

WHY INCOME TAXATION? A MORAL AND HISTORICAL INQUIRY

BY JEFFREY PAUL*

Abstract: The following essay analyzes the arguments made by the principal academic proponent of income taxation, Columbia University economist E. R. A. Seligman, after it was found to be unconstitutional in 1894. Seligman thought that the prevalent theory of just taxation, that it should be based on a natural right to one's person and property, was wrong. The principal American philosophical proponent of this natural rights-based approach to taxation was the late Brown University philosopher and economist, Francis Wayland. The essay analyzes the flaws in Seligman's contention that there are no natural rights and, therefore, no natural property rights, so that taxation could not be justified by the benefits received for the protection of such rights. Instead, he claimed taxation should rest upon a person's financial capacity. Since that capacity would be most accurately measured by net worth, we would have expected Seligman to endorse a proportionately assessed net worth tax (which was commonly used by the states in the nineteenth century). Alternatively, he argued for an income tax progressively assessed. This essay argues that since income is only a portion of financial capacity, his argument fails.

KEY WORDS: Francis Wayland, E. R. A. Seligman, U.S. income taxation, general property tax, wealth taxation, natural rights, justification of taxation

In 1799 William Pitt, Prime Minister and Chancellor of the Exchequer of Great Britain, introduced the first income tax in modern times¹ to supplement revenues required to engage in the French Revolutionary Wars. After he was succeeded in both offices in 1801 by Henry Addington, the tax was abolished in 1802, only to be resuscitated in 1803 upon the recommencement of French hostilities. Unlike Pitt, Addington required the payer (employers, banks, and others) both to report the income and to forward the tax due. This repaired the flaw in Pitt's tax, which relied on self-reporting and was relatively easy to evade.

In the United States, the first peacetime income tax was enacted at the federal level in 1894 (A Civil War income tax in 1861 was not renewed after 1872). The Supreme Court struck it down in *Pollock v. Farmers' Loan and Trust*

* Social Philosophy and Policy Center, John Chambers College of Business and Economics, West Virginia University, jpaul@sppfbg.org. Competing Interests: The author declares none.

¹ Examples of pre-modern income taxes include laws in France (1295 and 1356); England (1435); Florence, Italy (1447 and 1480); Holland (1748), and Saxony (1742). See E. R. A. Seligman, *Progressive Taxation in Theory and Practice* (Baltimore: Guggenheim, Weil and Co., 1894), 17-27. Still other examples were the income tax law passed in Massachusetts on November 4, 1646, the income tax provision in the Connecticut Code of Laws of 1650, and the income tax imposed in Georgia in 1773. (See Alvin Rabushka, *Taxation in Colonial America* (Princeton, NJ: Princeton University Press, 2008), 170, 172, and 859.)

Company (1895)² on the grounds that income derived from property in the form of interest, dividends, or rent should be viewed as a tax on the property itself. It was, therefore, a direct tax which, according to Article I, Section 9 of the Constitution must be apportioned “in Proportion to the Census or Enumeration.” This meant that it was apportioned to an individual in a state according to that state’s population relative to the other states. After *Pollock*, a campaign commenced to amend the Constitution and enable taxes on income that did not have to be apportioned among the states based on population. That amendment, the Sixteenth, was passed by Congress in 1909 and ratified by the states in 1913.

Because the progressive income tax is an almost ubiquitous fixture in modern political systems, it is remarkable that there is scarcely any attempt to provide a moral justification for this method of collecting revenue. It will therefore be instructive to review and evaluate the main arguments that were originally advanced to support it. The principal academic proponents of the tax were two German-trained economists, the progressive E. R. A. Seligman of Columbia University and the socialist Richard Ely of the University of Wisconsin. Of the two, Seligman was the more prolific and influential on this matter. In framing his argument, Seligman was concerned not merely to refute the arguments of Chief Justice Fuller and Justice Field in *Pollock*, but to provide a justification for taxation that would replace a Lockean “benefits” principle with a principle based on the “ability to pay.”

Seligman’s grounds for that replacement and what he believed necessarily followed from it—the requirement of a progressive tax upon income—as well as his disparagement of an alternative to that tax (namely a tax upon tangible and intangible property levied proportionately) is the subject of this essay. He deployed three principal arguments in favor of a progressive income tax. First, he claimed that the “ability to pay” must replace “benefit to the payer” as moral justification for any tax; second, that the ability to pay mandates a progressive rather than proportionate tax; and third, that a property or “net worth” tax cannot be fairly assessed in practice. Before evaluating Seligman’s arguments in favor of the ability to pay principle, it is best to understand the principle he sought to overturn.

I. FRANCIS WAYLAND: THE BENEFITS JUSTIFICATION FOR TAXATION

The version of natural rights invoked by Thomas Jefferson in the Declaration of Independence had been elaborated by John Locke in his *Second Treatise of Civil Government*. Indeed, in a resolution that Jefferson helped pass on March 4, 1825—while Rector of the University of Virginia—his Lockean vision of the republic was elaborated:

² *Pollock v. Farmers’ Loan and Trust Company* 157, U.S. 429 (1895), affirmed on rehearing, 158 U.S. 601 (1895).

Resolved, that it is the opinion of this Board that as to the general principles of liberty and the rights of man, in nature and in society, the doctrines of Locke, in his "Essay concerning the origins and extent of civil government," and of Sidney, in his "Discourses on government," may be considered those generally approved by our fellow citizens of this, and the United States.³

Before the Civil War, the principal expositor and proponent of Lockeanism was Francis Wayland, Professor of Moral Philosophy and President of Brown University, whose writings encompassed both political philosophy and economics.⁴ His views on taxation were implied by his theory of natural rights, which he set out in *The Elements of Moral Science*:

Every man has a right to himself. That is, every man has a right to his own body, and to his faculties both of body and mind; he is at liberty to use them as he will, subject only to his responsibility to God. Within this limitation, he may use them as he will, and for using them in any particular way he need give no other reason than that such is his choice. As this right is universal, and belongs just as much to my neighbor as to myself, my right over my own means of happiness, therefore, forbids me from interfering with the means of happiness bestowed upon another. Over my own faculties, and the means of happiness which they present, I am supreme; beyond these I have no right whatever.⁵

When an individual uses his faculties such as by growing corn on unoccupied land, Wayland went on, he has a right to the corn, and to do with it as he wants. That's all well and good in the state of nature; but in the presence of others, his rights—to life, to liberty, and to the products of his labor—may be violated. And, so too, he may violate his neighbor's rights. So, Wayland asked,

How then can justice be administered? How can right be protected and injury redressed? I answer, Provision is made for this in the social nature of man. *Every man is so created as instinctively to commit to the community of his fellow-men the protection of his rights and the redress of his*

³ Transcript of the Minutes of the Board of Visitors of the University of Virginia, during the Rectorship of Thomas Jefferson, March 4, 1825, in *The Writings of Thomas Jefferson*, vol. 19, ed. Albert E. Bergh (Washington, DC: Thomas Jefferson Memorial Association, 1907), 460–61.

⁴ Wayland's most significant works were *The Elements of Moral Science*, first published in 1835, and *The Elements of Political Economy* in 1837. Both went through several editions and were widely read. Indeed, according to Brown University, Wayland was "America's premier moral philosopher" and "his textbook, *The Elements of Moral Science*, sold more than two-hundred thousand copies in the nineteenth century." See "Slavery and Justice," Report of the Brown University Steering Committee on Slavery and Justice, 2006.

⁵ Wayland, *The Elements of Moral Science*, (Boston: Gould and Lincoln, 1867 [1835]), 344–45.

*wrongs; and his fellow-men, on the other hand, instinctively assume this authority.*⁶

Wayland outlined the principle by which the protection of rights should be financed in *The Elements of Political Economy*. He argued that people “should be taxed in proportion to the benefit which they receive from a government. Thus, if a government protects for one man, one hundred thousand dollars’ worth of property, and for another only one thousand dollars’ worth, the former should pay one hundred times as much towards the public expenses, as the latter.”⁷

Wayland was cognizant that taxes might provide for the alleviation of extreme want. Still, his position was that “whether the rich ought to be taxed *more* than a *pro rata* proportion or not, I think it evident that taxes should be so arranged, that individuals should, in so far as possible, pay in proportion to their property; that is, in proportion to the amount of protection which they receive of the government.”⁸

For Wayland, the benefit principle justified what he called direct taxation, by which he meant assessments made directly on, and in proportion to, the monetary value of the property that the taxpayer owns, and by which he directly benefits from its protection by the government. He defined indirect taxation as a tax upon the sale of a good or service from one agent to another. Wayland viewed such taxation as inequitable, given that it is not assessed in proportion to the total property of the buyer that government protects, but selectively on a portion of it. (He also found its assessment in the form of tariffs to be so distant from the ultimate consumer of the product as to leave him unaware of the additional cost that he must bear in purchasing it.) As to the inequality intrinsic to the taxation of consumption as opposed to that of wealth, Wayland wrote:

The *indirect tax* is paid by the *consumer*. Hence, he pays, not according to the benefit which he *receives* from the existence of civil government, but according to the amount of production which he *consumes*. Hence, he who possesses a million dollars’ worth of property, if he consumes no more than he who lives by his daily labor, will pay no larger share of the public burden. Hence, a manifest inequality is involved in the original conception of an indirect tax.⁹

⁶ Wayland, *The Elements of Moral Science*, 345.

⁷ Francis Wayland, *The Elements of Political Economy* (Boston: Gould, Kendall and Lincoln, 1850 [1837]), 395. Cf. John Locke, *Two Treatises of Government*, ed. Thomas Hollis (London: A. Millar et al., 1764 [1690]), Book II, Chapter XI §. 140: “It is true, governments cannot be supported without great charge, and it is fit everyone who enjoys his share of the protection, should pay out of his estate his proportion for the maintenance of it.”

⁸ Wayland, *Elements of Political Economy*, 395.

⁹ Wayland, *Elements of Political Economy*, 394.

II. E. R. A. SELIGMAN: "ABILITY TO PAY"

In responding to the natural rights foundation of the benefit principle, Seligman began with the consensus position of most first- and second-generation American progressives: that moral principles have no permanence but rather evolve historically to accommodate new circumstances. "Modern jurisprudence and modern political philosophy," he claimed, "have incontestably proved the mistake underlying this assumption of natural law or natural rights." Widely accepted notions about natural law or natural rights, in his view, may represent ideals of what ought to be, but these may change when "society is prepared for the change. Just as the modern method of jurisprudence is the historical method, so also the modern theory of property may be called the social utility theory."¹⁰

On his view, private property was not justified on the basis of moral principles, but only as it came to be understood as a socially useful contrivance:

At the outset, property, and especially property in land, was largely owned in common. It was only through the gradual progress of economic and social forces that private property came to be recognized as tending "on the whole to further the welfare of the entire community. The social utility theory does not, of course, mean that what has once been must always be. It is not a reactionary doctrine which looks upon all that is as good. It simply maintains that the burden of proof is always upon the party urging the change; and that when the change advocated is a direct reversal of the progress of centuries, and a reversion to primitive conditions away from which all history has travelled, the necessity for its absolute proof becomes far stronger."¹¹

Having severed taxation from its natural rights moorings, Seligman believed that he had severed it as well from the benefits theory. He argued that for government expenditures either on a war of national defense or on local police, "it cannot be claimed that any one individual receives a measurable special benefit."¹² Wayland would not have agreed. What is protected in both examples is measured by what the individual owns—himself and his property. Just as homeowner's insurance requires that premiums are correlated with the monetary value of the property, so too should taxes that protect all of an individual's property be correlated.

¹⁰ E. R. A. Seligman, *Essays in Taxation* (Barcelona-Singapore: Athena University Press, 1915), 68. Cf. Charles Edward Merriam, *A History of American Political Theories* (New York: Macmillan, 1903), 310: "[T]he idea that man possesses inherent and inalienable rights of a political or quasi-political character which are independent of the state, has been generally given up." Merriam, a progressive, was founder of the University of Chicago's political science department.

¹¹ Seligman, *Essays in Taxation*, 68.

¹² Seligman, *Essays in Taxation*, 71.

Seligman, however, believed that his argument demonstrated that it is the community rather than the individual that benefits and that, therefore, there is no way of measuring the benefits accruing to an individual from such state actions. He concluded, therefore, that “[w]hen payment is made for these general expenditures—and such payment is called a tax—the principle of contribution is no longer that of benefits or of give and take, but of ability, faculty, capacity. Every man must support the government to the full extent of his ability to pay.”¹³

Still, one’s ability or capacity to pay would be most accurately measured by wealth or net worth—and so a property or net worth tax would be the same as that implied by the benefits theory. Income, being only a portion of one’s net worth, would not accurately reflect that capacity.

To this sort of argument, Seligman responded that the benefit theory of taxation springs from the assumption that every individual has a clear and distinct entitlement in what he has produced or in what another has produced that he has acquired by purchase or by gift from its rightful owner. He rejected this assumption in toto: no individual laborer has a natural “right” to *anything* because no individual “produces” *anything*:

Take, for example, the workman fashioning a chair. The wood has not been produced by him; it is the gift of nature. The tools that he uses are the result of the contributions of others; the house in which he works, the clothes he wears, the food he eats (all of which are necessary in civilized society to the making of a chair), are the result of the contributions of the community. His safety from robbery and pillage—nay, his very existence—is dependent on the ceaseless co-operation of the society about him. How can it be said, in the face of all this, that his own individual labor wholly creates anything? ... Nothing is wholly the result of unaided individual labor. No one has a right to say: This belongs absolutely and completely to me, because I alone have produced it. Society, from this point of view, holds a mortgage on everything that is produced. The socialists have been in this respect more logical.¹⁴

“It is not the labor theory,” Seligman added, “but the social utility theory, which is the real defense of private property.”¹⁵ From his claim that there is no natural entitlement to ownership, but only one justified by social utility, Seligman moved on to a sweeping conclusion about the relationship of the individual and the government:

¹³ Seligman, *Essays in Taxation*, 71.

¹⁴ Seligman, *Essays in Taxation*, 69.

¹⁵ Seligman, *Essays in Taxation*, 69–70.

It is now generally agreed that we pay taxes not because the state protects us, or because we get any benefits from the state, but simply because the state is a part of us. The duty of supporting and protecting it is born with us. In civilized society the state is as necessary to the individual as the air he breathes; unless he reverts to stateless savagery and anarchy he cannot live beyond its confines. His every action is conditioned by the fact of its existence. He does not choose the state, but is born into it; it is interwoven with the very fibres of his being; nay, in the last resort, he gives to it his very life. To say that he supports the state only because it benefits him, is a narrow and selfish doctrine. We pay taxes not because we get benefits from the state, but because it is as much our duty to support the state as to support ourselves or our family; because, in short, the state is an integral part of us.¹⁶

Nevertheless, even if one agreed that the principle justifying taxation is ability to pay, wealth, not income, would be the most obvious measure of that ability since the latter, by definition, is only a portion of the former. But Seligman rejected the view that wealth is the most preferable type of taxation based on the ability to pay.

Its deficiencies, Seligman argued, were practical and insuperable. The principal defect was evidenced by America's experience with the general property tax in the nineteenth century.¹⁷ This tax was levied on both tangible and intangible property by the states and localities and was their principal source of state and local revenue. While the revenues collected and spent were substantial—nearly equal to that of the federal government by mid-century,¹⁸ according to a leading historian—there were three principal problems. The first was that, as the value of intangible assets (stocks, bonds, the value of a private business, and so forth) appreciated dramatically, especially after the Civil War, these assets brought in successively less revenues than taxes on tangible property (land, houses, and so on), since they could be more easily hidden and evaded than their tangible counterparts. Thus, while revenues from the general property tax grew throughout the century, the increasing disparity between revenues from real as opposed to personal property was justifiably resented by the public. Second, real estate had to be assessed, and the methods of doing so varied widely and controversially. Third, the tax varied from state to state in its treatment of debt, so that even if all assets had been accounted for, the tax would not necessarily have been assessed on net worth.

In short, an individual's property was an extremely difficult tax to assess accurately and did not reliably accord with a taxpayer's ability to pay. For

¹⁶ Seligman, *Essays in Taxation*, 72.

¹⁷ Seligman, *Essays in Taxation*, 27–30.

¹⁸ W. Elliot Brownlee, *Federal Taxation in America: A History*, 3rd ed. (Cambridge: Cambridge University Press, 2016), 51.

that reason, Seligman recommended an income tax, which had two attributes missing from any property tax. First, income, whatever its source, was stated in monetary terms and, therefore, did not require assessment (unlike, for example, assessing the value of real estate or a privately owned business). Second, the payer of the income (such as an employer, a corporation, or a bank) could be required to both report it and withhold the tax on it. In other words, the singular practical virtue of a tax on income, in Seligman's view, was its collectability, that is, its relative invulnerability to fraud, misestimation, and/or evasion.

III. PROBLEMS WITH SELIGMAN'S JUSTIFICATION OF INCOME TAXATION

However, the income tax was accompanied by its own set of problems, both philosophical and practical, that escaped Seligman's attention. Philosophically, he had maintained that income, like wealth, most accurately reflected an individual's capacity to pay tax when compared with his fellow citizens. Of course, nothing could be further from the truth.

A contemporary example demonstrates the problem. According to his 2015 federal tax return, Warren Buffett had \$11.6 million in adjusted gross income, on which he paid \$1.8 million in federal tax. "Tax specialists," however, said Mr. Buffett's income was low relative to his net worth, which Forbes recently pegged at \$65.2 billion.¹⁹ In other words, if Mr. Buffett had been assessed Elizabeth Warren's proposed 2 percent tax on wealth exceeding \$50,000,000, he would have paid \$1.3 billion instead of \$1.8 million (about 7,200 times what he actually paid). The former amount is obviously more precisely correlated with Mr. Buffett's ability to pay than the latter.

The same calculation could be made for any number of multi-billionaires today, or the growing number of millionaires and multimillionaires in Seligman's day. Whatever its practical advantages, the income tax's moral superiority to a wealth tax as calibrated by the "ability to pay" standard is delusional.

Seligman further suggested that the ability to pay principle requires that the income tax not be levied proportionately, but progressively. His reasoning was that, since the government's duty is to enhance social utility, the appropriate instrument to maximize that utility is to reduce the distance between those with lesser and those with greater financial capacity. The reasons for this are three. First, the income required for the necessities in life should not be subject to taxation at all. Second, more financial capacity amplifies an individual's potential future accretions to wealth geometrically and so must be taxed in successively greater proportions with respect to additional pecuniary increments in order that it accords with his financial capacity. Such progressive assessments will decrease the collective utility of

¹⁹ Nicole Friedman, Laura Sanders, and Richard Rubin, "Buffett Parries Trump by Releasing Some Tax Information," *Wall Street Journal*, Oct. 11, 2016.

the few while increasing the collective utility of the many. Finally, lesser financial capacity means that each additional pecuniary increment will yield greater marginal utility than that same increment when added to the assets of a higher-income individual. A progressive income tax will address both difficulties by reducing the future potential amplification of wealthy individuals' reinvested assets and by reducing the marginal utility of the final increment of their income while increasing that of the majority to whom that income's utility is transferred.²⁰

In practice, of course, the income tax has been the most collectible tax and, hence, an abundant source of government revenue. However, as a mechanism for the type of egalitarian reform Seligman sought—reducing the distance between the final utilities of the rich and the poor—it has been a failure of monumental proportions. In fact, “progressivity,” particularly in Europe, has increased the distance between the middle class and the ultra-rich, as the high marginal rates in these countries hit middle-income individuals and families. And when combined with typical European payroll taxes (normally at least double those in the United States) and value-added sales taxes, these taxes have served principally as a means of making the middle class dependent upon state provision while reducing their capacity to save and purchase medical care and other necessities from private providers.

One can illustrate the effect by looking at the tax rates on personal income levied in Germany, the grandfather of the welfare state:

Table 1. Income and Payroll Taxes in Germany: 2021 1€ = \$1.19

Single Taxpayer		Married Taxpayers		Marginal Rate
Euro €	\$US	Euro €	\$US	
0 – 9,744	0 – \$11,595	0 – 19,488	0 – 23,191	0%
9,745 – 57,918	\$11,596 – \$68,922	19,490 – 115,836	\$23,193 – \$137,845	14%
57,919 – 274,612	\$68,924 – \$326,788	115,838 – 549,224	\$137,847 – \$653,577	42%
Payroll Taxes		Single Rate		
Pension Insurance		9.3% paid by employee		
		9.3% paid by employer		
Unemployment Insurance		1.2% paid by employee		
		1.2% paid by employer		
Health Insurance		7.3% paid by employee		

²⁰ E.R.A. Seligman, *Progressive Taxation in Theory and Practice*, originally published by American Economic Association, vol. 9, nos. 1 and 2 (Baltimore: Guggenheim, Weil, and Co., 1894), 190–200, 217. Seligman's justification for progressive taxation is not stated as precisely as my summary. And he thought, as well, that except for inheritance taxes, progressive taxation at the federal level in the United States was not at the time (1894) possible.

Table 1. continued

Payroll Taxes	Single Rate
	7.3% paid by employer
Long-Term Care Insurance	1.525% paid by employee
	1.525% paid by employer
Total Additional Taxes on Wages	19.325% paid by employee
	19.325% paid by employer
VAT	19% (some, goods and services taxed at 7%)

Source: "German Wage Calculator," brutto-netto-rechner.info; "Germany Tax Rates and Allowances in 2021," www.icalculator.info/germany/income-tax-klassen/2021.html.

There is, moreover, an irony in how the graduated income tax played out in the United States Throughout most of the nineteenth century, the federal government was financed by indirect taxes—essentially on consumption via tariffs and excises. Especially in the decades following the Civil War, consumption taxes were roundly criticized as regressive—an unfair burden on lower wage earners. Indeed, growing fury over the injustice of tariffs as a means of financing the federal government was the immediate political context for the crusade to pass a constitutional amendment to permit an income tax. But as Ajay K. Mehrotra, a contemporary historian and political progressive, has noted, E. R. A Seligman, Richard Ely, and the others who attacked "consumption taxes like the tariff and excise levies as pernicious fiscal instruments" as a way to erase the "benefits theory," left later generations of progressive reformers with a problem:

A revenue system based primarily on ability to pay ignored how the modern fiscal state spent its tax revenue. This elision may have created a fiscal myopia among U.S. tax experts and their followers. By narrowly focusing only on the revenue extraction process, supporters of the faculty [ability to pay] theory neglected to see how distributional justice could be achieved through the tax-*and-transfer* process as a whole. They failed to realize how potentially regressive but highly efficient and productive taxes could generate tremendous revenue that could be used, in turn, for progressive social-welfare spending—spending that could counter the possibly regressive incidence of consumption taxes. In other words, the new school of American political economists may have foreclosed the possibility of the United States adopting a consumption tax like the VAT in subsequent years.²¹

²¹ Ajay K. Mehrotra, *Making the Modern Fiscal State: Law, Politics, and the Rise of Progressive Taxation, 1877–1929* (New York: Cambridge University Press, 2014), 388.

IV. THOMAS PIKETTY: THE WEALTH DISTRIBUTION PRINCIPLE

Seligman's successors among progressives—such as Thomas Piketty, professor at the Paris School of Economics—are well aware that income taxes, no matter how progressive, have scant relation to a taxpayer's capacity or ability to pay.²² “[T]he explosive dynamic of wealth inequality,” he writes, “especially when larger fortunes are able to garner larger returns,” ensures that outcome, “and only a direct tax on capital can correctly gauge the contributive capacity of the wealthy.”²³

Instead, Piketty and other progressives now endorse wealth redistribution as a third justification for taxation (as distinguished from the benefits and ability to pay justifications)—although they have carefully rephrased the public formulation of their general income egalitarian prescriptions as “the reduction of income inequality.”

Nineteenth-century impediments to collecting accurate information on personal intangible property, Piketty correctly notes, are irrelevant. The federal government could easily compel citizens to file forms listing their assets and liabilities and use the information to calculate their net worth. This information can be demanded as well from “banks, insurance companies, and other financial intermediaries.”²⁴ And to reach assets invested abroad, Piketty recommends something like the 2010 Foreign Account Tax Compliance Act, which “requires all foreign banks to inform the Treasury Department about bank accounts and investments held abroad by US taxpayers, along with any other sources of revenue from which they might benefit.”²⁵

While Piketty's goals are redistributive primarily with respect to wealth, he wishes to have both a progressive annual wealth tax with a top rate of between 5 percent and 10 percent on assets above 1 billion euros or \$1.1 billion, as well as a more progressive income tax with a rate of 80 percent on incomes above \$500,000 or \$1,000,000. Wayland, of course, would say that any tax on income, whether progressive or proportional, is not implied by the natural rights benefits principle because income represents only a percentage of the property that government protects. However, a small proportional tax on wealth for the protection of all the citizen's property certainly would meet the moral criteria elaborated by natural rights defenders like Wayland. Similarly, a uniform universal tax on all sales of tangible or intangible goods or services to individuals, associations, corporations, or others could be defended (though Wayland might disagree) on the grounds that these are insurance to protect the transactions from fraud, just as the property tax protects individuals' assets from theft.

²² Thomas Piketty, *Capital in the Twenty-First Century* (Cambridge, MA: The Belknap Press of Harvard University Press, 2014), 493–534.

²³ Piketty, *Capital*, 525–26.

²⁴ Piketty, *Capital*, 520–21.

²⁵ Piketty, *Capital*, 522.

As for proportional taxes on income for various government insurance and retirement benefits, these are vulnerable not only to the charges that they are a compelled purchase of what should be a discretionary one and that the supplier is a government monopoly (like Medicare), but in addition that the pyramid structure of the financing of some of these benefits (like Social Security) is fiscally irresponsible and deceptive in that it is allegedly paid for with money collected and saved for that purpose. Moreover, a taxpayer required to finance a government monopoly of an invaluable service like medical care is subject to an indefensible violation of his natural rights since that monopoly can withhold treatment or prevent the patient from seeking care elsewhere.²⁶ In addition, the rights of the providers of the service are similarly infringed by coercively restricting their employment to a single employer.²⁷

V. CONCLUSION

It is clear, then, that the progressive income tax is not morally justified by the benefits principle, the “ability to pay” principle, or even the redistribution of wealth principle. Its justification consists in that it is an accessible and easily allocated collectible source of government revenue. Ironically, in the second edition of his treatise, *The Income Tax: A Study of the History, Theory and Practice of Income Taxation at Home and Abroad*, published after the Sixteenth Amendment was passed and the first federal income tax was assessed, Seligman restated its practical virtues and then concluded stunningly, “So far as national taxation is concerned, it will scarcely be doubted that the income tax is not needed.”²⁸ Practically, he wrote, it is only needed to fight wars.²⁹ Otherwise, he concluded, tariffs and excise taxes are perfectly adequate sources of federal revenues. The much-maligned general

²⁶ Charlie Gard was an infant in Great Britain whose parents wished to have him transferred from a British National Health Service Children’s Hospital to Columbia University Medical Center in the United States to be treated for a rare neuromuscular disorder. His parents had raised £1.3 million to pay for this but were prevented from doing so by the British government. As a result, the National Health Service withdrew his life support and he died. See Debra Goldschmidt and Hilary Clark, “Baby Charlie Gard Dies After Life Support Withdrawn,” CNN Health, July 29, 2017.

²⁷ See, e.g., Bacchus Barvard and David Jacques with Antonia Collyer, “Waiting Your Turn: Wait Times for Health Care in Canada,” Fraser Institute, December 10, 2019; “Canada Among Highest Health Care Spenders Yet Ranks Near Bottom on Number of Doctors, Hospital Beds and Wait Times,” Fraser Institute, November 8, 2018; “The Private Cost of Public Queues for Medical Care,” Fraser Research Bulletin, 2019 (Fraser Institute); Liana Brinded, “The First Step Toward Fixing the U.K.’s Health Care System is Admitting it is Broken,” Quartz, February 22, 2018; “Terminally Ill Boy Denied ‘Potentially Life-Saving’ Treatment by NHS Would Be Given It in Any U.S. Hospital,” *The Telegraph*, April 18, 2019; and Li Zhisui, *The Private Life of Chairman Mao* (New York: Random House, 1994)—a portrait of public health care under Mao’s rule, written by his personal physician.

²⁸ Seligman, *The Income Tax*, 633.

²⁹ Seligman, *The Income Tax*, 634.

property tax is similarly adequate in providing needed revenues for cities, counties, and some states.

The single moral virtue, then, of the income tax is its psychological effect on the ordinary taxpayer who recognizes that the general property tax allows many of the wealthy to hide some of their intangible assets and, thereby, to successfully evade the taxes that others pay on visible, tangible assets. However, as Piketty has argued, in the twenty-first century the means of such evasion have been radically reduced, thereby leaving the income tax justified only by its productivity as a revenue source. And, of course, since its progressivity was never justified as a means of wealth redistribution, the single advantage of the income tax is that it is an easily available source of ample government expenditure. However, any income tax—proportional or progressive—is regressive as a tax on wealth, as the Buffett example illustrates, and by no means does it reduce the disparity between the extremely wealthy and the average person.

For those who believe the moral deficiencies of the income tax as a means of wealth equalization can be remedied through inheritance or estate taxes, the history of both has proven otherwise. Out of a total of \$3,465,466,627 in federal revenues collected by the United States in 2018, only \$22,943,348 was derived from the estate and gift tax.³⁰ The estate tax in this country is easily reduced for the very wealthy through the use of charitable lead trusts, grantor retained annuity trusts (GRAT), intentionally defective grantor trusts, discounts for lack of marketability and/or control, irrevocable life insurance trusts, dynasty trusts, and a myriad of other devices too numerous to mention.³¹ In member countries of the Organisation for Economic Co-operation and Development (OECD), gift, inheritance, and estate taxes on average made up .2 percent of their GDP in 2016, while total tax revenue accounted for 34 percent of their GDP.³² This is why “social democracies” such as Sweden, Norway, Canada, Australia, Austria, and New Zealand have abolished their inheritance taxes.

None of the three possible justifications for taxation—Wayland’s benefits principle, Seligman’s ability to pay principle, or Piketty’s redistributive wealth principle—justify an income tax. All three justifications, in fact, suggest that wealth should be taxed, proportionately, for Wayland and progressively for Piketty. As for Seligman’s ability to pay principle, it is entirely unclear what formula it may imply for wealth taxation. Does

³⁰ Internal Revenue Service Data for 2018 Data Book, 3.

³¹ In the words of multi-billionaire George Soros, “A charitable lead trust is a very interesting tax gimmick. The idea is that you commit your assets to a trust and you put a certain amount of money into charity every year. And then after you have given the money for however many years, the principal that remains can be left [to one’s heir] without estate or gift tax. So this was the way I set up the trust for my children.” (Michael T. Kaufman, *Soros: The Life and Times of a Messianic Billionaire* (New York: Vintage Books, 2003), 170.)

For a discussion of the GRAT, see Steve Hartnett, “Facebook Founders Provide an Excellent Estate Planning Example,” American Academy of Estate Planning Attorneys, May 16, 2012.

³² Revenue Statistics 2018: Tax Revenue Trends in the OECD, 7.

it imply a proportional wealth tax, a progressive one, or some other formula? Seligman would have had to, first, recognize that the ability to pay principle does not support income taxation and, second, define it with greater specificity to see what sort of wealth tax this principle implies.

In any case, progressive intellectuals who followed Seligman in the New Deal period did not recommend an annual wealth tax. The principal advocate of such a tax, Louisiana Senator and Governor Huey Long, was treated as a pariah by most progressives. And rather than recommending higher marginal rates on extraordinary levels of income, progressives during the 1930s repeatedly advocated increased rates for the middle classes.

Wisconsin's progressive Senator Robert La Follette, Jr. spoke for most of them. "The important [income tax] brackets that must be made to carry their fair share of the tax burden," he said in 1935, "are those below \$50,000 annual taxable income."³³ New Deal historian Mark Leff noted that "even before Roosevelt took office, a position paper approved by 101 economists counseled him to slash income—and estate—tax exemptions and to elevate rates on 'moderate-sized incomes' of \$5,000–\$30,000."³⁴ Leff added that "[w]hen the *New Republic* sponsored a forum of liberal economists in 1938, a majority favored cuts in income tax exemptions and higher middle-bracket rates."³⁵ The People's Lobby, led by the elite stratum of progressive intellectuals like John Dewey, Reinhold Niebuhr, Paul Douglas, and Stuart Chase produced a petition with 900 signatures arguing for broad-based progressive taxation that would include lower- and middle-income earners.³⁶ "The gold is in the foothills, not in the mountains," alleged one economist from the Twentieth Century Foundation.³⁷ All of them had to await the attack on Pearl Harbor to have their hopes realized when the class tax was converted to a mass tax to finance World War II.

In the twenty-first century, we find that whether countries are characterized as welfare states or social democracies—or as in the case of China, as a communist state though it is, in fact, a fascist state—it is the means of consumption, that is, income, not the means of production that are collectivized. Only in a few countries where original communism remains, like North Korea and Cuba, is private ownership of capital largely forbidden or severely limited. Indeed, "socialist" has become more of a description of income collectivization rather than capital expropriation.

³³ Quoted in Mark Leff, *The Limits of Symbolic Reform: The New Deal and Taxation, 1933–1939* (Cambridge: Cambridge University Press, 1984), 112. Leff notes, paraphrasing La Follette, that this group of taxpayers pulled in "a whopping nine-tenths of the net income reported by taxpayers."

³⁴ Leff, *Limits*, 106.

³⁵ Leff, *Limits*, 107.

³⁶ Leff, *Limits*, 105.

³⁷ Leff, *Limits* 106.

Perhaps this was the unacknowledged intention of income collectivists in the first place: maximizing dependency upon the state for the provision of as many services as possible by depriving the majority of the population— income, wage, or salary earners—of the means of purchasing them. By allowing private capital formation (with the understanding that this is not a natural right, but a state-derived privilege), the practical autocrat can escape the economic vulnerabilities of communism recognized by Lenin and his adoption of the New Economic Policy in 1921 and later, by Mao's successors. That is, fascism and "democratic socialism" can "succeed" by protecting capital while plundering income. Market forces can continue to generate wealth while providing autocratic governments with the means to render the majority of their citizens servile dependents.

For advocates of a natural rights republic, this suggests replacing income taxes with a low sales tax on the purchase of all goods and services and, perhaps, with a very low proportional wealth tax. Such a regime would be consistent with the benefits principle and a way to raise the revenues necessary to protect people's rights. In contrast, an ability to pay principle does not provide a moral justification for an income tax, whatever its practical advantages as a revenue-raising instrument. And for wealth redistribution, the taxation of income, as Piketty acknowledges, is a nonstarter. An income tax, then, is unjustified by any of the three political philosophies that we have examined.

Philosophy, Social Philosophy and Policy Center, John Chambers College of Business and Economics, West Virginia University