Comments on the Paper by Robin W. Boadway and Harry M. Kitchen

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It was a great pleasure to read this paper. As would be expected, the authors' review of the contemporary tax kaleidoscope is comprehensive, informative, and insightful, and reflects a staggering grasp of a wide range of current issues.

Over the past several years, I have been invited to comment on other papers at Canadian Tax Foundation conferences, and while the papers have always been models of good scholarship, I have always been able to begin by asserting that I disagreed with practically everything in them. Not so in this case. In part, this is because the authors draw a number of conclusions with which I agree, but in part, it is also because the authors are not so much arguing a point of view in their paper as reviewing the current state of personal income tax reform. Also, when they do indicate a preferred position on an issue, they usually hedge their conclusion appropriately since they concede that the issue under review is a complex one. Furthermore, they are well informed and reasonable enough to see the force in different perspectives. This latter quality is not one from which I suffer. Therefore, instead of going through the paper and simply making a checklist of points that I agreed or disagreed with, I searched through it for some offhand remark, or some snippet I could tear out of context, so that I could use it as an excuse to comment on issues that are currently being debated in public forums.

By way of explaining the issues I have chosen, one of my enduring interests in tax law has been the question of the extent to which the tax system can be used to achieve a more socially acceptable distribution of income and wealth than that which results from market forces. In this respect, I remain an unrepentant product of the 1960s. Few of us are left. The whole point of the "third way," which is now being championed by social democrats, appears to be to replace the goal of social equality with some version of fairness. However, the slogan "be fair" does not have the same ring to it as "make the rich pay," so I have been unmoved.

I might add, admittedly quite gratuitously, that choosing only a couple of current public tax topics to deal with has been made more difficult

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now that both the Reform Party and the *National Post* have entered into—indeed, set the agenda for—the public tax debate. Since their appearance on the national scene, the number of logical inconsistencies, misrepresentations, misinformation, and false claims about the tax system has increased exponentially. These critics seem to think that taxes are driving Canadians crazy. But all that demonstrates is that taxes have apparently driven them crazy. The notion that citizens must pay some price for government has rendered them incoherent, irrational, and apparently convinced that everybody else shares their obsession.

At any rate, as a concession to your patience, and the shortness of life, I will deal with just three propositions that are at least alluded to in Robin and Harry's paper. I will put these propositions in the form in which they have been frequently put in the press, with which I disagree, and not necessarily in the form in which they are presented in the paper. I will deal first with the assertion that the federal government must flatten tax rates to reduce the brain drain; second, the assertion that high taxes impair productivity; and third, the related assertions that the government ought to consider adopting some form of family unit taxation, ending the child-care expense deduction, and providing a universal child tax credit.

TAX PROGRESSIVITY AND THE BRAIN DRAIN

To place this issue in an even broader context, over the past couple of decades those on the right have attempted a political initiative unique in this century, namely, a sustained and deliberate redistribution of income from the poor and the middle-class to the rich. In this frontal attack on the welfare state, it is no surprise that the progressive income tax system has been the subject of their most mean-spirited assault. Tax policy is quintessentially a matter of class politics, and progressive tax rates are, at least symbolically, a minor victory for the majority and for democracy.

Over the years, every social ill imaginable has been assigned to high income tax rates—most frequently, that taxes reduce people's incentive to work, save, and invest. Unfortunately, the facts have not been kind to these theories. Therefore, in the past few years, those hustling reduced taxes for the rich have played what I am sure they regard as their trump card. Tax rates must now be reduced not as a matter of political choice but as a matter of economic imperative because of the effects of globalization and the spectre of a "brain drain."

In their paper, Robin and Harry seem somewhat agnostic on the rate structure; near the end of the paper, they simply review arguments for and against a flatter rate structure. However, at the beginning of the paper, they assert that in light of changing circumstances, "reforms in personal income taxation should be designed . . . to remove the incentives for highly skilled persons . . . to locate outside Canada."[1] Later, in discussing the

[1] Robin W. Boadway and Harry M. Kitchen, "Personal Income Tax Reform in a Broader Context," in this issue of the journal, 566-602, at 568.

constraints on reducing levels of tax, they say, "Perhaps the main room for manoeuvre is in the rate structure; a flatter rate structure would reduce to some extent the incentive for higher income earners to migrate."[2]

I was somewhat surprised to see them express this concern, although admittedly they do not do so in strong terms. In part, I was surprised because not long ago, in an article in *Policy Options*, Robin asserted that "[t]he conventional wisdom, much of it filled with rhetoric, is that tax levels have reached their limit and that international competitive pressures will (or should) force governments to reduce taxes in the near future."[3] However, he concluded that "there is no compelling economic reason why tax levels should be similar across countries. Countries are largely free to choose the level of taxation that seems appropriate to them."[4] I took some comfort in that conclusion. Perhaps Robin has since been corrupted by Harry.

The argument made ad nauseam in the business press is that the federal government must reduce tax rates on the rich to stem the flow of bright and talented Canadians to the United States. Every premise of this argument is wrong. First, there is no brain drain to the United States; there is barely a brain trickle. Second, to the extent that talented Canadians are migrating to the United States, it is not because of high taxes. Third, even if some individuals are leaving because of high taxes, to reduce taxes on all high-income individuals in an attempt to induce these few to stay in Canada would be perverse public policy.

The brain drain is a phenomenon that has been dreamed up wholly out of thin air by those pushing for lower taxes on the rich. Either that, or these people are sincerely subject to the tyranny of the anecdote. Statistics Canada reports that the number of Canadians emigrating to the United States during the 1990s is small by historical standards, even in absolute numbers.[5] Between 1990 and 1996, about 21,700 Canadians emigrated to the United States annually, whereas between 1955 and 1969 the number was well over 40,000 a year. Of those emigrating from Canada between 1990 and 1996, approximately 8,500 a year were university graduates; however, during the same period, about 32,800 university graduates were entering Canada each year as immigrants—about four times as many—and a much higher proportion of the recent immigrants had advanced degrees than of those who left. In the hi-tech sector, where much of the concern is being expressed, while only 148 computer scientists emigrated from Canada to the United States in 1996, 6,467 immigrated, 113 of them from the United States; while only 506 engineers emigrated from Canada

[2] Ibid., at 570.

[3] Robin Boadway, "The Constraints of Global Forces Are Exaggerated" (July/August 1995), 16 *Policy Options* 11-16, at 15.

[4] Ibid., at 16.

[5] Statistics Canada, "Brain Drain or Brain Gain? What Do the Data Say?" presentation to the National Policy Research Conference held in Ottawa, October 1, 1998, mimeo.

in 1996, 8,278 immigrated into Canada. Further, while the number of computer scientists and engineers immigrating into Canada has increased dramatically in recent years, since 1986 the number leaving to the United States has remained at about the same level.

These Statistics Canada numbers do not include workers leaving the country on temporary working visas. However, a recent study by two economists in the Economics Department of the Bank of Montreal[6] examined the data from both Canada and the United States on the issuance of temporary working visas and concluded that if the data are converted into an annual flow, apart from a spike immediately after the signing of the free trade agreement, there is no clear trend emerging over the past 10 years.

The data on the number and quality of workers moving in and out of Canada are not as good as one would like, and there are several projects under way to attempt to generate better data. John Helliwell recently reviewed the current studies and data relating to the number of people born in Canada and now living in the United States (both in absolute numbers and as a percentage of Canada's population, the lowest it has been for decades), and the number of University of British Columbia graduates who have permanent addresses in the United States (a trivial number and not increasing), and concluded, "[T]he existing data and analysis provide no evidence of a current crisis, or any great cause for alarm."[7] Helliwell asserts that what needs explaining is not why some Canadians are moving to the United States but why more have not moved during the 1990s, given the higher rate of economic growth there, the larger salary premium for those with higher education in the United States, and the difference in the unemployment rate between the two countries.

The relatively few talented Canadians who have been leaving Canada in recent years for the United States do not appear to be leaving because of higher taxes in Canada but because of better employment opportunities in the United States. There is almost no general empirical evidence that individuals move as the result of a rational calculation about where they will maximize the fiscal surplus that enures to them.[8] In economics, the factors that influence migration decisions have been the subject of considerable microeconomic modelling and some empirical research as it relates primarily to interprovincial or interstate migration. But even in these cases, moves appear to be determined primarily by employment considerations. Sociological studies also suggest that the primary motive

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[6] Rick Egelton and Wojciech Szadurski, "Trends in Canada-US Migration: Where's the Flood?" *Economic Analysis*, Bank of Montreal, Economics Department, March 24, 1999.

[7] John F. Helliwell, "Checking the Brain Drain: Evidence and Implications," a draft version of a paper prepared for the Advisory Council on Sciences and Technology's Expert Panel on Skills, Ottawa, March 29, 1999.

[8] A number of these studies are referred to in Neil Brooks, "Flattening the Claims of the Flat Taxers" (1998), vol. 21, no. 2 *Dalhousie Law Journal* 287-369, at 357ff. Parts of the following comments are drawn from this article; sources not footnoted in these comments can be found there.

for moving is job related. Some people move because of quality of life factors, some move to be closer to friends and relatives, and a few might move because they receive too few benefits from government in relation to the taxes they pay; but most move because of employment and job opportunities. These findings appear to be supported by most of the anecdotal evidence reported in the press about the "brain drain."

Even the newspapers that are trying to create a brain drain scare have difficulty coming up with someone who is prepared to say that he or she moved to the United States because of the level of taxes in Canada, and when they do, it is usually someone floating around on a sailboat in the Caribbean. It is hard to imagine that should be cause for concern. Most Canadians resident in the United States give employment-related reasons for moving. In one of the few news stories where a reporter found someone who was prepared to say he left Canada because of taxes, the person then went on to say he wished taxes would be lowered in Canada because he would like to move back since Canada is such a great place to live. Presumably he was not referring to the weather. It might have occurred to this person that it was in part public services that made Canada "such a great place to live."

Ironically, many of those who stand to make the most important contribution to Canada's future—research scientists, mathematicians, and physicists—have been leaving in the past few years, not because of low after-tax salaries in Canada, but because of the government's refusal to fund basic research or to otherwise show a public commitment to Canadian science and technology.

As I suggested above, even if some talented people are leaving because of the level of taxes in Canada, it would be perverse public policy to reduce taxes for all rich people in an attempt to induce these few to stay. Migration is not a marginal decision; it is an all-or-nothing proposition. Either people migrate or they do not. In making the decision to migrate, what is important to people is not the tax they will pay on the next dollar they earn, but the overall taxes they pay. Consequently, anxiety about the effect of taxes on migration does not reflect a concern about the progressivity of marginal income tax rates, but a concern about the overall level of taxes or a concern about the progressivity of average rates of tax. The average rates of tax in Canada, considering all taxes that fall on middle-and high-income Canadians, are about proportional. Thus, to satisfy those concerned about the supposed brain drain, the overall tax system would have to be made regressive. I would like to hear someone make the case for taxing middle-income individuals more heavily than high-income individuals because middle-income individuals are less likely to move to the United States.

The point that needs emphasis, though, is that, in theory, the threat of emigration introduces a constraint not only on the progressivity of the tax system, but also on the total degree of redistribution that a country can hope to achieve by the combined effect of taxation and public expenditure. That is to say, the threat of emigration constrains not just the design of one policy instrument of government, but one of the most fundamental choices to be made by a society—what is a socially acceptable distribution of income and wealth.

Moreover, the benefits of attempting to induce a few additional high-income individuals to stay in Canada are dubious. To be perfectly frank, there is little evidence that many of the high-income people who leave Canada make much of a contribution to the country's well-being. Around the world, there appears to be little correlation between the percentage of rich people in a country and the economic well-being of its citizens. The one country that has a higher per capita gross domestic product (GDP) (in 1997) than the United States is Luxembourg; yet it has a much more equal distribution of income than the United States. Both Denmark and Norway have a higher GDP per capita than Canada, and they have achieved this result without being particularly solicitous of their rich citizens. Rich people who leave Canada and decry taxes often have an exaggerated sense of their importance to the well-being of other Canadians.

This point was perhaps not as widely appreciated as it should have been until a few weeks ago, when a colleague of mine at Osgoode Hall Law School wrote a column in *The Globe and Mail* in which, quite naively intending, I think, to add force to the concern over the brain drain, he reported the number of dedicated and ambitious young lawyers graduating from our law schools and heading for New York.[9] I assume this only convinced most people that every cloud has a silver lining. It is well documented that lawyers are more concerned with rent seeking than with wealth creation and that in sufficient numbers, they are detrimental to both a country's economic growth and its democratic institutions. Moreover, this type of anecdotal evidence only makes the case that most migration is employment related. Law students move from Toronto to New York to practise law for the same reasons students move from Alabama to New York to practise law or from Timmins to Toronto.

My final point about the brain trickle is this—to put it in an even broader context: some individuals prefer a society in which there is a high degree of public provision, social cohesion, and a large degree of economic security. Others undoubtedly prefer one in which most goods and services are allocated on the basis of prices established in markets. One purpose of liberalizing rules of migration is to allow individuals to seek out those jurisdictions where taxation and public expenditures conform to their preferences. The great majority of Canadians prefer the social and cultural life of Canada to that of the United States. It would be ironic if the government were to respond to the emigration of a few by attempting to make Canada more like the United States. At some point, the two countries would be so much alike that presumably we would all move since there would be no reason to put up with the cold weather. If rich Canadians prefer US society, and they do not wish to remain and

[9] Patrick J. Monahan, "Paul Desmarais Is Right," *The Globe and Mail*, March 24, 1999, A15.

attempt to democratically persuade other Canadians to adopt their view, then they should leave. It would be odd to allow their departure to cause Canadians to rethink their collective aspirations when the force of their arguments could not.

TAXES AND PRODUCTIVITY

The authors have a section in their paper headed "Growth and Productivity." It is preceded by a section headed "Competitiveness," which is a discussion about the importance of the Canadian tax system's remaining competitive. Before looking at taxes and productivity, I will offer a parenthetical comment about taxes and competitiveness. The problem with invoking the concept of competitiveness when discussing the objectives of the tax system is that it seems to imply that reducing Canadian tax rates to a level equal to, or lower than, US rates is somehow an objective or a goal in and of itself—that Canada is in a competition with the United States for low tax rates. This surely cannot be right. If anything, the need to stay in line with the US tax system is a constraint on the Canadian tax system, a regrettable constraint, not an objective, and it is contestable how serious a constraint it is. It gives an undeserved urgency to this constraint to suggest that somehow Canada is in a competition that will be won when tax rates are lowered. The myth of international competitiveness as a war between countries has some political advantages for those who want tax cuts, but it is terribly misleading and could ultimately lead to bad policy judgments.

Even with respect to increasing rates of productivity growth, Canada is not in a competition with the United States. Canadians should be concerned about the productivity of their economy so that the real wages of Canadian workers can be increased, irrespective of the rate of growth of the US economy. Indeed, if the US economy becomes more productive, that will mitigate, not exacerbate, the consequences of low productivity in Canada. Unlike businesses that might fail if their productivity lags that of a competitor, countries do not need to compete with one another. All countries can gain from each other's successes. The standard of living of Canadians is determined solely by the rate of growth of the Canadian economy.

Turning then to the real issue—productivity—the authors underline the importance of productivity growth and offer a number of suggestions for changing the tax system to increase productivity. Their main point appears to be that while the tax system treats research and development and investment in human capital relatively generously, perhaps more could be done by way of a broad-based incentive for new investment in physical capital. Moreover, they suggest in other parts of their paper that more should be done to provide for the refundability of business losses and that Canada should rethink and perhaps jettison its partial system of corporate and shareholder integration. But generally they seem to suggest that the tax system should not be looked at as a policy instrument for increasing productivity. The best that can be done with the tax system is to try to make sure it does no harm, and that generally involves making the base as comprehensive as possible.

Continuing my theme of bashing the rich while ostensibly commenting on issues raised in the paper, two tax changes that might do a good deal to increase the productivity of the Canadian economy, but that were not mentioned by the authors, are the reintroduction of a wealth transfer tax and a tax on intercorporate dividends. In a recent working paper in the National Bureau of Economic Research series,[10] the authors analyzed 1993 data from some 41 countries. They found that while self-made billionaire wealth was associated with faster growth, heir-controlled wealth inhibited growth. They explained these findings largely on the grounds that rather than trying to create new wealth, rich families tend to use their economic and political clout to protect their holdings from competition. The authors' case in point was Canada, where, in 1988, 197 of the 246 largest public companies were controlled by individual shareholders. Comparing heir-controlled companies in this group with similar widely held companies in the United States and Canada, they found that the heir-controlled companies had lower earnings and slower growth in sales and employees, and spent less on research and development. The authors argued that concentrated, inherited corporate control impedes growth, and they dubbed it "the Canadian disease." One implication that might be drawn from the study is that instead of worrying about matching US income tax rates, Canada should adopt an American-style wealth transfer tax to attempt to loosen the control of family dynasties over Canadian business and enact a tax on intercorporate dividends. In the United States, the tax on intercorporate dividends is undoubtedly in part responsible for the fact that firms in control pyramids are essentially unknown, while in Canada they are endemic.

Robin and Harry do not make this argument directly, but in the press it is made over and over again: reduced tax rates are the miracle cure for the Canadian economy that will lead to increased productivity of Canadian workers. Where do people get this idea? Where is the evidence of any causal link between lower taxes and higher productivity levels?

One somewhat odd piece of evidence that is frequently referred to in support of this hypothesis is the relative experience of Canada and the United States. The implication is that if Canada had tax rates as low as the United States, its productivity might be as great. The evidence is mixed on how Canadian productivity compares with that of the United States in recent years,[11] but there is one thing we do know. Following the

[10] Randall K. Morck, David A. Strangeland, and Bernard Yeung, *Inherited Wealth, Corporate Control and Economic Growth: The Canadian Disease?* Working Paper no. 6814 (Cambridge, Mass.: National Bureau of Economic Research, November 1998).

[11] The recent flap in Canada over productivity was initiated in November 1998 by the release of the OECD's annual survey of the Canadian economy. The OECD reported that total factor productivity growth fell 0.4 percent a year in Canada from 1990 to 1996, while

(The footnote is continued on the next page.)

tax cuts in the United States in the early 1980s, although the United States experienced a period of economic growth, this was due to the fact that the US economy was recovering from a deep recession, the demand side stimulus of running a deficit, and the fact that more women were entering the paid labour force. Throughout the 1980s, labour productivity growth—that is, growth in the amount of output produced by a given amount of labour input—was lower in the United States than in any other major industrialized country. Moreover, over 70 percent of the growth in family income during that decade went to the top 1 percent of American families. Although tax cuts apparently do not make the rich any smarter, they do unequivocally make them richer. Moreover, for every year from 1983 to 1989, the rate of real economic growth was greater in Ontario than it was in the United States, and in at least three of those years economic growth was almost 2 percentage points greater in tax-weary Ontario than in the tax-liberated United States.

Some commentators point to the recent increase in US productivity as evidence of the link between tax rates and productivity, but ironically enough this productivity growth in the United States has followed tax increases on the rich in that country. In 1993, Clinton increased the federal income tax rates on higher-income individuals from 31 to 39.6 percent, among other tax increases. The conservatives predicted that the tax would send the economy into the tank and not raise much money. In fact, they were doubly wrong. It appears that the entrepreneurial spirit is thriving in the United States in spite of the tax hikes, and almost half of the overall reduction in the US deficit was accounted for by the increase in taxes on upper-income Americans. Another paradox of attempting to make much

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[11] Continued . . .
rising 0.5 percent annually in the United States. Organisation for Economic Co-operation and Development, *Economic Survey: Canada 1998* (Paris: OECD, 1998), table 8, at 44. It predicted that this lack of productivity advancement in Canada would lead to a substantial decline in Canada's per capita income relative to other OECD countries. However, in March 1999, Statistics Canada released a study suggesting that total factor productivity in the business sector actually grew 0.7 percent per year from 1988 to 1997, compared with only 0.4 percent in the United States. Statistics Canada, "Multifactor Productivity 1997," *The Daily*, March 23, 1999. Statistics Canada's revisions to its productivity series resulted from the historical revisions to the national accounts. The main reason for the difference between the numbers produced by the OECD that are used in its report on Canada and the Statistics Canada estimates of productivity is that the OECD uses employment as an input in calculating productivity whereas Statistics Canada uses a more refined measure, hours worked. The increase in part-time employment in Canada means that there is a substantial difference between these two measures of inputs. The statistical directorate of the OECD (a different directorate from that which prepared the report on Canada), which uses the same inputs as Statistics Canada, produces about the same productivity numbers as Statistics Canada. See also Andrew Sharpe, "New Estimates of Manufacturing Productivity Growth for Canada and the United States," paper prepared for the meeting of the Research Advisory Committee on the Centre for the Study of Living Standards project on the Canada-US manufacturing productivity gap, April 5, 1999, 1: "Despite the public perception that the United States has greatly outstripped Canada in terms of aggregate productivity growth in the 1990s, the data reveal that growth rates of GDP per worker employed over the 1989-97 period were virtually identical at 0.9."

out of taxes and the relative performance of the Canadian and US economies during the 1990s is that from 1990 to 1996 taxes increased by only 0.8 of a percentage point of GDP in Canada, but 1.8 percentage points in the United States.[12]

Moreover, cyclical factors have grossly distorted perceptions of the United States' relative economic performance. Comparative data purporting to demonstrate the superiority of the US economic model are frequently drawn from the 1992-1998 period. However, the US economy expanded throughout this period while, in large part owing to overtight monetary policies, most other countries were still mired in recession, at least at the beginning of the period. If the performance of world economies is compared over the business cycle—say, from 1989 to 1998—the United States' performance looks quite unexceptional. Except for low unemployment, the United States has been outperformed by many other industrialized countries on most economic indicators over this period.[13] For example, as *The Economist* notes, both Japan and Germany had higher GDP per capita growth over this period, and Germany's rate of productivity growth was actually more than twice that of the United States.[14]

Instead of crude comparisons between Canada and the United States, more reliable evidence of the effect of taxes on productivity can be obtained from large-scale cross-country studies. In recent years, because of the increased availability of cross-country data and the development of endogenous growth theory (which suggests that governments do matter for economic growth), there has been an explosion of cross-country studies attempting to discern some relationship between tax levels and economic growth. While these types of studies have certain limitations, it is a fair summary of the cumulative findings of this research project to say that, at the very least, the economic costs of high taxes and large governments are insignificant. For example, thorough reviews of studies by leading public finance scholars, such as Anthony Atkinson, Joel Slemrod, Jonathan Skinner, and Philip Gerson, all conclude that at best these studies produce contradictory evidence on the effects of tax rates on per capita income growth. If taxes had anywhere near the negative impact on prosperity that business people and folks on the right assume, this research project should have yielded unambiguous results.

Even a superficial review of growth rates of real GDP per employed person across the major industrialized countries confirms these findings. From 1989 to 1996, the fastest growing countries by this measure were Norway (23 percent increase in growth of real GDP per employed person), Denmark (18.2 percent), and Sweden (15.2 percent). The high taxes in

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[12] Organisation for Economic Co-operation and Development, *Revenue Statistics 1965-1997* (Paris: OECD, 1998), table 3, at 79.

[13] See Richard Freeman, "The US Economic Model at Y2K: Lodestar for Advanced Capitalism?" paper presented to Centre for the Study of Living Standards Conference on the Structural Aspects of Unemployment in Canada, held in Ottawa, April 22-23, 1999.

[14] "Desperately Seeking a Perfect Model," *The Economist*, April 10, 1999, 67-69.

these countries did not appear to hinder productivity growth. Over the same period, relatively low-tax countries, including Japan (9.8 percent), the United States (6.5 percent), and Canada (4.3 percent), had the lowest rates of growth of real GDP per employed person.[15]

In spite of what is often suggested in public debates, there seems to be little question that in recent years the average Canadian was made even more worse off than the average American, not because of the slowdown in labour productivity in Canada, but because of the slowdown in economic growth caused by Canada's monetary policy in the early 1990s of targeting low rates of inflation.[16] In 1989, almost 63 percent of the working-age population in both countries had jobs. In the 1990s, however, owing mainly to the higher rate of unemployment in Canada (but also because students were staying in school longer and workers were retiring earlier), the employment rate plunged in Canada, averaging 59.2 percent over the period 1990-1998, while it remained relatively stable in the United States, averaging 62.7 percent.[17] An extra three and one-half workers per 100 people, stretched over eight years, can generate a substantial amount of additional wealth in an economy. That is, the stagnation of living standards in Canada compared to the United States is not so much due to the lack of productivity of those who are employed as to the fact that a lower fraction of the population was employed during the 1990s. Thus, it would be odd to now attempt to correct for what is widely regarded as a misguided monetary policy that favoured the rich and brutalized so many workers, by making the tax system more regressive.

Finally, before Canadians become too distraught over falling even further behind the United States in terms of GDP per capita, it is worth remembering that in terms of the economic well-being of citizens, what is important is not only how many goods and services an economy produces, but also how they are distributed. In particular, while it is the case that the average family in the United States is better off in real terms than the average Canadian family, this can be a misleading indicator of the well-being of the typical family in each economy. The average family does not exist; it is only a statistical construct, the income of which is obtained by dividing the total number of families into GDP. In Canada, in large part because of the tax and transfer system, family income is distributed much more equally than in the United States. Using early 1990s data collected for the Luxembourg

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[15] Centre for the Study of Living Standards, *Productivity: Key to Economic Success*, report prepared by the Centre for the Study of Living Standards for the Atlantic Canada Opportunities Agency, March 1998, chart 2, at 14.

[16] See Pierre Fortin, "The Great Canadian Slump" (November 1996), 29 *Canadian Journal of Economics* 761-87. But see Charles Freedman and Tiff Macklem, "A Comment on 'The Great Canadian Slump' " (August 1998), 31 *Canadian Journal of Economics* 646-65 (arguing that the slump in the 1990s is better explained by a combination of factors than by monetary policy alone).

[17] See United States, Department of Labor, Bureau of Labor Statistics, "Comparative Civilian Labor Force Statistics, Ten Countries, 1959-1998" available on the Internet at http://stats.bls.gov/flsdata.htm.

Income Study, Peter Gottschalk and Timothy Smeeding[18] found that the absolute or real income level of the median family in Canada, which is a real typical family, was significantly higher than that of the median family in the United States. What is more, they found that in Canada every family right up to almost the 80th percentile was better off in real terms, in terms of their purchasing power, than their equivalent American families. It was the very rich families in the United States that were much better off than rich Canadian families—so much better off that they dragged the mythical average US family up above the mythical average Canadian family.

In a more recent study, Michael Wolfson and Brian Murphy of Statistics Canada reached the same result.[19] They concluded that in spite of the greater output per capita in the United States, because of the more unequal distribution of disposable income in that country, roughly 60 percent of Canadian families had disposable incomes in 1995 that gave them higher purchasing power than comparable American families.

These findings should give Canadians pause to consider before they accept changes to the existing tax and transfer system, which is in large part responsible for these results, in order to perhaps increase overall productivity. On almost any count, by reference to any theory of distributive justice, a society in which the bottom 50 percent of families are relatively better off is a more desirable society. The United States is basically a country with a lot of obscenely rich people. In its most recent Human Development Report,[20] the United Nations ranked 17 industrialized countries in terms of human deprivation—measured by such things as early mortality, literacy skills, long-term unemployment, social exclusion, and incidence of poverty. Of the 17 countries ranked, the United States came dead last. That is, in spite of all those rich families, there is more human deprivation in the United States than in any other industrialized country. Other than a relatively few high-income individuals, why the citizens of any country would be anxious to emulate it is a mystery.

THE TAX-PAYING UNIT[21]

Near the end of their paper, the authors briefly discuss a number of issues relating to the tax-paying unit. I agree with some but not most of what

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[18] Peter Gottschalk and Timothy M. Smeeding, "Empirical Evidence on Income Inequality in Industrialized Countries," in Luxembourg Income Study Working Paper no. 154 (Luxembourg: Luxembourg Income Study, June 1998).

[19] Michael C. Wolfson and Brian B. Murphy, *New Views on Inequality Trends in Canada and the United States*, Research Paper no. 124 (Ottawa: Statistics Canada, July 1998).

[20] United Nations Development Programme (UNDP), *Human Development Report 1998* (Oxford: Oxford University Press, 1998), table 1.8, at 28.

[21] An elaboration of the arguments suggested here, with citation to authority, can be found in Neil Brooks, "The Irrelevance of Conjugal Relationships in Assessing Tax Liability" in John C. Head and Richard Krever, eds., *Tax Units and the Tax Rate Scale*, Conference Series no. 16 (Sydney: Australian Tax Research Foundation, 1996), 35-80.

they have to say there. These issues have been subject to a good deal of public discussion recently, and there is so much confusion surrounding them that it is difficult to know where to slice into the debate. However, I will take issue with the three most significant suggestions that the authors make—namely, that there is a case for making the family the tax-paying unit; that the child-care expense deduction should be retained; and that a tax deduction should be provided to all parents of dependent children to recognize the non-discretionary expenses of raising children. These recommendations are standard fare for economists. Needless to say, all three would, or would continue to, provide benefits primarily to high-income individuals.

The idea of considering a taxpayer's conjugal relationships in determining his or her tax liability is bad tax policy and worse social policy. The tax case for individual unit taxation is straightforward. The income tax as an instrument of government policy ought to be designed to make it as effective as possible in achieving its assigned objectives. On the assumptions that there is no ethical justification for the market distribution of income (and it is hard to even imagine a theory of distributive justice that does not lead to this conclusion) and that the income tax ought to be used as a policy instrument for achieving a more socially acceptable distribution of resources than that which results from the interplay of market forces alone, the case for imposing the tax on an individual's earned income follows logically. But even if one argues that the income tax does not have a redistributive function, but that its sole purpose is to raise revenue equitably—in a way that treats individuals in similar circumstances the same—the case for individual taxation remains strong. Two individuals with the same earned income face the same options and arguably for that reason should be taxed the same, no matter how they spend or share their income.

Aside from making the income tax a more effective instrument in achieving its objectives, the taxation of individuals independent of their conjugal relationships more nearly satisfies the evaluative criteria that are normally applied to any set of legal rules: it is less likely to influence individual choices (for example, the choice of whether to marry or to work outside the home); it allows individuals to enter into relationships and yet preserve their privacy and autonomy; it reduces the cost of administering and complying with the rules; and it is more likely to promote gender equity. Parenthetically, over the past 20 years, there have been dozens and dozens of articles written on the issue of family versus individual taxation in the Canadian and US legal literature, many of them by feminist scholars. With few exceptions, these articles conclude that the income tax should be based on individual taxation. The fact that so many economists still insist that family-unit taxation is to be preferred to individual taxation perhaps reflects how thoroughly men and their concerns continue to dominate the discipline of economics.

In their paper, the authors assert that the fact that measures such as the refundable credits are based on a definition of net family income suggests "a partial recognition of the family as the tax-paying unit."[22] However, in the most important conceptual sense, this is not the case. Provisions such as the child tax benefit and the goods and services tax refundable credit are not part of the tax system; they are part of the transfer system. And while it might create some administrative difficulties, there is absolutely nothing philosophically inconsistent with having an income tax premised on an individual basis and an income transfer system premised on a family basis. Both systems are designed to serve different objectives. The income tax base is an attempt to measure the market income earned or controlled by an individual, while the income transfer base is an attempt to measure an individual's economic well-being.

With respect to the child-care deduction and tax credits for children, again these measures have nothing to do with the tax system, and it is a terrible mistake to analyze them as tax measures and evaluate them in terms of tax justice. One of the most fundamental principles underlying a fair tax system is that business expenses are deductible and personal expenses are not. Personal expenses are expenses that either yield a personal benefit or originate in a personal decision. This latter principle must be accepted in order to make sense out of a whole range of tax rules. In this tax universe, the decision to have children is clearly personal—at least, not many people regard having children as being the result of a business judgment—and therefore all expenses relating to children are personal. To be sure, there are good social and economic reasons why those without children should subsidize those with children and why the tax and expenditure system should result in people paying net taxes when they are not supporting children and receiving net benefits when they are; but those issues have nothing to do with tax justice concerns.

The authors justify a tax deduction for children by noting that the expenses of raising children are "non-discretionary." The concept of non-discretionary expenses also informed the basis of many recommendations of the Carter report.[23] This analysis was one of the weaker aspects of that report and appears to have been used by the Carter commission only in an attempt to buttress its obvious value judgments with a phrase that had an objective ring to it. In fact, in this context, the notion of non-discretionary expenses is almost incoherent. Moreover, as an internal critique of the tax system, all sorts of expenses that are more non-discretionary than those incurred for children, such as the costs of an addiction or the uninsured loss of an asset, are not recognized for tax purposes. It is difficult to know what a tax system would look like that purported to take into account the non-discretionary expenses of individuals, or what its ethical basis would be.

Even if there were some tax basis for recognizing the expenses that individuals bear in respect of children, it would be dwarfed by social

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22 Boadway and Kitchen, supra footnote 1, at 597.

23 Canada, *Report of the Royal Commission on Taxation* (Ottawa: Queen's Printer, 1966).

policy considerations in designing a sensible public policy toward children. In terms of promoting gender and social equality and of ensuring an adequate investment in children, instead of providing cash grants to families with children, more money should be spent on providing public services for children: more early childhood education opportunities, more health and dental care for children, more public recreational facilities, more special educational services for children in need, and lower university tuition, to name just a few. To promote social and gender equality, and social cohesion, the well-being of children ought to be disengaged, to the extent possible, from the well-being of their parents.

The same kind of concerns apply to the child-care expense deduction. The strong social policy case for subsidizing people who incur child-care costs when both parents work outside the home rests upon many considerations, but one of the most compelling is gender equity. Gender equity will be achieved only when men and women alike are equally protected from poverty and exploitation; achieve equality of income, leisure-time, and respect; are able to fully participate in all areas of social and political life; and are able to choose a lifestyle that departs from the current life patterns of others. It will be achieved only when men and women share absolutely equally care giving and paid employment work. If any evidence is needed for this proposition, observe the gender of the individuals on the various panels at this conference. Until there are as many men at home looking after children as there are women, the government must provide generous subsidies for purchased child care in order to achieve gender equity. So long as women continue to be saddled with care-giving work, subsidies for home caregivers will only exacerbate the gender-based division of labour.

Granted that subsidies should be given for child-care expenses of parents working in the paid labour force, the next important question is what form should they take? Should they be delivered on the demand side of the market and given to families in the form of direct grants or tax credits, or should they be delivered on the supply side of the market and given directly to child-care providers? Or, as I would prefer, should child-care services be delivered by the government as a public service through the educational system?

My basic point is that behind all of these so-called family taxation issues lie important value judgments and powerful visions of what constitutes a good society. Those ideologies should not be allowed to be obscured behind esoteric and largely irrelevant talk about tax justice.

CONCLUSION

I have taken just three issues of tax policy, raised or alluded to in the paper, and suggested that conventional thinking about these issues, particularly as reflected in the popular press, is profoundly wrong. But if these arguments are so easily shown to be false, why do they seem to spread so rapidly and are ostensibly held by so many people? The American economist Paul Krugman has suggested that the reason ideas such as supply-side economics have such durability is that they are like an infection.[24] He notes that "[b]iologist Richard Dawkin has argued famously that ideas spread from mind to mind much as viruses spread from host to host. It's an exhilaratingly cynical view, because it suggests that to succeed, an idea need not be true or even useful, so long as it has what it takes to propagate itself." These ideas for tax reform clearly have what it takes to propagate themselves: they primarily benefit rich men.[25]

[24] Paul Krugman, "Supply-Side Virus Strikes Again," August 15, 1996, available on the Internet at http://web.mit.edu/krugman/www/.

[25] Flattening the tax rates leads to a substantial shift in the tax burden from men to women. In 1995, men constituted 83 percent of the tax filers who reported income over $100,000. Revenue Canada, *Tax Statistics on Individuals: 1995 Tax Year* (Ottawa: the department, 1997), Basic Table 6, at 133.