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1 Enrichment of the Trustees

Among its many distinct features, the XX century will be remembered for the nearly universal spread of democracy and equally universal spread of its abuse. I am not even talking about either cynical falsification of democratic procedures, like in Stalin's empire, or terrible mistakes of the voters, like Hitler's electoral victory. I discuss typical and logical decisions of voters to abuse their power.

Partial Jury. Democratic constitutions endow the electorate with sovereignty, unrestricted even in cases of obvious conflict of interests. Can a judge, however wise and honest, be trusted with a decision to fine litigants and use the proceeds for his own compensation? The voters do have, and routinely use, the authority to redistribute resources from groups of smaller electoral power to groups of a larger one. For example, the 23% of the US electorate who pay above average federal individual income tax, contribute 78% of its revenues. Since the Congress, entrusted with the spending of these revenues, represents the voters uniformly, the benefit is in effect spread uniformly throughout the population. So, $78 - 23 = 55\%$ of the revenues are transferred from minority to majority by a majority decision. In fact, a majority of the electorate contributes 3% of the tax revenues but can, in principle, have the complete control of spending all.¹

Faith. The negative effects are many. First, the cynical perception of this process harms the fabric of society. Many people are in favor of public charity. But few would use the name "charity" when the decision is made by the recipients. The cynicism has not gone as far as to allow a politician to actually win under the slogan "Rob the rich and buy the poor". But think, how many of your friends would shoplift if absolutely guaranteed from being caught? Probably few, if any. And how many would pass up an opportunity to underpay their taxes (again under the unrealistic assumption of absolute impunity)? Probably few too ... The undermined internal respect for the law cannot be replaced by vigorous enforcement.

Taxpayer Owned. A market idealist may view voting rights as property and see little wrong with cashing in on them. But ordinary property rights serve to untangle our domains, to guard the assignment of fruits, both sweet and sour, of one's actions. Just the opposite comes from ill-designed property rights, like slave ownership and the (similar in nature) open-ended power of majority to tax a minority and consume the proceeds. Voting powers were conceived as an office of trust, not as property, vague and illiquid. Imagine a seat in the Supreme Court being owned and used for profit! It took the Civil War to establish that not all kinds of ownership deserve public endorsement and few deserve a mandate.

The Price of a Vote. And a vote sold is a vote gone, the voter's chance to contribute his/her wisdom to public life gone with it. Many proposals are decided on the basis of which groups gain or lose money rather than on other merits. We have no tolerance for bribe-taking judges not because bribes are a big economic loss, but because they impair the judgment. The fall of the ancient Roman democracy came, in large part, from the bribed voters' inability to address non-bribe issues.

I do not even touch here upon the many obvious economic harms such redistributions cause.²

* *Tax Notes* 77(7):858-860, <http://www.taxnotes.com/tax-notes-federal/1997-11-17>
(also available at <http://www.cs.bu.edu/faculty/Lnd/civic/bread.htm>).

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¹My concerns here are mostly procedural, not libertarian or even substantive, as in the fascinating "Takings" by R. Epstein. E.g., I see little conflict of interests in a vote to tax the wealthiest 20% equal amounts for support of the poorest 15%, a smaller electoral group.

²One less obvious is the proverbial inefficiency of publicly financed programs. But if every \$45 spent by "represented" taxpayers are supplemented by \$55 coming without representation, then even fully informed voters would support extension of tax-paid services until the efficiency falls below 45% margin.

2 Bugs in the Clockwork

Original Safeguards. The Framers of the US Constitution were very much aware of the danger of democratic procedures being used for “fair redistribution of wealth”. They created numerous safeguards against that. The use of private property for public benefit without just compensation was forbidden. The complicated original formula determining the number of state’s representatives in the House was explicitly equated to the one levying the tax on each state. The very slogan of American revolution about taxation and representation was behind this provision. All government branches except the House were denied financial initiative. Direct taxes, not proportional to the population were prohibited.

Income Taxation. These safeguards failed. The income tax amendment changed the taxation (quite small, at first), without changing the body entrusted with spending the tax. The link between taxation and representation was thus broken. This amendment survived many court challenges. Minor irregularities in its acceptance failed to impress the judges. More importantly, were the Court to overturn the amendment now, it would be immediately reinstated with overwhelming majority. Modern economy just cannot exist with as small government services as could be supported by capitation taxes.

... With Misrepresentation. Interestingly, the application of the amendment has not been challenged on another ground: whether the Congress levying the income taxes still preserves the authority to spend them without approval of a body representing taxpayers in proportion to taxes paid. Neither has been raised the issue of whether the income tax, not compensated with corresponding representation in the tax spending body, constitutes an uncompensated public use of private property.

A Lesser Evil. But imagine a legal genius proving these points in court. Suppose the Supreme Court forces the Congress to form a “taxpayers’ corporation” for each non-capitation tax it collects. The corporation representing taxpayers in proportion to the tax paid would have a veto power over any expenditures the Congress proposes. Would this be good?

No! Of all forms of extortion, taxation is the least intrusive and harmful. Deprived of the ability to redistribute money through taxes, voters may turn to doing this through restrictions on the use of private property. The disasters caused by reckless rent control in some cities serve as a good warning.

An Easier Ward. Remarkably, the Framers had a much greater success in protecting other, non-property, rights since the electorate has no real interest in non-economic abuse of minorities. The voters may temporarily be in favor of harassing some unpopular groups or persons. But all the legal system needs to do is to put some obstacles, slowing down the process, giving the voters the time to cool off. When the voters have a real conflict of interests, the protection is much trickier. Ultimately, they can even remove the annoying articles from the Constitution itself.

Reaching Far. Generating and preserving taxable assets depends on public services, such as maintaining national defense, social order, economic environment, etc. These services cannot be financed commercially due to the difficulty of restricting the benefits to subscribers (unless protection from tax collectors counts among the benefits). But taxation divorced from representation can reach realms beyond any link between its fruits and burdens. What free public services benefit such taxable events as death, gifts, foreign earnings? We can tax even future taxpayers, remote and unrepresented as they are, by leaving them public debt exceeding public assets.

Casus Belli. The arena of “fair redistribution of wealth” does stop at national borders. As a US citizen I would dread the combined vote of the US and the Peoples Republic of China on whether to share equally the wealth of both countries among the combined population. But the annoying borders that stop such temptations can be moved! Many a war was fought for or against the interests of this kind.

Our Legacy. Computers keep eroding our monopoly on intellectual power, as gas and electricity did with our physical powers before. Future democracies would have to incorporate intelligent agents much more diverse than humans. Even now the “one man - one vote” principle equates Einstein and someone who never bothered to work or even to take his child to a zoo. It requires caution, more so if we have an ambition to carry our ideas of civilized society into the centuries to come. At the very least the voters should be treated as trustees of the state, not as its owners cashing in on the votes.

3 Shall We Overcome?

Honor Before Profit. Shall we leave in the passing century these fights for each other’s purse? Legal systems compete fiercely in our shrinking world. True, one can bar capital from export, people from emigration or working abroad over the internet, allies can defend land and oil. But such limits of competition have major military, police, trade, and other costs, and fairness to the productive bodes the system a much brighter destiny.

The voters may give up their authority to act under conflict of interests. Constitutions may be amended or reinterpreted to invalidate any democratic decisions that have a combined effect of transferring significant resources or power from smaller to larger electoral groups. Then restrictions on property use with this effect could be challenged in court and to spend taxes the legislature would need the consent of an assembly representing the taxpayers in proportion to the tax paid. (Even now, called by a non-profit foundation with no legal authority, such an assembly could contribute to the integrity and wisdom of the appropriations by offering taxpayers’ opinion on how the electorate spends their money.) The amendment might also force the Government, precluded from mortgaging its taxing power, to gradually distribute its debt among its agencies, backed only by their assets, and the taxpayers (by lending them money to pay higher taxes).

Social Effects. Would the taxpayers’ control of their money breed neglect of social ills? Unlikely. They cannot allow widespread poverty without suffering from deteriorating labor resources and dwindling economic output. Rich and poor have old, ill, or unfit loved ones, some too proud to accept gifts. Richer electorates are often *more* supportive of public supplement to charitable safety nets and private social insurance.

Even should core taxpayers prove insensitive to social needs, the Congress could always form an additional taxpayer’s assembly collecting a separate regressive “social” tax. With a flatter shareholder base, it will support projects major taxpayers balked at. But whatever the goals, policies approved by those who paid will achieve them more efficiently. And a more trusted and less resisted tax system could fund them better.

Second, such a haven may become a magnet for investors around the globe. By creating employment and other opportunities to cooperate, the economically productive people would contribute much more to the well-being of others than can be taken by force.

And the society liberated from redistribution struggle should become wiser, open to new solutions precluded now by mistrust between different economic groups.

One such alternative is discussed in sections “A Gentler Taxman,” “A Straighter Taxpayer” of the original version of the present article and also in my article

<http://www.taxnotes.com/tax-notes-federal/tax-policy/taxation-and-valuation/2019/08/12/29rh>

Equal but Separate. Democratic ideas misapplied on a world scale hamper funding for crucial projects by unlinking potential payers and beneficiaries. Compare the life standards of US taxpayers and medieval peasants. Science has been responsible for most of the difference, yet it receives only a minor portion of our GNP. The reason is that national funding is not really adequate: why would a US taxpayer pay a fortune for projects that may benefit the Japanese faster than himself? But a large scale financing through institutions like the United Nations is unrealistic as it would amount to an international redistribution of wealth. Similar problems hinder investments in global environment, infrastructure, peace keeping, etc.

Diverse but Joint. The non-redistributive taxation may cross national boundaries solving the problem of financing much needed projects that cannot be adequately addressed at the national level. The most direct way may be an International Tax Corporation created by participant countries which compel their taxpayers to buy its shares. The governments would negotiate the scope of such corporations, the size and distribution of obligations to buy shares. No project would be financed without the consent of directors elected by shareholders.

Such investments may actually have an appeal to large groups of taxpayers if not to individuals. Say, an Atlantic fisherman may prefer to buy fewer shares herself, and yet strongly favor the law mandating all Atlantic fishermen to buy more shares and get more say in spending. The value of corporations often exceeds by far the value of their assets. So, an increase in fishermen's contributions may give them a hefty return (say, through research or investment in the Atlantic environment).