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The Structure of Subchapter C: An Anthropological Comment

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Correspondence

The Structure of Subchapter C: An Anthropological Comment*

To the Editors:

A striking feature of contemporary legal theory is its narrow focus. A Martian reading fashionable jurisprudence might imagine that everything important could be learned by combining a few common law cases with the hottest news from the Supreme Court. By indulging this neotraditionalist premise, we close ourselves off from the most distinctive aspects of our legal culture: whatever else is obscure, it is clear that we are living in an age of the activist state, in which legislation and administration are central elements of the professional experience. How has this transformation affected the substance and form of legal argument?

There are, I suppose, countless conceivable answers. At one extreme, the rise of the activist state may have led to very little alteration in the structure of legal culture. Lawyers may argue and opine before activist legislatures and agencies in much the same way as they do before common law courts. At the other extreme, there may have been a radical transformation of the shape of legal discourse; new habits developed in activist forums may in time undermine the old conventions of classical adjudicatory institutions. More likely, perhaps, is the intermediate possibility that traditional and innovative elements combine in different ways in different substantive areas and institutional contexts.

Only one thing is plain: our ignorance. We lack an accurate map of the present shape of our own legal culture. Not that we don't have slogans: courts are the home of reasoned elaboration; agencies, of expertise; legislatures, of will. Yet if we are to move beyond such simplicities, we must explore with greater sensitivity the patterns of argument and decision actually employed in various parts of the expanding legal universe. This is the great merit of Robert Clark's recent essay on corporate taxation.[1] Rather than manipulating the rules to achieve a particular outcome, he asks whether they "can be understood in terms of a few fundamental ideas or themes, rather than as a disordered manifold of particular products and activities . . . ."[2] Professor Clark's effort to make sense of his specialty is rewarded by an interpretation of the law's notorious complexity

* I am grateful to many of my colleagues for stimulating conversation. Bob Clark's help is especially appreciated.

1. *The Morphogenesis of Subchapter C: An Essay in Statutory Evolution and Reform*, 87 YALE L.J. 90 (1977) [hereinafter cited by page number only].

2. P. 91.

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in terms of seven abstract principles, each recognized quite early in the history of the field.[3] The proliferation of complex rules is viewed as the result of efforts by taxpayers and tax collectors to exploit the ambiguities and conflicts latent in the Seven Principles. Though economic self-interest provides the energy for doctrinal development, this energy does not generate a mass of mindless legal detail. Instead, it is transformed by lawyers into a coherent form of cultural activity in which rules are ordered into meaningful patterns.[4]

I shall not attempt to comment on the accuracy of Professor Clark's picture of corporate tax doctrine. Instead, I shall assume its validity in order to hunt for clues to the more general question with which I began. After all, if Professor Clark is to be believed, we have uncovered a body of rules that is far removed from the traditional common law[5] yet nonetheless reveals at least a semblance of pattern. What is its relationship to other patterns—both traditional and emerging—that exist in contemporary legal discourse?

There are, once again, two polar possibilities. On the one hand, Clark's Seven Principles may bear no intelligible relationship to other areas of legal doctrine. This conclusion would support the idea that the rise of the activist state has fractured the legal culture, bringing in its train a dramatic transformation of the patterns of legal argument. On the other hand, a scrutiny of the Seven Principles may suggest that they are closely related to the legal ideas deployed in other areas of conflict resolution. This would suggest that the legal culture has some resilience—that it can adapt to a major political and social transformation without a total loss of coherence.

This second interpretation—which I shall call the hypothesis of cultural coherence—provides the more convincing explanation of the relationships among Clark's Seven Principles and other areas of legal doctrine.[6] To

3. Professor Clark's Seven Principles are:

(1) *There shall be a separate tax on corporate income* (The separate tax principle) (*see* pp. 97-100);

(2) *A shareholder-level tax on corporate income shall be imposed, but generally only upon its distribution to shareholders* (The distribution principle) (*see* pp. 100-04);

(3) *Long-term capital gains shall be taxed at rates substantially lower than those applicable to ordinary income* (The capital gains principle) (*see* pp. 104-06);

(4) *Corporate distributions to shareholders are presumptively to be treated not as capital gains but as ordinary income, that is, as dividends* (The dividend principle) (*see* pp. 106-07);

(5) *Shareholder dispositions of stock are presumptively to be treated purely as dispositions of capital assets, that is, independently of corporate-level events* (The corporate veil principle) (*see* pp. 107-17);

(6) *Formal changes in corporate-shareholder relationships that nevertheless involve a substantial continuity of ownership in a business enterprise shall not be recognized for tax purposes* (The nonrecognition principle) (*see* pp. 117-30);

(7) *Corporate distributions in kind shall not create taxable gain or loss to the corporation* (The *General Utilities* principle) (*see* pp. 130-35).

4. *See* pp. 94-96.

5. As Professor Clark points out, the principles of corporate taxation have remarkably few common law roots. P. 96. Rather, they proceed directly from the complex forms of legislative-bureaucratic-judicial interaction characteristic of the modern state.

6. I should emphasize at once that coherence may be judged a good or bad thing, depending on the values central to the legal culture and those central to the evaluator.

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refine this hypothesis, I shall first set out some basic concepts that will guide the analysis. Section II then tries to show that Clark's Seven Principles do in fact confirm cultural coherence; this in effect marks the place of Subchapter C in the larger legal culture. Section III considers the significance of reform efforts of the kind represented by the last part of Professor Clark's article:[7] does reform suggest an impending transformation in the structure of our legal culture? Answering this question will permit Section IV to glimpse a more complex pattern of lawyerly adaptation to the activist state.

I. The Idea of Structural Analysis

Let us begin by defining some terms. Distinguish, first, between *substantive* principles and *structural* principles. Substantive principles express the abstract ideas that guide the concrete resolution of a particular class of disputes.[8] All of Professor Clark's Principles are substantive. To resolve a dispute between the Internal Revenue Service and a corporate taxpayer, a lawyer must know that there is a separate tax on corporate income, that corporate distributions are presumed to be dividends, and so forth. Structural principles, in contrast, describe the relationships among substantive principles in different fields. Mine is a structural inquiry, for I am exploring the conceptual relationships among the principles of corporate taxation and those of other fields of law.

A second set of terms is required to describe the way we will draw our structural map. What kinds of relationship could the principles of corporate taxation bear to those guiding other fields of lawyerly dispute resolution? The first important possibility is *autonomy*. Two groups of substantive principles, *A* and *B*, are autonomous from one another when lawyers do not take *A* into account when framing *B*, and *vice versa*. For example, a typical American lawyer invokes the distinctive principles of contract law—say, the consideration doctrine—without recognizing any need to consider whether *Brown v. Board of Education* was rightly decided. Similarly, lawyers arguing about the real meaning of *Brown* would not seek inspiration from the consideration doctrine.[9] Autonomous principles

This normative inquiry, however important it may be, is not my concern here. Instead, I am engaging in a positive investigation of the extent to which American legal discourse can in fact be ordered into an intelligible whole.

7. Pp. 153-61.

8. The precise logical status of substantive principles, as well as their relationship to legal rules, is a much-argued matter. *See, e.g.*, Dworkin, *The Model of Rules*, 35 U. CHI. L. REV. 14 (1967); Dworkin, *Social Rules and Legal Theory*, 81 YALE L.J. 855 (1972); Raz, *Legal Principles and the Limits of Law*, 81 YALE L.J. 823 (1972). For present purposes, it suffices to proceed from the brute fact that principles like Clark's Seven are indeed customarily invoked in legal argument.

9. It is, of course, easy to imagine a legal culture in which this report would be factually wrong—a culture in which lawyers *would* refer to *Brown* in arguing about consideration, or *vice versa*. In making my claim about autonomy, I do not mean to assert that a conceptual link between race and contract is impossible but simply to report a contingent fact about the existing structure of legal discourse. Indeed, it is this focus upon the contingent facts of a particular culture that marks my study as anthropological. *See* C. GEERTZ, THE INTERPRETATION OF CULTURES 33-54 (1973).

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stand in splendid isolation from one another in legal discourse. If all of Clark's Seven Principles were autonomous from all other legal ideas, they would present a polar case of legal innovation.

Complete autonomy, however, is an extreme condition. In justifying and framing principles for area *A*, lawyers often recognize that the principles governing *B* are relevant to their problem. This kind of *dependence* may take two different forms. The principles for *A* may serve as a source of arguments for defining the principles for *B*, while *B* does *not* serve as a similar source of inspiration when lawyers try to frame and justify principles governing *A*. Here, *A dominates B*, and *B* is *subordinate* to *A*. On the other hand, *A* and *B* may establish a relationship of *reciprocity*: either may be invoked as a source of argument in a lawyer's evaluation of the other. These relationships of domination, subordination, and reciprocity are familiar (if not by name) to any lawyer who can play competently with common law precedents.[10] The next question is whether the ideas governing corporate taxation may be mapped in a similar way.

II. The Structure of Subchapter C

Professor Clark's First Principle sets the stage for a conceptual field with very modest claims to autonomy within the legal culture. Tell a lawyer that there will be a separate tax on corporate income (Principle One), and he will automatically assume that he may apply his general understanding of corporate and tax doctrine to this area of cultural intersection. As lawyers juxtapose familiar corporate and tax principles in new ways, new stresses will appear, and new questions will be asked and answered. Over time, these answers may give rise to substantive principles autonomous from either Tax or Corporations or both. These autonomous principles may in turn be borrowed by lawyers working in other fields—subordinating areas of law that were previously autonomous or dominant. But if the First Principle captures an important element of the cultural reality constructed by an emerging group of legal specialists, we should expect Corporate Taxation's location in the legal culture to be mapped largely in terms of subordination and reciprocity rather than autonomy and domination.

The First Principle serves a second cautionary function. Not only does it warn against an easy assumption of autonomy, but it emphasizes that we are in the presence of a peculiar hybrid structure. In fashioning a distinctive form of discourse, specialists in corporate taxation will have to make their peace along two quite different conceptual boundaries—one defining their relationship to general ideas developed in corporate law, the other marking their relationship to general principles of taxation. These boundaries may be organized on very similar or very different structural lines. The question is whether the Seven Principles reveal something about

10. I do not mean to suggest, of course, that these relationships adequately describe all the important structures of a lawyer's reality. For an exploration along different, if related, dimensions, see my PRIVATE PROPERTY AND THE CONSTITUTION (1977), especially Chapters One and Seven.

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the way the profession has in fact resolved its problems of boundary definition.

Turning first to the corporate frontier, two of Professor Clark's Principles transparently presuppose the most fundamental idea in corporate law—that the corporation is an entity distinct from its shareholders. It "follows" from this idea that when a shareholder sells his stock, this transaction should be viewed independently of corporate-level events (Principle Five) and that a tax on shareholder-level income should generally be imposed only when the income is formally distributed to shareholders (Principle Two). To deny either of these principles would require a lawyer to assert that corporate tax law is structurally autonomous from corporate law rather than dependent on it. Moreover, the dependence involved seems of the subordinating variety—by adopting Principles Two and Five, the corporate tax lawyer is simply borrowing a basic idea from the dominant field without generating a reciprocal expectation that Two and Five will be invoked by corporate practitioners concerned with nontax matters.

In contrast, the relation between corporate tax and other areas of tax practice seems to be organized on a different structural principle. Rather than domination and subordination, reciprocity marks the pattern of dependence on this second conceptual boundary. Thus the Third Principle, which entrenches the distinction between capital gains and ordinary income, is the intellectual property of all tax lawyers regardless of whether they spend their time on corporate, individual, or estate matters. And a significant conceptual development in the treatment of capital gains or ordinary income in one sub-specialty is likely to be used as an argument for an analogous modification in the others.[11]

Principles Two, Three, and Five, then, mark Corporate Taxation as a hybrid structure whose pattern of discourse is dependent for its significance upon two larger patterns of professional argument. The Fourth Principle, however, has a different structural status. Here the question is whether corporate distributions are ordinary income or capital gains. Now this looks like something new: the lawyer must forge a new conceptual link between a category of corporate law (distributions) and categories of tax law (ordinary income and capital gains). The only reason why this link must be established is that a new field of professional activity—corporate tax—has come into existence. In answering the question, then, a lawyer must juxtapose categories in a way that suggests the possibility of an autonomous answer, one that does not depend upon more general principles.

Yet Principle Four suggests that this possibility for autonomy has not

11. As Professor Clark indicates, the distinction between capital gains and ordinary income gained statutory recognition in both corporate and individual taxation at the same time. Pp. 104-05. More generally, many of the leading corporate tax cases have been borrowed by tax lawyers operating in other areas, and *vice versa*. See, for example, Helvering v. Horst, 311 U.S. 112 (1940), whose corporate impact is noted by B. BITTKER & L. STONE, FEDERAL INCOME, ESTATE AND GIFT TAXATION 424 (4th ed. 1972), and Gregory v. Helvering, 293 U.S. 465 (1935), whose general impact is considered by Chirelstein, *Learned Hand's Contribution to the Law of Tax Avoidance*, 77 YALE L.J. 440, 452-59 (1968).

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been exploited with great energy. To see this, contrast two different ways in which a corporate tax lawyer might try to solve the problem of distributions. First, he could rely as much as possible on traditional corporate categories to provide a point of intellectual entry into his problem. For example, since corporate law distinguishes between "dividends" and the "return of capital," the corporate tax lawyer might frame his inquiry in a similar fashion, asking himself whether a particular distribution is a "dividend," as defined by substantive corporate law principles, as a preliminary to determining its tax status. Alternatively, he could reject these dominating cues and discriminate among corporate distributions in a way that seems to him to grasp more completely the distinctive elements of his corporate tax problem.[12] Such an autonomizing move would require the lawyer to elaborate classifications that would constantly remind him of the cognitive boundary separating his discourse from that of corporate law. Indeed, these new categories might, over time, be used as a source for revising received doctrine in the nontax areas of corporate practice—in which case corporate tax would dominate (at least in some respects) one of its cognitive progenitors.

Principle Four tells us, however, that the law has not traveled down this second path to autonomy. Rather than rejecting corporate cues, the law has based its tax categories upon them—establishing a rule that distributions are presumed to be "dividends" and linking dividends to the category of ordinary income.[13] In short, the Fourth Principle is autonomous in the same way that a pedestrian walkway connecting the fourth floors of two different department stores is independent of the buildings it connects.

With the Sixth Principle, however, a greater autonomy comes into its own. This "nonrecognition" idea serves notice that events of profound importance in corporate law are irrelevant to the corporate tax lawyer. Even though one corporation is dissolved and another takes its place, there will be no tax consequences so long as something called "continuity" in ownership is maintained. This is a move of great structural significance. It permits practitioners in very different legal areas to borrow the doctrine of "continuity" if it seems to offer a convenient way of dealing with their immediate problems. Assume, for example, that a new corporation seeks to avoid the collective bargaining agreement executed by its predecessor.[14] It is not impossible to imagine a judge looking to the "continuity" doctrine in corporate tax law to solve his similar-seeming problem in labor law. Of course, the chances of this happening now are not very great.[15]

12. For an effort to make just this kind of autonomizing move in a related context, see Warren, *The Corporate Interest Deduction: A Policy Evaluation*, 83 YALE L.J. 1585, 1586-89 (1974).

13. As Professor Clark notes, the high economic stakes have generated pressures to sharpen the line separating dividends from other distributions taxed at more advantageous rates. Pp. 106-07. *See, e.g.*, I.R.C. § 301(c). Nonetheless, Professor Clark's discussion makes it plain that these rules are merely refinements of a conceptual blueprint provided by corporate law. *See* pp. 100-01, 106-07.

14. *See, e.g.*, John Wiley & Sons v. Livingston, 376 U.S. 543 (1964).

15. My colleague Jack Getman, an avid student of labor law, tells me that he has never in fact seen a judge borrowing from the tax law in the way hypothesized in the text.

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For a complicated set of reasons—most of them quite obscure—the structural linkages between tax law and labor law are very weak. The two seem relatively autonomous strands in the seamless web. Nonetheless, even the possibility of a linkage suggests something about the potential autonomy of the corporate tax law generated by the Sixth Principle.

There is, however, a second structural aspect to nonrecognition. While the Sixth Principle marks a wall of cognitive autonomy from corporate law principles, it does not indicate an equivalent autonomy from those of tax law. On the contrary, as Professor Clark emphasizes, "these nonrecognition rules embody the general notion of income tax law that accrued gain must be realized before it will be taxed."[16] Hence, the Sixth Principle should not be read as a declaration of independence. Rather, it suggests that when tax principles and corporate principles point in different directions, reciprocity with tax principles dominates subordination to corporate ideas.

The Sixth Principle, then, has a complex structural status. First, it may be used as a dominant source of principles for previously autonomous structures (like labor law); second, it marks the achievement of a limited autonomy from a conceptual field (corporations) to which it has been structurally subordinate; yet, third, this achievement of a limited autonomy and a potential dominance has been purchased at the cost of a deeper structural commitment to reciprocity with allied fields of professional activity (individual taxation). In emphasizing this limitation on the area's cultural autonomy, however, I do not mean to belittle the importance of structural movements of the kind the Sixth Principle represents. Indeed, it is by a series of such moves that a previously subordinate field can gain increasing measures of cultural autonomy, dominance, and reciprocity. Thus, having refused "recognition" to certain corporate law dogmas, one can imagine the corporate tax law's refusing "recognition" to principles applied to the taxation of noncorporate entities. With every twist and turn, it will become increasingly unclear to well-trained lawyers that corporate tax is a dependent hyrid rather than a relatively autonomous area of legal development in its own right. And with the field's rise to autonomy, lawyers may use their understanding of corporate taxation as a source for inspiration in their efforts to reform areas at greater structural distance.

Clark's Seventh Principle, however, indicates how far we are from such a situation. Here, at last, appears an idea structurally autonomous from general tax principles—the *General Utilities* refusal to recognize in-kind distributions as corporate income. Moreover, Professor Clark demonstrates that the Seventh Principle has successfully entrenched itself in the cultural field in a number of familiar ways.[17] What is important here, though, are telltale signs indicating that the Principle's claim to structural autonomy from general taxation is exceedingly vulnerable. First, as Professor Clark shows,[18] it is quite possible to reverse the *General Utilities*

16. P. 117.
17. *See* pp. 130-35.
18. P. 152.

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principle without revolutionizing the cognitive structure of the corporate tax field. This contrasts sharply with a decision to alter any of the earlier Principles on Professor Clark's list—which would bring in its wake a radical restructuring of the practitioner's intellectual equipment.[19] Second, *General Utilities* is not only cognitively isolated, but also evaluatively incongruous. Most knowledgeable professionals, feeling the structural pull of general tax principles, would agree that *General Utilities* doesn't make much sense. Not only does this make *General Utilities* a constant subject of reform efforts, but it also diminishes the principle's potential as a model for reform in other areas. The anomalous status of the Seventh Principle, in short, suggests the difficulty the present legal community has in sealing the cognitive boundary between general taxation and corporate taxation.

An inspection of the Seven Principles, then, provides some tentative support for the hypothesis of cultural coherence. Though embryonic suggestions of increasing autonomy are present, Professor Clark has described a complex but dependent hybrid structure. Moreover, the field's successful autonomizing moves are in the direction of establishing independence from corporate ideas; similar efforts on the second front with general principles of taxation seem far less successful.

III. The Structure of Reform

It is not enough, however, to describe the present structural situation. As Professor Clark's concluding section indicates, the historical product we have analyzed is now under increasing attack. Drastic reform proposals are in the air. What are their structural implications?

The first thing to emphasize is that many substantive reforms do *not* portend a significant structural reorganization of the conceptual field. Imagine, for example, that some principle, *A*, has increased in importance in the field of corporate law and that reformers of corporate taxation attempt to change their specialty to reflect this change in *A*'s relative weight. In this case, a successful reform would hardly imply that corporate taxation had lost its structural subordination to corporate law ideas. Instead, the substantive change would imply a structural continuity.[20]

Reforms that do imply structural change, moreover, can be of very different sorts. At one extreme, reform of a dependent field like corporate tax may imply a quantum leap forward in the field's claim to autonomy and domination. Rather than meekly importing basic ideas from other areas of dispute resolution, a reform group may generate a new and autonomous model of corporate taxation and argue that existing law should be revolutionized to comport with their new ideas. "Autonomizing" reform of this type is the analogue of Scientific Revolution of the kind that

19. *Compare id. with* pp. 137-52. Principle Six is a possible exception. *See* pp. 151-52. *But cf.* p. 153 (only *General Utilities* principle could be reversed without "major doctrinal disadvantages").

20. Of course, the rising importance of *A* as a principle of corporate law may (though it need not) imply a change in the structural relations between corporate law and some other set of legal ideas. But this is consistent with the continuing structural domination of corporate principles over corporate taxation.

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Thomas Kuhn discusses in his famous book.[21] Such a dramatic change in corporate taxation would signal to the legal community the possibility of a paradigm shift—a new way of resolving previously troublesome difficulties on the basis of a newly autonomous law of corporate taxation.

But reform may also be of a less exciting, though no less important, variety. Rather than signaling a rise to autonomy, reform may suggest merely a change in the patterns of structural dependence controlling the conceptual field. It is this second (non-Kuhnian) kind of transformation, I think, that is implied by the present effort to reform the corporate tax law.

The point to remember here is the hybrid character of Subchapter C—its structural dependence on *two* fields at once. This leads to my main thesis about the structure of reform: rather than marking the rise of corporate tax as a relatively autonomous body of law, reforms of the kind suggested by Professor Clark indicate that corporate taxation may well lose its hybrid character. Instead of trying to maintain dual dependence, lawyers are becoming increasingly unhappy with the structural dominion of corporate models over the field. Reformers, in short, are trying to build a high wall of autonomy from corporate ideas so as to deepen and broaden their field's reciprocity with allied areas of tax practice.

To confirm this thesis, one need only consider the central reform idea of "full integration," which has been advanced by others and which Professor Clark instructively elaborates.[22] In essence, full integration represents a direct assault on the structural dominion of traditional corporate ideas in corporate taxation. No longer will the tax law respect the basic distinction between corporation and shareholder central to traditional principles of substantive corporate law. Instead, the corporate veil will be pierced as a matter of course in the computation of tax liabilities. In this way the general principles of taxation may be given their full impact without distortion by competing structural models. As Professor Clark shows,[23] radical substantive change follows from this single structural revision.

IV. Patterns of Adaptation

Thus far, I have merely sketched two different maps of a small part of the conceptual universe inhabited by American lawyers. One describes the existing structure; the other, a possible future one. The next step is to compare the two maps: as the eye moves from one map to the other, the mind may create a primitive moving picture, permitting a glimpse of a richer pattern of lawyerly adaptation than each alone reveals.

In Stage One, marked by the present structure of Subchapter C, a first

21. T. KUHN, THE STRUCTURE OF SCIENTIFIC REVOLUTIONS (2d ed. 1970). Needless to say, one would expect that such movements in law would exhibit many differences from similar transformations in science. But an exploration of this comparative question must await a far deeper and broader anthropological understanding of law (and science) than we now possess.

22. Pp. 153-56. Although a structural analysis of Professor Clark's other proposals would be useful, I do not think it necessary for my main point.

23. *See* pp. 155-56.

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legal generation confronted the task of adapting the legal culture to deal with a "new" problem forced to the forefront by political action. The response—Clark's Seven Principles—closely resembles the kind described by much recent work in anthropology and the sociology of knowledge.[24] Rather than fashioning new conceptual tools to fit the problem, the first professional reaction was to redefine the problem to fit conventional tools. So long as the hold of conventional concepts was not questioned, enormous complexity was tolerable, indeed welcomed as a lucrative source of professional rewards.

In Stage Two, marked by the structure of reform, the legal community has become increasingly uneasy with the initial effort at adaptation. The legal generation that first gave a shape to corporate taxation is dead or dying, and a new generation looks upon its parents' accomplishments from a necessarily different perspective. Since their predecessors have succeeded in giving the field at least a semblance of order, it is now only natural that lawyers should ask whether this received order makes sense. Yet however important the passage of time may be, it cannot account for our present miscontents. Just as children reject their parents' achievements, so too they may learn to venerate them. Why, then, are professional lawyers tempted to view corporate taxation as ripe for reform rather than as part of a hallowed tradition? Why is the corporate model losing its structural power in legal discourse at a time when the large business enterprise bulks so large in social reality?

An adequate answer to these questions would require a very elaborate theory. Since I do not have such a theory, I shall content myself with pointing to two general tendencies in the legal culture that should not be ignored in a fuller account. The first is our inheritance from Legal Realism. The present legal generation has been trained to be extremely sensitive to, and skeptical of, legal doctrines that reify entities like "the" Corporation and treat these entities as if they were independent human beings. Hence lawyers are predisposed to condemn a doctrine premised on the idea that a tax on corporations is different from a tax on the individuals who interact within the corporate shell. This critical tendency invites the very kind of structural revision implicit in current substantive reform proposals.

Realist sensibilities are reinforced by a second general impulse now transforming the shape of the professional legal culture. I refer to the assimilation of economic analysis into legal thought. Not only does the still-pervasive idea of "the" Corporation make little Realist sense, but the economists assure us that we are wrong in assuming that a tax on the corporate form will necessarily be borne by its wealthy shareholders, rather than by workers or consumers. Of course, economists cannot identify with any great precision the people who do bear the corporate income tax.[25] But doubt about its ultimate incidence compounds Realist reservations.

24. *See, e.g.*, P. BERGER & T. LUCKMANN, THE SOCIAL CONSTRUCTION OF REALITY 127-35 (1966); M. DOUGLAS, PURITY AND DANGER 41-58 (1966). Some remarks by Claude Levi-Strauss are particularly apt. *See* C. LEVI-STRAUSS, THE SAVAGE MIND 16-33 (1966).

25. *See, e.g.*, MacClure, *General Equilibrium Incidence Analysis: The Harberger Model After Ten Years*, 4 J. PUB. ECON. 125 (1975); Shauvin, *The Incidence and Effi-*

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These two factors, however, merely predispose legal professionals to question the present corporate income tax. Before such doubts may be transformed into legal change, there must be legislative change. And within the larger political culture, the idea of corporate taxation has a particular significance quite distinct from its meaning within the narrower group of professional lawyers. For masses of people who have never gone to law school, the word "Corporation" symbolizes enormous entities with concentrated economic power; the word "Taxation" symbolizes a primary technique by which the state clubs people into line. "Corporate Taxation," then, symbolizes the popular notion that private entities of enormous power are under state control. To tamper with the law of corporate taxation is to do more than change the cognitive structure of the legal culture. It is to endanger a cherished symbol in the political culture as well.[26] Nor are reformers blind to this. They will make much of the fact that corporations still withhold funds under a "full integration" regime: they will insist that they do not wish to abolish the corporate income tax so much as improve it, and so forth. The opponents of reform, in contrast, will play predictable populist themes: they will reify "the" Corporation and insist that Little People should not be obliged to pay all the taxes while Big Business goes free. A model of change in the legal culture, in short, requires a model of change in the political culture, and *vice versa*.

V. A Postscript on Culture and Self-Interest

To talk about taxation without talking about economic self-interest is to run the risk of preciosity. It is, of course, the great merit of the economic approach to law that it avoids this defect. Here, actors are considered apart from their particular cultures and are assumed to maximize some good (like dollars) whose structure is far less complex than cultural coherence. Setting the scene in this stark way permits one to focus upon the struggle for economic power—the pattern of exaction and evasion—that is a central aspect of tax law.

Anthropological analysis need not deny the power of this competitive model. Instead, it should be taken to suggest that even in a field like corporate taxation, where the economic model has obvious importance, the bare appeal to self-interest does not tell the whole story.

What is required is a form of understanding that unifies the disparate concerns of anthropology and economics.

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ciency Effects of Taxes on Income from Capital, 84 J. POLITICAL ECON. 1261 (1976); Stiglitz, *The Corporation Tax*, 5 J. PUB. ECON. 303 (1976). The importance of the incidence issue in legal treatments of tax questions is discussed in Graetz, *Assessing the Distributional Effects of Income Tax Revision: Some Lessons from Incidence Analysis*, 4 J. LEGAL STUD. 351 (1975).

26. For some generally perceptive remarks on this point, see M. EDELMAN, THE SYMBOLIC USES OF POLITICS (1964).

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