

United Debt Collectors of America

By Megan McArdle

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Yesterday, I mentioned that you shouldn't stiff the government. It has more reach than a loan shark, and it's not really more forgiving, either. By way of reference, I pointed to an appalling story from the Washington Post that recounts how the Social Security Administration started collecting on decades-old overpayments by going after the (then) minor children of the people who collected them.

Mercifully, the government has backed down. Still, it seems worth asking a question: Why the heck does the government keep doing this?

This is not the first time that the government has written itself a special pass excusing its collectors from the normal restraints on debt collection. You're probably aware that student loan debt can't be bankrupted except under extreme conditions. You may also be aware that tax debt is nearly as hard to get rid of. And then in 2011, the government decided to get rid of the statute of limitations on federal debt collections entirely. That's what led to the aforementioned appalling Post story, though it was not the first to report on this; local news reporters have been covering this story for some time.

As Walter Olson notes, statutes of limitations evolved for a reason: "They protect us not only from cost, uncertainty, and the misery of legal process, but from injustice of a hundred other kinds, and they protect society itself from spiraling into a legal war of all against all." So does the U.S. bankruptcy system, which allows an orderly resolution of debts for creditors and offers debtors a fresh start. Why doesn't the federal government think that these excellent reasons should apply to itself?

Presumably for the same reason that banks and debt collectors would like to strip debtors of their protections: It yields more revenue. I mean, maybe it's hard on society and the debtors, but what's that next to a few more pennies trickling into the coffers?

Look at it from a politician's point of view: This provision means more money for the federal government, without raising taxes. It is most likely to hit poor people hard, and they don't vote as often as taxpayers. But you're not cutting benefits or doing anything that poverty advocates can frame as an explicit attack on the poor; you're just collecting money that the government is legitimately owed.

Well, sort of. One reason the statute of limitations exists is that over time, it becomes very difficult to ascertain the legitimacy of the offense. The people involved die off; the records age;

rules and laws change; and how do you prosecute your case -- under the rules of the time or the rules now? Even if you try to apply the rules of the time, you will be doing so with modern sensibilities.

This is one of the things that Olson means by “uncertainty.” Predictability is valuable in a society; we need to know that we will not be prosecuted years hence for rules we didn’t know we were breaking. Whether these people actually received Social Security overpayments back when they were minor children, how on earth would they have known that? If the government can go after you for this sort of thing, then none of us can ever be sure we’re safe.

That sort of uncertainty is paralyzing. That’s why we resolve it by saying that we are closing the books at a certain point. One of the most offensive things about this sudden change in the law was that it applied retroactively -- people who had expected that the past was behind them suddenly had it reopened. This is the stuff of banana republics and totalitarian dictatorships, not a modern liberal democracy.

The government should care more, not less, than normal businesses about helping people to close the books and move on. It should be more scrupulous about procedural legitimacy, not less so. How it treats those with whom it deals sends a strong message. Unfortunately, the only message our legislators seem interested in sending is that Uncle Sam will hunt you to the ends of the earth for every last penny. If it really takes a storm of terrible publicity to stop this, we might as well turn the stars on the flag into dollar signs and be done with it.