

An Examination of Convergence and Resistance in Global Tax Reform Trends

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The worldwide rise of the Value-Added Tax (VAT) over the last half-century is emblematic of the paradox in modern tax systems: their remarkable similarity in the face of divergent political, cultural and social systems. However, efforts to introduce VAT-style taxes have frequently been accompanied by fierce localized resistance. The histories of VAT reform in Australia, Canada and the United States encapsulate the tension that arises from a tendency among developed tax systems to converge against frequent and often fierce localized opposition. This tension speaks to a key debate in the public policy and comparative law literature concerning the transferability of policy ideas or legal instruments across jurisdictions. The Article details the history of VAT reform in Australia, Canada and the United States over a period of four decades, 1965-2005, where the global uptake of the VAT was at its highest, but where VAT reform in each jurisdiction was highly controversial. The Article concludes with an assessment of the factors that contribute towards tax policy convergence and localized resistance.

INTRODUCTION

Notwithstanding a wide divergence in government and institutional structures, electoral systems, and social and political values, there has often been a convergence of tax systems in Western democracies. By the second decade of the last century, virtually every Western country had a

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national income tax, and by the end of the Second World War, the tax had emerged as a major revenue source for most governments. Over the next decades, social security taxes assumed an important role in most Western countries. And by the end of the twentieth century, all developed countries but one — the United States — had adopted a national consumption tax and, importantly, had adopted the same form of consumption tax: a multi-stage Value-Added Tax (VAT).

In this Article I examine some of the dominant explanations for tax reform outcomes in light of the experience of three countries with VAT reform — Australia, Canada and the United States. The VAT-reform experience of these three countries encapsulates the tension that arises from a tendency among developed tax systems to converge against frequent and often fierce localized opposition. This tension speaks to a key debate in the public policy and comparative law literature concerning the transferability of policy ideas or legal instruments across jurisdictions.¹

The VAT has become one of the most pervasive tax instruments across the developed and, increasingly, the developing world, having been adopted by more than 140 countries and accounting for approximately 20 percent of worldwide tax revenue.² Much of the literature treats the VAT as merely a technical innovation that will inevitably spread to most parts of the globe.³ However, less widely acknowledged and explored is the persistent opposition to VAT reform that has accompanied its spread — Australia and Canada introduced a VAT only after overcoming decades of prolonged resistance, while the idea has never seriously progressed towards implementation in the U.S. This Article proceeds from the assumption that deviations from trends

1 See, e.g., David Nelken, *Legal Culture*, in ELGAR ENCYCLOPEDIA OF COMPARATIVE LAW 379 (J.M. Smits ed., 2006); Nicholas H.D. Foster, *Comparative Commercial Law: Rules or Context?*, in COMPARATIVE LAW: A HANDBOOK 263 (E. Orucu & D. Nelken eds., 2007); Sven Steinmo, *The Evolution of Policy Ideas: Tax Policy in the 20th Century*, 5 BRIT. J. POL. & INT'L REL. 206 (2003).

2 The VAT was first introduced at a national level in France in 1954; however, it was a very limited coverage tax that did not move to the retail sector until 1968. The first country to implement a full VAT in Europe was Denmark in 1967, although it did not join the EEC until 1968. LIAM EBRILL ET AL., *THE MODERN VAT* 1-14 (2001); Michael Keen & Ben Lockwood, *The Value-Added Tax: Its Causes and Consequences* 3 (Int'l Monetary Fund, Working Paper No. 183, 2007).

3 CEDRIC SANDFORD, *SUCCESSFUL TAX REFORM: LESSONS FROM AN ANALYSIS OF TAX REFORM IN SIX COUNTRIES* 10 (1993); Malcolm Gillis, *Historical and Contemporary Debate on Consumption Taxes*, in UNITED STATES TAX REFORM IN THE 21ST CENTURY 288 (George Zodrow & Peter Mieszkowski eds., 2002); VICTOR THURONYI, *COMPARATIVE TAX LAW* 305 (2003).

towards convergence expose much about the politics of a nation's tax system, of tax reform, and of the VAT itself.

The Article begins by detailing the history of VAT reform in Australia, Canada and the United States over a period of four decades, 1965-2005, where the global uptake of the VAT was at its highest, but where VAT reform in each jurisdiction was highly controversial. It concludes by applying an analytical framework to assess which factors contribute towards tax policy convergence and localized resistance.

I. BEYOND THE "NEVER EVER": INTRODUCING THE GOODS AND SERVICES TAX IN AUSTRALIA⁴

Australia introduced a VAT, or goods and services tax (GST) as it is known in Australia, on July 8, 1999, after it had eluded those who sought to pursue it for the better part of three decades. During that time, a broad-based consumption tax was the focus of no less than four major reform initiatives.

The VAT had its inauspicious debut in the mid-1970s with the comprehensive review of the Australian tax system by the Taxation Review Committee, which recommended the introduction of a value-added style tax to replace the federal wholesale sales tax (WST).⁵ The recommendation failed to attract government support for the remainder of the decade, despite the later promotion of consumption tax reform by the then Treasurer of the Conservative government, John Howard.⁶

The second attempt crossed the partisan divide when, in 1985, the Labor government proposed a retail sales tax (RST) of 12.5 percent as a central component of the government's preferred option for comprehensive tax reform.⁷ This and other reform options were debated one month later by over 160 interest groups at the National Tax Summit. However, the Summit

4 This Part is based on Kathryn James, *We of the "Never Ever": The History of the Introduction of a Goods and Services Tax in Australia*, 2007 BRIT. TAX REV. 320.

5 TAXATION REVIEW COMM. (ASPREY), COMMONWEALTH OF AUSTL. PARLIAMENT, PRELIMINARY REPORT (1974); TAXATION REVIEW COMM. (ASPREY), COMMONWEALTH OF AUSTL. PARLIAMENT, FULL REPORT 530 (1975) [hereinafter TAXATION REVIEW COMM. (ASPREY), FULL REPORT].

6 121 PARL. DEB., H.R., Feb. 25, 1981, 132 (address by John Howard, Treasurer); PETER DIDERIK GROENEWEGEN, EVERYONE'S GUIDE TO TAXATION IN AUSTRALIA 46-47, 242-45 (1985).

7 TREASURY, COMMONWEALTH OF AUSTL., REFORM OF THE AUSTRALIAN TAX SYSTEM: DRAFT WHITE PAPER 1 (1985).

quickly degenerated into pluralist dysfunction. Business interests declared their support for a consumption tax, but firmly opposed the expansion of the direct tax base, while welfare and union groups were generally supportive of the expansion of the direct tax base, but opposed a consumption tax on equity grounds.⁸ Despite eventually achieving significant reforms to direct taxation (through the introduction of a capital gains and fringe benefits tax), the retail sales tax proposal was scuttled.⁹

A new decade brought renewed reform efforts. In 1993, a 15 percent GST was promoted by Conservative opposition leader, John Hewson, as the centerpiece of the *Fightback!* election package.¹⁰ The package, designed to return the Conservatives to office after thirteen years in opposition, virtually single-handedly caused the loss of an "unlosable" election.¹¹

The fallout from this electoral disaster prompted the then leader of the Conservatives in opposition, John Howard, to issue a "never ever" declaration in 1995 that hailed the death of the GST as Conservative Party policy.¹² However, like Lazarus rising from the dead, less than three years later, a 10 percent GST was proposed as the core component of the now incumbent Howard Conservative government's 1998 election tax-reform package, unassumingly entitled, *A New Tax System* (ANTS).¹³ The resurrection was facilitated by an "unholy"¹⁴ alliance between peak business association, the Australian Chamber of Commerce and Industry (ACCI), and peak welfare body, the Australian Council of Social Services (ACOSS), which campaigned for consumption tax reform.¹⁵ The government's cause

8 COMMONWEALTH OF AUSTL., NATIONAL TAXATION SUMMIT: RECORD OF PROCEEDINGS, 55, 118-19, 166 (1985) (summit held July 1-4, 1985).

9 PAUL KEATING, TREASURER, COMMONWEALTH OF AUSTL., REFORM OF THE AUSTRALIAN TAXATION SYSTEM (1985).

10 LIBERAL PARTY OF AUSTL., FIGHTBACK! IT'S YOUR AUSTRALIA: THE WAY TO REBUILD AND REWARD AUSTRALIA 2 (1991); LIBERAL PARTY OF AUSTL., FIGHTBACK! FAIRNESS AND JOBS (1992).

11 Ian McAllister & Clive Bean, *Electoral Politics of Economic Reform in Australia: The 1998 Election*, 35 AUSTL. J. POL. SCI. 388 (2000).

12 Michelle Grattan, *Howard Bans GST "Forever,"* AGE, May 3, 1995, at 5; McAllister & Bean, *supra* note 11, at 388.

13 TREASURY, COMMONWEALTH OF AUSTL., TAX REFORM: NOT A NEW TAX, A NEW TAX SYSTEM: THE HOWARD GOVERNMENT'S PLAN FOR A NEW TAX SYSTEM 14 (1998) [hereinafter ANTS].

14 Rick Krever, *The Political Economy of the GST: A Comment on Professor Brooks' Paper*, in TAX REFORM AND THE GST: AN INTERNATIONAL PERSPECTIVE 144 (Binh Tran-Nam ed., 1998).

15 ACOSS' support was contingent on there being no shift in the tax mix, no undermining of progressivity, and there being adequate revenue to support the poor

was strengthened by a High Court decision on August 5, 1997 that sounded the final death knell for the states' constitutional consumption tax power.¹⁶

On October 3, 1998, the government was narrowly returned to office, enabling it to negotiate passage of the legislation through parliament. A compromise was eventually achieved with the Australian Democrats, a center-left political party which held the balance of power in the upper house, the Senate, on May 28, 1999 whereby basic food was zero-rated and increased compensation offered for low-income earners.¹⁷ The compromise enabled the subsequent enactment of the *A New Tax System (Goods and Services) Act, 1999*, which heralded the introduction of a GST into the Australian tax system after three decades of reform efforts. Consistent with the implementation of major legislative reform, the ANTS package experienced various transitional problems and was subject to numerous amendments.¹⁸ However, the Howard government was largely spared the electoral consequences. In its place, the electoral sword fell squarely on the Democrats, who have been decimated in subsequent federal elections.¹⁹

II. NO DEAL AND THE DAMAGE DONE: INTRODUCING THE CANADIAN GST

In 1924, when Canada became the first state to introduce a single-stage manufacturing sales tax (MST) levied on most goods manufactured in Canada, the clamor for reform was virtually commensurate with the tax's

— it withdrew support for the GST when it judged these criteria not adequately met by ANTS. Jerome Brown, *The Tax Debate, Pressure Groups and the 1998 Federal Election*, 18 POL'Y ORG. & SOC'Y 75, 80-81, 89 (1999); N.S.W. DARLINGHURST, AUSTL. COUNCIL OF SOC. SERVS., TAX REFORM PACK (1997); John Warhurst et al., *Tax Groupings: The Group Politics of Taxation Reform*, in HOWARD'S AGENDA: THE 1998 AUSTRALIAN ELECTION 170 (Marian Simms & John Warhurst eds., 2000); JOHN HARRISON & MARILYN STRETTON, THE GST DEBATE (1999).

16 Ha v. New South Wales (1997) 189 C.L.R. 465.

17 Paul Kelly, *Over the Line*, AUSTRALIAN, May 29, 1999, at 21.

18 A New Tax System (Goods and Services Tax) Act, 1999 (Cth) has been the subject of multiple legislative amendments since its enactment — many occurring between the date of enactment on July 8, 1999 and the date of operation on July 1, 2000.

19 While the demise of the Democrats is not solely attributable to the GST, this was a major catalyst for the unraveling.

introduction.²⁰ However, translating criticism into actual reform outcomes proved inordinately difficult.

In 1967, the Royal Commission on Taxation (the Carter Commission) recommended replacing the MST with an RST levied by the provinces that would exempt food and shelter and other necessities of life.²¹ A VAT was briefly considered but rejected because of concern over compliance costs.²² Although significant (albeit watered down) reforms to the federal income tax followed the release of the Carter Reports,²³ the response to the proposed sales tax was inaction followed by inquiry. Far less ambitious proposals throughout the 1970s and 1980s, most attempting a shift to a WST, were similarly never realized.²⁴ It was not until the 1984 landslide election victory of the Progressive Conservative Party (PCP) led by Brian Mulroney that VAT reform seriously entered the public agenda.²⁵

In June 1987 the Mulroney government released a Draft White Paper that proposed firstly expanding the income tax base and reducing and compressing rates, and secondly introducing a GST to replace the MST.²⁶ Although the first stage of the politically palatable income tax reforms was

20 Neil Brooks, *The Canadian Goods and Services Tax: History, Policy, and Politics* 5, 8 (Austl. Tax Research Found., Research Study No. 16, 1992); GEOFFREY HALE, *THE POLITICS OF TAXATION IN CANADA* 208 (2002).

21 The federal government has unlimited constitutional taxing power. The provinces have a more restricted power to raise only "Direct Taxation Revenue for Provincial Purposes"; however, generous judicial interpretation of this clause has meant the provinces have levied both income and sales taxes. Constitution Act, 1867, 30 & 31 Vict. Ch. 3, § 92(2) (U.K.), as reprinted in R.S.C., No. 5 (Appendix II 1985). The Commission's recommendation reflected the practice of greater federal reliance on income taxation and greater provincial reliance on sales taxation. 5 CAN. ROYAL COMM'N ON TAXATION, REPORT OF THE ROYAL COMMISSION ON TAXATION 5 (1966) (Chair: Kenneth LeM. Carter) [hereinafter CAN. REPORT 1966].

22 CAN. REPORT 1966, *supra* note 21, at 44-53, 55.

23 JUNKO KATO, REGRESSIVE TAXATION AND THE WELFARE STATE: PATH DEPENDENCE AND POLICY DIFFUSION 122 (2003); W. IRWIN GILLESPIE, TAX, BORROW, AND SPEND: FINANCING FEDERAL SPENDING IN CANADA, 1867-1990, at 182, 187 (1991).

24 CAN. DEP'T OF FINANCE, FEDERAL SALES AND EXCISE TAXATION: DISCUSSION PAPER (1975) (The Green Paper); CAN. DEP'T OF FINANCE, REPORT OF THE COMMODITY TAX REVIEW GROUP (1977) (The Brown Paper); REPORT OF THE FEDERAL SALES TAX REVIEW COMMITTEE (1983); CAN DEP'T OF FIN., PROPOSAL TO SHIFT THE FEDERAL SALES TAX TO THE WHOLESALE LEVEL (1985) (The White Paper); Richard Domingue & Jean Soucy, *The Goods and Services Tax: 10 Years Later* (June 15, 2000), <http://dsp-psd.pwgsc.gc.ca/Collection-R/LoPBdP/BP/prb0003-e.htm>.

25 CAN. DEP'T OF FIN., A NEW DIRECTION FOR CANADA — AN AGENDA FOR ECONOMIC RENEWAL 67 (1984).

26 CAN. DEP'T OF FIN., TAX REFORM: THE WHITE PAPER (1987); CAN. DEP'T OF FIN.,

achieved with relative ease by January 1, 1988, the politically acerbic sales tax reforms were deferred until after the Conservatives won the 1988 federal election, an election dominated by the issue whether Canada should enter a free trade agreement with the U.S.

On April 24, 1989 the federal government announced it would unilaterally proceed with sales tax reform following the failure to negotiate an agreement with the provinces on a national VAT.²⁷ The government proposed a GST of 9 percent that would exclude basic groceries and goods and be offset by the introduction of a refundable sales tax credit for low income families.²⁸ The government argued that GST reform was necessary to reduce the budget deficit, to allow Canada to compete effectively in the world economy, and to improve the *overall* fairness of the tax system.²⁹

The GST provoked intense and protracted public debate, with the main official forum for public opprobrium being provided by the nationwide hearings of the House of Commons Standing Committee on Finance, chaired by Donald Blenkarn.³⁰ Welfare and labor organizations opposed the GST on equity grounds. Some business representatives supported the GST,³¹ while many others, especially small business organizations, bitterly opposed it. All the provinces vehemently opposed the GST, condemning it as an unwarranted and unconstitutional interference with their exclusive jurisdiction to levy sales taxes; all wanted to avoid the perceived liability of association with the unpopular tax, and most feared the complexity the GST would add to the administration of revenues and inter-provincial trade.³²

Despite accepting many of the Blenkarn committee's recommendations, including a rate reduction from 9 to 7 percent and passing the Bill C-62 through the House of Commons, the government faced a hostile Senate.³³

TAX REFORM 1987: INCOME TAX REFORM (1987); CAN. DEP'T OF FIN., TAX REFORM 1987: SALES TAX REFORM (1987).

27 Brooks, *supra* note 20, at 31-32.

28 CAN. DEP'T OF FIN., THE GOODS AND SERVICES TAX (1989); CAN. DEP'T OF FIN., GOODS AND SERVICES TAX: TECHNICAL PAPER (1989).

29 CAN. DEP'T OF FIN., GOODS AND SERVICES TAX: AN OVERVIEW 1 (1989).

30 Can. H.C., Standing Comm. on Fin. & Econ. Affairs (Blenkarn Comm.), Minutes of Proceedings and Evidence, Issue No. 31 (Sept. 18, 1989) to Issue No. 84 (Oct. 26, 1989) (on file with the National Library of Australia).

31 HALE, *supra* note 20, at 216.

32 Gene Allen & Benoit Aubin, *Premiers United Against GST, but Fail to Propose Alternative*, GLOBE & MAIL, Aug. 22, 2009; Domingue & Soucy, *supra* note 24.

33 CAN. H.C., STANDING COMM. ON FIN. & ECON. AFFAIRS, REPORT ON THE TECHNICAL PAPER ON THE GOODS AND SERVICES TAX — SECOND REPORT (1989); Brooks, *supra* note 20, at 34, 37-38; GILLESPIE, *supra* note 23, at 223.

The Canadian Senate is appointed rather than elected by popular vote, and by convention does not generally veto major legislation.³⁴ However, with an economy in recession, a series of interest rate rises, a government in decline, and public opinion polls suggesting the Canadian public wanted the Liberal-dominated Senate to veto the GST legislation, convention was thrown to the wind. The Senate Standing Committee on Banking Trade and Commerce recommended on September 26, 1990 that Bill C-62 not proceed through the Senate.³⁵ The government responded by relying on a never before used constitutional provision to appoint eight extra Senators, which ensured the passage of Bill C- 62 on December 13, 1990 even in the face of a Liberal filibuster.³⁶ Thus, on January 1, 1991 the GST was introduced in Canada.³⁷

The PCP's fate in the subsequent November 1993 federal election can be encapsulated in one word: annihilation. The PCP went from a majority government of 169 seats to securing only two seats with 16 percent of the popular vote. The defeat was so devastating the PCP lost its official party status. Although not alone decisive, the Mulroney government's handling of the introduction of the GST made a significant contribution to the plundering of its political fortunes.³⁸

The Liberal Party campaigned strongly throughout the 1993 election campaign on a pledge to "reduce, review or replace" the GST.³⁹ Instead the Liberal governments was only able to achieve limited harmonization of the GST with four provinces — Quebec, New Brunswick, Nova Scotia, Newfoundland and Labrador.⁴⁰ Despite the ongoing political controversy, the Canadian GST has endured. However, as a sign of its remaining political potency, the Conservative Party of Canada won the 2006 federal election⁴¹ on a platform that included reducing the federal GST from 7 percent to 5

34 Constitution Act, 1867, 30 & 31 Vict. Ch. 3, §§ 23, 29(2), 24, 53 (U.K.), as reprinted in R.S.C., No. 5 (Appendix II 1985); RICHARD ECCLESTON, *TAXING REFORMS* 106 (2007).

35 Brooks, *supra* note 20, at 39.

36 Constitution Act § 26.

37 Excise Tax Act, R.S.C., ch. E 15 (1985).

38 KATO, *supra* note 23, at 119; ECCLESTON, *supra* note 34, at 111; HALE, *supra* note 20, at 217.

39 LIBERAL PARTY OF CAN., *CREATING OPPORTUNITY: THE LIBERAL PLAN FOR CANADA* (1993) (The Red Book); CAN. STANDING COMM. ON FIN., *REPLACING THE GST: OPTIONS FOR CANADA*, NINTH REPORT (1994).

40 Richard Bird et al., *Coordinating Federal and Provincial Sales Taxes: Lessons from the Canadian Experience*, 2006 NAT'L TAX J. 889, 894; Domingue & Soucy, *supra* note 24. The provincial governments of Ontario and British Columbia will introduce harmonized sales taxes from July 1, 2010.

41 The Conservative Party of Canada is the latest incarnation of a national conservative

percent.⁴² The pledge was honored,⁴³ meaning that Canada not only has a weak VAT by international standards, but also has one of the lowest VAT rates in the OECD.⁴⁴

III. BUCKING THE TREND IN THE UNITED STATES: LEVIATHAN AND THE FEAR OF THE MONEY MACHINE

Beyond the earlier pioneering work of T.S. Adams, Carl Shoup and others earlier in the century, there was a steady expansion of consumption tax reform efforts in the U.S. during the 1970s.⁴⁵ A VAT was considered twice under the Nixon administration — firstly as a possible means of reducing federal business taxes, and secondly as a means of reforming federal-state finances.⁴⁶ The VAT was rejected in both instances. Although consumption tax reform returned to the agenda with the release of the *Blueprints for Basic Tax Reform* in 1977,⁴⁷ a VAT was not specifically proposed until 1979 when the chair of the Ways and Means Committee, Democrat congressman Al Ullman, introduced *The Tax Restructuring Act of 1979*, which proposed a 10 percent VAT to raise an estimated \$130 billion in revenue each year to be directed towards reducing income and social security taxes.⁴⁸ The Bill twice failed to pass the House of Representatives in 1979 and 1980.

Although the landmark report by the U.S. Treasury on tax reform (Treasury 1)⁴⁹ favored a VAT as the "most appropriate" consumption tax

party in Canada. It was formed from the merger of the Canadian Reform Conservative Alliance and the Progressive Conservative Party in December 2003.

42 Press Release, Can. Broad. Corp., Harper Vows to Reduce GST (Dec. 1, 2005), available at <http://www.cbc.ca/story/canadavotes2006/national/2005/12/01/elxn-harper-gst2.html>.

43 The GST was reduced to 6 percent on July 1, 2006 and then to 5 percent on January 1, 2008. Press Release, Office of the Prime Minister Stephen Harper, Prime Minister Rings in New Year with GST Cut (Dec. 31, 2007), available at <http://1800hart.com/blog/2008/01/prime-minister-rings-in-new-year-with-gst-cut/>.

44 OECD, CONSUMPTION TAX TRENDS, tbl.3.8 (2008).

45 See Steve Wells & Tonya Flesher, *Lessons for Policy Makers from the History of Consumption Taxes*, 1999 ACCT. HISTORIANS J. 103, 118-19.

46 The VAT was considered first in September 1969 by the Task Force on Business Taxation, led by John H. Alexander, and for a second time in 1973 by the Advisory Commission on Intergovernmental Relations.

47 U.S. DEP'T OF THE TREASURY, 95TH CONG., BLUEPRINTS FOR BASIC TAX REFORM 9-13, chs. 1, 4 (1977).

48 See SVEN STEINMO, TAXATION AND DEMOCRACY: SWEDISH, BRITISH AND AMERICAN APPROACHES TO FINANCING THE MODERN STATE 143 (1993).

49 U.S. DEP'T OF THE TREASURY, OFFICE OF THE SEC'Y, 98TH CONG., TAX REFORM

instrument for use at the federal level, the report advised against major federal consumption tax reform. Consideration of VAT reform returned briefly under the administration of President Bush Senior, prompted by fiscal pressure arising from an economic recession and the expenditure demands of the Gulf War.⁵⁰ However, the proposal offended Bush Senior's infamous "read my lips, no new taxes" pledge in 1988 and was quickly abandoned.⁵¹ The Clinton administration similarly abandoned a VAT as a means of funding its ill-fated healthcare reforms well before the death knell for the reforms was sounded in 1994.⁵² In 2005, President George Bush Junior's Advisory Panel on Tax Reform failed to obtain consensus on support for a VAT.⁵³

Each VAT reform proposal from Nixon to Bush Junior has met with a similar chorus of opposition: all feared the perceived complexity and administrative burden of the VAT; state and local government representatives were concerned about the balance of federal taxing power and feared any intrusion into the sales tax area, which is dominated by state and local governments; liberals decried the perceived regressivity of a VAT, while conservatives feared the VAT's reputation as a "money machine" that would fuel a growth in government.⁵⁴

Across the four decades from 1965 to 2005, the VAT has been simply one of a large number of tax reform proposals in the U.S. In the absence of a federal sales tax, much of the reform effort has been directed at replacing or reducing the income tax. Unlike the Australian and Canadian attempts to broaden a narrow tax base, an inverse pattern exists in the U.S., beginning from a relatively broad tax base, owing to a wider judicial concept of income, that has been narrowed by legislation over time, for example by carving out preferences for capital gains or inserting expenditures. As a U.S. Treasury document explains, since the *Economic Recovery Tax Act of 1981* this process has also marked "the de facto shift away from income taxation and toward taxing consumption." This shift has been facilitated through reforms such as accelerated cost recovery on the business side and

FOR FAIRNESS, SIMPLICITY, AND ECONOMIC GROWTH: THE TREASURY DEPARTMENT REPORT TO THE PRESIDENT 1-2 (1984) [hereinafter TREASURY I].

50 W. ELLIOT BROWNLEE, *FEDERAL TAXATION IN AMERICA: A SHORT HISTORY* 188 (2d ed. 2004); ECCLESTON, *supra* note 34, at 155.

51 BROWNLEE, *supra* note 50, at 183.

52 KATO, *supra* note 23, at 130; BROWNLEE, *supra* note 50, at 197.

53 U.S. PRESIDENT'S ADVISORY PANEL ON FED. TAX REFORM, 109TH CONG., *SIMPLE, FAIR, AND PRO-GROWTH: PROPOSALS TO FIX AMERICA'S TAX SYSTEM*, at xiv (2005) [hereinafter 2005 TAX ADVISORY PANEL].

54 *Paper Says President Opposes Value-Added Tax as a Danger*, N.Y. TIMES, Nov. 20, 1972, at 25; TREASURY I, at 192; 2005 TAX ADVISORY PANEL, at 192.

the enactment of various provisions to reduce the multiple taxation of saving on the individual side.⁵⁵ This process of "reform by stealth" accelerated under President George Bush Junior, with a number of reforms marking a decisive turn away from taxation on investment, accumulated wealth and capital gains, at a cost to revenue of approximately \$2.7 trillion.⁵⁶

This political urge to narrow the revenue base has sat uneasily alongside sporadic growth in government spending, which has led to a buildup of fiscal pressure throughout the period — sometimes prompted by recession, at other times by the demands of defense expenditure, particularly post-9/11. This has prompted varied calls for tax reform across the entire period, with the most successful being the enactment of the *Tax Reform Act of 1986* (TRA86), which achieved the reduction and compression of marginal income tax rates and expansion of the income tax base through the elimination of many special preferences.⁵⁷ Although TRA86 was hailed as a bipartisan victory that stemmed the tide of carve-outs and exemptions that had eroded a previously broad income tax base, the post-reform euphoria was relatively short-lived. In 2005, the President's Advisory Panel on Tax Reform estimated that since 1986 there have been over 15,000 changes to the tax code, thereby "returning the tax system to the same 'Christmas tree' it had been prior to reform."⁵⁸

The political battle continues between those seeking to preserve their favorable tax treatment and those desperate to restore revenues in the light of unprecedented spending pressure. Many commentators predict that a VAT-type tax might breach this void.⁵⁹

55 U.S. Dep't of the Treasury, History of the U.S. Tax System, <http://www.treas.gov/education/fact-sheets/taxes/ustax.shtml> (last visited June 14, 2007).

56 Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, 115 Stat. 38 (2001); Job Creation and Worker Assistance Act of 2002, Pub. L. No. 107-147, 116 Stat. 21 (2002); Jobs and Growth Relief Reconciliation Act of 2003, Pub. L. No. 108-27, 117 Stat. 752 (2003); C. EUGENE STEUERLE, CONTEMPORARY U.S. TAX POLICY 223-24, 284 (2004); U.S. DEP'T OF THE TREASURY, 110TH CONG., GENERAL EXPLANATIONS OF THE ADMINISTRATION'S FISCAL YEAR 2008 REVENUE PROPOSALS (2007); BROWNLEE, *supra* note 50, at 221, 237.

57 See JEFFREY H. BIRNBAUM & ALAN S. MURRAY, SHOWDOWN AT GUCCI GULCH: LAWMAKERS, LOBBYISTS, AND THE UNLIKELY TRIUMPH OF TAX REFORM (1987); Tax Reform Act of 1986, Pub. L. No. 99-514, 100 Stat. 2085 (1986).

58 *Introduction to 2005 TAX ADVISORY PANEL*, *supra* note 53, at i, i; Jonathan Ackerman & Rosanne Altshuler, *Constrained Tax Reform: How Political and Economic Constraints Affect the Formation of Tax Policy Proposals*, 2006 NAT'L TAX J. 165, 170; B. GUY PETERS, AMERICAN PUBLIC POLICY: PROMISE AND PERFORMANCE 226 (6th ed. 2004).

59 See, e.g., Reuven Avi-Yonah, *Designing a Federal VAT: Summary and*

IV. ANALYZING REFORM AND RESISTANCE

The history of VAT reform in Australia, Canada and the U.S. highlights the interaction between the drivers of VAT reform and the points of resistance that these reform attempts engender. In Australia and Canada, the resistance was overcome to a sufficient extent to enable the introduction of a VAT, however the tax still remains politically problematic in both jurisdictions. In the U.S. VAT reform proposals have been much weaker and the points of resistance manifold and much stronger. In this Article I have adapted a framework developed by the political scientist, Richard Simeon, who argues that most policy analyses attribute reform outcomes to one or more of the following factors: the socioeconomic environment; the relative power of participants in the reform process; the cultural traits in policymaking communities; and the institutions through which reform occurs.⁶⁰ I assess the histories of VAT reform in Australia, Canada and the United States under each of these four headings. Such an analysis is the starting point for improving understanding of the confluence of factors that contribute to tax policy convergence and provoke fierce resistance.⁶¹

A. Environment

The environmental approach considers the extent to which policy outcomes are determined by socioeconomic, technological and physical environmental factors. In this Section I examine the impact of increased global economic competition on VAT reform. The impact of global economic interdependence might impact on tax policy in a number of ways: first, through prompting

Recommendations (Univ. of Mich. Law Sch., The John M. Olin Ctr. for Law & Econ. Working Paper No. 104, 2009).

⁶⁰ Richard Simeon, *Studying Public Policy*, 9 CAN. J. POL. SCI. 548, 566 (1976). Simeon's framework is broader and encompasses separate classifications for the role of ideas and reform processes on policy outcomes. This Article examines ideas only through examining the impact of culture on policy outcomes but, in the Weberian tradition, acknowledges the importance of clarifying the role of ideas, culture, values and ideology in shaping policy outcomes. MAX WEBER, *THE PROTESTANT ETHIC AND THE SPIRIT OF CAPITALISM* (Talcott Parsons trans., Routledge 2001) (1930). Reform processes are examined under the broader heading of institutions.

⁶¹ This Article also shares some methodological commonalities with the approach adopted by Assaf Likhovski in this volume: Assaf Likhovski, *Is Tax Law Culturally Specific? Lessons from the History of Income Tax Law in Mandatory Palestine*, 11 THEORETICAL INQUIRES L. 725 (2010).

convergence as policymakers seek to harmonize international markets to facilitate global trade (the harmonization rationale); secondly, and conversely, the drive to compete in an increasingly globalized economy can prompt a race to the bottom and differentiation in tax outcomes — especially from countries keen to attract capital through generous tax concessions and loopholes (the competitive differentiation rationale). The former is generally celebrated among policymakers, the latter generally condemned.

The widespread introduction of VATs is said to indirectly facilitate the first and more favorable impact of global interdependence, because the VAT's neutral treatment of exports makes it ideal for the demands of a globalized economy.⁶² When the introduction of VATs is considered alongside the convergence in patterns of income, corporate and other forms of taxation among developed countries, particularly the move away from the taxation of capital and income derived from capital, it is one component of the increased movement towards at least increasingly similar (if not harmonized) tax systems. However, Keen and Lockwood found that, contrary to widespread assumptions, more open economies were less likely to introduce a VAT than more closed economies. The authors were only able to posit tentative hypotheses to explain this apparently surprising outcome by speculating that this might be "because simply more open economies are for some reason less likely to adopt a VAT."⁶³ Given that most of the uptake of the VAT in recent years has been by developing countries, part of the explanation might lie in the development policies of the International Monetary Fund and World Bank;⁶⁴ however, the answer might also lie in the political economy of the more open economies that resist VAT reform.

The competitive differentiation rationale was a relatively slow-burner in the Australian GST debate, evolving from a suspicious, one-paragraph reference in the Asprey Reports⁶⁵ to a leitmotif in ANTS.⁶⁶ By contrast, the competitiveness rationale dominated the Canadian GST reforms and

62 Most VATs in practice are levied on a destination basis meaning that goods and services are taxed in the jurisdiction of consumption (rather than in the jurisdiction of production as occurs under an origin-based VAT). This has the practical effect that exports are tax-free and imports are taxed. KATO, *supra* note 23, at 36-37; Reuven Avi-Yonah, *Globalization, Tax Competition, and the Fiscal Crisis of the Welfare State*, 113 HARV. L. REV. 1573, 1575-76 (2000); HALE, *supra* note 20, at 214.

63 Keen & Lockwood, *supra* note 2, at 19.

64 See Miranda Stewart & Sunita Jogarajan, *The International Monetary Fund and Tax Reform*, 2004 BRIT. TAX REV. 146.

65 TAXATION REVIEW COMM. (ASPREY), FULL REPORT, *supra* note 5, at 17.

66 See, e.g., ANTS, *supra* note 13, at 3, 5.

rhetoric, owing in part to the incidence of the MST (falling as it did on goods manufactured domestically) and the proximity of the country's major trading partner, the U.S. Nevertheless the government's attempts to sell the GST as a necessary step in enhancing Canada's competitive position failed to resonate with the electorate.⁶⁷ Few histories of tax reform match the U.S.'s obsession with taxation as a means to facilitate growth and competition; however, this obsession has never bordered on making the VAT a realization. Arguments grounded in an exploration of localized political resistance rather than the simple recitation of economic rationales bear consideration if we are to resolve part of Keen and Lockwood's quandary over why more open economies might be more resistant to VAT reform.

B. Power

Many argue that patterns of public policy will reflect the distribution of power within society. However, theorists differ over how this power is to be conceptualized, identified and measured. Pluralists see power as widely dispersed among groups, as evidenced by their influence on a broad range of policy outcomes.⁶⁸ By contrast, Elite⁶⁹ and neo-Marxist⁷⁰ scholars see power as highly concentrated amongst an elite or capitalist class. This analytical schism is replicated in analyses of tax reform outcomes: on the one hand, a simple elite or Marxist account might characterize the rise of the VAT as simply an extension of a campaign by powerful interests to reduce or liberate capital, wealth and income from the burden of taxation. On the other hand, pluralists might see the frequent political compromises that attend the enactment of a VAT, many with concessions to low income earners and those in need, as indicative of a more even distribution of power in the tax reform process. In this Section I assess these claims through examining the impact of interest groups on VAT reform.

⁶⁷ Alasdair Roberts & Jonathan Rose, *Selling the Goods and Services Tax: Government Advertising and Public Discourse in Canada*, 28 CAN. J. POL. SCI. 311, 317-18 (1995).

⁶⁸ For the classic exposition of the pluralist approach, see ROBERT ALAN DAHL, *WHO GOVERNS? DEMOCRACY AND POWER IN AN AMERICAN CITY* (1961).

⁶⁹ C. WRIGHT MILLS, *THE POWER ELITE* (1956); *see also* F. HUNTER, *COMMUNITY POWER STRUCTURE: A STUDY OF DECISION MAKERS* (1953); G. William Domhoff, *The Four Networks Theory of Power: A Theoretical Home for Power Structure Research* (Apr. 2005), http://sociology.ucsc.edu/whorulesamerica/theory/four_networks.html.

⁷⁰ *See* RALPH MILIBAND, *THE STATE IN CAPITALIST SOCIETY* (1969); *cf.* NICOS POULANTZAS, *POLITICAL POWER AND SOCIAL CLASSES* (1973).

Power Dispersed?

A look at the role of participants in the Australian, Canadian and U.S. VAT reforms initially fits well with Dahl's pluralist "polyarchy" model.⁷¹ Australian interest groups shaped tax policy outcomes with their resistance to broad-based consumption tax reform at the National Tax Summit in 1985, as did ACOSS and ACCI with their later promotion of broad-based consumption tax reform in 1996. Canadian welfare groups and unions were able to win concessions to alleviate the regressive impact of the VAT. The electoral revolt that drove the Mulroney government from office is a clear testament to the political power of the voting public once given the opportunity to express its discontent. Interest groups in the U.S. have contributed both to a proliferation of tax reform proposals over the period and to their failure.

However, whereas traditional pluralist accounts commend policy outcomes as generally democratic, the application of the pluralist framework to tax policy leaves most commentators thoroughly dejected.⁷² They point to a dysfunctional system riddled by inefficient and inequitable provisions favoring every cause from home ownership to chicken manure.⁷³ By contrast, public choice theorists expect the dysfunction by assuming that interest groups will advocate tax reform so that their members bear the least burden, while politicians respond to these demands in order to maximize their likelihood of reelection.⁷⁴ However, this hyper-pluralist environment might also provide an insight into why a VAT has not been enacted in the United States. Whereas powerful interest groups were united behind a GST from the mid-1990s in Australia, U.S. business and other conservative lobbyists remain hopelessly divided on their preferred vehicle for consumption tax reform — proffering everything from various flat tax proposals to Unlimited Savings Allowance (USA) taxes⁷⁵ and VATs. Unlike Canada, the legislative response has reflected this schizophrenic policy environment. At a minimum, like the U.S. history,

71 ROBERT ALAN DAHL, A PREFACE TO DEMOCRATIC THEORY (1956).

72 "But virtually none of the pluralists with more favorable normative evaluations have made *substantial* contributions to fiscal history." BROWNLEE, *supra* note 50, at 259 (emphasis added).

73 The Job Creation and Worker Assistance Act of 2002, Pub. L. No. 107-147, 116 Stat. 21 (2002) provided section 45 credit to electricity production from poultry litter. STEUERLE, *supra* note 56, at 285.

74 James M. Buchanan, *Public Choice: Politics Without Romance*, 19 POLICY 13 (2003); ROBERT JACKSON & DOREEN JACKSON, POLITICS IN CANADA: CULTURE, INSTITUTIONS, BEHAVIOR AND PUBLIC POLICY 564 (3d ed. 1994). For the classic statement, see JAMES M. BUCHANAN & GORDON TULLOCK, THE CALCULUS OF CONSENT, LOGICAL FOUNDATIONS OF CONSTITUTIONAL DEMOCRACY (1962).

75 The Unlimited Savings Allowance (USA) tax is a hybrid income and consumption tax designed to exempt savings and investment from taxation. See for example discussion

the Canadian experience demonstrates the difficulty of pursuing a reform agenda when powerful groups expected to be supportive of the reform remain opposed.

Power Concentrated?

The division among business interests and the public revolt on the GST in the U.S. and Canada may undermine a simple elitist account that a small group of people who occupy key institutional positions of power within the economy and the executive exercise unwieldy power. However, they may lend support to the structural-Marxist argument that irrespective of the vagaries of the personnel in power, the mutually reinforcing structure of politics and the economy in a capitalist system ensures reform in the interests of capital.⁷⁶ An examination of reform trends on the revenue side (absent expenditure) can only provide limited support for this thesis, however, some basic trends indicate some initial support for the claim. While ostensibly losing from the 1985 Summit compromise, business groups in Australia were the net beneficiaries of the macroeconomic reforms implemented throughout the 1980s and 1990s.⁷⁷ In addition, high-income taxpayers have benefited from the preferential tax treatment of capital gains, the reduction of top marginal tax rates and the lifting of thresholds, while there has not been an estate tax at any level in Australia since the early 1980s.

Studies of tax incidence in Canada conclude that although the Canadian tax system is overall roughly proportionate, the income tax is the only tax instrument that is progressive — with other taxes being either proportionate or highly regressive.⁷⁸ Other studies show that since the 1990s there has been a rise in income inequality in Canada. As Picot and Myles explain, the "gains associated with the economic expansion of the 90s went mainly to higher income families while the earnings of poorer families stagnated and social transfers fell."⁷⁹

Powerful conservative groups in the United States learnt a different

in ALAN SCHENK & OLIVER OLDMAN, *VALUE ADDED TAX: A COMPARATIVE APPROACH* 442-48 (rev. ed. 2007).

⁷⁶ See POULANTZAS, *supra* note 70.

⁷⁷ Richard Eccleston, *The Significance of Business Interest Association in Economic Policy Reform: The Case of Australian Taxation Policy*, 2 *BUS. & POL.* 309 (2000).

⁷⁸ Jonathon R. Kesselman & Ron Cheung, *Tax Incidence, Progressivity, and Inequality in Canada*, 52 *CAN. TAX J.* 786 (2004).

⁷⁹ Garnett Picot & John Miles, *Income Inequality and Low Income in Canada: An International Perspective* 27 (Statistics Can. Analytical Studies Branch, Research Paper No. 2005240e, 2005).

lesson from their earlier reform failures by replacing overt big bang reform with reform by covert baby steps. The approach has had results: over the course of the reform period, marginal tax rates and corporate tax rates were plummeted, capital gains were taxed preferentially, and the estate tax — or "death" tax as it is so pejoratively labeled — has only narrowly escaped the political guillotine.⁸⁰ The continuance of this system of covert accretions is likely to seriously erode the progressivity of the U.S. tax system.⁸¹ These groups can therefore afford to remain publicly divided on overt consumption tax reform proposals until such time, if any, as their feet are held to the fire.

C. Culture

Culture is seen in a dual light in analyses of tax reform outcomes. Some argue that culture, usually conflated with some imputed national identity, can explain much of the resistance to tax convergence.⁸² Others argue that cultural variations impact less in technical areas such as tax policy, meaning that tax law is more autonomous and transportable than other disciplines.⁸³ In this Section I assess these arguments in light of VAT reform and consider whether, even amongst groupings of culturally similar countries such as Australia, Canada and the United States, cultural differences might matter.

From one perspective, the Australian resistance to GST reforms might be attributable to a certain political culture, such as its isolationism, its embrace of a "fair go," or its electoral conservatism and skepticism of political elites. Others specifically cite the important place of "equity" in the Canadian tax system as a factor that might explain the resistance to VAT reforms.⁸⁴ Commentators frequently allude to some kind of cultural exceptionalism to explain U.S. resistance to VAT reform.⁸⁵ However, such accounts rarely move beyond the assertion or imputation of cultural attributes. Culture is neither unitary nor immutable, and sweeping cultural accounts offer very little in, for

80 Interestingly, the Senate blocked Bush's second-round attempt to permanently repeal estate taxes because of lobbying by some of the United States' wealthiest citizens — Bill Gates Snr, Warren Buffett, George Soros, and Ted Turner, who formed a group "Responsible Wealth". BROWNLEE, *supra* note 50, at 232.

81 Edmund Andrews, *Bush Tax Cuts Offer Most for Very Rich, Study Finds*, N.Y. TIMES, Jan. 8, 2007, at 16.

82 B. GUY PETERS, *THE POLITICS OF TAXATION: A COMPARATIVE PERSPECTIVE* 5 (1991); THURONYI, *supra* note 3, at 3; SANDFORD, *supra* note 3, at 228; Likhovski, *supra* note 61.

83 Foster, *supra* note 1, at 263-85.

84 ECCLESTON, *supra* note 34, at 91.

85 See, e.g., KATO, *supra* note 23, at 123.

example, explaining the sudden turnaround from 1993 to 1998 in Australia or the Carter Commission's simultaneous deep commitment to equity and support for a consumption tax.

There are many problems with cultural explanations, not least of which is the lack of any serious empirical evidence for the claims made, or the fact that many countries share remarkably similar tax systems despite their cultural differences.⁸⁶ While it may be difficult to ever establish a reliable causal link between culture and tax policy outcomes, it also might be ill-conceived to try to do so. Rather than take culture as a given, this Section highlights how culture is constituted by the participants in reform debates. A focus on the frequent use and misuse of cultural tropes, that is, figures of speech or rhetorical devices which resonate with, or play on, cultural concerns, can highlight the manner in which culture is constituted by the reform debate. The extent to which parties agree or disagree on the characterization of the VAT, either as regressive or money machine or whatever else, and the degree to which these characterizations resonate with policy participants and the public reveal the manner in which culture is constituted and reconstituted by the reform debates that take place in each jurisdiction. For example, one noticeable cultural trope utilized to great effect in the U.S. VAT reform debate is the shadow of Leviathan that looms large over U.S. tax policy.⁸⁷ The literature is marked by an undercurrent of fear, bordering on paranoia, that introducing the VAT "money-machine" will open the Pandora's Box of big government. Whether specious rhetoric or genuine concern, this fear manifests within the structure of the U.S. tax system itself.⁸⁸ One instance of this manifestation is the bipartisan employment of tax expenditures over spending as a means to finance the state, where tax breaks rather than direct expenditure account for one quarter to one third of the benefits and subsidies granted to the public.⁸⁹ However, the specter of Leviathan loomed less large in debates on consumption tax reform in the U.S. at the beginning of the twentieth century.⁹⁰ The fact that it looms

86 STEINMO, *supra* note 48, at 5.

87 PETERS, *supra* note 82, at 5; THURONYI, *supra* note 3, at 3; SANDFORD, *supra* note 3, at 228; JAMES M. BUCHANAN, *THE LIMITS OF LIBERTY: BETWEEN ANARCHY AND LEVIATHAN* (1975).

88 See PETERS, *supra* note 58, at 39, who argues: "Government in the United State is large, but it does not appear to be the ever-increasing Leviathan that its critics portray it to be."

89 STEUERLE, *supra* note 56, at 2; CHRISTOPHER HOWARD, *THE HIDDEN WELFARE STATE: TAX EXPENDITURES AND SOCIAL POLICY IN THE UNITED STATES* (1997).

90 See, e.g., Joel Slemrod, *Professional Opinions About Tax Policy: 1994 and 1934*, 48 NAT'L TAX J. 121 (1995); T.S. ADAMS, *Fundamental Problems of Federal Income Taxation*, 35 Q.J. ECON. 527 (1921).

so large now suggests an underlying shift in ideas and rhetoric employed by those opposed to VAT reform and the relative mutability of cultural tropes in tax reform debates.

D. Institutions

Even those who adopt a minimalist definition of institutions as formal and informal political structures attribute a key role to different institutional configurations in explaining variation in reform outcomes.⁹¹ For example, Keen and Lockwood highlight how federalism is a factor that contributes to certain states being more resistant to VAT reform, especially those federations with a strong sub-national sales taxing power.⁹² In this Section I examine this claim in light of the VAT reform experiences in Australia, Canada and the U.S. in order to illustrate how both the separation of taxing power between the federal government and states and the division of legislative power at the federal level impact on tax reform outcomes. I conclude with a consideration of how path dependence, or the earlier choices made in tax policy, interact with these institutional configurations to impact on the VAT reform debate.

1. Separation of State and Federal Powers

Australian states have been progressively stripped of the capacity to levy income and sales taxes since federation, largely as a result of a series of constitutional decisions by the High Court, which have effectively given the Commonwealth exclusive de facto power to levy income taxes and exclusive de jure power to levy sales taxes.⁹³ By contrast, U.S. states and Canadian provinces have far greater fiscal autonomy, which includes the

91 PETERS, *supra* note 82, at 15; PETER HALL, GOVERNING THE ECONOMY 19 (1986); *cf.* STEINMO, *supra* note 48, at 12.

92 Keen & Lockwood, *supra* note 2, at 18.

93 The concurrent taxing power between the Commonwealth and states under section 51(ii) of the Commonwealth of Australia Constitution Act, 1900, c. 1, has been severely circumscribed by two key lines of High Court decisions. First, in 1942 the Commonwealth successfully made grants of financial assistance to the states under section 96, conditional on the states abandoning their income taxes. *South Australia v. Commonwealth (Uniform Tax Case (No. 1))* (1942) 65 C.L.R. 373; *Victoria v. Commonwealth (Uniform Tax Case (No. 2))* (1957) 99 C.L.R. 575. Secondly, the High Court's expansive interpretation of the Commonwealth's exclusive power to impose customs and excise duties under section 90 of the Constitution has effectively excluded the states' levying sales tax. *See Ha v. New South Wales* (1997) 189 C.L.R. 465; *Capital Duplicators Pty v. Australian Capital Territory (No. 2)* (1993) 178 C.L.R. 561.

power to levy sales (and income) taxes, and therefore there is far greater fiscal decentralization in these countries. In the United States, states have accounted for the main source of growth in postwar taxation, with sales taxes constituting approximately half of this revenue.⁹⁴ Similarly, Canadian provinces have accounted for a substantial share of overall tax revenue in the postwar period, with sales taxes constituting a large portion of this share.⁹⁵ This decentralization of revenue power is matched at the expenditure level, with U.S. states and Canadian provinces accounting for an increasing proportion of public expenditure.⁹⁶ States and provinces therefore have a key fiscal interest in resisting federal intrusion into their sales tax revenue source, which history shows they are willing to defend. This resistance is evident from the difficulty experienced by Canadian reformers in achieving harmonization between the federal VAT and provincial sales taxes. The Canadian experience is not lost on would-be VAT reformers in the U.S. in light of the strong resistance of U.S. states to federal VAT reform.

2. Separation of Power at Federal Level

The history of the Australian and Canadian GST demonstrates that even one veto point, the Senate, can profoundly influence the outcome of tax reform. While economists gasp in despair at the inefficiency, inadequacy and complexity of such measures, they are frequently the political outcome of efforts to introduce the VAT worldwide.⁹⁷

The U.S. Constitution, in keeping with its revolutionary origins and attendant fear of the tyranny of centralized power, contains many more checks and balances than its Australian and Canadian counterparts. The

94 From 1975 to 2003, state taxes accounted for approximately 20 percent of federal revenue, with taxes from goods and services constituting close to 60 percent of total state revenues over this same period. OECD, *REVENUE STATISTICS: 1965-2004*, at 256 (2005).

95 In Canada, provincial tax revenues rose from 18.2 percent of tax revenues in 1960 to 38.6 percent in 2000. Revenue from sales taxes as a percentage of total revenue increased from 12.7 percent in 1970 to 14 percent in 1995, with the provincial share increasing from 5.6 percent in 1970 to 7.1 percent of total revenue in 1995. ROBIN W. BROADWAY & HARRY M. KITCHEN, *CANADIAN TAX POLICY 12* (Canadian Tax Paper Series, No. 103, 3d ed. 1999); HALE, *supra* note 20, at 69.

96 For example, U.S. state public expenditure jumped from 8.9 percent of GNP in 1950 to 24.1 percent in 1999. PETERS, *supra* note 58. In Canada, for example, federal spending increased by 72 percent from 1985 to 1995, while provincial and local government spending increased by 140 percent. BROADWAY & KITCHEN, *supra* note 95, at 7-8.

97 EBRILL ET AL., *supra* note 2, at 83.

labyrinthine structure of the policymaking process, replete with numerous veto points, presents a minefield for prospective reformers, particularly in the self-interested politics of tax reform. This institutional structure promotes issue-specific policymaking and, in tax policy, provides numerous opportunities for the accretion of concessions and privileges for special interests, or results in the outright stymieing of reform. This helps to explain the great number of consumption tax reform proposals, but also the failure of any one proposal to gain sufficient consensus. TRA86 shows that major reform is not impossible and highlights the importance of bipartisan coalition-building and the need for key institutional protagonists to promote reform. However, it also demonstrates the susceptibility of major reforms to the termite operation of the legislative system.

3. Path Dependence

Australian and Canadian consumption tax reformers were able to utilize, with varying degrees of success, defective federal sales taxes by arguing that the GST was replacing an antiquated and unfair federal consumption tax with a more efficient and fair one. Their agenda was never wholesale substitution. In contrast, American reformers, left without a federal consumption tax foil, instead shift the focus to the preexisting income tax and deem it so hopelessly beyond redemption that it requires euthanasia. This constitutes a much more radical shift than simply replacing one bad sales tax with a better one. However, even less radical reform proposals such as the President's Panel's hybrid VAT face the political challenge of trying to introduce an entirely new tax instrument.⁹⁸

CONCLUSION

The worldwide rise of the VAT over the last half-century is emblematic of the paradox in modern tax systems: their remarkable similarity in the face of divergent political, cultural and social systems. The analysis suggests that while consumption tax reform in Australia, Canada and the United States was, and remains, highly controversial, these controversies are often the

98 U.S. PRESIDENT'S ADVISORY PANEL ON FED. TAX REFORM, 109TH CONG., SIMPLE, FAIR, AND PRO-GROWTH: PROPOSALS TO FIX AMERICA'S TAX SYSTEM, at xiv (2005); Daniel Shaviro, *Simplifying Assumptions: How Might the Politics of Consumption Tax Reform Affect (Impair) the End Product?* 68-70 (N.Y. Univ. Law Sch., Law & Econ. Working Paper No. 53, 2006); Alan Auerbach & Joel Slemrod, *The Economic Effects of the Tax Reform Act of 1986*, 35 J. ECON. LITERATURE 589, 628 (1997).

product of different configurations of key political and economic factors, which pull in competing directions towards convergence and divergence in tax reform outcomes. The histories show the highly contingent nature of reform outcomes and call into question accounts that present tax reform outcomes as inevitable or as mere technical advances. While taxation is technical, it is also fundamentally about the rules of the game that determine, amongst other things, the level of social spending in society, the distribution of property among social groups, and the concentration of power in society.⁹⁹ These issues might be universal, but there are clear differences as well as similarities in the ways in which societies respond to these fundamental issues. The mere fact that VAT reform was so controversial in Australia and Canada and remains elusive in the U.S. challenges this presumption of necessary convergence. Highlighting how these political and legal outcomes are highly contingent rather than inevitable not only calls into question many of the assumptions in the tax and comparative law literature, but takes the first step towards opening up a dialogue as to how alternative solutions might come to gain currency.

⁹⁹ Foster, *supra* note 1, at 278.