FROM DEONTOLOGY TO PRACTICAL APPLICATION: THE VISION OF A GOOD SOCIETY AND THE TAX SYSTEM

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This article presents two arguments — one deontological and the other consequential — which, jointly and separately, aim to justify redistributive taxation and the resulting imposition of a greater tax burden on the wealthy. Both arguments are based on a community-oriented rather than an individual-centered view of society and are drawn from an analysis of the role that individual and collective rights and responsibilities ought to play in contemporary tax policy-making.

According to the deontological approach, the wealth belonging to the affluent is not merely the product of their efforts but also results from benefits conferred by social cooperation and good fortune. The article expands on this line of thinking by suggesting that the tax burden allocation is just if all members of society are guaranteed certain basics that ensure adequate living conditions and represent their fair share of the fruits of social cooperation. Since the pre-tax distribution of resources is so unequal, this approach to taxation is expected to result in

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some form of redistribution.

The second argument, based on consequential considerations, emphasizes the harmful economic, political, and social effects of concentrated wealth and income for modern democracy and promotes the use of the tax system to avoid these effects. This argument suggests that the wealthy, who hold the bulk of concentrated resources and, consequently, the actual means to contribute to redistribution, have a civic obligation to participate in the safeguard of society and fellow citizens by bearing a heavier tax burden than less affluent citizens. Additionally, the collective as a whole holds the right and bears the responsibility to require the implementation of redistributive measures in order to protect the workings and prosperity of the democratic society. The taxation of inter-generationally transmitted wealth is proposed as the proper target for redistribution.

TABLE OF CONTENTS

I. INTRODUCTION: THE TAX SYSTEM AND NORMATIVE CLAIMS OF JUSTICE AND FAIRNESS ........................................... 407

II. THE DEONTOLOGICAL APPROACH — RIGHTS AND RESPONSIBILITIES ................................................................. 410
   A. The Liberal-Libertarian Model of Human Rights ................. 410
   B. Rights, the Joint Venture, and Market Allocation ............. 414
      1. Socialization and the Joint Venture ............................. 419
      2. From the Joint Venture to the Social Paradigm of Rights ............................................................................... 420

III. FROM DEONTOLOGY TO PRACTICAL APPLICATION: THE PRINCIPLES OF TAXATION .................................................. 423
   A. The Benefit Principle ...................................................... 423
   B. The Ability to Pay Principle ............................................. 427
   C. The Combined Principle .................................................. 430
   D. Value Judgments and the Tax System .............................. 432

IV. THE CONSEQUENTIAL APPROACH: USING REDISTRIBUTION TO AVOID NEGATIVE EFFECTS OF WEALTH AND INCOME CONCENTRATIONS .............................. 434
   A. The Negative Economic Effects of Wealth and Income Concentrations: Poor Economic Growth ............................. 434
   B. The Negative Political and Social Effects of Wealth and
I. INTRODUCTION: THE TAX SYSTEM AND NORMATIVE CLAIMS OF JUSTICE AND FAIRNESS

“The final choice of redistributonal aims for a tax system involves basic value judgments about the nature of a good society.”1

The tax system is one of the most important economic and political institutions in a democratic society.2 It is expected to meet a number of economic goals, such as securing sufficient revenue for the government to operate and directing private economic activity.3 In addition, there are more normative-ideological objectives the tax system is generally required to promote, including facilitation of efforts to unify the nation — especially by funding social programs — and fairness.4 The promotion of fairness within the tax system is often regarded as a matter of high priority, overshadowing other considerations which arise in the contemplation of fiscal issues. As stated by Canada’s Royal Commission on Taxation:

[T]he first and most essential purpose of taxation is to share the burden of the state fairly among all individuals and families. Unless the allocation of the burden is generally accepted as fair, the social and political fabric of a country is

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4 See id.
weakened and can be destroyed . . . [F]airness in taxation must override all other objectives where there is a conflict among objectives.  

This view closely mirrors a more general thesis about the role of justice in civil society, defended by John Rawls: “Justice is the first virtue of social institutions, as truth is of systems of thought. A theory however elegant and economical must be rejected or revised if it is untrue; likewise laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust.”

What constitutes a “fair” or “just” system of taxation, however, is not immediately apparent. This article argues for the priority of wealth redistribution in the composition of a fair tax system. The arguments presented below are based on a community-oriented rather than an individual-centric view of society. In general, one can advance two chief reasons for justifying redistributive taxation and its implication, the imposition of a greater tax burden on the wealthy. The first argument, which is deontological and often cited in the literature on tax theory, holds that the wealth belonging to individuals is not merely the product of their own efforts but also results from benefits conferred through social cooperation and advantages gained by good fortune. In this view, the market allocation of goods and services does not properly reflect the role of social collaboration and should be corrected accordingly. This article pushes this argument further by suggesting that what ultimately matters in the reallocation of market goods and services is that all members of the social body are provided with certain basics that ensure adequate living conditions. A minimum standard of living in society will reflect each citizen’s just claim for the fruits of social cooperation. This conclusion emerges from an analysis of the role that individual and collective rights ought to play in a modern democracy. Since the distribution of resources is so unequal in our times, the funding of adequate living conditions for all is expected to result in some form of distribution of market output, from high to lower income individuals.

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5 Royal Commission on Taxation Report, 4 Carter Report 1 (Ottawa, Queen’s Printer and Controller of Stationary 1966).
The second argument for redistributive taxation, based on consequential considerations, emphasizes the harmful effects concentrated wealth and income pose for modern democracy and promotes the use of the tax system to lessen these effects. According to the second argument, large concentrations of wealth and income in a few private hands undermine the proper functioning of modern democracy by denying equal opportunity to participate in the social, economic, and political realms of life; causing social and political unrest; impeding national economic growth; and degrading the relationship between individuals by generating classes of citizens. The consequential argument suggests that the wealthy, who hold the practical means to contribute to the decentralization of wealth and income, bear a civic obligation to participate in safeguarding the well-being of society and fellow citizens by bearing a heavier tax burden than less affluent citizens. Furthermore, society as a whole has a collective right and responsibility to require the wealthy to bear this increased burden. Unearned, particularly inter-generationally transmitted wealth can be especially harmful to modern democracy as it perpetuates and magnifies the harms caused by maldistributed wealth and income across generations. Therefore, this form of wealth becomes an appropriate target for redistribution.

The two arguments outlined in this article lead to the same general conclusion, which prescribes the redistribution of resources in modern democracy. However, neither argument can gain support nor the willingness of society to implement redistributive taxation unless there exists a social understanding of the value and nature of a (good) society and a commitment among citizens and governments to safeguard such a society. This article aims to contribute to modern tax theory by considering these somewhat neglected elements of normative discourse over the desirable nature of society. Part II of the article outlines the deontological argument for the imposition of a heavier tax burden on the wealthy with an extended discussion on human rights. Part III of the article discusses the tax theory implications of the deontological rationale. Part IV of the article details the consequential argument for the imposition of a greater tax burden on the rich and Part V explores related tax implications of the consequential and deontological arguments. This article does not address the justifications for using the tax system, rather than other means, for redistributational purposes nor does it analyze the more practical aspects of redistributive taxation such as deciding on an exact tax rate or rates. These issues are beyond the scope of this
article and are therefore left for other inquiries.8

II. THE DEONTOLOGICAL APPROACH — RIGHTS AND RESPONSIBILITIES

Social-contract theorists from the seventeenth and eighteenth centuries have been fundamental to the shaping of the contemporary liberal-libertarian view of human nature and the state.9 With this influence, human nature is generally conceptualized as highly individualistic and self-sufficient, suggesting that the government is constructed mainly to protect the freedom of citizens and yielding a distinct classification of human rights as limited in scope and negative in character.10 This article calls for a different approach to human nature and society by placing more emphasis on social cohesion and shared responsibilities than on individualism. Such a view looks at society as composed of individuals who join together for an inclusive venture, which I will refer to here as “the joint venture” or “civil society.” People participating in this venture are not only holders of rights but also bear corresponding civic responsibilities. As duty bearers, all individuals, and, consequently, society as a whole, are obligated to promote and protect the rights of others, especially of those most in need, and to cultivate the infrastructure required to facilitate human rights and obligations.

A. The Liberal-Libertarian Model of Human Rights

Early social-contract theorists suggested that individuals possess natural rights that exist prior to and independent of the state and which, in effect, set boundaries on the sovereign’s power over its

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10 See SHAPIRO, supra note 9, at 273.
From Deontology to Practical Application

citizens.\footnote{See Mary Ann Glendon, Rights Talk: The Immaterialization of Political Discourse 20-21 (1991); Shapiro, supra note 9, at 277; Strum, supra note 9, at 29.} John Locke, Thomas Hobbes, Jean-Jacques Rousseau, for example, describe in their theses an initial state of nature that predates the formation of the civil or political order.\footnote{Thomas Hobbes, Leviathan 183-217 (C.B. Macpherson ed., Penguin Books 1968) (1651); John Locke, Second Treatise of Government 8-13, 18-29 (C.B. Macpherson ed., Hackett Publishing 1980) (1690); Jean-Jacques Rousseau, The Social Contract 1-5 (Maurice Cranston ed., Penguin Books 1968) (1762).} In this state, people are roughly equal and invested with the same natural rights, particularly the right and/or duty of self-preservation.\footnote{See Hobbes, supra note 12, at 183-217; Locke, supra note 12, at 8-13, 18-29; Rousseau, supra note 12, at 1-5.} Because life is unsafe in the state of nature, individuals leave this state and enter civil society (i.e., the state).\footnote{According to Locke, for example, the state of nature does not provide a mechanism to uphold the law of nature, a known and impartial judge, nor the power to execute just sentences. For these reasons, individuals are “willing to quit” the state of nature and “join in society with others . . . for the mutual preservation of their lives, liberties and estates.” Locke, supra note 12, at 66-67 (emphasis removed). Similarly, Rousseau stated:} In doing so, individuals seek to improve (rather than worsen) their situation and they do not surrender their basic rights and liberties.\footnote{See Locke, supra note 12, at 70-71; Rousseau, supra note 12, at 3 (“. . . and all, being born free and equal, surrender their freedom only when they see advantage in doing so”); id. at 20-25.} The state is viewed as a mechanism established mainly for the overriding goals of self-preservation and the protection of individuals as, first and foremost, autonomous, self-sufficient entities.\footnote{Locke explains, “the power of the society, or legislative constituted by them, can never be supposed to extend farther, than the common good; but is obliged to secure every one’s property [i.e., life, liberty, and estate], by providing against those . . . defects . . . that made the state of nature so unsafe and uneasy.” Locke, supra note 12, at 68.} Accordingly, liberal and libertarian theories of
human rights generally conceptualize rights as negative in character, designed to protect individuals from interference by other members of society and from intrusions by the government.\textsuperscript{17} Negative rights of freedom to act or of noninterference are perceived to be vastly different from positive rights, which entitle people to be provided with a particular good, action, or service.\textsuperscript{18} Only the former kind of rights captures the supremacy of individualism and self-sufficiency and is therefore accepted as a legitimate claim.\textsuperscript{19}

The minimalist approach to the state, as established principally for the protection of the individual, has carried over from the early centuries into contemporary social-contract theory. Theorists such as Robert Nozick and John Rawls draw on seventeenth and eighteenth century notions of the state and the person. They frequently presuppose that the welfare of the individual is of greater importance than social and political relationships and that it therefore constrains these relationships.\textsuperscript{20} These theorists describe the state as either a

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  \item \textsuperscript{17} See, e.g., \textsc{Shapiro, supra} note 9, at 277; Audrey R. Chapman, \textit{Reintegrating Rights and Responsibilities: Toward a New Human Rights Paradigm}, in \textit{INTERNATIONAL RIGHTS AND RESPONSIBILITIES FOR THE FUTURE}, \textsc{supra} note 9, at 3, 8 (suggesting that the more absolute the protection the government offers through negative rights, the safer the individual).
  
  \item \textsuperscript{18} See, e.g., \textsc{Strum, supra} note 9, at 30 (“‘Rights,’ as envisioned under the social contract, and particularly as articulated by Hobbes, were the possession of selfish individuals, whose primary concern was to secure their safety and property.”) (emphasis added).
  
  \item \textsuperscript{19} Chapman, \textsc{supra} note 17, at 8 (“Civil and political rights, because they are viewed as negative rights, are considered to be valid claims, whereas economic, social, and cultural rights are categorized as aspirations rather than as true rights.”); see also \textsc{Strum, supra} note 9, at 30. Note, however, that many human rights theorists argue that all human rights require both positive action and restraint by the state if they are to be effectively implemented. \textit{See, e.g., Carl Wellman, Real Rights} 6 (1995); David Braybrooke, \textit{The Firm but Untidy Correlativity of Rights and Obligations}, 1 \textsc{Can. J. Phil.} 351 (1972). On the predominance of the right to freedom, see \textsc{John Stuart Mill, On Liberty} (David Bromwich & George Kateb eds., Yale University Press 2003) (1869). For a more recent argument, see H. L. A. Hart, \textit{Are There Any Natural Rights?}, \textit{in Society, Law and Morality} 173 (Frederick A. Olafson ed., 1961).
  
  \item \textsuperscript{20} According to Nozick, only “a minimal state, limited to the narrow functions of protection against force, theft, fraud, enforcement of contracts, and so on, is justified; that any more extensive state will violate persons’ rights not to be forced to do certain things, and is unjustified.” \textsc{Robert Nozick, Anarchy, State, and Utopia} ix (1974). Rawls’s theory of justice is also grounded in the understanding that individuals are primarily self-interested beings aiming to maximize their social benefits. He theorizes a hypothetical situation corresponding to the state of nature in which individuals predate social and political relationships and no one knows his
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means to facilitate consensual market exchanges and to protect citizens from injury by others\(^{21}\) or as a political instrument established to allow individuals to pursue their self-interest (however defined) by maximizing social benefits under the rules of justice.\(^ {22}\) In either case, the defense of individualism continues to rule out a meaningful account of the need for sociability.\(^ {23}\) As eloquently explained by Audrey Chapman, “[i]f every individual functions as an autonomous unit, responsible for himself or herself, and if the major right or justified claim is for noninterference, there is no theoretical grounding for individuals to acknowledge reciprocal obligations other than to respect each other’s autonomy.”\(^ {24}\) This interpretation of human socialization, however, is not without difficulty. Most importantly, the image of detached, self-sufficient, autonomous individuals fails to fit place in society, personal attributes, or even conception of the good. Deliberating behind this “veil of ignorance,” members of society determine the rights and duties to be born once there is an established collective body such that social benefits would be maximized. \textit{See Rawls, supra} note 6, at 11–12, 108. For a later (libertarian) example, see \textit{Richard A. Epstein, Takings: Private Property and the Power of Eminent Domain} 5 (1985) (explaining that the end of the state is to protect liberty and property and that these conceptions are understood independent of and prior to the formation of the state).

\(^{21}\) \textit{See Nozick, supra} note 20, at 16–17, 149–51. Like Locke, Nozick posits that individuals hold natural rights, including the right to acquire and transfer property. He assumes that, in the state of nature, individuals lack firmly established methods for settling disputes and thus decide to form protective agencies to adjudicate conflicting claims and facilitate market transactions. \textit{Id. at 67}. According to Nozick, distribution or redistribution measures are inappropriate since they undermine existing distributions of legitimate holdings and violate individuals’ freedom of choice. Thus, the proper political theory can only provide for a very minimalist state. \textit{Id. at 150–53, 155–58}.

\(^{22}\) \textit{See Rawls, supra} note 6, at 1–12, 54–55, 131–32.

\(^{23}\) For example, Rawls’s first principle in \textit{A Theory of Justice} is that “Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.” \textit{Rawls, supra} note 6, at 266. Since Rawls’s second principle maintains that the goods of liberty, opportunity, income, wealth, and self-respect are to be equally distributed unless inequalities benefit the least advantaged, the priority of liberty in his theory may undermine the commitment to equality. \textit{See id.; David Hollenbach, Claims in Conflict: Retrieving and Renewing the Catholic Human Rights Tradition} 17 (1979).

\(^{24}\) Chapman, \textit{supra} note 17, at 10; \textit{see also Amitai Etzioni, Too Many Rights, Too Few Responsibilities, in International Rights and Responsibilities for the Future, supra} note 9, at 37 (claiming that the liberal-libertarian individualistic model of human rights tends to emphasize rights to the exclusion of responsibilities such that it offers an inadequate basis for the imposition of active responsibilities on the individuals as well as on the government).
with what we know today of human nature and social existence. Once this view of the individual breaks down, the whole theory of rights and our understanding of the state become open for reconsideration.

B. Rights, the Joint Venture, and Market Allocation

Contrary to the liberal-libertarian individualistic view of the state as primarily dependent on contractual acts and composed of isolated individuals, an alternative view of society and human nature sees social existence as an integral part of the well-being of the individual and not as a matter of free choice. In this view, all members of society and what they create in output are part of an all-inclusive joint venture which can be referred to as “the civil society” or the “state.” The “state” or “civil society” is a never-ending project, constructed by individuals, constrained and shaped by their virtues, and reflecting back on them in all aspects of human life.

In the context of taxation, the claim of joint venture is raised generally to argue for the legitimacy of the redistribution of income, wealth, or both. Proponents of the joint venture paradigm commonly assert that the government’s participation in the public realm by

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25 As pointed out by Joseph Raz, social relationships are necessary in order to enable individuals to realize their self-worth. He states:

Personal friendships, marital relations, one’s loyalty and sense of pride in one’s workplace or one’s country, are among the most valuable and rewarding aspects of many people’s lives. Such relations are culturally determined forms of human interaction and it is through learning their value that one acquires a sense both of the possibilities of one’s own life and of one’s obligations to others.


26 This argument draws on the “organic” conception of the State. Klaus Vogel states:

In Germany the philosophers and poets of the romantic era led the attack; they developed the “organic” theory of the State. For those romantic philosophers, the State is “not a mere manufacturer, steward, insurance institution, or merchantalist association; it is the intimate union of all physical and spiritual needs, of all physical and spiritual wealth and of the entire internal and external life of a nation to a large, energetic, perpetually changing and living whole.”

Klaus Vogel, The Justification for Taxation: A Forgotten Question, 33 AM. J. JURIS. 19, 27 (1988) (citing Adam Müller, Die Elemente der Staatskunst [The Elements of Statecraft], ZWEITE VORLESUNG 27 (1809) (Ger.)); see also infra notes 106–08.
providing, for example, the infrastructure for the division of labor and the monetary and legal systems, gives the government the right to claim its “fair share” of all income-generating activities. After being collected, the government’s share may be allocated to achieve various ends as it finds appropriate, including the redistribution of resources. However, on its face, the argument of joint venture fails to provide a clear justification for the distribution of the government’s share in social output to lower-income citizens. This deficiency is particularly evident when redistributive measures are compared, for example, with the allocation of these funds for goals more overtly serving the common good, such as the construction of public roads or the maintenance of a national guard.

The logic of the joint venture argument supporting redistributional ends becomes clearer once the government is thought of not as an autonomous entity but instead as, first and foremost, a representative of the body of individuals who comprise the society it governs. The government is important in the joint venture to the extent that it enhances, facilitates, and provides the context for social cooperation. Ideally, this cooperation leads to the creation of the government and supports its operation. In this light, the government serves mainly as a mediator between individuals, and as the product of their collaboration, rather than as an independent entity. Accordingly, the joint venture between individuals and the government, to which tax theory often refers, may more accurately be defined as a joint venture among individuals mediated by the government. If the joint venture consists primarily of relationships among individuals, then the government’s claim to its “fair share” of output generated by these relationships may be better understood as a collective action designed to ensure not that the government receives a “fair share” of the societal production but that each member of the society receives it.

The term “fair share” implies that there is something unfair in the market allocation of goods and services. Some theorists claim that the market is a morally neutral mechanism, a system where


28 See id.

29 See Michael J. Graetz, To Praise the Estate Tax, Not to Bury It, 93 YALE L.J. 259, 275–79 (1983) (discussing several reasons not to regard market distribution as inherently fair or as presumptively just).
individuals become responsible for the allocation of resources in their own lifetimes. These scholars perceive the market as a method of putting individuals in a position of equal opportunity with respect to one another. Proponents of this view of the market generally contend that the economic differences that emerge between individuals are mainly the result of the exercise of free will and effort such that the benefits these individuals acquire derive from their choices and labor. The market allocation, therefore, provides a just reward to the laborer or owner of capital, with the implication that the market benefits the strong and the deserving while rightfully failing to reward those who are “lazy, weak, or otherwise undeserving.”

The first difficulty with the view of the market as neutral or providing just rewards is that, in the real world, people do not enter the market with equal resources including identical or otherwise equivalent talents, skills, or backgrounds. Individuals bear some responsibility for their situation because of the decisions and actions they make, but they do not bear complete responsibility given that people face unequal starting points or circumstances. As John Rawls succinctly observes, “Even the willingness to make an effort, to try, and so to be deserving in the ordinary sense is itself dependent upon . . . family and social circumstances.” Thus, the operation of the market does not place individuals in a position of equal opportunity or complete accountability. To a certain extent, the problem of inequality of opportunity or starting points may be eased through solutions aimed at leveling the playing field, such as redistribution of resources, which may strengthen the relationship between personal responsibility and economic rewards. Nevertheless, the very presumption that the individual merits her market allocation even under ideal conditions of equality of

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30 For a good discussion on the relationship between the market economy and personal merit, see Amartya Sen, The Moral Standing of the Market, in ETHICS AND ECONOMICS 1, 1–19 (Ellen Frankel Paul et al. eds.,1985).
32 Graetz, supra note 29, at 274.
34 Id.
35 RAWLS, supra note 6, at 64.
36 MURPHY & NAGEL, supra note 33 (suggesting that taxes that are used to fund programs promoting equality of opportunity may help to improve rather than undermine the relationship between the market and personal accountability).
opportunity is questionable.

An important component of the concept of merit is the proposition of a reward *deserved* for something a person has *done*, implying a worthy personal action and not social convenience or luck. The fact that the market allocation of income and wealth is usually regarded as based on merit lends support to the idea that it is a morally “ethical” or “just” reward. Thus, people are generally “uneasy” accepting a departure from the results of the marketplace, and they see little justification for redistributing income or wealth or for taxing them at all. From such a starting point, it is necessary to “make a case” for redistributive taxation, as well as for any form of taxation, and the debate centers on the determination of the fairness of the distribution of resources in society. However, it is difficult to justify the market distribution as an expression of merit.

Market distribution fails to reflect merit not only because people start from unequal places but also because the market output is the product of a combination of factors rather than simply the result of efforts invested by any one individual. As Michael Graetz points out, “even in a perfectly functioning market economy, most production is based on the joint use of different resources, typically provided by different people.” Some people may appear to be more closely related to the output than others although all are in fact necessary in the process of production, just as a theatrical play depends on the labor of backstage workers as well as on the performances of the actors. By the same token, some share of the

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37 There may be little distinction between the reward and desert concepts: “desert” can mean either a reward or a punishment that is undeserved, while a “reward” is a payoff given to a person for some merit or service rendered. As Herbert Kiesling notes, “[D]esert, however, includes the idea that a person may be worthy of recompense, perhaps without receiving compensation itself, while the reward concept contains the implication that compensation is made.” HERBERT KIESLING, TAXATION AND PUBLIC GOODS: A WELFARE-ECONOMIC CRITIQUE OF TAX POLICY ANALYSIS 119–20 (1992) (adding that despite an overall neglect of the reward and desert concepts in the modern public finance literature, these expressions dominate the general public’s understanding of market allocation).

38 Id. at 120.


40 Graetz, supra note 29, at 274–75.

41 Id. at 274; see also HENRY C. SIMON, PERSONAL INCOME TAXATION 18–19 (1938) (describing the debate in terms of “ethical-aesthetic” claims).

42 Graetz, supra note 29, at 276–77.

43 Id. at 275.
market output can be attributed to societal conditions that, again, result from the work of many unidentified individuals. Graetz notes that “[t]he existence of public institutions, including laws and law enforcement mechanisms — criminal and corporate codes and courts to enforce them, for example — affects returns to private institutions and individuals.”

Similarly, the results of the market depend on the demand of others for products and services. People who work or invest capital where there is high demand for their products or services are likely to succeed, while those who are involved in industries or endeavors in which demand is weak will probably do quite poorly.

Finally, returns on capital and labor are affected by luck and by other factors outside the individual’s control. Many outcomes are determined, for example, simply by “being born into a family of wealth and education, rather than one of poverty and ignorance.”

By illustrating that at least part of the output of any one person results from the input of others and from sheer luck, Graetz calls into question the view that the market is morally neutral, that it provides fair results, or that the individual merits the entire share of her market allocation. Unfortunately, as a practical matter, it is usually impossible to “determine which person — or even which resource — produces or deserves what share of the total output.” However, once the predisposition toward the merit of the market distribution is challenged and the need for joint efforts is validated, it is easier to reach the conclusion that some form of taxation in general and redistribution in particular are necessary in order to ensure that all members of the society enjoy a fair share of the societal output.

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44 Id. at 276.
45 Id. at 275.
46 Id.
47 Id. at 275–76.
48 Id. at 276. For instance, Graetz discusses empirical evidence demonstrating that inherited wealth may account for at least half the net worth of wealthy men and for most of the net worth of wealthy women. See id. (citing JOHN A. BRITTAIN, INHERITANCE AND THE INEQUALITY OF MATERIAL WEALTH 47–49 (1978)).
49 Graetz, supra note 29, at 276. Cf. LOCKE, supra note 12, ch. v (on property), §§ 25–51, at 18–30. In particular, luck should not serve as a moral basis for rewards. See, e.g., RAWLS, supra note 6, at 89 (“We do not deserve our place in the distribution of native endowments, any more than we deserve our initial starting place in society.”).
50 Graetz, supra note 29, at 275–76; see also Edrey, supra note 14, at 502.
51 Note Rawls's conclusion that the willing cooperation of all members of the society is necessary in order to obtain long term political stability and the
1. Socialization and the Joint Venture

The model of joint venture starts with individual taxpayers and their collective efforts in the operation of civil society. It may be argued that, given this starting point, taxpayers can resist entering into partnership with other individuals or the government from the outset, and thereby object to the application of the joint venture to their situation already in the early stages of social or political cooperation. The implication of such a claim is that the market allocation where partnership is rejected solely reflects the taxpayers’ efforts and merits rather than social collaboration. Under this state of affairs, society could have no legitimate claim over the market allocation of these taxpayers since it seems not to contribute to their success. However, as the previous portion of this article suggests, the process of production, especially in the modern world, and society as a whole, heavily relies on social cooperation. To claim that the joint venture does not play an important role in any one economic activity is, as a practical and theoretical matter, to misinterpret the very notion of society. One can try to isolate herself from others or from a particular activity or resource and may, to some extent, succeed in doing so. Nonetheless, no one can live in a state of isolation and, so, the disassociation of an individual from the joint venture to any meaningful degree is practically impossible. The importance of the structures that result from the joint venture in an orderly society, such maximization of societal output. RAWLS, supra note 6, at 4–6; see also Avi-Yonah, supra note 27, at 1404 (suggesting that a belief in some form of societal entitlement can support redistribution of resources without completely revoking the idea of private property rights). For an opinion that prescribes a focus of tax policy on “economic efficiency rather than [on] ethics,” see Graetz, supra note 29, at 277.

52 Avi-Yonah, supra note 27, at 1404–05.

53 Cf. LOCKE, supra note 12, ch. xi, § 142, at 75 (holding that taxes should not be levied except by “the consent of people.”). Note, however, that “the consent of people” can be gained either from individuals, the majority, or their representatives. Id. ch. xi, § 140, at 74.

54 For a related perspective, see the social theory of Weber in MAX WEBER, THE PROTESTANT ETHIC AND THE SPIRIT OF CAPITALISM (1905). More recently, the communitarian movement suggests, among other things, the concepts of civility and commitment are among the community’s core elements. It has been advocated by communitarians, for instance, that once a person enters society she gives it the right to impose a set of rules on her. Under such an assumption, there is no option of rejecting the joint venture and its system of taxation. See, e.g., MICHAEL J. SANDEL, LIBERALISM AND THE LIMITS OF JUSTICE 122–24 (1998) (discussing one possible scenario for the process of social cooperation taking place behind Rawls’s veil of ignorance).
as the economy, the division of labor, and the use of money, is clear. These features are intrinsic aspects of modern life and cannot be easily rejected. Social reality, therefore, “forces” individuals into cooperation and makes the societal claim for a share of their market allocation an integral part of human existence in civil society.

Moreover, political, economic, and social relationships among individuals are not only a matter of choice but a condition inherent to the nature of the person. By denying the importance of cooperation to human existence we undermine the infrastructure upon which it depends. The joint venture is not merely a mechanism of production but, more profoundly, it represents a vision of the person and of civil society with shared obligations and privileges. This view of the person and society is further advanced in the next section, which explores the social paradigm of human rights.

2. From the Joint Venture to the Social Paradigm of Rights

Notwithstanding the predominance of individualism, throughout the history of political thought, theorists sought to balance the needs and interests of the individual against those of the collective, recognizing a powerful bond between the two. John Stuart Mill wrote that “[t]he contented man, or the contented family, who have no ambition . . . to promote the good of their country or their neighbourhood . . . excite in us neither admiration nor approval.”

The essence of Rousseau’s social contract theory presupposed a significant degree of social unity. This bond between the individual and the collective further strengthens the argument that individuals bear social responsibilities in addition to simply being claimers of rights.

55 See Annette C. Baier, Claims, Rights, Responsibilities, in PROSPECTS FOR A COMMON MORALITY 149, 149 (Gene Outka & John P. Reeder, Jr. eds., 1993) (suggesting that sociability is not merely a matter of individuals’ taste but rather an essential part of their very being).
56 RAZ, supra note 25; Avi-Yonah, supra note 27, at 1404.
57 WILL KYMLICKA, LIBERALISM, COMMUNITY AND CULTURE 207–09 (1989); Strum, supra note 9, at 30.
58 JOHN STUART MILL, CONSIDERATIONS ON REPRESENTATIVE GOVERNMENT 63 (Elibron Classics 2006) (1873).
59 ROUSSEAU, supra note 12. But see Chapman, supra note 17, at 9 (claiming that the early liberals sought to justify a “sphere of freedom and autonomy” for the individual within society that, in time and importance, came before any social relationships).
60 For an interesting discussion on rights and responsibilities, see David D. Boaz,
Some contemporary liberal and neo-republican theorists underscore the bond between individuals and the collective by arguing that there is no real conflict between individualism and the communal.\(^\text{61}\) According to this line of thinking, membership in a collective body does not threaten the freedom of the individual but, instead, provides the individual with a much needed sense of identity, self-worth, well-being, and a feeling of belonging.\(^\text{62}\) All of this, in turn, enables personal realization in a well-ordered society.\(^\text{63}\) From here, a powerful understanding of the individual may develop, offering a standard for “the good citizen.”\(^\text{64}\) The good citizenship standard breaks away from pure individualism and balances social responsibilities against individual rights.\(^\text{65}\) In this light, all members of society share a common responsibility to the social body and to one another as both right-holders and duty-bearers, treating shared obligations as necessary “virtues.”\(^\text{66}\)

Audrey Chapman explains that as right-holders, individuals can make claims consistent with the political, economic, and social standards of a contemporary democratic society.\(^\text{67}\) Some types of rights may also be vested in groups, making it possible to assert claims collectively in order to protect and promote the interests and needs of the collective.\(^\text{68}\) Therefore, as duty-bearers, “each person is responsible individually and collectively for respecting and protecting the rights of others and promoting conditions conducive to the implementation of human rights.”\(^\text{69}\) Particularly, there is an obligation to reach out to the most vulnerable members of society who face the greatest barriers to the enjoyment of rights whether because of race,

\(^{61}\) See KYMLICKA, supra note 57, at 208.

\(^{62}\) See RAZ, supra note 25.

\(^{63}\) See KYMLICKA, supra note 57, at 208–209.

\(^{64}\) Deborah H. Schenk, Saving the Income Tax with a Wealth Tax, 53 TAX L. REV. 423, 468 (2000) (addressing particularly the communitarian movement); see also Etzioni, supra note 24, at 38.

\(^{65}\) See Schenk, supra note 64, at 468.

\(^{66}\) See id.

\(^{67}\) Chapman, supra note 17, at 14 (suggesting that rights in the twenty-first century should be understood as “positive instruments of human and community development,” reinforcing the bond between members of society and their responsibility to one another and underscoring what society regards as essential to life in modern society).

\(^{68}\) Id. at 14.

\(^{69}\) Id. at 14; see also Boaz, supra note 60, at 44.
gender, age, or economic standing.\textsuperscript{70} Taken as a whole, this view of society and the implications for shared responsibilities may serve as a basis for the formation of positive rights — not just the liberal-libertarian conceived negative ones — as an essential part of human existence in modern civilization.\textsuperscript{71}

Under the above description of what can be called “the social paradigm of rights,” a community or civil society is fundamental to the exercise of human rights.\textsuperscript{72} The social paradigm of rights therefore challenges the traditional liberal-libertarian conception of rights in which the autonomous individual holder of rights precedes and constrains communal relationships. In this paradigm, it is social cooperation (i.e., the joint venture) that facilitates human existence and defines individual rights, such that objecting to this partnership virtually negates the existence of rights.\textsuperscript{73} Emphasizing the importance of social cooperation to civil society and to the execution of rights advances the claim for a just share of the fruits of social cooperation to all members of society, by highlighting the need for sociability. A democracy that adheres to the social paradigm of rights should care for its members and promote adequate living conditions for all individuals taking part in the social body and be especially

\textsuperscript{70} See, e.g., RAWLS, supra note 6, at 65–70, 130–31 (enunciating the difference principle).

\textsuperscript{71} See Chapman, supra note 17, at 10. For an example, see Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc A/810 (Dec. 12, 1948), available at http://www.un.org/Overview/rights.html; Vienna Declaration and Programme of Action, World Conference of Human Rights, June 25, 1993 (reaffirming that economic, social, and cultural rights are equal, interdependent, and must co-exist with civil and political rights). See also WELLMAN, supra note 19; Braybrooke, supra note 19. For a somewhat different perspective, see an opinion articulated by Rawls with regard to the equality of opportunity norm. In Political Liberalism, Rawls clarifies that the fair-equality-of-opportunity norm (detailed in his earlier work A Theory of Justice cited supra note 6) does not rise to the level of “constitutional essential” and therefore fails to yield concrete institutional implications. “[W]hile some principle of opportunity is surely such an essential, for example, a principle requiring at least freedom of movement and free choice of occupation, fair equality of opportunity (as I have specified it) . . . is not such an essential.” JOHN RAWLS, POLITICAL LIBERALISM 228 (1993). Thus, it is not surprising that the discussion on tax structure in A Theory of Justice is absent from Political Liberalism. See Edward J. McCaffery, The Uneasy Case for Wealth Transfer Taxation, 104 YALE L.J. 283, 293 (1994).

\textsuperscript{72} Chapman, supra note 17, at 11.

\textsuperscript{73} See id. (suggesting that objecting to social collaboration and the social paradigm of rights especially negates the ability to claim and enjoy private property rights).
responsive to the needs of the most disadvantaged members of society. These responsibilities should not be merely a collective duty but one that is also borne by each citizen as a participating member of society. The next section of this article describes the manner in which the tax system may serve as a means for citizens and governments to realize shared responsibilities consistent with those discussed above.

III. FROM DEONTOLOGY TO PRACTICAL APPLICATION: THE PRINCIPLES OF TAXATION

Assuming society commits itself to the deontological approach, which prescribes the state’s responsibility to provide citizens with a certain adequate standard of living, the issue of funding such a commitment must still be addressed. In modern democracy, the tax system generally serves as the main tool for funding government expenditures. The question of how to levy taxes in a manner that does not undermine and may actually enhance a state’s commitment to human rights and the guarantee of an adequate standard of living for all members of society, however, is a tricky one.

Over the years, tax theorists have developed two chief principles to govern the manner in which taxes are levied on taxpayers. According to the first, known as the benefit principle, different citizens receive different levels of benefits from the state and the burden of funding government expenditures should be distributed among taxpayers according to the level of benefits received. The second principle, described as the ability to pay principle, emphasizes the differences in the ability of taxpayers to pay taxes and suggests that the burden of government funding should be distributed across citizens according to this ability. This portion of the article explores these two principles of taxation and concludes by recommending the application of a third approach, a combination of the benefit and the ability to pay principles, as the most suitable for guiding the distribution of the tax burden.

A. The Benefit Principle

Originating in the discourse of political thought, the benefit principle suggests that governors obtain control over their subjects as a result of mutually beneficial relationships between themselves and those to be governed. Within the governor-governed relationship,
each party receives benefits and bears costs. 76 This type of give-and-take relationship, central to the social contract idea, 77 extended to the area of public finance, where it became the theory behind what is known today as the benefit principle of taxation. 78 Grounded in the notion that taxpayers interact with the state on a quid pro quo basis, the benefit principle of taxation suggests that taxpayers should pay taxes to the state in proportion to the level of benefits they receive from it. 79

Although the benefit principle has some intuitive appeal, it features two main flaws. First, in light of the multifaceted relationship between the state and its citizens, it can be difficult, if not impossible, to measure the benefits which the state conveys on a given taxpayer. Second, when faced with difficult distributional questions, the benefit principle provides little guidance for levying taxes on taxpayers. The benefit principle is most confusing when it is understood as requiring the poor and the weak to pay higher taxes than the rich and the able. 80

The following citation from John Stuart Mill’s Principles of Political Economy criticizes reliance on the benefit principle and eloquently identifies both problems:

[T]he practice of setting definite values on things essentially

(advancing the idea of a poll tax based on the understanding that this form of taxation would levy equal taxation on the rich and the poor given that both receive the same benefits from the state and stating: “Seeing then the benefit that every one receiveth thereby, is the enjoyment of life, which is equally dear to poor, and rich; the debt which a poor man oweth them that defend his life, is the same which a rich man oweth for the defence of his . . . .”).

76 KIESLING, supra note 37, at 31.

77 Id. at 32 (“All of the major benefit theorists believed in the idea of social contract, including . . . Hobbes, Locke, Montesquieu, and (probably) Adam Smith.”). For a contemporary example, see RAWLS, supra note 6, at 4–19.

78 BLUM & KALVEN, supra note 39, at 35 (reviewing the historical tax literature on the benefit principle). For a contemporary discussion on the use of benefit taxes and user fees as forms of benefit taxation, see David G. Duff, Benefit Taxes and User Fees in Theory and Practice, 54 U. TORONTO L.J. 391 (2004).

79 BLUM & KALVEN, supra note 39, at 35; see also, e.g., THOMAS HOBBES, ELEMENTA PHILOSOPHICA DE CIVE 264 (Bernard Gert ed., Hackett Publishing Co. 1991) (1642) (stating that taxes are “nothing else but the price of their bought peace”); LOCKE, supra note 12, at 74 (“[E]very one who enjoys his share of the protection, should pay out of his estate his proportion for the maintenance of it.”); ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS 404 (James E. Thorold Rogers ed., Clarendon Press 1880) (1776).

80 In particular, such an interpretation undermines institutional attempts to be responsive to the well-being of the most disadvantaged members of society.
indefinite, and making them a ground of practical conclusions, is peculiarly fertile in false views of social questions. It cannot be admitted, that to be protected in the ownership of ten times as much property, is to be ten times as much protected. . . . The same judges, soldiers, sailors, who protect the one protect the other; and the larger income does not necessarily, though it may sometimes, require even more policemen. . . . If we wanted to estimate the degrees of benefit which different persons derive from the protection of government, we should have to consider who would suffer most if that protection were withdrawn: to which question if any answer could be made, it must be, that those would suffer most who were weakest in mind or body, either by nature or by position. . . . If there were any justice, therefore, in the theory of justice now under consideration, those who are least capable of helping or defending themselves, being those to whom the protection of government is the most indispensable, ought to pay the greatest share of its price: the reverse of the true idea of distributive justice . . . .

The benefit principle was most influential in tax theory during the eighteenth century, but shortly after it lost much of its power, mainly as a result of critiques such as that of Mill. However, some scholars assert that a complete rejection of the benefit idea, as a general principle of taxation, is unnecessary and that such a rejection is based on a mere methodological mistake in the application of the principle. The main reason for the dismissal of the benefit approach after the eighteenth century, it can be argued, was not so much the result of problems with the soundness of this approach but rather due to a failure to find an agreeable measure of benefits, a shortcoming which, to a certain extent, may be corrected.

As nicely articulated by Liam Murphy and Thomas Nagel, to employ the concept of benefits, an agreement must first be reached on a baseline — some initial level of well-being absent any benefit — from which benefits can be conceptualized and measured. Murphy and Nagel define the magnitude of benefits received from the state as

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81 Mill, supra note 2, at 736.
83 See, e.g., Kiesling, supra note 37, at 37.
84 See id.
85 Murphy & Nagel, supra note 33, at 16–17.
the difference between the initial baseline and the level of an individual's welfare once benefits have been conveyed. They assume, as do modern tax theorists generally, that the baseline for assessing benefits is a person's level of welfare in a no-state world. The authors clarify that the differences in ability, personality, and inherited fortune which lead to great inequality of welfare in the market economy are likely to be insignificant in the absence of the state, which creates and safeguards legal rights and obligations. Instead, a world without a state is more likely to be chaotic, a world of war of all against all, similar to the world detailed in Thomas Hobbes's description of the state of nature. In such a state of anarchy, everyone’s level of welfare is expected to be very low and roughly the same. Alternatively, if society is an all inclusive joint venture, then both social and individual welfare are the product of social cooperation. In this view, given that the world, prior to the establishment of the joint venture, does not include social collaboration to any meaningful degree, the baseline for assessing benefits is, yet again, a state of no welfare, or a very low level of welfare, roughly equal across individuals. In either case, if the relevant baseline is a very low, roughly the same, level of welfare, then individuals’ existing levels of well-being (i.e., after the joint venture or the state is established) may serve as a proxy for the level of benefits conveyed by the state. Furthermore, since wealth is a principal means by which people ensure their well-being, it may reflect the level of welfare they enjoy and, ultimately, the amount of benefits conveyed.

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86 Id. at 16.
87 Id.
88 Id. at 17.
89 Id.; Hobbes, supra note 12.
90 Murphy & Nagel, supra note 33, at 16–17; see also Nozick, supra note 20, ch. 2; Allan Gibbard, Constructing Justice, 20 Phil. & Pub. Aff. 264, 270 (1991).
91 That is, we decide not to care about a hypothetical state of nature. Instead we assume that all present conditions (e.g., individual welfare) are the result of social cooperation. This perspective, unlike the one based on the assumption of an initial state of anarchy, not only provides a baseline from which to start in order to assess benefits but also avoids the use of a hypothetical state of nature that may be portrayed differently by different theorists.
92 Murphy & Nagel, supra note 33, at 17.
these individuals receive from the state or the joint venture.\textsuperscript{94} In the end then, the benefit approach yields a principle of vertical equality prescribing that individuals pay taxes in a rough proportion to their wealth.\textsuperscript{95} The more wealth the individuals possess, the more they benefit from the state and the higher the taxes they are required to pay.

\textbf{B. The Ability to Pay Principle}

In reaction to the debate over the soundness of the benefit principle of taxation, by the middle of the nineteenth century a new line of thinking arose in the area of tax analysis, evolving into what is known today as the principle of “ability to pay” (also called “faculty” or “sacrifice” principle).\textsuperscript{96} The ability to pay principle emphasizes the fact that people differ in their ability to meet the burden of taxation and suggests that taxes should be levied according to this ability (the “English interpretation”).\textsuperscript{97}

While the ability to pay principle avoids difficult assessments of benefits, its application is yet again quite problematic. In fact, the very concept of “ability to pay” is rather vague and can be subject to various interpretations. One initial ambiguity arises in deciding whether to base tax assessment on the taxpayer’s potential economic ability — resulting from her endowments — or on the taxpayer’s realized ability.\textsuperscript{98} Here, it is important to remember that the principle of ability to pay attempts to address the distribution of the tax burden in order to fund existing — compared with hypothetical or potential — state expenditures.\textsuperscript{99} Therefore, referring to the taxpayer’s actual

\textsuperscript{94} Alternatively, one may suggest using income as a proxy for individuals’ well-being. However, compared to wealth, income seems to reflect only partly individuals’ ability to provide for welfare and therefore constitutes a less accurate proxy for well-being.

\textsuperscript{95} See, e.g., \textsc{Richard A. Musgrave}, \textsc{The Theory of Public Finance: A Study in Public Economy} 17 (1959); \textsc{Arthur C. Pigou}, \textsc{A Study in Public Finance} 8, 60 (1928).

\textsuperscript{96} See \textsc{Blum & Kalven}, \textit{supra} note 39, at 39–55. For the history of the idea of ability to pay, see \textsc{Edwin R. A. Seligman}, \textsc{Progressive Taxation in Theory and Practice} 205–89 (1909). For a more contemporary discussion on the ability to pay and related principles of taxation see \textsc{Joseph M. Dodge}, \textsc{Theories of Tax Justice: Ruminations on the Benefit, Partnership, and Ability-to-Pay Principles}, 58 \textsc{Tax L. Rev.} 399 (2005).

\textsuperscript{97} See \textsc{Blum & Kalven}, \textit{supra} note 39, at 39–55.

\textsuperscript{98} \textsc{Murphy & Nagel}, \textit{supra} note 33, at 20–23.

\textsuperscript{99} \textit{Id.}
economic standing as the suitable basis for taxation rather than focusing on her potential ability might be more consistent with the underlying logic of the ability to pay principle. In this light, a tax scheme based on the principle of ability to pay will treat taxpayers according to their actual economic standing and levy higher taxes against those who are wealthier and therefore more able to bear the burden of taxation.

There are at least two different ways in which the wealthy might be considered better able to pay taxes than lower income individuals. First, applying the rule of the diminishing value of money where an additional dollar is worth less, in real terms, than the previous one, those with more money may be able to bear the burden of higher taxes while sustaining no greater loss in economic means compared with those with less financial resources who pay fewer taxes. Alternatively, wealthier individuals might be better able to sacrifice resources since, even if they sustain a larger monetary loss, they would still be left with more than those taxpayers who start with less economic means. It is the first alternative, drawing on utilitarian principles, that has been widely embraced by contemporary tax theory. Specifically, since the nineteenth century, the utilitarian doctrine has been employed by tax theorists in order to develop a normative standard by which the tax burden be levied on taxpayers. John Stuart Mill was the first to integrate the principle of ability to pay with utilitarianism, offering what is known today as the concept of “equal sacrifice,” which has held center stage among normative tax analysts ever since. According to Mill:

As a government ought to make no distinction of persons or classes in the strength of their claims on it, whatever sacrifices it requires from them should be made to bear as nearly as

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\(^{100}\) Id. at 24.

\(^{101}\) Id.

\(^{102}\) Utilitarianism was initially developed by Jeremy Bentham as a practical and easily understandable guide to social policy. It is an outcome-oriented theory, focusing on maximizing the sum total of happiness (and, later, of utility) in a given community. Happiness is measured according to an estimated index of pleasure and pain and where each individual is viewed as having comparable amounts of pleasure and pains. With comparability, the utility index is advocated to be applicable for policy-making across the board. For an application of utility theory to tax, see Schenk, supra note 64, at 470–73.

\(^{103}\) See, e.g., MURPHY & NAGEL, supra note 33, at 24–28 (exploring the concept of equal sacrifice); see also BLUM & KALVEN, supra note 39, at 40 (discussing equal sacrifice as a main doctrine in the progressive taxation literature).
possible with the same pressure upon all. . . . If any one bears less than his fair share of the burden, some other person must suffer more than his share, and the alleviation to the one is not, on the average, so great a good to him, as the increased pressure upon the other is an evil. Equality of taxation, therefore, as a maxim of politics, means equality of sacrifice. It means apportioning the contribution of each person towards the expenses of government, so that he shall feel neither more nor less inconvenience from his share of the payment than every other person experiences from his.\textsuperscript{104}

Mill’s thesis of equal sacrifice brings together the utilitarian rule of the diminishing value of money and the ability to pay principle, calling for the placement of a greater tax burden on the wealthy, in order to sustain the same (i.e., equal) economic sacrifice on the rich and poor.\textsuperscript{105} In this way, the real economic loss, rather than the monetary one, is the same for all taxpayers. Through the development of this line of argument, equality becomes a focal point from which the distribution of the tax burden is conceptualized, departing from likely regressive assessments of benefits and their implications for tax, and leaning more toward progressive, or at least proportional, allocations of the tax burden.

There is, however, another interpretation of the principle of ability to pay that was developed by German theorists (“the European interpretation” or “perspective”). Unlike the English interpretation of the ability to pay principle, the European perspective does not require that on the margin, an additional dollar will be worth less to

\textsuperscript{104} Mill, supra note 2, at 735 (some emphasis added). There are two main ways in which the concept of equal sacrifice can be interpreted: proportional sacrifice and marginal sacrifice. Both can produce a number of combinations with respect to policy recommendations. Note, however, that the presumption of diminishing marginal utility which underlies Mill’s policy of equal sacrifice is not without difficulty. There are those who either doubt the truth of the claim of diminishing value of utility or our ability to measure the rate(s) at which it diminishes. Taken as a whole, the idea of equal sacrifice advanced by the principle of ability to pay may not provide, in itself, the answer to the benefit principle’s weaknesses. In addition, Mill himself, was not very consistent with regard to the practical application of his principle. Mill’s recommendation for tax policy is a proportional income tax on clear income together with high transfer taxes. There has been considerable discussion over the years as to how Mill interprets the equal pressure principle in order to reach his position concerning proportional taxation. Due to the limited relevance of this discussion to the topic of this article, this issue will not be explored here. For a comprehensive analysis, see Blum & Kalven, supra note 39, at 41–45.

\textsuperscript{105} Mill, supra note 2, at 735–37.
the wealthy than to the poor or that, compared to poorer persons, wealthy individuals will be better off after paying taxes, but rather is based on a belief in a civic obligation to care for others.\textsuperscript{106} As Gunnar Myrdal explains, early German theorists addressing the ability to pay principle were influenced by the organic theory of the state — the notion that the state, as such, is more than the sum of the individuals comprising it.\textsuperscript{107} These thinkers tended to look at a citizen’s duty to pay taxes as related to her ability to pay, much as a member of a family is expected to contribute to the well-being of her family unit according to her individual ability.\textsuperscript{108} In this view, citizens who are in a better position to provide for the common burden of a state’s funding by bearing a heavier tax burden should do so simply because they can. In other words, the European interpretation of the ability to pay principle suggests that the affluent, as members in society, possess a type of civic obligation to promote the well-being of less fortunate fellow citizens and of society as a whole. Accordingly, the wealthy should pay higher taxes given that they have the necessary financial resources to do so.\textsuperscript{109} This reading of the ability to pay principle corresponds with the previous discussions on civic virtues, the joint venture, and the social paradigm of rights and it also helps bring these issues together, offering another layer to the interpretation of the concept of human rights and responsibilities in modern society.

\textit{C. The Combined Principle}

Even though the benefit and the ability to pay principles are distinct from one another in that each focuses on a different aspect of

\textsuperscript{106} See Vogel, supra note 26.  
\textsuperscript{107} See MYRDAL, supra note 82, at 142; see also Vogel, supra note 26, at 27.  
\textsuperscript{108} See MYRDAL, supra note 82, at 140; see also Vogel, supra note 26.  
\textsuperscript{109} A complementary perspective can be found under the theory of socialist society, emphasizing “need criteria.” Tom Campbell explains:

\begin{quote}
We may say that the characteristic justificatory principle of socialist organization is the equal satisfaction of need at the highest level of fulfillment. . . Interpreting the need principle as having primarily to do with the allocation of pre-existing resources for the satisfaction of human needs, the characteristic type of right that it justifies is one which places obligations on those in a position to provide the wherewithal for the satisfaction of the needs of others. Such rights will be positive or affirmative rights in that they correlate with obligations that others take positive steps to meet the needs of right-holders.
\end{quote}

the obligation to bear taxes, ultimately, the two principles are rather similar and closely related. There is little doubt that the various goods and services funded by the government have a direct effect on the welfare of citizens and, consequentially, on their ability to bear the tax burden. In this regard, Edwin Seligman has explained that:

The whole sacrifice theory . . . . is through and through an essentially consumption theory of finance. A more careful analysis of the doctrine, however, and one that is more in harmony with the actual facts, forces us to the conclusion that the consumption side of the theory must be reinforced by the production side. In estimating a man’s faculty or ability to pay we must not alone think of the burden imposed upon him in parting with his property or income, but we must also consider the opportunities which he has enjoyed in securing the property or income. . . . The older theory of faculty dealt only with the latter kind of sacrifice; the newer theory of faculty must include both kinds.\textsuperscript{110}

A complete view on the issue of the fair distribution of the tax burden, therefore, needs to incorporate both the benefit and the European and English versions of the ability to pay principles. On one hand, the burden of taxes should be placed more heavily on the rich, in view of their wealth, which may serve as a proxy for benefits conveyed by the state. On the other hand, the rich are also the ones most able to bear the tax burden. Taken as a whole, the extensive privileges that the wealthy receive from the state (i.e., the joint venture) along with their resulting enhanced well-being create a civic obligation on the part of the wealthy to bear a heavier tax burden than poorer individuals. This inclusive perspective captures the obligation of the wealthy from the benefit side, which arises from the creation of the state, as well as that from the burden side, which arises from the needs of the existing state, while keeping in mind the value of shared responsibilities to human existence. The consequence of applying broad thinking, such as just described, to the formation of tax policy may add to the development of a more compelling case for redistributive taxation, prescribing that citizens with higher economic means pay higher taxes. As for the determination of the precise tax rate(s) and of whether the combined tax principle leads to an income or consumption tax scheme, these considerations, though important,

\textsuperscript{110} \textit{Edwin R. A. Seligman, Essays in Taxation} 339–40 (1931) (emphasis added).
must remain for later discussions. 111

D. Value Judgments and the Tax System

When dealing with tax issues and, particularly, with the application of tax principles, the matter of identifying or setting the level of desired revenue to be collected by the tax system becomes of great importance. 112 The tax revenue and its usage through government spending is an integral part of the workings of modern society; some expenditures, such as those associated with maintaining a military force or paving public roads, are essential to the orderly operation of the state and can be viewed as indispensable. The appropriateness and extent of other government expenditures, including health care, unemployment benefits, and education, however, remains a hotly debated matter in academia as well as among the public and tax analysts. 113

The benefit principle treats government expenditures as a fixed cost and suggests allocating the tax burden among citizens without taking into account the fact that the benefits provided by the state are not fixed but rather vary depending on the political alignment of the government officials in charge. 114 Unfortunately, the ability to pay principle and the combined principle, which are based on similar grounds, provide even less guidance as to the appropriate level or nature of government spending and the amount of revenue required. These principles embrace the understanding that citizens ought to pay taxes according to their financial means, suggesting the imposition of tax on citizens’ pretax market welfare. 115 The pretax market welfare, however, depends on the laws and regulations of the state which again depend on political decisions that reflect value judgments concerning

111 See Murphy & Nagel, supra note 33, at 24 (arguing that the fact that the implementation of tax principles requires a closer examination, including the application of further assumptions and speculations, does not indicate that it is incorrect; instead, such rough assumptions and estimations are likely to be part of any plausible tax scheme).


114 Murphy & Nagel, supra note 33, at 18.

115 Id. at 25.
the proper nature of the state and, therefore, are also not self
evident.\footnote{Id. at 18–19, 25–26.}

One kind of value judgment that emerged out of discussions over
the ability to pay principle and became an important concept in tax
policy is the idea that the amount of income required to meet basic
needs should not be taxed away.\footnote{See SELIGMAN, supra note 96, at 279.} Some tax theorists feared that this
idea, which aims to ease the tax burden on the very poor, would push
society down a slippery slope in that the effort to tax only income
which is above a certain threshold ("clear income") would lead to the
unqualified exemption of other types of income.\footnote{Id. at 208–09.} Edwin Seligman
argued, for example, that so long as tax principles consider only
property, income, or wealth as a whole, the tax burden allocation
gives the impression of an impartial treatment of taxpayers.\footnote{Id.} This
impression implies that the determination of the tax burden does not
entail value judgments and that all income which should be taxed
according to an objective economic formula is indeed taken away.
According to this line of thinking, issues of consumption, once
accounted for in the tax analysis through the concept of clear income,
might introduce normative biases. Nothing, however, is farther from
the truth. Any approach to taxation must reflect policy decisions
based on value judgments that favor one economic or political system
over another. It is therefore implausible to argue that allocation
decisions rely on an impartial or non-judgmental system.
Accordingly, what should ultimately matter is not whether the burden
of taxation is justly imposed on citizens or designed to avoid a
speculative slippery slope but rather whether the "totality of
government’s treatment of its subjects, its expenditures along with its
taxes, is just."\footnote{MURPHY & NAGEL, supra note 33, at 25.} As Arthur Pigou stated, “people’s economic well-
being depends on the whole system of law, including the laws of
property, contract and bequest, and not merely upon the law about
taxes.”\footnote{ARTHUR C. PIGOU, A STUDY IN PUBLIC FINANCE 44 (1949).} If society can accept that the government acts and spends in
a just way, then the costs of its operation may be considered as a
common burden that ought to be fairly shared by all. Such a society,
if designed in a manner advocated by this article, would provide
citizens with a wide array of rights, advance the establishment of
proper institutions for their protection, and be especially responsive to
the needs of the least fortunate.

IV. THE CONSEQUENTIAL APPROACH: USING REDISTRIBUTION TO AVOID NEGATIVE EFFECTS OF WEALTH AND INCOME CONCENTRATIONS

A different approach to the issue of fair taxation and redistribution may be based on consequential — rather than deontological — arguments that consider the effects of concentrated wealth and income on society. Henry Simons's view on distributive justice and its accomplishment through the system of progressive taxation was articulated almost seventy years ago and is not grounded in the ability to pay or benefit principles. Instead, Simons focused on the issue of inequality and asserted that:

[T]o avoid dissimulation and circumlocution, one may begin by saying what one thinks about inequality . . . . The case for [] progression in taxation must be rested on the case against inequality — on the ethical or aesthetic judgment that the prevailing distribution of wealth and income reveals a degree (and/or kind) of inequality that is distinctly evil or unlovely.

Taking on Simons's challenge and aided by the knowledge and empirical data available today, it is safe to say that large concentrations of wealth and income, which lead to vast inequalities, have toxic effects on democratic society. The next section of this article explores the harmful effects of maldistributive wealth and income and examines the possible relationship between these conditions and the merits of redistributive taxation.

A. The Negative Economic Effects of Wealth and Income Concentrations: Poor Economic Growth

Empirical studies have found that high concentrations of income, which follow the same patterns as wealth, correlate with lower subsequent economic growth. For example, James Repetti

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122 See HENRY C. SIMONS, PERSONAL INCOME TAXATION (1938).
123 Id. at 17–19.
124 See Joel B. Slemrod, The Economics of Taxing the Rich, in DOES ATLAS SHRUG? 3, 16 (Joel B. Slemrod ed., 2000); see also Philippe Aghion et al., Inequality and Economic Growth: The Perspective of the New Growth Theories, 37 J. ECON. LIT. 1615 (1999). Another scholar, James Repetti, explains that:
identifies a study which found that growth rates of *per capita* gross domestic product from 1960 to 1985 in approximately sixty-five countries correlated negatively with the portion of the national income earned by the top five percent and twenty percent of earners in 1960. Repetti notes that “[t]he more concentrated income was, the lower the growth rate in productivity.”

This evidence challenges the conventional understanding that inequality stimulates the market by generating incentives that enhance economic productivity and is therefore good for growth. As a result, a new explanation has been offered for the correlation between inequality and poor economic growth, suggesting that slow growth might be the result of socio-political unrest and low investment in human capital among poor people, both caused and/or manifested by uneven distributions of wealth and income. Such an...
explanation suggests that the channeling of resources to the poor, funded by a heavier tax burden on wealthier taxpayers, may lead to an overall increase in investments in human capital, promote socio-political stability, and, as a result, boost economic growth.

B. The Negative Political and Social Effects of Wealth and Income Concentrations: Undermining the Workings of Democracy

In addition to the harmful economic effects of wealth and income concentrations, there is something inherently disturbing in extreme forms of concentrated resources. More precisely, there are two main arguments for why extreme concentrations of wealth and income are not congruent with modern democracy. The first argument concerns an inappropriate use of political powers: great wealth can finance election campaigns and buy political favors in a manner that undermines the democratic process in society. The second argument is more socially oriented, holding that vast inequality of wealth and income is socially destructive because it spoils cultural, social, and political relationships among citizens, weakening the sense of

[W]here the poor have a difficult time borrowing, a family that is poor is constrained from investing in education. The inability to invest in human capital traps many families in intergenerational poverty, thus slowing the nation’s economic growth. Alternatively, some suggest that there may be a more complex link between wealth, investment in education, and fertility. An increase in family wealth leads to lower fertility rates and to higher investment in human capital. When wealth is highly concentrated, higher fertility rates may result in lower investment in education, and as a result, lower productivity growth. Perotti found direct statistical support for both versions of the explanations involving education, i.e., the borrowing constraint and the fertility models. Support for the fertility model was somewhat stronger than for the borrowing constraint model.

Repetti, supra note 124, at 839–40 (citing Roberto Perotti, Growth, Income Distribution, and Democracy: What the Data Say, 1 J. Econ. Growth 149 (1996)). Slow growth may also result from the transition from rural to industrial society and, therefore, have only temporary effects as workers move from agriculture to industry. In fact, slow growth may have nothing directly to do with inequality but may result from redistributive fiscal policies that overtax the wealthy. However, there is little empirical evidence to support the agriculture-to-industrial state argument. As to the “excess taxation” claim, some empirical evidence suggests the contrary — that high tax rates actually correlate with high economic growth. See also Roberto Perotti, Political Equilibrium, Income Distribution, and Growth, 60 Rev. Econ. Stud. 755 (1993).

129 Avi-Yonah, supra note 27, at 1412.
community on which democratic society relies.\textsuperscript{130}

Specifically, large concentrations of wealth and income pose significant dangers to democratic societies since they endow the wealthy with disproportionate power and influence over fellow citizens.\textsuperscript{131} The exercise of these privileges has a destructive impact on democracies since it is an objective of democracy to provide each citizen with an equal voice and opportunity to participate in the economic, social, and political realms of life.\textsuperscript{132} Repetti cites various studies to support this argument. For example, in the area of public elections, empirical data shows that nearly half of those who make large donations to electoral campaigns in the United States are individuals with family incomes of over $250,000 per year.\textsuperscript{133} There is evidence that a key motivation for making these contributions is the prospect of gaining political influence. One study found, for instance, that political action committees (PACs) tend to make contributions to legislators who are successful in getting a large percentage of PAC-supported bills enacted into law.\textsuperscript{134} Additionally, in the crucial period preceding the adoption of the Tax Reform Act of 1986, citizens significantly increased their contributions to members of the House Ways and Means Committee and the Senate Finance Committee.\textsuperscript{135} Repetti argues that the influence of contributions clearly appears in election results, in effect endowing the wealthy with a disproportionately powerful political voice.\textsuperscript{136} He acknowledges, however, that studies have been mixed in finding direct correlation between contributions and an actual influence on key political matters or, in other words, between political contributions and the behavior of officials in highly visible issues after election-day.\textsuperscript{137} Instead, Repetti

\textsuperscript{130} Id.
\textsuperscript{131} See Repetti, supra note 124, at 843.
\textsuperscript{132} Id. at 840–41; Avi-Yonah, supra note 27, at 1408.
\textsuperscript{134} Id. at 847 (citing Janet M. Box-Steppensmeier & J. Tobin Grant, All in a Day’s Work: The Financial Rewards of Legislative Effectiveness, 24 LEGIS. STUD. Q. 511, 519 (1999)).
\textsuperscript{136} Id. at 845.
\textsuperscript{137} Id. at 846.
demonstrates that studies are much more consistent in finding evidence that contributions play a significant role in influencing legislators’ activities in matters less exposed to public scrutiny. For example, in the United States, contributions appear to have influenced votes on trucking legislation and to have generated greater partisan activity at the committee level, areas about which there is less publicity. Thus, politically motivated contributions may be harmful in that they erode the democratic process to the extent that they result in the covert predisposition of politicians to favor the interests of high income individuals who are willing and able to make these contributions.

In addition to the danger of obtaining excessive political voice at the institutional level, wealthy individuals are also likely to exercise disproportionate influence on their local communities. Reuven Avi-Yonah attributes this dominance to the enhanced economic, social, and political power held by the affluent due to their wealth. The economic power of the wealthy derives from their ability to invest in enterprises that employ considerable amounts of resources, thereby controlling large sectors of the economy. The social power of the wealthy stems from the knowledge on the part of other members of the society that the wealthy have an enhanced ability to acquire goods and services, leading others to solicit such expenditures. The political power of the wealthy comes from the donations the rich make to political campaigns, as explored above, and also from the politicians understanding that the wealthy have the capacity to contribute these funds. All three forms of power bestowed by wealth are not strictly dependent on the actual use of wealth but also on its potential usage, providing the wealthy with influence that goes beyond the consumption value of their fortune. However, the

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138 Id. (citing Woodrow Jones, Jr. & K. Robert Kieser, Issue Visibility and the Effects of PAC Money, 68 SOC. SCI. Q. 170, 170 (1987)).
139 Id. at 848 (citing Richard L. Hall & Frank W. Wayman, Buying Time: Moneyed Interests and the Mobilization of Bias in Congressional Committees, 84 AM. POL. SCI. REV. 797 (1990)).
140 Id. at 842–43.
141 Avi-Yonah, supra note 27, at 1406.
142 Id.
143 Id.
144 Id.
145 Id. at 1406–07 (citing Anne L. Alstott, The Uneasy Liberal Case Against Income and Wealth Transfer Taxation: A Response to Professor McCaffery, 51 TAX L. REV. 363, 371–72 (1996)). The fact that “the rich derive added utility from their wealth that is not available to people for whom (because of their lesser means) money
difficulty with concentrations of wealth and income, especially in their extreme forms, results less from the fact that the power of wealth exceeds its consumption value and more from the fact that it provides the wealthy with disproportionate power and influence over other members of society, generating classes of citizens. As nicely explored by Avi-Yonah, the polarization of citizens, especially when based on economic standing, better fits an aristocratic society than a democratic state. Considered in this light, cultivating a forward-looking process of redistribution of resources, designed to better equalize the allocation of wealth and income in society, seems a desirable and much needed measure not only on deontological grounds, but also in order to promote and protect the well-being of the democratic state in view of consequential considerations.

There is little doubt that large concentrations of wealth and income have distinct, negative economic, political, and social implications for modern democracy. As discussed above, such concentrations provide the wealthy with disproportionate power and influence at the institutional and local levels, generating classes of citizens and, in effect, degrading the relationships among them. In particular, there is a danger of perpetuating and magnifying these toxic effects through the transmission of maldistributed wealth and income from one generation to the other, which also interferes with the right of citizens to enjoy equality of opportunity, a central democratic ideal. The social paradigm of rights acknowledges that certain rights are vested in the social body and not only in the individual. Based on this model of rights, the collective may assert its right for self-preservation and resist the harmful effects of maldistributions of wealth and income by endorsing redistributive measures. Alternatively, by focusing on the civic virtues of citizens, it may be argued that it is the duty, or civic obligation, of wealthy individuals to contribute to the well-being and prosperity of their society and fellow citizens and, therefore, participate in the efforts to redistribute resources. Both lines of reasoning justify some form of only has consumption value” may be regarded, from an efficiency point of view, to be beneficial and may actually serve as an argument against placing heavier tax burden on the wealthy. As Avi-Yonah points out, this is because many theories advocating for redistribution assume the declining marginal utility of money and the fact that wealth means added power negates this assumption. Id. at 1407.

Id. at 1408 (citing authorities).

147 For an interesting discussion on the notion of equality of opportunity and taxation, see MURPHY & NAGEL, supra note 33, at 56–58.

148 See supra note 68 and accompanying text.
redistributive use of the tax system on consequential grounds. The following section of this article addresses one main challenge in heavily taxing the rich and argues that unearned, inter-generationally transmitted wealth is the proper target for much of the necessary redistribution.

V. AVOIDING THE PERILS OF WEALTH AND INCOME CONCENTRATIONS

If one is willing to acknowledge the need for redistribution of resources in modern democracy, then the logic for placing a greater tax burden on the wealthy follows from two rationales, both of which are discussed above. First, wealthy citizens ought to pay higher taxes than poorer citizens since they benefit considerably from the state and they possess the financial means to bear this enhanced burden. Second, large concentrations of wealth and income — which present a unique threat to democracy and, therefore, constitute a reasonable target for redistribution — are dominated by the rich. These two arguments illuminate the benefits of heavily taxing the rich. In addition to the advantages, however, there are some major risks involved in taxing the fortune of the wealthy. More explicitly, the main difficulty with placing a large tax burden on the wealthy is the potential creation of disincentives among the most productive members of society to work and to be otherwise engaged in economic activities.\footnote{\textsc{See, e.g.}, Richard A. Musgrave, \textit{Social Science, Ethics, and the Role of the Public Sector}, in 3 Public Finance in a Democratic Society 104, 111–113 (2000) (reviewing the existing distribution of income in the United States and suggesting that: “Income decline and deadweight losses that result from the process [of redistribution] need to be weighted against the social gains from reducing inequality.”).} The issue of costs and benefits involved in taxing the rich is further explored in this section and a possible solution is proposed that may balance these costs and benefits through greater taxation on one specific type of economic resource: unearned, inter-generationally transmitted wealth.

A. Taxing the Wealthy: Costs and Benefits

In 2001, the share of wealth held by the top one percent of taxpayers in the United States stood at 33.4 percent of total net worth wealth and 39.7 percent of total household financial wealth.\footnote{Wolff, \textit{supra} note 7, at 6–7, 30 tbl.2.} This
group of taxpayers earned 20 percent of total household income in 2000 and paid 37.4 percent of all individual income taxes that same year. According to the Treasury Department, since 1995 the top one percent of taxpayers with the highest gross income in the United States paid more than 30 percent of all individual income taxes. While these numbers demonstrate the potential for large redistributive gains if taxes at the very top of the income or wealth distribution are raised, they also illustrate the importance of the wealthy to the economy and, accordingly, the potential cost of redistribution. In other words, while there may be reasons for the redistribution of the wealth and income of the rich, there are also grounds for restraining this process due to the potentially adverse effects of such measures on national productivity. Indeed, “[i]t has long been recognized that a tax system which aimed at absolute equality would produce equal poverty, since absolute equality can be produced only by confiscating all above-average incomes.”

This, however, does not necessarily mean that redistribution of resources should be abandoned, as compared to it being constrained or supervised.

John Stuart Mill apparently believed that only the taxing of earned income severely distorts incentives. While he was aware that estate and inheritance taxes could also affect incentives to work, Mill argued that the effect of these taxes is much less than that of taxes on

\[151\] \textit{Id. at 7, 30 tbl.2.}
\[153\] Press Release, \textit{supra} note 152.
\[155\] See Slemrod, \textit{supra} note 124, at 6–7 (suggesting that increasing taxes for the top one percent of taxpayers by twenty-five percent in 1994 could have generated $38.2 billion in additional tax revenue and financed a ten percent across-the-board tax cut for the other ninety-nine percent of taxpayers while reducing the concentration of income and wealth in a few private hands).
\[157\] \textit{MILL, supra} note 2, at 739.
earned income.\textsuperscript{158} Today, some claim that Mill’s assumption is naïve and that taxes on unearned income greatly distort economic behavior, mostly among the very rich.\textsuperscript{159} Recent studies suggest, however, that heavy taxes on the wealthy are more likely to lead affluent taxpayers to engage in tax avoidance strategies, rather than to distort real economic activities, such as labor and saving.\textsuperscript{160} While the latter effect is considered a serious problem, the former may be eased by means such as tighter enforcement and broadening the tax base and thus should be appropriately weighted in the policy decision-making process.\textsuperscript{161} In addition, high taxes on unearned income and wealth, even if not economically ideal, may still help to diffuse large concentrations of economic resources in society, especially among the richest individuals and families. The next section of this article addresses the harms of concentrations of wealth that are passed across generations and suggests that these forms of concentrations are an especially effective target of redistribution. Bequest or inheritance taxes may promote the right of individuals to equality of opportunity as well as provide all other benefits already mentioned in support of redistribution.

\textit{B. Minimizing the Costs of Redistribution: The Taxing of Inter-Generationally Transmitted Wealth}

The decisions of one generation reflect its attitudes towards and conceptions of inter-generational relationships.\textsuperscript{162} However, many decisions that are taken by one generation extend beyond the lifetime of that generation to affect future generations, their well-being, and their patterns of wealth and income distributions.\textsuperscript{163} In particular, the decision to allow inter-generational — compared with intra-generational — transmission of maldistributed wealth interferes with the freedom of future generations to establish the right to equality of

\textsuperscript{158} Id.


\textsuperscript{160} See Slemrod, supra note 124, at 24 (citing literature).

\textsuperscript{161} Avi-Yonah, supra note 27, at 1396–98.

\textsuperscript{162} Green, supra note 3, at 79.

\textsuperscript{163} Id.
opportunity over their lifetime. Empirical data on inter-generational income mobility, for instance, indicates a clear correlation between the life-income of parents and that of their children, suggesting that patterns of economic and social standing are carried over across generations.

Applying the system of just rewards — where a person deserves a share of the market output based on his or her effort — to the issue of inheritance may lead to the conclusion that one generation is justly entitled only to the fruits of efforts invested in its own time. Alternatively, going back to the joint venture theory, it may be argued that inherited wealth is mainly a matter of luck, and not of collaborative efforts of the heirs, and therefore does not establish the heirs’ entitlement over it. It is not simple, however, to wholly dismiss entitlement to inherited fortune. Individuals often feel invested in the future of their offspring and have the desire to care for family members and loved ones even after their own death. Given these attitudes, the question of inheritance poses a unique challenge in the allocation of just rewards. Notwithstanding this challenge, ensuring that citizens have an equal opportunity is generally regarded as a valid justification for lessening the inter-generational transmission of wealth, thereby easing income and wealth maldistributions across generations.

Liberal theorists are typically willing to allow intra-generational concentrations of wealth and income as long as they result from a “just starting point.” Libertarians, on the other hand, focus more on the justness of the political and economic process and allow maldistributions of wealth and income where these are the result of a “just process.” Both liberal and libertarian scholars, however, are less willing to allow the inter-generational transmission of wealth.

See Bruce A. Ackerman, Social Justice in the Liberal State 202–27 (1980).


Luck, the argument may go, cannot be the foundation for entitlement. See supra note 49 and accompanying text.

Kiesling, supra note 37, at 123–24.

Id. at 124–25.

Ackerman, supra note 164, at 202.

See, e.g., Nozick, supra note 20, at 150–53 (prescribing three principles for the establishment of a “just” process: (1) the principle of transfer, (2) the principle of initial acquisition, and (3) the principle of rectification of injustice).
John Rawls, for example, allows for inheritance subject to his “difference principle,” suggesting that “inheritance is permissible provided that the resulting inequalities are to the advantage of the least fortunate and compatible with liberty and fair equality of opportunity.”

Rawls views income taxes primarily as a means for raising revenue. He advocates for bequest or inheritance taxes, however, “not to raise revenue . . . but gradually and continually to correct the distribution of wealth and to prevent concentrations of power detrimental to the fair value of political liberty and fair equality of opportunity.”

John Stuart Mill was also concerned with the impact of inequitable distribution of income and wealth, suggesting that such conditions might interfere with the right of individuals to equality of opportunity and lead to social stratification. Consequently, Mill advocated high transfer taxes on unearned, especially inherited, wealth. Even Robert Nozick, a libertarian, reconsidered his opinion that bequests represent a “right” of the donor to use personal assets as he or she sees fit and later allowed limits on the power to bequest. These theorists, by emphasizing the

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171 Rawls, supra note 6, at 245. Specifically, Rawls’s argument for a form of inherited taxation is linked to the principle of “fair equality of opportunity.” This principle prescribes that people of equal abilities and aptitudes “should have the same prospects of success regardless of their initial place in the social system.” Id. at 63. Accordingly, Rawls is concerned that rights to inherited property can interfere with the fair equality of opportunity. Id. at 245.

172 This is because Rawls presumes that fairness in market outcomes was already established and that income is “fairly” earned. Id. at 246–47.

173 Id. at 245. Rawls seems to suggest a proportionate, or a flat-rate consumption tax, coupled with a steep bequest or inheritance tax. Id. at 245–47. However, his theory might be “too general to produce a clear case for one type of taxation over another.” See Donna M. Byrne, Progressive Taxation Revisited, 37 Ariz. L. Rev. 739, 777 (1995).

174 Mill, supra note 2, at 737–40. John Stuart Mill’s taxation recommendations can be divided into two parts. First, he advocated an equal proportional tax on clear income so as not to impose a penalty on taxpayers who have worked harder and/or saved more than others. Next, Mill advocated high-asset or transfer taxes on inherited assets suggesting that: “It is not the fortunes which are earned, but those which are unearned, that it is for the public good to place under limitation.” Id. at 739. These somewhat conflicting suggestions yield a complex tax design aimed at accomplishing just distribution while preserving “industry and economy” by not unduly harming incentives.” Kiesling, supra note 37, at 41–42.

175 Mill, supra note 2, at 739.

176 Nozick, supra note 20, at 150–58.

value of equality in starting points or of a just political and economic process, make persuasive claims for the diffusion of inter-generationally transmitted wealth, especially in its extreme forms.

VI. CONCLUSION

The social dynamics of modern democracy and the importance of community life to individual existence shed new light on human rights and the understanding that rights must go hand in hand with obligations. Citizens do not exist in isolation, but instead, are participants in a civic union, claiming and providing their due share of the fruits of social cooperation. The tax system can be utilized as the primary means of funding a society that is committed to social responsibilities. This article argued that wealthy citizens must contribute to the funding of the state by bearing a heavier tax burden than poorer individuals based on two main arguments — one deontological and the other consequential.

According to the deontological argument, society is comprised of individual members who join together for an inclusive joint venture. As a result of this collaboration, each member is entitled to a fair share of the societal output. "Fair share" is a vague notion that may best be defined as a division of resources in a manner that ensures all members of society a decent standard of living. Since the distribution of wealth and income is vastly unequal, leaving some individuals to enjoy all that a good life has to offer while others experience destitution, the funding of a basic standard of living for all will require some redistribution of resources. Such redistribution can be achieved through the tax system, which would raise the required funds for providing an adequate standard of living for all by placing a heavier tax burden on wealthier citizens. According to the second, consequential argument, concentrations of wealth and income have toxic effects on modern democracy. These effects are economic, political, and social and they eventually undermine the fundamental tenets on which democratic society must rest. Redistributive taxation may be implemented to lessen these harms, reaffirming the social commitment of citizens to contribute to the well-being of others and to the prosperity of society as a whole. The taxing of inherited or bequeathed wealth holds great promise as the proper target for redistribution. In addition to raising necessary revenue and diffusing large concentrations of wealth, taxation of inter-generationally transmitted fortune may pose a relatively limited distortion on individuals’ economic behavior while providing the greatest benefits
in terms of the preservation of the right of citizens to enjoy equality of opportunity over their lifetime.

The conclusion of this discussion is inescapable: the wealthy ought to bear a heavier tax burden than other citizens in order to promote the fairness and justness of the political order in modern civilization. This conclusion and the discussion that led to it may serve as another step in the establishment of a normative foundation for modern tax analysis. A solid normative foundation for tax could facilitate a much needed move in taxation from abstract notions of fairness and justice to a more concrete implementation of these concepts as an integral part of tax policy-making and, eventually, the establishment of a healthier, more thriving, democratic society.