BOOK REVIEWS


The progressive, or graduated, income tax is entangled with contemporary mores like an ivy vine—and it may seem utter political Quixotism to suppose that the vine can ever be cut down without razing modern society as a whole. “How would you pay the costs of modern government without it?” “How would you justify removal of the tax to the poor?” “What politician would dare vote against it?” These are typical questions that always greet the suggestion that the days of the Sixteenth Amendment are numbered. Yet I persist in thinking the progressive tax will, in the not-too-distant future, give way to a proportional tax, or at least to a modification setting a ceiling to the tax at 25 per cent of a man’s income.

The reasons are not far to seek. For one thing, the progressive tax got its hold on Western society during the long period of Fabian, Populist and quasi-socialist agitation, when it was popularly supposed that the way to help the poor was to cut down the scope of the rich and well-to-do. Today, people are not so sure that the way to help the “lower third” is to level the incomes of the top third: the recent experience of Western peoples with semi-collectivist governments has rubbed the bloom from all the many meliorist doctrines that were so popular in the nineteen thirties. A secondary consideration is that the tax has ceased to be a merely “soak the rich” fiscal device. It now hits vast numbers of the so-called “middle condition of men”—which means that it is cutting close to the bone with people whose votes can really count at the polls.

The most important reason, however, for thinking that progressive taxation is on the skids is the movement of the intellectuals. In increasing numbers of late they have been turning their backs on the various allotropes of socialism. It seems like only yesterday, though actually it was in 1946, that I heard Harold Laski refer to F. A. Hayek, then chiefly known as the author of *The Road to Serfdom*, as “poor Fritz; he’s a 1905 liberal.” Today “poor Fritz” is riding considerably higher than any of the late Professor Laski’s disciples—and it even appears that his ably reasoned long-term opposition to the progressive tax principle has found converts.

In any event, the intellectual sapping operation against the progressive principle has been gathering momentum. A scant four years ago the written opposition to progressive taxation was largely confined to the pamphleteers who wrote for the Committee for Constitutional Government and other such organizations. Then the movement spread out a bit, reaching “little” magazines such as
Human Events and The Freeman. Frank Chodorov and Harley Lutz, among others, wrote some very telling articles against the principle of progression for the fledgling journals of the Right. But these would have remained voices speaking to themselves if the movement against the progressive tax principle had not broadened out from there. What was needed was an invasion of academe, just to make the movement respectable among those who deem nothing “official” until it is stamped with a university imprint.

Now, with the appearance of The Uneasy Case for Progressive Taxation, the movement has at last achieved the required academic recognition. In their epoch-making book (and it is destined to be that) Walter J. Blum and Harry Kalven, Jr., two members of the University of Chicago law faculty, indulge in no exciting fiscal prophecies. What the authors do is to poke and prod and raise the gentlest of doubts. Where a more Menckenian writer would chortle and roar, Blum and Kalven stick to bland impeachments. “The case for progression,” they say in summation, “turns out to be stubborn but uneasy. . . .” The method of piling mild doubt upon mild doubt does not make for particularly exhilarating reading. But it is effective enough for a beginning. Timid as it is in its separate paragraphs, The Uneasy Case for Progressive Taxation adds up to a severe indictment of the progressive principle. If the authors seem inclined to back away from their prey after they have killed it with double-shotted guns, put it down to an ex post case of buck fever. The hardened academic huntsman in the field which the Messrs. Kalven and Blum have chosen for themselves simply does not exist.

The case for the progressive income tax principle has rested historically on such claims as “ability to pay” and “equality of sacrifice.” To make sense out of these claims, fiscal theorists have had to stretch the economist’s concept of marginal utility to cover the income dollar. According to this line of thinking, a rich man’s “last dollar” of income is of less value to him than is the “last dollar” to someone in a lower bracket. Assuming the truth of this for the moment, the rich man is obviously more “able” than the poor man to part with a whopping percentage of his “last dollar” of income. And in giving up more of what he values less, the rich man is nicked for “equality of sacrifice.”

The obvious fallacy of this method of reasoning is that it confuses subjective feelings with objective market valuations. The “marginal utility” of a chair or a toothbrush can be measured by the price which it takes to clear the market of a given supply of such commodities. But there is no way of measuring the usefulness of a dollar of income to a given individual—or, for that matter, to society as a whole. Men differ by temperament, by ambition, by circumstance and by training. To a Thoreau, intent upon watching a muskrat or a crow, the dollar will be valueless if it means taking a single hour away from the pure enjoyment of nature. To a chemist who is saving his money in order to gain a sabbatical year for experimentation with complicated formulae, the “last dollar” of income may seem as glittering with promise as the one particular ruby or sapphire that
sets a brooch to blazing. If there is any way of getting a viable accountancy in which the supposedly stable X of the equation can have as many valuations as there are individuals, it is unknown to man. Mathematics, even fiscal mathematics, cannot mix qualities and quantities and come up with anything that is intellectually respectable by way of an answer.

The case becomes even more absurd when the progressive income tax principle is justified by an appeal to the "value to society" of the "last tax dollar" taken from upper bracket personages. If it could possibly be argued that politicians are better judges of investment or spending potentials than individuals, there might be a justification for seizing most of the "last dollars" of savers and entrepreneurs. The experience of the past generation, however, is scarcely of a nature to prove the case for government "planning" in either the investment or the consumption field. From the Lustron house to the last stack on the pile of government butter purchases, the record of what the State has done to redistribute income according to political notions of moral "parity" is a testimony to inept and arbitrary action. If Keynesian notions of the "mature" economy had not been riddled by the researches of George Terborgh, for example, there might be some excuse for taking investment funds from the rich and passing them out as "purchasing power" to the poor. But the common sense experience of the world, no less than the scholarly investigations of a Terborgh, goes to prove that a "mature" economy is impossible in a world of changing individual desires. The "mature" economy thinkers of the nineteen-thirties reckoned without the claims of a hundred things, from electronics to atomic power, and from factory "automation" to jet propulsion. If there is any case for trying to measure the "utility" of the last dollar of a man's income to society, the presumption would be to let individuals save what they can for investment wherever the prospects for gain seem high. For in that way funds would flow into new factories, new jobs, new incomes—and so ultimately into new consumer expenditures.

The Messrs. Blum and Kalven are "uneasily" aware of the interdependence of progressive tax thinking and Keynesian economics. But they fail to make the most of the case against the popular assumption that progressive taxation is the cause of the improvement in the condition of the masses during the past half-century. This assumption crops up everywhere. I quote from a recent advertisement in the New York Times, "An Editor's Message to the Heads of Corporations." Speaking of a particularly enticing sales market, the author of the advertisement wrote: "There are ten millions or more of these particular women that taxes made! So I want to help you understand them . . . because taxes—your taxes and mine—changed their role in life completely and created a very rich, susceptible young market for advertisers."

Nine out of ten people, I suppose, would agree with the author of that particular advertisement. Yet it should be obvious upon reflection that taxes, while they may redistribute the purchasing power of any given moment, never of themselves add to the stock of tools that are used to maximize the creativeness
of an economy. Only as the amount of investment per worker is increased can individual consumption be raised to higher levels. The question thus becomes: Has progressive taxation resulted in an augmented stock of tools? To the extent that government has channeled investment into armaments, certain punch presses, turret lathes, and assembly lines have undoubtedly come into being during the past generation. But if the tax money had been left in private hands, it would have indubitably been spent over the long run on creative devices. (Money never remains idle for long without passing into the hands of people who can use it.) And the net gain to society in terms of available human energy would have been greater under private spending, for, with the role of government reduced, more employees would have been available for productive as against bureaucratic work.

In praising equalizing taxes as a cause of the American standard of living, the popular historians of the past half-century (the period of Frederick Allen’s The Big Change) have put the cart before the horse. For taxes come after production, not before. Americans are able to pay high taxes in the first place because the maligned “robber barons” of yesteryear spent their money in innumerable creative ways. The modern mass market was created by Detroit, not by the Sixteenth Amendment. Indeed, if there had been high taxes in 1900–12, Henry Ford might have had no surplusage of cash to put into the tin lizzie. The untaxed lizzie sold, yielding a further surplus. Whereupon Mr. Ford decided to raise the basic wage in his factory to $5 a day. Other manufacturers were forced forthwith to follow suit. To pay the increased wages, the tycoons were compelled to the various mechanical ingenuities that have added to the man-hour productivity of labor. And so the American economy has spiralled upward, creating the basis for the immense tax yield that has bemused people into thinking that taxes can be creative agents in themselves.

If they tend to skimp the economic aspects of their subject, the Messrs. Blum and Kalven also skimp the morals of the case. They can never quite bring themselves to say patly that the Sixteenth Amendment legalizes a theft. When Robin Hood took from the rich to give to the poor, his gallantry was never used to disguise the fact that he was a robber. But government can do with impunity what Robin Hood risked his neck to do. And simply because the progressive tax is a government-sanctioned theft, individuals regard it as morally justified to “cheat the cheater” or “rob the robber” if they think they can get away with it. The rich individual who recently remarked to me that he pays income taxes for one reason, “to keep out of jail,” was merely being more candid than most people in the brackets affected by high progression. Such is the moral climate that progressive tax rates encourage. It is the case of the Volstead Act all over again.

No doubt all taxes, whether levied impartially or not, are a theft of the individual’s energy. But, since governments are necessary for reasons that were apparent to the Greeks of Aristotle’s time, men will put up with taxation when it does not depart from the old ethical view of the law that the “privileges and
the immunities of the citizen shall be equal.” The Fourteenth Amendment to
the U.S. Constitution guarantees “equal protection” of the law to the citizens
of the forty-eight states. But can it truly be said that men are “equally pro-
tected” when an engineer or a physician is forced by progressive taxation to
work more hours for the government than a day laborer? And what of the
equity involved when a salaried worker makes $25,000 spread evenly over five
years while a creative worker gets his royalties from five years of work within
the tax span of a single year? The doctor who spends years as a poverty-stricken
interne and then has a few good years later in life may well feel aggrieved when
the government skims the cream from his belated earnings. Other people who
are not forced by professional standards to an uneconomic novitiate gain tax
benefits that are denied to more dedicated individuals. Indeed, the tax laws
under progressive philosophy make distinctions that are just as morally in-
vidious as the English law of 1691 that soaked Jews and Catholics and let Protes-
tants off easy. For “Jews and Catholics” in the modern age, read “the rich”—
or even the “middle condition of men.” The progressive tax laws are designed to
make the ambitious man, the man of incentives and energy and ingenuity, feel
like a second-class citizen.

But it is not only the rich and the “middle condition” of men that have a
right to feel put upon by the workings of the progressive tax principle. Poor
families who hope their children may some day rise in the world might reflect
with some irony on the fact that current tax laws actually tend to stratify exist-
ing class lines throughout society. Under progressive taxation the poor can never
aspire to rise very far. Yet the progressive income tax allows an Averell Harri-
man, a Joseph Davies, a Joseph P. Kennedy, a Henry Morgenthau, to keep for-
tunes that were made in a more propitious age. (I use New Deal names here not
because I feel mean, but merely to emphasize the point that modern taxation
tends to create a class of rulers and ruled. True “equality of sacrifice” would not
permit an Averell Harriman to make a political career and, at the same time,
chain Johnny Jones to an assembly line in Detroit.)

If The Uneasy Case for Progressive Taxation fails to clinch its case both
from the standpoint of morals and economics, it would be unfair to blame the
authors unduly for the shortcomings of their text. For as Blum and Kalven
themselves state, the real case for progressive taxation is wholly bound up with
the case for economic equality. If the fostering of economic equality is a tenable
duty of the State, then it matters little what means are employed in mulcting
fifty-one per cent of

From a passage in the preface I gather that Professor Aaron Director did
much to stimulate the researches of Blum and Kalven. It is good to know that catalyzers like Director are at large in American university life. Now, if Aaron Director or his colleague, F. A. Hayek, will only find the author to rewrite Tawney's *Religion and the Rise of Capitalism* and *Equality* from a new point of view, we really will be getting somewhere. The future opens before us; let us get to work.

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None of the freedoms guaranteed by the Bill of Rights has been so thoroughly studied as has freedom of religion. Only with respect to this freedom does the scholar find bibliographical riches. To the layman this may seem paradoxical; for, since the Constitution provides for the separation of church and state and for freedom of religion, and prohibits the state from invading the precincts of the church, what need is there to say more? Does not the First Amendment settle everything? The answer is that the First Amendment is as much of a "settlement" as are the commandments of the Decalogue—"Thou shalt not..." Constitutional prohibitions have a way of generating a great number and variety of attempts at circumvention as well as outright and flagrant violations. The constitutional "Thou shalt not," addressed to the federal and state governments, is only an appeal to self-restraint. There is a wall of separation between church and state, but there is nothing that can stop people from trying to climb over the wall, or to catapult stones over it, or to bore holes in it, or to march around it and try to make it fall as they make a great noise with trumpets of rams' horns and with a great shout. The record shows that "Something there is that doesn't love a wall."

The most thorough study of that record until recently was Carl Zollmann's *American Church Law*, first published in 1917 and revised in 1933. In 1950 this work was in a sense displaced by Anson Phelps Stokes' *Church and State in the United States*, a monumental work in three volumes with close to three thousand pages. These works are for the rare specialist. Then there are a number of smaller monographs for the scholar, like the books by Johnson and Yost, Torpey, Cobb, Butts, and Sweet. Finally, there are the books that are important as statements of a point of view, books that are written as tracts for the times, like those by Dawson, Moehlman, Thayer, Bower, O'Neill, and Parsons. What has been missing is a book that would combine the virtues of Stokes, Sweet, and Moehlman: a book based on sound scholarship, yet written in a style that would not repulse the non-specialist; a book that does not hesitate to debate a point, but one that gives both sides of the argument; a book that does not fear to state