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The Rise of Inequality and the Fall of Tax Equity (or the limits of ideal setting tax-philosophy and public finance)

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"*We view the Gap between optimal capital tax theory and practice as one of the most important failures of modern public economics.*"[1]

"*[Taxes are] the most important instrument by which the political system puts into practice a conception of economic or distributive justice…[yet questions about taxes] have generated less sophisticated discussion from a moral point of view than other public questions that have moral dimensions*"[2]

Introduction

The ongoing growth of wealth and inequality in developed countries during the late 20th century is the elephant in the room whose presence can be attributed to many factors.[3] This

[1] Thomas Piketty & Emmanuel Saez, *A Theory of Optimal Capital Taxation*, WORKING PAPER 17989, 1 (2012).
[2] LIAM MURPHY & THOMAS NAGEL, THE MYTH OF OWNERSHIP 3-4 (Oxford University Press. 2002).
[3] See generally: JACOB S. HACKER & PAUL PIERSON, WINNER-TAKE-ALL POLITICS: HOW WASHINGTON MADE THE RICH RICHER--AND TURNED ITS BACK ON THE MIDDLE CLASS (Simon & Schuster. 2011). (attributing this dynamic to the growing powers of organized interest groups); Joseph E. Stiglitz, *The Origins of Inequality and Policies to Contain It*, 68 NATIONAL TAX JOURNAL 425(2015). (attributing the rise of inequality to the existence of rents); Thomas Piketty & Emmanuel Saez, *Inequality in the Long Run*, 344 SCIENCE 838, 840-842 (2014). (explaining the

essay focuses on one overlooked factor, which relates to the role of redistributive taxation in mitigating inequality. It argues that tax scholarship has not established a coherent normatively-informed policy oriented theory for analyzing whether tax institutions are designed to meet their professed distributive goals.

The gap between what this article refers to as ideal-setting philosophic and public finance scholarship and the reality of growing inequality is troubling. If graduate degree students in public finance would walk into a basic tax course in a law or business school, they will find it difficult to tie much of their knowledge to the materials studied. Philosophy students specializing in distributive justice theories, would at the very least be equally bewildered.

Undoubtedly, this disconnect between practice and theory is, in part, a blessing. It provides the platform for specialization, abstraction and sophistication of high end theory, which advances the boundary of human thinking. This essay does not deny the merits of this disconnect but wishes to discuss some of its accumulating costs. This is a first necessary step in a broader project dealing with the constraints and objectives of non-ideal-normative tax theory, which will be developed in future papers.

There is a broad understanding in economic and normative theory, as well as in political circles, that tax policies have a major role in implementing societal ideals and preferences of distributive justice.[4] While evident that analyzing issues of redistributive taxation involves normative as well as economic considerations, it is difficult to integrate the insights of the different literatures dealing with taxation to a whole greater than its parts. The lack of a common denominator between the different disciplinary discourses, and the gulf between those discourses and the issues on the policy agenda, often makes it difficult to connect between theory and timely policy dilemmas.

This Essay is a first step in a broader attempt to analyze the potential structure of a non-ideal distributive normative theory of taxation. As such it aims to achieve a few modest

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long term patterns of capital accumulation when r>g) ; Thomas Piketty, *Capital and Wealth in the 21st Century*, 68 NATIONAL TAX JOURNAL 449, 450 (2015). (discussing the role of other factors that comprise the underlying factors that motivate his main observation of r>g as the main force underlying the dynamics of capital accumulation).

[4] David G. Duff, *Tax Policy and the Virtuous Sovereign: Dworkinian Equality and Redistributive Taxation*, *in* PHILOSOPHICAL FOUNDATIONS OF TAX LAW 167, (Monica Bhandari ed. 2017).; Linda Sugin, *Theories of Distributive Justice and Limitations on Taxation: What Rawls Demands from Tax Systems*, 72 FORDHAM L. REV. 1991, 2014 (2004).; Liam Murphy & Thomas Nagel, *Taxes, Redistribution, and Public Provision*, 30 PHILOSOPHY & PUBLIC AFFAIRS 53, 54 (2001).; Daniel N. Shaviro, *The Mapmaker's Dilemma in Evaluating High-End Inequality*, NYU LAW AND ECONOMICS RESEARCH PAPER NO. 16-22; NYU SCHOOL OF LAW, PUBLIC LAW RESEARCH PAPER NO. 16-17, 46 (2016).

objectives, which comprise the necessary building blocks of future analysis. First, to explain the difficulty in connecting normative and the theoretic public finance literatures and the difficulty to draw policy guidelines from them to many important policy questions. Second, it stresses that this difficulty entails more than a theoretical dispute and highlights its tangible policy costs. Finally, it ends by briefly delineating some of the main features that an alternative (and in some margins more productive) framework may adopt. This last objective merely points towards the main avenues through which a non-ideal distributive normative theory of taxation can develop but does not aim to offer a comprehensive analysis of this theory.

These objectives, connect to a central question that has raised significant normative interest since early human history: What makes a just tax regime?[5] Current legal and policy thinking about tax policy issue responded mainly to the reasoning of theoretical economic modeling and paid considerably less attention to other considerations. Driven by a welfarist agenda of distributive justice, conventions generated by optimal tax theory (OTT)—such as the desirability of a zero tax rate on capital income, ability taxation, and the double distortion argument—made their way into tax thinking orthodoxy. While never fully adopted, they helped shape an ethos of what "good" tax policies consist of.

Recently, partly in response to rising income and wealth inequalities, there has been a growing concern about addressing the topic of redistributive taxation primarily through the lenses of economic analysis. Increasingly, important commentators have voiced the concern that OTT framework, as well as much of the law and economic literature that followed it, may not provide a full account over the desirable policies. [6] It seems as though much of the OTT and law and economics literatures tended to apply models that gave insufficient weight to other types of inputs, which are crucial to understanding the social function of redistributive taxation. Among those inputs one can include the analysis of political dynamics with respect to the enactment and implementation of tax policies,[7] the measurement and formation of social preferences with

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[6] Nolan McCarty & Jonas Pontusson, *The Political Economy of Inequality and Redistribution*, *in* THE OXFORD HANDBOOK OF ECONOMIC INEQUALITY 665, (Brian Nolan, et al. eds., 2009).; Alex Raskolnikov, *Accepting the Limits of Tax Law and Economics* 98 CORNELL L. REV. 523, 524 (2013).;

[7]

respect to tax redistribution,[8] and, most importantly for this Essay, the way in which normative considerations correspond to different tax policy alternatives.

This amounts to a serious concern. Complex problems such as inequality often require complex solutions, so that the inability to encapsulate the multilayer social and normative dimensions associated with redistributive taxation may result in suboptimal policy prescriptions. This Essay tries to identify why so much of normative and OTT research have not transcended from the theoretic literature into viable tax policy prescriptions. It claims that both normative theories dealing with taxation and OTT literature, exemplify the same pattern of focusing on ideal-setting, which produce meaningful theoretical insights, leaving it up for policymakers to derive how to translate them into actual policies. The Essay recognizes that this approach has its intellectual payoffs, but it also argues that it has some costs. In many cases policymakers, as well as academics interested in tax policy questions, can derive only limited value form ideal-setting conclusions.

This observation has theoretical and policy derivatives. In terms of theory, it provides an explanation for why philosophic and OTT body of scholarships rarely interact. It identifies that while both literatures focus intensively on ideal-setting, they differ in the type of ideal-setting they relate to. While the leading philosophic literature about taxation, best exemplified in the writing of Nagel and Murphy, tends to expand the scope of analysis, most OTT theory tends to narrow its ideal-setting. The Essay also tries to account for the theoretical costs of the inability to integrate normative and public finance discourses. These costs are best exemplified when reviewing the recent empirically driven public finance scholarship dealing with economic inequality, which has emerged in the last few years. Led by prominent economists such as Piketty and Saez, this new approach to public finance has successfully challenged many traditional OTT conventions. Most notably, they challenge those OTT conventions that have blunted the redistributive role of the direct tax regime. Nevertheless, even when reading the works of these talented scholars one cannot help but noticing that the normative foundation upon which they base their criticism is often not explicitly recognized or argued for.

[8] Edward J. McCaffery & Jonathan Baron, *Tax Policy in an Era of Rising Inequality: The Political Psychology of Redistribution*, 52 UCLA L. REV. 1745(2005).

The practical contribution of the Essay stems from the notion that tax policy is a unique and indispensable distributive tool in modern democracies. After reviewing the problems with ideal-setting normative and economic tax scholarship, the Essay starts making the case for a context dependent normative tax scholarship. [9] This would require developing a tax specific normative framework that ties normative theory to actual tax policy dilemmas. This framework should aim to allow policymakers and political philosophers to better connect tax policy alternatives to their underlying distributive justifications. This translation of normative theory principles into the tax policy world is bound to be noisy and inaccurate on some margins. Nevertheless, it would allow tax policy analysis to engage with normative theory in a more meaningful way that will result in a more informed and accountable distributive tax institutions.

Explaining all the potential trajectories of such an analysis goes well beyond the scope of this Essay. Nevertheless, the analysis presented ends by offering some preliminary thoughts about how future research can advance this type of inquiry. The common denominator of all these recommendations is that existing tax institutions should be the Archimedean point of any serious scholarly attempt to bridge different strands of theoretical research to formulate a more comprehensive law and policy analysis. Tax theorists should balance between their disciplinary tendency to examine reality with ideal-setting analysis with non-ideal-setting ones that consider "noisy" reality as a worthy academic challenge.

The first part reviews the ideal-setting normative and OTT theories dealing with taxation. The second part identifies some of the "costs" of ideal-setting. It provides three examples for factors, which are crucial for understanding how tax systems work and how tax rule formulate, which ideal-setting do not address. The third part argues that a need for a supplementary normative tax discourse is needed and connects this need to the emergence of the new empiric public finance literature. Part four delineates some of the main attributes of how a non-ideal-setting normative discourse with respect to taxation may look like. The last part concludes.

[9] Martin Feldstein, *On the Theory of Tax Reform*, 6 JOURNAL OF PUBLIC ECONOMICS 77, 91 (1976).

I. The (Shaky) Normative Foundations of the Ideal-Setting Tax Scholarship Discourse

This part argues that the normative cornerstones of which contemporary tax scholarship rests upon are vague and incomplete. For many years, philosophers, economists, and legal scholars dealing with the tax have generally avoided connecting between normative theoretical arguments and the operation of a non-ideal tax regime of the modern welfare state. This part of the essay traces the intellectual sources of this avoidance. It first reviews the philosophic literature about the distributive role of the tax regime and then turns to review the normative underpinnings of mainstream economic theory dealing with this topic. It observes two opposite trends: expansion of the distributive philosophic tax inquiry and contraction of the economic one (which up until recently was predominantly comprised of OTT scholarship). Together, these two trends help explain why tax scholarship provides little normative guidance to policymakers considering how to design a tax regime that deals with rising inequality.

1. The Philosophic Tax Discourse

This Subpart reviews an apparent paradox in modern liberal egalitarian political philosophy: Even though many philosophers consider the tax system to be a major distributive tool, only a few write about how distributive agendas should shape existing tax regimes. I explain why most contemporary philosophic addressment of tax dilemmas—often comes short of providing policymakers with relevant guidance about how to design tax institutions that may promote various objectives of distributive justice.

For years, the normative debate about tax policy orbited around two intuitive, yet intellectually incomplete, ideas of benefit taxation and ability-to-pay.[10] The first echoes on consumer economics. It prescribes that taxpayers contribution towards financing the government should correlate with the amount of benefit they derive from government apparatus. The second relates to welfare economics. It prescribes tax payments should grow in correlations with

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[10] Joel Slemrod, *The Consequences of Taxation*, 23 SOCIAL PHILOSOPHY AND POLICY 73, 73 (2006). Xx73. For some variations of this norm see Joseph M. Dodge, *Theories of Tax Justice: Ruminations on the Benefit, Partnership, and Ability-to-Pay Principles*, 58 TAX L. REV. 399, 401 (2005). Xx401

taxpayers' financial ability to bear an increased tax burden.[11] Hence, the ability-to-pay could be seen as comprised of two components—horizontal equity (people with the same ability should pay the same tax) and vertical equity (e.g., people with more ability should pay more).[12] These two non-consequentialist concepts rely on the compelling intuition that those who earn more should pay more taxes (in absolute and relative terms).

The above concepts were developed during the rise of the democratic welfare state during the 20th century as a reaction to popular libertarian claims that taxation is a form of unjust taking. While right-libertarian rhetoric prioritizes individuals' private property rights gained through market transactions, the benefit and ability-to-pay provide rhetoric support in favor of progressive taxation put in place to finance (big) welfare state governments. They aim to intellectualize two commonsense notions about why rich people should pay more taxes: because they benefit from the government cooperative enterprise; and, because, given their wealth, the tax burden is not (or at least should not be seen) as burdensome to them.[13]

One can think of why the benefit and the ability-to-pay standards may have played a more important role in policy debates,[14] but over the years they have lost their relevance. For example, these fairness standards have little to add on topics addressing the appropriate base choice of direct taxation or on how to balance the revenue mix among various tax bases.[15] These are two of the most central tax policy issues, which have significant tax policy implications. When using these standards, policymakers were referring to tax-distributive fairness standards that regulated issues concerned with "how to lay the tax burden fairly" rather than what (tax

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[11] For the intellectual history of the ability-to pay concept see: KENNETHSTASAVAGE SCHEVE, DAVID, TAXING THE RICH: A HISTORY OF FISCAL FAIRNESS IN THE UNITED STATES AND EUROPE 26-33 (Princeton University Press. 2016).

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[13] Dodge, TAX L. REV., 411-12 (2005). Xx411-12

[14] For example, the ability to pay principle played an important role in supporting the shift to a realization based income tax in the beginning of the 20th century (when valuation and liquidity concerns were very serious obstacles for many direct taxation proposals). Furthermore, it may have offered a good response against base erosion at the 1950s and 1960s, when public support for progressive income taxation was high, but there was intensive interest group politics to erode the tax base. The Benefit taxation offered a reasonable response to libertarians (Nozick) and right wing economists (Hayek, Freedman) against progressive taxation. It is worthwhile to note that while the Essay couples the two standards together other historical and normative accounts distinguish between them noting that the ability-to-pay standard was used to advance a much more radical and progressive agenda than the benefit principle. See Ajay K. Mehrotra, *Fiscal Forearms: Taxation as the Lifeblood of the Modern Liberal State*, *in* THE MANY HANDS OF THE STATE: THEORIZING POLITICAL AUTHORITY AND SOCIAL CONTROL 291-92, 299-300, (Kimberly J. Morgan & Ann Shola Orloff eds., 2017).;

[15] In fact, both standards seem to assume that income provides a reasonable tax base for the fairness standard they set forward. This is not evident—and one can easily come up with arguments for why wealth or consumption provide a better proxy for those standards. In fact,

base) to tax and towards what distributive end. By analogy, the benefit and ability-to-pay operated as road signs, which guide the driver on how fast to drive, where he should be careful, but can offer no help as to the desirable final destination of the journey, or the road that one should take towards it. In recent years, leading scholars made forceful arguments against these standards,[16] so that they play a relatively minor role in the contemporary academic-tax-policy discourse.[17]

While philosophers rarely tackle issues of tax policy directly, review of the philosophic discourse reveals two points of agreement. First, when discussing different consequentialist distributive policies, most philosophers cite taxation as a major instrument to promote them.[18] Second, that existing benefit and ability-to-pay standards, which used to govern the tax discourse, are futile instruments alienated from any substantive distributive justice theory.[19] Given these understandings, one would expect that political philosophers would uptake the challenge of engaging in the study of tax theory in an effort to bridge it with relevant philosophic theories. This, however, is not the case.

To date—the philosophic debate of tax policy yielded only "fragmentary" [20] research agenda characterized by two types of scholarly works: incremental and scientific. Incremental papers deal with a specific tax issue that (typically) stems from one of the dominant distributive justice agendas. Although often sophisticated and impressive, these papers rarely address concrete tax policy issues but rather examine how a specific distributive agenda could theoretically translate into different tax measures.[21]

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[16] Maybe add wishcach maybe others

[17] Brian Galle, *Tax Fairness*, 65 WASH & LEE L. REV. (2008);David Elkins, *Horizontal Equity as a Principle of Tax Theory*, 24 YALE L. & POL'Y REV. 43(2015);Ira K. Lindsay *Tax Fairness by Convention: A Defense of Horizontal Equity*, 19 FLA. TAX REV. 79(2016).

[18] To provide but a few references: Ronald Dworkin, *What is Equality Part 2: Equality of Resources*, 10 PHILOSOPHY AND PUBLIC AFFAIRS (1981).; ROBERT NOZICK, ANARCHY, STATE, AND UTOPIA (1974). ; JOHN RAWLS, A THEORY OF JUSTICE (1999).

[19] Add murphy and nagel about it

[20] Daniel Halliday, *Justice and Taxation*, 8 PHILOSOPHY COMPASS 1111, 1111 (2013).

[21] One of those specific topics that the Douglas Bamford, *Arguing for a New Form of Taxation: Lifetime Hourly Averaging*, JOURNAL OF APPLIED PHILOSOPHY (PUBLISHED ONLINE) (2016). (offering a tax base that aligns with equality of resources distributive agenda). Another topic is whether the argument by Robert Nozick that progressive redistributive taxation is equivalent to forced labor is correct: Mark A. Michael, *Redistributive Taxation, Self-Ownership and the Fruit of Labour*, 14 JOURNAL OF APPLIED PHILOSOPHY 137(1997). (discussing whether progressive taxation expropriates the fruits of one's labor as Nozick claims). A few papers that deal with global distributive justice also address taxation issues: Norwegian+add more mabe rixen and montreal.

The "scientific" observations tend to use tax example to promote a broader and more intellectual point. The best and most impressive example for such an enterprise is a book by Murphy and Nagel called "The Myth of Ownership".[22] This book reviews tax fairness standards and explains their alienation from theories of justice. It further offers an important insight that the correct philosophic question about taxation should not focus on the appropriate tax burden but rather upon the justified allocation of after-tax income. They convincingly argue that the concept of before-tax income (or free-of-tax private property) is flawed because private property is not a natural phenomenon but a social-legal convention created by the state. An operating tax system is a pre-condition for a state that (among other things) protects property and contractual rights. Hence, policymakers cannot determine which property is private in a way that a given individual is entitled to it free of any public claim (in the form of taxes). They conclude that tax fairness issues require a holistic evaluation—meaning that they should always be part of a broader assessment over the normative justification of all (after-tax property) in society.

The "Myth of Ownership" exemplifies the most thorough, provoking, and original philosophic analysis of the tax system. However, the achievements of its "scientific" approach to tax law reveal as much about its strengths as it does about its shortcomings. Because it is the most serious attempt made to date by philosophers to engage in understanding and analyzing the institutional framework of the tax system, I shall explain why despite its intellectual clarity—the book's analysis obfuscates rather than clarifies the appropriate role that normative considerations should play in the design of tax institutions.

Murphy and Nagel examine the tax system because they recognize its uniquely important distributive impact in modern society.[23] While they successfully analyze the shortcoming of common notions of tax fairness, they devote most of their intellectual efforts to refute anti-tax libertarian intuitions. As the authors themselves admit, their book is about reframing the tax question, more than it is an attempt to contribute to the debate about how a just tax system should operate. They succeed in the sense that their analysis provides a much more convincing, rigorous and clear analytic argument that can replace the vague (benefit and ability-to-pay) tax

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[22] MURPHY & NAGEL, THE MYTH OF OWNERSHIP.; Colin Farrelly, *Taxation and Distributive Justice*, 2 POLITICAL STUDIES REVIEW, 190 (2004). (providing a summary of the book); Xanother author mentioning this is the primary bookX

[23] MURPHY & NAGEL, THE MYTH OF OWNERSHIP 3.

fairness standards. However, the task itself, of justifying taxation against libertarian critique, is a rather modest one.

While libertarian rhetoric carries some weight in popular right-wing American politics, few philosophers, economists or legal scholars adhere to it. Most of them recognize the need for functioning tax system, which provides the government with resources to supply public goods that go well beyond the minimal libertarian state. However, after accepting this basic framework, there are many distributive dilemmas (e.g., the appropriate tax mix between different tax bases, the tax rate structure) that have serious normative implications about which "scientific" political philosophy, and the Myth of Ownership in particular, has very little to say. Impressive and original as it may be, the book's directs its main argument at a libertarian scarecrow rather than trying to provide a normative analysis of more substantial tax distributive issues.

The effects of the Myth of Ownership on tax discourse are more detrimental, however. Seeking intellectual clarity, Murphy and Nagel investigate the role of political philosophy in guiding policymakers in choosing the appropriate tax base. They conclude that this institutional choice is instrumental—so that any tax mix shall be acceptable—as long as it meets the distributive objectives of the state. Faithful to their conclusion that the tax system is part of the overall ownership structure in society, and that tax policymakers should only consider consequential after-tax outcomes, the authors concluded that political philosophy has nothing to say about the morality of the tax system. Their focus on outcome dictates that no government mechanism could be bifurcated from another—so that the philosopher cannot comment on the tax system as a redistributive institution (or any other mechanisms that government used to promote their distributive agendas) but only on the final distributive outcome.[24]

Obviously, when considering this outcome, policymakers should take into account property rights, taxes, contractual rights and obligations, the value of government transfers and services as well as perhaps other features (e.g., talents, mental conditions or personality traits). Each of these components shapes the relevant outcome and the distribution of both resources and welfare in society. The inevitable result is that none of these factors could be evaluated independently, and that the only relevant benchmark is how the end result (of all factors) compares with the bottom line of an ideal-setting theory. Hence, by grouping all these components together, Murphy and Nagel shed doubt about the ability of philosophy to inform

[24] Sugin, FORDHAM L. REV., 2014 (2004).

policymakers or academics in other disciplines about how to use the tax system to promote a just distributive agenda. Because tax policymakers can use any out of an infinite number of combinations to reach their desired distributive objective, normative analysis can offer little if any help in choosing amongst these different courses of action.

The irony is that like most of the philosophic literature, the Myth of Ownership recognizes that the design of the tax system operates as the major distributive tool of the state. As such, it seems to follow that tax issues cannot be realistically or logically be separated from questions of distributive justice. Hence, the book's inability to provide a framework for a more normatively informed tax policy discourse is an indicator for a much broader phenomenon. It demonstrates that even talented philosophers as Murphy and Nagel, who are willing to go beyond their comfort zone to study the field of taxation, are "unwilling or unable to bridge the gap between moral ideals and real-world tax policy and law".[25]

With only few exceptions,[26] the tax-philosophic discourse demonstrates how political philosophers address real-world distributive dilemmas. As Jonathan Wolff observed, political philosophers concerned with these dilemmas often operate with models that rarely, if ever, provide tool or guidance for transforming existing institutions.[27] Under what he labels the blueprint model, political philosophy provides abstract theories concerned with an ideal reality. Philosophers know it is unlikely that these abstract theories can ever be implemented, but intend that policymakers will apply their insights to real situations thereby leading to a better "philosophically informed policy."[28] However, because politics is mostly about changing existing arrangements "trying to change the world so that it maximally conforms to an idea can lead to serious problems if the ideal is not achievable".[29] As Wolff frames it, improving society probably has more to do with what is at hand than imagine how moral considerations would play out in an ideal reality, which bears little resemblance to the actual dilemmas faced by policymakers. For example, arguing for an ideal reality in which the government acts as an

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[25] Tyler A. LeFevre, *Justice in Taxation at* http://ssrn.com/abstract=2792393. Xx10

[26] BRUCE ACKERMAN & ANNE ALSTOTT, THE STAKEHOLDER SOCIETY (Yale University Press. 1999).; Ilan Benshalom, *The New Poor at Our Gates: Global Justice Implications for International Trade and Tax Law,* 85 NYU L. REV. (2010).; S. Stewart Braun, *Liberty, Political Rights and Wealth Transfer Taxation*, 33 JOURNAL OF APPLIED PHILOSOPHY 379(2016).; Kristi A. Olson, *The Endowment Tax Puzzle,* 38 PHILOSOPHY & PUBLIC AFFAIRS 240(2010).; Sugin, FORDHAM L. REV., (2004).

[27] Jonathan Wolff, *Political Philosophy and the Real World of the Welfare State*, 32 JOURNAL OF APPLIED PHILOSOPHY 360(2015).

[28] Id. at, 360.

[29] Id. at, 361.

insurer against bad luck and aims to provide some type of ex-ante resources equality (which takes into account innate talents) may prove merely as an intellectual endeavor. In a world characterized by huge ex-ante and ex post inequalities and enormous difficulties in defining and identifying the role of luck or talents, accepting or denying this standard of resources inequality provides little contribution to the debate about distributive policies.[30]

It goes beyond the scope of this Essay to investigate how the political philosophy discourse developed. What is clear, however, is that lacking a more concrete philosophic engagement, legal and economic tax scholarship dealing with taxation find it more difficult to articulate what are the justifications for using tax as an instrument of redistribution. Faced with changing and escalating patterns of inequality, legal tax scholars find little discussion in the philosophic discourse that can serve as a source for normative guidance or inspiration. Hence, instead of considering the appropriate distributive goals of different tax measures, philosophy-minded (mostly legal but also economic) tax scholars tend to take one of two strategies: First, rely on some explicit or implicit assumptions about why (and which type of) redistribution may be desirable.[31] Second take a somewhat more modest bite of the problem—by assuming a certain redistributive agenda, and examining certain specific tax arrangements according to it.[32]

The disconnect between the tax-policy and political philosophy discourses did not produce a distributional neutral tax scholarship. As mentioned, taxation, is inherently related to distribution so that distributive neutrality about the normative concerns related to the design of tax institutions is an impossible expectation. Instead, the absence of a tax philosophic discourse resulted in a bias in favor of a specific philosophic agenda—utilitarianism.[33] Even though few tax scholars would argue that distributive justice issues should aim to maximizing overall welfare, utilitarianism as a guiding principle, received important weight in the tax academic discourse. This emphasis originated from the law and economics and public finance literatures, which highlights the objective of efficiency maximization as the cornerstone of their analysis.

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[30] Wolf and de shalit

[31] Shaviro, dimond, Piketty

[32] Anne L. Alstott, *Equal Opportunity and Inheritance Taxation*, 121 HARV. L. REV. (2007).; Ilan Benshalom, *How to Redistribute? A Critical Examination of Mechanisms to Promote Global Wealth Redistribution*, 64 U. OF TORONTO L. J. (2014).; Duff, Tax Policy and the Virtuous Sovereign: Dworkinian Equality and Redistributive Taxation. 2017.;

[33] Alstott, HARV. L. REV., 474-75 (2007). + add raskolnikov

The next subsection will characterize this normative adaptation and assess how it affected the manner in which tax scholarship addresses current trends of inequality.

2. The Normative Implications of the Economic Tax Discourse

This subpart analyzes the dominant position of the OTT in public finance and in the law and economics literature dealing with taxation. The Essay recognizes that the rigorous analytic methods offered by these agendas contribute important insights to the study of tax law and policy. However, it argues that these approaches are insufficient by themselves, and that their dominance of the tax academic discourse resulted in tax scholarship which is rigorous in many respects, but incomplete in others.

Just like the legal scholarship, the classic tax fairness standards of benefit taxation and ability-to-pay dominated the economic tax scholarship for many years.[34] The ability-to-pay standard—resonated with ideas of equal sacrifice. Under standard economic analysis, which assumes declining marginal utility of wealth, equal sacrifice supports progressive tax rate structure in which the well-off pay more taxes (in absolute and relative terms) compared to those who have less resources. Assuming a relatively egalitarian distribution of public goods, financing the government through progressive taxation involves a transfer from heavily endowed individuals to those with little resources, which increases overall utility.

The Mirrlees report issued in 1971 marked an important point in modern tax scholarship.[35] This seminal piece started what later became known as the OTT. Developed as an extension of welfare economics, the OTT framework advocated that the tax system should be designed to meet its revenue and distributional goals in the most efficient way—that is while reducing the deadweight cost of meeting those objectives. While clearly concerned with increasing efficiency, the OTT seeks to maximize the social welfare function but does not prescribe how the different factors in this function should operate. Hence, the OTT provides an intellectual toolkit designed to assist policymakers about how to best promote their preferred revenue collection or distributive preferences.[36]

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[34] לחפש ציטוט

[35] Slemrod, SOCIAL PHILOSOPHY AND POLICY, 74 (2006).

[36] Louis Kaplow, *An Optimal Tax System*, 32 FISCAL STUDIES 415(2011).

The OTT analysis puts an emphasis on issues that were somewhat neglected under classic economic theory. For example, it stressed that the neo-classic support of higher average taxation of affluent individuals, which is based on the assumption of declining marginal utility of money, required a more nuanced analysis. Since high marginal tax rates on income can create disincentives to work or report income, there is a certain efficiency and administrative costs associated with redistribution through a steeply progressive tax rate on income.[37] This, of course, was a very important and illuminating contribution in the 1970s when top marginal taxes on labor and capital income in most developed countries exceeded 70%.

The OTT had a huge impact on law and economics tax scholarship. It replaced vague tax fairness standards with a new welfareist analytic framework that inquires how tax arrangements impacted the social welfare function. It promoted the notion of distribution-neutral tax reform, stressing that the use of the least distorting tax mechanisms would make it easier for governments to meet revenue and distributional objectives.[38]

Not surprisingly, OTT scholarship provides the intellectual backbone of many important trends of tax reform that took place in developed countries over the course of the last half a century. This includes the growing uniformity of indirect (sales and VAT) tax rates, and the broadening of income tax bases along with the decline in marginal tax rates.[39] In terms of research, it motivated more serious attempt to quantify and analyze the elasticities of various tax-responsiveness behaviors—to help tax policymakers better understand the costs and limits of the tax mechanisms they wish to enforce.[40]

The OTT separates tax policy questions from distributional politics, focusing on how to best execute tax policy to meet a certain revenue and distributional goal rather than upon what

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[37] Slemrod, SOCIAL PHILOSOPHY AND POLICY, 74 (2006)., Richard M. Zolt Bird, Eric M.. *Taxation and Inequality in Canada and the United States: Two Stories or One?*, 52 OSGOODE HALL LAW JOURNAL 401, 417 (2015).(explaining how low average rates on middle class can yield low revenues but still create significant distortions because of high marginal tax rates).

[38] Louis Kaplow, *An Optimal Tax System*, 32 FISCAL STUDIES 415, 429 (2011).; David Gamage, *How Should Governments Promote Distributive Justice?:A Framework for Analyzing the Optimal Choice of Tax Instruments*, 68 TAX L. REV. 1, 83 (2014).

[39] N. Gregory Mankiw, et al., *Optimal Taxation in Theory and Practice* Harvard Business School BGIE Unit Working Paper No. 09-140 *at* http://ssrn.com/abstract=1418043. Xx1; Thomas PikettyEmmanuel Saez, *Optimal Labor Income Taxation*, NAT'L BUREAU OF ECON. RESEARCH, WORKING PAPER 18521, 10 (2012).; Alice M. Rivlin, *The Continuing Search for a Popular Tax*, 79 AMERICAN ECONOMIC REVIEW 113, 113 (1989).

[40] David Gamage, *The Case for Taxing (All of) Labor Income, Consumption, Capital Income, and Wealth*, 68 TAX L. REV., 390-91 (2015). (pointing out that OTT analytic research motivated a series of empirical studies that examined labor supply elasticity to tax rates).

the appropriate goal should be. This allowed for a more rigorous analysis that provided a common ground on which scholars holding very different distributional agendas could debate the appropriate design of tax arrangements. However, the OTT's strength is also its weakness. In an effort to provide a clear intellectual framework, it adopted certain conventions, which left some important topics outside the scope of its analysis.

The OTT provided clear yet abstract models that rely on simplifying assumptions, which cannot account for the complexity and detailed reality. As mentioned, OTT scholars focused their research questions on how to construct an efficient redistributive tax regime by theoretically modeling taxpayers' incentives. To accomplish this aim, they adopted an *ex-ante* micro view of how tax rules effect fully informed taxpayers' behavior. This methodology allowed avoiding the hurdles of modeling complex interactions in order to elucidate useful insights about the costs and benefits of various tax arrangements. Inevitably, however, this strategy placed less emphasis on empirical questions (e.g., such as how the tax system actually affected the income and wealth distribution of different classes),[41] on non-utilitarian perceptions of distributive justice, or how tax rules will effect cognitively-biased or not fully informed taxpayers. To illustrate this point, OTT scholarship devoted considerable intellectual resources to analyzing how the tax regime may impact the propensity of individuals to save and considerably less to examine actual saving behaviors and wealth accumulation patterns of different types of taxpayers.

Embracing a narrow framework and avoiding some factors in the detailed intensive reality is necessary for a model to identify certain tensions and to point towards solutions. However, because of its dominant role in tax-research, some of the OTT's modelling assumptions, conventions and conclusions were absorbed as tax policy truisms without sensitivity to the limitedness of abstract modeling. As the OTT doctrine entrenched, too many important factors were frequently left outside the scope of the analysis.[42] The Essay recognizes the importance and achievements of these models as well as that economists are aware of abstract modelling's limitations. However, it provides a few examples for the omission of certain factors, and then explains why the policy derivatives of not including them are problematic.

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[41] Many papers suggest that the equity efficiency tradeoff may not be as severe, because the utility gains of redistribution are very large and because the labor supply responses to taxes is not very elastic. 1733, 1737 1753b

[42] Jeffrey Schoenblum, *Taxation, the State, and the Community*, 23 SOCIAL PHILOSOPHY AND POLICY 210, 232 (2006).

First, many OTT models assume a certain degree of homogeneity among taxpayers.[43] Some of these assumptions are arguably realistic but others—are subject to empiric and normative debate.[44] For example, James Mirrlees's influential model assume that all taxpayers view saving only as a way to smooth (personal) lifetime consumption.[45] This assumption may seem odd to someone living in a world characterized by inequality in which everyday experience suggests that people generate wealth to enjoy political influence and to entrench dynastic privileges to their descendants. While activities such as generating political influence and transferring banquets could be classified just as another form of personal consumption, this (overly inclusive definition) empties the concept of consumption. If one adheres to this logic, almost every human behavior could be labeled as a consumption of some sort so that the notion that individuals save only to consume means literally nothing.

Second, OTT models often entail strong explicit and implicit assumptions about governments levying the taxes. Some explicit assumptions relate to the tax instruments that governments can use. For example, under many models, governments cannot politically lay lump-sum taxes, cannot observe and therefore cannot tax earning ability, but can observe income. In reality, the first assumption may be true, the second is debatable and the third probably false or at least overly simplistic.[46] More interesting is the set of implicit assumptions about the nature of the governments levying the taxes. According to many OTT models, the government agent making the rules, operates as impartial social planners, insulated from the influence of interest groups who lack any independent political or economic interests of their own.[47] Hence, viewed via OTT lenses, the tax rulemaking process is driven not by some type of social understanding, which legitimizes the government's action, but by utilitarian benevolence (that is the ambition to increase overall utility) and coercive power to enforce the law.[48]

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[43] Mankiw, et al., Optimal Taxation in Theory and Practice 3-4. 2009.
Peter Diamond & Emmanuel Saez, *The Case for a Progressive Tax: From Basic Research to Policy Recommendations*, 25 J. ECON. PERSP. 165(2011). (explaining the Atkinson Stiglitz assumption)

[44] Raskolnikov, CORNELL L. REV., (2013).

[45] Daniel Shaviro, *The Mapmaker's Dilemma in Evaluating High-End Inequality*, NYU LAW AND ECONOMICS RESEARCH PAPER NO. 16-22; NYU SCHOOL OF LAW, PUBLIC LAW RESEARCH PAPER NO. 16-17, 47-48 (2016).

[46] Joel Slemrod, *Optimal Taxation and Optimal Tax Systems*, 4 JOURNAL OF ECONOMIC PERSPECTIVES 157, 169 (1990).

[47] James Alm, *What is an "Optimal" Tax System?*, 49 NATIONAL TAX JOURNAL 117, 118 (1996).

[48] Richard M. Bird & Eric M. Zolt, *Taxation and Inequality in Canada and the United States: Two Stories or One?*, 52 OSGOODE HALL LAW JOURNAL 401, 403-404 (2015).

Needless to say, the assumptions used to describe the government tax collection function stand far from reflecting the complex political settings in which tax laws are enforced and enacted. Even though OTT writers acknowledge there are political limitations that constrain implementation of efficient policies, one may raise questions over the validity of the insights provided from their abstraction of the state function. In a world in which collective choice tend to be extremely costly,[49] rulemaking dynamics are vital for understanding the adoption of tax legislation. That OTT theorized setting deviates substantially from the conditions in which policymakers operate testifies to OTT scholarship limitations and to its difficulty in integrating more nuanced measures that better account for how states operate into its analysis.[50]

The Essay does not wish to criticize the models developed under these assumptions. Models often offer a sophisticated fresh look at old problems and enable significant advancement in fiscal thinking. However, because of their unrealistic assumptions, translating these models into concrete tax policy steps may not be as straightforward. As a result, some of the conclusions became the benchmarks of what an ideal tax policy should comprise absent political and technical limitations. In many cases policy-minded tax scholars set to get as close as possible to these ideals—despite their many incongruences with reality.

One can provide a long list of such conceptions and elaborate on each of them considerably. However, the limited scope of this Essay allows it to discuss only a few examples. Hence, the Essay will not discuss important issues that have been dealt with elsewhere.[51] Instead, I will demonstrate this point by briefly discussing two representative issues in OTT scholarship prescriptions—the desirability of an endowment tax base and the zero tax on capital income.

OTT theorists, as well as law and economics scholars, consider endowment (or earning ability) as the perfect tax base.[52] It is a normatively significant currency of justice because people with more ability have more ex-ante opportunities and can exercise more choices how to satisfy their preferences as they see fit.[53] More importantly, endowment is innate and therefore tax-

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[49] Lee Anne Fennell & Richard H. McAdams, *The Distributive Deficit in Law and Economics* 100 MINN. L. REV. 1051(2016).; Randall G. Holcombe *Taxation, Production, and Redistribution in* HANDBOOK OF PUBLIC FINANCE 142-43, (Jürgen G. Backhaus & Richard E. Wagner eds., 2016).
[50] Schoenblum, SOCIAL PHILOSOPHY AND POLICY, 210 (2006).
[51] These issues include the efficiency of non-tax/transfer redistributive tools (e.g., private law) or recent OTT suggestions to mitigate the problematic effects of international tax competition by replacing the current corporate profits tax with a destination based consumption corporate tax. On these issues see: To be completed
[52] Chris William Sanchirico, *Taxes versus Legal Rules as Instruments for Equity: A More Equitable View*, 29 J. LEGAL. STUD. 797, 802-03 (2000).802-03(providing a concise yet compelling explanation of this view).
[53] DANIEL N. SHAVIRO, *Inequality, Wealth, and Endowment*, 53 TAX L. REV. 397, 402 (2000).

inelastic—so that taxing it will result in comparatively little distortions on taxpayers' activity (specifically their labor supply decisions). Hence, it is not surprising that many tax scholars reach the conclusion that ideally states should tax endowment and that following this conclusion, some proposals suggest that current tax regime should take measures to better proxy the taxation of ability.[54] OTT models assume heterogeneity in ability and justify their inquiry into various tax arrangements only because governments cannot observe ability.[55]

Unlike what OTT scholarship suggests, the main problem with endowment is not the difficulty of observing it, but problems associated with practically or normatively defining it. Earning ability is not a factor but a social understanding determined by how others value the financial worth of a specific individual's activities in a specific setting. The OTT assumes that determining endowment is only a problem of information—but rarely explains how to define it or distinguish it. Very basic questions of what distinguishes talents from preferences, how does endowment interrelates with wealth and with past individual choices, or with actions taken by the state—have not been satisfactorily addressed. Hence, rather than treating endowment as a missing piece of information—that policymakers should aim to look for—it should be understood as (another) non-realistic yet necessary simplifying assumption. Put differently, a careful inquiry into the nature of endowment suggests that policymakers should not design a tax system that tries to measure it, instead they should think of it as an assumed feature that is necessary to analyze tax dilemmas with OTT modeling methodology.

The advocacy in favor of a zero tax rate on capital income (that is the return for savings and investments) has accompanied OTT scholarship since its outset and has gradually received support by leading figures of the law and economics literature.[56] This issue has been part of extensive debate—so that it generated a considerable amount of literature, which touches upon a broad spectrum of related issues.[57] In a nutshell, the zero taxation of capital income relies, amongst other things, on two seemingly descriptive assumptions: First, since all lifetime earnings

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[54] Id. at, 406-07, 416. (suggesting that hourly wage is a better proxy for endowment than income and that policymakers could incorporate this as a factor in the tax rules+add from endowment.

[55] Slemrod, *The Consequences of Taxation*, 75.

[56] Kimberley A. Clausing, *The Future of the Corporate Tax*, 66 TAX L. REV. 419, 426 (2013).take out citations from 425

[57] William D. Andrews, *Personal Deductions in an Ideal Income Tax*, 86 HARV. L. REV. (1972).; Daniel N. Shaviro, *Replacing the Income Tax With a Progressive Consumption Tax*, 103 TAX NOTES (2004). including the taxation of risk, and the ability to tax capital in a dynamic of tax competition.

(initially) result from labor—a tax on earnings is essentially a tax on the return for labor (albeit in the case of capital income a less direct one); (2) Saving is merely deferred consumption which to some extent can be substituted with current consumption. Hence, while individuals have different (innate) abilities and earn different lifetime incomes, their decision of which portion of their income to save is predominantly driven by their (innate) preferences for current over deferred consumption, which is related to how much they value income smoothing. Taken together, any distributive objective policymakers seek to promote could be achieved by directly taxing labor without distinguishing according to whether taxpayers' choose to engage in current or future consumption. Hence, any capital income tax produces an unjustified economic distortion that reduces the incentives to save and decrease future capital stock and investment levels in the economy.

The above literature had a very strong, and (at least for a while) popular, policy prescription—to shift from an income tax to a direct progressive consumption tax that exempts the return from capital.[58] As mentioned, the zero taxation analysis rests on a number of assumptions (e.g., the existence of perfect capital markets, high labor elasticity), which like many other assumptions admittedly not accurate when face with complicated realities.[59] However, the case of the above two arguments is special, because they are bluntly tainted in a (controversial) normative manner.

The first assumption is problematic because it disregards the role of inherited wealth. The idea that individuals view the impact of a saving tax as a tax on labor—even say in the extreme case of income resulting from continuously invested inherited dynastic capital seems wrong and misleading. At some point, it is clear that inheritance is not consumption and that a tax laid on the capital income generated by inherited wealth, cannot realistically be internalized by the person first earning the income (many years earlier) as a tax on labor that would in any way impact their labor supply.[60] Simply assuming that inheritance is a form of deferred consumption so that taxing it is equivalent to taxing the labor of the person generating it and passing it to its descendants—is not only inaccurate (empirically). In a world characterized by a huge wealth

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[58] Thomas PikettyEmmanuel Saez, *A Theory of Optimal Capital Taxation*, WORKING PAPER 17989 (2012).to take out the relevant citaions; Gamage, *The Case for Taxing (All of) Labor Income, Consumption, Capital Income, and Wealth*, 356.
[59] Bankman and weisbach
[60] Diamond & Saez, J. ECON. PERSP., 178-79 (2011).

inequalities and the growing importance of inherited wealth in explaining these inequalities, this assumption trivializes (and diminishes) the equity considerations that favor a positive rate taxation of capital income.

The second assumption is problematic because it considers current and direct consumption as a close substitution. This assumption is (of course) not true with respect to many individuals that have little if any discretionary income they can choose to invest.[61] Recent empirical scholarship suggests that capital accumulation is heavily concentrated and dependent on many factors most of them seem to have very little to do with the saving preferences of taxpayers.[62] Saving behavior seems to connect with so many other normatively-relevant factors and much more inelastic for certain segments of society (e.g., inherited wealth, the effective rate of return, credit constraints, education). Even supporters of the zero tax on income admit that saving may be a proxy for some type of normatively relevant factor that tax system should take into account when assessing the economic ability of taxpayers.

Taken together, the popular reading of OTT scholarship as prescribing a zero tax on capital income seems not only unsubstantiated but normatively tainted. Many, perhaps even most, of the scholars writing within the OTT framework may have (personally) supported higher levels of tax transfer redistribution. However, the modeling methodology and the simplifying assumptions they undertook, made the policy derivatives of their analysis much less supportive of tax redistribution.

The last point serves as an example for the transition of OTT and law and economics analysis of taxation. What started as a tool to criticize and challenge existing doctrines became a doctrine in itself, which takes for granted certain elements. This doctrine takes for granted a welfarist or utilitarian agenda for distributive justice. While welfarism or utilitarianism framework does not a-priory dictate a pro or against redistribution agenda, the OTT puts a special emphasis on taxpayers' incentives and their expected reaction to tax rules.[63] While OTT and law and economic scholars fully recognize, and often support, the distributive role of the tax system, much of the writing on this topic has yet to address the nature of distributive objective more directly.

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[61] Pickaty THOMAS PIKETTY, CAPITAL IN THE TWENTY-FIRST CENTURY (Harvard University Press. 2014).
[62] Clausing, TAX L. REV., 426 (2013).; 1501
[63] Shaviro, *The Mapmaker's Dilemma in Evaluating High-End Inequality*, 55.

In summary, the OTT (and OTT-inspired legal) scholarship has many advantages and was able to provide the intellectual backbone to some major tax reforms that took place in developed countries. However, its framework disables it from coping with issues that seem highly relevant—such as the growth of income and wealth inequality. Taken together, it seems as though OTT scholarship has undervalued other factors and ideas, which are relevant to the broader understanding of public finance dynamics.[64]

3. The Normative Disconnect: A story of Contraction and Expansion

The former two subparts have illustrated one common denominator of the philosophic literature dealing with tax institution and the OTT literature: They both avoid dealing directly with concrete tax design questions that concern policymakers. In a sense, both research agendas take the blueprint model, which assumes a division of labor between academics and policymakers. According to this model, academics should primarily push intellectual frontiers, coming up with solutions (or models) for an ideal reality. Normatively-minded tax policymakers should use the insights resulting from these inquiries to adjust the tax institutions operating in non-ideal (realistic) settings—so that they get closer to this perceived ideal. Put differently, both approaches ignore much of the context in which tax reform dilemmas take place.

Despite this apparent similarity, the methodologies adopted by each literature differ considerably. As explained earlier, the post Myth of Ownership philosophic literature expands the tax question arguing that the normative design of a tax regime is not a question at all. It is a component of a broader distributive question which includes many other factors. In contrast, the OTT framework narrows its scope to a very specific assumption-intense setting, which identifies a very narrow incentives-related tax question that needs to be clarified. Both these moves are understandable and in certain respects methodologically necessary for these two disciplines to achieve their desired rigorous analysis. However, it is equally important to recognize that the opposite directions make it difficult to connect the two points of analysis.

It is no wonder little integration can be achieved between these two literatures. An ideal-setting (philosophic) literature that relates every small tax query to the grand bargaining of

[64] Mankiw, et al., Optimal Taxation in Theory and Practice 26. 2009.

private property can share little common grounds with an ideal-setting (OTT) literature embedded in myriad assumption focused narrowly on the tax system's efficient operation. This dynamic creates an even greater gap between public finance scholarship and distributive policy questions.

The next part turns to explain the costs that result from an ideal-setting-focused philosophic and economic tax scholarship. The last two parts then review the potential of exploring new normative frontiers focused on tax questions that arise in non-ideal-settings.

II. Why Ideal-setting Tax Scholarship Finds it Difficult to Deal with Inequality

The previous part demonstrated that much of mainstream economic and philosophic research dealing with taxation uses ideal-setting methodologies, which are context-independent. This part examines some of the theoretical and practical costs of not focusing on certain issues relevant to tax policy analysis. Specifically, the Essay points to three somewhat related issues: the rise of inequality, the consequences of inequality on the decision-making process of a democratic society, and the costs of enacting tax legislation.

One of the most important issues in tax reform is the distributive context in which any proposal takes place. However, providing an intellectual nexus between different policy proposals normative ideals in a concrete distributional context is a task not fit for ideal-setting theories. This tension became clearer in 2014 when Thomas Piketty published his book Capital in the Twenty-First Century.[65] This book received considerable attention because it explained the main findings and theoretical contributions of Piketty and other economists working with him in a way that was accessible to the general public. Most importantly, it documented that income and wealth inequality measurements in developed countries have dramatically grown during the last fifty years.[66]

While some of Piketty's empirical findings explanations and policy recommendations have been seriously contested, it is clear that his main empirical findings challenge OTT tax

[65] PIKETTY, CAPITAL IN THE TWENTY-FIRST CENTURY.

[66] For summary of the books main empirical findings and predictions see: James Kwak, *Reducing Inequality with a Retrospective Tax on Capital*, 25 CORNELL J. L. & PUB. POLICY, 6 (2015).; Edward J. McCaffery, *The Meaning of Capital in the Twenty-First Century*, USC CLASS RESEARCH PAPER NO. 16-10; USC LAW LEGAL STUDIES PAPER NO. 16-11., 4-12 (2016).

scholarship.[67] His findings that certain changes in the tax system reinforced market factors that contributed to the growth of inequality where not very surprising or controversial.[68] However, tax scholars found it difficult to theoretically articulate why existing direct-tax institutions, originally designed to contain inequality within acceptable limits, have lost their ability to achieve this objective over the course of the last forty years. Moreover, it became more difficult to justify why the mainstream of tax scholarship has not addressed this change and its normative implications more directly.

As mentioned, many economic and political factors could explain the rise of inequality and the lack of political will to modify existing tax institutions to better deal with high-end inequality. However, this Essay argues that policy-inaction of politicians which allowed a gradual drift in economic inequality received intellectual back wind from much of the philosophic and economic scholarship which address tax issues. The focus on "ideal-setting" arguments and models has done little to guide or encourage tax policymakers to examine how real-world tax institutions should respond to this growth of inequality. As Daniel Shaviro has observed, without a more comprehensive moral framework that connects between the empirical social science research and economic modeling "*[the same ideal-setting economic methodologies which lead to] high intellectual payoffs… has [also] negative payoffs unless dully supplemented"*.[69]

It is important to examine how growing inequality may impact the normative assessment over the desirability of certain tax policy proposals. For example, one of the major intellectual payoffs of ideal-setting methodologies was the argument in favor of the zero taxation of capital income. Obviously, the normative desirability of such a proposal, as well as other proposals such as the reduction in marginal tax rates, may vary in different distributional settings. If one considers the rise of high-end inequality as something that may have serious adverse effects, this requires a major revision of many OTT models. Many of the positive behaviors which OTT scholarship models sought to encourage (e.g., enhanced saving, capital accumulation, donative transfers of inherited wealth and even enhanced work hours of highly productive individuals)

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[67] Glenn

[68] Olivier Bargain, et al., *Tax Policy and Income Inequality in the U.S., 1979-2007*, ZEW - CENTRE FOR EUROPEAN ECONOMIC RESEARCH DISCUSSION PAPER NO. 14-001, 26 (2013).; PIKETTY, CAPITAL IN THE TWENTY-FIRST CENTURY.xfind pages+ add morex

[69] Shaviro, *The Mapmaker's Dilemma in Evaluating High-End Inequality*, 5-6.

may actually have negative or at least ambiguous (rather than positive) externalities when dealing with affluent taxpayers.[70] Making these type of determinations requires a more careful articulation to what extent inequality (or concentration of wealth) is a negative or positive phenomenon. This type of assessment requires an analysis based on making normative references towards empirical findings—a challenge that most scholars dealing with an ideal (philosophic or economic) settings do not usually confront.

Another related normative assessment that seems to be missing from current tax scholarship concerned with ideal-setting relates to the potential impact of high-end inequality on the ability of the democratic process to function properly.[71] Democratic participation is an egalitarian mechanism of allocating certain resources in society. Most political economy models assume that levels of government tax-transfer redistribution and inequality will correlate and therefore limit market inequality. High levels of inequality are assumed to boost the demand for redistributive policy among the majority of voters.[72] However, current social science research cannot establish this predicted correlation.[73] This gives rise to explanations that high levels of inequality undermine the ability of a democratic community to use the political process for promoting egalitarian allocation of scarce societal resources.

It is well known that money can buy political power (via lobbying, campaign finance, corruption of officials, influencing opinions via media organizations) so that concentration of wealth may also mean a growing concentration of political power.[74] Political inequality may start a cycle of political apathy amongst ordinary citizen that will reduce their political engagement. When citizens feel their inputs have little or no effect on the political outcome this in turn increases political inequality.[75]

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[70] Joseph Bankman Daniel Shaviro, *Piketty in America: A Tale of Two Literatures* 68 TAX L. REV. 453, 471-72 (2015).
[71] James R. Repetti, *Democracy, Taxes, and Wealth*, 76 NYU L. REV. 825, 827-28 (2001).
[72] Allan H. Meltzer & Scott F. Richard, *A Rational Theory of the Size of Government*, 89 JOURNAL OF POLITICAL ECONOMY 914 (1981).
[73] Brandon Pecoraro, *Inequality in Democracies: Testing the Classic Democratic Theory of Redistribution*, ECONOMICS LETTERS 398. (2014); JACOB S. HACKER & PAUL PIERSON, WINNER-TAKE-ALL POLITICS: HOW WASHINGTON MADE THE RICH RICHER--AND TURNED ITS BACK ON THE MIDDLE CLASS 78 (Simon & Schuster. 2011).
[74] Ingrid Roeyns, *Having too Much*, *in* WEALTH: NOMOS LVIII 7, (Jack Knight Melissa Schwartzberg ed. 2017).
[75] Matthew Loveless, *The Deterioration of Democratic Political Culture: Consequences of the Perception of Inequality*, 26 SOCIAL JUSTICE RESEARCH 487 (2013).

Ideal-setting theories frequently underestimate the importance of this rather straightforward point because their primary concern lies in determining the just or efficient level of economic inequality per-se. Therefore, dealing with the much more nuanced dynamic triggered by the actual rise in economic inequality and its gradual effect on political equality often falls outside their scope of analysis. This normative question should address the extent to which matters of redistribution are controlled by the democratic political decision-making process. Hence, if one attaches significant normative weight to considerations of political equality—that may impact the considerations over the desirability of certain tax policy actions.[76]

A third important factor are the political costs of enacting major changes in the tax-transfer system.[77] Ideal-setting theories often (explicitly or implicitly) assume that governments choose their preferred policies based on the desirability of their effects and accordingly focus on analyzing what should be the appropriate outcome. However, the costs of shifting from one policy to another may not necessarily relate to the desirability of different policies and their outcomes but to other factors (e.g., the status quo bias of the electorate and the political power of different interest groups).[78]

Given that the costs of shifting from one policy to another are difficult to define, quantify or predict—the real costs of shifting from one policy to the other vary considerably. Hence, ideal-setting theories usually do not devote considerable attention to the actual dynamics through which governments enact and enforce their rules. A comprehensive account of the collective choice mechanism of taxation goes well beyond the scope of this paper, but one can observe a number of factors, which misalign with ideal-theory settings. First, major changes in the architecture of the tax regime tend to happen only in rare occasions when governments face an economic and political shock along with an urgent need for revenues.[79] In non-crisis periods, efficiency considerations (e.g.' of increasing labor supply, reducing capital flight in a tax competitive environment) make it politically easier for tax policymakers to erode progressive

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[76] Since economic and political inequality are at least somewhat related, this objection may be considered as part of the consideration that tax scholarship should give to rising inequality. However, one may also view this as an independent consideration since individuals may have different views about economic and political inequalities.
[77] This factor relates to the second one, which examined the impact of economic inequality on political inequality. Real levels of inequality obviously influence some of these factors (e.g., the status quo baseline as well as the relative power of each interest group).
[78] Fennell & McAdams, MINN. L. REV. , 1055 (2016).
[79] This urgent need was often associated with war mobilization: STEVEN A. BANK KIRK J. STARK, WAR AND TAXES (Urban Institute Press. 2008).; SCHEVE, Taxing the Rich: A History of Fiscal Fairness in the United States and Europe 185-192 & 213. 2016.

elements in the tax system.[80] It is very difficult to create new enforcement institutions (e.g., such as taxing wealth). This pushes policymakers to use those mechanisms already in place, which apply to a large group of people and therefore provide maximum revenues—that is mostly labor and consumption even if over-reliance on these taxes is less than optimal to achieve revenue growth and distributional objectives.[81]

All the above considerations typically do not find their way into ideal-setting analysis even though their incorporation may alter the prescriptions of those theories significantly. For example, one may argue that from an optimal tax reform perspective—tax policymakers should consider using multiple tax instruments. This would allow them to flexibly balance between those instruments when the political window of tax reform opens. This point is neglected by the philosophic literature such as the one presented in the Myth of Ownership, which is indifferent the fiscal instruments used. It will also be alienated to the OTT literature, which will argue for using only the most efficient fiscal tool to minimize distortions. The ideal-setting assumption of a political process dominated by a social planner provides an inadequate starting point for dealing with considerations about the costs of introducing new tax instruments in any meaningful way.[82]

The three above mentioned considerations are examples to crucially important factors that ideal-setting theories tend to neglect. They do not provide a full list of the issues that ideal-setting inquiries tend to neglect, but a discussion of them can provide a good sense to the type of costs that over-reliance on ideal setting tax theories entail. This observation is not a criticism of those theories but only an attempt to articulate their boundaries. Philosophic and economic ideal-setting theories tend to assume allocation of resources in society occurs either by a very coherent strong state or by a competitive market. These strong simplifying assumptions took things "out of context" thereby allowing ideal-setting theories to construct stimulating intellectual insights about how these two forces interact.

In their attempt to provide clear insights, ideal-setting often decontextualize their analysis to the point that it loses part of its ability to influence tax policy. To contribute to the debate of

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[80] Thomas Piketty Emmanuel Saez, *How Progressive is the U.S. Federal Tax System? A Historical and International Perspective* 21 JOURNAL OF ECONOMIC PERSPECTIVES 3, 23 (2007).
[81] McCaffery, *The Meaning of Capital in the Twenty-First Century*, 29-30.
[82] Stanley L. Winer & Walter Hettich, *The Political Economy of Taxation: Positive and Normative Analysis When Collective Choice Matters*, CARLETON UNIVERSITY, ECONOMIC WORKING PAPER NO. 02-11, 4 (2003).

how to best modify and reform the tax system, tax scholarship must account to the dilemmas tax policymakers face. In a non-ideal-setting, the governments are not monolithic, and may not be even strong when compared to other factors that shape tax policy. Furthermore, in these settings rents in combination with competitive forces shape distribution of assets and the boundary between the market and the government may not be clear or even exist in any meaningful way. These considerations about inequality and about the dynamic nature of the political process should shape the policy debate about the desirable levels of redistribution and the appropriateness of using different tax instruments towards achieving it.

While every theoretical work requires abstraction which alienates it from reality, the above alienation entails a too-heavy-to-bear price. Tax theory decontextualized from so many policy dilemmas, results in policy recommendations that are vague about their normative foundations and agendas. At the end of the day, every tax policy analysis is part of a normative agenda and every tax policy recommendation is essentially a normative argument.[83] Normative vagueness about tax policy, may lead to a suboptimal (at best) or biased (at worst) policy discourse about one of the most important social engineering tools in modern democratic society.

III. The Empirical Public Finance Research Renaissance

After many decades of OTT dominance in public finance research a new trend of scholarship emerged as an important supplement to it. This new literature shifted the focus from abstract modeling of how tax rules impact saving, investment and labor supply decisions, to an empirical study of wealth accumulation patterns in society and, to a somewhat lesser extent, to the study of actual labor elasticities. It is part of an overall recent trend in economics,[84] which in the context of public finance manifests itself in a range of issues and led by scholars such as Martin Feldstien and Raj Chetty.[85] This part briefly describes the main features of this literature,

[83] EDWARD D. KLEINBARD, WE ARE BETTER THAN THIS xxii (Oxford University Press. 2015).
[84] Daniel S. Hamermesh, *Six Decades of Top Economics Publishing: Who and How?*, 51 JOURNAL OF ECONOMIC LITERATURE 162, 168 (2013).
[85] For an example for two leading papers that feature this trend in public finance see: Raj Chetty, et al., *Salience and Taxation: Theory and Evidence*, 99 AMERICAN ECONOMIC REVIEW 1145(2009).; Martin Feldstein *The Effect of Marginal Tax Rates on Taxable Income: A Panel Study of the 1986 Tax Reform Act*, 103 JOURNAL OF POLITICAL ECONOMY 551(1995).

and focuses its discussion on wealth accumulation and inequality. It then assess its virtue to the tax policy and reform discourses as well as its (normative) incompleteness. To put it boldly, if the previous parts offered a "too-theoretical critique" of OTT and the philosophic literatures dealing with taxation, then this part offers a "not-normative-enough" (theoretical) critique of the empirical economic literature. This of course should not be read as a critique of economic scholarship. Instead it should be viewed as an observation about the current state of affairs with respect to the philosophic literature dealing with taxation and redistributive justice. To date, it has yet to go down the path of non-ideal theory necessary to provide the normative context to the rapid advancement of empirical economic tax-literature.

In recent years, we have witnessed a shift in the way in which public finance research examines tax policy questions, which was motivated by the growth of inequality in the last half a century. Led by the work of prominent economists (e.g., Peter Diamond, Thomas Piketty, Emmanuel Saez, and Gabrial Zucman),[86] this literature diverted enormous amounts of intellectual resources to document the phenomena of wealth and income inequality and to offer explanations to it.[87] Shifting to this new approach entailed adopting an (ex post) inquiry of how tax rules impacted income redistribution of wealth and income, instead of adhering to the OTT ex-ante perspective, which aims to estimate how different tax rules will impact individuals' behaviors.[88] In what can be considered as a challenge to the OTT approach, Diamond and Saez elucidated what could be seen as the main pillars of their approach to the study of tax law. They stated that tax scholarship should produce policy recommendations that are: empirically relevant to the problem at hand; based on reasonably robust assumptions—which depart from rational model and strong homogeneity assumptions; and to be within the realistic utopian boundaries of (political and administrative) implementation.[89] In other words, the new empirically driven public finance theory aims to provide a realistic tax reform theory, which focuses on actual (rather than theoretical) efficiency and redistributive considerations.[90]

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[86] Diamond & Saez, J. ECON. PERSP., (2011).; PIKETTY, CAPITAL IN THE TWENTY-FIRST CENTURY.; Shaviro, *The Mapmaker's Dilemma in Evaluating High-End Inequality*, 60.
[87] Shaviro, *The Mapmaker's Dilemma in Evaluating High-End Inequality*.
[88] Shaviro, *Piketty in America: A Tale of Two Literatures* 458.
[89] Diamond & Saez, J. ECON. PERSP., 166 (2011).
[90] Saez, *A Theory of Optimal Capital Taxation*.

The work of Piketty and others about the growth of income and wealth inequality reached a large audience.[91] Moreover, tax scholarship work associated with this strand of analysis has also reached some additional important conclusions about how tax policy contributed to the growth of inequality. Some of the research papers associated with this new wave of empirical research, tried to measure labor and saving tax elasticities. Their findings suggest it is difficult to empirically establish either that current tax rates dramatically affect labor supply, or that optimal capital income tax rate should be close to zero.[92] Other works have established how the decline in marginal rates on labor and business income as well as low statutory rates on capital income and capital gains contributed to the growth in before and after-tax inequality.[93] Furthermore, faithful to their commitment to develop a theory which perceives reality as a challenge rather than as an obstacle, they have provided some models about the optimal tax rates of labor and capital income.[94]

Research projects associated with this new approach to public finance documented and modeled into their analysis features such as the growth of wealth inequality and the growing importance of inheritance in perpetuating it. They relaxed some of the OTT's traditional assumptions and reached very different policy recommendations. These recommendations tend to questioned many of the policy prescriptions generated by OTT tax scholarship during the last decades.

However, in the process of providing realistic policy recommendations, the new empirically driven agenda has neglected one important issue—the need to establish a closer connection between the fiscal issues it addresses and the underlying normative agenda it seeks

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[91] Emmanuel Saez & Gabriel Zucman, *Wealth Inequality in the United States Since 1913: Evidence from Capitalized Income Tax Data*, CEPR DISCUSSION PAPER NO. DP10227 (2014).;Thomas Piketty Gabriel Zucman, *Capital is Back: Wealth-Income Ratios in Rich Countries 1700-2010* 129 THE QUARTERLY JOURNAL OF ECONOMICS 1255(2014).

[92] Diamond & Saez, J. ECON. PERSP., 175-179 (2011).; Saez, *Optimal Labor Income Taxation*, 38.

[93] Thomas Piketty, et al., *Optimal Taxation of Top Labor Incomes: A Tale of Three Elasticities*, 6 AMERICAN ECONOMIC JOURNAL: ECONOMIC POLICY 230, 231 (2014). (arguing that reduction in top marginal tax rates on labor and business income has most likely contributed to the rise of CEO salaries in certain countries—due to a change in their negotiation incentives); Thomas L. Hungerford, *Changes in Income Inequality Among U.S. Tax Filers between 1991 and 2006: The Role of Wages, Capital Income, and Taxes*, (2013).; James A Yunker, *Economic Inequality and Optimal Redistribution: A theoretical and Empirical Analysis* 38 JOURNAL OF POLICY MODELING 528(2016).; Junyi Zhu, *Bracket Creep Revisited - with and Without R>G: Evidence from Germany* BUNDESBANK DISCUSSION PAPER NO. 37/2015 (2015).

[94] Diamond & Saez, J. ECON. PERSP., (2011).; Saez, *A Theory of Optimal Capital Taxation*. Saez, *Optimal Labor Income Taxation*.; Thomas Piketty Emmanuel Saez, *A Theory of Optimal Capital Taxation* NBER WORKING PAPER NO. 17989 38 (2012).

to promote. Faithful to their economic backgrounds, scholars writing in this tradition have endorsed two normative practices. The first practice is to assume rather than debate the normative-distributive objectives of social policy. The second practice is to (implicitly or explicitly) accept that utilitarianism/welfarism (with a social welfare function that puts more weight on the welfare of those at the bottom) is the default underlying normative foundation of social policy.

This shortcoming does not amount merely to an intellectual objection but rather comprises one that has tangible implications on the scope of this agenda. For example, while the findings of this literature suggests that the top 1% experience their lives in a very different way than the rest of society—they fail to explain why it is something that requires government intervention—and which type of intervention is acceptable. Like other economists they accept a utility/welfare based analysis, which provides a clear benchmark and accounts well for some intuitions. However, their analysis often does not suggest how their empirical findings would impact a more complicated (non-strictly utilitarian) normative position. Since individuals' normative distributive justice preferences are important, at the very least because they impact the social welfare function, inquiring how these empirical findings contribute to other normative agendas as well as determining whether they have any practical implications is important.

Without offering a more nuanced normative agenda, these scholars (talented as they are) either skip this step (going directly to their policy recommendations) or make extreme and non-trivial assumptions. For example, Diamond and Saez argued that a zero marginal utility of income of superrich taxpayers whose marginal consumption is used to purchase only luxury goods. Accordingly, they argue that the only reason for not taxing rich taxpayers at confiscatory 100% tax rates is the will to encourage them to work more to maximize the tax revenues they produce (which will allow the government to reduce taxes on taxpayers with lower income).[95] Elsewhere, after stating that public support for taxation rests on the notion that tax is fair, Saez noted that as an economists a plausible prescription of fairness is to distinguish and eliminate rents.[96]

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[95] Need to find

[96] Emmanuel Saez *Income and Wealth Inequality: Evidence and Policy Implications*, 35 CONTEMPORARY ECONOMIC POLICY 7, 25 (2107).

The above two normative positions are not wrong. However, they are simplistic and far from being trivial, do not offer any comprehensive theory of tax-fairness, and are not well argued for as a matter of normative theory.

Even economists such as Piketty, who seems convinced that the growth of inequality justifies a response in terms of tax policy, are not entirely clear at conveying why this inequality is normatively wrong.[97] This raises an alarming concern because the question at hand is not only whether government action is justified, but what type of tax reform should be promoted. Most importantly, the question of tax reform relates to the balance between different tax instruments comprising the government's budget. Each of these fiscal instruments measures economic well-being and effects taxpayers differently—so that questions regarding the appropriateness of using each of them carry significant normative weight.

Despite its great promise and sophistication, the new empirically driven economic literature did not go beyond the welfare economics framework. This suggests that it has yet to generate or catalyze the creation of a normative tax policy discourse that would allow it to analyze the factors that legitimize state action to counter extreme inequalities, to explain what forms of privileges and disadvantages they create, and to elaborate what egalitarian government strategies would be effective in dealing with them. Without this type of inquiry, even the much more reality-sensitive empirically driven economic literature runs the risk that its policy proposal will be intellectually and normatively incomplete.[98]

IV. The Way Forward

This Part of the Essay outlines the way in which tax scholarship should evolve to incorporate normative considerations in its tax reform analysis. The Essay argues that this change can provide an awaited supplement to reformulation that the empirically driven tax scholarship has triggered.

Economists, philosophers and legal scholars dealing with taxation recognize that at its very core it relates to fundamental distributive normative considerations. For this reasons they rejected incomplete ideals such as the benefit taxation and the ability-to-pay standards. Serious

[97] Need to find in his book
[98] McCaffery, *The Meaning of Capital in the Twenty-First Century*.

scholarship should not rely on intellectual shortcuts but be evaluated by how it relates to well elaborated normative agendas developed in political philosophy. However, while tax scholars recognized the importance of the distributive normative dilemmas brought to surface by tax issues—they did little to incorporate these considerations to promote a more complete tax discourse. This resulted in a tax policy discourse that orbits around revenues and an economic discourse that focuses on individual incentives. It also resulted in a state of affairs in which a complementary normative discourse about how tax policy issues should connect to different perceptions of distributive justice does not exist in a meaningful way.

The challenge ahead for tax scholarship with respect to the redistributive normative debate is to go beyond assuming it (as OTT scholarship does) or measuring it (as the empirically driven tax scholarship does). Instead, tax scholars should aim to lay the platform that will allow tax scholars to grapple with how notions of distributive justice reflect in contemporary tax reform proposals.

The question at stake is a complicated one and relates to the nature of the new fiscal contract that should be adopted by post industrialized state economies operating in a global environment. The normative parameters of this fiscal contract should be clear so that policymakers making decisions about who bears the burdens and the benefits of the social product provided by the state could be held accountable for the distributive ethos reflected in their tax policy decisions.

This Essay's analysis pointed to the normative gap in contemporary tax scholarship debate, offered an explanation for why it exists and tried to assess its consequences. Laying down the cornerstones of the desirable normative discourse, goes beyond the scope of this paper. Nevertheless, some of the main features of this normative fiscal discourse could be delineated in general terms.

Tax scholarship discourse should be more precise in linking the economic and philosophic literatures dealing with tax policy and economic inequality. This is not to suggest that a direct translation of philosophic notions of distributive of justice can yield reasonable legal tax rules and institutions. Reality often requires meaningful diversions from ideal normative considerations. Even though tax justice norms cannot be identical to (consequentialists) theories of economic justice, tax scholars can create tax justice norms that can operate as a reasonable proxies to those theories. Tax scholars probably do not have any special advantage in prioritizing between different normative views of distributive justice. However, their expertise should be understood as enabling them to develop a normative framework according to which tax policies' underlying normative agendas could be analyzed. Rethinking how normative abstractions could reasonably be translated into tax policy measures, stems from the notion that moral and political philosophy should also be practical in the sense that they should guide the actions of agents. That previous tax equity norms had their shortcomings, should not be viewed as a discouragement, but as an invitation for reconsideration.

Theory and practice of tax policy seem as operating in different spheres. Nevertheless, theoretical agendas had a vital role in shaping the fiscal structure of the welfare state during the course of the twentieth century. While tax reform proposals are not copied from university textbooks, theoretical conventions impact policymakers' notions about the desired policy and about the issues that require reform. Hence, tax scholarship dealing with the normative aspects of tax reform should be attentive to two considerations: that normative distributive ethos affects the way voters and policymakers think about tax policy; [99] and, that politics operates within certain scopes of feasibility, which are difficult to determine in advance. Taken together, tax theory dealing with tax policy should seek to better understand how the political and agenda setting process with respect to tax reform works, how issues of inequality and tax redistributions are perceived, and how the conventions of political feasibility could be extended.

The last point is of tremendous importance because it suggests that normatively minded scholars looking into tax reform issues "*should also pay attention to the polity's psychological tendencies*."[100] This Essay is part of a broader research project that asks how to promote normative considerations within the existing tax policy framework. This differs from ideal-setting-theory philosophic inquiries, which typically commence by examining moral principles and then trying to conclude what a just society should look like if it were designed from scratch. In terms of methodology, the main difference is that an institutional analysis begins with reality and then acknowledges which parts of it to embrace and which to challenge. This process requires deciding what the acceptable limits of practical political considerations are, and to

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[99] John E. Roemer, *Prospects for Achieving Equality in Market Economies*, *in* THE OXFORD HANDBOOK OF ECONOMIC INEQUALITY 707, (Brian Nolan, et al. eds., 2009).

[100] McCaffery & Baron, *Tax Policy in an Era of Rising Inequality: The Political Psychology of Redistribution*, 1749.

designate them as the boundaries of the analysis. Because these boundaries depend on dynamic human practices, they are inherently contestable. Thus, a normative theory that wishes to deal with and re-shape reality must also explicitly address these boundaries.

In a non-ideal (realistic) setting, the optimal tax reform scholarship should also be concerned with how normative tradeoffs are presented given our growing understanding of the way individuals form opinions about inequality and government tax policies. Hence, delineating a framework of a normative tax policy discourse requires a thorough understanding of individuals' cognitive biases, to draw a fine line with respect to how normative tradeoffs should be presented in light of them. Specifically, in a non-ideal-setting, tax scholarship oriented towards tax reform should confront the question of when cognitive biases should influence the structure of normative arguments, and when normative arguments should seek to counter these biases.

In summary, to provide more relevant policy recommendations, tax scholarship needs to meet the challenge of providing a platform for the debate about how to reform tax institutions. This move would require adopting a more comprehensive agenda that will supplement the advantages of abstract modeling and the empirical study of policy outcomes. This agenda must focus on tax legislation reform as a collective political decision and address question about the feasibility and normative desirability of various possible political equilibriums as part of its analysis.[101]

Among other things, this new agenda should try to clarify how major tax policy dilemmas in a non-ideal-setting relate to notions of distributive justice ideals. Reforming tax institutions, and retaining its integrity over the course of time in light of changing conditions and rent seeking behavior if interest groups—requires political support. At least part of this support relates to the underlying normative vision of different tax instruments and tax reform options.

Every tax policy put forward should relate to empirical characteristics of the distributive problem in question, rely on realistic assumption and adhere (broadly) to the realistically utopian political and administrative boundaries. The focus of this Essay, is to highlight the need in developing an analysis of the normative notions underlying various tax reform options. Hopefully, it substantiated this argument, which is but a first necessary step towards developing a more comprehensive tax research framework. Hence, future work would explain the

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multilayered role of non-ideal-normative tax theory—focus on its possible objectives and the constraints it should adopt. This future work requires a careful articulation of what comprises an adequate normative non-ideal theory and a careful review of the empirical literature to determine its main contours. The broadness of this inquiry dictates leaving it for future papers.

Conclusion

The revival of high inequality levels in advanced economies at the end of the 20th century, and the ongoing debate of how governments should respond to it, raised both interest and concerns in different fields of social science and moral philosophy.

The operation and enactment of tax rules as well as the analysis of their outcomes all seem inherently complex. The "natural" academic response to this complexity, is to address each issue on a separate narrow framework to increase the accuracy of the analysis and the clarity of its conclusions. The Essay, advocates for a different approach and calls for producing a more general framework. It contends that while the debate about the proper tax-distributive policy cannot be academically resolved, there is a need for a more structured interdisciplinary approach. Among other things, this structure should enable participants in this debate to link their positions to the empirical findings and moral perceptions concerned with inequality.

Clearly, there is no easy solution about how to best combine all the strands of research which relate to the debate of tax policy formation. Indeed, any attempt to combine them together is bound to erode the intellectual lucidity of each independent component of the analysis. Nevertheless, this Essay contends that there is a tradeoff between the intellectual payoffs of disciplinary focus, and, as it demonstrated, the negative intellectual and policy payoffs of viewing multilayered problems through narrow methodological lenses. Questions about the appropriate role and design of the tax regime require solutions which relate to the deep normative underpinnings of the taxes levied. The answers to these questions cannot be devised without a sincere and well framed discussion of the moral, psychological, political and economic issues that inequality raises.

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