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INTRODUCTION AND OBSERVATIONS ON PROMOTING TAX JUSTICE IN THE ONLINE PUBLIC FORUM

JONATHAN BARRETT, GUEST EDITOR

I TAX JUSTICE AND SOCIAL MEDIA

Before introducing the articles in this special edition of the *Journal of Australian Taxation*, I would like to reflect on the practice of taking tax justice research from the relative comfort of academia into the hurly burly of online public forums.

New Zealand is unusual, if not unique, in not only guaranteeing academic freedom but also requiring universities to play an active conscientious role in society. *Education and Training Act 2020* (NZ) s 267 provides:

(1) It is the intention of Parliament in enacting the provisions of this Act relating to universities and wānanga that academic freedom and the autonomy of those institutions are preserved and enhanced ...

(4) In this section, **academic freedom**, in relation to an institution, means –

(a) the freedom of academic staff and students, within the law, to question and test received wisdom, to put forward new ideas, and to state controversial or unpopular opinions:

(b) the freedom of academic staff and students to engage in research ...

The Act further establishes that one of the five characteristics of a university lies in its accepting ‘the role of critic and conscience of society’.¹

It is difficult to envisage a contemporary corporatized university in New Zealand having concerns beyond its own financial survival. Indeed, the inclusion of this role in the earlier *Education Act 1989* (NZ), which generally implemented the neoliberal recommendations of the Hawke Report,² is somewhat puzzling,³ since a charity, such as the Salvation Army,⁴ presents as a more plausible candidate for an *institutional* critic and conscience of society than the corporate university. Furthermore, since this provision refers to a university, it is a moot point whether the institution as a body corporate is expected to be the critic and conscience of society or the academic staff (collective and singular) and students (postgraduates and alumni) who partly constitute a university.⁵ Nevertheless, the duty, read with individual academic freedom, only makes sense if it is incumbent on academics and

¹ See *Education and Training Act 2020* (NZ) s 268(2)(d)(i)(E).

² See G R Hawke, *The Hawke Report: what future path for tertiary education?* (Final Report, 1988).

³ See Gilbert Wong, ‘Critic and conscience: where did the idea even come from?’ *University of Auckland* (Web Page, 3 November 2021) <<https://www.auckland.ac.nz/en/news/2021/11/03/ingenio-critic-and-conscience.html>> on the origins of the obligation being included in the 1989 Act.

⁴ See eg, Social Policy & Parliamentary Unit, ‘State of the Nation 2023’ *The Salvation Army New Zealand, Fiji, Tonga & Samoa Territory* (Report, 2023) <<https://www.salvationarmy.org.nz/research-policy/social-policy-parliamentary-unit/state-nation-2023>>.

⁵ Cf *Victoria University of Wellington Act 1960* (NZ) s 3 ‘Constitution of the University’.

research students to fulfil the obligation, with the institutional university's role being to maintain the integrity structures, including funding, for research.

The theorist and social activist Antonio Gramsci argued that 'all men are intellectuals, one could therefore say: but not all men have in society, the function of intellectuals'.⁶ Academics perform the function of traditional or formal intellectuals but may also act as an 'organic intellectuals', who, unlike traditional intellectuals, 'who seem more or less to remain in place, doing the same kind of work year in year out', are 'actively involved in society, that is, they constantly struggle to change minds'.⁷ In a related view, for Edward Said, a principal role of the intellectual is to 'speak truth to power'.⁸ While this invocation may sound loftily idealistic, Said argues it is a matter of 'carefully weighing the alternatives, picking the right one, and then intelligently representing it where it can do the most good and cause the right change'.⁹

If 'controversial or unpopular opinions' are to be *put forward* and 'controversial or unpopular opinions' are to be *stated*, it seems they must be taken into the public forum, which today is typically online.¹⁰ Some academic research may be exploratory or arcane, in which case it would not generate public interest and is better suited to discussion and development among subject specialists but very little tax research falls into this category of the academic occult. In short, as tax researchers, we can and should be taking our research to the public to promote general debate about taxation, and tax justice in particular. If we fail to stake a claim in that space, others may take it.

Some Australasian tax publications, notably this journal, the *eJournal of Tax Research*, and the *Journal of the Australasian Tax Teachers Association* are open source, but only the second journal has an A ranking, as categorised by the Australian Business Deans Council (ABDC). The ABDC ranking is notorious – from a New Zealand perspective, at least – for its parochialism and manifest lack of understanding of the quality of law journals. For example, under the discontinued journal ranking of the Excellence in Research Australia (2010), the *New Zealand Law Review* was ranked A* but ABDC ranks it B, the same category as the *New Zealand Law Journal*, which is aimed at practitioners and is not double-blind peer reviewed. Nevertheless, academics face managerial pressure to pursue publication in A or A* journals, which are typically sequestered behind exclusionary paywalls. It appears, for example, that not all Australian tax academics have access to the A ranked *New Zealand Journal of Taxation Law and Policy*, and less so academics based in Moana (Pacific) universities.

⁶ See Antonio Gramsci, *The Prison Notebooks: Selections* tr Quentin Hoare and Geoffrey Nowell-Smith (Lawrence and Wishart, 1973) 140.

⁷ See Edward W Said, *Representations of the Intellectual: The 1993 Reith Lectures* (Vintage, 1994) 4.

⁸ The phrase 'speak truth to power' is thought to have originated with a Quaker pamphlet, *Speak Truth to Power, A Quaker Search for an Alternative to Violence* (American Friends Service Committee, 1955). See Henry W Sawyer III, 'Reviewed Work(s): Speak Truth to Power, a Quaker Search for an Alternative to Violence' (1956) 104(8) *University of Pennsylvania Law Review* 1138.

⁹ See Said (n 7) 75.

¹⁰ Scope is not available here to discuss open-source publication, paid-for open-source publication, and a government's legitimate expectation that, if it funds research, results should be made publicly available. Sufficient to note, the issues are complex, and the power accumulated by corporate academic publishers is remarkable. See eg, Brian Resnick and Julia Belluz, 'The war to free science: How librarians, pirates, and funders are liberating the world's academic research from paywalls' *Vox* (Blog Post, 10 July 2019) <<https://www.vox.com/the-highlight/2019/6/3/18271538/open-access-elsevier-california-sci-hub-academic-paywalls>>.

The explosion of digital publication and copying in recent decades has seen, on the one hand, idealistic attempts to free information from the constraints of individualist copyright law,¹¹ and, on the other hand, corporations seeking to monetise and protect that information behind paywalls.¹²

With willing universities, writers, reviewers, and editors, we can produce high quality, digital-only academic journals, and make them available to anyone with internet access who wishes to read and develop their own research. But, however easy access to electronic journals is made, a 10,000-word article on, say, the OECD's BEPS initiative is unlikely to attract a readership beyond fellow specialist academics, diligent professionals or policymakers in the Australian Tax Office, the New Zealand Inland Revenue Department, or national Treasuries, and so may not constitute *putting forward* or *stating* to members of the public who, of course, pay the taxes to government which makes public universities possible.

The *Austaxpolicy* blog, housed at ANU's Tax and Transfer Policy Institute, commonly publishes digests of tax research in non-technical language, but, again, how much of this more accessible research is only read by specialists, professionals or people who have a particular interest in tax is not obvious.¹³ Possibilities exist for publishing through other forms of social media, such as LinkedIn, but once we move away from trusted editorial oversight, the less reliable information may become and the worse informed the tax justice debate becomes.

As a not-for-profit social media platform, *The Conversation* has certain unique features, including its joining professional journalists as editors, and academics as content providers. This set-up ensures that published articles benefit from the skills, standards, and ethics of both professions, such as the disclosure of conflicts of interests. The website is a feeder source for other reputable media, such as Radio New Zealand, which promotes potential reach. An article with general appeal can garner as many as 50,000 reads – an audience penetration for tax researchers that would be unimaginable through traditional academic channels. Following publication, authors may also be interviewed by media that may range from national to community radio stations, and emerging news platforms, such as Twitch.tv.

The Conversation operates under a Creative Commons licence Attribution-NoDerivatives 4.0 International (CC BY-ND 4.0). 'This license lets others reuse the work for any purpose, including commercially; however, it cannot be shared with others in adapted form, and credit must be provided to you.'¹⁴ *New Zealand Herald* and *Stuff* newspapers, including Wellington's *The Post* and Christchurch's *The Press* – have established paywalls which may exclude free access to important articles. And so, a piece on tax justice first published in, say, *The Post*, may not be available to everyone, but, if it is first published in *The Conversation* and then taken up by for-profit media, the open access licence ensures that it is likely to be available elsewhere. (It is presumed that a leading newspaper would not seek to put an article it gained for free behind a paywall.)

¹¹ See generally, Sharee L Broussard, 'The Copyleft Movement: Creative Commons Licensing' (2007) 26(3) *Communication Research Trends* 3.

¹² See generally, Stephan Puehringer, Johanna Rath and Teresa Griesebner, 'The political economy of academic publishing: On the commodification of a public good' (2021) *PLOS ONE* <<https://doi.org/10.1371/journal.pone.0253226>>.

¹³ Disclaiming any claim for scientific validity, when I have published items in *Austaxpolicy* Blog, the responsive comments have been technical in nature. When I have published in *The Conversation*, the comments have often been along the lines of 'Marxists in ivory towers'.

¹⁴ See 'CC BY-ND 4.0 Deed: Attribution-NoDerivs 4.0 International' *Creative Commons* (Web Page) <<https://creativecommons.org/licenses/by-nd/4.0/>>.

An unscientific survey of articles published in *The Conversation* by New Zealand tax academics on tax justice indicates that articles fall into two broad categories – advocacy and explanation. Advocacy involves identification of a particular area of tax unfairness and proposing a just solution.¹⁵ Explanatory articles allow non-specialists to better understand a tax issue. Explanations may involve an appraisal of opposing arguments,¹⁶ unpacking of a broad policy issue,¹⁷ or explaining a highly technical subject.¹⁸

Advocating progressive tax justice on social media is not for the thin-skinned.¹⁹ But, even for the most resilient female academic, online misogyny aimed at silencing women's voices, can be threatening and dispiriting.²⁰ No doubt, Indigenous or LGBTIQ+ opinions on tax justice would also be shouted down but unfortunately those voices are rarely heard in the first place. *The Conversation* no longer publishes comments, but authors' email addresses are generally available.

New Zealand academics owe a statutory duty to perform the role of critic and conscience of society. While this duty may appear idealistic – and, in practice, relatively few academics comply – social justice luminaries, such as Jane Kelsey, have spoken truth to power for decades. In the field of taxation, Lisa Marriott, Max Rashbrooke, Susan St John and others have consistently advocated progressive tax-transfer justice.²¹ An issue of this journal on tax justice in Aotearoa New Zealand would be incomplete without mention of the efforts, not just of individuals, but also of organisations, notably Tax Justice Aotearoa, and the Fabians to achieve a plausibly equitable tax-transfer system.

¹⁵ See eg, Jonathan Barrett, 'Forget a capital gains tax – what New Zealand needs is a tax on inherited wealth' *The Conversation* (Web Page, 31 July 2020) <<https://theconversation.com/forget-a-capital-gains-tax-what-new-zealand-needs-is-a-tax-on-inherited-wealth-143604>>; Ranjana Gupta, 'How 'tax forgiveness' could help New Zealand's many small businesses weather the financial woes brought on by COVID-19' *The Conversation* (Web Page, 2 September 2021) <<https://theconversation.com/how-tax-forgiveness-could-help-new-zealands-many-small-businesses-weather-the-financial-woes-brought-on-by-covid-19-166955>>; Lisa Marriott, 'Even if next week's budget avoids the issue, it's time New Zealand seriously considered a wealth tax' *The Conversation* (Web Page, 11 May 2022) <<https://theconversation.com/even-if-next-weeks-budget-avoids-the-issue-its-time-new-zealand-seriously-considered-a-wealth-tax-182505>>.

¹⁶ See eg, Jonathan Barrett, 'Feeling that fiscal drag? Why you could be worse off even if your pay has gone up' *The Conversation* (Web Page, 31 August 2022) <<https://theconversation.com/feeling-that-fiscal-drag-why-you-could-be-worse-off-even-if-your-pay-has-gone-up-188287>>; Lisa Marriott, 'New Zealand's tax system is under the spotlight (again). What needs to change to make it fair?' *The Conversation* (Web Page, 30 January 2023) <<https://theconversation.com/new-zealands-tax-system-is-under-the-spotlight-again-what-needs-to-change-to-make-it-fair-198492>>.

¹⁷ See eg, Craig Elliffe, 'Proving the wealthiest New Zealanders pay low tax rates is a good start – now comes the hard part' *The Conversation* (Web Page, 27 April 2023) <<https://theconversation.com/proving-the-wealthiest-new-zealanders-pay-low-tax-rates-is-a-good-start-now-comes-the-hard-part-204532>>.

¹⁸ See eg, Alison Pavlovich, 'Why a proposed capital gains tax could mean tax cuts for most New Zealanders' *The Conversation* (5 March 2019) <<https://theconversation.com/why-a-proposed-capital-gains-tax-could-mean-tax-cuts-for-most-new-zealanders-112852>>.

¹⁹ The Taxpayers' Union (sic) issued an ad hominem media release in response to one of my *Conversation* articles. See Louis Houlbrooke, 'Op-Ed: Why We Won't Stop Calling It "Taxpayer Money"' *Taxpayers' Union* (Web Page, 21 January 2021) <https://www.taxpayers.org.nz/why_we_won_t_stop_calling_it_taxpayer_money>. While I found this response risible, the trolling of female academics, who attract reactionary ire, is no laughing matter.

²⁰ See eg, Heather Savigny, 'Gender and the "impact" agenda: the costs of public engagement to female academics' *LSE* (Blog Post, 14 June 2019) <<https://blogs.lse.ac.uk/impactofsocialsciences/2019/06/14/gender-and-the-impact-agenda-the-costs-of-public-engagement-to-female-academics>>.

²¹ I actively sought a free market perspective on tax justice for this edition but the author who agreed to provide an article failed to deliver.

II OVERVIEW OF ARTICLES

I am grateful to the editors of the *Journal of Australian Taxation*, for inviting me to curate a second New Zealand special edition. The first special New Zealand edition was published after the Tax Working Group (2020) (TWG) published its final report.²² This edition has allowed contributors to consider the issues raised in that report in a longer-term perspective. The research that informed the TWG remains pertinent but deserves reflection. The principal majority recommendation of the TWG was a comprehensive capital gains tax (CGT), a recommendation, which is generally supported by academics but has been rejected by two Labour prime ministers.

The populist and policy-diverse New Zealand First party, which propped up the Labour-led government (2017-20), claims to have vetoed the introduction of a comprehensive CGT.²³ Since then, Jacinda Ardern, the country's iconic prime minister, who declared that there would be no CGT on her watch, resigned and presented the opportunity for a Labour-led government, under the helm of the pragmatic Chris Hipkins, to introduce a CGT. Both the Green Party and Te Pāti Māori, the other progressive representatives in Parliament, support a CGT, but, seeking electoral support from the centre, Hipkins followed Ardern's lead and ruled out a CGT and any form of wealth tax.

In the first article, Lisa Marriott and I have sought to map tax justice issues in Aotearoa New Zealand. The political context in which this process took place changed dramatically in the period of writing and in late October 2023 is still in flux. Hipkins inherited an absolute parliamentary majority²⁴ – a once in a generation opportunity to make radical changes to remedy tax-transfer injustice, in particular, the lack of taxation of capital gains, wealth or land (nationally). But, like his predecessor, he took no decisive action as support for Labour plummeted. His principal tax equity proposal, which was roundly criticised by tax commentators across the political spectrum, was to remove GST from fresh fruit and vegetables. Paradoxically, understanding of tax injustice in New Zealand has, perhaps, never been greater. In our article, we aim to unpack that paradox.

New Zealand had the constitutional opportunity to join the Australian Commonwealth but failed to do so, and, despite a cultural closeness among settlers, has chosen in some ways a different path from Australia in settler-Indigenous relations.²⁵ In particular, the Crown in New Zealand owes obligations under the Treaty of Waitangi Te Tiriti O Waitangi 1840 which was concluded with many iwi (First Nations) and is generally considered to be the country's founding document.²⁶ How is this relevant to tax justice? There is an increasing understanding that, despite being cashless societies before European encounter, First Nations,

²² See (2020) 21(1) *Journal of Australian Taxation*.

²³ See eg, Tom Pullar-Strecker, 'Capital gains tax abandoned by Government' *Stuff* (online, 17 April 2019) <<https://www.stuff.co.nz/business/112010254/government-to-make-statement-on-capital-gains-tax>>.

²⁴ The MMP system was designed to prevent single party governments. See generally, Geoffrey Palmer and Matthew Palmer, *Bridled Power: New Zealand's Constitution and Government* (Oxford University Press, 2004).

²⁵ The libertarian ACT party, whose support National will need to form a government after the October election, is demanding a referendum on the Treaty of Waitangi principles which have been developed over the past four decades by all branches of government. Essentially, in ACT's vision, Māori would be treated with formal equality ie, just one ethnic minority among many. See 'ACT proposes referendum on co-governance' *ACT* (Web Page) <https://www.act.org.nz/act_proposes_referendum_on_co_governance#:~:text=%E2%80%99CACT%20propos%20that%20the%20next,vote%20on%20it%20becoming%20law>.

²⁶ See eg, Claudia Orange, *The Treaty of Waitangi* (Bridget Williams Books, 2nd ed, 2011).

including those in Australia and North America (Turtle Island) engaged in traditional tax-like practices. Once European traders arrived, new forms of Indigenous taxation also developed.

In their article, Matt Scobie, Holly Willson, Rachael Evans and Madi Williams analyse Māori taxes and tax-like arrangements in Aotearoa before and after European encounter. This important investigation makes a significant contribution to an understanding of Māori taxing rights, some of which almost certainly survived the introduction of Crown governorship. This article is a crucial steppingstone to Māori assertions of taxing rights, complementary and coterminous with the powers of the Crown.

Broadly, every decade New Zealand conducts an inquiry into its tax system. These are important investigations but are often constrained by their terms of reference. For example, the most recent Tax Working Group was not permitted to consider land or inheritance taxes. Nevertheless, these inquiries are generally free to frame their own conceptions of the criteria of a good tax system – although they invariably start with Adam Smith’s Four Canons, including equity. In his article, Rob Vosslander analyses conceptions of equity in New Zealand’s tax inquiries. This article will be a useful source for scholars of New Zealand taxation history.

The New Zealand tax community, particularly members of the Australasian Tax Teachers Association, are invariably accountants or lawyers. I sought a different academic voice on land taxes and tax justice, and am pleased to include the preeminent economist, Arthur Grimes’s article on equity and land taxes. Arthur’s work on land taxes is seminal and, having been Chair of the New Zealand Reserve Bank for a decade, he has unrivalled understanding of the country’s economy and how a national land tax could promote tax justice.

This special edition concludes with Alison Pavlovich’s ‘blue sky’ thinking. Moving beyond the OECD’s BEPS Pillars 1 and 2, she asks how data should be taxed. Pavlovich demonstrates that New Zealand is a net exporter of data but gains no direct tax revenue from this transfer of wealth. She argues that data is the most important commodity in our current paradigm. Her article does not make policy prescriptions but leaves us with troubling questions about tax justice and a form of wealth flowing to the richest US-based entrepreneurs without tax benefit to New Zealand.

Academic research and publication are social activities. While the authors of the articles published here are from the University of Canterbury Te Whare Wānanga o Waitahi and Victoria University of Wellington Te Waka Herenga, academics across Australasian universities provided constructive reviews, and of course, the *Journal of Australian Taxation* generously provided a platform for the exchange of trans-Tasman knowledge.

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THE TAX UNFAIRNESS PARADOX IN AOTEAROA NEW ZEALAND

JONATHAN BARRETT* AND LISA MARRIOTT**

Abstract

In 2023, a tax unfairness paradox is evident in Aotearoa New Zealand. Never before has so much empirical evidence existed to demonstrate unfairness in the tax system, and yet, in an election year, neither of the two major political parties has proposed substantive changes that might address that unfairness.

Prime Minister Jacinda Ardern, who had ruled out a capital gains tax (CGT) under her premiership, unexpectedly resigned in January 2023. Her successor, Chris Hipkins, followed her lead, even though Labour would need the support of the progressive Green Party and Te Pāti Māori, to form a centre-left coalition government. Both minor parties support a comprehensive CGT and a wealth tax. National, the other major party, would need the support of the libertarian ACT party to govern, and so could face different pressures to engage in radical tax cuts, beyond its own conservative plans for tax rate realignment and reducing government reach. Into the mix, at the time writing, National would need the support of the policy diverse New Zealand First to govern.

The return of significant rates of inflation has brought increased attention to fiscal drag. Income tax bands, which, save for the re-introduction of the highest marginal rate of 39% in 2021, have not changed since 2010. Inflation has also focussed attention on the country's 'pure' goods and services tax, which does not exempt basic food items.

Three reports on the amount of tax the wealthy pay were issued in quick succession in April 2023. The report by Sapere, a private consultancy, appears to have been aimed at anticipating and muting the messages of the reports of the Inland Revenue Department and the Treasury, which concluded that the wealthiest pay a disproportionately low amount of tax. Adding to the debate, almost 100 of New Zealand's wealthiest people issued a public letter calling on government to ensure that the wealthy should pay a fair amount of – that is more – tax.

This article maps issues of tax unfairness in Aotearoa for readers who may not be familiar with the New Zealand political and social context and unpacks this country's tax unfairness paradox.

I INTRODUCTION

Voters in liberal democracies may have become more tolerant of inequality since the mid-1980s,¹ but few people are likely to object to fairness in principle. What does fairness look

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like in relation to tax? In New Zealand, in the run up to the October 2023 election, commentators and politicians outlined their conceptions of a fair tax system. A prominent independent economist for example, argued that a fair system would incorporate lower income tax rates, an increased goods and service tax (GST) rate, and some form of wealth tax.² While this prescription indicates that a mix of taxes is needed to deliver fairness, no explanation is given as to why an increase in GST would promote tax fairness. If a professional economist is taken seriously by the media when they make banal claims about tax fairness without statement of principle, we cannot expect politicians to go deeper than the rhetoric of claiming tax policies with which they disagree are unfair. For example, David Seymour, leader of the economically libertarian ACT party, has expressed concerns that 5% of taxpayers allegedly pay one-third of personal income tax,³ apparently oblivious to the likelihood that, if the market distribution of income leads to such a small percentage of the population claiming so much of the social product, then, a fair tax system will necessarily require them to pay a higher amount of tax. But, as we discuss in part IV, the very wealthy do not in fact pay a commensurate proportion of tax.

Chris Hipkins, Aotearoa New Zealand's recently deposed Prime Minister said we should look at ways to make the country's tax system fairer. According to Hipkins,

if you work hard you should be able to get ahead. There are people now working really, really hard, some of them might be working multiple jobs and they're not feeling that they can get ahead.

They are contributing enormously to New Zealand and to our prosperity but they are feeling that they're not able to get ahead. We need a tax system that recognises this, that actually makes sure that those who are really striving, who are putting in the hard yards, actually feel the reward for that.⁴

Hipkins voices Labour's traditional core concern for employed workers. But who does he exclude from his imaginary of those deserving tax fairness? Most obviously he excludes entrepreneurs, farmers, and rentiers – the traditional supporters of conservative parties – but he also tacitly excludes beneficiaries and stay-at-home parents or other unpaid carers from those who 'are contributing enormously to New Zealand'.⁵ This preference for a particular constituency – the centre that is presumed to decide elections – demonstrates that political conceptions of tax fairness are at best ideological in nature, if not opportunistic, and not informed by rational principles that transcend ideology.

The trope of tax fairness for the 'hard working Kiwi' is one claimed by parties across the admittedly narrow New Zealand political spectrum. Traditionally, for Labour, that trope implied unionised workers, and, for National, farmers but the image has been considerably

¹ See eg, Maurizio Lazzarato, 'Neoliberalism in Action: Inequality, Insecurity and the Reconstitution of the Social' (2009) 26(6) *Theory, Culture & Society* 109.

² See Ireland Hendry-Tennent, 'Wealth tax, higher GST and lower income tax: Prominent economist Cameron Bagrie reveals how he would overhaul tax system' *Newshub* (Web Page, 24 January 2023) <<https://www.newshub.co.nz/home/money/2023/01/wealth-tax-higher-gst-and-lower-income-tax-prominent-economist-cameron-bagrie-reveals-how-he-would-overhaul-tax-system.html>>.

³ See Thomas Coughlan, 'Will ACT's tax policy let you Seymour of your income?' *Newsroom* (Web Page, 18 June 2019) <<https://www.newsroom.co.nz/will-acts-tax-policy-let-you-seymour-of-your-income>>.

⁴ See eg, Ireland Hendry-Tennent, 'Incoming Prime Minister Chris Hipkins hints at tax changes, says some New Zealanders aren't paying their way' *Newshub* (Web Page, 21 January 2023) <<https://www.newshub.co.nz/home/politics/2023/01/incoming-prime-minister-chris-hipkins-hints-at-tax-changes-says-some-new-zealanders-aren-t-paying-their-way.html>>.

⁵ See generally, Francis G Castles, *The Working Class and Welfare: Reflections on the Political Development of the Welfare State in Australia and New Zealand 1890-1990* (Allen & Unwin, 1985).

blurred as both major parties have focussed on urban voters – thereby potentially leaving the provincial margins to fringe but not insignificant parties.

In a speech which joined concerns about unfairness in the tax system and fundamental tax principles, then Revenue Minister David Parker proposed a Tax Principles Act.⁶ The Bill, as eventually introduced,⁷ was an odd legislative text that, on the one hand, reiterated consensus positions, which do not require statutory statement, but, on the other hand, included obscure economic ideas that are unlikely to be intelligible to the average citizen.⁸ As an admirer of Thomas Piketty,⁹ it is understandable that Parker should have sought to record progressivity as a quasi-constitutional principle. Some national constitutions do indeed enshrine the principle of tax progressivity,¹⁰ but an attempt to lock-in the principles that Parker and Piketty support may have been optimistic or opportunistic. (it may be safely assumed that the Bill will not survive a National-led government.) In 2019, for example, ACT promoted a 17.5% flat tax.¹¹ This proposal would have led to anyone earning less than \$55,000 a year paying more tax, and, of course, the wealthy paying less. Nevertheless, high income earners would still pay more tax absolutely but proportionately the same as low-income earners. How that approach could be accommodated within a scheme of Piketty-influenced tax principles is difficult to imagine.

This article is written in the context of both overwhelming evidence of tax unfairness in Aotearoa New Zealand, and a paradoxical lack of mainstream political impetus to provide a remedy. The article considers local precedent because that implies plausibility, without being subservient to path dependency. Conversely, we do not consider taxes that are likely to lie beyond the current New Zealand political imaginary.¹² We argue that ability to pay among

⁶ See Bernard Hickey, ‘David Parker’s long, long game towards a fairer tax system’ *The Spinoff* (Web Page, 28 April 2022) <<https://thespinoff.co.nz/money/28-04-2022/david-parkers-long-long-game-towards-a-fairer-tax-system>>.

⁷ Taxation Principles Reporting Bill 253-1.

⁸ For a discussion, see Jonathan Barrett, ‘Making NZ’s tax system fairer is a good idea – but this proposed new law isn’t the answer’ *The Conversation* (Web Page, 1 June 2023) <<https://theconversation.com/profiles/jonathan-barrett-129387/articles>>. The New Zealand Law Society pertinently criticised the Bill, as introduced, on grounds including ‘the nature of the “tax principles,” which ... appear to reflect political positions on the operation of the tax system’. See New Zealand Law Society, *Taxation Principles Reporting Bill* (Report, 8 June 2023) [1.3.(c)].

⁹ See eg, Matthew Hooten, ‘Why Jacinda Ardern is the rightful heir to the “Smiling Assassin”’ *New Zealand Herald* (online, 6 November 2020) <<https://www.nzherald.co.nz/business/matthew-hooten-why-jacinda-ardern-is-the-rightful-heir-to-the-smiling-assassin/HWMGTT3X4M7UM26ILIF4G4UPFM>>.

¹⁰ See eg, *Constitution of the Italian Republic* (1947) art 53.

¹¹ See Coughlan (n 3).

Flat taxes typically include an exempt amount of income, eg, \$20,000. Such an exemption allows for progressivity. And so, a 17.5% flat tax with a \$20,000 exemption has the following effects:

Income (\$)	Effective rate of tax
20,000	0%
30,000	5.83%
50,000	10.5%
100,000	14%
150,000	15%
200,000	15.75%
500,000	16.8%

And so, while rates tend to flatten above \$100,000, below that, they are moderately progressive. The smaller the exemption, the less progressive is graduation of effective rates.

¹² Taxes which appear to fall outside the New Zealand political imaginary include poll taxes, Tobin taxes or a world-wide wealth tax. In the post-war era, like other Western countries, New Zealand charged high marginal

current taxpayers,¹³ from year to year, is the preeminent and most relevant principle of tax fairness.¹⁴ Other claims for fairness may be based on unprincipled sentiment or ideology. Fairness is not the only consideration for tax policy,¹⁵ but it is the sole consideration of this article.

The article is structured as follows:

Part II identifies potentially taxable events and, using the OECD classification of taxes, demonstrates the different types of taxes that are applied in New Zealand, and those which are absent.

Part III identifies areas of tax unfairness in New Zealand.

Part IV analyses the reports on the tax contribution of the wealthy and why their ability to pay is not apparently reflected in the tax system.

Part V draws conclusions.

II TAXABLE EVENTS AND FAIRNESS ISSUES

This part of the article identifies key taxable events and the principal fairness issues that follow from taxing those events. To reiterate, it is submitted that ability to pay (horizontal and vertical equity) is the most pertinent tax fairness consideration.

rates of income tax, levied extensive transfer duties, and operated estate and gift duties. These too appear to have become politically unimaginable.

¹³ Inter-generational equity is a critical fiscal concern but mostly relates to how government funds projects e.g. between long-term debt or current taxation. But it is difficult to bring future taxpayers into the present equity calculus because we do not know whether they will be similarly or differently situated from current taxpayers.

¹⁴ Natrah Saad concludes ‘approximately ten dimensions of fairness’ have been proposed but several of these are variations on ability to pay. See Natrah Saad, ‘Fairness Perceptions and Compliance Behaviour: the Case of Salaried Taxpayers in Malaysia after Implementation of the Self-Assessment System’ (2010) 8(1) *eJournal of Tax Research* 32, 35. The benefit principle is sometimes presented as an alternative to ability to pay but can only have limited application in real world situations. For a discussion of the benefit principle in taxation, see eg, Robert Scherf and Matthew Weinzieln, ‘Understanding Different Approaches to Benefit-Based Taxation’ (2020) 41(2) *Fiscal Studies* 385.

¹⁵ Adam Smith’s four maxims with regard to taxes in general (contribution proportionate to ability; certainty; convenience; efficiency) are canonical. See Adam Smith, *An Inquiry Into the Wealth of Nations* (Encyclopaedia Britannica, 1952) 361-62. Smith’s maxims are invariably used and developed by modern tax reviews. The Tax Working Group, eg, used the principles of ‘efficiency and growth, equity and fairness, revenue integrity, fiscal cost, compliance and administration cost, and coherence’. See ‘Tax Working Group Information Release, Release Document’, Tax Working Group (Report, September 2018) [2.2] <taxworkinggroup.govt.nz/key-documents>.

A Taxable Events

This section sketches key taxable events.

1 Consumption

Consumption is a traditional taxable event. Historically, indeed until the late 1920s, customs duties were the most important source of government revenue,¹⁶ and remain so in less economically developed countries.¹⁷ For customs duties, the key fairness consideration lay with taxing luxuries consumed by the wealthy but excluding staples consumed by the less wealthy.¹⁸

Since the 1960s, value-added taxes (VAT – GST in Australasia) have generally superseded customs and excise duties, and general sales taxes as the main form of consumption tax.¹⁹ VAT systems tend to employ a complex method of distinguishing between merit and demerit or, in many cases, more accurately, non-merit goods. Merit goods might include fresh fruit and vegetables and non-merit goods processed foods. New Zealand's 'pure' GST system aims to tax all goods and services to the extent practicable, without consideration of merit.

2 Receipt of Income

Receipt of income is the key taxable event under modern tax systems. Horizontal equity requires all forms of income, including less obvious items, such as fringe benefits,²⁰ to be included in the tax net. Vertical equity, as developed through marginal utility theory,²¹ requires slices of income to be taxed at higher rates of tax.

3 Receipt of Capital Gains

The receipt of capital gains can be seen as a form of income receipt.²² The distinction drawn between income and capital in UK-heritage tax law, captured in the famous metaphor of trees and apples,²³ is not a necessary differentiation. Martin Daunton concludes his discussion of why capital gains were excluded from the net of 'annual profits' under the UK's 1841 Act for a permanent income tax:

We are not dealing with systematic legal thinking so much as a confused mixture of political and cultural assumptions about the virtue of charity, the standing of corporations, the need for savings or the undesirability of socially created income. Judges and lawyers had to grapple with the wording of the acts; businessmen and accountants

¹⁶ See eg, J F Rees, *A Short Fiscal and Financial History of England, 1815-1918* (Methuen, 1921) 235.

¹⁷ See 'Customs and other import duties (% of tax revenue)' *World Bank* (Web Page, 2022) <<https://data.worldbank.org/indicator/GC.TAX.IMPT.ZS>>.

¹⁸ See eg, John Jeffrey-Cook, 'William Pitt and his Taxes' (2010) 4 *British Tax Journal* 376, 381.

¹⁹ See Kathryn James, 'Exploring the Origins and Global Rise of VAT' in Cathy Phillips (ed), *The VAT Reader* (Tax Analysts, 2011) 15.

²⁰ Fringe benefits, for example, have only been taxed since the mid-1980s in New Zealand. Cf UK which taxes fringe benefits in the hands of employees.

²¹ See eg, Sarah B Lawsky, 'On the Edge: Declining Marginal Utility and Tax Policy' (2011) 95 *Minnesota Law Review* 904.

²² See eg, John Prebble, 'Why Is Tax Law Incomprehensible?' (1994) 4 *British Tax Review* 380; Kevin Holmes, *The Concept of Income: A multi-disciplinary analysis* (IBFD, 2001).

²³ See *Eisner v Macomber* 252 US 189 (1919).

had their own, different, understandings. Legal reasoning helped to shape the outcome, but must be placed within a much wider context of the political culture of Britain and the electoral calculations of politicians.²⁴

A circular argument commonly encountered is that income tax is a tax on income,²⁵ but why are profits derived from capital gains not included in income? In addition to the political reasons he identifies, Dauntton points to the analogical influence of trust law in terms of which trustees are usually required to maintain the *res* (trust capital) when disbursing income to current beneficiaries.²⁶ That analogy may have been useful when devising means for taxing the great estates of the nineteenth century landed gentry, which were invariably held in trusts, but it holds little traction in other areas of the economy or in different times and places. There is, then, no deep-seated legal or economic principle that capital gains should not be taxed as profits. Indeed, in the US, '[t]he standard view of capital gains is that they have always been taxable under the sixteenth amendment and the statutes enacted under it'.²⁷ Between 1913 and 1921 capital gains received by US taxpayers were taxed at the same rate as other forms of income, and, at the end of World War I, were subject to the highest marginal rate of 73%.²⁸

4 *Fictional Receipts*

Statutory deeming of a receipt is a hypothetical 'event' that may lead to taxation.

Local property taxes, for example, may use the imputed rental value of an owner-occupied property to determine the rating base.²⁹ This arrangement amounts to taxing a fictional receipt.

If we include provisions that look to substance over form,³⁰ then we can identify numerous fictional receipts which are subject to income tax. Andrew Smith identifies various examples of fictitious income,³¹ with arguably the most significant being the foreign investment fund assumed return,³² and the treatment of financial instruments.³³

²⁴ See Martin Dauntton, 'What is income?' in John Tiley (ed), *Studies in the History of Tax Law, Volume 1* (Bloomsbury Publishing, 2004) 3, 14.

²⁵ Ibid 4.

²⁶ Ibid 8.

²⁷ See Marjorie E Kornhauser, 'The Origins of Capital Gains Taxation: What's Law Got to Do with It' (1985) 39 *Southwestern Law Journal* 869, 870 (footnote omitted). The sixteenth amendment (passed by Congress on 2 July 1909 and ratified 3 February 1913) provides: 'The Congress shall have the power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.' See '16th Amendment to the U.S. Constitution: Federal Income Tax (1913)' *National Archives* (Web Page, 13 September 2022) <<https://www.archives.gov/milestone-documents/16th-amendment#:~:text=The%20Congress%20shall%20have%20the,to%20any%20census%20or%20enumeration.%22>>.

²⁸ See *Revenue Act of 1918*, Pub L No 254.

²⁹ See eg, *Local Government (Rating) Act 2002* (NZ) s 13(3)(a)(i) on the use of the annual value of land as a tax base.

³⁰ The common law principle of *plus valet quod agitur quam quod simulate concipitur* holds that the substance of a transaction is more important than its form. But, for the courts to look beyond the legal form of an arrangement, there must be an element of concealment or evasion present. Accounting and economics employ broader conceptions of substance over form than the common law, and this broader understanding has informed laws such as the *Personal Property Securities Act 1999* (NZ) and parts of the *Income Tax Act 2007* (NZ) where concealment is not necessarily present.

³¹ See Andrew M C Smith, 'Fictitious Income: Should New Zealand Be Taxing Something That Does Not Actually Exist?' (2023) 18 *Journal of the Australasian Tax Teachers Association* (forthcoming).

³² See *Income Tax Act 2007* (NZ) s EX 44.

³³ See *Income Tax Act* sub-pt EW.

5 Property

Continuing ownership of real property also presents the possibility of fictive taxable events.

Taxes on immovable property have included levies on hearths,³⁴ windows and doors,³⁵ local authority rating,³⁶ and national land taxes.³⁷ In New Zealand's early colonial period, personal property was also briefly taxable.³⁸

Few countries levy taxes on net wealth;³⁹ nevertheless, the idea of taxing wealth beyond real property is persistent.⁴⁰ Again, a basic ability to pay argument is relevant here. If one has accumulated wealth, one can contribute to funding the political community that enabled and guarantees that accumulation. In this regard, it is important to note that taxation is conservative. It does not challenge property holdings. Rather taxation *confirms* one's post-tax property holdings.

Taxes on transfers of property have included stamp duty,⁴¹ and estate and gift duties,⁴² and succession taxes.⁴³

B Taxes: Possibilities and Omissions

The OECD classification of taxes set out in Table 1 below usefully indicates gaps in New Zealand's suite of taxes.⁴⁴ It is plausible, for example, to conceive a CGT as being more akin to a wealth tax than an income tax. Conversely, following the Schanz-Haig-Simons conception of comprehensive income,⁴⁵ capital gains – whether or not realised – and the receipt of gifts and inheritances should be taxable as income. (Ireland's capital acquisition tax can be seen as an element of a comprehensive income tax.⁴⁶)

³⁴ See eg, Smith (n 15) 371.

³⁵ Ibid.

³⁶ Ibid 318.

³⁷ Ibid 366.

³⁸ See *Property Rate Act 1844* (NZ).

³⁹ See *The Role and Design of Net Wealth Taxes in the OECD* (OECD, 2018).

⁴⁰ Thomas Piketty has proposed a European wealth tax. See Thomas Piketty, *Capital in the Twenty-First Century*, tr Arthur Goldhammer (Belknap Press, 2014) 527.

⁴¹ See eg, *Stamp Act 1875* (NZ).

⁴² See eg, *Estate and Stamp Duties Act 1955* (NZ). On the demise of capital transfer taxes in New Zealand, see Michael Littlewood, 'The History of Death Duties and Gift Duty in New Zealand' (2012) 18(1) *New Zealand Journal of Taxation Law and Policy* 66.

⁴³ See Smith (n 15) 378.

⁴⁴ See OECD, *Revenue Statistics 2022: The Impact of COVID-19 on OECD Tax Revenues* (Report, 2023) <<https://www.oecd-ilibrary.org/sites/30841643-en/index.html?itemId=/content/component/30841643-en>>.

⁴⁵ Under this system, Income = Consumption + Change in Net Worth. See Carl S Shoup, 'The Schanz Concept of Income and the United States Federal Income Tax' (1984) 42(3) *FinanzArchiv/Public Finance Analysis* 433.

⁴⁶ Broadly, the Capital Acquisition Tax taxes receipts of donees and beneficiaries, rather than payments made by donors or deceased estates. See *Capital Acquisitions Tax Consolidation Act 2003* (Ireland).

Table 1: Comparison of OECD taxes and New Zealand taxes

OECD classification	New Zealand equivalent tax	Comment
1000. Taxes on income and profits, and capital gains	Income tax	No comprehensive tax on capital gains
2000. Social security taxes	None	Welfare benefits, including New Zealand superannuation, are funded from general tax revenues. An Accident Compensation Corporation (ACC) earner's levy (1.39% of earned income) is payable but is more in the nature of a social insurance premium than a social security tax.
3000. Taxes on payroll and workforce	None	
4100. Recurrent taxes on immovable property	Property rates raised by local authorities	No national land tax No stamp duty on the transfer of immovable property
4200 Recurrent taxes on net wealth	None	
4300. Estate, inheritance and gift taxes	None	
4400. Taxes on financial and capital transactions	None	
5100. Taxes on production, sale, transfer, leasing and delivery of goods and rendering of services	Goods and services tax	'Pure' tax with no zero rating for merit goods
5120. Taxes on specific goods and services	Customs and excises duties, and some minor levies e.g. on gambling	

The OECD taxonomy does not currently include carbon or other environmental taxes. New Zealand seeks to reduce carbon emissions through an emission trading scheme, rather than a tax on carbon.⁴⁷

⁴⁷ See 'New Zealand Emissions Trading Scheme' *Ministry for the Environment* (Web Page) <<https://environment.govt.nz/what-government-is-doing/areas-of-work/climate-change/ets>>.

III CONCEPTS OF TAX FAIRNESS

Ability to pay is the fundamental principle of tax fairness. Derived from the Aristotelian concept of distributive justice,⁴⁸ this principle holds that taxpayers who are similarly situated should be taxed similarly, and, by implication, those who are differently situated should be taxed differently.⁴⁹ Historically, taxes, including customs duties, window taxes, local rating, income tax and estate duty were crudely based on ability to pay because lawmakers sought to exclude the less wealthy from the tax base or to subject them to a lighter tax burden. The emergence of marginal utility theory in the nineteenth century enabled a more scientific approach to be applied to ability to pay and led to graduated rates for income tax and estate duty.⁵⁰ Horizontal equity requires all types of income to be taxed, and vertical equity requires greater amounts of income to be taxed at progressively higher rates.

Two issues are prominent in current New Zealand political discourse on tax fairness. These are fiscal drag and the schedule of income tax rates, and the role of GST in an inflationary era. Because ability to pay is the preeminent tax fairness criterion, it is submitted, firstly, the schedule of rates is not a tax fairness issue and, secondly, GST, in itself, is inherently unfair and tinkering with merit and demerit goods cannot make it fair.

A Tax Rates

Tax rates are a political value judgement. Australia has a top marginal income tax rate of 45%, whereas New Zealand highest rate is 39%. But we cannot claim that either Australia or New Zealand has an unfair highest rate based on this difference. The two jurisdictions have simply made different political value judgements.

There appears to be something intuitively ‘wrong’ about fiscal drag, but it is difficult to demonstrate that it is unfair in principle, since it maintains similar treatment of those similarly situated and different treatment of those differently situated; it also maintains progressivity. It may seem underhand on the part of government to benefit from bracket creep, but that is not a matter of tax unfairness. The structure of tax brackets is a value judgement, not a principle of justice, such as non-discrimination.

Why are National and right-wing pressure groups exercised about bracket creep? Certainly, the intuitive wrongness of successive governments – both Labour and National-led – not changing tax bands since 2010 (other than Labour’s resurrecting the 39% highest marginal rate) plays a role but a Taxpayers’ Union (sic) spokesperson argues: ‘National has suggested resetting thresholds to 2017 levels, but the prime minister has said this would be “inflationary”. This would be true, but only if it were not matched by a commensurate reduction in spending.’⁵¹ In short, combatting bracket creep has the reasonable goals of restoring tax bands as they previously were but also has the effect of reducing government revenue and its ability to spend.

⁴⁸ See generally, Samuel Fleischacker, *A Short History of Distributive Justice* (Harvard University Press, 2005).

⁴⁹ See eg, Richard W Tresch, *Public Finance: A Normative Theory* (Elsevier Science, 2014) 173.

⁵⁰ See generally, William John Shultz, *The Taxation of Inheritance* (Houghton Mifflin, 1926).

⁵¹ See Cullum Purves, ‘First, kick the spending habit’ *The Post* (Wellington, 17 May 2023) 25.

B Receipts of Capital Gains

Following the logic of Canada's Carter Commission ('a buck is a buck'),⁵² a dollar earned from labour and a dollar gained from the sale of capital should be equally taxable. (It should be noted that an employee has virtually no opportunity to deduct the costs incurred in the production of employment income in New Zealand.⁵³) There can be no objection from a fairness perspective to including capital gains in the tax net, in some or other way. Certainly, arguments can be raised against a CGT based on, say, disincentivising enterprise, economic distortion, complexity, and administrative difficulties, but this article is only concerned with fairness. Besides, those arguments may equally and perhaps more plausibly apply to income tax.

From a perspective of fairness, the absence of a comprehensive CGT is an egregious and indefensible gap in the New Zealand tax system. Part IV considers this lacuna and the wider taxation of wealth.

C Consumption

It is implausible to seek to accommodate modern consumption taxes within a scheme of ability to pay. If a person buys a particular good, in a practical sense, they demonstrate an ability to pay the GST that is included in the price. Likewise, if they buy a pack of cigarettes, they show that they have the practical ability to pay the swingeing excise duties such consumption attracts. But intuitively, practicable consumption taxes are unfair.⁵⁴

In the imposition of customs duties, British governments sought to ensure the poor were not overburdened, and so, staple goods were commonly exempt or taxed at lower rates than luxuries, whose consumption was thought by policymakers to be voluntary.⁵⁵ While distinguishing between staple and luxury goods may be problematic,⁵⁶ the principle of preferentially taxing (or exempting) merit goods is typically incorporated into modern value added tax (VAT) systems.⁵⁷

1 GST

New Zealand's flat, no merit good exemption GST might appear fair as everyone who buys the same good or service pays the same amount of tax. But such 'fairness' is a travesty of ability to pay. People do not consume the same goods and services, or the same amounts of

⁵² See Les Macdonald, 'Royal Commission on Taxation' *The Canadian Encyclopaedia* (Web Page, 2006-13) <<https://www.thecanadianencyclopedia.ca/en/article/royal-commission-on-taxation>>.

⁵³ See *Income Tax Act* s DA 2(4).

⁵⁴ John Stuart Mill and Nicholas Kaldor argued for the equity of a lifetime consumption tax. See John Stuart Mill, *Principles of Political Economy* (D Appleton & Co, 1885) 628; Nicholas Kaldor, *An Expenditure Tax* (George Allen & Unwin, 1955) 5. We may perhaps have the technology to assess a person's life expenditure but the invasion of privacy this exercise would require is dystopian.

⁵⁵ See Jeffrey-Cook (n 18) 381.

⁵⁶ See Stephen Hickson, 'Removing GST on food is back in the news, proving some bad ideas just never go away' *The Conversation* (Web Page, 12 May 2022) <<https://theconversation.com/removing-gst-on-food-is-back-in-the-news-proving-some-bad-ideas-just-never-go-away-182592>>.

⁵⁷ See generally, *Consumption Tax Trends 2022* (OECD, 2022).

goods or services.⁵⁸ According to Engel's law, '[t]he poorer a family, the greater the part of total expenditures must be spent on food'.⁵⁹

GST cannot incorporate ability to pay. Higher income earners generally pay more GST overall but that is only because they can afford to consume more and to buy more expensive goods and services. However, they pay less GST as a proportion of their incomes and consume more goods and service outside the New Zealand GST net. The current economic environment is also relevant. When the rate of inflation, as at July 2023,⁶⁰ was 6% consumers are increasingly paying more in GST.

Given our contemporary product cornucopia, it is difficult to distinguish between staples and luxuries. In the eighteenth century, distinguishing, for customs duties purposes, between, say, tallow and whale oil candles, clearly indicated distinctions between abilities to pay. No one would burn disgusting tallow candles if they could afford otherwise.

A commonly encountered argument is that fruit and vegetables should be GST-zero rated.⁶¹ Considerable popular appeal lies in zero rating these goods, but any such concession is likely to disproportionately benefit the wealthy – an out of season avocado or strawberry, for example, will only be consumed by those better off. The Henry Report concluded that 'absolute actual expenditure on GST-free food is almost six times greater for the highest than the lowest income groups'.⁶² After New Zealand introduced its 'pure' GST, both South Africa, which closely followed New Zealand's legislation, and Australia sought to identify goods that less wealthy people consume and wealthier people do not consume. Maize meal was the only product that could be identified in South Africa.⁶³

A fair GST, as a discrete tax, unlike income tax, is impossible, to construct. GST can only plausibly operate, from a tax fairness perspective, within an overall tax-transfer system that is equitable. GST is not about fairness other than capturing within the tax net some consumption of those who are able to avoid income tax. And so, if a person earns an income in the informal economy, they must spend some money in the formal economy, and therefore pay a modicum of tax. It is, however, questionable the extent to which GST should be

⁵⁸ Nicola Willis, National's finance spokesperson, has proposed that every taxpayer should be provided with a receipt of the tax they have paid, and transfers received, along with, presumably, a pie chart or similar graphic showing how their tax dollars have been spent. See eg, Jenna Lynch, 'Election 2023: How ChatGPT reacted to Nicola Willis' idea that AI could write Kiwis' tax receipts' *Newshub* (Web Page, 15 May 2023) <<https://www.newshub.co.nz/home/politics/2023/05/election-2023-how-chatgpt-reacted-to-nicola-willis-idea-that-ai-could-write-kiwis-tax-receipts.html>>.

There can be no plausible objections to tax transparency in principle, but a true record of tax paid would also show how much GST a person has paid – ideally as a proportion of their post-income tax income.

⁵⁹ See Ernst Engel (1857) cited by D Perthel, 'Engel's Law Revisited' (1975) 43(2) *International Statistical Review/Revue Internationale de Statistique* 211, 211.

⁶⁰ See 'Annual inflation at 6.0 percent' *Statistics NZ* (Web Page, 19 July 2023) <<https://www.stats.govt.nz>>.

⁶¹ Despite previously rejecting zero rating for merit goods, Labour proposed zero rating fresh fruit and vegetables. Its manifesto stated: 'Fresh and frozen fruit and vegetables will have GST removed, but this won't apply to canned and dried items, or to juices. There are boundaries everywhere in the tax system and we're confident tax officials can make it work.' See 'Removing GST off fruit and vege' *Labour* (30 August 2023) <<https://www.labour.org.nz>>. Te Pāti Māori (previously the Māori Party) proposed that all food (*kai*) should be tax-free, thereby avoiding the usual problems arising from zero-rating merit foods, notably fresh fruit, and vegetables. See 'Remove GST from all kai' *Te Pāti Māori* (Web Page) <https://www.maoriparty.org.nz/gst_free_kai>.

⁶² See Commonwealth of Australia, *Australia's Future Tax System: Report to the Treasurer* (2010) ('Henry Report'), vol 1, [D 2–1].

⁶³ See Harold Alderman and Carlo del Ninno, 'Poverty Issues for Zero Rating Value-Added Tax (VAT) in South Africa' (Informal Discussion Paper Series, South Africa: Poverty and Inequality 19336, World Bank, Country Department I, Africa Region, February 1999).

designed to balance fairness between income tax defaulters and income taxpayers, rather than people who pay both their due income tax and GST. Pursuing this point, when we consider horizontal equity, we typically consider the position of people who pay tax, but what of those who receive income but for whatever reasons do not pay?

Thinking more tactically about tax and fairness, we could invest more resources into collecting tax that is already due. Inland Revenue wrote off \$688 million of tax debt in the year to 30 June 2022 and \$812 million in the previous year.⁶⁴ This write off is not the result of tax evasion or fraud but happens when people, such as the self-employed, have earned income but do not pay tax due. Non-payment of tax is not an option for a wage or salary earner: is it fair that this is an ‘option’ available to others? Greater investment in debt collection would promote horizontal equity in the tax system. Ideally, technology, for example, for businesses using Xero and similar accounting programs, would replicate PAYE to remove the moral hazard of holding, using, and spending money which is due to the government.

2 *Excise on Tobacco*

The historic taxation of tobacco was based on the presumption that its consumption was optional. We now know that smokers are invariably addicted to nicotine.⁶⁵ The punitive excise does not pass the ability to pay test since, for the small proportion of wealthy people who smoke, the duty is disproportionately low relative to their incomes. The issue of the unfairness of swingeing excise duties borne by the lowest income groups requires a degree of analysis which cannot be provided in this article.

D *Property*

Data from Statistics NZ shows that household wealth inequality in New Zealand is significantly greater than income inequality. The richest 20% of households own around 184 times the median household wealth of the lowest 20%: \$2,024,000 relative to \$11,000.⁶⁶ The median net worth is \$397,000.⁶⁷

As the top 10% of New Zealand households hold around 53% of New Zealand’s total household net worth while the bottom 60% share around 12%, clearly, from an ability to pay perspective, there is a strong argument that taxing some of this wealth would be fair.⁶⁸

Income inequality is less pronounced than wealth inequality. Data from Statistics NZ shows that, as at June 2021, the highest 20% annual household median income was around four times that of the lowest 20%.⁶⁹ This also supports an argument for focusing on wealth taxes.

⁶⁴ See ‘Inland Revenue Annual Report Te Tari Taake Pūrongo ā-Tau 2021–22’, *Inland Revenue Department* (Report, 2022) <<https://www.ird.govt.nz>>.

⁶⁵ See Neal L Benowitz, ‘Nicotine Addiction’ (2010) 362(24) *New England Journal of Medicine* 2295.

⁶⁶ See ‘Distribution of wealth across New Zealand households remains unchanged between 2015 and 2021’ *Statistics NZ* (Web Page, 3 March 2022) <<https://www.stats.govt.nz>>.

⁶⁷ *Ibid.*

⁶⁸ See Carlotta Balestra and Richard Tonkin, *Inequities in household wealth across OECD countries: evidence from the OECD wealth distribution database* (OECD, 2018).

⁶⁹ See ‘Household income and housing-cost statistics’ *Statistics NZ* (Web Page, 24 February 2022) <<https://www.stats.govt.nz>>. Note that NZ’s income inequality is around the average of OECD countries. The OECD report a S80/S20 quintile share measure that shows the ratio of the average income of the 20%

A further argument for a wealth tax comes from the suggestion that the wealthy pay a small proportion of their total income in tax.⁷⁰ This is because we comprehensively tax income in NZ but we do not comprehensively tax wealth. Is it fair that 42% of millionaires pay tax rates below those of the lowest income earners? This question will be further analysed in part IV.

IV ABILITY TO PAY AND THE WEALTHY

Three substantial reports were published on tax and wealth in Aotearoa in April 2023. These reports were generated by: Sapere Research Group, commissioned by OliverShaw, a boutique tax consultancy; the New Zealand Treasury; and the Inland Revenue Department (IRD). Only the IRD report was well signalled ahead of its release. Equity was considered in each of the reports, which are discussed over the following sub-sections.

A The Sapere Report

The Sapere website introduces its report⁷¹ with the statement ‘[l]eading tax consultancy OliverShaw commissioned Sapere to prepare a report on the effective rates of tax imposed on the incomes of New Zealand residents’.⁷² The Sapere report finds that the wealthy pay most of the personal income tax collected in New Zealand, with wealthier people paying more tax. The report also observes that average effective tax rates are lower than statutory tax rates at all income levels, due to policy decisions not to tax all types of economic income. These are not surprising or contentious claims. However, unlike the other two reports discussed below, the Sapere report finds that average effective tax rates increase as real economic incomes of households increase.

Where the Sapere report is different is it notes the high variability of effective tax rates for those at the same income level, and specifically at the lowest and highest income groups. The report attributes this phenomenon to these groups having the most variability in their circumstances.⁷³ Overall, the method adopted does not allow the same degree of visibility into effective average tax rates paid across different levels of wealth. While it is trite that high income earners pay the most tax, the pertinent fairness issue is the proportion of tax paid by the wealthiest members of society.

All reports agree that the highest income earners typically have the greatest ability to change their behaviour in response to high effective marginal tax rates. This flexibility arises

highest incomes to the 20% lowest incomes. This ranges from 3.2 for the Slovak Republic to 13.3 for Costa Rica. However, most countries are in the 4-6 range. ‘Income inequality (indicator)’ (OECD, 2023).

⁷⁰ See Thomas Coughlan, ‘More than 40% of millionaires paying tax rates lower than the lowest earners, Government data reveals’ *Stuff* (Web Page, 25 February 2021)

<<https://www.stuff.co.nz/national/politics/300238241/more-than-40-of-millionaires-paying-tax-rates-lower-than-the-lowest-earners-government-data-reveals>>.

⁷¹ See Kieran Murray, John Wallace and Mehrnaz Rohani, ‘Effective tax rates imposed on the incomes of New Zealand residents’ *Sapere* (Report, April 2023) <<https://srgexpert.com/resource/effective-tax-rates-imposed-on-the-incomes-of-new-zealand-residents>> (Sapere report).

⁷² See ‘Effective tax rates imposed on the incomes of New Zealand residents’ *Sapere* (Web Page, 2023) <<https://srgexpert.com/resource/effective-tax-rates-imposed-on-the-incomes-of-new-zealand-residents>>.

⁷³ See Sapere report (n 71).

because their income is typically not derived from wages or salaries, and instead it is in the form of savings or investment, such as land, where gains usually do not attract tax.⁷⁴

Like the IRD report, the Sapere report uses households as the unit of analysis. Data is sourced from the Household Economic Survey (HES) and other Statistics NZ data which does not provide a good representation of the financial position of the wealthiest in New Zealand.⁷⁵ Direct comparability with the Sapere results and the other two reports discussed below is limited. This is because the Sapere analysis focuses on three groups of people: low income (earnings less than \$48,000); middle income (earnings between \$48,000 and \$500,000); and high income (above \$500,000). Some illustrative examples are provided, but these afford limited comparability.

B IRD's High Wealth Individuals Report

In signalling the IRD research – commonly referred to as the High Wealth Individual report (HWI report) – at a speech in April 2022, then Minister of Revenue, David Parker, noted that little is known about the wealth held by those who have the most in New Zealand. The highest net wealth captured in the HES (the primary data in New Zealand on asset holdings) was \$20 million, which Minister Parker observed would mean that the maximum is out by a factor of hundreds.⁷⁶ Therefore, a methodology was adopted that allowed collection of income, asset, and taxation data from the 350 most wealthy individuals in New Zealand. Responses were, however, only received from 311 of these individuals. The HWI report used data over a six-year period (1 April 2015 to 31 March 2021).⁷⁷

The 311 families which participated in the research had \$276 million mean estimated net worth, and \$106 million median.⁷⁸ For illustrative purposes, the HWI report provides the Statistics NZ estimate that the starting point for the wealthiest 1% of households (the wealthiest 19,000) is \$7.6 million.⁷⁹ The median family economic income of the group in 2018 was approximately \$8 million, with tax paid of around \$642,000.⁸⁰

The HWI report uses the concept of economic income, that is, all the ways that people gain money, rather than assessable income. The main finding of the report is that the median effective tax rate of the households from the study including all income sources was 8.9% and the weighted-mean was 9.8%.⁸¹ When GST paid was included the median increased to 9.4%.⁸²

The HWI report, like the Sapere report, shows progressivity in taxable income, with the wealthiest people paying a higher rate of tax on their personal income than most people. This includes income from wages and salaries, interest, and dividends. The effective tax rates for the project population based on personal taxable income and personal tax was around 30% on

⁷⁴ Sapere report (n 71).

⁷⁵ Ibid.

⁷⁶ Hon David Parker, 'Shining a light on unfairness in our tax system' (Presentation at Victoria University of Wellington, 26 April 2022) <<https://www.beehive.govt.nz/speech/shining-light-unfairness-our-tax-system>>. Although, we note that the HWI report has the highest wealth as less than \$40 million.

⁷⁷ Inland Revenue, *High-Wealth Individuals Research Project* (Policy and Regulatory Stewardship, Inland Revenue, 2023) 4.

⁷⁸ Ibid 1.

⁷⁹ Ibid 4.

⁸⁰ Ibid 4.

⁸¹ Ibid 2.

⁸² Ibid.

a median taxable income of \$268,000, similar to the marginal tax rate of 33% at the time.⁸³ However, personal taxable income is only a small proportion of the economic income of those wealthiest people at approximately 7%, with around 80% of economic income coming from capital gains.⁸⁴ Over the six-year period of the study, the households in the research received most of their economic income in capital gains, specifically from increases in the value of businesses, property, and financial portfolios.⁸⁵ Also notable is that 67% of the economic income made by the wealthiest families in New Zealand is earned in trusts, either as capital gains on assets held by the trust or as trustee income.⁸⁶

The measure of economic income used includes non-taxed forms of income, including accrued and realised capital gains on shares and real property. The methodology measured the increase in economic resources over the period, including these capital gains, while acknowledging that these gains may not be taxable in practice under current tax rules. Nonetheless, capital gains comprise economic gains to those holding the assets, and ownership of assets is concentrated in the upper net worth deciles. For example, the top 1% of households as measured by wealth hold over 25% of the financial assets in New Zealand.⁸⁷ The HWI report shows that ‘capital gains are a significant source of untaxed income for high-wealth families’.⁸⁸

Other sources of income for the 311 households are those derived from business entities that they control and inheritances: 66 households declared receiving a significant gift or inheritance over the six-year period.⁸⁹ This totalled \$411 million, with a mean value for those receiving gifts or inheritances of \$6.2 million.⁹⁰ These are not included in the effective marginal tax rate calculations.

There are several caveats on the HWI report, including that there is considerable variation in effective tax rates in the population included in the research. Furthermore, the annual economic income of the research population varied over the six-year period from \$1 billion in 2017 to \$14.6 billion in 2021.⁹¹ The report also notes the volatility of capital gains and effective tax rates can be negative where there are capital losses. Some foreign income is not included in the measures used in the report, and other income sources are limited to those that are material, can be reasonably quantified, and where the associated tax can be obtained.⁹² Finally, government expenditure that the households may benefit from is not included in the calculations, such as education. While New Zealand superannuation is included, the estimates show that this has minimal impact on the overall effective tax rates of the population households.

⁸³ Ibid 1.

⁸⁴ Ibid i.

⁸⁵ Ibid chapters 9, 10 and 11.

⁸⁶ Ibid 4.

⁸⁷ Ibid 3.

⁸⁸ Ibid.

⁸⁹ Ibid 9.

⁹⁰ Ibid 9.

⁹¹ Ibid 4.

⁹² Ibid 10.

C Treasury Report

Contemporaneous with the release of the HWI report, the New Zealand Treasury released three documents. One of these is a report on a similar study conducted to estimate the distribution of wealth in New Zealand.⁹³ This report uses a capitalisation method to estimate asset holdings that generate taxable income flows. The data sources are calculated by taking Inland Revenue personal taxable income data and multiplying this by Statistics NZ's Household Balance Sheet aggregates, to estimate wealth. This is supplemented with HES data for net assets that do not generate taxable income flows (for example, owner-occupied housing less any borrowing on that housing). Results are calculated for three years, 2010, 2015 and 2018 and these are compared with the main alternative record of wealth in New Zealand, the HES.⁹⁴

The advantage of the Treasury approach is it facilitates estimates of wealth in smaller groups, including those held by the top 0.1% of the wealth distribution. The Treasury report notes that international literature has shown that the wealthy are likely to be under-sampled, and there are likely to be differential non-response and under-reporting biases among the wealthiest.⁹⁵ Results support the expectation that more wealth is held at the top of the distribution than is shown in the HES.⁹⁶

The Treasury report shows that current wealth estimates using the Household Economic Survey are both underestimated for the top 10% of wealth holders and overestimated for the bottom 90% of the population. Specifically, the authors find that individuals in the top decile held 67.2% of individual net wealth in 2018, compared to the estimate in the HES of 63.1%. Reference to the top one percent produces similar findings. Under the Treasury method, the top 1% held 26.1% of individual net wealth, contrasted with 20.1% in the HES (although noting that this is similar to the upper range of the 95% confidence interval of 26% in the HES).⁹⁷

The Treasury report was also able to calculate the proportion of wealth held by the top 0.1% of the population: this was 8.3%.⁹⁸ As the Treasury data was based on the full taxpayer population, the method adopted allowed for this calculation. The HES does not have the data to provide a comparator.

As noted above, the Treasury released three documents in April 2023. The other two documents related to tax and transfer progressivity in New Zealand. One focused on the methodology⁹⁹ and the other outlined the results.¹⁰⁰ This work measured the net effect of taxes and transfers as a proportion of a taxpayer's income to provide insights into the effective average tax rates in New Zealand. The method adopted in this study is an extension to the Tax and Welfare Analysis microsimulation model used in Treasury. The method in this study does not link individuals to companies or trusts for the purposes of allocating these

⁹³ Benjamin Ching, Tayla Forward and Oscar Parkyn, *Estimating the Distribution of Wealth in New Zealand* (New Zealand Treasury, 2023).

⁹⁴ Ibid 6.

⁹⁵ Ibid.

⁹⁶ Ibid i.

⁹⁷ Ibid iii.

⁹⁸ Ibid.

⁹⁹ See Benjamin Ching, 'Tax and Transfer Progressivity in New Zealand: Part 1 Methodology' *Analytical Note 23/02* (New Zealand Treasury, 2023).

¹⁰⁰ See Benjamin Ching, Chelsey Reid and Luke Symes, 'Tax and Transfer Progressivity in New Zealand: Part 2 Results' *Analytical Note 23/03* (New Zealand Treasury, 2023).

taxes to the individual, which is a significant limitation of this study. The data used in this study is from 2018 and 2019. The analysis focuses on effective average tax rates for adult equivalents in family units.

The work shows that taxpayers with equal taxable income can have ‘very different’ effective average tax rates when transfer payments, and untaxed sources of economic gains, are included.¹⁰¹ The report finds that the tax and transfer system ‘appears progressive when measured narrowly against taxable income’.¹⁰² But, as the definition of income is broadened to include these other forms of income, the trend of effective average tax rates is ‘significantly altered across the income and wealth distributions’.¹⁰³

Specifically, the results show that when effective average tax rates are viewed across the wealth distribution, they ‘appear less progressive, or regressive from the middle of the distribution once capital gains are included’ in the income base.¹⁰⁴ The report notes the limitation in the data, where the regressive pattern may also reflect the greater proportion of tax paid by the wealthy in the form of company taxes, trustee income and trustee taxes, as these are not included in the model, and as noted in the previous sub-section are significant sources of tax paid by the wealthy.¹⁰⁵

The progressivity of the tax system, unsurprisingly, differs depending on the taxes and transfers included in the analysis. For example, including transfers as a negative tax (as adopted in previous studies¹⁰⁶) makes the tax rates appear more progressive. The study shows that the bottom third of the income distribution has negative effective average tax rates under this method. Including accrued capital gains into the definition of income, again unsurprisingly, reduces progressivity.

Several measures are reported in the report, from narrowly defined to comprehensive measures. For the purposes of comparability with the HWI report, the most comprehensive measure is discussed, which includes GST, as well as capital gains and imputed rents. The most comprehensive effective average tax rate by net worth is 8.9% at the top of the distribution in ventile 20 (that is, the top 5%).¹⁰⁷ The median effective average tax rate reaches its highest bound in ventile 9, where it is 20.6%.¹⁰⁸ After this point, it declines to 8.9% in ventile 20. This is using a one-year capital gains rate, although the effective average tax rates are slightly higher when a 10-year capital gains rate is adopted.¹⁰⁹

While the differences in methods are noted, the key messages from the studies are the same: those with higher wealth pay a lower effective average tax rate. The effective average tax rate for the population median in the Treasury report is 16.2%, including GST and transfers as a negative tax. This can be compared to the HWI report of 9.4%. The median, excluding transfers as a negative tax and including GST, is 18.9%, which can be compared to the HWI report calculation of 9.5%. These are shown in Table 2 which also demonstrates the effectiveness of transfers in improving progressivity of the tax system.

¹⁰¹ Ibid 2.

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ Ibid 2.

¹⁰⁵ Ibid.

¹⁰⁶ See John Creedy, James Enright, Norman Gemmell and Nick McNabb, *Equity and efficiency measures of Tax-Transfer systems: some evidence for New Zealand* (New Zealand Treasury, 2008).

¹⁰⁷ A ventile is one twentieth (5%) of a statistical distribution.

¹⁰⁸ See Ching et al (n 100) 42.

¹⁰⁹ Ibid.

Table 2: Comparison of median effective average tax rates (EATR): Treasury (most comprehensive) and HWI – including GST¹¹⁰

	EATR population median	EATR net worth ventile 10 median	HWI population median
Median including transfers as a negative tax	16.2%	20.2%	9.4%
Median excluding transfers as a negative tax	18.9%	21.4%	9.5%

Table 2 shows that a middle-wealth New Zealander has an effective tax rate of 20.2%, including GST, which may be contrasted with the HWI group of 311 wealthiest New Zealanders, where the median was 9.4%.

Unlike the approach in the HWI report, the unit of analysis in the Treasury report is the individual. The authors acknowledge that this tends to indicate greater inequality than family or household units, as wealth is shared between individuals in these broader groups. A further acknowledged limitation in the Treasury report is the assumption of a fixed rate of return within each asset class, along with the acknowledgement that this may over- or under-estimate wealth held at the top of the distribution.¹¹¹

A key difference in the HWI and Treasury reports is the Treasury analysis does not include company tax, trustee tax or trustee income; therefore, it undercounts tax paid and income when compared to the HWI analysis (and understates effective average tax rates). This impacts primarily in the highest net worth ventiles and specifically the top 20% by net worth).¹¹² However, the Treasury report counts obligations that would use imputation credits as personal income tax.¹¹³ A further difference is in the calculation of the mean used in the project, as well as the different time periods used for analysis.

D Concluding Comments

When released, it appeared that the HWI report would support the introduction of some form of wealth tax in New Zealand. The evidence clearly showed that the wealthiest paid a lower effective marginal tax rate on their economic income than ‘middle New Zealand’. The Treasury research supports this finding. However, in July 2023, the current Prime Minister ruled out introducing either a wealth tax or a CGT if re-elected.¹¹⁴ As 2023 is an election year in New Zealand, this appears to be politically, rather than either economically or equitably, driven. It is particularly problematic as the evidence base strongly shows the lack of equity that exists in New Zealand with the highest income earners’ ability to minimise

¹¹⁰ Ibid 46.

¹¹¹ See Ching et al (n 93) iii.

¹¹² See Ching et al (n 100) 44.

¹¹³ Ibid.

¹¹⁴ See eg, ‘Hipkins rules out capital gains tax, wealth tax if Labour re-elected’ *RNZ* (Web Page, 12 July 2023) <<https://www.rnz.co.nz/news/political/493596/hipkins-rules-out-capital-gains-tax-wealth-tax-if-labour-re-elected>>.

payment of tax. The decision will entrench the growing inequality in New Zealand and offer no solution to address it.

The decision is particularly perverse as the then Minister of Revenue has been outspoken in his views on the importance of fairness in the tax system. The Tax Principles Reporting Bill has the objective of requiring government to report on principles, including horizontal and vertical equity. Specifically, the principle of vertical equity is explained as ‘people with higher levels of economic income pay a higher proportion of that income in tax’ and that while not every tax must be progressive, the overall tax system should be.¹¹⁵ The comment is made in the Bill, that ‘wealthy people should at the very least pay no lower a rate of tax on their economic income as middle income New Zealanders already do’. However, the commitment to not introduce a wealth tax means that the situation of the wealthiest paying around half the effective tax on their economic income as middle-income New Zealanders will continue for the foreseeable future, a point acknowledged in the HWI report which observed that the trends are long term.¹¹⁶

The HWI report notes that ‘[f]ailing to tax forms of income that are earned predominantly by those who are better off is likely to have an important impact in reducing the progressivity of the tax system and is also likely to impose other economic costs through influencing the pattern of investment in the economy’.¹¹⁷ Yet, the current government remains sufficiently unconcerned to take action. The Minister of Revenue’s foreword to the HWI report contains the comment that the report ‘will provide a fundamental baseline for debate on the fairness of our tax system, allowing future tax policy to be based on better data and more solid evidence’.¹¹⁸ However, the debate has ended before it has begun and the message has been sent that the evidence will not be used to inform future tax policy.

The key takeaway from the Treasury and HWI reports is that the current tax rules in New Zealand allow the wealthiest New Zealanders to pay a significantly lower effective tax rate than most other New Zealanders. The reports establish a strong evidential base to support the contention that the tax system entrenches and is likely to exacerbate unfairness.

V CONCLUSION

After Prime Minister Hipkins ruled out a CGT and wealth tax, Parker took the opportunity of a Cabinet reshuffle to surrender the Revenue portfolio, reportedly finding it ‘untenable’ to perform the role of Minister without the prospect of government championing measures to achieve a substantially fairer tax system.¹¹⁹ The parties of the right, in particular ACT, are consistent in their support for lower taxes and smaller government, goals that are not plausibly compatible with social justice. Conversely, the socially progressive Greens and Te Pāti Māori propose equitable tax measures but have no hope of seeing them enacted unless Labour shares their conceptions of fairness. The tax unfairness paradox lies with the Labour government, having an unprecedented absolute majority in a mixed-member proportional

¹¹⁵ Inland Revenue, *Regulatory Impact Statement: A reporting framework informed by tax principles* (Inland Revenue, 2023) [36].

¹¹⁶ Inland Revenue (n 77) i.

¹¹⁷ Ibid 3.

¹¹⁸ Ibid ii.

¹¹⁹ Glenn McConnell, ‘David Parker: “Untenable” to remain revenue minister after wealth tax rejection’ *Stuff* (Web Page, 25 July 2023) <<https://www.stuff.co.nz/national/politics/132611615/david-parker-untenable-to-remain-revenue-minister-after-wealth-tax-rejection>>.

representation Parliament, has done little to alleviate tax fairness.¹²⁰ The Tax Working Group amply demonstrated the equity imperative for a CGT,¹²¹ and the IRD and Treasury reports have now demonstrated exactly how unfair the tax system is, and yet the leader of a party whose campaign slogan is ‘In It For You’ has promised not to introduce a CGT or wealth tax if re-elected. Who, it may be asked, is ‘You’?

The principle of ability to pay is ancient and essential for a fair tax system. Indeed, almost 100 of the wealthiest New Zealanders have issued a public letter calling on government to tax them based on their ability to pay.¹²² Achieving a perfectly fair tax-welfare system is not feasible but recognition of that reality does not imply that government, particularly one led by an ostensibly progressive party, may ignore egregious gaps in the tax base and grossly unequal contributions to the commonwealth when measured against ability to pay.

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¹²⁰ The Labour government re-introduced a top marginal income rate of 39% but this was a symbolic measure that is unlikely to have impacted on the wealthy who can take advantage of the 28% corporate tax and income manipulation through trusts.

¹²¹ See generally, Tax Working Group, *Future of Tax: Final Report Volume II – Design Details of the Proposed Extension of Capital Gains Taxation* (Report, 2019) <<https://taxworkinggroup.govt.nz/resources/future-tax-final-report-vol-ii-html.html>>.

¹²² See eg, Aimee Shaw, ‘Wealthy New Zealanders say they want to pay more tax’ *Stuff* (Web Page, 11 May 2023) <<https://www.stuff.co.nz/business/132001093/wealthy-new-zealanders-say-they-want-to-pay-more-tax>>.

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TAX JUSTICE AND INDIGENOUS SOVEREIGNTY

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Abstract

This study investigates Māori taxation or tax-like practices to explore the relationship between taxation and Indigenous self-determination in Aotearoa New Zealand. We find historical examples of customary distribution practices, harbour dues, tollways, stock grazing fees and fines and joint stock subscriptions, all practiced by Māori leadership to raise revenues and assert authority. These findings contribute to tax research by advancing an argument for tax justice that takes Indigenous sovereignty seriously.

I INTRODUCTION

Settler governments are increasingly willing to talk about recognising Indigenous self-determination. They are less willing to talk about resourcing Indigenous self-determination. Article Three of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) affirms that Indigenous Peoples have the right to self-determination and can freely determine their political status, and pursue their economic, social, and cultural development.¹ Article 4 states that Indigenous Peoples have the right to autonomy or self-government in matters relating to their internal and local affairs, and ways and means for financing their autonomous functions. Given that settler-state forms typically maintain exclusive right to revenue raising powers, this raises a contradiction. How are Indigenous Peoples to go about financing their autonomous functions in settler colonial contexts? Contexts where representative settler states have asserted sovereignty and claimed exclusive rights to raise revenue through taxation.

We approach this question in a particular context. We explore the case of Māori rangatiratanga (unqualified chieftainship) as guaranteed in Article Two of Te Tiriti o Waitangi (Te Tiriti). A treaty, with constitutional status, signed between Māori leaders and representatives of the British Crown in 1840. In doing so we address the specific research question, what is the relationship between taxation and rangatiratanga? We follow a theoretical and political approach committed to constitutional transformation as set out in Matike Mai Aotearoa.² Broadly, this approach sets up spheres of influence flowing from Te

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¹ UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples*: resolution/adopted by the General Assembly, 2 October 2007, A/RES/61/295 art 3.

² Independent Working Group on Constitutional Transformation, *The Report of Matike Mai Aotearoa* (2016).

Tiriti, a rangatiratanga sphere (Māori authority), a kāwanatanga sphere (Crown/government authority) and a relational sphere where they overlap on issues that require shared authority. This question has to be addressed as fundamental to any attempt at tax justice in Aotearoa New Zealand because the colonisation of Māori, with support from Crown taxation policy, is one of the original tax injustices of Aotearoa New Zealand.³

We address this research question by exploring Māori taxation or ‘tax-like’ practices prior to and following the signing of Te Tiriti. While we have identified the need to properly resource rangatiratanga as part of a just constitutional transformation, we also need to establish new bases for revenue raising within the rangatiratanga sphere.⁴ On the basis that Māori never ceded sovereignty and, upon signing Te Tiriti were guaranteed rights to authority over their lands, villages, and resources, we argue this included rights to taxation or tax-like practices. The examples we discuss highlight this and how taxation by the Crown was a breach of Te Tiriti. Tax-like practices were an expectation within the rangatiratanga sphere of influence, as part of the right to authority over Māori lands, villages, and resources. This will be supported by exploring case studies of Māori taxation and tax-like practices, which also includes Māori resistance to Crown taxation. It is important to note that even if Māori were not doing something at the time of Te Tiriti, or doing things differently, this does not mean Māori do not have the right to develop practices over time.⁵

We find cases of Māori taxation or tax-like practices including customary distribution practices; harbour dues, tollways, stock grazing fees and fines and joint stock subscriptions following contact. All of these raised collective revenues and asserted rangatiratanga. This supports our argument that taxation is a guarantee under Article 2 of Te Tiriti, and with this and the articles of UNDRIP, there is a strong basis for revising revenue raising in Aotearoa New Zealand and how we might equitably resource rangatiratanga. These findings contribute theoretically to Indigenous studies and tax research by combining concerns of tax justice with Indigenous sovereignty. They contribute practically, by advancing a possibility for constitutional transformation that takes economic transformation seriously.

Next, we overview our theoretical approach committed to constitutional transformation. We then explore how existing Māori and taxation literature has engaged with rangatiratanga. Out of this our primary research question emerges: what is the relationship between taxation and rangatiratanga? We follow this section with a brief discussion on method and then proceed with our case studies of Māori taxation and tax-like practices. We conclude with a discussion, limitations and opportunities for future research. We ultimately argue that there is a basis for taxation within the rangatiratanga sphere and future discussion of constitutional transformation needs to take the financing/resourcing question seriously.

³ Catherine Comyn, ‘The Hokianga Dog Tax Uprising’ (2021) 11 *Counterfutures* 19.

⁴ Matthew Scobie et al, ‘Resourcing rangatiratanga as part of constitutional transformation: taking equity and sovereignty seriously’ (2023) 18(4) *Kōtuitui: New Zealand Journal of Social Sciences Online* 402

⁵ *Tino Rangatiratanga me te Kāwanatanga: The Report on Stage 2 of the Te Paparahi o Te Raki Inquiry, Pre-Publication Version, Part 1* (Waitangi Tribunal, 2022) ch 4, 11.

II THEORY AND LITERATURE

A Matike Mai and the Spheres of Influence

Māori had a complex political economy prior to colonisation, sometimes referred to as ‘the economy of mana’.⁶ Following the arrival of non-Māori, Māori were able to adapt to the opportunities presented by the burgeoning global economy, and adopt technologies they saw as useful.⁷ But with increasing lawlessness on the part of the European arrivals and the proliferation of dubious land deals based on speculative gains, Te Tiriti/The Treaty became necessary from several vantage points.⁸

Much has been written about Te Tiriti/The Treaty, but there are several key points for our purposes. First, there are two versions, the Māori language version (Te Tiriti) that the majority of Māori signatories signed and the English version (The Treaty). Both have three articles but the English version, The Treaty, had some fundamental differences. In Article 1, Te Tiriti says Māori leadership give the Queen kāwanatanga, (governance over British immigrants) but the Treaty says Māori leadership give the Queen all the rights and powers of sovereignty.⁹ Ranginui Walker points out that if Te Tiriti ceded ‘mana’, more akin to sovereignty than kāwanatanga at the time, then it is very difficult to imagine Māori signing away their mana.¹⁰ It is well-established that Māori never ceded sovereignty.¹¹ Article 2 of Te Tiriti guarantees tino rangatiratanga (unqualified chieftainship) to Māori leadership over whenua, kāinga and taonga (land, villages and resources), where The Treaty guarantees undisturbed possession of lands and estates, forests, fisheries and other properties. Article 3 guarantees Māori the rights and privileges of British subjects and is considered the most accurately translated. Recent interpretations have typically mapped Article 2 to a guarantee of self-determination and Article 3 to equity of citizenship.¹²

Matike Mai Aotearoa was established by Māori leaders to be an independent working group on constitutional transformation to advance the guarantees of Te Tiriti. The group explores and supports opportunities for constitutional transformation and put forward the ‘spheres of influence’ model as a possibility. One of the variations of the spheres of influence model envisages a kāwanatanga sphere (the Crown), a tino rangatiratanga sphere (iwi, hapū, urban Māori authorities) and a relational sphere where a Te Tiriti relationship will operate. The ‘spheres of influence’ model has since been taken up by many authors, activists, and leaders.¹³ However, the economic implications of the spheres of influence model and constitutional transformation have been less explored. Our purpose in this paper is to explore a specific economic implication of constitutional transformation: how can the rangatiratanga

⁶ Kiri Dell, Nimbus Staniland and Amanda Nicholson ‘Economy of Mana: Where to next?’ (2018) 7(1) *MAI Journal A New Zealand Journal of Indigenous Scholarship* 51, 51.

⁷ Michael Stevens, ‘A “Useful” Approach to Maori History’ (2015) 49(1) *New Zealand Journal of History* 54.

⁸ Claudia Orange, *The Treaty of Waitangi* (Bridget Williams Books, 2011); Margaret Mutu, ‘The Treaty Claims Settlement Process in New Zealand and Its Impact on Māori’ (2019) 8(10) *Land* 152, 155.

⁹ Mutu (n 8).

¹⁰ Ranginui Walker, ‘The Genesis of Maori Activism’ (1984) 93(3) *Journal of the Polynesian Society* 267.

¹¹ Margaret Mutu, ‘Behind the smoke and mirrors of the Treaty of Waitangi claims settlement process in New Zealand: No prospect for justice and reconciliation for Māori without constitutional transformation’ (2018) 14(2) *Journal of Global Ethics* 208; *Tino Rangatiratanga me te Kāwanatanga* (n 5).

¹² Scobie et al (n 4).

¹³ Morgan Godfery, ‘The political constitution: from Westminster to Waitangi’ (2016) 68(2) *Political Science* 192; Claire Charters et al, *He Puapua: Report of the Working Group on a Plan to Realise the UN Declaration on the Rights of Indigenous Peoples in Aotearoa, New Zealand*, Final report (Te Puni Kōkiri, 2019).

sphere resource itself? One particular possibility is through taxation, so we turn to the existing literature on taxation and tino rangatiratanga.

B Taxation and Tino Rangatiratanga

Matthew Scobie and Tyron Love evaluate two frameworks put forward as part of the Tax Working Group (2019) report to enhance Māori perspectives within tax policy.¹⁴ They argue that these frameworks have the potential to include Māori perspectives in tax policy design that could lead to a more sustainable and equitable tax system for all. But at the same time, these frameworks risk being watered down, or tokenistic, if not implemented in an authentic way. An authentic implementation requires committed engagement with Māori at the very least. They use the example of the limitations of kaitiakitanga (broadly, guardianship) by Māori without rangatiratanga to illustrate their argument.

Lisa Marriott focuses on Crown engagement with Māori in the tax policy process, as an expression of a partnership approach under Te Tiriti.¹⁵ The author finds that a relatively small group of homogeneous entities submit frequently on tax policy and few of these reflect Māori worldviews. Māori are poorly represented in this process, in terms of who is consulted, and who submits to the tax policy process. With the absence of Māori voice in conversations around tax policy, it is difficult to know what Māori may value in a tax system, and therefore how we might design a tax system of value to Māori.¹⁶ Building on this work, Marriott and Jessica Lai explore the academic implications of the lack of Māori perspectives in tax research.¹⁷ They argue that if Māori perspectives are not present in tax research, then they are unlikely to be present in tax policy. The authors suggest that a Kaupapa Māori perspective where research is conceived, developed and usually undertaken by Māori, could be an effective strategy for partnership between Māori and non-Māori researchers to advance tax research.¹⁸ By the same logic as the absence of Māori voices in research and its effect on policy, the authors argue Kaupapa Māori research could flow on to Kaupapa Māori tax policy that can advance the economic futures of Māori and Indigenous Peoples more broadly.¹⁹

While Marriott highlights the general lack of engagement with and by Māori in colonial tax policy, Andrew Maples pieces together the scant public perspectives that exist to explore Māori thoughts on the taxation of capital income.²⁰ Maples focuses on submissions to the Tax Working Group 2019 and argues that the taxation of capital income could raise unique challenges and issues for Māori with significant long-term implications for collectively

¹⁴ Matthew Scobie and Tyron Love, *The Treaty and the Tax Working Group: Tikanga or Tokenistic Gestures?* (2019) 21(2) *Journal of Australian Taxation* 1; *Future of Tax: Final Report* (Tax Working Group, 2019).

¹⁵ Lisa Marriott, 'Crown Consultation, Māori Engagement and Tax Policy in Aotearoa New Zealand' (2021) 27(2) *New Zealand Journal of Taxation Law and Policy* 143.

¹⁶ *Ibid.*

¹⁷ Lisa Marriott and Jessica Lai, 'Indigenous Perspectives on and in Tax Research Policy' (2022) 37(3) *Australian Tax Forum* 383.

¹⁸ See Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples* (University of Otago Press, 1999); Linda Tuhiwai Smith, 'On tricky ground: Researching the native in the age of uncertainty' in Norman Denzin and Yvonna Lincoln (eds), *The SAGE Handbook of Qualitative Research* (2005, 3rd ed, SAGE Publications) 85, 85-107; Patty McNicholas and Mereana Barrett, 'Answering the emancipatory call: An emerging research approach "on the margins" of accounting' (2005) 16(4) *Critical Perspectives on Accounting* 391.

¹⁹ Marriott and Lai (n 17).

²⁰ Andrew Maples, 'Māori perspectives on the taxation of capital income and the three "C"s" – caution, consultation and consideration' (Working Paper, University of Canterbury, 2023).

owned assets among other things. This study raises that Māori perspectives, especially connections with whenua (broadly, land) are necessary for tax policy design; assets from Treaty settlements are unique; wealth differences across ethnicity matter; and a poorly designed tax (for Māori) has the potential to damage Crown-Māori relationships. This final point also challenges the Treaty, because as Maples notes, there are implications for rangatiratanga rising from tax policy. While Sue Yong and Peni Fukofuka touch on rangatiratanga in their analysis of Māori entrepreneur perspectives on tax, they translate this as ‘esteemed authority’.²¹ They argue this is where Māori entrepreneurs defer to the authority of the Crown and accountants in the tax space. The authors do not engage with the possibilities of rangatiratanga *over* taxation.

Audrey Sharp takes a comparative approach to understanding the taxation of Indigenous authorities across New Zealand and Canada, and explicitly follows the UNDRIP in the analysis.²² Sharp concludes that tax concessions around ‘charitable purpose’ encourage Māori self-determination in the sense that they include a degree of cultural, economic, and political recognition previously denied. However, Sharp also suggests that measures taken to date amount to little more than giving Māori the fair deal they always should have had, and rather than concessions the Crown are slowly undoing past injustices. Overall, the taxation regime under analysis is ‘a very small window in the framework of a house whose overall design is determined and controlled by the government, to whom Māori are always answerable’.²³ While the policies under examination have strengthened the economic independence of some groups, it is but one small and important step towards economic self-determination in a broader Crown dominant culture.

Probably the best known historical studies of the role of accounting and taxation in the colonisation of New Zealand are a series of studies by Keith Hooper and Kate Kearins.²⁴ They argue, for example, that taxation by pre-emption through the monopsony purchase of land by the State for substantial profit was effectively a capital gains tax on Māori and, because of a lack of formal representation, was taxation without representation.²⁵ These studies by Hooper and Kearins highlight the nexus between the State, with its monopsony purchasing power to ‘legally’ and compulsorily acquire Māori land; capitalist development through colonial companies; and the dispossession of Māori land without the direct use of violent force, but with its threat and its application in other regions. And though they do not necessarily use the language of Te Tiriti, rangatiratanga, and sovereignty, they implicate accounting and taxation in the undermining of Māori rangatiratanga through the dispossession of land.

More recently, Catherine Comyn argues that in late 19th century New Zealand, taxation was not only a means of generating revenue, but ‘taxation measures sought to interpellate Māori

²¹ Sue Yong and Peni Fukofuka, ‘Accounting, tax compliance and New Zealand indigenous entrepreneurs: a Bourdieusian perspective’ (2023) *Accounting, Auditing & Accountability Journal* 1350.

²² Audrey Sharp, ‘Historical development of the tax regimes of Māori authorities in Aotearoa New Zealand and First Nations in Canada’ (2013) 4 *Te Tai Haruru Journal* 29.

²³ Ibid 54.

²⁴ Keith Hooper and Kate Kearins, “‘The excited and dangerous state of the natives of hawkes bay’: A particular study of nineteenth century financial management (1997) 22(3-4) *Accounting, Organizations and Society* 269; Keith Hooper and Kate Kearins, ‘Substance but not form: Capital taxation and public finance in New Zealand, 1840-1859’ (2003) 8(2) *Accounting History* 101; Keith Hooper and Kate Kearins, ‘Financing New Zealand 1860-1880: Māori land and the wealth tax effect’ (2004) 9(2) *Accounting History* 87; Keith Hooper and Kate Kearins, ‘The walrus, carpenter and oysters: Liberal reform, hypocrisy and expertocracy in Māori land loss in New Zealand 1885-1911’ (2008) 19(8) *Critical Perspectives on Accounting* 1239.

²⁵ Hooper and Kearins (2003) (n 24).

as financial-colonial subjects, to tacitly elicit their consent to colonial rule’.²⁶ The question of taxes was therefore intimately interrelated with the question, or rather myth of, legitimate political authority.²⁷ Comyn draws on the case of the Hokianga Dog Tax Rebellion where a seemingly mundane tax led to an armed rebellion by Māori. The Dog Tax was a tax of five shillings annually per dog levied throughout New Zealand in 1880. At this time, Māori were much more likely to have dogs than non-Māori. These dogs were a threat to the emerging agricultural economy – sheep – but were spiritually, socially and economically important to Māori. Many Māori resisted this dog tax, with some explicitly claiming that the tax was a breach of Te Tiriti, and registering their dogs with the Māori king whose authority they recognised.²⁸ In 1894, Te Kauhanganui, the parliament of the Kingitanga maintained that they could not “be forced to pay either rates or taxes without the Treaty being broken”.²⁹ This is certainly the most explicit statement of taxation breaching rangatiratanga in tax research. Comyn then goes on to explore a little-known case of a Māori bank, as an example of resourcing rangatiratanga.³⁰ Comyn argues that Te Peeke o Aotearoa, established by the Kingitanga in the 1880s was a way of centralizing iwi wealth and rendering it available for distribution. This should be understood as an example of pooling resources and reorganising social relations as a united front against colonisation. A colonisation that brutally undermined, and continues to undermine, the political economic authority of Māori.

In the country currently known as Canada, Kyle Willmott suggests that sentiments about Indigenous Peoples and government spending or welfare are expressed as fiscal concerns that often derive from racist critique.³¹ These fiscal concerns obscure white entitlement, racism and ultimately erode Indigenous legal and political sovereignty. They are best described as ‘fiscalized racism’.³² This marks a discursive and therefore substantive policy move, in terms of taxation and spending, from questions by settlers about Indigenous identity, nationhood and sovereignty – to questions by taxpayers about fiscal concerns. While Comyn demonstrates how taxation established Crown sovereignty, Willmott’s scholarship demonstrates how this is maintained today.³³

Willmott identifies three building blocks of taxpayer subjectivity through a close examination of the communications of the Canadian Taxpayers Federation. First is the *bifurcation* between taxpayers and Indigenous Peoples. This illustrates a particular vision with ‘taxpayer’ as a stand in for white settlers, regardless of their actual contributions, on one side, and Indigenous Peoples on the other. This bifurcation underlines the perceived illegitimacy of Indigenous Peoples as political participants. The second is the *subsumption of sovereignty*. The taxpayer subject relies on the bifurcation above, but also the overruling of Indigenous sovereignty. The underlying message is that the taxpayer exercises sovereignty and this overrides Indigenous self-determination. The third is *tax as property and security*. Taxpayer subjectivity allows settler-citizens to exercise sovereignty over Indigenous nations, but also secures tax as a form of property and security to guarantee settler political legitimacy. It is not difficult to transfer these same building blocks to Aotearoa.

²⁶ Comyn (n 3) 24.

²⁷ Mutu (n 8) 4-5.

²⁸ Comyn (n 3) 24.

²⁹ ‘The Natives and the Dog Tax’ *Thames Advertiser* (Thames, 18 July 1894) as cited in Comyn (2021) (n 3) 24.

³⁰ Catherine Comyn, ‘Te Peeke o Aotearoa: colonial and decolonial finance in Aotearoa New Zealand, 1860s–1890s’ in Paul Gilbert et al (eds), *The Entangled Legacies of Empire: Race, Finance and Inequality* (2023, Manchester University Press, 2023) 73.

³¹ Kyle Willmott, ‘Taxes, taxpayers, and settler colonialism: Toward a critical fiscal sociology of tax as white property’ (2022) 56(1) *Law & Society Review* 6, 7.

³² *Ibid* 9.

³³ Comyn (2021) (n 3); Willmott (n 31).

All of these studies have engaged with rangatiratanga, or Indigenous self-determination and its relationship with taxation in direct or indirect ways. Though there is a burgeoning literature on taxation and tino rangatiratanga, questions remain to be addressed: were Māori collecting taxes? And if so, how? Sharp argues that Māori had existing systems for resource sharing and accountability loosely comparable to taxation but left it at that.³⁴ This might seem like a mere historical curiosity, but it has potent implications for understanding Māori and Crown relations past, present and future. Te Tiriti guarantees rights around land, villages, and resources, including using these to generate wealth. This point is obvious to many Māori, who understand rights under Te Tiriti and practices of pooling and distributing resources according to collective responsibilities. But by assuming a singular sovereignty over taxation, the Crown breaches these rights. If the Crown did not assume this, these historical practices invoke possibilities for what Māori taxation or tax-like practices might look like in the future. This historical curiosity thus becomes a contemporary, controversial, political claim. This leads us to the precise research question for this study, what is the relationship between taxation and rangatiratanga?

III METHODOLOGY

The historical cases were located using a multiple-stage, inductive process. Initial searches focused on secondary historical sources containing instances of trade, commerce, inter-hapū exchanges or hapū development entailing a tax-like practice, either before or shortly after the mass arrival of colonial settlers during the 1840s-1850s. This process provided a range of primary historical texts to extend searches. It also helped to establish a range of tax-like concepts, timeframes, and specific terms for locating further examples in both primary and secondary sources. Details like iwi or rangatira names, locations and dates, were used in the second stage to conduct keyword searches across multiple digital and print sources, including university catalogues, national and regional library archival records and google scholar. This led to identifying further examples, as well as sources to repeat the process. The instances that most closely resembled taxation or tax-like practices were then written up as mini-case studies, which are presented below.

IV CASE STUDIES

A Māori Tax-like Practices

Economic anthropologist, Raymond Firth explores Māori practices of saving and distribution, which can be thought of as tax-like practices if we first clarify the role of the rangatira (leader) in embodying sovereignty.³⁵ The empirical detail is the strength of Firth's work, but at times his inability to imagine Māori as sovereign peoples at the time of writing, limits some of the possibilities of his arguments.

According to Tuiono, rangatira is often translated as chief or leader, but if broken down ranga is short for raranga, which is to weave, and tira is a group with a purpose. A rangatira 'is

³⁴ Sharp (n 22).

³⁵ Raymond Firth, *Primitive Economics of the New Zealand Maori* (George Routledge, 1929).

someone who weaves the opinions of people together’.³⁶ Rangatira maintained prestige and influence through mana. The role of rangatira in upholding rights was significant, as land and water were an extension of mana.³⁷ Mana enabled rangatira to exercise influence and authority but was its own regulatory force, because mana had to be earned and maintained.³⁸ Rangatiratanga, while being a contemporary representation of unqualified chieftainship, or self-determination, more precisely represents a practice of weaving people together. In other words, mana, and authority, came with responsibilities to the group, they were ‘duty bound to protect the mana of the hapū, its lands and the lives that were led there. Because it was the hapū who gave the Rangatira their status’.³⁹

Morgan Godfery argues that Māori *power* was generally known as *mana* until later in the 19th century when it became known as rangatiratanga.⁴⁰ This reinforces Ranginui Walker’s point earlier that if Māori were asked to sign away their mana in Te Tiriti, they would not have done so. Mana was power, authority and therefore sovereignty, in the pre-1840 Māori constitutional system, and following Te Tiriti, rangatiratanga became power in the post-1840 constitutional system.⁴¹ This links mana and rangatiratanga into a continuum of Māori power that was guaranteed in Article Two of Te Tiriti. Firth reinforces this by linking the maintenance of authority to distributions, by concluding his chapter on distributions with ‘the tendency to absorption and re-distribution of goods by persons of rank in the community helped to facilitate the creation of new and important items of material wealth, and also to support established authority’.⁴²

The best way to approach the mode of distribution for Māori is by examining the type of wealth that was of the greatest importance – food. In many cases this was consumed by individuals and groups immediately after being procured, but very often surpluses were deliberately produced and retained for future use to meet community needs and hospitality demands. This is where we can come to terms with Māori saving, pooling of collective resources, and distribution of those resources.

While tikanga forms the basis of distribution and this has a strong hold on custom, precise regulation was often absent. Instead, public opinion regulated distribution, allowing flexibility and adjustment in particular conditions. Nonetheless, distribution was closely bound with the structure of social life and sentiments around prestige and passing on of wealth, or mana and manaakitanga (maintaining and enhancing the mana of others).⁴³

Firth illustrates with several examples including eels on the Whanganui River, net fishing in Maketu, and whitebaiting around Rotorua. Eels, for example, were caught in traps seasonally, with the traps emptied every few hours into baskets. The baskets were brought to the marae and emptied on the grass. The rangatira or an appointee counted out the eels and placed them in heaps representing the share of a family group until the catch was exhausted. Firth suggests the system of distribution is similar across other cases with the use of an ‘umpire’. He follows Te Rangi Hiroa in making the following summary, that in general the ‘principle of

³⁶ Ropata Paora et al, ‘Tino Rangatiratanga and Mana Motuhake: Nation, state and self-determination in Aotearoa New Zealand’ (2011) 7(3) *AlterNative: An International Journal of Indigenous Peoples* 246, 250.

³⁷ Hirini Moko Mead, Traditional Maori Leadership in *Landmarks, Bridges and Visions: Aspects of Māori Culture*. (Victoria University Press, 1997) 197.

³⁸ Hirini Moko Mead, *Tikanga Māori* (Huia, 2003) 32.

³⁹ Erima Henare in *Tino Rangatiratanga me te Kāwanatanga* (n 5) 72.

⁴⁰ Godfery (n 13).

⁴¹ Māori Marsden, God, Mana and Universe: A Māori View in *The Woven Universe: selected writings of Rev. Māori Marsden*. Te Ahukaramū Charles (ed), (Estate of Rev Māori Marsden, 2003) 4; Godfery (n 13).

⁴² Firth (n 35) 307 (emphasis added).

⁴³ Mead (n 38) 145-46; Mead (n 37) 199-202; Marsden (n 41) 71.

apportionment of food gained by communal work is that of distribution among the whole community on the basis of relative needs, tempered by some regard for contributory services in production'.⁴⁴

While this might invite injustice and corruption, the sense of responsibility and the obligations on the rangatira and their appointee required them to consult the interests of all to maintain their authority. Public opinion was always ready to act as a check on suspicions of unfair division. Free speech and the firm belief that individual advantage should be subordinated to common welfare regulated the conduct of distributions in Māori villages and kin groups. According to Firth, starvation or real want in one family was impossible while others in the village had plenty. This did not necessarily result in idleness, with the force of public opinion again stepping in to call would-be slackers to assume their proper responsibilities. While rangatira had a lot of authority, they had a lot of responsibility and direct accountability to their communities.⁴⁵

In another example beyond in-village food gathering and distribution, practices of gift giving existed that could be loosely likened to tribute, taxes or rents depending on theoretical framing. Firth writes that it was typical among some hapū that annual presents of crops or resources were made to influential rangatira by those of lower rank, and/or those seeking a favour of some sort.⁴⁶ 'Tributes' often bolstered an influential rangatira's command of resources from those on their lands by permission. While Firth suggests that the gifting of a portion of produce to an influential rangatira that held land could be a near equivalent of *rent* we can also rethink this as a form of land tax given that rangatira's mana. These gifts were not necessarily made to compensate 'owners' for opportunity cost, like a rental, but were rather acknowledging the mana of the rangatira both over and from that land.⁴⁷ Regular gifts were an acknowledgement that underlying right to land was held by the rangatira. If gifts were not made, and no protest was made by rangatira, this risked the rights to land transferring to occupiers. And while gifts were often refused, they still had to be made regularly to acknowledge that ultimate rights to land were paramount, rather than the temporary usage of land.

Rangatira would also call on neighbouring hapū to work their forests, or gift food from their own resources. This was a gift from free men and recognised the leading position, mana and respect of a particular rangatira in a particular grouping. Relatives from other districts, visitors and locals as the rangatira was travelling would also present gifts, and the quality and value of these gifts increased with the status of the rangatira. All of these gifts accrued great wealth for rangatira, but this wealth was buttressed by the great liabilities/responsibilities of that rangatira to their people. These gifts were largely dependent on the rangatira's prestige and influence with people, and these people had to be fed and supported, have their needs and wants met. The more followers the rangatira had, the further their kinship obligations stretched. In most cases gifts were typically met with counter-gifts also. Firth summarizes this as follows:

If the chief's use of wealth be reviewed, then, it is seen that to the varied sources which provided him with his stores of goods corresponded a number of serious liabilities. The result was that a sort of equilibrium was maintained between income and expenditure. In general, at no time was the chief the possessor of immense quantities of valuables, though the system of

⁴⁴ Firth (n 35) 289.

⁴⁵ Hazel Petrie, 'Economic Dysfunction Or Land Grab?: Assaults on the 19th-Century Maori Economy and their Native North American Parallels' (2015) 11 (3) *AlterNative: An International Journal of Indigenous Peoples* 283.

⁴⁶ Firth (n 35) 289.

⁴⁷ Ibid 295.

receipt and redistribution of goods allowed a great quantity of them to flow through his hands. His wealth was utilized largely for his own aggrandisement and influence, it is true, but in so doing it contributed greatly to the material benefit of his people.⁴⁸

It is for this reason, many scholars of Māori political economy suggest that wealth was measured in Māori society not by how much accrued in one's hands, but how much passed through their hands.⁴⁹ Rangatira were promised rangatiratanga when they signed Te Tiriti, rather than thinking of these practices of gifting and distribution as by entrepreneurial or charismatic individuals, we think of them as wealth being pooled and distributed by authorities with collective responsibilities. This wealth is distributed according to public opinion based on maintaining influence, meeting needs, and recognising individual contributions. We are not saying that this equals taxation as commonly defined. It is unwise to use the categories from one time or place, to understand the categories from another time or place without flexibility or modification. These are tax-like practices. As we will illustrate in the next section, these tax-like practices were adapted and evolved following contact with Europeans, and European ideas. These adaptations incorporated practices of taxation prior to and following the signing of Te Tiriti by rangatira, which guaranteed their rangatiratanga in 1840.

B Post-contact Māori Taxation and Tax-like Practices

In this section we overview a number of taxation or revenue raising practices by Māori throughout the 19th century. These practices span a large geographical area, a long historical period, and a number of different rangatira or hapū. They include harbour dues, tollways, stock grazing fees and joint stock subscriptions. These cases advance the argument that Māori were actively practising forms of taxation and revenue raising to support lifeways *and* assert their authority.

1 Harbour Dues

A harbour due is a fee payable for a ship that enters into or otherwise uses a harbour or port. Harbour dues and localized variations of revenue raising via ports were recorded in Ancient Greece, and have likely existed far longer.⁵⁰ Harbour dues, fees and levies of various kinds are ongoing in New Zealand.⁵¹ Although no longer a substantial part of revenue, in the early days of the Crown colony, customs duties through harbours were a primary source of revenue.⁵² However, many accounts show that Māori in various parts of the country were collecting harbour dues prior to and in the years following the signing of Te Tiriti.

⁴⁸ Firth (n 35) 298.

⁴⁹ See Matthew Rout et al, 'Muttonbirding: Loss of executive authority and its impact on entrepreneurship' (2017) 23(6) *Journal of Management & Organization* 857; Matthew Scobie and Anna Sturman, 'Economies of mana and mahi beyond the crisis' (2020) 45(2) *New Zealand Journal of Employment Relations* 77.

⁵⁰ Aurélie Carrara, 'Tax and Trade in Ancient Greece: About the *Ellimenion* and the Harbour Duties' (2014) 116(2) *Revue des Études Anciennes* 441.

⁵¹ 'Fees and levies', *Maritime New Zealand* (Web Page) <<https://www.maritimenz.govt.nz/content/fees/default.asp>>.

⁵² 'Budget 2-22 data from the estimates of appropriations 2022/2023' *Treasury New Zealand* (Web Page. 2022) <<https://www.treasury.govt.nz/publications/data/budget-2022-data-estimates-appropriations-2022-23>>; Hooper and Kearins (2003) (n 24).

Accounts of commercial goods exchanged between Māori and Europeans sealers, whalers or traders visiting in their harbours during early contact periods, demonstrate delivery of goods was a common way to ‘level’ payment.⁵³ In 1838, minutes observed in a parliamentary committee report state that it was believed that ‘there is a certain Amount of Harbour Dues exacted from Ships in the Bay of Islands now by the Native Chiefs, in the way of Presents’, to the extent that this was driving ships further south to avoid such fees.⁵⁴ The same minutes suggest that piloting fees (for driving ships into the harbour) were collected in the Bay of Islands and Hokianga, these pilots being both Māori and settlers.⁵⁵

Other documentation from the 1830s, indicate more frequent or regular occurrences of anchorage fee collection were taking place, in at least some harbours or regions. Whaling journals record a pilot fee exchanged in 1833 when the *Cadmus* whaling ship came into Doubtless Bay, with another record of this at the same location in 1838 aboard the *James Stewart*.⁵⁶ On the opposite coast at Hokianga harbour, Māori stopped settlers entering for the purposes of collecting ‘paid pilotage’ or anchorage. Māori knew Europeans collected such dues in Port Jackson and asserted they were entitled to charge this.⁵⁷ Further, Polack explains that a ‘committee of chiefs’ had deliberated on such charges and how they could be applied ‘some time back’.⁵⁸

Journal records from 1836 show harbour dues were charged by Māori in Thames, where a specific account of enforcement is detailed. In his journal, Brown recounts how a cattle trader was refused entrance to unload the stock ‘because the Columbine did not pay for anchoring there’, stating that harbour dues were expected for incoming vessels ‘carrying trade or for their non-benefit’.⁵⁹ Such an explanation points to the systematic seeking out of payment for harbour access for the purposes of resourcing and asserting authority, rather than ad hoc application of these collections.

Further south, journal documentation from 1840 describing the gifting of muskets to Te Rauparaha (Ngāti Toa) in Cloudy Bay, suggests this form of payment was an established and expected practice for distinct rangatira: ‘It is also customary to make a present of two muskets, or an equivalent, to Robolua (sic), the chief, for harbour dues’.⁶⁰ The use of the word customary in this account also invokes the possibility of continuity between pre-contact and post-contact tax-like practices.

These accounts, combined with the eagerness of some Māori to engage in foreign trade, indicate that receipt of such goods, acted as a tax-like practice at some harbour locations during the 1830s and likely prior. However, Hazel Petrie reports that by 1840 Pākehā outnumbered Māori at Kororāreka, and Māori were denied the right to levy anchorage fees or receive goods.⁶¹ In addition, the imposition of formal customs duties by the Crown colony government encouraged shipping to be diverted to duty-free ports. The *Customs Ordinance*

⁵³ Hazel Petrie, *Chiefs of Industry: Maori Tribal enterprise in Early Colonial New Zealand* (Auckland University Press, 2006) 29.

⁵⁴ Select Committee of the House of Lords, Parliament of Great Britain, *Report from the select committee of the House of Lords, appointed to inquire into the present state of New Zealand* (1838) 177.

⁵⁵ Ibid 178.

⁵⁶ Harry Morton, *The Whale’s Wake* (University of Otago Press, 1982) 207.

⁵⁷ Joel Samuel Polack, *New Zealand: Being a Narrative of Travels and Adventures During a Residence in that Country Between the Years 1831 and 1837* (Richard Bentley, 1838) 216.

⁵⁸ Ibid.

⁵⁹ Alfred Brown, *Journal of the Rev. Alfred N. Brown at Matamata, Tauranga and the Bay of Islands 1835-1859* (University of Auckland Special Collections, 1836) vol 1, 37.

⁶⁰ Charles Wilkes, *Narrative of the United States Exploring Expedition During the Years 1838, 1839, 1840, 1841, 1842* (Wiley and Putnam, 1845) 408.

⁶¹ Petrie (n 53) 261.

1841 prohibited ships from landing anywhere other than designated harbours ('ports of entry') where duties were collected.⁶² Māori near the ports of entry resented the higher prices associated with the duties, and those living in other areas resented the restrictions on their own trading and revenue raising activities.⁶³

The denial of anchorage fees and loss of revenue from customs duties was a significant factor in Hone Heke and his allies' famous chopping down of the British flagstaff in Kororāreka in 1844. This incident developed into a major armed confrontation between Māori led by Heke and Kawiti, and British troops with Māori allies, referred to as 'the Northern war'.⁶⁴ Prior to the *Customs Ordinance 1841*, Heke and his allies had been charging their own tax on visiting ships of £5 per ship.⁶⁵ According to James Cowan they collected dues from ships outside the anchorage, boarding them from canoes before Tapeka Point had been rounded.⁶⁶

Without enough troops to confront Heke in 1844, Fitzroy convened the Legislative Council and introduced a *Property Rates Ordinance 1844* which abolished customs duties. Orange argues that Heke and Kawiti appear to have understood that the 'shadow of sovereignty' over land was as much a threat to their rangatiratanga as was any outright seizure of land.⁶⁷ It would certainly be an overdetermined argument for us to suggest taxation was the cause for the Northern war, the first major challenge to British sovereignty in New Zealand following Te Tiriti, but it would be remiss not to suggest it played a role. To be clear though, it is not simply a matter of lost revenue, it is a matter of rangatiratanga. In this case, the ability to raise revenue was a right of rangatiratanga, and the Crown colony government's expanding jurisdiction was challenging that.

2 Tollways

A tollway or toll road refers to a public or private road with a fee (or toll) assessed for passage on or use of the way or road. New Zealand still makes use of toll roads to fund the construction and maintenance of particular pieces of infrastructure.⁶⁸ Māori were recorded as making use of tollways in the late 19th century.

By the 1870s tourism to Lakes Rotomahana and Tarawera or the 'Lakes District' ensured that roads were increasingly busy with visiting traffic. The government had built roads into the area for military access in the 1860s during the New Zealand Wars.⁶⁹ However, some access to the lakes passed through Māori land and various accounts of hapū collecting tolls show this practice was in use throughout the 1870s.

While the majority of tourist traffic came from Auckland, particularly as tour operators commenced package trips, later on, the earliest accounts of toll activity relate to the road from Napier.⁷⁰ As a correspondent to the Bay of Plenty Times in 1872 reports, a toll was

⁶² Littlewood, Michael, 'In the Beginning: Taxation in Early Colonial New Zealand' in Peter Harris and Dominic de Cogan (eds), *Studies in the History of Tax Law, Volume 7* (Bloomsbury, 2016) 293, 318.

⁶³ Ibid.

⁶⁴ Orange (n 8) 118-120.

⁶⁵ James Cowan, *The New Zealand Wars: A History of the Maori Campaigns and the Pioneering Period* (R E Owen Government Printer, 1922) vol 1, 15.

⁶⁶ Ibid 16.

⁶⁷ Orange (n 8) 128-30.

⁶⁸ Waka Kotahi, 'Toll roads' (Web Page) <<https://www.nzta.govt.nz/roads-and-rail/toll-roads>>.

⁶⁹ Cowan (n 65).

⁷⁰ Hamish Bremner, 'Battle lines in the Hot Lakes District, New Zealand c. 1990: tourism development and the contested nature of place' (2015) 7(3) *Journal of Tourism History* 228; Donald Stafford, *The founding years in Rotorua: a history of events to 1990* (Ray Richards, 1986) 265.

being levied by local Wairoa Māori to visitors travelling overland to Rotomahana.⁷¹ Further mention of the toll is made a month later, along with a suggestion that local Māori were to ensure the road was properly maintained should the charges be levied.⁷² Another account refers to Māori seeking payment for cattle travelling down a road towards Napier, at £6 in total, which was enforced and eventually collected.⁷³

Multiple accounts detail a toll collected by hapū from tourists coming from Auckland in the mid-1870s. These tolls can be seen as part of the general collection of tourist charges headed by Wi Kēpa Te Rangipūwhe (Tūhourangi) and Aproro Wharekaniwha (Ngāti Hinemihi).⁷⁴ Tourism grew considerably at Lake Tarawera following the NZ Wars.⁷⁵ While some complained that these tolls were unreasonable, Gilbert Mair, a Crown land purchase agent, supported the toll charged at either a single or weekly rate. The charge of one to three shillings included accommodation in a hut and access to all hot springs, and Mair believed this was ‘more than fair and reasonable’.⁷⁶ As hostility towards both tourist charges and toll road levies at or around the lakes grew towards the end of the 1870s, a £2 toll being collected by Ngāti Hinemihi at the road into Rotomahana was disputed and subsequently removed in agreement with both Tūhourangi and Ngāti Hinemihi.⁷⁷

Other accounts of toll charges by Māori in 1880 demonstrate the extent of agency exercised concerning access to both Māori land and foreshore. While opposition was raised to the erection of a tollgate at Foxton beach, correspondence in *The Manawatu Herald* indicates this was the right of local hapū and that the charges were being maintained at ‘3s for a trip, and 4s for a coach, and 4s 6d for a bullock-dray, 1s for a horse, and 3d for a foot passenger’.⁷⁸ Additionally, Hoani Tapua of Ngāti Raukawa proposed establishing a tollgate in Ōtaki following disputes over wandering stock and the formation of a ‘Maori [sic] District’.⁷⁹ Tollways and roads can thus be seen as a means through which Māori could resource infrastructure, benefit from economic activities in their region, and, again, assert rangatiratanga at least throughout the 1870s and 80s.

3 Cattle/sheep Grazing Fees

Numerous accounts of fees collected by Māori for grazing or renting pieces of land for ‘runs’ are recorded from the 1840s. While settlers bringing cattle to New Zealand at this time were unlikely to own land for pastures, Māori would let land where they established runs, where the ‘runholder just turned the animals loose’ to graze.⁸⁰ Correspondence relays an earlier account of missionary Grace visiting the Hawkes Bay region who was shocked to find the stock of settler farmers accessing Māori land without payment. The missionary instructed that it would only be just and appropriate for the hapū to impose a tax in these instances; an annual tax of five shillings per cattle head was collected.⁸¹

⁷¹ ‘Correspondence’ *Bay of Plenty Times* (Tauranga, 26 October 1872) 3 cited in Vincent O’Malley and David Armstrong, *The Beating Heart: a Political and Socio-Economic History of Te Arawa* (Huia, 2008) 186.

⁷² ‘In the Street’ *Bay of Plenty Times* (Tauranga, 19 October 1873) 3.

⁷³ ‘Correspondence’ (n 71) 3.

⁷⁴ Bremner (n 70) 236.

⁷⁵ Ibid 235.

⁷⁶ O’Malley and Armstrong (n 71) 187.

⁷⁷ ‘The Abolition of the Tarawera Toll Bar’ *Bay of Plenty Times* (Tauranga, 16 July 1880) 2.

⁷⁸ ‘The Beach Road’ *Manawatu Herald* (Foxton, 16 July 1880) 2.

⁷⁹ ‘Native Meeting at Ōtaki’ *Manawatu Herald* (Foxton, 29 June 1880) 2.

⁸⁰ Michael Turnbull, *The Changing Land: A Short History of New Zealand* (Longman Paul, 2nd rev ed, 1975).

⁸¹ C Southwell, ‘Native Policy and Native Humbug Exposed’ *Auckland Examiner* (Auckland, 21 April 1860) 2.

While in some instances these arrangements resemble simple rent transactions, other accounts suggest that collecting fees for temporary, transitory access and for cattle trespasses were also common practices among Māori. Secure fencing was an expensive and laborious pursuit for settlers and a practice not traditionally used by Māori for crop protection.⁸² Property damage due to wandering stock was an ongoing issue during the early 1840s in particular, with the increased arrival of pigs, cattle and horses.⁸³ While difficult to assess the appropriate value of damages, Māori commonly amended such instances by seeking payment or ‘utu’.⁸⁴ According to one account from 1857 in Northland, where rangatira had displayed relatively consistent autonomy and resistance to the imposition of colonial law and governance throughout the 1840-50s, cattle trespass resulting in injuries to dogs or pigs ‘demanded immediate payment’.⁸⁵ In Waikato, when the Native Secretary, Donald McLean, attempted to intervene and set a schedule of fines for pasturing cattle in 1857, rūnanga resisted, resuming their own system of levies.⁸⁶ In instances where cattle, horses and sheep were running ‘at large’ on Māori land in Waikato, a fee of up to £20 was set and paid.⁸⁷ Further, receipt of this payment could be expected across multiple landholders: ‘when the title to the land is disputed by different owners it is necessary, in order to enjoy quiet possession, to pay them all’.⁸⁸

Another account suggests that valuable areas of land for Māori, could be let for cattle or sheep runs for temporary periods, while long-term letting for farming was not necessarily sought after.⁸⁹ The ample evidence of practices of grazing fees and fines taking place, combined with the temporary and sometimes transitory nature of the letting arrangement, indicate tax-like characteristics. Māori had authority over how and when these were collected, with the ability to opt into arrangements by allowing access to their land, while maintaining opportunities to opt out. While the *Native Land Purchase Ordinance Act 1846* ensured Māori were unable to lease land to settlers, by the time rangatira, including Iwikau Te Heuheu of Ngāti Tūwharetoa, began proposing concepts for a Māori parliament in 1856, oversight of their land, settlers ‘squatting’ on it, and collection of ‘revenue, by way of rent for their runs’, were central and interconnected considerations.⁹⁰ Once again, the rangatiratanga to determine arrangements, as an exercise of both revenue raising and assertion of authority was typical.

⁸² Augustus Earle (1827) cited in Vincent O’Malley, *The Meeting Place: Maori and Pakeha Encounters, 1642-1840* (Auckland University Press, 2012) 126-27.

⁸³ Alan Ward, *A Show of Justice: Racial ‘Amalgamation’ in Nineteenth Century New Zealand* (Auckland University Press, 1955) 62.

⁸⁴ Ibid 63.

⁸⁵ Vincent O’Malley, ‘English Law and the Māori Response: A Case Study from the Runanga System in Northland 1861-65’ (2007) 116(1) *Journal of the Polynesian Society* 13.

⁸⁶ Ward (n 83) 132.

⁸⁷ John Eldon Gorst, *The Maori King – or the – Story of Our Quarrel – with – the Natives of New Zealand – The Maori King* (Oxford University Press, 1959) 10.

⁸⁸ Ibid.

⁸⁹ Nancy M Taylor (ed), *The Journal of Ensign Best* (R E Owen Government Printer, 1966) 269.

⁹⁰ Vincent O’Malley, *Agents of Autonomy: Māori Committees in the Nineteenth Century* (Huia, 1998) 17.

4 Subscription/Joint Stock System

Although we have focused so far on Māori taxing settlers, there were also tax-like practices internally for collective resourcing. A subscription payment system, used to raise collective funds for hapū or iwi development or infrastructure, was adopted by many hapū. This practice was adapted from Pākehā settlers who used a similar ‘joint stock’ method when developing their own projects, but this adaptation can be seen as in line with the distributions described by Firth.⁹¹ Subscription payments could be one off or recurring, or contributed in instalments for larger purchases. As Māori learned more about producing flour from wheat and other production opportunities, hapū or joint hapū stock was raised to build watermills and bridges throughout various regions in the North Island.

Ngāti Toa rangatira Puaha, Mohi, Charley and Kanae, among others, collected subscription fees to build a watermill in Porirua as early as 1843. Subscriptions were collected from ‘members of the tribe for whose use it is chiefly intended’.⁹² In the 1850s, more flour mills were built using subscription systems in Ōtāwhao, Ōtaki and Kāwhia, with Ngāti Hikairo raising at least £162 to construct their flour mill at Kāwhia.⁹³ One account records a Kāwhia flourmill subscription collecting thirty £10 shares, underscoring the equitable calculation sometimes applied to the system.⁹⁴ It is noted also, that in many instances several hapū or iwi would contribute to collections and that these shared exchanges served to bolster or initiate alliances.⁹⁵ For example, in 1855 Ngāti Waitapu, Ngāti Matenui, Ngātitiaroa [sic], and Ngāti Maniapoto collected subscriptions to purchase a shared flourmill.⁹⁶

While it may be argued that the adoption of a subscription system is closer to capital raising for investment, the manner in which the system was adapted brings forth a tax-like practice. Not only were contributions often collected widely and across hapū, but the decision around participating in the subscription would usually be formed by community consensus.⁹⁷ In these ways, the system can be emphasised as a process by which hapū pursued the ongoing benefit or welfare of hapū or iwi by forming systematic opportunities for collective investment. This collective investment could also be used within the context of encroaching colonisation to defend rangatiratanga, as Comyn’s case⁹⁸ and the following Ngāi Tahu claim case describes.

On 10 June 1875, Ngāi Tahu and Ngāti Mamoe leaders convened to pass *He Ture kua whakaaetia e nga rangatira Māori o te Wahipounamu*.⁹⁹ This law was broadly aimed at raising funds to defend Te Kerēme, the Ngāi Tahu claim.¹⁰⁰ The ture (law) was a means of formalising the process of raising revenue to advance (or in this case defend) rangatiratanga,

⁹¹ Firth (n 35).

⁹² Petrie (n 53) 132.

⁹³ ‘Flour Mill at Kāwhia’ *Maori Messenger: Te Karere Maori* (Auckland, 1 February 1855).

⁹⁴ Hazel Petrie, ‘Bitter Recollections?: Thomas Chapman and Benjamin Ashwell on Māori Flourmills and Ships in the Mid-Nineteenth Century’ (2005) 39(1) *New Zealand Journal of History* 14.

⁹⁵ Ibid 4-5.

⁹⁶ Petrie (n 53) 204.

⁹⁷ Petrie (n 94) 5.

⁹⁸ Comyn (n 30) 84.

⁹⁹ Ngai Tahu, *He Ture kua whakaaetia e nga rangatira Māori o te Wahipounamu* (tribal law) (Otakou, 10 June 1875).

¹⁰⁰ Te Rūnanga o Ngāi Tahu, ‘Te Whakataunga: Celebrating Te Kerēme – the Ngāi Tahu Claim’ (Web Page) <<https://ngaitahu.iwi.nz/ngai-tahu/te-whakataunga-celebrating-te-kereme-the-ngai-tahu-claim>>; Martin Fisher, *A Long Time Coming: The Story of Ngāi Tahu’s Treaty Settlement Negotiations with the Crown* (Canterbury University Press, 2020) for a history of the claim and detail around the negotiations; and see Matthew Scobie, Bill Lee, and Stewart Smyth, ‘Grounded accountability and Indigenous self-determination’ (2020) *Critical Perspectives on Accounting* 1 on investment of the proceeds from the claim, and how this is advancing rangatiratanga in the contemporary context.

and hold the Crown to account for breaches of Te Tiriti and sales contracts. The law sets out specific detail on what the funds are for, how they are to be used, how they are to be managed, what happens in the case of mismanagement, who should contribute, the process for contributing, and what is to be done with funds once the claim is successful. It was expected that Ngāi Tahu and Ngāti Mamoe people living in the South Island and elsewhere should contribute money to advance the claim. Individual contributions, locations and dates were to be recorded so that following the success of the claim, one quarter of the proceeds would go to returning the funds to individuals according to their contributions, with the remaining three quarters going to those people with some claim to the land being disputed. This case illustrates in no uncertain terms that Māori were passing law to raise revenues to defend rangatiratanga in the 19th century. Raising revenue was fundamental to rangatiratanga.

In this part, we have considered Māori taxation and tax-like practices from pre-contact traditions, through contact and the post-Te Tiriti period. Each of these – distribution practices, harbour dues, tollways, stock grazing fees and fines, and joint stock subscriptions – contribute to a body of evidence suggesting that Māori collected taxes as a right of rangatiratanga, and actively exercising this right as an extension of customary practices and authority.

V DISCUSSION AND CONCLUSION

This study set out to address the research question: what is the relationship between taxation and rangatiratanga? Given the evidence reviewed, we argue that there is a basis for taxation within the rangatiratanga sphere of influence. How that might be implemented in practice, however, is out of the scope of this study. Suffice to say that practical implementation is the difficult part, given technical and especially political challenges.

We started by setting out our perspective on rangatiratanga, following *Matike Mai*, and then proceeded to explore how existing studies on Māori and taxation conceptualise rangatiratanga. We found that although existing studies have engaged with rangatiratanga explicitly or implicitly, the extent to which Māori have collected taxes or engaged with tax-like practices has not been addressed or adequately acknowledged as a right guaranteed under Te Tiriti. Evidence for these practices, to assert taxation as a right of rangatiratanga, is foundational to thinking about tax justice in Aotearoa New Zealand. Because the first tax injustice in Aotearoa New Zealand is how Māori have been considered in and affected by tax policy. As previous studies have pointed out, taxation has challenged both Articles 2 and 3 of Te Tiriti o Waitangi.¹⁰¹ While we do not want to over-determine our argument, it is fairly compelling that both the first armed conflict following Te Tiriti (the Northern wars) and one of the final armed conflicts (the dog tax rebellion) were both related to taxation and rangatiratanga. While rangatiratanga and mana as authority are the key words here, their relation to taxation and revenue raising cannot be overlooked. As the Crown obscured and erased Māori rangatiratanga, it used taxation as a tool to expand its sovereignty and extinguish the sovereignty of Māori.¹⁰²

While it can be difficult to conceptualise all of the practices covered in our findings as taxation or tax-like, it must be remembered that hapū were pooling revenue for wellbeing or defending authority. This is not dissimilar to contemporary authorities raising and distributing

¹⁰¹ Comyn (n 3); Scobie et al (n 4).

¹⁰² Comyn (n 3); Hooper and Kearins (2003) (n 24).

funds based on collective responsibilities. For example, in a monarchy, sovereignty was vested in the Crown, and this is where many of the taxation practices we have become accustomed to have evolved from. Māori have rangatira and rangatiratanga, the Crown has kāwanatanga via the New Zealand Government today. Both of these have some claim to authority over taxation within their relative spheres of influence, and where these spheres of influence work together relationally. Returning to Willmott's second building block of taxpayer subjectivity, the *subsumption of sovereignty* by the 'taxpayer' as sovereign, we hope our study has provided some remedy to this subsumption that is all too common across settler-colonies.¹⁰³

The relationship between taxation and rangatiratanga, or taxation and sovereignty, fundamentally becomes about the distinction between extra-economic and economic powers. Rangatira had extra-economic powers (legal, political, or military superiority and coercion) to advance their own position, and the material conditions of their communities. Following contact, they continued to exercise the extra-economic powers to make the most of new economic opportunities presented by markets.¹⁰⁴ This included taxation and tax-like practices as well as commercial opportunities. However, as the Crown gradually extended its sovereignty, in breach of Te Tiriti o Waitangi, the extra-economic powers of the Crown gradually obscured and erased the extra-economic powers of rangatira. Thus, Māori were reduced to economic subjects, with only economic powers (where survival depends on obeying market forces). Today we tend to emphasise the 'economic powers' of Māori to engage in markets, but we are also beginning to see Māori (especially large post-settlement governance entities) using economic power to reclaim extra-economic powers. For example, funding litigation and advancing rangatiratanga over water.¹⁰⁵ As Māori continue to reassert extra-economic power in the contemporary context, we will see transformation across multiple spheres – constitutional transformation that takes economic transformation seriously.

So, what are the practical and theoretical contributions of these findings? Theoretically we have advanced two contributions. On the one hand, we have argued for tax justice as a key means to advance Indigenous sovereignty. This enabled us to sketch out one possibility for a constitutional transformation that takes economic transformation seriously. We hope this will encourage future Indigenous research and praxis that takes the economic implications of Indigenous self-determination seriously. On the other hand, we have advanced an argument that Indigenous sovereignty is a key requirement for tax justice, at least in Aotearoa New Zealand and other settler-colonies. Although our study is largely historical, this history reveals that there is a contemporary basis for Indigenous self-determination over revenue raising. We hope this will encourage future tax researchers to take the challenges and possibilities of Indigenous self-determination for tax research and policy seriously.

Practically, this study has quite potent implications. What might Māori taxation, or revenue sharing as part of a constitutional transformation look like? This is out of the scope of this study. But it is a worthwhile pursuit if we are going to take tax justice seriously in Aotearoa New Zealand. We encourage future research to address these and related questions.

¹⁰³ Willmott (n 31).

¹⁰⁴ Ellen Wood, *The Origin of Capitalism: A Longer View* (Verso Books, 2002).

¹⁰⁵ 'Ngāi Tahu Rangatiratanga over Freshwater' *Te Rūnanga o Ngāi Tahu* (Web Page, 2020) <<https://ngaitahu.iwi.nz/environment/ngai-tahu-rangatiratanga-over-freshwater>>.

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ANAESTHETISING TAXATION? FAIRNESS IN NEW ZEALAND TAXATION DISCUSSIONS

ROB VOSSLAMBER*

Abstract

Long before Adam Smith included equality as one of his taxation maxims, governments have endeavoured to present taxation as more or less fair or equitable, and taxpayers have questioned the fairness or equity of the same. This article considers how the language of fairness or equity has been used in the reports of past New Zealand tax committees. The article then questions the meaningfulness of such language. The article concludes that the presentation of taxation as more or less fair plays an important motivational, rather than substantive role.

I INTRODUCTION

The art of taxation consists in so plucking the goose as to obtain the largest possible amount of feathers with the smallest possible amount of hissing.

Jean Baptiste Colbert¹

It is possible to pluck feathers from a goose without any hissing – as long as the goose is dead. In that case the goose would be blissfully silent, but its down production would be at an end. Just as geese have a propensity to indicate their displeasure if approached, let alone plucked, so do human beings when approached or assessed by the tax department. Yet while it may be acceptable to kill the goose, it would be counterproductive, not to mention immoral, for the tax collector to kill a taxpayer in order to minimise dissent when extracting tax. In a democratic society based on the rule of law it might well be questioned whether such an exaction would even constitute a tax. Yet the dilemma faced by Finance Minister Colbert continues to exercise the ingenuity of governments as they endeavour the superhuman task of taxing and pleasing.²

A more acceptable way to reduce the hissing of a taxpayer would be to present the tax as other than onerous or painful. Assuming that taxation per se is accepted, the way in which taxation is presented may alter a taxpayer's perceptions of the tax. A tax presented as fair is more likely to be accepted than one that is not.

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¹ Cited in William Sharp McKechnie, *The State & the Individual: An Introduction to Political Science, with Special Reference to Socialistic and Individualistic Theories* (James MacLehose & Sons, 1896) 77. Jean Baptiste Colbert was a French Economist and Minister of Finance under King Louis XIV of France, 1619-1683.

² Edmund Burke, 'Speech of Edmund Burke, Esq., on American Taxation' in E J Payne (ed), *Select Works of Edmund Burke: A New Imprint of the Payne Edition (Vol. 1)* (Liberty Fund, 1999) 149.

While it would be an odd government that promoted its (tax) policies as *unfair*, it is not obvious what the opposite claim might mean. Indeed, in promoting its taxation policies, the New Zealand Government has often appealed to fairness. On introducing the first income tax in 1891, the Premier and Finance Minister, John Ballance claimed that, ‘we have tried to make this Bill apply as fairly as we possibly can to all classes of the community.’³ Over a century later, the newly elected Labour government aimed to create ‘a better balanced tax system’,⁴ and the creation of ‘A tax system that is efficient, fair, simple and collected’ was the first objective specified by the Labour Minister of Finance Grant Robertson in the Terms of Reference for its Tax Working Group which reported in 2019. Although separated by over a century, both Premier Ballance and Finance Minister Robertson linked taxation and fairness. Whereas Premier Ballance’s comments were made at the introduction of a new tax measure, Robertson focused on modifying New Zealand’s existing taxation system.

The 2017 TWG was the latest of several committees which have advised the New Zealand government on its taxation system, and the New Zealand experience is not unique. In Australia the Henry Committee reported in 2009, and noted the ‘trade-offs that arise between the goals of fairness, efficiency, simplicity, sustainability and policy consistency.’⁵ In fact the second of the terms of reference of the Henry Committee read, ‘Raising revenue should be done so as to do least harm to economic efficiency, provide equity (horizontal, vertical and inter-generational), and minimise complexity for taxpayers and the community.’⁶ Similarly, the Mirrlees Committee in the United Kingdom indicated the importance of fairness in taxation by noting that, ‘We are not bound to have a tax system as inefficient, complex, and unfair as our current one.’⁷

This article considers the role of the language of fairness in legitimating New Zealand taxation policy by reviewing how such language was used in the reports of successive taxation review committees. Such committees play an integral role in influencing tax systems.⁸ Their reports provide evidence of contemporary thinking on taxation expressed by those charged to advise the government of the day. A review of such reports also indicates that the way the language of fairness is used has changed over time.

The article continues as follows: Part II discusses the concept of fairness as it is appealed to in the context of taxation. Part III reviews the use of fairness language in successive major tax enquiries prior to the current TWG. The discussion in Part IV relates this past experience to the 2019 *Future of Tax: Final Report*,⁹ issued in 2017 by the TWG established by the current Labour government. Section V then concludes.

II EQUITY AND FAIRNESS

The term ‘fair’ is much used. Children may complain that, ‘It’s just not fair!’ and Australasian social ethics may be epitomised in the two words, ‘Fair go!’¹⁰ Yet fairness is far

³ (1 July 1891) 71 NZPD 459.

⁴ NZ Labour, *Labour’s Fiscal Plan: Post-PREFU Revision* (Report, 2017) 13.

⁵ *Australia’s Future Tax System: Report to the Treasurer: Overview December 2009* (Final Report, 2010) ch 2.

⁶ *Ibid.*

⁷ James A Mirrlees, *Tax by Design: Volume 2 of the Mirrlees Review* (Report, 2010) 20.

⁸ Adrian J Sawyer, *The Effectiveness of Tax Reviews in New Zealand: An Evaluation and Proposal for Improvement* (Centre for Commercial and Corporate Law, 2020).

⁹ Tax Working Group, *Future of Tax* (Report, 2019).

¹⁰ ‘John Key’s “A fair go for all” speech’ *New Zealand Herald* (online, 30 January 2007)

<<https://www.nzherald.co.nz/nz/john-keys-a-fair-go-for-all->

from easy to define. The *Oxford English Dictionary* defines ‘fairness’ as: ‘Honesty; impartiality, equitableness, justness; fair dealing’,¹¹ but this simply pushes the question back a step: if ‘fair’ means equitable or just, then what do these other terms mean? Even the final phrase, ‘according to rule’, which suggests a more objective understanding of fairness, begs the question as to which rule(s) should apply. Dictionary definitions provide little assistance in clarifying the meaning of fairness. Humpty Dumpty aptly commented: ‘When I use a word’ ... it means just what I choose it to mean—neither more nor less.’ ‘The question is,’ said Alice, ‘whether you can make words mean so many different things.’ ‘The question is,’ said Humpty Dumpty, ‘which is to be master—that’s all.’¹²

If portrayed (and accepted) as fair, the pain of the extraction of taxation by the master – the state – may be palliated. The words ‘justice’, ‘equity’ and ‘fairness’ appear frequently in discussions of taxation, often synonymously. Although these terms may be distinguished,¹³ in the following sentence they are effectively synonymous (and would be understood as such by the general public): ‘When pursuing tax *justice*, *fairness* is achieved when the requirements of horizontal and vertical *equity* are attained’. Moreover, a thesaurus does little to clarify the concept or provide guidance for practical taxation policy.

Taxation provides a practical demonstration of fairness and epitomises concerns of distributive justice, that is, ‘normative principles designed to guide the allocation of the benefits and burdens of economic activity.’¹⁴ But taxation is more than just a concept: it also affects the economic position of the taxpayer. The amount of pain felt is related to a taxpayer’s subjective assessment of the fairness of the tax, and not (merely) the objective quantum.

Fairness is an aspect of social interactions and is an ethical evaluation of a social event. Ethics may be considered from two perspectives: in terms of outcomes, or in terms of actions or rules. Murphy and Nagel speak of a division that runs between ‘two types of normative theory – those that focus on outcomes, conventionally called ‘consequentialist,’ and those that focus on actions, conventionally called ‘deontological’ (from the Greek word meaning ‘ought’).’¹⁵

A consequentialist approach would evaluate the fairness of taxation policy in terms of the outcomes resulting from the tax. On this basis, good tax policy would achieve a certain desired result, such as increased taxpayer compliance, greater equality or economic growth. Difficulties arise, however, in determining which outcome should be prioritised, and in how to decide between various, and often competing, outcomes, let alone interpersonal differences of tax liability. In contrast, deontological approaches evaluate a policy based on some pre-specified standard or rule. The issue becomes which standard or rule to apply.

Certainly, there is some overlap between these two approaches. Murphy and Nagel comment that, since discussion of taxation ethics involves ‘disagreement at the level of theory, it does

speech/UYG6TSHZQDM4BODVEHCEW4U47Y>; see also Elizabeth Orsman and Harry Orsman, *The New Zealand Dictionary* (Heinemann, 1995) sv fair go; Gerald A Wilkes, *A Dictionary of Australian Colloquialisms* (Oxford University Press, 1996).

¹¹ *Oxford English Dictionary*, sv —Fairness n 6, <<https://www.oed.com/view/Entry/67729?redirectedFrom=fairness#eid>>.

¹² Lewis Carroll, *Through the Looking Glass, and What Alice Found There* (First Avenue Editions, 2014) 62.

¹³ David D Raphael, *Concepts of Justice* (Oxford University Press, 2001).

¹⁴ Julian Lamont and Christi Favor, ‘Distributive Justice’, in Edward N Zalta (ed), *Stanford Encyclopedia of Philosophy* (Web Page, 2008) <<http://plato.stanford.edu/archives/fall2008/entries/justice-distributive/>>.

¹⁵ Liam Murphy and Thomas Nagel, *The Myth of Ownership: Taxes and Justice* (Oxford University Press, 2002) 42.

not inevitably result in disagreements at the level of policy.¹⁶ However, they suggest that, ‘the evaluation of taxes will be much affected by whether one adopts a deontological or a consequentialist conception.’¹⁷ While difficulties in proposing and implementing tax reform stem, in measure, from a confusion between these two ethical bases, in practice most discussions of taxation do not go back to the level of normative theory. Constrained by the status quo (for example, existing property rights, or the government’s fiscal or political requirements), they tend to focus on adjustments to the existing system, rather than start at the level of first principles.

Taxation fairness is often discussed in terms of horizontal and vertical equity. Economist Richard Musgrave, for example, suggests that, ‘people in equal positions should be treated equally without discrimination – horizontal equity; and that people in unequal positions should be subject to moderately progressive taxation – vertical equity.’¹⁸ Yet although Musgrave’s definition of horizontal equity is unproblematic, his definition of vertical equity suggests a particular manifestation of vertical equity, namely progressive taxation.¹⁹ Strictly speaking, the vertical equity norm simply requires that individuals who differ not be treated the same, and could allow a proportional tax. Indeed, proportionality was the norm in most tax systems until about 1900.²⁰ Since then, vertical equity has been understood to imply progressive tax rates, and indeed New Zealand’s income tax has been assessed on a progressive basis from its inception.²¹ Musgrave highlights the complexity of vertical equity, concluding that, ‘Vertical equity, after all, is part of the larger problem of distributive justice, an issue that has no simple answer.’²² The same is true of taxation fairness in general.

In a pluralist society, individuals will differ in their assessments as to what constitutes fair taxation. In a democracy, taxation requires a degree of public consensus lest it lead to revolt by taxpayers²³ – preferably without violence at the ballot box.²⁴ Given an absence of any clear basis for taxation, what is understood by fairness in taxation will reflect the society in which it is levied, as will proposals for tax reform. Smith aptly comments: ‘

Tax reform is usefully framed by axioms like efficiency, equity, adequacy and simplicity. But the conception and interpretation of these are always in flux as well as conflict. It is probably not possible to make much sense of them outside a clear and continually updated understanding of the emerging social and political context.²⁵

¹⁶ Ibid 43.

¹⁷ Ibid 44.

¹⁸ Richard A Musgrave, ‘Growth with Equity’ (1962) 53(2) *American Economic Review* 323, 327.

¹⁹ See also Walter J Blum and Harry Kalven Jr, ‘The Uneasy Case for Progressive Taxation’ (1952) 19 *University of Chicago Law Review* 417; Nancy C Staudt, ‘The Hidden Costs of the Progressivity Debate’ (1997) 50 *Vanderbilt Law Journal* 919.

²⁰ Josiah Stamp, *The Fundamental Principles of Taxation in the Light of Modern Developments* (MacMillan, 1921) 38.

²¹ Peter A Harris, *Metamorphosis of the Australasian Income Tax: 1866-1922* (Australian Tax Research Foundation, 2002) 114.

²² Richard A Musgrave, ‘Equity and the Case for Progressive Taxation’, in Joseph J Thorndike and Dennis J Ventry Jr (eds), *Tax Justice: The On-going Debate* (Urban Institute Press, 2002) 9, 9-24..

²³ See Charles Adams, *For Good and Evil: The Impact of Taxes on the Course of Civilisation* (Madison Books, 1999).

²⁴ The notorious ‘Black’ Budget of 1958 which contributed to the Labour Party losing office after only one term (1957-1960) provides a New Zealand example: see Rob Vosslander, ‘Narrating history: New Zealand’s “Black Budget” of 1958’ (2012) 17(3-4) *Accounting History* 481.

²⁵ Greg Smith, ‘Australian Tax Reforms: Past and Present’ (Conference Paper, Tax Policy Conference, February 2009) 2.

Equity and fairness are normative considerations, and equity in taxation is often discussed in terms of horizontal and vertical equity; yet the lack of an agreed basis for the practice of taxation, and the evolving political and social context in which taxation is assessed, leave the meaning of fairness contested and subject to change. Given the changes in New Zealand's social, economic, and political context since 1891, it should be no surprise that tax reform is an on-going and non-linear process that has been undertaken almost from the start. Occasional tax review committees have furthered this process by providing an opportunity for tax policy to be discussed, and to inform government practice.

III NEW ZEALAND TAX REVIEWS

A review of a sequence of such reports in New Zealand not only confirms the changing understanding of fairness in taxation, but also reveals an increasing visibility of the ideas of fairness and equity in taxation discussions. The following sections of this article consider how these reports have used the language of fairness in taxation.

A Committee Appointed to Inquire into the Taxation of the Dominion of New Zealand 1922 (Hunt Report)

Following enactment in 1891, the New Zealand income tax changed little before World War One.²⁶ The top marginal rate did not exceed 6%, and the General Exemption of £300²⁷ meant that only higher income earners were subject to the tax. Indirect taxes and the land tax provided the bulk of government revenue.

During World War One (1914-1918), the top marginal income tax rate increased more than sixfold, and the income tax base was broadened as farmers were subjected to income tax.²⁸ Rather than reflect a change in the philosophy of taxation, these changes were a pragmatic response to the government's need to finance the war. By war's end, income tax had become the primary source of government revenue. The costs of war, which continued after the cessation of hostilities by way of debt servicing and pension costs,²⁹ prevented a return to pre-war levels of taxation.

In this post-war context of higher taxes, the Government appointed a Committee to inquire into the taxation of the Dominion of New Zealand, which was chaired by W D Hunt, and reported in 1922.³⁰ Subsequently, the Government appointed a Royal Commission in 1924 with a broad mandate to investigate into and report on 'the present system of land and income taxation in New Zealand in all its aspects.'³¹ Although these were two distinct inquiries with separate reports, unsurprisingly their reports are similar, given that three of the five Royal

²⁶ See Rob Vosslander, 'How Much? Taxation on New Zealanders' Employment Income 1893-1984' (2008) 15(4) *New Zealand Journal of Taxation Law and Policy* 299.

²⁷ In comparison, one of the lowest of the first award rates, that for a fulltime male hairdresser, was set at a weekly rate approximating £125 per annum effective from 22 July 1901, see New Zealand Department of Labour, 'Wellington Hairdressers' Award (22 July 1901 to 21 July 1903)' in *Awards, Recommendations, Agreements, etc. Made under the Industrial Conciliation and Arbitration Act, New Zealand, from 1st July 1900 to 30th June 1901* (New Zealand Department of Labour, 1902).

²⁸ *Finance Act 1915* (NZ) s 6. Previously they had been subject only to land tax.

²⁹ (8 July 1926) 20 NZPD 585.

³⁰ *Report of the Committee Appointed to Enquire into the Taxation of the Dominion of New Zealand* (Report, 1922) (Hunt Report).

³¹ William A Sim, *Report of the Royal Commission Appointed to Inquire into the Subject of Land and Income Taxation in New Zealand* (Report, 1924) [5].

Commissioners had also been members of the 1922 Committee. This article will focus on the earlier of these reports.

In common with subsequent Committees, that of 1922 was hardly representative of society in general. It comprised representatives of the Chambers of Commerce, the Law and the Accountants' Societies, the Farmers' Unions, and the Sheepowners' Federation. This was criticised in Parliament since the Committee 'represented big vested interests, and were very wealthy men.'³²

The 1922 Committee set its own brief as it was not provided with one:

to inquire into:

- The taxation of the Dominion of New Zealand in all its aspects;
- The effect of existing burdens of taxation upon the general prosperity of the Dominion and the directions of change, if any, that are necessary or desirable in the interests of the country.³³

The Committee noted the changed circumstances that resulted from the very recently ended World War One. In particular:

The writers of only a few years ago had no experience of conditions such as we are now passing through, and the conclusions they may have come to in connection with the very much smaller proportionate income tax of their day cannot be taken to definitely apply to income-tax such as that with which we are now dealing.³⁴

The Committee accepted that 'Adam Smith's four maxims may still be accepted as a sound foundation.'³⁵ However, just as conditions had changed, so too must the principles of taxation. Smith's maxims were 'hardly sufficient to cover all the problems involved in dealing with the very heavy graduated system of taxation which now obtains. Inequalities and anomalies that were not seriously felt when the tax was smaller and proportional become very serious matters when it is heavy and steeply graded'.³⁶

The Committee cited, but did not discuss, what is commonly referred to as Smith's equity maxim: 'The subjects of every State ought to contribute towards the support of Government as nearly as possible in proportion to their respective abilities – that is, in proportion to the revenue which they respectively enjoy under the protection of the State.'³⁷ The ambiguity of Smith's maxim, which may be read in terms of ability to pay or in terms of benefits received,³⁸ was not discussed. The Committee then mentioned other important aspects of income tax that must be considered, namely incidence, payment, graduation, and the treatment of losses.³⁹

As regards graduation, the Committee noted that, 'In a steeply graduated tax the percentage of income taken changes so greatly as the income increases that a fluctuating income, unless carefully watched, pays a much higher rate of tax than a steady income of the same average

³² (9 September 1925) 208 NZPD 161.

³³ Hunt Report (n 30).

³⁴ Ibid [27].

³⁵ Ibid [28].

³⁶ Ibid [29].

³⁷ Ibid [28].

³⁸ For opposing views, see Edwin R A Seligman, *Progressive Taxation in Theory and Practice* (American Economic Association, 1909) 164; Arthur D Lynn Jr, 'Adam Smith's Fiscal Ideas: An Eclectic Revisited' (1976) 29 *National Tax Journal* 369, 370; Raymond A Musgrave and Alan T Peacock, *Classics in the Theory of Public Finance* (MacMillan, 1967) ix.

³⁹ Hunt Report (n 30) [30].

amount.⁴⁰ Typical of the report, this comment is descriptive and factual, rather than prescriptive or evaluative. In fact, the report never specifically refers to either equity or fairness. Although the Committee did not reject the progressive principle, it suggested that the ‘limits of taxation that this country can bear have been reached – indeed, exceeded – and that there is now practically no reserve of taxable capacity,’⁴¹ and recommended that the top rate be no higher than 25%.⁴² Anything above this rate would cause loss to a high tax jurisdiction, since, ‘It is clear that one country cannot tax investors for a lengthy period at a higher rate than that charged by another country within easy reach and equally desirable to live in or invest in’,⁴³ suggesting an early concern about (income-) tax-driven international mobility of capital and labour. To mitigate this, it recommended that taxes should be reduced to five shillings in the pound (ie, 25%) in the interests of the prosperity of the Dominion, encouragement of its industry and production, and to prevent unemployment. Anticipating Optimal Tax Theory,⁴⁴ the Committee highlighted the disincentive effect of high income-tax rates: ‘Up to a point when the tax absorbs too large a proportion of the income, the incentive to effort is reduced and men fail to maintain their maximums. That point has been reached today.’⁴⁵

If the rates of tax on high incomes were too high, the Committee considered that rates on low incomes were too low, a conclusion it justified by international comparisons: ‘The Committee on this question reiterates that the rate of taxation on smaller incomes is lower and the exemptions on these smaller incomes higher, than in any other part of the Empire.’⁴⁶ Despite this, the Committee did not recommend a reduction in the level of the General Exemption, as the Commissioner of Taxation had suggested difficulties in handling the increased number of returns that would result.⁴⁷

Aside from a fleeting reference to Adam Smith’s maxims, the 1922 report (and the 1924 Royal Commission) provides no specific discussion of fairness in taxation; the language of fairness is notable for its absence. The practicalities of financing a polity and fostering economic development in a post-war context, rather than the ethics of tax policy, dominate the report. Yet the Committee recognised the complex nature of taxation, and rather unhelpfully advised the Government, ‘We, the members of the Committee, desire to assure you that we have fully realised the difficulty of the problem set before us, and we recognise that in the final settlement of the problem you have no easy task.’⁴⁸

Experts may advise, but responsibility was, appropriately, placed back on Parliament, the representative and protector of the people.⁴⁹ Almost presciently, in arguing for lower rates and a broader base and in focusing on (international) competitiveness, the 1922 report finds echoes in subsequent reports in the twentieth century.

⁴⁰ Ibid.

⁴¹ Ibid [13].

⁴² Ibid [67].

⁴³ Ibid [7].

⁴⁴ James A Mirrlees, ‘An Exploration in the Theory of Optimum Income Taxation’ (1971) 38 *Review of Economic Studies* 175.

⁴⁵ Hunt Report (n 30) [65].

⁴⁶ Ibid [40].

⁴⁷ Ibid [41].

⁴⁸ Ibid [67].

⁴⁹ In contrast, Coffield suggests that Parliament can fail and has indeed done so in protecting individuals against extortionary taxation, James Coffield, *A Popular History of Taxation: From Ancient to Modern Times* (Longman, 1970) ch 13.

B Report of the Taxation Committee 1951 (Gibbs Report)

A quarter of a century later, and less than a decade after the end of World War Two (1939-1945), a new National Party Government that had been elected in 1949 after 15 years of Labour Party rule called for another enquiry into taxation. Much had changed since the 1920s; the Great Depression, the election of the first Labour Government in 1935 and subsequent passage of the Social Security Act in 1938, and the massive increases in income taxation during World War Two, had resulted in significant growth in the role of the state and in taxation. In particular, the introduction of social welfare reflected an acceptance of redistribution as an acceptable function of government, and the command economy in World War Two continued into the following decades.⁵⁰ This had implications for both the quantum of taxation required, and the practice of taxation.

The 1951 Taxation Committee was given a broad order of reference, namely to:

Inquire into the present system of land and income taxation in New Zealand in all its aspects, and, having regard to the proposed consolidation of the land and income tax and social security charge legislation, to report on:

- (a) What alterations can be considered necessary or desirable;
- (b) The relation of taxation to the national economy;
- (c) The effect of any proposed alterations on the national economy, the rates of tax and the total yield of land tax, income tax or social security tax respectively.⁵¹

As in 1922 and 1924, the mandate hardly mentions tax fairness. However, part 3 of the report, 'The Relation of Taxation to the National Economy,' opened with a section entitled 'Principles of Taxation', which commenced with the claim that: 'Adherence to sound principles of taxation is all the more important at the present time when large expenditures on war and social welfare programmes have called for high levels of taxation.'⁵² In the face of such high levels, the Committee linked fairness to compliance, noting that, 'Where taxpayers have confidence in the equity of the taxation system they will be more inclined to pay their taxes with good grace and honesty.'⁵³

What then are sound principles of taxation? Unlike the 1922 Committee, Adam Smith's familiar maxims are not mentioned. Rather, the report provides six principles, with fairness being mentioned in the second. These are:

- (a) Taxes must be broadly based over the whole community...
- (b) Taxes should be fair as between the members of the community. Taxpayers must feel that they are being treated equitably if they are to be willing to meet their share of Government expenditure.⁵⁴
- (c) Taxes should be levied with due regard to the encouragement of primary and secondary production...
- (d) Taxes must be capable of being collected...

⁵⁰ Gary R Hawke, *The Making of New Zealand: An Economic History* (Cambridge University Press, 1985).

⁵¹ T N Gibbs, *Report of the Taxation Committee*, Government Printer, 1951) [1]. For the constitutional convention on the role of Parliament in taxing, see Philip A Joseph, *Joseph on Constitutional and Administrative Law* (Thomson Reuters, 5th ed, 2021) 5.

⁵² Ibid [55].

⁵³ Ibid [64].

⁵⁴ There is no evidence in the report that the adverbs 'fair' and 'equitably' are to be regarded as not synonymous.

(e) Taxes should not be levied at rates or by methods that impair or prevent adequate savings for capital requirements of the community.

To these ... should be added the paramount necessity for ensuring the effective distinction between capital (a source of production) and income (the result of production).⁵⁵

Fairness was considered in subjective rather than objective terms, since '[t]axpayers must *feel* they are being treated equitably'.⁵⁶ Just what this might mean in practice is hardly specified, although ability to pay was assumed as the criterion for apportioning the tax burden.⁵⁷ The Committee also considered it 'a matter of equity to the great majority of citizens who pay their full taxes that the Government shall exercise the greatest effort to trace effectively and deal properly with the evaders.'⁵⁸ Equity suggested that every person should pay such taxes as were levied, though the base of taxation need not be broad. Notably, since the Committee specifically endorsed the capital/revenue distinction, the taxation of capital gains was rejected.

Given that, as in 1922, a more conservative party was in power, the 1951 report focused on efficiency rather than equity. Concern was again expressed that very little reserve of taxable capacity existed.⁵⁹ The report repeated a 25% of national income benchmark as 'a safe political and economic limit for taxation,'⁶⁰ though by this time total taxation in New Zealand amounted to 34% of the national income.⁶¹ The disincentive effects of a high tax were also highlighted: 'A high income tax, imposed for the purpose of redistribution, is subject to the law of diminishing returns.'⁶² Practically, 'When individuals are required to pay up to [77.5%] and large companies up to [57.5%] they labour under a great deterrent.'⁶³

The social context further constrained tax reform. The role of government had increased with the introduction of a generous Social Security scheme in 1938. Although barely more than a decade old, the Committee noted that 'social security and the welfare programme have become part of the national economy, and that the whole country is committed to the continuation of the programme.'⁶⁴

Despite the significant increases in taxation during World War Two, and the introduction of Social Security, the 1951 report was far from revolutionary. Its recommendations tended to be at the level of detail rather than principle. As regards taxation fairness, the report provided little by way of guidance, aside from the aphoristic, 'Taxes should be fair as between the members of the community.' Just what 'fair' might mean was not specified.

C Taxation Review Committee 1967 (Ross Report)

In his 1966 budget less than two decades later, Harry Lake, the National Party Minister of Finance, announced a review of the whole field of central government taxation, since it was 'of vital importance that the structure of our tax system should be so designed as to place the

⁵⁵ Gibbs (n 51) [57]

⁵⁶ Ibid [57b] (emphasis added).

⁵⁷ Ibid [211f, 247].

⁵⁸ Ibid [69].

⁵⁹ Ibid [173].

⁶⁰ Ibid [120].

⁶¹ Ibid [121], cf [43].

⁶² Ibid [68].

⁶³ Ibid [86].

⁶⁴ Ibid [195].

least practicable restraint upon incentive and efficiency while at the same time maintaining equity among all groups of taxpayers and the community generally'.⁶⁵

The ensuing Ross Committee recognised that taxation had changed. Whereas 'the original concept of taxation was a simple one: taxes were the means of raising revenue for subsequent expenditure by the ruling authority',⁶⁶ in a modern society this was no longer the case: 'Taxation is no longer simply a device to raise the revenue needed to meet the cost of government. In this modern age taxes are now recognised as important tools for influencing the development of the economy, and for implementing economic and social policy in a variety of ways.'⁶⁷

In announcing the review, Lake had highlighted equity, and the 1967 report was more specific about equity than previous reports had been. It noted that:

The determination of equity in taxation must rest upon value judgments as to the overall pattern of income distribution (after tax) considered desirable. There are two major aspects of equity; first, the like treatment of persons in like circumstances; and second, the ability to pay, which is related to the economic wellbeing or standard of living to be enjoyed by the taxpayer.⁶⁸

The first aspect reflects the common understanding of horizontal equity. The second takes vertical equity to mean ability to pay. Significantly, the basis of equity is the *after*-tax rather than the *pre*-tax income distribution, and the criterion for distribution was not so much what a person had, but what a person would enjoy after the tax had been paid.

In keeping with contemporary political norms and realities, families were prioritised. The report noted that: 'It is generally accepted that the impact of taxes on income should vary according to income levels and family responsibilities.'⁶⁹ Indeed:

It is probably universally accepted, and it is certainly accepted in New Zealand, that a direct income tax system should be so designed as to have regard for a taxpayer's family status so that, generally speaking, an unmarried man on a certain level of income pays more income tax than a married man on the same income. This principle is applied further so that a taxpayer with other dependents, for example, children, pays less tax than another taxpayer on the same income who has no or fewer dependents. In most cases the dependants for whom tax recognition is given are a wife (or dependent husband) and children.⁷⁰

Simply put: 'as a prime requirement, a system of taxes on individual incomes likely to be acceptable to the majority of New Zealanders must be progressive in incidence and provide adequate recognition of family circumstances.'⁷¹

Fairness required that families be prioritised. Although the existing system did this, the Committee expressed concern that the progressive income tax bore heavily on taxpayers in the middle-income range, reaching the top marginal rate of 67½% (including social security tax). Yet in contrast to the 1922 report, which had suggested an ideal maximum rate of 25%, the Ross Committee embraced progressivity, and proposed a new scale and set of

⁶⁵ (16 June 1966) 346 NZPD, 346 584.

⁶⁶ L N Ross, *Taxation in New Zealand: Report of the Taxation Review Committee*, (Government Printer, 1967) [7].

⁶⁷ Ibid [5].

⁶⁸ Ibid [14].

⁶⁹ Ibid [256].

⁷⁰ Ibid [244].

⁷¹ Ibid [273].

exemptions, with rates (including social security tax) ranging from 10%, to 75% on income in excess of \$40,000.⁷²

Again, in contrast to previous reports, the Committee highlighted the matter of fairness or equity. It devoted chapter 11 to the Incidence of Taxation, noting that, ‘In any tax reform, we must recognise the necessity for equity between different groups in society.’⁷³ Indeed, ‘the ultimate guide to the problems of reform is a view of the progression and equity of the fiscal system as a whole.’⁷⁴ This represents a shift from previous (and subsequent) reports, which arguably placed a greater emphasis on efficiency than on ethics. The language of fairness was more prominent. The Ross Committee did qualify this concern, however, since ‘Equity in the taxation system should not be confused with equality.’⁷⁵ Nor could political reality be ignored, since ‘it is inescapable that a tax structure must reckon with public opinion.’⁷⁶ Like previous and subsequent reports, the Committee was further constrained by the stipulation that ‘the total revenue to be derived from taxation remains virtually unaltered.’⁷⁷

The Ross Committee concluded that, although ‘the overall weight of taxation was not unduly heavy by world standards,’ its proposals were intended to ‘provide substantial relief from direct taxation for the great majority of taxpayers,’⁷⁸ notably those on middle but not high incomes. Their proposals were intended to be practical, and to produce ‘a more equitable adjustment of its burden.’⁷⁹ Indeed, the Committee designated ‘equity and neutrality as the prime requirements of any tax system, and we have endeavoured to embody these principles in all our proposals.’⁸⁰ Yet despite this claim, as with previous reports it is far from clear exactly what notion of equity or fairness actually informed its proposals beyond the shifting sands of public and political acceptability.

D Task Force on Tax Reform 1982 (McCaw Report)

In 1981, the New Zealand Planning Council (‘NZPC’), a government-appointed advisory body, issued a report entitled *An Agenda for Tax Reform*, which commenced by stating that ‘our tax system is in pressing need of reform. It may have served us well in the past, but it has been distorted by the effects of high inflation.’⁸¹ The NZPC argued that this reform needed to be made as quickly as possible, and not in a piecemeal manner. Inevitably such reform would involve some redistribution of the tax burden. In keeping with this comprehensive focus, the NZPC included as part of its proposed agenda to:

- Evaluate how the acceptability of a tax system can be defined.
- Consider whether the present system is equitable

⁷² Ibid [277-84]. A wage of \$40,000 in the fourth quarter of 1967 equates to over \$1.1 million in real terms in Quarter 4, 2017, based on ‘Inflation Calculator’ Reserve Bank of New Zealand (Web Page, 17 October 2023) <<https://rbnz.govt.nz/monetary-policy/inflation-calculator>>. In contrast, a top marginal rate of 39% currently applies to income over \$180,000.

⁷³ Ibid [204].

⁷⁴ Ibid [205].

⁷⁵ Ibid [14].

⁷⁶ Ibid.

⁷⁷ Ibid [1048].

⁷⁸ Ibid [1049].

⁷⁹ Ibid [1051].

⁸⁰ Ibid [1052].

⁸¹ New Zealand Planning Council, *An Agenda for Tax Reform* (Report, 1981) 5.

- a) What standards can be applied to assess equity? Is progressivity an acceptable standard?
- b) How can the tax system best be redesigned to meet these standards.⁸²

The Government responded to the NZPC's call by appointing the McCaw Task Force on Tax Reform, which reported in April 1982, and which was charged to 'undertake a thorough and systematic review of all aspects of central government taxation.'⁸³

The McCaw Task Force noted the rapid changes in the tax system over the past decade and suggested that '[t]axation reform is a major issue generating much public debate, and this Report is part of the search for a more acceptable and equitable taxation system which is being demanded by almost all sectors of society.'⁸⁴

Inflation had resulted in bracket creep so that a person on the average wage was facing a marginal rate of almost 50 cents in the dollar. In light of this, the Report argued that 'both average and marginal personal income tax rates should be reduced for the great majority of individuals and, as far as possible, the degree of progression in the scale as it affects most members of the labour force should be reduced.'⁸⁵

Clearly this would involve a significant change to the extant rates scale which had high rates and was steeply progressive. In making its recommendations, the McCaw Task Force 'had close regard for the traditional principles of taxation.'⁸⁶ Fairness, it suggested:

could only be assessed in relation to the tax system as a whole. If a paramount consideration has been adopted, [by this Committee] it is for fairness, or equity – on the ground that no system which is unfair and is perceived to be unfair will have the acceptability and relative permanence which are required of a good tax system.'⁸⁷

The Task Force continued by restating the horizontal and vertical equity norms, noting that the latter involved the question 'what the relationship should be between measured ability-to-pay and the ensuing tax liability.'⁸⁸ It was clear that 'a higher ability-to-pay should imply a higher tax liability',⁸⁹ but the Task Force did not justify this assertion or indicate what this might look like in practice. It did comment that 'objective considerations have to be blended with important value judgments about the redistributive goals of the community before a conclusion on the shape of this relationship can be reached',⁹⁰ but did not specify what these judgments, or considerations and goals, might be.

During the twentieth century the role of taxation had expanded along with that of government – from the provision of basic services to the funding of mass war, the use of (Keynesian) fiscal policy to steer the economy, the provision of a social welfare safety net, the promotion of economic development, and the managing of fiscal policy. Equity considerations confound the attainment of these expanding and competing objectives. The Task Force recognised the problem; economic efficiency might point to a proportional tax scale, but equity considerations would seem to rule this out. Their conclusion was a compromise, and contrasts with the 1967 Committee's promotion of a steeply progressive rates scale:

⁸² Ibid 9.

⁸³ Ibid i.

⁸⁴ *Report of the Task Force on Tax Reform* (Final Report, 1982) [1.2].

⁸⁵ Ibid [1.10].

⁸⁶ Ibid [5.2].

⁸⁷ Ibid [5.2].

⁸⁸ Ibid [5.3].

⁸⁹ Ibid [5.3].

⁹⁰ Ibid [5.3].

If a proportional scale is unacceptable, then a scale with a modest degree of progressivity over either the lower – or higher – income range, or both, and with a long flat bracket for the majority of individuals, may offer a reasonable compromise between economic efficiency and equity goals. **This is the Task Force’s preferred approach.**⁹¹

The 1982 Task Force was the last before the introduction of the market-focused ‘Rogernomics’ reforms of the fourth Labour Government (1984-1990). The subsequent TWG 2010 suggested that these reforms had resulted in New Zealand’s tax system being regarded as one of the least distortionary in the OECD by 1989 and New Zealand’s tax rates being internationally competitive.⁹²

E Tax Review 2001 (McLeod Report)

Following 15 years of significant economic policy change in New Zealand, the then Labour government appointed a tax review, chaired by Robert McLeod, to ‘carry out a public review into the tax system so that the government has an appropriate framework within which to build tax policy.’⁹³ Fairness was to be part of this framework, for ‘[i]deally the tax system should raise revenue simply, efficiently, fairly and reliably in an environment of changing technology, growing globalisation and increasing complexity. It should do this in ways that do not materially undermine the environment, social cohesion or the effective use of resources.’⁹⁴

The Review’s Final Report contrasted sharply with the interventionist recommendations of the 1967 Tax Committee, noting that, ‘The last fifteen years have seen an overhaul of the New Zealand tax system. The main changes have been to remove special allowances and exemptions and varied tax rates. The result has been to broaden the tax base, flatten tax scales and greater resource allocative neutrality.’⁹⁵ Throughout, the report might be considered an apology for a broad-base low-rate (‘BBLR’) taxation system, since this approach ‘is sound and should be continued.’⁹⁶

The Review did discuss fairness, but this appeared to be secondary to efficiency. It described the principle of fairness as ‘inherently subjective’.⁹⁷ The authors acknowledged a need to make trade-offs between fairness and efficiency, but argued that the conflict between the objectives of fairness and efficiency can be overstated.⁹⁸ The report lists what it considers to be ‘four general principles of fairness that are usually considered in setting tax policies’⁹⁹ – ability to pay, even handedness, user pays and transitional fairness – which principles are arguably more aligned with an efficiency perspective than with traditional discussions of

⁹¹ Ibid [6.161] (emphasis in original).

⁹² *A Tax System for New Zealand’s Future: Report of the Victoria University of Wellington Tax Working Group* (final Report, 2010) 16.

⁹³ *Tax Review 2001 – Issues Paper* (Report, 2001) 215.

⁹⁴ Ibid 216.

⁹⁵ Ibid.

⁹⁶ *Tax Review 2001: Final Report* (Final Report, 2001) II.

⁹⁷ *Tax Review 2001 – Issues Paper* (n 93) 7.

⁹⁸ Ibid 8.

⁹⁹ Ibid 7.

fairness in taxation. What is missing is any clear philosophical discussion of what fairness might mean.¹⁰⁰

F Tax Working Group 2010

Reporting in January 2010, the TWG 2010¹⁰¹ was an independent group established by Victoria University, formed with the support of the Ministers of Finance and Revenue. Its final report, *A Tax System for New Zealand's Future* (2010), concluded that, 'New Zealand's tax system is not working effectively and reform is necessary if the country is to have a fair tax system that minimises the costs of raising taxes, reduces barriers to productivity and growth and positions it well for future challenges.'¹⁰²

The tax reforms of the fourth Labour Government of the 1980s provided a benchmark for the TWG 2010. It noted that these reforms, which broadened the tax base and lowered tax rates, 'improved the efficiency and equity of the tax system relative to the comparatively narrow-based, high-rate system that preceded it.'¹⁰³ Subsequent changes, though made in part to improve equity, had eroded the effectiveness of the tax system.¹⁰⁴ The Committee's favourable assessment of the tax reforms of the 1980s is reflected in its stated preference for a BBLR system of taxation adopted in the 1980s, and promoted by the McLeod tax review in 2001, arguing that 'the broad-base low-rate option is generally a sound principle to adopt in choosing the approach to tax design and should continue to be an underlying framework for the New Zealand tax system.'¹⁰⁵

The report commenced by discussing the role of taxes, which is to fund government services and spending, before listing six principles of a good taxation system.¹⁰⁶ The second principle is:

Equity and fairness: The tax system should be fair. The burden of taxes differs across individuals and businesses depending on which bases and rates are adopted. Assessment of both vertical equity (the relative position of those on different income levels or in different circumstances) and horizontal equity (the consistent treatment of those at similar income levels, or similar circumstances) is important. The timeframe is also important, including how equity compares over people's lifetimes.¹⁰⁷

Significantly this principle was stated tautologically: the principle of equity and *fairness* means that the tax system should be *fair*. The three sentences that followed were descriptive rather than prescriptive; no criteria were given against which the equity or fairness of a tax system might be assessed. In this, the report was consistent with previous tax review committee reports, and with the *Oxford English Dictionary* definition.

¹⁰⁰ Cf 'There are philosophical arguments for and against proportionality and progressivity; each can be described as "fair"'. See *Tax Review 2001: Final Report* (n 96) 58. These arguments are not elaborated in the report.

¹⁰¹ The 2010 Tax Working Group is referred to as 'TWG 2010' to distinguish it from its 2017 namesake (referred to as 'TWG 2017').

¹⁰² TWG 2010 (n 92) 5, 9.

¹⁰³ Ibid 16.

¹⁰⁴ Ibid 17.

¹⁰⁵ Ibid 10.

¹⁰⁶ Ibid 15. The other principles were efficiency and growth, revenue integrity, fiscal cost, compliance and administration cost, and coherence: ibid 15.

¹⁰⁷ Ibid.

If the report was consistent with its ancestors in using equity language without providing a clear basis for or definition of fairness, it differed in the way it applied such language in the balance of the report. First, fairness language was not treated as a separate topic; rather, equity- and fairness-speak permeated the report. The terms ‘equity’ or ‘fairness’ were used over 100 times in total and featured on more than half the pages of the report. Other principles similarly featured large: the terms ‘sustain’, ‘efficient’ and ‘integrity’ each appeared over 50 times.

Secondly, the report did more than merely mention fairness; the Group’s claim ‘to consider options for reform in terms of six principles of a good tax system’¹⁰⁸ was evident in that equity was considered as an independent criterion when evaluating the advantages and disadvantages of several proposals. So, for example, the proposal to align the top personal, corporate and trust tax income tax rates was said to increase horizontal equity but reduce progressivity and vertical equity.¹⁰⁹

Thirdly, the report suggested why fairness was important to a tax system: Compliance is likely to be affected by perceptions that the system is unfair.¹¹⁰ This is of particular concern where, as in New Zealand, the system relies heavily on voluntary compliance.¹¹¹ Both the fairness and the sustainability of the tax system are affected when taxpayers fail to comply.

Despite the pervasiveness of the language of fairness in the Report, a closer look at how the language of fairness was used raises questions as to just how significant fairness really was. Of the 13 main recommendations of the report, only the last made any reference to fairness, in the general advice that the government should have ‘a stronger focus on achieving and sustaining efficiency, fairness, coherence and integrity of the tax system.’ Other recommendations were specifically justified on the basis of their integrity, efficiency or sustainability effects; in contrast, fairness, like an orphan, was simply added to a general list of desirable characteristics. Perhaps readers of the report were supposed to understand that the first 12 recommendations met the criteria of equity and fairness, but this is not made specific.

Secondly, although the report was permeated with the language of fairness, most mentions of fairness or equity reflected a pattern evident in the thirteenth recommendation: fairness was not referred to in isolation, but rather tacked on, as it were, to a list of general characteristics that are desirable in a tax system. So, for example, concerns were noted about the ‘efficiency, equity and integrity’¹¹² of the tax system. The current system was said to be ‘unfair, lacks integrity, unduly discourages work participation and biases investment decisions,’¹¹³ and ‘inefficient, unfair, and adds to business uncertainty.’¹¹⁴ Most references to fairness or equity appeared in the same breath as efficiency or sustainability concerns. If these lists had been replaced with the single term ‘optimal’, little would be lost, for to say that ‘the tax system is sub-optimal’ is hardly less specific than to say that ‘the system lacks coherence, integrity and fairness.’ Indeed, it may have the advantage of focusing attention on the more basic and contested question: what *would* an optimal tax system look like, and how would we know?

This piling up of descriptors also occludes the possibility that a tax system that is both fair and efficient may be unattainable. Certainly, the report noted that there are trade-offs between

¹⁰⁸ Ibid 9.

¹⁰⁹ Ibid 39, 42.

¹¹⁰ Ibid 9, 33.

¹¹¹ Ibid 33.

¹¹² Ibid 5.

¹¹³ Ibid 9.

¹¹⁴ Ibid 13.

desirable characteristics of a tax system: tradeoffs between fairness and efficiency,¹¹⁵ and between efficiency, equity, integrity, administration, and fiscal cost.¹¹⁶ Yet fairness was frequently lumped together with other desirable characteristics as if taxation policy were a case of both/and, rather than of either/or, particularly where equity and efficiency are concerned.

Thirdly, trade-offs may not only be necessary between the six principles of a good taxation system, but also about the principle of fairness itself. The report indicated that a proposal may concurrently enhance one aspect of fairness and reduce another. Thus, rates alignment may simultaneously increase horizontal equity while reducing vertical equity.¹¹⁷ In other cases, such as a land tax, the equity impacts may be unclear.¹¹⁸ As the report itself noted, ‘Choosing between reform options will ultimately depend on the value judgements that are inevitably required where competing objectives are involved.’¹¹⁹ The question arises to which values should have priority, and on what basis this might be determined. Simply repeating the language of fairness does little to address, let alone resolve, this question. Nor does it indicate the interpersonal dimension; what is considered fair for one may not be considered so by another and may affect each differently.

Fourthly, as far as the tax base is concerned, the report indicated a preference for a particular approach: it considered a BBLR system of taxation to be ‘a sound principle for a tax system.’¹²⁰ Notably, it justified this approach on efficiency, but not equity, grounds. A BBLR approach may indeed improve the efficiency of a tax system. However, vertical equity has usually been understood to require higher, rather than lower, rates (and not merely quantum) of tax on increasing levels of income, and preferences (for example, rebates, exemptions or negative income taxes) for those on lower incomes.¹²¹ If so, a BBLR approach to income tax might well reduce rather than enhance equity, even while improving efficiency.

Finally, and of equal concern, is the apparently limited focus of the TWG in addressing the top marginal income tax rates but making only passing reference to the lower rates. In discussing the BBLR system, the report focused on taxation rates in isolation from other welfare measures. Although it mentioned the distortionary effect of the Working for Families (WfF) package which creates very high effective marginal tax rates,¹²² there was no specific recommendation concerning WfF beyond the general suggestion that, ‘[t]here should be a comprehensive review of welfare policy and how it interacts with the tax system, with an objective being to reduce high effective marginal tax rates’.¹²³ This contrasts with specific advocacy of rates alignment at the top of the scale.¹²⁴

Given the large number of New Zealanders affected by the steep effective marginal tax rates that result from the abatement of social welfare measures, something more specific might have been expected beyond the suggestion that lowering the top marginal tax rate would

¹¹⁵ Ibid 14.

¹¹⁶ Ibid 55.

¹¹⁷ Ibid 39.

¹¹⁸ Ibid 51.

¹¹⁹ Ibid 38.

¹²⁰ Ibid 15.

¹²¹ This distinction underlies the differing conclusions of two recent reports on whether high wealth taxpayers pay a fair amount of tax: see IRD, *High-wealth Individual Research Project* (Report, 2023); Kieran Murray, John Wallace and Mehrnaz Rohani, ‘Effective tax rates imposed on the incomes of New Zealand residents: Report prepared for Olivershaw’ *Sapere* (Report, 2023).

¹²² TWG 2010 (n 92) 9.

¹²³ Ibid 11.

¹²⁴ Ibid 10, 38.

lower the impact of the abatement of WfF on effective marginal tax rates.¹²⁵ It is highly questionable that the fairness (let alone the efficiency) of the tax system can be assessed independently of the redistributive effects of social welfare measures. Taxpayers with children, particularly those on low to medium incomes, are concerned about their net income, which is significantly affected by welfare measures such as WfF, and not just nominal income tax rates. At the time, more radical suggestions to mitigate or eliminate the effect of high marginal tax rates resulting from the abatement of WfF were aired.¹²⁶ The TWG, in focusing its attention on the nominal top marginal income tax rate, seemed to limit its vision to (the fairness of) only part of the tax system.

The TWG 2010 report made considerable use of the language of fairness. However, the lack of a clear discussion of fairness, the use of fairness language in the same phrase as other principles without distinguishing them, unresolved conflicts between and even within the principle, and the scope limitation whereby low and medium wage earner fairness concerns were barely addressed, suggest that fairness was not accorded the high priority claimed for it. Yet of all the reports discussed, the TWG report made the most intensive use of the language of fairness.

G Tax Working Group 2017

In fulfilment of an election pledge,¹²⁷ the Labour government elected in September 2017 announced another tax working group (TWG 2017), which issued its final report in February 2019. TWG 2017 issued a background paper in March 2018.¹²⁸ The background paper repeated the ‘established criteria that have been used in past tax reviews’, particularly TWG 2010, including the principle of equity and fairness, of which it provided a simplified definition: ‘Equity and fairness: The tax system should be fair. This involves both horizontal equity (fair treatment of those in similar circumstances) and vertical equity (fair treatment of those with differing abilities to pay tax).’¹²⁹

Since the TWG’s brief included ‘consideration of whether the tax system operated fairly in relation to taxpayers, income, assets and wealth’,¹³⁰ the TWG 2017 Secretariat subsequently issued a background paper entitled ‘Tax and Fairness’.¹³¹ Before restating the vertical equity principle (‘the principle that those with higher income, or higher ability to pay, should pay a greater amount of tax’) and the horizontal equity principle (‘[t]he principle that people that are in the same position should pay the same amount of tax’),¹³² the committee repeated the rather unhelpful aphorism that, ‘At its core fairness matters because people want tax to be fair’.¹³³

¹²⁵ Ibid 61.

¹²⁶ Keith Rankin, ‘An Income Tax Proposal for New Zealand’ (2007) 13 *New Zealand Journal of Tax Law and Policy* 10, 10-19.

¹²⁷ ‘Election 2017 tax policies’ KPMG (Web Page, 13 September 2017) <<https://assets.kpmg.com/content/dam/kpmg/nz/pdf/September/taxmail-issue-1-September-2017-KPMG-NZ.pdf>>.

¹²⁸ Tax Working Group, *Future of Tax: Submissions Background Paper* (Report, 2018).

¹²⁹ Ibid 19. The final report adds the sentence: ‘Procedural fairness is also important for a tax system’. Ibid 28.

¹³⁰ *Future of Tax: Submissions Background Paper* (n 128).

¹³¹ Tax Working Group, *Tax and Fairness: Background Paper for Session 2* (Report, 2018).

¹³² Ibid [7].

¹³³ Ibid [4].

In two short paragraphs, fairness was described in both deontological ('some people may views that tax fairness is based on a principle of duty or obligation...')¹³⁴ and consequentialist ('[f]airness has other benefits...')¹³⁵ terms. The paper noted that 'what is fair ultimately rests on value judgments. There is unlikely to be universal agreement'.¹³⁶ Despite this, the principles of vertical and horizontal equity are offered as being 'two main principles that are used to help guide what is fair within tax policy.'¹³⁷

In its final report, the Group confirmed the six principles advanced by TWG 2010 as an established principle of tax policy design, but in considerably less detail:

Equity and fairness – achieving fairness, including through enhancements to 'horizontal equity' (the principle that people with similar income and assets should pay the same amount in taxes) and 'vertical equity' (the principle that those with higher income or assets should pay higher amounts of tax). Procedural fairness is also important for a tax system.

Compared to its predecessor, this principle seems like shorthand, with minimal expansion of detail (into such matters as intergenerational concerns, bases and rates).¹³⁸

Despite changes in government, the language of fairness continued to permeate tax policy discussions. 'fair' and its cognates appeared 77 times in the Group's main report.¹³⁹ Yet despite its enduring popularity, past reports suggest that fairness may have little practical effect on practical policy.

IV DISCUSSION

Successive tax reports have made increasing reference to equity and fairness in taxation. The 1922 Commission barely mentioned the concept, whereas the reports of TWG 2010 and TWG 2017 were suffused with it. What then are the meaning and role of fairness language in the tax review process? Does such language contribute to the discussion of taxation policy at all?

That the meaning of fairness is fluid is evident from the range of policy prescriptions evident in successive reports. As far as the progressive income tax is concerned, a low-rate broader base approach was advocated in 1922; yet in 1967 a high-rate narrow-base was preferred, to be replaced by a BBLR approach in TWG 2010. The TWG 2010's emphasis on international competitiveness and lower rates bears comparison with the 1922 report and contrasts with the middle-income earner and family focus of 1967. Yet these reports all indicate a concern for fairness that increasingly is articulated. It is evident that fairness means different things to different people living in different times or contexts. At least as far as the income tax is concerned, fairness or equity is not static, and is contextually bound.

Certainly, use of the language of fairness increased during the twentieth century. The 1922 report and that of the Royal Commission of 1924 made limited reference to the concept,

¹³⁴ Ibid [4].

¹³⁵ Ibid [5].

¹³⁶ Ibid [6].

¹³⁷ Ibid [7].

¹³⁸ The other five principles were also amended, and in two cases renamed: Efficiency and growth simply became efficiency; and fiscal cost became fiscal adequacy.

¹³⁹ Tax Working Group (n 9).

possibly since only high earners paid income tax at the time.¹⁴⁰ The 1951 report did refer to it as a consideration, but the balance of the report seemed to take it for granted. The 1967 report devoted a separate section to fairness, and the 1982 report noted fairness as a paramount consideration, but which had to be considered at the level of the tax system. TWG 2010 not only listed fairness as one of six principles, but its report was suffused with the term. Yet after nearly a century of reports there is no greater clarity as to how to translate the concept into practice. As the income tax became more pervasive, affecting increasing number of taxpayers at ever lower income levels, the notion of fairness seemed to require increasing emphasis.

One reason for this emphasis has been noted in the reports: taxpayers are more likely to comply with a tax they consider fair, whereas perceived unfairness will encourage avoidance. While this may be true, it suggests a limited understanding of the meaning of fairness. Few would agree that the fairness of a tax can be determined simply by the extent to which those subject to the tax comply with it. On that basis a truly indirect tax would seem fairer than a direct tax, since the immediate payer of the tax is not the one bearing the burden, and the ultimate payer of the tax may be unaware that he or she is paying it, and thus lack any incentive to avoid the tax. This is not to deny that there is evidence of a link between perceptions of unfairness and avoidance.¹⁴¹

At root, the problem with fairness language is a lack of consensus as to what fairness means in the context of a pluralist society. At the simplest level, no two individuals share identical sets of values. What seems fair to one person (likely the person receiving a tax cut), is unlikely to seem so to another who is subjected to a tax increase. Further, fairness is not self-defining. Regardless of how fairness is understood, the criterion (or criteria) whereby to assess fairness need to be discussed, and this discussion is missing in the reports. Given the political nature of taxation, it may not be possible to define fairness in any final way; but unless an attempt is made, the term may become vacuous rhetoric rather than a useful guide for policy setting. Certainly, as society changes, and as a society's experience of taxation changes, so does its use of fairness language in taxation discussions. Meantime, the meaning of fairness remains elusive.

Murphy and Nagel highlight this problem when they suggest that 'serious public discussion of economic justice has been largely displaced by specious rhetoric about tax fairness.'¹⁴² In what sense is this rhetoric specious? As used in tax reports, fairness tends to be understood in a narrowly consequentialist way: a tax is fair if people are happy to pay it; if it is not fair avoidance will result. However, given the range of individuals – only some of whom will benefit from any tax changes – this can provide no clear basis upon which to assess the fairness of a tax. The demise of the New Zealand Inland Revenue Department's onetime motto, 'It's our job to be fair,' aptly demonstrates the problem. Instead of sending a positive message, a Report to the Treasurer and Minister of Finance noted that, 'Taxpayers' misconception of the meaning of 'it's our job to be fair' is an example of a common error that comes about from mixing the relative certainty of legal norms with the subjective flexibility

¹⁴⁰ Witte speaks of the United States' income tax developing from a class tax to a mass tax during World War Two. See John F Witte, *The Politics and Development of the Federal Income Tax* (University of Wisconsin Press, 1985) 110. New Zealand's pattern was not dissimilar.

¹⁴¹ Maryanne R Richardson and Adrian J Sawyer, 'A Taxonomy of the Tax Compliance Literature: Further Findings, Problems and Prospects' (2001) 16 *Australian Tax Forum* 140; Betty R Jackson, and Valerie C Milliron, 'Tax Compliance Research: Findings, Problems, and Prospects' (1986) 5 *Journal of Accounting Literature* 125.

¹⁴² Murphy and Nagel (n 15) 4.

that is characteristic of people's attitudes to morality.¹⁴³ If fairness is an aspect of morality, and if indeed morality is subjective, it is doubtful that mentions of fairness are likely to affect taxation policy prescriptions substantially, and certainly not in the absence of serious public discussion of economic justice.

What, then, is the role of fairness language? In the TWG 2010 report, as in previous reports, fairness language seems to provide a rhetorical legitimating device: emotionally appealing, for sure, but perhaps little more than that. Fairness, like the Australasian notion of 'fair go', seems to be a case of 'I know it when I see it', but rather notorious to specify in anything beyond general terms. This begs the question as to what would be lost if the language of fairness were omitted from future discussions of taxation. How would the recommendations of a future report differ if the language of fairness were omitted?

V CONCLUSION

This article discusses the increasing use of the language of fairness in New Zealand taxation reports and suggests that it is not clear just what 'fairness' or 'equity' means in the context of these discussions. This is hardly surprising in a pluralist society. Equity or fairness could refer to rights or to outcomes. Taxpayers' evaluations of fairness likely will differ when the top personal marginal income tax rate was 5% than when it reached 77.5%. Yet official taxation discussions frequently appeal to a notion of fairness. An increasing use of such language is evident in reports with contrasting or even conflicting policy prescriptions. Short of a consensus as to the meaning of fairness, appeals to fairness or equity should perhaps be recognised for what they are: aspirational appeals intended to affect the taxpayer's perception of taxation, but of relatively little relevance to the substance of taxation, and thus, perhaps, best discounted, if not ignored.

And yet perhaps the language of fairness does have a place in taxation policy. If the art of taxation indeed consists in so plucking the goose as to get the most feathers with the least hissing, perhaps the language of fairness is a vital tool in the Government's taxation toolkit, namely, as an anaesthetic. If so, Colbert's metaphor could be extended: appeals to fairness provide an anaesthetic to disguise the dubious ethics of taxation, thereby reducing the volume of hissing, but requiring limited, if any, adjustment to actual policy.

¹⁴³ *Report to the Treasurer and Minister of Revenue by a Committee of Experts on Tax Compliance* (Report, 1998) [16.27]. For a discussion of the slogan and the issues it raised, see D Martin, 'Money: Taxman's fairness slogan haunts him' *New Zealand Herald* (online, 30 June 2000) <<https://www.nzherald.co.nz>>.

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EQUITY DIMENSIONS OF A LAND TAX

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Abstract

Economists view land taxes as having beneficial efficiency properties relative to other forms of taxation. Furthermore, land taxes in New Zealand are administratively easy to implement since all properties are already valued on a regular basis. However, questions remain about the distributional properties of a land tax. Five questions are addressed in this paper: First, what are its vertical equity properties (in relation to household income/wealth)? Second, what are its horizontal equity properties (for people with similar incomes/wealth but with different landholdings)? Third, what are the impacts of the tax on landowners involved in land-extensive primary industries? Fourth, what are the impacts on owners of Māori land? Fifth, what inter-generational equity distributional considerations arise?

After addressing these questions, the paper considers broader changes to the tax system accompanied by a central government land tax that incorporates the following features: (1) Māori freehold land that is currently non-rateable under the Local Government (Rating) Act 2002 is exempt from the tax; (2) a tax-free threshold is set based on the per hectare value of the land parcel; (3) a proportionate tax is levied on all land value above the threshold; and (4) an option is provided to accrue the tax liability (with interest) until property sale to alleviate cashflow constraints. The paper concludes that the strong efficiency and administrative properties of a land tax, structured as above to alleviate certain distributional concerns, make land tax a valid option for central and local governments to consider.

I INTRODUCTION

An experimental property and income tax was introduced to fund New Zealand's central government expenditures in 1844.¹ A recognisable land tax was adopted as the country's first permanent direct tax through the *Land Tax Act 1878* (NZ). By 1895, land tax revenue comprised approximately three-quarters of the combined revenues from land and income

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¹ Paul Goldsmith, *We Won, You Lost. Eat That!* (David Ling Publishing, 2008) 22. The *Property Rate Ordinance 1844* scrapped customs duties and introduced a tax on the market value of real and personal property, and income. This experiment lasted less than a year. For a discussion of the ill-fated tax, see Ogy Kabzamalov, 'New Zealand's Forgotten Income Tax' (2010) 26 *Auckland University Law Review* 16.

taxes but increasing exemptions meant that, by 1967, land tax revenues comprised only 0.5% of total government revenue.² Central government land tax was finally abolished through the *Land Tax Abolition Act 1990* (NZ).

Separately, a 50% ‘betterment tax’ on increased land value consequent on a public infrastructure development was available for use by local authorities to fund infrastructure development between 1926 and 1953.³ Currently, at the local government level, land value is used as the basis for rates in some New Zealand local authorities. All other local authorities levy rates on the basis of capital value (ie, land plus improvement values).

Australia levied a federal land tax between 1910 and 1952.⁴ Currently (other than in the Northern Territory), Australian landowners pay an annual tax to state and territory governments based on the unimproved value of taxable property. A household’s main home is exempt from the tax.⁵

Economists have long viewed land taxes favourably given their beneficial efficiency properties relative to other forms of taxation.⁶ Milton Friedman once commented that ‘the least bad tax is the property tax on the unimproved value of land’.⁷ Land is an asset that is in fixed supply so taxing land does not affect the quantity supplied. This non-distortionary outcome with respect to supply is unlike the effects of taxation on incomes (eg, personal tax and company tax) or on consumption (eg goods and services tax (GST) and customs and excise duties) which impact on agents’ choices, causing inefficiencies. Taxes that are designed to combat externalities (eg, a carbon tax, or its Emission Trading Scheme (ETS) equivalent) can be considered even more efficient than a land tax as they rectify an existing inefficiency in the market economy. However, this latter class of taxes cannot collect remotely enough revenue to fund central government’s fiscal outlays, so must be supplemented by other forms of taxation.

At the local level, land-based rating systems are an efficient means of raising the revenues required to fund local authority expenditures. They are more efficient than capital value-based rating systems since they do not disincentivise development. Consequently, land value-based rating systems lead to greater intensification in cities than do capital value-based systems,⁸ provided planning laws do not stifle the ability to intensify. In addition to being an efficient form of funding local authorities, land value-based rates have the effect of holding

² Taxation Review Committee, *Taxation in New Zealand: Report of the Taxation Review Committee* (Government Printer, 1967).

³ Christopher E Harris, ‘Slow Train Coming: the New Zealand State Changes Its Mind about Auckland Transit, 1949-56’ (2005) 23(1) *Urban Policy and Research* 37, 43.

⁴ Jonathan Barrett and John Veal, ‘Land Taxation: A New Zealand Perspective’ (2012) 10(3) *eJournal of Tax Research* 573.

⁵ For further information on land taxes in an Australian context, see Vince Mangioni, *Land Tax in Australia: Fiscal reform of sub-national government* (Routledge, 2016).

⁶ John Stuart Mill, *Principles of Political Economy with Some of Their Applications to Social Philosophy*. Longmans, Green, & Co, 1865); Henry George, *Progress and Poverty* (D Appleton & Co, 1880), Richard F Dye and Richard W England, *Land Value Taxation: Theory, Evidence and Practice* (Lincoln Institute of Land Policy, 2009).

⁷ Mark Blaug, ‘Review of Robert V. Andelson: Critics of Henry George: A Centenary Appraisal of their Strictures on Progress and Poverty’ (1980) 47(188) *Economica* 471, 472.

⁸ Norman Gemmell, Arthur Grimes and Mark Skidmore, ‘Do Local Property Taxes Affect New Building Development? Results from a Quasi-Natural Experiment in New Zealand’ (2019) 58(2) *Journal of Real Estate Finance and Economics* 310.

local government to account to local ratepayers who witness at first hand the financial effects of local expenditure decisions;⁹ capital value-based rates have similar accountability benefits.

From an administrative perspective, land taxes in New Zealand are easy to implement. All properties in the country are already valued on a regular basis (at least once every three years) both with respect to land value and improvement value (together summing to capital value). In addition, land has clear title so the owners of all parcels of land are identified, and rates are already charged to the owners by local authorities. Together, these features mean that:

- no further expense is required to value properties relative to the existing situation,
- billing mechanisms already exist to gather land tax revenue, and
- no owner can avoid payment by restructuring their affairs or evade taxes by not paying; the consequence of non-payment of tax is forced sale of the property in order to gather the tax revenues that are due.

While the efficiency and administrative aspects of land taxes at both central and local government level are undoubtedly strong (especially relative to other forms of taxation), questions remain about their distributional properties. It is these distributional properties, in the context of New Zealand, that are the main focus of this paper. Section II of the paper focuses on questions of how a land tax may affect distributional outcomes and includes suggestions for how it could be designed to achieve certain distributional outcomes. Section III incorporates these suggestions and discusses how introduction of a land tax may operate in a system-wide context. The final section of the paper summarises key insights and discusses the potential for future work that could inform the design of a land tax in New Zealand.

II DISTRIBUTIONAL QUESTIONS

In the analysis that follows,¹⁰ unless indicated otherwise, discussion of a land tax refers to a proportional tax on the officially assessed value of a set parcel of land. At least five distributional questions arise in relation to such a tax. First, what are its vertical equity properties (where vertical equity here refers to tax incidence relative to either a household's income or wealth)? Second, what are its horizontal equity properties (where horizontal equity is initially narrowly considered in relation to the treatment of people with similar incomes or wealth but with different landholdings)? Third, extending the horizontal equity considerations, what are the impacts of the tax on landowners involved in land-extensive primary industries such as farming, forestry, and mining? Fourth, what are the impacts of a land tax on owners of Māori land? Fifth, what inter-generational equity distributional considerations arise? Each of these questions is considered in turn below.

⁹ Matthew Roskrige, Arthur Grimes, Phillip McCann and Jacques Poot, 'Homeownership, Social Capital and Satisfaction with Local Government' (2013) 50(12) *Urban Studies* 2517.

¹⁰ For prior analysis of equity consequences of a land tax in New Zealand, see Barrett and Veal (n 4) 581-82.

A Vertical Equity

When considering vertical equity issues in relation to taxes (eg, whether a tax is progressive, proportional, or regressive), a system-wide approach is required, ie, one needs to consider the degree of progressivity of the tax system as a whole rather than deciding whether an individual tax is progressive or not. These system-wide issues are considered in part III of the paper. Nevertheless, one can analyse how a specific tax contributes to the overall progressivity of the tax system as analysed in this sub-section.

The New Zealand evidence shows that the value of landholdings of wealthy and of high-income people, on average, exceeds that of less prosperous people.¹¹ In addition, urban land has higher per hectare (ha) value than does rural land while, within cities, land values per ha are higher in wealthy suburbs than in less wealthy suburbs. Outside of the main cities, land values in popular tourist areas (eg, Queenstown in New Zealand) are higher than in non-tourist locations. Given that incomes tend to be higher in large cities than in rural areas,¹² high income /wealthy people are more likely to own land in wealthy suburbs, and that high income/wealthy people are more likely than others to own second dwellings in tourist locations, a land tax is likely to have favourable vertical equity properties. While these patterns are observed across the country, it is useful for local governments to understand whether the same patterns exist in their local jurisdiction since specific place characteristics could affect vertical equity outcomes. This is particularly important when considering the vertical equity consequences of choosing either land value or capital value as a rates base.

Andrew Coleman and Arthur Grimes provide New Zealand evidence on the relationship between incomes and residential land values both across the country and within local authorities.¹³ At the time of that study, residential land comprised 64% of the value of all land in New Zealand. While the values used in the study are now somewhat dated, there is no reason to believe that the underlying relationships between incomes and property holdings have changed sufficiently since then to reduce their usefulness as a guide for understanding the vertical equity issues associated with a land tax.

The study examined how median household incomes within suburbs (referred to by Statistics NZ as ‘area units’, similar to the current SA2 definition) were related to median land values, median improvement values and median capital values within those area units. Across the country, a significant relationship existed between area unit residential land values and household incomes with an estimated elasticity of 1.65 ($p < 0.001$). Hence a 1% increase in median per ha land value of an area unit was associated with a 1.65% increase in household incomes for the households in that area unit. From a vertical equity perspective, this result implies that, on average, a land tax applying to residential land would be borne more than proportionately by higher income households, consistent with increasing vertical equity. Furthermore, not only is a nationwide land tax progressive, it is also more progressive than is a nationwide capital value tax for which the elasticity was estimated (in the same study) at 1.12.

¹¹ Andrew Coleman and Arthur Grimes, ‘Fiscal, Distributional and Efficiency Impacts of Land and Property Taxes’ (2010) 44(2) *New Zealand Economic Papers* 179, 195.

¹² David C Maré and Daniel J Graham, ‘Agglomeration elasticities and firm heterogeneity’ (2013) 75 *Journal of Urban Economics* 44.

¹³ Coleman and Grimes (n 11) 193.

When considered at an individual local authority level, the comparison becomes more muted. For the relationship within local authorities (ie, after controlling for differences between authorities), the estimated elasticities from that study were 0.76 for a land value-based tax and 0.71 for a capital value-based tax; furthermore, there was no statistically significant relationship between household incomes and the ratio of land to capital value within a local authority (whereas there was a significant positive relationship at the national level). From a vertical equity perspective, therefore, there is little to choose (on average) between a land value-based tax and a capital value-based tax when considered within a specific local authority; local characteristics (eg, degree of geographical disparities between suburbs) might make one form of rating base more progressive than the other depending on the city.

The results for the vertical equity properties of a (residential) land tax pertain to a pure proportionate tax system. A land tax can, however, be made more progressive without losing its efficiency properties through the inclusion of a tax-free threshold (as indeed was incorporated into New Zealand's land tax in the nineteenth century). This tax-free threshold cannot be related simply to the value of a parcel of land as that formulation would encourage (potentially inefficient) subdivision of land to reduce the tax burden. Instead, to maintain the efficiency properties of a land tax, the tax-free threshold can be set in relation to the land value per ha of the property based on the existing boundaries of the property at the time of the enactment of the tax. The example below illustrates how this tax-free threshold could apply and demonstrates its vertical equity properties, both in general and relative to a capital value-based rating system.

Consider a situation in which government wishes to raise \$15,000 pa in tax revenue from two properties, one with high and one with low land value (properties A and B respectively). Property A sits on 0.1 ha of land in a high-income suburb and is valued at \$900,000. Property B sits on 0.1 ha of land in a low-income suburb and is valued at \$600,000. Annual income of the household that owns property A is \$150,000 while annual income of the household that owns property B is \$100,000.

In order to raise \$15,000 in revenue using a proportionate land tax (with no tax-free threshold), government would need to set a 1% pa tax rate. The resulting land tax liabilities on properties A and B are then \$9,000 and \$6,000 respectively. As a proportion of income, the household at each property pays 6% of their income in land tax, ie, this example reflects a proportional tax (as opposed to a progressive or regressive tax).

Now consider a progressive variant of the land tax in which the first \$2,500,000 per ha in land value is not taxed. This threshold amounts to a deductible of \$250,000 for the land value of each property (given that each is 0.1 ha). Thus, the taxable component of property A becomes \$650,000 while that for property B becomes \$350,000. In order to raise \$15,000 in revenue, the tax rate now becomes 1.5% pa with the land tax payments being \$9,750 and \$5,250 for properties A and B respectively. The household at property A now pays 6.5% of their income in land tax while the household at property B pays 5.25% of their income; a larger tax-free threshold would further increase the progressivity of the tax. While this example reflects a central government land tax, the same logic applies to local authority rates based on land value for which a tax-free threshold would increase progressivity relative to current rating systems.

The analysis above is cast in terms of progressivity with respect to household income. Coleman and Grimes also examined progressivity of a tax on residential property in relation

to household wealth based on wealth statistics gathered by Statistics NZ in their 2006 Survey of Family, Income, and Employment (SOFIE).¹⁴ That analysis showed that 96% of households in the lowest net worth quintile do not own a home while the value of housing wealth (including ‘investment’ properties, defined as a house which is not the primary residence), increased consistently across the net worth quintiles. Thus, the evidence indicated that a land tax is progressive when viewed from a wealth perspective as well as from an income perspective.

Reserve Bank of New Zealand household balance sheet estimates¹⁵ indicate that ‘Housing and land value (including rental properties)’ comprised 61.9% of household net worth in March 2006 (at the time of the SOFIE survey used by Coleman and Grimes), with this share rising to 65.6% in March 2021 (the latest estimate provided). Excluding housing loans, the net share of housing and land value to total net worth rose from 47.0% to 52.2%. The rising shares are consistent with the rising real value of property over this period. These figures indicate that the wealth of property owners has increased relative to the wealth of others since the Coleman and Grimes study, strengthening the conclusion that a tax on property is progressive when considered in relation to wealth distribution.

B Horizontal Equity

The second issue in relation to the equity characteristics of a land tax concern matters of horizontal equity. In this sub-section, horizontal equity is considered narrowly in relation to the treatment of people with similar incomes or wealth who have different landholdings. (Subsequent sub-sections consider other matters relating to horizontal equity.) The transition to any new tax structure inevitably has horizontal equity implications as people in different existing circumstances are affected differently. For instance, the introduction of GST in New Zealand represented a one-off wealth tax (as did its subsequent increases) since the price of all goods and services to be consumed in future that were to be funded by existing wealth faced an increase in price reflecting the imposition of the tax. Older people whose remaining lifetime wealth (defined as existing wealth plus the present discounted value of future disposable income) faced a greater tax impost as a proportion of their wealth than did younger people for whom discounted earnings (rather than existing wealth) was the predominant component of wealth.

The introduction of a land tax similarly has disproportionate effects on the wealth of landowners relative to others who may have the same wealth and income prospects. As shown by Coleman and Grimes,¹⁶ the introduction of a land tax results in a one-off reduction in the price of land which is borne by existing landowners. The reduction in land price equals the present discounted value of future land tax payments over a long horizon. A similar situation of a fall in land values for farmland occurred in 1984 when agricultural subsidies were removed.¹⁷ People who own more than one property will face a greater tax impost from a land tax than owners of a single property who, in turn, will face a greater impost than those who do not own a property.

¹⁴ Coleman and Grimes (n 11) 195.

¹⁵ ‘Household balance sheet (C22)’ *Reserve Bank of New Zealand* (Report, 3 September 2001) <<https://www.rbnz.govt.nz/statistics/series/households/household-balance-sheet>>.

¹⁶ Coleman and Grimes (n 8) 182.

¹⁷ Lewis Evans et al, ‘Economic reform in New Zealand 1984-95: The pursuit of efficiency’ (1996) 34 *Journal of Economic Literature* 1891.

People whose equity represents a small proportion of their property value face a greater tax impost relative to their housing equity (and, most likely, relative to their wealth) than do those whose equity represents a high proportion of their property value. As a result, young homeowners are likely to face a higher tax impost (relative to their housing equity and wealth) relative to older people. With respect to age, a countervailing effect is that many retired people (who may be asset rich while earning relatively low incomes), could face greater cashflow problems in paying a land tax compared with salaried people who are younger. One method to alleviate such cashflow issues (currently used by some local authorities with respect to rates)¹⁸ is to allow the tax liability to be accrued (plus interest) as a lien on the property with the taxation authority having first call on the proceeds when the property is finally sold. From an accrual accounting perspective, this approach protects the government's balance sheet while alleviating the cashflow situation of individuals. (Government would, however, need to issue extra debt to fund its temporary cashflow shortfall with this approach.)

An alternative policy option to help people adjust to a new land tax is to introduce the tax gradually, with the tax rate increasing each year (perhaps over a decade). While giving households time to adjust their affairs to meet the cashflow demands, this policy still results in a one-off fall in property values (reflecting the discounted present value of future tax flows) at the time of the policy announcement.

A further alternative, albeit one that greatly reduces the revenue gathered from a land tax, is to follow an approach advocated by John Stuart Mill.¹⁹ In Mill's approach, the land tax applies only to the increase in land value following the introduction of the tax. This variant of the tax greatly reduces the one-off price reduction experienced by landowners as a result of the land tax since the tax does not apply to existing land value. (There will still be some subdued drop in price owing to the present discounted value of tax payments arising from prospective property price increases.) This version of the tax mitigates a potential criticism of a land tax that existing property rights are being stripped by government through the taxation of existing land value. The tax, in this form, becomes akin to an accrual capital gains tax on land value.

While the above discussion identifies a number of horizontal equity concerns associated with imposition of a new land tax, a reduction in the land price consequent on the introduction of a land tax has some offsetting horizontal equity outcomes.

First, holders of land who own the property through a trust bear the same tax (and hence the same capital loss) as households who personally retain ownership of land. The proportional nature of the tax means that no issues of income-splitting (or asset splitting) between the individual and the trust arise.

Second, people who have equity holdings in firms that own land will experience a reduction in the value of their equities. Thus, a person who has their wealth portfolio allocated more towards equities than direct property will still bear some of the burden of the tax; the size of that burden will depend on the nature of equities held.

¹⁸ See eg, 'Rates Postponement Policy' *Tauranga City* (Report, 20 June 2022)

<<https://www.tauranga.govt.nz/Portals/0/data/council/policies/files/rates-postponement-policy.pdf>>.

¹⁹ Mill (n 6), bk 5, ch 2, §5.

Third, a land tax has horizontal equity benefits in cases where the land value of a property increases as a result of a public investment or regulatory change that increases the value of the property. Examples include a new infrastructure investment that services a property (eg, an improved transport link), a change in regulation that enables greater intensification of existing land within a city, and changes in regulation that enable building on formerly rurally-zoned land on the outskirts of a city. These cases of value-uplift, ie, betterment, result in wealth increases (ie, temporary surges in income) that are unlikely to be taxed under the current New Zealand tax regime. Coleman and Grimes demonstrate that a land tax represents an amortised capital gains tax for instances such as these.²⁰ Hence adoption of a land tax can obviate the need for a (much more complicated) capital gains tax relating to land. It is also administratively simple (since all land is already valued through the local authority rating process) and being amortised, it enables the taxpayer to pay a small amount of extra tax each year rather than facing a large impost either at the time of land revaluation or at the time of sale (for a realisation capital gains tax).

Fourth, foreign owners of land, who may not be subject to income, GST, or other taxes, contribute to funding fiscal outlays in the country through a land tax. Foreign ownership of land may be driven by many factors, but the fact of ownership signifies that some advantage accrues to the foreign landholder by virtue of being an owner of land within the country. A land tax ensures that the foreign owner helps to compensate the residents of the country for the benefit accrued from their ownership status.

C Land-Extensive Primary Industries

One group in society who would inevitably be hit hard by a pure proportionate land tax are landowners who use their land for land-extensive productive purposes such as pastoral farming, forestry, and mining. For people in these industries, large landholdings are a prerequisite for production and hence for their livelihoods.

The deductible version of a land tax (ie, with some tax-free threshold), as outlined above, provides a simple solution for these cases. Land used for pastoral farming has very low value per ha relative to land in urban uses. The Real Estate Institute of New Zealand reports that the median price per ha of farmland sold in the April 2023 quarter was \$30,330,²¹ which represents only a tiny fraction of per ha land values in urban areas. Even dairy farms, at a median price per ha of \$44,060 (in the quarter to December 2022) have land values that are only a fraction of urban values.²²

To illustrate the importance of the tax-free threshold, consider a 100-ha dairy farm with land valued at the median national value, so that its land is valued at approximately \$4.4 million. A 1% land tax with no tax-free threshold would result in a tax payment of \$44,000 pa whereas a small tax-free threshold (eg, the first \$100,000 per ha being exempt) would completely insulate the farm from the tax. From a political economy angle, at least, the effective exemption of farmland and other rural land from a land tax would make its introduction more straightforward. In addition, with the exemption being based solely on land

²⁰ Andrew Coleman and Arthur Grimes, 'Betterment Taxes, Capital Gains and Benefit Cost Ratios' (2010) 109 *Economics Letters* 54.

²¹ Mina Martin 'Farm sales volume down but values still steady – REINZ', *NZA* (Web Page, 31 May 2023) <<https://www.mpamag.com/nz/news/general/farm-sales-volume-down-but-values-still-steady-reinz/447605>>.

²² Jessica Marshall, 'Farm prices steady – REINZ', *Dairy News* (Web Page, 8 February 2023) <<https://www.ruralnewsgroup.co.nz/dairy-news/dairy-general-news/farm-prices-steady-reinz>>.

values rather than on land use, there is no distortionary effect of favouring land use in one sector over another.

D Māori Land

Te Tiriti o Waitangi (Treaty of Waitangi) considerations add an important complexity to the application of land tax in New Zealand. This complexity is over and above (horizontal and vertical) equity concerns.

Māori landownership can be grouped into two broad types. First, Māori freehold land may be controlled by Māori Incorporations or Māori Trusts, or through direct *iwi* (tribal) ownership.²³ The Māori Land Court determines which land is classified as Māori freehold land, with such land being held by individuals as tenants in common. Much of this land is used for primary industry production while some is held as native forest (or regenerating native forest) consistent with the cultural importance placed on maintaining the mauri (life force) of the whenua (land). Additionally, some land is wāhi tapu (sacred land) for which restrictions on use are in place.

Māori freehold land that is officially deemed to be ‘wholly unused’ (eg, not used for commercial or housing purposes) is non-rateable under the *Local Government (Rating) Act 2002* (NZ).²⁴ This land could be similarly exempt from a central government land tax.

Following dispossession of the vast majority of Māori land in the nineteenth and twentieth centuries, much of the remaining land in Māori ownership is of poor quality for arable purposes.²⁵ Consequently, even Māori freehold land that is used for commercial purposes (eg, farming and forestry) has low market value and so would benefit from the same deductible policy outlined above as for other farmland. In effect, the great majority of Māori freehold land used for primary production would not be subject to a land tax that incorporated even a modest tax-free threshold, while land that is deemed ‘wholly unused’ would be exempt from the tax.

The second type of Māori landownership is land owned by individual Māori. From a horizontal equity perspective, a case can be made that such land should be treated identically to land owned by others. From a vertical equity perspective, the 2018 census recorded a Māori homeownership rate of 47% compared with 64% for the total New Zealand population.²⁶ In addition to the comparatively low homeownership rate, Māori homeownership tends to be more concentrated in areas with lower land values (rurally and within cities). Hence Māori are likely to pay a much smaller proportion of a land tax than is represented by the Māori population proportion.

²³ Sandra Cortés-Acosta, *Land-cover Choices and Governance Structures: Lessons from Māori* (PhD thesis, Victoria University of Wellington, 2020).

²⁴ ‘Remission and Postponement of Rates on Māori Freehold Land Policy’ *Tauranga City* (Report, 20 June 2022) <<https://www.tauranga.govt.nz/Portals/0/data/council/policies/files/remission-postponement-rates-maori-freehold-land.pdf>>.

²⁵ Rowan Thom, ‘Land Loss, Confiscation, Arability and Colonisation: The Experience of Iwi in Aotearoa New Zealand’ (2022) 18(4) *AlterNative: An International Journal of Indigenous Peoples* 556.

²⁶ Ministry of Housing and Urban Development, ‘Census Update #3 – Tenure of households for people in occupied private dwellings: Data from New Zealand Census of Population and Dwellings 2018 (Report, December 2020) <[https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_168719474/Wai%202750%2C%203.1.318\(b\).pdf](https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_168719474/Wai%202750%2C%203.1.318(b).pdf)>.

E Inter-Generational Equity

Introduction of a land tax has inter-generational effects which need to be considered beyond just the immediate impacts of its introduction. An important aspect of a land tax is its non-distortionary efficiency properties. Unlike income taxes (and GST), land tax does not disincentivise income generation activities such as entrepreneurial endeavours or investing in human and physical capital. Prior studies show that the use of non-distortionary taxes raises the economic growth rate,²⁷ and hence societal incomes, relative to the use of distortionary taxes. Consequently, the partial replacement of distortionary taxes with a land tax can be expected to raise the living standards of future generations. Future generations of residents will also be better off if the tax paid by foreign owners of domestic land is recycled to residents in the form of a dividend to residents.

From an equity perspective, people who receive bequests from land-rich parents will face a reduction in the value of their bequest following introduction of a land tax while those without such bequests will not be affected, so contributing to an increase in inter-generational vertical equity. In addition, future first-home buyers will face lower purchase prices for houses as a result of the introduction of a land tax which would assist those who face equity (house deposit) constraints at the time of initial house purchase. Each of these considerations is likely to result in increased vertical equity across generations.

A further consideration is that technological developments (together with people having multiple countries of residence and/or citizenship) make it increasingly difficult to define incomes and expenditures as occurring within a specific national boundary. These aspects make it increasingly challenging to collect taxes (especially company tax and personal income tax) when other countries have lower tax rates. In addition, the ability of individuals to purchase goods directly from a wide range of offshore suppliers provides challenges for the collection of GST, particularly for goods valued at less than \$1,000 which do not require a customs number. A key advantage of a land tax is that land is immovable and in fixed supply within the nation's boundaries, and title to the land is known. Land tax can therefore be gathered no matter where the owner resides; if the tax is not paid, the land can be repossessed by the state to pay the outstanding tax bill. Thus, with a land tax, future generations can have a secure tax base that is not subject to erosion by technological or other developments.

III LAND TAX IN A SYSTEM CONTEXT

No tax is introduced in isolation. For instance, when New Zealand introduced GST, multiple other taxes were cut or removed entirely. In order to assess the impacts of a land tax, one therefore has to consider how the introduction of the tax may be accompanied by other tax measures. Several alternative options for policies that may accompany the introduction of a land tax are noted below, each of which is designed to address one or more of the equity

²⁷ See eg, Michael Bleaney, Norman Gemmell and Richard Kneller, 'Testing the Endogenous Growth Model: Public Expenditure, Taxation, and Growth over the Long Run' (2001) 34(1) *Canadian Journal of Economics* 36.

issues outlined above; multiple options may be introduced together. All the options are in the context of a land tax introduced by central government that has the following features:

- Māori freehold land that is currently non-rateable under the *Local Government (Rating) Act 2002* (NZ) is exempt from the tax.
- A tax-free threshold is included in the regime, based on the per ha value of the land parcel, which has the effect of excluding virtually all rural land and excluding most other Māori freehold land.
- All land value above the threshold is taxed at a proportionate rate.
- An option to accrue the tax liability until property sale is included to alleviate cashflow constraints for those on low incomes who may nevertheless be land rich.

A first option is to use the land tax revenues to provide a tax-free income tax threshold, which is currently absent from New Zealand's income tax structure (unlike the thresholds that exist in most OECD countries). The proportionate effect of this threshold is greatest for those on low incomes, so its inclusion increases the progressivity of the overall tax system.

A second option is to use the tax revenue to provide an annual dividend to all residents as has been suggested for the revenues gained from the Emissions Trading Scheme.²⁸ The proportionate effect of this dividend is again greatest for those on low incomes, and it would also accrue to those who do not earn income (unlike the first alternative).

A third option is to reduce the rate of GST and/or reduce one or more rates of income tax. The vertical (and horizontal) equity implications of this approach depend on which tax rates were reduced.

Each of these three options has the effect of recycling not only domestic resident taxpayers' land taxes within the country, but also of recycling foreign landowners' land tax payments to New Zealand residents. Either can be used together with the introduction of a land tax to increase vertical equity. Impacts on horizontal equity will nevertheless inevitably remain as existing landowners in urban areas experience a one-off fall in land values. Mill's approach of taxing only increments in land value would substantially alleviate this horizontal equity issue but at the expense of gathering little revenue from land taxes over the short to medium term, so reducing the ability to combine the imposition of a land tax with other tax changes to contribute to increased vertical equity (and efficiency).

At the local government level, adoption of land value as the basis for rates together with a tax-free threshold would increase vertical equity while also improving efficiency of the tax system relative to systems that adopt a capital value base. Efficiency is improved by avoiding the distortionary tax on improvements which exists when rates are based on capital value.²⁹ While some local authorities in New Zealand adopt land value as the basis for rates (albeit without a tax-free threshold), many use capital value as the ratings base, and all authorities which have switched from one system to the other since 1985 have switched from the more

²⁸ See eg, 'ACT whacks petrol tax, the smart way', *ACT* (Web Page, 2022) <https://www.act.org.nz/act_whacks_petrol_tax_the_smart_way>.

²⁹ As noted by Barrett and Veal (n 4), William Vickrey comments that a tax on land is 'one of the best taxes', and a tax on improvements is 'one of the worst taxes' quoted in Sally Kwak and James Mak, 'Political Economy of Property Tax Reform: Hawaii's Experiment with Split-Rate Property Taxation' (2011) 70(1) *American Journal of Economics and Sociology* 4.

efficient land value base to the less efficient capital value base.³⁰ A switch back from capital value to land value as the ratings base for local authorities is therefore warranted on both equity and efficiency grounds.

IV CONCLUSIONS

Historically, land taxes played an important part in New Zealand's early tax system. They also played a role as a betterment tax to help fund infrastructure developments. With technological advances that threaten existing tax bases, land tax can provide a secure component of the country's future tax base. Furthermore, this benefit is complemented by the ability to replace less efficient taxes with an efficient tax and, at the same time, increase vertical equity. For these reasons, land tax was identified as an option to implement in New Zealand by the report of the 2010 Tax Working Group (TWG).³¹ Indeed, the TWG's eighth recommendation stated: 'Most members of the TWG support the introduction of a low-rate land tax as a means of funding other tax rate reductions.'³²

The TWG report was informed by empirical studies from the first decade of the current century. No detailed examination of the equity and efficiency properties of land taxes (relative to other taxes) has been undertaken in New Zealand since that time. This paucity of recent work presents a limitation on our current understanding of the incidence and impacts of a land tax. It also presents an opportunity for new empirical analysis of the detailed distributional consequences of the introduction of a land tax given current property prices. Opportunity exists also for more detailed examination of how a central government land tax could dovetail with local authority rates and with Te Tiriti o Waitangi obligations with respect to Māori freehold land.

The strong efficiency properties of a land tax have been well established in the economic literature, and these are highly unlikely to be challenged by further empirical work. These strong efficiency properties, coupled with the ability to structure the tax in conjunction with other tax changes to increase vertical equity while retaining revenue neutrality (as discussed in this article), means that it remains a valid option for central and local governments to consider.

³⁰ William McCluskey et al, 'Rating Systems in New Zealand: An Empirical Investigation into Local Choice', (2006) 14(3) *Journal of Real Estate Literature* 381.

³¹ *A Tax System for New Zealand's Future: Report of the Victoria University of Wellington Tax Working Group* (Final Report, 2010).

³² *Ibid* 11.

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TAX JUSTICE AND FREE DATA: A NEW ZEALAND PERSPECTIVE

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Abstract

This article examines the role of data collection and the resulting growth in global wealth inequality through a New Zealand lens. The third and fourth industrial revolutions have enabled an increased concentration of wealth through the exploitation of large databases of information. Most of the corporations (and their shareholders) benefiting from this shift in wealth are based in the United States. The big information technology enterprises, such as Alphabet (Google) and Meta (Facebook), have enjoyed an immense accumulation of wealth by exploiting their unique market power to collect and commercialise data. This trend may grow if the predictions of a fourth industrial revolution come to fruition. New Zealanders contribute toward the success of these enterprises as willing users of their services and contributors to their databases. This article proposes that tax could be used as a tool to redistribute some of this shift in wealth back to New Zealand by using the volume of data transferred from New Zealand as a tax base, thereby focussing taxation on the source of the wealth transfer.

I INTRODUCTION

The theme of this issue is ‘Tax Justice: Perspectives from Aotearoa New Zealand’. This article considers tax justice with respect to the data collection that forms the basis for much of the third and fourth industrial revolutions and how this might impact upon New Zealand’s tax justice in the world.¹ The article is based on a premise that while conceptions of tax justice will vary, taxing economic rents is relatively low hanging fruit. When wealth is created beyond normal returns, taxing those excess gains is less likely to be contentious. Many commentators argue that large databases of user/consumer information result in economic rents due to the market power created by the scale of data. When data is collected for free and on a large scale, it is readily exploitable for commercial gain using algorithms to convert raw data into useful information. This market power is creating large amounts of wealth for some enterprises. This article proposes that New Zealand should consider taxing the collection of data as an alternative, or in addition to, the traditional tax bases of revenue and profit.

First, in part II, this article considers tax justice and economic rents, concluding that taxing economic rents is unlikely to breach generally recognised conceptions of fairness.

In proposing to tax data collection, part III argues that economic rents are being derived from data collection and typically in favour of investors in the world’s largest information technology corporations. In this part, the activities of the third and fourth industrial

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¹ On the third and fourth industrial revolutions, see Frances Raday, *Economic Woman: Gendering Inequality in the Age of Capital* (Taylor & Francis, 2019) 109-10.

revolutions are discussed before examining the largest of these corporations, how they collect and use data and how data collection contributes to the wealth of these enterprises. This part also examines New Zealand's contribution to the wealth of global information technology enterprises by looking at the statistics on New Zealanders' internet usage.

Part IV briefly considers the most prominent tax tools for taxing multinational digital businesses in the jurisdiction of the user including the digital services tax, the diverted profits tax and the OECD proposals for multilateral solutions. In this part, a tax on data collection is suggested. This involves a tax on the free 'bits and bytes' being transferred from New Zealand-based users to the multinational information technology enterprises. This suggestion means using volume of data as a tax base by attributing a monetary amount, for taxing purposes, to data transferred by New Zealand users to international digital services providers.

II TAX JUSTICE AND ECONOMIC RENTS

A Tax Justice

'Tax justice' means fairness in tax matters. Throughout many centuries, conceptions of tax fairness have been proposed, discussed, and debated.² However, we get to the 21st century and still no conclusion has been reached on exactly what fair tax allocation looks like. In this 2023 election year, how tax should be allocated among the citizens of New Zealand has been a highly contested issue.³ The essence of the debate is whether, or not, the burden of taxation should fall more heavily upon those who have accumulated greater amounts of wealth. In a society with growing inequality of wealth, some argue a fairer tax system is one that imposes a heavier tax burden on those who are more able to pay. However, this view is often countered by those who argue that placing a heavier burden on the wealthy will discourage productivity or encourage capital flight.

This article does not engage in debates about fairness. However, the arguments in this article are founded on a premise that taxing economic rents is uncontentious when it comes to fairness. By economic rent, what is understood in this context is the return on investment that exceeds the base amount that is demanded by the market or that which is economically necessary. It is excess return – perhaps even windfall gains. If someone can earn economic rents from the economy, taxing those excess gains to return to that economy seems unlikely

² Adam Smith proposed a principle of 'equality' as an objective for taxation in Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (W Strahan and T Cadell, London, 1779) bk V. Since then, many commentators have discussed how equity (or fairness) should be assessed. Some consider that fairness can be achieved when applying a benefit theory approach to taxation; that is, tax should be allocated according to the benefits received by the individual. For example, some theorists sought to develop models to calculate these benefits. For a discussion of the contributions of Emil Sax, Knut Wicksell, Antonio de Viti de Marco, and Erik Lindahl, see Richard Musgrave, *The Theory of Public Finance* (McGraw Hill, 1959) 69-73. Other later theorists discuss fairness in the allocation of the tax burden on the principles of sacrifice theory. Examples include Edwin Seligman who advocated for progressive taxation. See Edwin Seligman, 'Progressive Taxation in Theory and Practice' (1908) 9(4) *American Economic Association Quarterly* 1, 150.

³ Chris Trotter, 'Captain's Call' *Daily Blog* (Blog Post, 14 July 2023) <<https://thedailyblog.co.nz/2023/07/14/captains-call/>>; Shanti Mathias, 'Greens come out swinging against ACT with expansive tax policy' *The Spinoff* (Blog Post, 11 June 2023) <<https://thespinoff.co.nz/politics/11-06-2023/greens-come-out-swinging-against-act-with-expansive-tax-policy/>>; Riley Kennedy, 'ACT would create a two-rate tax system' *BusinessDesk* (Web Page, 15 May 2023) <<https://businessdesk.co.nz/article/finance/act-would-create-a-two-rate-tax-system>>.

to result in any perception of unfairness. Equally, it is unlikely to result in changing investment behaviours because as long as “excess” returns are being earned, the investment is still attractive, provided the excess returns are location specific and not easily replicated by sending the investment to a lower tax jurisdiction.

Economic rents, also known as exploitation rents,⁴ have been explained by Joseph Stiglitz as those returns derived by owners of capital because of exploitation, oppression, and lack of competition. This is differentiated from returns derived because of increases in marginal productivity. Economic rents are the excess returns, over and above the required cost of capital.

While Stiglitz acknowledges the origins of wealth inequality are impossible to identify, he argues the evidence points to the existence of the ‘exploitation model’.⁵ If exploitation or economic rents contribute to the growth of inequality of wealth, then taxing those rents must return some of that wealth back to the economy from where it was generated.

B Tax Justice and Economic Rents

Stiglitz highlights that inequality of wealth is not the same as inequality of capital.⁶ Just because the ultra-wealthy enjoy greater levels of wealth, does not mean society enjoys greater productivity due to higher amounts of invested capital. The two concepts are not the same. Capital is generally regarded as the funding that supports productive activity. This can be distinguished from wealth which encompasses ownership and control of assets such as land – the value of which may have been the subject of large capital gains. These assets do not necessarily contribute to the available pool of capital used for productive purposes. They may include chateaux and properties near the coast, luxury motor vehicles, wineries, and equestrian estates.

The question Stiglitz explores, after making the clear distinction between capital and wealth, is what may have contributed to the exponential growth in wealth inequality. While humans have a long history of wealth inequality, the post-World War II years gave the West a taste for egalitarianism. What has changed in the past few decades to reverse the trend toward greater sharing of resources? This question is essential with respect to tax justice as identifying where the source of inequality arises may help to target taxation at that source.

Stiglitz posits that it is not economic forces that have caused such growth in wealth inequality since the post-war era, but rather the consequences of politics. He argues that exploitation rents are a significant source of growth in wealth, and these rents arise primarily due to political influence. Stiglitz argues ‘that the real issue is not capitalism in the 21st century, but politics in the 21st century’.⁷

Exploitation rent, a more emotive term than economic rent and perhaps encompassing a cause within its description, comes about due to political influence or market power. Stiglitz gives examples of exploitation rents because of political influence such as the benefits accruing to

⁴ Joseph Stiglitz, ‘The Origins of Inequality, and Policies to Contain It’ (2015) 68(2) *National Tax Journal* 425.

⁵ Ibid 433.

⁶ Ibid 431.

⁷ Ibid 428. Stiglitz is responding to the thesis of Thomas Piketty, *Capital in the 21st Century* (Belknap Press, 2014) where he argues that inequality of wealth is a result of the returns on capital being higher than productivity. Stiglitz responds by arguing the exponential growth in wealth cannot be explained solely by the growth in returns on capital.

real estate moguls after land rezoning decisions, the law disallowing the US government to bargain for prices for drugs to be procured for Medicare patients, or government's selling off state assets at discounted prices.⁸

Part III below argues that big technology enterprises exploit their market power to collect data and dominate many industries, enabling them to derive economic rents. By market power, what is meant is the ability of certain actors in the private sector to extract greater returns due to lack of competition in the market. Stiglitz highlights the returns in the finance sector accompanied by a lack of economic performance. As discussed further below, the ability of a few actors to collect vast quantities of data has resulted in a market power that allows those actors to derive exploitation or economic rents beyond the usual return. The holders of big data are outside New Zealand. Therefore, when New Zealand users give their data to these entities, this is effectively a transfer of wealth from New Zealand. This transfer increases global wealth inequality, to the detriment of New Zealand.

The next part briefly examines the world's wealthiest people and their interests in the information technology sector. These people and their interests are contrasted with New Zealand's wealthiest who mainly invest outside the technology sector. This part also examines the largest participants in the information technology sector globally and how they use data to create wealth.

III BIG DATA AND BIG WEALTH

A Growth in Wealth for Investors in Big Tech Industry

There has been a significant shift in wealth towards the big technology firms. This really means a shift in wealth in favour of the shareholders of those firms. The *Forbes* list of the wealthiest people in the world includes five people within the top ten who are heavily invested in technology businesses.⁹ They are Jeff Bezos, Larry Ellison, Bill Gates, Carlos Slim Helu and Steve Ballmer. Jeff Bezos founded Amazon and continues to invest in this corporation although he is no longer the CEO. Larry Ellison is the co-founder of Oracle, a software developer. He also invests heavily in Tesla. Bill Gates made his wealth through co-founding Microsoft. Carlos Slim Helu is Mexico's richest man and with his family, controls Latin America's largest telecommunications firm, América Móvil. Finally, Steve Ballmer made his wealth through leading, as CEO, and investing in Microsoft.

While the wealthiest man in the world, Bernard Arnault, is known primarily for his investments in luxury brands such as Louis Vuitton and LVMH, he also invests heavily in technology enterprises such as Netflix and ByteDance (TikTok).¹⁰ Likewise, the investments of Warren Buffet of Berkshire Hathaway include technology stocks too, notably Apple.¹¹

Elon Musk is also within the top ten wealthiest people in the world and his main business success has been with respect to his investment in Tesla, a car manufacturer. Tesla, however, is unique in that the vehicles all run on electric power and are operated by computer systems. Essentially, while being a car manufacturer, Tesla is also in the business of big data. Tesla

⁸ Stiglitz (n 4) 432.

⁹ 'World's Billionaire List, Rich List 2023' *Forbes* (online, 2023) <<https://www.forbes.com/billionaires>>.

¹⁰ Ibid.

¹¹ Ibid.

vehicles are designed to become the next self-driving vehicles. To achieve this goal, Tesla monitor the data of the vehicles it sells, and driver behaviours. This data is provided to Tesla via a series of sensors and smart technologies within the vehicles. Tesla is also a technology-based corporation, using the data collected from its users to exploit for commercial gain.¹²

The technology investors in the top ten wealthiest people in the world are all US-based. The wealthiest technology investor in China sits at number 26 in the *Forbes* rich list. Wealth concentration is centred in the US.

New Zealand has its own ‘rich list’. The 2022 list, like previous lists, includes business investors in a variety of sectors but only the wealth of Rod Drury, founder of Xero, a cloud-based accounting software package, arose from technology investment.¹³ Only three New Zealanders feature in the *Forbes* rich list and only Graeme Hart, who invests mainly in packaging, ranks in the top 1,000. New Zealand’s concentration of wealth appears to be more evenly spread across different industries, compared with the world’s wealthiest people for whom many have a heavy concentration of investment in the information technology sector.

Of course, many investors, including pension funds, participate in wealth accumulation from investing in the information technology sector. Nevertheless, the greatest concentration of individual wealth arises from investment in this sector.

This next section focusses on the corporations through which this wealth has been created and argues that data collection has enabled significant shifts in wealth to occur already and this may be exacerbated further if we move into a fourth industrial revolution. More than just shifts in data, this article argues that the shifts in wealth reflect the economic rents obtained through market power, enabled by the collection of vast amounts of user data.

B Exploiting Data to Create Wealth

This part first considers what the third and fourth industrial revolutions are. Then the activities of the world’s dominant technology enterprises are examined, with reference to their impact in New Zealand.

What are the Third and Fourth Industrial Revolutions?

The third industrial revolution entails the digitisation of manufacture and the use of online platforms. People use online platforms, such as Uber, Netflix, Air BNB, Paypal, Alibaba, and Skyscanner, for convenient access to a broad range of services.

The fourth industrial revolution involves greater integration of the information age into the everyday lives of humans, encompassing both the internet of things and the internet of bodies. The fourth industrial revolution has been described as ‘blurring the lines between the physical, digital, and biological spheres’.¹⁴

¹² See Azamat Abdoullaev, ‘How Tesla Is Using Big Data: Benefits & Challenges of Big Data in Self Driving Cars’ *BBN Times* (Web Page, 20 September 2021) <<https://www.bbntimes.com>>.

¹³ The NBR list 2022 is behind a paywall, but the list can be found at Mark Quinlivan, ‘NBR rich list: NZ’s top wealth creators unveiled’ (Web Page, 30 May 2022) <<https://www.newshub.co.nz/home/money/2022/05/nbr-rich-list-nz-s-top-wealth-creators-unveiled.html>>.

¹⁴ Min Xu, Jeanne David, and Suk Hi Kim, ‘The Fourth Industrial Revolution: Opportunities and Challenges’ (2018) 9(2) *International Journal of Financial Research* 90, 91.

The internet of things is the digital connection between things and people, enabled by the introduction of 5G. Anything and anyone can be equipped with an RFID tag, allowing it to be tracked and monitored. This might include food, home appliances, packages, and people. The internet of things will allow tracking and possibly control the movement of ‘things’ remotely.

The internet of bodies is the next possible development. This involves collecting the physical data of humans by using a range of devices that can be implanted, swallowed, or worn.¹⁵ The most common use of this technology is smartwatches that are worn on the body and collect and track personal body-related information. In 2017, the US Food and Drug Administration approved the first use of a digital pill that is ingested and transmits data from inside the body to a smartphone or other device.¹⁶ These technologies can transfer large quantities of very personal data to organisations who will be able to commercialise the information.

More immediately, our personal data is being collected and used for commercial purposes using third industrial revolution technologies. Next, the article considers how Apple, Microsoft, Alphabet, Amazon, and Meta use this data to create wealth. These organisations have been selected as they have the largest market capitalisations in the world within the technology sector.

The technology sector dominates the largest companies in the world by market capitalisation. Within the top ten companies at the time of this research are Apple Inc, Microsoft Corp, Alphabet Inc, Amazon.com Inc, Tesla Inc, NVIDIA Corp, Taiwan Semiconductor Manufacturing Co Ltd, and Meta Platforms Inc – all information technology-based businesses. Saudi Aramco, a petroleum company occupies the second spot and Berkshire Hathaway Inc, an investment company occupies the seventh position. Berkshire Hathaway invests heavily in the technology sector. Tesla is included with the technology companies as its success is largely due to having produced electronic motor vehicles with sophisticated computer technology.

1 *Apple*

Apple has been the largest company in the world by market capitalisation since 2012, although they were overtaken by the petrochemical company Saudi Aramco during 2019 and 2020 for a time.¹⁷ Apple derives its revenue mainly from the sale of physical products such as iPhones, iPads, Apple Watch and Mac computers. They also make 20% of their revenue from provision of cloud-space services and after-care services. All Apple users have an iCloud account and Apple collect data on their users that give them a unique competitive advantage with respect to development and sales of new product. Not only are they able to gain intelligence on customer preferences but they are also able to access customers directly. Apple have significant market penetration in many countries around the world and the scale of their database gives them a significant competitive advantage. This is an example of how the scale of the organisation and the data they hold both creates competitive advantage and excludes potential new entrants to the market.

¹⁵ Xiao Liu, ‘Tracking how our bodies work could change our lives’ *We Forum* (Web Page, 4 June 2020) <<https://www.weforum.org/agenda/2020/06/internet-of-bodies-covid19-recovery-governance-health-data>>.

¹⁶ ‘FDA approves pill with sensor that digitally tracks if patients have ingested their medication’ *U.S. Food & Drug Administration* (Media Release, 13 November 2017) <<https://www.fda.gov/news-events/press-announcements/fda-approves-pill-sensor-digitally-tracks-if-patients-have-ingested-their-medication>>.

¹⁷ Andrea Murphy and Hank Tucker, ‘The Global 2000’ *Forbes* (online, 8 June 2023) <<https://www.forbes.com/lists/global2000/?sh=726280485ac0>>.

Apple held 44% of the market share for mobile phone sales in New Zealand in 2021.¹⁸ However, the company appears to have dropped to second place in 2022 at 40% market share, behind Samsung.¹⁹ Nevertheless, Apple dominates mobile phone sales in New Zealand in a market with a high level of mobile phone ownership.²⁰ Apple dominates the tablet sector in New Zealand with a market share of 76% in 2021, well ahead of their rival, Samsung.²¹

2 Microsoft

Microsoft primarily operates in the software sector, although the company also occupies a significant place in the hardware market, selling gaming devices and personal computers. Microsoft is most well-known for their Microsoft Office suites of software products which have swept the business world. However, they are also the owners of the Xbox and LinkedIn. Microsoft describes data as the most strategic asset for every organisation.²² Like Apple, Microsoft collects and uses data to develop their own business. Algorithms are applied to the data collected from users and provide information such as when someone may be ready to buy an item, or when a software upgrade may be required, or when someone may be interested in online gaming.²³ Microsoft New Zealand's revenue surpassed \$1 billion in the year to 30 June 2022.²⁴ According to some statistics, LinkedIn has 2.5 million members in New Zealand in 2023.²⁵

3 Alphabet

Alphabet is best known for its search engine Google. According to Statista, Google has a global market penetration of around 85%, with several other search engines sharing the other 15% of the market.²⁶ In New Zealand, Google's market share is over 95%.²⁷ Alphabet also owns Google Maps, Gmail, YouTube, and Android. Alphabet, perhaps more than Apple and Microsoft, leverages the use of its database for commercial gain. Ownership of Google Maps allows Alphabet access to the location of its users – providing significant data on the interests and habits of its users. Google generates 80% of their revenue from advertising. Their market

¹⁸ Christopher Hughes, 'Yearly market share of mobile device vendors in New Zealand 2012-2021' *Statista* (Web Page, 3 January 2023) <<https://www.statista.com/statistics/1322261/new-zealand-smartphone-vendors-market-share>>.

¹⁹ Sasha Karen, 'Samsung on top of Kiwi smartphone market' *New Zealand Reseller News* (Web Page, 24 May 2022) <<https://www.reseller.co.nz/article/698419/samsung-top-kiwi-smartphone-market>>.

²⁰ New Zealand has more mobile phone connections than population according to Statista. See 'Smartphone Market in New Zealand – statistics and facts' *Statista* (Web Page, 23 February 2023) <<https://www.statista.com/topics/9745/smartphone-market-in-new-zealand/#topicOverview>>. This appears to be higher per capita than the market penetration in the United States.

²¹ Christopher Hughes, 'Market share of tablet vendors in New Zealand 2012-2021' *Statista* (Web Page, 3 January 2023) <<https://www.statista.com/statistics/1325647/new-zealand-tablet-vendors-market-share>>.

²² Satya Nadella, 'Microsoft Inspire 2021' Microsoft (Report, 2021) <<https://news.microsoft.com/wp-content/uploads/prod/2021/07/Microsoft-Inspire-2021-Satya-Nadella.pdf>>.

²³ 'The World's Most Valuable Resource Is No Longer Oil, but Data' *The Economist* (online, 6 May 2017) <<https://www.economist.com>>.

²⁴ Rob McNeill, 'Microsoft NZ storms past \$1B in revenue for 2022' *New Zealand Reseller News* (Web Page, 7 December 2022) <<https://www.reseller.co.nz/article/703874/microsoft-nz-storms-past-1b-revenue-2022/?fp=2&fpid=1>>.

²⁵ Simon Kemp, 'Digital 2023: New Zealand' *DataReportal* (Web Page, 13 February 2023) <<https://datareportal.com/reports/digital-2023-new-zealand>>.

²⁶ Tiago Bianchi, 'Worldwide Market Share of Search Engines' *Statista* (Web Page, 28 August 2023) <<https://www.statista.com/statistics/216573/worldwide-market-share-of-search-engines>>.

²⁷ 'Search Engine Market Share New Zealand' *Statscounter* (Web Page, July 2023) <<https://gs.statcounter.com/search-engine-market-share/all/new-zealand>>.

position as the dominant search engine globally stands them in good stead for selling advertising. Like other information technology businesses, they use algorithms to turn the data collected into information they can exploit commercially. Not only do they collect data on searches, but Google use ‘cookies’ to collect information on a user’s movements around the internet. Cookies attach to a user’s device and send information back to Google. Some cookies provide a useful function for the user such as remembering details from a user’s past visit to the page. However, those same cookies come with a cost; the data on internet movements is collected by Google in order to target advertising. Google is then paid per ‘click’ on advertisements. It is in Google’s interest to ensure they have the best information on the user to ensure they display advertisements most likely to attract the user’s attention. Alphabet also owns YouTube which reports 4.24 million users in New Zealand as at early 2023.²⁸

Alphabet has attracted fines in more than one EU jurisdiction due to breaches of the EU’s General Data Protection Regulations (GDPR).²⁹ In 2019, France imposed a fine of €50m on the company and a further €150m in 2021.³⁰ Spain, Sweden and Belgium have also imposed fines on alphabet during the 2020 to 2022 period.

4 Amazon

Amazon is the world’s largest online shopping platform. Like Alphabet, Amazon has access to a significant database of users’ interests and spending habits. Amazon’s revenue is mainly generated by online sales but also by freight, digital media content and advertising. Like Alphabet, Amazon is able to ensure the right advertisements and products are put in front of a user based on the data collected from that user. The scale of the database and precision of the algorithms provide Amazon with a significant competitive advantage, locking out potential competition. In 2018, the Californian legislature made it mandatory for corporations to disclose the information they hold on a customer, upon request. Requests to Amazon disclosed the volume and quality of information being collected, including voice recordings through use of Alexa.³¹ As noted in one investigation:

Amazon collects data on consumers through its Alexa voice assistant, its e-commerce marketplace, Kindle e-readers, Audible audiobooks, its video and music platforms, home-security cameras and fitness trackers. Alexa-enabled devices make recordings inside people’s homes, and Ring security cameras capture every visitor. Such information can reveal a person’s height, weight and health; their ethnicity (via clues contained in voice data) and political leanings; their reading and buying habits; their whereabouts on any given day; and sometimes whom they have met.³²

Like Alphabet (Google), Amazon has been the subject of substantial fines due to non-compliance with the EU’s regulations on data privacy, totalling €748m in 2021 and 2022.

²⁸ Kemp (n 25).

²⁹ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation). These regulations seek to control the collection and use of data by corporations.

³⁰ For a record of breaches of the GDPR, see ‘GDPR Enforcement Tracker’ *Enforcement Tracker* (Web Page) <<https://www.enforcementtracker.com>>.

³¹ ‘Alexa, how much does Amazon know about me?’ *Al Jazeera* (Web Page, 19 November 2021) <<https://www.aljazeera.com/economy/2021/11/19/how-much-does-amazon-know-about-you>>.

³² *Ibid*.

Due to New Zealand's high level of internet usage, there is an expectation that online shopping will continue to grow from its 2019 rate of 8.9% of all retail sales.³³ However, as at 2018, Amazon did not appear to make the top ten of New Zealand's most popular online stores.³⁴

5 Meta Platforms

Meta operates Facebook, WhatsApp, Instagram and Messenger. These social media services are free for users, and they all have large and global user bases. Meta derives revenue from its advertising on Facebook and Instagram. Meta use 'data signals from user activity' from websites that Meta does not control using cookies that track users even when not using Meta's platforms. Once again, it is the scale of the database collected from users that enable Meta to create sophisticated algorithms producing information able to target advertising to maximise 'clicks'.

Meta has been the subject of many fines in the EU under the GDPR, especially in Ireland and France.³⁵

Meta has a strong hold on social media consumption in New Zealand. According to some statistics, there are 4.24 million social media users in New Zealand in January 2023 and 2.95 million of these users are active on Facebook.³⁶ Estimates show that Instagram has 2.15 million users. Messenger has a user base in New Zealand of 2.65 million.

6 Tencent and ByteDance

All the examples used above, Apple, Microsoft, Amazon, Alphabet, and Meta are US corporations –specifically organisations operating in the heart of Silicon Valley. However, China also has also produced global information technology enterprises that use similar techniques for collecting data and applying algorithms to create information able to be exploited for commercial gain. Tencent, which owns WeChat and QQ.com, is one example. These platforms serve the largest domestic economy in the world and while they may not appear to be so present in New Zealand, there is a presence as many Chinese immigrants and students use the platforms while living in New Zealand. The other significant Chinese example that has a deep penetration into the New Zealand market is ByteDance, best known for their social media platform, TikTok. According to statistics from TikTok's advertising revenue, they are estimated to have 1.65 million users in New Zealand³⁷ – not an insignificant proportion of the total population of 5.2 million people.

These corporations are identified here as they represent the largest organisations in the world in terms of market capitalisation. This means that the largest shareholders in these corporations, who were invariably early investors enjoy immense wealth. Most significantly, the market capitalisation of these organisations has increased exponentially over the past decade. In 2013, Apple become the largest corporation in the world with a market

³³ 'Share of People Doing Selected E-Commerce Activities in New Zealand as of January 2021' *Statista* (Web Page, 10 July 2023) <<https://www.statista.com/statistics/681785/new-zealand-e-commerce-activities-by-type/>>.

³⁴ 'New Zealand: top 10 online stores 2018, by net sales' *Statista* (Web Page, 19 June 2023) <<https://www.statista.com/forecasts/1014511/top-online-stores-new-zealand-ecommerceadb>>.

³⁵ 'GDPR Enforcement Tracker' (n 30).

³⁶ Kemp (n 25).

³⁷ Ibid.

capitalisation of US\$500 billion.³⁸ Now, in 2023, Apple is the largest corporation in the world with a market capitalisation of US\$2.7 trillion. A more than quadrupling of growth has made the shareholders very wealthy. The same could be said for the other technology firms discussed above. In 2013, while Apple had a market capitalisation of US\$500 billion, ExxonMobil had a market capitalisation of US\$425 billion. ExxonMobil now has a market capitalisation of US\$441 billion.³⁹ It has grown during the past decade too but not at the rates of the technology enterprises.

C How Data Creates Wealth

All the corporations identified above collect and exploit data. It has been said that the exponential gains in wealth being derived by this sector are a reflection on their special access to data. The very nature of their business gives them access to the asset most valuable to them.

In 2017, *The Economist* published an article titled ‘The world’s most valuable resource is no longer oil, but data’.⁴⁰ The article describes the process under which more data creates exponentially more value:

This abundance of data changes the nature of competition. Technology giants have always benefited from network effects: the more users Facebook signs up, the more attractive signing up becomes for others. With data there are extra network effects. By collecting more data, a firm has more scope to improve its products, which attracts more users, generating even more data, and so on. The more data Tesla gathers from its self-driving cars, the better it can make them at driving themselves – part of the reason the firm, which sold only 25,000 cars in the first quarter, is now worth more than GM (General Motors), which sold 2.3m. Vast pools of data can thus act as protective moats.

Access to data also protects companies from rivals in another way. The case for being sanguine about competition in the tech industry rests on the potential for incumbents to be blindsided by a start-up in a garage or an unexpected technological shift. But both are less likely in the data age. The giants’ surveillance systems span the entire economy: Google can see what people search for, Facebook what they share, Amazon what they buy. They own app stores and operating systems and rent out computing power to start-ups. They have a “God’s eye view” of activities in their own markets and beyond. They can see when a new product or service gains traction, allowing them to copy it or simply buy the upstart before it becomes too great a threat. Many think Facebook’s \$22bn purchase in 2014 of WhatsApp, a messaging app with fewer than 60 employees, falls into this category of ‘shoot-out acquisitions’ that eliminate potential rivals. By providing barriers to entry and early-warning systems, data can stifle competition.

For the reasons outlined in the article, databases are the source of market power. This market power can be exploited for commercial gain. As discussed above, market power in an uncompetitive environment, results in economic rents. The key thesis of this article is that when some organisations have access to large amounts of global data, they can have total domination of the market, making it difficult for new entrants to succeed. When a new entrant does make some traction, the dominant entity can acquire the potential competitor.

³⁸ Ranking Charts, ‘Top Ten Companies by Market Cap (1979 – 2021)’ (You Tube)
<<https://www.youtube.com/watch?v=Z93yWXb9Tb0>>.

³⁹ ‘Exxon Market Cap 2010-2023’ *Macrotrends* (Web Page)
<<https://www.macrotrends.net/stocks/charts/XOM/exxon/market-cap>>.

⁴⁰ ‘The World’s Most Valuable Resource Is No Longer Oil, but Data’ (n 23).

What is known about technology entities is that they can create wealth from their databases. The larger the database, the greater the wealth opportunities. Therefore, it is in the interest of successful firms to suppress the rise of competitors in order that they do not have to share access to userbases.

Shoshana Zuboff describes the widespread collection and commercialisation of personal data as ‘surveillance capitalism’.⁴¹ Zuboff describes this as a mutation of industrial capitalism. According to Zuboff, while industrial capitalism exploited nature, surveillance capitalism exploits human nature.⁴² While surveillance capitalism centres on profit-making enterprises, it goes hand in hand with government surveillance. One of Zuboff’s criticisms of surveillance capitalism is that it prospers at the expense of the human experience. She, and many other commentators, argue surveillance capitalism (and government surveillance) pose a severe threat to freedom, democracy, and privacy. However, prospering at the expense of the human experience is most relevant with respect to increasing wealth inequality. As Zuboff argues, ‘[s]urveillance capitalism unilaterally claims private human experience as a source of free raw material that can be brought into the marketplace, used for production and ultimately for sale. Private human experience becomes a commodity in this new economic model.’⁴³

Zuboff views surveillance capitalism as exploitative. The inputs into the business model are free, they are personal, and they are often accessed with little awareness of the data provider.⁴⁴ As Zuboff points out, many of the providers of the data might not care whether they give away their data for free. However, they may be concerned about the shifts in wealth inequality to a few powerful interests. Unless the links between giving away free data and the shifts in wealth are recognised, global inequality will continue to grow due to ignorance.

The ignorance or lack of care with respect to gifts of free personal data may only grow as fourth industrial revolution technologies become more commonplace. Already thousands of Swedes have microchip implants embedded under the skin to enjoy the convenience of accessing their homes, vaccine passes, or gym entry.⁴⁵ While currently the implants are passive and only store information, it seems reasonable to expect it is only a matter of time until they are being used to transfer information from the human to somewhere else – be it a corporate or a government. Uploading data from inside the body opens the door to a deeper level of commercialisation. A human’s most personal data could be used to sell medical products, ensure compliance with medical advice, and inform providers of insurance of the health status of the insured person.

The internet of things must also result in greater access to data from objects. In many cases, the internet of things will attach an RFID (radio-frequency identification) tag onto objects in order that they can be tracked, managed, and monitored. The internet of things may also involve installing sensors or software into objects for the same purposes. The outcome is the ability to exchange data between objects or systems. Once again, the result will be more availability and use of data with the potential for greater transfer of wealth to those able to exploit the data for commercial purposes.

⁴¹ Shoshana Zuboff, ‘Surveillance Capitalism and the Challenge of Collective Action’ (2019) 28(1) *New Labor Forum* 10.

⁴² Alex Jenkins, ‘Shoshana Zuboff on the age of surveillance capitalism’ *Contagious* (Web Page, 1 September 2019 <<https://www.contagious.com/news-and-views/shoshana-zuboff-on-the-age-of-surveillance-capitalism>>.

⁴³ *Ibid.*

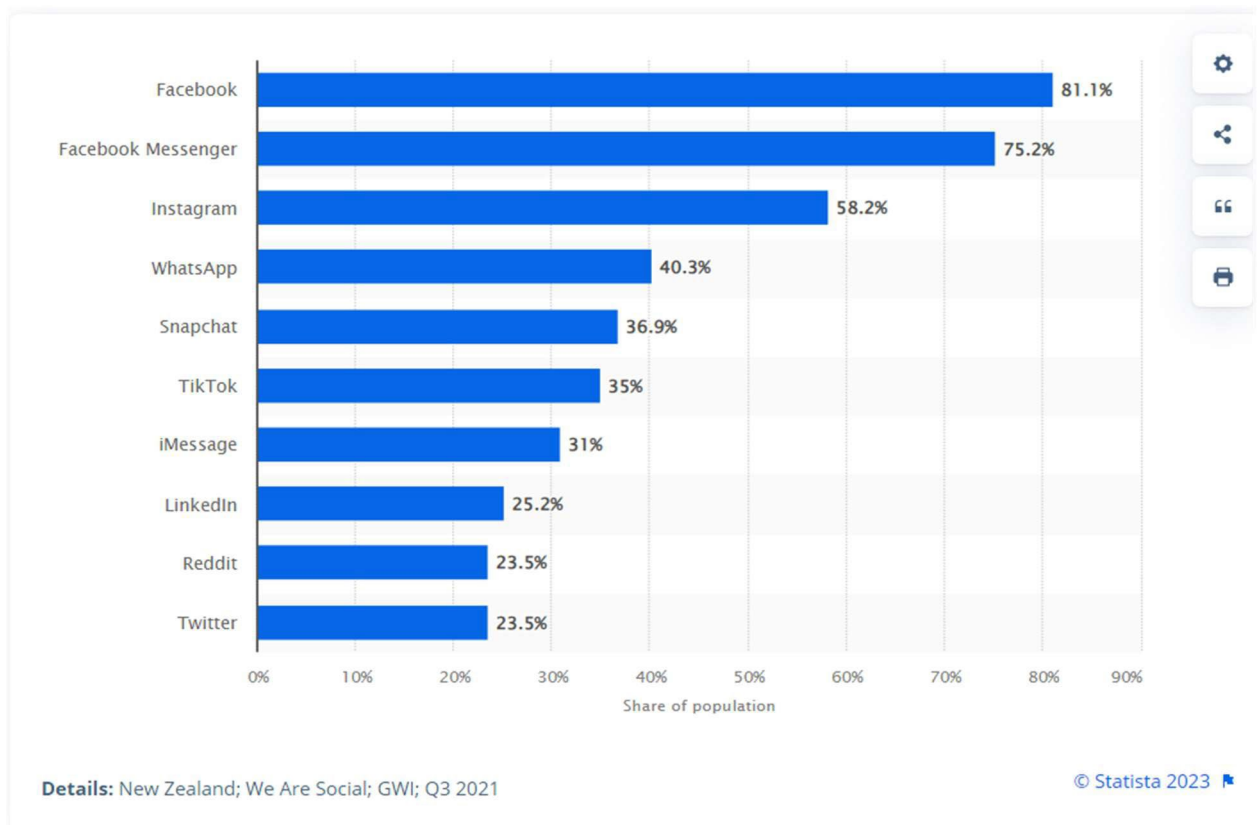
⁴⁴ *Ibid.*

⁴⁵ Maddy Savage, ‘Thousands of Swedes are Inserting Microchips under their Skin’ *NPR* (Web Page, 22 October 2018) <<https://www.npr.org/2018/10/22/658808705/thousands-of-swedes-are-inserting-microchips-under-their-skin>>.

D New Zealand's Contribution to the Wealth of the World's Richest

According to Statista, 94% of New Zealand's population are active internet users.⁴⁶ This places New Zealand near the top of internet users globally. Of the internet users in New Zealand, common use includes communications, obtaining information, entertainment, undertaking transactions, and learning activities.⁴⁷ Most users are using the internet several times a day, or at least daily.⁴⁸

The majority of internet users are communicating over the internet via email and messaging services.⁴⁹ Many also make voice or video calls, post content and re-post content. This implies the use of email services such as Gmail and Microsoft and social media platforms such as Facebook, Instagram, WhatsApp and Twitter. Only 7% of users do not use email at least weekly and only 12% of users do not use messaging services at least weekly. If this is representative of New Zealand, over 80% of New Zealanders use social media messaging services on a weekly basis at a minimum and most are using them much more frequently. According to Statista, New Zealand's social media usage is spread across the providers as follows:⁵⁰ Figure 1: Leading social networks in New Zealand in 3rd quarter of 2021



⁴⁶ Christopher Hughes, 'Internet Users as a Percentage of the Total Population New Zealand 2015-2021' *Statista* (Web Page, 3 January 2023) <<https://www.statista.com>>.

⁴⁷ Antonio Diaz Andrade, Mary Hedges, Gail Pacheco and Alexandra Turcu, 'The World Internet Project New Zealand 2021' (New Zealand Work Research Institute, 2021).

⁴⁸ Ibid 11.

⁴⁹ Ibid 13.

⁵⁰ Christopher Hughes, 'Leading social networks in New Zealand in 3rd quarter of 2021' *Statista* (Web Page, 3 January 2023) <<https://www.statista.com/statistics/681840/new-zealand-most-popular-social-media-networks/>>.

Many of these social media platforms are discussed above. All of them are owned by US corporations, other than TikTok. From these statistics, we can see that over 80% of New Zealanders are frequently using these US social media and messaging services, plus TikTok. The first four social media providers are all owned by Meta – the ninth largest company in the world by market capitalisation.⁵¹

Another common internet activity of New Zealand users is to access news content.⁵² While news may come from a variety of sources, most of it comes from large corporate or government-funded organisations. In New Zealand, the most trafficked online news sites are nzherald.co.nz (NZME), yahoo.com, RNZ, Stuff, and Newshub.⁵³

NZME is publicly listed on the New Zealand stock exchange. The shareholding is dispersed although the largest shareholding is Citicorp Nominees Ltd with a 23% share, a foreign investment company.⁵⁴ Citicorp Nominees Limited is part of a US based banking and financial services group, ranked 147th in the world by market capitalisation.⁵⁵ NZME includes the most popular internet news site in New Zealand within its portfolio, nzherald.co.nz.

Yahoo.com is ultimately owned by US based Apollo Global Management Inc, ranked 407th in the world by market capitalisation.⁵⁶

RNZ is a New Zealand Crown Entity news site, funded by the government.⁵⁷

Stuff is owned by a single domestic investor who purchased the company from its foreign owners in May 2020 for \$1.⁵⁸ However, the company has benefited from substantial government funding⁵⁹ enabling the employment of many additional journalists provided specific content is delivered and users are tracked so data could be provided to the government.⁶⁰

Newshub is owned by US media company Warner Bros Discovery Inc.⁶¹ Newshub includes television, radio, and online news content. Its ultimate holding company is ranked 520th in the world by market capitalisation.⁶²

Increasingly these news sites are using paywalls to raise revenue,⁶³ but they have relied upon advertising up until now. They use cookies to track users' movements around the internet and can target advertising accordingly. As Stuff states in its Cookies Policy, one of the purposes

⁵¹ 'Largest Companies by Market Cap' *Companiesmarketcap* (Web Page) <<https://companiesmarketcap.com/>>.

⁵² Andrade et al (n 47) 14.

⁵³ 'Top Websites Ranking' *Similarweb* (Web Page) <<https://www.similarweb.com/top-websites/new-zealand/>>.

⁵⁴ See 'Companies Register' *New Zealand Companies Office* (Web Page, 2023)

<<https://app.companiesoffice.govt.nz/companies/app/ui/pages/companies/1181195/shareholdings>> (search conducted 9 June 2023).

⁵⁵ 'Largest Companies by Market Cap' (n 51).

⁵⁶ Ibid.

⁵⁷ *Crown Entities Act 2004* (NZ) sch 2.

⁵⁸ Luke Malpass and Tom Pullar-Strecker, 'Stuff CEO Sinead Boucher buys the company, announces "great new era"' *Stuff* (Web Page, 25 May 2020) <<https://www.stuff.co.nz/business/121613758/stuff-ceo-sinead-boucher-buys-the-company-announces-great-new-era>>.

⁵⁹ 'Journalism funding' *NZ On Air* (Web Page) <<https://www.nzonair.govt.nz/funding/journalism-funding/#funding-decisions>>.

⁶⁰ 'Public Interest Journalism Fund: Interim Report 2021-2023' *NZ On Air* (Report) <https://d3r9t6niqlb7tz.cloudfront.net/media/documents/NZOA_PJIF_Interim_Report_FINAL.pdf>.

⁶¹ 'Discovery NZ Limited' *New Zealand Companies Office* (Web Page) <<https://app.companiesoffice.govt.nz/>>.

⁶² 'Largest Companies by Market Cap' (n 49).

⁶³ *The New Zealand Herald*, eg, has installed a paywall for some of its online news stories.

of cookies is to enable them to ‘keep track of products or services you view, so that we can send you news about those products or services’.⁶⁴

Another area of high internet use in New Zealand is for entertainment. A large volume of users plays online games, download and listen to music, and watch videos online.⁶⁵ The most popular sites in this domain include YouTube, Netflix and Pornhub.⁶⁶ As discussed above, YouTube is owned by Alphabet. Netflix is listed on the US Nasdaq and ranks 58th in the world by market capitalisation.⁶⁷ Pornhub is owned by Canadian-based (Luxembourg owned private company), MindGeek. Until 2023, it was owned by Austrian, Bernard Bergemar.⁶⁸ In 2023, MindGeek was acquired by a Canadian private equity firm, Ethical Capital Partners.⁶⁹

Except for some of New Zealand’s domestic news sites, most of the internet usage in New Zealand is on sites owned by foreign interests – many of whom are very large US platforms. Even the popular, locally established trading website, trademe.co.nz, is owned by overseas interests.⁷⁰ All of these sites collect user data and use that data for commercial purposes. New Zealanders are generous contributors to the databases of the large global technology-based enterprises. As a developed nation state, further development into the fourth industrial revolution with respect to the internet of things and the internet of bodies is likely to result in even more data transfer from New Zealand users. New Zealanders appear to be willing to adopt new technology. While many New Zealanders may be concerned about the growth in wealth inequality within New Zealand, we must also address the shifts in wealth away from New Zealand on a global level.

If data is viewed as a wealth transfer, New Zealand users are making a significant contribution, as a small population, to the global shift in wealth to an increasingly concentrated group of recipients. In this respect, New Zealand users are transferring wealth directly and contributing to wealth inequality at a global level.

The pertinent question is whether we can do anything to reduce the shifts in wealth, and whether tax may be used as a tool to redistribute some of the wealth transfer back into the New Zealand tax base.

⁶⁴ ‘Stuff Cookies Policy and targeting and tracking Policy’ *Stuff* (Web Page, April 2022) <<https://www.stuff.co.nz/about-stuff/300062240/stuff-cookies-policy-and-targeting-and-tracking-policy>>.

⁶⁵ Andrade et al (n 47) 15.

⁶⁶ ‘Top Websites Ranking’ (n 53).

⁶⁷ ‘Market Capitalisation of Netflix’ *Companiesmarketcap* (Web Page) <<https://companiesmarketcap.com/netflix/marketcap>>.

⁶⁸ See Patricia Nilsson, ‘MindGeek: the secretive owner of Pornhub and RedTube’ *Financial Times* (online, 17 December 2020) <<https://www.ft.com/content/b50dc0a4-54a3-4ef6-88e0-3187511a67a2>>.

⁶⁹ Dan Milmo, ‘Pornhub owner MindGeek sold to private equity firm’ *The Guardian* (online, 17 March 2023) <<https://www.theguardian.com>>.

⁷⁰ Trademe.co.nz was established by a New Zealander, Sam Morgan. However, in 2006 the owners sold it to Fairfax for NZ\$700m. See Claire Trevett, ‘Morgan’s big trade nets him \$227m’, *The New Zealand Herald* (online, 7 March 2006) <<https://www.nzherald.co.nz/nz/morgans-big-trade-nets-him-227m/URVP53E5UST4C73EQQOYVVWQWQ/>>. It is now owned by a British private equity firm, Apax Partners.

IV TAX AND BIG DATA

A Actions to Reduce Wealth Transfer

The most direct tool to reduce the volume of free data moving offshore is regulation. Regulating collection of data from New Zealand citizens or from New Zealand-based sources is one way to manage the data shifts. This could occur in a myriad of ways. However, there may be a sense of infringing upon the freedoms of willing parties to make a contract between themselves. For many people, the benefits associated with the free use of social media such as Facebook and TikTok far exceeds any potential threat of data collection. For a government to regulate the ability of consensual parties coming to this arrangement seems draconian.

The EU and some US states have responded by legislating that users have a right to access the data used and kept by corporates.⁷¹ This is a useful facility for the few users that want this information but does not deal with the inequality of wealth resulting from the data transfers.

The EU and the UK have also introduced regulation on how data can be used, and the EU have handed out some substantial fines to those organisations who breach the restrictions.⁷² However, the essence of the regulations is to require organisations to collect only the data required to carry out a specific purpose for the time required to achieve that purpose. These facts should be explained to the person from whom the data is collected.⁷³ While limiting the ability to collect and use data may have had an effect, there is no doubt the databases of the world's largest technology enterprises have continued to expand since the introduction of these regulations – indicating that even if they have been a handbrake, they have by no means kept a lid on the continued collection of data from online users.

This article focusses on wealth transfer rather than the other concerns around data collection such as infringements upon democracy and shifts in global power. Of course, the concerns are interrelated. With increased wealth comes power and a greater ability to influence democracy. Next the article will consider how the New Zealand government might use tax as a tool to reduce the wealth transfer.

B Reducing Wealth Transfer Associated with Free Data Transfer

Tax is often used as a tool for redistribution. The question posed here is whether we can use taxation to deal with the problem of wealth transfer taking place when data is transferred to these large foreign enterprises at no cost.

While this article deals quite specifically with the issue of wealth transfer through transfer of free data, there has been significant focus on the broader issue of taxing multinational activity in destination countries, especially multinationals in the digital sector.⁷⁴ Measures such as

⁷¹ See Regulation (EU) 2016/679 (n 29); eg, *California Consumer Privacy Act 2018* (Cal).

⁷² 'GDPR Enforcement Tracker' (n 30).

⁷³ Article 5(1) and Recital (39) of the General Data Protection Regulations.

⁷⁴ One of the original movements were the 2013 OECD reports on Base Erosion and Profit Shifting (BEPS): 'Addressing Base Erosion and Profit Shifting' (OECD, 12 February 2013) and 'Action Plan on Base Erosion and Profit Shifting' (OECD, 19 July 2013). More recent work under the OECD Action Plans has been the OECD work on fairer and more comprehensive taxation of the digital economy, notably: 'Tax Challenges Arising from Digitalisation of the Economy – Global Base Erosion Model Rules (Pillar One)' (OECD, 8

digital services taxes (DST), the diverted profits tax (DPT), and the OECD's Pillar One and Pillar Two proposals⁷⁵ have been mooted and in some cases, implemented.⁷⁶ These measures use revenue or profit as the tax base. Digital services tax is imposed at a low rate upon the revenues for digital services being imported into a country. For example, the United Kingdom DST is 2% of the revenue generated by search engines, social media platforms and online marketplaces by way of UK based users.⁷⁷ DPT is aimed at taxing profits relating to substantial activities in a state that may have gone untaxed due to the ability of large MNEs to divert profits out of the state. For example, Australia imposes a tax of 40% on the profits of large MNEs that have been diverted to lower tax jurisdictions to avoid paying Australian income tax.⁷⁸ The Pillar One proposal also operates to allocate profits of multinational digital enterprises across the states in which they operate. The Pillar Two proposals provide a mechanism to ensure a minimum income tax of 15% is paid on all multinational profits on a global basis. All these measures impose tax on revenues or profits.

New Zealand has not implemented any of the measures above as yet although a DST is waiting in the wings should a global solution not be reached.⁷⁹ The proposed DST is a 3% tax on revenues generated from New Zealand users of digital services, including intermediation platforms like Uber and eBay, social media platforms like Facebook, content sharing sites like YouTube, and search engines and the sale of user data.⁸⁰

All these taxes rely on the generation of revenues or profits. However, as discussed above, the wealth of these organisations stems from the databases they hold. It is this 'asset' that is the source of their wealth. These large multinational digital businesses generate income and profits by applying algorithms to the data they have accumulated from user activity.⁸¹ The thesis here is that the collection of user data could be a tax base. A tax base does not need to be limited to revenue and profits.

For some years, there has been a growing international awareness of the value users create for multinational digital businesses. In 2013, the OECD issued its Action Plan for addressing base erosion and profit shifting (BEPS) highlighting the importance of user participation in creating value for these enterprises.⁸² In 2018, in the United Kingdom, the HMRC expressed similar views, and this was also endorsed by the European Commission in the same year.⁸³ The European Commission proposed that taxing rights based on user participation should arise where an entity has a significant digital presence in the territory. A significant digital presence is determined in part by the size of the user base in the territory. All these discussions highlighted the value creation for multinational digital enterprises based upon the participation of users. The 2019 document on a DST in New Zealand describes the existing

October 2021) and 'Tax Challenges Arising from Digitalisation of the Economy – Global Base Erosion Model Rules (Pillar Two)' (OECD, 20 December 2021).

⁷⁵ 'Tax Challenges Arising from Digitalisation – Report on Pillar One Blueprint' (OECD, 14 October 2020); 'Tax Challenges Arising from Digitalisation – Report on Pillar Two Blueprint' (OECD, 14 October 2020).

⁷⁶ The DST, eg, has been introduced into the UK, Italy, and France. The DPT has been introduced into law in Australia and the United Kingdom.

⁷⁷ *Finance Act 2020* (UK) s 39.

⁷⁸ *Income Tax Assessment Act 1936* (Cth) s 177P.

⁷⁹ 'Options for taxing the digital economy' (Inland Revenue Department, June 2019); Digital Services Tax Bill (288 – 1).

⁸⁰ Digital Services Tax Bill, ss 7 to 18.

⁸¹ 'The World's Most Valuable Resource Is No Longer Oil, but Data' (n 23).

⁸² *Action Plan on Base Erosion and Profit Shifting* (OECD Publishing, 2013) 14.

⁸³ *Corporate Tax and the Digital Economy* (HM Treasury, March 2018) 4; European Commission, 'Commission Proposal for a Council Directive, Laying Down Rules Relating to the Corporate Taxation of a Significant Digital Presence' (Report, 21 March 2018) <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018PC0147>>.

problem: ‘Digital companies can derive significant value from the active participation of their users, from data generated by the users, and from the network effects. None of this value is recognised by the current profit allocation rules.’⁸⁴

By 2020 when the OECD released their pillar one and two proposals, the basis used to justify taxing rights in the territory of the user had become economic participation of the entity, rather than the user participation.⁸⁵ While this is possibly two sides of the same coin, the focus is of each justification is on a different party. User participation grants a taxing right in the jurisdiction of the user, economic participation grants a taxing right in the jurisdiction where the business is operating. The user participation and economic participation principles acknowledge the value creation for an enterprise because of the organisations’ access to the user.

Taxing rights in the user jurisdiction shifts some of the wealth back to the user jurisdiction as tax revenue. This may go some way toward counteracting the shift in wealth from users to collectors of data. New Zealand, as discussed above, is looking at alternative ways to impose a tax on those digital service providers transacting with New Zealand based users in recognition of the value created.

As discussed above, while inequality of wealth is not unusual and not necessarily undesirable, inequality resulting from economic rents may be regarded as unfair. Windfall gains through arbitraging information or other factors does not enhance the economy. Failing to tax economic rents, may be regarded as inequitable. Those who earn a fair income through hard work are subject to income tax and it may seem galling if those who gain their wealth without the requisite effort are escaping a tax liability.

The global digital businesses have grown wealthy because they have developed business models that have attracted users, and the scale of the user base enables a greater competitive advantage. New entrants may also have good innovations but without the scale, they are unable to compete. The scale of the databases gives these global organisations the market advantage which they can exploit.

Therefore, the argument made here is that if data collection is the source of the shift in wealth, an appropriate tax tool will be targeted specifically at that source. One solution may be to consider the introduction of a tax in New Zealand on large multinational technology enterprises on the data they collect from New Zealand based users. The tax base could be bits and bytes of data collected. Tax is paid in money and therefore, although the tax base would be data, a monetary amount would have to be attributed to each unit of data in order to calculate and pay the tax liability.

While this article does not propose a system for taxing data collection, it attempts to highlight the wealth shifts that occur through free transfer of data and proposes the concept that if New Zealand wants to tackle the problem of wealth shifting offshore, it should be creative around designing a tax that best targets the source of that wealth transfer.

V CONCLUSION

The purpose of this article is to examine the role data transfer plays in shifting wealth from New Zealand and to consider how taxation may be used as a tool to counteract some of that

⁸⁴ ‘Options for taxing the digital economy’ (n 79) 5.

⁸⁵ ‘Tax Challenges Arising from Digitalisation – Report on Pillar One Blueprint’ (n 75) 8, 11 and 122.

wealth transfer. The article argues that, because data transfer from New Zealand users to big technology enterprises enables the accumulation of extraordinary wealth, the data transfer should form a tax base. It is argued that, if tax is to be used as a tool to counteract wealth transfer that results from economic rent, it should be carefully targeted at the source of the wealth.

Global technology giants such as Apple, Amazon, Alphabet and TikTok, are now some of the most valuable companies in the world when measured by market capitalisation. There have been significant shifts in wealth toward these companies and their investors. If predictions of further movement toward the fourth industrial revolution come to fruition, these shifts are likely to result in greater transfer of data from New Zealand to offshore corporations. While, at present, most of the big technology enterprises operate in the technology, social media and shopping domains, future big tech enterprises may dominate other industries such as household products, transportation, and medical supplies.

Data is often a free resource for the big tech sector. Firms collect data from social media platforms, use of cookies, personal information in online forms and registrations, among other sources. The use of algorithms sorts the data and provides information that can be exploited for commercial and other purposes. In the future, data may be collected from the movement of goods using RFID tags, and from the movement, behaviour, and bodily functions of humans using data transmitters both on and inside the body. Data holds value and the more an enterprise holds, the more opportunity there is to exploit that data. Holders of large databases gain a competitive advantage over smaller players, creating an environment to amass economic rents. As the use of data grows, potentially the growth in wealth inequality will also grow with those receiving the data being the beneficiaries.

Economic rents shift wealth to the benefactors in excess of their productive contribution. In other words, economic rents arise when the returns on productivity exceed a normal return. They have been labelled exploitative rents.⁸⁶ Given the exploitative or excessive character of these returns, taxing them should be uncontroversial.

While various proposals have been made to deal with the digital economy and profit shifting away from user economies, including New Zealand, they generally seek to find ways to tax revenues and profits. This article proposes that, as the source of wealth for many of these global enterprises is in the volume of data collected, taxing the source of the wealth transfer should be explored. That is, the raw transfer of bits and bytes from New Zealand users to global enterprises could be an appropriate tax base to reallocate some of the wealth transfer back to the New Zealand tax revenue pool.

This article does not examine how its proposals might work on an operational basis. Such operational considerations would be a suitable subject for future research.

⁸⁶ See Stiglitz (n 4).

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