way to do that is to appeal to the judgment of someone authorized to speak on behalf of "the public" and to voice its preferences.<sup>16</sup> Without a legitimate public authority we do not have such agent.

Observe, that it is a different problem than the one we have when we use "executive power of the law of nature". When we use this power we need to demonstrate that the person we punished has in fact violated the law of nature and our punishment is proportional to his transgression. To do that we need to refer to natural facts about the

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<sup>14</sup> I use paradigm definitions of taxes and theft as they are known in Anglo-Saxon world. However, other legal systems, as far as I know, have similar definitions.

<sup>15</sup> McCarthy (2011, pp. 215-217) claims that taxation happens with the consent of taxpayers and if this is correct, then taxation is voluntary, contrary to what I am saying. But we should reject this position. Taxation is obviously not voluntary on individual level and to claim otherwise we need to use the same round-about ways we need to show that the state gets legitimacy from the consent of the governed. But this class of arguments is false by our earlier assumption.

<sup>16</sup> Alternatively, we can imagine some kind of mechanism which would aggregate preferences of all members of the public without their authorization. But this possibility is too far-fetched to explore it here.

actions of an alleged offender and normative facts which would allow us to evaluate said actions and make a decision about an appropriate punishment. Without the state or any kind of public authority doing that may be difficult, but it is a different kind of difficulty, than we have in case of “public purposes”. The difficulty we have here is a technical one, it is a difficulty of establishing all relevant facts in an objective way. In the case of “public purposes” the difficulty is more fundamental: in the absence of public authority relevant facts just do not exist.

The above, I hope, demonstrates that no separate concept of taxation may exist in a stateless society. It means that we cannot ground state’s right to tax in rights and duties which exist before the state is introduced. Below I will offer three thought experiments which are aimed to illustrate this contrast between taxation and other common state powers.

(A note of caution. In these experiments I am not trying to emulate any actually existing legal institutions and do not intend to emulate the procedure through which such institutions work. My concern is simpler and more basic: I want to understand, whether there is a right to tax in Lockean initial position in the same sense there is a right to enforce the law of nature.)

Imagine a community which consists of three people: Mary, Jane and Sally. Assume that the right to own property is a part of the law of nature. Now imagine that the Mary robs Jane and that for this she gets punished by Sally. This is rightful in virtue of the executive power of the law of nature. After that, however, Sally turns to Jane to demand monetary compensation for her efforts. Jane, however, refuses to compensate, pointing out that the compensation was never discussed with her before.<sup>17</sup> Sally takes her compensation by force. Is she justified in doing that?

I believe that the answer should be negative. It seems intuitive that you cannot bind someone by an obligation by simply providing him with some kind of good, when you haven't obtained their prior consent.<sup>18</sup> The only way to derive such obligations would be from some kind of fair play theory. In that case, however, one will need to reject my argument at earlier stage, because fair play theory makes it possible to justify the state by an appeal to consent of its citizens.

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<sup>17</sup> One might ask why Sally decided to punish Mary in the first place. A number of reasons: altruism, false belief that Jane would pay her if asked, etc. This is irrelevant for the question whether she is justified in demanding compensation and enforcing this demand.

<sup>18</sup> For convincing thought experiments illustrating this intuition see Nozick (1974, 90-95).

In a similar way we may construct two other thought experiments. Assume that a duty to avoid unnecessary ecological damage is a part of natural law. Imagine now the same community as before but this time Mary pollutes the atmosphere which leads to a decreased quality of life for Jane. Sally forces Mary to stop the pollution. And, just like in the earlier case, this act is justified in virtue of natural executive power. However, when Sally forces Jane to pay her, this act, once again, seems unjustified, just like the one in the previous experiment.

Let me now turn to a final thought experiment. Assume that a right to basic income is a part of the law of nature and that it is a duty of the rich to provide it. Imagine that the Mary is rich and Jane is poor and Mary withholds the money which she owes to Jane. Like in the previous two thought experiments, Sally is justified in forcing Mary to give money to Jane. If, however, the Sally would take the money from Jane herself and then give Jane only a part of the sum, she will do something more than just enforcing Jane's claim. This last act does not seem to have a justification.

Why we observe the difference in those cases? Why Sally's acts seem justified when she uses force against Mary but does not seem justified when she turns against Jane? Recall my earlier argument where I tried to demonstrate that without the state we will lose track of the difference between taxes and theft. I believe this is exactly what is going on in these three cases. It is especially obvious in the first thought experiment where Sally ends up doing to Jane the very same thing which Mary did to her earlier. No plausible argument can be made why Mary's act is unjustified but Sally's is not.

These thought experiments should teach us two things. Firstly, they show how executive power of the law of nature can be used by private individuals in Lockean initial position. Its usage is compatible with a wide variety of possible conceptions of the law of nature, not just the very minimalistic one which Locke himself defended. And secondly, they, together with the analytic argument which I made earlier in this section, help us understand how the power to tax is conceptually different from executive power of the law of nature and cannot be reduced to it.

This last point provides us with an answer to the questions with which I started this section. Under no conception of natural law taxation may be described as an act of enforcement of a particular right. But it means that the state, justified by the method which I have proposed in previous section, will not have a power to tax.

There is, however, still room for doubt. A large variety of conceptions of natural law is possible. Let us assume that the argument above does not account successfully for

all of them. It may still be the case that some of them include certain natural rights or duties from which taxation may be in some way inferred. In the next section I will propose an alternative argument which is intended to show that even if taxation can be derived from the law of nature, it still will be unjustified.

#### **1.4. Taxation and impartiality**

Assume that property rights are a part of the law of nature. Assume that the law of nature provides for a certain pattern of rightful distribution of property. Assume that, within this pattern, Sally, introduced in the previous section, has the right to own a certain share of wealth. Assume that for whatever reason the wealth, which ought to belong to Sally, systematically comes into the possession of other individuals (e. g. Jane). These assumptions generate a duty on behalf of Jane to regularly give a respective part of her holdings to Sally. If Jane refuses to do so, Sally is entitled to enforce this duty in virtue of the executive power of the law of nature. Imagine now, that Sally becomes the state. The state will have the same rights which Sally had, including the right to systematically receive payments from other members of community irrespective of their consent. This right is essentially similar to a right to tax.

I believe that the previous paragraph captures a general structure of any argument which may be employed to deduce tax obligation from the law of nature and any argument with this structure will have one fatal flaw.<sup>19</sup>

Recall that the state is justified as long, as it is able to solve three problems which are present in the initial position: lack of objectivity, impartiality and power in the enforcement of the law of nature. Recall that the problem of impartiality is solved given that most of the disputes which the state arbitrates are between its citizens. The disputes between the citizens and the state itself are rare and episodic and do not constitute a specific type of dispute.

The situation becomes different under the assumptions which are described at the start of this section. Conflicts between the state and the citizens about the content and application of the law of nature acquire a systemic character. It is not the case that the

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<sup>19</sup> It is inspired by Murphy and Nagel (2002, 32 – 38). I need to emphasize that it is not the argument which Murphy and Nagel themselves offer. Their justification of taxation is based on a premise that there are no natural property rights (Murphy and Nagel, 2002, 8-9) and yet the state has the power to legislate about them (Murphy and Nagel, 2002, 36). This premise contradicts basic assumptions of justification of the state which I have set to explore and discussing its implications here would be out of place. Instead I tried to build a similar argument which makes use of the resources of my own model.



property which rightfully belongs to the state ends up in the wrong hands only episodically and accidentally; this is something that regularly happens. This last circumstance in particular makes this phenomenon radically dissimilar to everything what happens between private parties. Disagreements about the share of property which rightfully belongs to the state become a specific type of dispute which necessitates a specific set of rules. The positive law of the state needs to acknowledge this and include special provisions which are only applicable to this category of dispute. This means that the state can no longer render itself blind to the fact that it is a party in a dispute (in other words, the problem of impartiality appears not on the level of judicial power but on the level of legislative power). Therefore, it is no longer impartial and ceases to be a solution for one of the problems of the initial position. Therefore, it is no longer justified.

I believe that the conclusion we should draw from the above is that even if it is somehow demonstrated that the power to tax can be grounded in the law of nature, the state needs to rescue itself from ever using this power. Otherwise, it will lose the ground upon which the justification of its power is built.

This last argument concludes the first part of my task. I have given a description of a justification of the state under which the state will be justified but taxation will be unjustified. In the two following chapters I will look at the question, whether it is true that such justification would pick out an empty set of possible states. I will explore two concerns which may lead one to believe in this. The first one is a suggestion that without taxation the state will not have enough resources to enforce the law of nature. This problem is dealt with in Chapter 2. The second one is a belief that without taxation the state will not be able to track the law of nature properly. This problem is explored in Chapter 3.

## Chapter 2 Practical Feasibility of Taxless State

### 2.1. Sources of income of taxless state

If the state cannot tax, it needs some alternative source of financing. I can think of three options: income from publicly owned property, income from selling of law-enforcement services to citizens and income from voluntary donations. Let us explore them

The state which derives income from publicly owned property will likely face the same problems with impartiality which tax state faces. Just to give one example: in 2015 government spending in USA were 37.5% of GDP (OECD, 2017).<sup>20</sup> To finance such expenses the state will need to own a comparable share of property. It would make it the largest market player by far. As a consequence, a large number of commercial disputes would involve the state as a party at least in an indirect way (for example, if the state leases away its property, its lessees will need to obtain special status as their financial health would become a consideration of public importance, not just a private concern). This fact will remove any such state from the set of justified states for reasons already discussed above.<sup>21</sup>

The state which “sells” law-enforcement services will have to treat differently citizens who “bought” the services and citizens who did not do it: the rights of the first category will be enforced while the right of the second category will remain unprotected. It will also create a problem with impartiality and, additionally, a problem with objectivity because different treatment of these two groups of citizens should actually become for such state a duty. This state is also unjustified.

It leaves us with voluntary donations as the only possible source of income for a taxless state. Under such financial regime there is no connection between the services which the state provides and the amount of money which citizens pay to it: everyone gets the same “package”, whether she pays or not.<sup>22</sup> In this way the state avoids problems with impartiality and objectivity.

Let us look at the income of such state in a bit more detail. We may conceive it as something akin to a modern non-profit organization which can give us a reference point to

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<sup>20</sup> Public spending in most other first world states will be even higher. In the remainder of the text I will use US-based examples for the sake of consistency.

<sup>21</sup> McCarthy makes a somewhat similar argument when he discusses rentier states which may be seen as a particular case of a state financed by the income from public property. See McCarthy (2011, 63-66).

<sup>22</sup> One may wonder if such state is actually possible: it seems intuitive that it should be biased in favor of its donors in one way or another. I will talk about practical difficulties of instituting such state in section 3.3.

estimate how much resource it would be able to collect. In 2016 the total amount of charitable donations in USA was 390.05 billion USD (Giving USA, 2017) which is about 2% of US GDP. This figure gives us a “floor” for the income side of the budget of a taxless state. Given that its services are more vital than those of actual charities and that without taxes citizens would have more money to spare, it is implausible to doubt that it would be able to raise at least that much. States with such level of expenditure are not historically unprecedented: at the start of the 20<sup>th</sup> century US federal government spent exactly 2% of GDP (Ortiz-Ospina, Roser, 2017).

Recall, however, that in 2015 the total amount of government spending in USA was 37.5% of GDP (OECD, 2017). Even if we give a very optimistic estimate of 10% of GDP for the income of our state it would not even come close to this number. A skeptic may say that today we need a much thicker concept of state than the one under which a 19<sup>th</sup> century state with minimalistic spending falls and with the income we have estimated our taxless state cannot satisfy such concept. In the next subsection I will try to cast doubt upon this objection.

## **2.2. Expenses of the taxless state**

My response to the problem, outlined in the end of the previous subsection, is that taxless state would be able to perform the same functions which modern states perform by spending much less. There are two reasons to believe that. Firstly, it will be more efficient than modern states, secondly, the most expensive functions of modern states are of redistributive nature and they can be substituted by analogous regulative functions which will not generate similar amount of government spending. I will now explore these reasons in a more detail.

### **2.2.1. Efficiency considerations**

Modern tax states lack an incentive to be efficient in provision of public services because there is no connection between the value of their services and the amount of money they are able to collect to cover their costs. The size of taxes which a taxpayer is obliged to pay in no way depends on the benefit the taxpayer receives. Due to this fact the state does not feel any difference between more or less costly ways to provide the same amount of services and has no reason to choose the least costly ones.

One may think that democratic control may repair this problem: the voters would put in power the political party which is able to provide the most value for the smallest cost. I would deny that, however. Even if we assume that “voters” and “taxpayers” are co-extensive groups (which is not so), there is a mismatch between the distribution of voting power and the distribution of a tax burden. Voting power is equal but tax burden is unequal and it is possible to increase the overall tax burden while keeping at the same level or decreasing the tax burden of a majority of voters.<sup>23</sup> This fact generates a set of cases where less efficient decisions may become more popular. I will illustrate it in Table 1.

**Table 1**

	Yellow Party		Blue Party	
	Contribution	Benefit	Contribution	Benefit
A	10	10	9	10
B	10	10	9	10
C	10	10	30	10
Total	30	30	48	30

Imagine a society in which citizens are divided into three equal groups: A, B and C. On elections two parties compete: “Yellow” and “Blue”. Yellow Party offers each group to contribute 10 units of resources and allows each of them to receive 10 units of benefit. Blue Party offers the same distribution of benefits; however, it requires from A and B to contribute only nine units of resources and from C to contribute thirty units. The program of Yellow Party is straight up more efficient but on elections it will lose because A and B together have more voting power and for them the program of Blue Party is more beneficial.

I need to make three remarks here. Firstly, I am not saying here that this is what necessarily happens in democracies. Of course, we can imagine a “Green” party which would offer 16 units of benefit to everyone while asking for the same distribution of burden as “Blue” party. This party is superior in every way to the Blue one and how it compares with the Yellow one is not immediately clear. My point is that if there is no

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<sup>23</sup> And this is exactly what happens in real life: tax burden is mostly carried by a minority of taxpayers. E. g. in United States in 2015 half of taxpayers paid 97.2 percent of all income taxes (York E., 2018).

Green party for some reason, then there is nothing stopping this society from being inefficient. Secondly, it is an abstract example the purpose of which is to demonstrate the consequences of democratic control over state expenses in a generalized form. It should not be read as, for example, a criticism of a system of progressive taxation as presented model does not necessarily capture its essential features (e. g. the rich can be said to receive a larger share of benefit). Thirdly, to say that this is inefficient is different from saying that this is unjust. I am not trying to prove here that unequal taxation of equal voters is unjustified; I am only pointing out economic consequences of such arrangement.<sup>24</sup>

The following objection may be made to the picture which I outlined above: for real life democracies it is misleading to say that everyone has equal voting power. Citizens have unequal opportunities in respect to promoting their political agendas and it can be said that the rich (and certain other social groups, e. g. professional intellectuals) have an advantage here. In addition to that, ultra-rich can influence policy by non-electoral means through lobbying politicians and officials. Most citizens do not have this opportunity. These factors, as it seems, introduce complications to my initial assumption about equal voting power.

This objection, however, misunderstands my point. It is not my purpose here to criticize real-life democracies. The question with which I am concerned is whether democratic control is an adequate tool to address the fact that tax state has no incentives to save taxpayers' money. I do not deny that factors listed in the previous paragraphs serve as an important balancing tool in real-life democracies and protect them from excesses. However, they function in spite of democratic institutions, not because of them. They are effective only as far, as democracy is not effective. Therefore, they cannot be invoked to defend the efficiency of democratic control over government spending.

In contrast to a tax state, in a voluntarily financed taxless state inefficient decisions as described in a Table 1 will be impossible. This state needs to receive individual consent from each contributor, not a collective consent from contributors as a group. The program of the Blue Party will fail because people from group C would just refuse to participate.

It creates for the taxless state an incentive to be efficient which is absent in case of tax states. Therefore, we cannot rely on the present level of government expenses to estimate how much money the taxless state would need to do the same thing.

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<sup>24</sup> An argument for injustice of such possibility may be found in Buchanan (1984). For a criticism of Buchanan's view see Fried (2003).

### 2.2.2. Use of regulatory tools

There is, however, a different, even more important consideration. The most of government spending are mere redistribution of resources: the government collects money from donors into a centralized pool and then gives it out to various beneficiaries.

This, however, is not the only possible way to organize the exercise of respective government functions. Imagine an alternative system in which regulatory instruments are used instead of redistributory ones: donors directly transfer money to beneficiaries guided by state regulations instead of using the state as an intermediary. For example, instead of a corporation paying taxes to the state from which the state would later finance a hospital, the state will instruct the corporation to transfer a certain sum of money to this hospital directly.

The extent to which the introduction of such system may reduce state expenditure may be demonstrated on the example of US 2018 Budget. Amadeo (2017) provides a breakdown of its expenses. Of the total of \$4.094 trillion \$2.535 trillion are mandatory spending (Social Security, Medicare, Medicaid, etc.) which are clearly of redistributive type. The next two largest expenses are various military needs (\$824.7 billion) and interest on national debt (\$315 billion). I suggest that we put these two categories aside: they are contingent upon the specifics of current state of affairs in US. There is a bunch of possible worlds, where these types of expenses are reduced to negligible amounts. It leaves us with the leftover of \$419.3 billion, about 2% of US GDP, which is exactly our estimated “floor” of the income which taxless state should be able to generate through voluntary donations.

It may be true that proposed system is not as efficient as centralized redistribution, though it is not necessarily so. In particular, we need to keep two considerations in mind. Firstly, the advances of informational technologies may very well render the advantages of centralization irrelevant. It is possible today to keep track of social needs and social resources without having actual control over them. Secondly, modern tax systems formed primarily to accommodate the needs of warfare. It is under that kind of evolutionary pressure tax-state with centralized redistribution of resources prevailed in a Darwinian struggle against states which did not make use of taxation.<sup>25</sup> Today, however, warfare is not the main activity of the state and tax-state has not been seriously tested against alternatives in this new environment.

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<sup>25</sup> See Tilly (1990) on the role the needs of warfare played in the creation of modern tax state.

In the end, however, efficiency is not really important for the question I have set out to explore here. I was asking, whether we should use expenses of modern tax states to get an estimate of expenses which a hypothetical taxless state would need to perform the same function. What is important about the possibility of usage of regulatory tools instead of redistributory ones is that public expenses could be laid directly upon various individuals and corporations without being centralized through taxation. In that case they would not show up as government expenses and those can be much lower than they currently are.

One might ask, whether proposed system of public finances is morally different from the one we have in tax states. It may seem that from a perspective of an individual it makes no difference, whether he discharges his public duty by paying a tax or by donating a certain amount of money to a hospital, identified by the state.

I would argue that there is a difference, both moral and practical one. From moral perspective an individual who donates the resources performs his moral duty directly, not through an intermediary which was not specifically entrusted by said individual with this job. The state in this scenario only supports the individual with information about how he can perform his duty best.

This altered function of the state may open up a possibility for practical improvements in the way public duties are performed. Donors would obtain an explicit and personal connection with beneficiaries, would be able to better understand how exactly their resources are spent and may be empowered to monitor the efficiency of such spending. The system would become more accountable and transparent. Also, if they happen to disagree with a particular way in which the state requires them to spend money, a more flexible system for resolving such disputes could be set up. They could be resolved in a distributed way on a case-by-case basis, while today all decisions about public spending are lumped up together and made by a single body of government (usually, the Parliament).

Also, importantly, the state would not have any systemic bias in such disputes because, in contrast to the case of taxation, the resources in question are not supposed to come into its ownership. This fact gives us another perspective on a fundamental problem which exists within taxation. It mixes into a single cash flow two principally different types of funding: the money which the state redistributes in accordance with the demands of the law of nature and the money which the state appropriates as a payment for its services. The first type of funding may be morally justified (as demonstrated in my third

thought experiment on Section 1.3.) and this fact is often used to justify taxation in general (see Holmes S. and Sunstein C. 1999 for a typical example of that). The second type is, however, both morally and prudentially questionable, at the very least because it involves the state evaluating the value of its own services. The system which I propose would retain the first component of taxation - in a transformed form - while eliminating the second one.

Much more could be said about the way taxless state could manage public spending without turning them into government spending and invoking taxation but I will stop at that point: these questions more belong to the realm of economic science and are not an immediate focus of my work. What is important for me here is that, in principle, it is possible to fulfill essentially the same functions, which modern tax-states fulfill, without collecting taxes. I will reiterate two main points: firstly, in the absence of taxation the state gets an incentive to become more efficient and will be able to get by with spending much less resources, secondly, a large portion of public spending can be paid for without channeling the money through the tax system. Taken together these two factors can make it possible for a taxless state to enforce the law of nature. This, I believe, allows us to defuse the first of the two problems of taxless state which I have identified in the end of the Chapter 1. In the next Chapter I will respond to a final objection: that taxless state will be unable to track the law of nature.



## **Chapter 3 Taxless State and the Ability to Track the Law of Nature**

### **3.1. The Tracking Mechanism**

To start, let us take stock of what we have by now. My overall goal is to show that one can reasonably believe that the state is justified but taxation is not. In Chapter 1 I have provided an outline for the justification of the state which will leave no room for taxation and which, therefore, would prescribe such position. There is however, a possibility that such justification picks out an empty set of possible states. There are two reasons because of which one may believe so.

The first one is that under such justification the state is required to enforce natural law and one may legitimately doubt that without taxation it would have the resources to do that. If this is so, then my position is not functionally different from anarchism because no possible state may satisfy the requirements which my justification puts forth. I have done my best to address this worry in Chapter 2 and argued that even without taxes the state would have plenty of tools to do its job. One can raise, however, a different concern with which I plan to deal in this chapter. I will proceed to describe it.

Under the justification of the state, provided in Chapter 1, the state is justified in virtue of the fact that its positive law is co-extensive with the law of nature. For this to be the case, however, the state needs to have some mechanism which would track the law of nature and adjust the positive law accordingly. It may be convincingly argued that such mechanism can only function if the state is financed through taxes. If this is so, then my justification of the state both forbids taxation and requires taxation. As no possible state can satisfy such condition, this possibility bears the same threat for my overall argument as the one which was discussed in Chapter 2: I am at risk of collapsing into anarchism. This is why I need to try to rule out such possibility.

Before I start to dwell into the specifics of this problem, it is useful to say a little bit more about the nature of the tracking mechanism. It should satisfy three requirements:

- 1) The ability to know the law of nature. Observe that full knowledge is not required. Rather, we need to be able to learn relevant aspects of the law of nature whenever the situation requires such knowledge. Assume, for example, that the law of nature contains specific instructions on what rights of AIs should be. However, we do not need to know these instructions until AIs are actually created. We only need to be able to know

them after it happens and in a possible world where AIs are never created, we will never need to know them.

2) The power to steer the government is such a way that the knowledge of the law of nature is actually applied. This is an important and often overlooked point. The ability to acquire and keep political power is different from the ability to use it in a right way. Let us assume that I have an accurate knowledge of the law of nature. It still does not mean that I have any means to wrestle the political power from the people who currently have it or to influence the decisions of these people because those belong to a different area of expertise and require an entirely different skillset.

3) The motivation to apply the law of nature. Once again, it is a distinct requirement from the previous two but it is just as necessary. We can easily imagine a philosopher-king who possesses both the knowledge of the law of nature and the power to implement it but prefer to use his power to advance his selfish interest. Such philosopher-king would not be able to fulfill the role of the tracking mechanism.

The easiest way to imagine a model of the mechanism described above is to picture a superhuman ruler with all necessary personality traits. This is what is expected to happen after the second coming of Jesus Christ, when the humanity will be allegedly ruled by a literal god who would satisfy all three requirements suggested requirements. This is also how Plato imagined the creation of a perfect state and this is the reason why a large part of his Republic is devoted to the task of training of the perfect ruler.

However, second coming of Christ is out of human control and there are many obvious problems with Platonic perfect ruler project.<sup>26</sup> Instead, we need to conceptualize an institution which would force imperfect rulers we have in actuality to emulate the behavior of a theoretical perfect ruler, at least, at a reasonably close approximation.

Democracy may be understood as an example of such institution. Contemporary theories of epistemic democracy argue for a similar thesis: they see the value of democracy in its truth tracking capabilities which it has in virtue of being able to pool diverse knowledge dispersed within the totality of the nation.<sup>27</sup> The ability to track natural law may be perceived as a particular case of such truth tracking function being exercised.

Of course, there are important difference between my approach and the approach of epistemic democracy theorists. Most notably, I assume that there is an independent

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<sup>26</sup> See Popper (1945, 106-137) for the criticism of Platonic approach.

<sup>27</sup> See Schwartzberg (2015) for an overview of current debates on issues related to the idea of epistemic democracy.

standard of correct decisions to which democratically made decisions should conform (“the law of nature”)<sup>28</sup> and that all the questions which are decided in political process are truth-apt (which means, they have objectively right and wrong answers). This last point, as I have argued earlier, is particularly essential for my purposes: as the state is legitimate only in virtue of conforming to natural law, it needs a conception of natural law which is robust enough to provide guidance to the content of all demands which the state imposes upon its citizens. Otherwise, the state loses its claim to legitimacy.

Both these assumptions are not particularly popular today, even among epistemic democracy theorist. This is why I cannot really claim that their ideas in any way support my view. Still, the similarities are good enough to illustrate how the argument for democracy as natural-law-tracking mechanism may look like:

P1: There is an objectively correct law of nature.

P2: Law of nature provides answers to all questions with which the state is concerned.

P3: Democratically made decisions are very likely to be correct due to the ability of democratic process to make use of diverse knowledge dispersed in the society.

P4: There is an obligation to follow rules which are objectively correct.

C1: Democratically adopted positive law is very likely to coincide with the law of nature (from P1, P3).

C2: Democratically adopted positive law provides objectively correct answers to all questions of politics (from P2, C1).

C3: There is an obligation to obey democratically adopted positive law (from P4, C2).

Now, this is not the argument I would want to actively defend here. As I have said earlier, for the purposes of this work I want to abstain as much as possible from any claims about the actual nature of the mechanism which may allow the state to track the law of nature. The purpose of this argument is rather to demonstrate, on a concrete example, the structure of the argument we should expect to see in the discussion of the tracking mechanism. Also it shows how such discussion may be connected with the more general question of the legitimacy of the state.

I hope that now it is a little bit more clear what exactly I mean when I talk about the mechanism which tracks the law of nature, what requirements it should satisfy and what

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<sup>28</sup> See Cohen (2009, 9) for the criticism of this idea.

kind of argument may be advanced in its favor. Now, let us see how the lack of taxation may interfere with such mechanism.

Recall the three requirements which I have described above: the mechanism should have the ability to know the law of nature (1), the power (2) and motivation (3) to implement it. In the next two sections I will explore how in absence of taxation requirements (1) and (3) may be sabotaged. Here I want to say a few more words about interaction between taxation and requirement (2).

In a large part, this issue heavily overlaps with the problem I have already explored in Chapter 2. Namely, I have already argued that even without taxation the state would have the tools to successfully enforce the law of nature. The question I ask in this chapter, however, is a little bit different. I am not dealing here with a simple problem of lack of resources. Instead I want to investigate how a particular method of collecting resources can affect the state, in particular, its ability to track the law of nature. In the aspect of requirement (2) I need to ask, whether, in the absence of taxation, the part of the state, which is responsible for discovering the law of nature, would turn out to be impotent to affect the actions of the state as a whole.

For the answer to this question to be positive, we need to believe that without taxation some parts of the state would become weaker and some would become stronger. I do not see how such belief can be possibly justified, this is why I do not devote a separate section to the discussion of this issue. It appears to me that the lack of taxation and the necessity to use alternative sources of finance would affect all parts of the state in a similar way, without making some of them stronger and some of them weaker.

With this out of our way, let us turn to other two avenues of attack which seem to be much more promising for my opponents. Firstly, it can be argued that without taxation the state would not be able to know the law of nature, because it would develop a bias towards certain judgments related to this subject. It may be believed that such bias develops due to inability of taxless state to estimate correctly the relation between costs and benefits of its actions (also known as free-rider problem) as explained in the next section. Secondly, it can be argued, that without taxation the tracking mechanism would not be able to motivate the state to implement the law of nature, even if it knows it. This is because without an independent source of financing it will be at the mercy of its donors which would be able to influence its decisions and to steer it towards promoting their egoistic needs. I have already touched upon this problem in Section 2.1. when I noted that

taxless state which treats all citizens equally, irrespective of the amount of resources they donate, may seem unrealistic. Now is the time to deal with this problem directly.

I will deal with free-rider problem in Section 3.2., and with the problem of being influenced by donors in Section 3.3. My task in these sections is not to present a complete proof of the fact that such problems would not be fatal for a taxless state. Such proof is not possible without a complete understanding of the nature of the tracking mechanism which, for the purposes of this work, I prefer to keep in a black box. I aim for a more modest goal: to present plausible scenarios in which taxless state would not be affected by this problems, so that these arguments could not be considered fatal without further investigation.

### **3.2. Taxation, Free Rider Problem and Public Goods**

Recall that executive power of the law of nature comes with the obligation to demonstrate to your neighbors that you actually enforce the law of nature but not engage in a random violence (Section 1.2). Such demonstration can be made through the usage of a variety of procedures. Some of them are costly but reliable, some of them are cheap but relatively unreliable. A specific conception of the law of nature should determine what kind of procedures should be chosen and how costs / reliability balance should be struck.

This question can only be answered with a reference to economic facts about the costs of specific procedures. This is how the knowledge of costs of certain actions becomes relevant for the knowledge of the law of nature.

This problem persists with the introduction of the state. As you may recall, the state acquires a duty to enforce the law of nature in exchange for obtaining a monopoly on the use of force. Just as private citizens need to balance between the cost and thoroughness of procedures which they should use to demonstrate the rightfulness of their actions to their neighbors, the state needs to balance between the cost and thoroughness of law enforcement. The question of how exactly this balance should be struck is to be answered within a particular conception of the law of nature. But it can only be answered correctly if the comparison between the cost of law enforcement activities and their benefits is calculated correctly. In this way the knowledge of net economic value of law-enforcement activities becomes the part of the overall corpus of knowledge of the law of nature. As per requirement (1), described in the previous chapter, the tracking mechanism is expected to track this kind of knowledge flawlessly.

At this point, the economic concept of public good becomes of interest for our purposes. Public good is characterized by two properties. First, it must be non-rivalrous. It means that the consumption of this good by one individual does not prevent other individuals from consuming the same good. Second, it must be non-excludable. It means that once the good is produced, exclusion of a given individual from the consumption of the good must be impossible.

Production of public goods by private agents runs into a so-called free-rider problem. As consumers cannot be excluded from the consumption of a public good once it is produced, private organizations have no effective means to collect the payment for the benefit they provide. It diminishes their incentive to produce the good. As a result, without additional external regulation, goods would be systematically underproduced.

Now, let us tie it up with our previous discussion. The enforcement of the law of nature can be understood as a type of public good. If we apply the above argument to the regime of voluntary government financing, as described in Chapter 2, the state would face a large number of consumers of law-enforcement making no donations to it and “free-riding” upon the benefits it provides. As the amount of money which economic agents receive in a free market as a payment for their work serves to transmit information about the value of respective goods and services, this last fact means that the state would constantly underestimate the amount of benefit it provides. It means that it would not be able to track correctly at least one type of knowledge which is relevant to the overall knowledge of the law of nature. As taxation is widely believed to be a proper tool for the solution of the problem of public goods, it seems that tax-state has an advantage over a taxless state in the respect of its ability to track the law of nature.

I will respond to this as follows. First, even if we accept the standard approach to free rider problem, as outlined above, it does not follow from it that taxation is necessary for the proper production of public goods. What it shows is that mere protection of property rights is insufficient to produce them efficiently. But it does not follow that taxation is a way to solve that problem.

The belief that taxation is a solution to the problem of public goods rises from an assumption that the only function which market plays in production is to provide incentives. It cannot do so in case of public goods but the state steps in and incentivize consumers of public goods to pay for them by using coercion.

However, providing incentives is not the only thing which the market does. As has already been mentioned above, through price mechanism it collects and utilizes the

information about social needs and available resources (Hayek, 1945, 526-530). Only using this information we can organize production rationally. Without this knowledge we can never be sure that the product which we produce is actually more valuable than resources which are spent on its production.

A large portion of information which is relevant for this purpose is comprised of the knowledge of particular circumstances of time and place (Hayek, 1945, 521) which is typically only available to individuals. Government does not have access to this kind of knowledge. This is why when it comes to production of public goods it fares better than market in providing incentives but still fails at fulfilling the corresponding function of information processing.

On the market a consumer is free to buy a product at a given price or refuse to buy it. If he refuses to buy it, it means that there are goods which are more valuable for him at this price. The producer is forced to either lower the price or to stop the production of the good. In this way the information about the needs of the consumers is transmitted to the producer. From the viewpoint of the society as a whole this mechanism allows to stop spending resources on production as soon as marginal value of respective goods is low enough that these resources are better spent elsewhere.

However, if the government takes up the role of a producer and starts to provide goods for free, covering its expenses from taxes, nothing like this mechanism exists. Even if consumers would prefer to pay less tax and receive a smaller amount of public goods, they have no means to transmit this information to the government.

One may argue that democratic elections provide such a mechanism. If a taxpayer thinks that he pays too much taxes, he can vote for politicians who propose to lower the taxes. This, however, leads us back to the problem already discussed earlier in Subsection 2.2.1: voting power of individuals is equal while the amount of taxes they pay is not. The state is insensitive to costs as long as it can distribute the tax burden in such a way that the majority of voters get more from the system, than they contribute.

It seems that financing public goods through taxes would inevitably create a tendency to overproduce them,<sup>29</sup> just like the market would tend to underproduce them.

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<sup>29</sup> This is not to say that all actual public goods are “overproduced”. Taxation is only one of many factors which may influence the incentives of the state and I assume here a highly idealized state which genuinely tries to serve the public. The alternative possibility, which we can observe much more often in real life, is that the government would produce something which is not a good at all but would ignore genuine social needs.

Therefore, there is no strict advantage of the government over the market when it comes to production of public goods: both systems have specific flaws of their own.

There is an even stronger objection. I believe that the assumption that free-rider problem leads to “underproduction” can itself be criticized. “Underproduction” is established against an arbitrary standard which assumes that overcoming free-riding is costless. In a similar way I may claim that food is “underproduced” because I can imagine a world where food can be produced at no cost and in this world there will be more food.

Another way to look at it is to accept that the possibility of free-riding is an objective difficulty which we face in production. It should be overcome by an expenditure of additional effort - just as production in general requires effort. The more effort given product requires, the less amount of this product we want to produce, other things being equal. Therefore, it is perfectly normal that we are incentivised to produce lesser amount of goods if they allow free riding. The fact that without taxation public goods would be “underproduced” is not a defect but an advantage.

This last conclusion may seem counterintuitive only if we assume that we know beforehand what amount of public goods is socially necessary or that we can make an arbitrary decision in that respect. But we do not have such knowledge and the fact that this knowledge is harder to access due to free riding effects should make us more reluctant to produce such goods. On the other hand, the only way we can learn such information at all is to allow costs to influence the amount of goods we produce and to create an incentive to come up with creative schemes to reduce the effect of free riding.<sup>30</sup>

The above means that it is not correct that without taxation the state would not be able to collect the information about the net economic value of law-enforcement, which it produces, which, in turn, would make it unable to know the law of nature. To the contrary, taxation is exactly the institution which prevents such information from being collected, as it renders the state blind to the true cost of its actions.

Now, as it has been made clear, let me turn to the next potential problem: the possibility that taxless state would be influenced by the interests of donors which would steer it away from the implementation of the law of nature.

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<sup>30</sup> See Tabarroc (1998) for an example of one such scheme. According to this paper the producer of public goods is able to turn free rider effect upside down by promising to give back to the donors more money than they have donated, in case he is unable to raise the necessary amount of resources.



### 3.3. The Oligarch Takeover

Let us now move to the final concern. It is based on the idea that taxes provide the state with a source of financing which it can unilaterally control. As it is only up to state to decide how much money it will be able to collect, it may enjoy independence to outside interferences when it comes to its financial decisions. By contrast, if we imagine the case of voluntary financing, the state becomes dependent on the whims of its donors. If it tries to implement policy which goes contrary to their interest, they will cut down their donations and the state would be forced to adjust the policy accordingly. It may be argued that it distorts motivations of the state. Even if there is a mechanism which provides for accurate knowledge of the law of nature, the state would rather want not to apply this knowledge but to enact policies which would satisfy its patrons.

Of course, this concern persists in actual modern states, even though the amount of wealth being redistributed through welfare system suggests that modern states are quite good at defending themselves from being overtaken by wealthy elites. The reason for this, however, is that modern states are not ideal liberal democratic states and ideal liberal democratic state would, supposedly, be fully protected from such danger. Ideal taxless state, however, seems defenseless against it exactly because of the lack of taxation.

This argument is inspired by (McCarthy, 2011, 37-50). He criticizes the ancient practice of euergetism, which consists in financing public needs through voluntary donations of rich individuals, on the grounds that it gives such individuals too much power over public affairs and alienates them from the rest of the society. He, of course, uses slightly different language than I do here: rather than saying that state's comprehension of the law of nature will be distorted, he says that such state will necessarily become illiberal. But if one believes that liberal values are a part of natural law (as many would be inclined to), his argument seems to be applicable for the criticism of my thesis.

Firstly, I need to point out that McCarthy's original criticism is heavily dependent on particular circumstances of ancient city states which do not need to be generally true for all types of voluntary financed states. He pictures a situation when the state is financed by a narrow circle of oligarchs who, presumably, have similar interests. There are no openings for fundraising beyond this narrow circle. In this particular situation we would have "buyer's market" and the state would, truly, be heavily dependent on these very few people.

One may think that this picture is still relevant today but I do not believe that it is so. Modern society is much more affluent in general than the ancient one. The wealth is much more spread out and there are a lot of working tools for efficiently accumulating it from large numbers of small-scale donors through voluntary, non-binding donations. Such internet resources as Twitch, Patreon, Kickstarter are examples of working business models built around that. One can also recall recent Bernie Sanders Presidential Campaign in USA when Senator Sanders was able to accumulate from a large number of small donations an amount of money which was sufficient to make him competitive against traditionally financed candidates.

These examples, I believe, should put to a doubt an idea that in modern context only a small cabal of oligarchs would be able to use the system of voluntary donations for financing the state. We can easily imagine how a populist state, which is denied funding by oligarchs, would still manage to maintain a balanced budget through the reliance on small donations - if, of course, it truly has a popular support. In future the factors, which increase the possibility of such scenario, would only become stronger. Taxless state may find itself on a “seller’s market”, where the state is able to choose between taking money from different groups depending on what kind of policy it wants to implement.

There is a more general response. I believe that the very assumption that dependence of the state on outside influences makes it less likely to come to correct conclusions about the law of nature is flawed. The simplest way to understand it is to apply it to democratic process itself. Just as we say that donors in hypothetical voluntarily financed state would steer the government towards satisfying their egoistic interests, we may say that voters in democratic elections would want to do the same thing. And whatever arguments we may advance to show that voters are motivated not just by self-interest but by “higher” values may be employed to show the same thing for donors.

At that point the conception of epistemic democracy may be employed to suggest an alternative approach. In the previous section I have shown how we can apply these ideas to understand the nature of the tracking mechanism. We need to understand democratic procedures as the very mechanism which allows the state to collect information about the law of nature. In that case they should be viewed not as an “outside influence” which “corrupts” the state and makes its decisions biased but as an internal institution of the state which makes it stay true to its principles.

This, I believe, is relatively uncontroversial. But let us try to extend this logic further.

Assume, for a moment, that the argument for democracy being exactly the epistemic mechanism which is used to discover the law of nature, provided in Section 3.1., is sound. In that case, however, it seems that if we open up the state to the influence from additional groups, which would bring with them some kind of unique perspective, this mechanism will become even more robust. And the community of donors would represent exactly such group, bringing in a unique appreciation of the cost of government's activities – just the thing which, as I have argued above, a typical democracy lacks. Observe, that this influence is introduced not instead of a usual democratic feedback mechanism but alongside with it: in voluntarily financed state elections are still there and the government still needs to justify itself to the community of citizens. But it also additionally needs to justify itself to the community of donors. It makes it more probable that instead of trying to appeal to a self-interest of a particular empowered group (e. g. the numerical majority of citizens), it would try to appeal to some universal moral truths which may be acceptable for everyone. This last fact would actually make it more capable of tracking the law of nature than a tax state.

This section completes the task which I have set for the Chapter 3. I have identified two main concerns which can make taxless state incompatible with a working tracking mechanism: the free-rider problem and the problem of oligarch takeover. I have shown that in both these cases we can imagine a scenario where specific features of a taxless state work to strengthen tracking mechanism, not to destroy it. Therefore, the possibility that taxless state cannot be justified because it would include incompatible features should be dismissed until further proof is advanced in favor of it.

## Conclusion

So, let me briefly summarize what I have argued. In Chapter 1 I have provided my evidence for Claim (1): There is an argument which justifies the state but only if it does not engage in taxation. I have argued that if we take Lockean initial position as a starting point but reject Lockean justification of the state by universal consent, we will still be able to justify the state simply by the fact that it successfully removes the inconveniences of the initial position while remaining within the bounds of the law of nature. But we cannot justify taxation in this way. Firstly, because it cannot be a part of the law of nature as it will be indistinguishable from theft without the state. Secondly, because the state will be unable to remain impartial while employing taxation which means that it will no longer be an answer to the problems which plague initial position.

The justification I have described is, in fact, a broad family of justifications which would have different assumptions about the content of the law of nature and the nature of the mechanism which allows the state to track the law of nature. These justifications will pick out different sets of justified states. Some of them will have very narrow functions and others very broad functions — but none of them will tax its citizens.

In Chapter 2 and Chapter 3 I have provided my arguments in favor of Claim (2): that the argument described in (1) does not pick out an empty set of possible states. Firstly I have explored the possibility that without taxes the state simply would not have resources to enforce the law of nature. To combat this objection I have shown that the state can actually do that while relying exclusively on voluntary donations. That was the topic of Chapter 2.

In Chapter 3 I have explored the second danger: that taxless state would not be able to follow the law of nature and, therefore, could not be justified. As I also claim that only taxless state can be justified, it would mean that the set of possible justified states is empty. While arguing against this possibility I explore two possible ways in which taxless state would be rendered unable to follow the law of nature. The first one is its inability to produce public goods in a sufficient amount. The second one is the possibility that it would be put under control of a narrow group of donors. I have argued that none of these possibilities is intrinsically connected with the nature of a taxless state.

In this way I have provided arguments for both Claim (1) and Claim (2) proposed in Introduction and have completed the task which I have set for myself in that work.

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## **Abstract**

On Separation of State from Taxes

[*Riigi ja maksude lahutamisest*]

The work argues for a conceptual possibility of the view, according to which the state is justified but taxation is unjustified. The argument is constructed through the defense of two following claims:

(1) There is an argument which justifies the state but only if it does not engage in taxation.

(2) The argument described in (1) does not pick out an empty set of possible states.

The first claim is defended by exploring Lockean concept of state of nature. It is argued that while the justification of the state which Locke himself proposes and which relies on the notion of the universal consent of citizens to the state may fail, there is an alternative possibility to justify the state by its compliance with the law of nature. Such justification, however, would render justifying taxation impossible.

The second claim is defended by exploring and rejecting two objections, according to which the state, justified in a proposed fashion, is put under incompatible requirements: that such state would not have the resources to enforce the law of nature and that it would not be able to track the law of nature correctly.



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