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“Tax Fairness and the Tax Mix”

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(All sessions meet Thursday 4:00-6:00 pm, Furman-120, NYU Law School)

1. January 15 – Daniel Shaviro, NYU Law School. “The Long-Term Fiscal Gap: Is the Main Problem Generational Inequity?”
2. January 22 – Alan Auerbach, Berkeley Economics Department and NYU Law School. “Understanding U.S. Corporate Tax Losses.”
<http://www.nber.org/papers/w14405.pdf>
3. January 29 – Edward Kleinbard, Joint Committee on Taxation. “A Reconsideration of Tax Expenditure Analysis.”
4. February 5 – Amy Finkelstein, MIT Economics Department, “EZ-Tax: Tax Salience and Tax Rates.”
5. February 12 – Dorothy Brown, Emory Law School. “Shades of the American Dream.”
6. February 19 – Yoram Margalioth, Tel Aviv University Law School and NYU Law School. “Employing Statistical Stigma As a Welfare Ordeal.”
7. February 26 – Leslie McCall, Northwestern University Sociology Department. “Americans' Social Policy Preferences in the Era of Rising Inequality.”
8. March 5 – Michael Doran, University of Virginia Law School. “Managers, Shareholders, and the Corporate Double Tax.”
9. **March 12 – David Duff, University of Toronto Law School. “Tax Fairness and the Tax Mix.”**
10. March 26 – Emmanuel Saez, Berkeley Economics Department. “Details Matter: The Impact of Presentation and Information on the Take-Up of Financial Incentives for Retirement Saving.”
11. April 2 – Lily Batchelder, NYU Law School.
12. April 9 – Mihir Desai, Harvard Business School and NYU Law School. “Investor Taxation in Open Economies.”
13. April 16 – Mitchell Kane, NYU Law School.
14. April 23 – Thomas Brennan, Northwestern Law School.

Tax Fairness and the Tax Mix

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I. Introduction

Justice, John Rawls famously wrote, is the first virtue of social institutions.¹ Since a society's tax system is one of its most basic and essential social institutions, the justice or fairness of this tax system is an important subject for social and political theory, as well as for practical politics. In order to assess the fairness of any particular tax or the tax system as a whole, however, it is essential to consider the purpose of the tax and the tax system in general.

Although the most obvious purpose of most taxes is to raise revenue to finance public expenditures, this is not the only rationale for taxation which may also be employed to regulate social and economic behaviour and to shape the distribution of economic resources.² For this reason, the concept of tax fairness is necessarily pluralistic, depending on the particular purpose for which the tax is imposed. Not surprisingly, therefore, modern welfare states typically levy a mix of taxes, including personal and corporate income taxes, broad-based consumption taxes, excise taxes on specific goods or services, payroll taxes, property or wealth taxes, wealth transfer taxes, as well as user fees and benefit taxes.

Since the justification for any tax presumably depends on the legitimacy of the underlying purpose which it is designed to promote, the concept of fair taxation is necessarily secondary and derivative – depending on more fundamental principles concerning the fairness or justice of the public spending that taxes finance, the regulatory goals that they support, and the distribution of economic resources that they help to define. As a result, it seems, it is pointless to talk about principles of tax fairness in

¹ John Rawls, *A Theory of Justice*, (Cambridge, MA: Harvard University Press, 1971) at 1.

² See, e.g., Reuven Avi-Yonah, "The Three Goals of Taxation" (2006), 60 *Tax Law Rev.* 1-28.

isolation, apart from more fundamental concepts of social and economic justice to which these principles relate.³

Notwithstanding this view, however, it is useful to consider the concept of tax fairness as it relates to each of the goals of taxation identified above. With respect to government spending on publicly-provided goods and services, for example, traditional tax equity principles of benefits received and ability to pay provide useful criteria to assess the fairness of any particular tax or set of taxes designed to collect revenues for this purpose, despite considerable disagreement about the meaning of a taxpayer's "ability to pay". With respect to the regulation of social and economic behaviour, the concept of tax fairness necessarily assumes a different character, related to the justice of the regulatory goal, the presence of a rational relationship between the tax or tax incentive and the regulatory goal, and the distributional effects attributable to the tax or incentive. Where a tax is designed to affect the distribution of economic resources, principles of tax fairness dissolve into broader considerations of distributive justice which determine the manner in which economic resources are fairly distributed and the respective roles of taxes and transfer payments to achieve this distributive goal. Although a fair tax may reasonably pursue one of these goals exclusively, a fair tax system will presumably pursue all simultaneously.

This paper reviews the concept of tax fairness in relation to each of the goals of taxation identified in this introduction: the collection of revenues to finance public expenditures, the regulation of social and economic behaviour, and the distribution of economic resources. Part II considers the collection of revenue to finance expenditures on

³ For an extended argument to this effect, see Liam Murphy and Thomas Nagel, *The Myth of Ownership; Taxes and Justice*, (Oxford: Oxford University Press, 2002).

publicly-provided goods and services, concluding that traditional benefit and ability-to-pay principles provide reasonable criteria to judge the fairness of different kinds of taxes for this purpose – assuming a just distribution of economic resources, the establishment of which may require the collection of other taxes and government expenditures. Part III examines the use of taxation for regulatory purposes, outlining principles of tax fairness to govern tax incentives or tax expenditures as well as regulatory taxes. Part IV discusses the relationship between taxation and distributive justice, arguing that widely-shared and normatively defensible principles of distributive justice support progressive taxes on income and wealth transfers in order to moderate inequalities that would otherwise prevail in the distribution of income and wealth as well as the opportunities that result from substantial inheritances. Part V explains how these considerations of tax fairness and distributive justice support a mix of taxes for different purposes.

II. Revenue Collection

Notwithstanding their reliance on private markets to supply most goods and services, the public sectors of most modern welfare states account for a substantial percentage of gross domestic product – representing 33.4 percent of GDP in Canada, 27.3 percent of GDP in the United States, and 36.2 percent of GDP in OECD countries in 2005.⁴ While some of these expenditures represent redistributive expenditures and transfer payments that are properly considered as part of a broader discussion of distributive justice, much of this revenue is devoted to publicly-provided goods and services such as public security, transportation, education, public pensions, employment

⁴ Organisation for Economic Cooperation and Development, *Revenue Statistics 1965-2006*, (Paris: OECD, 2006) at 76, Table 3.

insurance, and health insurance. Theories of public finance generally explain public provision of these goods and services on the grounds that they satisfy social wants that cannot be supplied efficiently by the private sector and so-called merit wants that are considered so essential to human welfare and flourishing that they should also be provided through the public sector – at least up to a basic minimum.⁵ While the former include so-called “pure” public goods and services like public security and national defence, the latter include quasi-private goods and services like public education, public pensions, and health insurance.

Assuming that public provision of these goods and services may be justified on some account, the key question for a concept of tax fairness is how the revenues that are needed to finance these expenditures should be obtained. For this purpose, traditional approaches to tax policy have generally supplied two answers, suggesting that the costs of publicly-provided goods and services should be allocated either according to the benefits that individuals and enterprises derive from government or according to some comprehensive measure of their taxable capacity or ability to pay.⁶ While the benefit approach reflects a conception of tax fairness as transactional equivalence according to which one should pay only for the goods and services that one receives in exchange,⁷ the ability-to-pay approach reflects a conception of tax fairness as equality of sacrifice according to which the burden of financing public expenditures should (as John Stuart

⁵ See, e.g., Richard A. Musgrave, *The Theory of Public Finance: A Study in Public Economy*, (New York: McGraw-Hill Book Company, Inc., 1959) at 9-14.

⁶ *Ibid.* at 61-89 (benefit approach) and 90-115 (ability-to-pay approach).

⁷ See, e.g., Richard M. Bird, *Charging for Public Services: A New Look at an Old Idea*, (Toronto: Canadian Tax Foundation, 1976) at 11 (suggesting that the benefit principle reflects “the commercial principle that it is only fair to pay for what you get”).

Mill reasoned) apply so that whatever “sacrifices” the government requires of taxpayers “should be made to bear as nearly as possible with the same pressure upon all.”⁸

A. Benefit Approach

As an initial matter, one might think that the benefit principle might be an attractive way to allocate the cost of government expenditures in a liberal society, since it requires individuals and enterprises to pay only for those publicly-provided goods and services that they themselves enjoy, without having to pay for goods and services that governments provide to others. For this reason, some have argued that only benefit taxation accords with the values of individual autonomy and citizen sovereignty that underlie contractual conceptions of the state.⁹ Where benefit taxes are dedicated or earmarked to public expenditures on the goods and services in respect of which they are raised, moreover, this method of taxation also has the notable advantage of simultaneously determining both the level and structure of government spending and the manner in which it is financed.¹⁰

In practice, however, the benefit approach suffers from three deficiencies as a general principle of tax fairness. First, as many advocates of benefit taxation themselves acknowledge, the application of this principle presumes a just distribution of economic resources, the achievement of which is apt to demand the collection of other taxes for distributive purposes.¹¹ Second, where the publicly-provided good or service satisfies a

⁸ John Stuart Mill, *Principles of Political Economy* (1848), ed. by Donald Winch (London: Penguin Books, 1970) at 155 [Book V, chap. II, sec. 2].

⁹ Richard E. Wagner, “Tax Norms, Fiscal Reality and the Democratic State,” in Richard E. Wagner, ed., *Charging for Government Services: User Charges and Earmarked Taxes in Principle and Practice*, (New York: Routledge, 1991) 1 at 2-3.

¹⁰ Bird, *supra* note 7 at 10.

¹¹ See, e.g., Erik Lindahl, “Some Controversial Questions in the Theory of Taxation” in Richard A. Musgrave and Alan T. Peacock, *Classics in the Theory of Public Finance*, (London: Macmillan & Co. Ltd., 1964) 214-32 at 227 (explaining that the benefit principle of just taxation presumes “that an unjust property

merit want that is essential to human welfare and flourishing (like education and health care), benefit taxation may impede access to the good or service, contradicting the very rationale for public provision in the first place.¹² Finally, it is impossible to apply the benefit principle to pure public goods and services (like public security and national defence) the benefits from which are generally shared, without resorting to arbitrary presumptions regarding the manner in which these benefits are distributed,¹³ or elaborate and impractical voting procedures designed to measure each taxpayer's willingness to pay for these goods and services.¹⁴ For these reasons, several tax scholars have sharply criticized the benefit principle as a general concept of tax fairness,¹⁵ and advocates themselves generally acknowledge its limitations.¹⁶

Despite these limitations, however, the benefit principle can be a fair and legitimate way to finance various kinds of publicly-provided goods and services,

structure need prior adjustment – if not by other means, then by taxation – so that the (remaining) tax burden can then be distributed in accordance with the improved property structure”).

¹² See David G. Duff, “Benefit Taxes and User Fees in Theory and Practice” (2004) 54 *University of Toronto Law Journal* 391-447 at 406 (explaining that goods and services such as public education, health care, and higher education are properly distributed according to right, need or merit, rather than willingness to pay).

¹³ See, e.g., Thomas Hobbes, *Leviathan*, ed. by C.B. Macpherson (Harmondsworth, UK: Penguin, 1985) at 386-87 (arguing first that the benefit of “enjoyment of life” that each citizen obtains from the commonwealth justifies “equal imposition of taxes” and second that this equality is best measured by amounts consumed); John Locke, *Second Treatise of Government* (1690), ed. by C.B. Macpherson (Cambridge: Hackett Publishing Company, Inc., 1980) at 74 [chap. XI, para. 140] (concluding that “everyone who enjoys his share of the protection [secured by civil society], should pay out of his estate his proportion for the maintenance of it”); and Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, ed. by R. Campbell & A. Skinner (Indianapolis, IN: Liberty Press, 1981) at 825 [Bk. V, ch. 2, pt. 2] (suggesting that the benefit of economic well-being secured by the state justifies taxation in proportion to the revenue or income that persons obtain under the protection of the state).

¹⁴ See, e.g., Knut Wicksell, “A New Principle of Just Taxation” in Musgrave and Peacock, *supra* note 11, 72-118; and Erik Lindahl, “Just Taxation – A Positive Solution” in Musgrave and Peacock, *supra* note 11, 168-76.

¹⁵ See, e.g., Edwin R.A. Seligman, *Essays in Taxation*, 10th ed. (1931) (New York: Augustus M. Kelly Publishers, 1969) at 74 (denouncing the benefit principle as one based on a “false political philosophy” away from which “all modern science and progress have been working”); and Henry C. Simons, *Personal Income Taxation*, (Chicago: University of Chicago Press, 1938) at 34 (criticizing the benefit principle as “a significant element in a reactionary social philosophy, constructed from the gratuitous implications of laissez-faire economics”).

¹⁶ See, e.g., Wicksell, *supra* note 14 at 73 (acknowledging that “there is an area of public activity where the benefit principle is not applicable, and for which the organic conception of the State is more appropriate”).

provided that it is feasible to identify and measure specific private benefits that the good or service confers, that access to a merit good or service is not impeded by the collection of a benefit-related charge or tax, and that distributive concerns are adequately addressed through other measures.¹⁷ Common examples include publicly-provided pensions as well as employment and health insurance (which are generally financed in large part through benefit-related payroll taxes), publicly-provided higher education (which is often partly financed through tuition fees), and public transportation including access to highways and roads (which is typically financed in part through user charges like transit fees and toll charges or benefit-related taxes like gasoline taxes). Although concerns about access and distribution mean that these goods and services are often subsidized from general government revenues, the substantial private benefits associated with these goods and services suggest that it is fair and reasonable to finance at least some portion of these expenditures from taxes and user fees premised on the benefit principle. Indeed, considerations of economic efficiency, government accountability and tax fairness suggest that modern welfare states might make greater use of benefit-related taxes to finance public expenditures in several areas such as higher education,¹⁸ roads and highways,¹⁹ and municipal services such as water and sewage and the collection and

¹⁷ See Duff, "Benefit Taxes and User Fees in Theory and Practice," *supra* note 12 at 410-13 (discussing the feasibility and suitability of benefit taxes and user fees).

¹⁸ See, e.g., Nicholas Barr, *The Welfare State as Piggy Bank*, (Oxford: Oxford University Press, 2001) at 191-222. In order to ensure and expand access to higher education, increased tuition fees should be accompanied by government-operated student loan programs under which repayments are contingent on post-graduation incomes. *Ibid.* at 179-90. See also Benjamin Alarie and David G. Duff, "An Income-Contingent Financing Program for Ontario," in Frank Iacobucci and Carolyn Tuohy, eds., *Taking Public Universities Seriously*, (Toronto: University of Toronto Press, 2005) 554-96.

¹⁹ Duff, "Benefit Taxes and User Fees in Theory and Practice" *supra* note 12 at 427-35; and David G. Duff and Carl Irvine, "Road Pricing in Theory and Practice: A Canadian Perspective," in Alberto Cavaliere, Hope Ashiabor, Kurt Deketelaere, Larry Kreiser, and Janet Milne, eds, *Critical Issues in Environmental Taxation*, Vol. III, (Richmond, UK: Richmond Law and Tax, 2006), 187-213.

disposal of solid waste.²⁰ A detailed analysis of these areas, of course, is beyond the scope of this paper.

B. Ability-to-Pay Approach

As an alternative to the benefit principle of tax fairness, it is often argued that fair taxes should be apportioned according to a comprehensive measure of each individual's taxable capacity or ability to pay. Although this ability-to-pay principle is sometimes rationalized as a surrogate for taxation according to benefits received,²¹ the most prominent conceptions of this approach ignore any connection to public expenditures altogether,²² treating the collection of taxes as what Walter Blum and Harry Kalven, Jr. colourfully characterized as "a common disaster – as though the money once collected were thrown into the sea."²³

The rationale for this approach to tax fairness is best expressed by John Stuart Mill, who was as fierce an opponent of the benefit principle of taxation as he was an advocate of the ability-to-pay approach. Rejecting the notion that taxes should be apportioned according to some measure of the protection that individuals obtain from the

²⁰ Duff, "Benefit Taxes and User Fees in Theory and Practice," *supra* note 12 at 435-46.

²¹ See, e.g., Smith, *supra* note 13 at 825 [Bk. V, ch. 2, pt. 2] (combining the ability-to-pay and benefit principles in his first maxim of taxation, according to which "[t]he subjects of every state ought to contribute toward the support of the government, as nearly as possible, in proportion to their respective abilities; that is, in proportion to the revenue which they respectively enjoy under the protection of the state"); and Erik Lindhahl, "Tax Principles and Tax Policy" (1960), 10 *International Economic Papers* 7 at 9 (arguing that general benefits might be measured by individuals' willingness to pay, which is generally assumed to increase with income or wealth, and concluding on this basis that "taxation according to ability to pay could be regarded as an essential part of a (modified) taxation according to benefit principle"). See also Graeme S. Cooper, "The Benefit Theory of Taxation" (1994), 11(4) *Australian Tax Forum* 397-509 (arguing that the ability-to-pay principle can be incorporated within a broader conception of taxation according to benefits received); and Deborah A. Geier, "Time to Bring Back the 'Benefit' Norm?" (2004), 33 *Tax Notes Int'l* 899 (arguing that governments are entitled to a share of each individual's income from participation in the market economy because they provide the security, law and infrastructure that allows the market to function).

²² See, e.g., Musgrave, *supra* note 5 at 93 (explaining that the ability-to-pay approach "bypasses the expenditure problem altogether").

²³ Walter J. Blum and Harry Kalven, Jr., "The Uneasy Case for Progressive Taxation" (1952), 19 *U. Chi. L. Rev.* 417-519 at 517.

state, Mill argued that the purposes of government extend beyond the protection of persons and property to include all “ends of ... the social union” and that government was “so preeminently a concern of all” that it was pointless to determine who are “most interested in it”.²⁴ More importantly, he continued, since a government should “make no distinction of persons or classes in the strengths of their claims upon it,” it followed that “whatever sacrifice it requires from them should be made to bear as nearly as possible with the same pressure upon all.”²⁵ As a result, he concluded:

Equality of taxation, therefore, as a maxim of politics, means equality of sacrifice. It means apportioning the contribution of each person towards the expenses of government, so that he shall feel neither more nor less inconvenience from his share of the payment than any other person experiences from his.²⁶

For Mill, therefore, the ability-to-pay principle of tax fairness reflects a broader concept of political equality associated with general principles of political justice.

Although the notional separation of taxation and expenditures in this conception of tax fairness is admittedly artificial,²⁷ the ability-to-pay approach has considerable appeal as a principle for allocating the costs of government expenditures on goods and services the benefits from which are indeterminate and generally shared – reflecting a principle of political equality that is the foundation of a democratic society. To the extent that taxes are used to finance expenditures on public security and national defence, moreover, it may be reasonable to view their collection as a “common disaster” that should be borne equally by all.²⁸ As with the benefit principle, however, this principle of

²⁴ Mill, *supra* note 8 at 155 [Book V, chap. II, sec. 2].

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ See Blum and Kalven, *supra* note 23 at 517 (describing this separation as a “fiction” that, “like many fictions in law ... is a shorthand way of making sense”).

²⁸ *Ibid.* at 518 (explaining that in this case, “the life and freedom of everyone in the community are equally at stake, and in this sense everybody equally benefits from the protection”). The notion of equal sacrifice also obtains more tangible expression in the form of a universal military draft during times of war. See

tax fairness presumes a just distribution of economic resources, which may require the collection of other taxes.²⁹

Despite its theoretical appeal in this context, however, the concept of ability to pay is notoriously imprecise.³⁰ While Mill and subsequent writers have generally conceived of ability (and sacrifice) in terms of subjective utility or welfare,³¹ it is not obvious whether the measure of welfare for this purpose should be assessed at a particular point of time or over a period of time, nor the appropriate time period (e.g., annual or lifetime) should the latter approach be preferred. Nor is it clear that the concept of equal sacrifice *should* be understood in terms of subjective utility or welfare, as opposed to a more objective measure of each taxpayer's economic capacity.³² In any event, since it is impossible to measure subjective utility directly, the concept of ability to pay must be defined in some objective manner if it is to serve as a practical basis for distributing tax burdens. In practice, however, the meaning of ability to pay has been defined in different ways, reflecting different interpretations as to the appropriate tax base and structure of tax rates that best implement this principle of tax fairness. In traditional approaches to tax policy, the definition of a fair tax base is described as a matter of

Joseph M. Dodge, "Theories of Tax Justice: Ruminations on the Benefit, Partnership, and Ability-to-Pay Principles" (2005), 58 *Tax Law Rev.* 399-461 at 410, n. 41.

²⁹ See, e.g., Adolf Wagner, "Three Extracts on Public Finance" in Musgrave and Peacock, *supra* note 13, 1-15 at 13-14 (distinguishing between the "financial" criterion of taxation according to economic capacity, and the "social welfare" criterion of taxation "by virtue of which taxation is not merely a means of raising revenue, but at the same time intervenes to improve the distribution of income and wealth resulting from free competition").

³⁰ For useful discussions of the concept, see Alfred G. Buehler, "Ability to Pay" (1946), 1 *Tax Law Rev.* 243-58; and Stephen Utz, "Ability to Pay" (2002), 23 *Whittier L. Rev.* 867-950.

³¹ *Ibid.* at 884-96.

³² See Dodge, *supra* note 28 at 449 (favouring an "objective" non-welfarist concept of ability to pay). I return to this point later in this section.

“horizontal equity” while the specification of tax rates is characterized as a question of “vertical equity”.³³

Beginning with the subject of horizontal equity, it is often assumed that a person’s annual income represents the best measure of their ability to pay.³⁴ On this basis, a considerable body of literature exists on how best to define income as a comprehensive measure of each taxpayer’s ability to pay.³⁵ In contrast to this approach, another tradition in tax scholarship regards annual consumption or expenditure as a fairer measure of each individual’s taxable capacity on the basis that a consumption tax base does not differentiate among taxpayers according to the period of time when income is earned and consumed.³⁶ Indeed, Mill himself regarded annual consumption as a better measure of ability to pay than annual income on the grounds that a labourer who must save for contingencies and old age does not have the same ability to pay as a property-owner with the same annual income who can maintain the same level of consumption over time without having to save for these purposes.³⁷ For this reason, others have suggested that wealth should also be taken into account in assessing a person’s ability to pay.³⁸ Yet

³³ See, e.g., Robin W. Boadway and Harry M. Kitchen, *Canadian Tax Policy*, 3rd edn., Canadian Tax Paper No. 103, (Toronto: Canadian Tax Foundation, 1999) at 52-73.

³⁴ See Musgrave, *supra* note 5 at 94 (explaining that it has generally been “taken for granted that the relative ... position of individuals should be measured in terms of their income, and that sacrifice is a function of income surrendered”).

³⁵ See, e.g., Richard A. Musgrave, “In Defense of an Income Concept” (1967), 81 *Harv. L. Rev.* 44 (1967); Richard Goode, *The Individual Income Tax*, 2nd ed. (Washington, D.C.: Brookings Institution, 1976); and Joseph A. Pechman, ed., *Comprehensive Income Taxation*, (Washington, D.C.: Brookings Institution, 1977).

³⁶ See, e.g., Irving Fisher and Herbert W. Fisher, *Constructive Income Taxation*, (New York: Harper & Bros., 1942); Nicholas Kaldor, *An Expenditure Tax*, (London: George Allen & Unwin Ltd., 1955); William D. Andrews, “A Consumption-Type or Cash Flow Personal Income Tax” (1974) 87 *Harv. L. Rev.* 1113-88; David Bradford, “The Case for a Personal Consumption Tax” in Joseph Pechman, ed., *What Should be Taxed: Income or Expenditure?* (Washington, D.C.: Brookings Institution, 1980) 75-125; and Edward J. McCaffery, “A New Understanding of Tax” (2005), 103 *Mich. L. Rev.* 807.

³⁷ Mill, *supra* note 8 at 162-69 [Book V, chap. II, sec. 4].

³⁸ See, e.g., Kaldor, *supra* note 36 at 33 (observing that “capital and income constitute two distinct though mutually incomparable sources of spending power” and suggesting that “a separate tax on each provides jointly a better yardstick of taxable capacity than either form of taxation taken by itself”); and Richard M.

others argue that personal endowment (the ability to earn income) is the best measure of a person's taxable capacity on the basis that a person's ability to pay should not be diminished by the personal decision to forego remunerative work in favour of leisure or other non-remunerative activities.³⁹ Endowment taxation, of course, is a largely theoretical concept, since it is as impossible to measure personal endowments as it is to measure welfare or utility.⁴⁰

Nor have attempts to define the concept of ability-to-pay yielded any consensus on the preferred structure of tax rates to give effect to the principle. Although the concept of "equal sacrifice" might suggest that any tax should be levied at a single or proportionate rate, the idea of diminishing marginal utility is often assumed to justify progressive tax rates on the grounds that a larger tax must be imposed at higher levels of income, consumption, wealth or endowment in order to maintain the same sacrifice in terms of utility or welfare.⁴¹ If equality of sacrifice requires each taxpayer to experience the same loss of total utility (equal absolute sacrifice), however, progressive rates are called for only if the marginal utility of the unit that is subject to tax decreases more rapidly than the increase in the quantity of the unit.⁴² Where the percentage reduction in

Bird, "The Case for Taxing Personal Wealth" in *Report of the Proceedings of the Twenty-Third Tax Conference, 1971*, (Toronto: Canadian Tax Foundation, 1972) 6 at 8 (arguing that "the possession of wealth ... provides advantages of opportunity, flexibility and security ... over and above the income enjoyed from the employment of capital," making it "an appropriate subject for differential taxation").

³⁹ See, e.g., Dan Shaviro, "Endowment and Inequality," in Joseph J. Thorndike and Dennis J. Ventry, Jr., eds., *Tax Justice: The Ongoing Debate*, (Washington, D.C.: The Urban Institute Press, 2002) 123-48; and Kirk J. Stark, "Enslaving the Beachcomber: Some Thoughts on the Liberty Objections to Endowment Taxation" (2005), 18(1) *Can. J. Law & Juris.* 47-68.

⁴⁰ See, however, Kyle D. Logue and Joel Slemrod, "Genes as Tags: The Tax Implications of Widely Available Genetic Information" (November 2007), University of Michigan Law School, Johns M. Olin Center for Law & Economics Working Paper 07-021, online at <http://ssrn.com/abstract=1032957>.

⁴¹ See Blum and Kalven, *supra* note 23 at 456 ("To take the same number of dollars from each is not to require the same amount of sacrifice from them. Instead a fair tax would take more from the wealthier individual, and this is what a progressive tax does.").

⁴² See, e.g., Arthur C. Pigou, *A Study in Public Finance*, 3rd rev. ed. (London: Macmillan, 1951) at 85-86 ("All that the law of diminishing utility asserts is that the last £1 of a £1000 income carries less satisfaction

the utility of the unit subject to tax is less than the percentage increase in the quantity of the unit, on the other hand, equal absolute sacrifice calls for rates to decrease as the quantity of the unit increases.⁴³ If equality of sacrifice is understood proportionately, however, so that taxpayers are required to surrender an equal share of the utility derived from their income, consumption, wealth or endowment (equal proportionate sacrifice), progressive rates are generally required.⁴⁴ Non-welfarist conceptions of equal sacrifice might also justify progressive rates on the grounds that taxable capacity however defined increases more rapidly than increases in the base that is subject to tax.⁴⁵ A version of this non-welfarist approach may underlie a broad consensus that the ability-to-pay principle mandates the exemption of a basic amount of income or consumption necessary for basic needs,⁴⁶ though Mill also favoured a basic exemption on the welfarist ground that the sacrifice imposed by taxes which apply to expenditures on necessities is “incommensurably” higher than that imposed by taxes above a subsistence amount.⁴⁷ A tax with a single rate and a basic exemption, of course, is progressive overall.

Aside from these arguments for and against progressive rates, progressivity is often justified in this context on the basis that “prevailing social conceptions of equity”

than the last £1 of a £100 income does. From this datum it cannot be inferred that, in order to secure equal sacrifice ... taxation must be progressive. In order to prove that the principle of equal sacrifice necessarily involves progression we should need to know that the last £10 of a £1000 income carry less satisfaction than the last £1 of a £100 income: and this the law of diminishing utility does not assert.”)

⁴³ Blum and Kalven, *supra* note 23 at 458-59 (explaining that the principle of equal absolute sacrifice supports a single proportionate rate only where each percentage increase in the unit subject to tax is accompanied by an identical percentage reduction in its marginal utility – a relationship that defines a rectangular hyperbola).

⁴⁴ *Ibid.* at 459.

⁴⁵ See, e.g., Wagner, *supra* note 29 at 14 (arguing that taxation according to “economic capacity” requires “progressive taxation of higher incomes” because economic capacity “rises more steeply than income and wealth in absolute terms”). This was also the approach adopted by the Canadian Royal Commission on Taxation (Carter Commission) to justify progressive income tax rates. Royal Commission on Taxation, *Report*, (Ottawa: Queen’s Printer, 1966).

⁴⁶ Dodge, *supra* note 28 at 449.

⁴⁷ Mill, *supra* note 8 at 157-58 [Book V, chap. II, sec. 3].

mandate this approach in order to reduce inequality.⁴⁸ Although broader conceptions of distributive justice may indeed justify progressive rates, this justification should not be confused with whatever justification for progressivity may exist in order to properly implement a narrower principle of taxation according to ability to pay. Indeed, it is an unfortunate feature of many appeals to the concept of ability-to-pay that they fail to clearly distinguish between a concept of tax fairness to govern the collection of revenues for publicly-provided goods and services, and a concept of tax fairness that is designed to advance a broader conception of distributive justice. Although this confusion may be understandable where the ability-to-pay approach is incorporated into a broader social welfare approach to distributive justice,⁴⁹ a proper understanding of tax fairness should distinguish between the “purely fiscal principle” that taxes should be distributed equally according to each person’s ability to pay, and the “social-welfare principle” that taxes and expenditures should be designed to maximize aggregate utility or welfare.⁵⁰

Shorn of any association with a broader conception distributive justice, one might hope that the concept of ability to pay could be defined with some precision in order to give effect to its purpose as “purely fiscal principle” of tax fairness to distribute the cost of necessary public expenditures in an equal manner. Some progress in this direction might also be made by abandoning utilitarian conceptions of the principle in favour of an explicitly objective definition that is more compatible with non-welfarist conceptions of

⁴⁸ Kaldor, *supra* note 36 at 27.

⁴⁹ See Musgrave, *supra* note 5 at 90-91 (explaining that the ability-to-pay principle has been employed not only to determine “the distribution of tax payments ... in an equitable or just fashion” but also within a broader welfarist approach to the distribution of taxes and expenditures to maximize aggregate social welfare).

⁵⁰ Musgrave draws this distinction in *ibid.* at 111-13 (citing the German fiscal reformer Adolf Wagner).

justice and equality in a liberal society.⁵¹ On this basis, for example, one would presumably reject the taxation of personal endowments on the basis that this approach would not respect personal choices concerning the use of one's talents.⁵² For similar reasons, one might also reject the taxation of personal wealth on the grounds that it fails to respect prior choices to save rather than to spend.⁵³ One might also reasonably conclude that equal taxation for this purpose mandates a proportionate or single rate above a basic exemption, rather than progressive rates.

As between income and consumption the choice of an ideal tax base for the purpose of collecting revenues for publicly-provided goods and services is more difficult, though Mill's argument that the labourer who must save for contingencies and old age does not have the same ability to pay as the property owner who can maintain the same level of consumption without having to save is compelling.⁵⁴ Further, as William Andrews has argued, to the extent that "[t]he primary, intended, real effect of any general revenue-raising tax is to curtail some part of the private consumption of economic resources that would otherwise occur, in order to free those resources for public use," it follows that "it is presumptively fair ... to distribute the burden of the tax ... in relation to levels of consumption prior to the imposition of the tax."⁵⁵ As with the benefit principle of taxation, however, this argument necessarily presumes a just distribution of economic resources prior to the imposition of the tax.

⁵¹ For prominent critiques of welfarist approaches to the concepts of justice and equality, see Rawls, *supra* note 1; and Ronald Dworkin, *Sovereign Virtue: The Theory and Practice of Equality*, (Cambridge, MA: Harvard University Press, 2000).

⁵² See, e.g., David Hasen, "Liberalism and Ability Taxation" (2007) 85 *Tex. L. Rev.* 1059-1113.

⁵³ See, e.g., Eric Rakowski, "Can Wealth Taxes Be Justified?" (2000), 53 *Tax Law Rev.* 263-376.

⁵⁴ See *supra* note 37 and accompanying text.

⁵⁵ Andrews, *supra* note 36 at 1165-66.

In conclusion, therefore, these considerations suggest that a proportionate consumption tax above a basic exemption might be the most appropriate way to implement a scheme of fair taxation for the collection of revenues to finance publicly-provided goods and services that cannot reasonably be financed according to the benefit principle of tax fairness.⁵⁶ In practice, such a tax could be implemented in the form of a personal expenditure tax under which revenues are included and savings deducted, but is more easily collected through a broad-based value-added tax (VAT) combined with a universal or targeted transfer payment designed to offset the tax on a minimum amount of tax. Perhaps not surprisingly, therefore, broad-based VATs and universal or targeted transfer payments are commonly found in most developed countries, with the notable exception of the United States. Given the fairness and efficiency of this tax as a method of collecting revenues to finance government expenditures on publicly-provided goods and services, enactment of a federal VAT in the United States would seem to be warranted, particularly given the federal government's current budgetary crisis.⁵⁷ In Canada, as well, where the federal VAT rate was recently reduced from 7% to 5%, greater use of this revenue source is also advisable, particularly if the additional revenues raised are used to reduce personal income taxes which comprise a significantly larger share of tax revenues in Canada than they do in most other developed countries.⁵⁸

⁵⁶ For a similar conclusion, see Rawls, *supra* note 1 at 278 (concluding that "a proportional expenditure tax may be part of the best scheme" and adding that such a tax "can contain all the usual exemptions"). It is important to note, however, that Rawls does not reject progressive taxation altogether, emphasizing that these may be "necessary to preserve the justice of the basic structure with respect to the first principle of justice and fair equality of opportunity, and so to forestall accumulations of property and power likely to undermine the corresponding institutions." *Ibid.* at 279. I return to this later in the paper.

⁵⁷ See Avi-Yonah, *supra* note 2 at 5-10.

⁵⁸ OECD, *supra* note 4 at 78, Table 7 (indicating that 47.5% of tax revenues in Canada are derived from taxes on income and profits, compared to 35.2% in all OECD countries).

III. Regulation

A second and entirely distinct purpose of taxation is as a regulatory tool.⁵⁹ On the one hand, governments often pursue allocative or distributional objectives through tax incentives or tax expenditures that encourage certain kinds of behaviour by reducing taxes otherwise payable. Conversely, governments can also impose regulatory taxes in order to discourage unwelcome behaviour by increasing its price.⁶⁰ While these regulatory taxes almost inevitably raise some revenue, revenue collection is merely incidental to their basic purpose to regulate social and economic behaviour.

There is a considerable literature on tax expenditures, much of it critical of the complexity and absence of accountability that can result from the delivery of these fiscal subsidies through the tax system.⁶¹ Provided that these tax expenditures are properly identified and accounted for, however, there is no reason why they should be any more or less desirable than direct spending programs.⁶² As a result, provided that the tax incentive is rationally related to the regulatory goal that it is supposed to advance, one might expect that the fairness of any particular tax expenditure should depend solely on the justice of the regulatory goal that it is designed to promote. Since tax expenditures can have different distributive effects, however, a concept of tax fairness in this context should also consider the manner in which the resulting tax benefit is distributed. To the extent that deductions and exemptions in a progressive income tax with a basic exemption are

⁵⁹ For a useful discussion of the regulatory role of taxation, see Satya Poddar, "Taxation and Regulation," in Richard M. Bird and Jack M. Mintz, *Taxation to 2000 and Beyond*, (Toronto: Canadian Tax Foundation, 1992) 71-96.

⁶⁰ Common examples include excise taxes on alcohol and tobacco, congestion charges on road traffic, and environmental taxes.

⁶¹ See, e.g., Stanley S. Surrey, *Pathways to Tax Reform: The Concept of Tax Expenditures*, (Cambridge, MA: Harvard University Press, 1973); and Stanley S. Surrey & Paul R. McDaniel, *Tax Expenditures*, (Cambridge, MA: Harvard University Press, 1985).

⁶² See, e.g., David A. Weisbach & Jacob Nussim, "The Integration of Tax and Spending Programs" (2004), 113 *Yale L.J.* 955 at 977-82.

worth more to high-income taxpayers than low-income taxpayers and worth nothing to taxpayers whose incomes are too low to pay any tax, tax expenditures that are provided in these forms are rightly criticized as inequitable.⁶³ The same criticism may also be directed at non-refundable tax credits, which are also worthless to taxpayers whose incomes are too low to pay any tax.⁶⁴

Turning from tax expenditures to regulatory taxes, questions of tax fairness also turn on the justice of the regulatory goal, the existence of a rational relationship between the tax and the regulatory goal, and the distributional effects of the tax. Although it is impossible for this paper to examine the merits of different kinds of regulatory taxes, a compelling argument for regulatory taxation in one area is to compel private actors to incorporate otherwise undervalued costs of environmental harms into their economic decisions by setting a tax price on the environmental harm.⁶⁵ While environmental taxes along these lines are typically defended on grounds of economic efficiency,⁶⁶ they also reflect a principle of commutative or corrective justice according to which those who are responsible for environmental harms should take responsibility for the damage that they cause.⁶⁷ Where the amount of the tax corresponds to the amount of the environmental harm, therefore, an environmental tax would seem to represent a fair and efficiency form of regulatory taxation.

⁶³ See, e.g., Stanley S. Surrey, "Tax Incentives as a Device for Implementing Government Policy: A Comparison with Direct Government Expenditures" (1970), 83 *Harv. L. Rev.* 705-38.

⁶⁴ See, e.g., the criticism of Canada's non-refundable credit for charitable contributions in David G. Duff, "Charitable Contributions and the Personal Income Tax: Evaluating the Canadian Credit," in Jim Phillips, Bruce Chapman, and David Stevens, eds., *Between State and Market: Essays on Charities Law and Policy in Canada*, (Montreal & Kingston: McGill-Queen's University Press, 2001) 407-56.

⁶⁵ For a useful introduction to this field, see Kalle Määttä, *Environmental Taxes: An Introductory Analysis*, (Cheltenham, UK: Edward Elgar, 2006).

⁶⁶ See, e.g., William J. Baumol, "On Taxation and the Control of Externalities" (1972), 62 *Amer. Econ. Rev.* 307-22; and Organisation for Economic Cooperation and Development, *Environmentally Related Taxes in OECD Countries: Issues and Strategies*, (Paris, OECD, 2001) at 21-31.

⁶⁷ David G. Duff, "Tax Policy and Global Warming" (2003), 51 *Can. Tax J.* 2063-2118 at 2068-70.

Notwithstanding this conclusion, however, arguments are often made that environmental taxes are inequitable to the extent that they impose a particular burden on specific industries, regions or groups. Where taxes are imposed on energy consumption or carbon content of fossil fuels, for example, evidence suggests that the impact as a percentage of income tends to be higher for low-income earners than high-income earners.⁶⁸ These taxes also impose a greater burden on industries and regions that depend more heavily on the consumption of energy in general and fossil fuels in particular.

Although one response to this perceived inequity might be to emphasize the corrective nature of the environmental tax and the fact that affected industries, regions and persons can lessen the burden of the tax by taking steps to minimize the extent of any environmental harm that their actions may cause, this response seems harsh where (as is arguably the case with carbon emissions) the environmental harm is not easily avoided and reflects the unanticipated consequence of human development more than a deliberate disregard for environmental harms. In this circumstance, therefore, tax fairness may well require compensatory measures to lessen the resulting burden of the tax without mitigating its impact on incentives and behaviour.⁶⁹ In the Canadian province of British Columbia, for example, which introduced a carbon tax in 2008, carbon tax revenues have been “recycled” to taxpayers in the form of personal and business income tax cuts and a “low-income climate action tax credit” designed to offset the increased burden on low-income families.⁷⁰ Similarly, European countries that have introduced or increased energy or carbon taxes have generally combined these measures with reductions in other

⁶⁸ OECD, *supra* note 66 at 87-88.

⁶⁹ See, e.g., *ibid.* at 89.

⁷⁰ *Income Tax Act*, R.S.B.C. c. 215, s. 8.1. For a detailed discussion of the origins and structure of the British Columbia carbon tax, see David G. Duff, “Carbon Taxation in British Columbia” *Vermont Journal of Environmental Law* (forthcoming).

taxes (typically payroll taxes) that offset the increased burden on affected industries, regions and groups.⁷¹ Although it is often argued that revenues from environmental taxes should be dedicated to expenditures on environmental protection,⁷² compensatory tax reductions are apt to be a better use of the revenues from environmental taxes than expenditures on environmental protection, the appropriate level of which bears no necessary relationship to the revenues raised from taxes designed to discourage environmental harms.

IV. Distribution

A third important purpose of taxation is to shape the distribution of economic resources in a society so as to advance a particular conception of economic or distributive justice.⁷³ To the extent that this conception of justice mandates the collection of revenues to finance redistributive programs or transfers, the principles of tax fairness that are appropriate for this purpose may differ from those governing the collection of revenues to finance other public expenditures. Taxes may also shape the distribution of economic resources directly, through progressive rates for example, in which case the applicable principles of tax fairness depend wholly on the underlying conception of distributive justice that the tax is designed to advance.

Although traditional tax policy analysis has tended to avoid these broader issues of distributive justice, addressing only narrower questions of tax equity in the collection

⁷¹ Organisation for Economic Cooperation and Development, *The Political Economy of Environmentally-Related Taxes*, (Paris, OECD, 2006) at 139-42.

⁷² See, e.g., Reuven S. Avi-Yonah and David M. Uhlmann, "Combating Global Climate Change: Why a Carbon Tax Is a Better Response to Global Warming Than Cap and Trade" (2008), *U. of Michigan Public Law Working Paper No. 117*, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1109167, at 42.

⁷³ Murphy and Nagel, *supra* note 3 at 3 (arguing that "taxes are not just a method of paying for government and public services" but are "the most important instrument by which the political system puts into practice a conception of economic or distributive justice").

of revenues for government expenditures, the broader subject of distributive justice is the proverbial “elephant in the room” without any discussion of which other principles of tax fairness necessarily remain partial and incomplete.⁷⁴ The problem for a comprehensive understanding of tax fairness, however, is that different conceptions of distributive justice have widely different implications for the kinds of taxes and expenditures that may or may not be appropriate for distributive purposes.

Beginning with welfarist approaches, in which distributive justice is understood as the maximization of social welfare in accordance with a stipulated “social welfare function” (SWF),⁷⁵ the purpose of all redistributive taxes and government expenditures is to maximize social welfare by redistributing economic resources in a manner that least affects economic activities that would occur in the absence of the tax (thereby minimizing the so-called “deadweight loss” associated with the tax).⁷⁶ On this basis, welfarist approaches tend to favour proportionate or declining-rate income taxes combined with redistributive transfer payments,⁷⁷ or the taxation of personal consumption at progressive rates.⁷⁸

In contrast to welfarist conceptions of distributive justice, libertarian conceptions typically reject all redistributive taxes and transfers on the grounds that “patterned” or “end-result” conceptions of distributive justice violate people’s rights to the ownership of

⁷⁴ See the discussion at *supra* notes 11 and 29, and accompanying text.

⁷⁵ For classical utilitarianism, this SWF weighs the utility of each individual equally. Welfarist versions of the Rawlsian difference principle, on the other hand, accord greater weight to the welfare of the least well off (however defined).

⁷⁶ For a recent exposition of this approach, see Lewis Kaplow, *The Theory of Taxation and Public Economics*, (Princeton: Princeton University Press, 2008). For the pioneering work in this field, see James A. Mirrlees, “An Exploration in the Theory of Optimum Income Taxation” (1971), 38 *Rev. of Econ. Studies* 175-208.

⁷⁷ See, e.g., Joseph Bankman and Thomas Griffith, “Social Welfare and the Rate Structure: A New Look at Progressive Taxation” (1987), 75 *Calif. L. Rev.* 1905-67.

⁷⁸ See, e.g., Daniel Shaviro, “Replacing the Income Tax with a Progressive Consumption Tax” (2004), 103 *Tax Notes* 91; and Joseph Bankman and David A. Weisbach, “The Superiority of an Ideal Consumption Tax Over an Ideal Income Tax” (2006), *Stan. L. Rev.* 1413.

property that is justly acquired and justly transferred.⁷⁹ As a result, except to the extent that taxes are justified to correct for past injustices in the acquisition or transfer of property,⁸⁰ libertarian conceptions of distributive justice generally limit the sphere of legitimate taxation to the collection of revenues that are necessary to support the most basic purposes of government such as the protection of persons and property.⁸¹

A third approach to taxation and distributive justice can be characterized as liberal-egalitarian or democratic-egalitarian or (better yet perhaps) liberal-democratic-egalitarian. Based on the work of theorists like John Rawls,⁸² Ronald Dworkin,⁸³ Amartya Sen,⁸⁴ and Elizabeth Anderson,⁸⁵ this approach (like libertarianism) is firmly rooted in the social contract tradition, but interprets this contract differently than libertarian conceptions of justice to emphasize social and political equality as well as individual autonomy. Despite significant variations within this tradition,⁸⁶ one can discern three broad principles that have implications for taxes and spending in a liberal-democratic-egalitarian society. First, such a society should secure a framework of equal basic liberties, such as political equality, and minimize extreme economic inequalities so that citizens can stand in relation to each other as social and political equals. Second, such a society should minimize the distributive consequences of unanticipated and

⁷⁹ See, e.g., Robert Nozick, *Anarchy, State, and Utopia*, (New York: Basic Books, 1974) at 149-231.

⁸⁰ *Ibid.* at 230-31 (discussing the possibility of redistributive transfers in order to rectify past injustices).

⁸¹ See, e.g., Richard A. Epstein, "Taxation in a Lockean World" (1986), 4 *Soc. Phil. & Pol'y* 49 at 68 (explaining that "within the Lockean world, the redistribution of income through the tax system is an unacceptable function of government"); and Eric Mack, "Self-Ownership, Taxation, and Democracy: A Philosophical-Constitutional Perspective," in Donald P. Raftery and Richard E. Wagner, *Politics, Taxation and the Rule of Law: The Power to Tax in Constitutional Perspective*, (Boston: Kluwer Academic Publishers, 2002) 9 at 25 (suggesting that "for each individual, the loss imposed upon him by taxation must be less than the benefit to him of the protective services he receives").

⁸² Rawls, *supra* note 1.

⁸³ Dworkin, *supra* note 51.

⁸⁴ Amartya Sen, *Inequality Reexamined*, (Cambridge, MA: Harvard University Press, 1992).

⁸⁵ Elizabeth S. Anderson, "What is the Point of Equality?" (1999), 109 *Ethics* 287-337.

⁸⁶ Anderson, for example, is sharply critical of the so-called "luck-egalitarian" approach adopted by Dworkin and other theorists. *Ibid.*

undeserved fortune, both good and bad, and ensure a measure of equal opportunity so that similar distributive outcomes are reasonably accessible to all. Third, regardless of the cause of their misfortune, such a society should aim to elevate the position of the least well-off. Applied to the context of taxes and spending, these principles might reasonably favour progressive income and wealth transfer taxes in order to moderate economic inequalities and opportunities and minimize the distributive consequences of undeserved good fortune,⁸⁷ as well as social insurance programs to compensate people for unanticipated and undeserved misfortune and transfer payments and other programs to improve the economic position of the least well off.

Although it is impossible in context of this paper to address each of these conceptions of distributive justice in detail, nor the full implications of each conception for taxation and spending, two lines of argument suggest that the liberal-democratic-egalitarian approach as outlined should be preferred to the welfarist and libertarian conceptions. First, as a theoretical matter, neither welfarism nor libertarianism constitutes a persuasive theory of justice, since the former (as Rawls famously explained) “does not take seriously the distinction between persons”⁸⁸ while the latter is arguably incompatible with the conception of free and equal persons on which it is based.⁸⁹ In practice, moreover, the tax and spending policies recommended by the liberal-democratic-

⁸⁷ For arguments in favour of progressive income taxes on this basis, see Donna M. Byrne, “Locke, Property, and Progressive Taxes” (1999), 78 *Neb. L. Rev.* 700; Michael A. Livingstone, “Blum and Kalven at 50: Progressive Taxation, ‘Globalization,’ and the New Millennium” (2000), 4 *Fla. Tax Rev.* 731; and Avi-Yonah, *supra* note 2 at 10-22. For arguments in favour of progressive wealth transfer taxes on this basis, see David G. Duff, “Taxing Inherited Wealth: A Philosophical Argument” (1993), 6 *Can. J. L. & Juris.* 3; Anne L. Alstott, “The Uneasy Liberal Case Against Income and Wealth Transfer Taxation: A Response to Professor McCaffery” (1996), 51 *Tax L. Rev.* 363; and Eric Rakowski, “Transferring Wealth Liberally” (1996), 51 *Tax L. Rev.* 419.

⁸⁸ Rawls, *supra* note 1 at 27.

⁸⁹ See David G. Duff, “Private Property and Tax Policy in a Libertarian World: A Critical Review” (2005), 18 *Can. J. L. & Juris.* 23-45 at 40-43.

egalitarian approach are broadly consistent with those that one actually finds in modern liberal-democratic welfare states – suggesting that this conception of distributive justice is generally shared in these societies. As a result, it follows, widely-shared and normatively defensible principles of distributive justice support progressive taxes on income and wealth transfers in order to moderate inequalities that would otherwise prevail in the distribution of income and wealth as well as the opportunities that result from substantial inheritances.

V. Conclusion

Since taxes have different purposes, the concept of tax fairness is inescapably plural, assuming different forms according to the purpose of the tax that is subject to investigation. This paper has considered three purposes for taxation – to collect revenues to finance publicly-provided goods and services, to regulate social and economic behaviour, and to shape the distribution of economic resources – and examined principles of tax fairness applicable to each. Where taxes are collected in order to finance government expenditures on goods and services, the traditional benefit and ability-to-pay approaches provide useful principles of tax fairness. Where taxes serve a regulatory purpose, the fairness of the tax or tax incentive depends on the fairness of the regulatory objective, the relationship between the tax measure and the regulatory goal, and the distributional implications of the tax or incentive. The use of taxes for distributive purposes depends on the underlying concept of distributive justice, as a consequence of which the concept of tax fairness dissolves into broader questions of distributive justice.

Within this pluralistic normative framework, this paper has also reached specific conclusions with respect to the kinds of taxes that might reasonably exist for each of

these purposes, favouring the use of benefit taxes and user fees for specific purposes, a broad-based VAT to collect revenues for more general government expenditures, regulatory environmental taxes, as well as progressive income and wealth transfer taxes. Although all of these taxes are not found in all modern welfare states, and the extent to which different countries rely on different taxes differs, most of these taxes are found in most modern welfare states, suggesting that our tax practices are not as irrational or inequitable as they are sometimes made out to be. Although an application of this pluralistic approach to tax fairness would almost certainly recommend reforms to various taxes as well as changes to the mix of taxes that are collected in any particular country, it would invariably recommend a mix of fair taxes in accordance with each of their purposes.