Still Uneasy

The Uneasy Case for Progressive Taxation, by Professor Walter J. Blum and Harry Kalven, Jr., of the Law Faculty, was published in 1953 by the University of Chicago Press, and has already become a classic in its field. A few months ago, it was reprinted in the University of Chicago Press's paperback series, Phoenix Books, with a lengthy new introduction. With the permission of the authors and the Press, the first three sections of that introduction are here reprinted.

1

Some years ago we engaged in a program to gain empirical knowledge relating to the progression question. The University of Chicago Law School had undertaken a series of projects in what was called law and behavioral science in an effort to apply the research techniques of the social sciences to the study of legal problems and institutions. As part of this program, we started to explore the community sense of justice as it relates to the tax burden. The key method of inquiry was that of the large-scale public opinion survey, and at the core of the study was the objective of assessing popular attitudes toward progressive taxation. For a variety of reasons the study was never completed, but the experience with it provides a refreshing stimulus to further reflection about progression.

We were determined to probe how deeply the public was committed to progression and on what basis. From the start, our social science colleagues had warned that, except in time of actual emergency, no public issue is really salient in popular thought. Nevertheless we were sanguine: the federal income tax was one law with which virtually everyone had direct contact, high surtax rates had been a prominent feature of the law for almost a generation, and, if there was any vitality at all to the notion of a community sense of justice as a foundation for law, it should appear in considering the blunt issue of how the tax burden in fairness ought to be allocated among individuals.

Pilot operations indicated that our expectations were clearly in error. Tax questions generally were of little interest to the public, and among tax questions the issue of distributing the tax burden ranked near the bottom. Even when we had reconciled ourselves to the absence of any conscious opinion and had turned to search for “latent sentiments,” our efforts were almost completely frustrated. The precise difficulties are worth emphasizing here. Except for a relatively small elite, the very notion of a progressive tax proved to be beyond grasp. By and large people could understand the concept of the wealthy paying more in tax than the less wealthy, but they did not comprehend the idea of the wealthy paying more than a proportionately greater tax than the less wealthy. Proportionate and progressive rate schedules simply were not seen as involving a choice of principles. This same mathematical barrier probably accounted for another difficulty. It is our impression that most people were interested only in the level of their own taxes and not in the ratio of that level to the tax burden on others with different incomes.

In probing as deeply as we could for the reason why the few who did understand the progression principle thought the rich should pay more, we were unable to find anything other than simple, unanalyzed ability-to-pay notions. There was virtually no associating taxes with economic incentives or purchasing power—or with envy or hostility to the rich or with concern over economic inequality.

There was one other clue from the study that seemed rich in political implications. People, it appeared, would distribute a tax increase differently than a tax reduction. They thought it most fair to handle an increase by putting relatively larger burdens on the rich, but, in the case of a reduction, they thought it most fair to give relatively more of the benefit to the less wealthy rather than return to the tax distribution that had prevailed before the increase. In any change in total taxes, either up or down, the popular view of fairness would tend to make the rate structure more progressive.

The Uneasy Case was an effort to explore what might be called the intellectual case for progression. In making the empirical tax study, our aim was to lay the results of a public opinion survey alongside the original essay. To the faintest degree, an interesting contrast emerged from the pilot work: the public, unlike a few intellectuals, virtually never thinks of the progressive tax as an instrument for reducing economic inequality. But more basic is the fact that the progression issue is so far beyond the reach of public opinion that it is futile and misleading to talk here of comparing expert opinion and public opinion.

This massive absence of any public opinion, except among the elite, adds a new puzzle to the political history of progression. In the essay we had noted that the intellectual arguments in support of progression all came well after progression had become a political fact. It could be inferred that the intellectuals were following the public rather than leading it and were seeking to find a rational basis for a strong but unarticulated popular sentiment. The sources of the political development, which ten years ago we found to be obscure, now seem to be more mysterious than ever. It is hard to believe that the tiny public sentiment which we were able to unearth could ever have been strong enough to produce the political fact of progression.

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One of the most notable recent developments on the world scene has been the emergence of the new nations. As the leaders of these countries have turned to the older
states for counsel, the economic problems of underdeveloped countries have become widely discussed. High among these problems has been tax policy. The literature on tax policy for underdeveloped countries provides a second novel vantage point for reflecting again on progressive taxation.

Observers generally agree that there are a number of characteristics common to most of the underdeveloped countries.

First, there is an extremely wide discrepancy in wealth and income between a relatively small high income group and a majority of the population whose income borders on subsistence. Second, the high income group is the focus, or more accurately the essence, of whatever political or economic stability exists. This group, tracing its wealth and position to large landholdings, tends to dominate the social, political, and economic structures of the nation. Finally, there is an ardent desire to be considered a modern progressive nation with political autonomy.

Under these conditions, the development of tax policy is caught in a sharp cross fire. On the one side there is a strong need to preserve economic incentives and not to alienate the economic elite who are a key source of stability. On the other side there is a strong desire to utilize sharply progressive taxes.

Two sources of this momentum toward progression are of special interest. There is the wish to emulate what is considered to be the moral style of advanced countries, and a distinctly progressive tax structure is viewed as a mark of a civilized country. As one observer has put it: "Progressive income taxation is desired simply because it is regarded as one of the symbols of modern government." There is, as another source, an emphasis the bluntness of which may be startling to those conditioned to the tradition of American political discussion. Official statements of policy in underdeveloped countries are explicitly phrased in terms of redistributing wealth or income. It is made clear that the attraction of progression for these countries is that it will mitigate economic inequalities. An Indian Commission reporting on tax policy a few years back listed as the first main criterion of a tax system: "... the incidence of a tax system and its suitability for reducing inequality of income and wealth, viz., the distribution of the burden of taxation and its redistributive effects and possibilities." The commission went on to observe:

We can no longer afford to leave the problem of equality to the automatic functioning of economic and social forces. ... The demand that the instrument of taxation should be used as a means of bringing about a redistribution of income, more in consonance with social justice, cannot be kept in abeyance.

But these spokesmen are equally explicit in recognizing the conflict between objectives. Nowhere are the tensions between the egalitarian aspirations and the disincentive effects of progression seen more vividly. The variety of responses to this conflict could almost have been predicted. At one extreme is the view that progression is compatible only with a mature economy; in the words of one observer, "extensive reliance on income taxes or other ability to pay measures is a social and economic luxury which the lesser developed nations of the world cannot yet afford." The advice which follows is to separate the political and economic objectives by offering little more than lip service to progression so as to satisfy the required political rhetoric. At the opposite pole is the conclusion of a United Nations Technical Assistance Report: "Redistributive finance appears to offer greater gains and involve less cost to underdeveloped than to developed economies." This view proceeds not only from a willingness to have the government perform the main role in capital formation but also from the premise that, given the structure of underdeveloped economies, the major disincentives will fall on rentiers rather than on entrepreneurs. In between these extremes is the hopeful position voiced by the Indian Commission: "Ways and means, therefore, must be devised to insure simultaneous progress in both directions, viz., of greater production and of better distribution." The expectation apparently is that it will be possible to build into a progressive tax structure a set of exceptions and qualifications which will maintain the necessary incentives for specific economic functions without destroying its redistributive potential.

Thus, although the relevant conditions in underdeveloped countries would seem to be dramatically different from circumstances in the United States, the progression issue, when transplanted, is no less uneasy. But the grossness of the inequalities of wealth and income and the depth of poverty in those countries cause a marked difference in the prevailing rhetoric.

Ten years ago we were puzzled as to why Henry Simons' bluntness had not had more impact on the tone of discussions in the United States. Writing in the late thirties, he exasperatedly asserted that the whole superstructure of sacrifice and ability-to-pay theorizing was simply nonsense and that the case for progression was no more and no less than the case for mitigating "unlovely" economic inequality. One then would have thought that the cat had been let out of the bag forever and would have predicted that discussion of progression would never be the same after this outburst of candor.

On reviewing the recent literature on the redistributive aspects of progression, we note some interesting changes in emphasis, but on the whole the approach to redistribution by those favoring progression is still curious. The most obvious change is the diminished appetite for justifying progression on the basis of sacrifice analysis and its many subtleties. What is particularly noteworthy is that in virtually surrendering sacrifice analysis,
with its postulate of declining marginal utility of money, the defenders of progression have not followed the path of Simons. Instead, they are willing to acknowledge redistribution as relevant but are unwilling to rest the case for progression on it. Typical of such contemporary commentators is Roy Blough. After saying that sacrifice, faculty, and even benefit theories "point to progression, but only in a rather moderate degree," he argues that the current tax rate "involve also at least a degree of skepticism that the distribution of income is demonstrably the best one." And having so modestly indorsed the egalitarian rationale for progression, he adds the further qualification that the "attitude that has chiefly been involved" is not that of "deliberately using tax and expenditure measures to reduce the incomes of people because these are deemed to be too high" but rather that of "looking around for the best place to impose taxes that have to be levied on someone." Another recent commentator, Louis Eisenstein, is likewise chary in dealing with progression and economic equality. He moves rapidly through three positions. Initially, he sees as a special weakness of sacrifice or ability-to-pay theories that their claim to neutrality is an illusion since in fact taxes have effects on the distribution of wealth and income. Accordingly, he finds inescapable the proposition of Simons that "it is only sensible to face the question as to what kinds of effects are desirable." A few pages later, however, he tells us that "though we still have progression, it is no longer prudent to say in so many words that the primary purpose of the graduated rates is to diminish the economic differences that characterize our economy." Next, he asserts that whether prudent or not there would be no point in confronting the equality question directly inasmuch as there is no way of answering the question, "If the rates are to mitigate inequalities of wealth, how drastic should they be in pursuit of this objective?" And he adds, "Everyone who meditates on such problems will respond in the light of his own views on equality."

A different resolution of the equality issue is put forward by Harold Groves. In his words, he wishes to find a position which affords "a detour around the futile snarl of the classical case" of sacrifice theory and "the pure value judgments of the Simons-Taussig school." He rejects sacrifice theory because it does not persuade and he rejects the egalitarian value judgment because it is "debate closing." As a solution, following the line of argument developed by Elmer Fagan, he urges placing the case on the total effects of progression. In setting tax policy, he would have us interested in what progressive taxation will do to serve or deserve such widely accepted national objectives as an increase in per capita real income, minimum economic fluctuations, a workable tax system producing adequate revenue, political stability under representative government, international independence or security, elimination of extreme want, and perhaps mitigation of social disorders, such as crime, divorce, mental illness and the like.

Tax alternatives, in short, should be weighed "not in terms of the personal but rather the social significance of income." On this view, the distribution of income becomes only one among many factors to be considered in appraising progression; in Groves's phrase, it is treated "as an intermediate means rather than an end." The positions taken by Blough, Eisenstein, and Groves, although quite distinct from each other, leave a common impression. The whole issue of redistribution is muted and is handled with gentility. Even with the props of sacrifice theory substantially removed, there is still a strong pull away from resting the case for progression squarely on doing something about economic inequalities. This, however, seems not so much due now to a default in candor. Rather it appears to arise from two other sources. First, there is a sense of despair over arguing the case for progression on grounds of a subjective judgment about what degree of inequality is disturbing in our society. Second, there is a disinclination to treat economic inequality in contemporary America as a very serious social problem. Eisenstein has recently put his finger on the point: "The usual liberal approach today is that if we can promote economic growth, if we can have a larger pie, all segments of society will necessarily have larger shares of that pie and we won't have to worry about redistribution of income anymore." This strikes us as a shrewd insight into the changing scene, and one which has been noted by others. But while it may explain why current writing does not re-echo the intensity of Simons, it more than ever leaves the intellectual case for progression in the obscurantist's vein.

FOOTNOTES

1 We examined the problems and the promise of public opinion surveys in Blum & Kalven, The Art of Opinion Research: A Lawyer's Appraisal of an Emerging Science, 24 U. Chi. L. Rev. 1 (1956).

In referring to impressions we gained from the early phases of the empirical study, we risk overstatement. The study was put into the field only in a most preliminary way and on a very small scale, with no effort to utilize proper sampling techniques.

2 The most extensive recent effort to relate public opinion and the community sense of justice to legal rules is Cohen, Robson & Bates, Parental Authority: The Community and the Law (1958). For a critical comment on the study see Kalven, Book Review, 14 Rutgers L. Rev. 843 (1960).

3 See text, pp. 11–14 infra.

4 For some speculations on the role of the intellectuals on roughly comparable public issues, see Hayek, The Intellectuals and Socialism, 16 U. Chi. L. Rev. 417 (1949).


6 Ibid.
On the problem of tailoring a tax system to the needs of an underdeveloped country, see Goode, Taxation of Saving and Consumption in Underdeveloped Countries, 14 Nat'l Tax J. 305 (1961).

13. In discussions of economic aspects of tax policy in the United States, the progression issue continues to appear with some frequency. There have been numerous assertions to the effect that a more progressive tax structure, as compared to a less progressive one yielding the same amount of tax revenue, would contribute significantly to bringing about or maintaining a high level of employment of resources. Although this position sometimes seems to be a rationalization for a deeper conviction that heavier taxes should be placed upon the wealthy and lighter taxes on the less wealthy, it also seems to have genuine adherents. It appears to be based on the proposition that the budget of the federal government should be in balance (or at a minimum deficit) over some period of time; that a dollar of tax taken from the less wealthy will reduce total private demand more than a dollar taken from the rich, because the latter generally save a larger percentage of their incomes than the former; and that there is a tendency for investment demands to fall short of savings at the level of income at full employment. Reasoning from these propositions, one arrives, in essence, at the view that the government can alter total demand by means outside the tax system through monetary operations. Moreover, for the type of analysis being offered, there is no need to stay within the premise that the budget must remain in balance (or at a minimum deficit); it is at least conceivable that, under some circumstances, total demand can be augmented by running a deficit (or a larger deficit) for a limited period. Further, we know too little about savings patterns and propensities to assert that a move to decrease the after-tax income of the wealthy and to increase the after-tax income of the less wealthy will reduce total private demand by the same amount would change the overall ratio of savings to income. See Steir, Stimulation of Consumption or Investment through Tax Policy, in Joint Committee on the Economic Report, in 84th Cong. 1st Sess., Federal Tax Policy for Economic Growth and Stability 245 (Nov. 9, 1955). See also Samuelson, The New Look in Tax and Fiscal Policy, id. at 233, 234, who concludes: "A community can have full employment, and at the same time the rate of capital formation is the least wanted, and can accomplish all this compatibly with the degree of income-redistributing taxation it ethically desires." Compare Rolph, Equity Versus Efficiency in Federal Tax Policy, 40 Am. Econ. Rev. 394 (1950).

There is recent evidence that the savings-income ratio in our society has been fairly consistent throughout a very wide range of incomes over a long time. Friedman, A Theory of the Consumption Function (1957). If this proposition turns out to be generally correct, it would undermine the argument that progressive taxation impairs economic growth by reducing aggregate savings. It would also pose a problem for those who seek to step up the rate of our economic growth. If over time the propensity to save is fairly constant among various income levels, a program to augment growth would seem to require that increased attention be paid to incentives and to the "investment climate." As to the impact of progressions on incentives, see text, pp. 21-28 infra.

14. The Simons remark is quoted in the essay at 72 infra; the original passage is found in Simons, Personal Income Taxation 18-19 (1938).

15. The conservative writers, it is not surprising, have been much more direct in dealing with redistribution. See especially three statements by F. A. Hayek: The Constitution of Liberty 306-23 (1960); The Case against Progressive Income Taxes, The Freeman, Dec. 28, 1953, p. 229; Progressive Taxation Reconsidered, in On Freedom and Free Enterprise 265 (1956).

Taxation apart, attention continues to be paid to the subject of economic inequality itself. Of particular interest are Oliver, A Critique of Socioeconomic Goals (1954); Lampman, Recent Thoughts on Equalitarianism, 71 Q. J. Econ. 234 (1957).
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16 As late as March 10, 1963, it appeared that sacrifice theory was not without distinguished support. In answer to the question, posed by a resident of Lewiston, Utah, "What do the great thinkers have to say about the purpose and limit of taxation that a country imposes upon its citizens?" Mortimer J. Adler, the director of the Philosophical Institute, replied in part: "The argument for graduated tax rates is that they equalize the sacrifice involved. A man earning $4,000 a year is far more grievously hit by a tax of 10 per cent than a man earning $40,000 a year." Chicago Sun-Times, March 10, 1963, S 2, p. 13.

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