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I. INTRODUCTION

Federal Reserve Board chair Alan Greenspan's recent call for tax simplification[1] and his acknowledgement of arguments for a consumption tax[2] may help to place the question of such taxes, including a value-added tax (VAT), on the national political agenda. If the possibility of imposing a VAT does receive significant national attention, the debate it occasions will obviously, and appropriately, focus in part on a variety of technical questions.[3] But normative questions will likely be at issue as well.

A VAT is like a sales tax, but is applied at each stage in a product's development and not merely when it reaches the retail market.[4] Because of disagreements about the reach of a VAT, and because of negative reactions to the *label* VAT, the proposal outlined here calls for the enactment of a Universal Transaction Tax (UTT). On the model envisioned here, the UTT would apply to consumable goods—both tangible and intangible—and services (including financial ones). It would replace state and federal

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1. *See* Nell Henderson, *Time to Change Tax Code Again, Greenspan Says: 1986 Law Presented As Model of Reform*, WASH. POST, Mar. 4, 2005, at EO2, *available at* http://www.washingtonpost.com/wp-dyn/articles/A3689-2005Mar3.html.

2. *Cf.* Krysten Crawford, *Greenspan Backs Tax Revamp*, CNN/MONEY, Mar. 4, 2005, http://money.cnn.com/2005/03/03/news/economy/tax_reform/index.htm?cnn=yes (last visited Oct. 1, 2005).

3. These will doubtless include questions about the best way of affecting a transition from the current system to a UTT and the complications associated with such a transition, as well as the implications of tax changes on the international trade performance of the United States. S*ee*, *e.g.*, John K. McNulty, *Flat Tax, Consumption Tax, Consumption-Type Income Tax Proposals in the United States: A Tax Policy Discussion of Fundamental Tax Reform*, 88 CAL. L. REV. 2095, 2126-29 (2000). *Cf.*, *e.g.*, Laura Dale, *The Economic Impact of Replacing the Federal Income Tax with a Federal Consumption Tax: Leveling the International Playing Field*, 9 CURRENTS: INT'L TRADE L.J. 47 (2000); Tracy A. Kaye, *European Tax Harmonization and the Implications for U.S. Tax Policy*, 19 B.C. INT'L & COMP. L. REV. 109 (1996); Stephen E. Shay & Victoria P. Summers, *Selected International Aspects of Fundamental Tax Reform Proposals*, 51 U. MIAMI L. REV. 1029 (1997); Sarah Ostergaard, Note, *The Third Strike: United States' Attempts at Achieving Tax Parity Between its Income Tax and the European Value-Added Tax*, 27 J. LEGIS. 421 (2001); Jane L. Seigendall, Comment, *A Framework on Consumption Taxes and Their Impact on International Trade*, 18 DICK. J. INT'L L. 575 (2000); John Seiner, Note, *Beating Them at Their Own Game: A Solution to the U.S. Foreign Sales Corporation Crisis*, 11 MINN. J. GLOBAL TRADE 395 (2002).

4. For an overview, see for example: Joseph Isenbergh, *The End of Income Taxation*, 45 TAX L. REV. 283, 332-52 (1990); D. T. Lakdawala, *Value-Added Tax*, 24 INDIAN ECON. J. 183 (1976); William J. Turnier, *Designing an Efficient Value Added Tax*, 39 TAX L. REV. 435 (1984).

personal and corporate[5] income taxes,[6] state and federal gift and inheritance taxes, and Social Security[7] and Medicare taxes.[8] States would enact their own UTTs and would be responsible for collecting tax revenues from businesses.[9]

Arguments for indirect taxes like UTTs are regularly mounted by commentators on the political right.[10] Not surprisingly, then, progressives often challenge proposals for such taxes as products of conservative efforts to cripple government.[11] And criticisms of the income tax and of abuses by the Internal Revenue Service may, in turn, be dismissed by progressives as smokescreens designed to hide attempts to shift the tax burden from wealthy to middle- and low-income taxpayers. I want to argue, however, that progressives should find the adoption of a UTT attractive because of the ways in which it could help to foster both equity and liberty.[12]

A UTT is a classic example of a consumption tax—a tax that does not apply to resources saved or invested. Because people with lower incomes spend proportionately more on consumption than do people with higher incomes, consumption taxes can fall more heavily on poorer taxpayers. Thus, it is regularly assumed that a commitment to social justice requires support for the direct taxation of income and wealth. However, I begin by suggesting that a simple strategy designed to guarantee the progressivity of a UTT—the provision of a fixed refund to all taxpayers—could also help

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5. *Cf.* Jennifer Arlen & Deborah M. Weiss, *A Political Theory of Corporate Taxation*, 105 YALE L.J. 325, 326 (1995) (maintaining that "two-tier taxation [of individuals and corporations] is unusual, unfair, and inefficient," and that it would make more sense to combine personal and corporate income taxes, but that the structure of the modern corporation generates political disincentives for the kind of lobbying required to effect this change) (citations omitted).

6. *Cf.* Laurence J. Kotlikoff, *Consumption Taxation—The A, B, C's That Every Politician Should Know*, 48 EMORY L.J. 823, 827 (1999).

7. Arguably, replacing revenue from social security taxes with revenues drawn from a UTT would have a positive effect on employment, provided consumer prices are not affected. *See* Laszlo Goerke, *Value-Added Tax versus Social Security Contributions*, 219 JAHRBUCHER FUR NATIONALOKONOMIE UND STATISTIK 308 (1999).

8. On implications of this model for states, see for example, Robert P. Strauss, *Administrative and Revenue Implications of Alternative Federal Consumption Taxes for the State and Local Sector*, 14 AM. J. TAX POL'Y 361 (1997).

9. *See* John A. Miller, *State Administration of a National Sales Tax: A New Opportunity for Cooperative Federalism*, 9 VA. TAX REV. 243 (1989). *Cf.* Lior Jacob Strahilevitz, *The Uneasy Case for Devolution of the Individual Income Tax*, 85 IOWA L. REV. 907 (2000). For one argument designed to show that a VAT would be an attractive option for state governments, see Charles E. McLure, Jr., *Rethinking State and Local Reliance on the Retail Sales Tax: Should We Fix the Sales Tax or Discard It?*, 2000 BYU L. REV. 77. States would pay refund credits to taxpayers like those I envision the federal government paying to taxpayers. While I think there's something to be said for the idea of state collection of federal taxes, the federal government could obviously agree to collect all taxes and remit state taxes to all state governments that agreed not to impose personal or corporate income or estate and gift taxes.

10. *See*, *e.g.*, Stephen Moore, *The Economic and Civil Liberties Case for a National Sales Tax*, *in* FRONTIERS OF TAX REFORM 110 (Michael J. Boskin, ed., 1996).

11. *See*, *e.g.*, Eric J. Gouvin, *Radical Tax Reform, Municipal Finance, and the Conservative Agenda*, 56 RUTGERS L. REV. 409, 414-15 (2004).

12. *Cf.* Jeremy Rifkin, *A New Social Contract*, 544 ANNALS AM. ACAD. POL. & SOC. SCI. 16, 22, 25 (1996) (arguing for a VAT as a means of financing a social wage). It was only after I had selected a name for this article and written much of it that I discovered Robert Kuttner, *The Liberal Case for a Value-Added Tax*, *in* THE CONSUMPTION TAX: A BETTER ALTERNATIVE? 337 (Charles E. Walker & Mark A. Bloomfield, eds., 1987).

to ensure that a variety of useful social goals were met. Then, I argue that individual liberty and privacy considerations make a transaction tax like a UTT preferable to an income tax. Thus, a UTT could help to meet key progressive goals of equity and liberty alike.

II. A UTT AND PROGRESSIVITY

Making a UTT the centerpiece of the tax system has the potential to address a variety of equity concerns. Unlike many tax reform proposals on the table, for instance, a UTT would be marriage-neutral.[13] Because of the way in which it was collected, it would not penalize or reward single people for marrying, nor would it reward or burden the decision to marry. Single people and people who formed couples (whether married or not) would be taxed based on their consumption decisions. How they chose to share resources—and tax burdens—would be up to them. This fact alone ought to make a UTT attractive to those concerned about equity. But I want to focus in this Section particularly on the ways in which a UTT could not only be rendered progressive, but also, in virtue of having been rendered progressive, help to meet a variety of other useful social goals.

The traditional objection to VATs and other comparable taxes is that they are regressive: they fall most heavily on those at the bottom of the income ladder.[14] Because consumption tends to decline as a percentage of income as income increases, a proportional consumption tax will take a smaller fraction of a wealthy person's income than of a poor person's income.[15] Further, while people with little wealth or income often pay no income taxes, a well-designed UTT would be paid on every purchase.[16] A poor consumer not liable for income taxes under the current system could thus confront a steep rise in the prices of the goods she regularly acquired with no corresponding reduction in income tax payments to offset it.

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13. On marriage-related discrimination in income taxation, see for example, MICHAEL J. GRAETZ, THE U.S. INCOME TAX: WHAT IT IS, HOW IT GOT THAT WAY, AND WHERE WE GO FROM HERE 29-40 (1999). See *id*. at 316 n.6, for a simple mathematical example of the problem of marriage-related discrimination.

14. Marvin A. Chirelstein, *Taxes and Public Understanding*, 29 CONN. L. REV. 9, 21 (1996). S*ee* McNulty, *supra* note 3, at 2114 ("Such a tax is not, and could not easily be made, progressive with respect to the amount of consumption by each particular taxpayer or consumer."); Kirk J. Stark, *The Uneasy Case for Extending the Sales Tax to Services*, 30 FLA. ST. U. L. REV. 435, 460 (2003) ("Like the retail sales tax, however, the value-added tax offers limited flexibility in terms of allowing adjustments to alter the distributional effect of the tax."). Another commentator explains:

> People occasionally suggest that an indirect value added tax is a possible substitute for income taxation, but prospects are not promising. An inherent problem is that value added taxes are regressive and require compensating payments to the low-paid and to beneficiaries. A value added tax that collected anything like an income tax would require compensating payments that would reach to middle income levels. Most modern states regard the fraction of their citizens who are in receipt of benefits as already too high. People would not welcome an increase.

John Prebble, *Income Taxation: A Structure Built on Sand*, 24 SYDNEY L. REV. 301, 315 (1999).

15. *See*, *e.g.*, Donna M. Byrne, *Progressive Taxation Revisited*, 37 ARIZ. L. REV. 739, 742 (1995); Lester B. Snyder & Marianne Gallegos, *Redefining the Role of the Federal Income Tax: Taking the Tax Law "Private" Through the Flat Tax and Other Consumption Taxes*, 13 AM. J. TAX POL'Y 1, 9 (1996).

16. *See* Isenbergh, *supra* note 4, at 336-37 (noting that VATs sometimes feature exemptions for necessities but suggesting that it is probably better if they do not).

It is clear that a UTT that imposed a disproportionately heavy burden on the poor and a disproportionately light burden on the rich would be deeply problematic. But a UTT need not be the regressive nightmare described by critics. There is some evidence, for instance, that over a *lifetime*, a tax on consumption tends to be less regressive than it appears to be when its impact is assessed during a given year.[17] If lifetime progressivity matters most—and, of course, whether it does can be disputed—a UTT may be much more satisfactory than might be suggested by criticisms that focus on its immediate impact.[18]

In addition, the objection simply assumes what is in fact at issue, namely, that the aptness of a tax ought to be measured by its impact on *income* rather than its affect on *consumption*.[19] It seems intuitively plausible that a wealthy person who spends an inheritance on expensive toys is differently situated from one who invests a comparable inheritance in an asset, like a factory, that is economically productive and benefits an entire community.[20] The social impact of a rich person's consumption for personal gain is obviously different from the social impact of her investment in a (putative) social good.[21] There's nothing wrong with consumption.[22] But the benefit to people other than the investor can be considerable when money isn't spent on personal consumption, and it makes sense to reward an investor for that benefit. Spending on personal consumption doesn't have a similar social benefit. So it makes sense to ask the wealthy consumer to contribute directly to the well-being of the community, through the tax system, when she spends primarily on herself rather than declining to do so and instead investing in a project with wider positive consequences.

It is also important to take seriously the net impact of an entire system of taxing and spending, rather than the consequences of a tax taken in isolation.[23] Presuming the tax system helps to fund substantial services, and presuming the costs of these services do not vary with wealth or income, then persons with lower incomes will benefit more from the provision of these services than will persons with higher incomes. The impact of providing these services will therefore be quite progressive.

Not surprisingly, wealthy people appear to have the ability to affect audit policy by suing and threatening to sue.[24] An additional advantage of adopting a UTT would be that there would be less occasion for lawsuits. Individual taxpayers would not confront the tax authorities directly, and so would have little or no occasion to sue. And the rules governing the collection of taxes by businesses would be sufficiently simple and straightforward that opportunities for suit would be reduced—and those on whom the actual fiscal incidence of the UTT falls would not be those responsible for collecting it, paying it, and thus for interpreting (and potentially challenging) the

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17. *See*, *e.g.*, Erik Caspersen & Gilbert Metcalf, *Is a Value Added Tax Regressive? Annual Versus Lifetime Incidence Measures*, 47 NAT'L TAX J. 731 (1994).

18. *But see* GRAETZ, *supra* note 13, at 203-04.

19. *Cf.* EDWARD J. MCCAFFERY, FAIR NOT FLAT: HOW TO MAKE THE TAX SYSTEM BETTER AND SIMPLER 87-93 (2002).

20. *See id.* at 90-91.

21. *Cf. id*. at 88-90.

22. *Cf. id*. at 43-44.

23. *See* LIAM MURPHY & THOMAS NAGEL, THE MYTH OF OWNERSHIP: TAXES AND JUSTICE (2002).

24. *See* Robert M. Howard, *Wealth, Power, and the Internal Revenue Service: Changing IRS Audit Policy through Litigation*, 82 SOC. SCI. Q. 268 (2001).

relevant laws and regulations. As a result, the leverage wealthy people could exert over their tax bills using lawsuits would be limited.

While all of these observations are undoubtedly relevant, there is a further response to the problem of a UTT's arguable regressivity that has potentially more substantial policy implications. The best way to ensure the progressivity of a UTT will be to offer each taxpayer a tax refund of a set amount.[25] On this arrangement, the percentage of income a person pays in tax will rise with her income, approaching the limit of the UTT rate. Thus, to take a hypothetical example, consider three people. Andrea makes $15,000 per year; Brenda makes $60,000 per year; Charlotte makes $105,000 per year. The UTT rate is 29%, and the refund amount is $15,000. Assume that each taxpayer consumes all of her income. Andrea receives a refund of $15,000, which she also consumes, so she pays a total of $8,700 in taxes.[26] Her net after-tax income is $21,300, so her net tax burden is $6,300 and thus, her effective tax rate is 42%. Brenda receives a $15,000 refund, so she pays $21,750 in taxes; her net tax burden is $6,750, and her effective tax rate is roughly 11%. Charlotte pays $34,800 in taxes, and shoulders a net tax burden of $19,800. Her effective tax rate is 19%. In short, while effective rates can be kept relatively low, the tax structure itself can be quite progressive.

A fixed-amount refund of the kind contemplated here would amount, in effect, to a *basic income*.[27] And it is this feature of the model that should, I think, make a UTT particularly appealing to progressives.

A basic income, sometimes called a *guaranteed minimum income*[28] or a *universal demogrant*,[29] offers a "social wage,"[30] a wage paid to every adult member of a community.[31] A basic income can plausibly be defended on a number of grounds.

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25. For similar proposals, see: LESTER C. THUROW, THE ZERO-SUM SOLUTION 232-34 (1985); MCCAFFERY, *supra* note 19, at 101, 140-42; JOEL SLEMROD & JON BAKIJA, TAXING OURSELVES: A CITIZEN'S GUIDE TO THE GREAT DEBATE OVER TAX REFORM 220-21 (1996) (noting the possibility of a model like the one outlined here, but questioning its political viability); Peter Mieszkowski & Michael G. Palumbo, *Distributive Analysis of Fundamental Tax Reform*, *in* UNITED STATES TAX REFORM IN THE 21ST CENTURY 140, 176-77 (George R. Zodrow & Peter Mieszkowski, eds., 2002); Sijbren Cnossen, *Evaluating the National Retail Sales Tax from a VAT Perspective*, *in* UNITED STATES TAX REFORM IN THE 21ST CENTURY, *supra,* at 215, 225-27. By contrast, Feldman seems to envision a complex system of exemptions as the only way to address the regressivity of a VAT. *See* Robin Cooper Feldman, *Consumption Taxes and the Theory of General and Individual Taxation*, 21 VA. TAX REV. 293, 342 (2002).

26. This model assumes, of course, that money refunded to taxpayers is indistinguishable from money derived from other sources, and is thus taxed at the same manner and in the same rate. An electronic transaction system could address this problem. The system could be designed in such a way that money from a separate refund account was not taxed when consumed. This kind of arrangement could make it possible for the refund amount to be lower and the tax rate higher without imposing excessive burdens on lower-income taxpayers.

27. For this usage, see for example, David Macarov, *The Employment of New Ends: Planning for Permanent Unemployment*, 544 ANNALS AM. ACAD. POL. & SOC. SCI. 191, 201-02 (1996).

28. For this usage, see for example, David A. Larson, *Long Overdue: The Single Guaranteed Minimum Income Program*, 69 U. DET. MERCY L. REV. 353 (1992).

29. For this usage (and a defense), see for example, Daniel Shaviro, *The Minimum Wage, the Earned Income Tax Credit, and Optimal Subsidy Policy*, 64 U. CHI. L. REV. 405, 469-73 (1997).

30. For this usage, see for example, Rifkin, *supra* note 12, at 22.

31. *See*, *e.g.*, ANTHONY BARNES ATKINSON, PUBLIC ECONOMICS IN ACTION: THE BASIC INCOME/FLAT TAX PROPOSAL (1995); SAMUEL BRITTAN & STEVEN WEBB, BEYOND THE WELFARE STATE: AN

Most important, of course, is its role in insuring against poverty, since it provides a floor below which no one can fall.[32] It is also important because a basic income offers increased financial independence,[33] which can in turn enable people to be more effective democratic citizens.[34] They may have more time to participate in public life, or in volunteer activities,[35] if their need to work for basic necessities is reduced, and they will be freed from patron-client relationships that not only reinforce dependency and subordination, but also may exert subtle constraints on political choices by encouraging clients to adopt their patrons' political interests as their own. A basic income can give people the freedom to resist and challenge unfair working conditions,[36] and thus to foster equity and democracy in the workplace—something that might be harder for them to do without the financial cushion provided by a basic income. And a basic income would also allow people to explore alternative conceptions of the good life, from volunteer service to surfing.[37] It would thus make good on a liberal society's commitment to welcoming diverse understandings of the good for humanity rather than imposing a single model on all community members.[38]

EXAMINATION OF BASIC INCOMES IN A MARKET ECONOMY (1990); VINCENT J. BURKE & VEE BURKE, NIXON'S GOOD DEED: WELFARE REFORM (1974); THE RETURN TO INCOMES POLICY (Ronald Dore, Robert Boyer & Zoë Mars eds., 1994); TONY FITZPATRICK, FREEDOM AND SECURITY: AN INTRODUCTION TO THE BASIC INCOME DEBATE (1999); ADRIAN LITTLE, POST-INDUSTRIAL SOCIALISM: TOWARD A NEW POLITICS OF WELFARE (1998); MARCUS MANZ, UN MINIMUM DE JUSTICE: ANALYSES DES JUSTIFICATIONS LIBERALES DU DROIT AU REVENU MINIMUM GARANTI (1995); DANIEL PATRICK MOYNIHAN, THE POLITICS OF A GUARANTEED INCOME: THE NIXON ADMINISTRATION AND THE FAMILY ASSISTANCE PLAN (1973); MICHAEL L. MURRAY, . . . AND ECONOMIC JUSTICE FOR ALL: WELFARE REFORM FOR THE 21ST CENTURY (1997); ARGUING FOR BASIC INCOME: ETHICAL FOUNDATIONS FOR A RADICAL REFORM (Philippe van Parijs, ed., 1992); PHILLIPE VAN PARIJS, REAL FREEDOM FOR ALL: WHAT (IF ANYTHING) CAN JUSTIFY CAPITALISM? (1995); HERMIONE PARKER, INSTEAD OF THE DOLE: AN ENQUIRY INTO INTEGRATION OF THE TAX AND BENEFIT SYSTEMS (1990); CAROLE PATEMAN, *Freedom and Democratization: Why Basic Income is to be Preferred to Basic Capital*, *in* THE ETHICS OF STAKEHOLDING 130 (Keith Dowding, Jürgen de Wispelaere & Stuart White eds., 2003); ROBERT R. SCHUTZ, THE $30,000 SOLUTION (1996); WALTER VAN TRIER, EVERY ONE A KING: AN INVESTIGATION INTO THE MEANING AND SIGNIFICANCE OF THE DEBATE ON BASIC INCOMES WITH SPECIAL REFERENCE TO THREE EPISODES FROM THE BRITISH INTER-WAR EXPERIENCE (1995); TONY WALTER, BASIC INCOME: FREEDOM FROM POVERTY, FREEDOM TO WORK (1989); ANDREW J. WINNICK, TOWARD TWO SOCIETIES: THE CHANGING DISTRIBUTION OF INCOME AND WEALTH IN THE U.S. SINCE 1960 217-19 (1989); Anne L. Alstott, *Work vs. Freedom: A Liberal Challenge to Employment Subsidies*, 108 YALE L.J. 967 (1999); David Copp, *The Right to an Adequate Standard of Living: Justice, Autonomy, and the Basic Needs*, 9 SOC. PHIL. & POL'Y 231(1992); Martha B. Coven, *The Freedom to Spend: The Case for Cash-Based Public Assistance*, 86 MINN. L. REV. 847 (2002). For an early defense on normative grounds, see J. PHILIP WOGAMAN, GUARANTEED ANNUAL INCOME: THE MORAL ISSUES (1968). A recent and widely discussed foray into proximate terrain is BRUCE A. ACKERMAN & ANNE ALSTOTT, THE STAKEHOLDER SOCIETY (1999) (offering a proposal not for basic income, but for what Kenneth Karst has termed "basic capitalization"—making available a large lump sum to each citizen at an early age).

32. *See*, *e.g.*, Joel F. Handler, *The "Third Way" or the Old Way?*, 48 U. KAN. L. REV. 765, 798 (2000).

33. *See* Alstott, *supra* note 31, at 988.

34. *See*, *e.g.*, Gary Chartier, *Civil Rights and Economic Democracy*, 40 WASHBURN L.J. 267, 283-84 (2001).

35. *See* Rifkin, *supra* note 12, at 22.

36. *Cf.* Martha T. McCluskey, *Efficiency and Social Citizenship: Challenging the Neoliberal Attack on the Welfare State*, 78 IND. L.J. 783, 813-15, 838 (2003).

37. *See*, *e.g.*, Phillipe Van Parijs, *Why Surfers Should be Fed: The Liberal Case for an Unconditional Basic Income*, 20 PHIL. & PUB. AFFAIRS 101 (1991).

38. It has also been argued that a basic income scheme, or something similar, would be preferable to

A basic income scheme is potentially very attractive for those who wish to build and sustain a diverse community in which no one experiences the subordination,[39] exploitation,[40] humiliation,[41] and loss associated with poverty. It is clear that people committed to progressive politics have good reason to favor such a scheme. It has been increasingly difficult, however, to garner support for aggressive social welfare measures, despite their evident exigency, during the past three decades. Changing economic conditions have increased the stress levels of middle-class Americans,[42] disposing them to be less generous than they might otherwise have been. And a cynical approach to class politics has used racial and cultural divisions to reduce support for measures designed to enhance social justice: *poverty* and *welfare* have become code-words evoking negative thoughts about black Americans.[43] As a result of these developments, it has been difficult to muster support for major enhancements in the American social welfare system,[44] and, as the adoption of welfare reform in the

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other income support and social welfare measures because it would be less market-distorting than these measures. I cannot adopt this rationale in its entirety because it depends in part on the assumption that a basic income would replace all other publicly provided social services. And I don't believe this is an attractive model. Eliminating all public social services while offering everyone a basic income would have a number of doubtful consequences, I think. It would fail to offer people the security they need with respect to health care, education, disability, unemployment, and retirement. And it would make it less likely that people would benefit from the economies of scale that can emerge when some services are publicly provided. Further, it would likely create a more clearly segregated system of service provision.

39. *Cf.* Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFF. L. REV. 1 (1990).

40. *Cf.* Martha Albertson Fineman, *Cracking the Foundational Myths: Independence, Autonomy, and Self-Sufficiency*, 8 AM. U. J. GENDER SOC. POL'Y & L. 13, 21 n.15 (2000).

41. *Cf.* Ronald C. Kramer, *Poverty, Inequality, and Youth Violence*, 567 ANNALS AM. ACAD. POL. & SOC. SCI. 123, 134 (2000).

42. *Cf.* Sylvia A. Law, *Ending Welfare as We Know It*, 49 STAN. L. REV. 471, 492 (1997).

43. *Cf.* MARTIN GILENS, WHY AMERICANS HATE WELFARE: RACE, MEDIA, AND THE POLITICS OF ANTIPOVERTY POLICY (1999); Peter Edelman, *Welfare and the Politics of Race: Same Tune, New Lyrics?*, 11 GEO. J. ON POVERTY L. & POL'Y 389, 389 (2004).

44. An obvious example is arguably President Clinton's comprehensive health-care reform proposal. The fate of that proposal is regularly invoked in discussions of the viability of progressive social welfare legislation. It is difficult to maintain, however, that the failure of the proposal can be simply or primarily attributed to public doubts about the worth of caring for the community's most vulnerable members. There is reason to think that the Clinton proposal was doomed from the start because it accepted as a given the delivery of health care to most Americans through health maintenance organizations. These organizations elicit hostility from both patients and health-care professionals for multiple reasons: decision-making is bureaucratic, and it is difficult to obtain approval for funding for needed procedures; not every health-care professional will be reimbursed for services by every HMO, which raises the possibility that discrimination against health-care professionals will occur and patients will not have access to the service providers they prefer; and the financial motivations of HMOs make them less responsive to patient concerns. The Clinton proposal did not incorporate all beneficiaries into the same system. And, perhaps most important from a political standpoint, it was fiendishly complicated and difficult to explain to the average voter. I think there is a strong case to be made for the view that if a simpler and more comprehensive program, one that retained the obvious advantages—for both patients and health-care professionals—of fee-for-service medicine and one that could easily be explained in one sentence ("The Medicare system will be enhanced and will be expanded to include everyone") could have garnered much more public support than did the Clinton proposal. It is also worth emphasizing that, because health care costs are problematic for large numbers of middle-class Americans, health-care reform is not as likely to be seen as an issue simply or primarily of poverty relief.

late 1990s shows,[45] even to retain support for existing poverty relief mechanisms.[46]

Nevertheless, Americans remain supportive of tax progressivity.[47] Studies have repeatedly shown that, although they do not favor confiscatory taxes, Americans do believe the tax burden should be shared progressively.[48] At the same time, it is probable that Americans dislike the complexity of the current income tax system and the unpleasantness and insecurity associated with the need for ongoing contacts between taxpayers and the Internal Revenue Service. And it should not be necessary to adduce much empirical support for the view that Americans would tend to favor the reduction in rates that would likely be associated with a UTT's diminished administrative costs and (arguable) capacity to reach some income earned in the underground economy.[49] Thus, many taxpayers should strongly favor the replacement of state and federal personal and corporate income and estate and gift taxes by a UTT. At the same time, Americans could be expected to oppose a regressive tax system that shifted the tax burden onto the shoulders of poor, working-class, and middle-class people.

Consequently, while Americans would have good reason to support a UTT of the kind envisioned here, they would not likely do so unless steps were taken to ensure the progressivity of the tax burden. While a variety of measures could achieve this result, a fixed-amount refund would be the simplest and most preferable. Exempting certain high-demand items from taxation, or lowering the tax rates on such items, would make the tax system more administratively complex and would raise complex questions about which items were and were not essentials.[50] A means-tested refund would, again, be administratively more complex to offer than an across-the-board one. It would also require that low-income families document their financial status, and thus require the kind of direct relationship between the Internal Revenue Service and individual taxpayers which the model envisioned here is designed to obviate. And, as a matter of practical politics, means-tested programs are more vulnerable than others.[51] If all

45. On the dubious consequences of these developments, see WILLIAM JULIUS WILSON, WHEN WORK DISAPPEARS: THE WORLD OF THE NEW URBAN POOR (1996).

46. It is less clear than some critics may maintain that public support for welfare is entirely absent. *Cf.* Robert L. Tsai, *The System Worked: Our Schizophrenic Stance on Welfare*, 106 YALE L.J. 929, 931-34 (1996) (reviewing STEVEN M. TELES, WHOSE WELFARE? AFDC AND ELITE POLITICS (1996)).

47. Marjorie E. Kornhauser, *Equality, Liberty, and a Fair Income Tax*, 23 FORDHAM URB. L.J. 607, 652 (1996).

48. *See id.* n.123 and accompanying text.

49. *Cf.* Daniel S. Goldberg, *E-Tax: Fundamental Tax Reform and the Transition to a Currency-Free Economy*, 20 VA. TAX REV. 1, 59-60 (2000). *But cf.* Graeme S. Cooper & Richard J. Vann, *Implementing the Goods and Services Tax*, 21 SYDNEY L. REV. 337, 356-57 (1999).

50. *Cf.* ALAN A. TAIT, VALUE-ADDED TAX: INTERNATIONAL PRACTICE AND PROBLEMS 42-43 (1988); J. Clifton Fleming, Jr., *Scoping out the Uncertain Simplification (Complication?) Effects of VATs, BATs and Consumed Income Taxes*, 2 FLA. TAX REV. 390, 395-98 (1995); Malcolm Gillis, Peter Mieszkowski & George R. Zodrow, *Indirect Consumption Taxes: Common Issues and Differences Among the Alternative Approaches*, 51 TAX L. REV. 725, 764-65 (1996); Charles E. McLure, *The Value-Added Tax: Effects on Productivity and Equity*, 20 TAX NOTES 971, 974 (1983). Thanks to Barry Freiman for bringing the Tait and McLure studies to my attention. *See* Barry M. Freiman, Comment, *The Japanese Consumption Tax: Value-Added Model or Administrative Nightmare?*, 40 AM. U.L. REV. 1265, 1290-91 (1991).

51. *See* Morris D. Bernstein, *Social Security Reform and the Growth of Inequality*, 8 KAN. J.L. & PUB. POL'Y 57, 64-65. *Cf.* Sonya Michel, *Tale of Two States: Race, Gender, and Public/Private Welfare Provision In Postwar America*, 9 YALE J.L. & FEMINISM 123, 128 (1997).

citizens became accustomed to the arrival of tax refund checks, it would be difficult to persuade them to abandon the refund option.[52] By contrast, if only some taxpayers received standard refunds, it would be easier for ideologues to practice the politics of division and urge the elimination of refunds and a consequent diminution in rates for upper-income taxpayers.[53]

A fixed-amount UTT refund would be appealing simply because it would constitute America's first basic income. But it would also serve other valuable public policy goals. The size of the refund would make it attractive for people to provide accurate contact information to the entity responsible for disbursing refunds. As a result, deadbeat parents, for instance, could be easily located. And otherwise unenforceable debts, public and otherwise, could be collected directly from such parents by debiting their refund accounts.

A UTT of the kind envisioned here would also be attractive because it would likely function as a more progressive alternative to the corporate income tax. The net effect of corporate income taxes may be regressive.[54] Arguably, the primary cost of such taxes is borne by labor.[55] There is also reason to think that, while competitive pressures will encourage a corporation to keep consumer prices low, it will still be inclined to pass on its tax costs to consumers, rather than its shareholders. A tax on corporate income may thus function much like a conventional sales tax. Because there is no progressivity offset of the kind contemplated here, the tax burden will be borne disproportionately by consumers with low and moderate incomes.

By contrast, on the model contemplated here, there would be no need to tax corporate *incomes* at all. Corporations would, of course, pay taxes whenever they purchased goods and services. And corporate shareholders would pay taxes whenever they converted their stock into cash and made purchases with the cash, and also whenever they borrowed against the value of their stock and made purchases with their loans. But the *consumer* would not pay an extra, shifted tax burden not offset by a refund.

Similarly, there would be no need to tax gifts and estates as such.[56] Instead, gifts

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52. *Cf.* BRUCE S. JANSSON, THE RELUCTANT WELFARE STATE: A HISTORY OF AMERICAN SOCIAL WELFARE POLICIES 242 (1988); Theda Skocpol, *Targeting Within Universalism: Politically Viable Policies to Combat Poverty in the United States*, *in* THE URBAN UNDERCLASS 411, 414 (Christopher Jencks & Paul E. Peterson eds., 1991). Thanks to Martha Minow for bringing these sources to my attention. *See* Martha Minow, *Learning from Experience: The Impact of Research about Family Support Programs on Public Policy*, 143 U. PA. L. REV. 221, 234 nn.53-54 (1994).

53. *Cf.* Bernstein, *supra* note 51, at 65 ("Reducing or eliminating payments to the wealthy . . . would very likely mean the end of Social Security as we know it.").

54. The argument is mine, but it is clear that we really are not sure how best to answer this question. *Cf.* Edward J. McCaffery, *Cognitive Theory and Tax*, 41 UCLA L. REV. 1861, 1883-84 (1994); Charles E. McLure, Jr., *The State Corporate Income Tax: Lambs in Wolves' Clothing*, *in* THE ECONOMICS OF TAXATION 327, 341-42 (Henry J. Aaron & Michael J. Boskin eds., 1980). Thanks to Daniel Shaviro for calling my attention to McClure's essay. *See* Daniel Shaviro, *An Economic and Political Look at Federalism in Taxation*, 90 MICH. L. REV. 895, 957 n.245 (1992).

55. Rebecca S. Rudnick, *Who Should Pay the Corporate Tax in a Flat Tax World?*, 39 CASE W. RES. L. REV. 965, 1073-74 (1989).

56. The now-classic case for the elimination of these taxes is found in two articles by Edward J. McCaffery: *The Uneasy Case for Wealth Transfer Taxation*, 104 YALE L. J. 283 (1994) and *The Political Liberal Case against the Estate Tax*, 23 PHIL. & PUB. AFF. 281 (1994). *See also* MCCAFFERY, *supra* note 19, at 62-77.

and estates would be taxed when recipients spent money they had received. This could represent a substantial gain in revenue and in progressivity. Consider one scenario. Darryl gives Edgar $10,000 in Y1. He does so again in Y2, Y3, Y4, and Y5. In Y6, Darryl dies, leaving Edgar a bequest of $900,000. Under current law, no significant taxes would be paid on these gifts.

Now, consider the model for which I am arguing here. Suppose Edgar's consumption income is $50,000 per year. In Y1 through Y5, this income is augmented by the $10,000 gifts from Darryl, which Edgar consumes as well. This means that Edgar pays a total of $6,750 in taxes each year ((($60,000 + $15,000) x 29%) - $15,000). Had Edgar not received the $10,000 gift, he would have paid only $3,850 ((($50,000 + $15,000) x 29%) - $15,000), for an effective tax rate of 8%. The gift is taxed at the standard consumption tax rate, and the annual gain to the public treasury is roughly $14,500.

Suppose Edgar opts to consume most of the $900,000 bequest over two years. During Y6, he spends $600,000 on a new home. In Y7, he purchases a $50,000 automobile. In Y6, presuming his consumption income remains constant, he pays $177,850 in taxes ((($650,000 + $15,000) x 29%) - $15,000), for an effective tax rate of 27%. In Y7, he pays $18,350 ((($100,000 + $15,000) x 29%) - $15,000), for an effective tax rate of 18%. He would otherwise have paid $7,700 in taxes during Y6 and Y7; on this model, he pays $196,200.

At higher wealth levels, of course, estates are subject, in theory, to taxation under current law as they would be under this model. But a variety of legal devices make it relatively easy to circumvent tax liability. By contrast, with a UTT in place, whenever heirs chose to consume inherited wealth, they would pay taxes.

Obviously, many gifts and bequests are not made in the form of cash. But this doesn't mean they will have no tax consequences. The gift of an asset that is converted into cash will certainly have tax consequences when the cash is spent. Likewise, the gift of an asset that is invested will obviously have tax consequences when the income from the investment is spent. And the progressive structure of the UTT envisioned here means that these tax consequences will be progressive. Any inherited wealth that is directly or indirectly converted into cash will be subject to taxation to the extent that the cash is consumed.

When an asset is not sold or used to secure a loan, it will not yield cash that will be taxed on consumption. However, retaining valuable assets will often have significant consequences for consumption levels. Maintaining a retained estate, for instance, will require expenditures that will be much greater because of the imposition of a consumption tax, than they would be otherwise, especially since, *ex hypothesi*, the estate will not generate income. This will serve both as a disincentive to retain large, valuable assets and as a way of ensuring that those who acquire them contribute significantly more to the tax system than they otherwise would.

Some assets, of course, do not require substantial maintenance expenditures—consider expensive jewelry or artwork, for instance. While there will be costs of upkeep for such assets, they will not be substantial, as they likely would be for an estate. The fact that a consumption tax would not be levied on the transfer of these sorts of assets by gift or bequest is obviously the strongest reason not to abandon such a tax entirely. But if taxes on gratuitous transfers, like those on income, are wholly eliminated, the effects need not be disastrous. Treating assets in terms of their monetary values masks significant differences between them. Possession of a nonmonetized asset like a painting confers a significant benefit on the possessor. But she will not typically be able to use the painting to acquire significant social power as she might be able to do with cash.

The strongest arguments for inheritance taxes are rooted in equity rather than fiscal considerations.[57] Perhaps most importantly, an inheritance tax can be defended as preventing the concentration of wealth and power in a few hands.[58] Thus, even wealthy Americans like Bill Gates, Sr. and Warren Buffett have emphasized the importance of retaining taxes on inheritance.[59] Buffett has argued that "[r]emoving the tax would lead to the creation of an 'aristocracy of wealth' instead of a meritocracy."[60] To a significant degree, however, this problem is a consequence of the current tax system: inherited wealth is not subject to the income tax, and sales and other taxes would do little to hamper the concentration of inherited wealth. By contrast, the UTT envisioned here would tax such wealth whenever it was spent on any consumable.

Concerns about wealth concentration are not typically motivated simply or primarily by an abstract worry about the fact that someone possesses consumer durables that someone else does not. Rather, such concerns characteristically reflect the conviction that wealth concentration will tend to have a subordinative effect in at least two ways: (1) some people will be denied access to goods and services that will make them effective democratic citizens and equip them to be part of the political and cultural mainstream; and (2) those with great wealth will use it to acquire undue political influence.

The tax system envisioned here clearly addresses the first concern. Its progressive rate structure ensures that those equipped to pay the most do, in fact, pay the most to support services that benefit all, especially those at the bottom of the social ladder. It would also inhibit consumption spending designed to suborn politicians and to attract social, cultural, and political influence.

The shift from an inheritance tax to a UTT would also not directly affect two other important means by which the wealthy can gain and exercise social power: control over the print and (especially) electronic media[61] and contributions to election campaigns.[62] And a progressive case for such a shift must certainly take this potential effect into account. But it is a mistake to suppose that the tax system is the most efficient or the most appropriate means of addressing all equity concerns like these. The creation of a genuinely independent public media system in the United States, one with a level of autonomy analogous to that enjoyed by the British Broadcasting Company, could serve dramatically to diversify public discourse. Because it would not be dependent on advertising and would not be subject to the oversight of politically

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57. For instance, inheritance taxes can allow a government "to compensate for the difficulty of subjecting intangible personal property to the property tax." Jack Stark, *A History of the Wisconsin Inheritance Tax*, 88 MARQ. L. REV. 947, 952 (2005).

58. *See*, *e.g.*, James R. Repetti, *Democracy, Taxes, and Wealth*, 76 N.Y.U. L. REV. 825, 841-50 (2001).

59. *See Rich Americans Back Inheritance Tax*, BBC NEWS Feb. 14, 2001, http://news.bbc.co.uk/1/hi/world/americas/1170874.stm.

60. *Id*. (paraphrasing the position of Warren Buffet); *cf.* Heather French, *From Riches to Responsibility: Defending the Estate Tax*, UUWORLD March/April 2003 (http://www.uua.org/world/2003/02/feature2.html).

61. *See* Repetti, *supra* note 58, at 842-43.

62. *See id.* at 843-49.

minded legislators,[63] it could ensure the dissemination of viewpoints quite different from those which might be promoted by wealthy advertisers. The reestablishment of rules restraining media concentration could also substantially limit the restrictive impact of concentrated wealth on public discourse. Similarly, the enactment of a satisfactory system of comprehensive public financing for state and federal elections, both primary and general, would dramatically minimize the influence of concentrated wealth on political life. Measures like these could minimize the deleterious consequences of wealth concentration at least as effectively as could inheritance taxes.[64] And would do so more directly and appropriately; targeting those aspects of public life where the negative effects of wealth concentration are actually felt most severely. The value of these measures, and their necessity as complements to the substitution of a UTT for, among other things, gift and inheritance taxes highlights what should be obvious—that a UTT, while a very useful public policy tool, would not be a panacea.

Finally, of course, the substitution of a UTT for current taxes on gratuitous transfers would not directly reduce the amount of money made available by saving for the purpose of bribing politicians and bureaucrats. Someone who chose neither to invest nor to consume inherited wealth, but to retain it for the purpose of suborning the political process could have more resources with which to do so than at present. Though taxpayers and those they might seek to bribe would still be restrained not only by their own consciences but also by the threat of prosecution, the very wealthy who wished to bribe might find it marginally easier to do so on a model like the one articulated here. The policy question to be answered, if this is the case, is simply whether this risk justifies the envisioned tax system, given its other advantages. My own judgment is that it does. For it not only offers a new opportunity for a move toward a basic income; it also serves the liberal goal of constraining state power over and intrusion into individual lives.

III. A UTT AND STATE POWER

Widespread criticism of the Internal Revenue Service in 1998[65] undoubtedly reflected self-interested desires on the part of some taxpayers to avoid fair contributions to the common good. Nonetheless, progressives have been insufficiently sensitive to the legitimate complaints voiced by taxpayers.

The current system of individual income taxation imposes several burdens on consumers. First, there is the burden of maintaining detailed records of income and expenditure. Consumers who wish to survive tax audits intact must devote tedious hours to collecting and maintaining information regarding personal transactions, records many would doubtless prefer not to compile and keep. The price of not maintaining such records is the risk of added tax liability, imposed at the whim of the tax auditor.

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63. Its board of directors might be self-renewing; alternatively, its directors could be chosen directly by the public in non-partisan elections.

64. The cost of these measures would obviously be borne primarily by those taxpayers most likely to benefit or to have benefited from significant gratuitous wealth transfer.

65. *See* Heather B. Conoboy, Note, *A Wrong Step in the Right Direction: The National Taxpayer Advocate and the 1998 IRS Restructuring and Reform Act*, 41 WM. & MARY L. REV. 1401, 1401 (2000).

The taxpayer also runs the risk of exposure. Personal tax return information provides a detailed profile of individual habits and preferences. The requirement that these be submitted to government authorities creates potential risks for taxpayer privacy. There is generally, of course, no inherent reason for the taxpayer to be troubled by the fact that an IRS agent has access to the information contained in her tax return. In principle, the fact that a stranger happens to be aware of information about my finances need be of no particular concern to me. Nevertheless, there are significant possibilities for abuse. Information that might cause the taxpayer public embarrassment could be released. Even if not released, it could serve as the basis for harassment by the government. Further, the selective use of the audit power can allow the executive branch to harass its political enemies.

The power of the IRS to confiscate individual consumers' property also complicates matters. The fact that the individual consumer has a personal legal obligation to the government means that her property can be attached and disposed of without her consent. There is considerable opportunity here for abuse, and the individual taxpayer may have very little power with which to oppose government misbehavior.

In addition, the ongoing capacity of the state to judge taxpayers as having filed inaccurate tax returns in the past means that the taxpayer must wait to enjoy peace of mind. The possibility of an audit looms. The taxpayer can thus experience ongoing insecurity for a significant period after her return has been filed, as she waits to see whether she will be audited. This may lead her not to spend or invest her money so she can be certain it will be available should she need to use it to pay an unexpected bill to the government.

Further, the availability of income tax returns as official records of financial status is an invitation to entities other than the IRS to request copies of returns. If a public or private organization knows that an individual has already prepared a tax return, it need not regard requesting the return as overly burdensome. Requests for detailed personal financial information thus become routine.[66] Eliminating the personal income tax could therefore discourage private and public intrusion into individuals' financial affairs.

In a UTT-based system, individuals would have no need to maintain detailed income and expenditure records. The efficiency gain would be considerable. And there would be fewer occasions for stress for the scrupulous taxpayer who lacks accurate records but is concerned to avoid underpayment. Stress would also be reduced because, having paid for a given product, the individual consumer would not need to be concerned about further contacts with the tax authorities related to that product. It would be the responsibility of the seller to pay the required tax on the product; failure to charge the consumer would not exempt the seller from liability for the tax. Thus, for instance, there would be no need for consumers to worry about the possibility of being harassed by tax inspectors concerned to ascertain whether they have paid taxes on consumer purchases, as they must do under some European UTT systems. Cost shifting to businesses is reasonable because they need, to a degree and

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66. *Cf.* William J. Turnier, *PAYE as an Alternative to an Alternative Tax System*, 23 VA. TAX REV. 205, 210-11 (2003). Turnier argues against a move to a VAT because the "individual income tax return has taken on a significant role as an informal provider of financial information about individuals in a variety of circumstances." *Id.* at 210.

in a way that consumers do not, to maintain detailed financial records,[67] and the fact that they process large numbers of transactions means they can benefit from economies of scale that will permit them to process tax calculations and payments more efficiently than consumers.

At one stroke, this model would eliminate the many problems associated with employment tax payments. For a private person, collecting employment taxes for household employees is a time-consuming nuisance. The amount of money involved is often small—suppose one pays a housecleaner $200 per month—and the amount of paperwork involved is considerable. Additionally, employers are placed in the difficult position of policing the immigration status of employees and acting as surrogates for the Immigration and Naturalization Service. By contrast, on the model envisioned here, people would pay taxes as they purchased, not as they worked. The burden of establishing whether someone had permission to work would be returned to the government, where it belongs.

At the same time, the model would provide a strong incentive for a worker to regularize her immigration status. For presumably the only way to qualify for the standard per-capita tax refund would be to register with the relevant government agency, which would presumably authorize refunds only for legal employees.

One obvious objection to the adoption of a UTT is that taxpayers would have substantial incentives to avoid paying taxes if rates were as high as they would likely need to be to raise adequate revenue. The perceived burdensome nature of a UTT would be offset in part, of course, by the fact that taxpayers would not be liable for other significant taxes. Further, when transactions are electronic—as they increasingly are—[68] it should be possible to collect a UTT automatically on a point-of-sale basis. Electronic transactions would not be possible in all cases and should not be *required* in any, but their obvious advantages would provide traders of all kinds with incentives to employ them; and when they were employed, tax collection could be relatively simple. The potential collection of information about individuals' consumption decisions by the state as a result of electronic payments would be troubling; but it need not be a feature of the model envisioned here. First, businesses, not consumers, would pay the relevant taxes, so no individual spending information would need to be collected by either sellers or the government. Second, payments consequent on transactions would not need to be associated even in business records with individual consumers in any way. New methods of anonymous electronic funds transfer could ensure that taxes were paid without records of consumer transactions being available at all—either to businesses or to governments.[69]

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67. *See* Feldman, *supra* note 25, at 343 ("Such entities already engage in keeping extensive records and making accounting judgments and are far more efficient at it than individuals.").

68. *See* Goldberg, *supra* note 49, at 5.

69. *See*, *e.g.*, *id.* at 50-51.

IV. CONCLUSION

A properly designed UTT could promote both equity and liberty.[70] The adoption of a UTT would not prove a panacea. In particular, the equity of the model offered here would depend in part on the provision of a range of public services—especially health-care and retirement support—that would not be encouraged by the tax system as they are at present,[71] and on changes in the campaign financing system and the control of the electronic media. But a UTT could prove attractive to progressives for multiple reasons. Adopting such a tax would make possible, perhaps for the first time, the implementation of a basic income scheme—not only to foster overall progressivity but also to achieve the other goals to which a basic income plan could be expected to lead. It would involve far fewer intrusions into taxpayers' privacy than the existing tax system, and it would substantially reduce compliance burdens on individuals. There is no reason, then, for conservatives and libertarians to monopolize support for transaction-based consumption tax: progressives should express their enthusiastic support for an alternative taxing model centered on a UTT.

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70. It would also, I think, be constitutional; arguably unlike some other proposed consumption taxes, it would not qualify as a direct tax; *cf.* Erik M. Jensen, *The Apportionment of "Direct Taxes": Are Consumption Taxes Constitutional?*, 97 COLUM. L. REV. 2334, 2405-07 (1997). Thanks to Lawrence Zelenak for bringing this article to my attention. *See* Lawrence Zelenak, *Radical Tax Reform, the Constitution, and the Conscientious Legislator*, 99 COLUM. L. REV. 833 (1999).

71. *Cf.* Julie Roin, *The Consequences of Undoing the Federal Income Tax*, 70 U. CHI. L. REV. 319 (2003).