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“Tax Policy as a Moral Issue Under Judeo-Christian Ethics”

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Introduction and Background Information

In the Fall of 2002, I published a lengthy law review article claiming that Alabama’s state and local tax laws are immoral under the principles of Judeo-Christian ethics. The article “*An Argument for Tax Reform Based on Judeo-Christian Ethics*” satisfied the thesis requirement when I spent my sabbatical at the Beeson Divinity School, a conservative, interdenominational, orthodox, evangelical Christian seminary, and earned the masters in theological studies degree.¹ The reaction both by the public at large and the news media was far more intense than anyone expected.² Less than a year later, this thesis was re-published as part of a paperback book under the title *THE LEAST OF THESE: FAIR TAXES AND THE MORAL DUTY OF CHRISTIANS*³ and Alabama’s Governor Bob Riley, a conservative Southern Baptist whose voting record when he was in Congress consistently lined up with the far right, pushed through the legislature and sent to the voters a tax reform plan that would have started the process of correcting the injustice embedded in Alabama’s state and local tax laws.

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¹ Susan Pace Hamill, *An Argument for Tax Reform Based on Judeo-Christian Ethics*, 54 *Alabama Law Review* 1-112 (2002) [hereinafter Alabama Tax Reform Thesis].

² See, e.g., “Seminary Article Sparks Alabama Tax-Code Revolt”, *The Wall Street Journal* (February 12, 2003); “Law Professor Summons Jesus as a Witness for Tax Reform”, *The Washington Post*, (March 23, 2003); “What Would Jesus Do? Sock it to Alabama’s Corporate Landowners”, *The New York Times*, (June 10, 2003).

³ Susan Pace Hamill, *THE LEAST OF THESE: FAIR TAXES AND THE MORAL DUTY OF CHRISTIANS* (Cliff Road Books 2003) [hereinafter Paperback Book]. Because the publisher expected the greatest number of sales to be in Alabama, where 93% of the population practices Christianity while less than 1% (0.20% precisely) practices Judaism, we chose a title highlighting the moral duty of Christians. However notwithstanding this title, the arguments apply equally to people of both the Christian and the Jewish faiths because the moral principles of Judeo-Christian ethics developed in the thesis come from the Hebrew Scriptures, what Christians refer to as the Old Testament. See Alabama Tax Reform Thesis, *supra* note 1 at 5, note 4. In order to emphasize the universal relevance and application of my work to Jews as well as to Christians, when I summarize the moral principles developed in my thesis I will use the term Hebrew Scriptures.

The idea of evaluating tax policy under the moral principles of Judeo-Christian ethics probably seems unusual to most people. Moreover, my professional background did not suggest I would be the sort of person who would use a sabbatical to attend a seminary of any kind and then end up pleading the cause of tax fairness on faith-based grounds.⁴ Before attending the Beeson Divinity School my teaching and research revolved around corporations, partnerships and limited liability companies from both a tax and business law perspective⁵ and I had ten years of experience in tax law in the private and government sectors. A brief summary of how my work applying Judeo-Christian ethics to Alabama's tax policy got started offers useful background on the most important parts of the thesis and its relevance beyond Alabama's borders.

Before attending the Beeson Divinity School I did very little towards putting my faith into practice. Despite my extensive education and experience in the area of tax law, I failed to notice that Alabama's state and local tax laws were grossly unfair to low income people.⁶ Instead of using my upcoming sabbatical to complete a book on the evolution of business organizations, I sought a seminary education to empower me to bring an ethical perspective to my scholarship, which at the time focused on corporate theory.⁷ I chose the Beeson Divinity School because my minister said they offered a quality program and I could commute from home. My religious background, being that of a mainline Methodist with moderate social and political leanings, made me an unusual student at Beeson.⁸ Once I got to Beeson for the first time in many years I was not surrounded by lawyers, law professors and law students. And for the first time in seven years I was able to see the unfairness of Alabama's state and local tax laws.⁹

⁴ See Francis Wilkinson, "Divine Right: From the belly of the conservative beast, a small group of Christians set out to change the way the pious think about politics", *The American Prospect* (August 28, 2003) at http://www.prospect.org/print-friendly/web_features/2003/08/wilkinson-f-08-28.html: [hereinafter Wilkinson] ("Susan Pace Hamill is an unlikely redeemer. Since 1994, Hamill has lived with her husband and two children in Tuscaloosa, where they moved after she left a job at the IRS in Washington. A former corporate lawyer, she was an inveterate careerist who spent years fussing over her tenure file at the University of Alabama").

⁵ Some examples of my pre-Beeson Divinity School publications include: "From Special Privilege to General Utility: A Continuation of Willard Hurst's Study of Corporations", 49 *American University Law Review* 81-180 (October 1999); "The Origins Behind the Limited Liability Company", 59 *Ohio State Law Journal* 1459-1522 (December 1998); "The Limited Liability Company: A Catalyst Exposing the Corporate Integration Question", 95 *Michigan Law Review* 393-446 (November 1996); and "The Taxation of Domestic Limited Liability Companies and Limited Partnerships: A Case For Eliminating the Partnership Classification Regulations" 73 *Washington University Law Quarterly* 565-608 (Summer 1995).

⁶ Paperback Book, *supra* note 3 at xi-xii.

⁷ *Id.*

⁸ Wilkinson, *supra* note 4 ("Hamill entered Beeson as a mainstream Methodist and a social, political and religious moderate. Why she chose to spend her law-school sabbatical at a conservative evangelical seminary is a bit of a mystery to everyone involved. 'You're trying to get to the core psychology of why I did this and I don't think I can answer that very well', Hamill says. 'I am probably the strangest student they've ever had'").

⁹ Paperback Book, *supra* note 3 at xi-xii.

A small newspaper article informing me that Alabama's income taxes reach deep into poverty prompted me to look further. A cursory investigation further revealed ridiculously low property taxes, oppressively high sales taxes and outrageously low funding for most of Alabama's public schools. As a tax professional I was shocked. I did not think this much unfairness existed anywhere in the United States. Because of my education at the Beeson Divinity School and the fact that most Alabamians practice Christianity, I immediately focused on the gap between Alabama's unfair taxes and the moral values most of us living in Alabama have adopted. The professors I consulted at the Beeson Divinity School said that I had an iron clad theological case against Alabama's unfair taxes. They also told me that I should pursue this topic because I was probably the only person in Alabama with both extensive tax background and a seminary education.¹⁰ I promptly abandoned the corporate theory topic I had planned and changed my masters thesis to an attack of Alabama's unfair tax laws as immoral under Judeo-Christian ethics.

Before summarizing the most important parts of the thesis, it is useful to establish what taxes are, why we have taxes, why the fairness of taxes must be tested by moral standards and finally establish that evaluating tax policy under the moral principles of Judeo-Christian ethics does not pose a constitutional problem under the First Amendment. A tax is a compulsory payment imposed by a government to meet public needs. Governments use tax revenues to pool resources so that all, even those in the community the least well off, will collectively benefit. In addition to providing support that everyone in the community needs, revenues raised from taxes also care for the poor and allow them a chance to better themselves, through for example a free public education. Nobody likes paying taxes yet few people want to give up the benefits taxes provide. Without taxes civilization would quickly descend to anarchy. In the United States citizens pay two distinct levels of tax – federal taxes meet national needs and state and local taxes meet needs within the borders of the particular state, county and city.¹¹

Why is it necessary to legally require people to pay their taxes and impose fines or even prison terms on those who fail to pay? Why not just rely on voluntary charitable giving to raise the needed level of revenues? The answer is quite simple. Virtually all people if given the choice would pay less than their fair share and many people would pay nothing at all. More bluntly, everyone wants the community benefits taxes provide (good public schools, well maintained roads, a competent and responsive police force, an infrastructure supporting healthcare, to name just a few) but nobody wants to pay their fair share of the costs. Russell B. Long captured this well when he said "Don't tax you, don't tax me, tax the fellow behind the tree."¹²

This attitude comes from basic human greed, which is present to some degree in all of us. Those practicing Christianity and Judaism recognize that greed is part of the human condition and a

¹⁰ *Id.*

¹¹ Hamill, Paperback Book, *supra* note 8 at ix-x.

¹² *Id.*

enormous spiritual problem to overcome. Although charitable giving can be an important supplement to a community that already has a fair tax structure, we simply cannot rely exclusively on charitable giving to raise adequate revenues to meet most community needs.¹³ So we must use the arm of the law to compel the payment of taxes, which means tax policy must be tested under the standards of justice. This is a very important point – many Christians and Jews confuse the moral requirements of justice and charity. They assume that charitable giving of their money and time absolves them from any moral obligations to address injustice embedded in the laws. Alabama is the perfect example where impressive charity coincides with miserable injustice. Simply put, an “A+” in charity does not average an “F” in justice to a “C”.

Fair tax policy under moral principles of justice focuses on two broad questions. First, the level of taxes needed to raise adequate revenues to meet the minimum needs of those in the community subject to the tax must be defined by the moral standards of the community and will differ among communities. Second, the burden for paying the taxes must be spread out among taxpayers at different levels of income and wealth. Whether the taxes in question are “fair” must ultimately be determined by the moral values adopted by the people subject to the tax. More plainly there is a right way and a wrong way to impose taxes. Taxes that raise revenues in a right way reflect a morally healthy society, while taxes that raise revenues in a wrong way reflect an immoral society.¹⁴

Morally evaluating Alabama’s tax policy under the principles of Judeo-Christian ethics is valid despite the First Amendment’s requirement of separation of church and state. A population study shows that more 90% of all Alabamians claim to be Christians and 96% of the members of the Alabama legislature claim to be as well. After first proving that Alabama’s state and local tax laws violate the moral principles of Judeo-Christian ethics, I then make a “bottom up” moral appeal to Alabamians in their individual capacities as voters and members of the community. I argue that Alabama’s Christians have a moral obligation to work for tax reform because the tax laws are a product of the democratic process in Alabama, which they have the power to change because of voting and free speech rights.¹⁵

Summary - “An Argument for Tax Reform Based on Judeo-Christian Ethics”

“An Argument For Tax Reform Based on Judeo-Christian Ethics” attacks Alabama’s unfair tax structure and the resulting public school funding patterns under two broad moral principles which forbid the oppression of the poor and require that the poor enjoy at least a minimum opportunity to improve their economic situation and better their lives.¹⁶ Alabama’s tax laws oppress low income

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Alabama Tax Reform Thesis, *supra* note 1 at 5-6 and note 7.

¹⁶ Paperback Book, *supra* note 3 at xiii.

Alabamians by forcing them to pay an unacceptably large portion of their meager resources in state and local taxes.¹⁷ Alabama's tax burden is regressive, meaning that the tax burden as a proportional share of the taxpayer's available income grows larger as the taxpayer's income shrinks. In plain language families with less resources are forced to pay a greater percentage of their scarce resources in taxes than those with more resources.¹⁸

A simple example helps explain the concept of regressive taxation. Compare a family earning \$10,000 with a \$500 tax bill to a family earning \$100,000 with a \$1,000 tax bill. These taxes are regressive because the family with less must give up 5% of their earnings to pay taxes (5% of \$10,000 equals \$500), while the family with more only has to give up 1% of their earnings to pay taxes (1% of \$100,000 equals \$1,000). At first glance these taxes may appear fair because the family with more pays more taxes when measured in actual dollars. However because of the larger proportional burden (5% verses 1%) imposed on the family with less earnings, these taxes are always considered unfair because a family earning less cannot afford to pay as much tax, not just in terms of actual dollars, but also in terms of the proportional size of their tax burden given their total earnings.¹⁹

Alabama's income and sales tax structures are principally responsible for the oppression of regressively overtaxing poor and lower middle-class Alabamians. Alabama's income taxes reach deep into poverty, taxing incomes as little as \$4,600 a year. A family of four still considered too poor to owe any federal income taxes must pay nearly \$500 in Alabama state income taxes.²⁰ At the same time punishing high sales tax rates, reach eight, nine, and in a few areas as high as ten and eleven percent. Even worse sales taxes fully apply to the most basic necessities such as inexpensive clothing and food at the grocery store, taking an even bigger bite out of the budget of poor and low income Alabamians.²¹

At the same time Alabama's state and local taxes raise inadequate revenues, the lowest per capita in the United States²², which deny poor and lower middle class Alabamians a minimum opportunity to improve their lives.²³ These inadequate revenues leave critical services, including the public schools, grossly underfunded with most of Alabama's public schools funded in the "D" and "F" ranges. Children from poor and lower middle-class families have little opportunity to better their

¹⁷ Alabama Tax Reform Thesis, *supra* note 1 at 67-68.

¹⁸ *Id* at 48-49.

¹⁹ Paperback Book, *supra* note 3 at xi.

²⁰ Alabama Tax Reform Thesis, *supra* note 1 at 14.

²¹ *Id* at 19 and at 83-85 (Appendix B).

²² *Id* at 22-23.

²³ *Id* at 68-70.

situation and Alabama remains at or near the bottom in all measurements of quality of life.²⁴ In Alabama we crush the poor by overtaxing them and then we keep them poor by denying them any reasonable chance of escaping poverty.²⁵

Alabama's grossly inadequate revenues and over taxation of poor and lower middle class Alabamians are caused by the tax laws allowing the wealthiest Alabamians to get away with not paying their fair share of Alabama's tax burden. This is caused principally by practically nonexistent property taxes.²⁶ In addition to having the lowest revenues per capita, Alabama has the lowest property tax revenues per capita in the United States.²⁷

Moreover a complicated property tax classification system that keeps the base for most property very small and in the case of huge tracts of profitable timber farms, practically nonexistent, allows the wealthiest landowners to pay practically nothing.²⁸ Timber makes up seventy-one percent of Alabama's real property yet accounts for less than two percent of Alabama's meager property taxes, averaging less than one dollar an acre. Even worse Alabama's tax laws treat huge timber corporations owning thousands of acres, which represent a major source of profits in the state's economy, as having the same nonexistent ability to pay as a small farmer with only a few hundred acres.²⁹ The tax laws especially deny the rural areas across Alabama the ability to impose fair taxes on the only wealth available in the area, those timber farms, leaving rural public schools among the worst funded in the state and the rural areas trapped in perpetual poverty.³⁰

In developing the two moral principles of Judeo-Christian ethics relevant to evaluating tax policy I use a process of hermeneutics that first discovers what the text meant to the original audience and then articulates the broad ethical principles established for them. If the "specific life situations" of the first audience mirror the "specific life situations" of the contemporary audience, then the broad ethical principles apply to the contemporary audience in the same manner as it applied to the first audience. However even if "the specific life situations" of the original and contemporary audiences do not mirror one another due to vast cultural differences and a gap of over 2000 years, the broad

²⁴ *Id* at 34-41 and at 96-100 (Appendix D).

²⁵ *Id* at 75-76.

²⁶ Alabama's income tax structure also minimizes the burden for taxpayers at the highest income levels, primarily by allowing full use of exemptions regardless of income level (as compared to the federal income tax which phases out the use of exemptions at very high income levels) and by allowing a full deduction for federal taxes paid. *See Id* at 15-17.

²⁷ *Id* at 20-22.

²⁸ *Id* at 23-28.

²⁹ *Id* at 29-33 and at 86-95 (Appendix C) and at 101-112 (Appendix E).

³⁰ *Id* at 42-46.

ethical principles can still be applied to the contemporary audience as long as the contemporary situation is “genuinely comparable”, meaning the contemporary problem must be analogous, to the situation originally addressed in the text.³¹

The two moral principles forbidding oppression of the poor and requiring that the poor enjoy a minimum opportunity to better their lives start appearing in the Book of *Genesis*, which portrays God monotheistically as the only supreme being. No person or group of persons, regardless of their station in life, stand at a lesser level of importance than other persons because God created all persons in His image. The familiar commandments “Love the Lord your God with all your heart and with all your soul and with all your strength” and “love your neighbor as yourself”, inseparably link a right relationship with God to right relationships with all other human beings. Because all human beings bear the image of God, all persons have an enormous responsibility from an ethical standpoint as “God’s representatives on earth” to act as his or her “brother’s keeper”. The Hebrew Scriptures establish that any person who perpetuates a wrong against their fellow human beings perpetuates a wrong against God.³²

The Hebrew Scriptures, especially the Books of *Exodus*, *Leviticus*, *Deuteronomy*, *Isaiah*, *Jeremiah*, *Ezekiel*, *Amos* and *Micah* express special concern for vulnerable and powerless persons in the community, who in ancient near east culture were the widows, orphans, aliens and poor people. Recognizing that “there will always be poor people in the land” and that poor people are created in the image of God to the same degree as persons enjoying more fortunate economic circumstances, the Hebrew Scriptures using both general terms and providing specific examples, create a broad ethical principle forbidding the economic oppression of poor persons. Although the ancient world’s examples of economic oppression covered in the Hebrew Scriptures sometimes differ from contemporary examples, the “specific life situation” - the tendency to take advantage of poor people - has not changed. Therefore the Judeo-Christian ethical principle forbidding the oppression of poor people applies to contemporary audiences in the same manner that principle applied to the original audience.³³ At the very least the teachings of Jesus Christ in the New Testament affirm this moral principle forbidding oppression.³⁴

Tax laws, such as Alabama’s, that heavily burden poor and lower middle class people violate this moral principle forbidding oppression and are therefore unjust. All adherents of both the Christian and Jewish faiths have a moral obligation to work towards correcting oppressive tax laws. In a democratic society, such as United States, where all qualified persons enjoy rights to vote and free speech at a minimum this moral obligation involves exercising those political rights to have the tax

³¹ *Id* at 51-52.

³² *Id* at 52-53.

³³ *Id* at 54-55.

³⁴ *Id* at 61-66.

laws changed. Persons with greater powers, opportunities and education have even greater moral obligations and political leaders and religious leaders in the churches and synagogues have the greatest moral responsibilities.³⁵

The Hebrew Scriptures further expand the ethical principle forbidding oppression by also requiring that poor persons enjoy a minimum opportunity to meet their basic needs and improve their economic circumstances. In addition to generally requiring that they be treated justly and generously, the Hebrew Scriptures mandate that others leave behind food for poor persons to harvest. Primarily based on the commandment to observe the Sabbath, the Hebrew Scriptures also create an infrastructure providing those facing the harshest economic circumstances, which in the ancient near east world meant they were indentured servants, heavily in debt or possessed no land, an opportunity to achieve economic self sufficiency. These provisions required servants to be released every seven years, debts to be forgiven every seven years, certain redemption rights of land sold outside the ancestral family to be honored and mandated that all land ultimately be returned to the original ancestral owner every fifty years.³⁶

The moral principle of minimum opportunity is much more difficult to see due to vast cultural differences and the passage of thousands of years between the time the Hebrew Scriptures were written and our modern world of today. “The specific life situations” of the ancient and contemporary economic structures, defining what is necessary to achieve economic self sufficiency, do not mirror one another exactly. Because economic well being in the ancient world revolved around ownership of sufficient land, while contemporary economic structures require an adequate education in order to develop marketable skills, the specific provisions of the Hebrew Scriptures, related to harvesting practices, release of servants and debt and land tenure rights, do not literally apply today.³⁷

However the ancient indicators of poverty of owning no land (which lead to heavy indebtedness and finally indentured servitude) is “genuinely comparable” to the contemporary problem of poor people unable to break out of the cycle of poverty due to an inadequate education and little or no marketable skills. Consequently the Judeo-Christian ethical principle mandating that poor persons enjoy at least a minimum opportunity to improve their economic circumstances applies to contemporary audiences but today calls for action which will ensure that poor children enjoy a minimum opportunity to achieve an adequate education. An adequate education is the modern equivalent of the seven year releases, and the harvesting and land tenure rights.³⁸ At the very least the teachings of Jesus Christ in the New Testament affirm this moral principle requiring that children have

³⁵ *Id* at 71-75.

³⁶ *Id* at 55-57.

³⁷ *Id* at 58-59.

³⁸ *Id*

a minimum opportunity to better their life through an adequate education.³⁹

The only way to raise enough revenues to adequately fund a decent public education for all children, including those who cannot afford to pay for it is through adequate tax revenues. It is simply not possible for charitable giving to meet all the needs. Alabama's inadequate tax revenues, strongly linked to the inadequate property taxes, especially benefitting the wealthiest landowners, is directly responsible for the dismal funding of most of the public schools. Therefore Alabama's state and local tax laws also violate the moral requirement of minimum opportunity and both Christian and Jewish adherents in the state have a moral obligation to work towards correcting this injustice.⁴⁰

The moral principles of Judeo-Christian ethics forbidding oppression and requiring that persons struggling at the bottom of the economic scale enjoy a minimum opportunity to improve their lives provides general guidance on how to craft tax policy so that it meets the minimum standards of justice. First the community must ascertain the minimum standards of basic health, education, and welfare that the moral principles of Judeo-Christian ethics demands all citizens to have and determine the cost to heed God's charge to meet these standards. If tax revenues are failing to meet this threshold then taxes must be increased to raise the needed revenues.⁴¹

In addition the level of adequate tax revenues must be raised by taking into account the different levels of income and wealth among taxpayers. If the tax system imposes an unfair heavy burden on the poor and lower middle classes then the tax burden must be adjusted to remove that unfair burden from those least able to pay. The bottom line is fair taxes in line with the moral principles of Judeo-Christian ethics, even in a revenue neutral posture, requires those at higher income levels, owning property of significant value to pay higher taxes.⁴²

The amount of reform needed to bring Alabama's state and local tax structure in line with the moral principles of Judeo-Christian ethics is substantial because not only does Alabama raise inadequate revenues but the burden for raising the revenues falls too heavily on the poor and lower middle classes. The income tax structure must be reformed to raise the exemptions to a sufficient level so that individuals and families below the poverty line do not pay any income taxes. At the same time the income tax burden on higher income taxpayers must be increased, in an equitable fashion. Proposals to reform the income tax structure should remove the elements that favor the highest income taxpayers, which include phasing out the right to claim exemptions at very high income levels and eliminating certain deductions such as the deduction for federal income taxes paid. In Alabama genuine income tax reform should also raise the rates at the highest income levels in order so that

³⁹ *Id* at 61-66.

⁴⁰ *Id* at 71-75.

⁴¹ *Id*.

⁴² *Id* at 77-77.

income tax revenues will increase as a whole.⁴³

Alabama also must reform the sales tax structure by setting a limit on how high sales tax rates can climb at the local level and adopting exemptions for food, clothing, medicine and other basic needs.⁴⁴ This will involve decreasing the amount of revenues collected from sales taxes. In order to make up for those lost revenues and increase revenues to meet a minimum level of adequacy, Alabama must raise property taxes in an equitable fashion. The low level of property taxes is the single most important cause of the chronic low revenues in general. Genuine tax reform in accordance with the moral principles of Judeo-Christian ethics must involve increasing the portion of the true fair market value of all property subject to the millage rates, which will require owners of all classes of property to more property taxes. In addition a well structured proposal to reform the property tax structure should carefully provide for sufficient exemptions in order to avoid overtaxing lower valued property where the owners ability to pay is truly an issue.⁴⁵

In addition to requiring all classes of property to pay more property tax in general, genuine tax reform in accordance with moral principles of Judeo-Christian ethics must also require owners of timber property to pay a substantially greater proportional share of the total property taxes than they do under the current structure by increasing to an even greater level the portion of the value of timber acres subject to the millage rates. In addition this proposal should carefully provide for exemptions in order to avoid overtaxing small farmers and other landowners where ability to pay is truly an issue. Allowing owners of timber acres, who as a group dominate Alabama's economy and landmass and constitute a substantial source of wealth and profits in the state, to pay only a *de minimus* portion, no more than two percent, of the property taxes, averaging no more than one dollar an acre, in addition to being patently unfair under any reasonable ethical analysis, constitutes the most troubling violation of the moral principles of Judeo-Christian ethics because children from low income families, the most vulnerable and powerless segment of Alabama's population, bear the brunt of their windfall by being denied a adequate education.⁴⁶

Relevance For Evaluating Tax Policy in Other States and at the Federal Level

Even though more than half of all Alabamians would have enjoyed an immediate tax cut, on September 9, 2003 Governor Riley's tax reform plan failed at the polls by a two-to-one margin.⁴⁷ The reasons for this include the mountain of resentment and lack of trust in state government widely felt by the average voter, difficulties reaching communities at the grassroots level and the fierce

⁴³ *Id* at 77-78.

⁴⁴ *Id* at 78-79.

⁴⁵ *Id*.

⁴⁶ *Id* at 79-80.

⁴⁷ See "Alabama Voters Crush Tax Plan Sought By Governor", *The New York Times*, (Sept. 10, 2003).

opposition of many Republicans because the plan violated their inflexible “no new taxes” platform with only lukewarm support from many Democrats because of partisan bickering and disagreements over unrelated issues. The disgraceful conduct of special interest groups, representing many of the wealthiest Alabamians and the largest landowners, also contributed greatly to the defeat. These special interest groups, which included the Christian Coalition of Alabama, ran a well funded advertisement campaign laced with lies and distortions to convince poor and lower middle-class Alabamians that Riley’s plan would hurt them. As a result the very people who would have enjoyed a tax cut and been helped the most through greater educational opportunities for their children voted against Governor Riley’s plan in droves.

To what degree can the moral principles of Judeo-Christian ethics forbidding oppression and requiring that the poor enjoy a minimum opportunity to improve their lives be invoked to ethically evaluate the tax laws in the other states? Obviously these moral principles can be applied directly in states where the overwhelmingly majority of the population practices Christianity or Judaism. Another important question is whether these moral principles speak to people who are not Christians or Jews. I believe the answer for most individuals is yes. Tax fairness is an ethical question that ultimately must look to moral values for answers. Although I have not yet proved this, I believe that most legitimate moral values for solving ethical questions, even those not based on a religious faith, forbid the oppression of the poor and lower middle-classes and require that they enjoy at least a minimum opportunity to better their economic situation and their lives.⁴⁸

Governing Magazine, a respected publication which focuses exclusively on state and local issues, reports that most states could significantly improve the fairness of their tax structures and that many approach the degree of unfairness found in Alabama. In the category of “Adequacy of Revenue” *Governing Magazine* reports that ten states other than Alabama have the lowest rating⁴⁹ with twenty-six states being only one step above that.⁵⁰ In the category of “Fairness to Taxpayers”, which speaks to how the tax burden is spread out, five states other than Alabama have the lowest rating⁵¹ and thirty-four states are only one step above that.⁵²

This cursory examination of the big picture indicates that as many as three-quarters of all states have tax laws that fail to meet the moral requirements of Judeo-Christian ethics. Only a small minority

⁴⁸ Paperback Book, *supra* note 3 at xiv.

⁴⁹ See *Governing Magazine* (February 2003) [hereinafter *Governing Magazine*]. The states graded with a single star (“The area under review needs some kind of dramatic reform; alternations at the margins will not be enough to fix the problems identified” *id* at 35) for “Adequacy of Revenue” in addition to Alabama are: Alaska, California, Colorado, Florida, Montana, Nevada, Oregon, Tennessee, Texas and Washington. *Id* at 24.

⁵⁰ A two star rating means: “The state could continue to function as it currently does into the foreseeable future. But there are clear elements to the tax system that would benefit from change”. *Id* at 33-35.

⁵¹ Those states are Florida, Illinois, Nevada, Tennessee and Texas. *Id* at 28.

⁵² *Id.*

of states have good ratings.⁵³ Even more disturbing, newspaper stories all over the country reporting fiscal crises in many states indicate that at the state and local level the degree of unfairness to low income taxpayers and revenue inadequacy is getting worse.

Can the moral principles of Judeo-Christian ethics speak to federal tax policy? Federal tax policy debates tend to focus on economic arguments. Conservatives in particular rely on economic incentive theory (also known as supply side economics or trickle down economics), arguing that we should raise less revenues and cut taxes on the wealthiest individuals and corporations in order to foster economic growth and prosperity. This is unfortunate for two important reasons. First a close look at the economic studies relied on by proponents of supply side economics and the critiques of those studies reveals that economic incentive theory provides no solid information supporting claims that tax cuts for the wealthiest taxpayers combined with less revenues overall will cause economic growth.⁵⁴

More importantly, focusing almost exclusively on economic analysis in debating federal tax policy ignores the moral component of the issue. Whether acknowledged or not, tax policy ultimately is a value judgement.⁵⁵ Economic theory and studies if they actually offered reliable proof for the claims being made can only provide useful information to be factored in the moral analysis. When deciding tax policy issues economic information or any other information can never legitimately serve as a substitute for the moral analysis. Even if supply side economics could predict positive economic

⁵³ Only four states (Delaware, New Mexico, North Dakota, and Wyoming) received a four star rating (“it does very well in the area under consideration” *id* at 33) in the area of “Adequacy of Revenues”(*id* at 24) and only one state (Hawaii) received a four star rating in the area of “Fairness to Taxpayers”. *Id* at 28. In the area of “Adequacy of Revenues” only eight states (Georgia, Hawaii, Idaho, Indiana, Iowa, Pennsylvania, South Dakota, Vermont and Wisconsin) received a three star rating (*id* at 24), meaning “there may be room improvement [but] the state is essentially performing well”. *Id* at 33. In the area of “Fairness to Taxpayers” only nine states (Alaska, Delaware, Montana, New Mexico, North Dakota, Oregon, South Dakota, Vermont and Wisconsin) received a three star rating. *Id* at 28. Especially in the area of “Adequacy of Revenues” a three or four star rating may conceal inequities buried beneath the big picture, because, for example, public school funding, an important indicator whether the state meets the moral requirement of minimum opportunity, normally has a substantial local component. Thus a three or four star rating at the state level is no guarantee that public schools in poorer neighborhoods, serving economically disadvantaged children, are adequately funded. For example, in the state of Pennsylvania, despite its three star rating for “Adequacy of Revenues”, there are severe equity school funding issues. I am told that in Pennsylvania the poorest and most disadvantaged children have no minimum chance to receive an adequate education where other public schools serving wealthy and upper class children have generous funding.

⁵⁴ Susan Pace Hamill, A Moral Perspective on “Big Business’ ” Fair Share of America’s Tax Burden (forthcoming in Symposium: “Understanding the Intersection of Business and Legal Ethics”, *St. Thomas Law Review* (2004)) [hereinafter *St. Thomas Article*] at text accompanying and in notes 60-89 in part II B.

⁵⁵ See Joel Slemrod and John Bakija, *TAXING OURSELVES: A CITIZENS GUIDE TO THE GREAT DEBATE OVER TAX REFORM* (2nd Edition 2000) at 52 (“Fairness in taxation, like fairness in just about everything is an ethical issue that involves value judgments”); at 53 (“...any panel of economists offering their opinions on the best tax system should be followed by a panel of philosophers or ethicists who offer their views...”).

growth and prosperity that alone would not conclusively support tax policy decisions that call for less revenues and a more favorable structure for the wealthy. The information provided by the economic theory, if it were available, would have to be factored in and weighted under the principles of the moral framework being used to evaluate the tax policy question.⁵⁶

The federal tax policy issues defining the level of revenues raised and how the burden for raising those revenues should be spread out is an extremely important ethical issue that reveals at the deepest moral level what kind of a country we really are. On the revenue side, do we care about making sure that all Americans have their basic needs met, which would include minimum nutrition, healthcare and education? Do we believe that all Americans should enjoy a chance to reach his or her full potential? Or are we only concerned about police and legal protection of property rights? On the burden side do we believe that the wealthiest Americans should proportionally pay more or do we favor minimizing the tax burden at the highest income levels?⁵⁷

Finally are the so called “starve the beast” fiscal policies right? Is it right to cut taxes, especially for the wealthiest taxpayers, knowing that safety nets and minimum opportunities for the poor and middle classes will be compromised because of those tax cuts? The absence of a serious and rigorous moral component in the discussion of the fundamental tax policy issues of adequate revenues and how the tax burden should be allocated is a glaring omission, especially since many proponents of cutting taxes for the wealthy while starving social services relied on by the poor and middle classes, President Bush being the most visible example, claim to be evangelical Christians.⁵⁸

Focusing on how federal tax policy spreads the burden, the federal income tax structure currently imposes a moderately progressive burden with six rates for individuals and households, which start at ten percent and gradually rise to a top rate of thirty-five percent.⁵⁹ The most recently enacted tax legislation sponsored by the Bush Administration cut taxes overall while reducing the level of progressivity of the federal income tax.⁶⁰ The wealthiest individuals and corporations enjoyed the greatest tax savings, the middle classes received only modest benefits from the tax cuts while those at the lowest income levels enjoyed at best only *de minimis* tax savings.⁶¹ Newspaper sources all over the country report that the federal deficit has steadily climbed since President Bush took office reaching levels well over \$400 billion and is threatening to escalate further out of control.

⁵⁶ St. Thomas Article, *supra* note 54 at text in part III (introductory material).

⁵⁷ Paperback Book, *supra* note 3 at 131.

⁵⁸ See e.g., “Alabama Puts Bush Tax Cuts to Biblical Test”, *The London Times*, (June 15, 2003).

⁵⁹ St. Thomas Article, *supra* note 54 at text accompanying and at note 18 in part I A.

⁶⁰ *Id* at text accompanying and in note 15 in part I A.

⁶¹ *Id* at text accompanying and in note 16 in part I A.

Moreover over the past twenty years arguments have been made that the current progressive income tax should be replaced with a flat/consumption based tax that exempts from taxation income from savings and investment income. The flat tax proposal sponsored by Senators Arme y and Shelby in the middle 1990s is probably the most well known and came the closest to actually passing.⁶² If a proposal like this were to replace the current federal income tax structure, wealthier taxpayers would enjoy tremendous tax cuts with the middle class bearing a substantially greater burden than they do under a moderately progressive structure. Moreover studies show that such a proposal would lead to lead to substantial revenue losses unless the flat rate exceeded twenty percent.⁶³

Ethically evaluating federal tax policy is far more complicated than evaluating Alabama's tax policy. This is because the federal revenue picture does not remotely present the gross level of inadequacy found in Alabama. As far as spreading out the tax burden, unlike Alabama, federal law exempts wages at poverty levels and that has not been changed by the recently enacted tax cuts by the Bush Administration nor would it be changed by the flat tax proposals such as Arme y/Shelby. Also the moral values adopted by Americans as a whole reflect far more diversity than the moral values of the largely conservative, evangelical Christian population in Alabama.

Ethically evaluating federal tax policy should probably start by applying the major secular-based moral models to the question of shifting tax burdens from the wealthy to the middle classes. Utilitarianism, which deems morally correct the result which provides the greatest good for the greatest number, offers no moral guidance because economic theory provides no reliable information as to the global economic consequences of shifting tax burdens. Egoism, which heavily emphasizes personal autonomy, deeming morally correct the course of action fostering the long term best interests of the individual, morally supports moving the tax burden from the wealthiest to the middle classes. Virtue ethics, which heavily emphasizes justice in the community, would find such a shift immoral and would strongly favor a more progressive structure.⁶⁴

I have not yet completed my research morally evaluating under the principles of Judeo-Christian ethics how the tax burden should be spread out. Nor have I completed my research ethically evaluating (under both secular-based and Judeo-Christian moral principles) the first and arguably the most important federal tax policy issue -- the level of adequate revenues morally required. The tentative title for this article in progress, which is at least a year away from being completed and published is "*An Evaluation of Federal Tax Policy Based on Judeo-Christian Ethics.*" This article will include theological perspectives contributed by mainline Catholicism, Protestantism, and Judaism and will carefully explore in depth issues raised by the First Amendment such as whether its appropriate for public officials to consider their religious morals when making public decisions.

Alabama's story offers broad lessons and warnings to other states and to the nation as a whole

⁶² *Id* at text accompanying and in notes 44-48 in part II A.

⁶³ *Id* at text accompanying and in notes 53-59 in part II A.

⁶⁴ *Id* at text accompanying and in notes 90-116 in part III A, B and C.

regarding the toleration of injustice. In the months following the defeat of Governor Riley's tax reform plan, many of my puzzled out-of-state friends asked me why it is so difficult to reform Alabama's tax structure if it is so indisputably wrong and indefensible.⁶⁵ The sad truth is the more unfair taxes become and the longer that injustice persists the more difficult it will be to reform the tax structure and restore justice. More broadly Alabama teaches the other states and the nation that the more unjust any societal structure is allowed to become, and the longer such unfairness is tolerated, the more difficult it will be to remedy.⁶⁶

When the voters rejected Governor Riley's tax reform plan in Alabama democracy devoured itself of its purpose of achieving the best results for the people as a whole. Powerful special interest groups, including the largest and most profitable landowners paying obscenely low property taxes, put their substantial resources towards defeating the tax reform plan. They believed and continue to believe that they are entitled to keep the unfair benefits they have enjoyed for decades and therefore they believe that their underhanded tactics to maintain the status quo are justified.⁶⁷

This lesson in Alabama illustrates that if tax policy is allowed to become unjust and remain that way for too long, powerful special interest groups determined to keep the unfair system in place will feed into our natural greedy tendencies, which in turn breeds many excuses rationalizing the injustice.⁶⁸ These excuses take many forms, for example: all taxes are evil so any attempt to require more taxes from us must be evil; we worked harder so we are entitled to keep more of what we earn and if they (the poor and lower middle class) would only work harder they would be as well off as us; additional revenues will be wasted by untrustworthy politicians; increased educational opportunities for the lower classes will be wasted because they will not take advantage of the opportunity; and somehow educational quality has nothing to do with adequate educational funding. In addition to fooling those who are not paying their share, these excuses lead to political rhetoric that will fool the lower classes into thinking that fair taxes will hurt them.

The paradox of a tax reform plan that would have lightened the tax burden for more than half of the voters failing at the polls stands as a powerful plea to other states and to the nation as a whole to work towards correcting unfair taxes before they reach the extreme injustice found in Alabama. Alabama teaches other states and the nation that tax policy is one of the most important barometers measuring a society's moral well being and only a fair tax system will produce adequate community infrastructures that guard the integrity of a true democracy. If on a national scale public education

⁶⁵ In their evaluation of Alabama's state and local tax structure *Governing Magazine* issued the lowest grade, one star, in both the categories of "Fairness to Taxpayers" and "Adequacy of Revenues" and described the tax laws as "ludicrous". See *Governing Magazine*, *supra* note 49 at 38.

⁶⁶ Paperback Book, *supra* note 3 at 132.

⁶⁷ Susan Pace Hamill, "Tax Sin Stains State", *The Atlanta Journal Constitution* (Sept. 12, 2003) [hereinafter *Atlanta Journal Constitution*].

⁶⁸ Paperback Book, *supra* note 3 at 130.

and other minimum infrastructures dip below a certain point the masses of voters will not be able to separate rhetoric from truth and they will fall prey to the special interests, just as many of our people did in Alabama.⁶⁹

The conversation about the critical issues of tax policy at each state and at the federal level desperately needs to have an ethical component that goes beyond intellectual arguments in academic circles. The conversation needs to bring in ethics that are relevant to the average American. The moral principles of Judeo-Christian ethics fills that gap. Fair tax policy is very difficult to achieve because the wealthy and powerful, driven by greed, will come up with excuses, such as those discussed above, and rhetoric based the false promises of economic prosperity to justify paying less than their fair share. The mass in the middle, also driven by greed, will be tempted to go along. When I commented publicly about President Bush's tax cuts at the *Call to Renewal* meeting in Washington DC, I stated that the middle-class taxpayers who supported President Bush's tax cuts so that they could save less than \$50 (as opposed to the wealthiest taxpayers who saved thousands) sold out for a few pieces of silver.

I am convinced that only solid moral appeals going to heart of people can defeat greed and stop the current trend drifting our states and our nation further and further away from fair tax policy. I believe that only the strength of real faith has a chance to build a moral compass sturdy enough to overcome the powerful sin of greed and reveal the excuses and rhetoric as camouflages concealing our greed. I believe that if we do not apply the standards of justice of our faith to the fundamental issues of tax policy our country will continue on a downward spiral. Or in the words of an editorial writer for the *New York Times* "as goes Alabama so may go the nation".⁷⁰

⁶⁹ Atlanta Journal Constitution, *supra* note 66.

⁷⁰ Adam Cohen, "'Starve the beast' won't work in Alabama or elsewhere", *New York Times* (October 21, 2003).