

Reply to Sechrest

Private Contract, Market Neutrality, and "The Morality of Taxation"

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I wish to thank Larry Sechrest (1999) for his radiantly insightful critique of my essay "The State, The Market and The Morality of Taxation" (Franck 1998), and for the graciousness and generosity manifest in his own essay.

At its essence, Sechrest's article criticizes my position on taxation on two grounds: one political and one economic. Politically, he argues that it has not been proven that the protection of rights requires a monopolistic government, albeit minarchic. Economically, he argues that any form of taxation cannot be market neutral in that, inherently, taxation is at worst redistributive and at best distortive of market calculus.

To summarize his position: Sechrest agrees with my view that, contrary to Ayn Rand's position as enunciated in her essay, "Government Financing in a Free Society" (Rand 1964, 157-63), voluntarily financed monopolistic government is not feasible. But the implication of the issues and questions that he raises is that anarcho-market society is the only feasible vehicle for preserving rights while not distorting the calculus of the market or the distribution of wealth.

By contrast, I agree with Rand's view that by dint of human nature, monopolistic government is an inherent necessity for the preservation of a rights-based civil society.¹ Yet, I have also argued that, because conflicts of interest are inherent in human interaction, including rational human interaction, and, because ethical emergencies dissolving rights do not exist, a rights-based regime, the rule of law and minarchism are essential.²

The paradigm of the business contract will be used to respond to

both of Sechrest's positions. Why did man invert the institution of the enforceable contract? We did so in an attempt to impose a level of certainty upon a chaotic world in general and upon human relations in particular.

Tax reform, whether quantitative or qualitative, has become part and parcel of political discourse. It is a given that wealth is what is being taxed. Omitted from this discourse is the source of this wealth, whether currently created or inherited. A premise of this essay is that because the factors of production and exchange are at the essence of wealth creation, we should pay attention to the vehicle for this exchange: the enforceable contract.

The Enforceable Contract

Wealth is created by rearranging the elements of that portion of the universe which is at hand. This rearrangement is a consequence of an individual thinking and then projecting his ideas onto the field of the physical universe, exploiting material brought into useful existence by someone's projection of his own thought, in the past or present. The acquisition of this material is the product of trade, i.e., of contract.

At its essence, then, a contract is the vehicle by which individuals exchange their rights in their thought, time and energy. Because taxation is imposed upon wealth, fundamentally, it is imposed upon this trade and thus upon the institution of contract.

When evaluating any activity or any political program on an ethical level, I agree with Rand that the life of each person as a flourishing individual is the standard of value and that the purpose of ethical consideration is the happiness of each such individual. It is in this arena that I argue that taxation is moral because it is necessary to protect and support this paradigm, the very breath and breadth of life itself, by means of a formal monopolistic minarchic government.

The market of contracts is an intricate and complex network of agreements, each fraught with the possibility of dispute, honest or otherwise; and each, if breached, affects even others not party to the contract. Because it is an individual who is the ultimate source of

each decision to enter into the contract, and it is the individual who suffers from an unremedied breach, taxation that supports the proper function of government, i.e., the protection of rights, actually protects the very essence of each person's individuality, in that it facilitates the protection of his or her vision from mind to physical reality.

As will be explained, this market, comprised of the exchange of respective visions, requires government to protect the rights underlying this exchange against theft, fraud and honest disagreement. Because the government translates our inherent rights into legal rights, in the first instance, and in the second, protects them, it is, indeed, an integral part of these rights. Furthermore, it is indirectly a part of these projected visions and transactions. Just as the individual requires material and spiritual sustenance to survive, so his rights require government to survive. And again, government requires sustenance—wealth—to function. Thus, the payment of taxes is requisite for the existence and functioning of the government. After all, a vision and the exchanged rights that it reflects would have no meaning without protection.

The Uncertain Universe

Natural uncertainty is reflected in phenomena such as volcanic eruptions, floods, drought, and plague; human death and disease, and the deprivation of resources, primary, secondary and tertiary, is always possible. We seek to transform the apparently unknowable universe into a knowable, predictable and manipulable arena. We do this by means of science, medicine and such predicative endeavors as meteorology, seismology and the annual medical check-up. And, in order to avoid these dangers and to cure their resultant harm, we *purchase*—we contract for—the relevant scientific, medical, architectural and horticultural products and services.

The universe is uncertain in another respect as well, i.e., in the social context of human existence. Other individuals are the most significant aspects of our respective personal environments. The uncertainty in question emanates from several sources including the inevitable conflicts of interest between individuals pursuing even their

respective rational goals. Consider two candidates for the same job or the pursuit of a taxi on a rainy New York City day. The uncertainty stemming from these natural conflicts of interest are exacerbated by unpredictable psychological reactions, in turn emanating from volitional choices, emotional compartmentalization and response to the ever shifting context of the market.

Humankind has imposed certainty upon the arena of human chaos by instituting a regime of well-drawn non-conflicting legal rights, which in turn are based upon each individual's inherent moral prerogatives of action. These inherent prerogatives emanate from the need to produce material and spiritual "wealth" in order to survive. These rights, despite both rational and irrational conflicts of interests, should themselves not conflict. For example, one's legal right to "the freedom of speech" does not imply the right to trespass upon another's property in order to deliver one's message.

This array of rights is captured by the concept of liberty. Liberty, rather than being an intrinsic value, is a value in consequence of the mandates of human nature. Because man, inexorably, exists in a social context, a particular species of liberty is requisite. The liberty of each individual must be conducive to the possibility of every other individual's pursuit of his own flourishing. And flourishing derives from the successful projection of one's thought, time and energy onto the real world.

A proper government is an instrumentality for the imposition of certainty. It is the social institution that translates man's moral prerogatives of action—his inherent rights—into a regime of non-conflicting and uniform legal rights, and protects them. As such, it is one of humankind's most ingenious creations.

Our ultimate right is the right to our individual selves. Each person experiences his individuality by experiencing himself as a free and sovereign individual with reason, volition and decisional capacity. We do this in the context of a world in which we lack omniscience and omnipotence, but in which we can project, physically through thought and action, our creative vision on Earth. We produce and we trade for that which is requisite for our survival. As mortal creatures, we require food, shelter, and art. We have produced in the past and

we promise future production in order to trade for what we lack. These requirements give birth to our inherent moral prerogatives of action, including *inter alia* property rights, i.e., the right to use and to dispose; liberty of association; and the right to tranquility in living the virtues and pursuing the values requisite for human existence, including production. The concomitant of the right of tranquility is the right to have one's rights protected. Absent these rights, we must divert our attention from a full-blooded human existence to one of animal-like protection from attack.

We experience our sovereignty in the social context, in large measure, by contracting with others. A contract is a legally enforceable arrangement comprised of a volitionally motivated agreement between free, sovereign and reasonable individuals to exchange their rights in their thought, time and energy, as represented by physical or intangible property and by services. Because government composes, promulgates and protects uniform non-conflicting legal rights, including the right to enter into enforceable contracts, it is the primary social device requisite for manifesting our humanity in the context of an otherwise chaotic societal environment. It retains this status as long as it performs its tasks consistent with the mandates of human nature.

To illustrate the importance of government, imagine an individual's attempt to withdraw to the wilderness. In the absence of well-defined non-conflicting legal rights-defining ownership, and in the absence of jurisdictionally monopolistic government to protect it, one could not know who owns the land to which one retreats, and who owns the fruit of the vine he wishes to eat. And, if they are owned in common, how are they to be apportioned and replenished? May he trade and, if so, what may he trade?

Why Government?

Given this inexorable context, human nature dictates the necessity of a monopolistic-minarchic government in order to provide answers to such questions, to provide for the rule of law and to provide for closure by serving as a final arbiter of disputes.

Simply, a minarchy is requisite for the provision of a regime of uniformity and, thus, of predictable legal certainty.

This order is characterized by the rule of law, by firm protections for individual liberty; and by political decision-making processes that have become increasingly open and participatory with the passage of time.

But institutions are only part of the story. Even the best-designed mechanisms, if they are not surrounded by a lubricating political culture, will soon grind to a halt. . . . [T]he essential feature of civic order—and the one most difficult to reproduce or transplant—is a widely shared acceptance of “the political virtues of free discussion, political compromise, plural societies, piecemeal practicality, change without chaos, and market economics.” (Friedberg 2000, 61)

The political questions raised by Sechrest trigger a paraphrase of the adage “if men were angels”—namely, if men were angels they would not require God. But men are not angels and, again, if rational men did not encounter interpersonal conflicts of interest, they would not require a minarchic state. But they do encounter these conflicts.

James Madison, in his darker moments, saw man as tainted by a brand of self-interest that ignores the rights and interests of others. He sought to construct a system where bad men—or men acting badly, even when in power—could not hurt good men. He envisioned a just system to account for, or in economic terms, to discount, unjust men. Lincoln, and the post-Civil War Congress, went so far as to act on the premise that federal government power should be employed to protect individual liberty from state incursion, a vision which Madison shared.³ The Founders—and Lincoln and his colleagues should be joined to this group—believed in the sovereignty of the individual protected by a regime of non-conflicting legal rights drawn from man’s “natural rights,” including life, liberty, property and the pursuit of happiness. They were to be supported by

a political system of free discourse among myriad individuals comprising myriad interest groups, ultimately comprising civil society. This free discourse was to be buttressed by a constitution restraining a government of limited powers and by a system of political checks and balances. This constellation—which tended to be self-correcting—was meant to moderate callous self-interest and to enable people to live together peacefully, if not harmoniously.

In contradistinction, states’ rightists—overlooking the concept of individual rights—believed that the local collective had the moral power to control the individual, whether to compel conformity or to segregate him. For the communitarian, peace, in other words, requires a “harmony” of forced conformity. For the states’ rightist, peace requires disharmonious forced subservience. I suggest that there is no difference between them and that neither John C. Calhoun nor Amitai Etzioni respect the concept of individual moral sovereignty.

Ayn Rand walked on another path, one that Shakespeare’s Hamlet envisioned when he said: “How like an Angel” (Act 2, Scene 2). To repeat a point made in an earlier essay (Franck 1997, 1), Rand maintained that

. . . as long as men act rationally, inherent interpersonal conflicts do not exist and thus that all men should and can cooperate in all instances, including those in which they are in competition. From yet another perspective, she was asserting that just as there are no naturally occurring contradictions in the metaphysical order, there are none in the man-made order—the social order—as long as man acts rationally.

It must be emphasized that Rand was addressing this issue at a political level. However, she was *not* resting her argument on the proposition that all men have an ultimate interest in respecting the rights of others, and therefore should subordinate their practical conflicts to this higher interest. *On the contrary, her reasoning reversed these propositions:*

she implied that in virtue of the absence of naturally occurring conflicts of interest, men could and should respect rights.

I suggest that an emanation of Rand's belief that rational men do not encounter conflicts of interest is her view concerning voluntary government financing. I also suggest that the contemporary anarchic perspective on government itself rests on the same foundation: these non-conflicting personalities will solve all problems by means of ultimately consistent, yet multi-communal voluntary groupings (whether or not they are geographically contiguous).

However, liberty is not a function solely of a free market. Indeed, the free market could not exist in the absence of property rights and the rule of law. The rule of law in turn eschews the phenomenon of favorites, be they born of castes, color or even compacts or members of private security systems. Illustrative is that, indeed, all American courts are open to all comers, foreign as well as domestic. The rule of law requires rules by which *all* play. As it eschews favorites, it also eschews exceptions. And because it is a rule to be adhered to by all, it must, by definition, be known and enforceable universally.

Several examples will illustrate why a monopolistic final arbiter, with the ultimate power of enforcement is requisite. In its absence, voluntary private arbitration is illusory as a form of dispute resolution. Arbitration is legal today, yet its judgments are enforced by a neutral court. Private security police constitute an extension of the inherent right of self-defense. Yet, if the individual and the private security force are not governed by jurisdictionally universal, uniform and neutrally enforced standards, it is *might and not rights* that will obtain. For example, by what criteria does one allege aggression and determine the appropriate level of response?

Nevertheless, Sechrest (1999, 101) maintains:

To anyone familiar with a wide range of libertarian, anarchist, and Objectivist literature, one very basic fact can be neither avoided nor overemphasized. No one has yet uncovered a clear-cut historical example of a minarchy whose functions

remained strictly limited to rights-protection for any period of time, or of a society of any significant size that was entirely devoid of government and yet survived. As for the former, Rand (1967) herself admitted that even in the United States "certain contradictions in the Constitution did leave a loophole for the growth of statism" (336).

America's omnicultural society and multivalent political structure approaches the ideal that people's deepest personal convictions can co-exist peacefully in a minarchic state. For example, the individual can maintain his ethnic values at home, even flaunt them in the street, as long as he does not violate the rights of others. Even diverse social systems can coexist: voluntary groupings from formal organizations to communal settlements, such as the Shakers, can coexist with a free market majority as long as they too do not violate the rights of the others. For example, Sati, the sale of children, and child abuse, even on religious grounds, cannot be tolerated as they violate the very nature of man. You can live any way you choose within a regime of well-drawn non-conflicting individual rights. But again, to know what those rights are, to better be able to shape them coordinately, to limit all but procedural distinctions, we require a minarchy.

Despite anarchist claims, the fact is that humankind always is in society and always is governed. The institutions constituting government vary. However, the sole ethical issue in judging the merit of any such institution is whether or not individuals subject to it are governed in accordance with the mandates of human nature. Sechrest accurately observes that no minarchist government has succeeded in reigning in its own power. However, while minarchism is not a guarantee, at least it has a chance at such success. For the reasons set forth by Rand and Bidinotto (1994), anarchism does not have the ability to protect rights in general and the right to tranquility in production in particular. Although the purpose of government is the protection of individual liberty, the standard of assessment of its success is not perfection. Recall, man is neither omniscient nor logically infallible. The standard of success is the ability to strive

toward the ideal. A constitutional republic, as described above, limiting government to enumerated powers, provides the only vehicle with which we can approximate this ideal. Indeed, such a system, by design, is self-correcting.

The anarchists maintain that, historically, in England, a series of spontaneously-born and evolving institutions protected rights and provided justice in the absence of the monarch and the apparatus of a central state (Dykes 2000). The arguments, apparently, are self-refuting. First, the institutions in question constituted quite complex systems of governance. Second, their prerogatives were supported by the state in that *ultimate enforcement* of their judgments rested with it. These "states within the state" were collectivist in nature and private property was a mere concession. Further, on a practical level, the anarchist thesis overlooks the possibility that any method of alternative dispute resolution can be corrupted. The possibility of fraud, the non-disclosure of facts, always is present and is exacerbated in the absence of a centralized method of investigation. And boycott, as a means of enforcement, could not obtain due to lack of viable communication.

If, as anarchists posit, Anglo-Saxon England was fraught with war, it, obviously, was not a law-abiding society in which the right of tranquility was recognized and honored. Indeed, war was a method of state police enforcement. The anarchists point to the fact that personal protection was provided by kinship groups supported by tithing. The separate courts resolved intergroup disputes, and these enforcement institutions had the power to kill those who did not adhere to the judgments. Is death the ethical response to a breach of contract or to even a trespass?

The historical examples of non-monopolistic government cited by Sechrest, namely Ireland and Iceland are, as he notes, not compelling. I would add that the Irish system of the clan chief protecting disbursed clan members by entering non-contiguous areas, mimics the settlement of international disputes by war: the outcome often penalizes the moral victim. And Iceland, indeed, was monopolistically governed, albeit by a parliament lacking an executive. With regard to medieval commercial courts, it is the triumph of the central

government and the imposition of uniform laws that provided predictability and thus laid the basis for expanded trade and the enforcement of contract. After all, lacking omniscience, how could any trader know the "law merchant" of a distant locality (Johnson 1999)? This crucial point is elucidated by Cohen as follows:

As noted by Horwitz, the will theory of contract was completely established after William Story's *Treatise on the Law of Contracts* in 1844. This treatise affirmed that every contract, express or implied, was formed as a result of the mutual agreement of the parties. It dealt with the "entire conceptual apparatus of modern contract doctrine," including rules of offer and acceptance, consideration, interpretation, and the canons of construction (Horwitz [1977] 1992, 185).

Another controversial question in the nineteenth century, discussed by Horwitz, was the relationship between custom and contract. Because the courts' task was to find—but not to impose—the original intent of the parties, custom and usage often proved helpful where terms were ambiguous. However, the courts were reluctant to incorporate custom and usage into law because it would render the law subjective once again. The argument in favor of the use of custom in interpretation is that the mere fact of its being a custom proves its universality and objectivity. However, the nineteenth century market was quite fragmented, and what was "custom" in one locale was unknown in another. Under the modern objective theory of law, a party is not held to be omniscient and thus capable of reading the mind of another party. Hence, local rules cannot be implied and thus imposed upon an outsider who is unaware of them. Nevertheless, a reasonable individual should be charged with the knowledge that he actually has and ought to have by dint of his education, his community, and, most significantly, his industry. Because even industrial custom varied from

community to community, this issue manifested a need for a uniform system of laws as a certainty-providing base line, a line which can be varied only by *contract* or by *actual* knowledge of local custom and usage by both parties. This need was satisfied later by the adoption of the Uniform Commercial Code, by 49 states. (Cohen 1996, 7–8)

Economics

Moving to the political-economic thread of this argument, Sechrest maintains that minarchism is trapped between vacuous voluntary funding and the vortex of taxation enforced by the initiation of force. Reason mandates a linguistic clarification. Although the initiation of force constitutes coercion, not all coercion constitutes the initiation of force. The most obvious illustration is that coercion is appropriate in response to the very coercion entailed by the initiation of force by a mugger. The Fourteenth Amendment's extension of federal power to protect individual liberty against the alleged states' rights to discriminate involves coercion, but *not* the initiation of force. Furthermore, the government's compelling a witness's testimony in a trial in order to protect the rights of the accused, although coercive, is not the initiation of force for no one has the right to violate rights by suppressing evidence. Compelling the cleansing of private property to preclude vermin from attacking a neighbor's property involves coercion but not the initiation of force. The same applies to the appropriation of one's land to prevent voluntary facilitation of enemy invasion; no one has the right to conspire with the would-be violators of our rights.

On an ethical-economic level, Sechrest focuses on the alleged redistributive effects of taxation. Again, assuming *arguendo*, that taxation does entail income transfers, recall that the creation of wealth and thus of income is not possible without government and, as Sechrest agrees, minarchist government does, indeed, require taxation in order to function.

At page 95 of his article, Sechrest, citing Ludwig von Mises, identifies three problems entailed by the alleged redistributive effects

of all taxation. He is correct that taxation, by reason of its very purpose, redistributes money from the private sector to the government. Also, he may be correct that such transfers create changes in the relative prices of consumer goods and the factors of production, and that the distribution of wealth in general is distorted. But the transfer of wealth to the government and enduring the posited imbalances are part and parcel of a free market, for it is the price paid by each individual to establish the market, and thus to make the creation of wealth possible in the first place.

Moreover, in questioning the validity of Sechrest's points, on a *qualitative* level, the only level relevant to a rights-based society, I note that "all individuals benefit equally from the government's protection of those rights: the immediate victim of a crime, a trespass of a breach of contract, and those frightened by the transgression, the poor as well as the rich. . . . [E]ach individual has a *right to a 'sense of tranquility,'* against even a threat to the security of his rights," if he is to be free to focus on life-sustaining productive activity and his happiness. Civil as well as criminal trespasses upon rights are public harms, not merely private wrongs. The enforcement of contracts and of other rights is not a "private good" only, it is a "public good" as well, and thus merits and validates taxation, which in effect is returned in the form of these valid services (Franck 1998, 15).

Furthermore, trade and its concomitant, the enforceable contract, is expected to and most often does lead to an increase in wealth, as measured subjectively, i.e., the parties receive more than they give. However, each party must bear the risk of his own bargain. If he miscalculated, he will lose his expected profits, and wealth will have been transferred. Also, certain transactions involve a zero sum mandating a transfer of wealth. Of course, these transfers result from voluntary transactions rather than from coercive taxation. However, the fundamental common denominator is that all voluntary transactions, whether profitable or not, require government to underwrite their legal viability.

Because man is destined to live in a society, any human action or omission impeding the production and trade necessary for achieving each individual's ultimate end—namely, survival as a flourishing

person in a social context—imposes the supreme ethical-political contradiction. Even if one part of the country requires greater protective resources, it is the fabric of the nation that is being protected, and thus this so-called inequality is balanced by protecting the spirit of each individual in the nation against the threat to his right to tranquility posed by any and all enemies.

Time Preference

On a purely economic level, Sechrest's main point is that taxation distorts *time preference*, which he defines as

... one's preferred rate of spending relative to saving. Alternatively, it can be described as the rate at which an individual discounts the future or as the ratio of demand for present goods to demand for future goods. Those who have a low rate of time preference tend to save and be suppliers of credit, while those with a high rate of time preference tend to borrow and be demanders of credit. The interplay of all persons' individual time preferences generates the "natural rate of interest," which has also been referred to as the "pure rate of interest" or "originary interest." (Sechrest 1999, 96)

Before responding directly, let us reconsider my own argument:

As to [Murray] Rothbard's claim concerning the non-neutrality of taxes, rather than being extraneous to, and a burden upon, the free market, government functions as part of the market by facilitating its operation. Thus, taxation to support the legitimate function of government, namely, the protection of rights, is *market-neutral*. Simply, such taxation creates the very possibility of a functioning market. To address the same point from a slightly different perspective, controversy is built into the market. While the free market deals in goods and services for which subjective valuation ... is essential, the market requires a protective mechanism

to facilitate the execution of such subjective choices. In the absence of government's protection of rights—i.e., in an anarchic situation—the lack of punishment would be an invitation to fraud and theft. More significantly, the inability to resolve honest disputes before a truly neutral and truly final arbiter would discourage trade and investment. Thus, the marginal utility, discounted value of the marginal product, and marginal revenue product or service must account for the costs attendant to the very possibility that dispute resolution may be required. . . . Rather than divert resources from the market, taxation for legitimate government functions, such as courts and the police, foster the market. (Franck 1998, 15)

Even if assuming *arguendo*—but only "assuming"—that all taxation distorts time preference, we are addressing a phenomenon relevant only to determining the "most neutral" type of taxation devisable. The alleged distortion, however, is not relevant to the basic issue of whether taxation is moral for, as noted above, we cannot guarantee, we only can tend toward, the ideal of perfection. Moreover, the entirety of the activities reflecting individual time preferences require a monopolistic government with the power to enforce all of the rights entailed.

Time preference reflects the present as distinguished from the future value of money. Money is the medium of exchange and thus the preference may, in reality, reflect the temporally relative values of wealth. And, given that wealth is the product of one's expenditure of time, thought, and energy in pursuit of a personal vision—be it sublime or mundane—time preference actually reflects the comparative temporal value of wealth-creating activity.

Although I am not arguing in favor of any particular type of tax, it is possible that a consumption tax is the tax that best reflects trade, i.e., the act of contracting, in that it taxes the activity essential to the creation of wealth and the ultimate value of such trade, namely the creation and consumption of that which is requisite for the sustenance of life.

Sechrest maintains that a consumption tax would force "dis-saving." Why does this matter? After all, the very purpose of saving is delayed consumption, i.e., dissaving is an activity undertaken by consumers, be they individuals or business entities, on a regular basis. A consumption tax respects time preference in that this is the precise phenomenon that it taxes. It taxes the subjective value of money—spend it now or later—as it accounts for the time frame of the activity requiring government action: the protection of contract rights by means of judicial resolution of disputes and the enforcement thereof by the police. It is precisely because—in general—prices charged to any individual are not a function of his income, a consumption tax—when discounted as a constant—should not shift time preferences.

As part of his larger argument, favoring, but not committing to, anarchy, Sechrest supports the concept that restitution is the ideal remedy for most, if not all, wrong doing (1999, 102). This perspective fails to account for the necessity of imposing certainty upon human affairs by, *inter alia*, the institution of the enforceable contract. Reflecting *time preferences*, a contract manifests the voluntary attempt by the parties to guarantee a price—or a quantity—over time, despite the ever-shifting context of the market. As noted by Cohen (1996, 6–7), who draws from Siegan's *Economic Liberties and the Constitution*:

... at the end of the eighteenth century, there already was a shift in the purpose of contracting and in the theory of contract. Horwitz ties the emergence of the modern law of contract to the award of the first expectation damages on stock sales . . . During this period, executory agreements became much more important due to the changes occurring in the market place. Goods were now considered fungible, and thus specific performance, in most instances, was no longer the remedy of choice. Instead of being limited to the transfer of property, a contract now created an expected return and enabled the parties to ensure themselves against market fluctuations or simply to speculate on the future course of the market by the means of "future" agreements.

Farnsworth provides the rationale for awarding expectation damages as the most effective way of protecting reliance upon another's promise, which in turn leads to a greater certainty and predictability: "Unless agreements can be relied upon, they are of little use" (Farnsworth 1982, 18).

The respective predicted values of future funds and future goods *per se* are never guaranteed, but their absolute amounts are. A consumption tax, again, taxes the *current* values, which tax the parties *can discount*.

Conclusion

In light of the inherent man-made uncertainty characteristic of inevitable social intercourse, in the absence of a protected right of tranquility, the vision underlying the creation of wealth probably could not materialize; each individual would perforce spend his time on the lookout for—at least worrying about—attack: one willful or emanating from innocent conflicts of interest, or one based upon honest and open disputes.

We must produce for the wealth underpinning our personal sustenance, and this includes the material support of the rights involved. The demand that taxation mimic the market mistakes effect for cause: taxation makes the government, which is requisite for market existence, possible. But, again, assuming *arguendo*, that government is external to the market, our fundamental concern is that tax funds not be used to move wealth except in the service of the protection of universal rights.

While we cannot guarantee good government, we can mandate it by always remaining cognizant of its purpose, i.e., that of protecting human rights in general and every individual's rights to pursue what he deems to be his destiny. And, since Sechrest and I agree that the voluntary financing of government is not feasible, we can shift the debate to which type of taxation has the *least* impact on individual time preference and decision making. As quoted by Cohen (1996, 8–9):

The right to acquire and possess property necessarily includes *the right to contract*, for it is the principal mode of acquisition, and is the only way by which a person can rightly acquire property by his own exertion. Of all the "rights of persons" it is the most essential to human happiness. . . . A person living under the protection of this government has the right to adopt and follow any lawful industrial pursuit, not injurious to the community, which we may see fit; and, as incident to this, is the right to labor or employ labor, make contracts in respect thereto upon such terms as may be agreed upon by the parties, to enforce all lawful contracts, to sue and give evidence, and to inherit, purchase, lease, sell or convey property of any kind. *The enjoyment or deprivation of these rights and privileges constitutes the essential distinction between freedom and slavery; between liberty and oppression.* (Siegan 1980, 57, emphasis added; *Leep v. St. Louis, I. M. & S. Ry. Co.*, 58 Ark. 407, 415, 422, 25 S. W. 75, 77, 79 (1894)).

Notes

1. See also Rand's essays, "Man's Rights" and "The Nature of Government" in Rand 1966, 286-94 and 295-303, respectively. Also see Bidinotto 1994.
2. See also Franck 1997, written in response to Rand's essay, "The Conflicts of Men's Interests," in Rand 1964, 50-56; Franck 1995; and Friedberg 2000.
3. See especially Mathews 1952, 185-90; McPherson 1991, 141-43; and Black 1997, 41-86.

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