Seattle Journal for Social Justice

Volume 19 | Issue 3 Article 24

5-1-2021

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A Review of *How America Was Tricked on Tax Policy: Secrets and Undisclosed Practices*

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In his persuasive book, Professor Bret Bogenschneider dismantles the dogma of United States tax policy. Bogenschneider discusses eleven deceptions in tax policy. These itemized deceptions include the following ideas: tax cuts for the wealthy will cause economic growth; workers do not pay taxes because the income tax rates are progressive; and tax cuts for large corporations will cause a decrease in the prices of consumer goods.[1] The other eight deceptions are significant and are worthy of discussion on their own merits. Bogenschneider's significant and novel argument is presented with ease and clarity, which makes for a compelling read. Although Bogenschneider refers to the tricking of America in the title, the book also covers international tax law and policy.

From my perspective and experience as a professor of business, Bogenschneider has re-envisioned the debate on tax policy. Bogenschneider ultimately claims a new perspective, regarding paying tax by rich premised in postmodern philosophy, and cites Leona Helmsley as the foil for his philosophical view, with her famous quote: "We don't pay taxes. Only the 'little people' pay taxes."[2] Notably, this quote appears on the cover along with a magician's hat and wand, which should bring a sly smile to the face of even the dourest of readers. The philosophical reference makes sense, given Bogenschneider's roughly fifty journal publications over the last several years broadly related to that topic, but the tax argumentation is so persuasive, it feels like the author is building on the works of tax

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1 *See* BRET N. BOGENSCHNEIDER, HOW AMERICA WAS TRICKED ON TAX POLICY: SECRETS AND UNDISCLOSED PRACTICES 6, 18, 23 (2020).

2 *Id.*

philosophy of Locke, Nozick, and Rawls. Bogenschneider looks at fair taxation not just from the view of moral philosophy but also uses sound accounting methods to deliver his points. Further, Bogenshneider's argument is likely to be viewed as an original work and not derivative of postmodern philosophy or mere reflection. For example, Bogenschneider's insistence on the use of consistent accounting methods in tax policy[3] seems so correct that I cannot see how it could ever have been thought otherwise. He claims that accounting methods and not moral philosophy alone must be applied to determine the amount of tax that a given entity or a person should pay. The reader is often left thinking that scholars must have always held Bogenschneider's view, even though that is very far from true, especially in tax policy. The book's conclusion introduces various alternatives to the current tax system by discussing postmodern tax policy and arguing why the "little people" matter to tax policy.[4]

The book appeals to a wide range of people, from tax policymakers to individual taxpayers. The work raises numerous questions that should interest tax policymakers and influence researchers and clinicians in tax policy for years to come. Bogenschneider introduces complex tax issues by presenting and debunking a number of deceptions relating to the tax code and tax collection in the U.S.[5] His ideas are provocative and captivating. The start to the chapter one summary says it all: "The tax system as portrayed on television and in political discourse bears little resemblance to reality."[6] While this portrayal is not surprising in this era of alternative facts, it is worrying because tax policy is based on what Bogenschneider calls false assumptions.[7] In practice the results do not reflect the assumed outcomes. These false assumptions were *first introduced* in the Laffer

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3 *See id.* at 102–25.
4 *See id.* at 153–62.
5 *See id.* at 1–27.
6 *Id.* at 31.
7 *Id.*

curve, which proposes that tax receipts can be increased by cutting tax rates.[8]

Bogenschneider's book contends that "sustained economic growth can best be achieved by cutting taxes on workers and small businesses."[9] In practical terms, lower tax rates are only available to large corporations and the wealthy, who have a lot of room to set their own tax rates through a variety of tactics. Some of the tactics described in the book include taxation delays, tax remittances, corporate inversions, and transfer pricing.[10] Specifically, Bogenschneider dispels a myth related to tax rate progressivity and welfare programs.[11] He states that the above terms are used "to establish that the current taxation system is 'fair' for society as a whole. But the tax system is more accurately described as designed to collect money from workers and redistribute that money to non-workers, both rich and poor."[12] The author asserts that the redistribution from the wealthy to the poor does not take place in the U.S.; rather, the workers alone support the poor.[13] He further contends that "by inventing a special way to count taxes, we conclude the wealthy pay significant amounts of tax (e.g., the top one percent pay roughly half of all income taxes)," which he also demonstrates is false.[14]

Further, Bogenschneider places economic theory and tax policy on a collision course, citing the lack of scientific rigor offered by the former and clinical application of the latter.[15] This tension seems to be the red thread present in all chapters. It is quite surprising to learn that present-day tax policy is not developed with the use of scientific methods. Later in the same

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8 *Id.*
9 *Id.*
10 *Id.* at 71.
11 *Id.* at 155.
12 *Id.*
13 *Id.* at 20.
14 *Id.* at 10.
15 *Id.* at 58.

chapter, Bogenschneider builds an effective argument for applying the scientific method in tax research and diverging from the "common sense" approach currently used.[16] Bogenschneider presents a compelling case against current tax incidence analyses, introduced by Harberger in 1962,[17] which often escapes, by design or by choice, most Americans. Bogenschneider also effectively posits a series of questions to build his argument.[18] He explores what tax discourse would look like if tax practitioners were in charge:[19]

> First, nearly all tax practitioners would agree that large corporations engage in tax avoidance, suggesting that capital bears the incidence of taxation including both capital and labor taxation. Second, tax practitioners usually set out to defer the levy of tax on their clients. Experienced tax advisors should universally agree that the availability of tax deferral is a key aspect of tax policy design. Because tax deferral is only available to capital, and rarely to labor, this suggests that the tax system is favorable to capital.[20]

Furthermore, if you want to understand the "social costs" of generating the majority of tax revenue from wage taxation, which currently comprise eighty-two percent of the total tax revenue, this book is for you. Additionally, according to Bogenschneider, if you are a small business owner, it may be useful to know that your economic activity is held back in comparison to that of large corporations because of the tax policy.

The social costs of wage taxation are further developed by Bogenschneider, building upon his prior publications in the field of taxation and public health. [21] Because public economics assigns all tax incidence to

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16 *Id.* at 59.
17 *See* Arnold C. Harberger, *The Incidence of the Corporation Income Tax*, 3 J. POL. ECON. 215 (1962).
18 *See* BOGENSCHNEIDER, *supra* note 1, at 49, 84.
19 *Id.* at 67.
20 *Id.*
21 *See* Bret Bogenschneider, *Wage Taxation and Public Health*, 14 RUTGERS J.L. & PUB. POL'Y 1 (2016).

workers, social costs of wage taxation are not measured at all and are fully excluded from tax policy based on theory alone.[22] The idea as a matter of scientific inquiry (as opposed to economic theory originating with Malthus) is to begin to measure the social costs of high rates of wage taxation as a subtraction to economic results.[23] Bogenschneider eloquently points out how "by inconsistently applying that method of accounting for tax remittances to different groups of taxpayers, it is possible to use the moral framework to reach nearly any statistical or moral result."[24]

The book also offers an analysis of the postmodern philosophy on taxation, which the author summarizes as the following: the postmodern critique is that tax theory is designed (i) to justify the heavy taxes on workers, and (ii) to assist the wealthy in feeling they have overcome the tax law as applied to the "little people."[25] Economic models are critiqued because they lack the causal hypotheses for testing that are required in science.[26]

Additionally, Bogenschneider examines writings on moral philosophy used to frame the tax policy. Analyzing Epstein's moral framework, Bogenschneider draws out the inner workings of what is referred to as "postmodern" philosophy and its dual approach. He writes that "the first purpose is to collect tax nearly exclusively from workers by withholding directly out of their paychecks. The second purpose is to allow the wealthy to feel powerful by not paying much of anything in tax."[27] Although Epstein's approach is derived from Locke, Locke was more concerned that the people have representatives with sufficient power to block attacks on

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22 BOGENSCHNEIDER, *supra* note 1, at 130.
23 *Id.* at 131.
24 *Id.* at 154.
25 *Id.* at 153.
26 *Id.* at 64.
27 *Id.* at 5.

their liberty and attempts to tax them without justification.[28] Nevertheless, as Bogenschneider points out, wage earners, unlike the wealthy, have no choice—the tax is taken away from their wages before the earners see any money.[29] It is unrealistic to expect that workers can pay any more in taxes than they already do, and, Bogenschneider concludes using actual data, this expectation is an extraordinary atrocity regarding the taxation of workers.[30]

It is unclear how long a system that places the tax burden on workers and small businesses can hold, but the system cannot last much longer. Regarding small business, Bogenschneider writes that "the non-neutrality of the business tax system means that in situations where, say, a local small business is in competition with a large multinational, the small business is at a disadvantage because of the tax system."[31] He further lists a number of hypothetical examples to show how large corporations can easily avoid taxation while small businesses in the U.S. pay much higher tax and do not have as many opportunities to wiggle out of paying tax.[32] This imbalance creates an undue burden for small businesses and provides advantages to large chains, beyond just scale, to compete with their local counterparts.[33]

Chapter three discusses the tax jargon offered by politicians and corporate "gurus" regarding the differences in taxation of small and large businesses, such as corporate inversion.[34] The chapter offers examples and detailed explanations of various machinations perpetrated by large companies to delay paying taxes and possibly avoid paying altogether.[35]

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[28] Richard A. Epstein, *Taxation in a Lockean World*, 4 SOC. PHIL. & POL'Y 49, 51 (1986).
[29] BOGENSCHNEIDER, *supra* note 1, at 159.
[30] *Id.* at 25.
[31] *Id.* at 78.
[32] See *id.* at 85–89 for discussions of transfer pricing between General Motors and its foreign affiliates in Mexico, as well as the case of Starbucks and its affiliates in the United Kingdom.
[33] *Id.* at 79.
[34] *See id.* at 71–99.
[35] *Id.* at 81, 112.

Bogenschneider highlights the process of tax avoidance by stating that "a corporate inversion eliminates the need to repatriate foreign profits back to the US parent corporation, which then avoids the levy of US corporate tax on foreign profits, not domestic profits."[36] This method is available only to large companies and, for some reason, not to small businesses nor wage earners.[37] Transfer pricing is another mechanism often utilized by large corporations to dodge taxation.[38] Bogenschneider points out the following:

> Multinational firms are accordingly able to use transfer pricing on finished goods as one possible means to avoid taxation. As an illustration, General Motors has not paid any income tax in the United States for many years, and transfer pricing is presumably part of the reason for its lack of tax liability.[39]

While large companies may be able to apply these techniques to avoid or significantly lower taxes, these methods are not available to small businesses.[40]

Bogenschneider also notes that high taxes are in fact what makes labor expensive, therefore incentivizing companies to invest in automation.[41] Consequently, automation is the major cause of job loss in the U.S., not the exportation of production.[42] In addition to being more efficient and not using paid sick days, robots also provide creative ways for companies to avoid taxes.[43] Here Bogenschneider contends further:

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[36] *Id.* at 83.
[37] *Id.* at 88.
[38] *Id.* at 89, 161.
[39] *Id.* at 86.
[40] *Id.* at 78–79.
[41] *Id.* at 147–48. Also, for further analysis of the effect of automation on tax policy, see Ryan Abbott & Bret N. Bogenschneider, *Should Robots Pay Taxes? Tax Policy in the Age of Automation*, 12 HARV. L. & POL'Y REV. 145 (2018).
[42] *See* DAVID F. NOBLE, FORCES OF PRODUCTION: A SOCIAL HISTORY OF INDUSTRIAL AUTOMATION (2017).
[43] Abbott & Bogenschneider, *supra* note 41, at 163.

> [T]here are various ways that robot workers are favored over human workers in the tax system, ranging from the differential in tax rates to the various types of wage tax levied exclusively on human workers and consumption taxes that only humans pay. Perhaps the most important of these is a reduction in gross tax revenue when a robot worker replaces a human worker. [44]

It is incredible that policymakers do not see this convergence as a tremendous risk, which the U.S. will have to face in the fast-approaching future. It is also worth noting that the majority of low-skilled manufacturing jobs lost in the U.S. before COVID-19 were not lost due to production moving abroad, but due to automation of factories, called by some a "labor-saving technological progress."[45] Therefore, careful tax policy along with other economic factors should offer a solution going forward.

As we hopefully approach the post-COVID-19 era, the robust discussion of guaranteed income is very timely. Because of the pandemic, more and more jobs are not returning or are being automated, which further reduces employment opportunities, especially for less-skilled workers. The argument for basic income guarantee, which was recently brought to the public's attention and discussed in some depth by Rutger Bregman in 2017,[46] was previously considered in the U.S. by President Richard Nixon in 1968, among others. In Canada, Finland, and the U.S., where basic income guarantee was deployed, studies show that basic guaranteed income had a positive impact on the participants in areas like health, education, and poverty.[47] Granted, not all studies bear the same results, but like anything in economics, the variables in these scenarios were not constant.

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[44] BOGENSCHNEIDER, *supra* note 1, at 147.
[45] Eric O'N. Fisher, *Why Are We Losing Manufacturing Jobs?*, FED. BANK CLEVELAND ECON. COMMENT. 65 (2004).
[46] RUTGER BREGMAN, UTOPIA FOR REALISTS: AND HOW WE CAN GET THERE 67 (2017).
[47] *See generally* Evelyn L. Forget, *The Town with No Poverty: The Health Effects of a Canadian Guaranteed Annual Income Field Experiment*, 37 CAN. PUB. POL'Y 283 (2011) (discussing impact of basic guaranteed income on population health in Canada);

Whether you agree or disagree with Bogenschneider's views, you will undoubtedly gain a new appreciation of the inner workings of tax policymaking and the effect those policies have on the economic well-being of every participant in the system. Everyone from wage earners to wealthy rent seekers, from small business owners to large corporations, and from economists to tax advisors or attorneys will see how this well-researched and practically grounded work demonstrates the impact of tax policy and its application on every participant in the economy. Further, this book reveals that the wealthy, who seem to be afraid to share with the workers, fall prey to a scarcity mentality and greed, although they are already very rich. The book provides a good lens through which to view the raised issues and will make every reader wonder: how can we create a better tax system?

ALLAN SHEAHEN, BASIC INCOME GUARANTEE: YOUR RIGHT TO ECONOMIC SECURITY (2012) (discussing President Nixon's consideration of a basic income policy); Pertti Koistinen & Johanna Perkiö, *Good and Bad Times of Social Innovations: The Case of Universal Basic Income in Finland*, 9 BASIC INCOME STUD. 25 (2014) (discussing the successes and failures of universal basic income in Finland).