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Rhetoric and Pandering: An Examination of Tax Policy Announcements in the Harper-Trudeau Era

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I. Introduction

This paper examines the budgets and other tax policy announcements during the time former Prime Minister Stephen Harper and now Prime Minister Justin Trudeau held office. The analysis exposes various tactics used, explains why they may have been used, and makes arguments about their appropriateness.

This paper proceeds by first summarizing the Canadian income tax system and fiscal politics, and then describing the major tax policy changes during the Harper-Trudeau era. In Part 3, the persuasive tactics used in tax announcements during this period are identified and analyzed. The first set of tactics relate to the careful choice of language. The second set relates to the strategic delivery of rationales behind the policy choices. Winners and losers of tax policy reform, the theme of this conference, are discussed in this section, among other matters. The third section shows a lack of educational content in tax policy budgets. The fourth section demonstrates that tax advantages are offered to groups of citizens to gain their political favour.

In the final part of this paper, it is then argued that, in light of the foregoing analysis, tax policy announcements should be scrutinized with the identified persuasive tactics in mind; full and accurate disclosure should not be assumed. Further, the government should move effectively and morally responsibly use of budgets budget to improve tax policy in Canada through a more candid and complete disclosure of their tax policy choices, including the connection to spending, and through better public education of the tax system goals.

II. Canadian Income Tax System and Politics

A. The Canadian Income Tax System & Fiscal Politics

Both federal and provincial governments have the power to raise income taxes under the Canada's Constitution.¹ With some exceptions, provincial taxes are collected by the federal government on behalf of the provinces, and Provincial governments generally use income calculated under the federal *Income Tax Act*² as their tax base, with some adjustments. In addition to spending tax revenues on its own services, the federal government also provides significant "equalization payments" to the "have not" provinces, using an allocation formula.

¹ Canada, *Income Tax Act*, R.S.C. 1985, c.1 (5th Supp)

² Canada, *The Constitution Act*, 1982, 30 & 31 Vict, c.3

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Since 1940, the only two parties in power federally in Canada have been the Liberal and Progressive Conservative parties. The federal government enacts income tax legislation through the parliamentary system, with most major changes announced in the annual federal budget, which is presented by the Minister of the Department of Finance.

Going back in history for a moment, in their introduction to the book *Tax is Not a Four Letter Word*,³ Alex and Jordan Himelfarb recount the rise in neo-liberalism in Canada, beginning around 25 years ago, and its free-market solution to economic stagnation and inflation, and the resulting prescription of low taxes and smaller government.⁴ They explain how governments sold this to a public accustomed to public goods and services: “The sales pitch was simple, and it was perfect politics: tax cuts would be so beneficial to economic growth that they would pay for themselves. Tax cuts were free- the last free lunch.”⁵ They also observe, at the time of the writing of the book, published in 2013: “that taxes are somehow separate from services they buy is now a part of political culture.”⁶ The other contributors to the book continue along this theme of exploring the tax-cutting phenomenon, and it is notable that this period there were both right wing Progressive Conservative and more centralist Liberal federal governments.

The Harper-Trudeau period reviewed here begins in 2006, with the election of Steven Harper’s Progressive Conservative minority government. This followed thirteen years of Liberal reign, under the leadership of Jean Chrétien and Paul Martin. While some previous Progressive Conservative leaders have been considered moderate conservatives, Harper’s Reform Party roots are indicative of his fiscal conservatism. As will be revealed shortly, his government continued the “tax cut mania”⁷ of those in power the decade before him. Harper’s government retained a minority government in the 2008 election, and then formed a majority government after the 2011 election, but fell to Prime Minister Justin Trudeau’s Liberal government in 2015. Trudeau successfully campaigned on strengthening the middle class at the expense of the wealthy, and his tax policy revisions purport to reflect this. While it is clear that there is at least a softening of the tax-cut frenzy, remnants of the low tax mentality are certainly still present, as evidenced by the significant net government cost of lowering middle income bracket rates and adding a new highest tax bracket.

B. A summary of major tax policy changes in the Harper-Trudeau era

This section gives a brief chronological summary of the major income tax policy changes during the Harper-Trudeau era.

³ Alex Himelfarb and Jordan Himelfarb, ‘Introduction: Tax is Not a Four-Letter Word’ in Alex Himelfarb and Jordan Himelfarb (eds), *Tax is Not a Four-Letter Word: a Different Take on Taxes in Canada* (Wilfred Laurier University Press ,2013) 1.

⁴ Ibid, 3.

⁵ Ibid.

⁶ Ibid.

⁷Eugene Lang and Philip DeMont, ‘A Brief Potted History of Ottawa’s Tax Cut Mania’ in Alex Himelfarb and Jordan Himelfarb (eds), *Tax is Not a Four-Letter Word: a Different Take on Taxes in Canada* (Wilfred Laurier University Press ,2013) 119.

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In its first post-election budget speech, and during a time of economic growth, the Conservative Minister of Finance Jim Flaherty opened by announcing its focus on tax relief.⁸ Despite forming only a minority government, the 2006 Budget⁹ included a plethora of significant tax changes, including a 1% GST reduction, decreasing the lowest income tax rate, and increasing the basic personal amount.¹⁰ More targeted tax credits included one for all employees, low income earners entering the workforce, tradespeople's tools, students' textbooks, children's fitness activities, and public transit. There were also significant tax reductions for corporations: both the general corporate rate and the small business rate would be gradually reduced over the next few years. In the fall of 2006, Minister Flaherty announced changes that would eliminate tax advantages income trusts had over corporations, but dampened the impact with a further corporate tax reduction and a policies aimed at seniors.¹¹

The 2007 Budget¹² again focused on tax reduction, concentrating on families (through a child tax credit and an increase of the spousal/dependent credit for single-earner families) and manufacturers (through accelerated depreciation). Later that same year, additional corporate tax – from 22.1 to 15 percent by 2012- were announced, and small business deduction rate reductions were accelerated by one year, such that the rate would decline from 16% to 11% by 2008.¹³

By the time of the February 2008 Budget,¹⁴ recession was looming. Nonetheless, the government introduced more tax relief, most notably in the form of a tax free savings account, in which savings could grow tax-free. If it wasn't already clear in 2008, the 2009 Budget,¹⁵ which followed the Conservatives winning another minority government, showed a full commitment to a plan to spend to stimulate the economy during the economic crisis. The Conservatives increased the basic personal amount and raised the upper limit of the lowest two tax brackets. It also offered more targeted relief through measures including expanding of the credit for low income earners entering employment and the age credit for seniors, as well as offering a new credits for first time homebuyers and home renovators. The 2010 Budget,¹⁶ in contrast, contained only minor tweaks to income tax policies.

The following year, 2011, was an election year, and by then the government's goal was a focus on low taxes as opposed to stimulus spending as it had been during the recession. Several "boutique" credits were offered: the family caregiver credit, arts tax credit, and volunteer firefighters tax

⁸Canada, Department of Finance, *The Budget Speech 2006: Focusing on Priorities* (2006)

⁹Canada, The Honourable James M. Flaherty, *The Budget Plan 2006: Focusing on Priorities* (2006).

¹⁰ This amount is a non-refundable credit available to all individual taxpayers and essentially operates to create a zero percent tax bracket.

¹¹ Canada, Department of Finance, 'Canada's New Government Announces Tax Fairness Plan' (News Release, 31 October 2006) Government of Canada <<https://www.fin.gc.ca/n06/06-061-eng.asp>>.

¹² Canada, The Honourable James M. Flaherty, *The Budget Plan 2007: Aspire to a Stronger, Safer, Better Canada* (2007).

¹³ Canada, Department of Finance, *Strong Leadership. A Better Canada: Economic Statement* (2007).

¹⁴Canada, The Honourable James M. Flaherty, *The Budget Plan 2008: Responsible Leadership* (2008).

¹⁵ Canada, The Honourable James M. Flaherty, *Canada's Economic Action Plan: Budget 2009* (2009).

¹⁶ Canada, The Honourable James M. Flaherty, *Budget 2010: Leading the Way on Jobs and Growth* (2010).

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credit.¹⁷ Tax policy changes in the next year's (2012) budget,¹⁸ were relatively minor, but included reducing the research and development credit in favour of direct spending.

Highlights of the 2013 tax policy changes include an expansion of the lifetime capital gains exemption for small business owners and farmers and fisherpersons, expanding the adoption tax credit, and introducing a super-credit to encourage new donors to make charitable donations.¹⁹ There were only minor income tax changes in the 2014 Budget,²⁰ with more notable changes announced later in the fall, as the Conservatives geared up for the election the following year.²¹ The fall announcements included enhancing the Children's Fitness Tax Credit, and the announcement of a "Family Tax Cut" package offering a more generous benefit for parents of children, increase in child care deduction, and limited income splitting for parents of minor children.

In 2015 the Conservatives announced plans to reduce the small business tax rate to 9% by 2019, and to double the tax free savings account limit. Yet another boutique tax credit was offered, this time a "Home Accessibility Tax Credit". Also, donors would no longer be taxed on the gains from selling private shares if the proceeds were donated to charity.²²

When Prime Minister Justin Trudeau's Liberal Party government took over late in 2015, it wasted no time in effecting tax changes to deliver on some campaign promises. In October, it announced a "Tax Cut to Strengthen the Middle Class", which involved a reduction in the tax rate for the second lowest tax bracket, and the creation of a new highest tax bracket for the wealthy. The government also announced a new income-tested Canada Child Benefit to replace the Conservative's Universal Child Care Benefit, and the repeal of income splitting for parents. In its first budget, released in 2016,²³ additional tax policy changes included eliminating the children's art and fitness credits, cancelling further phase-in of small business tax cuts as had been planned by the Conservatives, eliminating textbook and education credits, and introducing a teachers' credit for school supplies. In 2017, the Budget²⁴ announcements included further changes to tax expenditures, consolidating the caregiver credits into a single credit and eliminating the public transit credit. The Budget also signaled changes to close down loopholes used by small businesses.

¹⁷ Canada, The Honourable James M. Flaherty, *A Low-Tax Plan for Jobs and Growth* (2011).

¹⁸ Canada, The Honourable James M. Flaherty, *Jobs, Growth and Long-Term Prosperity: Economic Action Plan 2012* (2012).

¹⁹ Canada, The Honourable James M. Flaherty, *Jobs, Growth and Long-Term Prosperity: Economic Action Plan 2013* (2013).

²⁰ Canada, The Honourable James M. Flaherty, *The Road To Balance: Creating Jobs and Opportunities* (2014).

²¹ Canada, Department of Finance, 'PM Announces Tax Cuts, Increased Benefits for Families' (News Release, 20 October 2014) Government of Canada < <http://www.fin.gc.ca/n14/14-155-eng.asp>>.

²² Canada, The Honourable Joe Oliver, *Strong Leadership: A Balanced-Budget, Low Tax Plan for Jobs, Growth and Security* (2015).

²³ Canada, The Honourable William Francis Morneau, *Growing the Middle Class* (2016).

²⁴ Canada, The Honourable William Francis Morneau, *Building A Strong Middle Class: Budget 2017* (2017)

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Those changes were announced in the fall after public consultation,²⁵ a day after a promise to reduce small business taxation rates.²⁶

To sum up the tax policy changes in the past decade, Harper's time as Prime Minister was an era of tax cuts and boutique credits, followed by now Prime Minister Trudeau's quest to recalibrate income distribution to favour the middle class, at the expense of the upper class.

III. Tax Announcements as Persuasive Documents

Others have, not surprisingly, identified taxes as political²⁷. Language use and other tactics identified in this paper reinforce this point. The scope of analysis here is limited to income tax policy discussion in budgets and the budget speech, as well as other written announcements of income tax policy changes. These sources were chosen as they are the most broadly available and intended for general audiences and media. These communications, in particular the annual budgets, are also very well covered by the media, and thus likely have the highest public profile of any of the government's tax communication in Canada.

The analysis of tax announcements show that they are used to persuade. Why is this the case? Governments must gain legitimacy, must have revenue, and look towards the next election. As Marjorie Kornhauser states: "Legitimacy and a steady source of revenue provide the twin foundations of any enduring government."²⁸ The high profile of budgets means that they have an audience, and thus provide an opportunity to gain legitimacy. Paul Boothe, on reviewing Geoffrey Hale's book *The Politics of Taxation in Canada*,²⁹ explains:

The political goal of tax reform is not to reward particular groups for past support, but to capture the hearts and minds of the ever-moving, elusive, median voters by causing them to feel that they will be made better off immediately, in the medium term, or both.³⁰

The discussion below posits that multiple tactics are used to persuade, some of which may mislead the reader. In doing so, I make the assumption that the observations are deliberate tactics. While it would be practically impossible to have explicit confirmation that they were done mindfully with the view to persuade, their consistent use and the political environment in which they operate makes it likely.

²⁵ Canada, Department of Finance, 'Government Thanks Canadians for Helping Get Tax Fairness Right' (News Release, 17 October 2017) Government of Canada <<http://www.fin.gc.ca/n17/17-098-eng.asp>>.

²⁶ Canada, Department of Finance, 'Government Moves to Reduce Small Business Tax Rate and Support Fairness for the Middle Class' (News Release, 16 October 2017) Government of Canada <<http://www.fin.gc.ca/n17/17-097-eng.asp>>.

²⁷See e.g. Jonathan R. Kessleman, 'Economics versus Politics in Canadian Payroll Tax Policies' (1998) 24 *Canadian Public Policy* 381; Paul Boothe, 'The Art of Tax Reform' (2002) 50 *Canadian Tax Journal* 2038, 2044.

²⁸ Marjorie E. Kornhauser, 'Legitimacy and the Right of Revolution: The Role of Tax Protests and Anti-Tax Rhetoric in America' (2002) 50 *Buffalo Law Review* 810, 820

²⁹ Geoffrey Hale, *The Politics of Taxation in Canada* (University of Toronto Press, 2001).

³⁰ Boothe, above note 27, 2039.

A. Language was chosen carefully

Kornhauser has written multiple articles on rhetoric and taxes, and she points out that rhetoric can be used to either mask lack of change or mask proposed changes.³¹ The use of rhetoric in tax debates is not surprising. Nor is it necessarily objectionable. Kornhauser argues that the term “rhetoric”, or communicating persuasively, need not be viewed negatively and, in fact, is embedded in all written and spoken communication.³² However, Kornhauser points out that the term is also used “to mean insincere or flowery language used to mislead and emotionally sway an audience”.³³

Kornhauser concludes that the tax debate in the United States during a particular period of study was “rhetorical in the pejorative sense” as its assumptions were unstated, unnoticed, and hidden, and, thus, resulted in confusion rather than illumination.³⁴ It is argued here that much of the same could be said about the government’s tax policy announcement in Canada over the past decade: they were intended to persuade, contained hidden assumptions, and left a lot unsaid. In fact, it would appear that omission of detail was a tactical decision.

It is clear from reading the tax announcements that language is used to persuade. A variety of themes can be seen in the use of language, including consistent messaging, repetitive reporting on past achievements, setting a deliberate tone, and presenting taxes in a negative light.

1. Tone was deliberately set

The tone of a budget can set the stage for the tax and other changes to be announced. Given the less formal style of a budget speech, more license is given to deliberately set a tone. For example, in 2007, when economic times were good and the focus was on cutting taxes, the budget speech tone was aspirational and proud. The writing was poetic at times, and this poem could be named “That’s our Canada”, a refrain appearing eleven times in the budget speech.³⁵

The following year, in the face of the economic downturn, the tone of the budget speech was much more subdued, conveying a message that government was “holding down the fort”. By 2009, the government aimed to “weather the current storm”.³⁶ This was a time of “crisis”, and the tone was somber. They “passed through some steep and rocky terrain” but “their compass ha[d] not failed”³⁷, and by 2009 there was a tone of cautious self-congratulation and optimism. The 2011

³¹ Marjorie E. Kornhauser, ‘The Rise of Rhetoric in Tax Reform Debate: An Example’ (1996) 70 *Tulane Law Review* 2345, 2347.

³² Marjorie E. Kornhauser, ‘The Rhetoric of the Anti-Progressive Income Tax Movement: A Typical Male Reaction’ (1987) 86 *Michigan Law Review* 465, 469

³³ *Ibid.*

³⁴ *Ibid.*, 469-470.

³⁵ Canada, The Honourable James M. Flaherty, *The Budget Speech 2007: Aspire to a Stronger, Safer, Better Canada* (2007).

³⁶ Canada, The Honourable James M. Flaherty, *Canada’s Economic Action Plan: The Budget Speech 2009* (2009) 4

³⁷ *Ibid.*, 3.

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budget speech was particularly boastful of the Conservative tax record to date, likely due to it being an election year. And after winning a majority, the tone in 2012 returned to an aspirational one; once again, it was a time to dream. This time the poem would be entitled “we see Canada”:

We see young Canadians, confident in their future; retired Canadians, secure in their senior years; Aboriginal Canadians, realizing their vast potential; new Canadians, strengthening our country as they have done in every generation. We see every region of the country, more prosperous than ever in our history. We see Canadian businesses and universities coming up with things no one has thought of before, leading to new opportunities and a better life for Canadians and for people around the world.

We see Canada, going from strength to strength in the 21st century. We see Canada, at the centre of the world—with a great and friendly market to the south; a continent of opportunity across the Atlantic; and a world of growth across the Pacific. We see Canada, whose wealth, while immense, will be measured ultimately in the greater happiness and security of its people.

We see Canada for what it is and what it can be—a great, good nation, on top of the world, the True North strong and free. Our government has been inspired by this vision from the beginning. Today we step forward boldly, to realize it fully—hope for our children and grandchildren; opportunity for all Canadians; a prosperous future for our beloved country.³⁸

The government reverted back to a more cautious tone in 2013, advising that there were “significant risk ahead” given the “fragile state” of the global economy.³⁹ The boastful tone re-emerged in 2014 and 2015, not surprisingly with an impending 2015 election.

The 2016 Liberal budget speech was hopeful and aspirational, with the tone of their second budget being perhaps more forceful.

2. Taxes were presented in a negative light

Canadians pay too much tax. This is a constant story told in the tax announcements in the period of study. For example, Finance Minister Flaherty made the following statements on high taxes in his 2006 budget speech: “It’s holding families back. It makes it harder for small businesses to create jobs and opportunities. It discourages innovation and investment. It is limiting our productivity.”⁴⁰

³⁸ Canada, The Honourable James M. Flaherty, *Jobs Growth and Long-Term Prosperity, Economic Action Plan 2012: The Budget Speech* (2012), 9.

³⁹ Canada, The Honourable James M. Flaherty, *Jobs Growth and Long-Term Prosperity, Economic Action Plan 2013: The Budget Speech* (2013), 2.

⁴⁰ Canada, The Honourable James M. Flaherty, *The Budget Speech 2006: Focusing on Priorities* (2006), 5.

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Consistent with this message is the presentation of taxes as a “burden” from which to be “relieved”.⁴¹ This language is probably used consistently for a number of reasons. Firstly, it is presumed that tax cuts are popular with voters. As Kornhauser explains: “Because the purpose of rhetoric is to persuade, the particular form the rhetoric takes is important. It must reflect deeply and widely held views or else it will lack the power it needs to persuade.”⁴² Secondly, this language has permeated our discussions of taxes so deeply that they are used without much thought.⁴³ (As I write this paper, I catch myself using these terms as well). Thirdly, in the case of the Conservatives, it aligns with their ideology of small government and low taxes. In fact, one of Harper’s primary policy goals was to reduce taxes, and presenting taxes as a “burden” and reductions as “relief” is a subtle way to convince voters that this is the best course of action. However, the fact that the Liberal government’s first tax announcement was a “Tax Cut to Strengthen the Middle Class”⁴⁴ indicates the pervasiveness of the tax cut mentality, though it is notable that the terms tax “burden” and “relief” are not used nearly as often by the current government.

Tax expenditures are presented as tax cuts, as opposed to spending programs that happen to be located in the tax act, in some of the tax announcements. For example, the 2017 caregiver credit granted “*tax relief* for caregivers”.⁴⁵ In addition to getting credit for the popular notion of a tax cut, this has an appeal because it may be scrutinized less than a direct spending program.⁴⁶

However, there is some limit to this message that taxes are horrible, as both the Conservative and Liberal governments are adamant that tax avoiders and evaders are “not paying their fair share” and must be stopped. Therefore, there is at least a consistent message that citizens are morally obligated to contribute to society by paying taxes.

B. Rationales (or lack thereof) were delivered strategically

One strategy that could be used to rationalize a certain position would be to identify opposing arguments and address them head on, in order to appear rational and thoughtful and to address counterpoints the reader might come up with. However, if the audience is not considered to be interested or knowledgeable enough to detect the counterpoints, omitting to mention them may be a savvy strategy. In fact, a trickster may go one step further and mislead the audience to believe that a position is even stronger than it actually is. These strategies appear to be used in the tax policy announcements studied, as it is rare for a full and candid rationale to be given for a tax

⁴¹ The use of this terminology in Canadian discourse is also observed by Hugh Mackenzie, ‘Taxes and Public Services’ in Alex Himelfarb and Jordon Himelfarb (eds), *Tax is Not a Four-Letter Word: a Different Take on Taxes in Canada* (Wilfred Laurier University Press, 2013) 55,57

⁴² Marjorie E. Kornhauser, ‘The Morality of Money: American Attitudes toward Wealth and the Income Tax’ (1995) 70 *Indiana Law Journal* 119,138.

⁴³ Paul Saurette and Shane Gunster, ‘Canada’s Conservative Ideological Infrastructure: Brewing a Cup of Cappuccino Conservatism’ in Alex Himelfarb and Jordon Himelfarb (eds), *Tax is Not a Four-Letter Word: a Different Take on Taxes in Canada* (Wilfred Laurier University Press, 2013) 227, 227.

⁴⁴ Canada, Department of Finance, ‘Government of Canada Announces Tax Cut to Strengthen the Middle Class’ (News Release, 7 December 2015) Government of Canada < <http://www.fin.gc.ca/n15/15-086-eng.asp>>.

⁴⁵ Moreneau, *Budget 2017*, above n 24, 160 [emphasis added].

⁴⁶ [Hogg, Magee and Li (check)]

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policy change. The ways in which the government has tried to rationalize policy choices are described below.

1. “Fairness” was used as a rationale

The appeal to “fairness” as a rationale is a fairly common occurrence in the tax announcements. The reality that there is no agreement on tax fairness⁴⁷ may actually work to the advantage of the government; this way, readers may agree with the fairness argument for different ideological, self-interest based, or other reasons. .

The term “fairness” is used in a few ways, referred to here as content, compliance, and administrative fairness. “Content fairness” refers to the substantive rules of tax and is primarily concerned with distribution of the total taxes paid to government. There are various theories about the optimal distribution,⁴⁸ and ideas about optimal distribution may be tied to political ideology. The Harper government used the term “fairness” in this way to describe changes to allow income splitting,⁴⁹ while the Trudeau government used it to describe its middle class tax cuts (which would provide “greater tax fairness for the people who need it most- the middle class”⁵⁰).

“Compliance fairness” refers to citizens abiding tax laws.⁵¹ Both the Harper and Trudeau governments used the term “fairness” to justify rules to clamp down on tax avoidance or evasion.⁵² The references to the need to stop those who do not follow tax laws and pay their “fair share” appear to evoke feelings of solidarity as between the compliers and governments, in their crusade against the enemy evaders/avoiders. [add examples]

It is interesting that aggressive tax avoidance, which often is “legal” until the announced tax changes are put into effect, seem to be put in the same category as evasion (often through use of tax havens)⁵³ Two examples of aggressive tax avoidance justified, at least in part, on the grounds of fairness are the Conservative changes to eliminate income trust tax advantages vis-a-vis corporations,⁵⁴ and the Liberal announcements to eliminate “loopholes” being used by small

⁴⁷ Trish Hennessey, ‘Tax Cuts and other Cheap Parlour Tricks’ in Alex Himelfarb and Jordon Himelfarb (eds), *Tax is Not a Four-Letter Word: a Different Take on Taxes in Canada* (Wilfred Laurier University Press, 2013) 137, 142.

⁴⁸ For example, David Kamin identifies four theories of distributive justice: “ (1) equality of resources, under which a fair tax system would reduce income disparity; (2) the "difference principle," under which a fair tax system would seek to minimize income inequality but would give priority to maximizing the welfare of the least well-off in society; (3) equal sacrifice, under which a fair tax system would impose the same sacrifice, in terms of utility, upon each taxpayer; and (4) utilitarianism, under which the optimal tax system would maximize the summed value of everyone's utility.” (‘What is a Progressive Tax Change? Unmasking Hidden Values in Distributional Debates’ (2008) 83 New York University Law Review 241, 266).

⁴⁹ [add reference]

⁵⁰ Canada, Department of Finance, ‘Speech on Measures to Strengthen the Middle Class’ (7 December 2015) Government of Canada < http://www.fin.gc.ca/n15/15-086_1-eng.asp>.

⁵¹ Kornhauser, refers to this as ‘fair collection’ in ‘Legitimacy’, above n 28, 873: ‘Fair collection means that everyone pays the appropriate amount of tax that the law assesses.’

⁵² [add references]

⁵³ See e.g. Flaherty, *Budget 2007*, above n 13, 239; Flaherty, *Budget 2010*, above n **Error! Bookmark not defined.**, 101.

⁵⁴ part of the “Tax Fairness Plan.” [add cite]

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businesses.⁵⁵ In both cases, the appeals to fairness may have been successful to the general population, but those affected negatively were vehemently opposed in both cases, and brought up fairness counter-points.⁵⁶ So, while the flexible meaning of fairness can perhaps work to the government's favor in some instances, it has the downfall of being open challenged by self-interested parties who will experience negative tax implications from the policy change.

“Administrative tax fairness” refers to the government fairly administering the income tax act, and is not likely to attract hostility as generally citizens will not experience negative tax consequences. Appealing to administrative tax fairness, as was done by the Harper government in the [xxx] budget⁵⁷, and it can be used to foster confidence in government.

2. “Winners” and “losers” of tax policy changes were identified when politically expedient

It is clear that any tax policy change comes with a trade-off. That is, there will be winners and losers in the case of any tax policy. As David Kamin explains in the American context:

The federal government faces a budget constraint... This has important implications for the permanence of a non-revenue-neutral tax change; any such tax change will be budget neutral over the long term. Tax cuts will be paid for via eventual spending reductions or tax increases; similarly, tax increases will, in the future, finance either lower taxes or greater spending. Thus, if a tax cut creates only winners today by reducing tax revenues, then it must generate losers tomorrow through some combination of increased taxes and reduced spending. This truth comes from the "iron laws of arithmetic and fiscal solvency." ...As analysts have noted with regard to the Bush tax cuts, "Someone, somewhere, at some time will have to pay for them."⁵⁸

Good tax policy decision-making requires identifying the costs and benefits to various groups, and considering them in light of government goals. If the government does not make citizens privy to this analysis by discussing costs and benefits and winners and losers, it is difficult for the public to assess whether the policy choices were sound. The tax announcements examined in this paper appear to show a common theme of drawing attention to winners and to losers only when it would be politically expedient.

There may be *overall* “winners” in a budget who are the clear targets for tax changes. In terms of each particular tax policy change, there may be a clear group of winners, in the case of a tax cut or advantage, or a clear group of losers, in the case of a tax increase or removal of a tax advantage. However, it must be noted that members of the groups of winners and losers unusually do not share equally in the winnings or losses.

⁵⁵ [add cite]

⁵⁶ [add cite]

⁵⁷ [add cite]

⁵⁸ Kamin, above n 48, 263-264 [footnotes excluded].

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a. The overall winners were well-advertised and fairly consistent

The targeted beneficiaries under Stephen Harper's tax policies were consistent over the years, with businesses, families, and, perhaps, older Canadians, being the most touted. (The upper class frequently benefited from the tax policy changes, but this was not made known in the policy announcements).⁵⁹The Liberal government has vocally targeted the "middle class and those working hard to join it"⁶⁰ as the intended beneficiaries of its tax policy changes thus far.

b. Indirect winners of particular tax expenditures and tax rate reductions were rarely identified

The winners of most tax expenditures and tax rate reductions appear obvious in most cases. Anyone who paid individual or corporate rates would benefit from individual or corporate rate reductions, respectively, and anyone meeting the qualification criteria for tax expenditures would benefit. However, those who would benefit the most and least within the groups of beneficiaries were seldom identified, nor were the likely indirect beneficiaries.

One example of failing to mention those who would benefit the most and least can be seen in the instance of income splitting. The gendered and class impacts of income splitting have been discussed thoroughly in the literature.⁶¹ These have subsequently been raised by the Liberals in the case of income splitting of parents, but not pensioners (likely because of the political backlash that might result).

The most obvious omission is the failure to point out that the wealthy were likely to benefit most from the vast majority of the Conservative tax policy changes, including small business tax deductions increases, the lifetime capital gains exemption increase, child fitness tax credit,⁶² spousal income splitting, and exemptions of gains on sale of property where proceeds are donated to charity. While obvious to many tax policy experts and likely the advisors to the wealthy, the Conservatives were counting on their non-wealthy voting base to not notice, perhaps due to a lack of knowledge or interest.

Indirect beneficiaries of policies are not discussed either, likely because governments prefer to appear to be targeting the more apparent, direct beneficiaries. For example, in the case of tax policies appearing to benefit students, parents of those students may indirectly benefit if they were otherwise assisting in covering the cost of education. In the case of corporate tax reductions or expenditures, governments did not point out that the incidence of corporate taxes is unclear and may fall to employees, shareholders, all holders of capital, consumers.⁶³ It is, however, likely generally assumed that corporations, or its shareholders, would benefit. Why wouldn't governments point out this flawed reasoning, which might help to gain favour among those who bear the corporate tax and thus benefit from reduced taxes? One reason might be that if the

⁵⁹ See part II.B.2.b, below.

⁶⁰ [cite]

⁶¹ [Cite Woolly, etc.]

⁶² [Cite to von Tigerstrom et al Canadian Tax Journal]

⁶³ [Cite to incidence articles]

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incidence questions are raised, the public might start to question the corporate tax in its entirety. This would be a very real threat to government revenues.⁶⁴

c. Indirect losers for the expenditures and tax reductions were not identified often.

Governments tend not to identify non-obvious losers of a particular expenditure or tax reduction, likely with the hopes that those negatively affected will not otherwise figure it out. Again, as is the case in many of the tactics already identified, ignorance and apathy are assumed. In this case, however, there are special circumstances that make it more likely that the losers will not protest loudly. One could assume that the losers of a tax rate reduction include anyone who does not get to directly use the lowered rate. However, the rate reduction is often justified as helping the economy, suggesting wider positive implications.⁶⁵ It is nearly impossible for citizens themselves to determine who will indirectly benefit in these circumstances. The losers of a tax expenditure are widely dispersed or nearly impossible to detect, and so we often say that “the rest of society” will pay, at some point. But which members of society, and when? What tax policy would have been in place if that tax expenditure was not implemented? Would there have been a different tax or direct spending measure in its place? Would certain other public programs have grown or not been cut back? Would there have been broad based tax reductions? Since the implications are so unknown, the best that can be said is some members of society will eventually pay for this cost. There is no identifiable group to mobilize around this issue.⁶⁶

d. Direct losers were often easy targets or offered some compensation

In a number of instances, the direct losers of tax policy changes were offered some sort of off-setting compensation. There could be good policy reasons for doing this where direct spending was considered superior to tax expenditures, such as in the case of the elimination of textbook and education tax credits in favour of direct spending programs to assist low and middle class students.⁶⁷ By tying the spending to the elimination of the tax expenditure, it may appease at least those students who would qualify for the spending programs. When the research and development credit was reduced in the 2012 budget, it was tied to an increase in direct spending.

In other cases, the losers of a tax policy change were easy targets. Both the Liberals and the Conservatives may have viewed avoiders and evaders as easy targets⁶⁸ because the general population would likely loathe them for shirking their obligations. However, although the general public might agree with these policy changes, those targeted may not appreciate being portrayed

⁶⁴ [Cite to the tax revenue mix]

⁶⁵ [cite to examples]

⁶⁶ Richard Eccleston and Ian Marsh, ‘The Henry Tax Review, Cartel Parties and the Reform Capacity of the Australian State’ (2011) *46 Australian Journal of Political Science* 437, 441: ‘organised economic interests will lobby for self serving tax concessions resulting in a policy debate dominated by concentrated and politically powerful groups which tend to drown out the disorganized and politically ineffective majority’ [citations omitted].

⁶⁷ The Honourable William Francis Morneau, *Growing the Middle Class* (2016).

⁶⁸ [cite examples]

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as avoiders. This appears to have been the case during the recent crackdown on small business owners using aggressive tax planning.⁶⁹

The wealthy also appear to be easy targets. The Conservatives often mentioned in their tax announcements that the avoiders and evaders were usually also wealthy,⁷⁰ suggesting that wealthy tax cheats and free riders were particularly reprehensible. For the Liberals, the wealthy were deliberate targets in its middle class tax cuts. They had successfully campaigned on the issue of redistribution,⁷¹ and therefore they had the political authority to work towards eliminating the tax advantages of the wealthy.

Another tactic may be “burying” the tax change, as appears to be the case in changing the tax rate for testamentary trusts from graduated rates to the top marginal rate in 2014: it was very quietly put in the Budget paper, and only explained in more detail in the tax annex.⁷² The government was likely counting on the public not noticing or being this, perhaps aided by the fact that the repercussions would only be experienced upon death.

e. Indirect winners were occasionally identified

Indirect winners of a tax policy were only occasionally identified by Harper’s government. This was done in the context of cracking down on tax avoidance and evasion. For example, tax evaders and avoiders would leave “working Canadians and small businesses, among others” paying more taxes,⁷³ and therefore they would benefit from cracking down.

In the case of the tax expenditures eliminated by the Liberal government (the Child Tax Benefit, tuition and textbook tax credits and the children’s fitness and art tax credits), the government identified the middle class as the overall, indirect “winners”,⁷⁴ because the tax savings could be used to implement programs that were “better targeted”.

Both parties in power during the period under study, but especially the Conservatives, were quick to justify policy changes by referring to the economic growth that would result,⁷⁵ vaguely suggesting that all Canadians would benefit. However, there was a complete absence of explanation of the assumptions on which this rested and the mechanics of how this would work. The vagueness of these assertions could be, once again, an assumption that the public is not knowledgeable enough to understand economics. It also may, however, be because the trickle-

⁶⁹ [Cite examples]

⁷⁰ [Cite examples]

⁷¹ [cite authority]

⁷² The Honourable James M. Flaherty, *The Road to Balance: Creating Jobs and Opportunities* (2014) 259.

⁷³ Flaherty, ‘Budget 2007’ above n 13, 239. And, later in 2011, a similar message was sent: measures to close loopholes would “protect the Government’s revenue base- which helps keep tax rates low.” (Flaherty, *A Low-Tax Plan*, above n 17). See also a similar message in 2012 Budget: Flaherty, *Action Plan 2012*, above n 18, 203.

⁷⁴ Above n 67.

⁷⁵ [cite examples]

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down theory of economics has been questioned,⁷⁶ and therefore an overt reference to this assumption could weaken confidence in the government. Instead, the public is asked to blindly believe that the government has a handle on the “science” of economics, as though the government’s assumptions were indisputable.⁷⁷

f. Winners and loser were at times misrepresented

Yet again presuming some degree of taxpayer ignorance, the winners and losers of tax policy changes were sometimes misrepresented. While omitting to identify the winners and losers, might lead to misinformation, in the instances discussed here in this section, the government more overtly mislead readers.

In the case of Harper’s lowering the lowest marginal personal rate and increasing the basic personal amount, the government stated that “the majority of personal income tax relief...goes to Canadians with incomes in the two lowest tax brackets.”⁷⁸ This statement suggests that these tax reductions favour low to middle income earners. However, it is clear that while the total benefit would be greater for higher income earners in absolute dollars.⁷⁹ [confirm]

Along the same lines, in 2009 the Conservative government claimed to provide “additional tax relief, especially for lower- and middle income Canadians.”⁸⁰ The increase of the basic personal amount and raising of the upper limit of the lowest two tax brackets were supposedly aimed at this group,⁸¹ but of course would have maximum dollar value to anyone whose income fell above the former upper limit of the second highest tax bracket.

When the “family tax cut” package was announced leading up to the 2015 election, the Conservative government suggested that low and middle-income earners were the big “winners” as they “will receive two-thirds of the overall benefits provided by the package.”⁸² However, this is misleading as the income splitting would favour higher income earners, particularly where one spouse had very low income.

The Liberal’s “middle class tax cut” asked “the wealthiest...to contribute a little more”.⁸³ While it is true that the very wealthiest would pay more because of the introduction of a new highest tax bracket, the greatest tax benefits would go to those earning between the upper limit of the reduced income bracket (\$90,000) and the lower limit of the new highest bracket (\$200,000). Many people would not identify those people as “middle class”, particularly on the higher end. Perhaps it was assumed that well-off individuals would likely have advisors to let them know they would

⁷⁶Marjorie E. Kornhauser, ‘The Consistency of Conservative Tax Policy’ (2014) 108 North Western University Law Review 825, 850.

⁷⁷ [add cite- Kornhauser? or Tax is Not a Four Letter Word?]

⁷⁸ Department of Finance, ‘Strong Leadership’ above n 13, 85.

⁷⁹ [cite to Pate 86?]. The chart in the statement (Department of Finance, ‘Strong Leadership’ above n 13, 85) depicts a greater share of relief in the lower tax brackets, but that is likely due to there being more people in those brackets!.

⁸⁰ Flaherty, *Budget Speech 2009*, above n 36,4.

⁸¹ *Ibid*, 9.

⁸² Department of Finance, *PM Announces Tax Cuts*, above n 21.

⁸³ Department of Finance, ‘Strengthen the Middle Class’ above n 44.

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benefit, and it is but that others wouldn't have the ability or interest in the details to realize who the biggest winners would be.⁸⁴

Other examples of misleading taxpayers were where the arts and cultural community was singled out as benefiting from new charitable donation rules,⁸⁵ where it was equally as likely that other types of charities would benefit. In this case, the government clearly wanted to make it look like they were paying attention to the arts.

g. Only infrequent, and often vague, links were made between tax revenues and spending

Taxes have two functions: public provision and redistribution.⁸⁶ Himelfarb and Himelfarb explain that we have had a more "benign" view of taxes in Canada as compared to our American neighbours, and traditionally:

[W]e have understood that taxes, however irksome, are the price we pay for civilization and a better future, for the privilege of living in Canada and the opportunities that provides. While there are legitimate disputes regarding how much tax and of what sort, we have generally accepted higher taxes as a way of funding valued public goods and services, redistributing income to avoid the worst excesses of inequality, and shaping the future to the extent we can.⁸⁷

So, while collection of taxes can be linked to redistribution and government spending on public services, and Canadians know this is this case, over the past decade the governments have not made this link explicit.⁸⁸ This is rather curious, as budgets are replete with spending measures, and it would seem logical to link the collection mechanism, taxes, to the spending. However, there are ideological and tactical reasons that may motivate this omission.

Where governments are ideologically opposed to high taxes, as Harper's Conservatives certainly were, failing to connect taxes and spending is consistent with the message of taxes as a burden. As Hugh Mackenzie points out, "[i]t is "easier to sell the idea of taxes as a "burden" if they are presented as disconnected from any of the purposes for which they are raised."⁸⁹ And even though

⁸⁴ [cite authority- most people don't know how tax brackets work.

⁸⁵ Flaherty, *Budget 2006*, above n 9, 123.

⁸⁶ Liam B. Murphy and Thomas Nagal, 'Taxes, Redistribution, and Public Provision' (2001) 30 *Philosophy & Public Affairs* 53.

⁸⁷ Himelfarb and Himelfarb, 'Introduction', above n 3, 1-2.

⁸⁸ Tax is a Not a four letter word. At best, it is possible to find some insinuation that the two are linked. For example, at one point in the 2014 Budget, the Minister of Finance states that reducing government debt will "[e]nsure taxpayer dollars are used to support important social services- such as health care- rather than paying interest costs" (Flaherty, *The Road to Balance*, above n 20, 243).

⁸⁹ MacKenzie, 'Public Services' above n 41, 57

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the current Liberal government does not appear to share the same unyielding disdain for taxes, it must be cognizant of the political pitfalls of raising taxes after decades of anti-tax messaging.⁹⁰

Neglecting the link between taxes and spending impedes fulsome policy discussions, and leaves governments less accountable. The potential for being subject to less scrutiny concerning the taxing/spending trade-offs could motivate governments to stay silent.⁹¹

3. Ideology was used to rationalize

Not surprisingly, one can find ideological underpinnings in tax policy reforms. Turning first to Harper's government, the primary message was that taxes should be low. This is clearly consistent with conservative ideology. Underlying this is the belief that pre-tax income is the property of the taxpayer, not government,⁹² and this is reflected in terminology such as the "Tax Back Guarantee"⁹³ and the reference to "taxpayer dollars".⁹⁴

Small government is another conservative ideology, and it can be detected in messaging that individuals can better meet their needs through markets and other mechanisms. For example, the Conservatives suggested that charities can better meet community needs: "[t]hese charities now have a powerful set of tools for raising the funds they need to meet the needs of Canadians".⁹⁵ The policy choice to support private (rather than public) caregiving is also consistent with this belief.⁹⁶

Messaging in the budget also supports the belief that hard work is to be rewarded by offering benefits going to "families working hard,"⁹⁷ tax changes that will "make work more attractive"⁹⁸ and a budget described as "reward[ing] effort".⁹⁹ The conservative virtue of wealth accumulation¹⁰⁰ can be seen in the creation of the tax free saving account, and can be contrasted with the more progressive goal to reduce income inequality,¹⁰¹ which can be seen in the liberal's steepening of the rate structure.

Both governments target families, but it seems that Harper's government had a particular vision for families where one parent stayed home to raise the children. However, in announcing the provisions supporting this vision, the government was almost always careful to make it known that it would not exclude other versions of families. In the case of the Universal Child Care Benefit, not only would it "would help parents choose the child care option that best suits their families"

⁹⁰ Himelfarb and Himelfarb, 'Introduction' above n 3, 2.

⁹¹ MacKenzie, 'Public Services' above n 41, 57-58.

⁹² Kornhauser, 'Rise of Rhetoric' above n 31, 2349 [also add cite to N Brooks article]

⁹³ Department of Finance, 'Tax Fairness Plan', above n 11.

⁹⁴ See e.g. Flaherty, *Budget 2006*, above n 9, 51

⁹⁵ *Ibid*, 121.

⁹⁶ Flaherty, *A Low-Tax Plan*, above n 17, 114.

⁹⁷ Flaherty, *Budget 2006*, above n 9, 64.

⁹⁸ *Ibid*, 70.

⁹⁹ *Ibid*, 63.

¹⁰⁰ Kornhauser, 'Rise of Rhetoric' above n 31, 2349-50.

¹⁰¹ *Ibid*, 2349.

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needs” including “a parent staying at home”, it would also help those using formal and informal care.¹⁰² While the extension of the spousal and dependent credits would help those with a “low-income spouse”¹⁰³ (code for the male breadwinner with a wife staying at home to raise the kids), the government was quick to point out that this would also help single parents.¹⁰⁴ Spousal income splitting was packaged together with other measures that would “benefit every Canadian family with children,”¹⁰⁵ although it would actually only benefit spouses in different tax brackets, with greatest benefit to high income earners with lower income spouse (for example, staying home to raise children).

Some of the Liberal government’s tax policy changes also reflect its ideological beliefs. For example, the redistribution of wealth is implicit in the trade off of education credits in favour of direct government funded programs, the universal “cash” system in favour of an income tested child benefit, and higher taxes for the upper class in favour of lower taxes for the middle class.¹⁰⁶ So, while the Liberal budgets also reflected a value of hard work,¹⁰⁷ the ideological differences between the conservative value of equality of opportunity versus the liberal value of equality of need¹⁰⁸ can be detected in the parties’ policy choices.

What is somewhat perplexing is that, aside from the constant tax cut refrain, governments rarely overtly tie tax policies to ideology, and instead allow policies to speak for themselves, or use more subtle terminology, as discussed above. Why wouldn’t governments tie tax policy changes to ideology more overtly? Firstly, ideology is, rather surprisingly, less important to voters than political affiliation.¹⁰⁹ If a party can therefore count on a fair amount of its voter base that will not otherwise be concerned if party ideology lines up with its own, why risk losing these supporters by highlighting ideological issues that those voters might not agree with? Presumably those party supporters who are particularly concerned with ideology will draw the connections between the policy results and ideology. Further, in the two terms that it was a minority government, the Conservatives would have been sensitive to the need to appease Members of Parliament of opposing parties in order to gain their votes. It would be more difficult to form alliances if it was spouting ideology that was unpalatable to other parties and their supporters.

It is interesting that in the 2015 budget speech, more overt ideology was detectible when Finance Minister Joe Oliver stated that “Raising a family is hard work, and unlike our opponents, we prefer to leave it to the experts: Mom and Dad.”¹¹⁰ Was this perhaps because, for the first time, there was a new Finance Minister, who used a different strategic approach? Had the government reached a

¹⁰² Flaherty, ‘Budget 2007’ above n 13, 227.

¹⁰³ Ibid.

¹⁰⁴ Ibid. [check]

¹⁰⁵ Canada, Department of Finance, ‘Harper Government Tables Notice of Ways and Means Motion to Implement Tax Cuts for Families’ (News Release, 24 March 2015) Government of Canada < <http://www.fin.gc.ca/n15/15-027-eng.asp>>.

¹⁰⁶ Femke Roosma, Wim van Oorschot and John Gelissen, ‘A Just Distribution of Burdens? Attitudes Toward the Social Distribution of Taxes in 26 Welfare States’ (2015) 28 *International Journal of Public Opinion Research* 376, 380.

¹⁰⁷ [Cite example.]

¹⁰⁸ Kornhauser, ‘Rise of Rhetoric’ above n 31, 2348-2349

¹⁰⁹ [Cite authority]

¹¹⁰ [cite]

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new level of confidence in its final year of a majority government? Or was it an election year tactic used to distinguish themselves from the Liberals?

The Liberal government had the confidence to overtly tout ideology in its decision to release a gender statement, “an assessment that ensures all budget measures—not just those aimed specifically at women—help us advance the goals of fairness, stronger workforce participation, and gender equality.”¹¹¹ In other parts of the budget, tax policy changes were evaluated based on their effects on women.¹¹² While this is a laudable advancement, it is easy to see a political motivation considering the significant presence of women among the Liberal base.¹¹³

4. Overall, rationales provided are unacceptable

Tax policy-making should involve weighing trade-offs and governments undoubtedly do so before announcing policy changes. However, the government’s rationale for making its policy choices is seldom made public. Justifications for policy changes were absent, misleading, or vague. For example, when farmers and fishing business owners were given an increased exemption for capital gains on the sale of their property, the budget explained that this was to provide an incentive to invest in these businesses and to allow owners to “maintain more of their capital for retirement”.¹¹⁴ The obvious question is why other small business owners, who are also entitled to a capital gains exemption, weren’t bumped up at the same time? Why wouldn’t governments provide a complete justification? Likely, omitting details is an attempt to cover up a lack of good policy rationale. In the case of favoring farmers and owners of fishing businesses, for example, this is likely simply done to gain their political favour (a tactic described below).

C. Little attempt was made to educate citizens about the tax system

Governments could use budgets to educate citizens about the tax system. Tax credits could be presented as choices about public spending. Writing about “fairness” could lead to a discussion about equity. However, just as is the case with details about the justification for tax policy changes, governments choose less content and more rhetoric and strategic messaging. Again, this is likely because more fulsome information could come back to bite the government because, quite simply, it is difficult to justify many of the spending decisions other than on political grounds. In fact, many of the strategies set out above appear to rely on taxpayer’s ignorance about taxes, giving rise to a disincentive to educate taxpayers about the tax system.

¹¹¹ [cite to 2017 budget speech]

¹¹² [Cite]

¹¹³ [fix citation] This poll shows that women tended to support Prime Minister Trudeau.

[http://poll.forumresearch.com/data/dc2e85ea-624f-4377-b2f1-928dc876fef3Federal%20Horserace%20News%20Release%20\(2015%2010%2018\)%20Forum%20Research.pdf](http://poll.forumresearch.com/data/dc2e85ea-624f-4377-b2f1-928dc876fef3Federal%20Horserace%20News%20Release%20(2015%2010%2018)%20Forum%20Research.pdf)

¹¹⁴ [Cite]

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D. Tax advantages are offered to appeal to self-interest

The foregoing discussion of language, rationales, and education, centered on how things were communicated in the budget. The discussion now shifts to focus on the content of the tax policy changes.

This particular section points out that both governments, and the Harper government in particular, was focused in lowering taxes. This is related to two points already mentioned: the language used in the budget presents taxes in a negative light, and governments do not promote taxes as a way to build better societies through public spending. Low taxes were a crucial element in Harper's agenda. They even became part of the title of the 2011 budget, in an election year (though ironically, no notable tax policy changes were made in that particular year).

1. Small groups are given advantages to gain political favor

Governments capitalize on self-interest¹¹⁵ by offering tax advantages to particular groups. For example, the "Home Accessibility Tax Credit" was offered as part of a commitment to "supporting seniors, whose efforts have helped make Canada the strong and prosperous country that it is today."¹¹⁶ Harper's "boutique tax cuts", including the children's fitness tax credit and income splitting for pensioners have been described as "little more than backdoor tax cuts aimed at winning middle-income voters over to the Conservative Party."¹¹⁷ although researchers have shown that most of the benefits went to higher income earners.¹¹⁸

The Liberals purported to commit to eliminating many of the Conservative tax boutique credits, in the name of simplicity, efficiency, and better targeted support.¹¹⁹ However, offering a classroom supplies tax credit to teachers in that very same budget shows just how irresistible this tactic of capitalizing on self-interest can be, even where its use is blatant hypocrisy.

Governments may be able to get away with targeted policies without backlash from others by combining it with the strategy of not mentioning trade-offs or giving full rationales, and counting on a lack of knowledge or interest. Governments can also rely on the "puppy dog effect"¹²⁰ to avoid vocal opposition to targeted tax advantages. This tactic recognizes that there are certain causes or recipients that evoke an emotional response such that others, including critics, cannot oppose for emotional or political or tactical reasons. This emotional response may be linked to reverence, sympathy, respect, appreciation, or even, as with the case of puppy dogs, adoration. This has allowed governments to introduce targeted policies advantaging groups such as

¹¹⁵ This assumption of self-interest has complex and mixed support in empirical studies: see *e.g.* Takomori Sumino, 'Level or Concentration? A Cross-national Analysis of Public Attitudes Towards Taxation Policies' (2016) 129 *Social Indicators Research* 115.

¹¹⁶ [cite to 2015 budget]

¹¹⁷ Matt Fodor 'Taxation and the Neo-Liberal Counter-Revolution: The Canadian Case' in Word' in Alex Himelfarb and Jordon Himelfarb (eds), *Tax is Not a Four-Letter Word: a Different Take on Taxes in Canada* (Wilfred Laurier University Press, 2013) 101, 113.

¹¹⁸ *Ibid*, 114.

¹¹⁹ [cite]

¹²⁰ [cite]

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firefighters, persons with disabilities and their caregivers, and perhaps even teachers, with relatively low risk of criticism.

2. Tax advantages were offered to appease “losers”

The reason for offering tax advantages can be to appease those negatively affected by other tax policies.

When Harper’s government announced its plan to eliminate the tax advantages previously afforded to income trusts, it surely knew very well that they were breaking an election promise they had made earlier that year.¹²¹ To help to soften the blow, these changes were announced along with measures to lower the corporate rate (which would now apply to the income trusts) and extend greater tax benefits to seniors through an enhanced age credit and pension income splitting. The focus on pensioners was undoubtedly due to the negative impact of the income trust changes on their pension or personal investment portfolios.¹²²

The Liberals have also used this maneuver. When there was vocal opposition to the proposals to tighten up the small business taxation rules, the government quietly announced a reduction of the small business tax rate.¹²³ Although it was presented as “as committed”, it was actually a commitment by the previous Conservative government, and the Liberals had previously committed to NOT reduce the small business tax.¹²⁴ Clearly, this was done to appease small business owners without drawing attention to Liberal supporters who would oppose it.

E. Rhetoric-abound and other conclusions

Rhetoric is prevalent in annual budgets and other tax announcements. As Kornhauser points out, good rhetoric clarifies issues, while bad rhetoric obscures them¹²⁵ The tax announcements studied here demonstrate an unwillingness for governments to reveal the reasons underlying their policy choices. The assumption that readers are best persuaded through “flowery language”, misleading statements, and blatant pandering carries with it assumptions about the lack of knowledge, egotism, and perhaps even deficient intellect of the readers. To be certain, governments do not see annual budget speeches and budget plans as an opportunity to fully inform or educate citizens about taxes and policy.

¹²¹ [cite]

¹²² [fix cite] “sensible Move on Income Trusts” Edmonton Journal 2 November, 2006. <https://www.pressreader.com/canada/edmonton-journal/20061102/281805689427309>. [cite also to Frances Woolley(?)]

¹²³ Above n 26 and accompanying text.

¹²⁴ [cite]

¹²⁵ Kornhauser, ‘Rise of Rhetoric’ above n 31, 2346-7.

IV. So What? Recommendations and Conclusions

A. Recommendations

What lessons can be learned from the foregoing observations about the federal tax announcements over the past decade? Four arguments are made below.

1. Tax Announcements should be Perceived as Persuasive

It is not surprising that governments aim to persuade; it would be foolish to think otherwise. In light of the preceding discussion, it is particularly important for citizens and media to scrutinize government tax announcements, keeping in mind the political strategies that may be employed, rather than assuming full, balanced, and accurate disclosure by the government.

2. Rationales should be made more apparent and fulsome

Tax policy-making is complex. As Andrew C. Gould and Peter J. Baker explain: ‘Tax reform requires governments to address several issues simultaneously, including the breadth and scope of reform, revenue goals, equity goals, resource allocation goals, and timing. Fiscal policies involve inherent trade-offs among administration, efficiency, equity, political acceptability, and revenue.’¹²⁶ It is not a process that is easy to explain to the public.

The preceding discussion in this paper reveals that tax complexity and lack of public understanding, has been dealt with, and even capitalized on, by holding back important details about the winners and losers and other effects of tax policy changes. This is not unique to income taxes or the time period under examination. It also has occurred in the case of consumption tax reform in an earlier time period.: Alasdair Roberts and Jonathan Rose point out that in campaigning to introduce the GST, the government’s “main objective was to avoid the "confusion, conflict and irritants that would undermine the integrity of the proposed GST," Customs and Excise also hoped that its communications programme would persuade Canadians "that the administration of the GST is well designed," and that resource increases in the department were the "absolute minimum required to manage a mature GST.”¹²⁷ The government had relied on polling to make decisions about what information would be revealed through its GST advertising strategy.¹²⁸

It is possible for governments to be persuasive and forthcoming. In fact, if decisions are truly defensible as policy choices, they should not have a problem with revealing justifications for their policy decisions. The complexity of tax law and policy does create challenges, but when accompanied by the other communication projects suggested later, these challenges are not insurmountable. In fact, clear communication about the need for the tax law changes, the possible

¹²⁶ Andrew C. Gould and Peter J. Baker, ‘Democracy and Taxation’ (2002) 5 *Annual Review of Political Science* 87,88-89 [references omitted]

¹²⁷ Alasdair Roberts and Jonathan Rose, ‘Selling the Goods and Services Tax: Government Advertising and Public Discourse in Canada’ (1995) 28 *Canadian Journal of Political Science* 311,313.

¹²⁸ *Ibid*, 317-19.

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options for reform, and reason for selecting one particular option, has been described as a recipe for successful tax reform.¹²⁹

Some have argued that it is proper for politicians to take advantage of public misperceptions through “spin”.¹³⁰ Leo P. Martinez describes a couple of goals that may underlie this behaviour: “Some might call this trickery, others might call it paternalism: if the child does not understand what is good for her, it might be necessary to dress the truth up a little.”¹³¹ Martinez then goes on to suggest that the goals may be even more sinister “The trouble with these approaches is that they depend on an assumption that politicians, executives, and legislators are in fact interested in sound tax policy and a fiscal system that is capable of responsibly raising revenue”¹³²

Whatever the reason for such blatant mis- and under-communication, more transparent and forthright communications of the costs, benefits, and reasons for arriving at certain tax policy decisions will strengthen democracy. Kornhauser explains: “current rhetoric seeks only to evoke knee-jerk reaction rather than reflection. It is cheerleading, not thought. What we need, however, is a debate, not a sports competition.”¹³³ Our democratic system requires healthy debate. With the appropriate information, the public would be better equipped to hold governments accountable. Media and opposition within and outside of the House of Commons can assist with this,¹³⁴ but they, too, require governments to be transparent about their decision-making, including disclosing information they used to arrive at decisions.

3. Budgets should connect taxes with spending

As part of a more fulsome explanation of tax policy decisions, governments should connect taxes with spending. This will help to make debate more robust as it will take into account more considerations. Kornhauser points out that “[p]eople cannot think rationally about fiscal policy without linking taxation and expenditures. Similarly, they cannot think rationally about taxation without talking about its benefits as well as its burdens.”¹³⁵ Along the same lines, Jim Stanford argues that because taxes are only justified based on the public spending they finance, it is important to analyze the implication of taxes along with impact on public programs.¹³⁶

It might be easier and even politically expedient in the short run for governments to ignore these links. As Hennesy says, quoting Penn the Magician: “Nothing fools you better than the lie you tell yourself”, and then explaining: “Part of the magic of tax cuts is that we want to believe we

¹²⁹ Boothe above n 27, 2040.

¹³⁰ Leo P. Martinez, ‘Tax Legislation and Democratic Discourse: The Rhetoric of Revenue and Politics’ (2004) 4 Nevada Law Journal 510,516, mentioning the work of Steven Sheffrin.

¹³¹ Ibid.

¹³² Ibid.

¹³³ Kornhauser, ‘Rise of Rhetoric’ above n 31, 2371.

¹³⁴ Ibid.

¹³⁵ Marjorie E. Kornhauser, ‘A Tax Morale Approach to Compliance: Recommendations for the IRS’ (2007) 8 Florida Tax Review 599,632.

¹³⁶ Jim Stanford, ‘The Economic Consequences of Taxing (and Spending)’ in Alex Himelfarb and Jordon Himelfarb (eds), *Tax is Not a Four-Letter Word: a Different Take on Taxes in Canada* (Wilfred Laurier University Press, 2013) 17, 19.

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can have them without any great sacrifice on our part.”¹³⁷ Mackenzie [confirm] explains why governments get away with failing to link tax cuts to public spending. He [confirm] points out that public services are so pervasive is that they become practically invisible, particularly when governments have not shone a spotlight on them, as has been the case in recent decades.¹³⁸ He argues that this can lead to underinvestment in public services and provides a “smokescreen to obscure the fact that while tax cuts go disproportionately to those with high incomes, the costs of the public expenditure restraint needed to pay for them are born disproportionately by lower- and middle-income Canadians.”¹³⁹

Hugh MacKenzie chastises the tax cutting advocates for their short sightedness through this tongue-in-cheek analogy: “Conversations that separate actions from consequences are familiar to any parent. They are the kinds of conversations you have with a four-year-old at the supermarket checkout as you try to explain he can’t just grab that back of Smarties [candy]; the kinds of conversations that any toddler understands.”¹⁴⁰

Himelfarb and Himelfarb also criticize the debate in recent times on similar grounds: “Gone is the language of the citizen, replaced by the atomizing language of consumer and taxpayer. These taxpayers, we are told, know far better than some distant bureaucrat how to spend their money- as if roads, bridges, public schools, hospitals, and the like arise spontaneously.”¹⁴¹ More generally, others have noted that the conversation of taxes, particularly the conversation around cutting taxes, has been devoid of “any serious reference to the reason we have taxes in the first place- to pay for public services”¹⁴² This debate could be transformed from a tax bashing affair to talk about obligations, obligations, benefits, how taxes “tie us to one another and the common good.”¹⁴³

The long term tax cuts cannot be sustained without the public noticing reductions in public services, and implementing or even maintaining current tax rates can be made easier if, as xx Martinez puts it “more attention were given to the many benefits and necessities of daily life (for rich, poor, and everyone in between) that depend on tax revenue (including roads, schools, police and fire services).”¹⁴⁴ Mackenzie’s solution is to be more attentive to the value Canadians receive from public service.¹⁴⁵

Hugh Mackenzie suggests that there can be political value in greater government focus on public investment, as “public opinion surveys report repeatedly that respondents indicate a preparedness to pay more in tax in return for better public services in a wide range of areas.”¹⁴⁶ On the other

¹³⁷ Kornhauser, ‘Rise of Rhetoric’ above n 31, 2371.

¹³⁸ MacKenzie, ‘Public Services’ above n 41, 81.[check all MacKenzie references to ensure referring to the correct article]

¹³⁹ Ibid.

¹⁴⁰ Ibid, 55.

¹⁴¹ [cite to Tax is Not a 4 Letter Word, 15]

¹⁴² MacKenzie, ‘Public Services’ above n 41, 55.

¹⁴³ Himelfarb and Himelfarb [cite to Tax is Not a 4 Letter Word, 15]

¹⁴⁴ [Cite to Martinez At 517 (see politics folder)]. See also MacKenzie, ‘Public Services’ above n 41, 81

¹⁴⁵ MacKenzie, ‘Public Services’ above n 41, 81.

¹⁴⁶ Himelfarb and Himelfarb criticize the debate in recent times: “Gone is the language of the citizen, replaced by the atomizing language of consumer and taxpayer. These taxpayers, we are told, know far better than some distant bureaucrat how to spend their money- as if roads, bridges, public schools, hospitals, and the like arise spontaneously.”[cite] More generally, others have noted that the conversation of taxes, particularly the conversation

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hand, Frank Graves point out that sorting out public opinion is complex. For example, Graves points to surveys showing that the public would rather governments cut spending than increase taxes to address a deficit,¹⁴⁷ but, somewhat contradictorily, they have a strong preference for a government priority of investing in social areas as opposed to keeping taxes as low as possible.¹⁴⁸ Not surprisingly, non-Conservative supporters show stronger support for investment in services.¹⁴⁹ Along similar lines, while Conservative and Green party supporters prefer smaller government with lower taxes and fewer services, NDP, Liberal and Bloc supporters prefer larger government with higher taxes and more services. Thus, the Conservative government's focus on small government and lower taxes, while ignoring effects on public service, likely play to its voter base. The Liberal government, on the other hand, might be better off concentrating more on the linkage between taxes and public services, particularly if it can convince the public of a less wasteful, accountable and transparent use of funds.¹⁵⁰

Kornhauser (in the American context) frames the argument for greater links between taxes and services as a government obligation:

Leaders have an obligation to lead. As Justice Frankfurter once said "the responsibility of those who exercise power in a democratic government is not to reflect inflamed public feeling but to help form its understanding[.]" "In the tax area, many officials and candidates for office have sorely neglected this responsibility. Indeed, they have not only reflected inflamed public feeling, they have consciously sought to ignite the public's constantly simmering anti-tax sentiment. It is time for them to shoulder their responsibility by rationally discussing tax policy. They should help preserve the balance between the positive and negative aspects of tax protest, not destroy it in their efforts to achieve or maintain office. It is time for them to lead."¹⁵¹

So long as taxpayers see value in public spending, a consequence of linking taxes and spending will be that taxes will be elevated in status from a burden to a responsibility. This should help to motivate tax compliance.¹⁵² The government's anti-tax rhetoric as of late can threaten legitimacy,¹⁵³ and presenting taxes in a more positive light could help to reduce this threat.

around cutting taxes, has been devoid of "any serious reference to the reason we have taxes in the first place- to pay for public services"[cite] This debate could be transformed from a tax bashing affair to talk about obligations, obligations, benefits, how taxes "tie us to one another and the common good." [cite]

¹⁴⁷Frank Graves, 'Canadian Public Opinion on Taxes' in Alex Himelfarb and Jordon Himelfarb (eds), *Tax is Not a Four-Letter Word: a Different Take on Taxes in Canada* (Wilfred Laurier University Press, 2013) 82, 84-85.

¹⁴⁸ Ibid, 85-86.

¹⁴⁹ Ibid, 86.

¹⁵⁰ Ibid, 97-98.

¹⁵¹ Kornhauser, 'Legitimacy' above n 28, 929-930 [footnotes omitted].

¹⁵² Kornhauser rhetoric and avoidance 138

¹⁵³ [cite to article in *Tax is Not a Four Letter Word*]

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4. Budgets should be used as an opportunity to educate about the tax system

Even if more information was given on the trade-offs of particular policy decisions, many citizens would not have the requisite broader understanding of how our tax system works to fully evaluate the policy change. As Edward McCaffery has stated, “[p]eople just do not think very much, or very well, about taxes,” and tend to “[look] only to one salient dimension of a public policy issue, ignoring or underweighting all else.”¹⁵⁴ While he likely referring to Americans, it likely applies to Canadians as well.

Other than tax returns themselves, budget documents are the best publicized government documents. Unlike other tax-related government documents targeted at researchers and tax specialists (such as tax expenditures, backgrounders, technical documents), budgets, and especially budget speeches, are directed at general citizens and media. This presents is an opportunity to help citizens understand our tax system.

While expecting all citizens to become tax experts is not a realistic goal, most adults, or even teenagers, could achieve basic understanding of the goals of a tax system (such as equity, neutrality, and simplicity) and the concepts of tax expenditures. While governments may find taxpayer ignorance convenient when implementing unsound policies, they actually may find that a better educated populace makes it easier to gain political support for increases in taxes and increasing tax equity. For example, the government could have perhaps gained more support from the general population for the recent changes to close loopholes used by small businesses or to eradicate the tax advantages of income trusts. Perhaps those negatively affected may have objected out of self-interest anyway, but a better educated populace would have been more equipped to join the government and academics in arguing that, for the most part, these were good policy choices. Greater knowledge of the tax system also would have the benefit of increasing tax compliance.¹⁵⁵

B. Conclusion

Tax policy announcements over the past decade reveal a number of tactics to persuade readers. The main themes are an intentional use of language; strategic, sparse, and sometimes misleading communication of rationales underlying the policies; failure to educate citizens about the tax system; and a blatant use of tax policies to buy votes. There is no way to know if all of the examples identified were intentional tactics, but the frequency with which these were used suggests that they often were deliberate.

Governments will always be motivated to spin messages in their favor, and thus government communications will always need to be scrutinized with this in mind. Conservatives have tried, with a fair degree of success, to unite voters over their disdain for taxes. Progressives have called, however, for another vision for Canada, where we are brought together in solidarity as social

¹⁵⁴[cite to article in NYU 2014 symposium]

¹⁵⁵ Marjorie E. Kornhauser, ‘A Tax Morale Approach to Compliance: Recommendations for the IRS’ (2007) 8 Florida Tax Review 599, 633; [add citation to CD Howe report]

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citizens, and for a return back to “leveraging taxes to build a better society.”¹⁵⁶ Governments could promote this vision by pointing out the great things our tax dollars buy for us, personally and as a society. This would seem to be a vision that the current Liberals are flirting with, but not quite committing to, likely for fear that the tax cutting rhetoric is so established that moving away from it would have negative repercussions. Perhaps with more vocal citizen support, or a burst of government confidence, the conversation around taxes may begin to change through transparency and flow of meaningful information, and less empty rhetoric.

If tax announcements include a more fulsome, transparent and balanced accounting of the reasons tax policy choices were made, along with a message that there is link between taxes and services, and a general education about the tax system, better tax policies can result.¹⁵⁷ Taxpayers will be better equipped and more confident and interested in holding governments accountable. They will be better able to engage in meaningful debate. Members of the media and opposition may themselves have better tools to elevate the quality of tax policy discussions, and may not feel as constrained by lack of public knowledge.

Politics, rhetoric, and taxes may indeed all go hand in hand. However, it is possible for citizens to eschew smoke and mirrors and demand governments place more confidence in their ability to properly evaluate policy choices, rather than being treated as self-interested and ignorant. If successful in their calls for more transparent, respectful, and meaningful communication from governments, or if the current government makes a decision to take this more morally responsible route on its own, all members of our society would be “winners”.

¹⁵⁶ [cite to Trish Hennessy, in *Tax is Not a Four Letter Word*, 143].

¹⁵⁷ James Alt, Ian Preston, and Luke Sibieta, ‘The Political Economy of Tax Policy’ [complete this cite]