Cognitive Theory and the Delivery of Welfare Benefits

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When it comes to the topic of wealth and income inequality, Americans seemingly agree on nothing other than its existence.[1] They even differ as to whether the inequality is bad.[2] Those who agree it is bad disagree about what, if anything, should be done about it. Those who agree something should be done disagree about whether the government should do it. Those who agree the government should do something disagree about what should be done, and how. Should the government act through the tax code, direct expenditures, or a combination of the two?

These are important questions; they involve not just economic issues but social, moral, and critical political questions about the meaning of American democracy. Many people have pondered these issues and written about them. Yet no matter how cogent the arguments either for or against equality, they have changed few people's minds. This failure

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1. Although they agree that inequality exists, not everyone agrees that it has increased over the past several decades. In general, however, statistics show that inequality has increased in the past two decades, with the richest one percent of Americans having very large increases in average incomes. *See, e.g.*, JARED BERNSTEIN, ELIZABETH MCNICHOL & ANDREW NICHOLAS, CTR. ON BUDGET & POL'Y PRIORITIES, PULLING APART: A STATE-BY-STATE ANALYSIS OF INCOME TRENDS (2008), *available at* http://www.cbpp.org/4-9-08sfp.pdf (finding that income inequality has grown in most parts of the country since the late 1980s); Thomas L. Hungerford, *Income Inequality and the U.S. Tax System*, 117 TAX NOTES 465, 465–78 (2007); Frank Levy & Peter Temin, *Inequality and Institutions in 20th Century America* (Nat'l Bureau of Econ. Research, Working Paper No. 13106, 2007), *available at* http://www.nber.org/papers/w13106 (discussing the widening income inequality as shaped by economic institutions). Income inequality may have reached levels not seen since 1929. *See* Jesse Drucker, *Richest Americans See Their Income Share Grow*, WALL ST. J., July 23, 2008, at A3 (examining IRS data from 2006).

2. There is, however, growing evidence that inequality has negative economic, social, and political consequences. *See, e.g.*, Kathryn M. Neckerman & Florencia Torche, *Inequality: Causes and Consequences*, 33 ANN. REV. SOC. 335, 340–41 (2007) (finding that economic inequality has negatively impacted health, education, crime and incarceration, social relations, and politics); Richard H. McAdams, *Economic Costs of Inequality* 2–28 (U. Chi. Law & Econ., Olin Working Paper No. 370, 2007), *available at* http://ssrn.com/abstract_id=1028874 (arguing that income inequality increases crime, political corruption, and in certain circumstances, constrains growth).

rate is not caused by the quality of arguments. Rather, it stems from the fact that people's minds are not very susceptible to reason on these issues. Their opinions result from differing worldviews that, being affectively based, are not very responsive to factual information.[3]

Despite the extent of the disagreement and its intractable nature, the state constantly enacts laws, including tax laws, whose distributional burdens affect wealth/income inequality. Even when the goal is simply to raise revenue, basic choices about the tax base, rate, and taxable unit inevitably alter tax burdens. Tax provisions enacted to implement social and economic policies increase the distributional impact of the tax system, although the effects are not always intentional. Some people believe that certain programs are deliberately placed in the tax laws precisely to hide distributive effects.

Current United States federal policy intentionally uses the tax system to redistribute income to the poor because, according to conventional wisdom, the tax system is superior to direct benefits for both political and economic reasons. A refundable tax credit has become social policy's "magic bullet."[4] Thus, the largest federal antipoverty program for working families in existence today is the Earned Income Tax Credit (EITC).[5] The economic rationale for indirect tax benefits in lieu of direct welfare is simply that they are more efficient.[6] The political

3. Dan M. Kahan & Donald Braman, *Cultural Cognition and Public Policy*, 24 YALE L. & POL'Y REV. 149, 150–51, 163 (2006).

4. Dennis J. Ventry, Jr., *Welfare by Any Other Name: Tax Transfers and the EITC*, 56 AM. U. L. REV. 1261, 1261 (2007) (characterizing a common view of credits). Some have gone so far as to say that all welfare programs should be delivered via the tax system in the form of refundable credits. *See, e.g.*, JONATHAN BARRY FORMAN, MAKING AMERICA WORK 131–35 (2006).

5. I.R.C. § 32 (2000 & West Supp. 2008), *amended by* Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-234, § 4002(b), 122 Stat. 1095, *and* Pub. L. No. 110-246, § 4002(b), 122 Stat. 1857; STEVE HOLT, THE BROOKINGS INST., THE EARNED INCOME TAX CREDIT AT AGE 30: WHAT WE KNOW 1 (2006), *available at* http://www.brookings.edu/~/media/Files/rc/reports/2006/02childrenfamilies_holt/20060209_Holt.pdf.

6. *See* Louis Kaplow & Steve Shavell, *Should Legal Rules Favor the Poor? Clarifying the Role of Legal Rules and the Income Tax in Redistributing Income*, 29 J. LEGAL STUD. 821, 821 (2000); Louis Kaplow & Steven Shavell, *Why the Legal System is Less Efficient Than the Income Tax in Redistributing Income*, 23 J. LEGAL STUD. 667, 667 (1994); David A. Weisbach, *Tax Expenditures, Principal-Agent Problems, and Redundancy*, 84 WASH. U. L. REV. 1823, 1824 (2006). *But see* Ronen Avraham, David Fortus & Kyle Logue, *Revisiting the Roles of Legal Rules and Tax Rules in Income Redistribution: A Response to Kaplow and Shavell*, 89 IOWA L. REV. 1125, 1128–29 (2004); Chris W. Sanchirico, *Taxes Versus Legal Rules As Instruments for Equity: A More Equitable View*, 29 J. LEGAL STUD. 797, 797–800 (2000); Nancy Staudt, *Redundant Tax and Spending Programs*, 100 NW. U. L. REV. 1197, 1226–27, 1230–39 (2006) (arguing that since the causes of poverty are unclear, it may be efficient to have both tax and direct spending programs because each may reach a different causation theory). If the tax system is the appropriate delivery mechanism, then refundable credits are the best means to accomplish the goal. *See, e.g.*, Lily L. Batchelder, Fred T. Goldberg, Jr. & Peter R. Orszag, *Efficiency and*

rationale rests on the belief that the public does not support governmental provision of welfare benefits because these benefits violate basic American tenets of individualism, self-reliance, autonomy, and (negative) liberty, all of which profoundly limit the scope of legitimate state action. Consequently, most Americans view welfare as an unjust taking from individuals that which they deserve (having earned it by their own efforts) and a wrongful redistribution to others. The redistribution is wrong regardless of who receives it. Either the recipient is undeserving because he is responsible for his poverty through a failure to act in a responsible, self-reliant manner, or the recipient is deserving but the redistribution will create dependency instead of self-reliance.

Given these attitudes, conventional wisdom maintains that welfare expenditures via the tax system can garner wider political support than traditional welfare because they are more consistent with traditional American history, values, and beliefs. Benefits are less objectionable when delivered through the tax system because they are viewed less as handouts than direct spending, especially if they target the "deserving" poor and provide economic incentives to them. Moreover, the tax system conveniently camouflages tax welfare benefits.[7]

A recent incident in the 2008 presidential primary campaign seems to support conventional wisdom. In September 2007, Senator Hillary Clinton suggested that every baby receive a $5000 bond from the government which could be spent on education when the child reached age eighteen.[8] The response to this proposal was so negative that she quickly dropped it. However, despite the negative reaction, Americans

Tax Incentives: The Case for Refundable Tax Credits, 59 STAN. L. REV. 23, 42–56 (2006) (arguing that refundable tax credits minimize administrative costs and distribute income fairly); FORMAN, *supra* note 4, at 131–35.

7. *See* Ventry, *supra* note 4, at 1269. Another factor in the increased use of tax expenditures in the past decades has as much to do with trust as ideology. Christopher Howard states that in the "last decades of the twentieth" century, public support for government spending remained high, but as trust in government fell (and politicians exploited that trust), more "indirect tools of social welfare," such as tax expenditures, were needed to pass social legislation. CHRISTOPHER HOWARD, THE WELFARE STATE NOBODY KNOWS: DEBUNKING MYTHS ABOUT U.S. SOCIAL POLICY 122–23 (2007).

8. *See Voters Reject Clinton Baby Bond Proposal by 2-to-1 Margin*, RASMUSSEN REP., Oct. 1, 2007, http://rasmussenreports.com/public_content/politics/current_events/general_current_events/voters_reject_clinton_baby_bond_proposal_by_2_to_1_margin (stating that sixty percent of "America's Likely Voters" disapprove); Posting of Gerald Prante to Tax Policy Blog, *Hillary Clinton's Proposal for $5,000 "Baby Bond" Is Essentially Already Here*, http://www.taxfoundation.org/blog/show/22650.html (Oct. 3, 2007) (criticizing the $5,000 bond proposal for newborns).

support an existing program that actually gives many parents more money: the Child Tax Credit.[9]

Why does the American public react so differently to two policies with the same result? Recent cognitive behavior literature helps solve the puzzle. The two policies present or "frame" the goal differently. Each frame appeals to different worldviews and each activates different norms and other cognitive processes. The Child Tax Credit is more congruent with the assumedly dominant view in America: one that favors individualism, autonomy, and self-reliance, and opposes excessive state intervention, especially redistributive state action that interferes with market-based results. The direct payment proposal contradicts this view because it is visible government action that appears to be a "handout" in contradiction to the American credo of self-reliance.

Although reaction to the baby bond proposal appears to vindicate conventional wisdom, closer examination reveals the contrary. Welfare tax benefits are not as economically efficient or as broadly supported as commonly believed. Indeed, certain direct spending programs actually can be more efficient and generate more public support. From an economic standpoint, even the best type of tax welfare benefits—refundable tax credits—have efficiency problems. In the short term, they create work disincentives during phase-outs, and in the long term they cannot provide the non-monetary assistance people often need. More importantly, they do not properly address long-term underlying causes of poverty and inequality.

From a political standpoint, tax welfare benefits have cognitive disadvantages. Using the tax system to deliver welfare ultimately presents welfare in a negative frame, which divides people and narrows public support for welfare. It emphasizes individualistic/hierarchic worldviews and self-interested norms, activates negative attitudes regarding tax, the poor, and welfare, and creates an uneven playing field by disguising welfare benefits the non-poor receive while leaving those the poor receive visible. In contrast, direct expenditures, especially universal human capital programs, can activate communitarian/egalitarian worldviews and norms of cooperation and altruism, as well as moderate anti-tax attitudes by removing the direct connection between tax and welfare that exists when the tax system is

9. *See* Prante, *supra* note 8 (pointing out that a $1000 credit for every child under 17 already exists in the form of the Child Tax Credit). Gerald Prante calculates that "[w]hen [a] child turns 18, the family will have saved over $28,000 (assuming a five percent interest rate) [as a result of the Child Tax Credit]. On the other hand, a $5,000 bond only turns out to be around $12,000 over that same time period." *Id.*

the delivery mechanism. Direct expenditures diminish anti-welfare sentiment by leveling the playing field, making welfare benefits for the poor and non-poor equally visible. Reframed as direct expenditures—especially universal programs to develop human capital—welfare spending furthers the norm of equal opportunity, which most Americans accept regardless of their worldviews; this encourages a sense of cohesion and support.

The current reliance on tax expenditures to deliver welfare decreases the potential of welfare spending to spur economic growth and to gain political support. Just as financial investment portfolios must be constantly rebalanced to achieve optimum results, so too must investments in human capital. The time has arrived for the government to rebalance its mixture of direct and indirect spending on human capital (i.e., welfare).

This Article proceeds as follows.[10] Parts I and II examine conventional wisdom regarding American support for welfare. Part I sets the political debate about welfare and inequality within the context of opposing worldviews. It suggests that conventional wisdom underestimates the actual amount of support for direct welfare because it both overstates the dominance of the worldviews that oppose it and understates the strength of worldviews that support redistribution. Indeed, evidence suggests much stronger support for direct welfare than commonly believed. Part II continues the discussion of welfare within the framework of cognitive behavior. The placement of welfare benefits in the tax system triggers cognitive processes that are inimical to redistribution; in contrast, properly devised direct expenditures can suppress these processes and activate more positive ones that would generate more support for welfare than conventional wisdom suggests. Part III briefly examines the economic arguments favoring tax welfare benefits. The first section illustrates some of the economic problems with tax benefits, using the EITC and education credits as examples. The second portion explores the fallacy of the equity-efficiency tradeoff. Part III's final section briefly discusses efficiency issues with direct expenditures. Part IV provides a brief summary of the potential advantages of reframing certain welfare benefits as direct spending. It concludes by describing two hybrid tax/direct expenditure programs

10. This Article's scope is narrow. It is not a disquisition on welfare, poverty, or inequality; it does not enter the rich debate about the nature and merit of tax expenditures, nor re-examine tax expenditures generally, nor argue that there should not be any. It does not deny that taxation must be a consideration when examining wealth/income disparities since basic choices about taxation (e.g., base, rate, taxable unit) inevitably affect distribution. It also does not deny that specific tax expenditures, such as the EITC can—and have—helped poor individuals.

that might optimize efficiency and popular support by reframing welfare.

I. WORLDVIEWS AND PUBLIC SUPPORT FOR WELFARE

Worldviews are primarily unconscious and affectively-based cognitive systems of beliefs, attitudes, and assumptions. They serve as a framework for an individual's interaction with her surroundings, including other people and society.[11] Since they are the filters through which a person views the world—how it is and how it should be—they profoundly influence peoples' attitudes, including opinions about tax and welfare. People fall along a continuum of two basic worldviews: the first concerns the relationship of the individual to the group (individualistic versus communitarian orientation); the second concerns the nature of society (hierarchical versus egalitarian).[12]

Conventional wisdom holds that the tax system is the superior delivery mechanism for welfare because it better comports with predominant American worldviews than direct spending. On the first continuum (the relationship of the individual to the group), Americans are seen as extremely individualistic. American democracy rests on the primacy of the individual and the concomitant belief in negative liberty, which protects the individual from governmental infringement on his autonomy. Since Americans treasure individualism, self-reliance, and independence, they value the free market as the mechanism that best allows the individual to flourish. They do not support wealth and income redistribution, which encourages dependency by shifting

11. There is no universal definition, but the following quote captures the essence of worldviews:

> A worldview is a way of describing the universe and life within it, both in terms of what is and what ought to be. A given worldview is a set of beliefs that includes limiting statements and assumptions regarding what exists and what does not (either in actuality, or in principle), what objects or experiences are good or bad, and what objectives, behaviors, and relationships are desirable or undesirable. A worldview defines what can be known or done in the world, and how it can be known or done. In addition to defining what goals can be sought in life, a worldview defines what goals should be pursued. Worldviews include assumptions that may be unproven, and even unprovable, but these assumptions are superordinate, in that they provide the epistemic and ontological foundations for other beliefs within a belief system.

Mark Koltko-Rivera, *The Psychology of Worldviews*, 8 REV. GEN. PSYCH. 3, 4 (2004). *See also* Dan M. Kahan, *The Cognitively Illiberal State*, 60 STAN. L. REV. 115, 122 (2007) (discussing how cultural preferences are general views about how society should be organized).

12. Kahan, *supra* note 11, at 122–23 (referring to the anthropologist Mary Douglas's basic classifications); *see also* Daniel W. Barrett et al., *Individual Differences in the Motivation to Comply Across Cultures: The Impact of Social Obligation*, 37 PERSONALITY & INDIVIDUAL DIFFERENCES 19–31 (2004); Kahan & Braman, *supra* note 3, at 153–54 (citing MARY DOUGLAS & AARON WILDAVSKY, RISK AND CULTURE (1982)).

responsibility from the individual to the state and diminishes freedom by taking from individuals a portion of the just rewards they received for their efforts in the market economy. Moreover, any redistribution to decrease inequality will ultimately harm the very people redistribution attempts to aid because it will decrease economic efficiency, which fuels economic growth that benefits everyone. In other words, a "rising tide lifts all boats."

On the second continuum—views on the nature of society—the stereotypical American worldview is an egalitarian one. However, Americans are actually hierarchists, if hierarchy is defined by merit instead of the usual definition using status. This Article uses the term "hierarchist" in this sense of merit hierarchy,[13] unless otherwise stated. Belief in merit hierarchy flows from the belief in individual freedom and autonomy, which give the individual the ability to affect his fate. Market distributions are fair because they are the product of individual efforts and not status or mere (bad) luck. Consequently, wealth and income inequality is fair[14] because it results from individual merit—effort and talent—not status or luck. It follows, then, that redistribution is wrong because it unjustly takes from an individual that which properly belongs to him, thereby limiting freedom and undercutting merit-based hierarchy.

The prevailing American worldviews are not wrong; they are, however, incomplete. As I have argued elsewhere,[15] many Americans hold opposing (merit) egalitarian and communitarian views that favor reducing inequality and supporting governmental programs, including aid to the poor, as a means to do so. These views, like the individualistic/hierarchic ones, are also based on a foundational

13. Under classic or status hierarchy, hierarchists "support a relatively *hierarchical* social order, in which goods, opportunities, offices, and obligations are distributed on the basis of largely fixed social attributes, such as gender, ethnicity, lineage, and class." Kahan, *supra* note 11, at 122–23.

14. Alberto Alesina, Rafael Di Tella & Robert MacCulloch, *Inequality and Happiness: Are Europeans and Americans Different?*, 88 J. PUB. ECON. 2009, 2018–26 (2004) (theorizing that less unhappiness with inequality is correlated with a belief in mobility). *See also* FREDERICK VAN DER PLOEG, CTR. FOR ECON. POLICY RESEARCH, ARE THE WELFARE STATE AND DISTRIBUTION REALLY THAT BAD FOR THE ECONOMY? EFFECTS OF RECIPROCAL ALTRUISM, CONSUMER RIVALRY AND SECOND BEST (2005), *available at* http://www.cepr.org/pubs/dps/DP4918.asp (discussing how democratic countries where people believe success depends on connections and luck induce political support for high tax rates and generous welfare states).

15. Marjorie E. Kornhauser, *Choosing a Tax Rate Structure in the Face of Disagreement*, 52 UCLA L. REV. 1697, 1740–43 (2005). *See also* James R. Repetti, *Democracy and Opportunity: A New Paradigm in Tax Equity*, 61 VAND. L. REV. 1129, 1131 (2008) (arguing that creating equal opportunity is the principal goal of a just government and the tax system should be designed to do so).

principle of the nation: equality, especially equality of opportunity. Since most people do not uniformly hold the same view on every issue, even individualists and/or hierarchists sometimes see the world through a more egalitarian prism. This is especially true because the egalitarian view is so deeply rooted in American tradition.

In fact, egalitarianism—especially in the form of the concept of equal opportunity—is essential to individualists/hierarchists as well as communitarian/egalitarians. Americans tolerate inequality more than many other developed countries do because they believe in economic (and social) mobility; that each American has a chance of bettering himself.[16] Without equal opportunity, the agency of the individual is diminished, market economy results become suspect and merit hierarchy turns into a sham. If there is no economic mobility, then distribution is a result of one's status (who one's parents are) and not one's merit.

Empirical evidence undermines the assumptions about the dominance of individualistic/hierarchic views in America and indicates that concern about inequality and the degree of support for welfare is underestimated. The American public, for example, believes by a strong margin that the government has responsibilities regarding basic health care, decent housing, and access to college. Almost half, according to some studies, even believe that the government should reduce the income gap between rich and poor.[17]

Determining the exact amount of support for welfare is a complicated task well beyond the scope of this Article. At a minimum, there are three basic difficulties: defining the term "welfare," measuring the amount of welfare,[18] and discerning the degree of public support. This section next briefly discusses the first and last issues.

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16. *See* ISABEL SAWHILL & JOHN E. MORTON, ECONOMIC MOBILITY PROJECT, ECONOMIC MOBILITY: IS THE AMERICAN DREAM ALIVE AND WELL? 3 (2007), http://www.economicmobility.org/ assets/pdfs/EMP_American_Dream.pdf (last visited Oct. 16, 2008).

17. HOWARD, *supra* note 7, at 113 (stating that over eighty percent of the public supports these government responsibilities based on the data set of the International Social Survey Program, *Role of Government III* (1996), *available at* http://www.issp.org). The Pew Research Center for the People and the Press has found in surveys dating to 1987 that, on average, two-thirds of Americans believed that the government should "take care of people who can't take care of themselves" and that the "government should guarantee every citizen enough to eat and a place to sleep."

18. This problem is not limited to simply choosing the proper measurement tool. Rather, it also involves many of the cognitive issues, such as framing, discussed *infra* in Part II. For example, the results of a survey question are influenced by how the question is posed (e.g., in the positive or negative) and even the order of questions.

Americans generally define welfare narrowly to mean helping the poor, what this Article labels "poor" welfare. They tend not to call government spending "welfare" when it benefits middle and upper-income individuals or corporations,[19] what this Article labels "general" welfare. For example, low-income housing is seen as welfare, but subsidizing home ownership for the middle class is not. Food stamps are welfare, but low tuition at state-funded college attended by middle-class children is not. Cognitive behavior issues, such as framing and schemas, play a large role in the failure to identify "general" welfare as welfare, as discussed in Part II.

Americans support both types of welfare more than commonly believed.[20] The current size of the American welfare state offers ample support for this. Although most people believe the American welfare state is stingy and small relative to other developed countries, it is actually much larger than believed in both absolute and relative terms. The misperception about the size of the American welfare state occurs in large part because much of American welfare is not delivered in the traditional form of direct welfare payments, as is the case in other countries such as Norway or Sweden. In the United States, a large amount of welfare is delivered through the tax (and regulatory) systems, which the public generally does not consider welfare.[21] Regulations (statutory or administrative) are generally discussed in terms of their efficiency but not their distributive effects. For example, a law concerning cattle damage to farmers' crops will be efficient regardless of who bears the liability, but the wealth distribution will be very different.

The middle and upper classes receive a large share of government benefits through hidden tax expenditures. The Child and Dependent Care Tax Credit, for example, largely benefits higher-income families while direct subsidy programs that benefit low-income families are

19. The term "corporate welfare," however, is used by experts and some politicians in reference to tax preferences for corporations. Libertarians criticize these tax expenditures to corporations just as they criticize federal programs that help the poor. *See, e.g.*, STEPHEN SLIVINSKI, CATO INSTITUTE POLICY ANALYSIS, THE CORPORATE WELFARE STATE: HOW THE FEDERAL GOVERNMENT SUBSIDIZES U.S. BUSINESSES (2007), *available at* http://www.cato.org/pub_display.php?pub_id=8230.

20. HOWARD, *supra* note 7, at 122–23; MARTIN GILENS, WHY AMERICANS HATE WELFARE: RACE, MEDIA, AND THE POLITICS OF ANTIPOVERTY POLICY 2 (2000) ("The American public consistently expresses a desire for more government effort, and higher levels of spending, for almost every aspect of the welfare state.").

21. HOWARD, *supra* note 7, at 2 (stating that the U.S. system "rel[ies] less on social insurance and more on tax expenditures, loan guarantees, and social regulation than welfare states elsewhere").

underfunded.[22] The amount the federal government indirectly spends on housing via the home mortgage interest deduction, as another example, dwarfs that spent directly and indirectly on low-income housing, with most of those tax benefits helping higher income taxpayers since lower income taxpayers do not itemize.[23] A recent study by the Economic Mobility Project, sponsored by the Pew Charitable Trusts, reports that in 2006 approximately seventy-two percent of federal spending to further economic mobility (e.g., through housing supports) went to middle- and higher-income individuals, in comparison to twenty-eight percent to lower- and moderate-income individuals.[24] Much of that, according to David Cay Johnston, was spent via tax expenditures.[25]

22. LEONARD E. BURMAN, ELAINE MAAG & JEFFREY ROHALY, TAX POLICY CTR., TAX SUBSIDIES TO HELP LOW-INCOME FAMILIES PAY FOR CHILD CARE 14 (2005), *available at* http://www.taxpolicycenter.org/UploadedPDF/411190_TPC_DiscussionPaper_23.pdf.

23. William G. Gale, Jonathan Gruber & Seth Stephens-Davidowitz, *Encouraging Homeownership Through the Tax Code*, 115 TAX NOTES 1171, 1174–75, 1178 (2007). *See also* OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, BUDGET OF THE UNITED STATES GOVERNMENT FISCAL YEAR 2009, ANALYTICAL PERSPECTIVES, 289 tbl.19-1 (2008), *available at* http://www.whitehouse.gov/omb/budget/fy2009/pdf/spec.pdf (estimates of total income tax expenditures). Housing tax expenditures for the better off far exceed those for the poor. *Id.* For example, for 2007, the home mortgage interest deduction exceeded eighty-four billion dollars while the credit for low income housing was only five billion dollars. *Id.*

24. ADAM CARASSO, GILLIAN REYNOLDS & C. EUGENE STEUERLE, ECONOMIC MOBILITY PROJECT, HOW MUCH DOES THE FEDERAL GOVERNMENT SPEND TO PROMOTE ECONOMIC MOBILITY AND FOR WHOM? 3 (2008), http://www.economicmobility.org/assets/pdfs/PEW_EMP_ FEDERAL_SPENDING.pdf. Approximately twenty-eight percent of the benefits are in the form of direct expenditures, whereas approximately seventy-two percent are tax expenditures. *Id.* Interestingly, this mirrors the percentage that benefits middle/higher income individuals. *Id.* The researchers divided federal spending into ten basic categories:

> (1) employer work subsidies, such as 401(k) and healthcare; (2) home ownership; (3) savings/investments, such as dividends; (4) education/training; (5) child health/nutrition; (6) work support, such as EITC; (7) other child services, such as foster care; (8) business incentives/development; (9) citizenship, such as refugee assistance; and (10) equal opportunity services, such as minority business development.

Id. at 2.

25. DAVID CAY JOHNSTON, FREE LUNCH: HOW THE WEALTHIEST AMERICANS ENRICH THEMSELVES AT GOVERNMENT EXPENSE (AND STICK YOU WITH THE BILL) 7–8, 23 (2007) (arguing that the rich have "captured" the government, so much so that the subsidy often outweighs the economic benefits it produces). There is no uniform definition of tax expenditures, which is, in fact, one of the major criticisms of the concept. The Treasury and the Joint Committee on Taxation, for example, differ on several provisions. *See* JOINT COMM. ON TAXATION, 110TH CONG., ESTIMATES OF FEDERAL TAX EXPENDITURES FOR FISCAL YEARS 2007–2011, at 2, 18 (Comm. Print 2007), *available at* http://www.house.gov/jct/s-3-07.pdf. Employer health contributions, employer retirement contributions, and home mortgage interest deductions are some of the largest expenditures. *Id*. at 2–5. *See also* Dustin Stamper, *Capital Gains and Dividend Rate Cut Is Biggest Tax Expenditure*, 117 TAX NOTES 18, 18 (2007). The largest tax expenditure is now the reduced rates for dividends and long term capital gains, income that goes primarily to higher income taxpayers. *Id.*

Clearly, then, the general public likes welfare spending. But does it like it only when it helps them (and people like them) and not people unlike them (the poor)? An individualist/hierarchic worldview that stresses self-interest over self-reliance would argue yes, and to some extent it is no doubt true. However, because the majority of programs are framed as tax expenditures or regulations, many people are unaware that the benefits flow to them and not everyone. Thus, the current distribution of benefits may not be their real preferences since they are unaware of the true distributive effects.

More direct evidence exists that the public supports welfare benefits for the poor, especially certain benefits such as education and health care. Polls consistently show strong support for the proposition that government should be involved in the provision of health and education, even if increasing benefits means increasing taxes or eliminating tax cuts.[26] These findings are not surprising. The benefits are investments in human capital, which is necessary for expressing autonomy and equality of opportunity—concepts that both individualistic/hierarchic and communitarian/egalitarian people support.

Conventional wisdom holds that the public supports general welfare (such as Social Security) more than poor welfare (e.g., food stamps). However, the expansion of programs targeting the poor—whether indirect (EITC) or direct (Medicaid)—suggests broader support for poor welfare than commonly believed.[27] A partial explanation for this strong support may be that these programs involve positive worldviews and norms. The Earned Income Tax Credit's goal, for example, is to help only the "deserving" poor who are trying to be self sufficient and only need temporary assistance until they are. Indeed, one of the attractions of the EITC is that people view it as an effective means of rising out of poverty and dependency to self-sufficiency. Medicaid also involves the

26. *See, e.g.*, Los Angeles Times/Bloomberg Poll, *Public Pessimistic on the Economy: Most Pick Democrats Over Republicans on Health Care Reform*, Oct. 24, 2007, *available at* http://www.latimes.com/media/acrobat/2007-10/33450977.pdf. Sixty percent of respondents were willing to "repeal some of Bush's tax cuts in order to help pay for a health care program that insures all Americans." *Id.* at 5, 11. Thirty-one percent were not willing to repeal tax cuts, eight percent were not sure, and one percent refused to answer. *Id.* at 11. Interestingly, women were more willing than men (63% v. 58%) to repeal cuts. *Id.* *See also* National Annenberg Election Survey (question 10), Jan. 23, 2004 (2004 poll found that a majority of respondents believed the federal government should spend more money on public elementary and secondary schooling (55% of Republicans and 81% of Democrats)). *See also infra* notes 34–36. Empirical studies have well-known problems in that how a question is presented can affect the results (e.g., the order of questions; positive or negative phrasing). However, these problems are less severe regarding welfare because many of the questions have been asked repeatedly, using the same phrasing, over many years.

27. *See, e.g.*, HOWARD, *supra* note 7, at 41–43.

deserving poor, who merit help because of illness, not sloth. Improving their human capital (health) may help some beneficiaries achieve self-sufficiency, but many will never be able to work.

II. COGNITIVE BEHAVIOR: THE MERITS OF DIRECT EXPENDITURES AND TAX EXPENDITURES AS WELFARE DELIVERY MECHANISMS

The welfare tax provisions discussed in this Article, being substitutes for direct spending programs, fall within the numerous definitions of the contested term "tax expenditures." A classic criticism of tax expenditures is that they hide the fact that the government is spending money.[28] This argument rests primarily on the fact that tax expenditures are less salient than direct expenditures; the public is less aware of them, less interested in them, and more confused by them. Consequently, the hidden nature of tax expenditures, the criticism continues, makes it easier to enact, and maintain, policies that might not weather scrutiny if enacted as direct spending programs. For example, the public might not tolerate handing out dollars to every hedge fund trader, but will not notice if these traders receive the money by means of favorable tax treatment.

Conventional wisdom holds that this very quality of tax expenditures —their invisibility—makes them valuable when it comes to poor welfare. Hostility to poor welfare, the argument goes, makes it politically impossible for Congress to enact a direct welfare program as generous as the effects of the EITC. The tax system, in contrast, provides enough "protective coloration" to make enactment possible.[29]

Although it is generally true that welfare tax expenditures, like all tax expenditures, camouflage government spending, many complexities and

28. A rich literature discusses the definition of tax expenditures and their merits. The references in this note give just a small sample. For a classic discussion of tax expenditures, see HOWARD, *supra* note 7; STANLEY S. SURREY & PAUL R. MCDANIELS, TAX EXPENDITURES (1985); Edward A. Zelinsky, *James Madison and Public Choice at Gucci Gulch: A Procedural Defense of Tax Expenditures and Tax Institutions*, 102 YALE L.J. 1165, 1168–71 (1993). For current tax expenditures, see JOINT COMM. ON TAXATION, *supra* note 25; OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, FEDERAL RECEIPTS AND COLLECTIONS (2008), http://www.whitehouse.gov/omb/budget/ fy2008/pdf/apers/receipts.pdf. An early criticism of the concept occurs in Boris I. Bittker, *Accounting for Federal "Tax Subsidies" in the National Budget*, 22 NAT'L TAX J. 244 (1969). The Joint Committee on Taxation recently reconsidered tax expenditures and proposed a new method of analysis. STAFF OF JOINT COMM. ON TAXATION, 110TH CONG., A RECONSIDERATION OF TAX EXPENDITURE ANALYSIS (Comm. Print 2008), *available at* http://www.house.gov/jct/x-37-08.pdf.

29. *See* Lawrence Zelenak, *Tax or Welfare? The Administration of the Earned Income Tax Credit*, 52 UCLA L. REV. 1867, 1903, 1910–11 (2005) (stating that the increased refundable EITC in 1993 could occur only because Congress previously had come to view the EITC as largely an offset for Social Security taxes).

subtleties exist. Various cognitive processes affect responses to tax expenditures. The effects differ depending on whether the tax expenditure is one for general welfare or poor welfare because cognitive processes also influence a person's attitudes, opinions, beliefs, and behavior regarding welfare and the poor. These cognitive processes include the previously discussed worldviews, as well as schemas,[30] which serve as a type of mental "short cut," but are more specific. They create "rules of thumb" that allow individuals to efficiently acquire, store, organize, and retrieve knowledge; shortcuts influence the perception of new data and one's reactions to it. Placing general welfare benefits in the tax system activates cognitive processes that, on balance, are favorable: either the benefit becomes invisible or is viewed benignly. On the other hand, placing poor welfare benefits in the tax system activates cognitive processes that not only do not completely disguise their nature but also accentuate negative attitudes that ultimately decrease support for poor welfare. This Article suggests that, on balance, placing welfare benefits in the tax system has more negative effects than positive, and that properly devised direct benefits might elicit more public support for welfare.

People with individualistic/hierarchic worldviews perceive taxation differently than those with communitarian/egalitarian ones. For the latter, tax has some positive aspects because it is the mechanism to achieve a society that benefits everyone.[31] For the former, however, taxes have mainly negative aspects. For these people, most taxes are not necessary because government has only a few legitimate functions. This follows from the belief that the individual—not the government—is responsible for his own situation. Moreover, taxes take property (money) from those to whom it rightly belongs (the individuals who have earned it) and therefore undermine their autonomy and their freedom.

30. Schemas are relatively stable constellations of both affective and cognitive attitudes that organize an individual's knowledge and by this organization influence the perception of new information, affect, and values. *See* DAVID O. SEARS & JACK CITRIN, TAX REVOLT: SOMETHING FOR NOTHING IN CALIFORNIA 83 (1985). They are the product of various factors such as cognitive processes (e.g., framing), psychological traits, prior experiences, social norms and personal norms (i.e., social norms internalized by the individual). Since people have many schemas, sometimes revolving around related topics, their attitudes and behaviors may appear inconsistent when viewed in the aggregate. Sears & Citrin give the example of schema about race that causes whites to oppose bussing but favor desegregation of schools. *Id.* at 77.

31. See, for example, Oliver Wendell Holmes's famous quotation that taxation is the price of civilization. Compania Gen. de Tabacos de Filipinas v. Collector of Internal Revenue, 275 U.S. 87, 100 (1927) ("Taxes are what we pay for civilized society.").

Even Americans with communitarian/egalitarian views have some negative attitudes regarding taxation. This is true in part because, as described in Part I, people often hold a mixture of views. It is also true, however, because Americans connect low taxes not just to small government but to freedom and liberty. Since the colonial era and protests against British taxes, the struggle for freedom and independence—for an "American" way of life—has been intertwined with the struggle against taxes. It has always been patriotic to be anti-tax, and politicians constantly remind Americans of that.[32] Taxation thus triggers in most Americans, regardless of their worldviews, some degree of an anti-tax schema.

In addition to the anti-tax schema, the "dominant" individualist/hierarchic worldviews are consistent with two other relevant schemas. The first is an anti-welfare schema; the other an anti-poor schema. An anti-poor schema follows from the worldview that poverty is the fault of the individual rather than the result of outside

32. Examples of this are numerous. *See, e.g.*, President Reagan's Remarks During Tax Bill Signing Ceremony (Oct. 22, 1986), *reprinted in* 33 TAX NOTES 413, 413 (1986). President Reagan, on the signing of the Tax Reform Act of 1986, stated that the Act's economic benefits were less important than the fact that it returned America to its "first principles." *Id.* He called the prior code "un-American," stating that "[t]hroughout history, the oppressive hand of government has fallen most heavily on the economic life of the individuals. And, more often than not, it is inflation and taxes that have undermined livelihoods and constrained their freedoms." *Id. See also* President Ronald Reagan, 1988 Legislative and Administrative Message to Congress (Jan. 25, 1988), *reprinted in* 33 TAX NOTES 413 (1986); 146 CONG. REC. H81 (Jan. 31, 2000) (statement of Rep. Green). On January 31, 2000 the Speaker pro tempore, Representative Green gave a speech that in many ways typifies the rhetorical links traditional conservatives make between the proper nature of American government, liberty, and the role of taxes. *Id.* He began with three critical premises: (1) since America is a republic and not a democracy, its government must be one of limited powers "precisely defined and delegated by the people"; (2) the federal nature of the republic severely limits the power of the central government; and (3) "[t]he American Revolutionaries clearly chose liberty over security . . . ." *Id.* As a consequence of these premises, he then asserted that liberty declines when the General Welfare clause is interpreted, as it has been in recent decades, to expand the definition of welfare, and that taxation is theft, "[s]ince government cannot create anything, it can only resort to using force to redistribute the goods that energetic citizens produce." *Id.* Consequently, he concluded, high taxes are inimical to liberty, prosperity, and property ownership. *Id.* George W. Bush, when campaigning for the presidency, more succinctly, and with less rhetoric, summarized the conservative position on government and taxes when he said that he supported tax cuts because: "A government with unlimited funds soon becomes a government of unlimited reach." George W. Bush, Speech to Greater Des Moines (Iowa) Chamber of Commerce (Dec. 1, 1999), *quoted in* David Baumann, *Taxes*, 32 NAT'L J. 1047, 1047 (2000). Candidates for President in 2008 campaigned to lower taxes, and some, such as Ron Paul and Mike Huckabee, argued for the elimination of the income tax. *See* Mike Huckabee, http://www.mikehuckabee.com/?FuseAction=Issues.View&Issue_id=5 (last visited Oct. 16, 2008); Ron Paul, http://www.ronpaul2008.com/issues/debt-and-taxes/ (last visited Oct. 16, 2008); Mitt Romney, http://www.ontheissues.org/Mitt_Romney.htm#Tax_Reform (last visited Oct. 16, 2008).

institutions or bad luck,[33] and from the accompanying personal and social norms of self-reliance, industriousness, and efficacy of work effort. An anti-welfare schema follows from the view that it is the responsibility of the individual—not the government—to improve his situation, and from associated norms of self-reliance, independence, and (negative) liberty. Moreover, traditional wisdom that increased equity always comes at the expense of efficiency[34] contributes to the anti-welfare schema given the emphasis placed on the market and economic growth as a measure of liberty and autonomy. Both schemas are so deeply ingrained in the American psyche that even those with more communitarian egalitarian views also adhere to them to some degree. After all, most Americans, whatever their viewpoint, identify being American with being middle class, not poor (and also not rich).[35]

"Poor" welfare carries more negative baggage than general welfare; it is burdened by an anti-poor schema, not just an anti-welfare one. Moreover, antipathy to the poor and welfare is also fueled by historic American racism: people are poor because they are idle and lazy, and black people stereotypically are lazier than white.[36] Americans consistently over-estimate the number of African-Americans who are on welfare so that welfare is a "code" word for race, leading to a conflation of anti-tax and anti-welfare sentiments.[37]

The anti-tax, anti-poverty, anti-welfare schemas do not mean that people are always anti-tax/anti-welfare, especially since these "anti" attitudes are mediated by egalitarian/communitarian worldviews. In a 2005 poll, for example, more people believed that "circumstances beyond control" were the cause of poverty rather than that the poor

33. *See* Claudia Biancotti & Giovanni D'Alessio, *Inequality and Happiness* 6 (Bank of Italy, Working Paper Series, Aug. 15, 2007), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1011121 (citing R. Bénabou & J. Tirole, *Belief in a Just World and Redistributive Politics*, 121 Q. J. ECON. 699 (2006)).

34. ARTHUR M. OKUN, EQUALITY AND EFFICIENCY: THE BIG TRADEOFF 88–100 (1975). Part III, *infra*, discusses this tradeoff.

35. BRIAN W. CASHELL, CRS REPORT FOR CONGRESS, WHO ARE THE "MIDDLE CLASS?" 3 (2007), *available at* http://assets.opencrs.com/rpts/RS22627_20070320.pdf (citing a 2005 *New York Times* survey in which 67% of subjects identified their social class as "middle or upper-middle," while 35% were "working class" and 7% were "lower class"; only 1% identified themselves as "upper" class).

36. *See* THOMAS B. EDSALL WITH MARY D. EDSALL, CHAIN REACTION: THE IMPACT OF RACE, RIGHTS, AND TAXES ON AMERICAN POLITICS 4, 6, 15–16 (1991); GILENS, *supra* note 20, at 3; JOEL F. HANDLER, THE POVERTY OF WELFARE REFORM 3–4 (1995).

37. *See* Dorothy A. Brown, *Race and Class Matters in Tax Policy*, 107 COLUM. L. REV. 790, 794 (2007); Derrick Z. Jackson, Op-Ed., *Black 'Saints' Cannot Deliver Whites From Racial Inertia*, BOSTON GLOBE, Dec. 23, 2006, at A11 (arguing that "'taxes' is a code word for saying that collectively, white America has no intention of *really* paying for quality schools").

person was not "doing enough" (47% v. 44%).[38] Moreover, not everyone is anti-tax all the time. In one 2007 poll, 36% of respondents believed that the next president should increase taxes on "the most affluent Americans to help reduce the federal deficit and to pay for expanding health care programs to cover the uninsured," while only a bare majority (51%) preferred to cut taxes.[39] In another 2007 poll, 60% of respondents were willing to repeal some of Bush's tax cuts to help fund health insurance for all Americans.[40]

Empirical and theoretical literature shows that the manner in which an issue is presented or "framed" influences a person's attitudes and perceptions. Framing can either activate (crowd in) or suppress (crowd out) particular norms, schemas, or views. For example, whether a charge is labeled a "tax" or a "fee" influences people's response to it.[41] People respond more positively to a charge that is called a fee as opposed to a tax,[42] presumably because the term "fee" does not activate an anti-tax schema.

Taxes naturally highlight pecuniary motives and self-interested behavior because they involve giving money to the government. This is especially true when, as in the United States, tradition emphasizes the negative of taxes (taking your money away) but rarely discusses the positive (what taxes can do for you). Consequently, the placement of welfare provisions in the tax system activates self-interested norms and crowds out norms which support helping others or providing goods/services to everyone. Some in the environmental field, for example, argue that subsidies crowd out normative behaviors such as cooperation and altruism.[43] Thus, setting a price or giving an economic

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38. Nine percent either didn't know or refused to answer. Kaiser Family Foundation Poll (question 26), Oct. 2005.

39. NBC News/Wall Street Journal, *GOP Primary Voters Survey*, Sept. 2007, at 5, *available at* http://msnbcmedia.msn.com/i/msnbc/sections/news/071003_NBC-WSJ_Full.pdf (32% favored a tax increase; 60% cutting taxes, and 8% were not sure).

40. Los Angeles Times/Bloomberg Poll, *supra* note 26, at 11 (finding that 58% of men and 63% of women were willing). Unlike the previous question, repealing the tax cuts would increase taxes on everyone, including the respondent (if he or she paid income tax), not just the affluent.

41. Edward J. McCaffery & Jonathan Baron, *The Political Psychology of Redistribution*, 52 UCLA L. REV. 1745, 1760 (2005).

42. *Id*. This is not true, however, in regards to existing services that are funded by a general tax. *Id*. In that situation, respondents do not prefer a fee because they perceive it as paying for a service/good that they are already getting for "free." *Id*.

43. *E.g.*, Andrew Green, *You Can't Pay Them Enough: Subsidies, Environmental Law, and Social Norms*, 30 HARV. ENVTL. L. REV. 407, 432–33 (2006) (arguing that subsidies put a price on environmental behavior and crowd out behavior based on responsibility). *But see* Ann E. Carlson, *Recycling Norms*, 89 CAL. L. REV. 1231, 1297 (2001) (finding that market mechanisms do decrease "bad" recycling behavior and increase "good" behavior).

incentive for behavior motivated by social, non-pecuniary motives such as reciprocity commodifies the behavior and can actually decrease the desired behavior.[44]

Prospect theory illustrates the power of framing and is especially relevant in the tax area. According to the theory, people respond differently to the risk of loss and the risk of gain. In income tax, for example, whether an issue is framed as a bonus for those with children (such as a child credit) or a penalty for the childless will affect a taxpayer's attitude toward the provision.[45] It also means that a taxpayer will be more willing to take risks (not comply) when the issue is framed as a loss (penalty from an audit) than as a gain (a bonus from a refund).[46]

Most people view taxes as a loss, in part because of an anti-tax schema and in part because of the individualist worldview that highlights the negatives of big government, which is associated with taxes.[47] The media and politicians reinforce this by stressing the negatives of taxation such as, "taxation takes 'your' money, gives it to the government, which then wastes it on foolish programs or inept bureaucracy." According to prospect theory, willingness to pay tax should increase if paying taxes is seen as a gain rather than a loss. If a taxpayer views his situation as interconnected with the nation's situation, either because he is a communitarian and/or through identification with the nation, then taxpaying is more likely to be viewed as a gain than a loss.[48] Consequently, stressing tax-supported

44. *See* Lars P. Feld & Bruno S. Frey, *Tax Compliance as the Result of a Psychological Tax Contract: The Role of Incentives and Responsive Regulation*, 29 L. & POL'Y 102, 103 (2007).

45. McCaffery & Baron, *supra* note 41, at 1757–58.

46. For a general discussion of cognitive theory and tax compliance, see Marjorie E. Kornhauser, *A Tax Morale Approach to Compliance: Recommendations for the IRS*, 8 FLA. TAX REV. 599 (2007), *reprinted in* NAT'L TAXPAYER ADVOCATE, 2007 ANNUAL REPORT TO CONGRESS, NORMATIVE AND COGNITIVE ASPECTS OF TAX COMPLIANCE: LITERATURE REVIEW AND RECOMMENDATIONS FOR THE IRS REGARDING INDIVIDUAL TAXPAYERS 138 (2007), *available at* http://www.irs.gov/pub/irs-utl/arc_2007_vol_2.pdf.

47. The George W. Bush administration has shown that there can be tax cuts and increased government spending that is accomplished through borrowing. Of course, eventually the debts will have to be repaid, and ultimately that means higher taxes.

48. *See* PHILLIP HANSEN, TAXING ILLUSION, TAXATION, DEMOCRACY AND EMBEDDED POLITICAL THEORY 16 (2003) (for citizens, "the issue of what politics means and what kind of democracy is desirable turns on a fundamental question . . .: To what extent can my purposes be fulfilled only together with others; indeed to what extent are my purposes *our* purpose . . . . With respect to taxation, this raises the question of whether taxes are charges imposed on us by remote political authorities we are always reluctant to pay and do so only because we are coerced, or whether they are self-imposed levies, expressions of our commitment to the wellbeing of all."). *See also* Viswanath Umashanker Trivedi, Mohamed Shehata & Bernadette Lynn, *Impact of Personal and Situational Factors on Taxpayer Compliance: An Experimental Analysis*, 47 J. BUS.

programs that have been successful and/or have the approval of most people would frame taxes as a gain.

The same holds true for welfare. Funding "poor" welfare leads to risk-averse behavior. Such government payments help only an "other," and an inferior other at that, if poverty is perceived as a person's own fault. Consequently, the non-poor will oppose welfare spending since it is a loss to them. The perception that welfare is a loss is magnified if welfare is delivered through the tax system because many people already see taxes as a loss situation and it highlights the we/them aspect of welfare that encourages viewing welfare as a loss.

Delivering welfare directly, in contrast, could encourage viewing welfare benefits as a gain. Direct spending removes welfare from a prominent loss context—the tax system. Of course, taxes still fund direct expenditures, but the "loss" framing is muted and the gain (the benefit) becomes more prominent. Moreover, direct expenditures for health, education, and child care can encourage a broader view of welfare as helping society, of which everyone is a part. This transforms a welfare payment into a gain situation, either because the individual is a direct beneficiary of the payment or indirectly because it goes to someone in a group with which the individual associates; one of "us," not one of "them."

Empirical evidence illustrates how removing a policy from an explicit tax context can reframe the issue and broaden support for it.[49] In one experiment, subjects received $18.[50] Half the group was told that $2 had been given to a charity of their choice; the other half was told that they had been given $20 but the government had taken $2 in taxes which was then given to the charity of their choice.[51] When asked if they wanted to make additional charitable contributions, those that had been "taxed" did not, but those subjects who had simply been told $2 had gone to charity contributed more.[52] Although neither group had a choice whether to give the initial $2, the "tax" situation highlighted

ETHICS 175, 179 (2003). One study suggests that if a taxpayer views taxes as a national obligation, then after tax income is the taxpayer's reference point and therefore:

> [T]ax compliance decisions are made in the gain domain, which leads taxpayers to pursue risk-averse behavior. On the other hand, if the taxpayer considers paying taxes as a loss, then his/her reference point would be their income before tax. In this case, the taxpayer will be likely to engage in risk-seeking behavior.

Id.

49. Catherine C. Eckel, Philip J. Grossman & Rachel M. Johnston, *An Experimental Test of the Crowding Out Hypothesis*, 89 J. PUB. ECON. 1543, 1556–57 (2005).

50. *Id.* at 1548.

51. *Id.* at 1548–49.

52. *Id.* at 1551–52.

the compulsory aspect (or alternatively framed the situation as a loss situation since $2 of their money had been taken from them).[53] This crowded out voluntary charitable behavior.[54]

Simply placing a policy within the tax system frames the policy negatively, and negative framing can discourage (suppress or "crowd out") communitarian/egalitarian views and altruistic, cooperative norms that support poor welfare payments. Phrasing issues positively, on the other hand, generally encourages or activates normative behavior (at least for women).[55] For example, stating that most people comply with tax laws reminds people what the norm is and encourages them to follow it.[56]

Placing welfare benefits within the tax system creates complex framing effects that differ depending on whether the welfare is "general" or "poor" welfare. Placing general welfare benefits in the tax context completely reframes the benefits for most people. In contrast, poor welfare is only partially transformed from a negative into a positive benefit. The different outcomes result from the interaction of at least three schema: anti-welfare, anti-tax, and anti-poor. Using the tax system to deliver welfare reduces antipathy to the payment because the tax system decreases the awareness of the fact that the payment is welfare. This occurs because people are less cognizant of tax expenditures and understand them (and their distributive effects) less than direct benefits. To the extent that the payment remains visible, however, placing it within the tax system should trigger an anti-tax schema and raise hostility towards it. This happens with poor welfare, but not general welfare.

Using the tax system to deliver general welfare totally reframes the payments. To the extent that people are still aware of them, their essential nature is totally recast. They are no longer welfare (bad), but simply a return of the individual's own money (good). Tax expenditures transform welfare from a negative loss frame (giving your money to others) to a positive gain frame (getting your own money

53. *Id.* at 1556–57.

54. *Id.*

55. *See* Janne Chung & Viswanath Umashanker Trivedi, *The Effect of Friendly Persuasion and Gender on Tax Compliance Behavior*, 47 J. BUS. ETHICS 133, 141–44 (2003).

56. On the other hand, framing communications negatively, by emphasizing the number of people who violate the norm, crowds out normative behavior. *See, e.g.*, Robert B. Cialdini, *Descriptive Social Norms as Underappreciated Sources of Social Control*, 72 PSYCHOMETRIKA 263, 265–67 (2007). For example, theft of petrified wood at the Petrified Forest National Park decreased when a sign with a line through it showed only one person stealing wood as opposed to three; theft actually increased when the sign showed three people. *Id.*

back). The belief that tax expenditures merely return a taxpayer's money hides the fact that tax expenditures involve government spending and usually are redistributive—facts a person holding an individualistic/hierarchic worldview would disapprove of. In short, placing general welfare (child tax credits, home mortgage deductions, and education credits) within the tax system frames them so positively that they all but disappear from consciousness. Even when the benefit is visible, the *nature* of the benefit (welfare) is invisible.[57] This explains why people support the Child Tax Credit but not Hillary Clinton's baby bond proposal. The first is not a government spending program but is simply returning "their" money to them. The second is a government spending program, which violates individualistic/hierarchic views by expanding government functions and dispensing welfare.

Although placing poor welfare in the tax system diminishes its salience, the reframing that occurs with poor welfare tax expenditures is not as complete as that which occurs for general expenditures. The prominence of the welfare and redistributive aspects may fade, but they do not disappear entirely.[58] Moreover, even if the benefits are helping the deserving poor (e.g., those who work), the anti-poor schema still exists. As a consequence, the seemingly greater acceptance of poor welfare tax benefits is more apparent than real. Already the EITC is subject to more scrutiny and concern than other tax expenditures, such as those for higher education or mortgage interest. The law provides harsher treatment for taxpayers who fraudulently or intentionally claim the credit[59] than for other tax expenditures, and the IRS similarly enforces it more strictly (e.g., higher audit rates, pre-certification efforts, denial of benefits) even though it is unclear whether the errors are due to fraud or simply confusion about a complex provision.[60]

57. Professor Zelinsky found that people were more willing to pay volunteer firefighters by giving them a property tax exemption than by directly giving them an equivalent amount of cash. Edward A. Zelinsky, *Do Tax Expenditures Create Framing Effects? Volunteer Firefighters, Property Tax Exemptions, and the Paradox of Tax Expenditure Analysis*, 24 VA. TAX REV. 797, 799 (2005). In other words, although the programs are no longer hidden in a literal sense, they are still hidden in a cognitive sense. In the firefighter situation, people viewed cash payments as inconsistent with the valued concept of volunteer firefighters but did not view the tax expenditures as inconsistent because the government was not spending other taxpayers' money but merely giving the firefighter his own money back.

58. *See* Ventry, *supra* note 4, at 1261–62; Brown, *supra* note 37, at 800 (EITC recipients are seen as the "equivalent of welfare recipients").

59. I.R.C. § 32(k) (2000 & West Supp. 2008).

60. *See* Marsha Blumenthal, Brian Erard & Chih-Chin Ho, *Participation and Compliance with the Earned Income Tax Credit*, 58 NAT'L TAX J. 189, 210 (2005) (finding sharply higher rates of noncompliance than estimates of noncompliance from more traditional welfare programs partially due to different populations covered); Zelenak, *supra* note 29, at 1891–93; NAT'L TAXPAYER

The larger the EITC, the more criticism will grow.[61] To truly affect poverty, a refundable EITC in 2007 would have to have been raised about $5,000 for a one-earner household (and $6,500 for a two-earner household) to achieve the same after-tax income as increasing the minimum wage from the then current amount of $5.15/hour to $7.25/hour (the final increase that will occur July 24, 2009 under the Fair Minimum Wage Act of 2007).[62] The EITC, although a tax expenditure, is different from almost all other tax expenditures because it is refundable. Consequently, the redistributive effect cannot be completely disguised. If a recipient gets a refundable credit, he is not simply having his own money returned, but he is getting someone else's money. Since the recipient is poor, we call it welfare, and people perceive welfare fraud as more serious than cheating on an income tax form.[63]

The salience of poor welfare, but not general welfare, means people overestimate the benefits going to poor people and underestimate the benefits they receive themselves. This biased perception can create feelings of inequity, which are likely to be intensified because they occur in the tax context. Anti-tax schemas cause people to dislike paying taxes in general; the anti-tax sentiments can only be increased when the tax is perceived as unfairly rewarding others. Taxes occur in a monetary setting in which norms of self-interest are dominant and feelings of economic loss prevail. They do not generally trigger feelings of cooperation and altruism that would encourage support of welfare.

Placing both hidden general welfare benefits and partially hidden poor welfare benefits in the tax system creates an uneven playing field. General welfare tax expenditures, flowing to middle and high-income individuals, can expand silently, while poor welfare tax expenditures to

ADVOCATE, 2005 ANNUAL REPORT TO CONGRESS 101 (2005), *available at* http://www.irs.gov/advocate/article/0,,id=152735,00.html (finding EITC taxpayers have "a much higher audit rate" than other groups of individual taxpayers; forty-eight percent of individual returns examined in fiscal year 2004 had EITC claims but only seventeen returns of all individual returns claimed the EITC).

61. *See, e.g.*, Brown, *supra* note 37, at 797.

62. Elaine Maag, *Tax Credits, the Minimum Wage, and Inflation*, TAX POL'Y ISSUES & OPTIONS, Jan. 2007, at 1, 7, *available at* http://www.urban.org/UploadedPDF/311401_Minimum_Wage.pdf. This would be costly in monetary terms and would require very high marginal rates during the phase-out portion of the Credit, which would offset the incentive to work at the earlier phase. For the minimum wage, see U.S. Dept. of Labor, Wage and Hour Division, http://www.dol.gov/esa/whd/minimumwage.htm (last visited Oct. 16, 2008).

63. Zelenak, *supra* note 29, at 1900. This view is not unique to Americans. *Id.* at 1899 (citing survey by M.D.R. Evans & Jonathan Kelley, *Are Tax Cheating and Welfare Fraud Wrong? Public Opinion in 29 Nations*, 3 AUSTL. SOC. MONITOR 93 (2001)).

low and moderate-income individuals meet more resistance because they are more visible. All the negative framing effects still exist and may even be amplified because of the incorrect perception that the poor are getting benefits, but others are not.

Delivering both general and poor welfare benefits through direct spending instead of through the tax system can have several benefits. First, of course, it levels the playing field in terms of visibility. If people realize how many welfare benefits they are getting, their animosity towards poor benefits may decrease. The distribution may not seem so unfair. Moreover, direct expenditures may more correctly express preferences because most people do not understand tax expenditures and the burdens and benefits they create. For example, a middle-income taxpayer may support an education credit not just because it helps him but because it equally helps a low-income individual. Distributing the benefits directly could clarify the flow of benefits and burdens, which might change the middle-income taxpayer's support of the program.

Direct benefits can avoid the perception of a zero-sum state that exists in welfare tax benefits. The tax system creates an oppositional situation. It takes "my" money and gives it to "them." Properly devised direct expenditures, on the other hand, can activate more positive norms of reciprocity and cooperation. Direct programs can foster a sense of national unity and even national pride if they are seen as a means of accomplishing American ideals such as equal opportunity.

Universal programs can frame benefits even more positively than means-tested programs. First, they can avoid the stigma of being on welfare, in the sense of "poor" welfare.[64] Although tax expenditures may reduce the stigma, to the extent that the welfare is still visible, the stigma will not disappear entirely. Similarly, in non-universal programs, features such as using debit cards rather than food stamps may make welfare (nearly) invisible to the outside world. However, the recipient may still be internally stigmatized because she knows she is getting it. Second, universal direct programs do not divide people into "us" and "them," that is, those who get benefits and those who do not. Consequently, they can foster a sense of community with others and a sense of national identity. People will be more willing to support welfare programs because the benefits are going to the group (the nation) that includes "us," not just "them."

64. *See* Carol Pogash, *Free Lunch Isn't Cool, So Some Students Go Hungry*, N.Y. TIMES, Mar. 1, 2008, at A1 (illustrating how school children choose not to eat in order to hide that they are on a subsidized food program).

Universal coverage can have other political advantages. Studies show that the Scandinavian countries (Denmark, Finland, Norway, Sweden) that offer more general welfare than Anglo-American countries not only have economic advantages, such as less poverty, better health, and longer mortality, but also political advantages that can improve the workings of a democracy. Their citizens have a greater sense of community and "social solidarity," have more trust of individuals and public institutions, and "are more likely to discuss politics with friends." [65]

III. THE SIREN SONG OF ECONOMIC EFFICIENCY

The second common rationale for using the tax system to deliver welfare is an economic one: tax expenditures are more efficient than direct expenditures.[66] Although this argument appears to rest solely on an objective criterion, in reality it ultimately rests on the same individualistic worldview as the political justification for using tax expenditures. Economic efficiency occupies a privileged position because it presumably advances American ideals of autonomy, self-reliance, and freedom. Consequently, efficiency generally prevails in a conflict with any other goal. Since conventional thinking traditionally posits an inevitable trade-off between equity and efficiency, any program aimed at increasing equality, such as welfare, is disadvantaged from the outset given the political prominence of the individualistic/hierarchic view. Consequently, people will support a welfare program delivered via the tax system more than a direct spending program if it is more cost efficient.

This Part briefly investigates some of the evidence indicating that the tax system is not as efficient a welfare delivery mechanism as traditional wisdom believes. First, it examines the efficiency of two important welfare tax programs: the EITC and education credits, focusing on the former. Next, it considers the greater issue of whether an efficiency/equity trade-off is inevitable. It concludes with a short discussion of the efficiency of direct expenditures. It finds strong

65. NEIL BROOKS & THADDEUS HWONG, CANADIAN CTR. FOR POLICY ALTERNATIVES, THE SOCIAL BENEFITS AND ECONOMIC COSTS OF TAXATION 7–8 (2006), *available at* http://www.policyalternatives.ca/documents/National_Office_Pubs/2006/Benefits_and_Costs_of_Taxation.pdf.

66. Economic efficiency, of course, is generally a desirable trait, but not always: society would prefer an inefficient serial killer to an efficient one. Even in the more usual situation, when society desires economic efficiency, devising an economically efficient policy may not be all society needs to do. From an economic standpoint, assigning liability, for example, to either the farmer or the rancher will be efficient, but the rule chosen will greatly affect wealth distribution. Any point on a Pareto superior curve will be efficient.

evidence that universal, direct spending on human capital can be a very effective way of decreasing inequality without sacrificing efficiency (and even perhaps improving economic growth).

A. Are Tax Expenditures Efficient? Evidence from the EITC and Education Credits

The number of tax provisions that deliver welfare benefits has increased along with the consensus concerning their superiority over direct spending. Today, there is a wide range of tax programs that provide both general and poor welfare. They target a variety of areas such as housing (e.g., low-income housing credits, home mortgage interest deduction), children (Child Tax Credit, child care benefits), education (Hope and Lifetime credits) and the working poor (EITC). Many of the policy discussions focus not on the desirability of using the tax system, but on methods to improve the tax provisions' effectiveness; for example, by increasing the use of refundable credits and by combining provisions to decrease confusion and duplication, as in the case of education benefits.

This section briefly examines the basic issue of whether tax expenditures provide welfare more efficiently than direct expenditures. Rather than providing a comprehensive review of the vast literature, it considers only two areas: the EITC and certain education benefits. The EITC is the ideal provision to test the efficiency of the tax system as a welfare delivery mechanism for a variety of reasons. First, of course, it is the largest federal anti-poverty program for working families.[67] It is also structured in the best technical form for helping the poor—a refundable credit. Moreover, it is comprehensive in the sense that there are not duplicative provisions, as is the case with child care, for example. Finally, its design is compatible with conventional wisdom. It targets the most sympathetic segment of the poor, the "deserving" or working poor. It also encourages values congruent with the alleged dominant worldviews, such as autonomy and responsibility, by providing incentives that reward work.

Educational benefits also provide useful insights into conventional wisdom. Like the EITC, they resonate with American worldviews. They enhance individualistic norms of self-reliance and autonomy but also appeal to egalitarians and communitarians because they strengthen the core value of equal opportunity. At the same time, they present an interesting contrast with the EITC because they apply, at least

67. HOLT, *supra* note 5, at 1.

nominally, to a much broader range of people: middle (and upper middle or lower upper)-income taxpayers as well as low-income ones.

1. Effectiveness and Efficiency of the EITC

a. Short-Term Effectiveness

Most statistics indicate that the EITC has achieved its goal of reducing poverty by encouraging people to work.[68] This success, however, has been limited not only by the current form of the credit, but also because of problems inherent in the use of the tax system. One inherent structural problem, for example, is the unavoidable work disincentive created by the phase-out of the EITC. Other major problems, such as the failure of the EITC to reach the majority of poor people, could be solved, at least in part, by redesigning the credit. For example, the EITC would more effectively decrease poverty if it were more generous to childless workers or if the age requirements were broadened to include working individuals over 65 and those below 24, a group that includes those society ideally should be encouraging to work.[69] However, so long as the credit is limited to the working poor, a key political attraction because workers are "deserving" poor, many poor people will be excluded, such as the ill, the frail, and the completely unskilled.

The participation rate is another challenging issue. Proponents claim that proof of the EITC's greater efficiency, vis-a-vis direct spending, is a higher participation rate. A recent study suggests, however, that this higher participation is true only for those who already have an

68. *See, e.g.*, I.R.S. News Release IR-2007-055 (Mar. 12, 2007) (statistics on individual income taxes, split-interest trusts, and tax-exempt organizations); *Earned Income Tax Credit Outreach: Hearing Before the Subcomm. on Oversight of the H. Comm. on Ways and Means*, 110th Cong. (2007) (testimony of Richard J. Morgante, Commissioner, IRS Wage and Investment Division). *See also* Batchelder et al., *supra* note 6, at 34 (citing INTERNAL REVENUE SERV., 2004 STATISTICS ON INCOME, INDIVIDUAL INCOME TAX RETURNS PUBLICATION 1304 (COMPLETE REPORT) tbl.2.5 (2004), *available at* http://www.irs.gov/taxstats/indi/article/0,,id=134951,00.html); HOLT, *supra* note 5, at 13 (arguing that the EITC has proved remarkably successful in reducing poverty). *But see* Robert H. De Fina, *A Comparison of Poverty Trends and Policy Impacts for Working Families Using Different Poverty Indexes* (Fed. Reserve, Working Paper No. 07-13, 2007), *available at* http://ssrn.com/abstract=982393 (using certain poverty measures there is no significant decline in poverty between 1991 and 2002 despite a robust economy and various governmental policies attempting to reduce poverty, including Temporary Assistance for Needy Families (TANF) and expansion of the EITC).

69. HOLT, *supra* note 5, at 8 (arguing that they fail to qualify because they are not within the qualified age group for workers without children (25–64)); NAT'L TAXPAYER ADVOCATE, *supra* note 60, at 402 (stating that the EITC "provides little assistance to the working poor" without children). Approximately one-third of the poor fail to qualify because they have no earnings. HOLT, *supra* note 5, at 8.

obligation to file a return; those who have no such obligation actually may have higher participation rates in traditional direct expenditure welfare programs.[70] Moreover, even if the participation rate is higher, a significant number of eligible individuals—approximately twenty to twenty-five percent—do not claim it.[71] This is a sizeable failure-to-claim rate, especially given the very extensive, and costly, efforts to make people aware of the credit's existence and to help them apply for it. This intensive effort suggests that further efforts to increase participation have little chance of success.

Costs are another problematic issue. Proponents allege the EITC is superior because it has lower administrative costs than direct welfare. However, a recent study suggests that the vaunted low administrative costs are due to the fact that the credit targets households that already must file tax returns, as opposed to those who do not.[72] Moreover, costs to recipients, measured solely in monetary terms, are not insubstantial. According to the IRS, in 2005, the latest year for which there is data, EITC beneficiaries lost three million dollars of benefits due to the cost of refund anticipation loans and commercial preparers.[73] Although simplification of the credit might appear to be a solution to this outsourcing, behavioral theory suggests otherwise.[74]

A more fundamental question is whether programs that target the poor (whether directly or through tax expenditures) are the most effective means of fighting poverty. Some theoretical and empirical literature suggests that this is not the case.[75] Targeting the poor has

70. Blumenthal et al., *supra* note 60, at 208–10.

71. Ventry, *supra* note 4, at 1276 (citing I.R.S. News Release IR-2007-24 (Feb. 1, 2007), *available at* http://www.irs.gov/newsroom/article/0,,id=167470,00.html).

72. Blumenthal et al., *supra* note 60, at 210.

73. CHILDREN'S DEFENSE FUND, POLICY REPORT, HALTING THE LOSS OF BILLIONS OF DOLLARS IN EARNED INCOME TAX CREDIT BENEFITS 1 (2008), *available at* http://www.childrensdefense.org/site/DocServer/RAL_Report_2008.pdf?docID=6601. *See also* Leslie Book, *Preventing the Hybrid from Backfiring: Delivery of Benefits to the Working Poor Through the Tax System*, 2006 WIS. L. REV. 1103, 1118 (2006) (finding that approximately twenty percent of low-income benefits go to commercial preparers and associated fees). A 2002 study found that in 1999, an estimated $1.75 billion of the $30 billion in EITC went to private preparers and that this amount was growing. Francine J. Lipman, *The Working Poor Are Paying for Government Benefits: Fixing the Hole in the Anti-Poverty Purse*, 2003 WIS. L. REV. 461, 470 (2003).

74. Book, *supra* note 73, at 1133–34.

75. *See, e.g.*, Martin Ravallion, *How Relevant is Targeting to the Success of an Antipoverty Program?* 3, 18 (World Bank – Dev. Research Group, Policy Research Working Paper No. 4385, 2007), *available at* http://ssrn.com/abstract=1029500 (questioning whether a broad antipoverty measure will effectively impact overall poverty). *See also* ROBERT GOODIN ET AL., THE REAL WORLDS OF WELFARE CAPITALISM (1999) (finding that the Dutch social welfare system, which is not needs-based, is better at reducing poverty while producing economic growth). *But see*

several flaws from an efficiency standpoint, including leaving more poverty than universal programs.[76] As noted in the discussion of the EITC, targeting can cause economic disincentives to work as the aid phases out when income rises. Targeting also involves administrative costs because rules must be devised to prevent the non-poor from receiving the aid, either unintentionally or intentionally on account of fraud.

Targeting entails costs to the participants as well. There are hidden costs in terms of social stigma, but there are also real costs. The complexity of targeting means that many individuals need help in obtaining benefits. In the case of the EITC, participants frequently require help filing forms, and this help often costs money, which decreases the net amount of the benefit he or she actually receives. Moreover, some individuals are gulled by merchants who sell them goods based on the expectation of an EITC refund. The merchant fills out the form, applying for an inflated amount which the consumer never receives. Nevertheless, the consumer remains liable for the full (inflated) price of the merchant's product, such as furniture. The requirement that the recipient work also imposes costs on the recipient that reduce the overall benefits (increased costs of transportation, clothing, child care, etc.).[77] Children may also suffer to the extent that their psychological, social, and educational development may be impeded by poor quality child care and the lack of a parent at home. Society may also incur a loss because problems for the child may spill over and affect the wider community.

Finally, the basic premise of the EITC—that work can raise an individual out of poverty—is not universally true. The problem extends beyond the fundamental fact that some people are not capable of working because of poor health or old age, for example. The work solution to poverty assumes that there are jobs available and that those jobs pay a "living wage." Both assumptions are not always true. Some people want to work but cannot find a job, especially in a troubled economy. Even if a person wants a job and the job exists, the individual

NEIL GILBERT, TRANSFORMING THE WELFARE STATE: THE SILENT SURRENDER OF PUBLIC RESPONSIBILITY 135–53 (2004) (cautioning that "universal" benefits may be narrowed by taxing them). The EITC also creates costs to the beneficiaries as well as to taxpayers. *See infra* note 77.

76. *See* HOLT, *supra* note 5, at 6 (discussing federal EITC administration).

77. Neeraj Kaushal, Qin Gao & Jan Waldfogel, *Welfare Reform and Family Expenditures: How are Single Mothers Adapting to the New Welfare and Work Regime?* 24 (Nat'l Bureau of Econ. Research, Working Paper No. 12624, 2006), *available at* www.nber.org/papers/w12624 (finding that welfare reform requiring work merely shifted expenditure patterns to those that "facilitated" work).

may be unable to obtain it because of insurmountable obstacles such as no available transportation or child care.

More fundamentally, even if a person works full time, his labor is not always sufficient to raise him and his family out of poverty or provide a comfortable living. A recent study found that twenty-five percent of families with a full-time (1800 hours) worker were still below the poverty line.[78] Fifty-nine percent of low-income families (defined as double the poverty amount) had at least one adult working full time.[79] Moreover, even if all 'prime-age adults' worked at least 2,000 hours/year, only about twenty percent of low-income families would increase incomes above two hundred percent of the poverty level.[80] Even families who manage to obtain this level of income, however, still suffer "considerable material deprivation."[81] Moreover, it is not clear that increased income generated through work (as required by the EITC) actually increases quality of life. A 2006 study, for example, found that in households headed by low-educated single mothers, the welfare-related social policy changes in the 1990s did not increase total expenditures or increase changes in expenditures on child care or learning and enrichment, but they did increase spending on transportation, prepared meals, and other goods and services that made working outside the home easier.[82]

Hard work, in short, frequently fails to produce a reasonable standard of living. Either work-related expenses (such as transportation and clothing) cost enough to decrease the standard of living, and/or wages are simply inadequate to provide a sufficient return. The inability of work to provide a decent standard of living is a tragedy not just for the individual, but for American society. The central tenets of American beliefs are premised on the power of work. Individual effort leads not only to autonomy, but offers possibility of improvement. If people cannot support themselves by working, then American democratic

78. GREGORY ACS & PAMELA LOPREST, URBAN INST., WHO ARE LOW-INCOME WORKING FAMILIES? 2–3 (2005), *available at* http://www.urban.org/UploadedPDF/311242_working_families.pdf. The 2008 poverty level for a family of four in the continental United States is $21,200. Annual Update of the HHS Poverty Guidelines, 73 Fed. Reg. 3971, 3971–72 (Jan. 23, 2008) [*hereinafter* Poverty Guidelines], *available at* http://aspe.hhs.gov/POVERTY/08fedreg.htm.

79. Poverty Guidelines, *supra* note 78. The median national gross family income in 2008 is $61,500. Rev. Proc. 2008-19, § 3.01, 2008-11 I.R.B. A family with income double the poverty guidelines would still be only approximately two-thirds of the median.

80. ACS & LOPREST, *supra* note 78, at 3.

81. HANDLER, *supra* note 36, at 6.

82. Kaushal et al., *supra* 77, at 24.

ideals of self-reliance, social mobility, and equal opportunity are seriously undermined.

b. The EITC Fails to Address Short- and Long-Term Problems of Poverty

Although the EITC has lifted some families out of poverty, it cannot by itself provide a solid basis for a person's long-term prosperity. Reformulating its exact requirements can improve it, but it remains fundamentally flawed. Its work-oriented solution to poverty has at least three other major problems, other than those previously mentioned.

First, if the recipient is a single mother, the work requirement results in children being placed in child care and removes them from their mother's influence—something the federal government seems to think is good for middle-class children. Perhaps this removal is viewed positively because of a belief that low-income and/or low-educated women cannot provide appropriate care. If that is the case, then simply removing the mother from the home environment for a large part of the day is not enough. Even if there is quality child care, a more long-term solution to the alleged problem of inadequate parenting would include improving the mother's parenting skills so that she can provide a more enriching environment. Yet this rationale is also flawed because most mothers, even if they lack middle-class characteristics, provide nurturing and other intangible benefits for their children, such as a sense of security. Perhaps it is believed that the income gained from work more than compensates for any loss of maternal benefits. Even if this were true, the rationale assumes that jobs are more than temporary and that they provide a firm foundation for future economic solvency. Both assumptions are questionable. Jobs for low-skilled workers do not always pay a living wage, and even if they do, they are the most vulnerable, especially in an economic downturn as currently exists.

The second problem with the EITC is that all it can deliver is money, and money cannot be the sole solution to poverty. It is neither the only incentive to work nor the only thing a poor person needs to escape poverty. Money is certainly an important (and often primary) reason people work, but the decision to work is also based on non-fiscal considerations that are both personal and societal. People are internally motivated to work by factors such as personal satisfaction and growth, status, and a desire for social interaction. Internal motivations are affected by external factors, such as encouragement by (and expectation of) others, especially family and friends, or the availability of child care.

Work, by itself, cannot always provide everything a poor person needs to escape poverty, regardless of whether the poverty is short term or long term. Sometimes the most effective aid is not cash but goods and services such as food, health care, or social services.[83] Even if money could solve the problem (e.g., to obtain food or medicine), the tax system cannot deliver it in a timely fashion. Although there is a provision for advanced EITC payments, few individuals use it, largely because of fear of having to repay. A mere 0.2% of the total amount refunded by the EITC in 2003 was in the form of advanced payments.[84] Even if people get the cash in a timely manner, there is no guarantee that they will use it to obtain the appropriate goods or services. While "earmarking" cash grants increases the likelihood that the money will be spent for the desired purpose (child care, medicine, etc.),[85] the only way to ensure that the money is spent that way is to provide the service/good directly. If poverty is chronic, there is even more need for non-cash goods and services to break the cycle for parents and children.

Perhaps the biggest problem with the EITC, as with other programs that require the recipient to work, is that it does little, if anything, to address long-term structural issues of the availability of decent jobs at decent wages and the social and economic policies that encourage the development of human capital necessary to work.[86] Although knowledge, skills, and work habits often are learned on the job, such acquisition occurs less at lower-paid, unskilled jobs, especially if they are temporary jobs—which are frequently the only type of job many EITC participants can obtain. A work requirement without delivering education does little to increase a recipient's capacity to earn. The EITC, however, by stressing work over education, can actually discourage the development of human capital. The beneficiary must take a job, even if it is a dead-end job with no chance of advancement but a high likelihood of being laid off when an economic downturn occurs.[87] Although in theory the recipient could get on-the job-training

83. SUSAN E. MAYER, WHAT MONEY CAN'T BUY 152 (1997).

84. HOLT, *supra* note 5.

85. This "mental accounting," or tying the payment to a purpose, may be the reason that welfare reforms in the United Kingdom, according to one study, did increase spending on children. ACS & LOPREST, *supra* note 78, at 26 (also noting that the different result in the UK could also be due to the fact that the UK did not require work, as in the United States).

86. *See* ALICE O'CONNOR, POVERTY KNOWLEDGE: SOCIAL SCIENCE, SOCIAL POLICY, AND THE POOR IN TWENTIETH-CENTURY U.S. HISTORY 286–92 (2001) (discussing the societal and political pressures on welfare reform during the Clinton administration).

87. *See* HANDLER, *supra* note 36. Emphasis on work as a precondition of welfare—via direct or tax expenditures—can be shortsighted in terms of the ultimate goal: permanent jobs. Deborah Solomon, *For Welfare Clients, Temporary Jobs Can Be a Roadblock*, WALL ST. J., Dec. 16, 2006, at A1 (citing study finding that in Michigan, almost half of recipients who exit the welfare system boomerang back within three months). The work requirement "can create an unyielding cycle of finding and losing jobs," divert time and effort from finding a permanent job, and

or take adult education courses, the former often has limited transferability and the latter is frequently infeasible given other responsibilities and constraints on the worker (no transportation, child care duties, etc.). There is some evidence that work requirements actually negatively affect the recipient, resulting in a "deterioration in the quality of employment" while increasing the portion of the economy that takes advantage of the poor (e.g., "payday" lenders).[88]

Although the tax system cannot deliver education and skills training necessary to create human capital, it can encourage it—at least in theory. As the next section illustrates, however, delivering on that promise is difficult.

2. Education

Education can enrich anyone's life, both monetarily and spiritually, but for the poor it can be a key to escaping poverty. Education also has positive externalities that benefit society as a whole, not just the individual receiving the education.[89] Consequently, the United States federal government has a long history of subsidizing education at all levels through direct expenditures (e.g., land grant colleges, No Child Left Behind)[90] and through the tax system (e.g., non-profit status, charitable contributions to educational institutions).[91] Today, educational tax benefits that go directly to individuals (as opposed to institutions) occur mainly at the post-secondary level.[92] These tax

psychologically damage recipients every time they are laid off one job because the recipient spends time looking for jobs. *Id.*

88. Terry Carney, *Traveling the 'Work-First' Road to Welfare Reform*, 44 JUST POL'Y - A JOURNAL OF AUSTL. SOC. POL'Y 12 (2007), *available at* http://ssrn.com/abstract=1080109 (discussing how different poverty indices show different results).

89. STAFF OF JOINT COMM. ON TAXATION, PRESENT LAW AND BACKGROUND RELATING TO TAX EXEMPTIONS AND INCENTIVES FOR HIGHER EDUCATION 29-30 (Comm. Print 2006), *available at* http://www.house.gov/jct/x-49-06.pdf.

90. *See* OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, BUDGET OF THE U.S. GOV'T, FISCAL YEAR 2008 (2007), *available at* http://www.whitehouse.gov/omb/budget/fy2008/pdf/appendix/edu.pdf (funding budget for U.S. Department of Education).

91. The literature on tax incentives and education is vast, and well beyond the scope of this Article, which provides only a cursory examination of the topic. Among the numerous articles on the topic are: *Present Law and Analysis Relating to Tax Benefits for Higher Education: Hearing Before the Subcomm. on Select Revenue Measures of the H. Comm. on Ways and Means*, 110th Cong. (May 1, 2008), *available at* http://www.house.gov/jct/x-35-08.pdf; Andrew D. Pike, *No Wealthy Parent Left Behind: An Analysis of Tax Subsidies for Higher Education*, 56 AM. U. L. Rev. 1229 (2007); Sean M. Stegmaier, *Tax Incentives for Higher Education in the Internal Revenue Code: Education Tax Expenditure Reform and the Inclusion of Refundable Tax Credits*, 37 SW. U. L. REV. 135 (2008).

92. *See* CONG. RESEARCH SERV., AN OVERVIEW OF TAX BENEFITS FOR HIGHER EDUCATION EXPENSES (2005) (trends in government subsidies for education); *see also* LEONARD E. BURMAN ET AL., THE URBAN INST., THE DISTRIBUTIONAL CONSEQUENCES OF FEDERAL ASSISTANCE FOR

benefits represent an increasing proportion of federal dollars spent on higher education while direct benefits, such as Pell grants, have been decreasing.[93]

Experts agree that current education tax incentives have many problems, including three major issues. First, educational tax benefits are not very effective at increasing college enrollment; in fact, evidence suggests that enrollment is more responsive to grants.[94] A second major problem is a distributional one: tax incentives primarily benefit students in middle and upper-middle income families; low-income families receive few, if any, benefits from these tax expenditures.[95] This is in contrast to direct grants under the Pell program, which target low-income families.[96] Since low-income students are significantly underrepresented in higher education, especially four-year academic institutions,[97] assisting this group would provide both individual and social benefits.

HIGHER EDUCATION: THE INTERSECTION OF TAX AND SPENDING PROGRAMS (2005), *available at* http://www.urban.org/UploadedPDF/311210_TPC_DiscussionPaper_26.pdf (analyzing the shift in subsidizing education through the tax code rather than through direct expenditures).

93. *See* Pike, *supra* note 91, at 1245 (noting that tax provisions constitute an increasingly large portion of the federal financial aid effort).

94. BURMAN ET AL., *supra* note 92, at 13–14. *But see* Susan M. Dynarski & Judith E. Scott-Clayton, *Complexity and Targeting in Federal Student Aid: A Quantitative Analysis* 22 (Tax Policy & the Economy, Working Paper No. RWP08-005, 2008), *available at* http://ssrn.com/abstract=1083721 (arguing there is little persuasive evidence that Pell Grants increase enrollments).

95. Most benefits go to those with incomes of at least $50,000. *See, e.g.*, TAX POLICY CTR., EDUCATION TAX INCENTIVES, http://www.taxpolicycenter.org/taxtopics/Education-Tax-Incentives.cfm (last visited Oct. 16, 2008) (reporting that few low-income families benefit from education credits). It is not surprising that tax credits do not help poorer families, since thirty-five percent of households have no tax liability; therefore, a credit cannot help them. For this reason, some scholars suggest that the education credits become refundable. *See, e.g.*, BURMAN ET AL., *supra* note 92, at 12 (discussing the benefits of making College Opportunity Tax Credit refundable). This solution, however, is limited. First, and perhaps the crucial concern, is the expense of a refundable credit. Also, note that there is some evidence that schools often increase tuition because of a credit, or at least decrease loans. *Id.* at 14. Moreover, just as with the EITC, not all eligible taxpayers claim the credits. Burman found that seventy-four percent use the Hope Credit, and only sixty-three percent use the Lifetime Credit, with usage increasing with income. *Id* at 31.

96. A 2005 Urban Institute study estimated that approximately 40% of Pell grants were distributed to tax units with AGI < $10,000, 60% to students from tax units with AGI < $20,000, and only 2% to those with AGI > $50,000. Batchelder et al., *supra* note 6, at vi. In contrast, the study found that only 4.1% of the Hope Credit went to students in tax units with "cash income of less than $20,000" (approximately the poverty line for a family of 4), and 60% to those with income greater than $50,000. *Id.* In 2005, median income was $46,326. *See* CASHELL, *supra* note 35, at 6. More than half of the benefits go to those between $50,000–$100,000. Batchelder et al., *supra* note 6, at vi. Median income in 2005 was $46,326, if middle class were defined to include the 4th quintiles which, according to the United States Census, reached $91,705.

97. Controlling for ability measured by tests (a dubious marker), the gap in higher education

Third, educational tax benefits are very complicated and confusing. An individual must determine what the benefits are, whether he or she qualifies, and then how to obtain them. Often the planning must be done many years in advance of the benefit (education savings plans, for example). This often contrasts with direct benefits, where the institutions that administer the programs provide expert assistance. Such complexity helps explain why many people who qualify do not take advantage of the benefits.[98]

Another basic problem with current educational tax benefits is their focus on higher education. This puts the cart before the horse since many students begin to flounder while attending inadequate primary schools and do not even finish high school. The ramifications of these earlier failures are tremendous, not just to the individual but to society. From an individual standpoint, those without a high school education make less money than high school graduates and have fewer life opportunities to develop their talents and interests. From a societal perspective, dropouts are more likely to be poor, unemployed, in poor health, in prison, and in need of welfare.[99] Those who do not finish high school are more likely to be a minority than those who do finish.[100] Those who finish in four years are more likely to be higher-income white students than minorities. For example, in Boston, 40% of all students took greater than four years to graduate, with 52% of black

between low and top quartile is 22%. Also, low and moderate income students are "disproportionately" enrolled in two-year schools and "even more heavily in short-term programs in for-profit and technical schools." Batchelder et al., *supra* note 6, at v; Pike, *supra* note 91, at 1256.

98. *See Higher Education: Multiple Higher Education Tax Incentives Create Opportunities for Taxpayers to Make Costly Mistakes: Hearing Before Subcomm. on Select Revenue Measures, H. Comm. on Ways and Means*, 110th Cong. 10–11 (May 1, 2008) (testimony of Michael Brostok, Director, Tax Issues, Government Accountability Office), *available at* http://www.gao.gov/new.items/d08717t.pdf (suggesting that many tax filers do not make optimal education-related tax decisions due to the complexities of the tax provisions).

99. The median income of high school dropouts age eighteen and over was $12,184 in 2003. INST. OF EDUC. SCIENCE, U.S. DEPT. OF EDUC., DROPOUT RATES IN THE UNITED STATES: 2002 AND 2003, at 1 (2006), http://nces.ed.gov/pubs2006/2006062.pdf. By comparison, the median income of those age eighteen and over who completed their education with a high school credential (including a General Educational Development (GED) certificate) was $20,431. *Id.* Thirty percent of federal inmates are dropouts along with forty percent of state inmates and fifty percent of death row inmates. A study of British Columbia suggests that ensuring that children of welfare recipients graduate from high school will decrease the children's use of welfare. Michael B. Coelli, David A. Green & William P. Warburton, *Breaking the Cycle? The Effect of Education on Welfare Receipt Among Children of Welfare Recipients*, 91 J. PUB. ECON. 1369 (2007).

100. Coelli et al., *supra* note 99, at 1369, tbl.9-A. 2003 completion rates, and number and distribution of completers ages 18–24 not currently enrolled in high school or below, by selected background characteristics: White (non-Hispanic): 91.9%; Black (non-Hispanic) 85.1%; Hispanic 69.2%; Asian/Pacific Islander: 93.9%; more than one race: 91.7%. *Id.*

males and 57% of Hispanic males not graduating on time, but in the wealthier, predominantly white Boston suburb of Weston, only 1% of all males failed to graduate on time.[101]

Some of the problems with current educational tax benefits are correctable, or at least can be improved, and many have offered suggestions. For example, decreasing the number of provisions providing benefits would significantly alleviate both complexity and confusion. Extending benefits to primary and secondary education would deliver assistance at critical levels of education. Similarly, making credits refundable would improve distributional effects.

Nevertheless, delivering education benefits through the tax system, like delivering welfare benefits via the EITC, has problems that are intrinsic to tax expenditures. For example, there is a timing problem that may prevent some taxpayers from taking advantage of the tax benefits. Taxpayers must pay the educational expense before they receive the tax benefit, and they may not have the money to do so. This is a problem with any tax-delivered benefit when the person needs the good or service immediately but must wait to get the money to pay for it. EITC data shows that even when the benefit is theoretically available earlier in the form of an advance payment, few take advantage of applying for the money. This failure to use advances may reflect fear of having to repay incorrectly received money, or it may simply reflect lack of awareness of the advanced payment, or an inability to deal with its complexity.

Cognitive theory also indicates, as previously discussed, that providing education benefits through the tax system creates framing issues. Tax benefits encourage an entitlement attitude (the very problem commonly associated with the "old-style" direct welfare) because the beneficiary does not usually even believe that he or she is getting anything from the government. The benefit is invisible because the taxpayer believes he or she is entitled to it since the provision merely returns his or her money to him.

Tax expenditures also can be a band-aid solution, diverting attention from bigger underlying structural problems with education. For example, the temporary section 62(a)(2)(D) $250 above-the-line deduction for elementary and secondary teachers for supplies is no substitute for schools providing adequate supplies. Moreover, nowhere do any of these benefits address unequal school achievements and high

101. Steve Bailey, *Two Bostons*, BOSTON GLOBE, May 9, 2007 at F1 (citing Northeastern University Center for Labor Market Studies).

school graduation and college rates among differing demographic groups.

Increasingly, evidence shows the importance not only of high school but of early, preschool education to the individual and to society. Some believe it is one of the three best ways to improve the economy. Much evidence suggests that given the importance of the early childhood years, mere access to good child care is inadequate. Universal preschool education could provide substantial, long-lasting benefits that far exceed their costs. A 2006 study concluded that a "high-quality universal preschool policy" (for all three-year-old and four-year-old children) would improve economic growth and "could add $2 trillion to annual U.S. GDP by 2080" at a cost of only $59 billion.[102] In recent testimony before the House Committee on Education and Labor, Ron Haskins, a former White House and congressional advisor who helped shape the 1996 welfare reforms, stated, "Reducing the achievement gap holds great promise for reducing poverty in the long term and even for reducing inequality . . . there is no body of evidence on any social intervention that holds as much promise of producing as wide a range of positive effects as high-quality preschool programs."[103]

B. Equity v. Efficiency Tradeoff

The classic belief that there is an inevitable tradeoff between equity and efficiency has begun to crumble under the weight of recent evidence. Numerous studies have found little support for the view that expanded welfare programs inhibit the economy. Peter Lindert's two volume historical study of "social" spending, for example, found "[t]he

102. ISABEL SAWHILL, WILLIAM T. DICKENS & JEFFREY TEBBS, THE BROOKINGS INST., POLICY BRIEF SERIES 153, THE EFFECTS OF INVESTING IN EARLY EDUCATION ON ECONOMIC GROWTH 1, 3 (2006). *See also* JULIA B. ISAACS, THE BROOKINGS INST., COST-EFFECTIVE INVESTMENTS IN CHILDREN (2007) ("[E]ven in a time of fiscal austerity . . . America's future economic well-being will benefit from targeting investments to ensure that children have the skills to become tomorrow's adult workers, caregivers, taxpayers, and citizens."). Isaacs's proposed investments include (1) **"**high quality" educational programs for three-year-olds and four-year-olds, (2) "nurse home-visiting programs to promote sound prenatal care and the healthy development of infants and toddlers," (3) an emphasis on programs in high-poverty elementary schools, and 4) teen pregnancy reduction programs that "provide structured learning and volunteer opportunities." *Id*. at 1.

103. *Investing in Early Education: Paths to Improving Children's Success: Hearing Before the H. Comm. on Education and Labor*, 110th Cong. (2008) (testimony of Ron Haskins, Senior Fellow, Economic Studies, Brookings Institution), *available at* http://www.brookings.edu/~/media/Files/rc/testimonies/2008/0123_education_haskins/0123_education_haskins.pdf (Haskins now co-directs the Brookings Center on Children and Families, http://www.brookings.edu/experts/h/haskinsr.aspx). *Accord* Jens Ludwig & Deborah A. Phillips, *The Benefits and Costs of Head Start* (Nat'l Bureau of Econ. Research, Working Paper No. 12973, 2007).

net national costs of social transfers, and of the taxes that finance them, are essentially zero."[104] His research determined that high welfare countries spend more on programs that improve the economy by developing peoples' human capital, such as public education.[105] Even more interestingly, some researchers have found that inequality itself, especially extreme inequality, has numerous negative effects. It creates barriers to economic growth, undermines political stability, and decreases the health and happiness of people.[106] Inequality that results in absolute poverty is especially pernicious, but even relative poverty—which results from wealth/income inequality—is injurious.[107] As a recent comparative study stated:

> Inequalities erode social cohesion; they lead to worse health and personal security outcomes; they lead to the withdrawal of the haves from the life of the community and the exclusion of the have-nots; and, generally, inequality diminishes the richness and flourishing of a society. Moreover, extreme levels of inequality have been shown to have a negative impact on economic growth by distorting the allocation of resources and talents. Income inequality has also been shown to destabilize political and social values, since disproportionate

104. PETER H. LINDERT, 1 GROWING PUBLIC-SOCIAL SPENDING AND ECONOMIC GROWTH SINCE THE EIGHTEENTH CENTURY 21 (2004) [*hereinafter* LINDERT 1]; PETER H. LINDERT, 2 GROWING PUBLIC-SOCIAL SPENDING AND ECONOMIC GROWTH SINCE THE EIGHTEENTH CENTURY 82–99 (2004).

105. LINDERT 1, *supra* note 104, at 32.

106. *See id.* at 259; U.S. GOV'T ACCOUNTABILITY OFFICE, REPORT TO COMM. ON WAYS AND MEANS, POVERTY IN AMERICA, GAO-07-344 (2007) (finding that individuals living in poverty face increased risk of poor health and criminal activity, leading to reduced participation in the labor market); BROOKS & HWONG, *supra* note 65. *See also* McAdams, *supra* note 2, at 28. There can be a variety of explanations for the disutility of inequality. The 2008 tax rebates indicate one economic problem of large inequality: an inability of much of the population to buy the goods being produced. Henry Ford recognized this also when he increased the salaries of his factory workers so they would have enough money to buy the cars they produced. The economist John Kenneth Galbraith suggested, "We will discover that efficiency improves when a larger number of people feel they have a fair shot at being middle class . . . . We will find that people work harder under these conditions, that they are happier, that families are more stable, and that patterns of investment, consumption, and even technological change will accommodate themselves to more equality in the nation at large." JAMES K. GALBRAITH, CREATED UNEQUAL: THE CRISIS IN AMERICAN PAY 266 (1998). Even if some inequality is necessary for economic growth, it is questionable whether the current disparities are necessary. *See* Lester C. Thurow, *Toward a Definition of Economic Justice*, 31 PUB. INT. 56, 77 (1973) ("[C]urrent inequalities are much larger than those necessary to produce and expand the current gross national product."). The literature on the problems of inequality from political and social perspectives as well as economic ones is large. *See, e.g.*, *infra* Parts II, III (discussing welfare delivery mechanisms and ways to promote economic efficiency).

107. On the importance of relative inequality as opposed to absolute inequality, see AMARTYA SEN, DEVELOPMENT AS FREEDOM (1999); Thomas D. Griffith, *Progressive Taxation and Happiness*, 45 B.C. L. REV. 1363, 1364 (2004).

> economic power invariably leads to increased influence over political and other societal decisions.[108]

In sum, the classic assumption that equity can be achieved only at the expense of efficiency is not simply wrong, it is backwards, at least according to increasing evidence. Greater economic growth can be achieved with greater equity. Equality and efficiency are partners, not adversaries.

C. Direct Expenditures

Properly devised direct expenditures can provide some economic and political advantages compared to tax expenditures, while avoiding several of the previously discussed disadvantages. For example, direct expenditures can provide more timely aid, in contrast to the time lag noted for both the EITC and education credits. Even when timely aid is theoretically available from a tax credit, as in advance tax credits, the EITC experience shows that few take advantage of it. Moreover, providing periodic aid through the tax system can be complex (and costly) as the United Kingdom experience indicates.[109] More timely aid has at least two advantages. First, more people may take advantage of it since people will not discount the value of the future benefit nor over-emphasize the disadvantage of applying for an advance credit. Second, timelier aid can be more efficient; if you need money now, getting it two months, or a year, from now is not terribly helpful.

In certain situations, direct benefits may present fewer opportunities for fraud than tax benefits. Since there is no natural quantitative limit to how much money people want, people have a great incentive to lie to get more money than they rightly deserve through a tax expenditure. The same incentive to cheat may arise with some direct benefits. For example, some people may lie to get undeserved free cheese, not to consume it themselves, but to sell it. There is little incentive to cheat, however, if the direct benefits are not transferable and are not the type one would be likely to over-consume. Many important direct welfare benefits are of this nature, such as education and medicine. People, for example, are unlikely to repeat a grade in a tuition-free school or to ask the doctor for two free shots instead of one.

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108. BROOKS & HWONG, *supra* note 65, at 16.

109. The UK provides a weekly or monthly child tax credit payment. *See* HM Revenue & Customs, Children, Childcare and Tax Credits, http://www.hmrc.gov.uk/taxcredits/children-childcare.htm (last visited Oct. 16, 2008). *See also* Jennifer Hill, *Tax Credit Blunders Cost a Billion per Year*, REUTERS NEWS, Feb. 5, 2008, http://uk.reuters.com/articlePrint?articleId=UKL0421384920080205 (administrative costs rose to 587 million pounds in 2006/2007, from 406 million pounds three years earlier, but the report stated the "situation is as serious as ever").

Direct expenditures also can be more effective than tax expenditures because the former can provide a variety of types of aid, not just money, which is all the latter can do. Sometimes the help needed most is not money, but advice, emotional support, or immediate physical assistance. Even if money can buy a good or service, handing out money is not always the most efficient means to obtain it. Delivering money rather than the good/service itself is not as quick. Moreover, delivering money can present more hurdles for the recipient: figuring out what to buy, where to buy it, how to get to the place that sells it, and so forth. Giving vaccinations, for example, is more efficient than handing out money to go and get a vaccination. More importantly, some of the most effective welfare tools are not money but investments in human capital—education, health, skills training. Again, money can eventually buy some of these, but the time lag between getting the money and the assistance is greater, and the real world hurdles for the recipient may be too high.

Some universal direct benefits can be economically efficient, possibly more so than targeted programs. A universal program may have fewer administrative costs, less complexity, and less fraud, since fewer rules are needed to determine eligibility and fewer people are excluded. A longitudinal study indicated that universal programs in the Netherlands during the mid-eighties and nineties were more effective at reducing poverty than targeted programs in the United States and also produced economic growth.[110] High tax/high welfare countries have often achieved greater social equality than low tax/low welfare countries without sacrificing economic growth or "material prosperity."[111] High tax/high welfare Scandinavian countries have

> less poverty in almost all social groups, better health and longer mortality, higher amount of university education; better gender equality, lower homicide rates . . ., more freedom, according to a widely referred to index of economic freedom . . ., a marginally higher GDP per capita; a higher GDP per hour worked, significantly lower unit labour costs and significantly lower rates of inflation, higher budget and current account surpluses, a higher total labour participation rate, and higher female labour participation rate, much higher rates of household saving and net national saving.[112]

110. GOODIN ET AL., *supra* note 75, at 261–62. *See also* Ravallion, *supra* note 75, at 18 (poor correlation between targeting and cost effectiveness—i.e., reduction in poverty relative to cost of program).

111. BROOKS & HWONG, *supra* note 65, at 10.

112. *Id.* at 7–8.

IV. CONCLUSION: REFRAMING WELFARE SPENDING

The belief that tax expenditures are more economically efficient and more politically palatable than direct expenditures has produced a welfare policy that relies too heavily on tax expenditures. As a consequence, current policy not only fails to provide the maximum economic benefits possible but also fails to achieve the greatest amount of public support. A better mix of direct and indirect spending can improve both. In particular, there should be more direct spending, especially universal direct spending, to improve human capital. Such spending is economically efficient because it attacks the root causes of poverty. It is also politically efficient because it cognitively frames the policies in a manner that appeals to both individualistic/hierarchicists and communitarian/egalitarians. Such programs focus on equal opportunity, a concept common to all worldviews. Individualistic/hierarchicists need equal opportunity because without it the self cannot be fully expressed and any distribution based on merit is hollow; communitarian/egalitarians also need equal opportunity to achieve their vision of a just society. A policy that focuses on equal opportunity can expand support for redistribution by uniting people through a sense of a common goal and create a community of interests which activates norms of cooperation, trust, and reciprocity.

Placing welfare in the tax system frames the policy negatively. It creates a zero-sum situation in which "my" money is given to "them." In contrast, providing welfare benefits directly—especially through universal benefits—can reframe welfare benefits into a win-win situation. Since everyone is entitled to these benefits, everyone has a stake in them. This helps ensure political support (Social Security being the classic example). Since coverage is not needs-based, the programs do not divide the population into "us" and "them" taxpayers and tax-takers, as welfare payments do.

Direct benefits can also diminish a sense of "us" and "them" by lessening the incorrect perception that the poor receive an unduly large amount of welfare. The non-poor receive most of their welfare from tax expenditures, which are all but invisible. To the extent they are visible, people do not see them as government spending or welfare, but as a return of their money. In contrast, government spending for the poor is visible regardless of whether it is delivered through direct spending or through the tax system. Direct spending can help level the playing field for welfare benefits by making general welfare more transparent. If people realize how many welfare benefits they are getting, their animosity towards poor benefits may decrease. The distribution may not seem so unfair. Moreover, direct expenditures may more correctly express preferences since most people do not understand tax expenditures and the burdens and benefits they create. For example, a middle-income taxpayer may support an education credit not only because it helps him, but because it equally helps a low-income individual. Distributing the benefits directly could clarify the flow of benefits and burdens, which might change the middle-income taxpayer's support of the program.

Direct spending for human capital formation allows the spending to be reframed entirely. It eliminates the negative frame of "welfare." It presents the programs positively in terms of creating equality of opportunity for everyone, a concept that bridges opposing worldviews. Moreover, universal direct spending eliminates the we/them division because everyone is entitled to the same benefits. Many people have noted the advantages—economic, social, and political—of direct universal programs for health, child care, and preschool education, for example.[113]

Emphasis on using the tax system to deliver welfare benefits has led to a suboptimal allocation of public monies to fight poverty and increase everyone's welfare. It has led to missed opportunities for direct spending programs, such as preschool education programs, that could garner popular support and also provide the foundation for both decreasing inequality and increasing economic growth. A more balanced mixture of tax and direct spending could garner more political support and more efficiently decrease poverty and inequality while increasing economic growth and nurturing democratic goals, such as participation.

This Article concludes with brief descriptions of two programs that build on existing efforts to improve welfare. A novel feature of both programs is that each involves direct and indirect (tax) spending. The first offers an alternative to the EITC's pure tax efforts to make "work pay;" the second provides a mixed approach to higher education spending.

113. Scandinavian countries, with their higher level of welfare benefits, outperform Anglo-American countries in a number of social and political categories such as "community and social solidarity . . . general happiness . . . trust among individuals and for public institutions," and more leisure time. BROOKS & HWONG, *supra* note 65, at 8. Individuals in those countries "have more freedom, according to a widely referred to index of economic freedom; individuals report more life satisfaction; and they are more likely to discuss politics with friends." *Id.*

A. Making Work Pay

Policies that encourage work can generate support across the full spectrum of worldviews and at the same time be effective economic tools for decreasing poverty, provided they are properly devised. Tax expenditures alone cannot achieve these goals, as Part III demonstrated. A recent proposal combining tax and direct expenditures, however, overcomes some of the limitations of the EITC, most notably its inability to address the underlying causes of poverty and its inability to provide non-monetary support that many impoverished individuals need. The proposal is based on an experiment in Milwaukee in the 1990s called New Hope.[114] Unlike the EITC, New Hope provided direct benefits that mere money could not. Working closely with the "existing social service infrastructure in Milwaukee,"[115] it not only increased the immediate monetary position of the poor (including single individuals), it improved their long-term prospects. Even more encouraging was the effect on children, especially boys, in terms of improvements in their school performance and behavior. An evaluation two years later showed that positive effects of the program remained. The authors found that the New Hope benefits to the participants and society exceeded all the costs. The program suggests promising long-lasting benefits to society: less crime, less school drop out, less drug abuse, less unruly behavior; in short, a higher chance of keeping children out of trouble and becoming productive citizens.[116] This is, indeed, a superb economic result and surely the type of program that can gain political support from both individualistic/hierarchicists and communitarian/egalitarians.

B. Free College Tuition

Since college-educated individuals earn far more than their less educated cohorts, providing greater opportunities to attend college can

114. HANS BOS ET AL., THE BROOKINGS INST., NEW HOPE: FULFILLING AMERICA'S PROMISE TO "MAKE WORK PAY" (2007), *available at* http://www.brookings.edu/papers/2007/12_work_gennetian.aspx. In 2005, there were 3.7 million households in poverty that had a full-time worker. *Id.* at 5. The study was part of Brookings' Hamilton Project, which

> produces research and policy proposals on how to create a growing economy that benefits more Americans. The Hamilton Project's economic strategy reflects a judgment that long term prosperity is best achieved by making economic growth broad-based, by enhancing individual economic security, and by embracing a role for effective government in making needed public investments.

Hamilton Project, http://www.brookings.edu/projects/hamiltonproject.aspx (last visited Oct. 26, 2008).

115. BOS ET. AL., *supra* note 114, at 15.

116. *Id.* at 22.

lessen wealth/income inequality and at the same time increase economic growth. Although the United States, unlike many countries, does not provide universally free or very low-cost college education, Americans do support government spending on education as a way to further equal opportunity. Indeed, the American GI bill, which provided large numbers of American males with free higher education, promoted economic mobility and growth. State (and local) governments still provide substantial direct benefits for college education through their university and community college systems (and of course, provide direct elementary and secondary education). Although the United States government no longer maintains extensive direct college programs, it still provides numerous college benefits, although mainly through the tax system. In general, however, these benefits flow primarily to the non-poor, as discussed above.

Recent developments in college financial assistance show a promising trend that combines tax expenditures with a direct spending program that is almost universal. A growing list of private colleges have eliminated student loan programs and dramatically increased direct aid so that students pay little or no tuition and sometimes even receive free room and board. Many of these expanded financial aid programs cover the vast majority of students. Stanford University, for example, has announced that it will provide free tuition to students from families earning less than $100,000, which is eighty percent of all U.S. families.[117] Other schools, such as Yale University and Harvard, have greatly increased aid to families with incomes up to $200,000.[118] Many other colleges, including state and community colleges, offer similar programs.[119] This broad-based financial aid is more politically viable

117. Households with $100,000 income were in the top quintile in 2006, and those with $200,000 were in the top five percent. *See* U.S. Census Bureau, Current Population Survey, Annual Social and Economic Supplements, tbl.H-1 (1967–2006), *available at* http://www.census.gov/hhes/www/income/histinc/h01ar.html (including a table modified to reflect inflation). *See also* Jonathan D. Glater, *Stanford Set to Raise Aid for Students in Middle*, N.Y. TIMES, Feb. 21, 2008, at A14 (Stanford also waives room and board if income is less than $60,000).

118. Harvard recently announced that it will provide students from upper middle-income families (incomes between $120,000 and $180,000) with significant financial assistance. Eric Konigsberg, *Never Having to Say, "Too Expensive,"* N.Y. TIMES, Dec. 30, 2007, at Week in Review 5. *See also* David Leonhardt, *College and Money, What a Deal!*, N.Y. TIMES, Apr. 20, 2008, at Education Life 26–27 (financial aid bidding war at the nation's top universities); Valerie Strauss, *Yale Announces Plan to Cut Tuition for Many*, WASH. POST, Jan. 15, 2008, at A02 (Yale's tuition reduction for lower income families).

119. *See* Emily Brandon, *Better Yet, No Tuition: More Programs Offer Students Free Schooling*, U.S. NEWS & WORLD REP., Sept. 10, 2006, http://www.usnews.com/usnews/biztech/articles/060910/18free.htm (discussing reactions to free higher education).

than merely aiding the poor because it unites the interests of the vast majority of students (and their parents).[120] Although universities offering these programs are private institutions, the programs are actually a combination of public and private funding. Large portions of the endowments that finance these programs come from private donors, but the public both encourages the donations and subsidizes them in the form of the section 170 charitable deduction for the donor and non-profit section 503(c) tax-exempt status for the institution. Indeed, much of the impetus for increasing financial aid results from Congressional concern about rising tuitions at a time when these tax-favored entities have vastly increased endowment funds but pay only a small percentage on financial aid.[121] Senator Grassley recently wrote, "Those tax exemptions involve a social compact: In exchange, colleges are obliged to carry out the charitable purpose of providing the best education to the most students at the lowest cost."[122]

There is an old saying: *Give a man a fish and you feed him for a day/Teach a man to fish and you feed him for a lifetime*.[123] In today's fast-paced, rapidly changing economy, even learning how to fish cannot ensure a lifetime of self-sufficiency. Men and women must be able to learn how to do tasks that have not even been invented yet. They need an infrastructure that supports the development of currently needed skills as well as the capacity to learn future ones. They also need an infrastructure that allows them to practice these skills. They need, for example, not only education that gives them the skills to work, but also affordable child care that allows them to work. Tax expenditures alone cannot ensure that the largest number of people have the chance to acquire and use the skills needed to live a fulfilling and productive life. They cannot create the necessary skills and infrastructure, but even if they could, they could not acquire sufficient political support to enact them.

A "hybrid" approach with a better mix of direct and indirect spending can do both. Not only can it more effectively create the necessary capabilities, but it can also achieve broader political support by

120. Households with $100,000 income were in the top quintile in 2006, and those with $200,000 were in the top top five percent. U.S. Census Bureau, *supra* note 117, tbl.H-1, http://www.census.gov/hhes/www/income/histinc/h01ar.html.

121. *See* Michael Grynbaum, *Keeping the Lid On*, N.Y. TIMES, Apr. 20 2008, at Education Life 2 (noting escalating tuition costs in higher education).

122. Charles E. Grassley, *Wealthy Colleges Must Make Themselves More Affordable*, CHRON. OF HIGHER EDUC., May 30, 2008, *available at* http://chronicle.com/weekly/v54/i38/38a03601.htm.

123. Bartlett's Quotations, Bartleby.com, http://www.bartleby.com/73/484.html (last visited Oct. 16, 2008).

appealing to Americans regardless of their worldviews. Moreover, by activating positive norms—such as cooperation, reciprocity, and altruism—it can further promote the accomplishment of these goals while reinforcing support for them. Such a hybrid program can truly help to "end welfare as we know it:" moving people from dependency to autonomy while at the same time encouraging economic growth and strengthening democratic ideals such as equal opportunity.