A GOOD TAX: LEGAL AND POLICY ISSUES FOR THE PROPERTY TAX IN THE UNITED STATES

by JOAN YOUNGMAN

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Joan Youngman’s A Good Tax: Legal and Policy Issues for the Property Tax in the United States is two distinct books. First and foremost it is a handbook on contemporary policy topics in American property taxation. It is also a rare, enthusiastic, and optimistic defense of the property tax and fiscal decentralization in the United States. The title reflects these perspectives and is almost certainly a deliberate antithetical to the titling of Glenn Fisher’s book The Worst Tax? A History of the Property Tax in America (1996, University Press of Kansas). Unlike Fisher’s Worst Tax, Youngman’s Good Tax better describes contemporary practice by restricting the definition of the tax to only real property — land and its immovable attachments — to the exclusion of personal and intangible property. The first four chapters of the 12-chapter book constitute the actual defense of and advocacy for the property tax, with the remaining eight discussing familiar but specialized topics related to the administration of the tax.

I. A GOOD TAX (CHAPTERS 1–4)

The book begins with four chapters on the most prominent topics that have fueled the ire of opponents of the property tax: the desirability of an independent form of local government and public services, tax equity, property assessment, and the role of the tax in school financing. In this part of the book, Youngman applies the economic way of thinking to the property tax’s detractors by repeatedly asking “compared to what?” of their main arguments. Indeed, the most plausible alternatives, taxing sales or income, would cause many of the same problems or worse if employed as the main revenue instrument in an independent local public finance system. It is difficult to imagine, for
instance, that the multiple non-conterminous overlapping local taxing units (as cities, counties, and schools often are) could substantively rely on sales or income taxation and be politically transparent, adequate in revenues, and administratively efficient to the same degree as the property tax. Taxes on flows of market exchanges (sales or income) will inevitably encourage cross-border tax shopping and require taxpayers to be active in compliance; administration of these taxes has proven a challenge even to states, making it unlikely that local taxing units could operate them sustainably. Similarly, opponents of the property tax who view it as the source of inequality in the provision of quality schools are actually arguing against the provision of any form of local financing. The result of the misappropriation of attention onto the property tax, Youngman argues, has resulted in a series of reforms that have generally failed to materially improve these equity objectives while also harming the larger fiscal system.

The opening chapter of the book sets the boundaries and parameters for considering the property tax. This is an important chapter that frames the basis for normative considerations of the property tax. “Immovable property is a tax base well suited for local identification, administration, and decision making” (p. 2). The taxation of immobile resources, Youngman argues, leads to more local control from administration through budgeting, and it does so at lower economic costs than the taxation of mobile property or other taxes that are based on flows of transactions (i.e., income and sales). These are the beginning elements of the arguments in the chapters to immediately follow. The remainder of the chapter defines important concepts (e.g., capitalization, value capture) necessary for understanding the topics to come.

In chapter 2, “Progressivity, Regressivity, and Fairness,” Youngman takes on one of the most salient political attacks on the property tax, vertical equity, and attempts to disarm it. This is done by clarifying that the statutory incidence need not be the economic incidence and by exploring philosophical considerations of how best to contextualize income (i.e., annual versus permanent), showing in a review of literature that the tax is more progressive than its opponents probably regard it. This is immediately followed by “the property tax incidence debate” in public economics featuring three theoretical views: the Traditional View, the Capital Tax View, and the Benefit View. These are complicated ideas to explain when the reader is not necessarily familiar with Hicksian utility functions. Youngman does an admirable job of conveying the main points of each theory, while ultimately keeping to the primary message that both the Traditional and Capital Tax View tend to support the idea that the incidence of the tax is progressive by falling on capital, whereas the Benefit View converts the tax into a user fee rendering the concept of incidence irrelevant.

Far from disregarding all equity concerns, Youngman acknowledges that many opponents of the property tax have legitimate concerns about fairness when the discussion is shifted away from traditional considerations of the relative progressivity of the tax. Leaning heavily on Steven Sheffrin’s 2013 *Tax Fairness and Folk Justice*, Youngman highlights other concerns that motivate perceptions of tax fairness, such as political stability, relationship to public services, and fairness in the procedures used to establish rates. Some of these are more contextual to the political system than specific to
property tax, while issues on the procedural and administrative side have many valid points. However these concerns can be addressed with very specific attention to those particular details (this task makes up the bulk of chapters 5 to 12).

The third chapter, “Values and Valuation,” discusses the challenges of administering a system for assessing property values for determining the distribution of property tax burdens. Changes to property assessment practices have been important precursors to many of the property tax revolts Youngman highlights, and in the earlier chapter she concedes that these difficulties represent some of the most valid criticisms of the tax. This chapter summarizes how the seemingly simple notions of “fair market value” and “best use” often described in legislation actually embody larger and more difficult questions over the nature of property rights and ownership. Ownership of property implies an indefinite right of use that can be sold to another, yet public regulations like zoning represent malleable restrictions on these rights. This issue can be similarly raised when a landlord enters into a long term lease with a renter, only to see market rents rise substantially, yielding potential gains that cannot be realized by the landlord without breaking the contract or opting to buy the tenant out. These result in wedges that separate values to different potential owners on the basis of intangible rights. In a series of similar illustrative examples, Youngman points out that many cases “cannot be resolved by statutory language concerning fair market value, because they present a disagreement about what property is to be valued” (p. 44). I think it would be fair to summarize this chapter as stating that property assessment forces society to flesh out the nature of property rights through common law.

Chapter 4, “Property Taxes and School Finance,” summarizes the history of school finance reforms that began in the 1970’s and were widely characterized by efforts to undermine the use of the property tax as the primary revenue source of public schools. From the outset, Youngman specifies that this controversy “highlights the role of the property tax, but the tax itself is of secondary importance to the substantive points at issue, such as the total amount of education spending, its distribution across school districts, and the levels of government that are to provide funds” (p. 57). In this way, the school finance reform debate serves as the flagship movement of several similar controversies that arise when public services are produced locally, so that the property tax becomes the target simply because it is the primary source of local revenue. Rather than finish there, however, Youngman reviews several efforts to reform or modify the role of the property in public education through policies like California’s Proposition 13, New Hampshire’s statewide property tax, Vermont’s Act 60, and Michigan’s Proposal A. The unifying theme of these case studies is the complexity of actually administering such school finance reforms and the variety of unintended consequences that result, some of which may have been counterproductive to the original intent. For example, Youngman points out that reforms seeking to increase school funding in poor districts by challenging the equity of financing by the property tax base may be unsuccessful if voters respond to these reforms by “leveling down” education spending across all schools, a finding for which there is not universal agreement but is a mainstream interpretation of the evidence to date (Fischel, 2001).
II. LEGAL AND POLICY TOPICS IN PROPERTY TAXATION (CHAPTERS 5–12)

The specialized topics covered in these last 8 chapters include tax increment financing, property classification, treatment of open space and conservation easements, farmland assessment, current use valuation, federally subsidized low income housing, exemptions, payments in lieu of taxes, and tax and assessment limitations. Each topic is covered from its origins through the series of conflicts that led to current practices and policies. The reasoning of adversaries, as well as judges and politicians, is provided descriptively and without normative judgments. Indeed, it is often unclear exactly what the practice should be because there exists plenty of room for reasonable disagreement among countervailing parties, and some of the chapters seem to end abruptly with little in the way of conclusions. The analysis seldom falters, however, as Youngman tends to write in a story-telling timeline format rather than relying on ex-post recaps, and the flow of the book is aided by her apparent optimism throughout.

Chapter 5 reviews the theory and practice of Tax Incremental Financing (TIF), which is perhaps one of the most controversial institutional modifications of the conventional property tax base. In many states, TIFs extricate growth in the tax base by attributing it to a particular project, with project revenue accessible only to the sponsoring local government, which is subject to different standards of governance than for non-TIF revenues. Advocates view TIFs as an economic incentive that makes it more possible for local governments to make deals with developers for projects that otherwise would not occur, while critics often view it as a give-away to developers that reattributes revenues that would otherwise go to other overlapping governments. Youngman’s chapter seems largely agnostic to the merits of the TIF system, but her analysis provides plenty of ammunition to critics of TIF, which superimposes a highly opaque tool on an otherwise transparent tax. There has been juicy journalism in bringing TIF scandals to light, but unlike the school finance controversies these scandals have not prompted calls to eliminate the property tax altogether. In fact, the main theme from Youngman’s TIF review is that it is simply a tool that can be wielded to build or to destroy, with the outcome depending on the quality of the governing institutions.

Chapters 6 through 10 all deal with the special treatment of specific properties under the property tax (property classifications, conservation easements, farmland, federally subsidized low income housing, nonprofit organizations, etc.). The intensity of Youngman’s investigative coverage of legal statutes and evolution in common law results in what are arguably the most philosophical chapters of the book. Despite having limited the scope of the book to “real property” at the exclusion of personal and intangible property, assessing property at market value (or choosing not to do so) implies a capitalization of intangible property rights. What is the appropriate market value assessment when a landowner voluntarily relinquishes either development rights for a conservation easement or the rights to proceeds by exchanging with a qualified low income buyer?
What about the landowner whose property is restricted by the zoning council from being employed at its most valuable use, a state of policy that is malleable? Economic theory enters these chapters as the analysis of incentives that arise with different choices, and Youngman’s chapters are consistently exquisite in clearly highlighting trade-offs, as well as offering political economy explanations for some observed treatments. There seems to be little to no apparent normative theory from economics on how many of these questions should be answered, which would be somewhat tedious if not for Youngman’s enthusiastic delivery and optimism: “However, a varied range of opinions allows stronger reasoning to emerge over time, in the best tradition of the common law” (p. 168).

The last two chapters of the book review fiscal institutions in the form of tax restrictions and assessment limits, with a comprehensive study of Massachusetts’ Proposition 2 1/2. The analysis is generally focused on the administrative realities of implementing restrictions on market value assessment and their unintended consequences, implications for fiscal federalism, and other policy lessons.

### III. CRITIQUE

There seem to be two recurring challenges to Youngman’s defense of the property tax. The first is that many of her responses to property tax detractors can in turn be used as criticisms of her arguments advocating for the tax. In the conclusion to chapter 4, Youngman states, “Debate on the property tax should proceed on its own merits and clearly distinguish between issues concerning its operation and the use of its proceeds.” This indeed is a concise summary of the theme of her response to critics of the property tax, that by and large their concerns are about something other than the property tax per se or apply generally to the prospect of local public economies (e.g., “…the use to which tax revenue is put is quite distinct from the fairness or unfairness of any particular means of raising that revenue” (p. 31)). However, this can also be said of Youngman’s advocacy of the property tax, as it frequently depends on the merits of the existence of independent local governments or other political economy advantages of the property tax that are at the least untested. Consider Youngman’s rebuke of critics of the property tax who focus on school finance reform (p. 57):

This vigorous and long-running controversy highlights the role of the property tax, but the tax itself is of secondary importance to the substantive points at issue, such as the amount of total education spending, its distribution across school districts, and the levels of government that are to provide these funds. If income taxes constituted the primary local revenue source and property taxes were imposed at the state level, the school finance debate could continue as it stands, merely reversing the names of the state and local taxes.
This is a fair response, but Youngman makes similar leaps. In advocating for the property tax broadly, she writes (p. 9):

The use of the property tax as a local revenue source reflects its particular suitability for that function. Some local government services have a special relationship to real property, such as fire protection, road maintenance, and public safety. Efficient local spending can enhance property values. Well-functioning public operations, such as excellent schools, can increase the desirability and market prices of housing in the jurisdiction, encouraging even voters who do not directly utilize these services to support them.

All of the above consequences emanating from efficient local spending would remain in place regardless of the revenue source supporting it. Neither statement is necessarily wrong, but it is not advocating from a position of strength to try to have it both ways in a debate. It also presumes that the economic interest driving the support of the enfranchised voters is necessarily a good thing. Advocates of school choice programs, wind farm developers, and those who would like to see greater expansions in housing supply are just a few examples of those who frequently find themselves at odds with local voters worried about impacts on their property values. These defenses also tend to hinge on political economy hypotheses rather than the merits of the tax itself. For instance, “locally generated property taxes afford a measure of protection against fluctuating intergovernmental aid” (p. 3) seems to imply that this advantage of the tax would disappear if intergovernmental aid were less volatile. “The visibility and transparency of the property tax are important civic benefits but they also ensure that this tax will always be the subject of vigorous debate” is a similar political economy conjecture that would seem to depend on the quality of local democracy.

The second major challenge facing Youngman is that neither economists nor lawyers have provided a generally accepted conception or definition of a property tax. If a household gains an in-kind receipt that is not going to be included as part of its taxable income base, the Haig-Simon definition of comprehensive real economic income helps us distinguish whether this choice was appropriately defining income or implicitly creating a tax expenditure. Kaldor’s concept of personal expenditure aids in determining whether a transaction excluded from a consumption tax results in excess burden from base narrowing or avoids excess burden from tax pyramiding. Is the American retail sales tax a good tax? Is the personal income tax? Answers to both questions would surely involve comparing what we actually do to these standard conceptual definitions.

The absence of an analogous definition for property taxes makes it difficult to discern why certain property tax exemptions should be considered as appropriate or ill advised. One might argue that contrasting Youngman’s Good Tax with criticisms covered in Fisher’s Worst Tax would reveal that they are functionally describing different taxes, with Fisher taking a broader perspective in discussing “the general property tax” that
perhaps results in his being less enthusiastic in his defense of the property tax. The American property tax has largely (though not entirely) evolved away from the inclusion of properties like stocks, bonds, bank accounts, cars, jewelry, and airplanes. Why should these exemptions be regarded differently than those pertaining to nonprofit status, assessing farmland at use value, favorable property classifications, conservation easements, and TIF districts? Many specific inclusions to, and exclusions from, the property tax base receive significant criticism from economists, lawyers, and advocates, but without a good definition of the ideal property tax it is difficult to discern if these should be regarded as valid criticisms of the inherent nature of the tax. Youngman is not responsible for this deficiency, but so long as it exists one might respond that Good Tax only defends the “good” parts of the tax while ignoring the “bad” parts that may be intrinsic to its larger institutional architecture.

A last criticism of the book is not in substance but in form, as the overall structure arguably gets in its own way. Even though Youngman leads with a defense of the property tax and uses an optimistic framing of property tax policy as evolving through democratic conflict, there is a sense in the discussion of contemporary issues that the property tax is in disarray early and often. Youngman is quite convincing in arguing that the property tax can be simple, transparent, efficient, equitable, and effective as a means of raising revenue for local governments. But Youngman’s review of current issues and recent reforms of last few decades is also evidence that the property tax we actually have is none of those things. If the main intention is to defend the property tax from its critics, a classic like Blum and Kalven’s (1952) The Uneasy Case for Progressive Taxation might have been a better model.

IV. CONCLUSION

The marketplace for books written on the property tax does not much resemble the balance of views on the property tax. Youngman’s Good Tax might single handedly remedy this deficit by providing an infectiously enthusiastic perspective on the property

1 Fisher’s first chapter articulates his conceptual basis of “the general property tax” by outlining five characteristics which describe the tax. His “universality” trait is defined to include “all property — real and personal, tangible and intangible” with only a small set of commonly recognized exemptions.

2 Adam Smith’s perspective seems to have been against the nature of the tax when he wrote that a value based land tax required “an attention so unsuitable to the nature of government, that it is not likely to be of long continuance, and which, if it is continued, will probably, in the long-run, occasion much more trouble and vexation than it can possibly bring relief to its contributors.” (Smith, 1776, p. 899).

3 To Youngman’s significant credit, Good Tax arguably provides some scaffolding for defining a property tax, albeit it remains something closer to a definition based on reference tax law, as opposed to a principled abstraction that economists favor. Youngman assigns the lineage of the property tax to the statutes of Queen Elizabeth I with intentions to reach all forms of property and the goal of creating a wealth tax, with administrative impossibilities eventually pairing the tax down to real estate. Of course, most American property tax rates are determined by residual rules so that the “contemporary property tax is not a wealth tax” (p. 10) and Queen Elizabeth I does not get us terribly far.
tax. Written using a clear story telling format, the book is accessible to students in public finance, economics, and law at the undergraduate level. Fisher’s *Worst Tax, Good Tax*’s natural marketplace rival for syllabus space on property taxation, is perhaps too Kansas-centric in comparison to Youngman’s broad and excellent coverage of institutional details from around the United States (and occasionally the United Kingdom). Anyone actively engaging in property tax research will benefit from Youngman’s synthesis of the topics explored in the book, even if they have already read the many Lincoln Institute special policy reports on the those topics. While reading *Good Tax* ultimately convinced me that the only readily defensible attribute of the American property tax is that it generates revenue for local governments, Youngman’s advice for reform in the ears of policy makers could readily change this outlook. Every scholar of local government or property taxation will find benefit from reading *Good Tax*.

**REFERENCES**


