

## MURRAY I. FRANCK AND 'MORAL' TAXATION

Nicholas Dykes



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Nicholas Dykes is a British-Canadian writer currently living in England. He is married, with two grown-up children. Besides numerous pieces for the Libertarian Alliance and journals such as Reason Papers, he is the author of *Fed Up With Government?* (Hereford, UK: Four Nations, 1991), the 300-page manifesto for a putative British 'Libertarian Party'. The current article, published here for the first time, was originally included in Part One of his essay 'The Facts of Reality: Logic and History in Objectivist Debates about Government' which was published in the Fall 2005 issue of *The Journal of Ayn Rand Studies*.

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**Libertarian Alliance**

*For Life, Liberty, and Property*

Suite 35  
2 Lansdowne Row  
Mayfair  
London  
W1J 6HL

Telephone: 0870 242 1712  
Email: [admin@libertarian.co.uk](mailto:admin@libertarian.co.uk)  
Website: [www.libertarian.co.uk](http://www.libertarian.co.uk)

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Just over a decade ago, in 1994, legal professor Murray I. Franck caused quite a stir in Objectivist circles when he published an essay in the late-lamented journal *Full Context* entitled “Taxation is Moral.” In this, he called Ayn Rand’s opposition to taxation “mistaken” and asserted that because government was a necessity, taxation to support it was morally justified. “A requirement, or necessity,” Franck claimed, “without a means of implementation constitutes a contradiction” (Franck 1994, 9).

A lively debate between Franck and his critics ensued in several subsequent issues of *Full Context*, a debate which resurfaced briefly in 1999-2000 when Franck’s ideas were again robustly criticised, this time by Larry Sechrest in the newly-founded *Journal of Ayn Rand Studies*.

When I reviewed the debates a short time ago, it struck me that a number of serious problems with Franck’s premises—which are presented in the first three paragraphs of his essay—had either not been addressed in the debates, or deserved greater emphasis than his various critics had given them.

To begin with, Franck describes Ayn Rand as holding that government is required “to insure that rights are properly defined...” But Rand said no such thing. She began her argument for government with the existence of rights, moved on to the non-initiation of force, and only then arrived at government. In her words,

“[rights are] the basic social principle without which no moral or civilised society is possible... The precondition of a civilised society is the barring of physical force from social relationships... [M]en need an institution charged with protecting their rights under an *objective* code of rules...” etc (Rand 1963, 108-9). It is quite clear from her essay that, for Rand, rights precede government. Government is to protect rights, not define them.

Franck also claims that Rand referred to man’s “*inescapable* social context.” This too is wrong. What Rand actually wrote was conditional: “Men can derive enormous benefits from dealing with one another. A social environment is most conducive to their successful survival—but *only on certain conditions*” (ibid., 107) and “*if* [an individual] wishes to live in a free, civilised society...” (110; italics added). There is nothing in her essay implying that human society is ‘inescapable.’ And, plainly, it isn’t. Hermits, loners, and small groups of people, forming or disbanding as they saw fit, have existed throughout history and do so today. Nor is society ‘inescapable’ when one lives in the heart of it. One is always free to move, go off into the forest, stay indoors alone, etc. Franck suggests a kind of social determinism which does not exist.

Franck next proceeds to make an assertion of his own as if it were Rand’s, or were derived from Rand: “Because government is inherently necessary to define rights *ab initio*...” But Rand actually held,

as already noted, that government was established to protect *pre-existing* rights, and quoted the ‘self-evident’ truths of the Declaration of Independence to make her point. In fact, Franck’s assertion directly contradicts Rand, who wrote: “government as such has no rights except those *delegated* to it by the citizens” (1963, 110). One cannot delegate something unless it already exists. Franck evidently needs the notion of government necessity to build his case for ‘moral taxation,’ but it is misleading to imply, as he does, that his idea is derived from Ayn Rand.

Because Franck thereafter assumes the necessity of government as the foundation of his case for taxation, it is important to note that he has not demonstrated this ‘necessity,’ he merely asserts it. That *protection of rights* is a necessity few would dispute, but Franck has not established that government is required for that purpose. His whole case rests on unproven assumptions.

A different problem arises when Franck speaks of a “strictly limited government.” He goes on to describe how a “properly defined set of social relationships” will include “provision for the necessity of government” and how property rights in this arrangement “must account for access by government to *some* portion of one’s money to support its existence.”

This is a prescription for authoritarianism. Franck claims that “government is inherently necessary to define rights.” He then asserts that the “the parameters of property rights,” *as defined by government*, must allow for taxation. His government thus grants itself the power to seize other people’s wealth to ensure its own exis-

tence. It is not possible to see how government can be called “strictly limited” in this scenario.

There are several other problems with Franck’s opening paragraphs. For instance, his statement that “man requires a properly limited government for his social existence...” is clearly false, as Sechrest (2000) has noted. There are thousands of long-lasting, stateless societies on record, some hundreds of which are known to have existed in North America for centuries, or even millennia, prior to the establishment of the Thirteen Colonies and of the various governments of the United States.

Further, Franck’s argument that “government is inherently necessary to define rights *ab initio* ... its very existence is both a prerequisite and a component of rights” is circular. The conclusion merely repeats something asserted in the first premise. The argument also involves a non sequitur. It does *not* follow from its alleged necessity that government is a component of rights. That’s like saying ‘because water at 100C is necessary to boil an egg, the water is a component of the egg.’ Thirdly, if government is a ‘component’ of rights, how is it also the ‘definer’ of rights? Indeed, rights and government are conflated here.

In reality, of course, individual rights, if they are to be protected by government officials, or by anybody else, must be what they actually are—objective moral principles entirely separate from, and clearly distinguishable from, government, or from any other agency set up to protect them.

Another matter to consider is Franck's contention that, "A requirement, or *necessity*, without a means of implementation constitutes a contradiction." On the face of it, this is obviously wrong. *Viz*: a car that runs out of fuel must be refueled if it is to start again, but there is no contradiction involved if fuel is unavailable. Lack of means merely creates problems, not contradictions. One suspects that Franck may be trying to bolster an unworkable argument by slipping in Rand's vital insight that contradictions cannot exist. On the other hand, if he means that since (in his view) government is a necessity it would be contradictory to deny it the necessary wherewithal he would appear to be begging the question, for it is he who asserts the necessity, as his first premise.

Lastly, Franck's definition of rights as "man's inherent moral prerogatives of action" is hardly helpful. Vague and wordy, it covers only the positive aspect of rights, excluding the negative; and clouds the issue by using the word 'prerogative,' which connotes the privileges of *particular* individuals, not something universal in humankind. Rand's several definitions are much more useful starting points.

In sum, the foundations of Franck's case for 'moral taxation' are too illogical, misleading, and lacking in clarity to be persuasive. More extensive attention to his ideas is therefore unnecessary. It would also likely be unrewarding. After the passage of six years, and writing four further articles, Franck merely brushed aside the potent criticism directed at him and reiterated in 2000 what he had said in 1994.

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