

# WHAT IS WRONG WITH ENDOWMENT TAXATION

## Self-Usership as a Prerequisite for Legitimate Taxation

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### ABSTRACT

Delmotte and Verplaetse connect the issue of trust to legitimacy: what are the ethical boundaries that citizens can entrust the legislator not to transgress? Moreover, a research-programme aiming to restore the relationship between tax payers and their governments demands an identification of the limits to governmental taxing proclivities. Indeed, while normative tax theory focuses mainly on how to limit the productivity-loss due to taxation, this contribution scrutinises how to limit *rights-violations* due to taxation.

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To demonstrate the effect of peoples' rights within fiscal processes, the authors raise the issue of endowment taxation. The concept of an endowment tax, being a levy on the market value of one's talent, is the showpiece of the dominant, welfare economist approach to taxation. Taxing people on their talents has been celebrated as a theoretic ideal – mainly since it avoids tax payers' minimising their tax debt by working less, and it thus maximises welfare.

However, both authors protest against the ideal of talent taxation, by showing how such a measure collides with the rights tax payers have over their own person. From a more abstract notion of autonomy, they deduce the 'right to self-usership', that claims that all people have at least the right to control their own body and mind. By analysing how a talent tax would be practically implemented, the authors reveal that such a policy violates this right not once – but thrice: measuring, valorising and effectively taxing talents, all interfere with a different aspect of our general right to self-usership – and signal the illegitimacy of this fiscal measure.

As the right to self-usership demands that taxation ought to stay away from the sphere constructed by our body and mind, both authors explain why an income tax can possibly respect this demand. Since income does not belong to the personal domain itself, but is rather a product of consensual economic interactions, governments are not a priori prohibited from imposing fiscal and other duties on one's realised income, as long as these are detached from the choices people make on how to use their bodies and minds.

## 1. INTRODUCTION: TOWARDS A THEORY OF LEGITIMATE TAXATION

From a normative perspective a tax system can be assessed in two ways. A first kind of inquiry deals with the question 'Why should society levy taxes?' This research investigates the acceptability of the goals of public expenditure. Some of these are widely accepted, such as provision of public goods and funding of social security, while other objectives remain more debatable, such as correction for market failure and redistribution of wealth.<sup>2</sup> A second kind of inquiry deals with the question 'How should society levy taxes?'. If we assume that society agrees on (some of) these goals, an important issue remains how public authorities can attain these finalities in a *legitimate* way? Both questions should be treated separately. As a matter of principle, public spending should not only contribute to the abovementioned goals, a priori it should realise its funding through procedures that are *compatible* with people's fundamental moral rights and liberties. The significance of this 'legitimacy question' originates from the

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<sup>2</sup> The field of public finance traditionally includes all four. See H. ROSEN, 'Public Finance' in C. ROWLEY and F. SCHNEIDER (eds.), *The Encyclopedia of Public Choice*, Kluwer Academic Publishers, Dordrecht 2004, pp. 252–262.

classical philosophical and legal insight that governmental action can only be undertaken within the boundaries set by people's fundamental rights and liberties. As echoed by political philosopher John Tomasi, these rights and liberties are the 'prerequisites for the *legitimate* exercise of democratic authority'.<sup>3</sup> In order to be normatively tolerable a tax system should not only be efficacious and have the best intentions, it needs to be legitimate as well.<sup>4</sup>

In an age of distrust, when residents seem increasingly unwilling to pay taxes, this 'legitimacy' requirement demands more attention.<sup>5</sup> If public authorities want to restore the damaged relationship with their citizens, the rules that guide taxation ought to be justified within a balanced theory that addresses tax payers as active holders of rights and not merely as welfare-contributors. Hoping to re-establish a solid and durable relation between spending authorities and sponsoring citizens, the latter's fiscal duties cannot simply be a function of economic efficiency-models. Conversely, a new fiscal contract that aims at increased compliance requires – among other things – a theory of *legitimate taxation* that examines tax payers' particular moral rights and their relevance within fiscal policy.

Surprisingly, up to now tax scholars dedicated little to no attention to this 'legitimacy' requirement. In search for the ideal tax system, the dominant *Optimal Taxation Theory* focused mainly on considerations of efficiency – often supplemented with some notion of equity. Whether the suggested policy also adheres to people's moral rights and liberties seems to be neglected in current

<sup>3</sup> J. TOMASI, *Free Market Fairness*, Princeton University Press, Princeton (NJ) 2013, p. 76. (emphasis added).

<sup>4</sup> Legitimacy is thus presented here as PETER VALLENTYNE understands the 'justice' of a tax system, which means that it 'wrongs no one, in the sense of infringing no one's rights.' See P. VALLENTYNE, 'Taxation, redistribution and property Rights' in A. MARMOR (ed.), *The Routledge Companion to Philosophy of Law*, Routledge, New York 2012, pp. 291–301.

<sup>5</sup> The current context of taxation is one of rising distrust between taxpayers and tax administrations. For further analysis of the notion of trust see the other chapters in this book, notably those from ERICH KIRCHLER et al (chapter 15) and ALISSON CHRISTIANS (chapter 7). The latter sketches the present time as follows: 'Academics, watchdogs, journalists, and activists express deep skepticism about the motives of elected politicians with respect to tax policy in the context of multinationals that are simultaneously large political donors, outside influencers of legal reforms, and direct beneficiaries of tax largesse. This skepticism ... is arguably the source of a deepening distrust within societies regarding the design and implementation of the tax system.' See also A. CHRISTIANS, 'Putting the Reign Back in Sovereign' (2013) 40 *Pepperdine Law Review* 1373. For more information on the fiscal crisis and the rise of tax avoidance see R.S. AVI-YONAH, 'Globalization, Tax Competition, and the Fiscal Crisis of the Welfare State' (2000) 113 *Harvard Law Review* 1573. Related, the EU estimates that European tax administrations lose annually about €1 trillion due to tax evasion and avoidance. (For more information, see: [http://ec.europa.eu/taxation\\_customs/taxation/tax\\_fraud\\_evasion/index\\_en.htm](http://ec.europa.eu/taxation_customs/taxation/tax_fraud_evasion/index_en.htm)). More empirical material on current tax base erosion due to tax planning strategies can also be found at: <http://www.oecd.org/tax/beps-about.html>.

literature.<sup>6</sup> One of the best examples of this myopic search for an ideal tax system is the idea of an endowment tax, or taxing citizens on whatever their *talents* (and thus not their actual income) could make them earn. Already in the '70s, leading economists like Akerloff, Mirrlees and Musgrave promoted taxation of one's innate earning ability as the ideal tax base.<sup>7</sup> This century, leading tax scholars like Daniel Shaviro, Kirk Stark, Luis Kaplow, Lawrence Zelenak, Logue and Slemrod defend taxation of potential earnings as the optimal tax base.<sup>8</sup> Endowment taxation offers an excellent illustration how a certain tax proposal can at the same time be normatively most appealing (since it would gather the necessary revenue in a highly efficient way) and normatively most horrendous (since it might degrade citizens into passive welfare-donators). In our view, taking people's talents as the proper benchmark for taxation constitutes a multiple violation of people's moral rights. By pinpointing what is wrong with this measure, we like to uncover the normative *minima* that any taxation policy should respect. These conditions demarcate the operative field for public authorities, wherein they ought to realise the abovementioned goals in a maximally efficient way.

In this contribution, we first (section 2) clarify the idea of an endowment tax, the arguments of efficiency and equity that are raised in favour of it and the two

<sup>6</sup> The traditional prior aim of the dominant 'theory of optimal taxation' is to reduce inefficiencies and market distortions imposed by taxation. See, for example, J. SLEMROD, 'Optimal Taxation and Optimal Tax Systems' (1990) 4 *Journal of Economic Perspectives* 157. For a situation of tax theory within the traditional utilitarian framework, see D. SHAVIRO, 'Beyond the Pro-Consumption Tax Consensus' (2007) 60 *Stanford Law Review* 745, 750–760. This model has led to rather debatable standpoints from the perspective of people's (equal) rights, for example tax scholars' traditional rejection of taxation of capital income, supported by both the ATKINSON-STIGLITZ and CHAMLEY-JUDD theorem. For a critical discussion on this issue, see T. PIKETTY and E. SAEZ, 'A Theory Of Optimal Capital Taxation' (April 2012) *National Bureau of Economic Research Working Paper* 17989: <http://www.nber.org/papers/w17989>, accessed 10.10.2015. For an avowal on tax theories' disregard for other aims, see J. BANKMAN and D. SHAVIRO, 'Piketty in America: A Tale of Two Literatures' (2015) 68 *Tax Law Review* 453.

<sup>7</sup> For literature on endowment taxation (hereafter in footnotes: ET) from the angle of welfare economics, see J. MIRRLEES, 'An exploration in the theory of optimum income taxation' (1971) 38 *The Review of Economic Studies* 175; G. AKERLOF, 'The economics of "tagging" as applied to the optimal income tax, welfare programs, and manpower planning' (1978) 68 *The American Economic Review* 8; R. MUSGRAVE and P. MUSGRAVE, *Public Finance in Theory and Practice*, McGraw-Hill, New York 1989, pp. 291–293.

<sup>8</sup> Recently, an increasing number of tax scholars have proposed using ET: D. SHAVIRO, 'Inequality, wealth, and endowment' (2000) 53 *Tax Law Review* 397; L. ZELENAK, 'Taxing endowment' (2006) 55 *Duke Law Journal* 1145; K. STARK, 'Enslaving the beachcomber: some thoughts on the liberty objections to endowment taxation' (2005) 28 *Canadian Journal of Law & Jurisprudence* 47; L. KAPLOW, *The Theory of Taxation and Public Economics*, Princeton University Press, Princeton (NJ) 2008, pp. 96–104; K. LOGUE and J. SLEMROD, 'Genes as tags: The tax implications of widely available genetic information' (2008) 61 *National Tax Journal* 843; G. MANKIW and M. WEINZIERL, 'The optimal taxation of height: A case study of utilitarian income redistribution' (2010) 2(1) *American Economic Journal: Economic Policy* 155; E. PLUG, J. HARTOG and B. VAN PRAAG, 'If we knew ability, how would we tax individuals?' (1999) 72 *Journal of Public Economics* 183.

most heard – but unconvincing – objections. Next (section 3) we introduce a novel moral principle (*self-usership*) to which any taxation system should adhere. Derived from the concept of autonomy, self-usership will guarantee that each person has a (limited) controlling power over his own body and mind. Once we have stipulated what particular rights persons do have over their selves and their activities, we will identify the infringements of ET and its illegitimacy. We will argue (section 4) that any taxation policy that is based on the assessment, valuation and taxation of personal characteristics (body, mind, capacities) – or the activities resulting from the use of these characteristics – is at odds with self-usership. At the end of this chapter (section 5), we address some possible objections, and simultaneously, formulate some conclusions that involve *income taxation*. We will make clear which kind of income taxation will be in line with the right to self-usership – and thus possibly legitimate.

## 2. WHAT IS ENDOWMENT TAXATION?

Imagine John, who works as a local police officer after graduating from high school. He is not keen on his job, but considering his average talents, it is the one that pays him the most. He works 200 hours a month, and earns €4,000. Every day, on his way to work, he passes David, who is gifted with extraordinary mathematical talents that have allowed him to build a successful and well-paid career as a civil engineer in a construction company. Because David likes to spend more time pursuing his lifetime interest in philosophy, he decided to cut back on his engineering work. To fund this shift, a part-time job of 40 hours a month will easily suffice. Since David is a valuable engineer, the company still wants to pay him €4,000 a month.

Most taxation systems will tax John and David equally. A taxpayer's *actual* income, rather than his *possible* income, serves as the common tax base. However, leading academics want to abandon this basic principle of tax policy. For a few decades, economists (James Mirrlees, George Akerlof, Richard Musgrave), and more recently, tax scholars (Daniel Shaviro, Louis Kaplow, Kirk Stark, Lawrence Zelenak, Lee Fenell) and some philosophers (Ronald Dworkin, John Roemer, Stuart White), have questioned the justification of using *actual income* to calculate taxes – and stress the significance of a person's *potential* income.<sup>9</sup>

<sup>9</sup> For more information on philosophical ET literature, see R. DWORIN, 'What is equality? Part 2: Equality of resources' (1981) 10 *Philosophy & Public Affairs* 283 (under the form of an obligatory insurance system for endowments); J. ROEMER, 'A pragmatic theory of responsibility for the egalitarian planner' (1993) 22 *Philosophy & Public Affairs* 146; S. WHITE, 'The egalitarian earnings subsidy scheme' (1999) 29 *British Journal of Political Science* 601. For literature on ET from the angle of welfare economics, see n. 7 above. The contributions from recent tax scholarship are mentioned under n. 8.

They claim that tax systems should envisage a person's (innate) ability to earn a certain income, rather than his or her actual achievements, as the proper standard for taxation. These scholars advocate endowment taxation instead of income taxation, and argue that we should tax David and John differently – that is, at their potential market income – even if they both earn €4,000 a month.

Even if endowment taxation sounds too utopian to apply in current society, proponents still find that taxing people on their (maximum) earning ability should guide us as a normative ideal. This is for several reasons. A first and purely economic reason is that such a tax promises to be an efficient way to collect the necessary revenue. In principle, an endowment tax overcomes a well-documented discouraging side-effect of income taxation that results from the central precept that higher income equals higher taxation. Since this tax is detached from people's actual economic choices – and income – it avoids the so-called deadweight loss problem, that arises when skilled workers are discouraged from applying for well-paid yet highly taxed jobs. Taxing people on their market potential can be considered economically superior since it maximises overall welfare gains. In the literature, this reason has been called the 'allocation efficiency argument'.<sup>10</sup> A second reason is rooted in ethical considerations. Most proponents also praise taxing talents for reasons of equity. Superficially, it seems quite unfair to require the same financial effort from both John and David. Why demand an equal tax contribution when their talents, skills and competences are so unequal? In order to enhance equality of opportunity and disregard the impact of undeserved circumstances as much as possible, this fiscal measure simply translates a basic assumption of 'luck egalitarianism' from political philosophy into tax policy. If tax law depends more on a person's potential income than his actual income, this will compensate for bad luck in talent and grant less-gifted persons more equal chances to acquire income, leisure and job satisfaction. According to this distributive equity argument, it is appropriate to classify David and John in different fiscal regimes.<sup>11</sup>

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<sup>10</sup> This argument can be traced back to the theory of optimal taxation, launched in J. MIRRELES, 'An exploration in the theory of optimum income taxation' (1971) 38 *The Review of Economic Studies* 175, and further developed by Akerlof in G. AKERLOF, 'The economics of "tagging" as applied to the optimal income tax, welfare programs, and manpower planning' (1978) 68 *The American Economic Review* 8. Both economists found that an optimal tax (in terms of overall utility) would be sensitive to the distribution of skills between individuals. They proposed discriminating between skilled and unskilled workers by making the transfers sensitive to indicators such as age, health, race and sex. This insight has been worked out more thoroughly by the tax scholars mentioned under n. 8 above.

<sup>11</sup> The distributive equity argument is at the core of R. DWORKIN 'What is equality? Part 2: Equality of resources' (1981) 10 *Philosophy & Public Affairs* 283; J. ROEMER, 'A pragmatic theory of responsibility for the egalitarian planner' (1993) 22 *Philosophy & Public Affairs* 146; and S. WHITE, 'The egalitarian earnings subsidy scheme' (1999) 29 *British Journal of Political Science* 601; but also appears in e.g. D. SHAVIRO, 'Inequality, wealth, and endowment' (2000) 53 *Tax Law Review* 397, 416–420; and K. LOGUE and J. SLEMROD, 'Genes as tags: The tax implications of widely available genetic information' (2008) 61 *National Tax Journal* 843, 844.

In response, opponents launched attacks to challenge the presumed superiority of a talent tax. Two of these arguments seem appealing at first, but are nonetheless invalid. The first objection concerns the underlying assumption that talents, competences and skills can be objectively measured. If this assumption is flawed, then the entire project is in danger.<sup>12</sup> However, recent progress in genetics, neuroscience and cognitive neuropsychology might soon offer workable instruments which allow us to assess a person's endowment. Indeed, some tax scholars believe that science can already validate an 'endowment index' based on personal genetic information.<sup>13</sup>

Van Parys, Rakowski, Murphy, Nagel and others have mounted a second, more conceptual, ethics-based attack, known as the 'slavery of the talented'. This argument claims that taxing endowment violates people's free choice of occupation.<sup>14</sup> Though any taxation system will obviously limit personal choices to a certain degree (due to the non-negotiability of the general tax regime itself and the incentives it creates), supporters of this argument assert that an endowment tax disproportionately infringes on personal freedom by coercing gifted people to realise their potential. According to this line of thinking, talented individuals (like David, who prioritises philosophy) would be unable to pursue a different life due to the high taxes they would be obliged to pay. Yet this criticism can be directed to tax systems more broadly, not just to endowment taxes. Take, for instance, a country in which it is expensive to live, even if it is possible to fulfil basic human needs. In this case, an income tax of 50 per cent would certainly affect the occupational choice of its citizens. In such a country, John, who might have preferred a lower-paid job, will lose his freedom if he does not become a police officer, if he wants to survive. Thus the notion of 'slavery' – meaning violation of one's free choice of occupation – does not *uniquely* target endowment taxes. In addition, 'slavery' only applies to *some forms* of endowment

<sup>12</sup> For practical objections, see, e.g., J. RAWLS, *Justice as Fairness: A Restatement*, Harvard University Press, Cambridge (MA) 2001, pp. 157–158. Even proponents address this critique and therefore perceive ET as a theoretic ideal. More concrete forms of taxation are considered in light of approximating ET. See J. BANKMAN and D. WEISBACH, 'Consumption taxation is still superior to income taxation' (2007) 60 *Stanford Law Review* 789; E. SAEZ, 'The desirability of commodity taxation under non-linear income taxation and heterogeneous tastes' (2002) 83 *Journal of Public Economics* 217.

<sup>13</sup> See K. LOGUE and J. SLEMROD, 'Genes as tags: The tax implications of widely available genetic information' (2008) 61 *National Tax Journal* 843, 852, who anticipate the possibility of genetic markers for complex reasoning and mathematics, the ability to inspire loyalty among one's co-workers, the ability to persevere in the face of adversity, and even the ability to discern profitable opportunities from unprofitable ones or to distinguish trustworthy partners from scoundrels.

<sup>14</sup> P. VAN PARIJS, *Real Freedom for All: What (if anything) Can Justify Capitalism?*, Clarendon Press, Oxford 1997, pp. 63–68; E. RAKOWSKI, 'Can wealth taxes be justified?' (2000) 53 *Tax Law Review* 263, 267 fn. 10; T. NAGEL and L. MURPHY, *The Myth of Ownership: Taxes and Justice*, Oxford University Press, Oxford/New York 2002, pp. 121–125.

taxes, but not the concept as such. If an endowment tax system yields sufficient tax revenues – to the extent that a maximum taxation rate for talented people like David does not exceed, say, 20 per cent of their earning capacity – then few people would find themselves obliged to change jobs. Admittedly, David may need to work a bit more than 40 hours a month to pay his tax debt, but thanks to the low overall tax rate, he may cut his engineering hours substantially, and he would not be forced to perform this job at all. In a mild endowment tax regime there would be no enslavement at all.<sup>15</sup>

So if anything is wrong with this measure, the ‘slavery of the talented’ argument does not explain why. We follow a different approach and show that this project violates a fundamental concept of rights, which we dub *self-usership*. This notion is a weak form of the libertarian concept of self-ownership, which is immune to some of the latter’s radical and undesirable conclusions, yet self-usership remains solid enough to retain and integrate valuable moral intuitions concerning respect, autonomy, privacy and personal rights. After conceptualising the principle of self-usership, we will demonstrate that endowment taxation is highly problematic, as it violates this right not once but thrice (section 4).

### 3. SELF-USERSHIP: EXPLORATION OF AN ACCOUNT OF AUTONOMY

#### 3.1. THE NATURE AND FOUNDATION OF THE RIGHT TO SELF-USERSHIP

So why would it be wrong to demand that people contribute an amount commensurate with their potential to earn? Rather than referring to the effect of such a requirement on occupational choice, we argue that there is a more basic problem: an endowment tax entails an a priori violation of people’s rights over their own body and mind, regardless of the weight of such a tax. But what specific rights do people have over themselves?

The traditional conception of self-ownership has been discredited by controversial conclusions about the philosophical status of the human body. Critics and supporters alike have used self-ownership to justify or criticise extravagant personal rights over the human body, such as the right to sell vital

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<sup>15</sup> A shift towards ET enlarges the tax base, since it relates to the *maximum* earning capacity and conversely severely decreases the tax rate. In the example of JOHN and DAVID, who have a maximum earning capacity of €4,000 and €20,000 a month, respectively, an ET of 17% suffices to attain a government income of €4,000.



body parts or to sell oneself into slavery.<sup>16</sup> Accounts of self-ownership have thus mostly equated personal rights over the human body with full property rights over a material object.<sup>17</sup> Given that self-ownership includes possession and usage of body and mind, it also includes a full property right to one's income, meaning that all forced taxation is illegitimate, at least *prima facie*.<sup>18</sup> Additionally, even the left-libertarian position does not offer us a way out, since it accepts full ownership rights over the self (full rights to income, right to transfer), merely endorsed in combination with an egalitarian distribution of natural resources.<sup>19</sup>

Rather than warranting a complete dismissal of self-ownership, these counterintuitive rights strengthen the need for a subtler conception that manages to avoid these unpalatable implications. Indeed, such a concept is very important if we are trying to capture the fundamental difference between an individual's rights over his or her *own body* and his or her rights (or lack thereof) over the *body of others*. Why do we need special permission to touch someone else's body, whereas such an authorisation is absurd if we want to touch our own body?<sup>20</sup> Why can we decide to join a football team ourselves, but not

<sup>16</sup> A traditional concept of self-ownership includes the right to transfer (parts of) the self to the property of another person. See H. STEINER, *An Essay on Rights*, Blackwell, Oxford 1994, pp. 232–234; J. FEINBERG, *Harm to Self*, Oxford University Press, New York 1986, pp. 71–81; R. NOZICK, *Anarchy, State and Utopia*, Blackwell, Oxford 1974, p. 331; P. VALLENTYNE, 'Left-Libertarianism' in D. ESTLUND (ed.), *The Oxford Handbook of Political Philosophy*, Oxford University Press, New York 2012, p. 160; M. NUSSBAUM, *The Fragility of Goodness*, Cambridge University Press, Cambridge 1987, pp. 32–33.

<sup>17</sup> An example is delivered by the definition of G.A. COHEN: 'each person possesses over himself, as a matter of moral right, all those rights that a slaveholder has over a complete chattel slave as a matter of legal right, and he is entitled, morally speaking, to dispose over himself in the way such slaveholder is entitled, legally speaking, to dispose over his slave.' G.A. COHEN, *Self-ownership, Freedom, and Equality*, Cambridge University Press, Cambridge 1995, p. 86.

<sup>18</sup> M. ROTHBARD, *The Libertarian Manifesto*, Ludwig von Mises Institute, Auburn (Alabama) 2006, pp. 37–45; R. NOZICK, *Anarchy, State and Utopia*, Blackwell, Oxford 1974, p. 169.

<sup>19</sup> See for example Otsuka, adhering to a concept of self-ownership that encompasses 'A very stringent right to all of the income that one can gain from one's mind and body (including one's labor) either on one's own or through unregulated and untaxed voluntary exchanges with other individuals' in M. OTSUKA, 'Libertarianism without inequality' in H. STEINER and P. VALLENTYNE (eds.), *Left Libertarianism and its Critics: The Contemporary Debate*, Palgrave Publishers Ltd., New York 2000, p. 152. Left-libertarianism thus confirms 'full self-ownership' and achieves material equality through its assumption of an a priori egalitarian distribution of natural resources, while attaining an extensive form of self-ownership that includes a right to all the produced income (thus prohibiting any a posteriori taxation of labour-income) and rights to self-enslavement. See also PETER VALLENTYNE, stating: 'Libertarianism is a family of theories of justice, each member of which is committed to full self-ownership and certain moral powers to acquire property rights in natural resources and other unowned resources' in P. VALLENTYNE, 'Left-Libertarianism' in D. ESTLUND (ed.), *The Oxford Handbook of Political Philosophy*, Oxford University Press, New York 2012, p. 152. We do not endorse such extensive conception of rights over the self: as will be elaborated further, our weaker concept of self-ownership permits forms of income taxation and does not entail a right to transfer oneself.

<sup>20</sup> The acceptance of a right to mere possession over one's own body, and a consequential condemnation of trespass, is widespread and will be assumed.

force our neighbour to do so? Intuitively, we accept that people have the right to make decisions regarding their own body and mind, and do not have such a right regarding the body and mind of others. Hence a precise conceptualisation of rights is required to clarify the scope and limits of these personal rights.<sup>21</sup> We believe that the notion of *self-usership*, which stresses the (more limited but undeniable) value of usage and disposal of one's body and mind, performs this task excellently. We define self-usership as an individual's right to control the use of his or her own personal characteristics – including body parts (e.g., brain and other organs) and mental and physical capacities (e.g., intelligence, athletic abilities) – and to make (legal) arrangements concerning activities (e.g., writing a paper) that exploit these personal characteristics as he or she sees fit.

However, why should we recognise this right? The right to self-usership emanates from a notion of autonomy which entails that each person has the right to pursue his own ends. This axiomatic right encloses many specific principles in different spheres, such as freedom of religion, the right to private property or the guarantee for (social) security. In our view the right of each person to use her or his personal characteristics as he or she sees fit, is equally inferred from the generic right of each to pursue her or his own distinctive goals.

Now, if we say that 'each person' has the right to pursue his or her ends, then this concerns *real existing persons*, not some philosophised imagination of them. The right to autonomy relates to how people *are* – not to how they could or should be. Each person is that individual entity who he or she is because of her or his particular mental and physical make-up – the indivisible building blocks of each person. And the ends each person can pursue are not the ends of 'humanity' or 'rationality', but the specific goals of that particular person. If you recognise that David has a right to pursue his own goals, you recognise David as he is, including his unique characteristics (e.g., mathematical skills) and his personal objectives (e.g., writing a book on philosophy). Hence, autonomy ultimately encompasses a notion of 'personhood'.

However, if one's characteristics are an essential component of a person, control over these characteristics is equally vital. A person who is bound to a chair, locked up in prison, forced to eat or reduced to a sex slave, has been deprived of his personhood. A person is descriptively a person in terms of his specific goals and characteristics, but he is normatively a person to the extent that he or she has freedom over the elements that construct his personhood. Autonomy thus supervenes on a notion of personhood and requires recognition

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<sup>21</sup> Concurring views are provided by D. DICKENSON, *Property in the Body: Feminist Perspectives*, Cambridge University Press, Cambridge 2007, p. 14; S. MUNZER, *A Theory of Property*, Cambridge University Press, Cambridge 1990, pp. 41–56; and J. CHRISTMAN, *The Myth of Property: Towards an Egalitarian Theory of Ownership*, Oxford University Press, New York 1994, pp. 148–154.

of each person's control over the elements that design that person. Moreover, since each woman or man is – via her or his person – *embodied* by her or his characteristics, autonomy entails at least a right to control the use of these characteristics. One cannot force David to use his characteristics to construct bridges and still maintain he can live up to his own goals (e.g. to write a book on philosophy). A liberty to use another person's body and mind without their consent would chain these persons to the ends of others. Self-usership is thus not a trivial construct; it is a meaningful notion derived from the somewhat vague and abstract concept of autonomy.

As self-usership equals control over one's person and activities we can also indicate the boundaries of this concept. Controlling something means deciding what will happen to it. Controlling a car signifies that one can decide whether to drive it, lend it or use it for taxi services. Likewise, self-usership means that individuals can decide on the use of their personal characteristics. However, this right to decide cannot be confounded with a right to all economic benefits others are willing to give.<sup>22</sup> The economic profits that are correlated with some particular activities (the ones valued by others) do not follow from any right to control one's person; they follow from a right to transfer economic goods – such as money.<sup>23</sup> Self-usership relates to controlling rights that give an individual governance over what will happen to his person, but this principle does not found any right to all the economic valorisations others wish to attribute to a decision. Consequently, as will be elaborated further (section 5.2), income taxation is not necessarily illegitimate from the viewpoint of self-usership.

Since control rights must be carefully distinguished from transfer rights, this principle also excludes self-enslavement – possible under the traditional conception of self-ownership. Self-usership gives persons the right to legal actions that control the use of their personal characteristics, and e.g. permits John to make arrangements that he will work night-shifts. A contract that states that John will sell his own heart to David, or that John will become David's

<sup>22</sup> We thus draw further on the distinction made elsewhere between the right to decide how something will be used and the right to all the resulting gains. Inspiration for a limited notion of ownership, deprived from (full) income rights, can be found in P. VALLENTYNE, 'Taxation, redistribution and property Rights' in A. MARMOR (ed.), *The Routledge Companion to Philosophy of Law*, Routledge, New York 2012, pp. 291–301; J. CHRISTMAN, *The Myth of Property: Towards an Egalitarian Theory of Ownership*, Oxford University Press, New York 1994, pp. 129–135; J. WALDRON, *The Right to Private Property*, Clarendon Press, Oxford 1988, pp. 431–439.

<sup>23</sup> In an economic exchange of labour for money, the explanation for a certain income does not lie in one's self-control, but stems from the fact that the labourer and the employer grant differential economic value to this labour, which gets expressed in their consent of a certain sum of *external goods*. See for example G. GAUS, 'The idea and Ideal of Capitalism' in G. BRENKERT and T. BEAUCHAMP (eds.), *The Oxford Handbook of Business Ethics*, Oxford University Press, Oxford 2010, p. 89.

property (who can then do with him whatever he wants, e.g., lock him up, beat him, kill him or sell him) is clearly different. Such acts do not fall under an individual's right to decide how to use their personal characteristics. Rather, they permanently relocate such decisional power to others and consequently annihilate all personhood.<sup>24</sup> Self-enslavement and the sale of vital body parts are not expressions of our right to decide about the usage of our personal characteristics; both are instead expressions of a questionable right to transfer this sovereignty to others.

### 3.2. SELF-USERSHIP: A BUNDLE OF RIGHTS

Now that we know how self-usership corresponds to autonomy but differs from self-ownership, what exactly does it mean when someone has the right to use the personal characteristics he has at his disposal? What kinds of rights can David invoke to secure a life as a philosopher rather than as a successful engineer?

Before unpacking the particular rights that self-usership entails, it is illuminating to distinguish between active and passive rights.<sup>25</sup> An *active right* concerns the holder's own action, while a *passive right* demands a certain action – or rather the abstinence from it – of others. For example, if an individual has the active right to possess a lawn, but the government has the active right to expropriate it without reason, he might end up disappointed about the scope of his property right. Hence the right to property will entail *immunity* against expropriation that curtails his liberty to exploit his property. An analysis of basic rights thus typically does not stop with expressing active rights, granting possible actions to its holders, but also limits the active rights of others with passive rights. A right is futile unless it goes with a claim to exclude others.<sup>26</sup>

Thus, if David has the right to self-usership, which permits him to pursue his philosophical passion, his particular 'SU'-active rights are:

- (a) a *liberty right* that enables him to use his personal characteristics (body, mind, capacities) in activities of his choice, in the absence of (legal)

<sup>24</sup> A sale contract does not establish an effective transfer. The effective donation depends on the seller executing the right. Thus a sale contract of vital body parts leaves a person at the permanent will of someone else, and is to be seen as a variation of a slave contract.

<sup>25</sup> See R. TUCK, *Natural Rights Theories: Their Origin and Development*, Cambridge University Press, Cambridge 1979, pp. 5–6; L. WENAR, 'Rights' in E.N. ZALTA (ed.), *The Stanford Encyclopedia of Philosophy* (Fall 2011 ed.). Available at: <http://plato.stanford.edu/archives/fall2011/entries/rights/>, accessed 05.10.2015.

<sup>26</sup> Put in other words : an active right without a passive right is a pure 'liberty', as it only entails a right to act, but not a claim to forbid others from acting. See W.N. HOHFELD, 'Some fundamental legal conceptions as applied in legal reasoning' (1913) 23 *Yale Law Journal* 16. Additionally, see D. SCHMIDTZ, 'Property and Justice' (2010) 27 *Social Philosophy and Policy* 1, 80.

obligations.<sup>27</sup> For example, if David wants to use his mental capacities for metaphysics, rather than to construct buildings, he has the right to do so.

- (b) a *management right* that allows him to make (legal) agreements such as contracts with others regarding the use of his personal characteristics (body, mind, capacities) in activities. For example, David not only has the right to rely on his mental capacities; he also has the right to sign a contract in which he stipulates that he will use his mental capacities to write a book. This right should be distinguished from a transfer right; the latter does not concern agreements concerning the use of one's characteristics, but the permanent transfer of this power to others.

Both liberty and management rights rule out legislation that prohibits activities and legal agreements within the scope of one's self-usership. However, these rights are insufficient to fully describe the right introduced here. Self-usership not only safeguards the permissibility of actions and contracts; it equally outlaws subtler intrusions onto one's personal domain. Two passive rights secure the domain of personal governance:

- (c) a *non-intervention right* that protects the personal domain against interferences with the *activities* in which one is engaged.<sup>28</sup> Apart from outright prohibitions that tell a person what to do or not to do – which would violate one's liberty – an individual's personal sphere might suffer from more discrete interventions, created by measures intended to affect their decisions. For example, a government that introduces a tax or administrative barrier to discourage philosophers still repudiates one's self-usership by steering people away from certain activities. The non-intervention right precludes such practices as it establishes the duty on legislative processes not to intervene with the *type of activities* a person opts for.
- (d) an *immunity right* that protects individuals against intrusions onto the *personal characteristics* themselves. This passive right secures the personal sphere so that these items cannot serve as a basis for legal interference. For example, a government that taxes good looks violates this right since it disfavours a certain personal characteristic. The immunity right guarantees

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<sup>27</sup> Liberty points here at the absence of legal obligations. This right is respected when one is not obliged to do anything. See W.N. HOHFELD, 'Some fundamental legal conceptions as applied in legal reasoning' (1913) 23 *Yale Law Journal* 16.

<sup>28</sup> A non-intervention right is, in Hohfeldian vocabulary, thus a claim-right, as it establishes a specific duty in others. See W.N. HOHFELD, 'Some fundamental legal conceptions as applied in legal reasoning' (1913) 23 *Yale Law Journal* 16.

one's self-usership, as it excludes the legislator's power to impose duties on the basis of one's characteristics.<sup>29</sup>

So, importantly, as none of the rights is interchangeable, it is possible to violate someone's passive rights without violating his or her active rights. Imagine a state that forbids philosophy as either a waste of time or a dangerous activity. Looking for sanctions to get rid of philosophy, the government imposes a 10 per cent extra income tax on any practitioner. This anti-philosophers' tax does not infringe on people's liberty right to philosophise. Philosophising citizens are still free to practise their philosophers' skill, as long as they are prepared to pay for it. However, since it penalises certain activities that belong to the immediate personal realm of the self, such a tax violates the passive right of non-intervention. Or, envisage a racist government that imposes a tax on the basis of the colour of one's skin. This measure does not infringe upon one's liberty right, and does not interfere with any activity. Yet the personal sphere is intruded upon, for its elements are taken as a source of obligation for ends that are distinct from the person's.

#### 4. ENDOWMENT TAXATION: A THREEFOLD INFRINGEMENT OF SELF-USERSHIP

This conceptualisation of self-usership allows us to scrutinise the moral permissibility of a talent tax step by step. This project necessarily involves the following processes: (a) devising a process of endowment assessment (assessment), (b) attributing a tax base to a person according to his market opportunities (valuation), and (c) formulating a tax rate that will levy a part of that value (taxation). We will argue that in each process of this tax, a particular right derived from self-usership is in trouble.

##### 4.1. ENDOWMENT ASSESSMENT

Endowment taxation requires information about an individual's capacities. Intelligence is often mentioned, and Rawls also mentions the significance of health, vigour, imagination; Nussbaum includes her well-known capabilities

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<sup>29</sup> The use of the word 'duty' is important, as we endorse that those persons who have clear dysfunctional personal characteristics (because of a handicap, sickness or accident) can have additional claims (subject of a *right*), e.g. financial benefits, so that a decent threshold will be reached. This does not interfere with any user decisions, but rather guarantees self-usership for all. Importantly, in order to be legitimate, the financing of such a redistributive mechanism cannot be at the detriment of the self-control of others.

(practical reason, play, affiliation, etc.).<sup>30</sup> Tax scholars such as Shaviro supplement this list with sound judgement, self-discipline, emotional intelligence and good looks, and Plug et al. also target creativity, cooperative and commercial ability, and leadership.<sup>31</sup> Clearly, in order to be able estimate our endowment, we have to provide tax authorities with relevant information. Aside from technical matters that will complicate assessment of endowment, the real issue is how far such an investigation intrudes upon the private realm protected by self-usership. In contrast to the sources for calculating one's income or consumption, the basic information needed to assess the determinants of an individual's potential income is simply not directly available. It requires active participation in numerous activities such as tests, screenings and experiments. If tax authorities require information that goes deeper than consumption behaviour, monthly salaries or dividends, they will need instruments and practices to delve deeper into someone's privacy.

However, if the required information would have to be gauged by tests and (genetic) screenings, and a tax authority coerces an individual to participate in the screening, this obligation represents an infringement of his liberty right.<sup>32</sup> The liberty right regarding one's characteristics implies that no one – including tax authorities – has the right to force an individual to use his personal characteristics in a specific way, and therefore to overrule his refusal to participate in the assessment process. Thus the liberty right reinforces the individual's right to oppose and refuse participation in a practice that entails activities regarding their personal characteristics, regardless of whatever noble purposes the assessing authority intends to fulfil.

So, the real trouble with a tax on endowment is not that cheaters will attempt to conceal their true taxable talents, which is a pragmatic concern that Roemer and Dworkin repeatedly put forward.<sup>33</sup> Rather, the problem is of a more principled nature and targets those who spontaneously grant authorities access to private information and demand such openness from others. Prior to the question 'What to do with cheaters?' one needs to address the more basic issue 'Can administrations legitimately demand access?' According to our liberty right, the answer is clear: self-usership grants us the moral right to deny others

<sup>30</sup> J. RAWLS, *A Theory of Justice, Revised Edition*, Harvard University Press, Cambridge (MA) 1999, p. 54; M. NUSSBAUM, *Women and Human Development: The Capabilities Approach*, Cambridge University Press, Cambridge 2001, pp. 78–80.

<sup>31</sup> D. SHAVIRO, 'Inequality, wealth, and endowment' (2000) 53 *Tax Law Review* 397, 406, E. PLUG, J. HARTOG and B. VAN PRAAG, 'If we knew ability, how would we tax individuals?' (1999) 72 *Journal of Public Economics* 183, 207.

<sup>32</sup> Since one's personal characteristics are non-rival goods (you cannot be forced to engage in tests and write a paper at the same time), another person using your characteristics without consent necessarily entails a duty on you, and thus an infringement of the liberty right.

<sup>33</sup> See J. ROEMER, *Egalitarian Perspectives: Essays in Philosophical Economics*, Cambridge University Press, Cambridge 1994, p. 132; R. DWORKIN, 'What is equality? Part 2: Equality of resources' (1981) 10 *Philosophy & Public Affairs* 283, 324.

access or (to abstain from) activities that are intended to provide others with endowment-relevant information.

One objection might be that tax authorities are allowed to use less-intrusive information sources to assess an individual's endowment, such as tagging or proxies. *Tags* deliver information based on personal characteristics that are difficult to hide such as gender, health, height or age.<sup>34</sup> Tags are normally beyond our control, and are believed to be correlated with more hidden capacities.<sup>35</sup> If tax authorities use information based on voluntary achievements to assess an individual's endowment, they are using *proxies*.<sup>36</sup> For instance, a person's intellectual potential can be inferred from the proxy 'obtained university degrees', and 'money earned during previous jobs' might indicate their economic potential.

We do not think this method of indirect assessment is a successful strategy for accomplishing an endowment tax. Since by definition there is no necessary link between a proxy and a person's endowment, using proxies as a tax base can be as arbitrary as using an individual's income as a tax base, which defenders of this measure reject as inefficient and unfair. Why tax someone for obtaining a university degree if doing so may be a matter of lucky inborn talent? Some people work extremely hard to become an engineer, while others combine these studies with a time-consuming interest in philosophy. A university degree does not indicate a person's intellectual potential. A similar argument can be made with regard to tags. If a tax system uses tags, one does not tax possibilities but involuntary traits, which only on average correlate with these possibilities. After all, correlations do not guarantee that low-endowed individuals will enjoy a more favourable tax regime, as endowment taxation promises.

## 4.2. ENDOWMENT VALUATION

Before effectively taxing someone using a particular rate, we have to attribute a certain value to the object of taxation. If authorities skirt around the information

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<sup>34</sup> G. AKERLOF, 'The economics of "tagging" as applied to the optimal income tax, welfare programs, and manpower planning' (1978) 68 *The American Economic Review* 8.

<sup>35</sup> See G. AKERLOF, 'The economics of "tagging" as applied to the optimal income tax, welfare programs, and manpower planning' (1978) 68 *The American Economic Review* 8, 9 (proposing a differential tax that is dependent on health and age); G. MANKIW and M. WEINZIERL, 'The optimal taxation of height: A case study of utilitarian income redistribution' (2010) 2(1) *American Economic Journal: Economic Policy* 155 (proposing a differential tax of height); E. PLUG, J. HARTOG and B. VAN PRAAG, 'If we knew ability, how would we tax individuals?' (1999) 72 *Journal of Public Economics* 183, 186.

<sup>36</sup> S. WHITE, 'The egalitarian earnings subsidy scheme' (1999) 29 *British Journal of Political Science* 601, 621 (proposing a graduate tax), C.W. SANCHIRICO, 'Progressivity and potential income: measuring the effect of changing work patterns on income tax progressivity' (2008) 108 *Columbia Law Review* 1555 (proposing a tax on home-working spouses); L. ZELENAK, 'Taxing endowment' (2006) 55 *Duke Law Journal* 1145, 1180 (proposing a tax sensitive to SAT scores).



problem and collect relevant data in a morally acceptable way, they will still *valorise* our endowments. Given that authorities aim to minimise deadweight losses and equalise people's economic opportunities, a tax base will be imposed according to people's potential market benefit (i.e., what a person's physical appearance, emotional talents and cognitive skills allow them to earn).<sup>37</sup>

That taxing these hypothetical market benefits might result in the 'slavery of the talented' is only a minor element of critique. The principle problem with endowment valuation is that people's *tax obligations* are determined on the basis of their personal characteristics, moreover according to their market value. This price will – of course – not necessarily correspond to the tax payer's personal ends. Rather, the market price is the aggregate of the valorisations of all consumers in a market, and reflects *their* ends.<sup>38</sup> So, if David dislikes his own mathematical skills, an endowment tax will nonetheless impose a tax base that reflects the general desire of others that he continues to work as an engineer. Or take a beautiful girl who profoundly hates the beauty industry she refuses to join. Nonetheless, her taxes will be calculated on the price others would be willing to pay to see her as a supermodel.

Admittedly, an individual's liberty or management right might not be violated by this imposed value. An endowment-sensitive tax base as such does not forbid individuals from using their personal characteristics in another way. The violation of their right to self-usership is of a different nature here. This procedure establishes a duty on a person merely on the basis of his personal characteristics. The fact that administrations found fiscal duties on one's personal characteristics – and the general desire of others towards them – clearly invades the immunity right, that rescues personal characteristics from being a basis of obligation. Without any prior consent of the person over the use and value of such characteristics (e.g. through labour-contracts and agreed income see section 5.1.), this fiscal procedure intrudes upon an area that autonomy demarcated as personal domain.

### 4.3. ENDOWMENT TAXATION

After the tax base has been imposed, specific rates will levy a portion of that value. While the immunity right avoids interference on the level of personal characteristics, the non-intervention right protects *the activities* in which people

<sup>37</sup> DWORKIN, for example, defines 'endowment' as 'earning capacity', meaning 'the income that talents can produce'. See R. DWORKIN, 'What is equality? Part 2: Equality of resources' (1981) 10 *Philosophy & Public Affairs* 283, 316.

<sup>38</sup> For prices as a result of individual consumer 'votes', see G. STIGLER, *The Theory of Price*, Macmillan, New York 1987, p. 12.

use these personal characteristics. Again, it does not do so in a straightforward way (which is a job that the liberty or management right fulfils), but by assuring a realm of non-inference that rules out subtler interventions. Tax authorities that respect this right refrain from interfering with people's personal decisions on how to use their bodies and minds. Any tax policy that indicates a preference for some behavioural choices, for example via variable tax rates for particular occupations or consumption patterns, intrudes upon the personal domain. According to the non-intervention right, tax policies have to be *user blind* and must condemn discrimination aiming to facilitate or hamper behavioural options.<sup>39</sup> As self-usership does not include the right to income (because income does not relate to control of one's activities *sensu stricto*, see above), an income tax can escape such a violation if it is blind to a person's particular activities. Many tax codes – typically those that discriminate on the basis of occupational choice, legal entity or type of consumption – are at odds with the duty of non-intervention.

Since an endowment tax will tax a *potential activity* (i.e., the one that yields the biggest revenue), it obviously interferes with one's activities and it fails to treat income user blind. For example, John and David – both earning €4,000 – will be taxed at totally different rates. John, performing his most paying occupation, will be rewarded with an effective tax rate of 17 per cent, whereas tax authorities will instruct David on his current lifestyle with a rate of 85 per cent.<sup>40</sup> Consequently, we can say an endowment tax constitutes a *tax benefit* for those who opt to undertake the activities the market would favour them to do, and a *tax raise* for those who choose not to live according to the market-preference. In this way, endowment taxation's discriminatory treatment of income in light of one's potential activity influences occupational choices and thus violates the right of non-intervention.

## 5. SOME OBJECTIONS

### 5.1. ENDOWMENT AND INCOME: IMMUNITY AND CONSENT

One criticism might be that the liberty or immunity right not only constrains governments' tax policies but also precludes particular labour market practices. Are companies that are testing future employees' skills also guilty of endowment assessment? And should we accuse a business of endowment valuation when

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<sup>39</sup> The non-intervention right means that a particular activity cannot legally influence the tax rate. It does not imply that each particular activity should have the same economic consequence as such. We thank MARTIN O'NEIL for his critical remark, which enabled clarification.

<sup>40</sup> JOHN and DAVID have a maximum earning capacity of respectively €4,000 and €20,000 a month, so an ET of 17% would suffice to attain a government income of €4,000. This would result in an income tax rate of 85% on DAVID's real income, and in only 17% of JOHN's real income.

it proposes a salary to a worker? Our answer is no. The most important difference is that people engage in economic and social ventures on a consensual basis, in contrast to endowment taxation's coercive information process and its enforcement of non-consented values for personal characteristics. The principle of self-usership permits people to participate in interviews and tests. After negotiation and consent, they might accept certain legal and financial arrangements concerning the use of personal characteristics, which will involve an *income*. However, as long as David does not agree to undergo measurement of his capacities and does not effectively accept a certain level of income, tax authorities lack the right to act according to such measurements and prices.

Therefore, from a philosophical perspective, income taxation aligns better with autonomous personhood than endowment taxation. This kind of taxation does not intrude on the realm of one's body and mind but concerns a levy on economic benefits that supervene on this domain. Additionally, a *realised income tax* does not one-sidedly dictate specific values but merely replicates consented valorisations as a taxable basis. Under such a system, David will not be taxed on controversial values regarding his innate talent, but on external (monetary) benefits he explicitly accepts.

So, self-usership guards autonomous personhood and makes sure that no one is forced to partake in certain activities (e.g. assessment procedures) or has duties imposed on her or him on the basis of personal characteristics. Moreover, if taxation wants to respect self-usership, it needs to ensure people's consented actions. The legitimacy of an income tax emerges from the fact that it does not impose any alien valorisations regarding one's personal domain, but finds fiscal obligations in consented and external (economic) benefits. Admittedly, for most people the market value of their endowment will have a crucial impact on their occupational choices and – consequently – their income. If people consent to arrange their lives according to these opportunities, then taxation of these extra-personal benefits is legitimate. However, if they do not, authorities and markets should respect this choice and refrain from any political initiatives that mortgage one's personal domain.

## 5.2. CONSENT ISN'T EVERYTHING: NON-INTERVENTION AS AN EXPRESSION OF NEUTRALITY

Taxation must supervene upon our personal characteristics and activities without interfering with them. If someone uses his personal characteristics to trade financial products, rent apartments or perform manual labour, this *choice* cannot be the subject of a legitimate tax policy. However, nothing is wrong with a government that imposes taxes on the *economic outcomes* of this choice. Yet the imposition of such taxation ought to be disconnected from the activities one undertakes.

But what about taxes that aim to discourage harmful or polluting activities? Do these conflict with the user-blindness requirement as well? Not necessarily. One might justify the taxation of such activities along independent lines of reasoning. The damage done to others might be so clear that the taxed activities simply fall outside the scope of liberty rights, and consequently outside the scope of passive rights. Since no one has the liberty right to harm or endanger other people, one cannot claim that taxing to deter potential perpetrators is illegitimate. However, this does not mean that taxation is a useful tool with which we can discourage any kind of harmful action. When damage is caused by a limited number of identifiable people, individual liability claims remain the best way to obtain compensation.<sup>41</sup> However, if damage to public and natural goods is caused over the long run by people who are difficult to identify, taxation can be an effective instrument of deterrence and compensation.<sup>42</sup> If so, the principle of self-usership will not reject the possibility that taxation might be legitimate in these cases. Obviously, if authorities use taxes to favour a particular way of life *within* the vast domain of reasonable and respectable ways of life, they violate the requirement of user-blind non-interference. That alcohol and tobacco excite one half of the population while the other half is irritated by drunken people and spoiled air is not a good enough reason for a special tax concerning these substances. The core philosophy behind self-usership is to guarantee people the right not to prefer the most profitable or the most innocent option in life. So, this principle prevents taxation from becoming a tool for pushing people towards economic optima and welfare end-states. When people harm others, damage property and destroy natural resources, they place themselves outside the protective realm of self-usership. However, its protection persists when people do not seek to eliminate risks or hindrances that obstruct the road to perfect welfare. That the best possible world is not legally enforceable is the price we pay for the liberty that offers self-usership.

## 6. CONCLUSION

Philippe Van Parijs raised the example of Lovely and Lonely, two identical twins with identical preferences but one difference: Lovely, unlike Lonely, is blessed with extraordinary looks.<sup>43</sup> This talent enables Lovely to earn lots of money as

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<sup>41</sup> S. SHAVELL, *Foundations of Economic Analysis of Law*, Harvard University Press, Cambridge (MA) 2004, pp. 177–207.

<sup>42</sup> W.J. BAUMOL, 'On taxation and the control of externalities' (1972) 62 *The American Economic Review* 307; J.L. HARRISON and J. THEEUWES, *Law and Economics*, W.W. NORTON & Co., New York 2008, pp. 68–80.

<sup>43</sup> P. VAN PARIJS, *Real Freedom for All: What (if anything) Can Justify Capitalism?* Clarendon Press, Oxford 1997, pp. 63–68.

a stripper in peep shows. Lonely, however, has no such options. That it might coerce Lovely to work in peep shows, a job she profoundly hates, is the main reason why Van Parijs opposes a tax on endowment.

Intuitively, many people will indeed judge something to be wrong when authorities start taking people's market potential as a fiscal target. The popularity of endowment taxation embodies tax literature's neglect of the repercussions of people's moral rights within tax levying procedures. In an attempt to supplement current consequentialist framework within taxation theory, we have tried to uncover the problematic nature of this fiscal strategy. By pinpointing the relevance of people's rights within taxation policy, we tried to initiate a deontological view on taxation, in which tax payers are considered natural persons who have obligations but equally hold moral rights.

In this contribution we argued that the problem of endowment taxation is of a more principled nature than in Van Parijs' argument. The boundaries of permissible governmental action are delineated by peoples' moral rights and liberties, and taxing endowment simply transgresses these limits. The illegitimate nature of taxing people on their talent can be understood once we uncover a specific right of control which each person has over himself. From a more abstract notion of autonomy, one can deduce a specific form of self-ownership that claims that all people have at least the right to control their own person. Self-usership bundles several control rights such as the liberty right, management right, non-intervention right and immunity right. After introducing and explaining these sub-rights, we demonstrated how several breaches constitute the illegitimacy of endowment taxes. The screening and test procedures required to determine potential income establish certain obligations that infringe on the liberty right; defining the tax base according to one's personal characteristics violates the right to immunity; and taxing endowments interferes with the way someone uses his personal characteristics and thus violates the user-blindness requirement of the non-intervention right.

Respect for each person's self-usership serves as a prerequisite for legitimate taxation – that consequently ought to stay away from the personal sphere. As income does not belong to the person itself – and his private domain – but is rather a product of consensual economic interactions, it serves as a legitimate benchmark for taxation. Governments are therefore allowed to impose fiscal and other duties on one's realised income, as long as these are detached from the choices people make on how to use their bodies and minds. With the exception of activities that indisputably harm others or damage public goods, taxes cannot be used to instruct how people should lead their lives. Respect for the value of autonomy and, accordingly, the right to self-usership curtails theorists' and legislators' aspiration to shepherd tax payers towards specific ideological objectives via income taxation – unfortunately a common practice these days.

