Introduction to Tax Policy Theory

Allison Christians*

I. Why Do We Tax? 2
A. State Building 2
B. Internal Management 5
C. Negotiated Expansion 7
II. Normative Foundations 9
A. Equity. 11
1. Benefits theory: Taxes should match services received 12
2. Ability to pay: Taxes should match individual capacity 15
B. Economic Efficiency 16
C. Administrative Capacity. 23
III. Conclusion 24

Taxation involves the compulsory transfer of resources among members of society. Tax policy is concerned with how societies carry out taxation. That is a technical and legal question, but it is inescapably a political, social, and cultural one as well. To study tax policy is to engage simultaneously with the existential philosophical foundations of taxation: **why** and **how** societies tax. Yet, very few of those researching and writing about tax policy have extensive formal training in philosophy.[1] The vast majority are scholars of law, finance, political science, economics, and accounting, while a few are historians and have other social science backgrounds. Over the years, these scholars have developed theories about tax policy from the perspectives of their respective disciplines, as informed by

* Allison Christians © 2018

[1] Older tax law scholarship gives the distinct impression that its authors had more rigorous philosophical training overall. This could reflect a general trend of declining philosophical training in legal education, according to some observers. *See, e.g.*, Nigel Simmonds, THE DECLINE OF JURIDICAL REASON: DOCTRINE AND THEORY IN THE LEGAL ORDER (1984) (arguing that "[t]he extent to which the law is still thought of as based on some coherent notion of justice is doubtful" and that "since the late 19th century, 'lawyers have abandoned the attempt to place the law in the framework of some overall and coherent moral philosophy'").

Electronic copy available at: https://ssrn.com/abstract=3186791
Electronic copy available at: https://ssrn.com/abstract=3186791

their own research efforts into other disciplines. This introduction to tax policy theory presents an overview of tax policy discourse. The goal is to outline a working framework for reflection and analysis to examine the ways in which current assumptions and approaches require further development.

Part I asks **why** we tax, and posits **state-building**, **internal management**, and **negotiated expansion** as three broad goals. Part II asks **how** we should tax, and examines the conventional framework of **equity**, **efficiency**, and **administrative capacity** as the three guiding principles for most tax policy analysis. The goal is simply to provide vocabulary for the discussion, rather than serve as an exhaustive account of any of these ideas. Part III concludes.

I. WHY DO WE TAX?

Societies use taxation for a number of reasons. For our purposes, these can be loosely grouped into three broad goal categories that I will call state-building, internal management, and negotiated expansion. Other labels could equally apply, and some of reasons given for taxation span the categories or produce the same effect. This categorization of purposes, although imperfect, provides an adequate base for the analysis of tax policy principles going forward. Each of the three goals is presented below and is followed by a brief discussion of the normative questions they raise.

A. STATE BUILDING

State-building is perhaps an obvious first and foremost goal of taxation. Societies use taxation **to establish control** over a physical territory and a people.[2] People use taxes (not necessarily exclusively) to pay individuals to govern as legislators, judges, and law enforcers, to build government buildings and related infrastructure, and to wage war against other societies, whether in aggression (to gain territory or resources) or to defend against aggression from other societies. Of course, societies could use mechanisms other than taxation to exert force, and they have done so in the past. However, for the most part, taxation is currently the primary means of state-building.

[2] For a classic explanation, see Adam Smith, AN ENQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS (1776), Bk V, Chapters I - II, available at http://www.gutenberg.org/ebooks/3300 ("The first duty of the sovereign, that of protecting the society from the violence and invasion of other independent societies, can be performed only by means of a military force.")

Electronic copy available at: https://ssrn.com/abstract=3186791

Not everything a state does to fund a government is immediately recognizable as taxation – that is, compulsory payments to an established authority. For example, a state might raise funds by licensing or selling state-controlled resources,[3] by directly owning the means of production,[4] by interjecting itself as a sole buyer of domestic goods or services,[5] by printing money,[6] or by borrowing funds.[7] Each of these activities is like taxation in the sense that each places resources under the direct control of the government, and beyond the reach of individuals. Each may thus be viewed as economic equivalents to taxation, indirect forms of taxation, or taxation by another name.

Perhaps because taxation has been so connected to state-building, most scholars closely associate the act of taxation with the state.[8] Some even go so far as to argue that taxation is a **fundamental right belonging to the state as sovereign**, often citing Thomas Hobbes for the proposition that "[t]hese are the rights which make the essence of sovereignty … the power of raising money".[9] None have offered theoretical grounds for the claim that states are in fact holders of rights, however.

---

[3] For example, licensing mining or logging rights, or selling land outright.

[4] This can be accomplished either by directly owning and operating businesses ("state-owned enterprises") or by simply owning a stake in private businesses (such as through a sovereign wealth fund). Either action is said to "crowd out" private investment opportunities.

[5] Economists call this a "monopsony," a market with many sellers but only one buyer (the opposite of a monopoly). Many states use or have used law to create a monopsony in order to control agricultural and natural resource sales, whether to extract a tax, control exports, or both. The Canadian Wheat Board, established in 1935, had a monopsony as the sole legal buyer of wheat and barley produced in Canada, until the law was changed in 2012 (it will be fully privatized by 2016). *See* Marketing Freedom for Grain Farmers Act (S.C. 2011, c. 25). In a monopsony, producers or service-providers may only sell their goods or services to the state, which sets the price it will pay at will. Typically, the state then delivers the product on to customers, at a mark-up.

[6] Printing money acts as a form of taxation in the sense that it creates inflation, which raises market prices. As a tax, inflation is said to fall most heavily on persons with fixed incomes (for example, retired persons) and those who hold their savings in cash and cash-equivalents. For a discussion, see Andrés Erosa and Gustavo Ventura, *On Inflation as a Regressive Consumption Tax*, 49 J. MON. ECON. 761 (2002).

[7] Borrowing is not itself a tax in the sense that it is not compulsorily imposed, and its economic impact on current and future generations is debated. However, borrowing generally requires paying interest and principal, which requires taxation in some form (barring the possibility of perpetually borrowing in order to pay off prior borrowing).

[8] *See, e.g.*, Margaret Levi, OF RULE AND REVENUE (1988) ("The history of state revenue production is the history of the evolution of the state").

[9] Thomas Hobbes, LEVIATHAN (1651); available at http://www.gutenberg.org/files/3207/3207-h/3207-h.htm. For some examples of those citing this passage to make arguments about the state's sovereign right to

Electronic copy available at: https://ssrn.com/abstract=3186791

We observe throughout history that **states exercise power** (mostly through military and economic might), and only declare rights for themselves upon successful domination (such as in constitutions and charters).[10] This observation leads to the likelihood that taxation is not anyone's right but rather it is a constructed reality, coming about solely by and through the trial and error of experience.[11] This would explain why so much must be done to both **justify** as a matter of theory—and **entrench** as a matter of custom—the state's authority to tax.[12]

Even if states could be said to have the "right" to tax, it is not clear why taxation should be or is in fact any more inherent or essential to sovereignty than any other form of regulation such as currency control, bankruptcy, anti-trust, or securities laws.[13] Moreover, societies practiced taxation long before they developed the "post-Westphalian" international society of states with which we are so familiar today.[14] Still, it is fairly clear that the primary

---

tax, see Deborah Bräutigam, *Building Leviathan: Revenue, State Capacity, and Governance*, 33 IDS BULL. 10, 10 (2002); see also Michael J. Graetz, *Taxing International Income: Inadequate Principles, Outdated Concepts, and Unsatisfactory Policies*, 54 TAX L. REV. 261, 277 (2001) ("No function is more at the core of government than its system of taxation."); Miranda Stewart, *Introduction: New Research on Tax Law and Political Institutions*, 24 LAW IN CONTEXT 1, 1 (2006); Nancy H. Kaufman, *Fairness and the Taxation of International Income*, 29 LAW & POL'Y INT'L BUS. 145, 148, 169 (1998) (arguing that the right to tax on the bases of source, residence, and perhaps citizenship constitutes "customary norms" if not quite customary international law); Peggy B. Musgrave, *Sovereignty, Entitlement, and Cooperation in International Taxation*, 26 BROOK. J. INT'L L. 1335, 1336 (2001) (arguing that "international law" recognizes "national entitlements to tax").

[10] For a discussion, see Rebecca Boden, *Tea Parties, Tax, and Power*, in Lynne Oats, Ed., TAXATION: A FIELDWORK RESEARCH HANDBOOK (2012).

[11] This constructivist view can be explored in international relations theory. *See, e.g.*, Alexander Wendt, *Anarchy is what States Make of it: The Social Construction of Power Politics* 46 INT'L ORG. 391(1992).

[12] Rebecca Boden posits that taxation, as an exercise of power, is held in balance only "by the principle of consent, exercised through representation," demonstrating Foucault's proposition that power can never be absolute. Boden *supra* note 10 at 126-127; *see also* Michel Foucault, *The Subject and Power* 8 CRIT. INQ. 777 (1982); Allison Christians, *BEPS and the Power to Tax*, in Allison Christians and Sergio Rocha, eds., Tax Sovereignty in the BEPS Era (Kluwer 2017).

[13] See Allison Christians, *Sovereignty, Taxation and Social Contract*, 81 MINN. J. INT'L L. (2009); see also Diane M. Ring, *What's at Stake in the Sovereignty Debate*, 49 VA. J. INT'L L. 155 (2008)

[14] In general, the division of the world into nation-states, and with it the emergence of modern international relations, is traced to the 1648 Treaty of Westphalia, and it is customary to view today's division of sovereign states as the post-Westphalian order. For a brief overview, see Richard Cavendish, *The Treaty of Westphalia*, HISTORY TODAY Vol. 48 Iss. 10 (1998), available at http://www.historytoday.com/richard-cavendish/treaty-westphalia. For a contrary view, see Benno Teschke, THE MYTH OF 1648: CLASS, GEOPOLITICS, AND THE

Electronic copy available at: https://ssrn.com/abstract=3186791

objective of most societies has been to maintain control over a territory and a people, and that they typically pursue this objective with some form of taxation to create and maintain government.

B. INTERNAL MANAGEMENT

Once control is thus established, governments typically use taxation to both **benefit** and **constrain** the people they govern. I refer to these functions as internal management to imply that taxation is being used to manage affairs *within* the society and amongst its membership, however defined.

Governments undertake internal management by pooling and allocating the resources within their domains—that is, the resources over which they have successfully exerted control via state-building. Governments typically use pooled resources to fund goods and services, such as education and healthcare delivery systems, as benefits to their people. These "transfers" of resources by governments between individuals are an integral part of any tax system.

Taxation also constitutes internal management of society in the sense that distributing taxes and transfers alters the distribution of resources that would otherwise occur without intervention.[15] To put this another way, to the extent that taxes are ultimately borne by one segment or group and transfers ultimately benefit another, the internal management function is characterized as "redistributive," relative to what the outcome might have been in the absence of society and government.

Lawmakers cannot always know or control who actually bears a given tax or benefits from a given transfer, because people will pass along costs to others if possible, and try to obtain transfers not intended for them. The assessment of who bears a tax is called its "**incidence**." The incidence of a tax on personal income such as wages is usually assumed to fall on the person actually taxed, but the incidence of other taxes is not always clear. For example, since the corporation is an intermediary between the production of income and its ultimate owners, the tax on corporate income must

MAKING OF MODERN INTERNATIONAL RELATIONS (2003) (tracing the roots of modern international relations through the eighth to eighteenth centuries).

[15] The absence of government is an abstract speculation along the lines of Hobbes' life in the state of nature, "nasty, brutish, short." Hobbes, *supra* note 9. There is no way to measure the counterfactual - how resources would have been distributed in the state of nature. This observation has led to many faulty assumptions about market outcomes with and without the intervention of government. For a discussion, see Liam Murphy & Thomas Nagel, THE MYTH OF OWNERSHIP: TAXES AND JUSTICE (2002).

Electronic copy available at: https://ssrn.com/abstract=3186791

necessarily fall on someone other than the entity itself. Any number of persons other than the corporation might bear the incidence of the corporate tax, including workers and managers (in the form of lower salaries), consumers (in the form of higher prices), or shareholders (in the form of lower dividends). Economists have tried to measure incidence but the consensus is that there are too many variables to make analysis meaningful.[16]

Governments sometimes seek to achieve **redistribution** through taxation for the express purpose of reducing inequality. They might do so for normative reasons (justice requires less inequality) or practical ones (inequality has negative effects for the economy, for democracy, or for other social goals).[17] They generally implement these aims by attempting to raise more tax revenue from wealthier members of society than from poorer ones, and by making more transfers to poorer persons than wealthier ones.

Yet, governments just as often try to distribute taxes and transfers for **strategic** purposes. For example, many states use tax incentives to attract favoured industries, such as film and video game production, sports franchises, and resource extraction. Politicians typically cite economic growth and job creation as the reason for providing such incentives, though the empirical evidence that incentives produce these outcomes is weak at best.[18] Even so, politicians may reap political rewards from offering tax incentives, owing to public beliefs about the effects of incentives, even if unsupported by facts, or owing to public reception to the favored industries themselves (constituents may value hosting film and videogame producers and sports stadiums, even if costly, or view the exploitation of a particular natural resource as the sole or main source of economic prosperity in their region).[19]

Taxing or transferring resources to gain economic or political advantage are also redistributive as against non-intervention, but in

---

[16] See, e.g., Alan Auerbach, *Who Bears the Corporate Tax? A Review of What We Know* (2005), available at http://www.econ.berkeley.edu/~auerbach/bearstax.pdf.

[17] *See generally* Thomas Piketty, CAPITAL IN THE 21ST CENTURY (2014).

[18] See, e.g., Adrian McDonald, *Down the Rabbit Hole: The Madness of State Film Incentives as a "Solution" to Runaway Production*, 14 U. PA. J. BUS. L. 85 (2011); Aaron Gordon, *America Has a Stadium Problem*, Pacific Standard, 17 July 2013, *at* http://www.psmag.com/navigation/business-economics/america-has-a-stadium-problem-62665/; International Monetary Fund, Options For Low Income Countries' Effective And Efficient Use Of Tax Incentives For Investment, October 2015, at https://www.imf.org/external/np/g20/pdf/101515.pdf ("Countries often face pressures to attract investment by offering tax incentives, which then erode the countries' tax bases with little demonstrable benefit in terms of increased investment.").

[19] *See, e.g.*, Neil deMause, FIELD OF SCHEMES: HOW THE GREAT STADIUM SWINDLE TURNS PUBLIC MONEY INTO PRIVATE PROFIT (2002).

Electronic copy available at: https://ssrn.com/abstract=3186791

this case the redistribution is not likely for the purpose of reducing inequality. Indeed, this form of redistribution is as likely as not to **increase inequality**.[20] In addition to not likely producing promised economic benefits, tax incentives probably place resources in the hands of those already endowed with ample means. Tax incentives also reduce the amount of revenue available for funding other public goods and services, putting pressure on the overall budget and potentially countering equality-reducing redistribution elsewhere in the system.

The public provision of goods and services sometimes straddles the line between internal management and state-building. For example, economists define military spending as a public good and it therefore falls in the same category as other transfers, such as police protection, education and health spending. As a result, military spending might look like an internal management function, but governments engage in military spending in order to define and maintain territorial control. Further, governments typically collect resources to provide police protection along with education, health and other items, in order to achieve social and political goals.[21]

C. NEGOTIATED EXPANSION

Finally, societies typically use taxation to access resources or control behaviors beyond their immediate control: what I refer to as the goal of negotiated expansion. Tax policy scholarship has only rarely touched on the idea of negotiated expansion as a goal of taxation, but the concept has gained more attention in recent years.[22]

---

[20] *See, e.g.*, UK Equal Opportunities Commission, INCOME TAX AND SEX DISCRIMINATION (1978), p. 3 ("Taxation is not only a method of raising revenues; it is also an instrument of social policy. Governments customarily use changes in taxation as a way of encouraging or discouraging a very wide range of social behavior … the structure of personal taxation can, either deliberately or, more often, unwittingly, contribute to, or hinder progress towards equal opportunities ….")

[21] The danger of blurring lines between internal management and state-building was recently demonstrated in the events surrounding the shooting of an unarmed teenager in a small town in the United States, which had been heavily fortified with military weapons after the evens of September 11, 2001. In addition to highlighting ongoing social and cultural tensions, the incident increased public discourse over the appropriate level of spending on defense and protection. For a discussion, see Rand Paul, *We Must Demilitarize the Police*, TIME, Aug. 14 2014, *at* http://time.com/3111474/rand-paul-ferguson-police/ (America is "using federal dollars to help municipal governments build what are essentially small armies—where police departments compete to acquire military gear that goes far beyond what most of Americans think of as law enforcement").

[22] The idea that governments negotiate their engagement with globalization is a topic that is much more closely examined in law and society research focused on regulatory fields other than taxation. See, e.g., John Braithwaite and Peter Drahos,

Electronic copy available at: https://ssrn.com/abstract=3186791

In brief, the idea is that in an international society of states in which lawmaking is state-based (controlled by governments) but economic activity is globalized, each state's tax regime choices necessarily stand in relation to those of others. As a result, governments use taxation strategically to achieve goals that only materialize as a result of economic interdependence among states.

Accordingly, governments negotiate how their own tax system interacts with that of other jurisdictions with an express aim: to create social, economic, or political advantages and disadvantages within (or from) the international society of states. For example, governments typically want to attract inward investment to increase employment and productivity within their societies, and they want to export goods and services to other countries. They might use tax breaks or even cash subsidies to attract inward investment or reward outward expansion, or they might tax foreign products and services in order to disadvantage them relative to domestic alternatives. In both cases, governments are using the tax system to try to bring more resources under their control, and they are competing with other governments that are trying to do the same. Tax policy observers typically label this **tax competition**. Some argue that tax competition is a healthy way to check the otherwise unlimited expansion of governments; others argue that tax competition is simply mutual self-destruction in a global race to the bottom.

When tax competition leads to mutually disadvantageous positions, governments negotiate agreed terms for expansion. The WTO and NAFTA are two well-known mechanisms by which governments negotiate expansion by international agreement in the area of trade, but tax treaties and international tax norms are equally geared to serving this goal. It is historically the case that rich countries have created the structure of international tax norms and that they jealously guard a monopoly over the basic parameters within which countries may use tax to expand their reach over global resources.[23]

Whether through unilateral policy or international agreement, economically stronger states constantly make decisions about how

GLOBAL BUSINESS REGULATION (2000); Bruce G. Carruthers and Terence C. Halliday, *Negotiating Globalization: Global Scripts and Intermediation in the Construction of Asian Insolvency Regimes*, 31 LAW & SOC. INQUIRY 521 (2006), Terence C. Halliday & Bruce G. Carruthers, *The Recursivity of Law: Global Norm Making and National Lawmaking in the Globalization of Corporate Insolvency Regimes*, 112 AM. J. SOC. 1135 (2007). I have examined how these concepts explain tax policy decision-making but more work needs to be done. See Allison Christians, *Networks, Norms, and National Tax Policy*, 9 WASH. U. GLOB. STUD. L. REV 1 (2010); Allison Christians, *Global Trends and Constraints on Tax Policy in the Least Developed Countries*, 44 U.B.C. L. REV. (2010).

[23] For a discussion, see Christians 2010a and Christians 2010b *supra* note 22.

Electronic copy available at: https://ssrn.com/abstract=3186791

much to use economic and physical clout to gain advantages over weaker states. Because taxation is a complex technical subject governing an increasingly complex financial world, governments may not always recognize the potential advantages and disadvantages of tax policy decisions, whether their own or those of others. Indeed, poorer, weaker states have committed to international tax norms that appear to have weakened their tax systems and may have harmed their long-term economic interests. Recently, some governments are beginning to unwind some of these agreements, but they are working against an entrenched international architecture of expectations and pressures.[24] A government's ability to use taxation to negotiate expansion—its own outwards, or that of others vis-à-vis its territory—thus appears highly constrained by its economic and political power relative to other nations.

II. NORMATIVE FOUNDATIONS

The three goal categories discussed above are mainly empirical observations about what societies actually do, or try to do with taxation, rather than a normative assessment of what they should do. Tax policy scholars are not always clear about whether these observed priorities are also normatively appropriate goals. To the extent these goals are normative, their framework relies on a set of unstated assumptions that are rarely acknowledged in tax law scholarship. Perhaps the most fundamental of these is the existence of "**society**" as a pre-existing condition to the assertion of taxation.[25]

Starting a discussion about the normative aspects of tax policy implies a normative consensus exists about the society in which such taxation occurs. To start, we assume that a society has been constructed in a normatively justified way and that its leaders legitimately assert their leadership over the other members.[26] These

---

[24] *See, e.g.*, *End of tax treaty with India to hit Mauritius: IMF*, THE ECONOMIC TIMES, 16 April 2013, at http://economictimes.indiatimes.com/news/economy/policy/end-of-tax-treaty-with-india-to-hit-mauritius-imf/articleshow/19570779.cms; Katherine Lim, *NL to Rethink Tax Treaties*, NL TIMES, 17 July 2013, *at* http://www.nltimes.nl/2013/07/17/netherlands-to-reconsider-tax-agreements/.

[25] I do not here suggest that society somehow does not exist, though some politicians have expressly used that idea to promote specific tax policy ideas. *See, e.g.*, Margaret Thatcher, *Interview for* Women's Own, October 31 1987, *available at* http://www.margaretthatcher.org/document/106689 ("[W]ho is society? There is no such thing!"]). Rather, I draw attention to the assumption because the failure to define society has created a theory gap in tax policy scholarship.

[26] We can rely on a number of political philosophers to explain the normative aspects of social formation, even though we must accept that the societies we have today, most especially the sovereign nation-state, are the products of war, slavery,

Electronic copy available at: https://ssrn.com/abstract=3186791

assumptions allow us to dispense with foundational questions of political theory before turning to the who, what, and how of tax. This sometimes leads lawmakers to make normatively unjustifiable claims over people and resources.[27] The difficulty only increases when we examine how societies *ought* to achieve their goals.

Typically, tax scholars focus on the internal management goal of taxation to the exclusion of state-building and negotiated expansion goals. As such, most tax law scholarship focuses on the internal goals of taxation, and express these as **revenue raising**, **redistribution**, and influencing market behaviors and outcomes for other **policy reasons**.[28] Comparatively, much less tax scholarship is devoted to state-building, and much of this limited body of work focuses on poorer countries.[29]

By comparison, negotiated expansion is woefully under-studied as a tax policy goal. Indeed, because the focus of most tax scholarship is on internal management, it is not surprising that the standard normative discourse of tax policy employs principles tailored to analyzing internal goals. Thus, most tax scholarship argues that to achieve the desired distribution of costs and benefits through taxation, societies should be guided by three principles: **equity** (or fairness), economic **efficiency**, and administrative

---

historical power dynamics, and chance. *See, e.g.*, Murray Rothbard, THE ANATOMY OF THE STATE (1974) (questioning whether government as an institution can ever be morally legitimate).

[27] A classical example of what was ultimately viewed as an unjustified claim over people and resources may be found in the United Kingdom's taxation of its American colonies, which resulted in a war of independence in 1776. *See, e.g.*, Pauline Maier, FROM RESISTANCE TO REVOLUTION: COLONIAL RADICALS AND THE DEVELOPMENT OF AMERICAN OPPOSITION TO BRITAIN, 1765-1776 (1992). A more contemporary example is found in the claim of the United States over all persons the U.S. government deems to have U.S. citizenship. The United States asserts this claim even if the individual has no ties to the United States other than the accident of birth, and it generally releases the claim only upon the payment of taxes and fees. This position is clearly susceptible to a charge that it violates Foucault's basic principle that power cannot be absolute and the well-established common law principle that taxation must be by consent. *See* Foucault, *supra* note 12; Jane Frecknall Huges and Lynne Oats, *King John's Tax Innovations: Extortion, Resistance, and the Establishment of the Principle of Taxation by Consent*, 34 ACCT. HIST. J. 75 (2007); Boden, *supra* note 10 ("Ultimately, taxpayers give their consent to be dominated and have their money taken from them").

[28] *See, e.g.*, Reuven Avi-Yonah, *The Three Goals of Taxation*, 60 TAX L. REV. 1 (2006) (expressing the goals of taxation as the raising of revenue for public functions, the redistribution of unequal income and wealth, and to steer private sector activity in specific directions).

[29] *See, e.g.*, Yariv Brauner and Miranda Stewart, eds., TAX LAW AND DEVELOPMENT (2013); Deborah Brautigam, Odd-Helge Fjeldstad and Mick Moore, eds., TAXATION AND STATE-BUILDING IN DEVELOPING COUNTRIES (2008).

Electronic copy available at: https://ssrn.com/abstract=3186791

capacity.[30] Whether these are appropriate for the study of negotiated expansion is an important topic for further discussion.

In the briefest of terms, equity suggests that people should be treated fairly; efficiency means that tax should not distort economic outcomes; and administrative capacity refers to the idea that societies ought to be able to enforce the tax systems they create.[31] The equity/efficiency/capacity taxonomy is clearly a normative framework and not an empirical one: most scholars acknowledge that these three principles rarely explain tax policy outcomes in practice.

A main challenge for this framework is that it ignores institutions and decision-making processes as if they are irrelevant to the normative quality of the tax policies themselves. Bypassing the process of policy-making is a grave mistake that scholars in other fields have noticed and analyzed at length.[32] It is much less developed in tax policy scholarship, and we can see some of the results of that deficiency play out in theory and in practice. Examining the principles of equity, efficiency, and capacity lays a foundation for analyzing existing tax policy scholarship, but it also highlights the deficiencies of both the principles and the goals as analytical frameworks. In examining these deficiencies, we may be able to discern what needs to change for tax policy analysis going forward.

A. EQUITY.

In the foregoing, I briefly stated that equity suggests people should be treated fairly. Of course this only provides another term to be defined. Equity and fairness may be treated as cognates in tax policy—they are essentially interchangeable in practice, and they are typically defined in the same manner. At its core, the concept that taxes should be allocated in an equitable or fair manner should be interpreted to mean that taxation is, at its base, a distributional question. There is a bit of mischief at work in that taxation is the cost side of an equation, while a full analysis of a distribution

---

30 *See, e.g.*, Smith *supra* note 2 at Bk V, Chapter II (arguing that taxes should be equitable and certain, easy for taxpayers to pay and easy for governments to collect).

31 These concepts are developed more fully below.

32 *See* Braithwaite & Drahos, *supra* note 22; *see also* Terence C. Halliday & Bruce G. Carruthers, *The Recursivity of Law: Global Norm Making and National Lawmaking in the Globalization of Corporate Insolvency Regimes*, 112 Am. J. Soc. 1135 (2007).

Electronic copy available at: https://ssrn.com/abstract=3186791

question must also consider the balance achieved with transfers.[33] Many but not all tax scholars acknowledge the need to consider both taxes and transfers in building a theory of tax equity.

There are two main strands of tax equity theory. The first is benefits theory, which holds that people ought to pay taxes in relation to the benefits they receive from society. The second is ability to pay theory, which, as its terminology implies, holds that people ought to pay taxes in relation to their relative abilities to do so. A great deal of tax scholarship is dedicated to exploring these two theories, as well as their relative merits, overlaps and distinctions. The following descriptions summarize the basic idea behind each theory.

1. Benefits theory: Taxes should match services received

Benefits theory posits that people should contribute to government according to the benefits they receive from it. This is a compelling idea, grounded in the notion that societies form for the purpose of engaging in shared projects, and a government's main role, perhaps especially in a democratic state, should be that of aggregator of preferences. Scholars typically attribute some version of benefit theory to John Locke, who claimed:

> *It is true governments cannot be supported without great charge, and it is fit everyone who enjoys his share of the protection [of life, liberty, and property] should pay out of his estate his proportion for the maintenance of it.*[34]

Three shortcomings are immediately apparent. First, it is difficult or impossible to accurately measure the value of non-cash transfers to individuals, especially when they are intangible or difficult to disaggregate, such as clean air or a corruption-free legislature. Second, it can be difficult (whether economically or socially) to collect payment or to exclude certain benefits from people without the means to pay – namely, the poor, the young, the old, and so on. Third, when as a matter of policy (for instance to reduce economic inequality) the government intentionally seeks to transfer wealth from one person or group of persons to another, or

[33] Thus a flat rate consumption tax is generally viewed as regressive, but a state may rebate the tax to lower-income individuals. This is the model adopted in Canada, although the rebate system is not tied to actual consumption taxes paid.
[34] John Locke, Concerning Civil Government, Second Essay (1690), Ch. IX, sec. 140.

Electronic copy available at: https://ssrn.com/abstract=3186791

to subsidize a particular activity, "taxation according to benefit is sheer contradiction".[35]

The first shortcoming, involving the value of benefits conferred, has been a central challenge for proponents of benefits theory. The main difficulty is that many of the goods and services governments provide are "difficult to price and often impossible to allocate."[36] The economics concepts of "non-rivalry" and "non-excludability" are the framework for understanding this problem. In general, "non-rivalrous" goods or services are those that are not depleted by use; "non-excludable" goods or services are those that cannot be furnished to some without being furnished to all.

A quintessential example of a non-rivalrous and non-excludable service is a state's use of military force to protect against would-be foreign invaders. It would be virtually impossible for such national security efforts to protect only some members of the state, while leaving others vulnerable to attack. Provided for one against an outside threat, military defense protects all. When goods or services are both non-rivalrous and non-excludable, economists worry about free-riding, or the likelihood that people will benefit from services for which they do not pay, which usually means they impose a cost on someone else. This could result in unfairness, but that is not the element that bothers economists; instead, their concern is that being able to push costs on another distorts market prices.[37]

In contrast, it is entirely possible for governments to restrict other services to paying customers. These rivalrous and excludable goods and services include police protection, fire-fighting, clean water, parks, roads, and so on. In this regard, we may turn to examples from jurisdictions where fire-fighting services are based on an annual fee. When a fire occurs at a residence where the fee is not paid, protection will be afforded to the surrounding houses for which fees were paid, but the fire service will not put out the blaze

---

[35] Henry C. Simons, PERSONAL INCOME TAXATION: THE DEFINITION OF INCOME AS A PROBLEM OF FISCAL POLICY (1938), p 4.

[36] Richard A. Musgrave, THE THEORY OF PUBLIC FINANCE (1959); *see also* Walter Hettich and Stanley L. Winer, Rules, *Politics and the Normative Analysis of Taxation*, in Richard Wagner and Jurgen Backhouse (eds), HANDBOOK OF PUBLIC FINANCE (2002) ("many goods provided by the public sector differ in an essential manner from private goods. It is generally considered impossible to exclude those who refuse to pay voluntarily for public services, such as defense or police protection, from consuming these services. Nor is it possible to ascertain the demand for public goods by different individuals by asking them with questionnaires since potential consumers of such goods have an incentive to understate their preferences in order to minimize their own tax payments.").

[37] See discussion *infra*.

Electronic copy available at: https://ssrn.com/abstract=3186791

at non-payor's house, letting it burn to the ground.[38] This outcome generates public consternation and even outrage on occasion, but the rationale is that if persons could receive fire protection without paying their dues, or if they were allowed to pay their dues upon the occasion of a fire occurring at their residence, no-one would pay the annual fee and the service would cease to exist.[39]

Pursuing benefits theory puts governments in the position of creditor with respect to all rivalrous or excludable goods and services. In this position, governments would constantly face decisions about whether and when to withhold excludable goods and services from those unable or unwilling to pay. Even if this is the established social contract, the result can lead to results that offend social mores and create political backlash, such as when conditions deteriorate to levels not perceived as consistent with the society's overall governance capacity. An example can be found in the city of Detroit's decision to disconnect the water supply to non-paying residents, which led to calls for intervention from the United Nations.[40] Followed through to its logical conclusion, benefits-based taxation could easily result in a society from which those without resources are effectively excluded.

Some scholars have attempted to redeem benefit theory by arguing that the value of benefits received by a person can instead be ascertained by looking at economic well-being, as measured by success in the market economy.[41] The idea is that because

---

[38] *See, e.g., Firefighters let home burn over $75 fee – again*, NBC News, 7 Dec. 2011, at http://usnews.nbcnews.com/_news/2011/12/07/9272989-firefighters-let-home-burn-over-75-fee-again ("Firefighters stood by and watched a Tennessee house burn to the ground earlier this week because the homeowners didn't pay the annual subscription fee for fire service. … The city makes no exceptions. 'There's no way to go to every fire and be able to keep up the manpower, the equipment, and just the funding for the fire department,' said South Fulton Mayor David Crocker").

[39] Economists might frame this as a situation involving "moral hazard." See, e.g., Paul Krugman, (2009). The Return of Depression Economics and the Crisis of 2008 describing moral hazard as "any situation in which one person makes the decision about how much risk to take, while someone else bears the cost if things go badly.").

[40] *See, e.g.*, Melissa Block, *Detroit's Crackdown To Collect Owed Money Means Thousands Lose Water*, NPR News, at http://www.npr.org/2014/06/30/327064659/detroits-crackdown-to-collect-owed-money-means-thousands-lose-water; see also Corey Williams, *U.N. criticizes Detroit over water service shutoffs*, Associated Press, 25 June 2014, available at http://www.thestarphoenix.com/news/experts+criticize+Detroit+Water+officials+over+shutoffs/9973611/story.html

[41] *See, e.g.*, See Deborah A. Geier, *Time to Bring Back the 'Benefit' Norm?* TAX NOTES, March 1, 2004, p. 1155; Herwig J. Schlunk, *Double Taxation: The Unappreciated Ideal*, TAX NOTES, Feb. 16, 2004, p. 893; Murphy & Nagel, *supra* note 15.

Electronic copy available at: https://ssrn.com/abstract=3186791

governments provide all of the things necessary to make market transactions possible by building the state and the institutions of governance, we can say that a person's success in the market is equal to (or a proxy for) benefits received from government.

This leads to the contention that a tax could satisfy benefit theory by measuring the relative income and maybe the wealth of the members of society, rather than the benefits themselves. By emphasizing relative outcomes rather than absolute benefits from membership in society, benefits theory is said to be satisfied even if some people pay very little or nothing, but receive the same education, health care, military and police protection, and other services as those who pay more. Valuing outcomes as a proxy for valuing benefits moves benefits theory very close in terms of structure to ability to pay theory, which most tax scholars view as dominant in tax policy.

2. Ability to pay: Taxes should match individual capacity

Ability to pay theory can be attributed to any number of sources, but scholars tend to point to Adam Smith, who said that individuals "ought to contribute towards the support of the government, as nearly as possible, in proportion to their respective abilities".[42] Ability to pay is compelling because it encapsulates numerous theories of equity, including the utilitarian notion of "equal sacrifice". Thus, John Stuart Mill stated:

> *As in the case of voluntary subscription for a purpose in which all are interested, all are thought to have done their part fairly when each has contributed according to his means, that is, has made an equal sacrifice for the common object; in like manner should this be the principle of compulsory contributions: and it is superfluous to look for a more ingenious or recondite ground to rest the principle upon.*[43]

Ability to pay satisfies two axes of equity: **horizontal** and **vertical**. Horizontal equity holds that like persons should be treated alike. This means for instance that two people with the same ability to pay should not contribute different amounts simply because the respective sources of their ability to pay are different. For example,

[42] *See* Smith, *supra* note 2, at Bk V, Chapter II.
[43] John Stuart Mill, PRINCIPLES OF POLITICAL ECONOMY, Bk. V, Ch. II, sec. 2 (W. J. Ashley ed. 1929).

Electronic copy available at: https://ssrn.com/abstract=3186791

horizontal equity would be violated if a set amount of earnings from wages attracted a higher tax than the same amount of earnings from trust fund investments.[44] Vertical equity holds that non-like persons should be taxed appropriately differently. In other words, a person with few resources should be required to contribute less, even on a proportional basis, than a person with many resources at her disposal.

Governments use progressively increasing tax rates ("progressive taxation") to achieve vertical equity. The concept relies on the utilitarian theory that the value per unit of money declines, the more one has of it (money has "diminishing marginal utility").[45] To put this in common (non-economic) terms, a single dollar means a great deal to a person who has very little, but it means almost nothing to a very wealthy individual. Some tax scholars reject the notion that vertical and horizontal equity are distinct or distinguishable, or that either are normative concepts at all, but the framework is still commonly used as such in tax policy discourse.[46]

B. ECONOMIC EFFICIENCY

In popular discourse, the need for governments to maximize economic efficiency is accepted wisdom, whether or not taxation is involved. As I briefly stated above, the principle of economic efficiency suggests tax should not distort economic outcomes. The principle of economic efficiency is therefore sometimes referred to as "**neutrality**." Non-distortion is one definition of economic efficiency, but it is not the whole picture. In a standard economics textbook, we might see economic efficiency defined as the use of resources so as to maximize the production of goods and services. Economists further suggest that perfect efficiency is achieved when no one can be made better off without making someone else worse off (Pareto-efficiency), or alternatively that everything that can be produced is being produced, given available resources.

---

[44] It is not necessarily the case that wages and investment returns must be taxed at the same rate to preserve horizontal equity, since some investment returns might have been previously taxed, either by the recipient or by another person, moreover some portion of investment gain may be attributable solely to inflation. These possibilities creates enormous debate, especially regarding the interaction of personal and corporate taxes.

[45] For the origins of marginal utility theory, *see* Jeremy Bentham, INTRODUCTION TO THE PRINCIPLES OF MORALS AND LEGISLATION (1780); Hermann Heinrich Gossen, THE DEVELOPMENT OF THE LAWS OF HUMAN INTERCOURSE AND THE CONSEQUENT RULES OF HUMAN ACTION (1854).

[46] See, e.g., James Repetti and Diane Ring, *Horizontal Equity Revisited*, 13 FLA. TAX REV. (2012) ("VE and HE are together a single concept which lacks normative content and is itself only a proxy for theories of distributive justice").

Electronic copy available at: https://ssrn.com/abstract=3186791

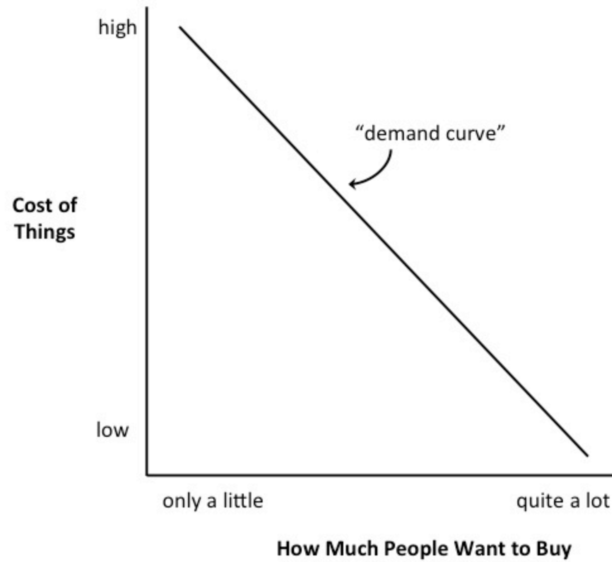
These definitions confirm that economic efficiency is a measuring tool and not actually a normative goal. Stating that taxes "should" maximize efficiency assumes two conclusions: that maximizing the production of goods and services is normatively justified, and that taxation is a normatively justified means to achieve this end.

The latter needs a bit more explaining since it is clear that in microeconomics, taxation is almost always explained as a **pure cost** rather than as an investment. In these terms, the only way for taxation to further economic efficiency would be for it not to exist: that is, for states to refrain from taxation all together. This would require states to resort to other means for funding state-building, internal management, and negotiated expansion (or to avoid all of these functions and cease to exist). Economists typically conclude that other funding means (for example printing money or borrowing) would be more distortive than taxation and therefore the efficiency goal taxation is meant to meet is one of **minimum disruption** rather than absolute non-distortion. Accordingly, pursuing economic efficiency with taxation usually means trying to predict or measure the relative economic impact of various types of taxes, and favoring those which are believed to produce the least distortion, as economists define it.

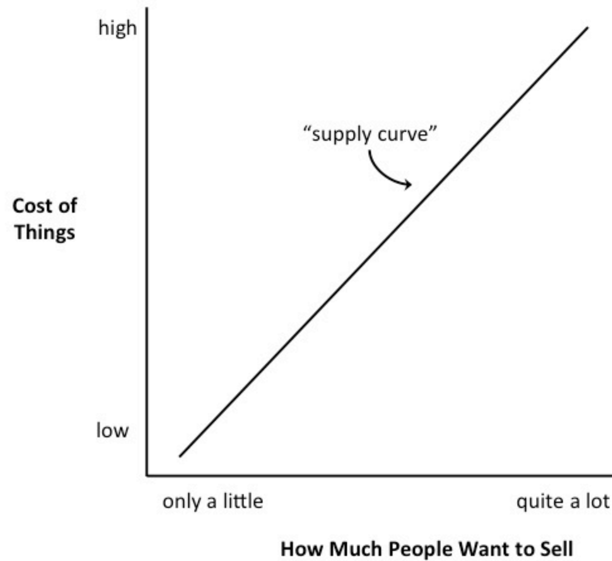
As was the case in thinking about equity, the idea that taxes should be used (or avoided, as the case may be) in order to maximize production and consumption presupposes that a society has formed and that it has defined and agreed upon this goal in some normatively defensible way. But saying that taxes should maximize economic efficiency tells us nothing about why societies should engage in that goal at all, or why societies should use (or avoid) taxation (as opposed to some other institution) to further it. Nor does economic efficiency tell us anything about who should pay taxes, to whom or to which society they should pay, let alone how much they should pay.

Taxes, by merely existing, must logically impact economic efficiency, as any other variable does. There is plenty of scholarship dedicated to isolating and measuring this relationship, and the basic lesson from economics is told with a supply and demand curve. Everyone who studies taxation ought to have at least a passing familiarity with the concept. Economists start by making the observation that, setting aside many complicating factors, including otherwise determined preferences ("all else being equal"), when things are cheap, people want relatively more of them, and when things are expensive, they want relatively less. This is the **demand side** of the economy. Economists draw it as follows:

Electronic copy available at: https://ssrn.com/abstract=3186791

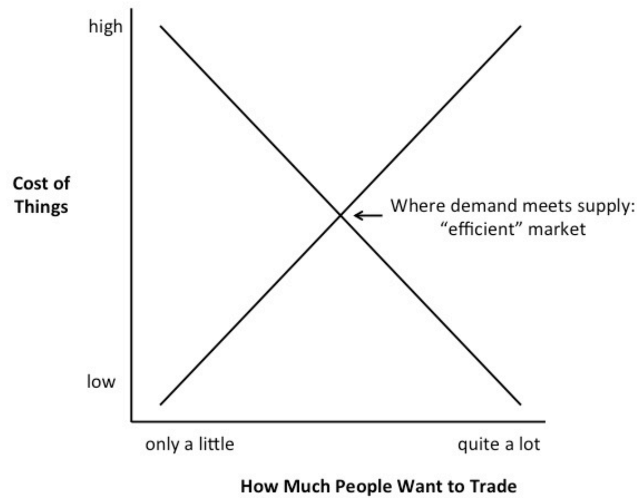


On its opposite, the supply side, producers are said to want to sell relatively more things when prices are high, and relatively less when prices are low (again, other things being equal). That is shown as the **supply curve**:



At the intersection of supply and demand is a fabled "**equilibrium**", where production is at its most efficient, given available resources:

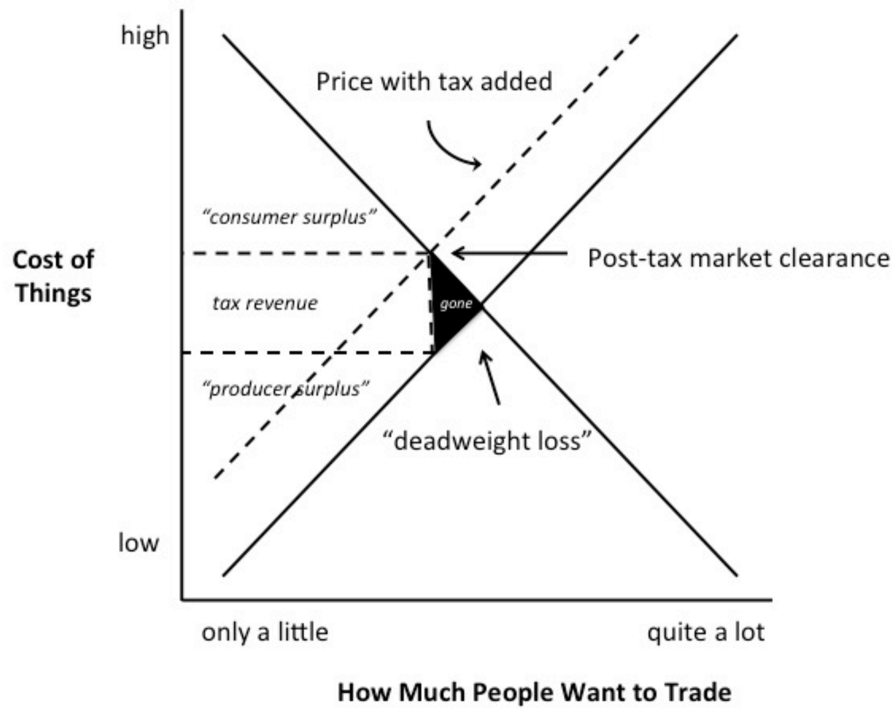
Electronic copy available at: https://ssrn.com/abstract=3186791



Economists suggest that the economy is always working toward this point. However, taxation imposes a cost to production and consumption, "artificially" altering the point at which supply meets demand and therefore denying the market the opportunity to achieve equilibrium. This is depicted as follows:[47]

[47] This basic economic model is based on an excise tax on the good in question increasing its price in a straightforward way, but the idea that taxes introduce deadweight loss and thus inefficiency applies equally to income taxes, which affect most obviously the supply curve for labour and the demand for almost all consumer goods, against the hypothetical baseline in which income is received tax free.

Electronic copy available at: https://ssrn.com/abstract=3186791



Maximizing economic efficiency by itself does not constitute a theoretical justification for imposing taxation or failing to do so. However, there are varying theories within the efficiency paradigm that draw upon normative ideals for their foundations, and these are explored in tax policy theory.

For example, a principle of economic efficiency is that taxes should be structured so as to minimize people reacting to the tax by altering their behaviors in ways that further disrupt the market as it moves toward equilibrium. In its most basic terms, this implies that people should respond to incentives other than purely avoiding tax as a cost. The argument is that everyone won't produce everything that could be produced in a society: some people will use resources to reduce taxes (their own or someone else's) instead of maximizing production or consumption.[48] When this happens, others will fail to

[48] Helping others reduce their taxes for profit could be an example of what an economist would call "rent-seeking," or profiting from non-economic behavior, perhaps especially if the advisor works to create the conditions in which such help will be sought. A tax lawyer or accountant rent-seeks when she lobbies for tax regulations that will allow her to use her expertise to increase her fees or gain more clients. For example, companies selling fee-based annual tax filing services consistently lobby against efforts by governments to reduce the cost or paperwork of annual tax filing, so that they can capture the rents associated with tax compliance. *See* Liz Day, *How the Maker of TurboTax Fought Free, Simple Tax*

Electronic copy available at: https://ssrn.com/abstract=3186791

use resources to produce or consume, either to avoid tax or because the tax is depressing production or consumption or both.[49]

At the same time, many economists support the use of taxes, often targeted consumption taxes, excise taxes, or other non-income taxes, to directly influence market choices and correct for "market failures" such as excess levels of pollution. The idea is that a market failure allows some to **externalize** some of their costs on to others, without compensation. Taxes can be used to force people to internalize (bear) their own costs. Arthur Pigou developed the idea of internalizing externalities, so taxes designed specifically to correct externalities are typically characterized as "**Pigouvian**" taxes.[50]

Economists suggest that the foundational principle of Pigouvian taxes is to guard against underpricing goods, leading to over-consumption relative to what a perfect market (in which products bear all of their costs) would dictate.[51] A ready example is a factory that is allowed to dump toxic waste into a nearby river instead of disposing of it properly or using a non-toxic alternative. The pollution caused by the toxic waste, both immediately and for an indefinite future, creates costs for all those who are directly or indirectly impacted by the river.[52] By avoiding this cost, the factory can sell its goods more cheaply to customers, leading to an over-supply of goods relative to their actual cost as the demand/supply curve would represent perfect market equilibrium. The theory that costs should be **internalized** tells us that we ought to use taxes (as opposed to something else—such as tort or criminal law) to correct the error.

Filing, PROPUBLICA, 26 March 2013, at http://www.propublica.org/article/how-the-maker-of-turbotax-fought-free-simple-tax-filing.

[49] The most basic tax lesson in any economics textbook teaches about the deadweight loss created by taxation. Philosophers Liam Murphy and Thomas Nagel argue that the presupposition of the market as a pre-existing and costless institution in all such analyses renders the theory absurd. Murphy & Nagel *supra* note 15.

[50] Arthur C. Pigou, THE ECONOMICS OF WELFARE (1920), available at http://www.econlib.org/library/NPDBooks/Pigou/pgEW.html. Pigouvian taxes are sometimes intended to raise money to compensate the victims of behaviours that have dispersed social effects. Difficulties include properly identifying the perpetrators and the victims, and assessing the relative contributions to harms, and harms suffered, respectively.

[51] For a classic discussion, see William Baumol, *On Taxation and the Control of Externalities*, 62 Am. Econ. R. 307 (1972).

[52] These costs can come in many forms, including actual outlays such as water purification and reclamation of contaminated land, and indirect costs such as plummeting home values in the vicinity, but also in more attenuated forms the costs of which are difficult to measure, such as reduced bio-diversity and quality of life.

Electronic copy available at: https://ssrn.com/abstract=3186791

Pigouvian taxes can be distributed to the victims of externalities in various ways. If the victims are known and their harms are evenly distributed, society might use a direct, one-time payment (a "lump sum distribution") or a reduction in other taxes the victim pays, such as in the form of a tax credit. If the victims are not known, or their harms are not assessable, or both, the taxes might be used to fund public goods.[53] The benefits of public goods might redound back to the perpetrators of the harm, but presumably at least some of the benefits are shared by the victims.

Modern Pigouvian taxes include carbon taxes and financial transaction taxes in some respects.[54] Carbon taxes are commonly understood to fulfill the "polluter pays" principle in theory, whether or not in fact. Financial transaction taxes might serve various goals, but at least one is to increase costs for those who engage in many financial transactions. This might help compensate for the risk to the rest of society that is created by financial market participants who engage in things like excess speculation, arbitrage, and fraud.

Pigouvian taxes may ultimately serve normative ends, but they are intentionally **self-defeating** as a revenue strategy. They are not always meant to discourage undesirable behaviors, but they likely have this effect in many cases, making themselves obsolete the more they succeed. In this respect they are like a "**sin**" tax—one imposed on things society seeks to discourage on moral grounds but not outright ban, such as alcohol and tobacco consumption.[55] As a result, a Pigouvian tax has the potential to reduce or eliminate the activity

[53] The fact that the victim is not always personally compensated or the perpetrator is not personally called to pay may make Pigouvian taxes less then normatively justifiable. Whether the wrong person is penalized, or the right person is penalized too harshly or too exclusively, or all the victims are not compensated enough or at all, the targeted harm is not corrected. That means that a Pigouvian tax could itself impose harm. The more variables that may contribute to a harm and the more attenuated the harm may be, across time and space, the harder it will be to justify a Pigouvian tax. But Pigouvian taxes can be compelling even if they are largely symbolic or representative rather than direct.

[54] To the extent a financial transaction tax is a Pigouvian tax, it is a bit of an attenuated one since the tax is extracted whether the risk comes to fruition or not, and all market participants are assumed to contribute the same amount of risk. That is clearly not the case: we can now see that too-big-to-fail institutions were a much larger source of risk in the last global financial crisis than their more modest competitors. Nevertheless, financial transaction taxes arguably gained political traction precisely because too-big-to-fail entered the popular imagination as a clear threat that the tax could fix. If a financial transaction tax can be publicly accepted as a form of making private market actors bear the risk that their actions could someday have large public consequences, this opens a conceptual door for creating other types of risk-internalizing taxes.

[55] Alcohol and tobacco consumption might also impose costs on society, but the evidence is mixed. For a discussion, see Joseph Heath, FILTHY LUCRE: ECONOMICS FOR PEOPLE WHO HATE CAPITALISM (2009).

Electronic copy available at: https://ssrn.com/abstract=3186791

that led to the tax, thus reducing or eliminating tax revenues in the long run. If a Pigouvian tax is successful, it starts out by compensating victims of harms and ends up preventing people from harming each other in the first place. In other words, raising revenues is not the goal; preventing people harming each other is.

C. ADMINISTRATIVE CAPACITY.

The principle of administrative capacity suggests that societies ought to be able to **enforce** the tax systems they create. This is to say that in a pure cost/benefit analysis, governments should tax so as to return the most revenue over dollars spent. The normative goal here could be one of stewardship based in an agency relationship: that governments have duties as agents of societies to practice careful management of resources entrusted to them.[56]

Administrative capacity may also serve equity goals. For example, a common capacity argument is that governments should not undertake administratively difficult taxes if they are under-resourced, because they will not be able to administer the tax equally across society. Lack of resources means lack of ability to monitor and enforce compliance, and this increases the risk that persons with equal means are taxed equally, or persons of different means are taxed appropriately differently.

Administrative capacity receives much less attention in tax policy discourse than equity and efficiency.[57] This might be a mistake in that tax law is characterized by a constant disconnect between what lawmakers intend and what they express as legal doctrine. Consequently, there is a related disconnect between what lawmakers say they want the law to do and what it actually does. As Milka Casanegra de Jantscher has stated and has been often been repeated, "tax administration *is* tax policy."[58] This may be so, but normative theories of tax administration persist in the developmental stage.

---

[56] For an exploration of states as institutions with fiduciary duties toward their populations, see Evan Fox-Decent, SOVEREIGNTY'S PROMISE: THE STATE AS FIDUCIARY (Oxford University Press, 2012).

[57] For a discussion of why this might be appropriate, see Samuel Donaldson, *The Easy Case Against Tax Simplification*, 22 VA. TAX REV. 645 (2003) (Argung that "simplicity is best characterized as a component of the efficiency criterion" and should not be treated as a separate normative goal.)

[58] Milka Casanegra de Jantscher, *Administering a VAT*, in M. Gillis, C.S. Shoup and G.P. Sicat, eds., VALUE ADDED TAXATION IN DEVELOPING COUNTRIES (World Bank, 1990), p. 179.

Electronic copy available at: https://ssrn.com/abstract=3186791

III. CONCLUSION

Having outlined the basics of these main tax policy principles, we should now be able to apply them to the goals of taxation and begin to discern discrepancies and weaknesses in the paradigmatic tax policy framework. As stated earlier, it is not always clear whether tax policy scholars view the goals of taxation as normative in nature or only positive. Moreover, the three tax policy principles of equity, efficiency, and capacity often conflict and may be mutually exclusive in normative terms, making coherent analysis even more difficult.

As we study tax policy we should consider the various ways in which governments can attain the resources needed in order to achieve their goals. Taxation is, of course, only one way. It is not even the most obvious or easy way. But it is the most common way and it has ongoing intended and unintended effects on human endeavors that require careful and considered study and reflection.

Electronic copy available at: https://ssrn.com/abstract=3186791