Comparative Tax Law and Culture Conference

The Taxation of Wealth Transfers in Comparative Perspective

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Among the many aspects of country's domestic tax system, the taxation of wealth transfers ranks as one of the most contentious. Enacted in many developed countries in the late nineteenth and early twentieth centuries, these taxes have come under sharp criticism in recent years, and have been repealed in several developed countries, including Canada, Australia, New Zealand, Israel and Austria. In the United States of America, however, the election of Barak Obama appears to have stalled Republican-led efforts to repeal the federal estate tax. In other countries, moreover, the taxation of wealth transfers appears to be more resilient, at least measured by the share of GDP and total tax revenue raised by these taxes.

The purpose of this paper is to engage in a comparative inquiry into the resilience of wealth transfer taxes by looking at the relationship between these taxes and the social and cultural environments in which they have been enacted and repealed. A key aspect of this inquiry involves the relationship between the design of these taxes (e.g. donor-based versus recipient-based) and legal and cultural conceptions of the family relationships. To what extent to these conceptions of the family shape the design and success or failure of different wealth transfer taxes? To what extent to wealth transfer taxes shape legal and cultural conceptions of the family?

The Politics of Tax Law Reform: A comparative analysis of the adoption of value added taxes in Australia, Canada and the United States

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Notwithstanding a wide divergence in government and institutional structures, electoral systems, and social and political values, there has often been a convergence of tax systems in western democracies. A recent high profile instance of this trend towards fiscal policy convergence has been the rapid rise of the value added tax (VAT). From relatively inauspicious beginnings in the early-mid twentieth century, the VAT has been adopted by more than 130 countries and accounts for approximately 20 per cent of worldwide tax revenue (Keen & Lockwood; 2007).

The paper adopts a comparative case study approach. It examines the reception of the VAT in three jurisdictions - the United States, Canada and Australia - in light of the

global popularity of the VAT in order to provide a systematic assessment and evaluation of the political factors that impact on tax reform and shape legislative outcomes.

Tax Ratios, Tax Mixes, and Tax Reforms: Convergence and Persistence

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Countries vary dramatically in the amount of taxes they collect, the relative use of various taxes (their tax mix), and the broad design of their major taxes. Over the past 25 years, against the backdrop of increased globalization ("the intensification of economic, political, social and cultural relations across borders"), many countries have been undertaking major changes in all three of these broad aspects of their tax systems.

This paper will first try to explain the differences between countries with respect to these broad aspects of their tax systems as they stood about 25 years ago. It will then seek to explain the trends over the past 25 years. For example, with respect to the former issue the paper will examine whether such variables as political institutions, legal cultures, social structure, the relative power of particular group interests, prevailing opinions about tax equity, or simply historically contingent facts explain the differences. With respect to the latter issue it will examine whether there has been convergence of general tax policies or whether differences persist. To the extent there has been some convergence, it will explore explanations for this convergence: a response to what international organizations and other opinion-shapers consider to be the best international practices; the effect of regional economic policy coordination; competition to attract investment, to reduce the cost of doing business, and to otherwise attract mobile factors of production; learning from the policy experiments of other countries; yardstick competition (or tax mimicking), in which governments adopt tax changes to signal to their citizens that they are as competent as their apparently more successful neighbors; or other variables.

The Social Norm of Tipping, its Correlation with Inequality and with Differences in Tax Treatment across Countries

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Whereas in many countries, most notably in Europe where the practice originated, a service charge is now the norm, tipping has become quintessentially American. Consumers of yesterday left no more than 10 percent on fountain counters. Beginning in the late 1970s, the going rate rose to 15 percent and it is steadily edging toward 20 percent.

People who tip may be perceived as imposing a negative externality on others who tip less generously or do not tip at all. I suggest that as inequality grew in the United States, affluent people increased the amount they tipped in order to improve their relative positioning; that is, their status. This puts pressure on those who are somewhat less affluent to increase the amount of tip that they left, beginning a cascade effect to the detriment of all. Evidence supports the view that expenditure cascades in housing and other areas are at least in part a consequence of increased income inequality. Tipping seems to me to be part of that trend. One of the goals of the tax system is to mitigate negative externalities, and indeed there are significant differences across countries (and cultures) in the ways they treat tip income for tax purposes.

In this paper, I explore the different tip practices comparing the US with some European, Asian and South American countries assuming they reflect differences in underlying social norms; examine their correlation with income inequality; and compare the tax treatment and the rationale for it wherever I can find it, in an effort to support (or refute) the above theory.

Ordinary People Necessary Choices—a Comparative Study

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This article will focus on the concept of deductible expenses. Tax law in most Anglo-American countries allows taxpayers to deduct business-related expenses, but not personal expenses. Distinguishing between disallowed personal expenses and deductible business-related expenses is traditionally considered a matter of technical classification. By contrast, I argue that the deductibility of expenses is closely related to social, cultural and political features of different societies. If this hypothesis proves right, the specific elements that make up this distinction are likely to vary across time and place.

In order to demonstrate this, The comparative part of this project will focus on three countries – Canada, the US, and Israel – in order to check to what extent do these three countries differ in the way they interpret expenses to be "ordinary and necessary" for the production of income in one specific context—that of childcare deductions. All three countries belong to the British tax family; hence follows a similar general pattern of determining taxable income. Yet, each of these legal systems developed independently for decades. If tax doctrine is indeed culturally sensitive, one would expect to find differences in the details of such countries' tax doctrine.

Two of the countries—Canada and Israel – have given the deductibility of childcare expenses extensive consideration in recent years. I will thus discuss the Symes case in

Canada and the Perry case pending at the Israeli Supreme Court. I will also compare these cases to the prevailing law and scholarship in the US.

Wedded to the Joint Return: Culture and the Persistence of the Marital Unit in the American Income Tax

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The United States, unlike most developed countries, continues to use the marital couple as the taxable unit for its income tax. This continued use of the marital unit—like its original establishment—rests on cultural preferences. Historical events—such as the 1948 enactment of income splitting—help shape the preference for retaining the marital unit. However, history alone cannot account for America's enduring commitment to it, as indicated by the fact that other countries with a history of using the marital unit have abandoned it.

This Essay suggests that the roles of family, religion and taxation in America are essential to America's retention of the marital unit. Part I examines the distinctive contribution family and marriage—especially the traditional breadwinner marriage—make to the political life of the country. Part II explores the similar role of religion. Part III describes some of the congressional activity during the past two decades to support marriage. Although these have not been the most effective or efficient means of helping married couples, Part IV concludes that Congress' tax actions nevertheless serve an important expressive purpose. Tax has been the arena for many political issues since the founding of the nation. Consequently, congressional actions and rhetoric reinforce the marital unit/joint return and reaffirm—even if primarily symbolically—a national commitment to marriage as instrumental to American democracy and tacitly acknowledge a similar importance of religion (which supports marriage).

The Public Control of Corporate Power: Revisiting the Origins of the 1909 U.S. Corporate Tax

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At the turn of the twentieth century, state and federal government actors in the United States attempted to use their taxing powers to control the bourgeoning power of corporate capital. Using tax policy to contain corporate power soon became a critical intermediary step in the broader historical process of amending national and state constitutions. Indeed, it is no coincidence that the U.S. Congress introduced the Sixteen Amendment, nullifying Pollock, at the same time that it enacted a new levy on corporations. This paper analyzes how political reformers were able to capitalize on the social anxieties surrounding corporate capitalism to create not only the constitutional amendment, but

also the first set of legislative enactments that would soon become the legal foundations for the emerging modern fiscal polity.

Although scholars have explored the origins of the 1909 U.S. corporate tax, most studies have focused mainly on the domestic political history of the levy. This paper seeks to broaden the historical analysis both chronologically and comparatively. It examines how other Western industrialized nation-states approached the taxation of corporations in the late nineteenth and early twentieth centuries. The aim of the paper is to develop a better understanding how U.S. corporate tax policy may have influenced, and been influenced by, similar political and economic developments in European nations.

Beggars and Bordellos on the Borders of Empire: Transplanting Colonial Income Tax Law to Mandatory Palestine

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Tax law is a "technical" area of law which does not seem to be at first glace to be culturally-specific. It is thus seen as easily transferable between different societies and culture. On the other hand tax law is often highly contested politically, and it often reflects deep social and cultural structures. So is tax law universal or particular? Is it easily transferable between different societies and cultures or not?

This paper seeks to answer this question by analyzing one specific example – the history of income tax legislation in Mandatory Palestine. This history reveals the dual nature of income taxation. On the one hand, the Income Tax Ordinance which was enacted by the British in Palestine in 1941 was based on a "one-size fits all" colonial model, and the lawyers involved in its enactment, in Palestine and the Colonial Office in London, made relatively little effort to adjust it to local conditions. One the other hand, other actors – politicians involved the decision to impose income taxation in Palestine in the 1930s and administrators involved in the application of the Ordinance after it was enacted in the 1940s – were very aware of the need to adapt the enactment and the specific economic, political, social and cultural conditions of Palestine.

Thus, while on a formal level the Ordinance seemed to represent a process in which the law of Palestine converged with the law of other British colonies and indeed with English income tax law, once we expand our framework and examine not just law in the books but also law in action, and actors such as politicians and administrators, we discover that particular local conditions were an important factor in the enactment and application of the Palestine Income Tax Ordinance.

From Mumbai to Shanghai, With a Side Trip to Hong Kong: The Future of Progressive Taxation in an Asian-Led World

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Progressive income taxation--and western tax norms generally--have historically been extended to nonwestern nations when they reached an appropriate stage of economic development. Because of their size, self-confidence, and important cultural differences, China and India present a challenge to this time-honored process. This article will consider the issue above, beginning with a general survey of progressive taxation in developing countries and proceeding to more special issues affecting large Asian countries. These include, for China, an emphasis on collective rather than individual concepts of justice, a preference for administrative rather than legislative (or judicial) settlement of disputes, and the amibiguous legacy of Marxism; and, for India, the effects of the Hindu and Ghandian traditions as well as a loose federal system and relative lack of administrative resources. The article will conclude by considering the impact of these traditions and the broader question of whether the progressive income tax is an inevitable part of the "tax life cycle" or whether it varies across societies and cultures.

Law as Culture: A Cross-cultural Inquiry of the General Anti-Avoidance Rule in China and Canada

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The main goal of this paper is to explore the idea of “law as culture”. More specifically, it examines the extent to which Western tax norms acquire their “Chinese” meanings. Through a case study of the general anti-avoidance rule in China and Canada, the paper demonstrates that the apparent commonality in legislative language can have different interpretations and effect in the Chinese and Canadian legal culture. However, the impact of culture differs with respect to different types of tax rules. For purposes of discussion, tax rules are classified as “technical” and “anti-avoidance” rules. While the application of the former is sensitive to cultural contexts, the later, such as the GAAR, can have opposite effect in China and Canada. The central argument of the paper is that the true meaning of some cross-culturally convergent rules can only be found in their local cultural contexts.

The research for the paper draws from general comparative law scholarship and anti-avoidance literature as well as Canadian and Chinese tax literature. The analysis is mostly

normative, although reference is made to some secondary empirical research on tax culture in China.

Taxation in a "Socialist Market Economy": How Globalisation and Modernisation are Causing a Fundamental Shift in the Fiscal Relationship between China's Central Government and the Provincial Governments.

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While the shift from emperor feudalism to political fragmentation and warlordism through to rigid socialism brought significant political change to China, it did not fundamentally alter the relative powers of the provincial governments relative to the central government, in particular the significant role of local governments in providing public services and raising revenues to carry out local government functions. The longstanding balance between the central government and provincial governments may be in the process of changing, however, as the dual pressures of globalisation and modernisation force changes to the structure and administration of tax laws and to the division of revenues. If provincial governments are to continue to play important roles, a new system of fiscal federalism may be needed.

Applying Legal Theory to Comparative Taxation: The Evolutionary Structure of Tax Systems

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Comparative tax research primarily looks at legal transplants and domestic tax reforms which are viewed as the result of circulation of models among countries and thus amounts to an evolutionary approach which has very solid underpinnings in legal theory. The paper claims that legal theory is needed to pursue effective comparative research and provides a model of tax law which can be applied to all tax systems and which accounts for their evolutionary structure. The paper adopts analytical legal philosophy as the kind of theory of law which specifically serves the purpose of comparative tax analysis; it also evidences that comparative taxation is a type of analytical theory of law insofar as it provides an explicative framework for comparing local solutions which would be otherwise not comparable.

The paper looks both at the structure as well as the evolution of tax systems using tenets of the network theory to provide a general model of tax law and shows how this general

model can be used to carry out comparative analysis of any tax system by suggesting applications and providing examples.

The paper separately discusses the structure and the evolution of tax systems. The structure of tax law is defined by hierarchies of tax rules (chains of validity) through the adoption of a widely accepted model of the tax system based on the distinction between by primary and secondary tax rules, but which also encompasses general as well as singular tax rules. The evolution of tax law is defined by looking at the diachronic change of general and singular rules, as well as at the sinchronic coexistence of different sets of singular rules.

The paper goes on to show that comparative taxation must address the evolutionary structure of the tax systems which is the result of diachronic and synchronic change of both general and singular rules at the level of each country. The paper further discusses these aspects of comparative evolutionary analysis by defining legal adaptation with reference to the design and the fitness of legal structures and briefly discusses the circulation of tax models.