Current Tax Reading

Co-Editors: David Duff, Tim Edgar, Alan Macnaughton, and Amin Mawani*

Kevin Milligan and Mark Stabile, "The Integration of Child Tax Credits and Welfare: Evidence from the Canadian National Child Benefit Program," *Journal of Public Economics* (forthcoming)

This article presents empirical evidence of the effect on social assistance rates of recent reforms to child benefit programs. Since 1998, a portion of the Canada child tax benefit (CCTB) known as the national child benefit (NCB) supplement has been subtracted from the amounts of social assistance (welfare) payments in several provinces. The concept was that the support for children might ultimately come exclusively from the CCTB, and hence welfare recipients would not lose any benefits for their children when they went off welfare and entered the paid labour force. It was believed that without this integration of benefits, the loss of benefits from beginning to work would create a "welfare wall" keeping people on welfare. This benefit reduction has been intensely controversial; the National Council of Welfare and other groups have complained that it increases poverty.

The method of analysis is to use the Survey of Labour and Income Dynamics and predict the labour market outcome for each family as a function of several variables, including a policy variable that is the product of the NCB supplement owed to the family and a dummy variable for the five "clawback" provinces (those that, at the time of the study, reduced welfare by the amount of the NCB supplement payments).

The main result is that between 19 and 27 percent of the decline in the percentage of single mothers receiving welfare assistance can be accounted for by the integration of welfare and the NCB supplement.

A.M.

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Mark Jaccard, Nic Rivers, Christopher Bataille, Rose Murphy, John Nyboer, and Bryn Sadownik, *Burning Our Money To Warm the Planet: Canada's Ineffective Efforts To Reduce Greenhouse Gas Emissions*, C.D. Howe Institute Commentary no. 234 (Toronto: C.D. Howe Institute, May 2006), 31 pages

Despite signing the Kyoto Accord and making repeated commitments to reduce greenhouse gas (GHG) emissions, Canada has not only failed to reduce GHG emissions but has experienced more rapid increases in emissions since 1990 than occurred during the preceding decade. Reviewing Canadian policies to reduce GHG emissions, the authors of this paper argue that Canada's current emphasis on subsidies and voluntary measures is unlikely to yield significant improvements. Instead, the authors conclude, the federal government should seriously consider the alternative of a steadily increasing tax on GHG emissions in the form of a carbon tax. Any bets that the Harper government will follow this advice as it develops its own approach to global warming?

D.D.

Robert G. Valletta, "The Ins and Outs of Poverty in Advanced Economies: Government Policy and Poverty Dynamics in Canada, Germany, Great Britain and the United States" (2006) vol. 52, no. 2 *The Review of Income and Wealth* 261-84

This four-nation comparison of poverty dynamics reaches the troubling conclusion that poverty persistence is relatively high in both Canada and the United States. Government tax-and-transfer policies in Germany and Great Britain seem to be relatively more effective in making poverty a transitory experience.

A.M.

Jack Mintz and Thomas A. Wilson, *Removing the Shackles: Deferring Capital Gains Taxes on Asset Rollovers*, C.D. Howe Institute Backgrounder no. 94 (Toronto: C.D. Howe Institute, April 2006), 9 pages

Late in the 2006 federal election campaign, the Conservative Party promised to introduce a rollover for certain types of capital gains. Few details were provided, and many think this idea was a flash in the pan that will never progress to a definite proposal. Aiming to prevent that from happening, this paper discusses the issue of the "lock-in effect" created by realization-based taxation of capital gains and how it might be reduced through the creation of a "capital gains deferral account." The individual owner would not be taxed on capital gains deposited to the account until withdrawal; however, this deferral would not be available for receipts of dividends, interest, and like payments.

A.M.

Theodore P. Seto and Sande L. Buhai, "Tax and Disability: Ability To Pay and the Taxation of Difference" (2006) vol. 154, no. 5 *University of Pennsylvania Law Review* 1053-1145

In recent years, both Canada and the United States have introduced numerous income tax provisions dealing with or of particular relevance to persons with mental or physical disabilities. Despite this legislative activity, serious academic analyses of disability and the income tax are relatively few.[1] This article provides a much-needed contribution to this area, reviewing the implications for income tax theory and policy of evolving conceptions of disability law and theory.

Part I provides a historical overview of disability law and theory, tracing the replacement of the "affliction paradigm" with a "medical/charity paradigm" in the early 1900s, the replacement of the "medical/charity paradigm" with a "civil rights paradigm" in the second half of the 20th century, and the more recent development of a "human variation" paradigm according to which "society should be structured affirmatively to take differences into account—with the goal of allowing equal participation by all, despite those differences, to the greatest extent possible."[2]

Part II turns to the income tax, surveying traditional accounts of the income tax base and progressive tax rates, and advancing a non-utilitarian account of the "ability to pay" concept defined in terms of the discretionary income available to each tax unit. On this basis, part III reviews US income tax provisions with particular relevance to people with disabilities and makes recommendations for reform.

D.D.

Task Force on Modernizing Income Security for Working Age Adults, *Time for a Fair Deal: Report of the Task Force on Modernizing Income Security for Working Age Adults* (Toronto: Toronto City Summit Alliance and St. Christopher House, May 2006), 67 pages

This report is the final product of a task force on income security formed in the fall of 2004 by the Toronto City Summit Alliance, a broad-based coalition of civic leaders in the Toronto region, and St. Christopher House, a multiservice neighbourhood centre that works with low-income people in Toronto.

The report is highly critical of the current social safety net for working-age adults, reporting among other things that a third of Canada's low-wage workers do not earn sufficient income to meet their costs of living and that changes to the employment insurance (EI) program mean that only 27 percent of unemployed workers

1 See, however, David G. Duff, "Disability and the Income Tax" (2000) vol. 45, no. 4 *McGill Law Journal* 797-889; Lisa Philipps, "Disability, Poverty, and the Income Tax: The Case for Refundable Credits" (2001) vol. 16 *Journal of Law and Social Policy* 77-114; and Michael Smart and Mark Stabile, "Tax Support for the Disabled in Canada: Economic Principles and Options for Reform" (2006) vol. 54, no. 2 *Canadian Tax Journal* 407-25.

2 At 1057.

in Ontario obtain any benefits under the program. Emphasizing that Canada's income security system should be reformed before a major economic downturn occurs, the report recommends "reform of EI to return it to its original purpose as a major support to the unemployed across the country, and a new approach to income supplementation delivered through the federal tax system."[3] With respect to the income tax, it is proposed that the federal government should introduce a new refundable credit consisting of a basic tax credit for all low-income working-age adults and a working-income supplement for low-income wage earners.

D.D.

Dustin Stamper, "Nation's Largest Tax Return Filed Electronically"
(2006) vol. 111, no. 10 *Tax Notes* 1089

In case anyone needs convincing that electronic filing makes sense, this article reports that a 24,000-page corporate income tax return has been filed electronically with the US Internal Revenue Service. The taxpayer was General Electric, which historically files the largest returns.

A.M.

Auditor General of Canada, *Report of the Auditor General of Canada to the House of Commons: 2006 Status Report* (Ottawa: Office of the Auditor General of Canada, May 2006), 265 pages

This report contains an interesting chapter on the collection of tax debts. In 2004-5, the Canada Revenue Agency (CRA) wrote off $2.7 billion of taxes, penalties, and interest as uncollectible, representing 0.8 percent of cash receipts for the year. The tax debt problem for personal income tax is concentrated among people making instalment payments. One of the auditor general's recommendations is that the CRA develop a scoring system for identifying the risk of insolvency so that it can move faster to collect its debts in those cases.

A.M.

Joel Slemrod, "The Role of Misconceptions in Support for Regressive Tax Reform" (2006) vol. 59, no. 1 *National Tax Journal* 57-75

This article provides some surprising data on the extent of taxpayer misinformation. While 51 percent of respondents to a survey of US taxpayers believe that middle-income families currently pay a higher percentage of their income in tax than high-income families do, taxpayers who hold this belief are 24 percent more likely to favour replacing the existing income tax by a flat-rate tax and 17 percent more likely to favour replacing the income tax with a retail sales tax (assuming a tax rate of 17 percent). Although informed observers generally believe that either of these

3 At 12.

changes would raise the proportion of the tax burden borne by middle-income taxpayers, these taxpayers apparently favour them because they think the effect would be in the opposite direction. It appears that taxpayers are forming opinions about tax policy that are against their own interests because of misinformation about the tax system.

A.M.

Robert D. Ebel, Joseph J. Cordes, and Jane G. Gravelle, eds., *The Encyclopedia of Taxation & Tax Policy*, 2d ed. (Washington, DC: Urban Institute Press, 2005), 499 pages

This volume updates and slightly expands the first edition, which appeared in 1999. It contains approximately 250 entries of about two pages each on various issues in US tax policy and tax economics, such as "ability to pay," "basis adjustment," "deferral of tax," "earmarking of taxes," etc. The contributions include references and are generally by recognized experts in the field. It will be quite some time before the Wikipedia Web site catches up to the quality of this collection (if indeed it ever does).

A.M.

Organisation for Economic Co-operation and Development, *Using Third Party Information Reports To Assist Taxpayers Meet Their Return Filing Obligations—Country Experiences with the Use of Pre-Populated Personal Tax Returns* (Paris: OECD, Centre for Tax Policy and Administration, March 2006), 24 pages, available on the Web at http://www.oecd.org/dataoecd/42/14/36280368.pdf

Joseph Bankman, "Simple Filing for Average Citizens: The California Ready Return" (2005) vol. 107, no. 11 *Tax Notes* 1431-34

The Canadian model for tax administration is that taxpayers fill out blank tax returns and send the information to the CRA, and the CRA then compares this information with information it has from third-party reports (such as T4 slips from employers). An alternative approach would be for the CRA to use the third-party reports to produce filled-out tax returns that would be presented to taxpayers for agreement or adjustment. This "pre-populated return" method of tax administration originated in Denmark and is now used with considerable success in six OECD countries. In California, 50,000 taxpayers were invited to participate in a similar "ready return" trial in 2005.

These two publications cover different aspects of the issue. The Bankman article presents the argument in favour of the California experiment, with particular emphasis on the reduction in compliance costs. The California trial seemed to be well received but at the time of writing (June 2006) faces an uncertain future. The OECD study presents a short cost-benefit analysis of the pre-populated return method, but the main contribution is to identify, on the basis of a survey of the countries that use it, seven factors that are believed to be essential to the success of this approach. The following are among the tax changes required to attain these factors: withholdings at source would need to be cumulative over the year, so that the inevitable delays associated with the pre-populated return method would not inconvenience taxpayers waiting for sizable refunds; third-party reporting would need to be extended to some items presently not covered (such as child care and medical expenses) and made fully electronic for others (such as charitable donations); and the list of deductions and credits would need to be pruned substantially. On the other hand, few of the OECD factors are present in California, so one wonders to what extent they are necessary.

One commonly perceived drawback of the pre-populated return method is that if a taxpayer knows what information the tax agency has, in some cases the taxpayer might choose to take a risk and not declare income that is not contained in the pre-populated return. However, all the countries employing this method report that this is not a significant issue.[4]

A.M.

Edward J. McCaffery and Joel Slemrod, eds., *Behavioral Public Finance* (New York: Russell Sage Foundation, 2006), 403 pages, ISBN 0871545977

Much recent work in economics has involved theories that assume taxpayers behave in ways that are not fully "rational." In other words, taxpayers may not always act consistently to carry out a well-defined set of preferences. This behavioural economics literature extends traditional economic thought into the area of psychology and may produce theories that better predict behaviour, although it is much too early to draw conclusions. This book contains a collection of speculative and entertaining essays that attempt to apply this approach to taxation issues such as tax compliance and the effect of taxes on saving.

A.M.

Martin Feldstein, "The Effect of Taxes on Efficiency and Growth" (2006) vol. 111, no. 6 *Tax Notes* 679-84

This is short non-technical survey of the state of knowledge on the effect of taxes on economic efficiency by a leader in the field. The author generally avoids reference to specific studies or estimated values of parameters, making the article quite readable.

A.M.

4 OECD, at 14.

Jason J. Fichtner, "Distribution Tables and Federal Tax Policy: A Scoring Index as a Method for Evaluation" (unpublished PhD thesis, Virginia Polytechnic Institute and State University, 2005), 138 pages, available on the Web at http://scholar.lib.vt.edu/theses/available/etd-11012005-125628/

In the United States, it is common for proposals for tax reform to be accompanied by tables showing the distribution of the benefits and costs by income class. An informed user of these tables needs to be aware of the different ways they can be constructed and how that influences the findings. This thesis reviews these issues and produces a series of 10 questions that are intended to help the user to identify the key assumptions underlying the calculations.[5] Regrettably, in Canada such tables are rarely published; instead, budgets simply present examples of "typical taxpayers," which can be even more readily manipulated to suit the desired message.

A.M.

Marc Frenette, David Green, and Kevin Milligan, *Revisiting Recent Trends in Canadian After-Tax Income Inequality Using Census Data*, Analytical Studies Branch Research Paper Series, Family and Labour Studies Division (Ottawa: Statistics Canada, 2006), 28 pages

This new study of income inequality finds that while the inequality of pre-tax incomes increased at a relatively constant rate in the 1980s and 1990s, the inequality of disposable incomes increased sharply in the 1990s. Possibly this suggests that the effectiveness of redistribution through the tax system decreased in the 1990s. However, the major contribution of the study is methodological: it develops a way of directly imputing tax liabilities onto census data instead of employing the more conventional tax calculation approach. Since this approach could be used for other surveys lacking tax variables, the rationale and method are described below.

The paper begins by explaining the failings of non-census data for income inequality studies. Although tax return data provide the best information on incomes, many important socioeconomic variables are missing (for example, education). The alternative used by many researchers has been Statistics Canada's Survey of Labour and Income Dynamics (SLID), the successor to the Survey of Consumer Finances (SCF). However, the sample size is relatively small (30,000-35,000); and more importantly, 20 percent of the people invited to participate in the SLID chose not to respond. This non-response rate would be acceptable if there were no pattern to the failure to respond across the survey group. However, in a 2004 study, Frenette et al. show that people with the highest and lowest incomes are particularly likely not to respond to this survey.[6] For studies of income inequality, this is a crucial failing.

5 At 59.

6 Marc Frenette, David Green, and Garnet Picot, *Rising Income Inequality in the 1990s: An Exploration of Three Data Sources*, Analytical Studies Branch Research Paper Series, Family and Labour Studies Division (Ottawa: Statistics Canada, 2004).

The authors turned to census data because of the large sample size (20 percent of households receive the long form, which contains the income questions) and the much-reduced non-response problem (since participation is mandatory). However, in order to use these data, they had to deal with the fact that the census does not collect tax information and hence provides no data on after-tax incomes.

The authors' first approach to this problem was the usual one—to attempt to calculate tax payable for each respondent from the income amounts, family relationships, and other census variables. However, the census does not collect information relevant to important tax deductions and credits, such as charitable donations and registered retirement savings plan contributions. Since these are quite common for middle- and upper-income families, the authors found that the tax calculation approach overstated tax payable in the upper portion of the income distribution by a wide margin.

Since the authors had access to tax data, they were able to use an alternative "reduced form" approach. First, they developed regression equations that predicted federal and provincial tax liability from various independent variables that also appeared on the census form (such as income, family structure, age, and province of residence); then they used the regression coefficients to impute tax liability onto the census data. The authors believe that this approach fits the data quite well, as measured by the closeness of the match to the percentiles of the distribution of after-tax income.

A.M.

Joel Slemrod, "Taxation and Big Brother: Information, Personalisation and Privacy in 21st Century Tax Policy" (2006) vol. 27, no. 1 *Fiscal Studies* 1-15

The subject of this article is the effect of information technology on the tax system. The growing use of computers in tax compliance[7] has reduced compliance costs and made it increasingly possible for the tax system to respond to an individual's specific circumstances (that is, to become more personalized). Although much of this personalized tax information is used to provide a greater range of deductions and credits, some may object to the government's increasing control of the economy through these tax levers. While privacy concerns might be invoked as grounds for preventing the state from obtaining too much information about taxpayers, Slemrod doubts that this would work. For example, it might be thought that citizens could guard against government intrusion into their lives by insisting that tax systems be business-based so that personal tax returns would not be required. However, personal income tax systems for employees can be run totally through employer withholding, as in the case of the United Kingdom. Even sales taxes are not immune from personalization;

7 For example, it is estimated that 85 percent of US tax returns were prepared on a computer in 2003, compared with 13 percent in 1987 (Slemrod, at 11).

Slemrod cites the concept of a "smart card" required to be shown for purchases, which could store information about the purchaser (perhaps income or charitable contributions) that would affect the consumption tax rate applied.

A.M.

Jim Armstrong and Jack Selody, "Strengthening Defined-Benefit Pension Plans" [December 2005] *Financial System Review* 29-36

This article is a nice summary of public policy issues regarding pension plans, but it is especially notable for its sponsor, the Bank of Canada. Much of the content could be taken as implied criticism of government policy. In particular, it is suggested that there is a need for tax reforms allowing pension plan surpluses to be higher in order to protect against subsequent downturns. The ownership of pension plan surpluses is also a problem, owing to recent court decisions.

The source of the concern begins with a survey finding that the proportion of employers that provide a defined benefit pension plan for new employees has fallen from 49 percent in 2000 to an estimated 39 percent in 2006. The authors suggest that the trend away from defined benefit plans to defined contribution plans could impair the efficiency of the financial system. The reasoning is that investment through defined benefit plans is generally directed by the sponsors of these plans, characterized as "active market investors with a long-term perspective," while investment through defined contribution plans is directed by employees, described as "risk-averse savers [who] are likely to pursue less-efficient allocations of capital."[8]

A.M.

Rebecca M. Kysar, "The Sun Also Rises: The Political Economy of Sunset Provisions in the Tax Code" (2006) vol. 40, no. 2 *Georgia Law Review* 335-406

Many Canadians have been bewildered by recent tax developments in the United States in which major tax changes, such as abolition of the estate tax, are legislated with an explicit provision that the law will revert to its prior form after a specified date. Such "sunset provisions" were once thought to be good government practice, ensuring that the wisdom of a particular tax change is reviewed after a certain period of time. This comprehensive survey of the issue shows that the problems with sunset provisions may be greater than the benefits.

In Canada, experience with the temporary partial exemption from capital gains tax for donated securities shows that the disadvantage of increased uncertainty for taxpayers is not necessarily offset by any advantage to the government arising from a sunset clause providing for easy and automatic cancellation of a tax measure. Cancelling tax measures that benefit taxpayers is never easy.

A.M.

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8 At 29.

Joann Martens-Weiner, *Company Tax Reform in the European Union*
(New York: Springer, 2006), 122 pages, ISBN 0387294244

This is an expanded version of a paper previously reviewed in this feature.[9] This version provides much more background on the EU situation and is therefore more accessible to a Canadian reader. A chapter on tax administration, compliance, and tax planning has also been added.

A.M.

Ted Cook, *Canadian Tax Research: A Practical Guide*, 4th ed.
(Toronto: Carswell, 2005), 255 pages, ISBN 0459279424

This guide to Canadian tax research, first published in 1989, was originally written by David Sherman. Sherman also prepared the 1994 and 1997 editions. The fourth edition marks a departure, and not just in a change of authorship. As Ted Cook explains in the preface, since 1997, a "plethora of amendments" to the Income Tax Act have rendered it "even more complex and impenetrable"; the goods and services tax (GST) "has continued to mature"; Revenue Canada has been transformed, first into the Canada Customs and Revenue Agency in 1999 and then into the Canada Revenue Agency in 2003; and the availability of Internet and other electronic information has continued to grow.[10]

This updated edition is intended to take these changes into account, as the author guides the reader through the steps that he generally follows when addressing "a live tax problem." For this purpose, Cook has substantially restructured the book: an introductory chapter on tax research is followed by chapters on the Income Tax Act, other statutes, case law, CRA publications, other secondary sources, the GST and other federal and provincial taxes, and finally a chapter "putting it all together" in the context of a sample tax problem. An appendix explains various sources for tax research.

Like earlier editions, the book will probably be most useful to students engaged in tax law research and tax practitioners in the first few years of practice. However, more established practitioners may also find it useful to skim through the chapters to update their research skills.

D.D.

9 Joann Weiner, *Formulary Apportionment and Group Taxation in the European Union: Insights from the United States and Canada*, Directorate-General for Taxation and Customs Union Working Paper no. 8/2005 (Luxembourg: Office for Official Publications of the European Communities, 2005), reviewed in this feature (2006) vol. 54, no. 1 *Canadian Tax Journal* 345-58, at 356.

10 At vii.

"Taxation, Economic Prosperity, and Distributive Justice"
(2006) vol. 23, no. 2 *Social Philosophy and Policy* 1-286

This issue of the journal *Social Philosophy and Policy* features 12 articles on various aspects of tax law and policy, written by economists, philosophers, legal scholars, and one tax historian. Since the articles were originally prepared for a conference co-sponsored by the Liberty Fund,[11] it is not surprising that several of them display a decidedly libertarian orientation. Others, however, do not, and the issue is worth a look for anyone interested in interdisciplinary perspectives on tax law and policy.

The first article, "Social Philosophy and Tax Regimes in the United States, 1763 to the Present," is written by US tax historian W. Elliot Brownlee, who has also authored several books in his field, including a comprehensive history of federal taxation in the United States.[12] Emphasizing war-related crises as key drivers of US tax reforms, Brownlee divides US tax history into five distinct regimes corresponding to periods in which the federal tax system was dominated by specific tax bases, rate structures, administrative arrangements, and social purposes: (1) the "founding regime" of moderate customs duties and excises to finance domestic economic development; (2) the civil war regime of high tariffs and excises on alcohol and tobacco to encourage domestic industry; (3) the wartime Wilsonian regime of income and excess profits taxes, which represented the culmination of progressive opposition to monopoly power and the regressive civil war regime; (4) the New Deal regime of mass-based income taxation and payroll taxes to finance the new social security system; and (5) a postwar regime emphasizing progressive income taxation with a consistently broadened base and gradually reduced top marginal rates. Noting more recent proposals for various forms of consumption taxation, Brownlee speculates that a movement in this direction would signal "a return to the path the nation had taken before the disruptive series of crises that began with the Civil War and ended with World War II."[13]

Brownlee's survey of US tax history is followed by three articles by economists on the economic and distributive consequences of different tax policies. In "The Impact of Tax Policy on Economic Growth, Income Distribution, and Allocation of Taxes," James D. Gwartney and Robert A. Lawson rely on cross-country data on changes in marginal tax rates since 1980 to conclude that high marginal tax rates, particularly rates over 50 percent, diminish long-term economic growth; that decreases in marginal rates increase the income share of high income earners; and (counterintuitively)

11 According to its Web site, the Liberty Fund, Inc. is "a private, educational foundation established to encourage the study of the ideal of a society of free and responsible individuals." Sponsored conferences and publications "focus on the place individual liberty has in an intellectual heritage evident from ancient times and continuing through our own times" and "are intended to enrich understanding and appreciation of the complex nature of a society of free and responsible individuals and to contribute to its preservation." See http://www.libertyfund.org/about.htm.

12 W. Elliot Brownlee, *Federal Taxation in America: A Short History*, new ed. (New York: Cambridge University Press, 2004).

13 Brownlee, at 27.

that across-the-board tax decreases increase the share of taxes paid by high income earners "because of the stronger incentive effects accompanying rate cuts in the upper income and highest tax brackets."[14] In "Taxes, Growth, Equity, and Welfare," Richard Vedder presents evidence indicating that high taxes can have adverse effects on income growth and argues, somewhat less convincingly, that tax burdens are inversely correlated with economic welfare (or happiness) and that "the growth-equity trade-off is more illusory than real."[15] Joel Slemrod's article, "The Consequences of Taxation," adopts a different perspective on the efficiency-equity tradeoff, surveying literature on the elasticity or responsiveness of taxable income to changes in tax rates, and emphasizing improvements in the technology of tax collection as a way to reduce this elasticity and lessen the traditional conflict between efficiency and tax equity.

After hearing from the economists, the issue presents three contributions by legal and political philosophers. In the first of these articles, "Justice: A Conservative View," John Kekes presents an avowedly conservative and anti-egalitarian conception of distributive justice, emphasizing the connection between justice and individual desert to conclude that "[redistributive taxation] is unjust because it deprives people of what they deserve to have in order to give it to others without inquiring whether they deserve it."[16] In "Non-Absolute Rights and Libertarian Taxation," Eric Mack questions libertarian theories about the absolute character of individual rights and concedes that the non-absoluteness of rights makes redistributive taxation easier to justify, but argues nonetheless that arguments against redistributive taxation remain strong. In "Taxation, the Private Law, and Distributive Justice," Kevin A. Kordana and David H. Tabachnick review different conceptions of entitlement and distributive justice, concluding that only libertarian theories can account for a conception of private law that is "free" of the distributive considerations and equity-oriented values that characterize public law.

The next two articles return to more traditional subjects in tax law and policy, with articles by US tax scholars Ed McCaffery and Dan Shaviro. In "The Uneasy Case for Capital Taxation," McCaffery repeats the argument he has made in other contexts against income and wealth transfer taxation and in favour of a "consistent progressive postpaid consumption tax" as a replacement for the current income tax.[17] In "Households and the Fiscal System," Shaviro employs a utilitarian normative framework to examine the appropriate status of households within the tax and transfer system, favouring "greater consistency in the rules used by different parts of the fiscal system to identify couples,"[18] the mitigation of US tax rules that favour

14 Gwartney and Lawson, at 51.

15 Vedder, at 53.

16 Kekes, at 104.

17 See, for example, Edward J. McCaffery, "A New Understanding of Tax" (2005) vol. 103, no. 5 *Michigan Law Review* 807-938.

18 Shaviro, at 208.

one-earner couples and discourage work by so-called secondary earners, and broader tax recognition for the costs of raising children.

The last three articles address broader issues of public finance and political theory. In "Taxation, the State, and the Community," Jeffrey Schoenblum criticizes traditional public finance for its undertheorized and benign conception of the state. In "Choice, Catallaxy, and Just Taxation: Contrasting Architectonics for Fiscal Theorizing," Richard E. Wagner also challenges the concept of the state assumed by traditional public finance, arguing that "government itself is a polycentric process embedded within an emergent network of human relationships, and is most certainly not some conductor that is orchestrating the activities of its citizens."[19] Finally, in "Government as Investor: Tax Policy and the State," Jonathan R. Macey considers the implications of a constitutional perspective in which government, in its role as tax collector, is viewed as an investor in all individuals and enterprises from which it collects tax revenues.

D.D.

Steven A. Bank, "A Capital Lock-In Theory of the Corporate Income Tax"
(2006) vol. 94, no. 4 *Georgetown Law Journal* 889-947

For several years now, tax scholars have engaged in a spirited debate about the purpose and merits of the corporate income tax.[20] Recently, Reuven Avi-Yonah has argued that the tax reflects a deliberate effort to regulate corporate managers and to limit their control over corporate wealth.[21] In this meticulously researched and well-argued paper, Steven Bank takes issue with this and other explanations for the corporate income tax, arguing (persuasively to this reader) that it represents a pragmatic tradeoff between the legal ability of corporations to "lock in" capital absent the declaration of dividends by the corporation's board of directors, and concerns about the ability of shareholders to defer tax on undistributed income.

The article is divided into four substantive parts. Part I surveys traditional explanations for the corporate income tax based on the entity theory of corporations, the administrative challenges to passthrough taxation, and more recent regulatory arguments. Part II identifies the corporation's ability to lock in capital as the crucial feature of the modern corporation, distinguishing this organizational form from general

19 Wagner, at 254.

20 See, for example, Herwig J. Schlunk, "I Come Not To Praise the Corporate Income Tax, But To Save It" (2003) vol. 56, no. 3 *Tax Law Review* 329-462; Kim Brooks, "Learning To Live with an Imperfect Tax: A Defence of the Corporate Tax" (2003) vol. 36, no. 3 *UBC Law Review* 621-72, reviewed in this feature (2003) vol. 51, no. 5 *Canadian Tax Journal* 2051-62, at 2052-54; and Reuven S. Avi-Yonah, "Corporations, Society, and the State: A Defense of the Corporate Tax" (2004) vol. 90, no. 5 *Virginia Law Review* 1193-1255, reviewed in this feature (2005) vol. 53, no. 2 *Canadian Tax Journal* 589-604, at 593-94.

21 Avi-Yonah, supra note 20.

partnerships, limited partnerships, and limited liability companies. Part III examines the impact of capital lock-in on the development of the corporate income tax, tracing the origins of the tax in the United States to the emergence of the modern corporation and increased financing by retained earnings in the early 20th century. Part IV revisits the traditional explanations for the corporate income tax in light of the concept of capital lock-in, suggesting that the theory helps to explain why the tax is essentially elective, applying mostly to large public companies and not to partnerships and S corporations, which are taxed on a passthrough basis. A short conclusion considers the normative implications of what is otherwise a positive account of the corporate income tax, suggesting that fundamental differences between owning an interest in a corporation and an interest in a partnership related to the ability of the former to lock in capital might justify the different tax treatment of these organizational forms.

D.D.