Policy Forum: From Independent Tax Commission to Independent Tax Authority

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PRÉCIS

L’impôt est un domaine dans lequel les impératifs d’une « politique bonne » et ceux de la « bonne politique » divergent toujours. Cette situation en a amené certains à proposer que l’on dépolitise la politique fiscale en créant une administration fiscale indépendante (AFI) qui serait responsable d’établir la politique fiscale générale et fonctionnerait indépendamment du gouvernement du jour. Un tel changement représenterait de toute évidence un pas vers une forme plus « technocratique » de gouvernement et susciterait de la résistance pour ces mêmes raisons. Afin de faire progresser la discussion, je commence cet article en avançant qu’une AFI répond à un problème réel, soit l’exploitation par les politiciens de l’ignorance et de l’irrationnalité du public en ce qui a trait aux impôts et aux taxes. Cette situation donne lieu à des inefficacités et à des inégalités qui sont intégrées dans le code des impôts, ainsi qu’à des pertes de temps et d’énergie passés à constamment détourner le débat public sur des pseudo-problèmes. Après avoir motivé la proposition, je présente ensuite les grandes lignes de la structure institutionnelle qu’une AFI pourrait prendre au Canada, le genre de mandat qu’il lui serait confié et les types d’impôts et de taxes qu’elle contrôlerait. Je conclus en présentant certaines des objections les plus évidentes et en tentant d’y répondre.

ABSTRACT

Taxation is one area in which the imperatives of “good policy” and those of “good politics” consistently diverge. This has given rise to the occasional call to depoliticize tax policy, through the creation of an independent tax authority (ITA) that would be responsible for setting general tax policy and would operate with substantial independence from the government of the day. Such a change would obviously represent a move in the direction of a more “technocratic” form of government and will be resisted on those grounds. In order to advance the discussion, I begin this article by arguing that an ITA represents a response to a genuine problem, which is the exploitation by politicians of public ignorance and irrationality with respect to taxes. This leads to inefficiencies and inequalities that are introduced into the tax code, and also wasted time and energy through the constant diversion of public debate into arguments over pseudo-issues. Having motivated the proposal, I then outline the basic institutional structure that

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an ITA could have in Canada, the kind of mandate that it would be given, and the types of
taxes that it would control. I conclude by presenting some of the more obvious objections
and attempting a response.

KEYWORDS: TAX ADMINISTRATION ■ TAX POLICY ■ REVIEWS ■ POLITICS ■ POLICY MAKERS

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INTRODUCTION
Milton Friedman once remarked, famously, that for the government, “to spend is to
tax.” Many politicians, unfortunately, strive to escape the force of this equivalency.
Indeed, it has by now become a wearisome ritual in US politics that, after voting in
favour of a series of spending measures, Congress tries to avoid passing the legisla-
tion required to pay for them. Things are not so bad in Canada, although the
 persistence of budgetary deficits, both federally and provincially, suggests an ongoing
desire to wriggle free from the inevitable consequence of government spending
decisions. Canadian politicians also have a lengthy track record of playing politics
with tax policy. The policy platforms developed by the major parties over the past
few decades have at one time or another all featured tax changes aimed at appealing
to voters on the basis of false perceptions of their effects. In other words, the fact that the
general public has a great deal of difficulty understanding the tax system has been
seized upon by political parties across the political spectrum as a way of selling the
equivalent of snake oil to the electorate. Compounding the problem, some politi-
cians feel that, having been elected on the basis of such promises, they actually need
to follow through on them. The result has been the introduction of both arbitrar-
iness and inefficiency into the tax system.

One bold proposal that has been made to deal with this state of affairs is the
creation of an independent tax commission, which would be charged with develop-
ing recommendations for comprehensive tax reform. A bolder proposal—made by
Alan Blinder in particular—is the creation of an independent tax authority (ITA),
which would have the authority both to develop and to implement tax policy.1 In the
same way that the Bank of Canada is given substantial autonomy from the govern-
ment of the day, in order to set and pursue monetary policy, the ITA also would

enjoy substantial autonomy in its decision making. On this model, Parliament would retain control over all spending decisions. The question of how to pay for those decisions, however, would be delegated to the ITA, which would have the power to determine all the details of tax policy, such as which general taxes to implement and what the rates should be. The objective would be to take the specific instruments of taxation policy—such as whether to tax income or consumption, or what the corporate tax rate should be—out of the realm of partisan politics. Parliament would provide to the ITA only three parameters: the projected spending level, the government's deficit tolerance, and the target level of progressivity for the tax system as a whole. The ITA would then select its tax instruments, subject to those constraints.

Such a change would obviously represent a move in the direction of a more “technocratic” form of government and will be resisted on those grounds. Indeed, Blinder's proposal has received very little uptake or support in the literature. In order to advance the discussion, I will start by showing that an ITA represents a response to a genuine problem, which is the exploitation by politicians of public ignorance and irrationality with respect to taxes. Taxation is an area in which the imperatives of “good policy” and those of “good politics” consistently diverge, and there is no sign of this changing any time soon. As a result, inefficiencies and inequalities get introduced into the tax code, and much time and energy are wasted through the constant diversion of public debate into arguments over pseudo-issues. Having motivated the proposal, I will then outline the basic institutional structure that an ITA could have in Canada, the kind of mandate that it would be given, and the types of taxes that it would control. Following this, I will present some of the more obvious objections and attempt a response to them.

THE PROBLEM

If one were to fault the general public for one thing, when it comes to comprehension of tax policy, it would be for its failure to follow the money when assessing the impact of a tax.\(^2\) There are, of course, more straightforward failures, including the persistence of false beliefs about the distribution of income, the progressivity of the income tax system, and how much the wealthy pay in tax.\(^3\) The more subtle problem, however, involves the average taxpayer’s susceptibility to the “flypaper fallacy” (the idea that the person who writes the cheque to the government is necessarily the person who pays the tax), through failure to grasp the concept of tax

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incidence. The same inability to follow the money makes the public susceptible to Frédéric Bastiat’s fallacy of “the seen and the unseen.” For instance, the economist’s traditional concerns about the effects of price distortions, as well as increased transaction costs causing deadweight losses, deal with issues that occur in the realm of the “unseen,” and are thus susceptible to being discounted or ignored by the general public. More directly, the misperception of tax incidence leads the public to favour hidden taxes over visible ones, even when their explicit policy preferences involve objectives (such as progressivity) that can more easily be achieved through the latter.

One consequence of this cognitive failure is that it leaves the public vulnerable to certain forms of political demagoguery. The following are examples of this from recent Canadian politics:

- Perhaps the most obvious example of politicians exploiting the public’s poor understanding of tax incidence is the attempt to portray the taxation of corporations as some kind of alternative to the taxation of individuals. Popular support for increased corporate taxes is always extremely high, generating the suspicion that many people believe that a “tax on corporations” will be borne by corporations. Steven Sheffrin argues that the average person subscribes to an “entity” view of taxation, believing that the tax burden should be distributed over all entities, whether they be firms or individuals. Because of this, the suggestion that one might tax profits in the hands of the firm, or the individual, or both (and that, in order to assess the tax burden, one must look at the combined rate), is a point that eludes the average voter.

- One of the peculiarities of Canadian debates on climate change policy has been the politicization of the preference for carbon taxation versus cap and trade, resulting, inter alia, in the development of a patchwork set of policies across the country. Some fraction of this is due to the New Democratic Party’s (NDP’s) repeated insistence that cap and trade is to be preferred because it imposes the tax burden on corporations (or “polluters”), while a carbon tax unfairly imposes the tax burden on consumers (or “hard-working Canadian families”).

- One of the oldest chestnuts of tax demagoguery is the suggestion that tax cuts “stimulate the economy.” This is based on widespread public confusion about the difference between “consumer spending” and “aggregate demand” (or, more crudely, the perception of government as an economic black hole into

6 Sheffrin, supra note 3, at 321.
7 Ibid., at 327.
which money disappears).\(^8\) Obviously, to the extent that tax cuts are matched by decreased government spending, they leave aggregate demand unchanged, even if they do increase consumer spending.

- A permanent feature of tax policy debates in Canada is persistent, low-level agitation to create tax exemptions for “honorific” activities or “necessary” consumption goods. High-profile instances of this include the NDP platform promise in 2011 to exclude home heating costs from goods and services tax (GST). The Conservative Party also introduced “boutique” income tax credits, such as a special tax credit for money spent on children’s sports. These kinds of policies amount to the introduction of government subsidies for particular consumption goods, and yet it is doubtful that any of them would be advocated if they were described in such terms.

- One of the most anomalous features of the Canadian tax system is that value-added taxes (VATs)—the GST and its provincial counterparts—are visible. This has made the GST the least popular tax in Canada (unlike most European countries, in which VATs are hidden and thus arouse no significant public resentment). In 2006, the Conservative government earned the ire of almost every economist in the country when it cancelled a set of scheduled income tax cuts in order to cut the GST rate. This decision was based purely on public opinion research, which showed that Canadians had difficulty remembering which political party had reduced their income taxes.\(^9\) Cutting the GST was seen as the most effective way of branding the Conservative Party as the one committed to lower taxes.

These examples are all cases in which political parties have found it strategically advantageous to advance policies that would introduce, or have introduced, inefficiencies into the tax system in return for illusory gains. The problem, however, extends much further than this. Apart from being a source of government revenue, the tax system also plays an important role in adjusting the distribution of income, not just through direct transfers, but also by providing public goods and services on terms that are less burdensome to the poor than market pricing. Unfortunately, while the general public has some relatively firm intuitions about what we can refer to as the “distributive justice” aspects of the tax system, these are also compromised by ignorance and irrationality. Unscrupulous politicians have, in turn, exploited these shortcomings in order to persuade voters to support policies that are contrary to their considered preferences. In the United States, for instance, many people believe that the income tax system is so full of loopholes that the wealthy actually


pay less tax, in absolute terms, than the middle classes. One study found that a surprising 41 percent of Americans believed that the replacement of the graduated income tax with an exceptionless flat tax would result in the wealthy paying more in taxes; only 35 percent believed that the tax burden on the wealthy would decline under such a proposal.10

One can imagine circumstances in which it would be possible to correct such false beliefs. But many other more subtle errors in judgment are made when it comes to assessing the distributive justice implications of tax policy, which it is difficult to imagine being corrected. These include the following:

- The central problem with the way that people apply their distributive justice intuitions to the tax system has been variously described as an “isolation effect” or “disaggregation bias.”11 The problem, roughly stated, is that while people would like the tax system as a whole to exhibit a certain level of progressivity, they try to achieve this by having each constituent tax exhibit that same progressivity. As a result, they evaluate the “fairness” of each tax in isolation from the others, and thus tend to under- or overadjust them relative to each other, given the target level of progressivity.12 For instance, if the system contains a flat consumption tax, and the rate goes up, people will typically fail to recognize that an increase in the progressivity of the income tax system can preserve the distributive character of the system as a whole.13

- One of the most peculiar consequences of the “entity” view of taxation is that it leads many people to apply their distributive justice intuitions to corporations as well as to individuals. As a result, there is a persistent tendency to think that corporate income tax should also be progressive, with small businesses paying lower rates than large ones. Small businesses, on this view, are seen as analogous to poor people. The result is a corporate tax system that somewhat arbitrarily privileges small businesses by taxing their profits at lower rates. This has contributed to the perverse situation in which wealthy individuals across Canada create corporations—taking advantage of the “small business” tax rates—in order to shelter their own income from taxation.


12 Or as McCaffery and Baron, “The Humpty Dumpty Blues,” supra note 11, at 107, put it, people “generally fail to integrate parallel tax systems or tax and spending systems to form globally consistent judgments about bottom-line allocations and distributions.”

Economists often complain that the public puts too much weight on the “fairness” of the tax system, and not enough on its efficiency. Thus, the imposition of expert judgment is recommended as a way of redressing the relative neglect of efficiency considerations. As we have seen, however, the public also has considerable difficulty bringing its distributive justice intuitions to bear upon the tax system. When incidence is taken into account, even the factual question of determining the distributive impacts of the tax system quickly becomes very complicated. On top of this, people use a set of very limited heuristics for judging fairness, leaving them open to manipulation. As a result, there is good reason to think that bringing greater technical expertise to bear upon the tax system would permit greater realization of both its efficiency and its distributive justice goals.

THE PROPOSAL

Jean-Baptiste Colbert famously compared the art of taxation to that of plucking a goose, with the objective being to secure as many feathers as possible while producing the least amount of hissing. The analogy is inapt in at least one respect. While the goose can presumably feel each one of its feathers being plucked, the complex web of invisible, indirect, and implicit taxes in a modern economy has a mixed effect, such that taxpayers are sometimes unaware of being plucked and at other times have the sensation of being plucked when in fact they are not. Meanwhile, elected officials, far from serving as loyal fiduciaries, helping the taxpayer to sort through the confusion, have too often succumbed to the temptation to take advantage of it—in some cases, cynically; in other cases, because they share the same confusion. Compounding the problem is the fact that public irrationality sometimes constrains politicians in return, so that beneficial reforms cannot be undertaken, entirely for reasons of political optics.

This is what motivates the proposal for the creation an ITA, whose central function would be to remove certain questions from the realm of partisan politics and have them instead be addressed by public officials committed to political neutrality. While the existing revenue authority, the Canada Revenue Agency, enjoys some discretion when it comes to the interpretation of Canadian tax law, its central functions are essentially administrative. An ITA would enjoy a more substantial grant of delegated authority, with the power to determine both the base and the rates for all general revenue-generating taxes. It would be governed either by a board and chief executive officer appointed by the prime minister, for a term sufficiently long to establish independence from the government of the day (and in the case of a board, staggered terms). One might also institute something like the “minister’s directive” provision of the Bank of Canada Act, which allows the minister of finance to give

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15 An example of the latter would be real estate transaction taxes, which are “paid” by the buyer, but in a competitive real estate market actually fall on the seller.
the governor of the Bank of Canada instructions “in specific terms and applicable for a specified period,” which the bank must then comply with. Thus, explicit political direction would remain always a possibility; the hope would be that a convention of non-interference would emerge, as it has with the central bank.

The general principle governing delegation of power to the civil service is that it should be undertaken only when policy objectives can be clearly specified ex ante and remain relatively stable, and where administration does not involve further, significant normative judgments. Bureaucratic administration typically proves superior to political decision making when the attainment of these objectives benefits from the deployment of complex technical knowledge over a long time horizon, where there is a need for consistency over time, and where there is some desire to insulate decision making from the influence of interest groups. Taxation satisfies these constraints so long as the term “tax” is interpreted fairly narrowly. After all, the government imposes a dizzying array of taxes, fees, charges, fines, takings, royalties, tariffs, and surcharges, many of which are closely tied to very specific policy objectives. An ITA, by contrast, would be concerned only with general revenue. We can use the term “general taxes” for payments meeting the following criteria:

(1) an exaction of money; (2) imposed and collected by a government authority; (3) on or from a private person or entity; where (4) such payment is compulsory; (5) imposed for non-punitive purposes; and (6) paid not in return for a specific service or privilege received from the government, but rather as a means to fund government operations more generally.

In the Canadian context, this means that a federal ITA would have authority over income, consumption, corporate, and inheritance taxes. It would not control customs, tariff, and excise taxes, nor would it control taxes that can be construed as Pigovian, such the usual “sin taxes,” or the revenue from a carbon-pricing regime. The chief difference is that, in the case of general taxes, the objective is to raise revenue while minimizing the distortionary impact on economic behaviour. In the latter set of cases, the objective of the tax is precisely to change economic behaviour in order to meet specific policy objectives (and only secondarily, or perhaps not at all, to raise revenue). Thus, there is good reason to want the latter sort to be under direct political control. Similarly, dedicated social insurance contributions, such as Canada

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18 Stuart P. Green, “Tax Evasion as Crime,” in Monica Bhandari, ed., Philosophical Foundations of Tax Law (Oxford: Oxford University Press, 2017), 57-78, at 60. Green limits his use of the term “tax” to payments that meet all of these criteria. For convenience, I use the term “tax” more broadly, and the term “general tax” for what Green calls a “tax.”
Pension Plan or employment insurance, should remain outside the control of the ITA, because they are tied to the specific policy objectives of those programs.19

With general taxation, despite the complexity and the proliferation of different instruments, there is a relatively simple overarching objective, which is to raise revenue (hence the goose-plucking metaphor). The desire to do so in a way that minimizes distortion, or deadweight losses, is what calls for the deployment of technical expertise. The details of how this should be done are extremely complicated but essentially administrative—they do not involve any other significant normative judgments per se. There is also a great deal to be said for treating all general taxation instruments as part of an integrated scheme, since they each merely contribute to the attainment of the objective. And finally, there are significant benefits to having a tax regime that is both stable over time and designed to enhance long-term prosperity.20 All of these considerations suggest that the creation of a single administrative agency with control over general taxation could have significant benefits.

Perhaps the most important complication in the plan arises from the fact that the tax system cannot be organized around an exclusive preoccupation with efficiency. Taxation also raises questions of distributive justice. In the first instance, there is the question of how the fiscal burden for the state’s activities, such as the provision of health care, education, infrastructure, defence, etc. should be borne by the population. Taxes here are *implicitly redistributive*, in that all citizens get access to roughly the same bundle of public goods, but the contribution that they make to the funding of these goods is progressive with respect to income. Beyond this, however, there is also the possibility of using the tax system in a way that is *explicitly redistributive*, to effect transfers between individuals.21 Typically, however, explicit redistribution is achieved through benefit programs that are financed through taxation. Thus, an ITA could concern itself entirely with the implicitly redistributive character of taxes, which is to say, how the overall fiscal burden of financing the state should be distributed over individuals in the society. Here, it is not too difficult for elected officials simply to specify how progressive they would like that distribution to be. An ITA

19 It is worth noting that in 2008 the government of Canada created an independent authority responsible for determining employment insurance premiums, the Canada Employment Insurance Financing Board, to balance the budget of the program over the course of the business cycle. Unfortunately, the board never achieved genuine independence, and it was abolished in 2013. As a matter of practical politics, this precedent bodes ill for the creation of an ITA. See Arthur Sweetman, “Take the Politics out of Employment Insurance,” *National Post*, January 19, 2011.

20 Blinder, supra note 1, puts particular emphasis on this point.

21 There is a tendency to overstate how much explicit redistribution is undertaken by the welfare state, because of confusion over the appropriate classification of social insurance programs. All insurance, whether public or private, is “redistributive” in a sense, but this is different from the sort of egalitarian redistribution undertaken by the state. Generally speaking, it is best to think of social insurance programs as public goods provided by the state, which are implicitly redistributive because individuals are not charged actuarially fair premiums.
would therefore have a dual mandate: to raise a specified amount of revenue as efficiently as possible, and to do so in a way that imposes the burden in accordance with a specified principle of distributive justice.

What would such a principle of distributive justice look like? Consider the economist’s classic argument for progressive taxation, which takes as its central normative claim the principle that all citizens should make approximately equal sacrifice, expressed in terms of utility.22 Because money (or consumption) produces declining marginal gains in utility, it follows that the rate of taxation should increase as a function of individual income (or consumption). If this is the ideal, then it is possible to specify a single number (the elasticity of marginal utility of consumption) that will determine how much the tax burden should increase as one moves up through the income brackets, in order to maintain equal sacrifice. In principle, this can be determined empirically. It can also be specified normatively (or politically), in which case the same number can be used as a measure of inequality-aversion, to produce a prioritarian social welfare function, which will in turn recommend a more steeply progressive set of tax rates. Thus, the distributive justice principle that governs the tax system could be specified, at an abstract level, by something as simple as a single number—one that specifies the rate at which, as income rises, the sacrifice associated with the forfeiture of a given sum declines.

While these end-state distributive justice objectives may be easy to specify, achieving them is extremely complex, and involves a great deal of expert judgment and technical knowledge. This is primarily because each component of the tax system makes its own contribution to the distributive impact of the system as a whole. The level at which we should care about the outcomes, from the standpoint of distributive justice, is the aggregate level, and in terms of net impact on individuals. These effects are, however, too complex for the average person to assess, and this is why people opt for the imperfect heuristics that generate the disaggregation fallacy.23 An ITA would force elected officials to state clearly what their overarching conception of “tax fairness” amounts to, and then delegate to public officials the task of designing a system that actually achieves fairness according to that specification. In principle, this might also improve the quality of public debate, to the extent that it encouraged politicians to focus less on the framing of particular taxes, and instead to defend their most basic convictions about what the distribution of wealth in society should be.

Finally, it should be noted that an ITA could be instituted in weaker and stronger forms, depending on how much discretion is granted. It could also be structured in

22 As John Stuart Mill put it, “[a]s a government ought to make no distinction of persons or classes in the strength of their claims on it, whatever sacrifices it requires from them should be made to bear as nearly as possible with the same pressure upon all; which, it must be observed, is the mode by which least sacrifice is occasioned on the whole.” Principles of Political Economy (New York: Prometheus, 2004), at 735.

23 McCaffery and Baron, “The Humpty Dumpty Blues,” supra note 11.
such a way that the level of discretion exercised could evolve over time. (By way of comparison, the growing autonomy of the Bank of Canada occurred, not so much through changes in legislation, but rather through the governor of the bank asserting increased authority over monetary policy, and the government refraining from retaking control.)\textsuperscript{24} A weaker version would keep existing parliamentary control over taxes in place, but give the ITA some discretion to modify rates, or to make small adjustments to the base.\textsuperscript{25} The standard version would give the ITA the power to determine rates (including zeroing them out, effectively abolishing a particular tax) and base. Tax expenditures could still be introduced by the government, but they would have to be implemented explicitly as spending programs. A stronger version still would give the ITA the power to retain any surpluses it collects, so that it would transfer to the government only the amount requested at the beginning of the budgetary period. This would have the salutary effect of preventing the government from treating unexpected surpluses as windfall gains and engaging in reckless spending. Surpluses would of course not literally be retained by the ITA, but they could be kept nominally on the books and used in future years, either to cover revenue shortfalls or to finance lowering of rates.

**OBJECTIONS**

Proposals for an ITA are generally regarded as a political non-starter, on the grounds that elected officials are unlikely to want any curtailment of their authority in these matters. This is, of course, incontrovertible, although it is not so difficult to imagine various crisis scenarios that might change things. Furthermore, if the model were to be implemented and found successful in one jurisdiction, this could lead to its adoption in others. In the discussion that follows, therefore, I will abstract from everyday political obstacles and focus on more principled objections to the entire scheme.

**Question 1: Wouldn’t an ITA Be Unconstitutional?**

Owing to certain vagaries of English history, the ability to raise taxes is one of the most jealously guarded powers of Parliament. As a constitutional convention it dates back to Magna Carta, and over time it served as the central mechanism through which the powers of the monarchy were curtailed. Creation of an ITA could easily be construed as a transfer of taxation power from Parliament to the executive, and thus as a reversal of centuries-old constitutional convention. More narrowly, the obvious constitutional challenge would be that it violates the non-delegation doctrine, and hence the separation of powers.

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25 This is the model that was put forward in Business Council of Australia, New Directions Task Force, *Avoiding Boom/Bust: Macro–Economic Reform for a Globalised Economy* (Melbourne: Business Council of Australia, 1999), at 43.
While in essence this is correct, the rise of the administrative state in the 20th century generated considerable ambiguity with respect to determining what constitutes “delegation.” Statutes are increasingly formulated at a high level of generality, with the task of writing specific rules being handed over to administrative agencies or departments. Thus, as a technical matter, it would not be that difficult to write a set of enabling statutes for an ITA that would follow existing precedent in the delegation of rule-making authority. And if this proved controversial, there would still be the possibility of requiring major ITA decisions to be ratified by Parliament, perhaps with those decisions being submitted in an omnibus package that would not be subject to amendment. It is worth keeping in mind that the constitutional conventions that would be tested by an ITA are all unwritten, and as a result are not entirely inflexible. Furthermore, new conventions can always be created.

The one hard constitutional constraint that does exist involves the division of powers in the realm of taxation between the federal government and the provinces (and, through delegation from the provinces, municipalities). This does not prevent the creation of an ITA at the federal level, but it does complicate the mandate, since the federal agency would have to work around provincial policies. This would make it difficult to attain certain distributive justice objectives. It would also leave certain taxes in the control of elected officials—assuming that the provinces did not create their own ITAs. Ideally, one would want resource royalties and property taxes, as well as provincial income, consumption, and corporate taxes, to be under a unified taxation authority. Probably the most that one could hope for, in a Canadian context, would be coordination.

Question 2: What About the Efficiency/Equality Tradeoff?

The ideal scenario for delegation of powers to an administrative agency is when a single objective can be specified (which in turn allows the attainment of that objective to be reduced to a technical exercise). The existence of multiple objectives, along with some measure of rivalry between them, results in a dramatic expansion of administrative discretion, along with the spectre of unelected officials making significant normative judgments when deciding how these objectives should be traded off against one another. The ITA is described as having essentially a dual mandate—both to promote an efficient tax regime and to achieve certain distributive justice targets. These are far from complementary, and it is not difficult to imagine circumstances in which distributive justice objectives could be achieved only at the expense of efficiency and vice versa.

Nevertheless, it is not unprecedented for an administrative agency to be given a set of complex and partially rivalrous objectives. Indeed, the phrase “dual mandate” is typically associated with the United States Federal Reserve, which has the objective of promoting both stable prices and maximum employment. The Bank of Canada has an even more complex mandate,
its influence fluctuations in the general level of production, trade, prices and employment, so far as may be possible within the scope of monetary action, and generally to promote the economic and financial welfare of Canada.26

The question, therefore, is not whether a particular task can be reduced to a purely technical exercise, stripped of significant normative judgments. Rather, the question is who is likely to do a better job at balancing rival objectives—elected officials or public servants? As long as politicians see the tax code primarily as a source of wedge issues, and focus their efforts on the framing rather than the economic consequences, or on particular tax policies, it is not difficult to imagine public servants doing a better job at achieving a satisfactory resolution of the tensions that exist within this domain.

**Question 3: Wouldn’t an ITA Be Undemocratic?**

A lot of things are undemocratic; the question is whether an ITA would be objectionably undemocratic. In Canada, we do not elect judges or Crown prosecutors; in the United States, they do. Neither arrangement is derived from first principles of democratic theory. Popular election of judges is rejected, throughout almost the entire world, because it fails to produce a sufficiently independent and impartial judiciary.27 Similarly, the question of whether the specific details of tax policy should be set by elected officials, or at what level of granularity these details should be specified, cannot be answered by consulting first principles. There is inevitably a consequentialist dimension to these questions—one has to look at the likely effects of various arrangements.

In the case of taxation, however, it is helpful also to recall Freidman’s dictum, that “to spend is to tax.” There is a sense in which, under the present arrangement, Parliament gets to vote twice on the same question. It decides to spend, and then it decides how to pay for this spending. An ITA would obviously have no role to play in any of the spending decisions made by Parliament, and with good reason, since making these decisions involves little other than making the complex normative judgments involved in balancing the competing demands of different programs. An ITA would merely deal with the downstream consequences of these decisions. Treating the choice of tax policy as a separate decision, as we currently do, encourages incoherence in government decision making.

If this is not sufficient comfort, it is worth recalling that no grant of authority is irrevocable, and the autonomy of an ITA need not be established all at once. The structure suggested above is one in which the agency’s independence would have clear limits, and autonomy would be allowed to evolve through convention. This would create a phase-in period in which adjustments could be made.

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26 Preamble to the Bank of Canada Act, supra note 16.

27 Adam Liptak, “U.S. Voting for Judges Perplexes Other Nations,” *New York Times*, May 25, 2008. As one French judge put it, the option of electing judges was debated following the French Revolution: “It was thought not to be a good idea.” Cited by Liptak, ibid., at 21.