

# Tax Policy & Reform: Rejecting “Tax Utopianism” in Favor of “Tax Diversification”

Perspectives from the Citizenry, the Business Sector,  
Private Practice, Academia, and Government

**Tax Reform: Perspectives From Across the Nation**

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# Why Do We Have Taxes

- To raise revenue and pay for a “civilized society”<sup>1</sup>
  - › But what is the proper scale and scope of government?<sup>2</sup>
    - Roads, bridges, reservoirs, defense, police, fire
    - Health security? Education? Retirement security?
    - Redistribution?
  - › Efficiency costs? Distributional goals? (See below)
- To discourage certain behaviors and activities?<sup>3</sup>
- What would the IMF recommend for USA?<sup>4</sup>
  - › How did we come to rely so much on income taxes?<sup>5</sup>
  - › Government sector (i.e., taxes and spending) as a percentage of GDP<sup>6</sup>
- Perhaps the only certainties are death and taxes<sup>7</sup>

**Author’s Thesis: By rejecting tax utopianism, and instead accepting tax diversification, we can spend as much or more (and obtain the “benefits” of that spending), but tax more widely and less deeply (and thus reduce the “costs” of taxation).**

<sup>1</sup> *Compania Gen. de Tabacos de Filipinas v. Collector of Internal Revenue*, 275 U.S. 87, 100 (1927) (Holmes, J., dissenting) (“Taxes are what we pay for a civilized society....”). See also Nicholas Kristof, “Our Fantasy Nation?” *THE NEW YORK TIMES* (June 4, 2011), available at <http://www.nytimes.com/2011/06/05/opinion/05kristof.html>.

<sup>2</sup> “It’s a good thing we don’t get all the government we pay for.” – Will Rogers.

<sup>3</sup> *McCulloch v. Maryland*, 17 U.S. 316, 431 (1819) (“[T]he power to tax involves the power to destroy...”), available at <https://www.law.cornell.edu/supremecourt/text/17/316>.

<sup>4</sup> International Monetary Fund, *2016 Article IV Consultation with the United States of America: Concluding Statement of the IMF Mission* (June 22, 2016), available at <https://www.imf.org/en/News/Articles/2015/09/28/04/52/mcs062216>.

<sup>5</sup> “Tax History, the Definition of Income Taxes, a Taxucation,” efile.com, <https://www.efile.com/tax-history-and-the-tax-code/> (accessed July 23, 2017); Tax Foundation, *Income Tax Illustrated: A Visual Guide to Income in America and How it is Taxed 2* (2015), available at <https://taxfoundation.org/income-taxes-illustrated/>.

<sup>6</sup> Organisation for Economic Co-operation and Development, “General Government Spending,” <https://data.oecd.org/gga/general-government-spending.htm> (accessed August 2, 2017); Tax Policy Center, “What are the sources of revenue for the federal government,” *Tax Policy Center Briefing Book* (2016), available at <http://www.taxpolicycenter.org/briefing-book/what-are-sources-revenue-federal-government>; Tax Policy Center, “How does the federal government spend its money?” *Tax Policy Center Briefing Book* (2016), available at <http://www.taxpolicycenter.org/briefing-book/how-does-federal-government-spend-its-money>.

<sup>7</sup> “Our new Constitution is now established, and has an appearance that promises permanency; but in this world nothing can be said to be certain, except death and taxes,” in Letter from Benjamin Franklin to Jean-Baptiste Leroy (November 13, 1789); Gail Sibley, “The Taxman Cometh . . . The Tax Collector as Seen in Art,” *GAIL SIBLEY BLOG* (April 30, 2013), <http://www.gailsibley.com/2013/04/30/the-taxman-cometh-the-tax-collector-as-seen-in-art/>.

# Examples of Tax Utopianism

- Florida Constitution precludes a personal income tax <sup>8</sup>
- Obama's ACA adds investment taxes to payroll taxes, to arrive at more income taxes <sup>9</sup>
- Republican "Blueprint" completely replaces corporate income tax with a cash flow tax <sup>10</sup>
- Democratic opposition to "regressive" taxes narrows choices to income and wealth taxation
- Inertia: easier to keep/raise status quo taxes, rather than try new ones

**Conclusion: Perhaps nobody argues for tax utopianism per se, but people default to it on account of various factors. To overcome tax utopianism, the benefits and virtues of tax diversification need to be better articulated and understood.**

<sup>8</sup> FLA. CONST. OF 1968, art. VII, § 5(a) (1971) ("No tax upon estates or inheritances or upon the income of natural persons who are residents or citizens of the state shall be levied by the state, or under its authority, in excess of the aggregate of amounts which may be allowed to be credited upon or deducted from any similar tax levied by the United States or any state."), available at <http://www.leg.state.fl.us/statutes/index.cfm?submenu=3#A7S05>.

<sup>9</sup> U.S. Department of the Treasury, Office of Tax Analysis, *Gaps between the Net Investment Income Tax Base and the Employment Tax Base* (April 2016), available at <https://www.treasury.gov/resource-center/tax-policy/tax-analysis/Documents/NIIT-SECA-Coverage.pdf>.

<sup>10</sup> *A Better Way: Our Vision for a Confident America—Tax 27* (June 24, 2016), available at <https://abetterway.speaker.gov/assets/pdf/ABetterWay-Tax-PolicyPaper.pdf>; Kyle Pomerleau and Stephen J. Entin, "The House GOP's Destination-Based Cash Flow Tax, Explained," TAX FOUNDATION (June 30, 2016), <https://taxfoundation.org/house-gop-s-destination-based-cash-flow-tax-explained/>.

# How Should Taxes be Analyzed?

**Taxes are often analyzed separately from spending. This is a mistake, for many reasons:**

- Taxation levels and spending levels must move in tandem, especially over time <sup>11</sup>
- Taxes and spending are entwined in “discrimination” <sup>12</sup> and “subsidy/sparing” analyses <sup>13</sup>
- Regressive, flat, and progressive taxation
  - › Can these terms have meaning without viewing taxation and spending together?
  - › Tax expenditures are spending through the Tax Code <sup>14</sup>
    - Home mortgage interest deduction
    - Solar and wind incentives
    - Education incentives
  - › Spending raisers are taxes through diminished entitlements
    - Less social security benefits for wealthy
    - Less scholarships for wealthy
    - Less flood insurance for wealthy
  - › How can we define a normative baseline for taxation or for spending, or is the concept inherently illusory? <sup>15</sup>
  - › Viewing taxation and spending together, government is very progressive
- The social “benefits” of spending must be weighed against the “costs” of taxation

**Conclusion: We should not worry about whether a tax is regressive or progressive, because spending is overwhelmingly progressive.**

<sup>11</sup> “To spend is to tax.” – Milton Friedman. See, e.g., “Milton Friedman – Money and Inflation (Q&A),” YOUTUBE (April 27, 2012), <https://youtu.be/8hlpDxdbj5w?t=768>; Bill White, “Let’s Pay for the Government We Get,” WASHINGTON MONTHLY (November/December 2014), available at <http://washingtonmonthly.com/magazine/novdec-2014/lets-pay-for-the-government-we-get/>.

<sup>12</sup> Walter Hellerstein, *Is Use of Tax Proceeds Relevant to Whether a Tax Discriminates?*, 85 STATE TAX NOTES 561 (Aug. 7, 2017); *W. Lynn Creamery v. Healy*, 512 U.S. 186 (1994), available at <https://supreme.justia.com/cases/federal/us/512/186/case.pdf>.

<sup>13</sup> 26 C.F.R. § 1.901-2(e)(3) (2012), available at <https://www.law.cornell.edu/cfr/text/26/1.901-2>.

<sup>14</sup> Grace Wyler, “There Is A Second Part Of Grover Norquist’s Tax Pledge . . . And Many Conservatives Are Infuriated By It” BUSINESS INSIDER (November 29, 2012), available at <http://www.businessinsider.com/conservatives-cheer-on-norquists-waning-power-2012-11>.

<sup>15</sup> “I used to think ‘crits’ [i.e., Critical Legal Scholars] avoided tax because deconstructing it was too boring. Now I realize it is because it is too easy,” quoted from David Hariton, *Essay: Distinguishing Between Equity and Debt in the New Financial Environment*, 49 Tax Law Review 499, 501-502 n.8 (1994).

# What are Possible Tax Bases?<sup>16</sup>

Income	Personal Sins – Alcohol, Tobacco, Sugary Drinks <sup>19</sup>
Consumption	Environmental Sins – Speculation, Excessive Risk <sup>20</sup>
Wages & Payroll	Environmental Sins – Carbon, Pollution Fines
Capital Income	Per Capita & Poll Taxes – Military Draft
Wealth <sup>17</sup>	User Fees – Toll Roads, Gasoline Taxes, Using 911
Tariffs on Imports or on Exports <sup>18</sup>	Fines – Speed Traps, False Alarms, Bail and Forfeitures <sup>21</sup>
Property Values	Surprise tax, lump-sum tax lead to fewer distortions
Gifts & Estates	

**Question: At the federal level, why do we limit ourselves to income taxes and payroll taxes when there is “fiscal capacity” for other taxes?<sup>22</sup>**

<sup>16</sup> Joint Committee on Taxation, *Description and Analysis of Proposals to Replace the Federal Income Tax* (June 5, 1995), available at <http://www.jct.gov/s-18-95.pdf>; John R. Brooks, *The Definitions of Income*, 71 TAX L. REV. \_\_\_\_ (forthcoming), available at <http://scholarship.law.georgetown.edu/facpub/1952/>.

<sup>17</sup> David J. Shakow, *A Wealth Tax: Taxing the Estates of the Living*, 57 BOSTON COLLEGE LAW REVIEW 947 (2016), available at [http://bclawreview.org/files/2016/05/09\\_shakow.pdf](http://bclawreview.org/files/2016/05/09_shakow.pdf).

<sup>18</sup> Erika K. Lunder, *Export Clause: Limitation on Congress’s Taxing Power*, Congressional Research Service (October 18, 2012), available at <https://fas.org/sgp/crs/misc/R42780.pdf>.

<sup>19</sup> World Health Organization, *Taxes on sugary drinks: Why do it?*, (2016), available at <http://apps.who.int/iris/bitstream/10665/250303/1/WHO-NMH-PND-16.5-eng.pdf>.

<sup>20</sup> “Tobin Tax – Evaluating the Tobin tax as a general Financial Transaction Tax (FTT),” WIKIPEDIA (July 2, 2017), [https://en.wikipedia.org/wiki/Tobin\\_tax#Evaluating\\_the\\_Tobin\\_tax\\_as\\_a\\_general\\_Financial\\_Transaction\\_Tax\\_.28FTT.29](https://en.wikipedia.org/wiki/Tobin_tax#Evaluating_the_Tobin_tax_as_a_general_Financial_Transaction_Tax_.28FTT.29); “Financial transaction tax,” WIKIPEDIA (July 27, 2017), [https://en.wikipedia.org/wiki/Financial\\_transaction\\_tax](https://en.wikipedia.org/wiki/Financial_transaction_tax); “Let Wall Street Pay for the Restoration of Main Street Bill,” WIKIPEDIA (August 8, 2017), [https://en.wikipedia.org/wiki/Let\\_Wall\\_Street\\_Pay\\_for\\_the\\_Restoration\\_of\\_Main\\_Street\\_Bill](https://en.wikipedia.org/wiki/Let_Wall_Street_Pay_for_the_Restoration_of_Main_Street_Bill).

<sup>21</sup> Emily Shaw, *Where local governments are paying the bills with police fines*, SUNLIGHT FOUNDATION (September 26, 2016), available at <https://sunlightfoundation.com/2016/09/26/where-local-governments-are-paying-the-bills-with-police-fines/>.

<sup>22</sup> Tax Foundation, *Income Tax Illustrated: A Visual Guide to Income in America and How it is Taxed 2* (2015), available at <https://taxfoundation.org/income-taxes-illustrated/>; Ajay K. Mehrotra, MAKING THE MODERN AMERICAN FISCAL STATE: LAW, POLITICS, AND THE RISE OF PROGRESSIVE TAXATION, 1877-1929 (Cambridge University Press 2013).

# Income Versus Consumption Bases,<sup>23</sup> but Why Not Both?<sup>24</sup>

- Haig-Simons income taxes
  - › Realization requirement is the Achilles heel<sup>25</sup>
  - › Getting to utopia: marking-to-market all real and financial assets and liabilities
- Taxing the underground economy with a consumption tax
- Consumption taxes
  - › Retail sales taxes
  - › Valued added tax (VAT)<sup>26</sup>
- Who likes or does not like a VAT?<sup>27</sup>
- Is an income tax a tax on the sins of working and saving?

**Conclusion: Utopianists believe it is possible to design a “better” or more “perfect” income tax or consumption tax; pragmatists see any measurement system as having flaws somewhere and so it is better to diversify.**

<sup>23</sup> Alan J. Auerbach, *The Choice between Income and Consumption Taxes: A Primer*, NBER, Working Paper No. 12307 (June 2006), available at <http://www.nber.org/papers/w12307.pdf>; Daniel N. Shaviro, *Replacing the Income Tax With a Progressive Consumption Tax*, 103 TAX NOTES 91 (April 5, 2004), available at <http://www.american taxpolicyinstitute.org/wp-content/uploads/2017/02/ShaviroPCT.pdf>; Edward B. Hyson, *The Debate Over Replacing the Present Income Tax with an Alternative Tax Structure*, 23 SOUTHERN LAW JOURNAL 181 (Fall 2013), available at [http://www.southernlawjournal.com/2013\\_2/SLJ\\_Fall%202013\\_Hymson.pdf](http://www.southernlawjournal.com/2013_2/SLJ_Fall%202013_Hymson.pdf).

<sup>24</sup> Michael J. Graetz, *100 Million Unnecessary Returns: A Fresh Start for the U.S. Tax System*, 112 THE YALE LAW JOURNAL 261 (2002), available at [http://www.yalelawjournal.org/pdf/417\\_s99jq6yx.pdf](http://www.yalelawjournal.org/pdf/417_s99jq6yx.pdf); Alan D. Vaird, “Fundamental Tax Reform,” THE ECONOMICS OF TAX REFORM (Alan J. Auerbach and Kent Smetters, eds., 2017), available at <http://www.law.georgetown.edu/faculty/symposia-lectures/tax-law-public-finance/upload/Three-Fundamental-Tax-Reform-Options-Revised-Jan-25-2016.pdf>.

<sup>25</sup> Under current law, we have a “lock in effect”: i.e., do we have a tax on income, measured at realization, or a tax on realization, measured by income?

<sup>26</sup> James M. Bickley, *Value-Added Tax (VAT) as a Revenue Option: A Primer*, Congressional Research Service (January 11, 2012), available at <https://fas.org/sgp/crs/misc/R41708.pdf>; Sijbren Cnossen, “A VAT Primer for Lawyers, Economists, and Accountants,” 55 TAX NOTES INT’L 319 (July 27, 2009), available at <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.190.7199&rep=rep1&type=pdf>.

<sup>27</sup> “Former Treasury Secretary Lawrence Summers said Republicans don’t like value-added taxes because they are a ‘money machine’ and Democrats don’t like them because they are regressive. We will get a VAT, he said, when Democrats realize that it is a money machine and Republicans realize that it is regressive,” quoted from Michael J. Graetz and David R. Henderson, “Should the U.S. Adopt a Value-Added Tax?” THE WALL STREET JOURNAL (February 28, 2016), available at <https://www.wsj.com/articles/should-the-u-s-adopt-a-value-added-tax-1456715703>; Daniel Shaviro, “The Rise and Fall of the Destination-Based Cash Flow Tax: What Was That All About?”, presentation at Nordic Tax Research Council Annual Conference (June 1, 2017), available at [http://www.law.nyu.edu/sites/default/files/upload\\_documents/shaviro-DBCFT-v2.pdf](http://www.law.nyu.edu/sites/default/files/upload_documents/shaviro-DBCFT-v2.pdf).



# We Should Try More “Tax Diversification” and Reject “Tax Utopianism”

- Plucking the most feathers with the least squawking <sup>28</sup>
  - › Taxes deeply affect behavior, e.g., working, saving, marriage, dying <sup>29</sup>
  - › Efficiency, Laffer curve <sup>30</sup>
  - › The case of sales tax holidays <sup>31</sup>
  - › Legal incidence versus economic incidence <sup>32</sup>
- Collecting same or more revenue (to spend), but with fewer distortion costs <sup>33</sup>
  - › Distortion effects / costs grow with the “square of the tax rate”
  - › A 40% tax rate is 16 times more “costly” than a 10% tax rate
  - › So four taxes at 10% each could be much better than one tax at 40%
- Diversification means eggs in different baskets <sup>34</sup>
- Basic World Tax Code <sup>35</sup>
- How would a state revenue czar approach this?
  - › California white paper <sup>36</sup>
  - › New Jersey billionaire moves to Florida <sup>37</sup>
  - › Who are “the rich”? <sup>38</sup>
    - Should we soak the rich? <sup>39</sup>
    - Should we not soak the rich?
- Are environmental/sin taxes (Pigouvian taxes) a win-win? <sup>40</sup>

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<sup>28</sup> Jean-Baptiste Colbert, “The art of taxation consists in so plucking the goose as to procure the largest quantity of feathers with the least possible amount of hissing”, quoted in, William Sharp McKechnie, *The State & the Individual: An Introduction to Political Science, with Special Reference to Socialistic and Individualistic Theories* 77 (1896).

<sup>29</sup> Eric Felton, “How the Taxman Cleared the Dance Floor,” THE WALL STREET JOURNAL (March 17, 2013) (discussing how taxes contributed to the decline of swing dancing and the rise of jazz music), available at <https://www.wsj.com/articles/SB10001424127887323628804578348050712410108> ; Wojciech Kopczuk and Joel Slemrod, *Dying to Save Taxes: Evidence from Estate-Tax Returns on the Death Elasticity*, 85 THE REVIEW OF ECONOMICS AND STATISTICS 256 (2003), available at <http://www.columbia.edu/~wk2110/bin/dying-final.pdf> ; Edward G. Fox, *Do Taxes Affect Marriage? Lessons from History*, NYU CENTER FOR LAW, ECONOMICS, AND ORGANIZATION, Working Paper No. 17-15 (June 2017), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2988559](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2988559) .

<sup>30</sup> Joint Committee on Taxation, *Economic Growth and Tax Policy* (May 16, 2017), available at <https://www.jct.gov/publications.html?func=startdown&id=4992> ; “[. . . President Reagan's policy of cutting taxation at the top end of the scale, and welfare benefits at the bottom, was based on the curious assumption that the rich were not working properly because they had too little money, the poor because they had too much,” in Michael Stewart, “JK Galbraith (Obituary),” THE GUARDIAN (May 1, 2006), available at <https://www.theguardian.com/news/2006/may/01/guardianobituaries.usa> .

<sup>31</sup> Aditya Aladangady, et al., “The Effect of Sales-Tax Holidays on Consumer Spending,” FEDS NOTES, WASHINGTON: BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM (March 24, 2017), <https://www.federalreserve.gov/econres/notes/feds-notes/effect-of-sales-tax-holidays-on-consumer-spending-20170324.htm> .

<sup>32</sup> Stephen Entin, “Tax Incidence, Tax Burden, and Tax Shifting: Who Really Pays the Tax?” THE HERITAGE FOUNDATION (November 5, 2004), available at <http://www.heritage.org/taxes/report/tax-incidence-tax-burden-and-tax-shifting-who-really-pays-the-tax> ; Gilbert E. Metcalf, *Tax Incidence*, Working Paper (March 2006), available at <http://ase.tufts.edu/economics/papers/200607.pdf> .

<sup>33</sup> Alan Reynolds, “Hello Supply Side,” NATIONAL REVIEW ONLINE (May 13, 2010), available at <https://www.cato.org/publications/commentary/hello-supply-side> .

*Notes continue on next page*

- <sup>34</sup> David Schizer, *Border Adjustments and the Conservation of Tax Planning*, 155 TAX NOTES 1451 (June 5, 2017), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3001108](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3001108); David Gamage, *The Case for Taxing (All of) Labor Income, Consumption, Capital Income, and Wealth*, 68 TAX LAW REVIEW 355 (2015), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2465522](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2465522); Nassim Nicholas Taleb, *ANTIFRAGILE: THINGS THAT GAIN FROM DISORDER* (2012), summarized at <https://en.wikipedia.org/wiki/Antifragile>; Edward D. Kleinbard, *WE ARE BETTER THAN THIS* (Oxford University Press 2014), summarized at Steven Pearlstein, “We Are Better Than This” Edward Kleinbard, and ‘Seven Bad Ideas,’ Jeff Madrick,” THE WASHINGTON POST (October 10, 2014), available at [https://www.washingtonpost.com/opinions/we-are-better-than-this-edward-kleinbard-and-seven-bad-ideas-jeff-madrack/2014/10/10/658aa8ca-289d-11e4-86ca-6f03cbd15c1a\\_story.html?utm\\_term=.af28a6c480dc](https://www.washingtonpost.com/opinions/we-are-better-than-this-edward-kleinbard-and-seven-bad-ideas-jeff-madrack/2014/10/10/658aa8ca-289d-11e4-86ca-6f03cbd15c1a_story.html?utm_term=.af28a6c480dc); Allen Buckley, *Eliminating the Income Tax While Balancing the Budget*, 156 TAX NOTES 1271 (September 4, 2017).
- <sup>35</sup> Ward M. Hussey and Donald C. Lubick, “Introduction,” *Basic World Tax Code and Commentary* (1996), available at [http://www.taxhistory.org/www/bwtc.nsf/PDFs/basica.pdf/\\$file/basica.pdf](http://www.taxhistory.org/www/bwtc.nsf/PDFs/basica.pdf/$file/basica.pdf).
- <sup>36</sup> George Skelton, “State Controller Betty Yee wants tax reform that relies less on the top 1%,” LOS ANGELES TIMES (June 10, 2015), available at <http://www.latimes.com/local/politics/la-me-cap-taxes-20150611-column.html>.
- <sup>37</sup> Robert Frank, “One Top Taxpayer Moved, and New Jersey Shuddered,” THE NEW YORK TIMES (April 30, 2016), available at <https://www.nytimes.com/2016/05/01/business/one-top-taxpayer-moved-and-new-jersey-shuddered.html>.
- <sup>38</sup> G. William Donhoff, “An Investment Manager’s View of the Top 1%,” WHO RULES AMERICA? (January 2012), available at [http://www2.ucsc.edu/whorulesamerica/power/investment\\_manager.html](http://www2.ucsc.edu/whorulesamerica/power/investment_manager.html); G. William Donhoff, “An Investment Manager’s 2014 Update on the Top 1%,” WHO RULES AMERICA? (January 2014), available at [http://www2.ucsc.edu/whorulesamerica/power/investment\\_manager\\_2014.html](http://www2.ucsc.edu/whorulesamerica/power/investment_manager_2014.html).
- <sup>39</sup> James B. Stewart, “The Myth of the Rich Who Flee from Taxes,” THE NEW YORK TIMES (February 15, 2013), available at <http://www.nytimes.com/2013/02/16/business/high-taxes-are-not-a-prime-reason-for-relocation-studies-say.html>; Jordan Weissmann, “Why It’s Absolutely Crazy That We Don’t Ask Millionaires to Pay More Taxes,” SLATE (Apr. 15, 2015), available at [http://www.slate.com/blogs/moneybox/2015/04/15/top\\_tax\\_rates\\_why\\_it\\_s\\_absolutely\\_crazy\\_that\\_we\\_don\\_t\\_ask\\_millionaires\\_to.html](http://www.slate.com/blogs/moneybox/2015/04/15/top_tax_rates_why_it_s_absolutely_crazy_that_we_don_t_ask_millionaires_to.html); Tim Squirrell, “Does Raising Taxes Drive Out the Rich?” TIM SQUIRRELL BLOG (June 23, 2016), <https://www.timsquirrell.com/blog/2017/6/23/does-raising-taxes-drive-out-the-rich>; Howard Gleckman, “Do High State Taxes Drive Away the Rich? Not Really,” FORBES (May 26, 2016), available at <https://www.forbes.com/sites/beltway/2016/05/26/do-high-state-taxes-drive-away-millionaires-not-really/#2757b9f5360f>; Steven A. Bank, *When Did Tax Avoidance Become Respectable?*, LAW & ECONOMICS RESEARCH PAPER SERIES, No. 17-15 (UCLA School of Law 2017), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3014985](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3014985).
- <sup>40</sup> Interview with Dale Jorgenson (June 2014), published in *Time to Tax Carbon: Enhancing Environmental Quality and Economic Growth*, HARVARD MAGAZINE 52 (September – October 2014), available at [https://scholar.harvard.edu/files/jorgenson/files/harvardmagazine\\_09\\_2014.pdf](https://scholar.harvard.edu/files/jorgenson/files/harvardmagazine_09_2014.pdf); Victor Fleischer, *Curb Your Enthusiasm for Pigovian Taxes*, 68 VANDERBILT LAW REVIEW 1673 (2015), available at <https://www.vanderbiltlawreview.org/wp-content/uploads/sites/89/2015/11/Curb-Your-Enthusiasm-for-Pigovian-Taxes.pdf>; Paul Caron, “Kleinbard: A Grand Bipartisan Bargain On Tax Reform—Fund Lower Corporate Rates With A Carbon Tax,” TAXPROF BLOG (September 25, 2017), [http://taxprof.typepad.com/taxprof\\_blog/2017/09/kleinbard-a-grand-bipartisan-bargain-on-tax-reform-fund-lower-corporate-rates-with-a-carbon-tax.html](http://taxprof.typepad.com/taxprof_blog/2017/09/kleinbard-a-grand-bipartisan-bargain-on-tax-reform-fund-lower-corporate-rates-with-a-carbon-tax.html).



# What is Fair and Just?<sup>41</sup>

- Distributional impact:<sup>42</sup> is inequality increasing?<sup>43</sup>
  - › Are we mismeasuring inequality over time?<sup>44</sup>
  - › Are other factors, such as assortative marriages, largely responsible?<sup>45</sup>
  - › How much “rent” seeking is happening?<sup>46</sup>
- Is it mine or is it yours? Who built that?
  - › It’s mine: I built that.
    - Locke’s theory of property<sup>47</sup>
    - Aesop’s Fable<sup>48</sup>
    - Nozick’s Tale of the Slave<sup>49</sup>
  - › It’s ours: We built that.
    - No person is an island; there is no “I” in team; we are in this together
    - Rawls’ “veil of ignorance”<sup>50</sup>
    - Murphy & Nagel’s “Myth of Ownership”<sup>51</sup>
- Horizontal equity versus vertical equity<sup>52</sup>

**Conclusion: Whether viewed through the lens of Nozick or Rawls, taxes and spending are not independent ends; instead, both taxation and spending are intertwined “means” to particular conceptions of a “just” societal “end”. Under both lenses then, tax diversification makes more sense than tax utopianism.**

<sup>41</sup> Joint Committee on Taxation, *Fairness and Tax Policy* (March 3, 2015), available at <https://www.jct.gov/publications.html?func=startdown&id=4737>; JUSTICE WITH MICHAEL SANDEL: WHAT’S THE RIGHT THING TO DO? (Harvard University 2009), <http://justiceharvard.org/justicecourse/>; Leif Wenar, “John Rawls,” STANFORD ENCYCLOPEDIA OF PHILOSOPHY (January 9, 2017), available at <https://plato.stanford.edu/entries/rawls/>.

<sup>42</sup> Julian Lamont and Christi Favor, “Distributive Justice,” STANFORD ENCYCLOPEDIA OF PHILOSOPHY (January 2, 2013), available at <https://plato.stanford.edu/entries/justice-distributive/>. For various discussions on the topic of inequality see Harvard Gazette, “Gazette Topics: Inequality,” <https://news.harvard.edu/gazette/story/topic/inequality/> (accessed on September 12, 2017).

<sup>43</sup> R.A., “Thomas Piketty’s ‘Capital’, summarised in four paragraphs,” THE ECONOMIST (May 5, 2014), available at <https://www.economist.com/blogs/economist-explains/2014/05/economist-explains>.

<sup>44</sup> Gary Burtless, *Comments On: “Has U.S. Income Inequality Really Increased?”* THE BROOKINGS INSTITUTION (January 11, 2007), available at <https://www.brookings.edu/wp-content/uploads/2016/06/20070111.pdf>; Alan Reynolds, “Why Piketty’s Wealth Data Are Worthless,” THE WALL STREET JOURNAL (July 9, 2014), available at <https://www.wsj.com/articles/alan-reynolds-why-pikettrys-wealth-data-are-worthless-1404945590>.

<sup>45</sup> Richard V. Reeves, “The rich marrying the rich makes the income gap worse, but it’s not our biggest problem” Social Mobility Memos, THE BROOKINGS INSTITUTION (April 8, 2016), available at <https://www.brookings.edu/blog/social-mobility-memos/2016/04/08/the-rich-marrying-the-rich-makes-the-income-gap-worse-but-its-not-our-biggest-problem/>; Tyler Cowen, “The Marriages of Power Couples Reinforce Income Inequality,” THE NEW YORK TIMES (December 24, 2015), available at <https://www.nytimes.com/2015/12/27/upshot/marriages-of-power-couples-reinforce-income-inequality.html>.

<sup>46</sup> Mark Thoma, “Explainer: How economic ‘rents’ affect inequality,” CBS MONEYWATCH (April 1, 2014), available at <http://www.cbsnews.com/news/explainer-how-economic-rents-affect-inequality/>.

<sup>47</sup> John Locke, SECOND TREATISE OF CIVIL GOVERNMENT (1690).

<sup>48</sup> Aesop, *The Ants & the Grasshopper*, available at <http://read.gov/aesop/052.html>.

<sup>49</sup> Robert Nozick, *ANARCHY, STATE AND UTOPIA* 290-292 (1974), available at [http://www.colorado.edu/studentgroups/libertarians/issues/nozick\\_slave.html](http://www.colorado.edu/studentgroups/libertarians/issues/nozick_slave.html).

<sup>50</sup> “John Rawls and the Veil of Ignorance,” *HAMMERING SHIELD: THE COLLECTED ESSAYS* (March 4, 2013), <https://hammeringshield.wordpress.com/2013/03/04/903/>.

<sup>51</sup> David Cay Johnson, “You Can’t Take It With You,” *THE NEW YORK TIMES* (April 21, 2002), available at <http://www.nytimes.com/2002/04/21/books/you-can-t-take-it-with-you.html>.

<sup>52</sup> Ira Lindsay, *Tax Fairness by Convention: A Defense of Horizontal Equality*, 19 *FLORIDA TAX REVIEW* 79 (2016), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2634781](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2634781); Joseph J. Cordes, “Horizontal Equity,” *THE ENCYCLOPEDIA OF TAXATION AND TAX POLICY*, (1999 Urban Press Institute), available at <http://webarchive.urban.org/UploadedPDF/1000533.pdf>; Louis Kaplow, *THE THEORY OF TAXATION AND PUBLIC ECONOMICS*, (2008 Princeton University Press), outline available at <http://www.jstor.org/stable/j.ctt7srnp>.

# Related Themes of Tax Policy, Reform and Scholarship

Besides a/the “proper” tax base, there are other, related themes of tax policy, reform, and scholarship<sup>53</sup>

- Corporate integration<sup>54</sup> – Corporations are people too?
- Taxation of financial products<sup>55</sup>
- International dimensions and edge effects<sup>56</sup>
  - › Who is a citizen or resident of the US? <sup>57</sup>
  - › What activity and profitability is onshore versus offshore? <sup>58</sup>
  - › Worldwide taxation (export neutrality) versus territorial (import neutrality) <sup>59</sup>
- Improving and simplifying “measurement” of income <sup>60</sup>

**Conclusion: We learn from these other academic debates that any tax base is at bottom a measurement system that will have some flaws (or at a minimum, limits to its precision), and thus again we should diversify rather than pursue a single tax base strategy.**

<sup>53</sup> Robert W. Wood, “20 Inspirational Quotes . . . About Taxes” FORBES (September 20, 2013), available at <https://www.forbes.com/sites/robertwood/2013/09/20/20-inspirational-quotes-about-taxes/#7adc703134d1>.

<sup>54</sup> Joint Committee on Taxation, *Overview of Approaches to Corporate Integration* (May 13, 2016), available at <https://www.jct.gov/publications.html?func=startdown&id=4913>.

<sup>55</sup> Alvin C. Warren, Jr., *U.S. Income Taxation of New Financial Products*, 88 J. of Pub. Econ. 899 (2004), available at <http://elsa.berkeley.edu/~burch/Warren.pdf>; Joint Committee on Taxation, *Present Law and Issues Related to the Taxation of Financial Instruments and Products*, (December 2, 2011), available at <https://www.jct.gov/publications.html?func=startdown&id=4372>.

<sup>56</sup> Joint Committee on Taxation, *Present Law and Selected Policy Issues in the U.S. Taxation of Cross Border Income*, (March 16, 2015), available at <https://www.jct.gov/publications.html?func=startdown&id=4742>; Edward D. Kleinbard, *Stateless Income*, 11 FLORIDA LAW REVIEW 699 (2011), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1791769](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1791769); Edward D. Kleinbard, *The Lessons of Stateless Income*, 65 TAX LAW REVIEW 99 (2011), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1791783](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1791783); Edward D. Kleinbard, *Through a Latte, Darkly: Starbuck’s Stateless Income Planning*, 139 TAX NOTES 1515 (June 24, 2013), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2264384](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2264384).

<sup>57</sup> “Group Calls for Switch to Residency-Based Taxation,” TAX NOTES TODAY, 2017 TNT 141-11 (July 19, 2017), available at <http://www.taxnotes.com/tax-notes-today/corporate-taxation/group-calls-switch-residency-based-taxation/2017/07/25/1vx86>.

<sup>58</sup> 26 U.S.C. § 865 (2012), available at <https://www.law.cornell.edu/uscode/text/26/865>.

<sup>59</sup> Joint Committee on Taxation, *Present Law and Background Related To Proposals To Reform the Taxation of Income of Multinational Enterprises* (July 21, 2014), available at <https://www.jct.gov/publications.html?func=startdown&id=4656>; Jane G. Gravelle, *Reform of U.S. International Taxation: Alternatives*, Congressional Research Service (July 21, 2017), available at <https://fas.org/sgp/crs/misc/RL34115.pdf>.

<sup>60</sup> TOWARD TAX REFORM: RECOMMENDATIONS FOR PRESIDENT OBAMA’S TASK FORCE (Tax Analysts 2009), available at [http://www.taxhistory.org/www/freefiles.nsf/Files/TowardTaxReform.pdf/\\$file/TowardTaxReform.pdf](http://www.taxhistory.org/www/freefiles.nsf/Files/TowardTaxReform.pdf/$file/TowardTaxReform.pdf); President’s Advisory Panel on Federal Tax Reform, *Simple Fair, and Pro-Growth: Proposals to Fix America’s Tax System* (November 2005), available at <https://www.treasury.gov/resource-center/tax-policy/Documents/Report-Fix-Tax-System-2005.pdf>.

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