

# THE ARGUMENT PHASE OF TAXPAYER POLITICS\*

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## I. INTRODUCTION

FEDERAL TAX POLICY is developed in a welter of clashing opinions. The major source of controversy is the conflict of interest that exists among different although often overlapping economic groups—businessmen, industrial workers, farmers, creditors, debtors, landlords, persons with large incomes, persons with small incomes, and so on. Members of Congress, who are the principal makers of tax policy, are presumed to represent the interests of the whole public. They are elected on a geographical basis and do not, at least formally, represent specific economic interests. Such interests achieve the practical effect of representation through organized groups with paid advocates—the lobbyists—who work for proposals to reduce, or prevent an increase in, the tax loads of their respective groups.<sup>1</sup> In effect each group endeavors to push part of its load on to other groups through securing favorable legislative changes.

The art of taxpayer politics is to persuade the necessary majority of the makers of tax policy—whether in the given situation these are the voters generally, the members of Congress, or a small group of the latter—to vote in the desired way on tax proposals. The persons who successfully practice this art become experts in knowing what causes a policy maker to decide a tax issue in a certain way, and use that knowledge to achieve their ends. The chief task of the lobbyist appears to be to bring and keep before the attention of the policy maker the considerations which will lead him to make a favorable decision. The factors that motivate policy decisions are complex. Some have little relation to the public interest; even irrational and subconscious factors are present. Deep-seated prejudice, personal friendship or hostility, domination by a political boss or a powerful constituent, party loyalty, a trade for votes on other measures,

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<sup>1</sup> With respect to lobbies and pressure groups in general, see Herring, *Group Representation Before Congress* (1929); Schattschneider, *Politics, Pressures and the Tariff* (1935); Key, *Politics, Parties, and Pressure Groups* (1942).

or the personal taxpayer interest of the policy maker may override the merits of a tax issue in the final decision. How important relatively are the various factors in the determination of tax issues?

While no attempt will be made here to answer this question, it may be observed that taxpayer groups and their representatives go to great effort and expense to argue the merits of the issues. Speeches, reports of special study groups, and newspaper releases are methods of getting these arguments before the public. The thousands of pages of reported hearings before the House Ways and Means Committee and the Senate Finance Committee are devoted almost entirely to (1) the presentation of tax proposals, and (2) the statement and elaboration of arguments designed to show why the proposals should be adopted or rejected. Much the greater number of words is devoted to the arguments. The information on which tax policy decisions are made comes to the attention of the taxing committees largely through these arguments. The development and presentation of the arguments is a major element in the art of taxpayer politics.

The purpose of arguments is to persuade the policy maker that the public interest would be promoted by the adoption of a tax proposal which would financially benefit its advocates. Regarding some proposals, the direct financial interest of the great majority of the people may be quite clear. Such proposals rarely create active tax issues. Regarding other proposals, the public interest may be difficult to ascertain. The amount of direct cost or benefit involved to each member of the public may be so small and uncertain that other tests of the public interest take on great importance. It is to these indirect and somewhat subtle public interest objectives that arguments are commonly addressed.

The nature of the arguments will appear from an example. When the witness for a taxpayer interest group appears at hearings before the congressional taxing committee, he does not merely say, and often does not say at all: "Please adopt our proposal because it would benefit us." It is always assumed that each witness thinks he and his group would be benefited by the action he proposes. The argument is usually on a high plane of public welfare. The witness may indeed point out that his industry is subject to an unusual hardship, but even in this case the testimony usually goes beyond the private benefit to consider the public interest.<sup>2</sup> Witnesses do not argue that their proposals would benefit per-

<sup>2</sup> An exception to this generalization is noted in the reported statement of a congressman to spokesmen for the National Council of Salesmen's Organizations, lobbying for repeal of excise taxes: "Why don't they get together and tell us how repeal would benefit the country, instead of each trying to tell us how it would benefit his own industry?" *N.Y. Times*, § 3, p. 4, col. 3 (June 19, 1949).

sonally the members of the committee except as these are part of a much larger general group.

## II. THE MAJOR GROUPS OF ARGUMENTS

The witness often begins by presenting to the committee a general philosophy of taxation as it relates to the public welfare. The number of different thought-patterns on this subject is extremely small, and there is repeated, often tedious duplication by successive witnesses. The witness then states that his proposal would benefit the country as a whole and in the long run would benefit almost everyone. With more or less skill he then presents one or more arguments by which he hopes to establish this proposition in the minds of the committee members.<sup>3</sup> Occasionally the arguments are imaginative and even brilliant. But in general they run in a fairly routine and predictable pattern with only minor shades of variation. Almost all of them fall roughly into ten groups.

1) *The proposal will increase (decrease) revenue.* A dollar of tax revenue collected by the government is a dollar taken from some taxpayer. All makers of tax policy dislike to increase taxes and would much prefer not to have any taxes at all, other things being equal. But since the major purpose of taxes is to raise revenue, proposals which would increase revenue have that fact in their favor, while a prospective revenue decrease is a consideration against adopting a proposal. Whatever else a congressional taxing committee desires to know about a tax proposal, the effect on revenue is always asked, and the more specific the answer the better. The importance of the revenue argument varies greatly depending on whether the need for revenue is increasing or decreasing, but in either case the argument is significant. The amount of the tax increase or decrease to other taxpayers is directly affected by the revenue change resulting from any particular proposal. Changes which cost substantial revenue are not likely to be acceptable except when the need for taxes is declining.

2) *The proposal will enlarge (diminish) tax fairness.* To achieve fairness is a major objective of all social action and is an important consideration in tax policy decisions. The evolution of taxing methods has been largely the result of seeking better ways of distributing tax burdens. It is unfortunate that the terms tax equity and tax justice are often used inter-

<sup>3</sup> See published reports of any federal tax hearings which were open for public testimony: for example, Revenue Revisions, Hearings before the House Committee on Ways and Means, 80th Cong. 1st Sess., Parts I-V, at 1-4118 (1947-1948). The statements of Stanley H. Ruttenberg, Assistant Director of Research, Congress of Industrial Organizations, at 1407-1418, and Don G. Mitchell, Chairman, Taxation Committee, National Association of Manufacturers, at 1447-1494, illustrate the point.

changeably, for they can usefully distinguish two different concepts. Tax equity is achieved when equals are treated equally: that is, when the same tax loads are placed on different persons in the same economic position. Tax justice is achieved when the relative burdens on people who are not equals in their economic position are fairly apportioned. The problem of tax equity is involved in the uniform application and administration of tax laws, and in the elimination of special privileges and special hardships. The relative burdens placed on persons with small incomes and persons with large incomes, and on single persons and married persons with dependents, are examples of the larger problem of tax justice. Various standards are recognized for measuring tax justice with the result that arguments on this point are often controversial and confusing. In a sense, tax justice and equity look to the past and try to give each person his just deserts on the basis of what has happened in the past.

3) *The proposal will promote (destroy) a high and stable level of production and employment.* The prosperity of the nation is a tax objective of high priority. Measures to promote prosperity look to the future, which is the only period in which they can operate. The arguments falling in this group are many and varied and often conflicting. The conflict is in part a result of confusion in the objective: for example, a stable level of production is not necessarily a high one, and high production and high employment do not inevitably go together. More important, the level of production and employment is determined by a combination of many different factors, any one of which, in a given situation, may limit the amount of production or employment. Amounts and forms of natural resources, the supply of capital, skill and industry of workers, technology and know-how, the number and quality of enterprisers, freedom of markets, the volume of purchasing power in the hands of consumers, and incentives to operate and expand businesses are among the more important factors. Tax measures may affect any of these. Each of two witnesses might argue that his position would promote a high and stable level of production and employment, even though they argued on opposite sides of a tax proposal. They might be emphasizing different factors, in which case there would be no real meeting of minds in the argument.

4) *The proposal will encourage (discourage) an important industry or business group.* Arguments in this group are involved in consideration of the protective tariff, import excise taxes, the former tax on oleomargarine, and ordinary revenue excise taxes, as well as various provisions of the individual and corporation income tax laws. The well-being of any business is a matter both of private interest and of the public interest. The en-

couragement of an important industry or business group may thus be in the public interest. But the tax provision that encourages one group may discourage others, which is an undesirable result. The maker of policy must then decide whether the good outweighs the ill. Many people consider the promotion of specific industries and forms of business to be an undesirable use of taxing power. The person making the argument will, of course, emphasize only the side that affects his own interests.

5) *The proposal will repress (promote) socially undesirable consumption.* Small use is made of arguments in this group. For the most part, the government takes a neutral view toward what the public consumes. Some forms of consumption it encourages—education, health services, housing, for example—usually through government operation or subsidy, but sometimes through tax exemption. A few other forms of consumption it discourages because of the harmful effects on persons. Taxation may be used for this purpose. Taxes on narcotic drugs are clearly in this category while the high rate of tax on alcoholic beverages reflects at least a willingness to discourage consumption.

6) *The proposal will improve (make worse) the distribution of wealth and income.* By “improve” is usually meant “make less unequal.” Some modification of the distribution of income and wealth is inevitable in any system of taxes and government expenditures. Some form of the argument is often employed in advocating provisions to protect from taxation the incomes of persons at the bottom of the income pyramid or to prevent the concentration of wealth and economic power at the top. Almost every question of tax rates, exemptions, or the choice of one tax over another, involves the question of income distribution, but many people discussing these subjects do not mention it directly. The argument that taxation should be used deliberately to alter the distribution of income and wealth is a delicate one to present, at least in these bald terms, and may boomerang. Hostile reactions often arise, sometimes apparently from a form of class consciousness which objects to changes in distribution, at other times from a belief that taxation should not be used to promote the economic position of one segment of the population at the expense of another. The emotional content of reactions to arguments in this group is commonly very high.

7) *The proposal can readily be (cannot be) administered in a complete and uniform manner.* “Complete” and “uniform” are in practice relative terms. No tax is ever administered either completely or with perfect uniformity. But tax measures differ widely in this regard and, accordingly, ease and cost of administration may be important considerations. Argu-

ments in this group are never entirely absent and are, at times, decisive. If a tax or tax provision cannot be administered with a "reasonable" expenditure of effort and money, there is a strong case against it.

8) *The proposal will simplify (complicate) the compliance problems of taxpayers.* The application of a tax involves not only expense and effort to the government in administering the tax, but also to the taxpayer in complying with it. Some taxes and tax provisions are rejected because compliance would be extremely difficult or extremely irritating—the two usually go together. Obviously, simple tax laws and easy compliance are to be preferred to their opposites. Arguments for "simplification" are usually arguments for easier compliance, although many simplification proposals have little bearing on the ordinary taxpayer.

9) *The proposal will increase (decrease) a "wholesome" tax consciousness.* The objective of arguments in this group is that people who bear the burdens of taxes shall know what they are paying. Issues in which the tax consciousness arguments are significant include those involving the choice between direct and indirect taxes, the choice between simple taxing provisions and those that are so complicated that only specialists can compute the tax, the requirements for filing tax returns, and the withholding of income tax at the source. Tax consciousness and the costs of tax compliance sometimes become confused with each other. The intense consciousness that arises when a tax is difficult to comply with is not usually argued as being "wholesome." The distinction should be made that tax consciousness is the awareness of the existence and the amount of the tax being borne, while costs of tax compliance are the added effort and expense beyond the tax itself that are required to compute, pay, and otherwise comply with the tax.

10) *The proposal will enlarge (contract) the rights and financial independence of the states.* The federal character of government in the United States makes the vigor of the states and their local subdivisions a matter of national interest. Federal taxes that are imposed without regard to state interests can adversely affect the ability of states to raise needed revenues, especially when rates are high or when federal and state levies apply to the same tax bases. The interests of the states are thus a proper matter of concern for federal tax policy. In some fields—such as the estate tax, tax exemption of interest on state and local securities, and the income tax rate schedule of the wartime period—there is evidence that state interests have been considered in federal tax policy. For the most part, however, federal tax policy has been developed with relatively little concern for the finances of the states. In the postwar period, there have been signs of

change toward greater concern for the interests of state and local governments.

### III. EVALUATING THE ARGUMENTS

The fact that tax arguments are couched in public interest terms does not reduce the confusion and difficulty of the policy maker's task. Consider the dilemma of the congressional committee member who has responsibility for deciding issues of federal tax policy. A succession of witnesses passes before the committee on which he sits. On practically every proposal of general application, some witnesses are for and some against. The arguments may be logically developed and persuasive, but unfortunately, they do not agree. The witnesses may differ on whether the proposal will promote specific objectives, such as tax justice or a high level of production. Perhaps even worse, one witness may argue that the proposal will promote justice, while another argues that it will retard production. The arguments thus fail to meet squarely, since both justice and a high level of production are of public importance. It is little wonder that committee members often grow increasingly confused, are prone to discount all arguments, and come to prefer facts, even irrelevant facts, to the most beautifully constructed arguments. An ever-present danger is that the committee member will be so frustrated that he will fall back on his own preconceptions and biases and, in effect, throw out all the arguments. Yet an evaluation of the arguments is of first importance if the tax issue is to be decided on its merits.

How can a maker of tax policy test the arguments to decide which to follow? There are a number of possible tests of varying importance and usefulness:

1) Since arguments are inevitably judged in comparison with others, it is important that all significant arguments be on the table when the decision takes place. Some advocates of proposals are more competent than others. If the policy decision to be made involved only a conflict of private interests, the maker of policy might view with unconcern whether an advocate had made a competent argument. But since the public interest is at stake, it is the duty of the policy maker to go beyond the testimony presented to him, if this is inadequate. While both sides of the case are usually presented when the proposal is one of general application, deficiencies in testimony often arise because numerous proposals involve directly only a relatively small number of taxpayers. When such proposals originate with the taxpayer, they are usually for a reduction in taxes. This reduction may be of great importance to the taxpayer seeking it, but the resulting ad-

verse effect on any one taxpayer outside this group may be too small to justify his appearance against the proposal and thus only one-sided arguments may be presented. Accordingly, a test of tax arguments is whether all sides of the matter have been adequately presented. If they have not been, the defect should, if possible, be remedied before the decision of the tax issue is made.

2) A test that should be applied to every argument is whether the facts on which it rests have been accurately stated. With minor exceptions, the witnesses are making *ex parte* statements, not objective analyses of the problem. While it is to be hoped that the witness, even though not under oath, will make no actual misstatements of fact, it is too much to hope that he will present all the facts, including those with implications adverse to his argument. The maker of policy must be in a position to apply the test of accuracy to the facts that are presented, to know whether other important facts have been withheld, and to have such facts supplied.

3) An argument usually states that if a given proposal is adopted, specified results will follow and that these results will promote or interfere with desirable objectives. Assuming the statement of facts has been found to be accurate and complete, the next question is whether the argument is correct. Every argument is an application of economic theory. Witnesses and makers of policy alike often profess disdain for theory, but the belief that certain results will follow certain actions must rest on some kind of economic theory. Unfortunately, the differences in the economic theories that persons believe are often a subconscious reflection of their interests and values and are rarely objective.

The problem of correctness of arguments involves another difficulty. The validity of an argument is determined both by the soundness of its logic and by the realism of its assumption. In a national economy marked by enormous variety, there are hardly any sets of assumptions that may not exist sometime, somewhere. Accordingly, almost every logically reasoned argument may under some circumstances be correct. An argument must contain at least a kernel of truth if it is to find affirmation and support in the mind of the listener. Likewise, hardly any argument is always correct, because the assumptions necessary to its correctness cannot be expected always to exist. The correctness of arguments is thus a relative matter, with every argument containing elements of both truth and error. But obviously some arguments are correct under a greater variety of circumstances than are others. The problem of testing the argument is thus not a simple one of determining whether it is always correct or always incorrect, but the complex one of determining under what cir-

circumstances it is correct, and whether those circumstances predominate in connection with the proposal under consideration.

4) An argument which is correct may be irrelevant to the issue under discussion. For example, a proposed tax change might be supported by the argument that it would increase savings. This argument would fall in the group of arguments relating to a high level of production. Assume that the argument has been examined and found to be correct under the probable circumstances. Even though it is correct, the argument should not affect the decision unless it is also relevant. The argument in the example would be relevant if (1) greater investment were a factor limiting the level of production and (2) lack of savings were a factor limiting the amount of investment. The argument would not be relevant if either of these two were not the case under the circumstances: that is, if the amount of investment were not a factor limiting the level of production, or if savings were already adequate for the investment being made, and investment were being limited by some other factor. An assessment of the economic conditions that are expected to prevail during the period for which the tax change is proposed is commonly necessary to determine the relevancy of the argument. Before an argument is allowed to influence a tax decision, it should be subjected to inquiry about whether it is relevant under the conditions which are expected to exist.

5) Another question that should be applied to every argument is: granting the correctness and relevance of the argument, how important is the objective it seeks to promote? All of the ten groups of arguments described above are based on desirable objectives. It is rarely possible to promote all objectives by any tax measure at the same time. There must be a choice among objectives. Within each class of objectives there also may be choices that must be made. For example, a choice may be necessary between tax justice based on benefits received and tax justice based on ability to pay. A choice among objectives must be made on the basis of their relative importance. This relative importance is not decided in the abstract. It varies from time to time. In some years Congress has deemed tax simplification to be a consideration of high relative importance, while in other years increased complexities have brought no evidence of concern. Moreover, relative importance varies from case to case. For example, the question is not whether in general justice is more important than simplicity. Rather, it is whether the amount of justice involved in a specific tax change is more important than the amount of simplicity involved. This makes it vital, in weighing the relative importance of various arguments, that there be a clear idea of the correctness and relevancy of the

arguments. Errors in those elements may lead to a conclusion about relative importance of objectives that would otherwise not be made.

6) How much weight should be given to the sincerity of the witness? If his statements are so inconsistent that he cannot rationally believe his own argument, its force is largely vitiated. But this is perhaps an unusual situation. Every member of a congressional taxing committee is aware that the reasons presented in arguments are not necessarily the real reasons, which may be more deeply seated in self-interest, group solidarity, or prejudice. If the test of a tax proposal is to be the public interest, however, the real reasons for making the proposal are largely irrelevant. Decisions should depend on the merit of the proposal, not on why it is made, provided of course that the actual effects of the proposal are fully understood.

It is rarely possible to prove that a witness does not believe his own argument. To question sincerity of motive will surely boomerang. Sincerity, or at least an aura of sincerity, is the basic undergarment of intellectual self-respect which no one gives up without a struggle. Moreover, people persistently and sincerely believe so much that is nonsense about taxes that there is little profit in trying to distinguish the sincere from the insincere. The question may also be one of whose sincerity is involved. Many of the arguments are made by paid advocates, who are not presumed to believe what they argue in the interests of their clients, while the clients in turn did not themselves think up the arguments. Finally, error is just as wrong if it is believed as if it is not—and is likely to be more dangerous if believed, because more strongly and persistently argued. The conclusion must be that while obvious insincerity destroys an argument, sincerity gives it no claim to acceptance.

7) Witnesses appearing before a tax committee differ greatly in their prestige. Some witnesses represent organizations that have an important place in the economy. Other witnesses have continued to testify over a period of years and have come to be known, respected, and trusted by members of the committees. Still other witnesses may be sponsored by one or more members of the committee. Other witnesses may have been weighed and found wanting in earlier years and are no longer given much attention. An unknown witness representing no important group and with no committee support must be unusually effective to make any significant impact. Unquestionably, a test that is applied to arguments, although unconsciously, relates to the prestige of the witness. Is this a safe test?

Reliance on the prestige of the witness permits a maker of tax policy to substitute an earlier view toward the individual or organization for a

personal check of the facts and personal analysis of the argument. If this reliance is well-founded, there is great saving in time and energy. Obviously, there are some people whose word must be trusted; otherwise it would be impossible to make tax policy rationally.

Prestige based on past experience that the witness understands the issues, does not misstate the facts, and has a reasonably unbiased approach, is prestige properly earned and can be relied on within limits. But the prestige that goes with connection with large organizations is another matter. The political influence of an organization by virtue of its widespread membership and the financial position and general prestige of its members is not a safe basis for accepting its arguments on taxation. The prestige that goes with large organizations largely concerns the point of view of the organization. If a member of the committee has found that over a period of years the viewpoint of a certain organization is most congenial to his thinking, he is likely to accept its arguments regardless of any other tests of their validity. Of course, this works both ways. A policy maker who has a profound dislike for the viewpoint of an organization is likely to distrust all its recommendations without making any test of the facts or analysis of the argument.

It is inevitable that the prestige of witnesses will have a significant bearing on the acceptance of arguments, but it is important to distinguish between the validity of the arguments themselves and the congeniality of the viewpoint.

#### IV. SOME IMPLICATIONS

Making tax policy involves the decision of tax issues—the acceptance, rejection, or compromise of tax proposals. Choices must be made among conflicting private interests. To make these choices is the essence of the political function. To decide tax issues in the public interest requires not only good intentions on the part of the maker of tax policy, but also knowledge and understanding. Tax proposals cannot be classified simply as white-good and black-bad. The arguments presented in support or opposition vary widely in degrees of correctness, relevancy, and importance. Intelligent policy making requires a detailed knowledge of the effects of tax proposals. To some extent this knowledge is of a general and unchanging character; a good deal of it is specific knowledge which can be gained only by direct study of the facts in a particular situation. To a large extent the policy maker is obliged to rely on tax specialists or experts to supply him with knowledge of the effects of tax proposals. The choice of experts is thus a matter of profound importance to the determination of tax policy.

The policy maker also needs to have an understanding of the public interest objectives or goals of tax policy, since it is with respect to these objectives that he must decide whether the expected effects of a proposed tax change would be in the public interest. The relative importance attached to different objectives constitutes a pattern of values. A pattern of values is not something that can be secured from experts. It is so intimately related to the intangible process of decision-making that it must be developed in the policy maker himself. The pattern of values of the policy maker largely determines the impact which tax arguments make on him and thus vitally influences the directions of tax policy growth.