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Selling the Rule of Law for £500m [1]

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On Radio 4?s Today Programme this morning, Exchequer Secretary to the Treasury David Gauke defended the introduction of retrospective tax law to make Barclays pay tax which it had avoided legally. ?When we see something like this, behaviour which is unacceptable, we are willing to step in?, he said. There are always reasons to ditch rules which aren?t very convenient. But such reasons are rarely good enough. And certainly not when it is to scrape away the glue which keeps the law together: the Rule of Law.

Retrospective legislation ? or *Ex Post Facto* law[3], as it is called in jargon ? is unacceptable because it make coercive rules random at the behest of the rule maker. In*The Constitution of Liberty*, Hayek describes how some coercive action by government is acceptable, provided it satisfies three conditions: generality, certainty, and equality. Retrospective legislation fails on the certainty ground, and is therefore objectionable. Earlier, in *The Road to Serfdom*, he said:

> ?[The Rule of Law] means that the government in all its actions is bound by rules fixed and announced beforehand ? rules which make it possible to foresee with fair certainty how the authority will use its coercive powers in given circumstances, and to plan one?s affairs on the basis of this knowledge.?

How is a company to assess costs and gains before it makes an investment if greedy government can turn around at any given moment and ask for more? It isfundamentally unfair [4] to hold a person to be in contravention of the law when the law did not exist when the alleged contravention occurred.

This is not the first time a greedy government has decided to outlaw behaviour after the facts. But there is even worse: leaving tax laws vague to give the taxman discretion to tax no matter what has been common practice [5] in the UK for years.

Some have tried to legitimise the Treasury?s actions by pointing out that Barclays has signed a voluntary code of practice in which it promised not to use tax avoidance schemes. It was certainly silly of Barclays to do so, as tax avoidance is not illegal (tax *evasion* is); and by signing this code of practice it effectively harmed its shareholders. Its action may have been inspired by a fashionable public spirited sense of ?corporate responsibility?. Barclays wouldn?t be the first corporate player to decide that it?s quite a good little idea to collaborate with coercive greedy government. Never mind the consequences for the

entrepreneurs who arrive later.

You cannot opt out of the Rule of Law. Barclays' silly signature changes nothing to that simple fact. For the Treasury, £500 million of additional tax revenue is a sufficient reason to walk over legal certainty. Never mind the billions of pounds investment which will now walk out of the UK.

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