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*Stuart MacLennan**

Few taxes are popular, but even fewer have attracted such little support as the Council Tax. Since its creation by the Local Government Finance Act 1992[1] the Council Tax has represented a compromise that was seemingly no one's first choice. That the Council Tax is unpopular should come as a surprise to no one. One reason for this unpopularity might be that Council Tax – like most property taxation – is highly visible. 86% of all Income Tax is collected through PAYE,[2] with National Insurance Contributions (NICs) being similarly collected at source. Value Added Tax (VAT) is not a 'payer pays' tax from the perspective of the consumer. For most people, therefore, the Council Tax is one of the few taxes they are asked to pay personally. This, according to Mirrlees,[3] can cause people to overestimate its importance. Another possible reason for the unpopularity of the Council Tax is that it is not buoyant – it does not rise automatically year-on-year. It is therefore necessary for local authorities to announce increases in the amount of tax they require people to pay in a way that is not necessary with, say, Income Tax (the amount people will have to pay will automatically increase when their earnings increase). A third reason might be that it is very definite, and allows people to make easy comparisons with the circumstances of others to determine whether or not they are getting a good deal. There's a very strong likelihood that someone will know how much their neighbour pays in Council Tax – however Income Tax payments remain largely private. Finally, there is evidence that suggests that people consider a tax that is levied according to assets, and not income, is unfair.[4]

This is not a uniquely Scottish phenomenon. Property taxes are a common instrument for financing local government services around the globe – and equally as commonly unpopular. Hayashi describes property taxes as being 'one of the most hated taxes in the United States',[5] while the introduction of such a tax in Ireland has proved hugely unpopular. Nonetheless, despite the seeming unpopularity of the Council Tax, policymakers nonetheless appear to be instilled with a profound reluctance to reform or replace it.

Conceptually, almost every form of taxation could be used at a local level. The prevailing international tendency is for sales taxes, income taxes, and property taxes, as well as services charges, to be used as an the instrument for financing local government. The EU-mandated system of Value Added Taxes precludes the use of sales taxes at anything other than a national level. The remaining options for local taxation primarily includes local income taxation, property taxation, and service charges (including a poll tax). The Council Tax is an unusual hybrid of these three options. It is in part a tax on property insofar as the liability to charge varies in accordance with the value of the property you occupy. It is in part a poll tax because it doesn't vary very much. And it is in small part

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[1] Hereafter "the Act."

[2] 2013-14 figure, HMRC, *Tax Receipts and National Insurance Contributions for the UK* (March 20, 2015) available at: *https://www.gov.uk/government/statistics/hmrc-tax-and-nics-receipts-for-the-uk* [Accessed April 6, 2015].

[3] James Mirrlees, *Tax By Design* (London: IFS 2011), p383.

[4] Lyons Inquiry into Local Government and Sir Michael Lyons, *Place-Shaping: a shared ambition for the future of local government* (London: TSO 2007).

[5] Tax Foundation, *Property Taxes and their Limits: Special Report No. 166: How do American feel about taxes today?* (2009) available at: *http://taxfoundation.org/sites/default/files/docs/sr166.pdf* [Accessed February 23, 2015].

an income tax insofar as the income level of the taxpayer is reflected in the availability of Council Tax Reduction (formerly Council Tax Benefit) to low earners.

All taxation is a conduit through which money flows – from persons (natural or legal) to government. The nature and structure of the taxation conduit therefore affects both the contribution of the taxpayer, and the receipts (and, therefore, expenditure) of government. Attempts at reforming local government finance are often highly concerned with government receipts and expenditure, with the effects at the contribution-end a secondary consideration.[6] In the 1980s, the Thatcher Government's reforms were primarily concerned with limiting local government expenditure,[7] while more recent reviews have been concerned with providing adequate finance to meet higher levels of service provision and increasing costs.[8]

In 2015, the Scottish Government mandated a commission (hereafter "Local Tax Commission") to review local government finance in Scotland.[9] This is not the first such review that has taken place in the United Kingdom, or indeed Scotland, since the inception of the Council Tax.[10] The Local Tax Commission's final report reaches the unsurprising conclusion that local taxation is in need of reform, but does not recommend any single alternative to the present system, highlighting that "[t]here is no one ideal local tax".[11] The Local Tax Commission does, however, recommend that "any reform of local tax has to include recurrent tax on domestic property",[12] while acknowledging the need for progressivity. It also supports the broadening of the local tax base to include some devolution of income, albeit with some dissent, provided that such devolution proves feasible. This article therefore seeks to make proposals within the framework set out by the Local Tax Commission.

In March 2016, the First Minister, Nicola Sturgeon, outlined the Scottish Government's proposals for reforming the Council Tax, which largely amounts to slightly increasing the rate for higher bands, ending the Council Tax freeze, but capping the amount that local authorities can increase Council Tax by 3% annually.[13] Such modest proposals are a far cry from the SNP's previous policy of scrapping the Council Tax and replacing it with a local income tax. This is the strongest

[6] As Wilson and Game point out, throughout all of the reforms to local taxation in the 80s and 90s, "from the narrow viewpoint of a council's annual budget process, the key decisions remained essentially the same." See David Wilson and Chris Game, *Local Government in the United Kingdom,* 5th edn (London: Palgrave 2011) pp. 223-224.
[7] Peter John, "Central-local government relations in the 1980s and 1990s: Towards a policy learning approach" (1994) 20 Local Government Studies 412.
[8] For example, the remit of the Scottish Government's Local Tax Commission "to identify and examine alternative systems of local taxation that would deliver a fairer system of local taxation to support the funding of services delivered by local government." See, Scottish Government, *Commission on Local Tax Reform* (February 2, 2015) available at: *http://news.scotland.gov.uk/News/Commission-on-Local-Tax-Reform-162f.aspx* [Accessed October 6, 2015].
[9] Scottish Government, above fn. 8.
[10] Neil McIntosh, *Moving Forward: Local Government and the Scottish Parliament: the Report of the Commission on Local Government and the Scottish Parliament* (London: HMSO 1999); Lyons, above; Sir Peter Burt, *A Fairer Way*: Report of the Local Government Finance Review Committee (London: HMSO 2006).
[11] Commission on Local Tax Reform, *Just Change: A New Approach to Local Taxation* (Edinburgh: Commission on Local Tax Reform 2015) p. 83. One explanation for the failure of the Commission to produce specific proposals might be the largely partisan nature of the membership of the Commission, when compared to previous inquiries.
[12] Above fn. 12, pp. 26.
[13] Scottish Government, *Council Tax Reform* (2016) available at: *http://news.scotland.gov.uk/News/Council-tax-reform-2347.aspx* [accessed on March 15 2016].

indication yet that the most likely future for local taxation is reform within the framework of the Council Tax, rather than its wholesale replacement.

This article considers the role that Council Tax plays in contributing towards local government revenue, with a particular emphasis on the method and manner of taxation upon individuals, rather than the level of receipts by local government.

Previous reforms of local government finance have often included consideration of non-domestic rates as well as the grants system. However, it is possible to isolate consideration of the method and manner local residents' contribution to local government finance, without necessarily considering the overall quantum of that contribution, or its interaction with other contributors to local government funds.[14] This article will limit its consideration to the contribution made by residents to local government funds. It therefore excludes consideration of non-domestic rate income, charges and fees, and government grants to the overall revenue of local authorities. This creates an inevitable bias in favour of more cautious and less radical reform although, as is discussed below, this approach better reflects the prevailing political sentiment among policymakers.

Part I: Local taxation and local accountability

The need for autonomous revenue streams

Local autonomy is not an a priori good. While the overwhelming majority of developed countries have advanced and often complicated systems of local government, there are some – such as Ireland – where local government is comparatively powerless. This notwithstanding, however, successive governments of all political hues have felt it necessary to display some deference to localism – even if only rhetorically. However, there has always been a small minority of political actors who are unashamedly in favour of centralisation. These "honest centralisers", as McLean describes them, do not disguise their disdain for local autonomy.[15] In the view of the honest centraliser, according to McLean,

> the role of a progressive government is to enforce uniform progressive policy throughout the country. Local authorities either agree with this, in which case they are redundant, or disagree, in which case they should be abolished.[16]

Honest centralisers can be found in the Jacobin tradition in France, or in the Labour governments of the mid-20th century. However, the practice of successive governments with respect to the powers and functions of local government has been to give with one hand while taking-away with the other, with the prevailing movement of competence being away from local government towards the centre – notwithstanding the any rhetorical deference to localism.[17]

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[14] The transition from Community Charge to Council Tax is an example of such a reform. While the introduction of the Charge was accompanied by the nationalisation of Non-Domestic Rates and reforms to central government grants; the transition to the Council Tax concerned only the contribution made by local taxpayers.

[15] Iain McLean, "Can Local Taxation be Progressive?" (2005) 12 Public Policy Research 111, 113.

[16] McLean, above, 111.

[17] Wilson and Game, above fn. 6, pp. 22-23.

Revenue expenditure by local government in Scotland is primarily funded from three sources: grants from central government; local taxation (Council Tax and Non-Domestic Rates); and sales, fees, and charges for services. Of these sources, grants from central government make-up by far the largest source of local authority income.[18]

Central government grants come in both hypothecated and unhypothecated form. Hypothecated grants are grants which must be used for a specific purpose, while unhypothecated grants allow local authorities to decide how to spend the money. The prevailing trend in local government finance throughout the late 20th century was for grants to come in hypothecated form. In recent years, however, we have seen a shift away from formally hypothecated grants to a system of general grants. The "Concordat" between the Scottish Government and Scottish local authorities (acting through COSLA) was lauded for removing ring fencing from most of the central government grant. The Concordat concluded that

> this package, which to be considered as a whole, is both ambitious and ground-breaking. It represents a fundamental shift in the relationship between the Scottish Government and local government, based on mutual respect.[19]

However, in-keeping with the practice of giving with one hand and taking-away with the other, the Concordat had a profound impact on the fiscal autonomy of local authorities, by requiring councils to freeze Council Tax at 2007-08 levels. Furthermore, though the Concordat removed *specific* ring fencing, the Scottish Executive (as it then was) sought to replace many of these controls with a package deal – local government agreed to deliver many of the Executive's policies, including on class sizes, pre-school places, and police numbers.[20]

Accountability

Local taxation greatly enhances local accountability, by compelling local authorities to justify its spending choices to the electors from whom they raise revenue. Where the levels of expenditure bear little correlation to levels of taxation, invariably, the link between decisions of voters and decisions of representatives will be weakened. That is not to say that absent revenue raising powers bodies will lack any accountability.

While the Burt Commission was firmly of the opinion that the existence of local tax-raising powers is an essential element of accountability,[21] their report cited the Scottish Parliament and Executive as evidence that fiscal autonomy is not necessary for a body to be accountable. However, the report qualifies this conclusion, adding that

> [s]hould the case for fiscal reform for the Scottish Parliament become compelling, then we accept that with it might come a stronger argument in favour of tax-raising powers for local authorities.[22]

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[18] Scottish Government, *Scottish Local Government Financial Statistics 2013-14* (April 16, 2015) available at: *http://www.gov.scot/Resource/0048/00481380.pdf* [Accessed October 6, 2015].
[19] Scottish Executive, *Concordat between the Scottish Government and local government* (November 14, 2007) available at: *http://www.gov.scot/resource/doc/923/0054147.pdf* [Accessed October 6, 2015], p7.
[20] Scottish Executive, above.
[21] Burt, above fn. 10, p41.
[22] Burt, above.

Given that fiscal autonomy has been the central issue in consideration of further devolution – with accountability frequently cited as one of the main reasons for further such devolution[23] – then it is submitted that the Burt Commission's qualification has been met. There is a logical inconsistency in; on the one hand, seeing fiscal autonomy as essential for the accountability of the Scottish Parliament and Government; but not so necessary where local government is concerned.

Layfield notes that we have not yet decided how much local autonomy we actually want.[24] The effluxion of time appears to have done little to clarify this. There appears to be a considerable appetite in Scotland, generally, for both greater local autonomy as well as greater redistribution. However, there is a tension inherent in these two positions.

Local authorities possessed of only a single autonomous revenue stream are comparatively unusual in an international context. Local government in Japan has control over income, sales, and business taxes; as well as, inter alia, taxes on motor vehicles, tobacco, and hot springs. The Mayor of New York has at his disposal four major taxes – on property, personal and corporate income, and sales – as well as a litany of smaller taxes and duties. While a hot-tub tax might not be the most fruitful source of revenue for Scottish local authorities, the availability of such options, according to Hambleton, compares favourably with the UK,

> where the council has only one tax - generating a small fraction of revenue spending. And, incredibly, even that is subject to capping by central government. Effective local leadership cannot be expected to prosper in such a constrained setting.[25]

It was noted in the introduction to this article that the Council Tax is a highly visible tax. The Community Charge was designed to allow taxpayers to make easy comparisons between themselves and residents in other authority areas. The fact that such comparisons are also quite easy with respect to the Council Tax is no mere accident. The use of Band D properties as the benchmark seems to confirm this. This might explain why in the 15 years that Councils were setting their own Council Tax rates very little variance emerged between them. It appears that a degree of gaming may have taken place between authorities, with local government in Scotland behaving much like an oligopoly. Rather than competing with each other to levy the lowest Council Tax – as Margaret Thatcher envisaged would happen under the Community Charge – local authorities appear to have done quite the opposite. If this was indeed the case, then the discretion enjoyed by local authorities in setting their own Council Tax is actually quite limited.

In any case, the discretion that authorities had over their rate of Council Tax has been effectively eliminated by the Scottish Government's Council Tax Freeze policy. Since the SNP came to power in Scotland in 2007, Council Tax has been frozen at 2007 rates across all local authorities.[26] Though initially intended as a temporary measure, before the abolition of the Council Tax and its

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[23] The Smith Commission, Report of the Smith Commission for further devolution of powers to the Scottish Parliament (Smith Commission, 2014).

[24] FHB Layfield, Local government finance: Report of the Committee of Inquiry (HMSO, 1976).

[25] Robin Hambleton, "Modernising political management in local government" (2000) 37 Urban Studies 931.

[26] In 2016, a number of local authorities, most notably The Moray Council, explored defying the Scottish Government's Council Tax freeze, however, in the face of Scottish Government threats to withhold government grants, these authorities ultimately backed down. See Press and Journal, *Moray Council scraps plans to increase council tax* (February 2, 2016) available at: *https://www.pressandjournal.co.uk/fp/news/moray/821884/moray-council-scraps-plans/* [accessed March 20, 2016].

replacement with a local income tax, the Council Tax continues to be frozen at 2007 levels.[27] The effects of this policy are obvious: local government taxation and expenditure prescribed almost entirely by central government; with the amount of real-terms revenue being raised by authorities gradually being eroded by the effects of inflation.

Fairness

One of the most frequent criticisms of the Council Tax in political discourse is that is it "unfair". However, there appears to be little commonality as to what critics of the Council Tax consider to be "fair".

Historically, two competing theories have monopolized discourse on a community's justification for levying taxes: the benefit theory; and the ability-to-pay theory.

The justification for the ability-to-pay theory is usually based on some form of sacrifice. Kendrick proposes three forms of sacrifice theory: the equal sacrifice theory; the proportional sacrifice theory; and the least-sacrifice theory.[28] Such theories can be said to be communitarian – through our personal loyalty to a political community, we are obliged to make a form of sacrifice for the benefit of that community.

Under the befit theory of taxation, a state's jurisdiction to tax is justified as being a *quid pro quo* exchange for benefits received from the state. While Mr Justice Holmes' now famous refrain, "taxes are what we pay for civilized society",[29] is perhaps the most well-known espousal of what Dodge describes as a contractrarian principle of taxation[30]; it is most certainly not the first. Mill conceived a theory of taxation based upon specific benefits any particular person received from the state,[31] although he discounted such a theory on the basis that it would likely result in the poor paying more than the rich. This theory, however, rested upon a narrow definition of benefit.

Modern understandings of the concept of benefit are altogether broader. The benefit received from the state is not defined, nor particularly quantifiable. Here, the benefit includes the maintenance of a system of laws and norms that facilitates the individual's economic wellbeing.[32] This broad definition of benefit legitimizes, as Dodge describes,

> not only taxes, but also government and civil society itself. Here the concept of benefit binds taxation to the core role of government. Crucially, the benefit concept is here diffuse, indivisible, and nonallocable, as opposed to being an aggregation of assorted government activities and programs that inure differentially to various taxpayers and groups thereof.[33]

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[27] The Scottish Government has announced that the Council Tax freeze will end in 2017, though rises will be capped at 3% annually. See Scottish Government, above fn. 13.
[28] M. Slade Kendrick, "The Ability-to-Pay Theory of Taxation" (1939) 29 *American Economic Review* 92.
[29] Mr Justice Holmes (dissenting), *Compania General de Tabacos v Collector* (1927) 275 U.S. 87, at 100.
[30] Joseph M. Dodge, "Theories of Tax Justice: Ruminations on the Benefit, Partnership, and Ability-to-Pay Principles" (2005) 58 Tax L. Rev. 399.
[31] John Stuart Mill, *Essays on Some Unsettled Questions of Political Economy*, 2nd edn (London: Longman,1874).
[32] Deborah A. Geier, "Time to Bring Back the 'Benefit' Norm?" (2004) 33 Tax Notes International 899.
[33] Dodge, above fn. 30, 402.

Both of these approaches to taxation are evident in discussions on local taxation. Margaret Thatcher considered the Rates to be grossly unfair. Her motivation for scrapping them is said to have been inspired by the plight of the "old ladies of Morningside living in six-bedroomed family houses who had no children at home and only had their bins emptied once a week."[34] As a tax on property ownership, her Ministers saw little that was just in concentrating the financing of local services in the hands of a comparatively small number of people who consumed very little in the way of local services. It certainly did not sit well with Thatcher's desire to encourage a "property owning democracy".[35] Her solution to this was a poll tax. The rationale behind this poll tax was along the lines that as most people, regardless of the size of their properties or levels of income, consumed roughly the same amount of local services, they should all contribute equally to the provision of these services. Everyone paying equally for services consumed roughly equally was, in the mind of Thatcher, fair. This conception of fairness corresponds considerably to the benefit theory of taxation – albeit with a somewhat narrow definition of benefit.

History recalls that large swathes of the population did not agree with Margaret Thatcher's conception of fairness. Public discontent over the Community Charge was remarkable – inciting levels of public unrest seldom seen in British society. The source of their disquiet over the Community Charge was that it was, in their opinion, unfair. Under their conception of fairness, the charge was unfair because everyone paid the same, regardless of income – it took no account of individuals' ability to pay.

Upon John Major's accession to the Premiership, Michael Heseltine was appointed Secretary of the State for the Environment, with a special mandate to formulate a replacement for the Community Charge, and to do so quickly. Heseltine had to balance the concerns of those who, on the one hand, felt that the burden of financing local services fell disproportionately on a few people who consumed very little of them; with those who felt that the tax should take account of the means of the payer. The result was the Council Tax compromise.

Intuitively, a tax based on the value of the property you occupy should correspond considerably to means. This seems obvious: people with more money live in nicer houses than people with less money. However, at the same time, an unlimited tax based solely on the value of your property would suffer from the same defect that many saw in the rates – that burden of financing local services would fall far more heavily on a relatively small number of people. To those who favoured the benefit approach to taxation, this was unfair. A degree of banding and capping was therefore deemed necessary in order to flatten the progressivity of that tax. The effect of this banding is that, before the application of Council Tax Benefit, people in lower income groups pay more as a proportion of their income in Council Tax than higher income groups. Relative to income, the Council Tax is regressive.

Residence as a suitable basis for local taxation

At an international level, we allocate the jurisdiction to tax employment income, for example, to the jurisdiction in which the income is earned.[36] This makes particular sense under the benefit theory of

[34] David Butler, et al., Failure in British Government: the politics of the poll tax (Oxford: OUP 1994) pp. 63-64.
[35] Amit Ron, "Visions of Democracy in 'Property-Owning Democracy': Skelton to Rawls and beyond" (2008) 29 History of Political Thought 89.
[36] On the basis that the jurisdiction which supplies the employment should have the right to tax it.

taxation – the jurisdiction that creates the economic environment in which the employment is carried out enjoys the jurisdiction to tax that income. If that principle were to be applied to domestic taxation at a local level – and it is arguable that there is no good reason why it shouldn't – then local income taxes should be payable in the local authority in which a taxpayer works, rather than the local authority in which he or she resides.

However, the benefits derived from local government are normally derived from their consumption of services, which for most people takes place not where they work, but where they reside. Norregaard argues that "property values to some degree reflect services supplied by local governments, strengthening the argument that it is reasonable for this base to be tapped to finance local activities."[37] This is, of course, not universally and unequivocally the case. Obviously, non-residents who work in a local authority area still benefit from the provision of public roads and footpaths, cleansing and environmental services, and an economic climate to which local government undoubtedly contributes. On this basis, it makes sense for local authorities to be able to tax non-domestic properties as well, which is undoubtedly one of the key rationales for non-domestic rates.[38]

Furthermore, if one of the primary justifications for local taxation is local accountability then taxation anywhere other than at the place of residence makes little sense. With the exception of elections to the City of London Corporation, and Business Improvement District (BID) referendums, voting franchises in the United Kingdom are based entirely upon individuals in their place of residence.

Therefore, if taxation of income makes most sense in the place it is earned, and local taxation makes most sense at the location of residence, income appears to be an entirely unsuitable basis to tax at a local level. This leaves property taxes and consumption taxes as suitable potential candidates for local taxation.

Council Tax in the context of the tax system

It is a generally accepted principle of tax optimisation theory that efficient tax systems favour a broader base with a lower rate over a narrow base with higher rates.[39] The rationale is that lower rates reduce incentives to alter behaviour, while a broader base reduces opportunities to gain a tax benefit from altering behaviour. In this respect, poll taxes are the least distortive and most efficient form of taxation, however, for reasons of contemporary political history this paper does not advocate a return to any such system.

Property taxation is a useful tool for broadening the tax base. At present, a number of taxes on property presently exist in the UK. These include Capital Gains Tax, Stamp Duty Land Tax, Inheritance Tax, and Council Tax. However, with the exception of Council Tax, all of these taxes require some kind of transaction to take place.[40] The Council Tax is, therefore, the only tax on static property presently in operation in the UK.

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[37] J. Norregaard, *Taxing Immovable Property: Revenue Potential and Implementation Challenges* (Washington, D.C.: International Monetary Fund 2013) p. 15.
[38] And, arguably, supports the case for the de-nationalisation of non-domestic rates revenue.
[39] W. Bradley Hilreth and J.A. Richardson, *Handbook on Taxation* (Boca Raton: CRC Press 1999) p.23.
[40] It should be noted that certain trusts are liable to a charge to Inheritance Tax on the total value of relevant trust property every ten years, Inheritance Tax Act 1984 s.66.

Furthermore, there is a considerable body of evidence that property taxes are amongst the most efficient taxes in existence.[41] The OECD's empirical research confirms that property taxes are, in general

> more efficient than other types of taxes in that their impact on the allocation of resources in the economy is less adverse. This is because these taxes do not affect the decisions of economic agents to supply labour, to invest in human capital, to produce, invest and innovate to the same extent as some other taxes.[42]

It follows from this that a tax on land alone (and not what's built on it) is therefore even more efficient. As the amount of land is fixed, taxing it cannot affect supply. It is further arguable that taxing land alone creates additional economic efficiencies in encouraging efficient utilisation of land assets.[43] However, there exist considerable difficulties in disaggregating the value of land from that which is built upon it, in particular where a considerable amount of time has elapsed from the point of development to the point of assessment. Furthermore, the value of land will inevitably be affected by the amenities and built environment surrounding it. It is perhaps unsurprising therefore that, notwithstanding the economic attractiveness of taxing land over property, the prevailing preference in international practice is for property taxes over land taxes.

Part II: Operation of the Council Tax

Legal basis for the Council Tax

The legal basis for the Council Tax in Scotland can be found in Part II of the Act. The tax is payable in respect of dwellings,[44] and the incidence of the tax falls primarily upon occupiers of dwellings under s75 of the Act. The Council Tax (Liability of Owners) (Scotland) Regulations 1992 (as amended) prescribe a number of circumstances in which owners, and not occupiers, of properties will be liable to pay the Tax.[45] The tax is chargeable daily, and is only payable by the occupiers on those days in which he occupies the property. A discount of 25%, or a percentage specified by the Secretary of State, is to be applied to properties with a single chargeable occupier. Persons are to be disregarded for the purposes of the discount where they are prisoners or certain other detainees, severely mentally impaired, children, students, patients of hospitals or care homes, carers, and homeless persons in temporary accommodation.[46] Further discounts are available under the Council Tax Reduction (Scotland) Regulations 2012.

The first step in calculating the tax is the determination of a property's value on 1 April 1991. s84 of the Act requires that the assessor for each council compiles and maintains a valuation list showing each dwelling existing in the local authority's area, as well as the Council Tax band applicable to each dwelling.

[41] See, R. Bahl, J. Martinez-Vasquez, and J. Youngman (eds.), *Making the Property Tax Work* (Cambridge, Massachusetts: Lincoln Institute of Land Policy 2008); OECD, *Tax Policy Reform and Economic Growth* (Paris: OECD Publishing 2010).
[42] OECD, above fn. 41, p. 118.
[43] OECD, above fn. 41, p. 118.
[44] Local Government Finance Act 1992 s.72.
[45] Such circumstances include residential care homes, resident staff, and houses in multiple occupation (such as bedsits).
[46] Schedule 1.

The applicable valuation bands for the Council Tax are prescribed by s74. Dwellings are to be allocated into a valuation band ranging from the lowest band (A) to an unlimited top band (H). The Council Tax payable by properties in each band is in the proportion 6: 7: 8: 9: 11: 13: 15: 18 where 6 is Band A, 7 is Band B, and so on.[47] Local authorities, therefore, have no discretion over the progressivity of the Tax through the bands. Local authorities must then set an amount of Council Tax to be paid by dwellings listed in valuation band D[48] and then the amount of Council Tax payable by dwellings in each of the other valuation bands in accordance with the abovementioned proportion. Councils are required to set the Council Tax charge at a level that meets their estimated total expenditure for that financial year.[49]

The distribution of properties into the valuation bands across Scotland is as follows:

Table 1: Distribution of properties in Council Tax bands (Scotland)[50]

Band	Number of Properties	%	Ratio	Average Tax
A	545,549	21%	6	£766.00
B	596,594	23%	7	£893.67
C	410,733	16%	8	£1,021.33
D	336,404	13%	9	£1,149.00
E	336,888	13%	11	£1,404.33
F	189,753	7%	13	£1,659.67
G	121,348	5%	15	£1,915.00
H	13,241	1%	18	£2,298.00
Total	2,550,510	100%		

As can be seen from the above table, 60% of all properties are in the bottom three bands – where there is very little progressivity between the bands. The top three bands contain only 13% of properties, where the progressivity between the bands is somewhat steeper.

Because the bands are national[51] there is a considerable inequity between local authorities. For example, while 16% of all properties in East Renfrewshire are in band G (the second highest band); only 2% of all properties in neighbouring East Ayrshire are in band G. 46% of East Ayrshire's properties are in band A (the lowest band), but only 4% of East Renfrewshire's property are in that lowest band.[52]

[47] s74(1).
[48] s93(1).
[49] s93(3).
[50] Scottish Assessors Association, *General Statistics: Report 2* (2015) available at: *http://saa.gov.uk/general_statistics.php?&REPORT_NAME=ct_band#report_list* [Accessed April 7, 2015].
[51] That is to say, the same bands are used in every local authority area.
[52] Scottish Assessors Association, above fn. 50.

Because properties were allocated to nationally applicable valuation bands, and the progression of the bands is prescribed by the Act, councils, in reality, enjoy very little autonomy over the Council Tax. Indeed, the only discretion local authorities exercise over the council tax is determining the charge to dwellings in valuation band D. The importance of this discretion should not be understated – as it directly affects both the tax burden on residents and the expenditure levels of the local authority. In England, the variance in Council Tax charges is considerable. The average Council Tax bill for a Band D property in Westminster in 2014 was £678, while the average bill for a Band D property in Kingston-upon-Thames is more than twice that, at £1,679.[53] By contrast, the highest Council Tax bill for a Band D property in the same period in Scotland was £1230.39 in Aberdeen City, while the lowest was £1024 in Eilean Siar.[54]

Until 2013, the Council Tax was accompanied by a welfare benefit – Council Tax Benefit (CTB) – in order to mitigate the effects of the tax on low-income households. As part of the Department of Work and Pensions' reforms to Britain's benefits system, the Council Tax Benefit was abolished to be replaced by the Council Tax Reduction. The Reduction is regulated by the Scottish Ministers and administered by local authorities, and no longer forms part of the benefits system. Individuals are entitled to apply for Council Tax Reduction where they have little or no income[55] and do not have capital in excess of £16,000.[56] This follows, in part, the recommendation of the Lyons Inquiry that a Council Tax Rebate should replace CTB.[57] However, contrary to Lyons' recommendation, the Council Tax Reduction is not automatic.

Progressivity of the Council Tax

The progressivity of the Council Tax can be assessed by two measures: progressivity to income; and progressivity to property value. Though there is often a correlation between property values and income levels, this need not necessarily be the case. The various stereotypes presented by political actors in public discourse about the Council Tax and its predecessors illustrate the tensions between these two measures of progressivity: the pensioner couple whose children have left their large family home, but have limited income; the family with four working adults residing in a modest family home. A tax that is progressive to property values would tax the pensioner couple more highly; a tax that is progressive to incomes would tax the household with multiple incomes more highly.

Progressivity to Property Values

Properties in lower bands pay less Council Tax than properties in higher bands. This, on the face of it, appears to be progressive to property value. However, the rate at which the Council Tax increases as

[53] This variation can, in part, be explained by the distribution of properties into different bands – however the difference between the two authorities is not as stark as the differing tax rates suggest. See National Statistics, *Council Tax levels set by local authorities in England 2014 to 2015 (revised) – Table 7* available at: *https://www.gov.uk/government/statistics/council-tax-levels-set-by-local-authorities-in-england-2014-to-2015* [Accessed on April 7, 2015].

[54] It should be noted that Aberdeen City has one of the evenest distributions of properties across valuation bands in Scotland, while in Eilean Siar, the majority of the properties is concentrated in the lower three bands. Therefore, notwithstanding the similarity between the two authorities' Council Tax rates, the average bill per household in Eilean Siar is much lower in that authority area than Aberdeen City, as more properties fall into lower valuation Bands. See Scottish Assessors Association, above fn. 50.

[55] Council Tax Reduction (Scotland) Regulations 2012 Reg. 14(5).

[56] Reg 42.

[57] Lyons, above fn. 4.

you progress up the bands is considerably smaller than the increases in the values of the properties in the bands. In this respect, the Council Tax is regressive – higher value properties pay much less Council Tax than lower value properties, relative to their respective values.

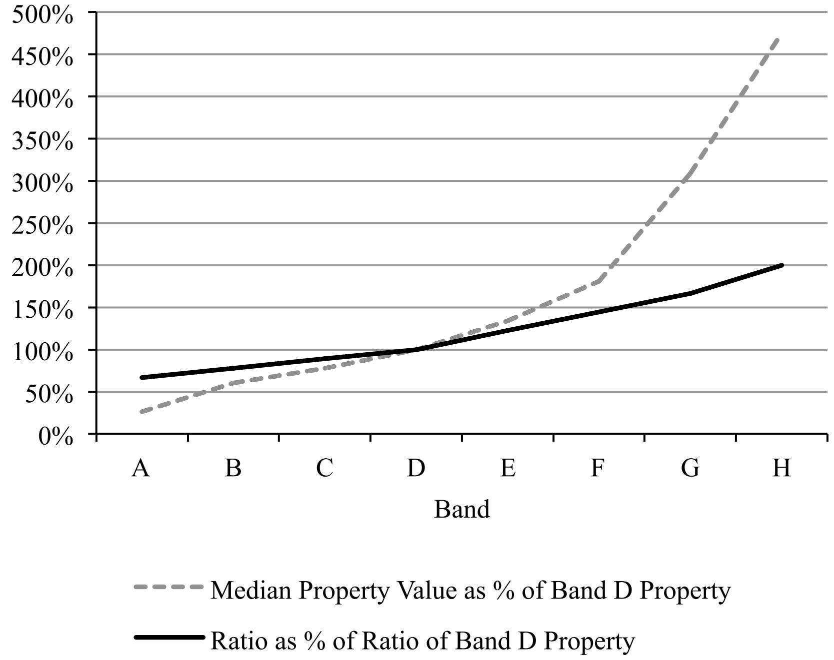

Figure 1: Progression of Council Tax ratios compared to assessed values in each band

The below table illustrates the regressive nature of the tax that is inherent in its design. The median value figure is the median assessed property price in each of the bands. As Band H has no upper limit, a notional median value was determined by adding the average of the difference between the lower limit and the median value for each band to the lower limit for Band H. The median property price in each band was then adjusted to 2014 values using the Halifax House Prices Index for Scotland. The Average Notional Charge on Value is the average Council Tax charge for each band expressed as a percentage of the Adjusted Median Value in each band. It must be stressed that the Adjusted Median Value might, in reality, bear little resemblance to the actual present market value of properties in their respective bands – this is a flaw inherent in a property tax system that is based upon 24 year-old valuations.

Table 2: Council Tax as a tax on property values

Band	Lower Limit	Upper Limit	Median Value	Adjusted Median Value	Ratio	Average Council Tax	Average Notional Charge on Value
A	£-	£27,000	£13,500	£30,122.93	6	£766.00	2.54%
B	£27,000	£35,000	£31,000	£69,171.16	7	£893.67	1.29%
C	£35,000	£45,000	£40,000	£89,253.11	8	£1,021.33	1.14%
D	£45,000	£58,000	£51,500	£114,913.38	9	£1,149.00	1.00%
E	£58,000	£80,000	£69,000	£153,961.62	11	£1,404.33	0.91%

F	£80,000	£106,000	£93,000	£207,513.49	13	£1,659.67	0.80%
G	£106,000	£212,000	£159,000	£354,781.12	15	£1,915.00	0.54%
H	£212,000		£244,643	£545,878.41	18	£2,298.00	0.42%

The most obvious flaw in the above data is with respect to the Band A and Band H properties – as they have no lower and upper limit, respectively. The steepness of the regression between Bands A and B can therefore be explained in part by the fact that very few properties will be completely worthless. Nonetheless, the regression of the Average Notional Charge on Value is quite apparent – with the effective tax rate on a property with an Adjusted Value of £69,171 being 1.29%, while the effective tax rate on a property with an Adjusted Value of £354,781 is 0.54%.

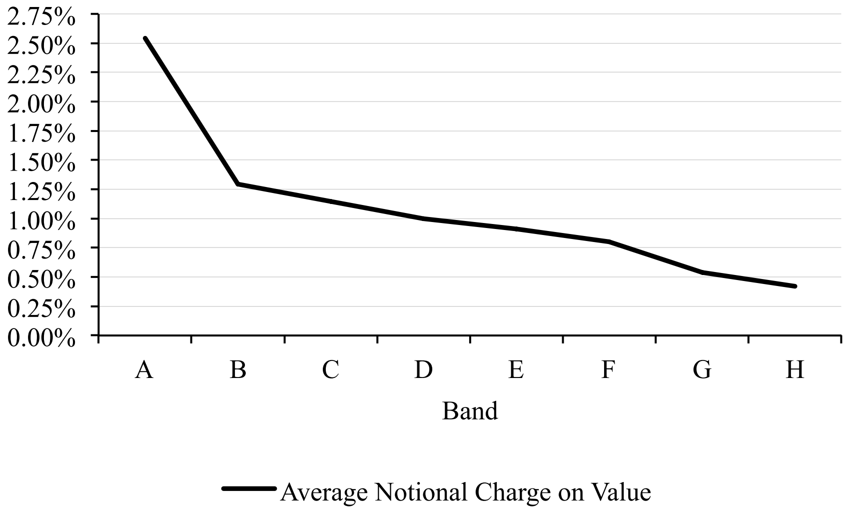

Figure 2: Regression of Council Tax rates as a tax on property values

Progressivity to Income

The incidence of the Council Tax is regressive to incomes. We have already seen how the Council Tax is relatively flat – the highest Council Tax bill in a local authority area can only ever be three times larger than the lowest. We have also seen how the overwhelming majority of taxable properties fall within bands A to D, with a band A property being charged two-thirds of the amount a band D property is to pay.

A year after its inception, Giles and Ridge analysed the progressivity of the Council Tax to income, compared to that of the Community Charge. They found that the Council Tax amounted to almost the exact same proportion of income in each decile group as the Community Charge – they were equally as regressive.[58] Sir Michael Lyons Inquiry into Local Government in England conducted

[58] Christopher Giles & Miles Ridge, Right This Time? An analysis of the first year's Council Tax figures (London: IFS 1993) p.21.

a similar analysis over a decade later and reached similar conclusions – the Council Tax is highly regressive to income.[59]

However, there is considerable merit to the observation that "[p]rogressivity is best viewed as a characteristic of the tax system as a whole, rather than a property of each individual element of it."[60] An even broader view of progressivity might also include consideration of benefits received from the state – at the very least cash benefits. The introduction of the Council Tax was accompanied by a new benefit – Council Tax Benefit – designed to mitigate the burden of Council Tax on those on very low incomes.

When both Giles & Ridge and the Lyons Inquiry took Council Tax Benefit into consideration, both reached similar conclusions – that the availability of Council Tax Benefit substantially reduced the burden of Council Tax on lower income groups. The Lyons Inquiry concluded that once Council Tax Benefit was taken into account the burden of the Council Tax on each decile group was broadly similar.

This will likely come as little consolation to those who consider income to be the only measure of someone's means – however the author finds little sympathy with such a narrow view. As Kay and King argue "[i]ncome is a measure of taxable capacity, but it is not the only one, nor necessarily the best. Income, supplemented by information about housing consumption, may give a better guide to a household's standard of living than either of those variables alone."[61] This re-iterates that that intuitive point that wealthier people live in more expensive houses – it is borne out by evidence.

The Warwick Institute for Economic Research found that the number of owner-occupiers in higher Council Tax Bands (E to H) on low incomes amounted to only 2% of all owner-occupied properties.[62] The reality is that there is an overwhelming concentration of wealth in higher income groups. The Office for National Statistics recently found that the total wealth of people in the lowest 10% of earners was about 15% more than their total income, the total wealth of those in the top 10% of earners was 1100% that of their total income.[63]

That is not to say that the impact of the Council Tax on that small minority of people who are actually asset rich but cash poor should not be understated. The Warwick survey of owner-occupiers identified one interviewee who had to pay a £103 monthly Council Tax bill out of a net-weekly income of £123.[64] However, McLean argues that such persons should "face the true cost of living in expensive houses",[65] while the Institute for Fiscal Studies told the Local Tax Commission that "housing should be taxed like other consumption."[66] The Council Tax Reduction exists to mitigate the effects of the Tax on those who are both asset poor and on low incomes, while a litany of financial

[59] Lyons, above fn. 4.
[60] John Alexander Kay and Mervyn A King, *The British tax system* (Oxford: OUP 1983), p139.
[61] Kay and King, above, p.149.
[62] Michael Orton and Rhys Davies, 'Wealth Rich but Income Poor'? Council tax and the relationship between household income and property value (Coventry: Warwick Institute for Employment Research, 2004).
[63] Office for National Statistics, *Wealth and Income, 2010-12* (ONS, 2014).
[64] Orton and Davies, above fn. 62.
[65] McLean, above fn. 15, 116.
[66] Local Tax Commission, above fn. 11, p. 30.

products exists to allow people to generate income from their assets (discussed below). The taxpayer should not be in the business of subsidising inheritance.

Part III: Reforming the Council Tax

As this article argues above, a tax based on residence is best suited to operation at a local level. On this basis, there is nothing inherently wrong with the Council Tax – its defects are in its operation and structure. However, there exist a number of options that can go some considerable way to addressing these defects.

If the Council Tax is to be retained, there are a number of reforms that could be introduced to address some of the flaws in the present system. These reforms are concerned with the allocation of properties into bands, and the ratios applicable to those bands; the process for determining the value of properties; and reliefs that ought to be available.

Banding and ratios

The distribution of bands is clearly designed to reflect the value of properties, and not the number of properties within them. As Table 1 shows 60% of all properties fall within the lowest three bands, A, B, and C. As the ratios applicable to these bands are 6, 7, and 8, respectively, it is quite apparent that for the overwhelming majority of properties there is very little difference in the amount of council tax they actually pay. This, undoubtedly, gives the impression that the Council Tax, in reality, bears a considerable resemblance to the Poll Tax. There is, therefore, a strong case for introducing more bands at the lower levels of the tax (that is, below those properties which presently fall within Band D).

There is, of course, a danger in introducing too many bands, especially at lower levels. This is because the more bands there are the narrower they will be. It follows that the narrower the bands are, the greater the likelihood that properties will be wrongly allocated. This was undoubtedly a concern in the initial setting of the bands, with the gap between the upper limits of bands A and B, and B and C, being £8,000 and £10,000, respectively. Were the bands to increase in increments much smaller than that, the scope for error greatly increases.

However, it is arguable that this is less concerning today. House price inflation has broadened the distribution of property values. As Table 3, below, shows the gaps between Council Tax bands broaden considerably when adjusted for house price inflation. The gaps between the upper limits of bands A and B, and B and C, once adjusted, are now approximately £18,000, and £22,000, respectively. It is therefore highly arguable that there is now scope for an additional two bands below what is presently Band D.

Table 3: Breadth of Council Tax bands, original and adjusted

Band	Lower Limit	Upper Limit	Gap	Adjusted Lower	Adjusted Upper	Adjusted Gap	Ratio
A	£-	£27,000	£-	£-	£60,246	£-	6
B	£27,000	£35,000	£8,000	£60,246	£78,096	£17,851	7
C	£35,000	£45,000	£10,000	£78,096	£100,410	£22,313	8

D	£45,000	£58,000	£13,000	£100,410	£129,417	£29,007	9
E	£58,000	£80,000	£22,000	£129,417	£178,506	£49,089	11
F	£80,000	£106,000	£26,000	£178,506	£236,521	£58,015	13
G	£106,000	£212,000	£106,000	£236,521	£473,041	£236,521	15
H	£212,000		£-	£473,041		£-	18

Furthermore, in recent years a number of parties have proposed additional taxation on very high value properties – a so called "Mansion Tax". Support for such a proposal has primarily been from the Labour Party and the Liberal Democrats. Although neither has provided much detail on how they would implement such a policy, it is understood that the Liberal Democrats' proposal would be to do so through the Council Tax system. If the Commission is minded to recommend a higher tax burden on very high value properties, then it is proposed that the simplest way to do so would be through the Council Tax system.

However, as can be seen from Table 1, the number of properties in Scotland that fall into Band H is very low – approximately 0.5% of all properties in Scotland. The number within Band H that could be classified as a 'mansion' (however defined, but presumably more specific than a mere Band H property) will be a smaller number still. Furthermore, it is likely that that those properties that could be classified as 'mansions' would be concentrated in a very small number of local authority areas. It is unlikely, therefore, that many more bands above H would raise very much extra in the way of additional revenue. In reviewing its own system of Council Tax bands, the Welsh Government concluded that only one additional band above Band H was practicable. It is likely that the same is true of Scotland. However, the breadth of the upper bands leaves considerable scope for the introduction of additional bands between Bands D and H.

As the progressivity of the Council Tax is determined by the ratio assigned to each band, these ratios ought to be reassessed too. As Figure 2 illustrates, the Council Tax is presently regressive to property values. There will doubtless be some attraction in making the tax progressive to property values – that is to say that the effective percentage charge on value increases for higher value properties, this would be a highly radical approach and one that might well be met with considerable public disquiet. It is therefore proposed that a more acceptable compromise would be to construct the Council Tax as an effectively flat percentage charge on property value. The simplest way to do so is to assign each band a ratio that better corresponds to the value of the properties within it.

Table 2 illustrates the regressiveness of Council Tax relative to property value. The total notional revenue received from such a structure in 2014 is approximately £2.8bn. The actual revenue received was somewhat lower – approximately £2bn – with Council Tax reduction accounting for almost half of that shortfall, as well as various other reliefs and exemptions, such as for single occupants and students. Nonetheless, the £2.8bn figure provides a useful basis for comparison.

Table 4: Council Tax if ratios correspond to value[67]

Band	Median	Adjusted	Ratio	Average	Average	Number of	Notional	Gross

[67] On the basis of existing bands with ratios adjusted to correspond to value. Revenue calculated on the basis of Band D Council Tax at current average.

		Median		Tax	Notional Charge on Value	Properties	Revenue
A	£13,500	£30,123	2	£459.60	1.53%	545,549	£250,734,320
B	£31,000	£69,171	3	£689.40	1.00%	596,594	£411,291,903
C	£40,000	£89,253	4	£919.20	1.03%	410,733	£377,545,773
D	£51,500	£114,913	5	£1,149.00	1.00%	336,404	£386,528,196
E	£69,000	£153,961	7	£1,608.60	1.04%	336,888	£541,918,036
F	£93,000	£207,513	9	£2,068.20	1.00%	189,753	£392,447,154
G	£159,000	£354,781	16	£3,676.80	1.04%	121,348	£446,172,326
H	£244,642	£545,878	24	£5,515.20	1.01%	13,241	£73,026,763
							£2,879,664,474

As Table 4 illustrates, using a ratio that better corresponds to property values, as preferred by the Local Tax Commission,[68] would substantially lower Council Tax bills in Bands A, B, and C, while the bills of properties in Bands F, G, and H would be subject to sizable increases.

Interestingly, this redistribution would notionally raise a little more revenue. However, as the Council Tax Reduction, etc. falls primarily upon lower banded properties the actual revenue raised would likely be a good deal higher still. Were this a revenue-neutral exercise then this additional revenue could be used to reduce Council Tax for all bands. Alternatively, such a re-rationalising would provide welcome additional revenue for local authorities.

The measures proposed therefore are as follows: an additional two bands below Band D; an additional band between Band D and Band H; a further band above Band H; application of ratios that reflect the value of properties within each band.

Using the 1991 valuations adjusted for house price inflation, it is proposed that the structure of bands and ratios should be as follows:

Table 5: Proposed new bands and ratios

Band	New Lower	New Upper	Median	Ratio	Average Tax	Average Notional Charge on Value
1	£-	£60,000	£30,000	6	£574.50	1.92%
2	£60,000	£70,000	£65,000	7	£670.25	1.03%
3	£70,000	£80,000	£75,000	8	£766.00	1.02%
4	£80,000	£90,000	£85,000	9	£861.75	1.01%
5	£90,000	£100,000	£95,000	10	£957.50	1.01%
6*	£100,000	£120,000	£110,000	12	£1,149.00	1.04%
7	£120,000	£150,000	£135,000	15	£1,436.25	1.06%
8	£150,000	£180,000	£165,000	17	£1,627.75	0.99%
9	£180,000	£240,000	£210,000	21	£2,010.75	0.96%
10	£240,000	£470,000	£355,000	35	£3,351.25	0.94%
11	£470,000	£800,000	£635,000	60	£5,745.00	0.90%
12	£800,000	£-	£800,000	90	£8,617.50	1.08%

*Band 6 is the former Band D.

[68] Local Tax Commission, above fn. 11, p. 75.

It should be noted that these bands are not based upon real present day values. Once real present day values have been determined it should be possible to better structure the bands to reflect actual values, however the broad distribution of properties would likely remain relatively similar. Finally, it is proposed that in any substantial re-banding the naming of the bands should be changed from letters to numbers. This is simply to avoid the perception that people have moved up a band, and that they might therefore have to pay more tax, when in actual fact their tax liability – as this paper proposes – would actually decrease.

Valuation

The discorrelation between Council Tax bands and present-day property values undermines the legitimacy of the Tax. The Lyons Report noted that "an out of date tax base will mean that the credibility of council tax as a property tax will gradually be eroded."[69] The Local Tax Commission recognised that "property tax liabilities should ideally be linked to up-to-date property values".[70]

There is a tremendous unwillingness amongst political leaders to update property values.[71] Inevitably in any revaluation of properties there will be winners and losers – and the fear is that the losers will be more vocal than the winners. Mirrlees describes this as "one of the most egregious demonstrations of the 'tyranny of the status quo.'"[72]

The political hesitation to engage in a substantial revaluation is perhaps understandable when looking at Wales' experience. One third of properties were placed in a higher band, while only 8% of properties were assigned to a lower band. A fact that was pointed to by opponents of revaluation in England - and likely the explanation for the UK Government abandoning its plans to do so.

Increases in property taxes that arise as a consequence of increases in property values are almost always unpopular. This, as Hayashi points out, raises something of a puzzle.[73] Individuals' liability to Income Tax increases when their income rises and yet doesn't provoke the same ire from taxpayers as an increase in their liability to property taxes. The most likely explanation is that the increase in the overall wealth of a taxpayer that results from an increase in the value of their property is not necessarily matched by an increase in available cash.

The effect of the system of bands in the Council Tax is that – except at the margins – minor differences in the value of property should not have any effect on tax liability. Of course, where no revaluation takes place, variations in the value of properties has no effect on the liability to tax.

[69] Lyons, above fn. 4.
[70] Local Tax Commission, above fn. 11, p. 31.
[71] In March 2016, First Minister, Nicola Sturgeon, confirmed that the Scottish Government has no plans to revalue properties, notwithstanding the recommendations of the Local Tax Commission. See Scottish Government, above fn. 13.
[72] Mirrlees, above fn. 3.
[73] Andrew T. Hayashi, "Property Taxes and Their Limits: Evidence From New York City" (2014) 25 *Stanford Law and Policy Review* 33.

Most properties remain in the same band to which they were assigned in 1991. Confidence in the accuracy of these valuations has been undermined over the years, with various reports of gross errors as a result of so-called "second gear valuations"[74].

The longer historical property valuations are relied upon the more detached from reality the Tax becomes. The Local Tax Commission estimates that had a revaluation taken place in 2014, 57% of all properties would have changed bands[75] (assuming the number of properties in each band is to remain the same). Furthermore, the longer revaluation is deferred the harsher the impact of such a revaluation will seem. We also find ourselves, every time a new house is constructed, engaging in the bizarre exercise of attempting to determine what the value of this house would have been in 1991. A system of periodic or even rolling revaluation is therefore desirable.

Periodic revaluation

The starting point for keeping the tax base up to date should be a system of periodic revaluation. There ought to be a statutory obligation upon authorities to update property valuations with a specified frequency. The appropriate frequency with which these revaluations should take place depends somewhat on whether or not a system of rolling revaluations is adopted as well (discussed below). More frequent revaluations will reduce shocks and lend to the impression that such revaluations are routine. Though the forthcoming revaluation has been postponed by two years, a five-year interval between revaluations is normal for Non-Domestic Rates. It may be, however, that domestic property prices do not vary as sharply – relatively speaking – as the rateable value of non-domestic property – and a longer interval may therefore be more appropriate. It is proposed that a ten-yearly periodic revaluation might be the most appropriate frequency.

Rolling revaluation

The only time we ever know the market value of a property is when it is sold. That is the nature of a market value. However, accounting for deemed transactions is a hugely commonplace practice for the purposes of taxation – often done so with far fewer open market comparators than exist with respect to property. We have available to us a far more sophisticated toolkit for measuring the value of properties than we did in 1991.

A system of rolling revaluations could be used in addition, or as an alternative, to periodic revaluation. Valuation bands could be published annually, adjusted for property price inflation. Where a property changes hands at market value – or some other determination of contemporary market value takes place – which property will be assigned to the applicable band for that financial year. Houses that increase in value in line with average prices would therefore not shift bands when their updated value is determined. However, where the change in the value of a property has been significantly higher or lower than the average change it may, therefore, be assigned to a different band to reflect its change in relative value.

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[74] So called because, owing to the rushed nature of the Council Tax rollout, valuations were allegedly done in some instances by driving slowly around residential areas and ascribing valuations to properties on the basis of fairly cursory assessments.
[75] Local Tax Commission, above fn. 11, p. 32.

The Land Register of Scotland has been fully operational across Scotland for over a decade, and in certain parts of Scotland for many more. Records of properties should include valuation index keys, outlining their features and characteristics, in order to make comparisons with others.[76] The following process for updating property values between valuations is therefore proposed.

Base valuation

The starting point for any updated valuation ought to be the price paid for the property in a recent arm's length open market transaction. Where no recent transactions over the property have taken place, a recent independent and verified valuation for some other purpose (such as Inheritance Tax or mortgage application) might also be used. That failing, the most recent statutory valuation may be used.

Updating valuations

Properties vary in value for two reasons: either because of changes in the condition of the property; or because of changes in the prevailing market price in a particular area. Both of these variations are quite easily measurable. Once a base valuation has been determined, changes in the value of a property can be obtained by considering both improvements to individual properties, as well as the prevailing trend in the value of properties in the area.

Improvements or dilapidations

Property owners ought to be required to report substantial improvements or dilapidations made to the property. This should not include simple redecoration, or like-for-like replacements of fixtures and fittings, but of substantial enhancements to the property itself. This might include extensions and conversions, re-arrangement of internal configuration, installation of a conservatory, improvements to necessary services such as plumbing and wiring. Documentary evidence of the value of these improvements should be provided. The value of these enhancements is ultimately the amount by which these enhancements increase the value of the property. This should usually bear some considerable correspondence to the amount that a purchaser of a property would have to expend on making these enhancements themselves. Therefore, in most instances, the enhancement in value will be reflected in the cost of making these improvements – and documentary evidence as to the cost of the improvements would therefore be acceptable.

Irregular increase in market value

The value of properties in a particular area can increase sharply as a consequence of factors beyond the direct control of the property owner. This can include provision of new or improved local services and amenities, improvements in local school standards, and crime statistics. It is also entirely possible that prevailing social conditions could cause properties to increase in value rather more slowly than might be typically expected, or even decline. Where Land Registry data shows a change in property prices at variance with the prevailing trend in a particular area then valuations for properties should be revised accordingly.

[76] For example, a three bedroom, semi-detached, two-storey house, with garage, of a particular area measured in square metres, with a particular size of garden. A property could reasonably be expected to have a similar market value to other nearby properties with all or most of the same characteristics.

Independent valuation

A final option that ought to be available to a taxpayer is to provide a verified independent valuation of their property by a Chartered Surveyor at his own expense. Invariably, this likely would only occur where a taxpayer feels that the value determined by one of the foregoing means was incorrect. It may well be the case, for example, that comparators used to determine property prices are inexact, or an open market price was, for some unrelated reason,[77] considerably higher than its normal market value would otherwise have been.

Reliefs

There exists a wide range of financial products that allow owner-occupiers to liquidise the capital value in their homes - so called ‘equity release schemes’. These products allow homeowners to receive either a cash lump sum and/or an income (usually by using the capital to purchase an annuity) in exchange for a share of the ownership of, or granting of a security over, their homes, all the while retaining a right to reside within the property.

It is arguable that such products suffer from the perception that they amount to “selling-off the family silver”. Such products are usually marketed as a means to allow pensioners to make the most of their retirements, not to meet the burdens of an ever-increasing council tax. However, the alternative is for local authorities to forego large amounts of income from high value properties in order to satisfy their owners desire to live in these high value properties for their entire lives and (eventually) leave them in their entirety to their children.

Allowing pensioners to defer payment would be similar in effect to pensioners using equity release schemes to meet their council tax bills. Presentationally, deferral might not suffer from the negative perceptions attached to borrowing to meet present liabilities. Furthermore, for those local authorities that do not wish to absorb the immediate cost of deferral, financial markets could easily provide products to authorities in consideration of the eventual payment of such council tax liabilities. This amounts to, in effect, the council arranging for equity release over such properties, rather than the taxpayer.

There is no way of knowing how popular an option deferral might be, though uptake of such a scheme in Northern Ireland was limited, leading to the scheme’s discontinuation.[78] The fact that interest would have to be applied to any deferral would surely act as some incentive to pay bills as they become payable wherever possible. Though the Local Tax Commission considered and appeared to dismiss deferral on the basis of Northern Ireland’s experience,[79] presentationally, deferral would go some considerable way to making it easier to defend the assertion that the Council Tax takes into account the taxpayer’s ability to pay.

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[77] A particular sentimental motive, for example.

[78] Northern Ireland Executive, *Finance Minister to bring an end to the Rates Deferment Scheme* (2012) available at: *http://www.northernireland.gov.uk/news-dfp-220212-finance-minister-to* [accessed March 16 2016].

[79] Local Tax Commission, above fn, 11, p. 31.

Other recommendations

It is also recommended that the revenue base of local government should be diversified. This would have the advantage of increasing the proportion of revenue local authorities raise autonomously, whilst simultaneously reducing the likelihood of "revenue shock" should a decline in their sole source of income occur.

Prospective candidates for further devolution to local government include environmental taxes such as landfill tax and the plastic bag tax, and the power to levy hotel taxes. Though not the subject of the present inquiry, the continued nationalisation of Non-domestic Rates ought to be reviewed in the near future as well.

The on going discussion surrounding the Smith Commission process and the new Scotland Bill should keep in mind the potential for further devolution of revenue powers to local government.

From a cosmetic perspective, it might be worth re-naming the Council Tax. Its sheer unpopularity amongst taxpayers means that any programme of substantial reform to the Tax, such as this article suggests, ought to be reflected in its appearance. "Local Property Tax" might be a more appropriate name.

Finally, a greater effort ought to be made to preserve the fiscal autonomy of local government in Scotland. Political parties should refrain from running in national elections on policies that fall exclusively within the ambit of local control. The Scottish Government should respect the autonomy of local government by ending the Council Tax freeze, and allowing local authorities to set the Tax at the level they feel is most suitable. Furthermore, the Scottish Parliament should legislate to protect the fiscal autonomy of local government. Though the Parliament cannot actually bind itself, or its successors, it would be a powerful gesture of respect for the fiscal autonomy of Scotland's councils.

Conclusion

The Council Tax represented a compromise, but arguably one that represents the worst of all worlds. Contrary to the rhetoric, it does take some account of means – but not necessarily income; it is a property tax, but it bears only the scantest relationship to property values; and while its flatness does increase its correlation to local service consumption, it does not do so anything like as precisely as service charging.

However, property taxation is the form of taxation that is by far the best suited to financing local government, and there is nothing inherent in the Council Tax that prevents it from operating as a reasonably efficient property tax. Many of the criticisms frequently levelled at the Council Tax – the burden it places on individuals of lesser means, and of older people on fixed incomes – can easily be overcome by structural changes to the base as well as allowing for deferral of payment for certain taxpayers.

The proposals contained within this article are, quite intentionally, not particularly revolutionary. However, they do go some way to better satisfying the criteria for good local taxation set out in Part I. While there is no denying that the Council Tax provides an autonomous source of revenue, discontent with the tax has resulted in it being frozen by the Scottish Government, severely curtailing that autonomy. By addressing some of the flaws inherent in the Council Tax system it becomes difficult to continue to justify a centrally imposed freeze. By ending that freeze, the fiscal autonomy of local government will be greatly enhanced. Furthermore, the visibility inherent in the design of the Council Tax facilitates the accountability of local government to local taxpayers. The fact that the tax is payable at residence goes some way to satisfying the benefit theory of taxation, by allowing local authorities to levy taxes as a quid pro quo for consumption of local services. There are broader economic benefits, too, to retaining the Council Tax in some form, as it broadens the overall tax base, revenue is relatively stable, and is much less distorting than most other forms of taxation.

However, it is with respect to the apparent fairness of the tax that the proposals contained within this article arguably provide the greatest advance. The Council Tax at present is regressive both to property values and to incomes (and approximately proportionate to incomes after the application of means-tested reductions and benefits). The re-rationalising of the Council Tax proposed by this article makes the Council Tax proportionate to property values. Furthermore, the proposed reforms to valuation ensure that the link between property values and tax payable is maintained. The proposed system of deferral allows the incidence of the tax to more closely align with taxpayers' immediate ability to pay. By creating a system of bands that is perceptively fairer, the legitimacy of the tax is greatly enhanced.

The Scottish Government's Commission on Local Taxation provided a unique opportunity to re-shape the way that local taxation operates. However, the Local Tax Commission has passed the burden of developing proposals back to the political sphere. The proposals contained within this article retain the basic structure of the Council Tax, while addressing some of its more common criticisms. No taxes are ever popular, however it is submitted that these proposals would go a long way to making the Council Tax perceptively 'fair'.