

*Redefining Non-Confiscation and Taxes:
An Institutional Conception of Property Rights as a Guide for Judicial Practice*

Alejandro Berrotarán

Tax principles serve as guidelines for legislators and also as interpretative criteria that judges use to apply taxes and, eventually, overturn those that do not conform to these criteria. In most jurisdictions, tax legality is guided by a principle known as non-confiscation, which states that the State should not take from individuals an amount of their property that would nullify their moral property rights. If a competent judge finds that this limit to the taxing authority of the State has been exceeded, then the tax must be declared confiscatory and, consequently, annulled.

The non-confiscation principle is based on and expresses some important assumptions about private property rights, which, however, have not been examined and defended by legal theorists. They have, indeed, been examined - and in some cases challenged - by some political philosophers, but the latter have not paid attention to the implications of their views for the legality of tax law.

The main aim of this research project in applied legal philosophy is to critically examine the principle of non-confiscation as it is currently understood in most legal discussions, and to propose an alternative to it by drawing on and expanding on recent discussions, within political philosophy, on private property rights. In doing so I intend to provide conceptual and normative tools to guide the judicial practice of our societies.