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*Ex Post*

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# Taxation of Beards

*Erik (the Middlin') Jensen*

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## Taxation of Beards

Erik (the Middlin') Jensen

**M**AYBE EVERYONE ELSE already knew this, but I didn't: Peter the Great, ruler of Russia from 1682 until 1725, imposed a tax on *beards*.<sup>1</sup> What a great idea! Why aren't the tax policy gurus in the United States discussing a beard tax as a way to trim budget deficits? The hirsute Michael Graetz, after all, hasn't been Assistant Secretary of the Treasury (Tax Policy) for years.

Peter ("Pete" to his friends, all of them clean-shaven ... eventually) thought the omnipresent beards made Russia look silly in western eyes.

Beards were "unnecessary, uncivilized and ridiculous," as Peter's biographer Robert Massie puts it,<sup>2</sup> and who can argue with that?<sup>3</sup> In his first attempt not to countenance hairy countenances, in September 1698, Peter took a straight razor to the faces of those appearing before him – and without any warning.<sup>4</sup> Thereafter, because the word was slow getting out that sporting a beard in Peter's presence wasn't very smart,<sup>5</sup> Peter had lots more chances to do his thing: "whenever Peter attended a banquet or ceremony, those who arrived with

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*Erik Jensen is the David L. (the Generous) Brennan Professor of Law at Case Western Reserve University. Professor Jensen reports: At CWRU, we've been debating whether the faculty should be writing only grand theoretical articles or whether it's OK, every once in a while, to write other stuff (you know, to look productive and pad the CV). The other stuff was characterized by one colleague as "tweedle." I think that wasn't intended to be praise, but I don't care. Let there be no doubt: this piece is tweedle. Indeed, everything in this journal is tweedle. In my tweedly view, the Bag is the preeminent American journal of tweedle.*

- 1 I learned this from *Mini-AIR* (issue 2002-04, Apr. 2002), the on-line version of the amazing *Annals of Improbable Research*.
- 2 Robert K. Massie, *Peter the Great* 235 (1980). Peter may not have liked Russian hairstyles, either, but change in that area would have required hitting Russian males in their Vitalis parts.
- 3 Cf. Richard Brookhiser, *America's First Dynasty: The Adamses, 1735-1918*, at 152 (2002) ("[Henry] Adams belonged to the first generation of his family obliged by fashion to wear unflattering facial hair").
- 4 Massie, *supra* note 2, at 234 (describing events of Sept. 5, 1698). And these people weren't enemies; Peter's Schick was hitting his fans.
- 5 This was before CNN, and most guys didn't have clipping services.

beards departed without them.”<sup>6</sup>

As you can imagine, the shaving process wasn't pleasant (except for Peter, who enjoyed it immensely). Peter could handle a blade,<sup>7</sup> but he wasn't a trained stylist. And he didn't use Burma Shave,<sup>8</sup> so he inevitably left gouges along the way.<sup>9</sup> On the days he was “in a merry Humour,”<sup>10</sup> Peter even ripped a few beards off – “pull'd [them] out by the Roots,” as John Perry put it in 1716.<sup>11</sup> I'm not sure whether this was better than the straight-razor option, but I am sure that Peter was *not* a barber of civility.<sup>12</sup> When historians write that Peter “altered the face of Russia permanently,”<sup>13</sup> they mean it.

As bad as the JiffyShave™ treatment was, it could have been worse. In 1699, Peter was called home to Russia because of his sister's intrigues, and, according to Bishop Burnet, he “let loose his fury on all whom he suspected. Some hundreds of them were hanged all around Moscow, and it was said, that he cut off many heads with his own hand.”<sup>14</sup> At least when he dealt with

the bearded population, Peter intended to leave something attached to the offenders' necks.

Anyway, Peter couldn't get to all the beards in the empire himself, not if he was going to take Saturday afternoons off, so he outlawed beards (except for the clergy's).<sup>15</sup> This worked fairly well, since the fuzz fuzz “were given the power to cut off the beard of any man, no matter how important, whom they encountered.”<sup>16</sup> Russian men could hide for a while, but, after a few close shaves, they were likely to opt for a close shave. And bribery turned out to be not much of a problem. Yes, a save-the-beards proponent could grease the palm of one official, but then there'd be another, and another, and another. “Before long,” writes Massie, “wearing a beard became too expensive a luxury.”<sup>17</sup>

An outright prohibition of beards, however, conflicted with enlightened theory. After attending graduate school at the University of Chicago, to brush up on economics,<sup>18</sup> Peter decided to let the market take over. It may not

6 Massie, *supra* note 2, at 235. Whatever was on the menu, the bearded ones got cold cuts.

7 See Gerhard Rempel, The Personality of Peter <http://mars.wnec.edu/~grempe/courses/russia/lectres/12peter1.html> (website of Gerhard Rempel, Western New England College) (“[S]o dexterous was [Peter] that if a piece of cloth was thrown into the air he could cut it in half with his knife before it landed.”).

8 Peter cared about substance, not foam.

9 Massie, *supra* note 2, at 235; see John Perry, The State of Russia Under the Present Czar 196 (1716) (noting that beards were “sometimes taken so rough off, that some of the Skin went with them”). This may have been the origin of the term “hell-razor.”

10 Massie, *supra* note 2, at 236 (quoting Perry, *supra* note 9, at 196).

11 Perry, *supra* note 9, at 196.

12 Nor was he a cute little shaver. He was 6' 7" or so. Massie, *supra* note 2, at 134.

13 See Meredith Oliver, Peter I (The Great), 1689-1725 (1998) <http://campus.northpark.edu/history/WebChron/EastEurope/PeterGreat.html> (website on Russian and Eastern Europe Chronology of Department of History, North Park University).

14 3 Bishop Burnet's History of His Own Time 308 (1809) (originally published 1724 @ 1734). At other times he used a sword, sending the heads into saber-space.

15 For those of you who require a legal citation for everything, see Kelley v. Johnson, 425 U.S. 238, 253 n.4 (1976) (Marshall, J., dissenting) (“[I]n an effort to stimulate his countrymen to adopt a modern lifestyle, Peter the Great issued an edict in 1698 regulating the wearing of beards throughout Russia.”).

16 Massie, *supra* note 2, at 235.

17 *Id.*

18 Just kidding. In fact, Peter's GREs weren't high enough to get in. See Burnet, *supra* note 14, at 272 (“the czar was so sensible of the defects of his education”).



from "The Barber Wants to Cut the Old Believer's Whiskers." Woodcut circa 1770. The print depicts an Old Believer on the left, wearing traditional Russian clothing and with a beard. To his right, a barber wearing German attire attempts to cut off the Old Believer's beard. The text identifies the Old Believer as a schismatic (*raskol'nik*), who states, "Listen, barber, I neither want to cut my beard nor shave. Watch out, or I will call the guards to teach you to behave." Photograph and caption courtesy of Professor Stephen Norris, Assistant Professor of History, Miami University.

have happened in quite this way, but I like to imagine Peter talking about beards as externalities, which they obviously are (unless ingrown), and, like any good (or bad) economist, urging his countrymen to internalize externalities. Thus, if a subject of the czar wanted to look like Gabby Hayes, he had to pay to do so.<sup>19</sup> And, as we'll see in a moment, the beard tax was graduated<sup>20</sup> – another factor that should make a beard tax attractive to modern policy wonks.<sup>21</sup>

Peter was pretty good at enforcement. There was no doubt who was in charge, and you didn't hear any Bolshoi about the tax system's being "voluntary." Indeed, with a beard tax, evasion of the modern sort seems to have been almost impossible.<sup>22</sup> Moving one's beard to a Caribbean island required a *very* long trip, and beard laundering was unknown.<sup>23</sup> In general, you either scraped up the money to pay the tax, or the officials scraped you.

It's worth quoting Englishman John Perry, who was an engineer at Peter's court from 1698 until 1712, at some length on the origin of the beard tax:<sup>24</sup>

It had been the manner of the *Russes*, like the Patriarchs of old, to wear long Beards hanging down upon their Bosoms, which they comb'd

out with Pride,<sup>25</sup> and kept smooth and fine, without one Hair to be diminished; they wore even the Upper-Lip of that length, that if they drank at any time, their Beard dipp'd into the Cup, so that they were obliged to wipe it<sup>26</sup> when they had done, altho' they wore the Hair of their Head cut short at the same time; it being the Custom only for the Popes or Priests, to wear the Hair of their Heads hanging down upon their Backs for Distinction sake. The Czar therefore to reform this foolish Custom, and to make them look like other *Europeans*, ordered a Tax to be laid, on all Gentlemen, Merchants, and others of his Subjects (excepting the Priests and the common Peasants, or Slaves) that they should each of them pay 100 Rubles *per Annum*, for the wearing of their Beards, and that even the common People should pay a Copeck at the Entrance of the Gates of any of the Towns or Cities of *Russia*, where a Person should be deputed at the Gate to receive it as often as they had occasion to pass.<sup>27</sup>

Jean Rousset de Missy, in his *Life of Peter the Great*, published in 1728, described events in much the same way. (In fact, it's so much the same way that one can see the premonitory influence of Stephen Ambrose and Doris Kearns Goodwin on these eighteenth-century historians.)

19 If he were alive today, Peter would probably be touting transferable beard-tax credits.

20 Unlike, say, Nebraska football players. It's no accident that towns in Nebraska aren't called Omahagrad, Scottsbluffgrad, or Kearneygrad.

21 Except those at Chicago's law school. See Walter J. Blum @ Harry Kalven Jr., *The Uneasy Case for Progressive Taxation* (1953). Not having the benefit of modern scholarship (i.e., this article), Blum and Kalven didn't discuss beard taxation. But I have no doubt that, had their work been more forward-looking, they would have questioned the propriety of a graduated beard tax.

22 Although one should never underestimate the inventiveness of tax evaders. For example, peasants managed to evade another of Peter's taxes, a household tax, by getting the houses out of the tax collector's sight: "Russian peasant houses were largely made of logs or timbers notched at the four corners. Thus, they could be un-notched in a few hours and either removed to the forest or scattered about." *Massie*, *supra* note 2, at 780-81.

23 Indeed, laundering of any sort wasn't common in those days.

24 It's worth it because doing so saves me a lot of effort.

25 As you can see, Perry had some trouble with pronoun-antecedent agreement in his writing. Presumably the beards were being combed out, not the bosoms, but, with those hairy-chested Russes, one never knows.

26 Yup, same problem.

27 Perry, *supra* note 9, at 195. The alternative to tax collectors was barbers at the gates.



Beard Token, 1705.

Photographs courtesy of Ira & Larry Goldberg Coins & Collectibles, Inc., Beverly Hills, California.

The tsar labored at the reform of fashions, or, more properly speaking, of dress. Until that time the Russians had always worn long beards, which they cherished and preserved with much care, allowing them to hang down on their bosoms, without even cutting the moustache. With these long beards they wore the hair very short, except the ecclesiastics, who, to distinguish themselves, wore it very long. The tsar, in order to reform that custom, ordered that gentlemen, merchants, and other subjects, except priests and peasants, should each pay a tax of one hundred rubles a year if they wished to keep their beards; the commoners had to pay one kopeck each. Officials were stationed at the gates of the towns to collect that tax ...<sup>28</sup>

To be sure, the beard tax was hugely unpopular at first; the Russian tie between beards and religion was very strong. Rousset de Missy wrote that "the Russians regarded [the tax] as an enormous sin [yes, a real sin tax!] on the part of the tsar and as a thing which tended to the abolition of their religion."<sup>29</sup> And Perry agreed:

This was look'd upon to be little less than a Sin in the Czar, a Breach of their Religion, and held to be a great Grievance for some Time ...

It is most certain, that the *Russes* had a kind of religious Respect and Veneration for their Beards; and so much the more, because they differed herein from Strangers, which was back'd by the Humours of the Priests, although acknowledging that the holy Men of old had worn their Beards according [*sic*] to the Model of the Picture of their Saints, and which nothing but the absolute Authority of the Czar, and the Terror of having them (in a merry Humour) pull'd out by the Roots, or sometimes taken so rough off, that some of the Skin went with them, could ever have prevailed with the *Russes* to have parted with their Beards. On this Occasion there were Letters dropp'd about the Streets, sealed and directed to his Czarish Majesty, which charged him with Tyranny and Heathenism, for forcing them to part with their Beards.

About this Time the Czar came down to *Veronize*, where I was then on Service, and a great many of my Men that had worn their Beards all their Lives, were now obliged to part with them, amongst which, one of the

28 2 Mémoires du règne de Pierre le grand 254 (or thereabouts) (1728), translated and reprinted in 2 Readings in European History 310-11 (James Harvey Robinson ed., 1906) [hereinafter Robinson]. Rousset de Missy used the pen name Ivan Nestesuranoi to make himself appear legitimate. (Not wanting his face to be reworked, he didn't actually visit Russia.)

29 Rousset de Missy, *supra* note 28, reprinted in Robinson, *supra* note 28, at 311.

first that I met with just coming from the Hands of the Barber, was an old *Russ* Carpenter that had been with me at *Camishinka*, who was a very good Workman with his Harchet, and whom I always had a Friendship for. I jested a little with him on this Occasion, telling him that he was become a young Man, and asked upon him what he had done with his Beard? Upon which he put his Hand in his Bosom and pull'd it out, and shew'd it to me; further telling me, that when he came home, he would lay it up to have it put in his Coffin and buried along with him, that he might be able to give an Account of it to *St. Nicholas*, when he came to the other world; and that all his Brothers (meaning his Fellow-workmen who had been shaved that Day) had taken the same Care.<sup>30</sup>

Rousset de Missy confirmed that *St. Nick*<sup>31</sup> was a strict constructionist at the Pearly Gates: "[T]here were many old Russians who, after having their beards shaved off, saved them preciously, in order to have them placed in their coffins, fearing that they would not be allowed to enter heaven without their beards."<sup>32</sup>

Despite the fears of the religious and despite some transition problems – other than the clergy's, no beards had been grandfathered – the beard tax turned out all right. Many of the newly shaved tax avoiders – the younger guys anyway – found that Peter's reforms could lead to heaven on earth. Rousset de Missy: "As for the young men, they followed the new custom with the more readiness as it made them appear more agreeable to the fair sex."<sup>33</sup> Perry: "[T]he Women liking their Husbands and Sweet-hearts the

better, they are now for the most part pretty well reconciled to this Practice."<sup>34</sup> There's a lesson here for modern politicians: couple tax policy with good sex and popularity is guaranteed.

For those who elected to forgo the foreplay and keep their beards, one of the nice touches of the beard tax was that payment "entitled the owner to a small bronze medallion with a picture of a beard on it and the words TAX PAID, which was worn on a chain around the neck to prove to any challengers that his beard was legal."<sup>35</sup> If you displayed your clunky tax receipt, the officials wouldn't jerk your chain.

In the interests of scholarly completeness, always a *Bag* goal, I should note that not everyone accepts the version of events outlined above.<sup>36</sup> For example, tobacco scholar Iain Gately argues that nothing so grand as Europeanization was behind the beard tax. Instead, he says, it was simply retaliation against the Russian Orthodox Church for its opposition to smoking, a favorite pastime of Peter when he wasn't shaving:

The key text was found in the Gospel of Mark, 6:15, "The things that come out of him, those are they that defile the man." The Patriarch of Moscow threatened smokers with excommunication, thus provoking a trial of strength with the tsar. But Peter did not enjoy, or even allow, disagreement. ... Peter responded to the patriarch's challenge by imposing a tax on beards of the sort favoured by the Orthodox clergy.<sup>37</sup>

Gately cites no authority for his theory,

30 Perry, *supra* note 9, at 195-97.

31 Had jolly *St. Nick* been in Peter's Russia, given Peter's views (and actions) on these matters, he could have become Nearly Headless Nick.

32 Rousset de Missy, *supra* note 28, reprinted in Robinson, *supra* note 28, at 311.

33 *Id.*

34 Perry, *supra* note 9, at 196.

35 Massie, *supra* note 2, at 235.

36 Contemporary historians didn't do an adequate job of describing the beard tax, presumably because, in Peter's Russia, scholars wanted to stay away from the cutting edge.

37 Iain Gately, *Tobacco: The Story of How Tobacco Seduced the World* 94-95 (2001).

however, suggesting that he could find no smoking gun.

Scholarly hairsplitting is fun, but for present purposes it really doesn't matter *why* Peter taxed beards. The important point is that it's an idea that can work in today's United States. Let's just do it.

The societal benefits would be enormous. The tax would raise some money, and, as was true in Russia, the country would look better: a beard tax would make it more likely that Al Gore<sup>38</sup> would stay clean-shaven. And a beard tax would stimulate the economy. Manufacturers of razors and blades would clearly benefit, as would the lotion industry, and my impression is that a lot more dollars are spent advertising shaving than are spent advertising not-shaving.

The beard lobby would resist any beard-tax proposal, of course, whining, I imagine, about a tax on growth. And beards do have some desirable effects, I grudgingly admit. For example, it's been noted that "[e]xaggerated facial hair probably serves several adaptive functions. As a social organ it inflates apparent body size, thereby helping to establish and maintain the group dominance hierarchy."<sup>39</sup> In addition, not shaving opens up time for lots of other activities, like watching

professional wrestling or reading the *Bag*.

But the greater good should outweigh any of the warm, fuzzy notions of the beard cultivators. That was Peter's principle, and he was great.

This is a legal journal, so I guess I should run down the list of constitutional objections that might be raised to a national beard tax. First, there's the First Amendment stuff, of course – freedom of expression, penumbras emanating from scruffy beards,<sup>40</sup> etc. You know the routine.<sup>41</sup> For those who speak with their follicles, this may be a serious issue, but *come on!*

Second, a beard tax would fall overwhelmingly on men, which has a certain feminist appeal<sup>42</sup> but raises equal protection issues. We can sidestep those concerns, however, by characterizing the tax as reparations for centuries of girdles.

Third, if a tax on beards is a direct tax, it would have to be apportioned among the states on the basis of population.<sup>43</sup> If so, the application of the tax in any particular state would depend on the concentration of beards in that state, which would make the tax difficult to implement.<sup>44</sup> You've never heard of this before? Join the club. Nobody important

38 For those of you who've forgotten, Al Gore was a late twentieth-century American politician.

39 Jerry N. McDonald, *North American Bison: Their Classification and Evolution*, caption to plate 28 (1981). I've used this quote in the *Bag* before, but maybe you missed it the first time.

40 It's probably just the mustache wax.

41 See, e.g., James M. Maloney, Note, *Suits for the Hirsute: Defending Against America's Undeclared War on Beards in the Workplace*, 63 *Fordham L. Rev.* 1203, 1243 (1995) (locating the right to scruffiness in the First Amendment's protection of freedom of expression).

42 The certain feminist is June Stephenson, who proposed a "gender tax," a \$100 per year tax on men only. See *Men Are Not Cost-Effective: Male Crime in America* (1995). The revenue would be used to fund "intensive tutoring and for family counseling," *id.* at 361 – to help clean up the mess that the "criminal gender" has caused through rape, pillage, and littering.

43 See U.S. Const. art. I, § 2, cl. 3; art. I, § 9, cl. 4.

44 Imagine two states with equal populations. If the beard tax is direct, the aggregate beard tax collected from each would have to be the same, regardless of the number of beards in the two jurisdictions. If state X has twice as many beards as state Y, the tax per beard would be only one-half as high in X as in Y. In such circumstances, one can imagine the movement of beards from high-taxing jurisdictions to low-taxing ones, with some states effectively becoming beard-tax havens. (Maybe this is a way to get the Dakotas going again if the buffalo-commons idea doesn't work out.)

direct-tax clauses seriously,<sup>45</sup> so let's  
out this one, too.



ve taken the first big step to deal with  
nd behavioral modification needs,<sup>46</sup>  
dn't stop. There are lots of other  
waiting to be picked from Peter's fiscal  
Massie reports,

n 1708 created a service of revenue  
men whose duty it was to devise new  
of taxing the people. Called by the  
name "fiscals," they were commanded  
and make income for the Sovereign  
... There was a tax on births, on  
ges, on funerals and on the registration  
. There was a tax on wheat and tallow.  
were taxed, and horse hides and horse  
There was a hat tax and a tax on the  
g of leather boots. The beard tax was  
ratized and enforced, and a tax on  
hes was added. Ten percent was  
d from all cab fares. Houses in Moscow  
xed, and beehives throughout Russia.

There was a bed tax, a bath tax, an inn tax, a tax  
on kitchen chimneys and on the firewood that  
burned in them. Nuts, melons, cucumbers,  
were taxed. There was even a tax on drinking  
water.<sup>47</sup>

That's a bushelbasketful of ideas to ponder,  
and, in 1724, Peter also imposed a head tax, an  
idea he'd picked up in France. Of course, when  
Peter imposed a "head" tax, you couldn't be  
sure you were exempt just because your head  
was no longer attached.<sup>48</sup> Accordingly, the tax  
came to be called a "soul" tax: "By 1722, a census  
had been compiled listing 5,794,928 male 'souls'  
and in 1724 the soul tax was collected for the  
first time."<sup>49</sup> It was an enormous revenue  
success, and, if there, why not here?

It wasn't too long ago that the chair of the  
House Ways and Means Committee, in a  
merry humor, wanted to "pull the income tax  
out by its roots and throw it away."<sup>50</sup> Sounds to  
me like we're already on our way to adapting  
Peter's revenue ideas to twenty-first-century  
America. 

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Erik M. Jensen, *The Apportionment of "Direct Taxes": Are Consumption Taxes Constitutional?*,  
Colum. L. Rev. 2334 (1997). You can't get less important than that.

Yeah, there's another quasi-legal issue to consider: how to draft the Old Spice Stimulus Bill of  
Think of the definitional problems: Is Roger Clemens on game day, when he avoids the Yankee  
ber, subject to the tax? Where does one draw the line between beards and sideburns? Is a  
ache a *de minimis* beard? These are serious questions, which is why I won't deal with them.

ie, *supra* note 2, at 388. Peter's beardless lips were easy to read, and he obviously wasn't  
sising "no new taxes."

n Peter visited France, the Revolution hadn't yet come, and it was only the tax, not any heads,  
he was able to pick up there. He really didn't need any more heads anyway, having developed his  
source of supply. See *supra* note 14 and accompanying text.

ie, *supra* note 2, at 781.

ohn Godfrey, *Archer Keen on Killing Code; Full Speed Ahead on Tax Reform*, 70 *Tax Notes*  
1431 (1996) (quoting Bill Archer); cf. *supra* notes 10-11 and accompanying text.