The Uneasy Case for Degressive Taxation: A Critique of Blum and Kalven

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We must all be grateful to Professors Walter J. Blum and Harry J. Kalven, Jr. for providing in a brief space a cogent review and critique of the various arguments for progressive taxation, together with an extensive and valuable bibliography of the varying points of view. We must also be grateful to discover a serious monograph that rejects progressive taxation as such, although it does support a form of such tax which the authors label "degressive." Unfortunately, that is as far as one can go in granting this important article unqualified support. For its argument is shot through with errors and omissions that need to be carefully sifted from its valuable contributions.

A discussion of taxation is perhaps unique in that it involves fundamental problems in economic theory, political philosophy, ethics, and constitutional law. Taxation cannot be, or, at least, has not been presented as a pure economic problem; it has been tangled with problems of justice, politics, etc. In addition to its involvement in several social science and philosophic fields, it is by its nature a highly controversial field, especially when an author pronounces a value judgment on the type of tax which should or should not be levied. The entire existence and power of the State is wrapped up in the taxation question. It is therefore likely that any article in the field of taxation,

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Editor's Note: Murray N. Rothbard (1926–1995) was the S.J. Hall distinguished professor of economics at the University of Nevada, Las Vegas. This is an unpublished manuscript from the Rothbard papers, written in 1952 for the Volker Fund. In a letter to the Volker Fund's Herbert C. Cournuelle, on August 18, 1952, Rothbard gave his reasons for writing about the Blum and Kalven essay: "[I]t is certainly an important one. . . . However, it is decidedly an article of mixed quality, containing many errors and significant omissions. Because of this, I am at present engaged in writing a detailed critique of the article." The article is Walter J. Blum and Harry J. Kalven, Jr., "The Uneasy Case for Progressive Taxation," *University of Chicago Law Review* 19 (1952): 417–520.

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especially when its facets have been traditionally treated fallaciously, is bound to be susceptible to numerous errors and pernicious judgments. This article is no exception, and its importance requires it to be measured in detail against the yardsticks of sound economic theory and individualist political philosophy, both of which are involved in the subject of taxation. Since the authors advocate a system of "degressive income taxation" (proportional income taxes above the minimum subsistence level), they leave themselves open to criticism in both areas.

First, in their discussion of progression the authors fail to consider any other tax than the income tax. The authors recognize that income is not the only base for tax rates: saying "either capital or expenditure could be used." And then they simply and dogmatically state: "The income base, however, appears to offer the best framework for analysis of the case for progression" (p. 419). On expenditures there is only a footnote declaring that a progressive tax on the consumption of milk would be "regressive as measured by income or wealth." Presumably this is enough to damn all further consideration of a spending tax. Indeed, on the same page, the authors make the usual arrogant assumption that "no one" could possibly favor a regressive tax structure.

> The rate of tax . . . may be graduated downward with income and thus be regressive; under this pattern a man with ten times the income of another would pay something less than ten times the tax. It is so clear no one today favors any tax because it is regressive. . . . A regressive tax on income is not a serious alternative.

This casual dismissal of regression is one of the major defects of the entire article. After brusquely dismissing regression, the authors quickly go on to another pernicious assumption: "It is almost unanimously agreed that some exemption keyed to at least a minimum subsistence standard of living is desirable." Again a spurious unanimity is invoked as a means of avoiding reasoned discussion. Such an exemption is by no means obvious; in fact, it is difficult to justify such an exemption at all. Why should the able be especially penalized,and the less able especially privileged? Suppose further the minimum subsistence level is $2,000, and the proportionate tax above the minimum is 20 percent. A man who makes $2,000 a year would pay no tax at all, while a man who makes $2,500 would pay $100. If we grant for the moment that governmental activities are worthwhile, then it is difficult to see why a man slightly above the minimum should subsidize government activities for a man slightly below the minimum.

Blum and Kalven admit that their proposed "degressive tax" (proportionate income tax above a minimum subsistence exemption) is in reality a form of progressive tax. Despite their attempts to distinguish between the two forms, and despite the lesser severity of this tax, the fact remains that Blum

and Kalven's arguments against progressive taxation only result in their own advocacy of a form of progressive taxation.

A further result of minimum exemption—admitted by the authors—is that a tax-earner with a large family pays less than one with a small family—since the subsistence exemption is larger for the former. Under what principles of justice must bachelors pay to subsidize someone else's prolific breeding?[1] This injustice is part of the larger issue—that any compulsory tax of a more able group to support a less able and more "needy" group is pure highway robbery. It is highly significant that, in an article which devotes much attention to "justice," the robbery aspect of progressive taxation is only barely mentioned, and then in a very unsatisfactory fashion (see below). In the first part of the article dealing with objections to progressive taxation, this key issue is not discussed at all.

There is of course a further objection, which will be treated below, that there is no possible way of setting a "minimum subsistence level" except purely arbitrarily, and that setting exemptions at some other level, as the authors admit, merely brings the system right back to unadulterated progressivism.

With this inauspicious beginning, the authors set out to examine the arguments against progressive income taxation. They begin with the constitutional argument. Here the sound constitutional objections to a progressive income tax are rudely brushed aside. As in other cases, the authors' review of the history of the subject is useful and interesting, but the position that they uphold is the wrong one. They sneer at the great *Pollock* decision of 1895, that the income tax is a direct tax. Of even greater importance is the great argument of Justice Field, which they quote, that any progressive or degressive income tax law violates the constitutional clause requiring *uniformity of tax* and also violates the Fifth Amendment's due process clause. The authors recognize that the adoption of the Sixteenth Amendment by no means disposed of the constitutional issue, since this amendment did not supersede the uniformity or due-process clauses. They recognize the enormous ignorance of Chief Justice White's *Brushaber* decision in 1915, which validated the income tax law on erroneous grounds, and which has never been added to or challenged thereafter. Yet, despite this, and despite Hackett's brilliant arguments attacking the constitutionality of progressive or degressive taxation, the authors simply conclude in one of their offhand statements: "the result seems clearly sound on constitutional grounds" (p. 427).[2]

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[1]Such a subsidy aggravates its own problem, and becomes self-cumulative, by encouraging larger families among the poor.

[2]This section gives interesting legal references for and against the constitutionality of

Blum and Kalven next launch the body of their article devoted (a) to general objections to progressive taxation, and (b) to the arguments in its favor.

In the objections to progression, they fail to mention one of the fundamental ones—that is unjust highway robbery, especially flagrant since they deal with questions of justice in the course of the discussion.

The first objection they consider is administrative complications. The authors endorse this objection, and there is little to add to their discussion.

The second objection considered is the basic one that under it a majority can use their ballot power to confiscate the income of a minority, a power limitless under progressive taxation. Blum and Kalven brusquely dismiss this valid objection by merely saying that "majority rule . . . is superior to any other principle for resolving group decisions." And not to agree with this preference for majority rule "is to reject democratic self-government." This is simply a sneer. In the formal sense, all government rests on majority consent. However, to protect the rights of the individual, general and prior majority consent to a rigid constitution that severely limits the powers of government is a far better guarantee than constant reliance on the good sense and discretion of the elected "people's representatives." If this is antidemocratic, so much the worse for "democracy." In a footnote, Blum and Kalven make their argument absurd in their attack on the antiprogressive argument of W.D. Guthrie, by asserting that Guthrie's fears of confiscation "have not been realized in practice" and that these are "fanciful dangers." Their argument consists of an extended quote from Seligman: it is perhaps excusable for Seligman to have made these remarks in 1909, but for Blum and Kalven to rely upon them in 1952 flies in the face of the confiscation ruling in the world today.

Their hopeful citing of the Knutson tax reduction of the Eightieth Congress as an example of the majority's ruling reducing taxes clearly backfires; this "reduction" was a piddling one, and was quickly reversed. The fact that the authors favor restrictions on the majority in the area of free speech and religion makes incomprehensible their accusations of "antidemocratic" against those who wish to place further necessary restrictions on government.

The third objection to which they turn is a crucial one—that the progressive income tax destroys the capital structure and the standard of living of society. Here, Blum and Kalven do a truly abysmal job. They claim that the effect is really "in the realm of conjecture in psychology," and attempt to use

progressive taxation, such as the Hackett article. They summarize the arguments on state progressive inheritance taxes, without taking sides, but it is clear to this writer that Justice Brewer's dissents on the basis of uniformity and violation of the Fourteenth Amendment, destroying all progressive taxes, were magnificent. The majority decisions by Justice McKenna and Chief Justice White are clearly sheer sophistry. We shall also be interested to read what the authors call one of the most bitter attacks ever made against progressive taxation—the article by David Ames Wells in the 1880 *North American Review*.

the fact that low taxes are better than high taxes to absolve progressive taxation from the guilt involved. They soft-pedal the effect of progressive taxation on incentives to work with the canard that money only really matters "as a symbol of prestige or success," and that, therefore "Progression does not impair this incentive since the highest income is still the highest income both before and after taxes however high the marginal rate of tax." They quote with approval the ridiculous assertion of Simons that "our captains of industry are mainly engaged, not in making a living, but in playing a great game." Furthermore, they even give credence to the notion that the higher the tax rate, the greater the incentive to work in order to maintain the "net position after taxes."

On the effect of progression on capital formation—a key consideration—they are equally unsatisfactory, backing and filling between the different positions. At one point they will recognize the destructive effect on capital, and a few paragraphs later, they vitiate with doubts, uncertainties, and such inane remarks as the following: "And it may well be that a sufficient group in the society will be disposed to gamble whatever the odds"; "It cannot be taken for granted that the discouragement of the most risky enterprises is, at our present level of technological development, an unqualified evil"; and "It seems equally plausible that the lower effective rates (of return on savings due to a progressive tax) will induce some persons to consume less now and to save and invest more in order to maintain their incomes after taxes at desired levels in the future."

Blum and Kalven conclude by deciding that the effects on capital and work are merely "highly indeterminate." They go on to insist that even if the effects are to destroy capital, "it would take an extremely drastic rate of progression and very high taxes to endanger the existing accumulation of capital," as if the present rates are not drastic! And if it merely restricts further growth of capital, after all, "at some point it is reasonable to question the wisdom of society in always continuing to postpone present consumption for the sake of greater consumption tomorrow." They deprecate the objections to progression on these grounds offered by Lutz and Jundson, and cite favorably such absurd arguments as Simons's that the "cost of our present stock of productive instruments was . . . decades and centuries of terrible poverty for the masses," and Edgeworth-Pigou's that enforced equality really "increases productivity" because of the "improved morale" of the poor, etc., etc.

Blum and Kalven conclude this most unsatisfactory section (pp. 437–44) by asserting that productivity, even if it were clearly injured by progression, is not overriding, because a tax system promoting savings would be "a regressive tax system" which they blithely consider unjust without further discussion. It is interesting to note here that Blum and Kalven add a footnote dealing with Beale's (and Fisher's) suggestion of a progressive spendings tax as a way of keeping progression without impairing capital.

Instead of coming to grips with this issue, they merely dismiss the spendings tax (even a progressive one) by saying: "Such a tax would inevitably be somewhat regressive at the higher levels of the income scale."

The net effect of Blum and Kalven's backing and filling on this issue is to dismiss this objection to progression. They conclude this part of the discussion with a quotation from Simons. They cite this quotation with approval, but it is so bad that it deserves quoting at length:

> If we deliberately limit the degree of progression, out of regard for effects on accumulation [of capital], we are in effect removing taxes from those who consume too much and transferring them to classes which admittedly consume too little; and against the additional capital resources thus painfully acquired are mortgages, property rights, in the hands of those freed from tax. While the saving will really have been done by those at the bottom of the income scale [presumably because they have abandoned progression for proportionate taxation], those free from tax and their assigns will enjoy the reward. This method of fostering increase in productive capacity thus increases the concentration of property and aggravates inequality. . . . [T]he scheme looks a bit like taxing small incomes to reduce consumption in the hope that those relieved of tax will save more after consuming all they can, and then allowing 1 per cent to those who have really done the saving and 4 per cent to those who have served merely by paying smaller taxes.

It is not surprising that the authors conclude by stating that the objections to progression are "far from conclusive."

Having begun the article by basing their discussion on several fallacious assumptions, Blum and Kalven treat the case against progressive income taxation in a manner which ranged from omission of important elements to confused backing and filling to outright acceptance of fallacious and antifree-market arguments. The valuable parts of the article so far (some biographical references, historical sections, and treatments of administrative confusion due to the tax) have been so brief as to be overshadowed by errors.

Blum and Kalven next turn to the major part of their article: a critique of the arguments for progressive income taxation. They turn first to the argument that this type of tax helps maintain a high, stable level of economic activity. One such approach is that of Mints-Friedman-Simons, who hail the fluctuations in income tax receipts with changes in economic activity. A progressive tax increases the effective tax rate under inflationary conditions and reduces it in a depression. Blum and Kalven unfortunately agree that "there is now general agreement that it is altogether appropriate for the government deliberately to operate with an unbalanced budget whenever significant inflation or deflation is taking place"; that is, to have a surplus in a boom and a

deficit in a depression. Blum and Kalven obviously support this fallacious point of view, but are inconclusive on this argument, inferring that the progressive features of the income tax law does not add so much to this feature that it cannot be eliminated.

The second such approach is the Keynes–Hansen mature-economy approach, which supports progressive taxation in order to boost consumption as compared to savings. Their critique of this approach is rather weak; they do not point out that depressions are never caused by "under-consumption," and therefore cannot be relieved by such measures—quite the contrary. Their main argument is that stagnation does not exist so that such a remedy need not be adopted. Finally, they advocate, to counteract temporary depressions, lowering taxes uniformly while maintaining government expenditures. Thus although some of their criticism of the Keynes–Hansen position is valid and useful, it is unfortunately weakened by various concessions.

Having thus disposed, though not very decisively, of the stability case, the authors turn to the taxation arguments based on justice. There are three criteria or principles to use as bases for levying taxes: benefit received, costs incurred, and ability to pay.

They first turn to the benefit principle—that people should pay taxes to government in accordance with the benefits they receive from government. The benefit principle is not a wholly satisfactory one, but it has much merit, especially as compared to the "ability-to-pay" doctrine. According to this theory, for example, the users of roads are taxed on their gasoline purchases in order to pay for the upkeep of roads. The authors seem to favor benefit taxation in many cases, such as these, where the benefits may easily be traced. In such cases, however, it is difficult to understand why (assuming the government should operate them at all) these services should not be *priced* and have their expenses paid solely by their customers. Thus, the users of the post office should be the ones to pay for the service, the users of parks to pay for the parks, etc.

Blum and Kalven next proceed to those expenditures where benefits allegedly cannot be definitely traced. Here they are at their best in destroying the fallacy that benefits to property owners increase either proportionately or progressively with the value of property protested (pp. 452–53). This "benefit" argument for progressive (or proportionate) income taxation rests on the fallacious "tax as insurance-premium analogy." They point out that such property-protecting outfits as police, army, and fire fighting, do *not* benefit the owners of property according to its value, and indicating particularly that owners of intangible property benefit far less than owners of real estate. Furthermore, they agree that the services of government in defense of persons is alike for all individuals, and add that the amount of police and army necessary to protect persons are probably adequate to protect property as well.

Yet, inconsistently, Blum and Kalven approve of Mill's attack on a proposal for equal poll tax on all persons and a proportionate tax on property, which stated: "it is not admissible that the protection of persons and that of property are the sole purposes of government. The ends of government are as comprehensible as those of the social union"—the authors add that mere protection is "only a small fraction of the total services performed by government" in a "modern state." But this is just the point. Individualists believe that this is the maximum of service that the government should bestow—that this is the only field where government is competent to perform service, and the only field in which justice permits the government to be active. By adopting Mill's vague statist criterion instead, they abandon individualism, and they abandon the only field in which government—the organization of force—is competent; instead they adopt the philosophy of collectivism.

Blum and Kalven dispose of the very useful "cost principle" in a footnote: "sometimes the theory is stated in terms of the *cost* of the government services performed for each citizen rather than in terms of the *benefits* received from such services." The authors' only comment is, "This refinement may avoid the need of measuring subjective benefits, but it does little else for the theory." This is their sole comment on the *cost principle*. Yet the cost principle is very different and far superior to the benefit principle. In the first place, it is a great advantage that it does not have to measure subjective "benefits." Benefits are purely subjective, and can never be measured, and the fact that some of the best parts of this article are devoted to criticizing "equal sacrifice of utility" theory precisely on this ground makes it even stranger that the authors did not examine the cost theory in more detail. Indeed the impossibility of measuring benefits is also a strong argument against the spendings tax mentioned above, since money-expenditures are not a criterion of psychic benefits.

The cost principle levies the tax on the most accurate estimate of cost of the operation to the government. Services such as the post office, for instance, would be priced on the cost principle, although individualism would eliminate these wasteful, monopolized services entirely. The police-army services of defense of person and property would obtain its revenue (a) from fines on wrongdoers, and (b) from taxes according to cost levied as equal poll taxes on each person under protection; and approximately proportionate to acreage on real property policed. All services on the free market are priced according to marginal utility (which, in turn, sets costs); if it is just for *all* consumers, regardless of wealth or income, to pay *one price* on the market for all these services—food, autos, etc.—why is it not just for all receivers of government protection to pay equally for the same service? Since there is no free market for protection service, a tax levied on the basis of cost is the best approximation to the free-market ideal of one good, one price.

Furthermore, the benefit principle has the unjust feature that those who benefit more must pay more; why should a man be punished because he is happier? The cost principle—based on equal price for equal service—voids this problem.

In the course of their keen analysis of the benefit principle, the authors successfully attack all phases of the benefit arguments for proportion and progression. As a matter of fact, they point out, with Mill, that the poor and the unpropertied probably benefit more heavily from government police protection than the rich, who could pay for their own private protection. "If there were any justice, therefore, in [the benefit principle] . . . those who are least capable of helping or defending themselves, being those to whom the protection of government is the most indispensable, ought to pay the greatest share of the price." Thus, under the benefit principle, a poor man would be taxed more heavily than the rich. The cost principle is not open to this objection—since it taxes absolutely equally for any service rendered, regardless of the subjective benefits rendered to each of the consumers.

Blum and Kalven add with horror that the benefit principle would require the specially privileged "underprivileged" who receive welfare subsidies from the government to be precisely the ones to be taxed for their payment. On the contrary, here is one case where the rigorous application of the benefit principle would quickly end agitation for these statist schemes.

Thus, Blum and Kalven retain the benefit principle only where benefits are directly traceable, and the benefits are not "a consequence of deliberate welfare measures." On the contrary, the benefit principle should be retained only in cases of "welfare measures" and all other subsidies to specially privileged groups.

The authors' section on the benefit principle thus contains much keen analysis, but is vitiated by concessions to collectivist and "welfare" philosophy and neglect of the cost principle.

Blum and Kalven next proceed to the "equal sacrifice" criterion of taxation. They make the interesting assertion that this approach treats taxes as though they were a confiscation of property, and "the problem then becomes one of confiscating in an equitable manner." Since this approach toward taxation is quite realistic, it is unfortunate that Blum and Kalven did not raise the obvious question at this point: Why assume that there can be such a thing as "confiscation in an equitable manner"? If taxation confers no benefit, why tolerate taxation at all?

It is clear that this assumption places the entire "equal sacrifice" theory in a highly curious position, and although Blum and Kalven do not pursue this position, it is one of their great contributions that they highlight the fact that "sacrifice theory"—which has loomed the largest by far in all discussions of taxation—rests basically on this taxation-as-harm assumption. As they put it,

"An equitable apportioning of sacrifice requires inflicting equal hurt on each taxpayer." To a thoroughgoing individualist and libertarian, this basic goal of the sacrifice theorists reveals the utter absurdity of their position. Instead of worrying about what constitutes "equal hurt," why inflict any hurt at all? Why tolerate an institution that represents only pain and injury, and then try to find some sort of "equitable means" of spreading it around? The entire concept of "just and equal" in suffering is an absurdity.

Setting aside this point for the moment, we return to Blum and Kalven, who proceed on a lengthy and generally very valuable analysis of the various attempts at measuring "equal sacrifice." This is generally an excellent section and provides valuable analysis and bibliography of the different points of view. This is probably their outstanding contribution.

They analyze the "utility curve" of money and its components, and clarify the different contentions. Best of all, their final devastating attack on the whole "utility of money" analysis as a basis for taxation rests on the Mises-Robbins contention that utility cannot be measured, and therefore cannot be compared between one person and another. They recognize that utility is an ordinal concept, and that therefore "the whole elaborate analysis of progression in terms of sacrifice (disutility) and utility doctrine finally collapses." (It is unfortunate that this conclusion is marred slightly by an absurd footnote quotation from Pigou attempting to deny this.) They point out the analysis rests on an attempt to measure utility and disutility by the amount of money income, and to compare diminishing marginal utility of money between persons.

Their main error in the course of this sacrifice analysis is their preference for the "proportionate sacrifice" standard over the "equal sacrifice" standard, although it is one of their great merits that they have brought the distinction between the two concepts into clear focus. They prefer the former (although finally discarding both) because the latter is "regressive" in income taxation, although most economists have preferred the equal-sacrifice principle. If we assume for the sake of argument that utility can be measured in units, and compared between persons, the equal-sacrifice formula states that each individual should give up an equal *percentage* of his total utility derived from money. It should be clear to all that the former is more just; at least it preserves some sort of equality before the law that is a requisite of individualism. The proportionate criterion is the reverse of justice; why should one man sacrifice more units of utility just because the market has made him richer than the next man? This is clearly unjust discrimination and confiscation of the rich. Yet, Blum and Kalven reject the equal-sacrifice principle because it is regressive; a man with $10,000 income would pay more than a man with a $5,000 income but *less* than twice as much. This is all part and parcel of the authors' continual preference for proportionate taxation and horror of equal taxation or "regression."

In the course of this discussion, Blum and Kalven advance their only argument for the proportionate formula in general—that it is "neutral" as compared to the distribution on the market; all people are equally worse off as a result of the tax. And they indicate on page 461 that their rejection of proportionate sacrifice on grounds of immeasurability of utility leaves them with proportionate income taxation on grounds of its "neutrality." The question arises: Is a proportionate income tax best because it is neutral with respect to the market?

At first blush, this argument is superficially appealing. If a tax of 10 percent is levied on all incomes, is not the market distribution left untouched? Each has 10 percent less income after taxes than before. This argument, however misinterprets the nature of the market and "neutrality" toward it. The question should be: How are all prices of goods set on the market? They are set on the basis of one price for each good, *regardless* of the incomes of the people on the market. A pound of butter costs the same to a poor man as to a rich man. Yet this one-price system is considered just, especially by writers like Blum and Kalven who claim to support the market process. It would be considered unjust, and rightly so, if the rich were penalized for their wealth by being forced to pay more for every service than a poor man. Equal price for equal service—discrimination against neither rich nor poor—is the rule on the market. Therefore, if it is the rule of justice to be neutral with regard to the market, then taxing will take place as nearly as possible on a *market basis*; it too would *tax each person equally*. If the government taxes the rich more heavily—in amount not in "proportion"—than the poor, it is not being neutral; it is introducing a principle of charging, which is foreign to the market.

There are several gems of analysis contained within Blum and Kalven's critique of sacrifice theory. There is the "customary sacrifice" contention of the Stamp which highlights the impossibility of measuring subjective sacrifice; and there is the greater chance of going wrong under progression; there is excellent critique of the Pigou argument for progression based on conspicuous consumption. The authors demonstrate that this Veblenian evil is likely to be more widespread among the middle classes than among the "rich."

A third type of sacrifice theory which the authors analyze is the "minimum social sacrifice" theory of Bentham and others. This assumes some sort of "maximum quantity of social satisfaction," and, of course, makes the same error in assuming measurability of interpersonal satisfaction. The minimum social sacrifice doctrine is, of course, completely vicious—it disposes of all equality before the law or neutrality concepts—and demands what amounts to outright leveling of incomes and confiscation of higher income groups and subsidizing of lower income groups. Aside from considerations of justice or productivity, the fundamental criticism is that sacrifice cannot be measured between persons by simply comparing income. Furthermore, the utilitarian

principle of minimum sacrifice assumes that it is the state's function to allocate happiness between persons, which would be vicious even if it could be accomplished. The authors rightly footnote Simons's remark that on the minimum-sacrifice doctrine, those with a greater capacity for pleasure would be taxed less than others—a curious doctrine to say the least. The authors' rejection of the formula, however, is not as strong as it might have been. They concede too much to its being a "variant formulation of the question for the common good or the common welfare."

In the general argument against a measurable diminishing utility of money, the authors are wrong in indicating that the utility of money does not really diminish. It does diminish as the stock increases, but the crucial point is that this decrease cannot be measured, and here the authors are correct.

After disposing of the sacrifice theories, the authors turn to the next principle of taxation, the "ability to pay." They point out correctly that, in general, the term "ability" is simply the converse of the sacrifice doctrine, *the ability to bear a sacrifice*, which also cannot be measured. Again, however, their treatment is marred by an acceptance of proportionate income taxation as being properly commensurate with ability to pay. The authors fail to proceed further to a critique of the ability-to-pay principle itself. This "principle" is simply that of the highway robber, who takes as much as he can. It is a curious form of "justice" for the state to pursue in taxation.

Blum and Kalven are at their best in an excellent critique of the Seligman argument for progressive taxation, based on the absurd theory of "faculty" of earning money. They also have a fine critique of Hobson's proposal to tax "surplus" economic rent, and of Peck's peculiar plan to tax consumer surplus.

The authors next have a fine critique of the "moral consumption" ideas involved in arguments for progression.

Finally, Blum and Kalven turn to consider the argument that progressive taxation is good simply because it brings about greater economic equality this is the Henry Simons position. If egalitarianism should be pursued as a policy, progressive taxation is one way of achieving the goal. The authors assert that if Henry Simons rests his case simply on a value judgment that equality is good and is an ultimate one, there can be no further discussion. They fail to recognize that the infinite variety and inequality of talents among human beings makes the goal of egalitarianism absurd and antihuman, better suited to an ant-heap than to human society.

In treating the socialist-communist arguments for progression, it was not necessary for Blum and Kalven to levy an implicit insult on Lutz and Crotty for maintaining that advocates of progressive income taxation are unwitting collaborators of socialists and communists. This charge may not be pleasant, but it is true, and it is out of order for the authors to call this "the rhetorical possibilities of guilt by association" (p. 489).

Passing over the socialist and the Simons position, the authors ably point out that the case for equality rests at bottom on sheer envy, is certainly a gross injustice as a foundation for political policy, and state that envy can certainly not be eliminated even by enforced equality.

Blum and Kalven then keenly examine the "general welfare" argument for progressive taxation. They point out brilliantly that (a) welfare can no more be measured than utility or sacrifice, and that (b) even if it were such taxation would benefit one group at the expense of another, and that, therefore the welfare considered *not* general, but special. The authors also point out the difficulty that the egalitarians have with the government—shall the confiscated money be spent by the poor or by the government? Increase in government expenditure may be highly undesirable and lead to a loss in consumer freedom.

The authors next have an excellent critique of the "democratic" argument for equality. This is the Tawney-Lasswell contention that democracy cannot work well if incomes are too unequal, and equality will ensure against revolution. Against this familiar theme song, the authors set: Edgeworth's observation, that there may be more danger in whetting the appetite of the poor and thus precipitating revolution, aside their own contention that the money route to political power is far better than status-routes dependent on heredity, caste, and military prestige. Here the authors rely also on some apt statements by Wright. They also dispose rapidly of the inane "money power" and "private sovereignty" arguments against the rich.

Finally, the authors dispose in admirable fashion of the "moral reform" argument for equality, based on the "sense of fellowship" that would ensue. Rivalry would only be shifted to other, more unpleasant areas. The argument could be much stronger here, however; money differences in the ultimate analysis are the main thing that binds man in a sense of fellowship rather than the reverse. These money differences arise from the peaceful cooperation of the market, and it is only as a result of such peaceful cooperation, as Mises has brilliantly pointed out, that any sense of fellowship can emerge. The authors are to be commended for their footnote by Sharp that a sense of fellowship through equality can be highly dangerous and lead to rule by dictators and mobs.

Blum and Kalven conclude by denying that economic inequality is in itself a good, and assert that past arguments that a wealthy group is needed to be the culture bearers of society are now outmoded by universal education. We must differ strongly; universal education has in fact led to a general degradation of cultural and educational standards. It is still true that only a small elite are culture-carriers; although the spread of universal education has made this elite harder to distinguish and to discover. This elite is certainly not identifiable with the wealthy; but it is still true that the wealthy are far more likely to recognize and patronize the elite than are the masses.

Having disposed of the case for economic equality, the authors return to the other side of the coin—the question of whether or not the market's income distribution is a just one. If it is, then the perniciousness of attacking the unequal distribution of income resulting from the market is evident.

The authors first ably point out that even if there is underserved income on the market due to monopoly and fraud, there is no correlation of *undeserved* income and *total* income and therefore no case for progression. The authors err seriously, however, in (a) attributing monopoly to the market—undeserved monopoly income is attributable to state deviations from the market; (b) treating fraud and duress as part of the market—these too are anti-market phenomena and are illegal; (c) treating shifts in the value of money as causing unjust income rewards—this is only another market phenomenon and no more unjust than any other change; and (d) treating luck as leading to "undeserved income." In the first place, luck cannot be legislated, and second, it is usually the able and enterprising that can take advantage of the luck that comes their way. Each person is equally liable to be confronted with good or bad "luck."

Having disposed of the unjust reward argument, Blum and Kalven do a very fine job in probing further the arguments of the anti-inequality writers. They show that some really base their position on abandonment of all personal responsibility. In this amoral and monstrous view, the able are not to be rewarded because they are not responsible for their talents, and the criminal not to be punished for the same reason. Upheld consistently, this view is anti-human and anti-individualist in the deepest sense. Blum and Kalven do well to attack this deep-seated modern doctrine.

Also, they show that it is nonsense to use the fact that modern production requires division of labor and cooperation to say that therefore no one's rewards can be separated from another's. The authors point out rightly that this separation is precisely what the pricing process accomplishes.

In their final argument, Blum and Kalven consider the argument that the market, in dispensing monetary rewards, does not rate "the whole man," and that perhaps the state should redress the balance. Here, the authors are curiously inarticulate. They merely state that this argument is rarely formulated. They admit in a footnote that the market is not the only rewarder in society, that, for example, there are nonmonetary markets such as friendship in exchange for praiseworthy qualities, which appraise these other qualities with which the market is not concerned. Yet they seem to favor this argument by implying that the progressive tax provides a useful method for society to review and change the market's distribution of income. The market's rewards are monetary for contributions that can be appraised in terms of money; what justification is there for the state to alter this monetary pattern? If market monetary rewards are just, as Blum and Kalven admit, the contention that

they still should be "reviewed" through progressive taxation is an absurd one. Yet, nonmonetary contributions continue to be rewarded in nonmonetary ways.

Thus, Blum and Kalven began their article unfortunately. Each of their basic assumptions was fallacious, and their treatment of the arguments against progression unsatisfactory. However, we have seen that the great value of their article lies in most of their critique of the arguments for progression—particularly, the sacrifice, ability, and equality arguments. Much of their analysis in this part is of a high order. The merits lie, however, not in any arguments for "degression" but in the arguments against progression.

It is unfortunate that, after concluding the critique of arguments for progressive taxation, the authors should slip back into much fallacious argument in their discussion of "equality of opportunity" and inheritance.

They first make the flat statement that rewards cannot be considered just "unless the contestants start from the same mark," and they continue with a quotation from Tawney that the "game" is not fair "if the rules of a game give a permanent advantage to some of the players." Also, equal opportunity will develop individual talents best.

This position completely misconstrues the nature of the market and of society generally. Blum-Kalven-Tawney err in considering human life and action some sort of "race" or "game," where each should start in an identical position. Life is not a race, but an attempt by each individual to be as happy as possible. Since the world has not just come into being, it is absurd to decree that everyone should "start" the same. Each individual's "reward" for his industry, foresight, and saving consists of property which it is his right to dispose of as he sees fit. This disposal includes, certainly foremost, the right to accumulate and give to his children. It is an absurd and pernicious doctrine of "justice" that each child should "start" absolutely equally. It is an anti-human position, since each child manifestly begins completely unequally—with unequal abilities and parents. If parents have a right to beget and raise children without state interference, then parents have a concomitant right to provide that environment, and that amount of money for them, that they think best. To provide "equality of opportunity" in the sense of equality of infants would have to mean that the state nationalizes all infants and raises them in State nurseries under precisely "equal" conditions (although, even here, absolute equality is not possible). If private raising of children is admitted, then private inheritance must also be fully admitted.

Blum and Kalven penetrate to the issue by stating that the "important inequalities of environment, in its broadest sense, are for the children." They

proceed to endorse inheritance taxes, and go on to restate the old canard: "Today few dispute the force of the equalitarian case in this context." As one of these "few," we reiterate that if freedom for the private family is accepted and the horror of communication of children squarely rejected, there is no case whatsoever for inheritance taxation or "equality of opportunity" in this field. Blum and Kalven do not improve matters much by conceding that this "strong" argument for progressive inheritance taxation must be "counterbalanced" by considering the impairment of incentives to work and disruption of the family standard of living.

The authors merely conclude that the case for progressive inheritance taxation is pretty well established, but not progressive income taxation, and bolster themselves by citing a "tradition" for this program (Hill). On the contrary, a progressive inheritance tax is far worse than progressive income tax. As the authors skim over without pointing out its significance—the inheritance tax is a *pure tax on capital*. It does not tax income at all. It is a pure tax on accumulated capital, and thus leads directly to impoverishment. Not only that, but it is a pure tax on that very form of endeavor that provides the main incentive for long-range accumulation of capital after a man's death—the bequest to one's children. It is therefore a staggering tax on capital. Not only should there be no progressive inheritance tax, there should be no inheritance tax at all. An inheritance tax is pure evil, and no valid arguments can be found for it.

The authors err fundamentally in believing that inheritance leads to a "permanent" handicapping, or inequality of the "rules." Inheritance of wealth is not permanent at all. In contrast to inheritance of status—aristocratic, military, bureaucratic, or political—inheritance on the market is precisely always in danger of being dissipated if the heirs are not careful. Every inheritor must continue to invest profitably not only to increase his wealth, but to maintain it. George Washington was one of the wealthiest men in the America of his day. A few generations later, the Washington family disappeared from the scene.

But for Blum and Kalven an inheritance tax (progressive) is not enough in reducing "inequality of opportunity." For before inheriting the money, the children receive the benefit of parental expenditure on them. Here is a critical loophole indeed. As the authors put it:

> The critical economic inheritance consists of the day-to-day expenditures on the children; it is these expenditures which add up to money investments in the children's health, education and welfare which in the aggregate are . . . gravely disparate.

There is a hint in a footnote that the authors would endorse a system whereby children would be taxed (in practice, of course, the parents) for the

"income" (in goods) received from the parents, or the parents would suffer a stiff gift tax on all expenditures made for their children.

Fortunately, however, Blum and Kalven stop this process of reasoning in time to see where it leads. They (inconsistently) begin to draw back from the prospect of steeply progressive income taxes in order to equalize expenditures on children. They seem to look with favor on equalizing opportunities for "formal education, healthful diet, and medical attention" (p. 504), presumably by having the government nationalize these services and providing them equally. There still remain inequalities of cultural education and psychological training that seem unavoidable. At least the authors realize that attempting to remove all inequalities by tackling these areas would lead to complete destruction of the private family. As they put it, "this would call into question the very having of children." Yet they do not follow this thought consistently, but only continue to wrestle with the problem in confusion.

Blum and Kalven summarize by declaring, that for adults, enforced equality rests simply on envy, but "in the case of children these difficulties (in the arguments for egalitarianism) largely disappear. There is an enormously strong ethical claim to equality for the sake of children. What may reduce to envy as among adults surely is justice as among children."

Yet the authors are troubled by what will happen to the family and to private property under such a regime. Also, they realize the important point that if the conditions of children are equalized via progressive income taxation of the parents, then the later incomes of these children when grown up will also be subject to leveling, and "they will be denied the opportunity to enjoy the differential rewards which they have earned." In effect we would be first making certain that the conditions for the race are fair and then calling the race off. Precisely, and this should reveal the absurdity of "equalizing opportunity" to begin with. The authors thus conclude this section in a state of confusion.

Blum and Kalven conclude the discussion of equality with two erroneous footnotes. One purports to refute McCulloch's objection to a progressive tax that it renders the rate pattern arbitrary and uncertain. If the argument is on the merits of equality, then the progressive tax resulting, they claim, will simply be the result of "democratic debate." The fact that something is resolved "democratically" does not make it any the less arbitrary or capricious—indeed, it is likely to make it more so—or undo the harmful effects of such capriciousness. "In the end the distrust of progression on grounds of the uncertainty of the equality standard is only a doubt about the wisdom of entrusting the question of economic equality to the democratic process." Once again, we react to the invocation of the god Democracy, by saying "precisely"—let us see this question removed from the area of the democratic process and prohibited to government by constitutional means.

Another error they make is to pooh-pooh the antiprogression argument that complete leveling will really add little, quantitatively, to the income of the mass of people even in the short run (i.e., aside from effects on productivity and capital). It is true that this algebraic argument has been overworked by opponents of progression (it is interesting that this argument is the central one in Bertrand de Jouvenel's recent *Ethics of Redistribution*), but after all it has its place and is not to be dismissed so brusquely. Its "cold mathematics" are *not* irrelevant to the agitation for economic equality—for it reveals some of the absurdity of the agitator's passionate pleas for redistribution. And the authors' contention that the quantitative benefits could really be great by "distributing the benefits in the form of community expenditures rather than cash" is singularly unconvincing, especially in light of their own doubts about state (not "community") expenditures and restrictions on consumer freedom.

Except for a brief concluding section, the remainder of the article deals with the Blum-Kalven case for "degressive" taxation—exemption up to the "minimum standard of subsistence" and a uniform proportionate rate above that. There is not too much of interest here. They explain that the degressive tax is progressive, but more mildly so than other types of progression. The outcome of their case is not favorable for degression even on their own grounds. They admit that if the exemption is set above the subsistence level, the progression will be far steeper, and explicitly graduated rates are likely and probable if such criteria as "decent standards of living" are set as the exemption. Their arguments against degressive taxation at high exemption levels are good, and they also have an interesting argument about the ambiguity of graduated rates in their comparison of the income-classes that are being leveled.

The authors conclude that degression would be worse than graduated progression if the exemption of the exemption level were set at a high level, and that graduation would also be necessary if the exemption level were too low, in order to soften the impact on the poor. Even on their own grounds, therefore, degression is only called for if the exemption level is squarely set at the minimum subsistence level. Yet, it is impossible to set such a level scientifically; any such exemption level would be arbitrary and subject to the further capriciousness of the authors' "democratic process." On the authors' own terms, then, their case for "degressive taxation" evaporates.

Why have exemption anyway? The authors present their brief position on page 509. One argument is the diseconomy of collecting small amounts of tax from many low incomes—this is totally unconvincing considering the "untapped resources" from the many low incomes. A second argument is the futility of the state's giving welfare benefits and then taxing them away—on the contrary, this is a cogent reason for not permitting exemptions, since this will be likely to end the welfare benefits. A third argument is the alleged "disadvantages of anchoring judgments about tax rates and government expenditures

to the capacities of the poorest members of the community" (p. 509). On the contrary, this is a great advantage. A firm anchoring of this sort will ensure a very low level of state taxation and expenditures—precisely what is needed.

Blum and Kalven conclude with a discussion of government expenditures. Where benefits are traceable, though unintended, they advocate taxation of the recipients of the benefit. In discussing expenditures where benefits are not traceable, such as military or other defense expenditures, the authors realize that since we might roughly say that such expenses benefit everyone equally, the benefit principle would lead to *equal taxation*. They recoil with horror from this because it would increase economic inequality, and it "certainly is intolerable to predicate it [a case for increasing economic inequality] on the cost of the indispensable activities of government." But this is completely beside the mark; equal taxation is not a deliberate enforcement of greater inequality, any more than a grocer's charging one price for butter causes "greater inequality" between the rich and poor buyers.

The authors would also pay for welfare expenditures by degressive taxation. But it would be better to apply the benefit principle strictly, thus quickly ending such expenditures. This aim of reducing such expenditures is not entirely out of place here, since the authors admit that ending progression probably greatly reduces such expenditures.

I have engaged in this lengthy critique because the article is an important one. Professors Blum and Kalven have written one of the few scholarly attacks on the theory of progressive taxation in recent decades. They deserve commendation for their effort and analysis. In general, their article has been found to be strong in critical analysis of progression, but weak and confused in their positive recommendations and erroneous in attacking many anti-progression arguments.