by Fred Foldvary

The *Nomos* Challenge asks whether some taxes are "more avoidable and thus, more just, than others." In response, I think we must first distinguish just taxes from avoidable ones; these are two logically different categories. A third attribute is the economic impact, or whether a tax is "uneconomic."

My intent in this essay is only to clarify the categories of "just," "avoidable," and "uneconomic." To analyze all the types of taxes would require more space than is allowed for the *Nomos* Challenge.

The question of a "just" tax involves morality. That something is "just" implies some moral standard by which to judge. The only significant standard to use is natural moral law, since any other standard would only be someone's personal view, and it is nonrational to dispute matters of personal taste.

Natural law provides three moral values for any particular act or situation: good, evil, or neutral. A "just" tax would be non-evil, and therefore either good or neutral. The criterion by which to judge would be whether a tax was coercively harmful (and thus evil) for the individuals affected.

An "avoidable" tax is one which individuals or organizations can legally escape. Tax avoidance is different from tax evasion, the latter being an illegal escape from the tax. For example, a tax on income from rental property can be avoided by carefully planning an investment so that the depreciation of the property, in addition to expenses, offsets the income. Making maximum use of deductions, credits, and exemptions can help one avoid some income tax. Sales taxes can be avoided by buying through the mail from out of state. Current legislation is being considered which would nationalize the sales tax so that mail-order buying would also be taxed.

One argument claims that sales taxes can be "avoided" by refraining from buying. But this is not genuine avoidance. After all, you can avoid all taxation by committing suicide. Genuine avoidance means doing what you want to do, whether consuming or working or owning, *and* not having to pay a tax that would normally apply to that activity.

The third aspect of taxation is its economic effect. There is no such thing as a neutral tax. Different types of taxes have different types of effects, and these depend not only on the type of tax but on the nature of the market affected. The effect of sales taxes is to raise prices, and consumers usually end up paying the tax. Income taxes can both lower real wages and raise the price of labor; employers often end up raising the prices of their products to cover the extra expense, and so consumers end up paying for much of the income tax. Taxes on savings lower the incentive to save and invest, resulting in more consumption relative to savings than would occur in a free market. Less capital results in less future wealth. Taxes on real estate are actually two taxes combined in one payment: a tax on the land and a tax on the buildings and other improvements. The tax on the land reduces the price of land, whereas the tax on the improvements increases the price of buildings, since the improvements have a cost of production.

The American economist Henry George, in his book *Progress and Poverty* set forth four "canons of taxation" by which to judge the economic impact of taxes. The economically best or least-worst taxes are those which:

1) bear as lightly as possible on production,

2) have as little cost of collection as possible,

3) have the least opportunity for government corruption and oppression, and

4) are as equitable as possible, i.e., with as few arbitrary disadvantages as possible. (For example, a 40% income tax for males and 60% tax rate for females would be arbitrary and not equitable.)

A tax that best meets these four canons would be the economically least-worst tax, and it would also influence the judgement of whether a tax is just, or less unjust, than others. Note that none of these canons consider whether a tax is direct or indirect. Indirect taxes are not necessarily more avoidable than direct ones, and not necessarily economically better. A direct income tax may be more avoidable through "loopholes" than an indirect tax one does not even know one is paying! An argument against indirect taxes such as the value-added tax used in Europe is that it is added to prices without the consumer being able to even determine how much the tax is. The *MIT Dictionary of Modern Economics* (third edition) states that the distinction between indirect and direct taxes is not "a particularly watertight one, nor is it especially useful from an analytical point of view."

To sum up, the three aspects of taxation—justice, avoidance, and economics—are logically separate. The question of a just tax is a moral one, and depends on the moral standard used to judge. The economic effect requires complex economic analysis of the tax and the market affected, and has nothing to do with the moral questions, although the moral issues may depend on the economic effect. The issues of ease of avoidance and possible evasion are practical matters that are logically independent of the moral issues. A tax may be just and avoidable, unjust and avoidable, just and unavoidable, or unjust and unavoidable. The consideration of which taxes are just or least unjust requires the use of natural moral law. Since natural law requires us to minimize coercive harm, the judgment of which tax is least harmful also requires us to consider the four canons of taxation. Before we can even begin to discuss whether a tax is just or not, we need to keep the distinctions between avoidance, economics, and justice clear.