

Introduction

This issue's title, *Comparative Tax Law and Culture*, evokes a tension inherent in the study of comparative law under conditions of globalization, between global legal convergence and cultural diversity. Can law be productively compared across cultures? Can it be effectively transferred across cultures? Which elements in law, in its making, reception, and implementation, or most broadly, which elements of engaging-with-law — living law (or "law in action") — ought to be examined by scholars interested in comparative analysis and in the assessment of global processes? And what, if anything, can such comparison teach us for local purposes? These questions are especially pertinent to tax law, an area often analyzed in a technical and decontextualized manner.

The contributors to this issue tackle the challenges of comparative tax law and culture from a wide variety of perspectives, covering major methods of taxation, from consumption to income and corporate taxation, as well as specific tax norms. They compare Western and non-Western tax laws, national and sub-national contexts, and examine cases of tax transplantation, or, from the opposite direction, cases of tax-exceptionalism, and they do so diachronically and synchronically. In each case, the authors consider social and cultural conditions which, they all show, are highly relevant to the analysis. Tax law is a social, political, and cultural construct, whether considered through the classical lens of revenue-raising and redistribution, or through tax law's expressive and constitutive relations to individual and social identities and worldviews. At the same time, cross-national and cross-cultural universals continue to be of relevance, as demonstrated by the very fruitfulness of comparative work, and by the brute facts of globalization.

Contributions in this issue thus emphasize the importance of comparative studies of tax law, but at the same time they complicate assumptions about tax and tax-related distinctions as being technical and socially disembodied, opening up a range of additional questions. For instance, the articles collected here adopt different perspectives regarding the relevant "social" or "cultural" factors for analysis — from political struggles, through broad cultural concepts, historical contingencies, administrative and institutional practices, all the way to discrete local actors. They also offer varying perspectives on the relevant locations for the examination of law. As for the uses of comparative analysis itself, the contributions emerge with different insights, from the use of comparison as critique of established categories of tax

analysis, through the generation of descriptive insights on the relations of institutions involved in lawmaking, to the development of nuanced understandings of culture and society.

The issue opens with Kathryn James' article, offering a comparative analysis of debates over the adoption of a VAT in three Western countries — Australia, Canada and the United States — with the proponents emerging successful in the former two, but not in the U.S. The analysis draws on the global paradox of tax-systems' tendency towards convergence despite political, social and cultural divergence. Following political scientist Richard Simeon, James explores four factors involved in the process: socioeconomic environment; the relative power of participants; cultural traits in policymaking communities; and institutions through which reform occurs. The comparison exposes the diverging factors involved in processes of VAT adoption, pointing to the contingency of convergence and thus challenging the thesis of inevitability, while telling us much about the politics of national tax systems.

Ajay Mehrotra's comparative analysis addresses the 1909 U.S. corporate tax by looking both below and beyond the American nation-state to determine how and why U.S. state governments and other Western industrialized nations tried to tax corporations at the turn of the twentieth century, with the rise of corporate capitalism. The analysis shows that differences in the organizational structures of big businesses have led to variations in corporate tax law and policies across place and time. The historically-specific confluence of factors in the U.S. explains how the country could paradoxically embrace both a *laissez-faire* ideology and an aversion toward monopoly power underlying the American obsession with disciplining large business through nominally punitive taxes. The path-dependence created by the 1909 tax, suggests Mehrotra, might explain why the U.S. has not adopted regressive forms of taxation, like the VAT.

Michael Livingston turns his gaze eastwards, tracing developments in progressive income taxation in the two largest developing non-Western countries, China and India, as these countries opened up to foreign investment and globalization. The analysis sheds light on the effect that economic, political, and cultural factors have on the tax system in general, and on income tax and progressivity in particular. While economic factors are to some degree shared by the two countries, cultural and political factors are significantly different, argues Livingston. He thus cautions against theories of global tax convergence which overlook the latter factors, and calls for the development of a methodology based on thick description in the study of comparative tax culture.

Yoram Margalioth begins with social practices, reviewing the social norm

of tipping across countries in an attempt to explain the relative uniqueness of the U.S. norm of high tips. The norm, argues Margalioth, is tied with American cultural and economic traits, particularly the requirement that redistribution be linked with work, high income inequality, and consumerism. Margalioth shows that the differing tax treatment of tips from a comparative perspective is correlated with the prevalence of tipping itself: significant taxation appears where tipping is prevalent. In the process, Margalioth also offers an analysis of tip income and comments on its appropriate tax treatment, given the adverse effects of tipping.

The measurement of taxable income in many legal systems is based on what is often presented as a technical distinction between business and personal expenses. Tsilly Dagan offers a comparative analysis of legal debates on childcare deduction — traditionally considered as a personal expense and thus disallowed — in three jurisdictions: the U.S., Canada, and Israel. The study demonstrates that the issue of childcare deductions is not a matter of technical distinction even within Western contexts, but rather raises a question of baseline setting. Dagan thus suggests abandoning the business/personal "straightjacket" for an alternative framework that directly acknowledges the normative questions of equity (distributive justice) and efficiency, as well as two additional considerations that are novel to tax policy analysis: individual identity and community.

Marjorie Kornhauser focuses on U.S. exceptionalism in the use of married couples as taxable units in income taxation, a use diverging from that of most developed countries, and explores the deep cultural roots underlying the U.S. practice. Her article traces the roles of marriage and religion in American political consciousness, which have led to a continued commitment to the traditional single-earner model of marriage. Neither path-dependency nor administrative or internal-consistency considerations can account for the American fidelity to the marital unit, argues Kornhauser. Rather, taxation is an expressive arena through which Americans have and continue to reinforce a commitment to marriage as instrumental to their democratic nation.

Jinyan Li's article crosses the Western-non-Western divide to compare the General Anti-Avoidance Rule (GAAR) in Canada with the GAAR recently adopted in China, and offers a prism through which one can view cross-cultural transplantation. While the Canadian and Chinese GAARs appear similar on paper, argues Li, they diverge in terms of the problems addressed, the motivations behind their enactment, their application and effect. The seeming ease with which tax laws are formally transplanted is checked by the difficulty inherent in transplanting the values and principles underlying modern tax laws, such as the nature of the relationship between taxpayers and the state. Interestingly, because the compared GAARs affect

their tax systems from almost opposite directions, they bring those systems closer to one another. The study offers a unique example of the paradox of global convergence and cultural divergence.

Li Jin and Richard Krever review the changes that have turned China's economy into a market economy in the last three decades, presenting an analysis of Western influence and Chinese response. The authors examine three periods: the 1980s, an era of learning marked by ad hoc changes in government policy intended to shift revenue bases from profit appropriation to taxation following the rise of the private sector and the decline in government ownership; the 1990s, when more conventional tax bases were adopted, changes in the tax administration took place, and revenue was shifted from the provinces to the center following growing wealth disparities which put pressure on the central government; finally, the current period which has been one of modernization and further revenue shifting in the direction of the central government, as the economy has continued to grow and foreign investment to rise. The authors conclude by commenting on additional tax centralization that is likely to occur under global pressures, and the irreversible effects of this process on China's political economy.

Assaf Likhovski challenges the common perception that tax law is a technical area of law, autonomous and easily transferable between societies and cultures, by adopting a broad perspective on colonial transplantation. His article studies the history of income tax legislation in mandatory Palestine, investigating both the pre- and post-enactment stages of the legislative process. Income tax law in Palestine was based on a one-size-fits-all British model, yet non-legal actors exerted efforts both before and after its adoption to adapt the law to local conditions. Palestine's case-study shows, argues Likhovski, that law is in fact both universal and particular, autonomous and related to society, depending on the specific phase in the life of the law examined, and the actors taken into account.

Carlo Garbarino develops a theoretical model for the comparative study of tax law. Drawing on Jinyan Li's analysis of the GAAR in this issue, Garbarino expounds and exemplifies the comparative model, based on concepts of legal hierarchies and chains of production of tax rules drawn from analytical legal philosophy. Domestic solutions to tax issues, argues Garbarino, are the result of interactions of basic elements of tax law-in-action, namely case law, administrative guidelines, positions of scholars, statutes and regulations. A model sensitive to these elements is essential in examining tax legal systems' structure and evolution, and should serve as a practical tool for the comparison and assessment of tax legal transplants.

In the issue's closing article, Neil Brooks and Thaddeus Hwong return to the contentious question which opened the issue and has been revisited

throughout, namely whether the forces of globalization will result in the convergence of public policies across countries. Brooks' and Hwong's review the evidence to suggest, contrary to many existing accounts, that globalization has had significant effects on tax levels and structures. Global pressures, argue the authors, will continue to make it increasingly difficult for national governments to maintain their independence and use tax effectively for social purposes. To prevent tax competition from completely eroding the ability of countries to fashion their own tax systems, Brooks and Hwong recommend that countries coordinate and harmonize aspects of their tax systems.

The articles collected here are the product of a workshop held at the Buchmann Faculty of Law, Tel Aviv University in August 2008 and a conference held at the Monash University Prato Center in Italy in June 2009. The workshop and conference were organized by Tsilly Dagan, Rick Krever, Assaf Likhovski and Yoram Margalioth and supported by the Monash University Taxation Law and Policy Research Institute, the Israel Science Foundation, the Marc Rich Foundation and the Institute for Advanced Studies at Tel Aviv University. *Theoretical Inquiries in Law* thanks the organizers for bringing together an outstanding group of contributors, Ruvik Danieli for style-editing the articles, and all the conference participants and commentators. Comments on the articles published in this issue are available online in the *Theoretical Inquiries in Law Forum* (www.bepress.com/til).

The Associate and Assistant Editors

