In a review of Malcolm Gladwell’s most recent book, The New York Times reporter Joe Nocera opined that, “As always, Gladwell’s sweep is breathtaking, and thought-provoking. What it is not, however, is entirely convincing” (Nocera, 2013). Readers of Steven Sheffrin’s new book, Tax Fairness and Folk Justice, will no doubt experience the first two of these reactions. Sheffrin has written a book of Gladwellian sweep, one that synthesizes and translates large swaths of fascinating social science research, while also enlivening the analysis with engaging stories from the trenches of tax policy and public finance. But will they, like Nocera on Gladwell, come away feeling not entirely convinced?

My aim in this review is twofold: first, to offer a brief overview of Sheffrin’s project in order to give some sense of the ambitious scope of his analysis, and second, to register some skepticism about the book’s central claim regarding the proper role of “folk justice” in the formulation of tax policy. As the author notes in the Preface, the book’s main purpose “is to resurrect folk justice and bring its emphasis and focus back into the public dialogue (p. x).” Sheffrin defines the term “folk justice” as “the full constellation of attitudes that individuals hold in their daily lives about all dimensions of justice (p. 3).” At various points, the author contrasts notions of folk justice with views held by a range of “experts” in tax policy and distributive justice, including philosophers, economists, legal scholars and various other commentators who think and write about such policies. The book advances the view that folk justice should be respectfully considered in the formulation of tax policies, rather than dismissed as the biased product of the untutored masses. Sheffrin’s elevation of popular conceptions of justice can be contrasted with the position expressed by philosophers Liam Murphy and Thomas Nagel, whose book, The Myth of Ownership, entails a systematic repudiation of “everyday libertarianism” in the design of tax and transfer policies (Murphy and

Kirk J. Stark: School of Law, Los Angeles, California (stark@law.ucla.edu)
Nagel, 2003). Sheffrin’s project is not to defend everyday libertarianism, but rather to develop a more textured and charitable conception of popular intuitions about justice and fairness in tax policy, and then to consider how attention (or lack of attention) to those intuitions have influenced tax policy outcomes in several specific settings.

Sheffrin’s analysis begins in Chapter 2 with an elaboration of the key “foundations” of folk justice. Drawing heavily from social psychology, Sheffrin identifies five separate foundations of folk justice that he then applies throughout the rest of the book, including (1) procedural justice, (2) equity and social exchange theory, (3) qualified perceptions of fairness, (4) moral mandates, and (5) system justification theory. Each of these foundations derives from a well-developed social science literature, the details and empirical substantiation of which Sheffrin summarizes throughout the chapter.

Procedural justice emphasizes that it is not just the outcomes of policy that matter, but also the process by which those policies are developed. In particular, procedural justice requires that relevant stakeholders be treated with dignity and given a “voice” in the formulation of policies. Equity and social exchange theory emphasizes the importance of “an equal balance between inputs (effort) and outputs (results) (p. 37)” and often leads individuals to evaluate public policies on the basis of how well burdens correspond with benefits and vice versa. The term “qualified perceptions of fairness (p. 38)” refers to how context — in particular, perceptions of deservingness in different settings — can influence popular conceptions of what is just. Moral mandates are deeply held moral convictions about what is right and what is wrong, defined by one researcher as beliefs that are “experienced as psychologically nonnegotiable and as a fundamental truth about right and wrong (p. 45).” Finally, system justification theory is rooted in the “deep tendency to accept the status quo and to view the exiting hierarchies and social stratification as just (p. 51).” Because of this tendency, individuals may sometimes adhere to beliefs that cannot be explained by individual or group interests.

Sheffrin describes each of these five “foundations” of folk justice in considerable detail, reviewing the relevant literatures and highlighting, where appropriate, objections, challenges and controversies within those literatures. He also discusses the implications of folk justice for normative analysis, noting the similarities between his thesis and that of philosopher Raymond Geuss in *Philosophy and Real Politics*, who, as Sheffrin notes, contends that “political philosophy needs to be in direct contact with actual political practices and beliefs, even when they are at times subject to illusions (p. 53).” The broader project of both Geuss and Sheffrin can be understood as an effort to take seriously the normative commitments of everyday people, and to treat the disciplines of philosophy and taxation, respectively, not as precious pursuits undertaken in the ivory tower but rather as critical topics for ordinary people to tussle over at coffee shops and kitchen tables across the country.

Sheffrin’s specification of five distinct “foundations” of folk justice provides the essential groundwork for the rest of the book, and helps to ensure that the ensuing discussion of popular attitudes toward taxation is anchored in an analytical framework. Still, the reader may be forgiven for wondering whether the psychological tendencies Sheffrin identifies are meant to describe the universe of possible foundations for folk
justice or whether this is just a sampling of popular intuitions about justice. The author refers to these foundations as “key elements of the psychology of folk justice (p. 28)” but seems to leave open the possibility that other (unspecified) popular attitudes might also exert a powerful influence on tax policies. As an example, one might plausibly find broad-based “folk” support for the notion that tax policies should support “family values” — a proposition that could lead, in certain formulations, to tax policies that many would find distasteful or discriminatory. If folk justice entails not just the five foundations Sheffrin describes, but also other, potentially problematic normative commitments, our views about respectfully consulting these attitudes may change.

It is also at this stage in the analysis that the reader might begin to wonder about the weight that should be given to popular notions of justice, especially when those popular impulses reflect the darker side of human behavior, including emotions such as vengeance, hatred or spite. On this point, Sheffrin offers a useful discussion of the concept of “reflective equilibrium” developed by philosopher John Rawls in *A Theory of Justice* (Rawls, 1971). Following Rawls, Sheffrin seems to envision a process by which popular moral sentiments are weighed against more rigorously considered moral judgments arrived at outside the rough and tumble domain of politics. The notion then is that each perspective is informed by the other, leading ultimately to an equilibrium view that reflects the insights developed both at the kitchen table and the ivory tower.

Having developed the five basic foundations of folk justice, Sheffrin then undertakes an extended analysis of how these concepts have played out in specific settings, addressing a range of pressing tax policy questions such as: (1) why do so many Americans exhibit such distaste for the property tax? (2) why do low-income Americans often oppose redistribution through the tax system, while many high-income Americans support it? and (3) why does anyone, in the face of low audit rates, comply with the tax law? The questions, and the popular sentiments surrounding them, form the bulk of the book’s substantive analysis in the middle three chapters.

In Chapter 3, *Fairness and the Property Tax*, Sheffrin discusses the role of folk justice concepts in the context of property taxation. The property tax presents a particularly interesting application of these issues because of striking divergence between expert and lay views of the tax. Whereas public finance experts typically regard the property tax as one of the best taxes, especially for use at the local level, public opinion polls have consistently shown the property tax to be one of the most hated taxes among the general populace. Sheffrin reviews several explanations for this paradox (e.g., the relative salience of property tax burdens compared to taxes with respect to which there is withholding or other forms of periodic collection), but ultimately finds them wanting. Popular distaste for the tax, he asserts, derives in large measure from the fact that the property tax conflicts with deep-seated notions of procedural justice.

The dimensions of procedural justice with which the property tax conflicts concern the importance of certainty, predictability, and taxpayer comprehension in the design of a tax system, as well as the value the citizenry places on having a “voice” in the formulation of tax policy. To illustrate these points, Sheffrin gives an example of a homeowner who lives in a community where a new mall opens up or one that experi-
ences a wave of foreclosures. In these situations, the taxpayer’s relative share of the community’s property tax burden may change for reasons having nothing to do with the taxpayer’s actions. Of course, this is true for any market-based property tax used to fund a set municipal budget target. In such a system, one’s tax liability is a function of one’s relative share of local property wealth, a figure that is determined anew with each reassessment cycle. Sheffrin suggests that the rise of computer-assisted mass appraisal (CAMA) techniques, along with legal reforms aimed (ironically) at reducing assessment disparities, have exposed homeowners to greater micro-uncertainty in their property tax liabilities. The result has been greater popular discontent with the tax — discontent that presumably could have been avoided, or at least minimized, if policymakers had been more attentive to the precepts of procedural justice.

Sheffrin recounts the details of three different episodes in support of his argument. The first is California’s famed Proposition 13, where assessment reforms in the 1960s laid the groundwork for escalating property taxes as housing prices began to rise in the 1970s. The second is a failed effort at property tax reform in Ontario, where taxpayers were given little input in the reform process. The third is an example of a largely successful property tax reform from Wales, which resulted in a banded property tax system that limits property taxes by reference to the relationship of different bands of property to the median value band. In the case of Wales, Sheffrin emphasizes the extensive consultation with Welsh citizens that was undertaken before the reforms were implemented. In effect, this conscious effort to encourage popular participation in the lawmaking process inoculated the Welsh reforms from the more aggressive form of political opposition confronted in California and Ontario.

There is much to praise in Sheffrin’s analysis of property taxes. The claim that taxpayers are sensitive to the sort of micro-uncertainty engendered by a property tax that responds more efficiently to periodic market value reassessments seems both plausible and supported by empirical research, the essential findings of which he recounts. In addition, Sheffrin’s point about the importance of ensuring a voice for popular input in the policymaking process seems indisputable. It is hard to disagree with the conclusion that policymakers should be attentive to the possibility of bubbling discontent among constituents who do not entirely understand why their property taxes are rising. Indeed, as admonitions for policymakers considering property tax reform, it is hard to take issue with any of key implications of Sheffrin’s analysis for property tax reform. This is not to suggest, however, that the lessons from his analysis should be dismissed as simple, anodyne recommendations. To appreciate Sheffrin’s insights here, one must evaluate his folk justice interpretation of property tax policy against the backdrop of standard public finance views of the property tax, which generally take little or no account of popular perceptions of justice. In effect, Sheffrin seems to be urging us to consider the property tax system as a living organism of sorts, one that requires careful attention to the dynamic influence of ever-present popular sentiment. Sheffrin’s analysis suggests that we ignore these popular sentiments at our peril, for in a democracy it is ultimately the popular will that directs the course of tax policy.
Chapter 4, titled Should We Redistribute Income through Taxation?, considers how the folk justice concepts of equity theory, modified fairness, moral mandates, and system justification theory influence popular views of using the tax system as a vehicle for redistributing income. In this chapter, Sheffrin considers several subtopics, including general attitudes toward inequality and redistribution, the broad popularity of work requirements in welfare and other transfer programs, and the “puzzle” of popular support for repealing the estate tax. (I will say more below about why I put the word “puzzle” in quotation marks; Sheffrin does not use them.)

With regard to each of these topics, expert commentators have often regarded popular opinions as deeply perplexing, especially in those instances where low or middle-income respondents express opposition to redistributive taxes they may never pay (and that may plausibly increase public services from which they would seem to benefit). One example of such commentary is Larry Bartels’ article, “Homer Gets a Tax Cut,” which, among other findings, explains a finding of strong plurality support for the Bush tax cuts as “entirely attributable to simple ignorance (Bartels, 2005, p. 24).” By contrast, Sheffrin’s analysis emphasizes that popular attitudes toward taxation and redistribution are not the product of ignorance, but instead can be understood as deriving from deep-seated moral intuitions about effort, reward, and deservingness.

Popular debates over repealing the estate tax provide an especially fruitful vehicle for analyzing these claims. As Sheffrin explains, “vigorous support for repealing the federal estate tax has curiously come from those who would gain nothing from its repeal (p. 142).” Rather than dismissing this popular sentiment as reflective of a fundamental misunderstanding of the hoodwinked masses, Sheffrin ascribes the popularity of estate tax repeal to widely held moral convictions arising from the folk justice foundations of moral mandates and system justification theory. Regarding moral mandates, Sheffrin notes that many people simply believe that a tax imposed at the time of death on a family’s accumulated wealth is inconsistent with fundamental notions of fairness. As to system justification theory, Sheffrin notes that arguments framing the estate tax as a “threat” to the American Dream may have had special traction in debates over repeal. System justification theory holds that, in the face of such system threats, disadvantaged individuals experience something akin to cognitive dissonance, leading them to embrace system-justifying perspectives at variance with their self-interest. According to system justification theory, perceived threats to the American Dream might actually “increase the tendency of lower-status groups for in-group derogation and out-group elevation (p. 151)” — leading these less advantaged groups to applaud the wealthy and oppose a highly progressive tax.

As evidenced in his discussion of estate tax repeal, much of Sheffrin’s analysis in Chapter 4 is directed at rescuing popular opinion from the criticism that it is somehow illogical or irrational for people of relatively limited means to “vote against their interest” by opposing redistribution through the tax system or supporting estate tax repeal. Sheffrin’s analysis would lead us to conclude that these people are not ignorant Homer Simpson types. In response to the question, What’s the Matter with Kansas? — a
popular book by Thomas Frank arguing that the GOP has duped middle America into supporting an anti-redistributive agenda (Frank, 2004) — Sheffrin might reply that there’s nothing “wrong” with Kansas, it’s just that its citizens have deep-seated moral convictions that shape their understanding of tax policy. These convictions may derive from moral mandates or from a sense that redistributive policies threaten the status quo; either way, it is adherence to an intuitive sense of justice that accounts for the attitude, not mere ignorance.

If these are the two choices — i.e., either (1) the public consists of ignorant fools being duped into misunderstanding their own self-interest, or (2) popular attitudes reflect deeper psychological tendencies and a normative commitment to certain key principles of justice — then it is hard not to side with Sheffrin in endorsing option (2). Perhaps I am engaging in my own version of “system justification” by resisting the claim mere ignorance is the ultimate explanation for the tax attitudes Sheffrin describes. Certainly there are dimensions of tax policy that, if better understood, might diminish popular support for estate tax repeal. On balance, however, Sheffrin’s view seems to have the edge in terms of understanding mass opinion.

But perhaps there is a third explanation, one that is not captured by Sheffrin’s reference to folk justice or the “Homer Gets a Tax Cut” view that ignorance reigns. A growing literature has focused on the “expressive” value of individual policy preferences and commitments, whether through the act of voting, responding to opinion polls, or arguing with relatives at Thanksgiving dinner. Hamlin and Jennings (2011) provide a useful survey of the research. Much of the evidence Sheffrin presents in Chapter 4 is polling data showing broad popular resistance to redistribution through taxation. Like many commentators, he observes that support for estate tax repeal has “curiously come from those who would gain nothing from its repeal (p. 142).” But is it really “curious” or “puzzling” when someone of limited means indicates via a poll or a vote (or in any other context, for that matter) that she opposes redistributive taxes and supports repeal of the estate tax? After all, these people must know that nothing they say or do with regard to their policy preferences will actually influence policy outcomes. The general population may not have a sophisticated understanding of complex tax policies, but they surely realize that, whatever policy outcome they might favor, they don’t run the risk of accidental enactment by expressing those views at a dinner party or responding to a Mechanical Turk survey.

An expressive account of political behavior might help explain the supposed “paradox” of popular resistance to redistribution in a manner that is wholly consistent with rational self-interest. It leaves open the possibility that the voter/respondent is simply aligning herself with a set of ideas, beliefs, and preferences that help her to portray herself to the people that truly matter in her life — her family, her friends, her co-workers, and herself. There is nothing paradoxical or counterintuitive about such behavior. Imagine, for example, a hypothetical citizen who is an Assistant Manager at a Red Lobster in Tulsa, one of three who is hoping for a promotion to Manager at the new location opening across town. Perhaps this ambitious Assistant Manager has come to view certain
political preferences and affiliations as central to her success in life, an image that she is cultivating of an up-by-the-bootstraps self-starter who believes in low taxes and limited government. We shouldn’t be puzzled when individuals use political commitments as a vehicle for self-definition and personal advancement, any more than we would be puzzled by their use of fashion or table manners as a means of telling the world (and themselves) who they are. This “expressive” account of popular attitudes toward redistributive taxation isn’t necessarily inconsistent with Sheffrin’s folk justice perspective. It offers a possible explanation, grounded in rational self-interest, for why individuals may subscribe to certain normative commitments. Rather than Homer Simpson type simpletons, this view regards voters as savvy consumers of political discourse, charting out beliefs and sculpting a self-image to maximize their long-term self-interest.

In Chapter 5, *Why Do People Pay Taxes?*, Sheffrin considers a paradox of a different sort: why do taxpayers comply with the tax law, especially when the likelihood of audit and subsequent detection is so low? In contrast to his first two applications of folk justice — property taxes and redistributive taxation — tax compliance is an area where researchers have already begun incorporating insights from social psychology in the consideration of why taxpayers comply with the law. Sheffrin describes and explains several studies that move beyond a simple deterrence model of tax compliance to take account of other factors, such as tax morale. Drawing once again from the foundations of folk justice developed in Chapter 2, Sheffrin emphasizes the role of procedural justice — especially the value of voice and respectful treatment — in ensuring taxpayer compliance. The author reviews several studies showing that individuals are more likely to pursue cooperative strategies when they feel they are being treated with dignity. Likewise, equity theory also influences taxpayer attitudes toward compliance. Sheffrin describes several interesting studies showing that when individuals regard the distribution of tax burdens as fair, they are more likely to comply with the law.

In some ways, existing research on tax compliance already has the sort of folk justice orientation that Sheffrin is hoping will take root in the areas described in chapters 3 and 4. Consequently, there is less of a divergence between “expert” and “folk” perspectives. From the various studies that Sheffrin reviews, one might characterize this subfield of tax research as incorporating something of a “behavioral realist” approach to understanding tax compliance. Rather than ignoring or presupposing popular attitudes, the aim is instead to accept that ordinary people may alter their behavior as a result of deep-seated intuitive judgments about fairness and justice.

Finally, in Chapter 6, *Desert, Equity Theory and Taxation*, Sheffrin offers a brief but engaging discussion of how a theory of just deserts might influence judgments about the distribution of tax burdens. The chapter begins with a quote often attributed to South African golfer Gary Player, who supposedly once said, after a fan expressed amazement at Player’s luck in holing out a shot from the sand trap, “The harder you work, the luckier you get (p. 191).” The quote nicely captures the fundamental difficulty of disentangling the relative contribution of effort and luck in producing outcomes. In life, as in golf, it is nearly impossible to say how different outcomes might be without the influence of
luck, good or bad. Yet most egalitarian theories of distributive justice entail doing just this, at least insofar as they aim to respect outcomes that are the product of choice and effort, while reversing (or at least minimizing) those that are attributable to brute luck or other morally arbitrary factors. Sheffrin doesn’t offer a full-blown defense of this or any other approach to distributive questions, but he does ask, “What implication would a theory of fair deserts for market outcomes have for tax policy? (p. 207)” Some of the targets for reform are noncontroversial (e.g., Pigouvian taxes) while others might encounter more resistance (e.g., inheritance taxes). Of particular interest in Sheffrin’s list of tax reforms that might be warranted under a theory of just deserts is the idea of a cash-flow consumption tax that is designed to reach extraordinary returns to capital. Here Sheffrin sides with a growing crowd of public finance theorists who view such a tax as, in the words of the title of a recent paper by Ed McCaffery and Jim Hines, “the last best hope for progressivity in tax (McCaffery and Hines, 2010).”

To return to the question with which I began this review: will the reader ultimately find Sheffrin’s analysis convincing? The answer to this question has to depend upon how seriously we are being asked to take the concept of folk justice. If the point is simply that popular notions should be respectfully consulted and considered as one factor in the design formulation of tax policies, then surely the thesis is wholly unobjectionable. If instead folk justice concepts are to be given strong deference, then we must face some harder questions. Who decides what folk justice requires? What is to be done when alternative conceptions of folk justice conflict with one another? And what if the mandates of folk justice run afoul of other, widely accepted principles of justice? In the end, of course, we are left with the inescapability of political conflict over these very difficult and contentious issues. Sheffrin’s book concedes the centrality of that conflict to the design and implementation of tax policy. His honest and thorough analysis deserves a place on the reading list of anyone interested in these issues. It offers a fresh perspective on many longstanding — and notoriously nettlesome — tax policy questions, and does so in an engaging and accessible style.

REFERENCES


