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Fiscal Sociology at the Centenary

UK Perspectives on Budgeting, Taxation and Austerity

Ann Mumford

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Palgrave Socio-Legal Studies
ISBN 978-3-030-27495-5 ISBN 978-3-030-27496-2 (eBook)
https://doi.org/10.1007/978-3-030-27496-2

Cover credit: Brian Jackson/Alamy Stock Photo

This Palgrave Macmillan imprint is published by the registered company Springer Nature Switzerland AG
The registered company address is: Gewerbestrasse 11, 6330 Cham, Switzerland

I am grateful to a number of colleagues who have contributed enormously to the development of this project. Dave Cowan's guidance and insight on refining the parameters of the project were invaluable, as were the contributions of the anonymous reviewers for this book proposal, and final manuscript. A number of chapters have been presented at annual meetings of the Law and Society Association, within collaborative research networks chaired separately by Neil Buchanan and Kathleen Lahey. The thesis, and several chapters, were presented at a meeting of the postgraduate taxation research network at Cambridge University, chaired by May Hen and Dominic de Cogan. Several chapters were written during a sabbatical spent in 2017 at the Centre for Transnational Legal Studies, where I was fortunate to be able to discuss key arguments with Ann O'Connell. At King's College London, Clair Quentin provided guidance as I navigated often unfamiliar subject matter. Additionally, I was fortunate to be able to present the arguments concerning fiscal federalism at a research seminar generously convened by Eva Pils at King's in March 2019. Eva also chaired a seminar at King's in 2018, within her Human Rights, Development and Global Justice series, which assisted me in refining my arguments concerning the contributions of a single scholar to a broad movement. Irit Samet-Porat chaired a work in progress seminar at King's in 2015, at which I was able to begin refining key arguments within these pages. Aruna Nair offered encouragement and wisdom during the final stages. Also at King's, Tim Macklem and

Stephen Gilmore generously gave their time to discuss a number of arguments in chapter six. Freddie Alldridge discussed Keynes, economies, and more, with me as we navigated completing this manuscript, and A-Level revision. Finally, Peter Alldridge read the text in full, at different stages. This book is dedicated to him, and to Freddie and Nellie.

—Ann Mumford

May 2019

Contents

1

Introduction

Concerns about taxation have the tendency to simmer.

At the moment tax is paid, a point of agreement, or clarity, has been reached on a number of points that might be contentious. This point may have been reached in the name of administrative ease, or, perhaps, necessity. The state needs money to function, so debates about whether money is owed can only last for so long. Any number of features of tax collection exists only so as to enhance ease and speed of collection.

Even if these agreements emerge from a somewhat forced, or hurried consensus, they merit consideration. A close look at tax assessments may reveal, *inter alia*: regimes protecting private property; an account within which interests in wealth are recognised by law; and, when otherwise unpaid labour needs to be allocated a monetary value. Perhaps most significantly, tax and spending choices may provide the mirror for what citizens, and the state, expect from each other.

These expectations can be complicated. For example, a majority of citizens might agree that they would like to increase the economy's overall growth. They may agree that they are worried about losing their jobs, or being unable to meet payments due on their mortgages. The most likely way of improving economic performance may be through increased government spending; and, an increase in some forms of taxation may be necessary to achieve this. This call for raising taxation might be the point at which the consensus unravels.

How can taxpayers agree that it is important to achieve an outcome, but remain unwilling to pay for it? How can they insist upon their entitlement to two, apparently contradictory outcomes? This is a question with particular

A. Mumford, *Fiscal Sociology at the Centenary*, Palgrave Socio-Legal Studies,
https://doi.org/10.1007/978-3-030-27496-2_1

resonance in 2019. Indeed, the suggestion that this book is published during a year of remarkable political upheaval, and contradictions, falters only when one considers its starting point: the centenary of the plea, from Professor Joseph A. Schumpeter,[1] that Austria takes its own 'crisis of the tax state' seriously—falters, only because this suggestion seems less remarkable, and, perhaps, more timeless.

In 1918, the Austro-Hungarian Empire collapsed with the end of the First World War (Barker 1973). The portions of Austria that remained largely were German-speaking. The Treaty of Versailles forbid the creation of an official republic of "German-Austria," yet the imperative to form a closer relationship, or *Anschluss*, between Germany and Austria was gaining increasing political momentum in Austria (ibid.: ch. 4). A rebuilt Austrian economy, Schumpeter believed, would render the calls for this union with Germany (a prospect he opposed) less desirable. Politicians within his own party, however, seemed invested in the idea that all was hopeless; and the lament that, given the restrictions imposed under the Treaty of Versailles, it was impossible for the Austrian economy to recover without Germany's support (ibid.: ch. 4). Against this background, this economics professor, recently appointed as Austria's Minister of Finance, gave a speech calling for attention to be paid to Austria's "crisis of the tax state." There were, Schumpeter argued, good possibilities for instituting taxes which would strengthen greatly Austria's terribly weakened post-war economy—the one outcome on which all Austrians agreed. Why, Schumpeter, asked, did all Austrians not support the one path which he was certain would make things better? From these questions, 'fiscal sociology' was born.

Since 1918, fiscal sociology has had many iterations. This literature will be briefly reviewed. In the twenty-first century, fiscal sociology has become a phrase used by scholars to represent, primarily, two things: first, when scholars approach tax law in a way which departs from (what can be perceived as) a dominant, growth-focused narrative; and, secondly, when scholars who study inequalities, pluralism and "development" ask why tax scholars have not also considered issues within their field (or, why scholars in their disciplines are not also considering tax). Thus, fiscal sociology, generally, tends to be used as a clarion call to consider a government's tax and spending decisions against criteria which deviate from "fiscal responsibility", and "balanced budgets". This is not to suggest that these are the only concerns of governments, but, rather, to argue that governments tend to posit that,

[1] 1883–1950. Chair at University of Bonn, Germany, 1925–1930. Lecturer and other posts at Harvard University, from 1930.

once "balanced budgets" are achieved, then it will be possible to consider other issues (like inequality). So, one must come before the other. This is exactly the assumption which Schumpeter challenged, and why his essay from 1918 continues to be used as something of a shorthand for scholars seeking to find a different starting point for tax and spending analyses (or, at the very least, to find a starting point within which tax *and* spending may be considered *together*).

As Austria's challenges in 1918 were serious, so are the challenges faced in 2019 worth our attention. This book was completed during the Spring 2019 Brexit negotiations. The observation that a disconnect between what a country wants, and that for which it is willing to pay, in this context appears as fresh today as it did one hundred years ago. Brexit, however, is not the only evidence of this. For greater depth, it is necessary to look at the UK's budget, and the institutions which support it. This, also, is a key argument within fiscal sociology.

Schumpeter was very aware that, when he insisted upon the scholarly importance of budgeting decisions, he was addressing an institution with deep roots in British history. This book will consider this history and will detail how this very British innovation has evolved over the centuries. In particular, it will consider how the modern legal framework of budgeting—what this book suggests might be labelled "budget law"—has developed. Influences from the EU, and the USA, will be considered. The place of the domestic practice of budgeting within the 'transnational turn' also will be addressed. The reason for this is that the question of how a state taxes, and how it spends those taxes, is no longer simply a domestic question. For example, whereas nineteenth-century Britain turned to death duties as a response to growing concerns about inequality of wealth, in the twenty-first century, the OECD is encouraging countries to consider deploying inheritance taxation as a way to address concerns about unequal distribution of wealth in the modern era (Farrell, 12 April 2018). Political reform movements today emerge outside of domestic governance frameworks, as well as within.

What is most remarkable about a consideration of one hundred years of fiscal sociological analysis is the persistence of certain themes, and the extent to which the language used to describe problems a century ago resonates today. When the disconnect between what taxpayers are willing to pay, and what they expect from the state, is considered by scholars, Schumpeter's "fiscal sociology" framework is evoked, although, other than mentioning Schumpeter and using the label, little else is rigid or fixed about how these analyses are approached. Perhaps this is because the label itself refers to the efforts of Schumpeter to find a language, or a toolset, for addressing the failures of the 1918 Austrian fiscal state; and, thus, the label has been borrowed ever since when scholars have been engaged in just such a search—and explored a way of answering questions that seem not to be answered within one's home discipline.

What did Schumpeter mean why he suggested that this was a "sociological" enquiry? In the broadest sense, he was interested in a scientific study of societies, which also included fiscal issues. As an economist, Schumpeter's starting point was that the answer to his questions could not be found within traditional economic enquiry. He suggested that (what he understood to be) a 'sociological' enquiry would be necessary to provide insight. Thus, his efforts to study 'the fiscal state,' never constrained by disciplinary boundaries, provided a theme for a long, prolific and remarkable career; and, thus, works beyond his 1918 essay are considered within this book.[2]

Within the fiscal sociological framework, separate discussions have emerged which, by all accounts, Schumpeter would have enjoyed. He has become a writer who means different things to different types of scholars. Whereas economic historians look back upon a contemporary (and antagonist) of Keynes,[3] academic lawyers (and scholars from other disciplines)

[2]His use of the term echoes Giddens' claim that history and sociology "are and always have been the same thing" (Goldthorpe 1994: 55, citing Giddens 1979: 230). The choice of the term by Schumpeter appears in many ways to be of its time, and a bit dated, not least because it seems to assume that history and sociology use the same evidence (Goldthorpe ibid.: 56). It is also evocative of Hart's use of the term "descriptive sociology" (2012: xlv), which Schauer described as an "…identification… that few sociologists would be able to fathom" (2005: 860). He suggests that "…Hart's claim to be doing descriptive sociology might be an implicit recognition that to explain the concept of law is to engage in a descriptive practice ultimately grounded in observation of actual legal systems" (ibid.; see also Lacey 2017, providing an in depth consideration of Hart's use of the term, and suggesting that whilst he hoped to acknowledge the importance of Austinian linguistic theory, he also aimed to expand beyond that). The term sociology, generally, does appear to be used loosely in many of the early and mid-twentieth century pieces referred to in this book, and not simply by Schumpeter. In the twenty-first century, economic sociologists have employed the term as a reminder that it is important to consider taxation when they approach the reproduction of inequality (and have tended not to linger on the fact that Schumpeter's methods differ from theirs). Socio-legal scholars have approached fiscal sociology as a way of considering the connection between tax, spending, and the social contract.

[3]John Maynard Keynes (1883–1946), British economist whose ideas changed the course of public policy, and the economic practice of governments. His masterpiece is presumed to be his book *The General Theory of Employment, Interest and Money* (originally published in 1936; 2018). "Keynesianism" generally refers to ideas explored within *General Theory*. Very broadly, Krugman (in the introduction to the 2018 publication of this text) suggests that Keynes' argument can be summarised as four "bullet points": "(1) Economies can and often do suffer from an overall lack of demand, which leads to voluntary unemployment; (2) The economy's automatic tendency to correct shortfalls in demand, if it exists at all, operates slowly and painfully; (3) Government policies to increase demand, by contrast, can reduce unemployment quickly; (4) Sometimes increasing the money supply won't be enough to persuade the private sector to spend more, and government spending must step into the breach" (xxvii–xxviii).

seeking to consider the connections between tax and the social contract may describe themselves as Schumpeterian fiscal sociologists. The 'fiscal sociological' framework has proved attractive to scholars for a number of additional reasons. As mentioned, the 1918 exhortation to consider the power of tax included an insistence (perhaps even more importantly) to acknowledge the significance of budgeting. This is because, when considered within the framework of the social contract, 'tax' problems are perhaps most accurately understood as tax and spending problems, as Schumpeter argued. Budgets, in fact, are incredibly important to the social contract; both as a topic of study, capable of providing deeper insight into the content of the contract, and, as pragmatic tools. If one wishes to argue that budgets are important, then Schumpeter is often the starting point.

An additional reason for the continuing attraction of Schumpeter's analysis of the Austrian 'crisis' is the knowledge that, in 1918, he became the Minister of Finance, which was a very powerful political appointment. Given his political influence, his were not the thoughts of just any observer. His exhortation was wholly practical, urgent, and that much more desperate. He spoke as a political actor who had a plan, that he ultimately was unable to implement, largely because of the apparently insurmountable resistance to raising taxes. Having been appointed as Minister of Finance because of his expertise in economics, he soon realised the limits of his subject. It is one thing to have devised a plan for promoting economic growth. It is quite another to realise that it is politically impossible. To what extent should popularity matter, or not, when times are desperate? What exactly should states expect from citizens, and citizens expect from states? How is it possible to discern the content of those expectations? He asked all of these questions, and more, and these became the subjects of a 'fiscal sociological' analysis. Put simply, fiscal sociology is concerned with tax, spending and the social contract—as well as the laws and institutions that support these processes, and the politics that render some things possible (and others not).

This book will consider Schumpeter's contributions to the study of tax and spending law, but it is not an essay within a *Festschrift*. In its aims to consider and to contribute to the field that has come to be understood as fiscal sociology, it engages a discipline (if it may be described as that—perhaps it is closer to a perspective) which largely has developed *after* Schumpeter's lifetime. Also, the methods it brings to this task are self-consciously socio-legal, in the sense that cases, legislation, and literature written within the socio-legal tradition provide the main focus. Although he studied law, Schumpeter did not devote any notable amount of consideration of legislation and cases in his search for an answer to a question he never resolved;

namely, the cause of the crisis of the Austrian fiscal state. Nonetheless, legal scholars have adopted his enquiry as their own, and thus their contributions are introduced here.

The purpose of this book is to apply the central questions of fiscal sociology to the UK; that is:

> What does 'failure of the tax state' mean? What is the nature of the tax state? How did it come about? Must it now disappear and why? What are the social processes which are behind the superficial facts of the budget figures? (Schumpeter 1918: 100)

The only questions for which answers are not proposed are the first and the fourth. Thus, "what does failure of the tax state mean?" and, "must it now disappear, and why?" remain unanswered, although reflections on these are offered in the conclusion. The 'nature of the tax state,' and 'how it came about' is considered in the context of the historical foundations and institutions of budgeting in the UK. Modern legislation and government processes addressing budgeting also are addressed.

The 'social processes behind the superficial facts of the budget figures' are explored in two ways, both involving law. The first example is the call by Piketty[4] for a global tax on capital. Such a tax would be difficult to put in place, although what might be described as a transnational norm is evolving which would support exactly such a levy. It is a form of disconnection which attracts fiscal sociological analysis. What is the reason for the disconnection? The next example provides the start of an answer, in another context. It illustrates that whilst there might be an assumption that law protects women from discrimination in tax and spending decisions, this assumption is far from correct. Thus, the frustrated call for a global tax on capital, and the law's failure to prevent the disproportionate impact of tax and spending decisions on women, both illustrate the distance from what might be expected of law, and the protections that law actually provides. In both instances, purportedly 'neutral,' bureaucratic processes have identifiable repercussions.

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[4]Thomas Piketty (1971–), economist; professor at the *École des hautes études en sciences sociales*, and associate chair at the Paris School of Economics. His book, *Capital* (2014), was enormously influential in both scholarly and political discourse, and is discussed in Chapter 6.

References

Barker, Elisabeth. 1973. *Austria 1918–1972*. London and Basingstoke: Springer.

Giddens, Anthony. 1979. *Central Problems in Social Theory: Action, Structure, and Contradiction in Social Analysis*. Vol. 241. Berkeley: University of *California Press*.

Goldthorpe, John H. 1994. "The Uses of History in Sociology: A Reply." *The British Journal of Sociology* 45 (1): 55–77.

Hart, H. L. A., and Leslie Green. 2012. *The Concept of Law*. Oxford: Oxford University Press.

Keynes, John Maynard. 2018. *The General Theory of Employment, Interest and Money*. Cambridge: Palgrave Macmillan. Originally published 1936.

Lacey, Nicola. 2017. "Analytical Jurisprudence Versus Descriptive Sociology Revisited." In *Legal Theory and the Social Sciences*, 111–148. London: Routledge.

Piketty, Thomas. 2014. "Capital in the Twenty-First Century: A Multidimensional Approach to the History of Capital and Social Classes." *The British Journal of Sociology* 65 (4): 736.

Piketty, Thomas. 2017. *Capital in the Twenty-First Century*. Cambridge and London: Harvard University Press.

Schauer, Frederick. 2005. "(Re) Taking Hart." HeinOnline.

Schumpeter, Joseph A. 1918/1953. "Die Krise des Steuerstaates." Graz-Leipzig: Leuschner & Lubensky; reprinted as pp. 1–71, in J. A. Schumpeter, "Aufsätze zur Soziologie." English translation by W. F. Stolper and R. A. Musgrave, in International Economic Papers. London: Macmillan, 1954.

Part I

Fiscal Sociology

2

What Is Fiscal Sociology?

The starting point for fiscal sociology, and the idea of the tax state, is that it is, of course, not uncommon for governments to highlight the distance between aspirations and capacities. The distance, typically, is explained through reference to financial constraints. Sometimes the distance is significant. If only the economy in a country were stronger (runs the lament), then choices might have been different. One need only recall the dire predictions back at the start of the 2008 financial crash (Hemerijck et al. 2012; Elsby et al. 2010; Mian and Sufi 2010) to assess how intimate the connections between maintaining balanced budgets and cohesive societies are perceived to be.

The area of scholarly study known as fiscal sociology has *challenged* assumptions such as these for a number of decades. Fiscal sociologists would suggest that one of the problems with the reasoning in the preceding paragraph is that it suggests that budgets, or economies, stand apart from societies, and, in this sense, act upon them. Put differently, societies are victims of economies. Fiscal sociologists suggest a closer relationship. They would argue that budgets and tax laws actually present a useful way of learning more about states. A founding principle of fiscal sociology is that there are few, more important, scientific indicators than how taxes are designed, collected and spent.

The Field: A Brief Introduction

Fiscal sociology could be described, very broadly, as the theoretical, sociological study of tax policy formation. It has produced a fascinating literature, which this section reviews; and, over the decades, it has ebbed and

A. Mumford, *Fiscal Sociology at the Centenary*, Palgrave Socio-Legal Studies,
https://doi.org/10.1007/978-3-030-27496-2_2

flowed in terms of the attention it has received from other scholars. Now at its centenary, it has been celebrated as "vibrant, with a number of competing schools" (Coffman 2018: 529). To the extent it has a predominant theme, its "central aspect" is tax compliance, although the investigations run deeper than considerations of how best to effect compliance, or to prevent non-compliance (Nuta 2018: 392). The field, rather, attempts to identify the "cultural determinants of taxpayer consent" to tax collection (Ganev 2011: 245). Tax, thus, is approached as "…one of the most 'pervasive' relationships that exists between the citizen and the state, as 'everyone' is obliged to pay tax" (Mugler 2019: 390).

Convergence with, for example, studies in behavioural finance is possible and fruitful, but fiscal sociology, in its ambitions, is much broader than this (Martin et al. 2018: 22). The overwhelming impression of the field is that it is constantly developing, and its perspectives continue to reach into new areas. Thus, very recently, and despite its centenary, fiscal sociology has been described as "burgeoning" (Crowhurst 2019: 4), and still "emerging," (Pampel et al. 2018: 1338) and always capable of more. To present just one example, Crowhurst has argued that the taxation arrangements of sex work has not attracted a great deal of attention, despite the fact that such taxation targets some of the most disadvantaged members of society—a category with which fiscal sociology is presumed to be concerned (2019: 3). One reason for this neglect, perhaps, is that whilst taxation is an enormously important factor in the relationship between citizens and the state, it is also a relatively discreet, or quiet, factor, and easily ignored while other topics demand attention (Mugler 2019: 390).

Example of Study: Tax Revolts

There are, however, a few constants within this field. The study of tax revolts, for example, is an enquiry that fits neatly within the remit of fiscal sociology. A classic example of this genre is Martin's 2008 book, *The Permanent Tax Revolt*, which opens with an acknowledgement of Schumpeter. (i) Martin investigates why, in the USA, taxation—and, more importantly, tax cuts—are far from discreet or ignored; and, in fact, have become a "central issue" in American public life (ibid.: 2). Looking back on what he designates as the tax revolt of the 1970s, Martin argues that the genesis of the revolt was the fact that "informal tax privileges" had come to provide "a kind of social protection from the market" (id.: ch. 1). Informal tax privileges are those that are not recorded in law (unlike formal tax privileges, or tax expenditures, which are discussed in Chapter 4), and thus represent a form of "leeway" in practice (id.). Writing in a similar vein, Delalande, and Huret have argued that the modern history of tax revolts in the USA can be traced directly to public resistance to Keynesian policies in practice (2013: 301). By comparison, Travers has suggested that, in the UK, there has been a deliberate effort to downplay public discussion of tax (1989). He argued that, after the poll tax riots of 1990,[1] UK tax policy stagnated for years, largely because politicians feared suffering the same fate as Margaret Thatcher (Travers 1989; Glennerster et al. 1991; Butler et al. 1994).[2] As a consequence, Travers argues, the debate over the connection between social services and taxation has not evolved (1989, ibid.). There is some public discussion of helping people at the bottom by targeting people at the top, but, he suggests, there has been little discussion of targeting people in the middle (id.).

To focus on such policies *alone*, however, is to miss the point; because, "… tax resistance is always a social act, which enables social scientists to depict the social organizations of societies and their political fractures" (Delalande and Huret 2013: 301–302). It is not simply a policy imposed upon people by governments. It is more accurate to describe it as an indicator of sorts. Thus, fiscal, sociological analyses of tax resistance have revealed, by way of example of the sorts of insights that are possible, links between fiscal protests and large governmental budgetary deficits (Martin and Gabay 2012: 4). The reason for this connection, as put forward by "students of fiscal sociology", is that deficits are a "symptom of unresolved conflicts between social groups that make competing demands on the treasury" (ibid.: 5). Additionally, some "have gone further" and argued that deficits are not merely symptoms of the conflict, but the source. Pursuing a middle ground, Martin and Gabay have suggested that, where budgetary deficits exist, proposals of fiscal reform are "…both likely to occur, and likely to give offense" (id.). Deficits, thus, are predictors, or indicators, of movements for social change.

A fiscal sociological analysis also has addressed the "mechanisms of the racial tax state," and demonstrated a correlation between moments of tax protest with "moments at which racial justice (in the United States) seemed possible" (Henricks and Seamster 2017: 169). In this project, taxation law was considered within the perpetuation of racial inequality in the USA. Because taxation law is shrouded in "bureaucratic obscurity", it often receives far less attention than, by comparison, "state-sanctioned racial violence" (ibid.: 175), and, thus, in some ways is far more invidious.

[1] A series of riots in the United Kingdom, protesting the Community Charge (otherwise known as the Poll Tax). See generally, Bagguley (1996).

[2] Also, https://www.independent.co.uk/news/uk/uproar-predicted-over-council-tax-1551107.html (last accessed 30 April 2019).

Tax revolts are important to fiscal sociology, but they are not the only object of study. In 1918, the problem was not that Austrians were refusing to pay existing taxes, but, rather, Schumpeter was encountering opposition to his proposals to institute new forms of taxation, as a form of support after the economic devastation of the Great War. There is a connection, however, between tax revolts and opposition to the introduction of much needed new taxes: both involve a misjudgement by taxpayers of what the state is capable of providing without funding. Fiscal sociology presumes that the answer to this question extends beyond 'they resist because they do not understand.' It may be the case, for example, that the "mechanisms of the racial tax state" are hiding abuses of power behind a suggestion that budgeting is neutral, or that its bureaucratic intricacies make it too *difficult* for the average person to understand. Or, perhaps (and this may have been an important point for Schumpeter in 1918), the level of trust has broken down to such an extent that taxpayers no longer believe that governments will keep their promises. Or, perhaps it is something else—the point is that it is important to ask the questions.

The next section will move from this brief review of the fiscal sociological literature, to consideration of the scholar himself. Thus, it will introduce a brief biography of Schumpeter, but will focus particularly on the conditions surrounding his writing of the founding text of fiscal sociology in 1918, an essay which he called "The Crisis of the Tax State". The purpose of this biography is to provide a foundation for a deeper analysis of that text, and consideration of why this field, here briefly reviewed, owes a debt to a single essay.

The Scholar: A Brief Introduction to Joseph Schumpeter

Schumpeter's life has been the subject of several major biographies, which provide the sources for this brief, biographical section. For such a well-documented life, it is somewhat surprising that a few controversies do emerge. This section will touch upon these controversies. The overriding focus, however, will be the circumstances surrounding the delivery and publication of the founding essay of fiscal sociology, 'The Crisis of the Tax State.'

The "Sacred Decade"

Schumpeter published his first major work, a book titled *The Theory of Economic Development* (1912), at the relatively young age of twenty-eight

(Aydin and Ozer-Imer 2018: 404). The publication of this book marked an (early) high point of what Schumpeter would later describe as his "sacred decade" (Allen 1994: xii). This began when he took up a lectureship at the University of Czernowitz[3] in 1912, five years after his graduation from the University of Vienna (Aydin and Ozer-Imer 2018: 5), where he had studied under Siegmund Adler, an historian of administrative law with a significant interest in taxation (Swedberg 1991a: 23). The disappointing (from Schumpeter's perspective) transfer from Vienna to "small-town" Czernowitz was mollified by becoming, at the age of twenty-six, the youngest professor in Austria (ibid.: 18). After transferring to a position at the University of Graz, he then took up the role of Minister of Finance of Austria, from 1919–1920 (Aydin and Ozer-Imer 2018: 5).

He will have been appointed by Karl Renner, the first Chancellor of Austria (a role established in 1918 after the end of the first world war).[4] Renner was a member of the Socialist Party, which broadly supported *Anschluss* with Germany. Schumpeter did not, and this, and other factors, ultimately led to his dismissal after only a year. Whether he had wider political goals is unclear, but his ambitions appear very much to have been focused on his desire to serve as Minister of Finance, as it was a role in which (he informed others) he believed he would be a significant success (Stolper 2019: 8). Thus, his early dismissal from this position was a major disappointment, and his next moves reflected this. He followed by serving a term as president of a German bank (where he nursed his wounds from the failure of his political hopes by, in McCraw's estimation, "try[ing] to get rich" [2007: 105]); and, then, a chair in public finance at the University of Bonn (Aydin and Ozer-Imer 2018: 5; Stolper 2019: 8). He became a professor at Harvard University in 1932, where he remained until his retirement in 1950 (Aydin and Ozer-Imer, ibid.). He spent the remainder of his adult life in the USA for a variety of reasons, many of which, according to Allen's biographical treatise, appear to have been related to frankly careerist considerations (1994: 1–17, although the suggestion that Schumpeter was more interested in his career, than remaining in the USA as an expression of opposition to Hitler, is controversial).

[3]A city now in western Ukraine.

[4]He was appointed on the recommendation of Otto Bauer, the new foreign minister, who was a friend from the University of Vienna (Swedberg 1991b: 58). Swedberg relates that some scholars suggest that Bauer's recommendation was cemented as a consequence of *Crisis of the Tax State* (and that Bauer may even have been in the audience for the lecture) (ibid.). Swedberg (1989: 517) draws our attention to a "famous footnote" in Schumpeter's *Business Cycles* (1939: 696), which states that he now agrees with Renner's ideas on "social imperialism", and prefers it to his own of 1910. Apparently, the meaning of this statement remains "unclear" (Swedberg 1989, ibid.).

Career in the USA

A review of the biographical literature on Schumpeter reveals an emphasis upon his strong desire to create a theory of economies with pragmatic resonance. He wanted to improve the lives of citizens[5]; and he may have felt that he could achieve this end more effectively in the USA, than in Austria. By one account he was unhappy in America, particularly during the Second World War (McCraw 2007: ch. 23). The FBI's decision in 1939 to investigate him (largely because [although he later claimed to "despise" Hitler] he could not understand why others would not join him in hating Stalin [even more], and regularly complained of this during the war [Swedberg's introduction to Schumpeter 2010: 14–15]) undoubtedly played a role in his sense of feeling unsettled.

After Schumpeter's death in 1950, a contemporary reflected that the fact of having been born "in the closing era of the Austro-Hungarian empire" had cast a long shadow over the whole of his life, as, with the disappearance of the country he knew, "he became completely qualified to play the important sociological role of the alienated stranger" (Samuelson 1951: 98). The abdication of the last emperor of Austria had heralded the end of the "only political order he had ever loved" (Reisman 2005: 18). He did not propose to fall in love again. He saw only one game of American football (at Columbia University) in his entire life (ibid.). When he arrived in America, he was unfamiliar with "Mickey Rooney and coca-cola" and felt no particular need to assimilate—if anything, he "went out of his way to exaggerate his naivete" (id.).

Unsettled in America though he was, he nonetheless acquired the affection of his students at Harvard, as "Schumpy" (McCraw 2007: 404).[6] He resisted any temptation (and it would appear that the offer was almost certainly there) to form a "school" with "followers" (McCraw 2007: 404). This resistance, perhaps, is one of the reasons why books addressing the history of economics rarely devote an entire chapter to Schumpeter (Shionoya 2007: xi).

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[5] If not all citizens—but cf. Stolper (2019: 10), refuting allegations of prejudice, and arguing that racist references in his diaries should be placed in historical context; and, in perhaps the definitive treatment of these diary references, Swedberg's introduction to Schumpeter (2010: 14–15), in which the racist outbursts are placed in the context of his personal crisis at the time, although Swedberg notes of this period that observing the "dark side of Schumpeter was very difficult for those of his friends who were still loyal to him" (ibid.: 15).

[6] *But cf.* Swedberg's introduction to Schumpeter (ibid.: 14–15), including the allegation from one of Schumpeter's "favorite" students of support for Hitler during the war, which Swedberg concedes may have been the case during the early years, although his rejection of Naziism as the war *progressed* is uncontroversial; see also Stolper's suggestion that Schumpeter "underestimated the menace of Hitler," although he "soon learned better" (2019: 11).

Legacy

Writing a year after Schumpeter's death, Samuelson observed that

> [t]here were many Schumpeters: the brilliant *enfant terrible* of the Austrian school who before the age of thirty had written two great books; the young Cairo lawyer with a stable of horses; the Austrian Finance-Minister; the social philosopher and prophet of capitalist development; the historian of economic doctrine; the economic theorist espousing use of more exact methods and tools of reasoning; the teacher of economics. (1951: 98)

Samuelson suggested that "[f]rom the long-term viewpoint the first of these roles is most important" (ibid.). He was referring to his eminence as a "business-cycle theorist" whose emphasis on "the innovator" had transformed the field (ibid.). Interestingly, Samuelson's tribute contained no mention of the word "tax".

Samuleson's reference to the "young Cairo lawyer" will attract the attention of any fiscal sociologist with a legal background—and, indeed, Schumpeter both studied law at Vienna, and, soon after his graduation in 1907, left for a job in Egypt as a "lawyer-consultant" (Moss 1993: 114). Allen reveals that, during this early period, Schumpeter still had not decided whether he wanted to be a lawyer, or an economist (1994: 57). Thus, Schumpeter travelled to England, where he briefly attended the London School of Economics, followed in Marx's footsteps to the British Museum, and also began to study law at one of the Inns of Court (ibid.). Apparently, Schumpeter enjoyed complaining that he ultimately decided that he "could never become an English barrister because the food at the Temple Inn was so terrible that he had to abandon any thought of an English legal education" (id.). Allen dismisses this as the "*braggadocio*" of a young man impatient to begin his career (id.: 60), and, in fact, the brief legal career which followed apparently was "highly successful" (Stolper 2019: 44).

The "main intellectual passion" of Schumpeter's life, however, was not law, but economic theory (Swedberg 1991b: 13), although he defined the limits of this field broadly. Decades after his death, Shionoya suggested that Schumpeter had been treated as something of an intellectually exciting oddity in economic history, his legacy the target of equal parts "benign neglect and enthusiastic praise" (2007: xi). The reason for this is that Schumpeter's work with economics was explicitly and (both for his time, and his discipline) unusually cross-disciplinary. Modern economics (Shionoya argues) combines the macro-economics of Keynes with neoclassical microeconomics, leaving little for Schumpeterian theories to 'fit into' (ibid.). He suggests that Schumpeter deserves more than this (no matter how affectionate and warm the dismissal), and in order for his legacy to be taken seriously, then his role as a social scientist requires consideration (id.).

Despite the apparently 'benign neglect' of modern economic scholars, nonetheless, the "Schumpeterian entrepreneur" is, perhaps, a 'school-like' reference in the "countless" works he inspired (Kuhnert 2001: 14)—school-like, because of the ardour of its devotees and followers. Within the Schumpeterian theoretical framework, the entrepreneur presents as the creative person who introduces new products and services to markets; and, thus, who provides a driving force for economic activity (Muller 2013: 36). The focus on entrepreneurial activity was one way in which Schumpeter departed from Marx—whereas Marx saw the drive to increase and accumulate capital as the driving force of economies, Schumpeter, alternately, saw the entrepreneur (ibid.). Schumpeter also is remembered for a famous, four-part "technique" for "scientific" economists: history, statistics, theory and economic sociology (Best and Humphries 2003: 65).

He, thus, is an important historical figure, certainly, within the history of economic thought, but with qualifications. By those who knew him, Schumpeter is recalled as a "showman", as opposed to a "leader" (McCraw 2007: 404). He left behind "no band of zealots", but, rather, "a generation of economic theorists who caught fire from his teachings" (Samuelson 1951: 103). Indeed, in some ways, it appears that it was necessary for the enthusiasm which surrounded his abilities as a teacher to fade with time, for the fullness of his writings to have the opportunity to be considered, beyond the attention that his major monographs received. Reluctant to lead 'a school' though he may have been, the story of the brief political career which followed the delivery of "Crisis of the Tax State" suggests that it was always important to Schumpeter that people agreed with him, and perhaps most importantly, did as he asked.

The Founding Text: 'The Crisis of the Tax State'

Schumpeter's 'Crisis of the Tax State' was delivered first as a lecture in Vienna in 1918, before the *Wiener Soziologische Gesellschaft* (1918: 131, fn. 1) and then committed to text with the intention that it would be considered as a scholarly publication (Stolper 2019: 163). It was published that same year in issue number four of *Zeitfragen aus dem Geibet der Soziologie*. The essay begins with the statement that "[m]any people assert, and indeed in some circles it has become axiomatic, that the fiscal problems left in the wake of the war cannot be solved within the framework of our pre-war economic order" (1918: 99). It then proceeds to consider the origins of the pre-war framework; whether parts of it may continue to be useful; and, if so, which parts and what might replace it (ibid.). The key message is that capitalism will survive in Austria, at least for now.

As the essay begins, he wryly notes that the "bourgeois" are "smugly" predicting the fall of capitalism; and, whilst that probably will prove to be true (eventually), the confidence with which "every Tom, Dick and Harry feels entitled" to offer opinions, when they are clearly inexpert, is unhelpful (id.: 99). He certainly would not follow in their steps, he explains, and made no pretence as to offering an "exhaustive discussion" (id.). Rather, he would focus on the following questions:

> What does 'failure of the tax state' mean? What is the nature of the tax state? How did it come about? Must it now disappear and why? What are the social processes which are behind the superficial facts of the budget figures? (id.: 100)

The very next words, providing the heading for the next section, are "Fiscal Sociology".

He continues, that it is to Goldscheid's "enduring merit" to have been "the first" to consider the significance of "fiscal history" to answering these questions. He was referring to Rudolf Goldscheid (1870–1931), a fiction writer and "private scholar" sociologist (Exner 2004: 283). Goldscheid was an independent thinker, who, Exner explains (like Schumpeter), also could not be classified within any intellectual school (ibid.). One of the key arguments for which Goldscheid is remembered is that exploitation of the working classes not only increases the general "misery" of society and is morally wrong on humanitarian grounds, but also makes bad sense economically (id.: 287). Goldscheid's fiscal analyses, thus, sought to maximise the welfare of all *because it was* a crucial factor in economic growth. As will be noted at several points in the analyses which follow in this book, this stands in stark contrast to some forms of modern economic modelling which prioritise economic growth, and then leave welfare and equality concerns as issues to be considered afterwards. Indeed, challenging this argument, perhaps, has been the key intellectual point of attraction for scholars engaging with the modern fiscal sociology.

In *Crisis of the Tax State*, Schumpeter provides an historical context for his contention that, when addressing the problems of post-Great War Austria, coping as it was with a faltering economy and increasingly facing pressure from Germany, taxation was an incredibly important part of the problem. Indeed, it had always been so—for example, he argued that fiscal pressures in history had led directly to the development of tax collection, alongside the burgeoning growth of capitalist economies (this, in contrast to the historical development of feudalism) (Schumpeter 1918: 102). Capitalism and taxation, from this historical perspective, are intertwined (ibid.: 107). For many states, the key moment of transition from feudalism to capitalism was the introduction of tax collection. Thus, the tax state exists "parasitically" with the market state.

As *capitalism* is a product of *taxation*, similarly, *democracy* is a product of *capitalism* (Prisching 1995: 313–314). The place of voting processes at the heart of this 'tax state' is particularly important. Indeed, Schumpeter's analysis of voting has led to his designation as a forefather of rational choice theory; or, alternatively, as the father of *irrational* choice theory (ibid.: 301–302). It is not immediately clear whether Schumpeter was more interested in an "'economic' study of democratic politics"; or, say, a public choice study of economic processes (Mitchell 1984: 74). His overall contributions to the understanding of voting and rationality have been described as helpful but, on balance, limited; and, for example, useful for understanding economic phenomena, if not, by way of comparison, "ethnic riots" (Green and Shapiro 1996: 27).

In *Crisis of the Tax State*, Schumpeter's focus was Austria, but he notes that many of the issues he considered are relevant to other capitalist democracies. A strong interest in England is obvious throughout the essay. He notes that in "England the fight ended on the scaffold of Charles I" (Schumpeter 1918: 107). He cautions that it would be wrong, however, to proceed from the execution of Charles I to an assumption that restraints on taxation provided the road for democracy. Rather, "[t]ax bill in hand, the state penetrated the private economies and won increasing dominion over them" (ibid.: 18). The tax state, over the centuries, then proceeded to grow in size significantly. As evidence of this, he notes (with wonder) the growth in the size of the British war budget of 1912–1913 (id.: 117).

Clearly filled with admiration, he observes that the tax state in England has "met all challenges" during its long stretch of history, perhaps most effectively so under Gladstone, which was its "best period" (id. See discussion in Chapter 3, *infra*). The Great War, of course, had served to emphasise some pre-existing problems in Britain; as it had with other countries, most especially (in his view) Austria (id.). Indeed, Schumpeter argued every problem that Austria then faced could be traced to a challenge that predated the war; and, could be located within the straining of its 'tax state' (id.). This is the point: Austrian society was not the victim of the faltering, post-war Austrian economy, which, in any case, could be fixed, if the political will were there. The problem was much deeper, and only capable of being analysed with a "sociological" enquiry.

The only, vaguely optimistic observation within Schumpeter's driven and frustrated narrative was that the problems of Austria's tax state were so acute that, if it could survive, then all other tax states were secure (id.: 118). In other words, capitalism, most likely, would be safe for some time. What were these terrible problems? First, the country, after the war, was much poorer, rather like "a businessman whose factory has burned down and who now faces the task of expressing this loss in his books" (id.: 119). The economy, however, was not poorer, in "money terms". How? "Simply so that claims on the state and money tokens have taken the place of stocks of goods in the private economies" (id.). The economy, thus, had changed, and it was important for leaders either to adapt to this, or to take prudent steps to counteract the impact of these changes. Secondly, significant confusion appeared to blur the distinction in public discourse of those problems which emanated from a lack of money, and those which related to the provision of goods. This was important because the state could always intervene through taxation—for example, "…we could have squeezed the necessary money out of the private economy just as the goods were squeezed out of it" (id.: 121). Thirdly, laments about the lack of money needed to save the situation in Austria failed to recognise that, if Austria's currency managed to return to its pre-war value, then it would be in a far better position to pay its debts (id.: 121). This could be achieved through targeted taxes and levies, but "[o]nly a strong government on the broadest possible base, impressing the public with real power and leadership" (id.: 122–123) would be capable of making it happen. The public would need to trust the government—and, this was a key argument (id.: 123). With mutual trust between government and governed in place, Austria could yet meet the challenges before it. Nonetheless, when viewed from the perspective of history, Schumpeter reflected that even solving all of Austria's problems at that point in time was unlikely to stop the inevitable fall of capitalism, although the fall would occur at some indeterminate point in the future.

As Schumpeter warned, in closing, "[n]evertheless the hour will come" (id.: 131). By this, he meant the death knell of capitalism. Indeed, "[b]y and by private enterprise will lose its meaning through the development of the economy and the consequent expansion of the sphere of social sympathy" (id.). This is because "[s]ociety is growing beyond private enterprise and tax state, not because but in spite of the war" (id.). As "society" was the most important factor in the future of Austria, thus, he wanted to study it, and to encourage others to take it seriously. The inevitability of socialism was a very grave risk indeed for Schumpeter, as he "detested" it (Reisman 2005: 20). He wrote this essay only months after the Bolshevik coup in Russia; and, thus, the possibility of this movement spreading to Austria was very real (Ganev 2011: 246). Before its arrival in Austria, however, Schumpeter needed to take up his role as Minister of Finance, and try to solve Austria's immediate problems. Taxes clearly were going to play an important part in that, but the country would be required to accept the need for them before they had any chance of saving the situation. Politicians also would need to take heed, and opt for strong and sensible options, as opposed to short-term political popularity.

How was this speech, later an essay, received? As noted earlier, Schumpeter's tenure as Minister of Finance for Austria—equivalent to the Chancellor of the Exchequer in the UK, or the Secretary of the Treasury in the USA—was notably brief. The delivery of this speech did not preclude his appointment to the position he very much wanted, however; perhaps, its fiery conviction may even have led to his appointment. The government may have perceived value in appointing the brilliant young economics professor to this position, assuming (wrongly) that Schumpeter would agree that economic governance was a separate concern from important political issues, on which it would be important to support party unity. Nonetheless, he did not survive allegations of disloyalty to the government (Schmidt 2003: 337), partly arising from his "habit" of approaching journalists and diplomats about his plans, even before he mentioned them to members of Parliament—a tendency which did not make him popular with his superiors (McCraw 2007: 100). The fissure, however, was deeper than this. His opposition to planning for the *Anschluss*, for example, despite the fact that support for it was the official position of the government (Stolper 2019: 159), was significant. Indeed, plans for the *Anschluss* were even included in the new Austrian Republic's constitution in November 1918, so Schumpeter's opposition would have caused significant concern (Swedberg 1991b: 61). Ultimately, a number of factors during this chaotic period led to Schumpeter's dismissal from the government (see, for example, Swedberg's description of the "Kola Affair" [1991b: 62–63]), but McCraw points to the private correspondence of a Viennese journalist in 1919 for a clue as to the proverbial last straw. A journalist suggested that whilst the Austrian government was working hard to convince the peace treaty negotiators and the Austrian people that the treaty would not work because it was an "[economic] impossibility", Schumpeter (perhaps in an early expression of what would develop into his Harvard "showmanship") nonetheless proceeded with a series of speeches which explained exactly "how he could restore the economic health of Austria in three to four years" (2007: 101). In this, Schumpeter certainly had "courage", but, contemporaries observed, his career in politics was doomed (ibid.).

Before his "insult[ing]" sacking came to pass, however, he pondered the ability of post-WWI Austria to meet its debts in this famous essay (Schmidt 2003: 337). The essay survived the end of his political career and has been discussed ever since. It was the impressive weight of his later scholarship, and in particular the antipathy of some branches of economic thought for interdisciplinary scholarship, which had the greatest impact on the reception of this essay for the remainder of Schumpeter's life (and perhaps explains why so little coverage of this essay occurs in the obituaries and tributes published in economic journals soon after his death). The prescience of the essay continues to add to its attractiveness to scholars.

For example, Schumpeter concluded that Austria most likely would not be able to cover its debts, but was more interested in whether this was as simple a fact as it seemed (ibid.: 339). More importantly, to him, was the question of whether, as the state could be described to have failed, it also followed that the system of capitalism had failed (id.). He acknowledged his grave concerns that socialism might eventually come to Austria, even if not quite yet (Swedberg 1991b: 59). Schumpeter's prescience perhaps primarily lies in the fact that he was right that capitalism would persevere for some time, as it was, in Swedberg's description of Schumpeter's reasoning, "necessary for the moment" (ibid.).

The "tax state" enquiry could be understood, in Schmidt's description, in the following way:

> …[whether] the (first World) War was just the external event which exposes a more basic failure of the social order, the financial pattern of which was the tax state[?] (2003: 337)

Asking this question allowed Schumpeter to push past the issue of "the financial problems", as Schmidt described them, to "his real interest"; *i.e.*, the "sociological" consideration (ibid.). Within this analysis lie the potential of observations that would benefit *all* states, and not simply Austria. For example, Schumpeter hoped to investigate whether Goldscheid's argument that taxation would never provide enough money to finance a welfare state within a capitalist system, and thus debt would always be necessary, (1917) was, in fact, true. Goldscheid predicted that this fact would always lead to crisis, which was a matter of intense concern for a country laden with the debts of World War I (Schmidt 2003: 339). This issue is considered further, in a modern context, in Chapter 6, *supra*.

Although Schumpeter cautioned that it would be wrong to assume that, were it not for the Great War, then these crises necessarily would have been avoided (Atkinson 2014: 14), he did not mean to suggest that war is unimportant; and, in fact, wars are likely to be the most important factor in the development of large nation states (McCraw 2007: 95). Rather, his suggestion is that a deeper analysis would ask, for example, whether taxpayers were aware that, if the tax state were to fail, then most aspects of their lives would change (Atkinson 2014: 61). Atkinson summarised Schumpeter's concerns as focused upon "an erosion of the norm of contributing to society" (ibid.).

The Finanzplan

Schumpeter did not only deliver a lecture on the socio-economic problems of Austria in 1918. He also had a plan. To ward off economic disaster during a period of perilous inflation, as the new Minister of Finance, Schumpeter had developed a *Finanzplan*, which essentially anticipated the Marshall Plan thirty years later (McCraw 2007: 98). The *Finanzplan* is the quiet, uncredited, lead player of "Crisis of the Tax State". It involved a combination of free trade and international loans, and was, as described years later by one of his students, "…the only [plan] which could possibly have saved the situation" (ibid.). The belief that free trade would save Austria from further war was, perhaps, incredibly optimistic for the time (Stolper 2019: 162). Stolper counters this criticism, however, with two arguments. First, the long-term view of history would suggest that Schumpeter was right. Secondly, Schumpeter's tackling of this problem continues to fascinate simply because he asked the question of what governments should do; and, this remains a question which is too seldom asked by others, or discussed seriously (ibid.).

By McCraw's estimation, the *Finanzplan's* chances, politically, were "close to zero" (2007: 98). From an international perspective, the Allies' desire for "vengeance" was so complete that they would refuse to support it (ibid.). From an Austrian perspective, a capital tax designed to control inflation would have been very unpopular, especially as the plan involved taking a percentage of money out of circulation (id.). In an odd move that appeared destined almost to ensure the unpopularity of his proposals, Schumpeter informed an Austrian newspaper that the tax would be collected through a register of all movable property, which he described as a "furnace in which all cash and titles [that] fall into the hands of the state must be burned" (id.: 100). McCraw concedes Schumpeter's description was "tactless", and suggests that it is hardly surprising his plans were resisted, "no matter how brilliant [this young professor from Graz] was supposed to be" (id.). Thus, the new Finance Minister found himself in a position of having designed an economic plan that would control inflation and manage the country's debts, and yet carried no chance of success because all key players were reluctant to alter the status quo. The international players were loath to approve any measures which would afford Austria either autonomy or, perhaps most especially, any extra funding (id.). The domestic players, having achieved a relief in suffering after the end of the war, clung to the new status quo, even though, without action, the economic situation could only deteriorate. The Austrian government also wholly disapproved of the *Finanzplan*, although, as discussed, this was but one of several reasons why he was dismissed (Swedberg 1991b: 61).

The *Finanzplan* is the reason for Schumpeter's focus, in *Crisis of the Tax State*, on his domestic, political opponents. Thus, he asked how Austrians could resist action which might prevent disaster. Clearly, he argued, this was a deeper problem than simply budgeting, or simply designing a different tax plan. Once his position of political leadership was lost, this question, now identified, would be addressed by Schumpeter for the rest of his career; but as an influential Harvard scholar, and not as a politician.

Close reading of *The Crisis of the Tax State* reveals doubt, however, from Schumpeter himself, that his capital tax, even if enacted, would succeed completely (Swedberg 1991b: 59). Austria's problems extended beyond the simply financial, and were "as much political… in nature" (Swedberg 1991b: 59). This, perhaps, also is why Schumpeter was not the right person for the role of Minister of Finance (ibid). Swedberg relates that all political parties—left, right and centrist—appeared to believe that Schumpeter supported their platform (id.: 59–60)—most likely because this was, at least partially, true, and he saw merit in all of their positions. The other possibility advanced by media at the time was that he was (in Swedberg's account) "untrustworthy and opportunistic" (id.: 60). Indeed, some viewed him as a "two faced opportunist" (Reisman 2005: 20).

What were his party loyalties? Schumpeter apparently was far more inclined to political conservatism, than left-wing politics (Fukuyama 2012: 55; Roiphe 2016: 662). He has been described as "far-rightist," (Piomelli 2008: 1389) and largely as holding views to the right of Weber—particularly on the question of the Russian revolution (Collins 1992: 171). Yet by other accounts, Schumpeter admired Weber to the point of 'adulation' (ibid.: 172). He was "complex," and, in Collins' description, even a bit "weird" (id.: 173). It would be wrong to ascribe his famous belief that socialism eventually would triumph to this inconsistency, however, as it was actually the product of what he would have described as scientific deduction. Capitalism was doomed because it, unlike socialism, did not represent what the vast majority of people actually wanted (Fukuyama 2012: 55), given its tendencies to consume and destroy the social institutions they most valued (Roiphe 2016: 662).

Definition of the Term: Tax State

The Crisis of the Tax State, of course, is a part of a wider body of distinguished work. Aydin and Ozer-Imir explain that he published his book *Business Cycles* (1939)

> …at a time when the Keynesian revolution was at its peak. Schumpeter was a contemporary of Keynes; however, in contrast to Keynes, he did not have followers and did not attempt to create a school. (5)

Business Cycles is considered his *magnum opus*; and, if one were to wander into the halls of faculty of economics today, and mention Schumpeter's name, this might be the text that is referenced. If, however, one were to continue one's wanderings into a faculty of law, then a single essay written in 1918 is rather more likely to be mentioned. Schumpeter continued his analyses of the tax state for the remainder of his career, and never forgot his *Finanzplan* (Schmidt 2003: 340). For example, in volume two of his famous *Business Cycles*, one can discern defensiveness, perhaps connected to his failed capital tax proposal from 1918, in his analysis of the "*ressentiments*" against some forms of capital gains taxation in the USA (Schumpeter 2017: 1040).

Musgrave offered a review of Schumpeter's contributions to the concept of tax state, from the perspective of having been Schumpeter's "admiring if awed student" (1992: 89). To understand the origin of the concept, Musgrave directs the reader, first, to the essay, then to "amendments" in the *Deutsche Volkswirt* (1926–1932) essays, followed by the Lowell Lectures (1941), and, finally, Schumpeter's "crowning treatise", *Capitalism, Socialism and Democracy* (1942; later edition, 2013). It is interesting to trace the evolution in Schumpeter as well during this period: he was appointed Finance Minister of the Austrian Republic the year before *Crisis* was published as an essay (Schumpeter 1954), and, by the publication of *Capitalism, Socialism and Democracy*, he had been a professor at Harvard for ten years.

In *Capitalism, Socialism and Democracy*, Schumpeter aims to debunk the idea that a "uniquely determined common good" exists (Schumpeter 2010: 6). Published in 1942, this book had a "major impact" when it was published (ibid.). The key argument is that there is no such thing as a "common good", and that the only point of democracy is to enable competition for political office. This argument has played a key role in Schumpeter's classification as a scholar who leans to the political right. It also has endeared Schumpeter to law and economic scholars, perhaps most notably Posner (discussed, *infra*, at p. 83–84). This book and this argument, however, have been largely ignored by fiscal sociologists. They have remained focused on the essay from 1918 and concerned with the connection between the social contract and tax.

Introduction of a Methodology: Or, Why Is an Essay from 1918 Still Important?

By his death in 1950, Schumpeter was widely acknowledged as one of a handful of the most important economists of his time (introduction to Schumpeter 1955: 5). In tributes, his roles as academic scholar, policy maker, bank adviser, and even a period as a financial adviser to an Egyptian princess were relished (ibid.), as the view of his career in hindsight was celebrated for its fascinating variety, although it was conceded that his international fame had been secured during his long career at Harvard. He appeared to have asked questions nobody else was asking, that were both important and, potentially, transformative.

Forty years after his death, however, whilst noting the continuing and enormous interest in Schumpeter's work, Collins posed the question: why should sociologists should care about him? (1992: 173). Considering the reasons against, he noted that Schumpeter's theories, sometimes, were blatantly wrong (ibid.). For example, his prediction of the emergence of a bureaucratic socialism from the embers of defeated capitalism might seem, in hindsight, either hopelessly incorrect or impossibly naïve (id.). Collins suggests that Schumpeter is perhaps best approached through the methodology he used in his own work: pull out a strand, examine it, and then place it back within the whole—but, we need not accept the whole (id.: 175). Collins reassures that "[w]e need not accept his ideologies", as we can treat him "best in his own spirit"; and, speculates that the reliance on his work in the cause of "advanc[ing] economic sociology" would have "pleased him, as a pure intellectual, above all else" (id.).

Nonetheless, are the insights of a politician-scholar in 1918 really capable of enduring relevance? Ganev warns that they are not; and, thus, writes that

> [i]t is emphatically not my claim that fiscal sociology offers a privileged vantage point from which everything worth knowing about a nation, epoch, or a historically specific configuration of political factors will become clear. (2011: 246)

This is accurate—everything will not be known. Ignoring taxation, spending and budgeting, however, simply because it is hidden by bureaucracy, or viewed as a tool for economic growth and nothing more, will ensure that the entire picture of an event in political history will never be understood. This has been a central argument of the modern fiscal sociology.

Ganev posits that fiscal sociology is particularly helpful, for example, in understanding the transition of post-Communist states. He provocatively argues that a tax state did not exist in "early post-Communism," and then proposes that it is possible to identify the reasons *why*, and *when*, the tax state re-emerged (ibid.: 247). Ganev's argument is startling for a number of reasons, including the fact that, for Schumpeter, one of the defining characteristics of a state is tax collection (and, it is for this reason that Schumpeter declines to call feudal states "states"; Monson and Scheidel 2015: 9) Whether or not Schumpeter would have agreed that a tax state did not exist in 'early post-Communism,' Ganev appears to be using the language of fiscal sociology to express his view that the state had failed, or that the social contract had failed. Viewing the 'tax agreement' between government and governed as a proxy for the social contract in many ways is exactly the point of fiscal sociology.

Fiscal sociology, for certain, has developed beyond the remit of Schumpeter's specific interests. Research into the "mechanisms of the racial tax state" presents a good example of this (Henricks and Seamster 2017). That, however, is the point of this field: tools developed by Schumpeter within this 1918 essay have been used and refined, as part of a search for greater understanding. Strands have been taken out, just as Collins argued, without accepting the whole. This perhaps has occurred in part because, once one looks beyond the remit of *Crisis of the Tax State*, and considers how fiscal sociology was developed in other aspects of his work, one discovers a broad and rich body of scholarship, considering a number of different issues, sometimes in a number of different ways.

There are a number of different "strands" with which to work. Schumpeter was thoroughly capable of embodying many contradictory ideas at once, and perhaps even devoted to this (Collins 1992: 173). He lived his life as a public intellectual, and appeared to believe that the point of debate, sometimes, is that opposed positions each possess a bit of merit. He was incapable of ignoring a good argument, and this is reflected in his writing. As a consequence, most scholars approaching his work tend to find something for them. Fiscal sociology, perhaps above all else, is a broad church.

This broad church has not argued for homogeneity amongst fiscal histories, or solutions to fiscal problems; for example, it has not suggested that there is one tool that will resolve tax revolts, even where countries are similar or have had close partnerships (Ganev 2011: 254, emphasising that not all Eastern European countries should be approached in the same way). The breadth of topics addressed within this scholarship, however, often has been *so* broad that it can be difficult for legal scholars to find a way in. Thus, one purpose of this book is to identify points of entry.

Paretian Fiscal Sociology

The Italian political economist (and political scientist and sociologist, amongst other talents) Vilfredo Pareto (1848–1932; see Amoroso 1938) was admired by Schumpeter, and merits acknowledgement in a chapter surveying the field of fiscal sociology. Although Schumpeter may have avoided designation as a leader of a school throughout his lifetime, he did argue for the labelling of a discrete, *Paretian* school of fiscal sociology.

Pareto had many talents and roles. He was a philosopher, but, most importantly, he is remembered for important contributions to economic thought (ibid.). He is credited both with introducing the term *élite* into social analysis, and with highlighting the importance of the distribution of income to individuals' life choices (id.). He aimed "in the typically nineteenth-century manner, to examine social phenomena from differing economic, sociological and political standpoints" (Mornati 2018: 1). Schumpeter responded to the description (by GH Bousquet, a twentieth-century French jurist and economist) of Pareto as "bourgeois Karl Marx" with the quip: "I do not know that a man can be rightly called 'bourgeois' who never missed an opportunity to pour contempt on *la bourgeoisie ignorante et lâche*" (Schumpeter 1949: 147). Reisman wryly speculated that Schumpeter may have admired Pareto because he perceived him to be rather similar to himself (Reisman 2005: 22). Schumpeter described Pareto as a patrician who did not identify with the *bourgeoisie*, but was nonetheless interested in securing their well-being. As Reisman quipped in response, "not all intellectuals wear red and drive on the left" (ibid.).

Schumpeter perhaps also identified with Pareto's strong interest in the economic policy and history of the UK (Schumpeter 1949: 148). Schumpeter and Pareto, both sought to classify the history of economic thought, in an effort to identify similar interpretive methodologies (McLure 2007: 89). The school Pareto formed, even if enormously influential beyond its borders, was "specifically Italian" (Schumpeter 1949: 154). Although important, the school "never dominated" either contemporary English or Italian economic scholarship (ibid.). Schumpeter admired Pareto as "the patron saint of the 'New Welfare Economics'," and as someone who recognised the importance of tying taxation to Bentham's theory of utilitarianism (id.: 163). Pareto's New Welfare Economics (which broadly uses microeconomic techniques to evaluate welfare at the wider level of the economy) did dominate, and became a very influential movement, proving particularly popular between the 1930s and the 1990s (Gowdy 2005: 211). Schumpeter, thus, pursued his career in the thick of the New Welfare Economics. Very generally, the ambition of the movement is to achieve sustainability of welfare across generations, by "maintaining the total stock of capital used to generate economic goods, broadly defined" (ibid.: 212).

Why was Schumpeter content to designate Pareto the head of a school or branch of fiscal sociology, and not himself? When it came to defining and designating "schools" with leaders (Keynesianism is the key example of this), Schumpeter believed that it was important to identify both a broad doctrine, and a tiered level of scholars who compete to define key terms, and to advance the methodology (McLure 2007: 20). With Pareto's fiscal sociology, Schumpeter believed he had found this. Where Schumpeter differed from Pareto was on their views as to the value of the sociology of knowledge. To both Schumpeter and Pareto, this was enormously important. Yet, whereas Pareto viewed the sociology of knowledge as "the primary consideration for the extrinsic aspects of science," Schumpeter viewed sociology as *one* of the "important motivating factors in scientific progress" (ibid.: 89).

What About Marx?

Fiscal sociology would appear to overlap with several key facets of Marxian analysis; and, thus, the absence of a reference to Marx thus far in this review would appear to demand explanation. In fact, Schumpeter very much viewed Marx as an inspiration (Schumpeter 1983: vii; Schumpeter 1950: 446). He also viewed Keynes in much the same way, but perhaps more as an antagonist, than an inspiration (Schumpeter 1934: I; Giersch 1984: 104; but cf. Stolper 2019: 15, noting that Schumpeter's correspondence contains many positive references to Keynes). Schumpeter's engagement with Marx is a bit different.

One description of Schumpeter's fiscal sociology is that it provides an enthusiastic reception for Goldscheid's analyses, in Marxian terms, of the history of tax struggles (Deutsch 1956). This could even be, perhaps, the starting point of attraction for some legal scholars. Marx does not engage very much with to taxation (Friedman 1974) since, despite the wealth of insight offered by Marx's analyses of economy and history, he seldom discussed tax, and his work actually 'contain[s] only scattered references to fiscal matters' (Musgrave 1980: 361).

Marx considered taxation to be 'an instrument of class struggle', and, thus, thought that progressive taxation might be a somewhat useful weapon against the capitalist order, but little more than that; and in any case, he offered little detail. It was actually Goldscheid who offered "[t]he first full-fledged effort at analyzing the fiscal role of the state in Marxist terms…" (ibid.: 362). Fiscal sociology, thus, extends Marxian analysis to tax (even if Marx, himself, ignored it).

Given the potential appeal of Marxian analysis of government and economies to tax scholars, and the concomitant lack of material with which to work, Schumpeter's enthusiastic reception of Goldscheid's research is not surprising (Deutsch 1956: 43–45). Taking clear inspiration from Marx, Goldscheid argued that tax battles are among the "oldest kinds of class discord" (Campbell 1993: 168). Goldscheid's analyses, thus (as Schumpeter appreciated), would appeal to all scholars who sought to take tax seriously. Campbell suggests that the Goldscheid's work continues to have relevance; and, as an illustration of this, complains that research on matters such as the influence of corporations over business taxation policies, for example, is much more common than research explaining the influence of political activist groups over other aspects of the tax system (Campbell et al. 2005: 288). Without balanced research, a full picture is not possible, and Campbell posits that Goldscheid appreciated this. Goldscheid fills the gap, provides a basis for understanding the relationship between tax and class, and enables a nuanced analysis of the dynamics of power and influence in the modern tax state.

Similarly, Musgrave explains that, from an historical perspective, the emergence of taxation from the feudal order meant that

> [p]roperty holders resented being burdened by taxation over which they had little control, and the struggle of the bourgeoisie to control the public purse came to play a central role in the move toward popular control. Taxation became a prime issue in the rise of modern democracy. (1980: 363)

The 'flaw' of the new state was that it was compelled both to borrow heavily to protect the economy of its citizens, and to fund the increasing rise of social programmes—thus, '[a]though the people gained control over the state, they inherited only a debt-ridden and impoverished state' (ibid.). Capitalism was the only hope of the "exploited" state, and "here", Musgrave explains, "Goldscheid's story ends" (ibid.), but *Schumpeter's story begins.* Schumpeter developed Goldscheid's work, but with greater parallels to Marx. For example, much as Marx recommended preserving capitalism as an "incentive" until the transition from socialism to communism was complete, so Schumpeter recommended maintaining capitalism at least until the basis of a state, its economy and its social programmes had been established (id.: 363–364).

If part of the attraction of Schumpeter's fiscal sociology is that it offers a bridge to Marx for tax scholars, do other scholars fall into this category? Possibly, Weber does. As with Pareto, Schumpeter much admired Weber. Swedberg has even suggested that Weber was a fiscal sociologist (1998: 58), if on his own (and not necessarily strictly Schumpeter's) terms. Particular evidence of this is found in Weber's final work, *General Economic History*, which contains several references to taxation in its analyses of an economic sociology of the history of property (Knight 2003: xi, 19–20, 22–23). Certainly compared to Weber, Schumpeter is "rarely read" (Swedberg 2018: 159). Weber, in fact, perhaps most influenced Schumpeter's efforts to add an 'historical basis' to Goldscheid's work (Brownlee 2003: 4). Whilst Schumpeter endorsed enthusiastically Goldscheid's arguments about the centrality of 'the budget' to history, it is nonetheless useful to remember that Weber often portrayed taxation systems with "brutality" (Swedberg 1998: 58; 2018: 58). As Weber perceived the very definition of a state as connected to a monopoly upon the use of violence, it is unsurprising that he viewed taxation as part of that (Berwick and Christia 2018: 72). In this and other ways, Swedberg emphasises, the Weberian fiscal sociology (as he describes it) is quite different from Schumpeter's (Swedberg 2018: 58). Simply, Schumpeter's descriptions are far less forceful than Weber's.

Schumpeter's fiscal sociology could be described as the structuring of an analysis of public policy around the subject of taxation (Levin et al. 2001: 56), as opposed to a portrayal of taxation as simply an instrument of the state. How so? For example, Schumpeter agreed with Marx's proposals, but not with his methods (Turner and Hamilton 1994: 17). Schumpeter's methodology included long term, historical explorations of the development of both the economy and the 'welfare state' (Backhaus 2004: 4). He believed that analyses of patterns of tax collection, alongside patterns of governmental spending, would reveal insights about the nature of government that surpass transient characteristics such as political affiliation of the governing party (Clancy et al. 2000: 55). Tax collection represents something more than an exercise of power by the state.

Within the field of fiscal sociology, Schumpeter typically is referred to as having invented or discovered it; other times, he is acknowledged as its most distinguished contributor. For example, Schumpeter's contribution of the idea of the tax state was described, by Musgrave, as providing "a much neglected perspective on [the, presumably, pre-existing field of] fiscal sociology", because it integrates social and other issues into an area of study that can be dominated by mainstream economics, and associated theories of public finance (1992: 89). Swedberg explains that Schumpeter's designation of the 'tax state' actually "…*introduced* [the concept of fiscal sociology] into the social sciences" (2003: 175, emphasis added. It is possible that, in his 1992 essay, Musgrave is using the terms "economic sociology" and "fiscal sociology" interchangeably.). The point is that Schumpeter embraced, and approached separately, Marx's contributions as a sociologist, as an economist, and as a revolutionary (ibid.: 8; citing Schumpeter 2003 [1994 ed.]: 1–58). This is part of the important role that fiscal sociology plays in forging connections with other bodies of literature. Schumpeter filled the chasm between Marx and tax, and between economics and sociology. He never considered himself to be a sociologist, yet the contributions of his writings have formed an important part of sociological discourse.

The Modern Fiscal Sociology

There were a number of efforts to reflect upon the continuing relevance of fiscal sociology in the decades after Schumpeter's death. In 1993, Campbell reviewed the literature relating to the formation of tax policy, and mourned that the field had maintained an "infancy" until that point (Campbell 1993: 163). Fiscal sociology perhaps remained outside of the mainstream of economics, and sociology, precisely because it focuses on a range of different factors in its analyses of tax policy formation (id.: 164). Additionally, spending decisions are not typically considered alongside taxation (id.).

This continues to be the case. Martin and Prasad identify the gap in the literature in a 2014 review, *Taxes and Fiscal Sociology*, where they explain that "[i]t is not an exaggeration to say that the fields of development studies and stratification research ignored taxation altogether as they developed in twentieth-century American sociology" (331). The interaction between taxation and sociology in other ways, however, was quite rich; and, indeed "[o]ur canonical texts describe taxation as one of the most important factors that can foster or impeded capitalist economic development and the reproduction of class inequality" (ibid.). Especially through the latter part of the twentieth century, Schumpeter's fiscal sociology was not always part of this conversation. In the twenty-first century, however, this has changed.

The Post-2008 Era

Two developments, both significant to Schumpeter's fiscal sociology, have occurred in the modern era, and particularly since the financial crash of 2008. First, he would have been amused to learn that he has been much discussed in the British Parliament he so admired, especially when speakers have sought to explain the problems with capitalism, and wished to articulate their fears that it might not endure. This section will address just a few of these examples. Secondly, the *New Fiscal Sociology* was published in 2009. Both are important to understanding the modern course of this field of study, at its centenary.

Parliament

The name "Schumpeter" might sound familiar to readers otherwise unfamiliar with fiscal sociology because, in 2008, suddenly, his name was much discussed. In the UK, as politicians struggled to articulate the causes and consequences of the financial crash, Schumpeter's observation that capitalism ultimately would consume itself seemed to provide the language that members of Parliament needed.

Even before the crash, indeed throughout the early twenty-first century, Schumpeter frequently was been invoked in Parliament. For example, Andrew Tyrie, MP[7] brought Schumpeter's theory of 'creative destruction'—under which increasing the amount of participants entering the market, as opposed

[7](1957–), Andrew Tyrie, Baron Tyrie, Conservative MP for Chichester since 1997, former special adviser at HM Treasury.

to lowering product prices, stimulates competitiveness—into Parliamentary debates in early 2000 (HC Deb, col.661, 27 January 2000). Similarly, Schumpeter's acknowledgement of the potentially deleterious impact of "creative destruction" on individuals, even where it might appear that the economy generally is benefitting, was acknowledged in a House of Lords Report on *Innovation in EU Agriculture* (Great Britain Parliament House of Lords European Union Committee 2011: 15).

A further example came from Simon Parker, the Director of the New Local Government Network, who, whilst offering evidence before Parliament, suggested that "..in the impact of what it is doing, the Coalition [government, led by David Cameron[8]] is a disciple of Joseph Schumpeter."[9] He explained that the government appeared to hope that the creation of "lots of different accountability mechanisms" would cause weaker government services to "die off and new ones will grow up" (ibid.). The faith appeared to be vested, Parker explained, in the value of the "shake up", without much focus on anything else (id.).

In many cases the rhetoric appeared to suggest that if, before the financial crash of 2008, victims of "creative destruction" were anticipated to be businesses (vaguely conceived), then, after the crash, they were anticipated to be unemployed individuals. In both cases, that there were victims was a 'natural' occurrence, however regrettable. In 2004, Lord Hodgson[10] went so far as to suggest that "our economy would be better" if businesses were allowed to fail in "gales of creative destruction", however "painful they may be" (HOL Deb, Column 265, 8 January 2004). He emphasised that "[a] risk that does not work is not a fraud" (ibid.). By 2011, however, Lord Kestenbaum,[11] in Lords Hansard text, may be found referring to the current unemployed as victims of Schumpeterian "creative destruction", whilst noting that such victims must be protected (if not at the expense of encouraging businesses to thrive) (HOL Debs, vol. 731, 27 October 2011). Similarly, Sir Samuel Brittan,[12] in testimony before the Select Committee on Treasury in 1999, invoked Schumpeter's writings into a defence of why "perfect public

[8](1966–), Member of Parliament for Witney 2001–2016, Leader of the Conservative Party 2005–2016, Prime Minister 2010–2016.

[9]Simon Parker, Corrected transcript of oral evidence to be published as HC 592-v, House of Commons Oral Evidence taken before the Political and Constitutional Reform Committee (16 December 2010), Q230.

[10]Robin Granville Hodgson, Baron Hodgson of Astley Abbots (1942–), British Conservative politician and life peer.

[11]Jonathan Kestenbaum, Baron Kestenbaum (1959–), Labour member of the House of Lords.

[12](1933–), journalist and author, first economics correspondent for the *Financial Times*.

education" would be a nightmare (Select Committee on Treasury, Minutes of Evidence, Examination of Witnesses [Questions 20–39] [8 June 1999]). He also explained that Schumpeter insisted that it is not rational to invest a great deal of energy researching the economy with models, as "it is just not rational to become too well informed" (ibid.).

The New Fiscal Sociology

The link amongst these references was a fear that capitalism had failed—as Schumpeter had predicted of Austria in 1918, the "hour" had come. The references largely did not appear to engage the 1918 essay, however, but rather evoked his book *Capitalism, Socialism and Democracy* (1942). As Marx had described the eventual destruction of wealth under capitalism, so Schumpeter (taking his inspiration from this) was credited with suggesting that large businesses with power in the market would accelerate innovation, and create new forms of economies to replace that which it had destroyed (Nicholas 2003: 1023). This idea has different normative potential, depending on the intentions of the speaker; and, so, in the observations above, it is possible to discern a sense of 'capitalism causing carnage is no one's fault,' as well as opprobrium for a government failing to protect capitalism's victims. Schumpeter's "creative destruction" was providing a *lingua franca* for political actors facing the sort of moment that, in 1918, he had identified as a *Crisis of the Tax State*.

Meanwhile, the *Crisis* essay was far from ignored at this time. Even if not specifically mentioned in Parliament, it received a great deal of attention at what might be described as the start of the post-2008 era, with the publication of Martin et al.'s 2009 text, *The New Fiscal Sociology* (Martin et al. 2009). The book has served as a useful benchmark of the revival of fiscal sociology, and the start of a new, modern era. This collection of essays adopted a comparative perspective, addressing elements of American taxation (from the New Deal—see Thorndike, "'The Unfair Advantage of the Few': The New Deal Origins of 'Soak the Rich' Taxation" [Chapter two]—to the [then] modern politics of the political right, for which see Block, "Read Their Lips: Taxation and the Right-Wing Agenda" [Chapter four]), Japanese taxation (see Ide and Steinmo, "The End of the Strong State?: On the Evolution of Japanese Tax Policy" [Chapter seven]), and *both* Japanese (see Brownlee, "The Shoup Mission to Japan: Two Political Economies Intersect" [Chapter fourteen]) *and* African taxation (see Kiser and Audrey Sacks, "Improving Tax Administration in Contemporary African States: Lessons from History" [Chapter eleven]). The substance of these sections may be divided, roughly, into sources of tax policy, the significance of taxpayer consent, and the impact of taxation on societies.

As Smoke observed in an enthusiastic review, the collection "both encourages conceptual insights and provides those who design tax policy with much food for thought" (2011: 628). The thesis of the collection is that taxation law forms an integral part of the social contract, and its study reveals important insights into countries' histories. The book used as its starting point Schumpeter's argument that, if one wishes to learn about a country's social, political, economic and legal systems—essentially, to ask why one country is organised in a certain way, and differs from others—then it is important to ask the question: at what point did this country move from pillage and plunder as a means of funding the state, to an organised system of tax collection? That, essentially, is the starting point of the new fiscal sociology: taxes matter.

Closing: A Next Step for the New Fiscal Sociology

After the publication of *The New Fiscal Sociology*, Schumpeter's name gradually found its way into an increasingly wide range of literature dedicated to socio-legal studies. In a sense, he became a shorthand for socio-legal tax studies. This literature is engaged throughout this book. The convergence of the *New Fiscal Sociology*, with the public, political discourse, meant that he has become, now a century after *Crisis* was written, much mentioned if little read. As the *Crisis* essay is in some ways buried under the weight of his famous economic treatises, in many ways this is not surprising.

It also is not surprising that Schumpeter's name became a shorthand for expressing discomfort about capitalism, uncertainty about the proper role of government, and worry for citizens. Schumpeter acknowledged that tax is perhaps the moment of recognition between citizen and government. A citizen, generally, may be unaware of government, until the moment of tax payment, at which point consciousness is provoked in a number of ways. How is this tax collected? Is the process convenient, or perhaps too intrusive? How will the tax be spent? Is the process by which the tax has been assessed transparent? Does the amount one has to pay appear to be fair, as compared with that known to be paid by others?

Of course, these observations tread closely to Smith's famous canons, which have played a formative role in a number of countries on the idea of a 'good' tax (1776; see *discussion* in Ver Eecke 2003). Smith's writings on tax have had a far-reaching impact, not least, famously, on Prime Minister

Thatcher.[13] It is perhaps for this reason that, it may be assumed, Smith's work (and perhaps the entire idea of canons of taxation) is approached cautiously, so imbued it would appear to be with twentieth-century political partisanship (although to assume this would also neglect the fact that Smith's critics reach as far back as Smith; see MacDonald 1912). The point is that Schumpeter's consideration of the contradictory interests that can be expressed within a democracy is similar to Smith's identification of an "invisible hand" of the market—as Kuhnert explained, the competition and contradictions, in both Smith and Schumpeter's models, fulfil "a positive social function, [and] lea[d] to the discovery and best possible realization of individual needs and ideas of the voters – and individually unintended outcome of individually intended actions" (2001: 19).

So, the tax state is: the locus of the social contract, and the reflection both of the arrangements concerning all aspects of this charged act—the act of paying tax. It is also a language—a collection of concerns raised when the fiscal social contract appears to be falling apart. In such cases, whereas "fiscal sociology" is the term adopted in the literature, simply "Schumpeter" is the term adopted in public discourse. Schumpeter need not have written within a certain area, or (sometimes) even espoused the idea for which he is credited, to have his name invoked. This is because his name, in political discourse, seems to be a shorthand for 'things are falling apart.'

It is also shorthand for, within the new fiscal sociology: if you want to know why things are falling apart, consider the role of tax. The first chapter touched briefly on the idea that taxation has the tendency to be somewhat invisible, and the reason for this, perhaps, is that whilst taxation is an enormously important factor in the relationship between citizens and the state, it is also a relatively discreet, or quiet, factor, and easily ignored whilst other topics demand attention. The challenge is not to be too quick to identify clarity of intention. Is UK tax policy, really, consistently evasive and otherwise silent? Is it all that deliberate? UK tax policy over the past ten years or so also has been described (by Johnson) as showing "few signs of a wider coherent strategy" (2014). This is particularly acute in the case of income taxation, which is important "for work incentives and for equity"; and which also (in unison with National Insurance Contributions) constitutes approximately half of total tax revenue (ibid.). Johnson provides an example of the absence of a coherent structure: the current (Conservative) government's policy of increasing the (tax-free) personal allowance is "a very focused policy", if not necessarily a very "coherent" one

[13]See http://www.margaretthatcher.org/document/114620 (last accessed 30 April 2019).

(id.). So, it is not necessarily a question of the government not knowing what it would like to achieve—increasing the tax-free personal allowance is a very deliberate policy choice—but, rather, a question of explaining how deliberate choices fit into short or long-term strategies in a coherent way.

Having a longer-term plan, of course, is supposed to be one of the purposes of budgeting—a government process actually invented in this country. The next chapter will analyse the budgeting process in the UK from the perspective of specific, culture-shifting laws that have targeted budgeting over the remarkable history of UK public finance (von Hagen and Harden 1995). It will consider the modern legislative structure, as well as the famous UK "budget stories" that have contributed to a process which has been adopted by most other countries in the word.

References

Allen, Robert Loring. 1994. *Opening Doors: The Life and Work of Joseph Schumpeter*. Vol. II. London: Transaction Publishers.

Amoroso, Luigi. 1938. "Vilfredo Pareto." *Econometrica: Journal of the Econometric Society* 6: 1–21.

Atkinson, Tony. 2014. *Public Economics in an Age of Austerity, Graz Schumpeter Lectures*. London: Routledge.

Aydin, Derya Guler, and Itir Ozer-Imer. 2018. "At the Crossroads of History and Theory: Weber, Schumpeter and Economic Sociology." Panoeconomicus.

Backhaus, Jürgen G. 2004. "Joseph A. Schumpeter's Contributions in the Area of Fiscal Sociology: A First Approximation." *Journal of Evolutionary Economics* 14 (2): 143–151.

Backhaus, Jürgen G. 2005. *Fiscal Sociology: What For?* Boston, MA: Springer.

Bagguley, Paul. 1996. "The Moral Economy of Anti-Poll Tax Protest." In *To Make Another World: Studies in Protest and Collective Action*, edited by C. Barker and P. Kennedy, 7–24. Abingdon: Routledge.

Berwick, Elissa, and Fotini Christia. 2018. "State Capacity Redux: Integrating Classical and Experimental Contributions to an Enduring Debate." *Annual Review of Political Science* 21: 71–91.

Best, Michael H., and Jane Humphries. 2003. "Edith Penrose: A Feminist Economist?" *Feminist Economics* 9 (1): 47–73.

Brownlee, W. Elliott. 2003. *Funding the Modern American State, 1941–1995: The Rise and Fall of the Era of Easy Finance*. Cambridge: Cambridge University Press.

Butler, David, Andrew Adonis, and Tony Travers. 1994. *Failure in British Government: The Politics of the Poll Tax*. Oxford: Oxford University Press.

Campbell, John L. 1993. The State and Fiscal Sociology. *Annual Review of Sociology* 19 (1): 163–185.

Campbell, J. L., Jens Beckert, and Milan Zafirovsky. 2005. *'Fiscal Sociology,' in International Encyclopedia of Economic Sociology*, 285–289. London: Routledge.
Clancy, Peter, James Bickerton, and Ian Stewart. 2000. *The Savage Years: The Perils of Reinventing Government in Nova Scotia*. Nova Scotia: Formac.
Coffman, D'Maris. 2018. "Modern Fiscal Sociology." In *The Palgrave Handbook of Political Economy*, edited by I. Cardinale and R. Scazzieri, 529–541. London: Palgrave Macmillan. https://www.springerprofessional.de/en/political-economy-outlining-a-field/16042632?fulltextView=true.
Collins, Randall. 1992. "Rediscovering Schumpeter." JSTOR.
Crowhurst, Isabel. 2019. "The Ambiguous Taxation of Prostitution: The Role of Fiscal Arrangements in Hindering the Sexual and Economic Citizenship of Sex Workers." *Sexuality Research and Social Policy* 16: 1–13.
Delalande, Nicolas, and Romain Huret. 2013. "Tax Resistance: A Global History?" *Journal of Policy History* 25 (3): 301–307.
Deutsch, K. W. 1956. "Joseph Schumpeter as an Analyst of Sociology and Economic History." *The Journal of Economic History* 16: 41–56.
Elsby, Michael W., Bart Hobijn, and Aysegul Sahin. 2010. "The Labor Market in the Great Recession." National Bureau of Economic Research Working Paper No. 15979.
Exner, Gudrun. 2004. "Rudolf Goldscheid (1870–1931) and the Economy of Human Beings." *Vienna Yearbook of Population Research* 2: 283–332.
Friedman, J. 1974. "Marxism, Structuralism and Vulgar Materialism." *Man* 9: 444–469.
Fukuyama, Francis. 2012. "The Future of History: Can Liberal Democracy Survive the Decline of the Middle Class?" *Foreign Affairs* 91: 53–61.
Ganev, Venelin I. 2011. "The Annulled Tax State: Schumpeterian Prolegomena to the Study of Postcommunist Fiscal Sociology." *Communist and Post-communist Studies* 44 (4): 245–255.
Giersch, Herbert. 1984. "The Age of Schumpeter." *The American Economic Review* 74 (2): 103–109.
Knight, Frank Hyneman. 2003. *Max Weber's General Economic History*. Mineola: Courier Dover Publications.
Glennerster, Howard, Anne Power, and Tony Travers. 1991. "A New Era for Social Policy: A New Enlightenment or a New Leviathan?" *Journal of Social Policy* 20 (3): 389–414.
Goldscheid, Rudolf, and Robert Lazarsfeld. 1917. "Staatssozialismus oder Staatskapitalismus? Ein finanzsoziologischer Beitrag zur Lösung des Staatsschulden-Problems." *Archiv für Rechts-und Wirtschaftsphilosophie* 11: 255–259.
Gowdy, John. 2005. "Toward a New Welfare Economics for Sustainability." *Ecological Economics* 53 (2): 211–222.
Great Britain Parliament House of Lords European Union Committee. 2011. "EU Financial Framework From 2014: 13th Report of Session 2010–11." The Stationery Office.
Green, Donald, and Ian Shapiro. 1996. *Pathologies of Rational Choice Theory: A Critique of Applications in Political Science*. New Haven: Yale University Press.
Hemerijck, Anton C., Frank Vandenbroucke, Torben M. Andersen, Philippe Pochet, Christophe Degryse, Gaetano Basso, Mathias Dolls, Werner Eichhorst,

Thomas Leoni, Andreas Peichl, and Peter Taylor-Gooby. 2012. "The Welfare State After the Great Recession." *Intereconomics* 47 (4): 200–229. https://doi.org/10.1007/s10272-012-0422-y.

Henricks, Kasey, and Louise Seamster. 2017. "Mechanisms of the Racial Tax State." *Critical Sociology* 43 (2): 169–179.

Johnson, Paul. 2014. Few Signs of a Wide and Coherent Tax Strategy. Edited by Institute for Fiscal Studies. http://ifs.org.uk.

Kuhnert, Stephan. 2001. "An Evolutionary Theory of Collective Action: Schumpeterian Entrepreneurship for the Common Good." *Constitutional Political Economy* 12 (1): 13–29.

Levin, M. A., M. K. Landy, and M. M. Shapiro. 2001. *Seeking the Center: Politics and Policymaking at the New Century*. Washington, DC: Georgetown University Press.

MacDonald, Robert A. 1912. "Ricardo's Criticisms of Adam Smith." *Quarterly Journal of Economics* 26 (4): 549–592. https://doi.org/10.2307/1883798.

Martin, Isaac William. 2008. *The Permanent Tax Revolt: How the Property Tax Transformed American Politics.* Stanford, CA: Stanford University Press.

Martin, Isaac William, Ajay K. Mehrotra, and Monica Prasad. 2009. *The New Fiscal Sociology: Taxation in Comparative and Historical Perspective.* New York: Cambridge University Press.

Martin, Isaac William, Jane Lilly Lopez, and Lauren Olsen. 2018. "Policy Design and the Politics of City Revenue: Evidence from California Municipal Ballot Measures." *Urban Affairs Review*. https://doi.org/10.1177/1078087417752474.

Martin, Isaac William, and Monica Prasad. 2014. "Taxes and Fiscal Sociology." *Annual Review of Sociology* 40: 331–345.

Martin, Isaac William, and Nadav Gabay. 2012. "Fiscal Protest in Thirteen Welfare States." *Socio-Economic Review* 11 (1): 107–130.

McClure, Michael. 2003. "Fiscal Sociology." On File at the British Library. Economics Program, School of Economics and Commerce. The University of Western Australia.

McCraw, Thomas K. 2007. *Prophet of Innovation: Joseph Schumpeter and Creative Destruction*. London: The Belknap Press of Harvard University Press.

McLure, Michael. 2007. *The Paretian School and Italian Fiscal Sociology*. Berlin: Springer.

Mian, Atif, and Amir Sufi. 2010. "Household Leverage and the Recession of 2007–09." *IMF Economic Review* 58 (1): 74–117. https://doi.org/10.1057/imfer.2010.2.

Mitchell, William C. 1984. "Schumpeter and Public Choice, Part I: Precursor to Public Choice?" *Public Choice* 42 (1): 73–88.

Monson, Andrew, and Walter Scheidel. 2015. *Fiscal Regimes and the Political Economy of Premodern States*. Cambridge: Cambridge University Press.

Mornati, Florenzo. 2018. *Vilfredo Pareto: An Intellectual Biography, Volume I. From Science to Liberty (1848–1891)*. Translated by Paul Wilson. Basingstoke: Palgrave.

Moss, Laurence S. 1993. "Review: Robert Loring Allen's Biography of Joseph Schumpeter." *American Journal of Economics and Sociology* 52 (1): 107–118.

Mugler, Johanna. 2019. "Regulatory Capture? Fiscal Anthropological Insights into the Heart of Contemporary Statehood." *The Journal of Legal Pluralism and Unofficial Law* 50: 1–17.

Muller, Jerry Z. 2013. "Capitalism and Inequality: What the Right and the Left Get Wrong." *Foreign Affairs* 92: 30.

Musgrave, R. 1980. "Theories of Fiscal Crises: An Essay in Fiscal Sociology." In *The Economics of Taxation, Brookings Institution*, edited by Henry J. Aaron and Michael J. Boskins, 316–390. Washington, Brookings Institution.

Musgrave, R. 1992. "Schumpeter's Crisis of the Tax State: An Essay in Fiscal Sociology." *Journal of Evolutionary Economics* 2: 89–113.

Nicholas, Tom. 2003. Why Schumpeter Was Right: Innovation, Market Power, and Creative Destruction in 1920s America. *The Journal of Economic History* 63 (4): 1023–1058.

Nuta, Alina Cristina. 2018. "Some Considerations on Fiscal Sociology." *EIRP Proceedings* 12: 392–395.

Pampel, Fred, Giulia Andrighetto, and Sven Steinmo. 2018. "How Institutions and Attitudes Shape Tax Compliance: A Cross-National Experiment and Survey." *Social Forces* 97 (3): 1337–1364.

Piomelli, Ascanio. 2008. "The Challenge of Democratic Lawyering." *Fordham Law Review* 77: 1383.

Prisching, Manfred. 1995. "The Limited Rationality of Democracy: Schumpeter as the Founder of Irrational Choice Theory." *Critical Review* 9 (3): 301–324. https://doi.org/10.1080/08913819508443385.

Reisman, David A. 2005. *Democracy and Exchange: Schumpeter, Galbraith, TH Marshall, Titmuss and Adam Smith*: Edward Elgar Publishing.

Roiphe, Rebecca. 2016. "The Decline of Professionalism." *Georgetown Journal of Legal Ethics* 29: 649.

Samuelson, Paul A. 1951. "Schumpeter as a Teacher and Economic Theorist." *The Review of Economics and Statistics* 33: 98–103.

Schmidt, Karl-Heinz. 2003. "Schumpeter and the Crisis of the Tax State." In *Jospeh Alois Schumpeter: Entrepreneurship, Style and Vision*, edited by Jurgen Backhaus, 337–352. London: Springer.

Schumpeter, Joseph A. 1918. "The Crisis of the Tax State." In *The Economics and Sociology of Capitalism*, edited by Richard Swedberg. Princeton, NJ: Princeton University Press (1991).

Schumpeter, Joseph A. 1934. *The Theory of Economic Development: An Inquiry into Profits, Capital, Credit, Interest, and the Business Cycle*. Vol. 55. London: Transaction publishers.

Schumpeter, Joseph A. 1939. *Business Cycles*. Vol. 1. New York: McGraw-Hill.

Schumpeter, Joseph A. 1949. "Science and Ideology." *American Economic Review* 39 (2): 345–359.

Schumpeter, Joseph A. 1950. "The March into Socialism." *The American Economic Review* 40: 446–456.

Schumpeter, Joseph A. 1954. *History of Economic Analyses*. Abingdon: Psychology Press/Routledge.

Schumpeter, Joseph A. 1955. *Imperialism; Social Classes: Two Essays*. Vol. 4. Ludwig: von Mises Institute.

Schumpeter, Joseph A. 1983. "The Theory of Economic Development: An Inquiry into Profits, Capital, Credit, Interest, and the Business Cycle (1912/1934)." *Transaction Publishers* 1: 244.

Schumpeter, Joseph A. 2003. *Capitalism, Socialism and Democracy*. New York: Routledge.

Schumpeter, Joseph A. 2010/2013. *Capitalism, Socialism and Democracy*. London: Routledge.

Schumpeter, Joseph A. 2013. *Capitalism, Socialism and Democracy*. London: Routledge.

Schumpeter, Joseph A. 2017. *Business Cycles: A Theoretical, Historical and Statistical Analysis of the Capitalist Process*. London: McGraw-Hill Book Company. Original edition, 1939.

Shionoya, Yuichi. 2007. *Schumpeter and the Idea of Social Science: A Metatheoretical Study.* Cambridge: Cambridge University Press.

Smith, Adam. 1776. "An Inquiry into the Nature and Causes of the Wealth." London 17S6.

Smoke, Paul. 2011. The New Fiscal Sociology: Taxation in Comparative and Historical Perspective. Edited by Isaac William Martin, Ajay K. Mehrotra, and Monica Prasad, 313 pp. New York: Cambridge University Press, 2009. 103.99cloth 55.00 paper. MIT Press.

Stolper, Wolfgang F. 2019. *Joseph Alois Schumpeter: The Public Life of a Private Man*. Vol. 5257. Princeton, NJ: Princeton University Press.

Swedberg, Richard. 1989. Joseph A. Schumpeter and the Tradition of Economic Sociology. *Journal of Institutional and Theoretical Economics* 145 (3): 508–524.

Swedberg, Richard. 1991a. "Major Traditions of Economic Sociology." *Annual Review of Sociology* 17 (1): 251–276.

Swedberg, Richard. 1991b. *Jospeh A. Schumpeter: His Life and Work*. Cambridge: Polity Press.

Swedberg, Richard. 1998. *Max Weber and the Idea of Economic Sociology*. Princeton, NJ: Princeton University Press.

Swedberg, Richard. 2003. *Principles of Economic Sociology*. Princeton, NJ: Princeton University Press.

Swedberg, Richard. 2018. *Max Weber and the Idea of Economic Sociology*. Princeton: Princeton University Press.

Travers, Tony. 1989. "Community Charge and Other Financial Changes." In *The Future of Local Government*, 9–29. London: Springer. Original edition, The Future of Local Government.

Turner, B. S., and P. Hamilton. 1994. *Citizenship: Critical Concepts*. London: Routledge.

Ver Eecke, W. 2003. "Adam Smith and Musgrave's Concept of Merit Good." *The Journal of Socio-Economics* 31 (6): 701–720. https://doi.org/10.1016/s1053-5357(02)00144-0.

Von Hagen, Jürgen, and Ian Harden. 1995. "Budget Processes and Commitment to Fiscal Discipline." *European Economic Review* 39 (3–4): 771–779.

Part II

"What Is the Nature of the Tax State? How Did It Come About?" (Schumpeter 1918: 100)

3

The Fiscal State and Budget Institutions

In *Crisis of the Tax State*, Schumpeter praises the tax state in England for effectively meeting most of the challenges it had faced. As mentioned *supra*, he praised the "era of Gladstone" as its "best period" (1918: 117). Following Schumpeter's lead, this chapter will identify key moments in what could be described as the "budgeting history" of the UK. The proliferation of legislative innovations in budgeting in the UK over the past two decades is sufficient on its own to justify in-depth study. This chapter, thus, analyses the significance of institutions and legislation supporting the budgetary process in the UK, primarily, but also with reference to the EU, and the USA. It starts from the position that, for every story of a government which borrowed and won, of clear choices elected wisely against the backdrop of an uncertain future, there is a story of excess and poor decision-making. History is written by the victors as much in budgetary decision-making as it is in war. As Schumpeter argued in *Crisis,* historic stories are imbued with modern relevance.

Schumpeter urged societies to take heed of the importance of historic budgets for modern governance. This book does not follow precisely the path established by Schumpeter, but aims to follow a path informed by developments in socio-legal theory. That budgets represent process has long been appreciated, and indeed budgetary processes frequently are targeted by legislation attempting to introduce procedural curbs to excess and, perhaps crucially, the elusive talis of balance (Dothan and Thompson 2009: 121). Budgets are important "signalling devices", capable of conveying, amongst other messages, important indicators about the relationship between different branches of government (Toma 1991). A balanced budget is widely,

A. Mumford, *Fiscal Sociology at the Centenary*, Palgrave Socio-Legal Studies,
https://doi.org/10.1007/978-3-030-27496-2_3

globally perceived to be emblematic of a sound government making sound financial choices. Yet such perceptions need not necessarily produce desirable outcomes, and, indeed, economic theory, whilst relevant, need not necessarily provide blueprints for how budgets might function. The controversies, inevitably, seem to concern debt, and the extent to which a government should risk it in order to pursue immediate objectives. As mentioned in Chapter 2, Goldscheid theorised that capitalism would never be capable of providing a functioning welfare state without debt, so, within a fiscal sociological framework, debt is anything but a "neutral" topic, unconnected to broader issues of economic justice.

Budgets are inherently "policy documents," meant to suggest a government's current priorities (Bakker 2006). The priorities typically will include deficit reduction and economic productivity, but it would be incorrect to conclude from this that budgets are simply economic balance sheets, lacking deeper significance. For example, in the Queen's Speech on 25 May 2010, Cameron promised not to "balance the budget on the back of the world's poorest people" (Manji 2010: 989, fn. 20). Prime ministers are aware that pursuing a vision of solvency at any cost is likely to carry the potential for wider, global impact.

The UK's Budget History: A Fiscal, Sociological Consideration

For examples of good budgeting and tax design, Schumpeter—described as "[e]ver the Anglophile" by McCraw in his Pulitzer Prize-winning biography—admired both Gladstone and the younger William Pitt; (McCraw 2007: 95) and, thus, their tax policies are considered here. Their policies contributed to what has come to be known as the Westminster style of budgeting. Lienert has argue that "[a]lthough there is widespread concern that parliaments have lost their voice in budget decision-making, cross-country studies show that the *budgetary power of parliament in countries of Westminster inheritance is particularly weak*" (Lienert 2007: 4, emphasis added). This, and other, issues will be considered in this chapter. Exactly what does it mean to be a country of "Westminster inheritance"? What is the origin of the modern Westminster budget process?

In the UK, the Budget involves the presentation of the financial plans of the government to Parliament, with the intention of a general debate in Parliament to follow, typically on the first "ways and means resolution" (Parliament, The Financial Work of Parliament, Financial Procedure of the

House of Commons, Ways and Means, Budget Resolutions', *Halsbury's Laws of England*, vol. 78[3][iii][1051]). Questions are first submitted on this, and thereafter on all other resolutions at the end of the last day of the debate on the budget (ibid.). Some proposals will enter in to force either on the day of the budget speech, or at the end of the last day of debate Provisional Collection of Taxes Act 1968 c2. See discussion of the interaction of this legislation with retrospective tax initiatives in *R v Customs and Excise Commissioners, ex p Kay & Co. Ltd. and another and other applications* [1996] Simons Tax Cases 1500 (Queen's Bench Division).

Schumpeter's admiration for the English approach to taxation and governance, particularly during the era in which he wrote *Crisis*, formed part of a world view in which he disliked what he viewed as the German approaches both to tax and to governance, in equal measure (Stolper 2019: 159). By contrast, Schumpeter admired deeply the "technique of tory democracy" (Reisman 2005: 18). In his view, if Austria adopted the English approach, it might survive; if it followed the government's path of a closer economic relationship with the German Reich, it would not (Stolper 2019: 159). This places his focus on capitalism in *Crisis* in an urgent light: a good, British-style budget system might yet save Austria.

Schumpeter's attention to British economic history is based on an assumption that, if one wishes to understand modern UK economic practice, then it makes sense to consider the origins of that practice. As the very practice of budgeting is a British innovation, then the insights from this history, potentially, carry relevance beyond its borders (see generally Lienert 2007). To establish the importance and fascination of this history, it is difficult to determine which stories to highlight. Certainly, for example, the trial of Charles I is important to the modern budget process. In a modern context, the culture of privacy that has developed around the budgeting process, and its qualification when the pre-budget report was introduced during the New Labour years (Prabhakar 2003; HM Treasury 2007), all appear meaningful, and capable of being considered within an institutionalist theoretical framework (Oliver 1996), as will be considered in Chapter 5, *infra*.

A number of scholars (North and Weingast 1989, cited at Ross 2004: 251; Mann 1980, and Ross, ibid.) have argued that the Glorious Revolution led directly to greater representation for all within Westminster, and (perhaps more controversially) significant economic success for the English economy (see Norton 2015: 171, describing the role of taxation in developing the power of Parliament). The budget process emerged directly from this history. Interestingly, however, and as Ross emphasises, "[m]ost theories of democracy say nothing about taxes" (Ross 2004: 233). Ross finds this curious, because he considers the connection between taxation and representation as a history of swapping one for the other (ibid.). Put simply, the cost for citizens of acquiring greater representation in a democratic structure is the imposition of taxes.

The tax history of Great Britain in the eighteenth century has attracted a "surprising[ly]" small amount of attention from economic historians (Beckett and Turner 1990: 377). Early English tax history involved three distinct types of revenue: the King's ordinary revenue, the King's extraordinary revenue, and local taxes (Kirst 1978: 1313). The taxes were enforced by a variety of courts (ibid.: 1314–1315). The extraordinary and poor taxes are particularly significant, because they were familiar to colonists, and thus transplanted to the "New World" (id.: 1315). The poor law was paid by the "overseers" of the poor, based on an assessment of the value of their property (id.). Its administration was entirely local, and "did not involve the Exchequer or its processes at all" (id.). In the period spanning 1690–1799, the land tax was the most important form of direct taxation (id.).

Wars and taxation, generally, are classically linked, and indeed it is traditional in the UK to suggest that income taxation, in particular, is linked with ancient wars with France. Much like the connection between the US income tax and its Civil War, the suggestion is that UK income taxation would not exist without the fact of these wars; and, further, the irony is that income taxation persisted as a 'temporary' tax (temporary, until the end of the war) for centuries after peace was declared with France. As Beckett and Turner observed, "…the country waged war for 56 of the 122 years between 1693 and 1815 without recourse to significant new forms of revenue raising until the very end of the eighteenth century" (1990: 378).

It is the start of the eighteenth century, 1714, that is an important moment, because it signals the point by which parliamentary consent was required for taxation, which by then represented an important portion of public revenue (Braddick 1996: 16). Taxes by this point were, simply, as Braddick explained "…a larger proportion of national income, and involved the agencies of government in unprecedented intervention in social and economic life" (ibid.: 16). This date also signalled the beginnings of the era of modern finance, as it was through taxation that the debt of the Crown was transferred to the nation (in that taxation was one of the important ways of making the prospect of lending money to the government attractive) (id.: 14).

The requirement for the consent of Parliament was not reached easily, as it followed the execution of Charles I. King of England, Scotland and Ireland from 1625–1649, Charles was executed after a trial which accused him of tyranny, and largely of placing his own interests ahead of those who lived in his kingdom. Charles insisted that he had the right to tax without the consent of Parliament. The medieval "ship-money" was one of several taxes which several monarchs had insisted they could levy without Parliament's consent. The Plantagenets had permitted towns and counties to fulfill their obligation to provide ships in wartime by paying money instead—hence, the tax. Charles, however, had levied it during peace time. This act led fairly directly both to his execution and to the English Civil War (Russell 1962).

Another outcome of the Civil War was the Bill of Rights 1689, which guarantees civil rights and establishes the constitutional law of the UK (O'Brien 2001). The UK is a parliamentary democracy, which means that parliament is supreme, and can do (whilst respecting civil rights) most things, with an important exception: "[t]hat levying Money for or to the Use of the Crowne by pretence of Perogative without Grant of Parlyament for longer time or in other manner than the same is or shall be granted is illegal". In other words, Parliament is forbidden from giving away the right to tax to the Crown. Over the centuries, the Crown became irrelevant in this respect. The courts, however, became increasingly more relevant. Lamb suggests that the Inland Revenue (now HM Revenue and Customs) relied upon the courts to establish a "disciplinary power," thus "supplant[ing] taxation based on the exercise of sovereign power" (2002: 106).

Emerging from this history, the UK has been classified as having comparatively stringent budgeting processes (Reksulak et al. 2013: 170). There are a number of different methods available for controlling its budgets, including "[d]ebt limits, interest coverage ratios, one-off balanced budget requirements, pay-as-you-go rules, and tax expenditure limits" (Dothan and Thompson 2009: 463). A specific, historic period in the development of these "stringent" processes was considered particularly relevant by Schumpeter: the 1850s (especially Gladstone's Budget of 1853). This will be considered, as will perhaps the perhaps the most famous budget of the modern era (the People's Budget of 1909, largely ignored by Schumpeter for reasons which are explained), and, the "Sinking Fund" origins of the practice of budgeting.

Pitt the Younger, and the Old Sinking Fund

The process of budgeting, at least as we would recognise it in the twenty-first century, apparently originates with William Pitt the Younger[1]

[1](1759–1806) Tory statesman, became the youngest Prime Minister in the history of the United Kingdom in 1783.

(McCaffery 1996). Pitt faced heavy costs from wars with France and the War of American Independence, which led him to bring together taxes from a number of different sources in order to pay the government's debts, whilst simultaneously instituting auditing features which were designed both to control fraud and to secure tax revenues (ibid.: 235–236). Essentially, Pitt aimed to establish a reliable system of incomings and outgoings through which the ambitions of government could be moderated. Thus, the world's first modern budget was divided into the "Old sinking Fund", with which Pitt planned to pay off existing debts, and the "New Sinking funds," which would pay off future debts (Cooper 1982: 95). The fact that Pitt was able to achieve this even in the face of political coalitions determined to oppose his efforts was celebrated by Disraeli a generation later (Ledger-Lomas 2004: 659; if grudgingly, see discussion, *infra*), and even by contemporaneous (to Pitt) poets.[2]

In 1783, the national debt Pitt confronted was very large indeed—over £243 million in government loan stock (Cooper 1982: 94). The idea of a sinking fund, actually, was originally Walpole's, yet it was Pitt who thought both to revive it, and to place it in the control of independent commissioners, "…to protect it from raids by the First Lord of the Treasury, that is, by himself or his successors" (ibid.). The original sinking fund idea was based on the quite simple practice of earmarking the proceeds of some taxes for the servicing (and eventual reduction of the capital) of public debt (Cox 1901: 363). First created in 1716, Walpole's innovation worked well for a number of years—until, inevitably, the presence of the sinking fund created a new baseline. New debts were acquired, and after a few years, ordinary expenditure were charged against it (ibid.).

Pitt's innovation was to create a Commission for the Reduction of the National Debt, and to give it an income of £1 million per year (id.). The Commission would use this money to buy government stock, and to invest the dividends in the purchase of more stock (id.: 363–364). This, in fact, worked for a number of years, during peace time. The eventuality of war proved too great a challenge even for the sinking fund, and debts increased (id.: 364). Perhaps one of the most stinging criticisms of the fund was that, in the end, it ultimately compelled the government to "sell new stock cheap in order to buy old stock dear" (id.: 364).

[2]"With budget and taxes, the people half mad, / For a kick at the Minister sure would be glad; / For his friends for his honour would cry out alas!…" Anon (London: S.W. Fores, 1784): broadsheet, Miles Johnson and AD Harvey, 'Political Verse in Late Georgian Britain: Poems Referring to William Pitt the Younger (1759–1806)' [2004] *Electronic British Library Journal*, at p. 35.

And what of Pitt's National Debt Commissioners? They continue to this day. The six commissioners, originally, were: the Chancellor of the Exchequer, the Governor and Deputy Governor of the Bank of England, the Speaker of the House of Commons, the Master of the Rolls, and the Accountant General of the Court of Chancery.[3] Subsequent legislation added the Accountant General of the Senior Courts, the Lord Chief Justice, and additional Deputy Governors of the Bank of England, for a total of ten commissioners.[4] The last recorded meeting of the commissioners took place on 12 October, 1860, and, for reasons unrecorded by history, there have been no further. They are still consulted for formal appointments—for example, for the Comptroller General—but the practice has been to delegate all other decisions to the Comptroller General and the Assistant Comptroller.[5] The UK Debt Management Office (DMO) has carried out all statutory functions of the CRND since 2002. The DMO, the executive agency responsible for carrying out the management of the national debt, also manages the Public Works Loan Board. The DMO reports to the Commercial Secretary to the Treasury, although, as an executive agency, it is expected to operate at arm's length from ministers.[6]

Gladstone's Budget of 1853

From this basic process evolved the practice of the Chancellor of the Exchequer providing a Budget statement to the House of Commons which proposes changes to taxation, and provides an overview of the state of the economy. Although there are a number of memorable budget speeches in UK history from which to choose, as mentioned, in *Crisis,* Schumpeter displayed admiration for the "Gladstone era" (1918: 100). The Right Hon. William E. Gladstone is recalled for having delivered perhaps the most famous budget speech in history, with enormous local and global impact. Sir Robert Peel,[7] The conservative Prime Minister from the early-mid 1800s, is an important player in the story of this budget, as the leader of a conservative 'breakaway' movement (primarily, in disagreement with the landed

[3]https://www.dmo.gov.uk/responsibilities/public-sector-funds-crnd/national-debt-commissioners/ (last accessed 30 April 2019).

[4]Ibid.

[5]Id.

[6]https://www.dmo.gov.uk/responsibilities/financing-remit/ (last accessed 30 April 2019).

[7]Robert Peel (1788–1850), Conservative, Prime Minister from 1834–1835 to 1841–1846.

interest wing of the party, on the issues of trade, and whether agricultural prices should be maintained at an artificially high level) that ultimately bore his name (the Peelites).[8]

Meisel argued that Gladstone's famous Budget speech of 1853—dubbed the "Peelite" budget (in honour of Gladstone's efforts to advance Prime Minister Peel's agenda; Haigh 1990: 255)—was motivated by enthusiasm for "political" if not "fiscal" consequences (Meisel 2012: 86). This speech was less about taxing and spending, and more about the birth of the Peelites. It is for this reason, perhaps, that this budget has been largely ignored by (primarily, Keynesian) economists—it was not explicitly, or exclusively, linked to economic growth (Matthew 1979: 615). In fact, many nineteenth-century budgets carried little economic weight, at least when considered in comparison with late-twentieth-century and twenty-first-century comparators (and thus have been ignored by mainstream economic thought, ibid.). It is useful to recall that it was against this background—in other words, a background within which contemporaneous British budgets largely were ignored—that Schumpeter urged consideration of their significance. The delivery of a speech which presaged major economic changes naturally may seem compelling, and important. For early-twentieth-century economic thought, the nineteenth-century British examples were all too easily dismissed as, simply, all about politics.

Gladstone's budget speech of 1853 (alongside the younger Pitt's budget speech in 1798) is invoked regularly as an example of masterful fiscal rhetoric (Meisel 2012: 86). Meisel insists that "Gladstone was almost unique in his ability to discuss a budget with verve" (ibid.). In a similar vein, Sabine wrote that "[j]ust as the decade in fiscal history from 1842 to 1852 is dominated by the name of Peel, so the years from 1853 to 1866 are similarly dominated by the name of Gladstone" (2013: 75).

Disraeli later suggested that the distinctive feature of the 1853 budget (which simplified duties and customs by abolishing 123 duties, and reducing another 133, and also extended the income tax for another seven years) "…was, I will not say one to pay off the National Debt, but to reduce the interest paid to public creditors" (1862: 13). He analysed the costliness of Gladstone's scheme, and lamented, "[w]ell, so much for the first great feature, and the first great failure of the Budget of 1853" (ibid.). Gladstone unsurprisingly did not share Disraeli's poor opinion of his budget, as

[8] Interestingly, Gladstone and Peel were interchangeable in a number of additional ways. Both earned double Firsts in Greats and Mathematics at Oxford (Sabine 2013: 75). Both changed political parties late in their careers (ibid.). Sabine described Peel as, simply, Gladstone's "master" (id.).

> …there were four occasions on which he believed that he had divined the right moment for a searching appeal to public opinion on a great question. The renewal of income tax in 1853 was the first; the proposal of religious equality for Ireland in 1868 was the second; home rule was the third…The fourth case was this, of a dissolution upon the question of the relations of the two Houses. (Morley 2011: 505, quoting Arthur James Balfour, 1st Earl of Balfour.)

The crux of the disagreement between Disraeli and Gladstone actually has been ascribed to reasons other than the budget, for a reason described to be "as childish as it was complex" (Paterson 2001: 158). It has been suggested that their animosity originated in a dispute over compensation for expenses related to furniture and the passing on of the Chancellor's gown, when Gladstone took over as Chancellor from Disraeli (ibid.). Pre-existing tensions, thus, were only exacerbated when the impact of Gladstone's 1853 budget was to enhance in the public imagination the possibilities surrounding the office of the Chancellor of the Exchequer (id.).

Gladstone believed that the popularity of his 1853 Budget in part was due to his experimentation with a new form of political rhetoric (St John 2010: 56). Delivered on 18 April—a Monday evening that has been discussed ever since (Adelman 2014: document 28)—it lasted four and three-quarter hours (Matthew 1997: 121). The effect was a "sensation" (St John 2010: 56), and perhaps one of the most "memorable ever made" (Sabine 2013: 75). The *Greoille Memoires* record that "[e]ven those who do not admire the Budget, or who are injured by it, admit the merit of the performance" (Adelman 2014: document 28, citing *The Greoille Memoirs*, 21 April 1853, 12, vi, pp. 418–419). Gladstone's great achievement was to convey a sense of excitement surrounding taxation, and to suggest that the possibility of progress was contained within otherwise (deceptively) mundane figures (Matthew 1997: 121). Bebbington describes the budget speech as "probably [Gladstone's] single greatest achievement" (1993: 83).

The background was that Peel had re-introduced income taxation as an unpopular necessity to redress the exigencies of an impoverished Treasury—an initiative that was derided on both sides of the aisle (St John 2010: 56). Gladstone's accomplishment was to make the idea of maintaining what was intended to be a short-term measure popular (ibid.). Sabine reminds us that "income tax was slowly consolidating its position as a fiscal reserve; its fiscal indispensability was not yet appreciated, much less admitted" (Sabine 2013: 75). Thanks to the budget speech, Gladstone managed to retain income taxation in almost exactly the same form in which he had inherited it, with few changes (Matthew 1997: 121). Income taxation then was extended to cover all incomes exceeding 100 pounds sterling, which exempted the majority of the working class (Gurney 2015: 258). Gladstone, in fact, had expected that the income tax would end in seven years, but instead, in his Budget of 1860, he raised the tax from 7d to 10d (i.e., roughly 3% to 4%) on the pound for those whose income exceeded £150 (ibid.).

The People's Budget of 1909

From Gladstone's memorable Monday evening in April, to Lloyd George's People's Budget—in his admiring account of the latter, the political economist ERA Seligman (1861–1939) commenced by observing that one of the most remarkable features of the history of tax are the "successive waves of reform" (1912: 454). These events are extraordinary because they seem to happen in different countries at the same time, for reasons that may not necessarily be clear, or obviously connected to sharing of ideas or mutual observation. Two particular years Seligman selected to demonstrate this were 1909 and 1910, during which years he suggested that reform movements in Great Britain, Germany and Austria were particularly remarkable, and displayed elements of convergence.

One finds no similar praise for *The People's Budget* in the writings of Schumpeter. Schumpeter's interest in Lloyd George derived primarily from his connection with Keynes. Keynes had been selected by Lloyd George to serve as Principal Representative of HM Treasury at the Peace Conference in 1915—which Schumpeter described as a role that "might have been a key position if such a thing could have existed within the orbit of Lloyd George" (Schumpeter 1946: 499). Schumpeter admired Keynes' resignation on principle from the role of Deputy for the Chancellor of the Exchequer in 1919 (ibid.). With marked enthusiasm, Schumpeter explained that

> [o]ther men had much the same misgivings about peace, but *of course* they could not possibly speak out. Keynes was made of different stuff. He resigned and told the world why. And he leapt into international fame. (id. [emphasis in original])

That Schumpeter was dismissed as Minister for Finance during the exact same year, and also for publicly criticising his own government's plans for the post-War period, is an obvious reason for his enthusiastic praise (although the parallels are unmentioned by Schumpeter in his tribute).

The context was that, after the war, Lloyd George was "something of a hawk" on the issue of reparations, whilst "Lenin's disciples were busy trying to seduce the Germans with promises of a fresh start" (Nasar 2012: 222). Even whilst the Austrian *krone* was in "free fall" days after Schumpeter assumed his position as Minister for Finance, Lloyd George continued to push this line (ibid.). As a consequence, the extent of Schumpeter's engagement with Lloyd George appears to be limited to not much beyond his posthumous tribute to Keynes, in which he largely congratulates Keynes for disagreeing with the prime minister (Schumpeter 1946).

Schumpeter, thus, would have been unlikely ever to acknowledge what has come to be known as perhaps the most famous UK budget speech of the twentieth century, Lloyd George's "People's Budget" of 1909. The title for the Budget comes from Lloyd George's famous words:

> I am one of the children of the people. I was brought up amongst them and I know their trials and their troubles. I therefore determined in framing the budget to add nothing to the anxieties of their lot, but to do something towards lightening those they already bear with such patience and fortitude.[9]

This budget, which was introduced within a 4-hour-long speech on 29 April 1909 (Scotti 2006: 104), has caused some degree of confusion amongst scholars, some of whom at one point—in a view that has since largely been rejected—argued that Lloyd George designed the budget in such a way as to invite its rejection by the House of Lords (Murray 1973: 555, but cf. Fraser 1973: 146). The fame, and indeed constitutional significance, of the budget is that it led to the introduction of the Parliament Act 1911 (1 and 2 Geo.5 c.13).

The background is that, with the House of Lords then at a very low ebb in popularity, Henry Asquith's Liberal government seized the opportunity to introduce the Parliament Act, which significantly reduced the powers exercised by the House; and, in particular, removed their ability to block "money bills" and other forms of legislation. The House of Lords then attempted to block even this legislation, but were thwarted both by King George V's agreement with Asquith's famous threat to create two hundred and fifty new Liberal peers so as to be able to outvote the Conservative majority in the House of Lords.

The key issue was whether social programmes should be financed by taxing the wealthy (Sauvain 1996: 6). Hence, for the first time, "landed incomes"

[9] https://www.bl.uk/onlinegallery/onlineex/voiceshist/george/index.html (last accessed 30 April 2019).

faced the prospect of significant taxation (Taylor and Wolff 2004: 1). Steinmo suggests that the House of Lords were fully aware of the historical significance of the budget and that they appreciated that, were the bill to pass, from that point forward the British state would be engaged in the redistribution of wealth (1996: 58). It was not the case that the House of Lords were completely opposed to the introduction of social programmes themselves, but that they preferred to pay for them through tariffs, and not taxes (Steinbach 2012: 57). Ultimately, it was the "real power" of the House of Lords in British government that was at stake (Steinmo 1996: 58). Losing this battle would mean that the House of Commons would emerge as the ultimate source of power and influence (Steinbach 2012: 57). The threat of new peers was enough to force the Conservatives to retreat,[10] and the Parliament Act passed.

The issue of peerage creation was intimately tied with the growing unrest in Ireland, as the Liberals largely sided with the Irish Nationalists (who, crucially, were strongly opposed to proposed increases in whisky duties; Brooks 1995: 124). The prospect of increasing support for Irish Nationalists in the fraught years before the Easter Rising was thus enough of a threat to ease the passage of the Parliament Act. Almost by way of reward, the government thanked John Redmond's Irish Party by introducing the Third Home Rule Bill months after the People's Budget passed (McGarry 2010: 1, ch. 2). Unlike earlier attempts in the late nineteenth century, Home Rule for Ireland no longer faced "constitutional obstacle" in Parliament (ibid.).

A number of important events followed the House of Lords' rejection of the "People's Budget" of 1909: a general election in early 1910, a Constitutional Conference in 1910, a Parliament Bill (later Act) designed to diminish the power of the House of Lords; and, finally, yet another general election, as 1910 came to a close (Laybourn 2001: 196). The level of rancour in all of these events was high. Asquith was "heckled and shouted down" during a debate of the Lords' amendments to the Parliament Bill (Marcus and Nicholls 2004: 132). King Edward VII wrote to Asquith (from the royal yacht) complaining that the speech had been "calculated to set class against class and to inflame the passions of the working and lower orders against people who happened to be owners of property" (MacArthur 2012: "The People's Budget").

The repercussions of these events and these alliances were felt within the ranks of the Liberals as well. Indeed, by 1912, Beatrice and Sidney Webb

[10] Indeed, a contemporaneous reflection written by David Lindsay, Earl of Crawford, suggests that the threat of a "creation of peers" was enough to "pass the budget with little further opposition" (Crawford 1984: 143).

found that they were criticised as “Socialists” by their once fellow Liberals, so they somewhat dejectedly (after the excitement of 1911) left to join the Labour Party (Feske 2000: 77). From that point on, they apparently felt that what Feske described as “direct” attempts to influence government were doomed to fail, so it made sense to engage in “indirect” attempts with the support of their new party (ibid.).

Amongst the provisions introduced in this historically impactful budget were increased taxes on death and land, which *The Times* denounced as “social ransom…[putting] the fundamental *right of ownership*… at stake” (Brooks 1995: 71, citing *The Times*, 30 April 1909 [Seabrooke’s emphasis]). All land in Great Britain was valued anew, in such a way as to go “beyond the market and into the realms of pure theory: beyond rents, beyond selling prices, even beyond capital valuation, to tease out and capitalise the pure rent” (Offer 1981: 363). Offer described the revaluation as “a veritable Domesday” (ibid.).

The People’s Budget had a number of purposes, including the financing of “battleships, the increasing expenditures for old-age pensions, and other vaguely defined social reforms” (Levine 1988: 138). Daunton reminds us that it is important to note that the “People’s Budget” was also “a family budget”, as it “…[i]ntroduced tax allowances according to family circumstances which outlived the immediate excitement of the onslaught on Rent” (2007: 367). It was also about preparation for war. As this war would be against Austria, it is unsurprising that Schumpeter’s admiration for British budgeting did not extend to perhaps the most significant British budget of his lifetime.

Budgeting and Executive Power in the UK

The budgets described in this section have been presented as the products of Chancellors of the Exchequer, as opposed to the deliberations of a wider committee. This is because, in the UK, budgetary matters are included alongside defence and nuclear policy as issues which traditionally are not brought before the full cabinet for discussion (Foster 2004: 757). Rather, budget matters are discussed in what Foster described as a “bilateral” manner between Prime Minister and Chancellor of the Exchequer (ibid.). It would be wrong however to assume that budgets are solely a reflection of chancellors, and not prime ministers. A great deal can be learned about prime ministers through their budgets. This section will consider this issue in two ways. First, it will address the battles waged by Prime Minister Margaret

Thatcher against local authorities during the 1980s. Secondly, it will consider the role, of every prime minister, as First Lord of the Treasury.

Local Authorities and the Thatcher Era

Her Budget of 1981 (delivered by Sir Geoffrey Howe) apparently is the moment, Hennessy suggests, that "Whitehall, the City, the world's money markets and her own party" acknowledged that Margaret Thatcher "really would not turn", especially in the midst of a "severe" recession (1991: 495). During the Thatcher era, budgets often provided an important means of communication between the national government and, in particular, local authorities. An example of this was provided by the response of local authorities to the "rate capping" powers granted to the Secretary of State under the Rates Act 1984, which attracted significant controversy on the basis that the legislation curtailed local autonomy (Cooper 1996: 260). Local authorities could not prevent the introduction of rate capping, but they did have a choice in terms of how they responded, and, in particular, how much "chaos" they were prepared to cause (ibid.). When the task of setting the 1985/1986 budget arose, Cooper relates that local authorities had three choices: "not setting a rate, deficit budgeting, and ignoring the cap" (id.). Liverpool chose the option of delaying its budget, and then setting a deficit (id.; see generally, discussion in Fennell 1986).

Similarly, Sunkin offers the example of the Social Fund, which was introduced by the Social Security Act 1986, and designed to assist persons who already received government assistance in the event of unexpected financial emergencies (1994: 130). The fund was not subject to judicial review, because "…local officers must always keep within their budgetary allocation even if this means that needs cannot be met" (ibid.). Sunkin wrote that "[t]he ministerial view was that appeals would undermine the strictly budgetary nature of the scheme, because appellate bodies would not be constrained by the budget" (id.). This position attracted significant comment, to the extent that scrutiny was introduced at the level of *process*, "…not intended to second guess the decision itself" (id.). The significance of the Social Fund was that its aims were focused on budgetary *control*, and the hope of the government to be able to predict the future costs of the measures covered (Mullen 1989: 66).

The Social Fund predicted eventual changes to government-funded legal aid, and also moved process away from a "demand-led" budget (Zander 1998: 540). Welfare legislation came not, as Fulbrook explained, to exist in a "vacuum", and there developed a "complex interface" between social security, social services and health (2001: 252). Of particular importance is the distinction between which budgets are administered nationally, and which are controlled by local authorities (ibid.). This is because the UK is distinctive in that local governments are, to a comparatively significant extent, funded by central government (Hirsch 1973: 125).

First Lord of the Treasury

In the UK, the Prime Minister serves as First Lord of the Treasury, a role originated by Sir Robert Walpole (the first Prime Minister) in 1721 (Hennessy 2001: 39). To clarify, the position of Prime Minister is viewed as having been originated by Walpole, although the duty of First Lord of the Treasury had been assumed by Walpole in a quite separate process, and indeed after it had been resigned by Lord Sunderland (Pearce 2008: 139–140), who widely was viewed as having limited financial aptitude (Jones 1999: 42). In fact, Sunderland had relied on Walpole's superior financial skills during the "South Sea crisis" to such an extent that Sunderland was forced to make a number of concessions to him (ibid.). Walpole exploited Sunderland's limitations, and thus was able to commence an undertaking to become "supreme minister," although the assumption of role of the First Lord of the Treasury, on its own, did not complete it (Pearce 2008: 140). The duty of First Lord of the Treasury came to be onerous, and particularly was felt to be a burden by Lord North, who felt it to be an impossible duty to discharge (as he was expected to do) alongside the cumbersome roles both of Chancellor of the Exchequer, and Leader of the Colonies, especially during the American War of Independence (Hennessy 2001: 42).

The first holder of the office of Prime Minister, *in a modern sense* (Walpole otherwise was 'first'), is widely viewed to be Pitt the Younger (Hennessy 2001: 42–43). This largely was because although the King was consulted, the Prime Minister claimed the power to appoint and dismiss his own Cabinet Ministers (ibid.: 43). As mentioned above, Pitt's Sinking Fund played an important role in his ability to govern; but, it also only was achieved by virtue of his occupancy of the role of First Lord of the Treasury. Jennings suggested that, thus, "[i]t is not entirely an accident of history that the Prime Minister is also the First Lord of the Treasury" (Jennings 1969: 144). He explains that "[i]n the days when majorities were swayed by the exercise of patronage and the patronage of the Treasury was the most valuable, the principal politician was necessarily the First Lord, or, to put it equally truly, the First Lord was the principal politician" (ibid.).

This role is referred to in a variety of legislation, largely dealing with pensions: for example, the Public Service Pensions Act 2013, c.25, s.33, which addresses the pensions arrangement of the Prime Minister. At a basic level, as Jennings explains, this is because the Prime Minister is required by the Ministers of the Crown Act 1937 to hold the office of First Lord of the Treasury in order to be eligible to draw a pension (Jennings 1969: 205). Additionally, the Prime Minister's role as First Lord of the Treasury historically has been important in deciding who *else* received a public pension. In 1784, the First Lord of the Treasury only was allowed to grant "secret pensions" if he took an oath that it was not connected to any form of political patronage (Foord 1947: 492, citing 22 George III c.82, arts.24-9 [Civil List and Secret Service Money Act 1782]). The First Lord of the Treasury's increasing power over pensions during this era was particularly important, given the fact that pensioners had been prohibited from sitting in Parliament (ibid.: 492). Thus, pensions had been covered in secrecy; a practice which the passage of a piece of legislation called Burke's Act aimed to curtail (id.). Pensions, from that point forwards, were required to be paid in public from the exchequer, and then reported to Parliament (id.). Importantly, this plan allowed the Treasury to take control of what had been an unruly and non-transparent Civil List, and to make certain that no future First Lord of the Treasury would be able to engage in such abuses again (Reitan 1966: 331). Also of relevance in this account is the Civil Contingencies Act 2004 c.36, s.20(2), which grants the "senior Minister of the Crown" the power to "make emergency regulations". s.20(3)(a)–(c) of this act makes clear that the "senior Minister of the Crown" means "the First Lord of the Treasury (the Prime Minister), any of Her Majesty's Principal Secretaries of State, and the Commissioners of Her Majesty's Treasury." The test, as specified in s.20(4)(a)–(b) is where "serious delay" might cause "serious damage".

The assumption generally is that the First Lord of the Treasury will be the Prime Minister, but this has not always been the case. For example, during the period 1885–1895, Lord Salisbury, serving both as Foreign Secretary and Prime Minister, suggested that, first, Sir Stafford Northcote, and later, Mr W.H. Smith (and, then, Mr Balfour) should serve as First Lord of the Treasury (Jennings 1969: 205). Theoretically, the role provides the Prime Minister with a role in the Treasury, although Jordan dismissed this as an "archaic status" (2002: 11). He argued that: "…while PMs do have a dominating input into Treasury deliberations this is as Prime Minister and not through their notional place within the Treasury (as First Lord)" (ibid.). The Chancellor of the Exchequer, in this analysis, carries the true power of the public purse. Jordan suggests that the Chancellor's power is enhanced through the supportive position of the Chief Secretary (or, the "Treasury No.2") (id.). It, however, is only in relatively recent history that the Chief Secretary of the Treasury has been included within the Cabinet. This fact, along with the occasional participation of the Parliamentary Secretary to the Treasury within the Cabinet, all have contributed to the remarkable power of the second in command, who in fact is the primary authority in domestic public expenditure (id.).

The "symbolic" importance of the Prime Minister's role as First Lord of the Treasury is to signpost the Treasury's place at the very heart of government, despite the fact that there is no "day-to-day contact" (Daintith and Page 1999: 114). The historic alignment between the First Lord of the Treasury's powers and increasing transparency in the civil list suggests that the position plays some role in partly discipline, which Daintith and Page argue is not accidental (ibid.). As they explained, "[t]he eighteenth-century House of Commons may not have been enthusiastic for financial discipline but it was very interested in securing the fruits of patronage" (id.). The Treasury, for example, controlled 14,000 out of 17,000 available civil service positions during the second half of the eighteenth century (id.). This rendered the Treasury enormously powerful, and "there is nice irony in the fact that the …search [in the following, nineteenth century] for financial control and rectitude, which could not have been carried through without that strength, involved stripping away the sources of patronage on which it had been built" (id.).

Closing

What could be described as "budget institutions" are a very significant factor in predicting the ultimate success of economic policies, but they are not the only factor (Park 2010: 989). The impact of politics remains significant. If, for example, a government promises both an increase in spending and a decrease in taxation, this will produce pressures that likely will resist the influence of even the most carefully constructed budget process (Bastida and Benito 2007). Put differently, budget institutions do not ensure economic stability. They may provide, however, methods of "punish[ment]" in the event of instability (Dothan and Thompson 2009: 463).

And yet Schumpeter praised the era of Gladstone, the innovations of Pitt, and the essential structure of economic governance in the UK—all important budget institutions—for the stability they provided. He meant, however, to imply that the institutions had not *contributed* to fissures within the tax state. The evolution, for example, of the economic powers of the Prime Minister all occurred within a process of consultation between the governed and the governors, and arose from a form of elitist democracy of which he approved.

In the context of fiscal sociology, the task is to consider the continuing evolution of these institutions. The next chapter will consider changes which have occurred in response to the challenges of debt and instability. Particularly after the financial crash of 2008, which arguably qualifies as a Schumpeterian "crisis of the tax state," initiatives were introduced in the UK, and elsewhere, to control what Goldscheid always predicted; in other words, the increase of debt in response to the democratic call for an increasingly mature and developed welfare state.

References

Adelman, Paul. 2014. *Peel and the Conservative Party 1830–1850*. London: Routledge.

Bakker, I. 2006. "Gender Budget Initiatives: Why They Matter in Canada." Canadian Centre for Policy Alternatives. Last Modified 2006. http://www.policyalternatives.ca/documents/National_Office_Pubs/2005/afb2006_techpaper1_gender_budget_initiatives.pdf.

Bastida, Francisco, and Bernardino Benito. 2007. "Central Government Budget Practices and Transparency: An International Comparison." *Public Administration* 85 (3): 667–716. https://doi.org/10.1111/j.1467-9299.2007.00664.x.

Bebbington, David William. 1993. *William Ewart Gladstone: Faith and Politics in Victorian Britain*. Grand Rapids: Wm. B. Eerdmans Publishing.

Beckett, John V., and Michael Turner. 1990. "Taxation and Economic Growth in Eighteenth-Century England." *The Economic History Review* 43 (3): 377–403.

Braddick, Michael J. 1996. *The Nerves of State: Taxation and the Financing of the English State, 1558–1714*. Manchester: Manchester University Press.

Brooks, David. 1995. *The Age of Upheaval: Edwardian Politics, 1899–1914*. Manchester: Manchester University Press.

Cooper, Davina. 1996. "Institutional Illegality and Disobedience: Local Government Narratives." *Oxford Journal of Legal Studies* 16 (2): 255–274.

Cooper, Richard. 1982. "William Pitt, Taxation, and the Needs of War." *The Journal of British Studies* 22 (1): 94–103.

Cox, Harold. 1901. "The Public Debt of Great Britain." *The North American Review* 173 (538): 355–376.

David Lindsay Earl of Crawford. 1984. *The Crawford Papers: The Journals of David Lindsay, Twenty-seventh Earl of Crawford and Tenth Earl of Balcarres (1871–1940), During the Years 1892 to 1940*. Manchester: Manchester University Press.

Daintith, Terence, and Alan C. Page. 1999. *The Executive in the Constitution: Structure, Autonomy, and Internal Control*. Oxford: Oxford University Press.

Daunton, Martin. 2007. *Trusting Leviathan: The Politics of Taxation in Britain, 1799–1914*. Cambridge: Cambridge University Press.

Disraeli, Benjamin. 1862. *Mr Gladstone's Finance, from His Accession to Office in 1853 to His Budget of 1862, Reviewed by the Right Hon. B. Disraeli*. Saunders: Otley & Company.

Dothan, Michael, and Fred Thompson. 2009. "A Better Budget Rule." *Journal of Policy Analysis* and *Management* 28 (3): 463–478.

Fennell, Phil. 1986. "Roberts v Hopwood: The Rule Against Socialism." *Journal of Law and Society* 13 (3): 401–422.

Feske, Victor. 2000. *From Belloc to Churchill: Private Scholars, Public Culture, and the Crisis of British Liberalism, 1900–1939*. Chapel Hill: The University of North Carolina Press.

Foord, Archibald S. 1947. "The Waning of 'The Influence of the Crown'." *The English Historical Review* 62 (245): 484–507.

Foster, Christopher. 2004. "Cabinet Government in the Twentieth Century." *Modern Law Review* 67 (5): 753–771.

Fraser, Derek. 1973. *The Evolution of the British Welfare State: A History of Social Policy Since the Industrial Revolution*. Berlin: Springer.

Fulbrook, Julian. 2001. "New Labour's Welfare Reforms: Anything New?" *Modern Law Review* 64 (2): 243–259.

Gurney, Peter. 2015. *Wanting and Having: Popular Politics and Liberal Consumerism in England, 1830–70*. Oxford: Oxford University Press.

Haigh, Christopher. 1990. *The Cambridge Historical Encyclopedia of Great Britain and Ireland*. Cambridge: Cambridge University Press.

Hennessy, Peter. 1991. "The Last Retreat of Fame: Mrs Thatcher as History." *Modern Law Review* 54 (4): 492–498.

Hennessy, Peter. 2001. *The Prime Minister: The Office and Its Holders Since 1945*. New York: Palgrave Macmillan.

Hirsch, Werner Z. 1973. "Program Budgeting in the United Kingdom." *Public Administration Review* 33 (2): 120–128.

Jennings, Ivor. 1969. *Cabinet Government*. Cambridge: Cambridge University Press Archive.

Jones, Clyve. 1999. "Jacobites Under the Beds: Bishop Francis Atterbury, the Earl of Sunderland and the Westminster School Dormitory Case of 1721." *The British Library Journal* 25 (1): 35–54.

Jordan, Grant. 2002. *The British Administrative System: Principles Versus Practice*. London: Routledge.

Kirst, Roger W. 1978. "Administrative Penalties and the Civil Jury: The Supreme Court's Assault on the Seventh Amendment." *University of Pennsylvania Law Review* 126 (6): 1281–1343.

Lamb, Margaret. 2002. "Defining 'Profits' for British Income Tax Purposes: A Contextual Study of the Depreciation Cases, 1875–1897." *The Accounting Historians Journal* 29: 105–172.

Laybourn, Keith. 2001. *British Political Leaders: A Biographical Dictionary*. Oxford: ABC-CLIO.

Ledger-Lomas, Michael. 2004. "The Character of Pitt the Younger and Party Politics, 1830–1860." *The Historical Journal* 47 (03): 641–661. https://doi.org/10.1017/s0018246x04003899.

Levine, Daniel. 1988. *Poverty and Society: The Growth of the American Welfare State in International Comparison*. New Brunswick: Rutgers University Press.

Lienert, Ian. 2007. "British Influence on Commonwealth Budget Systems: The Case of the United Republic of Tanzania." International Monetary Fund Working Paper WP/07/78.

MacArthur, Brian. 2012. *The Penguin Book of Modern Speeches*. London: Penguin.

Manji, Ambreena. 2010. "Eliminating Poverty? 'Financial Inclusion', Access to Land, and Gender Equality in International Development." *Modern Law Review* 73 (6): 985–1004.

Mann, Michael. 1980. "State and Society, 1130–1815: An Analysis of English State Finances." In *Political Power and Social Theory*, edited by *Maurice Zeitlin*, 165–208. Greenwich, CT, US: JAI Press.

Marcus, Laura, and Peter Nicholls. 2004. *The Cambridge History of Twentieth-Century English Literature*. Cambridge: Cambridge University Press.

Matthew, Henry Colin Gray. 1979. "Disraeli, Gladstone, and the Politics of Mid-Victorian Budgets." *The Historical Journal* 22 (3): 615–643.

Matthew, H. C. G. 1997. *Gladstone 1809–1898*. Oxford: Clarendon Press.

McCaffery, Jerry L. 1996. "On Budget Reform." *Policy Sciences* 29 (3): 235–246.

McCraw, Thomas K. 2007. *Prophet of Innovation: Joseph Schumpeter and Creative Destruction*. London: The Belknap Press of Harvard University Press.

McGarry, Fearghal. 2010. *The Rising: Easter 1916*. Oxford: Oxford University Press.

Meisel, Joseph S. 2012. *Public Speech and the Culture of Public Life in the Age of Gladstone*. New York: Columbia University Press.

Morley, John. 2011. *The Life of William Ewart Gladstone*. Cambridge: Cambridge University Press.

Mullen, Tom. 1989. "The Social Fund—Cash-Limiting Social Security." *Modern Law Review* 52 (1): 64–92.

Murray, Bruce K. 1973. "The Politics of the 'People's Budget'." *The Historical Journal* 16 (03): 555. https://doi.org/10.1017/s0018246x00002946.

North, Douglass C., and Barry R. Weingast. 1989. "Constitutions and Commitment: The Evolution of Institutions Governing Public Choice in Seventeenth-Century England." *The Journal of Economic History* 49 (4): 803–832.

Norton, Philip. 2015. "Parliament: A New Assertiveness?" In *The Changing Constitution*, edited by Jeffrey L. Jowell, Dawn Oliver, and Colm O'Cinneide, 171–193. Oxford: Oxford University Press.

Nasar, Sylvia. 2012. *Grand Pursuit: The Story of Economic Genius*. New York: Simon & Schuster.

O'Brien, Patrick. 2001. "Fiscal Exceptionalism: Great Britain and Its European Rivals: From Civil War to Triumph at Trafalgar and Waterloo." Economic History Working Papers 22369.

Offer, Avner. 1981. *Property and Politics 1870–1914: Landownership, Law, Ideology and Urban Development in England*. Cambridge: Cambridge University Press.

Oliver, Christine. 1996. "The Institutional Embeddedness of Economic Activity." *Advances in Strategic Management* 13: 163–186.

Park, Gene. 2010. "The Politics of Budgeting in Japan: How Much Do Institutions Matter?" *Asian Survey* 50 (5): 965–989. https://doi.org/10.1525/as.2010.50.5.965.

Paterson, David. 2001. *Liberalism and Conservatism, 1846–1905.* Oxford: Heinemann.

Pearce, Edward. 2008. *Great Man: Sir Robert Walpole-Scoundrel, Genius and Britain's First Prime Minister*. London: Random House.

Prabhakar, Rajiv. 2003. "Stakeholding and New Labour." In *Stakeholding and New Labour*, 119–154. Berlin: Springer.

Reisman, David A. 2005. *Democracy and Exchange: Schumpeter, Galbraith, TH Marshall, Titmuss and Adam Smith.* Cheltenham: Edward Elgar Publishing.

Reitan, Earl A. 1966. "IV. The Civil List in Eighteenth-Century British Politics: Parliamentary Supremacy Versus the Independence of the Crown." *The Historical Journal* 9 (3): 318–337.

Reksulak, Michael, Laura Razzolini, and William F. Shughart. 2013. *The Elgar Companion to Public Choice*. Cheltenham: Edward Elgar Publishing.

Ross, Michael L. 2004. "Does Taxation Lead to Representation?" *British Journal of Political Science* 34 (2): 229–249.

Russell, Conrad. 1962. "The Ship Money Judgments of Bramston and Davenport." *The English Historical Review* 77 (303): 312–318.

Sabine, B. E. V. 2013. *History of Income Tax: The Development of Income Tax from Its Beginning in 1799 to the Present Day Related to the Social, Economic and Political History of the Period*. London: Routledge.

Sauvain, Philip. 1996. *Key Themes of the Twentieth Century.* Cheltenham: Nelson Thornes.

Schumpeter, Joseph A. 1918. "The Crisis of the Tax State." In *The Economics and Sociology of Capitalism*, edited by Richard Swedberg. Princeton, NJ: Princeton University Press (1991).

Schumpeter, Joseph Alois. 1946. John Maynard Keynes 1883–1946. *American Economic Review* 36(4): 495–518.

Scotti, Paschal. 2006. *Out of Due Time: Wilfrid Ward and the Dublin Review*. Washington: The Catholic University of America Press.

Seligman, E. R. A. 1912. "Recent Tax Reforms Abroad." *Political Science Quartlery* 27 (3): 454–469.

St John, Ian. 2010. *Gladstone and the Logic of Victorian Politics*. London: Anthem Press.

Steinbach, Susie L. 2012. *Understanding the Victorians: Politics, Culture and Society in Nineteenth-Century Britain*. London: Routledge.

Steinmo, Sven. 1996. *Taxation and Democracy: Swedish, British, and American Approaches to Financing the Modern State*. New Haven: Yale University Press.

Stolper, Wolfgang F. 2019. *Joseph Alois Schumpeter: The Public Life of a Private Man*. Vol. 5257. Princeton: Princeton University Press.

Sunkin, Maurice. 1994. "Judicialization of Politics in the United Kingdom." *International Political Science Review/Revue internationale de science politique* 15 (2): 125–133.

Taylor, Miles, and Michael Wolff. 2004. *The Victorians Since 1901: Histories, Representations and Revisions*. New York: Manchester University Press.

Toma, Eugenia Froedge. 1991. "Congressional Influence and the Supreme Court: The Budget as a Signaling Device." *The Journal of Legal Studies* 20 (1): 131–146.

Treasury, H. M. 2007. *Meeting the Aspirations of the British People: 2007 Pre-Budget Report and Comprehensive Spending Review*. Vol. 7227. London: The Stationery Office.

Zander, Michael. 1998. "The Government's Plans on Legal Aid and Conditional Fees." *Modern Law Review* 61 (4): 538–550.

4

Budgets: Process, Rights, and Institutions

Process: Twenty-First-Century Legislative Initiatives

One of the attractions of Goldscheid's, and Schumpeter's, analyses for socio-legal scholars has been that, once "pillage and plunder" were abandoned in favour of tax collection, the fundamental elements of societies, governments and markets began to emerge (Van Der Veen 2003: 353). Thus, as the roots of modern governmental conflict and decision-making can be traced back to the inception of a country's tax system, many of Schumpeter's studies start in the early seventeenth century (McClure 2003: 145). This provided the inspiration for the previous chapter, which aimed to provide a brief tour of the foundations of the UK's fiscal state. The innovation of the *new* fiscal sociology has been to include socio-legal, constitutional, and other influences upon public finance (ibid.) and to expand the focus from seventeenth-century laws, to the laws of today.

If there has been one theme of the post-2008 era in the UK, and the EU, it has been the introduction of new legislative initiatives to control the accumulation of governmental debt. Prosser explains that efforts to introduce forms of budget restraint in the UK initially were approached through soft law (2014: 17). Balanced budget rules were the next step. After the financial crash of 2008, such rules increased in earnest. This chapter will consider the balanced budget legislation that was introduced, first by the Labour government and then by the Coalition, in the immediate aftermath of the crisis. In this review, the analyses of this legislation offered by Prosser will receive particular attention.

A. Mumford, *Fiscal Sociology at the Centenary*, Palgrave Socio-Legal Studies,
https://doi.org/10.1007/978-3-030-27496-2_4

The primary law in this area in the UK is the Budget Responsibility and National Audit Act (2011) c.4 (BRNA 2011). The clear message of this legislation is that debt, for governments, is problematic. An operating assumption is that, without this legislation, there is insufficient incentive for Parliament to resist the temptation to continue to fund its operations through the acquisition of more debt. Thus, the Act sets out, *inter alia*, national audit functions (Sch.3, para. 3) and the parameters of the Public Accounts Commission (Pt 2, s.25). The National Audit Office is prescribed to run in an efficient and "cost-efficient" manner (Government's Explanatory Notes to the Bill for this Act, s.21). Significant provisions include: the requirement that the Treasury publish a Charter for Budget Responsibility, to be laid before Parliament; the requirement that the government should pursue fiscal responsibility; and, targets and reporting requirements for the management of debt (Prosser 2016: 119).

The (Coalition government's) BRNA was *preceded* by the (Labour government's) Fiscal Responsibility Act (Act 2010) (FRA 2010), which had prescribed that, over the period of the six years following 2010, public borrowing would be halved by 2014, and then fixed to continue steadily to reduce from the financial year 2015–2016, onwards (ibid.: 118–119). The FRA did not survive the Coalition government, which swiftly repealed it and replaced it with BRNA 2011 (id.: 119). Prosser suggested that it may be possible to draw analogies between the FRA 2010, and efforts by countries such as Germany and Italy to "constitutionalise austerity" during this early post-crash era (id.). Alternatively, it may be far more likely that the FRA 2010 represented more of a "merely symbolic" effort by the Labour government to reassure a "jittery" market (id.).

Prosser acknowledges that relying on the process of the "constitutionalisation" of balanced budget rules as a tool for the implementation of austerity policies might, at first glance, appear simply to be a way to ensure that austerity policies survive (id.). The danger arises when there are attempts to view such rules as "constitutional norms," as this can cause "considerable problems" (id.). As Prosser explains: first, there are difficulties with democratic legitimacy (id.). Balanced budget legislation requires a fiction of "consensus on economic management [which] is inconceivable in a democracy" (id.). Secondly, there may be problems with the UK, especially, adopting what appears to be a trend in other countries, yet ignoring obvious differences between them. The UK is neither a Eurozone country (and such rules might appear to be the price required for Eurozone countries),[1] nor does it

[1]In November 2018, the possibility of a Eurozone budget within the framework of the European Union was explored, https://www.consilium.europa.eu/media/37011/proposal-on-the-architecture-of-a-eurozone-budget.pdf (last accessed 30 April 2019). The legal bases for the proposal were Articles 175(3), 173, and 136 TFEU.

have a written constitution (and, thus, Prosser explains, the sovereignty of Parliament is particularly important) (id.).

Prosser also suggests that a country's membership in the Eurozone does not insulate the existence of such rules from further criticism. For example, Prosser argues that the Eurozone is dominated by Germany, which has "a particularly strong view of what constitutes a legitimate economic constitution" (id.). Additionally, whilst Eurozone membership might appear to justify the implementation of relevant legislation implementing austerity, changing the constitutions of these countries, Prosser warns, could be viewed both as unnecessary, and overreaching (id.).

These criticisms apply to the constitutional changes in these countries only, of course, if the changes are meant to be taken seriously. There are arguments that these changes are, as with Prosser's description of the UK's FRA 2010, simply "symbolic", and meant to calm jittery markets (id.: 120–121). Symbolic provisions in constitutions, he explains, are not uncommon (id.). Nonetheless, Prosser warns that symbolism in constitutions (he provides the example of "the provision in the Irish constitution that it is in the name of the Holy Trinity") should not be conflated with cynical efforts to stymy democratic debate by *equating* one position in that debate with a *constitutional norm* (id.). At the least, he cautions, this is likely to lead to "creative accounting" by governments hoping to avoid the reach of the provisions (id.).

Does it inevitably follow, however, that the constitutions should remain silent on balanced budgets, at least as a point of principle? Certainly not, he explains, given the wide prevalence of such rules across a variety of countries (id.). Prosser's point is that such provisions cannot escape the criticism that they may be undemocratic; and, when dismissed as simply symbolic, they then "devalue constitutional currency" whilst risking, through the exigencies of creative accounting, unintended impacts (id.: 128–129).

A Spending Review (discussed further in Chapter 6) also was introduced by the Coalition government in 2010, which Prosser argues in many ways was a more significant development than the BRNA 2010 (2011). This process addressed not only the amount of funding that would be available for government agencies, but also the fundamental function and structure of the public sector (ibid.: 597). The process was destined to be impactful, given its proximity to the seismic economic shifts that accompanied the introduction of the Coalition government (id.: 615). Although the Coalition government, by virtue of the election, had a clear democratic mandate to provide leadership on some forms of change, Prosser cautions that it did not follow that the election provided an all-encompassing mandate for every decision taken by that government; and, indeed, through balanced budget rules, by future governments (id.). Prosser, writing in 2011, suggested that "[t]he task, then, is to find ways of opening up the process both through improved provision of information and through increased opportunities for reflexive deliberation as the process unfolds" (id.).

Prosser advocates for the preservation of democratic processes. He implicitly warns against dismissing rules as simply about fiscal good sense, and thus unworthy of debate, democratic review, or probing for implicit normative values. It is tempting to speculate about the response of the author of *The Crisis of the Tax State* to legislation like BRNA 2011 and FRA 2010. Would Schumpeter have bristled against legislation which in theory could stifle innovative responses to economic challenges? The Fiscal Responsibility Act required halving of public borrowing by 2014 (Prosser 2014: 17, citing Fiscal Responsibility Act 2010 c.3). If Schumpeter had felt that more debt were necessary, it is difficult to imagine that he would have approved of legislation which attempted to prevent that.

Would such legislation really have effected a block? A clue is provided by Prosser's analysis of the Budget Responsibility Act (Budget Responsibility and National Audit Act 2011 c.4) and its focus upon the formation of a Charter for Budget Responsibility, in which the Treasury's objectives for fiscal policy should be set out, alongside the means by which the objectives will be attained (referred to in the legislation as "the fiscal mandate") (ibid., s.(1), (2)(b)). Prosser predicted that the actual impact of the 2011 legislation on budgeting processes—for example, on whether a budget must be "balanced"—would have "little binding force" (2014: 243). In this, the BRNA followed the example of the FRA, the binding power of which was so limited, Prosser warned, as to be "ridiculed" (ibid.).

The Office for Budget Responsibility

The Budget Responsibility and National Audit Act 2011 (Commencement No. 1) Order 2011 establishes the Office for Budget Responsibility (OBR) and required the Treasury to produce a Charter for Budget Responsibility. It also reorganised the National Audit Office. Its primary responsibility is to "examine and report on the sustainability of public finances" (BRNA 2011, s4(1)). The reporting requirement includes a specification that the OBR should always make clear its "assumptions", and the "risks" which are considered to be "relevant" (BRNA 2011, s6(a)(b)) (for a discussion of auditing under the previous régime, see White and Hollingsworth 1999).

The OBR is designed to be an independent, yet accountable, body. The legislation affords it "complete discretion in the performance of its duty", which must be discharged "objectively, transparently and impartially" (BRNA 2011, (1)(2)). The Government may develop policies to which, if relevant, the OBR is required to "have regard", but, clearly as part of an effort to preserve its independence, the OBR "may not consider what the effect of any alternative policies may be" (BRNA 2011, (3)(a)(b)).

The Charter for Budget Responsibility, produced under the authority of the legislation, explains that "[t]he OBR is designed to address past weaknesses in the credibility of economic and fiscal forecasting and, consequently, fiscal policy" (HM Treasury, 'Charter for Budget Responsibility; Presented to Parliament pursuant to Section 1 of the Budget Responsibility and National Audit Act 2011' [April 2011], 5). The Charter is produced by the Treasury, and "relate[s] to the formulation and implementation of fiscal policy for the management of the National Debt" (BRNA 2011, 1(1)). The Charter specifies: the Treasury's "objectives in relation to fiscal policy and policy for the management of the National Debt"; the "fiscal mandate," or the way in which these goals will be achieved; and, the coverage of the Financial Statement and Budget Report (BRNA 2011, 1 (2)(a)-(c)) The National Audit Office also is given the obligation to "carry out its functions efficiently and cost-effectively" (BRNA 2011, s21).

One illustrative function of the OBR has been to produce analyses of spending called "welfare trend reports" (15 January 2019). They have produced two, and the theme of both is disability benefits (ibid.: 1). The purpose of the second was to: trace the development of disability benefit over fifty years; consider modern developments in the benefit; and, evaluate the impact of this benefit on public finances (id.). The ability of the OBR to forecast spending trends accurately was a particular focus of these reports. Risks to the accuracy of the forecasts included the quality of the information available as to the likely duration of awards, and, interestingly, legal challenges (id.: 7). Once the availability of a benefit is protected in law, it then becomes difficult to predict whether "future challenges to the Government's interpretation of benefits legislation could expand coverage of the system further" (id.). Protections of rights within law, thus, are presented by the OBR as a risk both to financial stability, and to its ability to offer economic predictions.

"Extra costs" of the system have proved especially difficult to forecast in this process. For example, after Disability Living Allowance was introduced in 1992, its coverage was subject to a policy of expansion—which also meant that the caseload of public sector and healthcare workers became higher, much more so than had been expected (id.: 13). Correspondingly, when Personal Independence Payments were introduced in 2013, the explicit purpose was to significantly reduce spending (id.). Yet, its implementation was delayed, and costs that had been estimated to reduce spending by twenty per cent, actually *increased* by between fifteen to twenty per cent (id.). This, and other factors, led the OBR to conclude that predictions of savings after the introduction of reforms are not only difficult to predict with accuracy, but, possibly, burdened by "the risk of optimism bias" (id.: 14). The challenge in fashioning accurate forecasts largely involves the "[d]istinguishing [of] news from noise" (id.: 14). Put simply, spending cuts *do not* simply lead to savings, and, in fact, may leave the availability of (newly restricted) resources in a more perilous state than if the reform had not been implemented.

Brexit may prove to be the most significant challenge faced by the OBR. The period preceding the deadline of 29 March 2019, after which withdrawal of the UK from the EU would have become automatic under the operation of article fifty TFEU. For example, a Budget announcement was made with one month's notice on 26 September 2018 (Budget, 12 February 2019: 4). The problem was that a Memorandum of Understanding between the OBR and HM Treasury stated that the OBR should be given at least ten weeks' notice before it would be required to produce economic forecasts (ibid.). The Budget Responsibility Committee complained of "repeated failures to observe the [agreed] forecast timetable" (id.: 6). Particular challenges arose in respect of the introduction of Universal Credit (*per* Welfare Reform Act 2012, c.5). Delays by the Treasury in the provision of information relating to costings to the OBR meant that only "uncertified estimates" were possible (id.). The overall challenges faced by the OBR during this pre-Brexit period, in the view of its Chairman Robert Chote, were unprecedented (id.). Nonetheless, the House of Commons Treasury Committee suggested that the Treasury had "no excuse" (id.). It urged that greater attention should be paid to timetabling, and that, in future, the impact of "global developments" should be taken into account (id.: 7).

For example, in 2015, the OBR had predicted that the introduction of Universal Credit (discussed further in Chapter 7) would save the public purse £3.2 billion by 2019–2020 (McKeever 2016: 15, citing OBR 2015). These predictions largely have been discredited, whilst concerns of almost immediate financial hardship for large numbers of vulnerable persons following the commencement of the (much delayed) reform process (McKeever 2016: 16) have proved accurate. Amongst the challenges was an adjustment in November 2011 to the unemployment figures it had forecast in 2010—a further half million were predicted to be unemployed (Puttick 2012: 124). The introduction of Universal Credit was not meant simply to operate as a savings device, however, but was also designed to impart the skills of work to persons who were deemed to need this—part of what

Puttick describes as the "wage-work-welfare bargain" (ibid.: 131). However, "[a]t a time of retrenchment and cutbacks", Puttick warned, "the 'welfare' component in the wage-work-welfare bargain is clearly under pressure" (id.).

Although the OBR was introduced after the general election in 2010, the Conservatives conceived it in shadow form in 2009.[2] Back in 2009, the objective was to enable the Conservatives to release forecasts in tandem with emergency budgets, were they to win the election.[3] Sir Alan Budd, an ex-Treasury adviser, who took the helm in 2009, said then that its purpose was to "keep the chancellor's feet to the fire".[4]

The creation of the OBR was welcomed by the International Monetary Fund, which also interestingly expressed the hope that it would be the first step towards "…the eventual adoption of a new rule-based framework" (IMF 2010). "Very unusually", as Prosser noted, appointments to the OBR may be vetoed by the Treasury Select Committee (2014: 40). At the time of its introduction, France, Slovakia and Greece were considering the possibility of introducing a similar office, although they all had plans that were described as "at the design stage" (Mihályi 2010: 325). By contrast, in the UK "[t]he Office was in fact introduced by the new government immediately after the elections, with the objective of promoting transparency in government finances—to be accomplished in part by taking over from the Treasury responsibility for macro-fiscal projections" (ibid.). It also has the role of "confirm[ing] the likelihood that the Government's policy is consistent with achieving the forward-looking mandate set by the Chancellor" (Hagemann 2010: 19).

The OBR has operated during a period of significant budgetary reform in the UK, which was predicted to impact the production of tax legislation, in particular (Sanger 2018). For example, in December 2017, HM Treasury announced its transition to a single budget process in the autumn (ibid.: 168, citing HM Treasury 6 December 2017). This change followed the recommendations of the IMF, the Institute for Fiscal Studies and the Chartered Institute of Taxation (ibid.). This meant that significant announcements regarding changes in taxation policy would occur only once a year (id.). Moving to a single event had been the ambition of both Gordon Brown and George Osborne (id.). It has been described as carrying the promise of fostering a more *sustainable* system, with fewer changes of course (id.).

[2] http://news.bbc.co.uk/1/hi/uk_politics/8401517.stm (last accessed 30 April 2019).

[3] Ibid.

[4] Id.

The criteria of sustainability, and transparency, are considered in more detail here, and in the following sections.

Transparency is a particular objective of the OBR and the Office of Tax Simplification (OTS), which commenced operation in 2010 in the UK. It has the advancement of simplified tax legislation as a clear mandate and aims to provide advice to the government on this issue.[5] Sanger predicts that history will show that the change in the tax policy-making process within the Treasury will be most impactful. Less change, simply, will mean more stability. He also suggests that including the Office for Tax Simplification in the consultation process, as well as engaging the Office of Parliamentary Counsel at an earlier stage, would combine to improve the process (id.: 175). The potential of interaction between the OBR and the OTS is important. Although the availability of advance scrutiny of budgets is increasing, the role of Parliament in this remains limited (Brazier 2007). The interaction of the OBR, with scrutiny by the Equality and Human Rights Commission, and the Spending Reviews are significant, Prosser suggests, but in a limited way (ibid.).

Budgets as "Transparent"

The next sections, briefly, now will consider the terms transparency and sustainability, and their implications for budgeting control. The UK has a long history of shrouding budgets in secrecy before the Chancellor presents them to Parliament, although, in practice, many important changes to taxation law have been subject to pre-Budget consultation (Brazier 2007: 250). Public interest in enhancing 'fiscal transparency' peaked perhaps towards the end of the 1990s (Heald 2003: 723). Heald suggests that this may have been because the Institute for Fiscal Studies, the *Financial Times* and political opponents all attacked the Labour government for "insincere" portrayals of "…'increases' in the 'burden' of public expenditure and taxation" (ibid: 724). This suggestion places the Conservative party's commitment to the introduction of the OBR in a clearer light. The argument appears to have been that Labour had increased public expenditure irresponsibly, and that the establishment of a government office committed to transparency would serve to redress this.

There is a conflicting literature on transparency. On the one hand, higher levels of budget transparency have been linked, explicitly, to "better economic and social outcomes" (Bastida and Benito 2007: 667). Thus, for

[5] http://taxsimplificationblog.wordpress.com/about/ (last accessed 30 April 2019).

example, parties that are running for re-election in countries in which the mechanisms of the state operate at a high level of transparency frequently will be careful not to run deficits in the run-up to the election (Alt and Lassen 2006: 546). On the other hand, Philipps and Stewart emphasise that “fiscal transparency is not a neutral public good, but one that is open to a range of definitions that serve different interests” (2009: 799). From the perspective of governments, fiscal transparency tends to mean exercising fiscal “discipline”, and providing information to banks and oversight agencies (ibid., where they address the challenge of capturing the transparency debate in a way that will benefit the needs of developing economies, “…for which issues of poverty reduction and sovereignty are most pressing”.).

Budgets as “Sustainable”

In twenty-first century, the emphasis appears to rest on crafting budgeting as a sustainable process (Posner 2009: 236). What does this mean? According to Rubin, sustainable budgeting should “provide transparency and accountability, predictability, prioritization and balance” (2009: 245). Viewed from the perspective of these objectives, Rubin concludes that the budgeting process (speaking of the USA) is “unravelling”, largely because of the weight of deficits (ibid.).

“Sustainability” means viewing budgets within the context of a “shift of our societies to more market-oriented, privatised governance arrangements” (Bakker 2006: 2). How is this achieved? One argument is that focusing on the importance of separation of powers plays a significant role in controlling the propensity of ruling political parties to manipulate whatever legislative constraints exist (Saporiti and Streb 2008) and, for example, finding ways to increase deficits for a short-term political boost, in a cycle that forever delays the problem of debt to be addressed by someone else, in the future.

Thus, one study suggests that, ideally, the budgeting process should be divided into two stages, but, at each stage, two, separate “policy-making bodies” should be required to agree (Persson et al. 1997: 1166). One of the two bodies should then have power over the overall size of the budget, whilst the other should then have power over its “composition” (ibid.). Neither body should be able to act on either of these aspects of the budget without the assent of the other (id.).

Another argument suggests that, in the pursuit of sustainability, careful choice of the *target* of budgets also is significant. On this point, von Hagen and Harden argued that because “public spending tends to be targeted at individual groups in society while the tax burden is widely dispersed [,] …a bias towards excessive expenditures and debt" results (Von Hagen and Harden 1995: 771). Thus, targeting wider groups, as often as possible, is an effective way of avoiding the undesirable outcome of deficit proliferation.

The goal of "sustainability," at least in the literature covered in the brief review above, is quite narrow: the prevention and amelioration of deficits. Schumpeter's ambitions with fiscal sociology appear to be much broader than that. The evolution of the new fiscal sociology, also, is not restricted solely to the tackling of deficits. Perhaps focusing on the process in a different way—not as an event which begins, and ends with consequences; but, rather, as an ongoing discussion, perhaps even as an institution—is closer to the fiscal sociological project.

The process by which the UK government produces its budget also operates within the context of EU legislation. The next section, briefly, will introduce this context, with a particular focus on budgeting in the aftermath of the 2008 financial crisis. The motivation behind this focus is to trace the concept of sustainability, particularly, at a supranational level. Attention will be paid to tensions between (what could be described as) governance by economic models, and rule of law concerns.

The EU Context

The composition and size of its budget have been identified as one of the key factors behind the emergence of the EU governance structures as a primary agent of legal change in member states (Williams 2010: 672). From a fiscal sociological perspective, the task is to identify important historical moments. The financial crash of 2008 certainly qualifies as that. Additionally, this section proposes that another period merits brief acknowledgement: the period surrounding the Santer Commission of 1999.

The EU budget was the locus of the events behind the mass resignation of the Santer Commission on 15 March 1999 (Tomkins 1999). Tomkins relates that a Committee of Independent Experts was established by the European Parliament in January 1999, partially in response to allegations of fraud from the UK Conservative MEP, Edward McMillan-Scott (ibid.: 744). Concerns also had been raised by some audits which had revealed high levels of irregularities (id.: 745–746). In the end, the reports of the Committee of Independent Experts led to the resignations, and to calls for a change in the budgetary culture of the European Commission (id.: 748).

The resignations were preceded by the initiation of a process, in 1995, by Commissioner Santer, that was intended to "improve' the budgetary culture of the Commission (Cini 2000: 3). With the shock of the resignations in 1999, this process largely was forgotten and became "little more than a footnote" to reform processes that began in earnest at the turn of the current century (ibid.). The reason why this footnote deserves mention here is that it provided the basis of an institutional study, "[i]nformed by theories of organization and more specifically by the literature on organizational culture" (id.: 22). The study concluded that the failure of the reform process, which might well have had merit, could be traced to Santer's failure to gain credibility as a "change initiator" (id.). The leader of the process, thus, was more significant than the process itself. The value and challenges of institutional analyses of budgeting are explored in more detail in Chapter 5, *supra*.

A far greater challenge to the EU than those experienced with the Santer Commission crisis occurred in the aftermath of the 2008 economic crash. In the words of the European Commission, "[o]ne way of investigating the balance between ideology and pragmatism is to examine responses to difficulties."[6] A brief consideration of the struggle between law, and economies, occasioned by this crisis follows.

There are a number of provisions within the EU founding treaties that seek to control the capacity of member states to run deficits on a long-term basis. Gott argued that, if attempting to identify the most significant provision, then Article 126 TFEU—which empowers the Commission to

> …monitor the development of the budgetary situation and of the stock of government debt in the Member States with a view to identifying gross errors. In particular it shall examine compliance with budgetary discipline… (Article 126(2) TFEU)

would qualify. As Gott explains,

> Article 126… activates a set of EU powers in the specific instance of member states running excessive—that is, dangerous—budget deficits. But beyond the power to make recommendations to the member state, Article 126 only provides for the power of four enforcement mechanisms: requiring additional disclosures prior to bond issuances; recommending that a European investment bank reconsider lending to the member; requiring a deposit of sufficient collateral from the member; and imposing fines. (2011: 220)

[6] https://www.consilium.europa.eu/en/press/press-releases/2016/07/12/portugal-spain-excessive-deficit/ (last accessed 30 April 2019).

For Eurozone members, the Commission has greater powers; in particular, via article 136 TFEU. As Gott explains,

> [u]nlike Article 126, Article 136 explicitly applies to all member states whose currency is the euro and seems to provide for a broader power to monitor budgetary matters of the member states. Specifically, the TFEU requires the EU Council 'to strengthen the coordination and surveillance of their budgetary discipline.' (ibid.: citing TFEU, Article 136, s.1, cl(a).)

After the economic crash of 2008, the EU deployed both of these articles in an effort to compel member states with significant deficits to control their spending. The story of Portugal provides a useful illustration.

By way of background, Nogueira described the 2012 Portuguese State Budget as "… most likely, the most ruthless piece of legislation approved in the roughly 40 years of Portugal's democracy" (2012: 127). Mourning the likely impact of this budget, Nogueira wrote:

> [r]ecently, *'fado'* was recognized by UNESCO as constituting intangible world cultural heritage. The feelings embedded in this type of song are, surprisingly, quite similar to those enshrined in the current budget, including nostalgia for a once glorious past, the pain and anguish of the current state of affairs and an unbridled belief in a better tomorrow. (ibid.)

The budget included significant cuts to wages for public sector workers, and provision of services in welfare, health and education.[7] The challenge was that, even as the budget was passed, the measures were deemed insufficient to stop the country from falling into an even deeper recession, given the likely increase in the rate of unemployment from 12.9 to 13.6%.[8]

These measures apparently were insufficient, as the Council ruled on 12 July 2016 that Portugal (along with Spain) had taken inadequate efforts to correct its "excessive deficit".[9] In particular, Portugal had not reduced its deficits to under 3% of GDP, which is the EU's "reference value" (ibid.). Additionally, its "fiscal effort", apparently despite the 'painful' 2012 budget, was found to fall "significantly short" of what the EU had recommended (id.). Thus, the Council commenced its "excessive deficit procedure", and

[7] https://portuguese-american-journal.com/portuguese-lawmakers-approved-government-budget-for-2012-portugal/ (last accessed 30 April 2019).

[8] Ibid.

[9] https://www.consilium.europa.eu/en/press/press-releases/2016/07/12-portugal-spain-excessive-deficit/ (last accessed 30 April 2019).

triggered sanctions under s.126(8) TFEU (id.). These fines were cancelled, however, by 27 July of that year.[10] Portugal (and Spain) had been permitted to submit “reasoned requests” under Article 126(8) TFEU which could support the cancellation of the fine, which both countries did do (successfully).

The situation in the EU was grave. It was only a matter of weeks after the signing of the Lisbon Treaty in 2010 that the full scale of the debt crisis in some European member states became apparent (Ruffert 2011: 1777). Two discourses emerged: either that the entire “reform effort” of the Lisbon Treaty was at risk; or, that the countries with the problems could be described as “‘peripheral,’… a most polemic and pejorative epithet” (ibid.). Ruffert issued an impassioned call for the involvement of lawyers in the next steps taken, as compared with “financial market experts” (id.: 1777–1778).

There were several reasons why Ruffert believed that legal scholars needed to be involved. First, the bailout packages constructed for Greece, Ireland and Portugal were, he argued, in breach of Article 125(1) TFEU, which provides that

> [t]he Union shall not be liable for or assume the commitments of central Governments…of any Member State,… A Member State shall not be liable for or assume the commiments of central governments…..of another Member State… (id.: 1785)

Ruffert considered arguments advanced within what he described as the largely German-language literature (id.: 1785, fn. 42) that there was a distinction between automatically assuming liability, and “deliberately” (or voluntarily) assuming liability, and dismissed both as not “really convincing” (id.: 1785). He explained that although there is authority under Article 122(2) TFEU to assist Member States financially where there are “natural disasters or exceptional circumstances”, the applicability of this clause “was not even considered” (id.: 1787). The reason for this, he implies, is that lawyers were not involved in the process, and thus ensuring a solid legal basis for action was not a priority. He continues to explain that there are other provisions of TFEU which would have forbidden the bailouts, and, “[i]n a European Union based on constitutional foundations, this is not a reassuring perspective” (id.: 1788).

Ruffert then proceeded to consider Article 136(3) TFEU, which was new to the Lisbon Treaty, as part of supporting the European Single Market (id.).

[10] http://europa.eu/rapid/press-release_IP-16-2625_en.htm (last accessed 30 April 2019).

He emphasised that Lisbon had not increased the competences of the EU; and, as such, it is at best "questionable" to suggest that the creation of the European Single Market created new emergency powers outside of the existing constitutional framework of European law (id.: 1789). Of course, the argument that it is not possible to have a customs union without a fiscal union is pervasive in this analysis—but, Ruffert emphasises, "[t]his submission is one of economics, not of law" (id.: 1793).

What, then, is the place of law here? Article 121 TFEU, which is designed to exert some national budgetary control and dissuade Member States from running dangerous deficits, apparently had failed to prevent the crisis (id.: 1798). Article 126, under the authority of which the fines had been proposed for Portugal and Spain, apparently also had failed to help (id.). Ruffert argued that the combination of these factors meant that "core principles of European law are at stake", and yet "options for scholarly legal approaches appear to be scarce" (id.: 1804). With clear echoes of Prosser, Ruffert argued that the development of "economic governance" was important, but it must occur on the basis of the rule of law: "[t]he European Union is a Union based on the rule of law, not of power (claimed by whomsoever), and this must also hold in times of distress" (id.: 1805; and, *inter alia*, Kilpatrick 2015, arguing that the rule of law had been ignored during the bailout in favour of of "managerialism").

What is the origin of the criticisms that have been levied against both the UK and the EU since the financial crash, suggesting that they have failed to follow principles of rule of law, in favour of economic modelling? To answer this question, in the next and final sections of this chapter, the focus will shift from the EU to the USA. The section will begin with a brief review of the important differences in budgeting practices between the UK and the USA. It then will proceed to consider two key concepts—tax expenditures, and fiscal federalism—which have proved very influential in budgeting practice in the UK and the EU.

Comparative Perspective: The USA

Prosser warned that "[f]or other possibilities for reform, it is tempting to use comparative models, but this is potentially dangerous given the differences in constitutional arrangements elsewhere, especially in relation the USA where Congressional committees have much greater direct control over spending" (2011: 614). Indeed there are several important differences between the UK and US approaches to the powers of the executive when it comes to budgeting, perhaps the most significant of which is the US context of separation of powers.

In Chapter 6, McCaffery's proposal that the USA, and other post-colonial countries, received its normative values in taxation from the UK, particularly in the context of the tax system's treatment of women, is addressed in detail. In the current section, the potential contribution *of the USA* to budgeting in the UK is considered. The proposal is that, in two key areas—tax expenditure analysis, and fiscal federalism—the USA has contributed key ideas to the UK, and beyond. Before these concepts are considered, a brief, fiscal sociological review of budgeting in the USA follows.

In the US model, a system of checks and balances between the different branches of government is established under Articles I and II of the US Constitution. By contrast, in the view of a Harvard Law School study of the UK budget process, the most striking aspect of the UK procedure is the power of the Chancellor of the Exchequer (Young 2006: 2). As the report marvels, "the British Parliament has no ways and means committees, no budget committees, no appropriations committees" (ibid.: 3). It speculates that the reason for this is that the focus of British history has been slowly but deliberately to deprive the monarch of the power to budget. As this has occurred, a tendency to "highly centralize" the power to budget within Parliament has developed. There is no tax committee, the report observes, to which the Chancellor must report before setting tax rates (id.). Thus, "[i]n essence, the Chancellor is a "one-man Ways & Means Committee" (id.). The US Ways and Means Committee, in essence, is the primary committee for writing tax legislation within the US House of Representatives. The Committee has jurisdiction over all federal taxation, and a range of benefit programmes, including Social Security and Medicare.[11]

This is not the only way in which the US budgetary structure differs from the UK. Perhaps most notably, in the USA, government "shutdowns" stemming from budgeting crises have become a commonplace feature of US politics in the modern era. The following description of a shutdown in 2011 highlights the sorts of uncertainties that tend to precede such an event:

> The tense weeks leading up to the August 2, 2011 deadline for raising the federal debt ceiling witnessed a protracted partisan standoff with the potential for government default hanging in the balance. Meanwhile, legal scholars and public officials debated whether President Obama could invoke constitutional

[11] https://waysandmeans.house.gov/about (last accessed 30 April 2019).

> authority to raise the debt ceiling unilaterally. Ultimately the President and leaders of Congress averted the impending economic and constitutional crisis by reaching a deal, the Budget Control Act of 2011… In exchange for a promise to hold a vote on a constitutional amendment requiring a balanced budget and to reduce the federal budget deficit by $2.4 trillion over a decade, congressional Republicans agreed to delegate authority to the President to raise the debt ceiling. (Note 2011: 867)

Such standoffs technically are caused by a funding gap, arising from a failure of the government to pass legislation which will fund key federal agencies for the next fiscal year. Shutdowns have occurred since, in 1980, an interpretation of the 1884 Antideficiency Act (Pub. L. 97-98, 96 Stat. 923) led to the conclusion that the government could elect to cease operating all non-essential operations when such impasses occur.

The background to this decision was the fact that, in 1980, the US federal government operated under "a mosaic of at least thirty laws and dozens of sets of regulations governing and limiting the expenditure of funds by the executive branch" (Fenster and Volz 1979: 156). Nonetheless, all of these restrictions tended to be ignored "when exigencies demand[ed]", particularly by the Department of Defense (ibid.). Congress was perceived as uninterested in providing any checks on this; and, when it did set spending limits, the executive branch historically ignored them (id.). This was a pattern that could be traced back to the earliest days of the USA; and, thus, a regulatory "mosaic" had developed in (apparently, futile) response (id.). A point of crisis finally was reached in July 1978, when the US Navy (more or less unilaterally) had acquired obligations to build new ships that amounted to over $2 billion (id.). According to one account, this was an open yet embarrassing secret in Congress, who quietly agreed to defer the debt indefinitely, or at least until the idea of paying it became more "acceptable politically" (id.). The legislation which was invoked to provide restraint was the 1884 Antideficiency Act, 31 U.S.C. sec.665. At that point approaching one hundred years of age, scholars marvelled that its criminal sanctions had not once been invoked during that history (id.). In 1979, it was described as "more a matter of folklore than law" (id.). The time had come, advocates argued, to change that (id.).

The problem, they argued, was that spending power had become too removed from the branch of government in which the US Constitution explicitly invests it: Congress. Article I, sec.9, clause 7 of the Constitution provides that "No Money shall be drawn from the Treasury but in Consequence of Appropriations made by Law…" (id.). Thus, the Executive only may spend funds which already have been appropriated by Congress, and no more. The fact of the Antideficiency Act's existence was perceived, in 1979, as pointing to the likelihood that this fundamental restriction seldom was respected (id.: 159). Indeed, in 1809, the predecessor of 31 U.S.C. 628 emphasised that when the executive spent funds previously appropriated by Congress, it was required to do so in line with the intentions of Congress—spending the funds for other purposes was not permitted (id.: 159). The view was that the earlier, and current, versions of the act had failed to achieve its purposes, practically from the start (id.: 160). In 1880, just ten years after the first version of the act was passed, the Post Office advised Congress that it had spent its entire budget significantly in advance of the end of the fiscal year, and, as it could not breach its existing contracts, would require more funding (Manos 1993: 340). As Congress felt it could not suspend the nation's postal service until the next fiscal year, the funding was provided—and the Antideficiency Act was not invoked (ibid.). Problems like this continued, to the point that criminal sanctions were added in 1905—and, the Act remained unused (id.: 341). The Act also refers to a collection of statutes, all of which constrain the spending powers of the federal government where the unfunded yet identified need is not perceived to be urgent (id.).

This issue can be addressed from the opposite direction. In his first 2 years in office, President Reagan sought to reduce the national debt without raising taxes. He approached this through a practice known as impoundment, under which the President spends *less* than the amount of money appropriated by Congress (Neuren 1984: 693–694). This had been permitted since a 1950 amendment to the Antideficiency Act (ibid.: 699) although Thomas Jefferson has been credited as the first US president simply to refuse to spend the funds that Congress had appropriated (Pearcy 2015: 4343). The amendment had permitted the executive to take account of "other developments' after the appropriation of funds by Congress, which Neuren suggested implied a "limited" amount of discretion (1984: 699). Richard Nixon, however, apparently disagreed with this, and pushed for ever wider powers, leading to a showdown in 1974, when he announced that he would impound any appropriation that pushed the federal deficit over a debt ceiling he imposed (ibid.: 702). This led to the passage of the Impoundment Control Act of 1974, which was intended to prevent future impoundments, but actually was interpreted by President Ford was providing a "broad *grant* of executive impoundment authority" (id.: 705). The confusion continued, but, on the whole, the Act is viewed as having achieved its purpose by preventing future impoundments (Pearcy 2015: 43). Although some still argue that the power to impound, at least theoretically, persists, today, a president may request a *recission*, but needs Congress' approval for this (ibid.).

The closest equivalent to this dynamic in the UK is the Consolidated Fund, which is the government's bank account at the Bank of England. The account is called the "Account of HM Exchequer" (Brittain 1959). The Government requests to use money from this account via Consolidated Fund Bills, which then are authorised by Parliament. The Consolidated Fund is a product of legislation with "no common law or EU aspects" (ibid.). It was established by the Consolidated Fund Act 1816 c.98, and payments into it are controlled by The Exchequer and Audit Departments Act 1866 c.39 s.11 Many of the funds required from the Consolidated Fund are authorised permanently, and require no annual renewal from Parliament (Pollard et al. 2007: 258). The Consolidated Fund carries significance for taxation law as, before 1787, most taxes were hypothecated, and paid into separate funds (ibid.: 257). With the introduction of the Consolidated Fund, however, "this link was lost," and now all taxes were paid into this one, single fund (id.).

Although many of the American struggles between government branches for control of budgeting seemed to have played out centuries earlier in the UK, sometimes this is reversed. The budget control legislation introduced in the UK after the 2008 financial crisis carries significant parallels to legislation introduced decades *earlier* in the USA, when a number of legislative initiatives were introduced with the purpose of compelling US presidents to 'balance' the budget. Notable examples include the Budget and Accounting Act of 1921, and, as mentioned, the Congressional Budget and Impoundment Control Act of 1974.[12]

In the USA, calls to reform budgeting processes typically have emanated from struggles between the states and the federal government for power. These perennial battles appeared to reach apotheosis in the mid-1990s, with the advent of what Tannenwald described as the "devolution revolution", which involved a struggle by the states for "greater fiscal and regulatory authority" (1998: 23). The Balanced Budget Act of 1997 (P.L. 105-33 (US)) was part of this skirmish, but ultimately, Tannenwald suggests, "[l]ike

[12]On this act: Finley wrote that "[t]he procedure to insure a comparison of revenues and planned spending for an overall fiscal position can become, as it is intended to be, a means of a coordinated approach to national spending priorities. But there is no guarantee that this will happen. Rules can be waived and deadlines missed as time passes. The Act does not bind Congress to any position that cannot be changed by a majority" (1975: 277).

its predecessors, the …movement to restore powers to the states has yet to achieve its goals" (1998: 23).

Budgets also have provided presidents with important political tools. Famously, in what Jansson described as a "political[ly] ingenious" strategy, President Roosevelt used creative budgeting essentially to create the modern US welfare state in the midst of an economic depression (1993: 207). With clear echoes of Pitt's Sinking Fund, Roosevelt accomplished this through the creation of an emergency budget, through which he funnelled spending on programmes which he believed would create economic growth and improve social conditions (ibid.). When Congressmen complained that he was spending too much and the budget was unbalanced, he would cut spending in the 'main' budget (id.).

This was not completely unnoticed at the time, however, and in 1934, Sundelson issued warnings about the dangers of this strategy:

> It is not long before the legislator learns of the great ease with which revenues are balanced against only a limited portion of the expenditures. The temptation to arrive at a fiscal equilibrium by means of further expenditure segregation is very great, especially when the necessary medium is already present. The emergency budget, therefore, is in this respect a potential if not actual danger. The abandonment of the unified single budget constitutes in itself a menace, and the new procedure must be closely guarded; it is the point of introduction for the human element and is an open invitation to disordered finances. (68)

The use of emergency budgets to introduce fundamental reforms to the welfare state would appear to be a common tool. The Coalition government's emergency budget of 2010, for example, was introduced with the explicit purpose of reforming, or retracting, the size of the welfare state in the UK (Hemerijck et al. 2012: 62–64). Taylor-Gooby, however, have highlighted the "resilience of welfare states when confronting [this kind of] radical retrenchment" (ibid.: 77). New Zealand and Canada, he suggested, were examples of countries that had achieved lasting change; although, given what he identified as the "weaker pubic and political support" in the UK, as well as the "real costs" that would be experienced by people as a result of these changes, the prospects for durability, or sustainability, were predicted to be limited (id.). This will be explored in greater detail in Chapter 6.

Returning to the USA, the tale of the United States Bureau of the Budget, which ceased to exist on 1 July 1970, after 50 years of operation (Schick 1970) echoed the development of the UK's twenty-first century Office of

Budget Responsibility. The US Bureau of the Budget, which was established by the Budget and Accounting Act of 1921 (Pub. L. 67-13, Stat. 20) enjoyed a relatively positive reputation during its years of operation (ibid.). It ultimately was replaced however by a much less powerful (in terms of control over presidential functions) Office of Management and Budget (id.: 538). Today, the explicit purpose of the OMB is to "…serv[e] the President of the United States in overseeing the implementation of his vision across the Executive Branch."[13] Specifically, its "…mission is to assist the President in meeting his policy, budget, management and regulatory objectives and to fulfill the agency's statutory responsibilities."[14]

Two American Ideas: Tax Expenditures, and Fiscal Federalism

Two, specific ideas from the American budgeting process have carried weight in the UK. First, the concept of "tax expenditures" slowly has found its way into analysis of government spending.[15] Secondly, the concept of fiscal federalism has been embraced both by the UK, and supranational organisations. This section introduces both concepts. Their implications for the economic modelling/rule of law tensions explored earlier in this chapter are developed further in Chapters 5 through 7.

Tax Expenditures

A form of traditional 'tax policy' analysis, largely developed in the US literature, involves consideration of tax expenditures (Kantowicz 1985: 219). They have been defined as 'revenue losses arising from provisions of the federal tax laws that allow a special exclusion, exemption or deduction from gross income or that provide a special credit, a preferential rate of tax or a deferral of tax liability' (Kaye 1998: 178). The reason why what is effectively tax relief has been characterised in this way is that a government, rather than simply giving money to a citizen, instead has elected to use the tax system to provide this economic support. Thus, the distinction is that '[t]hese special

[13] https://www.whitehouse.gov/omb/ (last accessed 28 April 2019).

[14] Ibid.

[15] https://data.gov.uk/dataset/aa524493-4c60-4ea0-b116-afd9bb24e9f1/revenue-based-taxes-and-benefits-tax-expenditures-and-ready-reckoners (last accessed 30 April 2019).

provisions are not necessary to implement the income tax structure itself but are instead government expenditures made through the tax system, hence the name "tax expenditures"' (ibid.).

This literature on this more or less begins with Gerald Ford's 1975–1976 Budget, in which estimates of tax expenditures for that year were enumerated (Shoup 1975: 1329). Shoup celebrated this development by writing that "[r]arely, if ever, in budgetary history has a major innovation been so directly attributable to an idea formulated in is necessary detail by a particular individual who also possessed the energy and influence to translate it into action" (ibid.). He was referring not to President Ford, but to Stanley Surrey, whose book *Pathways to Tax Reform* played a major role in bringing this development forward (id., citing Surrey 1973).

The idea behind this kind of analysis is that the proliferation of tax expenditures is not surprising. The complexities of tax law can provide many layers of subterfuge for politicians keen to provide financial support believed to be necessary, and known to be unpopular. Tax expenditures can provide a form of direct action, without the political cost. The impact, or cost, of tax expenditures is, as Schurtz suggests, that '[e]xisting tax policy taken as a whole is inarticulable and theoretically incoherent, and thus, in effect, an obstacle to effective tax reform' (1986: 1665). Tax expenditures, however, also are inherently practical; and, potentially, faster than other forms of social policy.[16] They are pragmatic and prescriptive.

Bittker offered four options concerning the status of a "tax expenditure budget": first, that such an idea rests on a normativity of a "proper" tax structure with expenditures as "departures"; second, that the Haig-Simons definition of income (under which taxable resources include consumption plus increases in wealth; see, generally, Haig 1921) is potentially the most useful standard for identifying tax expenditures, although it is problematic; third, that it is probably easier to consider tax expenditures in the context of federal taxation than local taxes; and, finally, that, given all of these conditions and exceptions, the entire idea of a "tax expenditure budget" is going to be less than perfect in execution (1969). On the conceptual basis of tax expenditures, Dilnot and Johnson explained that "[t]here are many areas of the tax system in which substantial concessions are made, or appear to be made, to certain forms of activity" (1993: 42). The point of tax expenditure analysis is to draw attention to this and to avoid the risk that financial

[16] This is found throughout the legislative process. As Naumann observed, '[i]t is harder to mobilize support for complex policy reforms than for single issues such as the right to abortion' (2005: 49).

support will be less obvious for the activities that benefit from concessions, as opposed to those that benefit from the full glare of direct government budgetary investment.

Key famously defined the main question behind tax expenditure analysis as, “[o]n what basis shall it be decided to allocate X dollars to Activity A instead of Activity B?” (1940: 1137). Wildalvsky rephrased the question as “how” should the decision to allocate funds be reached, as opposed to the articulation of a basis for a decision (1961: 190). Interestingly, this reformulation has been described as “…one of the opening shots in the behavioural revolution in political science” (Jones 1996: 227–228). Yet, whereas political science embraced the usefulness of having a separate budget of expenditures to study “theories of behavior,” a comprehensive theory of budgeting did not develop from this point (Neuby 1997: 131). Rather, this information was used to support existing analyses into investment; or, alternatively, as calls to political activism. Similar to Sutherland’s call to treat the crimes of corporations as seriously as a mugging in the street (1983), so tax expenditures form the basis of a call to appreciate that even, perhaps most especially, the wealthiest members of society receive money from the state. Surrey apparently had the activist potential of tax expenditure analysis in mind from the beginning.[17]

Fiscal Federalism

Tax expenditure analysis thus starts from the point of proposing that the choices of governments can be hidden within legislation. It presumes that it is necessary for the choices that are *not* made to be clarified, and implies that simply reading the official budget will not be sufficient to achieve this. If tax expenditures represent an idea, then, by comparison, fiscal federalism perhaps more accurately can be described as a movement, the basis of which is a belief in the capacity of a centralised government to advance equality initiatives. The core idea appears to be quite simple: centralised governments

[17]In particular, tackling them, he believed, could be a way of tackling deficits. According to Sugin: “[t]he approach to tax reform that repeals all (or almost all) tax expenditures in the name of budget reduction is consistent with the traditional approach to the tax expenditure budget - as a tool of budget policy. Repealing all tax expenditures helps achieve the goals of those concerned that tax expenditures are an invisible, illegitimate and unchecked haemorrhaging of federal funds. It treats tax expenditure as a source of funds to be garnered for proper federal goals. This was the way that Surrey imagined the tax expenditure budget would function when he first advocated it, and the budget itself reflects that approach. The design of the tax expenditure budget mimics that of the larger federal budget, organized by administrative function, and detailing revenue loss on account of each item” (2011: 14).

will have the capacity to lend to lesser resourced state and municipal governments; and, thus, should be able to link pursuit of equality-promoting objectives to the availability of these funds.

The movement is very popular. The OECD even supports a "fiscal federalism network," under which researchers make available reports and resources to support the growth and spread of the fiscal federalism idea. A classic example of this literature is a 2016 report, titled "Fiscal Federalism: Making Decentralisation Work" (Blochiger and Kim 2016). In its executive summary, the editors provide a definition of a "fiscal constitution": "… the set of rules and frameworks which guide fiscal policy and are enshrined in a country's fundamental laws" (ibid.). The report provides a brief review of the history of the evolution of fiscal constitutions, on a very broad level, with scattered references to a variety of different countries (Australia, and Germany, for example) as support for observations on what 'most' fiscal constitutions do (id.). The basic touchstones tend to be that, during the Great Depression of the 1930s, federal governments acquired power because states needed funds (and, so, the provision of those funds was linked to a transfer of sovereignty to federal governments). This also occurred during the Second World War, and the oil crisis of the 1970s. These, of course, are key periods in the evolution of American constitutionalism, and are quite specific to that country (although the USA is fleetingly mentioned, because the basis of the argument is that these events happened in the basic model of evolving fiscal federalism—if you identify as a federal state, then this is your story, too). The brief history concludes with an observation that "[a]uthoritarian regimes tend to restrict state autonomy," and then moves on to consider best models for fiscal federalism (id.: 53).

The tenets of fiscal federalism provide a language for scholars, legislators and lawyers hoping to define what economic justice looks like, and which "framework" is best for achieving it. The choice of "framework," over laws, or rules, is important because it acknowledges the existence of bureaucratic processes which emerge separately from formal, democratic procedures. Fiscal federalism also, from one standpoint, appears to make sense during the transnational era. The factors which influence economic equality do not stop at the borders of the nation state.

The fiscal federalism literature acknowledges the significance of the connection between the power to tax, and the power to borrow, in federal government structures. This is probably because of some aspects of American history. In particular, during the mid-nineteenth century in the USA, some states did not have any taxes, at all. The idea was that public services could be expected from the government without any concomitant expectation of taxation in return. Indeed the only taxes perceived to be "legitimate" were those levied on foreigners, and states accepted that these could only be enforced by the federal government (Rodden 2006: 69). The gradual introduction of a tolerance for more developed taxation at state level can be connected to the growth of debt. This is because, by the 1820s, some states had never experienced any debt at all. A banking crisis in the late 1830s changed this and heightened awareness of the possibilities for the federal government in this area (ibid.: 58–59). So, states wanted to borrow from the federal government and understood that they would have to raise funds in some way—hence, taxation at state level. This story provides, for the fiscal federalists, a useful account of how the power to borrow can be concomitant to the power to effect the introduction of taxation.

There may be important benefits in studying the connections between decision-making, devolution, centralisation and economic growth. A fiscal, federalist literature might aim to assess which players, in a theoretical situation, are more likely to be able to consider the 'bigger' economic picture. The difficulty, as Prosser would warn, is when fiscal federalism evolves into a norm—for example, the norm dictating that, since the US federal government eventually acquired the power to tax directly, then this is what federal states do. Thus, within this mindset, there would be no need to consider the constitutional law of a federal structure, because this is simply what federal states do. Perhaps this question is best addressed within the Weberian "ideal type" literature (Lindbekk 1992; Burger 1978), and could be rephrased usefully perhaps as "are fiscal federalists thinking of utopia, when they construct ideals of rely on fiscal federalism?" If so, then, perhaps, it does not matter, as long as these misunderstandings are not misused so as to restrict democratic processes.

Responding to this literature, Elwes has written an article directly on point, in which she is very critical of the ECJ's efforts to achieve "negative" integration despite the very "limited" power in taxation given to the EU by the treaties (2013). She warns that comparisons with the power of the US federal government to tax are overly broad. What, then, to make of this literature overall? Putting the US constitutional issues to one side, it is possible to read it as arguing that federalism, generally, provides a balance against the temptation of "Leviathan" to abuse its various powers, including the power to tax, by sharing and thus balancing powers with local governments (Rodden 2006: 21). Or, one could read it as suggesting that federalism actually exacerbates the risk of "overtax[ing]" because the more powerful, federal government is able to "externalise" the costs of the bad behaviour by shifting the responsibility for caring for citizens to the local governments (ibid.).

When considering the value of taxation at federal level, it is worth remembering that a negative consequence of decentralized taxation can be the problems caused for non-residents (Gordon 1983). Federal taxation, simply, can be easier to administer. It is important also to address some of this literature with a sense of the limitations of classical law and economics studies (if one is concerned with more than just "taxing for growth," and also rejects the idea that, without more, the 'most efficient model,' for example, will advance equalities [Ellickson 1998]). Keeping the second point in mind, there is an interesting literature on the "tax assignment problem"; or, the difficulty of deciding which taxes should be assigned to either the federal or the local government (Oates 2005: 352). Oates, perhaps the father of fiscal federalism, explains that "[i]n the literature on the tax-assignment problem, there is an explicit recognition of the role that local taxation must play in establishing a proper environment for budgetary decision-making" (ibid.: 354). The key distinction when looking at the difference between taxes that are shared, in terms of control, between federal and local levels, is whether or not the level of control at local level includes the power to determine the rate of taxation (Noregaard 1997: 53) This is because the power to control the level of services offered by a local government is integral to the power to raise or lower taxes to fund them (ibid.).

Closing

It is a complicated issue. On the one hand, resting power at "the top" risks a number of outcomes, including a "collapse" in the event of the wrong person being elected (i.e., wrong, in the sense of a person who will not put the maximising of public welfare at the forefront of objectives); whilst, conversely, leaving power at local level opens the possibility that, also if the wrong person is elected, then local governments may step into protect some social services. Decentralisation may serve the purpose of preventing competition amongst local politicians, and thwarting them in efforts to "line their pockets" with money from the federal government; (Rodden 2006: 19) yet, warnings exist that "[p]olitically powerful subnational governments with borrowing autonomy and limited tax autonomy can be a dangerous combination" (ibid.: 10). A further weakness at the heart of the fiscal federalism literature is silencing of the value of law. One country's laws contribute to a "model" of what federal states do.

The values of transparency, and budgetary expenditure analysis, are increased salience. By pursuing these goals, the public better will understand the choices that governments face. Perhaps, they even will comply more readily with the obligation to pay taxes. Is it indeed the case that the state requires "unthinking obedience" to its laws, or would the state rather elicit a degree of understanding of the benefits and disadvantages? (Lynch 1997: 46). Cooter posits that "almost all economists" approach this question from the perspective of "…moral scepticism by exploring efficient institutional arrangements for rationally self-interested actors" (Cooter 2000: 1577–1578). The fallacy of this is that people often fail to act in the name of self-interest alone (ibid.: 1578). This is a point with particular relevance for tax, Cooter explains, especially when one considers countries with "unusually high rates of tax compliance" against some economists' "predict[ed] low rates of tax compliance" (id.: 1579). What follows is a question not for the economists, Cooter argues, but rather for the social scientist, of which "values" are "internalised" by some societies, and which are not (id.). These issues are explored in more detail in Chapter 6. There are also distinct challenges in taking values seriously in these processes, particularly from a fiscal sociological perspective. These are addressed, next, in Chapter 5.

References

Alt, James E., and David Dreyer Lassen. 2006. "Transparency, Political Polarization, and Political Budget Cycles in OECD Countries." *American Journal of Political Science* 50 (3): 530–550.

Bakker, I. 2006. "Gender Budget Initiatives: Why They Matter in Canada." Canadian Centre for Policy Alternatives. Last Modified 2006. http://www.policyalternatives.ca/documents/National_Office_Pubs/2005/afb2006_techpaper1_gender_budget_initiatives.pdf.

Bastida, Francisco, and Bernardino Benito. 2007. "Central Government Budget Practices and Transparency: An International Comparison." *Public Administration* 85 (3): 667–716. https://doi.org/10.1111/j.1467-9299.2007.00664.x.

Benito, Bernardino, and Francisco Bastida. 2009. "Budget Transparency, Fiscal Performance, and Political Turnout: An International Approach." *Public Administration Review* 69 (3): 403–417.

Bittker, Boris I. 1969. "The Tax Expenditure Budget: A Reply to Professors Surrey & Hellmuth." *National Tax Journal* 22 (4): 538–542.

Blochiger, Hansjorg, and Junghun Kim. 2016. *Fiscal Federalism 2016: Making Decentralisation Work*. Paris: OECD.

Brazier, Alex. 2007. "The Fiscal Maze: Parliament, Government and Public Money." *Parliamentary Affairs* (60): 346–355.

Brittain, Samuel. 1959. *The British Budgetary System*, 69. New York: Allen & Unwin/The Macmillan Company.

Burger, Thomas. 1978. "Max Weber's Theory of Concept Formation: History, Laws and Ideal Types." *Philosophy and Phenomenological Research* 38 (4): 585–586.

Cini, Michelle. 2000. "Organizational Culture and Reform: The Case of the European Commission Under Jacques Santer." EUI Working Paper RSC No. 2000/25.

Cooter, Robert. 2000. "Do Good Laws Make Good Citizens? An Economic Analysis of Internalized Norms." *Virginia Law Review* 86 (8): 1577–1601.

Dilnot, Andrew, and Paul Johnson. 1993. "Tax Expenditures: The Case of Occupational Pensions." *Fiscal Studies* 14 (1): 42–56.

Ellickson, Robert C. 1998. "Law and Economics Discovers Social Norms." *Journal of Legal Studies* 537–552.

Elwes, Sylvia. 2013. "The Internal Market Versus the Right of Member States to Levy Direct Tax—A Clash of Fundamental Principles." *Intertax* 41 (1): 15–26.

Fenster, Herbert L., and Christian Volz. 1979. "The Antideficiency Act: Constitutional Control Gone Astray." *Public Contract Law Journal* 11: 155.

Gordon, Roger H. 1983. "An Optimal Approach to Fiscal Federalism." *Quarterly Journal of Economics* 98 (4): 567–586.

Gott, Jason B. 2011. "Addressing the Debt Crisis in the European Union: The Validity of Mandatory Collective Action Clauses and Extended Maturities." *Chicago Journal of International Law* 12: 201.

Hagemann, Robert P. 2010. "Improving Fiscal Performance Through Fiscal Councils." OECD Economics Department Working Paper.

Haig, Robert M. 1921. *The Concept of Income-Economic and Legal Aspects*, *Volume 1*: *The Federal Income Tax*. Columbia: Columbia University Press.

Heald, David. 2003. "Fiscal Transparency: Concepts, Measurement and UK Practice." *Public Administration* 81 (4): 723–759. https://doi.org/10.1111/j.0033-3298.2003.00369.x.

Hemerijck, Anton C., Frank Vandenbroucke, Torben M. Andersen, Philippe Pochet, Christophe Degryse, Gaetano Basso, Mathias Dolls, Werner Eichhorst, Thomas Leoni, Andreas Peichl, and Peter Taylor-Gooby. 2012. "The Welfare State After the Great Recession." *Intereconomics* 47 (4): 200–229. https://doi.org/10.1007/s10272-012-0422-y.

International Monetary Fund. 2010. *United Kingdom: 2010 Article IV Consultation: Staff Report; Staff Supplement; Public Information Notice on the Executive Board Discussion; and Statement by the Executive Director for the United Kingdom*. International Monetary Fund.

Jansson, Bruce S. 1993. *The Reluctant Welfare State: A History of American Social Welfare Policies*, 2nd ed. Pacific Grove, CA: Brooks.

Jones, L. R. 1996. "Wildavsky on Budget Reform." *Policy Sciences* 29 (3): 227–234. https://doi.org/10.1007/bf00136105.

Kantowicz, Edward R. 1985. "The Limits of Incrementalism: Carter's Efforts at Tax Reform." *Journal of Policy Analysis and Management* 4 (2): 217–233.

Kaye, Tracy A. 1998. "Show Me the Money: Congressional Limitations on State Tax Sovereignty." *Harvard Journal on Legislation* 35: 149.

Key, V. O. 1940. "The Lack of a Budgetary Theory." *American Political Science Review* 34 (6): 1137–1144.

Kilpatrick, Claire. 2015. "On the Rule of Law and Economic Emergency: The Degradation of Basic Legal Values in Europe's Bailouts." *Oxford Journal of Legal Studies* 35 (2): 325–353.

Lindbekk, Tore. 1992. "The Weberian Ideal-Type: Development and Continuities." *Acta Sociologica* 35 (4): 285–297. https://doi.org/10.1177/000169939203500402.

Lynch, Gerard E. 1997. "The Role of Criminal Law in Policing Corporate Misconduct." *Law and Contemporary Problems* 60 (3): 23–65.

Manos, Karen L. 1993. "The Antideficiency Act Without an M Account: Reasserting Constitutional Control." *Public Contract Law Journal* 23: 337.

McClure, Michael. 2003. Fiscal Sociology. On file at the British Library: Economics Program, School of Economics and Commerce, The University of Western Australia.

McKeever, Grainne. 2016. "Universal Credit." *Journal of Social Security Law* 23 (1): 15–16.

Mihályi, Dávid. 2010. "Conference on Independent Fiscal Institutions." *Acta Oeconomica* 60 (3): 321–325.

Naumann, Ingela K. 2005. "Child Care and Feminism in West Germany and Sweden in the 1960s and 1970s." *Journal of European Social Policy* 15 (1): 47–63.

Neuby, Barbara L. 1997. "On the Lack of a Budget Theory." *Public Administration Quarterly* 21 (2): 131–142.

Neuren, Cathy S. 1984. "Addressing the Resurgence of Presidential Budgetmaking Initiative: A Proposal to Reform the Impoundment Control Act of 1974." *Texas Law Review* 63: 693.

Nogueira, Joao Félix Pinto. 2012. "The Feared Austerity Budget Enters into Force." *European Taxation* 52 (2): 127–131.

Noregaard, John. 1997. "Tax Assignment." In *Fiscal Federalism in Theory and Practice*, edited by Teresa Ter-Minassian, 49–72. Washington, DC: International Monetary Fund.

Note. 2011. "Constitutional Law—Separation of Powers—Congress Delegates Power to Raise the Debt Ceiling." *Harvard Law Review* 125: 867–874.

Oates, Wallace E. 2005. "Toward A Second-Generation Theory of Fiscal Federalism." *International Tax and Public Finance* 12 (4): 349–373.

Pearcy, Mark. 2015. "'Playing the President': The Value of Simulations in Promoting Civic Literacy." *The Ohio Social Studies Review* 52 (1): 40–49.

Persson, Torsten, Gerard Roland, and Guido Tabellini. 1997. "Separation of Powers and Political Accountability." *Quarterly Journal of Economics* 112: 1163–1202.

Philipps, Lisa, and Miranda Stewart. 2009. "Fiscal Transparency: Global Norms, Domestic Laws, and the Politics of Budgets." *Brooklyn Journal of International Law* 34 (3): 797–860.

Pollard, David, Neil Parpworth, and David Hughes. 2007. *Constitutional and Administrative Law: Text With Materials*. Oxford: Oxford University Press.

Posner, Paul L. 2009. "Budget Process Reform: Waiting for Godot." *Public Administration Review* 69 (2): 233–244.

Prosser, Tony. 2011. "'An Opportunity to Take a More Fundamental Look at the Role of Government in Society': The Spending Review as Regulation." *Public Law* (3): 596–616.

Prosser, Tony. 2014. *The Economic Constitution*. Oxford: Oxford University Press.

Prosser, Tony. 2016. "Constitutionalising Austerity in Europe." *Public Law*: 111–129.

Puttick, Keith. 2012. "'21st Century Welfare'and the Wage-Work-Welfare Bargain." *Industrial Law Journal* 41 (1): 122–131.

Rodden, Jonathan. 2006. *Hamilton's Paradox: The Promise and Peril of Fiscal Federalism*. New York: Cambridge University Press.

Rubin, Irene S. 2009. "Response: Prospects for Budget Process Renewal." *Public Administration Review* 69 (2): 245–248.

Ruffert, Matthias. 2011. "The European Debt Crisis and European Union Law." *Common Market Law Review* 48 (6): 1777–1805.

Sanger, Chris. 2018. "The New Budget Process and Its Implications for Tax Policy Making." *British Tax Review* 2: 168–174.

Saporiti, Alejandro, and Jorge M. Streb. 2008. "Separation of Powers and Political Budget Cycles." *Public Choice* 137 (1–2): 329–345. https://doi.org/10.1007/s11127-008-9331-9.

Schick, Allen. 1970. "The Budget Bureau That Was: Thoughts on the Rise, Decline, and Future of a Presidential Agency." *Law and Contemporary Problems* 35 (3): 519–539. https://doi.org/10.2307/1191008.

Schurtz, Nancy E. 1986. "A Critical View of Traditional Tax Policy Theory: A Pragmatic Alternative." *Villanova Law Review* 31: 1665.

Shoup, Carl S. 1975. "Surrey's Pathways to Tax Reform—A Review Article." *Journal of Finance* 30 (5): 1329–1341. https://doi.org/10.2307/2326658.

Sugin, Linda. 2011. "Tax Expenditures, Reform, and Distributive Justice." *Columbia Journal of Tax Law* 3: 1–42.

Surrey, Stanley S. 1973. *Pathways to Tax Reform: The Concept of Tax Expenditures.* Cambridge: Harvard University Press.

Sutherland, Edwin Hardin. 1983. *White Collar Crime: The Uncut Version*. New Haven: Yale University Press.

Tannenwald, Robert. 1998. "Implications of the Balanced Budget Act of 1997 for the 'Devolution Revolution'." *Publius: The Journal of Federalism* 28 (1): 23–48.

Tomkins, Adam. 1999. "Responsibility and Resignation in the European Commission." *Modern Law Review* 62 (5): 744–765.

Van Der Veen, Hans. 2003. "Taxing the Drug Trade: Coercive Exploitation and the Financing of Rule." *Crime, Law and Social Change* 40 (4): 349–390.

Von Hagen, Jürgen, and Ian Harden. 1995. "Budget Processes and Commitment to Fiscal Discipline." *European Economic Review* 39 (3–4): 771–779.

White, Fidelma, and Kathryn Hollingsworth. 1999. *Audit, Accountability and Government*. Oxford: Clarendon Press.

Wildavsky, Aaron. 1961. "Political Implications of Budgetary Reform." *Public Administration Review* 21 (4): 183–190. https://doi.org/10.2307/973628.

Williams, Andrew T. 2010. "Promoting Justice After Lisbon: Groundwork for a New Philosophy of EU Law." *Oxford Journal of Legal Studies* 30 (4): 663–693.

Young, Stuart. 2006. The British Budget Process: A Case Study. In *Harvard Law School, Federal Budget Policy Seminar.* Briefing Paper 32.

Part III

"What Are the Social Processes Which Are Behind the Superficial Facts of the Budget Figures?" (Schumpeter 1918: 100)

5

The Challenge of Taking Rights Seriously in Fiscal Sociology

The publication of the *New Fiscal Sociology* in 2009 (Martin et al. 2009)—containing pieces by prominent legal scholars—drew attention to the fact that legal scholars, if quietly, had been emphasising the connection between tax and the social contract for a number of years, perhaps to a sufficient extent that it could be described as a renewed movement. The core argument of that book was that fiscal sociology deserves this attention. At least since its publication, it has become commonplace to acknowledge that fiscal sociology includes (amongst others) historians, sociologists, economists, and legal scholars.

How can a field include so many different disciplinary perspectives? In many ways, that is exactly its point. Fiscal sociology, as viewed by Schumpeter, was a subgenre of economics, but not using traditional methods (Backhaus 2005: 104). So, from his perspective, fiscal sociology was exemplified by the works of, for example, Oppenheimer, who argued that a 'land barrier', described as a combination of rising property values and congestion in cities, perpetuated poverty and the ill-health associated with it; and, as a remedy for this, advocated Ricardo's theory of inframarginal land rent (ibid.: 146). Similarly, Sombart, who founded the economic sub-discipline of "comparative economic systems," and von Schmoller, who, amongst many other things, argued the importance of both quantitative and qualitative economic and sociological research, were hailed by Schumpeter as important writers in the fiscal sociological tradition (Backhaus 2005: 104). Thus, both economists and sociologists have contributed to fiscal sociology from its earliest days, although the expansion of the field to include

A. Mumford, *Fiscal Sociology at the Centenary*, Palgrave Socio-Legal Studies,
https://doi.org/10.1007/978-3-030-27496-2_5

legal scholars has been comparatively slow. This chapter will address the challenges of taking rights seriously in fiscal sociology.

It is axiomatic to suggest that legal scholars tend to focus on the *law* when they approach issues like inequality and development, but it is important to acknowledge that law is not their sole preserve. Economists spend a great deal of time on these issues as well. To present just one example (of many), the German statistician Ernst Engel (1821–1896) was the first to analyse the correlation between the amount of money a household spends on consumption, and a household's income (Zweimüller 2000). As Chai and Moneta explained:

> Engel curves describe how household expenditure on particular goods or services depends on household income. German statistician Ernst Engel (1821-1896) was the first to investigate this relationship systematically in an article published about 150 years ago. The best-known single result from the article is "Engel's law," which states that the poorer a family is, the larger the budget share it spends on nourishment. (2010: 225)

Engel's law demonstrates that "the expenditure share for food decreases with income" (Zweimüller 2000: 185). A logical deduction is that levels of inequality in society have an impact on growth and innovation (ibid.). Schumpeter celebrated this insight, and worried that not enough attention was paid to Engel's theories (Perthel 1975: 211).

There is an interesting literature attempting to bridge the gap between Schumpeter and Engel—or, specifically, between levels of inequality and levels of innovation (see, e.g. Latzer 2011). The power of this literature is that it starts from the point of assuming that *simply deleting deficits will not necessarily lead to economic growth*, given that levels of poverty will have an impact upon consumption (and hence innovation) regardless. This bridge provided the building block for a number of later twentieth-century analyses of the interplay between growth and inequality. In this, Schumpeter presaged Amartya Sen's work with instrumental freedoms—political freedom, economic facilities, social opportunities, transparency guarantees, and protective security—all of which underscore that "much more than countrywide growth" is required to guarantee human dignity (Hartmann 2012: 1).

There are two main difficulties that legal scholars may encounter either when advancing a rights-based analysis in fiscal sociology, or within attempts to find a place to consider the role of law in fiscal sociology. The first is Schumpeter himself: as an economic theorist, who inclined to the political right, he does not always provide easy connections for legal scholars interested in equality. Secondly, tax, spending, and budgeting are bureaucratic institutions, perhaps obscured (deliberately, or not) by the weight of law addressing them. The point of this chapter is to acknowledge these challenges, so as then to demonstrate (in Chapter 6) that it is worth the effort.

Taking Rights Seriously with Schumpeter

The next step for law, as part of a fiscal sociological analysis, might be to identify key points of class discord that are exacerbated by failures in legal systems. Schumpeter likely would have been fascinated by such a study, but would not necessarily have agreed with the outcome. By way of illustration, consider the example of economic inequality between women and men. Schumpeter wrote in a footnote, in his essay on *Imperialism*, that

> [s]pecialization along occupational lines need not, of itself, tend to form classes. Men and women have always had distinct spheres of work, yet they never formed 'classes' on the basis of mere inter-individual relationships. (1955: 187, n. 2)

It would be difficult to proceed from this point to an assumption that Schumpeter, in 1955, was interested in the unequal sharing of economic resources between men and women. This is because the overwhelming impression from reading his work is that he was not interested in redressing economic inequality between the sexes; but, rather, worried about the impact that increasing financial, and other forms, of independence for women would have on maximising public welfare.

Given this, some of Schumpeter's writings on democracy have been embraced by distinctly conservative writers. Schumpeter's portrayal of democracy as a marketplace, for example, was deeply influential in American political thought (Mansbridge 1998, reprinted 2009: 143–144, citing Schumpeter 2010). The basic idea was that there is no common good. Activists pursue rights according to the intensity of their feelings. Politicians respond to this activism, wholly motivated by self-interest and the desire to win votes. They are, thus, the product that is being sold in this marketplace of ideas, or activism. The bargain that is struck represents a compromise between the self-interest of every actor. This construct has been given a number of different labels in democratic theory, including 'contemporary,' 'equilibrium,' 'élite,' and 'empirical' (Medearis 1997: 819). The reason for the variety is that it has been treated as the "prototype" for definitions of democracy, from which all wider theories develop (ibid.).

In the twenty-first century, Posner enthusiastically has embraced Schumpeter, and has based his idea of "Concept 2" democracy on Schumpeter's theory of "elite democracy" (Sullivan and Solove 2003: 690, citing Posner 2005). "Concept 2" is conceived on the premise that after voters elect their representatives, they will remain largely disinterested in politics, and will re-engage only in the event of egregious abuses of power (ibid.). This was contrasted with Posner's Concept 1 democracy, under which, essentially, philosophers should be kings (ibid.: 722). Also described as "competitive élitism" (Waylen 1994: 331), élite democracy does not provide any assurances as to the competency of the rulers who emerge from this process (Guest 2000: xiii).

In his embrace of Schumpeterian models, Posner is reviving a trend which had been dormant for some time. Mansfield suggests that belief in this model of democracy started to falter in the 1970s and 1980s, when a number of politicians seemed to be motivated by something closer to altruism, or a belief in the public good (1998, reprinted 2009: 144). It started to appear that not everything could be reduced to commodification. This, apparently, is a trend Posner seeks to reverse, as he is attracted to the idea of commodifying democracy.

Schumpeter was not an egalitarian. For example, he suggested that the spread of industrial action in the 1930s was the (to him, unfortunate) consequence of allowing the idea that all classes are equal to gain mainstream credence (Medearis 1997: 826). He was "an uncompromising élitist", and fully capable of believing that simply because the "*demos*" supported something, it did not necessarily follow that it was the best thing for them (Reisman 2005: 22). He was not completely opposed to the possibility of other forms of governance, and, in Reisman's description, believed that "[d]emocracy need not perform much better than rival models of collective coordination" (ibid.: 23).

Schumpeter also is unlikely to have been a feminist. He viewed the development of feminist thought as a threat to birth rates of higher classes—something he indicated was regrettable (Medearis 1997: 826; *but note* that this also was a significant interest of Goldscheid's [Exner 2004: 284], and was a widespread and commonplace concern of the post-WWI era [Medearis 1997: 826]). Stolper, however, counters that "Schumpeter might even be considered an early feminist" (2019: 13). He bases his argument on Schumpeter's support, whilst still in school, for girls to attend classes; and, also, on a letter Schumpeter wrote in 1936, suggesting that Cambridge's Joan Robinson would be a good appointment at Harvard (ibid.).

Nonetheless, theories of liberal democracy (apparently the classic example of this literature is Moore 1993, orig publ 1967) that were developed particularly in the 1950s and 1960s tended not to mention or engage gender, and the fault for this has been laid squarely at Schumpeter's feet—and, in particular, ascribed to the "narrow" definition of democracy within competitive elitism (Waylen 1994: 331). Certainly, any theory of democracy which supported limits on suffrage would be antithetical to the protection of rights and redress of inequalities (Pateman 1997: 196). Additionally, Schumpeter's portrayal of democracy as little more than a neutral method (Mouffe 1994: 1537) stands in direct contrast to the argument of much feminist theory that law is anything but. Review of Schumpeter's works in the hope of locating a feminist spark tends to end in disappointment. For example, the review of the demands of parenthood in *Capitalism, Socialism and Democracy*, at first glance, seems promising, until a reference to children contributing to the "normality" of women dashes these hopes (Schumpeter 2010: 192–193).

There is a normative basis for Schumpeter's elitism. The reason he did not believe in supporting whatever choice the *demos* made was that (especially after World War Two) he thought it was important to recognise that the majority are capable of supporting immoral acts. He did not believe that whatever immoral choice is made within the 'neutral' process of democracy is acceptable. He addressed this directly in *Capitalism, Socialism and Democracy* (2010; see discussion Eskridge Jr. and Peller 1990: 747, fn. 119). He argues that, if a country decided to organise persecution and genocide through democratic practices, then this "certainly" should not be approved (ibid.). It is clear he has the Holocaust in mind. Yet, Schumpeter argues, it is useful to focus on whether avoiding these immoral outcomes through a non-democratic government would be preferable (2010: 282). He concludes that the result of such a comparison would be that the democratic government that elects to persecute is *not* legitimate, so the choice is moot. Thus, seeking an alternative to the democratically elected government which supports genocide is not only acceptable, but preferable. Democracy, on its own, thus, is not *inherently* legitimate, and relies on the substance of its laws as much as the process by which they are produced (Eskridge Jr. and Peller 1990: 747, n. 119).

With an apparent lack of interest in inequality experienced by specific groups (other than the broad division between rich and poor), Schumpeter is both a product of his time, and of trends within his discipline. As Seiz observed, economic thought, on the whole, is not known for taking feminist theory seriously (1993). It is tempting, however, to speculate: what if

Schumpeter had considered it? Both Medearis (1997) and Stolper (2019) do exactly this: they aim to answer the question of whether or not Schumpeter would qualify as a feminist under modern criteria, and look to evidence from his published writings and his correspondence for an answer. They do find some evidence to support this possibility. Seiz takes a different approach and speculates as to the outcome if economic thought, generally, *had* taken feminism seriously, which brings her to two points. First, Schumpeter acknowledged the importance of self-interest and the significance of different viewpoints (Seiz 1993: 190). Secondly, she notes that Schumpeter insisted that the tools he used in economic analysis were exempt from ideology (ibid.: 192)—a fact that needs to be balanced against his clear interest in what he described as "sociological" enquiry. The fiscal sociological analysis, clearly, for Schumpeter, was intensely ideological.

The conclusion tends to be that it is more fruitful to use Schumpeter's methodology as a starting point for further work on inequality, than to hope to find evidence of his own work in this area. For example, one of Schumpeter's doctoral students, HP Minksy (1919–1996, a prominent monetary economist), played an important role in extending Schumpeter's writings on democracy to taxation and budgeting (Minsky 1988b, 1992). In particular, he identified a managerial era of American capitalism, in the aftermath of the second world war, within which the "money managers" acquired a disproportionate amount of control over the powers of government. As Whalen explained, Minsky called this "the new era *money-manager* capitalism (MMC)" (Whalen 2011: 157 [emphasis in original]). Minsky identified "agents" of the economy, all of whom, he argued, made choices not under the influence of political values, but with different, ideal versions of the economy in mind ("Every agent of the economy has a model of the economy in mind when he makes his decisions" [Minsky 1993: 19].). This is a system which inevitably leads to moments of crisis and instability. Minsky explained that "…over periods of prolonged prosperity, the economy transits from financial relations that make for a stable system to financial relations that make for an unstable system" (ibid.: 8). In fact, economic instability is inevitable in a "money manager," capitalist economy.

As Minksy explained,

> I want to stress the post-Keynesian make: Economic instability is the result of the internal processes of capitalism. This contrasts sharply with the neoclassical theory, whether Keynesian or monetarist, that claims instability results from events outside the workings of the economy. (1988a: 24)

His point is that the causes of political instability may be located *within* the economic order. Instability is not something to be studied for its impact upon (what, in better circumstances, would be a more stable) economy; but, rather, both should be studied concurrently. As will be discussed further in Chapter 7, Minsky's analysis provides a basis for connecting financial instability to the neoliberalism of the modern era.

Similarly, Campbell, a leading fiscal sociologist, agrees that the "post-Keynesian make" is the source of instability and inequality. He argues that the "Keynesian prescription" of tax cuts for a "sluggish economy" benefits political elites, and allows them to gain a degree of autonomy over how much in taxes they will need to pay during periods of boom and bust (1993: 167). Fiscal sociology, for Campbell, provides an alternative to the dominant Keynesian focus, and allows consideration of, for example, "competing analytic frameworks, such as public choice, neo-Marxist, institutional, transaction-cost, exchange, and rational choice theories" (ibid.: 180). This, Campbell insists, is exactly "as Schumpeter wished" (id.: 181).

Campbell emphasises that the development of neoliberalism is a direct product of the *failure* of Keynesian economics; and, in particular, its failure to solve the "stagnation" problems of the 1970s (id.: 258). Indeed, in his "epilogue" within the *New Fiscal Sociology*, Campbell explicitly links the "rise of neoliberalism," within "a policy paradigm that prescribes significant reductions in taxes and government spending" to the rise of the new fiscal sociology movement (2009: 273). As Schumpeter acknowledged the limits of Keynesianism, so the new fiscal sociology appears to be flourishing because of the limitations of what Keynesian prescriptions like, for example, 'using government spending as a way out of recessions' are able to achieve. Put simply, the growth of neoliberalism feeds the new fiscal sociology, the latter in retort.

Schumpeter (as with, in the modern era, Amartya Sen) accepts that the value of persons in the economy extends beyond those moments when income appears and is capable of being counted (Heilbroner 1993: 92). Even if one's sole concern is growth, the existence of poverty will have a negative impact upon that, *beyond* the fact that an increase in the outgoings of the welfare state will contribute to deficits. Put differently, as poverty increased in Portugal after the austerity measures of its 2012 budget, so the possibility of economic innovation from Schumpeterian entrepreneurs decreased. The deliberations of the European Commission when considering whether to impose penalties upon non-compliant, deficit carrying member states may well have taken these factors—i.e., the impact of increasing poverty on economic growth—into account. If so, this may be the point at which law falters as a focus, without more, of fiscal sociological analysis. The provisions of TFEU refer only to deficits, whereas perhaps the deliberations of the Commission may be more nuanced. It is not always easy to deduct economic ideology from legal instruments, although, as Chapters 6 and 7 will argue, this has become an increasingly important effort to undertake. To get the full picture, however, the processes and bureaucracy that law produces need to be studied, as much as the legislation itself. The next sections consider how.

Taking Rights Seriously in Economic Institutions

The laws which support tax, spending and budgeting need to be considered within the processes they produce. These processes can be opaque, and deeply bureaucratic. It may be simpler to assume that the processes are unguided and disorganised but basically neutral and that the purpose of the legal scholar is to identify points of disruption, or protection, when they cause harm. Otherwise, bureaucracy might safely be ignored. As noted in Chapter 2, ignoring taxation, spending and budgeting, however, simply because it is hidden by bureaucracy, or because it is viewed as a process for economic growth and nothing more, will ensure that the entire picture of an event in political history will never be understood. This has been the central thrust of the modern fiscal sociology.

An institutional analysis of the budgeting process, however, intrinsically links budgeting to just outcomes, as opposed to viewing it simply as a tool that may or may not contribute to justice. The writings of Hobbes and Rousseau contributed to the development of an approach, as Sen explained, called "transcendental institutionalism" (2009). One distinctive feature of transcendental institutionalism is that it focuses on the importance of institutions in the *development* of a just society. Institutions develop from the Hobbesian "social contract" which some members of a society choose as an alternative to chaos (ibid.). Sen suggests that Locke, Rousseau and even Kant start from this "contractarian" point, and then proceed to focus on the role of institutions in establishing justice (id.).

It is important to understand how the economy functions, as an institution, and how best it might be deployed in achieving the ends we would like to see—whether that is sustainability, distributive justice, or even something else. Understanding even bureaucratic institutions, thus, becomes important on its own merit. Accordingly, Sen particularly praises the writings of not Schumpeter, but Smith, both for contributing towards our modern understanding of how the market economy functions, and but also in the context of his emphasis upon the importance for other institutions to control and curb markets, and correct tendencies towards "instability, inequity and poverty" (Sen 2010: 52). In this, Sen relies primarily on Smith's *Theory of Moral Sentiments*, particularly Smith's emphasis on the importance of self-love, or self-interest, in explaining how markets work (Sen 2009: 124, 429, citing Smith 2010, orig publ 1759). The idea is that, especially as everyone is looking out for their own interests within markets, then intervention into the machinations of the market is all the more important.

Institutions need to be approached from a variety of perspectives. They are forever interacting and evolving. An analysis which focused solely on preventing deficits, or encouraging economic growth, risks falling short, if it does not consider the institutional context within which programmes designed to achieve these ends will function—a fairly Schumpeterian observation. The consideration of budgeting as an institution immediately invokes the theory of isomorphism, as defined in DiMaggio and Powell's groundbreaking article (1983). Dimaggio and Powell famously argued that business, and government processes and agencies, are being driven by homogenisation (ibid.). Corporate and public bodies respond to change by mimicking what similar organizations do, they explained, largely to achieve some sort of stasis in the midst of disruption (id.). Legislation according rights to groups of persons can cause exactly the sort of disruption that may lead to the pursuit of bureaucratization, or homogeneity.

The theoretical 'institutionalism' introduced by DiMaggio and Powell, generally, has a long history in legal analysis, roughly divided into two schools: old, and new. The 'old' institutionalism focused upon formal means of achieving what could be described as good outcomes; in a sense, it was pragmatic. The 'new' institutionalism is interested in the impact that institutions have upon society, and the way that they interact. It acknowledges that law does not proceed in a strictly "top-down" fashion. It is because of the acknowledgement of this complexity that several insights are possible when mining the isomorphic literature for approaches to some of the changes in tax and spending law, generally. Institutional analysis allows a deeper analysis of the language, and symbolism, underpinning legislative initiatives.

What would an institutional analysis *offer* to our understanding of the budgeting process? The value of institutional analysis has been noted particularly for what might be described as 'normal times'. Although few historical periods are without crises of some sort, the 'New Labour' period from

1997–2007, before the economic crisis of 2008, might serve as a 'normal time' for these purposes. This, also, is not to suggest that this period, having been designated 'normal,' did not contain social and economic inequality; rather, it is to emphasise the difficulties of the period after 2008. It is only by comparison, or on a sliding scale, that the pre-2008 period might be described as "normal". Thus, "[t]he institutionalist approach… has a good toolbox to explain, for 'normal times', social policy continuity and what has been termed 'progressive change', that is, the kind of change showing no brutal departure from a developmental path but with a specific direction nonetheless" (Vis et al. 2011: 339).

It is an approach which is quite evocative of fiscal sociology. This is evident in two examples: patterns of borrowing and patterns of tax collection. Schumpeter believed that government patterns of borrowing were "erratic" when they are connected to war—for example, "[t]he heavy borrowing of the German Empire occurred in the prosperity phase of the third Kondratieff" (Schumpeter 2017: 607). So, in this sense, he argued that borrowing is not necessarily predictable. This is important for Schumpeter, because he believed that borrowing is capable of being dangerous and reckless; and, indeed, the borrowing and speculation that preceded the Great Depression is one of the themes of his book, *Business Cycles* (Schumpeter 2017).

In a similar vein, there is a consensus within the fiscal sociological literature, Campbell explains, that states are able to collect higher levels of taxation during war, than during peacetime (1993: 165). The argument is that taxpayers accept higher levels of taxation during times of conflict, but this tolerance dissipates when the war ends, if slowly (ibid.). Nonetheless, as countries move from one war to the next, tolerance for higher levels of taxation persists, and "ratchets upward" (id.). Campbell contrasts this narrative with that of "neo-Marxists", who focus on the choices of democratic states in "advanced capitalism" that are not taken in the interests of capital, but to serve the interests of "political elites"; (id.) in particular, the interest in preventing popular revolt against crumbling levels of state infrastructure whilst funds are being diverted to the military infrastructure (id.). The fiscal sociological approach, thus, is receptive to institutionalist analysis, in a way that a strictly neo-Marxian analysis is not.

The UK budgeting process is imbued with symbolic touches that attract an isomorphic, institutional analysis. From the culture of privacy that historically has enclosed the budgeting process, to the modern-day example of the pre-budget report, to the moment a Chancellor, when delivering the speech, may, or may not, choose to indulge in an alcoholic Despatch Box drink[1] whilst announcing levies on the same—all of these theatrical touches are ripe for consideration within the theoretical framework of isomorphic, institutionalist analysis (Oliver 1996). Such an analysis, however, would be interested in more than theatre.

To offer just one example, Japan also amended its budgeting structures twice in the first decade of the twenty-first century (Park 2010: 965). It changed the body of government with responsibility for budgeting and created two, new bodies for carrying out the process (ibid.). Describing these changes as carrying both "real-world and theoretical significance", Park argued that these developments were positive, a least in the context of the post-2008 crash era, but not necessarily durable (id.: 965, 969). His main concern was whether these new bodies would be able to control spending in the long term, although he conceded that short-term prospects looked positive. This was because, beneath the theatre of creating a new forum for budgetary policy decision-making rested a quiet effort to insulate greater autonomy within the executive, away from the political pressures to spend beyond Japan's immediate means—in other words, to control deficits.

If fiscal sociology were to expand to include an isomorphic, institutionalist analysis of budgeting, what would it look like? An institutionalist analysis, within traditional fiscal sociology, would always be more comfortable with historical budgets. Once delivered, budgets quickly become part of an historical narrative. Schumpeter was focused on emphasising the importance of this history.

It is perhaps understandable that the scholars Schumpeter addressed would have found it more compelling to consider whether money should have spent in a certain way in the past, and thus they would have moved past or dismissed the technicalities of a process that was simply about putting decisions into action. In moving past this process, however, they would have missed the democratic process. They would have missed the process in which the important economic recommendations, devised by experts, are filtered through the public's tolerance for the immediate impact of those choices. Indeed it would not be surprising if the scholars Schumpeter challenged had little tolerance for budgeting—and, perhaps, by extension, democracy—at all. In their view, budgeting was the process by which good and sensible ideas were at best compromised, at worst stymied.

But budgets represent something more than the remnants of events that some scholars might prefer to forget, or at least to ignore. Budgets are also

[1]https://www.parliament.uk/about/faqs/house-of-commons-faqs/budget/ (last accessed 29 April 2019).

documents, or texts, in addition to outcomes of processes; and thus, worthy of being considered simply on their own, almost as if they were literature (Roe 1988: 61). Thus, from a textual perspective, what would distinguish the UK budget, from budgets in other countries, is that, whereas, for example, in the USA, budgets are perceived to have no author, whereas in the UK one hears the voice of the Chancellor (ibid.: 62; similarly, see also Von Hagen and Harden 1995: 15, explaining that, in Denmark, the Finance Minister does not enjoy the same “predominance” as in the UK).

The same can be said of the process by which these texts are produced. Exactly what kind of process is it? Bureaucratic? Democratic? A combination of the two? There appears to be no agreement in the literature on what “type” of process budgeting is (Neuby 1997: 132). In a review of this literature, Neuby distinguishes between those who refer to budgeting as an economic process, and those who refer to it as a social process (ibid.). An institutionalist, and a fiscal sociological, analysis would proceed from the premise that it is a social process.

Budgets are rewarding to study once time has passed, and perhaps only then, as the task of pulling them together is not necessarily pleasant. Indeed the process of budgeting has been described as almost uniformly unpopular, amongst “practitioners and analysts” alike (McCaffery 1996: 235). So, what is the legacy of a process that essentially is the remnant of political struggles? Schumpeter’s point is that whilst we all ‘budget,’ we do not sufficiently think about its importance. It should not be dismissed as a procedure that occurs after the important decisions of where and how taxes should be collected, and then spent, are taken.

What is the place of the ‘budget controlling’ agenda within an institutionalist analysis? A review of the literature suggests several, potential sites. For example, the question need not necessarily be framed from the perspective of a battle between legal scholars, and scholars from other disciplines. Inequality and development are important; and, thus, contributions from many different perspectives are likely only to be positive. This is especially true when the subject of study—in this case, budgetary analysis—attracts different scholars, for different reasons (For just one of many examples to support this point, see Zimmerman 1928: 901, explaining that “[t]he works of Engel and LePlay suggest that an understanding of many effects of urbanization upon social behaviour may be grasped through the use of budgetary analyses.” Zimmerman explains that “[t]he term budget is used here to include incomes, expenditures use of time and other features of the ‘living’ behaviour” [ibid.]). Budgets, thus, can be approached as rhetoric, as plans, and as actions (insofar as they place limits on expenditure).

The Importance of Multi-disciplinarity

The institutional analysis could be dismissed as having no place within an "economic" area. There is every possibility of rivalry in this regard. As Dau-Schmidt warns, "[t]he 'sister' disciplines of economics and sociology have developed in very different ways and with no small measure of animosity between their practitioners" (1997: 389). Simply because two disciplines both consider the same topic, it need not necessarily follow that there is an absence of fundamental disagreement between its scholars. Nonetheless, the special case of tax could render cooperation between the different disciplines especially vital.

Tax law is a special case because: (1) it is so closely connected to the budgeting process; and, similarly, budgeting processes are very closely connected to pursuit of growth (an economic, and not a legal, concept). Tax law thus can be viewed as the expression of budgeting needs and can impact upon the salience and effectiveness of the legislation. (As Simon explained, "[t]he theory is that the budget process imposes constraints on tax legislation that inhibit the development of sensible legislation" [1987: 455].) Additionally, (2) non-compliance with tax laws becomes more significant, as Graetz et al. explain, during periods of budgetary deficit (1986: 2). Finally, (3) there are questions concerning tax and budgeting which remain unresolved. For example, the reconciliation between the wants of the individual, and public need, has not really been resolved by sociologists who study the budgeting process (van de Braak 1983: 105, suggesting that "[e]xchange sociology might be of use here".). Similarly, some ideas can only be progressed so far within the boundaries of a single discipline for example, "…when economists talk about constrained choices they are focusing on how scarcity and people's budgets affect their choices rather than how culture might influence what people choose within the confines of their budget" (ibid.: 401, fn. 77).

There is an additional reason why study of tax and budget law merits cooperation between disciplines. Law is imperfect, and the capacities and limitations of legislation are most likely to be visible if as many disciplines as possible collaborate. For example, balanced budget movements provide evidence of frustration with democratic processes, at least insofar as the democratic choices of one generation impact upon future generations (See, e.g., Rodino, then chairman of the US House Committee on the judiciary, discussing a "balanced budget movement" in the US [1982: 786].). Additionally, some aspects of law are capable, as Llewellyn identified a generation ago, of becoming embedded, to such an extent that we no longer really see them:

> [a]round the initial channelling job clusters that body of regulative law which has ceased to be challenged by litigation 'on points of law' and which is therefore met in court only in case of doubt on the facts or in case of the perverse recalcitrance of some offender; here we meet the traffic-light, the filing of the income tax return, the general recognition of rightful possession and of the status of marriage, or governmental office, of citizenship; while buttressing not-primarily-legal machineries as family and market have already been mentioned. (1949: 455–456)

That areas of law can become such a part of the fabric of society that they are almost invisible, means that the failure of legislation to be both truly democratic, and also fair to all groups of persons, can remain unprobed by legal scholars, and it is perhaps then most important to seek a fresh eye from other disciplines.

Consider, for example, the question of whether tax law is truly democratic, or, whether it is just an expression of power, or reproduction of existing inequalities. A legal analysis might begin, and end, at the question of whether or not the law was democratically produced. And yet,

> …the extent to which any class controls taxation is debatable, since tax law is *actually* legislated by elected representatives and implemented by government bureaucrats. Moreover, if a dominant class does manipulate taxation through legislators and other government officials, would anyone suppose that it is manipulated to decrease social stratification… [in, this case, the United States]? The questions suggests the possibility of some connection between taxation and social stratification, but there is no sociological theory on the subject. (Gibbs 1979: 80)

The absence of such a "sociological" theory is perhaps most worrisome in a highly technical and challenging subject, like tax law. In such an environment, it is easy to miss the forest for the trees. Calls for reform, or for approaching old subjects in new ways, are comparatively uncommon. Thus, as Stein warns (in the US federal government), "…committees allocating tax burdens and appropriations for specific programmes operate in conditions of limited public scrutiny, deal with highly technical matters, and are dominated by members who are hostile to reform" (1980: 114).

In the context of gender inequality, specifically, Philipps noted the problems arising from the technical talk surrounding budget deficits: "[o]ne of the reasons that deficit-fighting agendas have resisted political scrutiny so well… is that they have been framed discursively as belonging to the realms of economics, accounting, mathematics, statistics and other technical knowledges with a strong claim of scientificity" (1996: 155). It is thus all the more important that philosophers, for example, take an interest: "[f]eminist philosophers of science have deconstructed the notion of pure objectivity, demonstrating the impossibility of insulating scientific inquiry from its context of social values, beliefs, ideologies and politics" (ibid.: 154, citing Harding 2016). Simply because an agenda is technical, challenging and bureaucratic, it does not necessarily follow that the agenda itself should be immune from scrutiny.

Closing

If **fiscal sociology** ***were to take inequality and the law seriously, what would it look like?*** Answering that question is the purpose of the next two chapters. The first assesses an explicit proposal advanced in response to an identified problem: inequitable distribution of wealth, and tax treatment of capital. The second addresses gender inequality. McCaffery asked, 'where is the sex in fiscal sociology?', meaning gender and, thus, the purpose of Chapter 7 is to answer that, in the context of the UK (2009). What these two questions have in common in that they are both perceived as *problems*. Both issues present challenges for the present. Chapter 6 considers Piketty's challenge to rethink the taxation of capital in the twenty-first century. Chapter 7 considers the fact that cases challenging the benefit cap explicitly have revealed that women may have insufficient protections in law from budgeting initiatives that disproportionately impact upon them—this is the revelation of a process started by budgeting immediately after the crisis. The argument is advanced that considering this as an economic problem, alone, would miss a great deal. As Schumpeter would have encouraged, the final chapter will consider what these points reveal about the current state of the social contract.

From this point in the book, the review of fiscal sociology's potential ends. The chapters that follow will present a fiscal sociological analysis of two important issues in the modern UK tax state. Thus, this closing section offers a few thoughts on the ambitions of these chapters, and the outcomes of the chapters now concluded.

The final chapter will build on what precedes it, in the following ways. First, it accepts the presumptions of the 'new fiscal sociology' that law, inequality, and gender are valid topics of fiscal sociological analysis. Secondly, it accepts the founding principle of fiscal sociology that laws and taxation are never neutral and disconnected from the areas of law that are 'meant' to tackle inequality and discrimination. These two presumptions, however, may create a tension, which Chapter 7 aims to resolve.

The concept of the tax state presupposes a separation between public and private property. As Philipps explained, it is predicated upon "…a separation of public and private realms in which the tax system limits how far the state, in pursuit of collective goals, can legitimately encroach upon the property rights of individuals" (1996: 143). This has a number of consequences. First, inequality may be dismissed as a "natural" consequence of the market, which governments need not be expected to redress (ibid.). Secondly, against this background, the simple existence of taxation is viewed as a wonderfully progressive factor, much "more redistributive than it actually is" (id.). Both of these elements contribute to what Philipps describes as the "normalising" of inequality (id.).

Chapter 7 will pick up from this point. It explains how the tax state normalises inequality. It considers both tax legislation which has failed to achieve its stated aims, and legislation which is not explicitly about tax, but which is meant to redress the inequality caused by the tax state. Whether the persons who will be suffering the impact of austerity possess any rights in law which would protect them from these cuts—indeed, which would render such cuts illegal—is a legitimate form of enquiry in the new fiscal sociology. There are a number of reasons for this. First, such questions will engage legal scholars. Secondly, the legislation which might be relevant may be perceived as sufficiently vague, or undefined, that claims for its protections easily can be dodged with the suggestions that these are 'bureaucratically neutral' processes. Scrutiny is thus all the more important. Finally, the question of whether or not restricting the size of welfare states is permitted by law might be perceived as one that a Prime Minister would be required to answer, before a budget is put before a parliament.

Menendez clarifies the 'legality' issue as follows:

> …the most complex question we have to deal with is one related to the bifurcation of the principle of legality in tax matters. To put it in different terms, we have to determine the shape of the correct division of labour between the Budget Act and ordinary tax statutes. (2013: 307)

If budgeting legislation 'gives,' and taxing statutes 'take away,' then in many cases the question of how to achieve a desired goal might be directed, alternatively, to both. This will leave the executive with a choice. If the question, for example, is how to return the economy to a status of productivity and growth, perhaps in the aftermath of the economic crash of 2008, then a lot will turn on how the question is framed. If the question is framed, "who should pay for the economic crisis of 2008?," and if the answer is "primarily, women, their children, and the disabled," then questions of legal rights might appear to become immediately relevant. So, the framing of the question, and the choice of forum, can become crucial.

The concept of tax expenditures, discussed in Chapter 4, is based on the idea that taxing and spending often coalesce. The point is that, by choosing the forum of budgeting, not only are similar outcomes achieved to those that would be seen with a direct tax, but rights-based analyses are precluded. Yet these analyses are valuable even when the rights are vague and the protections are uncertain, perhaps especially so. A response to this point might be to argue: but the government did not choose to take money away from these groups; rather, it opted to cease spending money on them, and, however painful that choice was, it was necessary—necessary, for "sustainability," for the control of deficits, and for the promotion of economic growth. The return, then, is: but have the decisions to spend been made on the basis of unacknowledged norms or values, meriting closer scrutiny?

References

Backhaus, Jürgen G. 2005. *Fiscal Sociology: What For?* Boston: Springer.

Campbell, John L. 1993. "The State and Fiscal Sociology." *Annual Review of Sociology* 19 (1): 163–185.

Campbell, John L. 2009. "Epilogue: A Renaissance for Fiscal Sociology." *The New Fiscal Sociology: Taxation in Comparative and Historical Perspective*, edited by I. W. Martin, A. K. Mehrotra, and M. Prasad, 256. Cambridge: Cambridge University Press.

Chai, Andreas, and Alessio Moneta. 2010. "Retrospectives: Engel Curves." *Journal of Economic Perspectives* 24 (1): 225–240.

Dau-Schmidt, Kenneth G. 1997. "Economics and Sociology: The Prospects for an Interdisciplinary Discourse on Law." *Wisconsin Law Review* 3: 389.

DiMaggio, Paul J., and Walter W. Powell. 1983. "The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields." *American Sociological Review* 48 (2): 147–160.

Eskridge Jr., William N., and Gary Peller. 1990. "The New Public Law Movement: Moderation as a Postmodern Cultural Form." *Michigan Law Review* 89: 707.

Exner, Gudrun. 2004. "Rudolf Goldscheid (1870–1931) and the Economy of Human Beings." *Vienna Yearbook of Population Research* 2: 283–332.

Gibbs, Jack P. 1979. "The Elites Can Do Without us." *The American Sociologist* 14 (2): 79–85.

Graetz, M. J., J. F. Reinganum, and L. L. Wilde. 1986. "Tax Compliance Game: Toward an Interactive Theory of Law Enforcement." *The Journal of Law, Economics, & Organization* 2: 1.

Guest, Stephen. 2000. *UCL Jurisprudence Review*. London: Faculty of Laws, University College London.

Harding, Sandra. 2016. *Whose Science? Whose Knowledge? Thinking from Women's Lives*. Ithaca: Cornell University Press.

Hartmann, Dominik. 2012. "Sen Meets Schumpeter: Introducing Structural and Dynamic Elements into the Human Capability Approach."

Heilbroner, Robert. 1993. "Was Schumpeter Right After All?" *Journal of Economic Perspectives* 7 (3): 87–96.

Latzer, Hélène. 2011. "A Schumpeterian Model of Growth and Inequality." Citeseer.

Llewellyn, Karl N. 1949. "Law and the Social Sciences: Especially Sociology." *Harvard Law Review* 62 (8): 1286–1305.

Mansbridge, Jane. 1998, reprinted 2009. "Feminism and Democracy." In *Feminism and Politics*, edited by Anne Phillips, 1420160. Oxford: Oxford University Press. Original edition, I: Feminism and Politics.

Martin, Isaac William, Ajay K. Mehrotra, and Monica Prasad. 2009. *The New Fiscal Sociology: Taxation in Comparative and Historical Perspective*. New York: Cambridge University Press.

McCaffery, Edward J. 2009. "Where's the Sex in Fiscal Sociology?" In *The New Fiscal Sociology*, edited by Isaac William Martin, Ajay K. Mehrotra, and Monica Prasad, 216–236. Cambridge: Cambridge University Press.

McCaffery, Jerry L. 1996. "On Budget Reform." *Policy Sciences* 29 (3): 235–246.

Medearis, John. 1997. "Schumpeter, the New Deal, and Democracy." *American Political Science Review* 91 (4): 819–832.

Menéndez, Agustín José. 2013. *Justifying Taxes: Some Elements for a General Theory of Democratic Tax Law*. Berlin: Springer Science & Business Media.

Minsky, Hyman P. 1988a. "Back from the Brink." *Challenge* 31 (1): 22–28.

Minsky, Hyman P. 1988b. "Schumpeter: Finance and Evolution." Bard Digital Commons. https://digitalcommons.bard.edu/cgi/viewcontent.cgi?article=1313&context=hm_archive. Last accessed 9 July 2019.

Minsky, Hyman P. 1992. "Schumpeter and Finance." Bard Digital Commons. https://digitalcommons.bard.edu/cgi/viewcontent.cgi?article=1279&context=hm_archive.

Minsky, Hyman P. 1993. "The Economic Problem at the End of the Second Millenium: Creating Capitalism, Reforming Capitalism, Making Capitalism Work." viewcontent.cgi. Bard Digital Commons: Bard College. https://digitalcommons.bard.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1100&context=hm_archive&sei-redir=1&referer=http%3A%2F%2Fscholar.google.co.uk%2Fscholar%3Fhl%3Den%26q%3Dauthor%253A%2522hyman%2Bminsky%2522%2Bschumpeter%2Bbudget%26btnG%3DSearch%26as_sdt%3D0%252C5%26as_ylo%3D%26as_

vis%3D0#search=%22author%3Ahyman%20minsky%20schumpeter%20budget%22. Last accessed 9 July 2019.

Moore, Barrington. 1993. *Social Origins of Dictatorship and Democracy: Lord and Peasant in the Making of the Modern World*. Vol. 268. Boston: Beacon Press.

Mouffe, Chantal. 1994. "Democracy and Pluralism: A Critique of the Rationalist Approach." *Cardozo Law Review* 16: 1533.

Neuby, Barbara L. 1997. "On the Lack of a Budget Theory." *Public Administration Quarterly* 21 (2): 131–142.

Oliver, Christine. 1996. "The Institutional Embeddedness of Economic Activity." *Advances in Strategic Management* 13: 163–186.

Park, Gene. 2010. "The Politics of Budgeting in Japan: How Much Do Institutions Matter?" *Asian Survey* 50 (5): 965–989. https://doi.org/10.1525/as.2010.50.5.965.

Pateman, Carole. 1997. "Contributing to Democracy." *Review of Constitutional Studies* 4: 191.

Perthel, David. 1975. "Engel's Law Revisited." *International Statistical Review/Revue Internationale de Statistique* 43: 211–218.

Philipps, Lisa. 1996. "Discursive Deficits: A Feminist Perspective on the Power of Technical Knowledge in Fiscal Law and Policy." *Canadian Journal of Law & Society/La Revue Canadienne Droit et Société* 11 (1): 141–176.

Posner, Richard A. 2005. *Law, Pragmatism, and Democracy*. Cambridge and London: Harvard University Press.

Reisman, David A. 2005. *Democracy and Exchange: Schumpeter, Galbraith, TH Marshall, Titmuss and Adam Smith.* Cheltenham: Edward Elgar.

Rodino Jr., Peter W. 1982. "Proposed Balanced Budget/Tax Limitation Constitutional Amendment: No Balance, No Limits." *Hastings Constitutional Law Quarterly* 10: 785.

Roe, Emery M. 1988. "Deconstructing Budgets." *Diacritics* 18 (2): 61–68. https://doi.org/10.2307/465299.

Schumpeter, Joseph Alois. 1955. *Imperialism; Social Classes: Two Essays*. Vol. 4. Ludwig: von Mises Institute.

Schumpeter, Joseph A. 2010/2013. *Capitalism, Socialism and Democracy*. London: Routledge.

Schumpeter, J. A. 2017. *Business Cycles: A Theoretical, Historical and Statistical Analysis of the Capitalist Process*. London: McGraw-Hill Book Company. Original edition, 1939.

Seiz, Janet. 1993. "Feminism and the History of Economic Thought." *History of Political Economy* 25 (1): 185–201.

Sen, Amartya Kumar. 2009. *The Idea of Justice*. London: Harvard University Press.

Sen, Amartya. 2010. "Adam Smith and the Contemporary World." *Erasmus Journal for Philosophy and Economics* 3 (1): 50–67.

Simon, Karla W. 1987. "The Budget Process and the Tax Law." *Capital University Law Review* 17: 455.

Smith, Adam. 2010. *The Theory of Moral Sentiments*. London: Penguin. Originally published 1759.

Stein, Stuart D. 1980. "The Sociology of Law-Some Comments on Theoretical Paradigms and Case Studies." *British Journal of Criminology* 20: 99.

Stolper, Wolfgang F. 2019. *Joseph Alois Schumpeter: The Public Life of a Private Man*. Princeton: Princeton University Press.

Sullivan, Michael, and Daniel J. Solove. 2003. "Can Pragmatism Be Radical-Richard Posner and Legal Pragmatism." HeinOnline.

Van de Braak, Hans. 1983. "Taxation and Tax Resistance." *Journal of Economic Psychology* 3 (2): 95–111.

Vis, Barbara, Kees Van Kersbergen, and Tom Hylands. 2011. "To What Extent Did the Financial Crisis Intensify the Pressure to Reform the Welfare State?" *Social Policy & Administration* 45 (4): 338–353.

Von Hagen, Jürgen, and Ian Harden. 1995. "Budget Processes and Commitment to Fiscal Discipline." *European Economic Review* 39 (3–4): 771–779.

Waylen, Georgina. 1994. "Women and Democratization Conceptualizing Gender Relations in Transition Politics." *World politics* 46 (3): 327–354.

Whalen, Charles J. 2011. "Rethinking Economics for a New Era of Financial Regulation: The Political Economy of Hyman Minsky." *Chapman Law Review* 15: 149.

Zimmerman, Carle C. 1928. "The Family Budget as a Tool for Sociological Analysis." *American Journal of Sociology* 33 (6): 901–911.

Zweimüller, Josef. 2000. "Schumpeterian entrepreneurs meet Engel's law: the impact of inequality on innovation-driven growth." *Journal of Economic Growth* 5 (2):185-206.

6

Example One of Taking Law Seriously in Fiscal Sociology: Taxing Inherited Wealth

As noted in Chapter 2, Schumpeter was fasincated by Goldscheid's argument that taxation would never provide enough money to finance a welfare state within a capitalist system, and thus debt would always be necessary (1917). Goldscheid predicted that this fact would always lead to crisis (Schmidt 2003: 339). Had he considered the debt control mechanisms discussed in Chapter 4, Goldscheid would have argued that crises surrounding the unequal distribution of wealth, and legislation such as that introducing the benefit cap (discussed, *infra*), were inevitable. The present chapter explores these questions in a different way, from the perspectives of, as previously discussed, values (Cooter), norms (Prosser) and law (Ruffert). In particular, this chapter will consider Piketty's proposals concerning the unequal distribution of wealth. The next chapter will address disadvantage visited on specific groups by tax and spending decisions. In each example, the possibilities available within law will be considered within a fiscal, sociological analysis.

Methodology

This structure of analysis is derived from a 2014 review of "Taxes and Fiscal Sociology" by Martin and Prasad, published in the *Annual Review of Sociology.* It identifies two main themes for development: taxation and equality, and taxation and development. The starting point for Martin and Prasad's review is that, whereas Schumpeter had emphasised the significance

A. Mumford, *Fiscal Sociology at the Centenary*, Palgrave Socio-Legal Studies,
https://doi.org/10.1007/978-3-030-27496-2_6

of taxation for *early state building*, the modern fiscal sociologist should extend this analysis to questions of *inequality and poverty* (2014: 332). They speculate that the reason why other sociologists do not consider taxation—despite the importance afforded to taxation in the "canonical texts" of Weber—is that "…they think them so obvious as to need no investigation" (ibid.). They warn that, in fact, the impact of taxation on inequality and law and development is both "too surprising to ignore" and "too surprising to be assumed" (id.).

Thus, these final, two chapters aim to provide a theoretical framework for understanding the popular reception of not only some legislative provisions, but also some spending decisions, and (to a lesser extent) some international initiatives. These all combine to provide the foundations of the tax state (Backhaus 2012; Schumpeter 1954). The specific purpose of this chapter is to argue that the form of governance known as the "tax state" has changed in three significant ways. First, its boundaries, or jurisdiction, have shifted from the national to the transnational. Second, the understanding of what law is capable of achieving has developed, with greater expectations and higher levels of ambition, yet limited capacity. Third, the concept of justice in the contexts of taxation and fiscal policy has become both intricate and expansive, with important implications for policy formation.

Capital and Tax Principles

The analysis begins in 2013, when the French economist Thomas Piketty published the book *Capital*, which traced concentrations of wealth, and associated problems with distribution, over the past 250 years (English translation, Harvard University Press, 2014, 2017). The book received a number of awards, including the 2014 *Financial Times* and McKinsey Book of the Year Award, and the 2014 British Academy Medal. Additionally, it produced a great deal of discussion, much of it in a fiscal sociological vein. It also captured the attention of some politicians. For example, in February 2019, US Senator Elizabeth Warren, a candidate for the 2020 presidential election, announced that, having worked closely with Piketty's scholarly collaborators Emmanuel Saez and Gabriel Zucman,[1] she, if elected, would introduce a version of *Capital*'s crowning argument: a tax on wealth,

[1]Matthew Yglesias, "Elizabeth Warren's proposed tax on enormous fortunes explained," https://www.vox.com/policy-and-politics/2019/1/24/18196275/elizabeth-warren-wealth-tax (publ. 24 January 2019) (last accessed 29 April 2019).

targeting US households worth more than $50 million.[2] Similarly, in the UK, Piketty was appointed as an advisor to the Labour Party, only he resigned close to the Brexit referendum in 2016, as a reflection of his concern over what he described as the "weak campaign of Labour (even though [Jeremy] Corbyn [the party leader] is obviously not the primary person responsible for this disaster)."[3]

Capital contains a number of elements which are evocative of Schumpeter. First, it engages in an historical review of fiscal structures within a number of different countries. Secondly, *Capital* lingers on the example of England, often with admiration (2017: 25, 30, 74, 92, 310–311, 513, 736). Piketty and Schumpeter also *differ* in important ways. Piketty's writings display no traces of admiration for elitism. Piketty also openly is interested in inequalities. Perhaps the most important *parallel* between the two scholars is that both offer a proposal. Whereas Schumpeter proposed a capital tax in his *Finanzplan*, Piketty, similarly, has proposed his global tax on capital. Both proposals met a controversial reception. The purpose of this section is to consider *Capital*'s place within a fiscal sociological analysis.

The starting point of Piketty's *Capital* is that capital has been growing at a faster rate than income; and, if this doesn't stop, then inequality will continue to increase (Piketty 2017, pt.I). Thus, in response to a pattern of historical growth in the value of capital, and the promise of more growth in the future, Piketty argues that a global tax on income is necessary to redress the upheavals associated with persistent inequality (ibid.: ch. 15). Inequality is problematic for a number of reasons, not least because it leads to political unrest (id.: ch. 13). Whilst the proposal of a tax on wealth is not new, the suggestion that it should be "global" is unusual. The enthusiastic reception to Piketty's book has focused on a variety of different implications of his argument. The practical implications of next steps have been considered; (Harvey 2014) whilst, perhaps particularly in legal journals, the difficulties of actually implementing such a tax have been emphasised (Bankman and Shaviro 2014; Caron 2015). Indeed, Elizabeth Warren was warned that her

[2] Tucker Higgins, "The Supreme Court could stop Elizabeth Warren's wealth tax dead in its tracks," https://www.cnbc.com/2019/02/01/elizabeth-warren-has-set-the-stage-for-a-once-in-a-generation-supreme-court-fight-over-her-wealth-tax-proposal.htm (publ. 1 February 2019) (last accessed 29 April 2019).

[3] Ashley Cowburn, "Thomas Piketty, leading left-wing economist, resigns from Labour party role," https://www.independent.co.uk/news/uk/politics/thomas-piketty-resigns-from-labour-party-role-a7108891.html (publ. 29 June 2016) (last accessed 29 April 2019).

proposed Pikettian tax faced "a colossal battle at the US Supreme Court",[4] although a number of leading US constitutional and taxation scholars have dismissed this, and describe her proposals as "plainly constitutional".[5]

Taking its cue from the literature, this chapter acknowledges that, from the perspective of existing domestic and international legal structures, the idea of a *global* wealth tax presents real pragmatic challenges. This is not the end of the discussion, however, and there is a wider resonance to his proposals, as a fiscal sociological analysis reveals. Specifically, Piketty's call could be interpreted as an exhortation towards a *principle* of taxation (2017). Thus, the concept of "tax principles" is introduced here, with an explanation of its roots both in legal, interpretative principles and in principles of political economy.

The concept is evocative of the kinds of concerns that Prosser, Ruffert and Cooter highlight. The term "tax principles" is preferable to analyses which consider tax principles *only* from the perspective of political economy, or *only* consider legal principles in the context of determining a legislature's intention in enacting a tax statute. It perhaps most closely resembles Prosser's references to constitutional norms, but is broader. Specifically, and by way of review: when considering balanced budget rules in the UK and other EU member states, Prosser warned against the treatment of these rules as constitutional norms. Such constitutional norms are particularly inappropriate in the UK, he argued, which places a great deal of importance on the sovereignty of Parliament. Secondly, he suggested, even in Eurozone member states, insisting that countries change their constitutions to include balanced budget rules risks overreaching—unless, of course, the intention merely is to offer symbolism. Even then, the question of constitutional norms remains relevant—such symbolism should not be used to interfere with the underlying values of legal systems. From one perspective, this is exactly Piketty's project: to change the underlying norms of a *global* legal system.

Introduction to $r > g$

Piketty, described as "the modern Marx" (*Economist* 2014), demonstrated in *Capital* that wealth increases more quickly than economic output—summarised succinctly as $r > g$ (2017). As a consequence, he argues that a

[4]Note 34, *supra*.

[5]https://www.independent.co.uk/news/uk/politics/thomas-piketty-resigns-from-labour-party-role-a7108891.html (last accessed 1 May 2019).

global tax on wealth would serve both to prevent increases in inequality, and to reduce the associated risks of political instability, because "[t]o regulate the patrimonial capitalism of the twenty-first century fiscal and social model and adapting it to today's world will not be enough" (2017: 684). Just as Schumpeter thought of Austria in 1918, intervention is required, in the form of a tax on capital.

Capital is a culmination of work in this area which Piketty had pursued for at least ten years before the publication of his book. For example, relying upon data from returns filed in France for income tax, wages and inherited property, he considered, on a broad scale, whether there was inequality in income, wages and wealth (2003). He concluded that inequality in income in fact was a *stable feature* of the French system, such that any variations during the period he studied (1901–1998) were due to fluctuations in the value of stocks, but not because any aspect of income inequality had ameliorated or lessened (ibid.: 1004). Across the breadth of this work, progressive income taxation was found to be particularly significant for the outcomes of people who lost a large portion of their fortunes during the stock market crash of the early twentieth century (id.: 1005). It provided an extra bit of pressure from which they were never able to "recover," and regain their previous wealth (id.). The inequality which always had been a problem in France, Piketty argues, became, and remains, intractable.

Worse, the problem extends beyond France, and is described as global in reach. In consideration of the UK, Piketty writes that the "metamorphoses of capital in Britain and France since the eighteenth century" have not been reflected in parallel changes in levels of income (2017: 194). Given $r > g$, the "fundamental inequality" is that, without intervention, capital always will increase at a greater rate than income (id.: 54–56). This fits within other, similar research in the area. Publications by Piketty, and others, for example, have demonstrated that, if one seeks to be really rich, then the swiftest path is to invest well, rather than to aim to earn as much as possible (Roine and Waldenström 2008: 366; Piketty and Zucman 2014: 1255). Simply, it is statistically easier to achieve the former, than the latter—and this is all part of the "…changing nature of wealth" (Roine and Waldenström, ibid.). Because the growth of capital has outpaced income to such a significant extent, in many countries, Piketty argues, "the ideal tool would be a progressive global tax on capital, coupled with a very high level of international financial transparency" (Piketty 2017: 684).

In *Capital*, Piketty's discussion of law is not extensive, as this is intended to be an economic treatise (Hsu 2014: 2043). By ignoring law, however, he has opened his proposal to criticism. Piketty seems to anticipate this response, when he writes, "[a] global tax on capital is a utopian idea. It is hard to imagine the nations of the world agreeing on any such thing anytime soon" (2017: 685). If "utopian" and "hard to imagine," then why propose it? Piketty argues that the proposal is still "useful" because it might become a "worldwide reference point" or a "standard" against which other proposals might be assessed (ibid.). Put differently, it might become a global version of the "constitutional norms" that Prosser describes. Is it possible, however, for a norm to be shared between different countries with different legal structures?

In the context of tax, the extent to which Adam Smith's writings on tax—in particular, his work on ability to pay (1839, originally published 1776)—have been adapted by other countries would indicate that it *is* possible. Whether described as a "worldwide reference point," a "standard" or even a "norm," Smith's writings have been highly influential. The impact of Smith's canons of taxation has been so profound that, in governments that accommodate capitalism and free markets, there are some commonalities in values that appear to be shared between countries. Put differently, there are some outcomes which are viewed as negative in discussions of taxation, which appear to be common to different countries. Additionally, tax is not approached as a neutral, or merely technical, subject within these canons. Smith sometimes is dismissed as uninterested in the inequalities that a free market may produce, yet it is wrong to make this assumption (Boucoyannis 2013: 1951). As Sen (2010) acknowledged, there is more to Smith, and to what might be described as principles of taxation generally, than simply interest in ensuring that taxation interferes with the market as little as possible.

For example, Smith believed that whilst class divisions were acceptable, extreme imbalance of power and opportunities between the classes were not. Well-being was an entitlement of all, regardless of social class. We thus "submit" to "labour, in order to avoid the greater shame and pain of poverty" (Smith 2010: 292). It should not follow that we still experience poverty, even if we are willing to labour. The market is important, but there is also a requirement for other institutions to help persons who may need it (ibid.: 13). Smith acknowledged that a market economy may function well, but still permit the existence of suffering; and, that it was important that this should be alleviated (id.).

Schumpeter found Smith's ideas to be accessible, and not unduly complicated, once writing: "I do not think that there is anything in A. Smith's great work, which sums up the knowledge of the time [the eighteenth century], that could not be readily understood by any educated person without much trouble, and especially without the use of any ideas not at the command of every-day life" (Schumpeter 1982: 1053). He suggested that a great deal of *Wealth of Nations* was simply "common sense" (ibid.: 1054). Schumpeter agreed with Smith (and Locke) that the market provided a manageable forum for securing some form of justice in a world composed of self-interested persons (Reisman 2005: 22). Smith's emphasis upon self-regard (or, protection of self) was of particular interest to Schumpeter, largely because of his fascination with entrepreneurism and innovation (ibid.). Schumpeter, however, did not probe alternatives to capitalism too deeply, primarily because he viewed capitalism (and its ultimate demise) as inevitable developments in history (id.).

Schumpeter's designation of taxation as the key, distinguishing feature of a nation state thus extends beyond simple purposes of identification (Liebig and Mau 2007: 143). Taxation is also the way in which the state corrects the injustices of the way in which the market allocates resources (ibid.). Taxes, thus, are given the task of implementing a government's vision of a more just state (id.). In order for this task to succeed, taxes need to be *perceived* as just (id.). The values which contribute to this perception may be described as tax principles.

Tax Principles

The proposal here is that the expression "tax principles" better represents what Piketty is aiming to achieve with his "worldwide reference point," or "standard" of a global tax on capital. It is also more accurate than a description as a constitutional norm. Constitutional norms are important when laws are interpreted by courts. Piketty's global tax proposal is closer to a target which all countries might agree to pursue, without necessarily interfering with the constitutional norms of their own jurisdictions. The term 'tax principles' might be used to indicate very broad expressions of rules, focusing on the end result more than the steps, prescriptions and tasks that will need to be undertaken to satisfy the principle.

In the context of Piketty, a tax principle might indicate the limits and the potential of redistribution of wealth. Legislators might be called to account for a failure to consider the impact of their rules on the ability to satisfy principles. For example, legislators would not be precluded from supporting laws which clearly make redistribution more difficult—they would simply be required to account for doing so. Principles, within this context, remain linked to some form of public accountability.

The phrase "tax principles" is not a term of art, and may be used interchangeably to signify both principles of political economy concerning taxation, and principles for the interpretation of tax legislation. The term may be used to infer ideas or values which are meant to serve as basic touchstones in the design of a tax system which is perceived as fair and equitable. Political economy, as a discipline, rests on the assumption that the study of different economic theories can influence the design of governments and societies. It also signifies the "interrelationship between the political and economic affairs of the state" (Caporaso and Levine 1992: 1). It, thus, provides a platform for addressing different perceptions as to what constitutes "fair".

A *legal* principle may be defined as the purpose for which a rule was enacted. A principle of *political economy* may be defined as an aspiration—thus, it might include the ability to pay, or, indeed, Smith's other famous canons of taxation (Smith and McCulloch 1838: 695–696). Piketty appears to allude to principles of political economy when he urges us to acknowledge that

> [t]axation is not a technical matter. It is preeminently a political and philosophical issue, perhaps the most important of all political issues. Without taxes, society has no ***common destiny***, and collective action is impossible. (2017: 493)

Piketty is evocative of Smith in these observations, perhaps because, generally, *The Wealth of Nations*, is the "canonical text of liberal political economy" (Boucoyannis 2013: 1951). Smith, and Piketty, both acknowledge that tax is something more than a procedure for funding a government's budget. Choices in taxation are linked inextricably to choices as to the form of government, and to political discourse.

Principles of taxation involve elements of law, as well as political economy. They consist of justifications for legal rules, and of ambitions, or targets, which are sometimes met, and sometimes missed. This may appear unambitious, but principles of law which are not followed in every case are still valuable, because they may contribute to an inclination, or a shift, or a tendency in a system towards a favoured direction (Dworkin 1967). Thus, for example, even if the principle of "ability to pay" is not followed in every case, it is still valuable to be able to have and to identify the principle itself. This is not to suggest that the limits of law are unimportant, but, rather, to draw attention to the fact that legal rules may sometimes conflict (see Raz 1972: 830–831, disagreeing with Dworkin on this point), and, when they do, legal principles may present a productive way of resolving the conflict.

Global Tax Principles, and Domestic Tax Policy

The next step is to consider the interaction between these 'global' tax principles with domestic 'tax policy'. Tax policy, as a general concept, tends to be broadly defined, and to address engagement with some kinds of choices in public finance. Traditionally, tax policy involves consideration of choices about revenue collection and spending. A "good" tax policy is often described as one that is equitable, efficient (or neutral) and simple (and, as with tax principles, Adam Smith is often the starting point for this; see, amongst a vast literature, West 1977).

The impact of tax policy upon fiscal stability (as, for example, with the BRNA 2011) might appear at first glance to be a domestic topic. Tax policy is not immune, however, from what might be described as the pressures of internationalisation. Indeed, as Ring argues, '[t]he central challenge in international tax is navigating the relationship between an individual country's tax system and the rest of the world–a question of how nations should balance competing demands of revenue, domestic policy, retaliation, and global goals' (2002: 79). An important element in this navigation is pace, as '[t]he question grows more pressing as the pace of intersections among tax regimes escalates' (ibid.). The growing internationalisation of tax policy discourse has coincided with an increasing reliance upon tax as a vehicle for social policy.

Tax policy tends to be forward looking, whereas tax principles seem to be more timeless. Schumpeter appeared to be rather more interested, at least in his studies of the UK, in its tax *principles*, than in tax policies. Perhaps, this was because, from his vantage point in Cambridge, Massachusetts, Schumpeter viewed "…democracy, like American capitalism, [as] a *fait accompli*" (Reisman 2005: 23). This scholar of economics was more interested in understanding why its economic order had unfolded the way it did, rather than proposing any alternatives to it[6] (ibid.).

The fiscal sociology advanced decades earlier in *Crisis of the Tax State*, however, was of a different kind. This essay was driven by the desire to effect change, and to reform the social order. In the fullness of his career, Schumpeter's scholarship may not have been driven by the same urgency; but, at the start of his career, when his intended audience was his fellow Austrians, his fierce desire was to convince his political party to abandon

[6]Reisman reminds us of the importance of noting Schumpeter's intended audience: "…his intended readership were the stable Anglo-Saxondom of Britain and the United States where no one had any desire to revisit the great decisions of 1688 and 1776" (2005: 23).

ideology in favour of what he viewed to be the only pragmatic solution to Austrian's struggling economy. Schumpeter, thus, approached Austria, the USA and the UK very differently. It is the fiery urgency of *Crisis of the Tax State* which has driven fiscal sociology in the twenty-first century, and, thus, it is in this spirit that the search for "tax principles" in the UK is approached.

Principles of Taxation in the UK

If Piketty's global tax on capital were to be adopted as a principle of taxation in the UK, which existing principles would need to adapt, or to change? To answer this question within a fiscal sociological context, it is instructive to review key moments within the history of taxation in the UK. The scope of this review is limited by two, key factors: first, the depth and extent of this history is so rich that any review, aiming to identify key moments, is likely to reflect more of the author's interests than to resemble, for example, a survey. Secondly, there are few in-depth studies of English tax history. The two most important sources for scholars and policymakers are, first, the publications of Daunton; (see, e.g., 2007a, b); and, secondly, the tax history series edited by Tiley, Harris and de Cogan.[7] The question which this section will aim to investigate is, "which UK tax policy moments, or points of discussion, whether modern or historical, might be of interest in a search to identify historical patterns in principles of taxation in the UK?"

The starting point is that all classical policy terms in tax discourse—equity, fairness, efficiency, progressivity—inevitably are spiked with political context. Certain concepts, such as fiscal sustainability or the ability to pay principle, are dominant across a number of different countries. This section aims for specificity (or, to dig deeper) by discussing policy reforms in the UK, whilst acknowledging that reforms that were *not* introduced, in many ways, can be important as well.

Searching for Tax Principles in Policy Reviews

Twice in the modern era, the UK, famously, has paused to consider its tax system as a whole, and to investigate whether its detailed legislation supported its broader ambitions. These moments are worth considering in this

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[7]https://www.bloomsburyprofessional.com/uk/series/studies-in-the-history-of-tax-law/ (last accessed 30 April 2019).

context. Moments of legal and policy reform are as valid a topic for fiscal, sociological analyses as budgets or tax revolts. Not least, budgets and revolts can be the impetus of policy reviews.

The Meade Review

'The structure and reform of direct taxation,' more commonly known as the Meade Review, was published by the Institute of Fiscal Studies on 1 January 1978. The committee which produced the report was chaired by Professor James Meade (1907–1995); and, until the Mirrlees Review was published in 2011, was the pre-eminent source for tax policy analysis in the UK (Mirrlees 2011). The Meade Committee was asked to

> look at the system as a whole and.. produce a statement of the objectives of taxation (including an assessment of any conflicts between different objectives); to comment on the present system in light of these objectives; and to make recommendations for reform. (Meade, 1 January 1978: xi)

The report continues to be discussed, both within the UK and internationally (Isaac 2006: 224).

The report focused on three questions:

1. How to remedy the evils (e.g. the poverty trap) which have resulted from the largely unco-ordinated interplay between the tax system and the social security system.
2. Whether to shift the base of the main direct taxes in the direction of an income base or in the direction of an expenditure base.
3. What structure of capital taxes to combine with any reforms of the rest of the structure of direct taxation (ibid.: 516).

…and reached five conclusions:

1. *Taxable* social benefits to cover unemployment, sickness old age and other causes of need at an acceptable minimum standard of living.
2. *Untaxed* child benefits on a scale sufficient to provide an acceptable minimum standard of living.
3. A correspondingly adequate single's person's tax allowance.
4. The introduction of a home responsibility payment.

5. To help finance the reforms, the elimination of the married man's tax allowance and the restriction of the single person's allowance to earned income (both with appropriate transitional arrangements) (id.: 516–517).

The report also advised that it would be necessary to raise the basic rate of income tax "at least four percentage points" in order to be able to afford the proposals (id.: 517). The Meade Review has been noted for having constructed a convincing argument in favour of an expenditure tax, even if one has not yet been adopted in the UK. Lord Howe, later the figurehead behind the Tax Law Rewrite programme, wrote that, "for a time", an expenditure tax was viewed as "the answer to all our problems" (2001: 116).

In the search for a connection to a Pikettian tax principle, it is worth nothing that the Meade Review proposed a linear annual *wealth accessions tax*—a proposal which also was not adopted, but which continues to be debated to this day (ibid.). The overall purpose of the Review was to assess the system in terms of its capacity to meet its own stated goals, although it has been described as prioritising "the efficiency of the system" over equality concerns (Mendel and Bevacqua 2010: 176). The opportunity to revisit this enormously influential project occurred in 2011, with the Mirrlees Review.

The Mirrlees Review

The Mirrlees Review provided a reconsideration of the UK tax system for the twenty-first century. Published in September 2011 by the Institute for Fiscal Studies, it provides a thorough review of taxes and transfers. Recommendations of note include:

> …the integration of income tax and employee National Insurance contributions into a single tax, where all work-related expenses are deductible; the integration of as many benefits as possible into a single benefit, remaining separate from income tax;… the introduction of a land value tax; and the introduction of a tax on lifetime receipts as part of the taxation of wealth. (Creedy 2011: 362)

The aim of the Review was the creation of "a progressive, neutral tax system" (Mirrlees et al. 2012). The Review did not specify how much progressivity is desirable in a tax system, but instead considered "how to manage the inevitable trade off between redistribution and work incentives and how to design the system carefully to minimize the efficiency loss associated with achieving progressivity" (ibid.: 657).

Atkinson questioned whether gender equality could have been considered more explicitly by the review (2012: 779). He suggested that approaching welfare through Sen's capabilities approach would have opened up the possibility of a number of different perspectives (ibid.). Additionally, different criteria could have been adopted. For example, if gender equality had been considered in a review of VAT and child benefit, he argues, the importance of making gender equality a "prominent" concern would have been achieved (id.). Nonetheless, he emphasises that the Mirrlees Review is an "excellent" achievement that advances the cause of a "makeover" of the UK tax system (id.). Against the background of this achievement, he explains, the need for "integrat[ing]" the "different branches of economics" becomes more relevant (id.) (Presumably, by "different branches", Atkinson was referring to feminist economics.).

The same cause might be advanced through a fiscal sociological analysis, which would ask (amongst other questions): (1) why is gender equality a particular concern now, whereas it was ignored by previous generations (who, presumably, would have considered the unit of households the start and the end of welfare analyses)?; (2) why is gender equality not made more prominent in a review like Mirrlees, but it is considered part of an 'unintegrated' branch of economics? and, finally, (3) what do budgets reveal about gender equality? The new fiscal sociology, which explicitly incorporates law, and treats it as a valuable source of insight, asks: (1) does legislation address equality and taxation in an integrated way? (2) have courts done this? (3) Have the political 'elites' stated their views on the intersection between taxation and gender equality?

Personal Tax Reform 2010–2015

The answer to the third question is yes. The Conservative and Liberal Democrat Coalition government stated its positions in a Policy Paper, *2010 to 2015 government policy: personal tax reform*[8] released on 8 May 2015. It contained eight key actions. The personal allowance was raised to £10,500; businesses and charities were allocated a £2000 per *annum* relief against the cost of hiring staff; a revised "tax-free childcare scheme" was released; fuel duty was cut by 1 penny per litre; beer duty received a number of favourable (to the consumer) beer adjustments; (non-higher rate) married couples and

[8] https://www.gov.uk/government/publications/2010-to-2015-government-policy-personal-tax-reform/2010-to-2015-government-policy-personal-tax-reform (last accessed 6 November 15).

civil partners were given the right to share or transfer their personal allowance; bingo duty was reduced; and, finally, "the 10% rate of tax on savings income[…] [was] …replaced with a new 0% rate from April 2015 and the band of savings income that is subject to the new 0% rate is increasing to £5000."[9]

Gender equality was not mentioned, and women were not identified as a distinct class of persons requiring consideration. Children and families, however, are addressed. All of the initiatives are explicitly devoid of references to gender. Simply, it was not on the political agenda at the time of the 2010–2015 review.

Two important points emerge from this brief review of Meade and Mirrlees, and the 2010–2015 tax reform review. The reference to *untaxed child benefits* in Meade, and suggestion of a single, unified benefit in Mirrlees—combined with the absence of reference to gender in the 2010–2015 reform—provide the basis for consideration of a modern, Schumpeterian tax struggle. This struggle is at the intersection of class/wealth, and gender. As will be explored in the next chapter, a number of women have claimed that they have been made significantly poorer by recent changes in tax and benefit law, and the run of cases has failed to provide relief to their claims of discrimination. These cases are considered in the next section.

Transnational Tax Principles?

From the domestic, to the transnational: on the point of Piketty, and the 'tax principle' potential of his global capital tax proposal—the references to neutrality and efficiency within both the Meade and Mirrlees reviews would indicate that introducing further redistribution into the UK tax system, beyond that which already is achieved through the taxation of inherited wealth, would not sit well. The borders of existing tax and transfer policies were policed carefully in both reviews. In terms of the "global" aspect of Piketty's proposal, the question becomes even more difficult. Presumably, by "global," Piketty means to imply that the UK should seek, amongst other things, to prevent capital from escaping taxation by other countries, and to achieve this within its own shores.

First, a fiscal, sociological look backwards: the UK tax system has always been international in *outlook*. Indeed, one of the earliest taxes in English law

[9] Ibid.

was custom duty (Molovinsky 1979: 234). The first use of the term "customs" in application to import and export duties has not been dated, but, as Carson explained, "…it may be presumed that the expression antedated the Magna Carta in view of the reference therein to '*rectae et antiquae consuetdianae*'" (1972: 15). The formation of Her Majesty's Customs and Excise (HMCE) by Parliament has been dated to the aftermath of the Civil War, when the collection of a variety of different excise taxes and duties was systematised under a single government agency (ibid.: 257). HMCE's long history changed significantly in 2005, when it merged with HM Inland Revenue to form HM Revenue and Customs.

On the whole, Daunton explains that Britain adopted a strikingly "liberal, international [economic] policy" until 1914, at least, as compared with other countries (2007a: 5). But, of what relevance is comparison? One tax principle might be that there is no issue more domestic to a nation state than how it taxes its citizens. This is a common law principle, known as the revenue rule.[10] It has a long and rich history, but its origin is attributed to a 1729 case from the Court of the Exchequer.[11] It is also a principle which seems quite old fashioned in 2019. Today, countries take a great deal of interest in each others' fiscal, legislative choices, although that interest may be distinguished from taking the step of actually enforcing the tax laws of another country.[12] Indeed, through membership in supranational organisations such as the OECD and the United Nations, countries regularly attempt to impact policy choices in the content of tax laws of other countries. This sort of effort, however, has been occurring in one form or another at least since the League of Nations produced its first model tax treaty at the

[10]See, in particular, *A.G. Canada v. RJ Reynolds Tobacco Company* (2007) 268 F3d 103, in which US Court of Appeal for the second circuit relied upon the revenue rule to bar a Racketeer Influenced and Corrupt Organizations Act (RICO) claim (PL 91-452; 84 Stat 922-3; 18 USC ss 1961–1968).

[11]*Attorney General v Lutwydge* (1729) 145 Eng Rep 674 (Ex Div). See generally Mallinak (2006). The court in RJ Reynolds ascribed the origin of the revenue rule to Boucher v. Lawson, 95 Eng. Rep. 53 (K.B. 1734).

[12]The approach of the second circuit court of appeal in the USA has not influenced significantly the approach of the UK Supreme Court in similar cases. See Collins (2014: 356) who, when analysing the case of Revenue and Customs Commissioners v Sunico ApS (C-49/12) [2014] Q.B. 391 (ECJ [3rd Chamber]), suggests that it is "surprising" that the revenue rule was not considered relevant, especially given: (1) the fame of the RJ Reynolds case, and (2) the emphasis on its importance to be found in Dicey, Morris, and Collins 2016: para. 5-025. In any case, this book concerns neither the comparative development of the revenue rule in common law jurisdictions, nor whether the revenue rule continues to be relevant in either the USA or the UK. Rather, it suggests that whereas international tax questions traditionally have been approached from a conflict of laws perspective, presently, it is possible to discern a transnational middle ground, which, it will be argued, represents the transnational iteration of the Schumpeterian tax state.

turn of the last century (see generally Cockfield 2013: part B). Today, however, this sort of activity appears to have increased, significantly. The escalation in collaboration on tax issues between countries, civil societies, and supranational organisations has produced a new status quo, which differs greatly from the 'tax is domestic' ethos, promulgated in part by centuries of the common law principle of the revenue rule. Something has shifted.

This level of cross-border interest in tax not surprising, because tax is important. It always has been. The choices made by governments as to how much tax to collect from its citizens, and how to spend that money, are impactful on a number of levels. These choices will impact upon what a state is able to provide to its citizens; and, the choices that taxpayers make. Taxes may act as incentives at several key points in taxpayers' lives, in choices made within business, within the family, as to where to live—and, ultimately, many other ways.

Equally significant are the choices that governments make with those taxes. What services will citizens receive back, from the state, in return for taxes paid? Taxpayers will not receive back exactly what they paid. Through collective action and policy choices, they will receive something more. The content of that 'something more' offers the start of the 'tax state'. Is it, thus, possible to conceive of a *transnational* tax state?

By the advent of the twenty-first century, the absence of taxation in analyses of globalisation, poverty, and equality came to be acknowledged as problematic. The lack of engagement by fiscal sociology with issues relevant to developing economies, and the 'law and development' canon more generally, played a role in the slow adoption of fiscal sociology by legal scholars. An awareness of the importance of globalisation encroached upon fiscal sociological scholarship, in a way that made it difficult to continue to consider taxation as solely the preserve of the nation state.

When tax is discussed in a transnational context, issues such as avoidance and evasion, and organisations such as the OECD, UN and IMF, tend to be mentioned. A common thread in these discussions is a focus upon the idea that the globalisation of corporations has made it difficult for states to achieve their objectives (Webb 2004: 787). To the extent that Schumpeter's ideas contribute to an era he did not live to see, it sometimes is in the context of transitioning away from Keynesianism. So, for example, Jessop argues that Keynesianism was followed by Fordism (the post-war model of economic growth associated with systems of mass production), which was followed by the "Schumpeterian workfare" state, which itself has been followed by the modern transnational era (1993: 11). Using the term "Schumpeterian workfare state", Jessop refers (in part) to the idea that innovation is important, and, thus, it is sometimes necessary to "subordinate social policy" in order to keep the market conditions ripe for and supportive of innovation and competitiveness (ibid., I.1). On balance, however, Schumpeter appears to be useful for the principle that, in order for firms to survive, it is important for governments to support an environment in which they will be able to break old routines, and, above all, innovate (London and Hart 2004). The wrinkle of the transnational era, however, is the lack of control that individual states will be able to exert over this. This would not have been completely unknown to the author of the *Crisis of the Tax State*, however, who in 1918 was aiming to convince Austrians not to be distracted by the challenges of the Treaty of Versailles, and, instead, to focus on the possibilities offered by his *Finanzplan*.

What of the possibility of transnational tax principles? The concept of "transnational law," generally, famously was identified in 1956, when Philip C. Jessup published a book titled *Transnational Law*, containing the text of three of his Storrs lectures at Yale (Vagts 1956). In a review of the text, Katzenbach offered the following definition of this new concept:

> 'Law' for Jessup is composed of all rules and practices which regulate actions and events. When those actions and events transcend in any aspect a national frontier, then the 'law' which regulates, whatever its formal origin and whoever the lawmaker may be, is 'transnational.' (1957: 413–414)

The field of study was developed by Detlev Vagts, the author of a Harvard Law School casebook called *Transnational Legal Problems* (1956) and other scholars working primarily in the field of international law (Bekker et al. 2010: 16–18).

Transnational law, as a term, has a specific resonance within private international law. It can refer to problems of individual actors that are distinctly international in character. The solution to the problem, however, will be national. The question is, which nation? Lawyers attempting to solve private international law problems will ask, (1) which law is applicable? (2) which courts have jurisdiction?, and (3) are judgements from foreign courts recognised domestically? The questions typically are answered by analysis of connecting factors that tie a client, or a problem, to a jurisdiction, such as domicile, nationality, and, significantly for this discussion, through taxation.

The definition of transnational clearly is somewhat fluid; or, at the least, not rigid. Attempting to pin it down, Cotterrell suggested that European law inhabits the transnational sphere, simply because it 'spills out' from the borders of the nation state (2012: 500). He explains that this (relatively) new term, transnational law, has seemed necessary to indicate new legal relations, influences, controls, regimes, doctrines, and systems that are not those of nation-state (municipal) law, but, equally, are not fully grasped by extended definitions of the scope of international law" (ibid.: 500–501). Although he concedes that the term is not used with much "precision" (id.: 501), the "transnationalization" of European law in particular is perhaps best understood not as an end product of the integration and harmonisation of the different legal systems of the member states, but, rather, as the process by which the policy-making agenda of the EU is set (Kaiser and Starie 2005: 2). This is because policy makers within the EU view themselves as working within a wider, transnational context.

Is it possible for a consensus to be reached on transnational, tax principles? In search of an answer, it is worth considering some of the wide literature on transnational and multilateral consensus. For example, in exploration of this issue, Cotterrell has compared a *unilateral* agreement to a *multilateral* agreement (2012: 507). With a multilateral agreement, a group has decided something, but then it will be necessary to put in place "(Hartian) secondary rules" to enforce the agreement, or at least an agency to oversee its execution (ibid.). In a similar vein, Calliess and Zumbansen have addressed the concept of consensus, suggesting, first, that they "understand transnational law above all to demarcate a methodological position rather than to identify a perfectly map-able doctrinal field" (2010: 6). They endeavour thus to engage with a space which is "captured" neither by public nor by private law, whilst demonstrating that boundaries between both categories of law, increasingly, are less relevant (ibid.). Finally, scholars such as Danielsen have called for greater attention to be paid to the extent to which corporations influence what he describes as "transnational regulation," using many of the same illustrations as Cotterrell to populate this area of law (essentially, anything transcending the domestic, or, as Cotterrell would describe, the "municipal") (see, e.g., Danielsen 2005; see also, generally, Likoksky 2002).

Pragmatic Transnational Consensus: The Development of Law and Development (and the Role of Tax Principles)

> The fiscal state is strongest where it is needed most. (Gilley 2017: 456)

The journey from the "law and development" movement in the 1960s, to modern engagements with both legal pluralism, and transnational legal theory, are relevant in this context. The fiscal sociological analysis embraces a history of ideas, as well as tax revolts, budgets and law. Where would a global tax on capital, pursued as a principle of taxation, fit within this history? As a natural next step, or something else? It should be noted that the study of the relationship between law and development actually predates the 1960s, and reaches back "at least" to the nineteenth century (Trubek and Santos 2006: 1). Indeed, Marx, Weber and others addressed this topic (ibid.). In particular, Kennedy has explained the relevance of Marx's position that agreements made by exploited workers under capitalism did not represent "free will" (Kennedy 2006, ibid.: 28, citing Forbath and Forbath 2009).

For the purposes of this section, however, it is useful to follow Trubek's identification of the 1960s as the start of the law and development movement (1972). In 1972, he observed, in an article titled "Law and Development," that

> [l]aw is a practical science. It does not ordinarily dwell on fundamental questions about the social, political, and economic functions of the legal order. Satisfied with implicit working assumptions about these matters, legal thought moves rapidly to more tractable questions. But when law's solutions to social problems fail to satisfy, it becomes necessary to examine the basic theory from which they derive. This is such an era. (ibid.: 1)

Why, Trubek implicitly asked, did some countries have what could be described as developed economies, and others not? He outlined a pragmatic project with the hope of assisting Third World nations, defining these as countries which have not yet achieved "self-sustaining economic growth" (id.: 2).

There was a certain practicality to the evolution of law and development scholarship—simply, Trubek and Santos explain, this was a research area in which it was possible to seek funding. After the second world war, "international development agencies" devised methods for reforming legal systems in some countries (Trubek and Santos 2006). Economists and social scientists offered their assistance to these agencies first, and then were followed, comparatively "late," by legal academics (Burg 1977: 496). Their efforts were varied, and did not produce consensus, even on the definitions of "law" and "development" (ibid.: 500).

It is interesting and instructive to time travel through the decades, from 1972 to 1996, and to read Trubek updating his arguments in an article titled, "Law and Development: Then and Now" (1996). He explained that his 1972 article had been written at the end of a movement in the 1960s which was "designed to bring about major changes in legal systems and norms in the interests of efficiency and justice" (ibid.: 223). The reason for the development of the movement, as Burg suggested in another article from the 1970s, was that "[t]he spirit of service was in the air" (1977: 496).

Yet, writing in 1996, Trubek noted that the early law and development movement had been widely criticised in academia, on the grounds that it was "ethnocentric, imperialistic, atheoretical and naïve"—and, Trubek conceded, there was "much to" these assertions (223). In terms of the academic discourse, he explained that "[l]aw and development had a short, happy life and then faded from the scene" (ibid.). Thus it might have remained, except for the fact, as Trubek explained, that these agencies started, again, to call for academic expertise (id.). He directed attention towards development institutions, and noted that the "World Bank, regional banks, major foundations, the US Agency for International Development (USAID) and other bilateral aid institutions" all have "rule of law" initiatives worth billions of dollars. This produced a resurgence of interest in law and development, not least from academics whose projects were funded by these agencies (id.).

Addressing its resurgence, Trubek articulated a number of questions that the new/old movement would need to address, including whether there "… can be a true transnational discourse on law and development?" (id.: 226). He emphasised the importance of acknowledging the allegation, levied at the "old" movement, of an "ethnocentric bias for Western law" (id.). He stressed how important it was for proponents of the new movement to avoid the temptation to ensure that the economies of the developing countries are "reformed" in a way that ensures that they become good customers for trade with already developed capitalist countries (id.). It also was crucial to avoid the temptation to view one's own, developed capitalist country as a model for anything (id.). The key to progress, Trubek advises, is for the refreshed law and development movement to be "tentative, situational and dialogic" (id.). In particular, any "knowledge" produced by this refreshed movement should be produced in tandem with the developing countries who are its target (id.).

Trubek and Santos explain that, from the 1990s onwards, Western law has been deployed as a corrective for market failures (2006)—just as Smith would have advised. In their 2006 book, they guide the reader through a number of different phases of the law and development phenomenon, whilst noting that, throughout, the market, and capitalism, is trusted as the panacea for the problems faced by developing economies (ibid.: 15). Schumpeter would have described capitalism as an inevitable development for most countries, if not a final, static destination.

These are issues which also have been considered not simply within the context of transnational law, and law and development, but also within the context of legal pluralism. Griffiths' seminal article in 1986, titled "What is Legal Pluralism?," offered a "descriptive conception" of the term, which he defined as "the presence in a social field of more than one legal order". (1) In this article, Griffiths described the "myth" of legal centralism, in which law is the primary institution within society, under the shade of which all other institutions (including, for example, religion) fall (ibid.: 3–4). He explored the frustration caused by this myth both to "the liberal idealist" and "the would-be empirical student", and suggested that the problem of the "legal centralism" concept extends to "the theory of law in 'primitive society'", because of comparisons with the false, idealised picture of law in "modern" societies (id.: 4). "Legal pluralism is the fact", Griffiths insists, whereas "[l]egal centralism is a myth, an ideal, a claim, an illusion" (id.).

It is also a myth with serious consequences, given that it has driven European colonial expansion, under the justification of carrying the benefits of legal centralism to countries around the world (id.: 6). In his 1986 article, Griffiths provides a review of literature from that era, all addressing the concept of "legal pluralism", and concludes that most of the pieces he reviews are hindered by the fallacy of legal centralism (id.: 10–13). Griffiths' push for a different conception of legal pluralism is based partly upon ideas introduced in the 1930s by Ehrlich.

Ehrlich also is central to the writings of (several decades after Griffiths) Berman, who offers a different interpretation of legal pluralism:

> [w]e live in a world of legal pluralism, where a single act or actor is potentially regulated by multiple legal or quasi-legal regimes imposed by state, substate, transnational, supranational, and nonstate communities. (2012)

Berman approaches the topic of legal pluralism primarily from the perspective of competing assertions of jurisdiction, with subtopics including "normative communities" that seek to influence decision-making processes (ibid.: 336). The tensions behind the idea of legal pluralism also are clearly described by Merry, who refers to the joining of European and "traditional" forms of law (Merry 1988: 870). She writes that legal pluralism is more than that—for example, it was a mistake to assume that the countries subjected to colonisation were "legally and culturally plural" (ibid.).

Whether considered within the context of Smith-ian 'good tax' canons, transnational consensus, law and development, or legal pluralism, the identification of tax principles, in a global sense, appears at first glance to be quite a noble project. What would such a principle look like? The principle would probably articulate opposition to tax 'dodging' by international corporate actors that appear to fully reside in no state—a description that may appear to risk evocation of the outdated law and development project. Could such a tax principle be instituted in the transnational sphere, and could it occur without suggestions of ethnocentric bias? Additionally, given the modern discourse on global tax avoidance, are we now in the midst of a Schumpeterian, transnational how might tax crisis? How might such a crisis be described in a way that respects plurality?

These questions are urgent because, if there is a transnational tax state—or, if one day, there will be—then its *next* crisis may well be precipitated by the absence of adequate protection for socio-economic rights. This, ultimately, is Piketty's point. He recommends the "global tax on capital" explicitly to prevent such a crisis. This book has considered the inadequacy of protections in two fora—both EU, and UK law—neither of which provided legal protections against austerity measures which, cloaked under a guise of prudent and sustainable budgeting, contributed to unequal distribution of wealth, and economic inequality. Reactions against this explain why Piketty's proposal for a global tax on capital struck a chord. The challenge is, there is no (existing) international legal order into which such a proposal easily will fit.

Prosser warned of the dangers of UK law internalising balanced budget rules as if they are norms. If one is in search of new, normative legal values, then considering Piketty's proposal as if it were a principle provides an interesting alternative. The point at which forms of transnational or international governance may become particularly relevant is in the context of protecting socio-economic rights. This is considered in more detail, in the next chapter.

Closing

Is there a transnational fiscal state? When we think of the crisis of the tax state in the modern era, does it make sense to address this idea from the perspective of national states? Schumpeter would have noted that, within the modern discourse, it has become traditional to construct tax avoidance as a problem of globalisation. States, so runs the worry within this discourse, have lost the ability to cope with the international, or transnational, corporate form. It is thus a worldwide problem, and the best leadership that can be provided on this issue will have to come from supranational organisations like the OECD, UN and IMF.[13]

[13] The EU, it should be noted, assumes a very different place in this discourse, as a wholly unique supranational state struggling (it might be suggested) with its absence of direct taxing competence.

Schumpeter's fiscal sociology was motivated, in particular, by identifying lessons that the past might have for the economically troubled Austria of the 1920s, but also looked beyond its borders (Swedberg 1991: 252, 257; James 1984: 70). He began writing at a time when previously localised questions of economy and governance were beginning to be considered within an international framework, and argued that his fiscal sociology could explain patterns of international economic activity (Beckert and Zafirovski 2005: 289). Yet he never lost his focus on localised questions surrounding, for example, the structure of taxation.

That, perhaps, is because this was where such questions, then, were best addressed. Yet even the *Finanzplan* presaged the Marshall Plan and was based on an understanding that rebuilding Austria's economy would require engagement beyond its borders. Given this, it is safe to assume that Schumpeter would have had no hesitation in rejecting the legal traditions of the revenue rule, and pursuing his "sociological" analysis in a broader way.

If there is a transnational tax state, might Piketty's global capital tax find a place as a principle within it? Given the enthusiastic response to *Capital*, the potential would appear to be there, even if the legal framework for such a tax may be more difficult. What would also appear to be present is a fiscal, sociological disconnect between what citizens expect from tax states (i.e., that inequalities in wealth should not increase unchecked), and what tax states currently are capable of delivering.

References

Atkinson, Anthony B. 2012. "The Mirrlees Review and the State of Public Economics." *Journal of Economic Literature* 50 (3): 770–780.

Backhaus, Jürgen G. 2012. *Navies and State Formation: The Schumpeter Hypothesis Revisited and Reflected*. Münster: LIT Verlag.

Bankman, Joseph, and Daniel Shaviro. 2014. "Piketty in America: A Tale of Two Literatures." *Tax Law Review* 68: 453.

Beckert, Jens, and Milan Zafirovski. 2005. *International Encyclopedia of Economic Sociology*. London: Routledge.

Bekker, Pieter H. F., Rudolf Dolzer, and Michael Waibel. 2010. Introduction: A Festschrift to Celebrate Detlev Vagts' Contributions to Transnational Law. In *Making Transnatioal Law Work in the Global Economy: Essays in Honour of Detlev Vagts*. Cambridge: Cambridge University Press.

Berman, Paul Schiff. 2012. *Global Legal Pluralism: A Jurisprudence of Law Beyond Borders*. Cambridge: Cambridge University Press.

Boucoyannis, Deborah. 2013. "The Equalizing Hand: Why Adam Smith Thought the Market Should Produce Wealth Without Steep Inequality." *Perspectives on Politics* 11 (4): 1051–1070. https://doi.org/10.1017/s153759271300282x.

Burg, Elliot M. 1977. "Law and Development: A Review of the Literature and A Critique of Scholars in Self-Estrangement." *American Society of Comparative* Law 25: 492–530.

Calliess, Gralf-Peter, and Peer Zumbansen. 2010. *Rough Consensus and Running Code: A Theory of Transnational Private Law*. London: Bloomsbury Publishing.

Cockfield, Arthur J. 2013. "The Limits of the International Tax Regime as a Commitment Projector." *Virginia Tax Review* 33: 59.

Caporaso, James A., and David P. Levine. 1992. *Theories of Political Economy*. Cambridge: Cambridge University Press.

Caron, Paul. 2015. "Thomas Piketty and Inequality: Legal Causes and Tax Solutions." *Emory Law Journal Online* 64: 2073.

Carson, Edward. 1972. *The Ancient and Rightful Customs: A History of the English Customs Service*. London: Archon Books.

Collins, Lawrence. 2014. "The Enforcement of Foreign Revenue Laws'." *The Law Quarterly Review* 130: 353.

Cotterrell, R. 2012. "What Is Transnational Law?" *Law & Social Inquiry* 37 (2): 500.

Creedy, John. 2011. "Reflections on Tax by Design." *Fiscal Studies* 32 (3): 361–373.

Danielsen, Dan. 2005. "How Corporations Govern: Taking Corporate Power Seriously in Transnational Regulation and Governance." *Harvard International Law Journal* 46: 411.

Daunton, Martin. 2007a. *Just Taxes: The Politics of Taxation in Britain, 1914–1979*. Cambridge: Cambridge University Press.

Daunton, Martin. 2007b. *Trusting Leviathan: The Politics of Taxation in Britain, 1799–1914*. Cambridge: Cambridge University Press.

Dworkin, Ronald M. 1967. "The Model of Rules." *The University of Chicago Law Review* 35 (1): 14–46.

The Economist. 2014. "A Modern Marx."

Forbath, William E., and William E. Forbath. 2009. *Law and the Shaping of the American Labor Movement*. Cambridge, MA: Harvard University Press.

Gilley, Bruce. 2017. "Taxation and Authoritarian Resilience." *Journal of Contemporary China* 26 (105): 452–464. https://doi.org/10.1080/10670564.2016.1245891.

Goldscheid, Rudolf, and Robert Lazarsfeld. 1917. "Staatssozialismus oder Staatskapitalismus? Ein finanzsoziologischer Beitrag zur Lösung des Staatsschulden-Problems." *Archiv für Rechts-und Wirtschaftsphilosophie* 11: 255–259.

Griffiths, John. 1986. "What Is Legal Pluralism?" *Journal of Legal Pluralism and Unofficial Law* 24 (18): 1–55.

Harvey, David J. C. 2014. "Afterthoughts on Piketty's Capital in the Twenty-First Century." *Challenge* 57 (5): 81–86.

Howe, G. 2001. "Simplicity and Stability: The Politics of Tax Policy." *British Tax Review* 2: 113–123.

Hsu, Shi-Ling. 2014. "The Rise and Rise of the One Percent: Considering the Legal Causes of Wealth Inequality." *Emory Law Journal Online* 64: 2043–2072.

Isaac, John Gower. 2006. "Development of Tax Policy Formulation and Presentation: A Retrospect." *British Tax Review* 3: 222–228.

James, Harold. 1984. "The Causes of the German Banking Crisis of 1931." *The Economic History Review* 37 (1): 68–87.

Jessop, Bob. 1993. "Towards a Schumpeterian Workfare State? Preliminary Remarks on Post-Fordist Political Economy." *Studies in Political Economy* 40 (1): 7–39.

Kaiser, Wolfram, and P. Starie. 2005. "Introduction." In *Transnational European Union: Towards a Common Political Space*. New York: Routledge.

Katzenbach, Nicholas de B. 1957. "Book Review." *University of Chicago Law Review* 24 (2): 413–417.

Liebig, Stefan, and Steffen Mau. 2007. "When Is a Taxation System Just? Attitudes Towards General Taxation Principles and Towards the Justice of One's Own Tax Burden." In *Social Justice, Legitimacy and the Welfare State*, edited by Steffen Mau and Benjamin Veghte, 143–183. Aldershot: Ashgate.

Likoksky, Michael. 2002. *Transnational Legal Processes: Globalisation and Power Disparities*. Vol. 9. Cambridge: Cambridge University Press.

London, Ted, and Stuart L. Hart. 2004. "Reinventing Strategies for Emerging Markets: Beyond the Transnational Model." *Journal of International Business Studies* 35 (5): 350–370.

Mallinak, Brenda. 2006. "The Revenue Rule: A Common Law Doctrine for the Twenty-First Century." *Duke Journal of Comparative & International Law* 16: 79.

Martin, Isaac William, and Monica Prasad. 2014. "Taxes and Fiscal Sociology." *Annual Review of Sociology* 40: 331–345.

Meade, James. 1978. *The Meade Review*. Allen & Unwin. Accessed 9 November 2015. http://www.ifs.org.uk/publications/3433, 1 January.

Mendel, Jonathan, and John Bevacqua. 2010. *International Tax Administration: Building Bridges*. Sydney: CCH Australia Limited.

Merry, Sally Engle. 1988. "Legal Pluralism." *Law & Society Review* 22 (5): 869–896.

Mirrlees, James. 2011. *Tax by Design: The Mirrlees Review*. Edited by Institute for Fiscal Studies. Oxford: Oxford University Press.

Mirrlees, James, Stuart Adam, Tim Besley, Richard Blundell, Stephen Bond, Robert Chote, Malcolm Gammie, Paul Johnson, Gareth Myles, and James Poterba. 2012. "The Mirrlees Review: A Proposal for Systematic Tax Reform." *National Tax Journal* 65 (3): 655–684.

Molovinsky, Lemuel. 1979. "Continuity of the English Tax Experience in Early Pennsylvania History." *Pennsylvania History: A Journal of Mid-Atlantic Studies* 46 (3): 233–244.

Piketty, Thomas. 2003. "Income Inequality in France, 1901–1988." *Journal of Income Inequality* 111 (5): 1004–1042.

Piketty, Thomas. 2017. *Capital in the Twenty-First Century*. Cambridge: Harvard University Press.

Piketty, Thomas, and Gabriel Zucman. 2014. "Capital Is Back: Wealth-Income Ratios in Rich Countries 1700–2010." *Quarterly Journal of Economics* 129 (3): 1255–1310. https://doi.org/10.1093/qje/qju018.

Raz, Joseph. 1972. "Legal Principles and the Limits of Law." *Yale Law Journal* 81 (5): 823–854. https://doi.org/10.2307/795152.

Reisman, David A. 2005. *Democracy and Exchange: Schumpeter, Galbraith, TH Marshall, Titmuss and Adam Smith.* Cheltenham: Edward Elgar.

Ring, Diane M. 2002. "One Nation Among Many: Policy Implications of Cross-Border Tax Arbitrage." *Boston College Law Review* 44: 79.

Roine, Jesper, and Daniel Waldenström. 2008. "The Evolution of Top Incomes in an Egalitarian Society: Sweden, 1903–2004." *Journal of Public Economics* 92 (1): 366–387. https://doi.org/10.1016/j.jpubeco.2007.06.012.

Schmidt, Karl-Heinz. 2003. "Schumpeter and the Crisis of the Tax State." In *Jospeh Alois Schumpeter: Entrepreneurship, Style and Vision*, edited by Jurgen Backhaus, 337–352. London: Springer.

Schumpeter, Joseph A. 1918/1953. "Die Krise des Steuerstaates." Graz-Leipzig: Leuschner & Lubensky; reprinted as pp. 1–71, in J. A. Schumpeter, "Aufsätze zur Soziologie." English translation by W. F. Stolper and R. A. Musgrave, in International Economic Papers. London: Macmillan, 1954.

Schumpeter, Joseph A. 1982. "The 'Crisis' in Economics-Fifty Years Ago." *Journal of Economic Literature* 20 (3): 1049–1059.

Sen, Amartya. 2010. "Adam Smith and the Contemporary World." *Erasmus Journal for Philosophy and Economics* 3 (1): 50–67.

Smith, Adam. 2010. *The Theory of Moral Sentiments*. London: Penguin.

Smith, Adam, and John Ramsay McCulloch. 1838. *An Inquiry into the Nature and Causes of the Wealth of Nations.* A. and C. Black and W. Tait.

Swedberg, Richard. 1991. "Major Traditions of Economic Sociology." *Annual Review of Sociology* 17 (1): 251–276.

Trubek, David M. 1972. "Toward a Social Theory of Law: An Essay on the Study of Law and Development." *Yale Law Journal* 82 (1): 1–50.

Trubek, David M. 1996. "Law and Development: Then and Now." Proceedings of the Annual Meeting (*American Society of International Law*) 90: 223–226.

Trubek, David M., and Alvaro Santos. 2006. Introduction: The Third Movement in Law and Development Theory and the Emergence of a New Critical Practice. In *The New Law and Economic Development: A Critical Appraisal*. Cambridge: Cambridge University Press.

Vagts, Detlev. 1956. *Transnational Legal Problems*. New Haven, CT: Yale University Press.

Webb, M. 2004. "Defining the Boundaries of Legitimate State Practice: Norms, Transnational Actors and the OECD's Project on Harmful Tax Competition 1." *Review of International Political Economy* 11 (4): 787–827.

West, Edwin G. 1977. "Adam Smith's Public Economics: A Re-evaluation." *Canadian Journal of Economics* 10: 1–18.

7

Example Two of Taking Law Seriously in Fiscal Sociology: Tax, Spending and Gender

The Value of Fiscal Sociology to Law, Gender, and Inequality (or, Problems with Schumpeter and Marx)

Fiscal sociology provides a forum for analysing how taxation contributes to the preservation of inequality (Campbell 1993: 180). For this reason, it has filled an important gap for many scholars. In the "classical tradition" of economics, there are two economies: the economy of the household, and the economy of the market (Bell 1974: 29–30). Although there are "sociological theories" of the private household which scholars consult, there are few if any "sociological theor[ies] of the public household" (ibid.: 30). For the market economy, Smith and Locke are important. And yet, as Bell observed, "we have… no sociology of the structural conflicts between classes and social groups on the decisive question of taxation" (id.). Given the historical exclusion of women from paid work, and the large amount of unpaid labour in which women engage, this omission has meant that analyses of inequality between men and women largely has remained under-discussed.

When the intersection of inequalities and taxation is considered, from any perspective—whether from the perspectives of gender (McCaffery 2009), children (Dawson 2010) or race (O'Brien 2017)—scholars have embraced the fiscal sociological framework, in that they have considered the contribution of the tax state to inequalities, and its capacity to redress them. As discussed, Schumpeter's framework makes it easier to consider Marxian perspectives upon taxation law. Particularly in Chapter 2, *supra*, tax was

A. Mumford, *Fiscal Sociology at the Centenary*, Palgrave Socio-Legal Studies,
https://doi.org/10.1007/978-3-030-27496-2_7

identified as the perfect candidate for a Marxian analysis; perfect, that is, until one recalls that Marx viewed tax as necessary only in the intermediary sense for the transfer of the means of production to the control of the people (Musgrave 1980: 361–362; Friedman 1974). Nonetheless, part of the appeal of fiscal sociology remains that it enables a (sort of) quasi-Marxian consideration of the potential of tax (Musgrave 1980: 362).

Does it necessarily follow, however, that a fiscal sociology-enabled Marxian analysis has anything to contribute to a study of gender inequality? Such analyses have occurred (Wilson 2013; Kenworthy 2009) and have contributed to a rich literature; but, generally, there are a couple of challenges. The combination of the problems of Marxian analysis with the issues discussed in "Taking rights seriously with Schumpeter" (ch. 5, *supra*) would appear to risk fiscal sociology's classification as a particularly unsuitable framework for consideration of gender inequality. As Himmelweit advised,

> [l]ater Marxists, rather than mining his works for the odd comment on gender relations, would do better to accept that a more fundamental extension of his analysis to include human reproduction is necessary if anything significant is to be said on the relations between the sexes. (1991: 189)

Her message is that it makes little sense to comb Marx in the hope of finding material with which to work, if one is interested in the economic inequality of women. Given this, it becomes particularly important to distinguish between Schumpeter's fiscal sociology, and the new fiscal sociology.

Employing the framework of the new fiscal sociology, it is possible to move beyond "mining [Marx's] works for the odd comment on gender relations," and to embrace a broader framework. The tax principles analysis, in Chapter 6, demonstrates how. Against this background, the impact of the policies of austerity on gender inequality would appear to be a perfect issue to address within an analysis of the UK's tax state in modern times. As Salomon observed of austerity (in the context of programmes imposed in Greece in the wake of the financial crash), "[t]hese may be unusual times but in important ways they are also deeply familiar times" (2015: 2929). Her point was that the lesson of history is that economic crises often expose gaps in legal protections (ibid.). This is demonstrated, in particular, by the litigation history of the benefit cap in the UK courts, which is considered in this chapter.

The aftermath of the economic crisis has served to highlight the reality that women have little legal protection against government initiatives which disproportionately impact them, absent a connection with children. This has led to a strained litigation, which is detailed here, in which the influence of international agreements pertaining to the rights of children sometimes are considered, whereas those pertaining to the rights of women are ignored. Salomon has predicted that, in future, the leadership exercised by supranational organisations during times of crisis is likely only to increase (id.). This chapter will highlight some of the issues that may be targeted.

The New Fiscal Sociology, and the 'Gender Norms' of Empire

In a chapter in the *New Fiscal Sociology* titled "Where's the sex in fiscal sociology?" (Martin et al. 2009: ch. 13), McCaffery observed that traditional fiscal sociological scholarship has tended to deal with what he describes as "large-scale issues" of, *e.g.*, social unrest, war, and tax revolts (2009: 232). He urges that fiscal sociological analyses of tax systems should continue to extend to consideration of what he designates the "micro" issues as well; in other words, the "patterns of marriage, childbearing, work, savings, education, charity, home ownership and more" (ibid.). The reason for this is that considering the impact of "social norms and biases" on fiscal systems can reveal how "deeply entrenched" they are, leading to the active participation of the fiscal system in the reproduction of inequalities (id.: 231).

By way of example, McCaffery compares the USA with the UK and relates that, well into the 1970s, the Inland Revenue (as then was) refused to deal with wives, and would only correspond with their husbands (id.: 232). He explains that this made discrimination against women a matter of "positive law," whereas, by comparison, discrimination against women was more indirect—and, then, he extends a comparative, analytical bridge in consideration of several different ways in which the US tax code discriminates against women in favour of men (id.). One of the reasons for choosing this comparison, McCaffery explains, is that the system in the UK had an impact "throughout the empire," and thus played a role in the formation of norms and biases in countries beyond its borders, including the USA (id.).

The sections which follow will seek to identify these normative values, and to consider their role in the context of the benefit cap litigation. The aim is to provide greater context to McCaffery's proposal that, if the new fiscal sociology is to develop a greater body of scholarship dealing with women, taxation, spending and inequality, then the norms and biases of the UK' system provide a useful, historical, fiscal sociological starting point. The Inland Revenue's refusal to deal with wives until the 1970s is but one example: are there more? As noted in Chapter 2, Schumpeter's methodology included long term, historical explorations of the development of both the economy and the 'welfare state' (Backhaus 2004: 4). A survey of important moments, reflecting the interaction between the tax state and gender in the UK, follows. There are two criteria for selection and inclusion in this brief review: first, whether the example provides an illustration of McCaffery's positive law/indirect discrimination dichotomy; and, secondly, there is a preference for examples with relevance for the analysis of the example selected for analysis in this chapter: the benefit cap litigation.

This litigation has been selected for consideration because it supports Salomon's point that, after economic crises, gaps in legal protections often are exposed. The argument advanced here is that, after the economic crisis of 2008, gaps in legal protections against economic discrimination against women were revealed. This is what McCaffery would describe as an illustration of indirect disadvantage. Thus, this chapter will consider the historical roots of the litigation, as well as the gaps in law exposed by the fiscal crisis.

Independent Taxation

When it comes to dealing with wives independently from their husbands, in one, important way the HM Revenue and Customs was ahead of its time—as compared with other European countries, if not the USA—specifically, in the context of independent taxation To set the comparative stage: in 1930, the US Supreme Court held that a married couple's income may be divided between spouses, in community property states, for the purposes of US federal income taxation (*Poe v Seaborn*, 282 US 101 (1930)). This decision disadvantaged married couples in non-community property states; and, thus, was followed by the US Revenue Act of 1948 [Pub. L. No. 471, 80th Cong., 2nd Sess.; see Surrey 1947, making it clear that the act was not motivated by the hope to afford financial independence to wives, which is unmentioned, but, rather, aimed to ameliorate disadvantage for non-community property states], which allows all married couples to opt for an "income splitting" joint return.

When the US enacted a federal income tax in 1913, individual filing was permitted, but less desirable for married couples, who enjoyed a larger exemption than a single person (Stotsky 2006: 10). Yet the approach to a wife's interest in the family income seemed to split between those states which followed the English common law tradition (so, a married man filed one return for the whole family), and civil law, community property states (where each spouse had a "legally defined interest") (ibid.). *Poe* had attempted to sort the confusion that arose from this by establishing separate treatment, although the US Revenue Act of 1948 finally sorted the issue.

By contrast, separate income reporting for wives was not achieved in the UK until the late 1980s. Before 1988, a wife's self-reported income was included with that of her husband for tax purposes automatically.[1] The change in the law actually occurred ahead of many other European countries (Rafferty and Rubery 2013), many of which continue to delay, despite the fact that the European Commission called for independent taxation in EU member states as early as 1984 (Spencer 1986; see also the recent European Parliament resolution of 15 January 2019 on gender equality and taxation policies in the EU (2018/2095(INI))).

The introduction of independent taxation in the UK afforded wives the option to have marriage ignored for tax purposes, and for wives to be assessed for tax separately. This is an important historical development, although some of the tensions surrounding taxation of married couples persist. For example, some financial benefits to women from joint taxation have been acknowledged in some studies (Himmelweit 2002: 61). These studies largely served to emphasise that a tax system which disadvantaged women, generally, was unlikely to be 'fixed' by a switch to independent taxation (ibid.). Nonetheless, the move to a system which affords wives financial independence from their husbands is a significant development for the equal treatment of women, and reflects the sort of change in "positive law" which McCaffery engaged.

Married Couple's Allowance, and Child Benefit

Whilst the introduction of independent taxation for married women in the UK was an important change, it was combined with a tax allowance for married couples which automatically was paid to husbands. This served to "reaffirm.. the 'normality' of traditional gender roles as well as the value of marriage" (Bryson and Heppell 2010: 34). This also continued the dissonance between the Married Women's Property Act in 1882 (45 & 46 Vict. C.75), which afforded women (after 1870) the right to own and control personal property, and the continuing requirement that a wife's income should be combined with her husband's for tax purposes. Whereas, after the

[1]Full, independent taxation was achieved by 1990 (Stotsky 2006: 8).

Married Women's Property Act, there had been some hope that inequality would be eliminated in the next century, as Walby explains, "[a] more appropriate interpretation is that they shifted the form and degree of patriarchy without eliminating it" (1994: 385). Patriarchy could be described as fostered and even produced by the tax system; or, alternatively, it could be portrayed as an existing, structural inequality which was revealed by the tax system.

It is surprising that the married couple's allowance, which essentially involved the tax system rewarding husbands for marriage, was not immediately repealed in 1988, when the independent taxation reforms were introduced. Nonetheless, enthusiasm for the allowance had dwindled, and, in the 1993 Budget, Norman Lamont introduced important changes. Effectively, the allowance changed into a *tax credit*, and was reduced in value, first, to twenty per cent of its original value; and, later, down to fifteen per cent, then ten per cent; and, eventually, was abolished.

The system of tax credits which came to dominate the government's approach to tax, spending and the family was introduced as an addition to an allowance known as child benefit. Child benefit combined child-centricism, with some equality-focused objectives. Introduced in 1974 by the Labour Government, Castle described it as "…for the first time a single universal system of family support" (HC Debs, Hansard, 13 May 1975, col 334; Atkinson 2011: 80). The benefit amounted to four pounds a week in 1979, which then represented 9% of mean gross income per person in the UK (Atkinson 2011: 80). When the idea of child benefit was first introduced in 1971 by the Child Poverty Action Group (CPAG), led by Pete Townsend and Frank Field, the ambition had been set to target 15% of mean gross income—so, 9% was less than had been hoped (ibid.: 79–80). As time passed, the percentage fell even further (id.: 79–80). There was a "modest recovery" under John Major; nonetheless, the percentage fell to as low as 3% for a one child family (id.).

The investment of a child-centric focus on child benefit was evident both from its name, and from its close association with the CPAG. The CPAG continued to play an important role in influencing its development; and, for example, was involved in convincing New Labour to consider the impact of its policies on children, in particular (although it did "argue that family income needs to be looked at in the round"; Lister 2006: 328) On the whole, children's well-being was linked to that of women (ibid.: 330). The thinking was, as Prosser explained of New Labour and the "third way": "…the social investment philosophy was essentially instrumental to the demands of global competitiveness, as social policy was still treated as the 'handmaiden' of economic policy, and children were constructed as 'citizen-workers of the future rather than child-citizens in the here and now" (2011: 74).

Tax Credits

Children initially were not an important part of the rearrangement of the tax system away from the focal point of the married couple, towards the individual. That changed, however, when the New Labour policy of 'supporting families through supporting children' was pursued in large part through the tax system. Children were targeted through the universal child tax credit and childcare tax credits, which entailed another reorientation of the tax system: away from tax allowances, and towards tax credits. This was a significant shift, because whilst tax allowances are perceived as favouring the better off, tax credits and benefits target support at the lower end of the income distribution.

Bowler has considered the impact of the individualistic reorientation of the tax system after the introduction of independent taxation (2007). Her work suggests that, despite the recent child-centric focus, the focus of the tax system upon individuals, regardless of family, persists. She qualifies, however, that there are 'significant exceptions' to this observation. She explains that these exceptions include income election rules for jointly held property; the tax avoidance rules on settlements; capital gains tax exemptions for transfers between spouses/civil partners, and, the inheritance tax exemptions for transfers between spouses/civil partners both before and after death (ibid.).

In the UK, analysis of predictive models (which simulated likely results) had suggested that tax credits would produce an increase in labour for single mothers, but a drop in market participation for married women (id.: 2010). Child care largely is the challenge. Thus, the increase in reliance on earned income tax credits in the UK under the Blair administration was portrayed as a response to the absence of a national child care policy; and, in one sense, transplanted the child care issue to tax law. It also aimed to address the problem that, in particular, single mothers face in the workplace, such that it is only financially worthwhile to take on jobs that are relatively well paid.

This travel of norms and biases that disadvantage women within fiscal systems, as identified by McCaffery, actually occurred in a different direction: from the USA, to the UK. Tax credits are an example of a system that evolved in the USA, and, especially during the New Labour exchange of ideas and strategies between Tony Blair and Bill Clinton, were exported directly from the USA to the UK (Dolowitz 2003: 2217). Tax credits, thus, can be analysed from two perspectives: from the perspective of the travel of norms and biases (when considering the early iterations of, for example, the Working Families Tax Credit), and, from the perspective of, in McCaffery's description, "positive law" discrimination (especially when considering the Universal Credit, which replaced the New Labour tax credits, and is discussed next).

New Labour

Universal Credit was introduced in 2010, as part of the Personal Tax Reform review covered earlier in the previous chapter. In many ways, it may be understood as a reaction against what preceded it, so this history is covered here briefly. New Labour's Child Tax Credit (2003–2018, for most people), and Working Tax Credit (same), are both relevant. Early research into the Child Tax Credit, which allowed a family with children and an income below a certain level to claim credit on top of child benefit, concluded that it was likely to increase labour market participation, although the costs of childcare might require further attention (Blundell et al. 2000). The Child Tax Credit was described as part of an approach which involved "welfare ends through market means" (Taylor-Gooby et al. 2004: 573). Blundell, in the 2001 Keynes Lecture in Economics, optimistically suggested that the tax credits, when viewed as part of Labour's wider package of tax initiatives, "could work", and, in fact, were potentially a "…relatively low-cost way of enhancing earnings and self-sufficiency" (Blundell 2001: 519).

As with the Coalition government that followed it, the (then, new) Labour government had commenced its term in office with welfare reform initiatives—what eventually was enacted as the Welfare Reform and Pensions Act 1999 (Commencement Order 1999, Order 1999, No. 3309 (c.88)). In his analysis of that bill, Lund suggested it was typical of the "rights/obligations" structure of New Labour philosophy (1999: 447). He explained that rights became closely linked with duties, so that expectations of the state could not be perceived as unconditional (ibid.: 451). He emphasised, though, that "…the promotion of social inclusion by the elevation of obligation was an important element of New Labour's thinking on the 'third way'" (id.: 452). New Labour attempted to emphasise the "processes" that led to social exclusion and "benefit dependency" (Walker and Wiseman 2003: 14), rather than simply mandating solutions and budgetary efficiencies (ibid.: 17). On the whole, however, budgetary efficiencies clearly were a priority.

"Welfare to work" was placed at the centre of New Labour's policies, possibly based on influences from Clinton-era initiatives in the USA (Walker 1998: 533). By 2008, the UK government modified its approach slightly by "renewing" the tax credits initiative by focusing on the needs of families as they moved into and out of work—a renewal based on a certain amount of optimism that paid work had successfully been introduced into some families (Smith 2008: 507–508). In this sense, as will be discussed, the means-testing aspect of the (Coalition government's) Universal Credit is not new.

What is new, however, is the drastic cut in support, the IT problems, and the increase in the number of families using food banks.[2] Indeed, Sainsbury reminds us that "[c]onditionality has been a feature of the benefit system since its inception: requiring claimants to fulfil some kind of obligation (mostly to do with preparing or looking for work) is rarely challenged and has become an almost core tenet of welfare policy in the UK" (2010: 102; Adler 1975: 97). Similarly, celebrated as the UK's "first" tax credit (McLaughlin et al. 2001: 163), the predecessor to the Child Tax Credit, the Working Families Tax Credit (1999–2003 (WFTC)) was in many ways designed to be all things, to all people. As its main objective, however, the WFTC (later the Child Tax Credit) was linked to New Labour's child poverty reduction platform.

The 'all things to all people' aspect of the WFTC was criticised by Newman, who suggested that New Labour operated in an "imaginary post-feminist world", in which there was a "supposed new consensus" on women, work and the economy (2001: 155). Yet, she and others acknowledge that there is *some* consensus; for example, that families headed by lone mothers with dependent children are most "vulnerable" to poverty (Smith 2008: 513). In this sense, upon their introduction, the tax credits were recognised as "major reforms" (Walker and Wiseman 2003: 3). Nonetheless, their intention was not to remedy existing defects in the system, but to facilitate "modernisation" (ibid.: 4).

For a while, and at least for children, the tax credits seemed to work. By 2002, Bradshaw described the prospects for improving rates of child poverty as "pretty good", and linked the introduction of these tax credits to this

[2]https://www.newstatesman.com/politics/welfare/2019/04/universal-credit-designed-make-you-fail-why-foodbank-use-record-high (last visited 29 April 2019).

positive outlook (as well as, at that point in time, what was perceived to be a relatively healthy economy) (137). Bradshaw's observation should be considered in light of two factors. First, this was during a period when, globally, statistics pertaining to child poverty were steadily worsening (Levy et al. 2007: 625). Secondly, these credits were introduced against the backdrop of the stark reality that, in 1997, the UK had the highest rate of child poverty in Europe, achieved after a period in which (since 1979) rates of child poverty had tripled (Phung 2008: 551). New Labour made these statistics a target of their time in office. Indeed, one of the final pieces of legislation published by the outgoing Labour government was the Child Poverty Act 2010 (Dickens and Ellwood 2003: R7).

The Universal Credit

It is not surprising, therefore, that the system which New Labour had hoped would be part of its legacy was targeted for reform by the Coalition government which succeeded it. As mentioned *supra*, the Universal Credit was introduced at the 2010 Conservative annual conference, by the Work and Pensions Secretary, Iain Duncan Smith. It replaced both the Child Tax Credit, and the Working Tax Credit. To receive the Working Tax Credit, the income of couples was aggregated, as long as they lived together (Tax Credits Act 2002 Pt I, ss3(5A), 48(1)). The Universal Credit's ambition of "making work pay" actually had been introduced with the tax credits reforms in July 2001, and was only *continued* by the Coalition government (Puttick 2017). By 2010, this idea was deeply embedded.

The Universal Credit was introduced by the Welfare Reform Act 2012, Pt 1. The general idea behind Universal Credit is to replace six benefits (Child Tax Credit, Housing Benefit, Income Support, Income-based Jobseeker's Allowance, Income-related Employment and Support Allowance (ESA) and Working Tax Credit[3]—with one single credit. As mentioned earlier in this book, it has been heavily delayed and its final "roll out" was set December 2018 (McKeever 2018). The migration, generally, has proved fraught. As discussed in Chapter 4, the OBR has faced significant challenges in providing accurate forecasts as to its impact. In April 2019, the Institute for Fiscal Studies (IFS) predicted that approximately two million people would lose £1 million a year due to the Universal Credit, with those claiming disability

[3]http://www.gov.uk/universal-credit (last accessed 30 April 2019).

benefits predicted to be the worst affected.[4] The IFS has predicted that although 4.2 million adults will collect at least 100 pounds per year more than before the Universal Credit (UC), around 4.6 million were predicted to be worse off.[5] Those who are disabled, or care for a disabled person, were most likely to remain "persistently, rather than temporarily, poor" under the UC.[6]

At its introduction, the Coalition government announced that the UC would be supported by the investment of an additional £200 million for childcare support (Sanders et al. 2019). The design of the scheme, however, was "regressive," and tended to offer tax-free childcare in greater numbers to those at the top of income distribution, as opposed to the bottom (ibid.). This, combined with the many delays, led Gedalof to observe that "…the impossibility of this neoliberal model of an austere welfare state and its individualised account of social justice is increasingly being revealed" (2018: 4). Indeed, it could be argued that the increase in food bank usage since the UC was introduced, as well as the increase in personal debt and rent arrears, reveals the UC to be part of an attack on one of the "founding principles" of the welfare state: that well-being should be a social responsibility, and not one left to "an individualised private sphere alone" (ibid.).

The Male Breadwinner Model

This, thus, is the first tax principle that a fiscal sociological review of the history leading up to the benefits cap litigation has revealed: a shift to the privatisation of the welfare state. The second principle to be discussed is the predominance of the male breadwinner model. As Lewis explains, "[t]he settlement at the heart of the modern welfare state was that between capital and labour." There is also, she continues, a settlement between men and women, and this is the male breadwinner model. She explains that "[t]he male breadwinner model was based on a set of assumptions about male and female contributions at the household level: men having the primary responsibility to earn and women to care for the young and the old" (2001: 152). She acknowledges that a pure version of this model "never

[4] Phillip Inman, "Almost 2m people will lose 1000 pounds a year with universal credit—study," *The Guardian* (24 April 2019), https://www.theguardian.com/society/2019/apr/24/almost-2m-people-will-lose-1000-a-year-with-universal-credit-study (last accessed 30 April 2019).

[5] Ibid.

[6] Id.

really existed", but it was treated as a "prescription", or an "ought" at the policy level (ibid.).

Although Lewis writes that this model was particularly "strong" in the UK, in modern times, she suggests, there has been a shift towards an "adult worker model" (id.). She ultimately concludes that, given that women are more likely to work part-time than men, any model that does not recognise care work is as likely to fail to provide opportunities of equality for women. As will be emphasised, *infra*, this point is particularly relevant to the benefit cap litigation. Lewis insists that the welfare state in the UK needs to develop in a way that acknowledges both paid and unpaid work, especially given that historically women's entitlement to receive benefits is dependent upon unpaid labour (as a mother, for example) (id.).

What About (Gender) Budgeting?

How can such a model persist, especially during an era when explicit discrimination against women is less acceptable? Consider, by way of explanation, the fact that, since the passage of the Gender Directive (Council Directive 2004/113/EC) the UK, as an EU member state, has been required to submit all of its budgets to gender budgeting analysis. Similar in ideological genesis to tax expenditure analysis, but focused on women, it *starts from the assumption* that more money is spent by governments on men, than women, regularly, under the cloak of 'neutrality.'

Gender budgeting was introduced, in part, as a response to years of initiatives offered by successive governments in numerous countries, all of which were intended to improve the position of women, but did not (Banerjee and Krishnaraj 2004: 4788). It was a development from human rights based analyses of budgets, which had been occurring since at least since the turn of the current century, and as such is a relatively "young" process (Blyberg 2009: 124). Blyberg associates its development with the proliferation of civil society engagement with government processes, dating from about the end of the Cold war (ibid.). The increasing interest of organisations such as the World Bank, the IMF and the United Nations in "good governance" policies also was a significant driving factor (id.). To give a flavour of its genesis, human rights budget analysis has been described by Blyberg as resembling "detective work", in that it involves the search for "clues" and the analysis of "what often turns out to be a crime" (id.: 123).

The important starting point for gender budgeting, as Lahey emphasises, is that "[g]ender-impact analysis is distinguished from gender-neutral policy analysis by its insistence on taking the realities of women's lives as the starting point of the analysis" (2009: 367). Unpaid labour is an important part of this reality. She explains, by contrast, that '*gender neutral* analysis' starts at the point of insistence upon analysis of the individual, and not the family unit (ibid.). *Gender mainstreaming* then takes this a step further, and "…begins with an understanding of how the political economy of women affects individual women as well as women in key sectors" (id.). The power of Lahey's analysis rests in her identification of the two, separate economies inhabited by men and women (id.: 367–368). The gender gap in pay, and the difference in levels of unpaid work, is so significant that it is "no exaggeration" to suggest that men and women labour in different economies (id.).

The consequence of this bifurcation is that gender-neutral legislation, simply, is not possible (id.). The next step thus is the instantiation of proactive legislation, as required by existing commitments from, for example, the Convention for the Elimination of all Forms of Discrimination Against Women ((CEDAW) id.: 377) Given the bifurcation of economies, however, it is not surprising that frameworks such as CEDAW have been haunted by a notable "fragility" (Lahey 2010: 38). Lahey explains "how framing government policies around cost cutting, deficit reduction, and 'children living in poverty' took the focus away [in Canada] from the role of women in caring for children, the disproportionate incidence of poverty among women, and the particular needs of single parents…" (ibid.: 39). CEDAW's absence in the benefit cap litigation, *infra*, amply supports this point.

Stotsky explains that gender budgeting is sometimes perceived within the existing literature as something that is "outside mainstream research", whereas it belongs "…squarely within that mainstream….[as] just good budgeting – budgeting that properly accounts for the positive externalities that are derived from improving women's opportunities for health care, education, and employment" (2006). In this sense, gender budgeting is a process in which significant hopes have been invested, even if the anticipated outcomes are not always clear. It remains, resolutely, about process. If the process reveals evidence of gender inequality, then the law will rise to meet this evidence. In a fiscal sociological context, this very structure raises a number of interesting questions: (1) why is evidence of inequitable processes in government presumed to be hidden, such that a procedure like gender budgeting would reveal it? (2) Can the moment of funding allocation be sufficiently separated from the society and its laws that precede it, as to make its analysis worthwhile? (3) What is the connection between budgets, tax law and gender?

Further questions might include: why have men remained the recipients of greater financial investment than women? What is the role of the male breadwinner model in these biases? Assuming that the male breadwinner model is at the centre of funding choices made by the government, then how is this model reinforced and replicated?

The experience with gender budgeting thus far, however, is “mixed” (ibid.: 3). Why? One culprit is the standard point within the literature that it is difficult to prove that women are poorer than men, because household consumption is the standard measure of inequality, as opposed to individual consumption (id.: 7). Stotsky suggests that “[a]n alternative approach is to compare indicators of poverty, such as education, health and nutritional status, work opportunities, and time use” (id.). Other sources continue to support the suggestion that poverty is a “family characteristic”, but also address poverty as something that can be individualised and studied (Casper et al. 1994: 594), and focus instead on poverty from the perspective of “economic hardship”, as opposed to average income (ibid.: 595). A problem, thus, is with the reliability, or the gender assumptions underpinning, indicators.

The value of gender budgeting is in some ways plagued by its “taken for grantedness”, meaning that it sounded like a good idea; so, let us do it, gain the credit for doing so, and then safely ignore it (Steccolini 2019: 1). The extent to which it will continue to be ignored may depend, perhaps, on “demographic challenges, which are shaping the demand for public interventions” (ibid.: 4). Indeed, it has been taken for granted to see an extent that the Coalition government failed completely to undertake an equalities impact assessment of its first emergency budget in 2010 (O’Hagan et al. 2018: 297). Indeed, since 2010, the UK government largely has failed to incorporate gender and equalities analyses in its budgeting processes (ibid., 298). As prime minister, David Cameron described them as “bureaucratic nonsense”, and a form of “red tape” worthy of being eliminated entirely (id.). This has meant that the impact of the benefit cap, and other initiatives, on women has not been included in Treasury budgetary analyses (id., 298–299).

In this, the UK was only following the lead of the EU. The European Commission, of course, was required to follow its own policy by monitoring the impact of member states’ austerity measures on gender equality; and, yet, failed to do so (Fagan and Rubery 2018: 306). The impact of this was significant in more ways than one. Perhaps most importantly, the Fawcett Society launched an unsuccessful attempt to seek judicial review of the 2010 emergency budget, under the Equality Act 2010 (*R [Fawcett Society] v Chancellor of the Exchequer* [2010] EWHC 3522 [Admin]).

The Commission's failure to engage in gender budgeting analysis itself apparently "implicitly sanctioned" the failure of the challenge (Fagan and Rubery 2018: 308).

Austerity, and the Benefit Cap

The financial crash of 2008 served to exacerbate existing problems. It also revealed weaknesses in legal protections. The introduction of the benefit cap, which disproportionately impacted upon women, was but an extension of an environment in which legal obligations simply to consider the impact of budget provisions upon women were ignored. Litigation arising from the imposition of the cap is considered here.

The benefit cap was introduced by the Coalition government, alongside the Universal Credit, as part of an effort to limit the amount of benefits that a recipient may collect. It was announced by Chancellor of the Exchequer, George Osborne, at the Conservative Party conference in 2010 (Porter 24 October 2010). The initial, broad theme of the initiative was that no person, other those with disabilities, would receive more in benefits than the average living wage of £26,000 a year (ibid.). The particular target of the reform, however, was families who receive more than £500 a week in benefits. Osborne promised that the reform would "save hundreds of millions from the welfare budget" (id.). The prediction was that 50,000 families would be affected (id.).

In his speech at the conference, Osborne promised that this reform would introduce "a radical new welfare state where it always pays to work, where effort is always rewarded and where fraud can no longer hide behind complexity" (id.). This initiative disproportionately impacted women, who are more likely than men both to be poor and to be single parents. A number of cases in the past eight years have challenged the benefit cap. This section reviews some of those cases, from a fiscal, sociological perspective.

In none of the cases arising from the benefit cap litigation did the argument that women were indirectly discriminated against by the legislation lead to a successful challenge. This is because, where this impact occurred, the effect was capable of being 'justified' by the government, when considered in light of the objectives of the legislation. It is difficult to escape the impression that the standard for justifying legislation which indirectly discriminates against women, as a class of persons, often appears to be quite low. This is because the courts need simply have evidence that an argument in favour of the legislation was presented to Parliament, and that Parliament considered this. On the whole, as long as the legislation does not engage other, protected rights or interests, it is destined to survive a simple challenge on the basis of indirect discrimination.

The benefit cap litigation was settled by the May 2019 decision of *R (on the application of DS and others) (Appellants) v Secretary of State for Work and Pensions*, which considered whether an exception to the cap should be allowed for parents of children under two ([2019] UKSC 21). The Court considered whether the structure of the legislation attaches to children, and not just to their parents; and, the particular needs of babies under two. The Court dismissed the parents' appeal by a majority of 5-2. In the main judgment, Lord Wilson, whilst acknowledging both the major impact that the cap had on the affected households, and the fact that the cap itself saved the public little if any money, nonetheless found that the government had considered the potential impact of the legislation. This, combined with the evident belief of the government that having working parents led to better long-term outcomes for children, meant that the legislation was supported by a "reasonable foundation" (discussed, *infra*).

The issue of whether the benefit cap impacts unlawfully upon women, as a distinct class, was viewed, by the time of this decision, as very much settled. The answer is that it does not. Thus, the issue was not available for consideration by the Court in the May 2019 decision. One purpose of this section is to consider the intersection of women, indirect discrimination, and welfare law.

This analysis is in three parts. The first part introduces some of the important cases in the benefit cap litigation and highlights the role that indirect discrimination plays in these cases. The second section considers indirect discrimination law: its aims, and its limitations. The third section considers the legal framework for distinguishing between mothers and their children. It also considers the failure of indirect discrimination law to support the claims of women in welfare state litigation. A possible reason for this failure (the continuing dominance of the male breadwinner model) is proffered, but this section does not turn on the 'uncovering' of this reason as a cause of the inconsistencies and disappointments of, for example, indirect discrimination law. Rather, this section concludes that an area of law which focuses on obstacles through a prism of relativity is going to face particular difficulties when attempting to discern and clarify the impact of a welfare state provision simply on mothers, or simply on their children. The benefit cap is presented here as a foundational part of the modern, UK Schumpeterian tax state. Ultimately, this section aims to answer McCaffery's call to consider the "sex" in fiscal sociology. The historical review which preceded this next section set the fiscal sociological scene. The analyses of cases which follow aim to explain how the law has led to a result in which ostensibly neutral budgeting choices, in fact, are anything but.

1. "Objective and Reasonable Justification:" Introduction to the Benefit Cap Cases

The objective of the benefit cap legislation is to cap the amount of benefits that a single household can receive in a year. When introduced, the cap was £26,000 annually, or £500 a week (see Aldridge and MacInnes 2014), which was the average UK household income. Single persons without children received £18,200 a year (or £350 per week). Before the cap even came into force, the implications of cutting benefits for what was estimated to be 50,000 households at an average of £93 a week were feared to include "increased arrears, homelessness, threatened evictions, and greater overcrowding, with people forced to move…" (Hodkinson and Robbins 2012). A key element of the government's shift from welfare to "workfare," (Hamnett 2014) lone parents and children were identified as "clear losers" (De Agostini et al. 2014) of the new policy (*per* Welfare Reform Act 2012; The Benefit Cap (Housing Benefit) Regulations 2012 No. 2994).

The legal challenges to the benefit cap commenced almost immediately. The review of cases which follows starts with the first and, perhaps, to this context, the most important: *R (on the application of JS) v Secretary of State*, also known as the case of *R (on the application of SG) v Secretary of State* ([2015] UKSC 16; [2015] 4 All ER 939). This is the case which could be viewed as having settled the question of the rights of women to challenge the impact of the benefits cap upon them, absent the connection with their young children. The case of *DA*, which is discussed second, engaged the question of the young children.

SG

The case of *SG* considered the impact of the benefit cap on single mothers caring for several children, and living in comparatively high-cost areas. The Court held that the cap indirectly discriminated against several persons in different ways, and engaged both Article 14 and Protocol 1, Article 1 of the ECHR (as the benefits were "possessions"). The indirectly discriminatory impact, however, was found to be justified, as the fact that a greater number of women than men were affected had an "objective and reasonable justification"; and, thus, the High Court ([2014] EWCA Civ 156; [2014] HRLR 10 (Civil Division)] dismissed the claims of the parents. Thus, the 2015 appeal to the Supreme Court in *SG* held that the benefits cap, which generally restricts benefits without regard to either the geographical location (and value of rents) or a family's number of children, was lawful.

The plaintiffs, in this case, were two single mothers. The first, *SG*, is the mother of six children, the youngest of whom is four years old. The second mother, NS, has three children and has suffered a long history of domestic violence within her marriage. The Court considered the impact of the legislation from the perspective of women, statistically. It held that the benefits cap indirectly discriminated against women, because they are far more likely than men to head single-parent households (which, in turn, are far more likely than other households to be "capped"). Nonetheless, because the policies behind the cap, which included both the prevention of the spread of "worklessness" across generations of the same family and the control of government spending, are justifiable, however, the court ruled that the legislation was permissible.

In reaching its judgment, the Court considered the argument that, when drafting the regulations, Parliament failed to comply with its obligation to consider the best interests of the child, *per* the United Nations Convention of the Rights of the Child, Article 3(1). Lord Reed gave the leading judgement and suggested that the UNCRC, although engaged by the facts of this case, was less relevant to the facts than property rights questions raised by the application of Protocol 1, Article 1 of the European Convention on Human Rights (A1P1) (*SG*, [2015] UKSC 16, at para 88, 89, citing ECHR, as amended by Protocols Nos. 11 and 14 (14 November 1950)). As a general approach, Lord Reed essentially sought to determine whether Parliament had considered the arguments of the appellants before they passed the regulations (and, he determined, they had. Lady Hale, dissenting, argued that the key question was whether the regulations satisfied the requirements of Article 3(1) UNCRC; and, she concluded, that it did not. Also dissenting, Lord Kerr emphasised the significance of the UNCRC, in what Fenton-Glynn described as a "constitutionally radical" approach to "unincorporated human rights treaties" (Fenton-Glynn 2015: 469). He argued that unincorporated treaties, in fact, could be directly enforceable in domestic law, as an exception to the dualist approach to all other kinds of treaties (the argument being that the purpose of the dualist approach is to protect citizens from the overreach of the executive, which is not a concern with human rights treaties). Lord Kerr's dissent opens up the potential application of the Convention for the Elimination of Discrimination Against

Women (CEDAW), which contains provisions protecting the socio-economic rights of women (UN General Assembly, CEDAW, Treaty Series vol. 1249, p. 13 (18 December 1979), at Articles 10, 11 and 13). Fenton-Glynn's suggestion that Lord Kerr's dissent "raised.. eyebrows", would suggest, however, that this interpretation is somewhat unusual (Fenton-Glynn: ibid.).

The *SG* majority had considered, in particular, the evidence of the Spending Review, which suggested that the benefit cap would positively and "fundamentally change the prospects of these children" (*SG*, para 20). But it also noted reports from the Office of the Children's Commissioner, which "…expressed concern about the potential impact if households were unable to reduce their housing costs" (*SG*, para 27). The Court remarked upon the potential harm experienced by school-aged children, who might be compelled to move as a consequence of the benefit cap, (*SG*, para 30) but, significantly, it did not consider the specific harm that might be inflicted by the cap on babies under the age of two. This issue was considered by the *DA* case.

DA

Two years later, the benefit cap policy was amended slightly (it was lowered) through a new piece of legislation (Welfare Reform Act 2016, amending ss 96–97 Welfare Reform Act 2012). The newer, 2016 Act changed the annual limit for the receipt of benefits from £26,000 a year to £20,000 (£23,000 for those who live within London) ([2017] EWHC 1446). Essentially, the amount of benefits which exceeds the designated amount would be reduced under this legislation. The relevance here is that the passage of the 2016 amendments permitted the issue of the benefit cap to head back to the High Court. In the High Court decision, the court ruled that the Supreme Court had failed to consider the impact of the (indirect) discrimination specifically on very young babies, for whom the discrimination could not be justified—simply, they were too young to be able to appreciate the model of 'working' being demonstrated.

The High Court decision involved a challenge by the parents of such children, in particular to the requirement that they must, in order to avoid the imposition of benefit cap, work at least 16 hours per week (Welfare Reform Act 2016) The court held that the cap engaged both Article 8 and Article 14 rights under the ECHR. This decision was reversed in the Court of Appeal, which held that these parents were not in a significantly different group from lone parents with children of different ages (*R (on the application of DA) v Secretary of State for Work and* Pensions, [2018] EWCA Civ 504 (2018)). This reversal was addressed by the Supreme Court in its May 2019 decision, which considered

> whether the application of the revised benefit cap, introduced by section 8 of the Welfare Reform and Work Act 2016, to lone parents with children under two years old (i) unlawfully discriminates against the parents and/or the children, contrary to article 14 of the European Convention on Human Rights, read with article 8 and/or Article 2 of the First Protocol and in breach of the United Kingdom's international obligations under article 3 of the United Nations Convention on the Rights of the Child; and/or (ii) is irrational. (UKSC 2018/0061)

From the very beginning of the High Court's decision in *DA*, the importance of the fact that most of these issues had already been decided by the Supreme Court in *SG* was acknowledged. A key point was that the *DA* case would focus primarily on very young babies (ibid.). The impact of the cap on this particular class of claimants was considered as potentially violative of the requirements of a variety of legislation. For example, the court classified the right to receive benefits as a property right, thus entitled to protection under the First Protocol of the First Article in the European Convention on Human Rights (A1P1). The High Court also—in line with the *SG* case—considered Article 3 of the United Nations Convention on the Rights of the Child; Article 14 of the ECHR (addressing discrimination); and, Article 8 of the ECHR (which guarantees, in s.8(1), that "[e]veryone has the right to respect for his private and family life…"). (The protections of s.8(1) are qualified in s8(2), which allows exceptions for, amongst other reasons, the protection of 'national security, public safety or the economic well-being of the country'.) The *SG* court had considered Article 8 as well, but only insofar as it applied to women. Women with older children were excluded from this appeal.

The acceptability of the benefit cap as it applies to women of *older* children was established not only in the cases of *SG* and *DA*, but in two additional cases. First, the case of *SC v Secretary of State for Work and Pensions* (hereafter, *SC*) ([2018] EWHC 864 (Admin) addressed the introduction of a limit to the number of children in respect of whom Child Tax Credit and its replacement, Universal Credit, is payable. The limit is known as the "two child rule" (s9, Tax Credit Act 2002 and s10 of the Welfare Reform Act 2012, as amended by ss13 and 14 of the Welfare Reform and Work Act

2016). The court here found this limit to be compatible with the ECHR; and, again, the claims of the parents were dismissed. Finally, on 9 March 2017, in the case o*f R (DS and Others) v Secretary of State for Work and Pensions* (hereafter, *DS*), the CPAG issued a claim for judicial review in the High Court against the Secretary of State for Work and Pension in a challenge to the legality of the lowered benefit cap, as it applies to lone parents. The case was heard on 26 March 2018, having previously been stayed; and, then, an earlier hearing date adjourned, to allow consideration of the related case of *DA*, addressing lone parents with children under two. In light of the Court of Appeal decision in *DA* (given on 15 March 2018), the CPAG asked the High Court both to dismiss their claim without a full hearing; and to grant a certificate allowing them to bypass the Court of Appeal, with permission to appeal directly to the Supreme Court. The hopes thus raised were ended, with the dismissal of the appeal by the Court in May 2019.

2. Indirect Discrimination

In these cases, why were the mothers of children older than two found indirectly to be discriminated against by the legislation; but, in a way that could be justified by the objectives of the legislation? In order to address this question, it is necessary to consider the aim of law, in the context of discrimination, generally; and indirect discrimination, specifically. To start, the objective of discrimination law, generally, is to ameliorate and to prevent often long-standing discrimination suffered by groups of persons (Khaitan 2015: 154). Yet in the context of indirect discrimination, specifically, law's objective is to map a connection between the impact of a specific provision on a group of persons, with the objectives pursued by the provision—and, essentially, to assess whether the objective is worth the impact.

The assessment of the impact involves consideration of whether the provision in question involves a proportionate means of achieving a legitimate aim. It does not include pursuit of either equal treatment under the law, or equality more generally. Indeed, the broad concept of indirect discrimination includes acceptance of difference, and disadvantage, that laws produce in different groups. It is possible to suggest that the purpose of indirect discrimination law is to ensure equality of *opportunity*, through the removal of obstacles (Collins 2003).

Opportunity, though, of what? Stepping back from indirect discrimination law, and considering discrimination law, as a whole, one finds a body of rules, and a collection of cases, that is devoted to relative positions (whether one is discussing direct, or indirect, discrimination) (ibid.: 354–355). The opportunity, thus, perhaps, is to alter an individual's position relative to others, whilst leaving the underlying division of power and opportunities, between the different groups, untouched.

In many areas of law, it is not unusual for courts to be required to give reasons for altering parties' relative positions to each other. In criminal and public law cases, when the state argues for the right to deprive someone of their liberty or their entitlement to benefits, if the state wins, then someone else loses—thus, again, it is a question of relative positions (Collins 2003: 354). Gardner explains that "comparisons between people" are "of the essence" when considering the "primary duties" of anti-discrimination law (1996). He clarifies that, if inequality is discerned from a comparison, then it is at this point that "justice" becomes the concern of the courts (ibid.).

In the twenty-first century, generally, there has been a discernible trend towards identifying, targeting, and eliminating forms of discrimination (Lahey 2000: iv)—so, of the courts pursuing justice, as Gardner would say. This largely has occurred in two, distinct forms of legislation. The first form deals with discrimination directly, as part of "liberal state-oriented anti-discrimination legislation" (ibid.). The second form targets the source of discrimination, and attempts, through the modelling of the welfare state, both to empower and to distribute resources more equitably (id.). The *SG* and *DA* cases do not fall into either of these categories perfectly and would fit more comfortably into a third classification, which focuses on distribution of resources, and the pressures of limited resources, almost to the exclusion of other issues. They appear to concern budget control.

Why It Matters Whether the Issue Is Addressed from the Perspective of Mothers, or Their Children

SG and *DA* involved an assessment of whether the claimants had suffered indirect discrimination; and, if they had, then whether that could be justified by a legitimate purpose. In each of these cases, the mothers and their children are considered together, and as financially connected. Yet not all benefits targeted at mothers and children will be considered by the courts in this way. The question of whether a benefit should be construed as targeted at children, or their parents, will turn on the manner in which the legislation is designed.

Courts will consider the structure of the benefit, and whether it has been designed to attach to children, or to their parents. This is an approach that was established in two cases. First, in the 2012 case of *Humphreys* ([2012] UKSC 18), the Supreme Court considered the Child Tax Credit. Here, the Court decided that the system of single payment of child tax credit to the person mainly responsible for a child was an indirect, yet justified, form of discrimination against *men*. The court held that the "no-splitting rule" was a "proportionate" form of "pursuing a legitimate aim of social policy" (ibid.). This case clearly evokes the male breadwinner model.

Humphreys' "manifestly without reasonable foundation test" was relied upon in *SG* as a barometer for assessing the stated aims of the benefits cap (para 25). In *Humphreys*, the Court accepted the government's arguments that targeting benefits at one household was more likely to "lift" the child's family out of poverty, than would splitting the money (para 9). Additionally, the Court acknowledged that the system would be much more expensive to administer if splitting were allowed (para 10).

Similarly, in 2004, the Court of Appeal, in the case of *Hockenjos v. Secretary of State for Social Security*, had addressed the "no splitting rule", in the face of a challenge from a fathers' rights activist ([2004] EWCA Civ 1749, [2005] EuLR 385). In this case, the court held that the indirect discrimination against fathers of the "no splitting" element of Jobseekers' Allowance could not be justified under Council Directive 79/7/EEC, Article 4, which prohibited discrimination on grounds of sex. Eight years later, the Court in *Humphreys* noted that the first point of distinction between the two cases was that *Hockenjos* turned on the equal treatment provisions of Council Directive 79/7/EEC, and not on article fourteen of the ECHR. The Child Tax Credit, addressed by *Humphreys*, was not covered by the Council Directive.

The court in *Humphreys* described the Child Tax Credit as "supersed[ing] in all material respects" the legislation considered in *Hockenjos*; but, nonetheless

> …much of the argument has revolved around the judgments in *Hockenjos* and the extent to which the reasoning in them applies to the present case notwithstanding the differences between the schemes themselves and the legal context (it being common ground that the CTC (Child Tax Credit) provisions are not governed by EU law but fall to be considered by reference to the ECHR). ([2010] EWCA Civ 56, para 2)

The stringent requirements of Council Directive 79/7/EEC of 19 December 1978 covered "the progressive implementation of the principle of equal treatment for men and women in matters of social security"

(O.J. No. L. 6, 10.1.1979, P24). The implementation of this directive was described as one of "several critical 'firsts'" in the "push for gender equality" (Stratigaki 2012: 170). It was included in a "first group" of directives addressing equal opportunity, also including the Equal Pay Directive (75/117/EEC) and the Equal Treatment in the Workplace Directive (76/207/EEC) (Stratigaki, ibid.). Yet, although the legislation and the appellants might be different, as the *Humphreys* court acknowledged, the principles at issue in the two cases were very similar.

For example, in both cases, the courts analysed legislation which was targeted at families, in an effort to determine whether the structure of the law "*attaches to the child* rather than the parent" ([2012] UKSC at para 25 [emphasis added]). This was determined by breaking down each provision of the legislation. *Humphreys* considered Rule 1.1 of the Child Tax Credit Regulations 2002, which provides that "[a] person shall be treated as responsible for a child or qualifying young person who is normally living with him [-] 'the normally living with test'"). Similarly, Rule 2.2 emphasises that "[t]he child or qualifying your person shall be treated as the responsibility of—(a) only one of those persons making such claims, and (b) whichever of them has (comparing between them) the main responsibility for him (the 'main responsibility test')." Finally, Rule 3 provides that, where rule 2.2 applies, the couple "may jointly elect' which of them satisfies the 'main responsibility test'). Thus, although the regulations aim to construct a space in which parents may decide, jointly, who has the main responsibility for the child, where that agreement is not possible, then the default is to consider where the child lives most of the time. In this sense, the CTC appears to attach to the manager of the 'most sleeps' household, where there are two competing households.

The reason why Council Directive 79/7/EEC did not apply in *Humphreys* was that the Jobseekers Allowance in *Hockenjos* appeared to concern parents, whereas *Humphreys'* Child Tax Credit appeared to concern children. In *Humphreys*, however, Lady Hale resisted the suggestion that it was possible to suggest that the *Hockenjos* decision was really about sex discrimination, and insisted that "[t]he real object of the complaint is the discrimination between majority and minority shared carers" (ibid., para 20). She dismisses the issue quickly, noting that a 'minority carer' would likely lead to the identification of "another status" under article fourteen, and, thus, the point was not important (id.).

Judge Jacob's explanation in the Upper Tribunal of the distinction between *Hockenjos* and *Humphreys* was summarised by Lady Hale:

> …on the basis: first, that discrimination under EU law is different from discrimination under the ECHR; that cost is no excuse in EU law, but it may be a justification under the ECHR; that there were no competing claims in that case, because the mother was not claiming jobseeker's allowance; that there was a fundamental principle of equality in EU law; and finally, and most importantly, that the *structure of jobseeker's allowance and CTC were different*. (id., para 14 (emphasis added))

Lady Hale considered each of these arguments in turn and ultimately settled on the "manifestly without reasonable foundation" test for assessment of the policy behind the Child Tax Credit's "no splitting" rule (id., paras 22,26). She confessed that she was "a little sceptical" about whether the objective to "lift children out of poverty" (id., para 28) was little more than an effort by the Labour government to manipulate the statistics of children living in poverty, but nonetheless concluded (writing for a unanimous Court) that, on balance, the ambition of the CTC to forge an integrated approach to benefits, thus "smooth[ing]" the transition to paid work, was "reasonable" (id., para 30).

The cause of action in *Humphreys* emanated from the fact that, as Eames explained, "[t]he Tax Credits Act 2002 makes provision for the allocation of Child Tax Credit (CTC) for separated parents in situations where the child in question lives not just with one parent but with both at different times, such that both parents could in theory legitimately lay claim to an entitlement" (Eames 2012: D126). Thus, the question is whether, when an entitlement is structured in this way, there is a legal justification for denying a request to "split" the benefit. Ultimately, the court in *Humphreys* concluded that protecting *predictability*, as opposed to ensuring *flexibility*, was a legitimate choice for an administrative state.

Mr Humphreys challenged whether the means employed to achieve 'predictability' were too blunt, and out of proportion to the ends being sought. Cousins explains that, as a consequence, in *Humphreys*,

> the focus of the discussion was entirely on whether the non-splitting rule pursued a legitimate aim. Mr Humphreys' argument that there was not a reasonable relationship of proportionality between the means employed and that aim was not explicitly addressed and it appears that the state's submission that a "bright line" approach is permissible was, in effect, adopted. (2013: 22)

The "bright-line" approach was justified on a number of grounds (Mauricio 2014: 166). First, the court suggested a link between the goal of reducing child poverty, and allocating the entirety of the benefit to only one parent (ibid.). Giving the most money to the households where children spent the most time, the court reasoned, must help to reduce child poverty (id.). Additionally, splitting the benefit on behalf of carers who are unable to agree would necessarily involve administrative costs, which the state is entitled to try to avoid (id.). This issue, in particular, was addressed in the context of a pursuit of a "seamless tax credit system," with a minimum of administrative complexity (id.). Finally, the court suggested, the state is entitled to treat the financial support of children, and the issue of how parenting time is divided, as separate issues (id.). Thus, paid labour, and unpaid labour, are treated separately.

The application of the "manifestly without reasonable foundation test" in *Humphreys* has been interpreted as providing support for the administrative state, in the face of what (are sometimes implied) as burdensome equality challenges. This echoes concerns expressed by the OBR, in its analyses of the Coalition government's retraction of the welfare state, in Chapter 4. Mr. Humphreys had the strategic, legal "advantage" of coming from a large group of affected persons (Khaitan 2015: 183–184), *i.e.*, all fathers who live separately from their children for most of the week. This advantage was outweighed, however, by the government's *two* advantages in defending legislation targeted at an even larger class (children living in poverty); and, in having to defend a challenge based in ECHR law, as opposed to EU equality legislation. From both of these advantages, the government was able to protect the new, post-austerity, third category, discussed above—control of government spending.

What About: EU Equality Legislation?

EU equality legislation, generally, is the product of heated strategic battles and is introduced in creative ways. Docksey explains that "[e]quality between women and men is a general principle of Community law, a 'constitutional' principle which only exists in undiluted form at Community level, at the level of pure principle" (1991: 259). Gender equality is also an important part of the EU concept of non-discrimination, which Docksey explains "underpins" the entirety of EU law (ibid.). The only persons who receive these protections directly, however, are the staff of the EU (id.). This is the reason, Docksey explains, that

> [c]ommentators have rightly pointed to the legislative block afflicting European social policy, and have sought to devise ways of circumventing it,

> whether by way of creative use of the provisions inserted into the Treaty by the Single European Act or by way of creative litigation seeking to enforce other international instruments. (id.)

Council Directive 79/7/EEC (at issue in *Hockenjos*, above) in some ways was designed to redress this.

Lombardo argues, however, that whilst the directive provided a useful opportunity for review of existing legal frameworks, it did little to address the root causes of inequality (2003: 161). European law, generally, responds to women's inequality with men in two ways. First, the law actively supports women's efforts to achieve equality with men (O'Donovan 1989: 129). Council Directive 79/7/EEC is an example of this kind of response. Secondly, it responds to direct discrimination (*Birds Eye Walls Ltd v Roberts* (C-132/92), 1994 ICR 338, 345). Direct discrimination may not be excused by reference to a justification, which is only possible with indirect discrimination. An advantage for the administrative state is that EU equality law applies directly in a limited number of cases.

3. Attaching Benefits to Children

Doyle defined indirect discrimination as "…connot[ing] a measure that does not on its face distinguish between class A and class B but which, for some related reason, is nevertheless considered troubling" (2007: 538). Drawing on the US roots of the concept, he explains that "…there are at least two models of indirect discrimination, one focusing on motive, the other on effect: discriminatory purpose and disparate impact" (ibid.). The issue in *Humphreys* would fall into the latter category, in that the requirement that Child Tax Credit is paid to only one parent is likely to result in the credit being paid to more women than men. Yet as the structure of the legislation attaches the benefit to the child and not to the parents, the indirect discrimination against men is easier for the government to justify. If it had attached to parents (which, perhaps, could give rise to an analysis based on motive, as in Doyle's bifurcation), then, as the benefit cap cases demonstrate, it need not necessarily follow that a finding of indirect discrimination cannot be justified. The legacy of *Hockenjos*, however, is that the intersection of 'motive' based indirect discrimination and another, perhaps more powerful (than Article 14) source of legislative protection can lead to a successful challenge of the legislation.

The question of autonomy is significant within this fiscal sociological analysis, in two ways. First, children are incapable of being treated as an individual for the purposes of a government's benefit policy. Secondly, the movement, internationally, towards greater reliance on the individual as the basis of government tax policy, has increased levels of freedom and choice for taxpayers, largely through decreasing government interference in the decision to form a family (Lahey 2000: vi). Yet children must be associated with an adult—they cannot be counted as individuals in benefit entitlement—and it is then through association with their mothers that they encounter the effects of gender discrimination.

Two underlying assumptions about the value that should be placed on caring work are discernible within these cases. The first assumption concerns the 'ideal' of equal treatment, which permeates assumptions we make about what is 'normal' in the context of compensation for paid work. On the one hand, we assume that work that is of equal value should be compensated, more or less, equally—say, certainly when the comparison is between employees of the same organisation. This assumption extends to the benefit system: when parents spend equal time with children, then the assumption is that benefits given by the government for the care of those children should be divided equally. The equality of compensation principle is so pervasive that, even when children do not spend equal time with their parents, if benefits are paid to parents, then it is important that the benefits should be divided equally.

The second assumption concerns a presumed difficulty of placing a monetary value on caring labour. The benefits in all of these cases are connected to caring labour, which economic thought, in particular, has struggled to address (Folbre 1995: 74). Folbre describes the problem as "holding hands at midnight" (ibid.). In other words, how should the act of holding the hand of an unwell or distressed person, at midnight, be quantified in monetary terms? None of the courts in the cases discussed here consider the possibility of ascribing a value to caring labour (even though it is work which somebody else would need to be paid to perform, were the parents unavailable), because this issue is ignored by the legislation that is being considered. Another justification that could be advanced for ignoring the monetary value of caring labour is that, as Folbre acknowledged, it can be "nice" work, and possibly is performed because it is its "own reward" (id.). It also, however, is important work, not simply because comfort has value, but also because the person may require assistance, or monitoring. Clearly, it is important work for children. The risk that caring labour may not "persist" if it does not "command an economic return," (id.) which would most keenly be experienced by children, is not considered because that risk is considered unlikely, or perhaps the subject of another area of law.

The legislative protections against indirect discrimination are of a different order entirely. It is perhaps an understatement to suggest that the protections afforded by ECHR Articles 8, 14 and others in gender non-discrimination, although marked by some notable achievements, are vague, even to the extent that it is sometimes difficult to predict how the courts will decide a case. Indeed, inconsistency is a facet of European non-discrimination law, generally, to the extent, Besson suggests, frankly "contradictory" judgments have been rendered by the ECJ and the ECHR on similar facts (2008: 649). There is nonetheless a considered effort by all courts to ensure that, as cases are decided, the protections offered between the competing regimes (ECJ, ECHR and national courts) are roughly consistent (ibid.). This inconsistency between systems is mentioned here largely because, as Besson observes, non-discrimination is a "*leitmotif*" of EU law, and perhaps the one area in which one might most expect some influence from EU law upon European human rights law (id.: 655). Given the broadness with which non-discrimination is approached in EU law, it is not unreasonable for litigants to approach the non-discrimination provisions of the ECHR with hopes for parallel breadth of scope.

Legitimacy

Even from this slightly chaotic background, the benefit cap cases in the UK have produced a consistent outcome: absent from the connection to and potential impact upon their children, benefit cuts which disproportionately impact women are easily justified by reference to wider objectives by the government. Macklem argues that we should assess the initiatives aimed to counter indirect discrimination—examples of which include laws which "…prohibit any requirement or condition whose burden falls disproportionately on one sex the another"—wholly on the "legitimacy of such ends" (2003: loc3181). The *SG* court would respond: because of the legitimacy of the government's ambitions both to control spending and to protect children from the alleged harm caused by living in a "workless" household, it was acceptable for the burden of achieving those ambitions to fall disproportionately on women heading single-parent households.

A compelling definition, which complements Macklem's approach, was suggested by Morris in 1995: "[i]ndirect discrimination looks like a hybrid, combining the tort-like structure and individualised claims of direct discrimination with the group-based focus of positive discrimination" (Morris 1995: 195). Because of this hybrid structure, Morris suggests that indirect discrimination is "in search of a normative foundation" (ibid.). He explains that there are two poles within legal action—actions for individuals (like tort), and consideration of the rights of groups (like indirect discrimination) (id., 200). To understand the two poles, Morris argues, it is necessary to engage with scholarship exploring the "division" between corrective and distributive justice (id.). The advantage of this approach is that it allows the literature to progress *beyond normative critiques* of the law, and permit, for example, "the insights of Artistotelian forms of justice to this controversy" (id.).

Workfare, Welfare, Poor Law, and the Male Breadwinner Model

Welfare provision in the UK continues to be structured along the male breadwinner model, including tax incentives targeted at children (Rowlands 2002: 36). The modern social state is the product of a move away from what has been described as "poor law systems," which were based on need, and universally available, but ultimately punitive in nature, so as to "discourage" recipients from relying on them (Lewis 2001: 152). These systems have been abandoned in favour of a settlement between social provision and paid work; or, as Lewis explained, "…a long standing firm conviction… that wages are the best form of welfare" (ibid.: 152). Historically this has been the firmly held position of the Labour party, which, a century ago, supported the Right to Work Bill more fervently than pensions, or social insurance, as it "feared state intrusion into the territory of mutuality" (id.).

The male breadwinner model is presumed to have declined with the increased integration of women into the workforce—during "modern" times, or during the transition to an industrialised economy (Pfau-Effinger 2004: 377). It appears most to linger, however, in legal analyses of cases involving children and state welfare provision. This may be due to the fact that the reduction of child poverty requires a stronger element of redistribution than the reduction of poverty, generally. It requires more than behavioural incentives, but the actual transfer of resources (Brewer et al. 2003: F256). Put simply, it is explicitly about money. Under the male breadwinner model, men control a family's finances, and women provide care. Whilst the model may have evolved within the social state to accommodate the provision of care by fathers, the actual transfer of money to women has proved more difficult. Lacey explained that the underlying concept behind indirect discrimination is the "idea that women's disadvantage is not solely or even principally the result of individual acts of prejudiced discrimination but of structural discrimination embedded in the practices of social institutions" (Lacey 1987: 413). She then argues frankly that whether or not a court finds indirect discrimination to be justifiable often will be connected to the "(often low) importance [the court] gives to sexual equality as a social goal" (ibid.: 414).

Returning to the question of legitimacy, it is common for analyses of anti-discrimination laws to attempt to assess their usefulness in the context of the "broader political goals" that they serve (Moreau 2010: 144). When one is considering the accommodations required by anti-discrimination legislation such Article 14 of the ECHR, analyses will focus on what the government is trying to achieve with the legislation. In many ways, introducing concepts of equality into discussions of rights sometimes can only serve to confuse discussions about rights; and, therefore, perhaps, are best avoided (Westen 1982: 542). This is not to imply that there is a tension between rights and concepts of equality; but rather, to emphasise the importance of acknowledging the differences between all of us (ibid.: 539–540). Concepts of equality, or neutrality, also carry the risk of treating all persons without regard to difference, in the purported pursuit of neutrality, even when that disregard causes harm [In Lahey's famous words, "equality with a vengeance;" (1987: 15) see also, *inter alia*, Fineman and Thomadsen 2013: 516; Hunter 1992: 5]. It is perhaps easier to think of indirect discrimination as embracing equality (as Cooter would argue) as a "value," which as a consequence targets certain forms of discrimination (Lahey 1987: 413).

The aim here is to target the discrimination, but eliminating discrimination neither means eliminating difference, nor treating all groups equally (Macklem 2003). Equal treatment under the law in fact may lead to indirect discrimination, because of the failure to take the possibility of different susceptibilities or vulnerabilities into account (Collins 2003: 16). This is because both equal treatment—and indirect discrimination—deal with different rights, as opposed to an overarching concept of equality (Westen 1982: 537).

In its search for obstacles, indirect discrimination law, thus, risks never getting to the root of the problem. This point is perhaps best illustrated through the example of the gender pay gap. It is important to pay attention to which part of a problem is problematised by law. With the gender pay gap, the starting point of problematisation need not be the fact, for example, that work that is performed by women regularly is paid less than labour that is performed by men. The lower pay is the outcome of misconception. Put differently, the undervaluing of work that is traditionally performed by women arises from a misconception, or misunderstanding, of what it means to be a woman (Macklem 2003: loc2824). Put simply, the misunderstanding is that women, inherently, are worth less.

A Fiscal, Sociological Analysis: Tax Principles and Austerity

Women, on their own, were unlikely ever to succeed in a challenge to the benefit cap. The aim of this section was to adjust the focus back, as litigation now has concluded, on to the women. Thus, this analysis considered Lord Kerr's suggestion that the UNCRC may be enforceable without incorporation into domestic law by the UK Parliament, a proposal which "raised… eyebrows". Why, though, focus on the UNCRC, when the Convention for the Elimination of Discrimination against Women might appear to be applicable as well? CEDAW, article one refers explicitly to "fundamental freedoms" in the "economic… field". Lahey and de Villota identified its relevance for gender-based analyses of spending programmes and spending reductions—a category within which the benefit cap certainly falls (2013: 83). Indeed CEDAW might appear to carry particular potential for governance in this area of law, as it aims both to reflect legal developments in different states, whilst also, as Banda and Eeklaar explained, "insisting on observance of fundamental normative standards of equality between men and women" (Royston and O'Brien 2017: D96).

There is a tension at the core of this area of law, between paid and unpaid labour. First, the state is entitled to treat the financial support of children, and the issue of how parenting time is divided, as separate issues. Secondly, the transition from women's entitlement to financial support on the basis of their connection to otherwise unpaid labour (such as caring work) has been complicated. This transition has occurred at the intersection of a switch towards concentrating on individuals in taxation law (independent taxation), yet upon families in welfare law (the Universal Credit and the benefit cap). Children, meanwhile, are the target whom the government hopes to assist, and the focus of the benefit cap legislation—thus, women disappear from indirect discrimination analyses.

Morris explains that trying to make sense of indirect discrimination is important, "because the justification of state action in important" (1995: 200). In the context of the benefits cap, the hope of 'teaching' the skills of paid work is the state's justification. As children are the targets of this legislation, then the impact upon their parents is ignored. If mothers are the target, then the question of adjusting relative positions becomes relevant. If any adjustment from their existing position, at the crossroads of the uneasy settlement between paid and unpaid work in the development of the welfare state, becomes a possibility, then a heavy presumption in favour of protecting the status quo emerges. Additionally, EU anti-discrimination law supports the status quo.

From this case law, an odd result emerges in which it appears that only men have been the victors in litigation surrounding benefits and families. The point of this analysis is that, by continuing to focus on babies, in a sense disconnected from their mothers, this outcome can be obscured. The introduction of austerity in the UK in the aftermath of the economic crash of 2008 was controversial, disruptive, and produced competing accounts. Schumpeter believed that inequality was capable of sustaining itself, as long as those who suffered it believed that it was a necessary sacrifice for the greater good (Somek 2011: 23, fn. 9, citing Schumpeter 2010: 121–142). This sustainability has the potential to endure even long after the conditions which led to the creation of inequality have disappeared (Bendix 1974: 160, fn. 6, citing Schumpeter 1955). So, what conclusions can we draw from a legal framework that concludes that, say, the father in *Humphreys* is the victim of indirect discrimination, although "reasonably" so? This background, and the important role that the concept of eliminating discrimination plays within it, may explain the framing of the issue in *Humphreys*—*i.e.*, as indirect discrimination against men—when there might have appeared to be different ways to approach the question.

Given that equal treatment is not the ambition of indirect discrimination law, it can be difficult to discern what the objective of this area of law is. Thus, for example, Macklem makes clear that his arguments do not engage specifically with discrimination against women as a "legal wrong"—what McCaffery would call "positive" law—in the same way. He clarifies that one of the reasons for adopting an approach which does not focus on legal wrongs is that such a project would be unlikely to reveal much about "law's ability to address the problem actually confronted by women" (Martin et al. 2009: 232).

The problem is serious. After the first year of operation of the benefit cap, the Department of Work and Pensions released a report titled, "In-depth interviews with people affected by the Benefit Cap". The report covered a variety of points, including the observation that "[m]ost of the interviewees said that they understood the principle of the Cap, and thought that it was wrong, in principle, for people to receive more than £500 per week."[7] Nonetheless, "…those still capped could see no easy way out of the situation

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[7] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/385901/rr895-benefit-cap-indepth-interviews.pdf (accessed 7 June 2017).

[the cap' had thrown them into, despite in many cases trying harder than before to find work."[8] One in four children are raised by single parents in the UK. These children are significantly more at risk of living in poverty than children in two-parent households, and their parents are more likely to be unemployed. Simply, directing money to women in these circumstances should not, per se, constitute discrimination against men, or even necessarily be viewed as wrong, unless, of course, it is considered within a framework which suggests that the male breadwinner model is the norm.

Closing

It is important to consider the way in which legal systems resolve conflicts when they arise (Raz 1972: 832). It is also important to consider legal principles, and, where relevant, principles of political economy. Legal principles may serve as the bases for interpreting rules, for changing rules, and for suggesting exceptions to rules (id.: 839–840). Principles of political economy, by contrast, are tied intimately to the design of economies. The most famous illustration of this is Mill's book of the same name, in which he examined the components of production, including labour, and considered their connection to nature (Mill and Nathanson 1875). In this book, Mill challenges Smith, specifically on the point of land rents. Smith believed that land rents were higher because nature was being offered, whereas Mill thought that land rents were higher because land is scarce. Capital, Mill suggested, could be defined as "the accumulated stock of the produce of labour" (ibid.: 32). Mill and Smith, thus, present two different visions for designing an economy.

Legal principles perhaps would start at the point of considering whether land rents *should* be higher than other forms of income, and a legal rule might attempt to regulate the value of rent from land. Principles of political economy appear to engage with why land rents are higher, and the implications of this. An amalgam of political economy and legal principles which is focused on an objective for a taxation system is defined, in this chapter, as a tax principle.

The tax principle underpinning the benefit cap litigation is that it is important to preserve the unpaid labour of women and to rely upon the male breadwinner model as a point of reference. At each point in the cases

[8] Ibid.: 37.

that have been considered in this section, when a possibility of recognising, financially, the unpaid labour of women arose, the courts declined. The only point at which the courts considered the possibility of recognising it was when, to decline to do so, this might impact upon children.

The 'sociological' enquiry which Schumpeter encouraged can assist in illuminating fundamental ideas at the basis of tax and spending systems. It can reveal that budgets are not neutral and that economies are deliberately constructed. Economies do not act upon societies—in the end, we have the socio-economy we choose. This tax principle may be embedded, but it is possible to choose something different.

References

Adler, Michael E. 1975. "IFS Conference on Proposals for a Tax-Credit System." *Journal of Social Policy* 4 (1): 97–98.

Aldridge, H., and T. MacInnes. 2014. "Multiple Cuts for the Poorest Families." Oxfam Research Reports.

Atkinson, Tony. 2011. "The Case for Universal Child Benefit." In *Fighting Poverty, Inequality and Injustice: A Manifesto Inspired by Peter Townsend*, edited by Alan Walker, Adrian Sinfield, and Carol Walker, 79–90. Portland: Policy Press.

Backhaus, Jürgen G. 2004. "Joseph A. Schumpeter's Contributions in the Area of Fiscal Sociology: A First Approximation." *Journal of Evolutionary Economics* 14 (2): 143–151.

Banerjee, Nirmala, and Maithreyi Krishnaraj. 2004. "Sieving Budgets for Gender." *Economic and Political Weekly* 39 (44): 4788–4791.

Bell, Daniel. 1974. "The Public Household-on Fiscal Sociology and the Liberal Society." *The Public Interest* 37: 29.

Bendix, Reinhard. 1974. "Inequality and Social Structure: A Comparison of Marx and Weber." *American Sociological Review* 39: 149–161.

Besson, Samantha. 2008. "Gender Discrimination Under EU and ECHR Law: Never Shall the Twain Meet?" *Human Rights Law Review* 8 (4): 647–682.

Blyberg, Ann. 2009. "The Case of the Mislaid Allocation: Economic and Social Rights and Budget Work." *Sur—International* 11 (1): 123–140.

Blundell, Richard. 2001. "Welfare-to-Work: Which Policies Work and Why?" Proceedings of the British Academy.

Blundell, R., A. Duncan, J. McCrae, and C. Meghir. 2000. "The Labour Market Impact of the Working Families' Tax Credit." *Fiscal Studies* 21 (1): 75–104.

Bowler, Tracey. 2007. "Taxation of the Family, Tax Law Review Committee", Discussion paper No. 6, The Institute for Fiscal Studies. https://pdfs.semanticscholar.org/f6ca/49da4464aa0f8e7f98263ae4431868924a74.pdf. Last accessed 4 September 2019.

Brewer, Mike, Tom Clark, and Alissa Goodman. 2003. "What Really Happened to Child Poverty in the UK Under Labour's First Term?" *The Economic Journal* 113 (488): F240–F257.

Bryson, Valerie, and Timothy Heppell. 2010. "Conservatism and Feminism: The Case of the British Conservative Party." *Journal of Political Ideologies* 15 (1): 31–50.

Campbell, John L. 1993. "The State and Fiscal Sociology." *Annual Review of Sociology* 19 (1): 163–185.

Casper, Lynne M., Sara S. McLanahan, and Irwin Garfinkel. 1994. "The Gender-Poverty Gap: What We Can Learn from Other Countries." *American Sociological Review* 59 (4): 594–605. https://doi.org/10.2307/2095933.

Collins, Hugh. 2003. "Discrimination, Equality and Social Inclusion." *Modern Law Review* 66 (1): 16–43. https://doi.org/10.1111/1468-2230.6601002.

Cousins, Mel. 2013. "Equal Treatment and Objective Justification in Social Security Cases Under the European Convention on Human Rights." *Journal of Social Security Law* 20: 13–23.

Dawson, Andrew. 2010. "State Capacity and the Political Economy of Child Mortality in Developing Countries Revisited: From Fiscal Sociology Towards the Rule of Law." *International Journal of Comparative Sociology* 51 (6): 403–422.

De Agostini, P., J. Hills, and H. Sutherland. 2014. "Were We Really All in It Together? The Distributional Effects of the UK Coalition Government's Tax-Benefit Policy Changes." Social Policy in a Cold Climate, Working Paper 10, CASE, London.

Dickens, Richard, and David T. Ellwood. 2003. "Child Poverty in Britain and the United States." *The Economic Journal* 113 (488): F219–F239.

Docksey, Chris. 1991. "The Principle of Equality Between Women and Men as a Fundamental Right Under Community Law." *Industrial Law Journal* 20: 258.

Dolowitz, David P. 2003. "A Policy-Maker's Guide to Policy Transfer." *The Political Quarterly* 74 (1): 101–108.

Doyle, Oran. 2007. "Direct Discrimination, Indirect Discrimination and Autonomy." *Oxford Journal of Legal Studies* 27 (3): 537–553.

Eames, John. 2012. "Human Rights: Discrimination—Tax Credits—Children—Separated Parents—Humphreys v Revenue and Customs Commissioners." *Journal of Social Security Law* 19 (3): D126.

Fagan, Colette, and Jill Rubery. 2018. "Advancing Gender Equality Through European Employment Policy: The Impact of the UK's EU Membership and the Risks of Brexit." *Social Policy and Society* 17 (2): 297–317.

Fenton-Glynn, Claire. 2015. "Austerity and the Benefit Cap: In Whose Best Interests?" *Journal of Social Welfare Family Law* 37 (4): 467–469. https://doi.org/10.1080/09649069.2015.1121961.

Fineman, Martha Albertson, and Nancy Sweet Thomadsen. 2013. *At the Boundaries of Law (RLE Feminist Theory): Feminism and Legal Theory*. London: Routledge.

Folbre, Nancy. 1995. "'Holding Hands at Midnight': The Paradox of Caring Labor." *Feminist Economics* 1 (1): 73–92.
Friedman, J. 1974. "Marxism, Structuralism and Vulgar Materialism." *Man* 9: 444–469.
Gardner, John. 1996. "Discrimination as Injustice." *Oxford Journal of Legal Studies* 16 (3): 353–367. https://doi.org/10.2307/764598.
Gedalof, Irene. 2018. "Academic Reflection—Narratives of Justice and the Welfare State in Times of Austerity." *feminists@ law* 8 (2). https://journals.kent.ac.uk/index.php/feministsatlaw/article/view/664. Accessed 4 September 2019.
Hamnett, C. 2014. "Shrinking the Welfare State: The Structure, Geography and Impact of British government Benefit Cuts." *Transactions of the Institute of British Geographers* 39: 490–503.
Himmelweit, Susan. 1991. "Reproduction and the Materialist Conception of History: A Feminist Critique." In *The Cambridge Companion to Marx*, edited by Terrell Carver, 170–190. Cambridge: Cambridge University Press.
Himmelweit, S. 2002. "Making Visible the Hidden Economy: The Case for Gender-Impact Analysis of Economic Policy." *Feminist Economics* 8 (1): 49–70.
Hodkinson, Stuart, and Glyn Robbins. 2012. "The Return of Class War Conservatism? Housing Under the UK Coalition Government." *Critical Social Policy* 33 (1): 57–77. https://doi.org/10.1177/0261018312457871.
Hunter, Rosemary. 1992. *Indirect Discrimination in the Workplace*. Annandale: Federation Press.
Kenworthy, Lane. 2009. "Tax Myths." *Contexts* 8 (3): 28–32.
Khaitan, Tarunabh. 2015. *A Theory of Discrimination Law*. Oxford: Oxford University Press.
Lacey, Nicola. 1987. "Legislation Against Sex Discrimination: Questions from a Feminist Perspective." *Journal of Law and Society* 14 (4): 411–421.
Lahey, Kathleen A. 1987. "Feminist Theories of (In)Equality Papers from the 1986 Feminism and Legal Theory Conference." *Wisconsin Women's Law Journal* 3: 5–28.
Lahey, Kathleen A. 2000. *The Benefit/Penalty Unit in Income Tax Policy: Diversity and Reform*. Ottawa: Law Commission of Canada.
Lahey, Kathleen A. 2009. "International Transactions, Taxation, and Women: The Critical Role of Gender Analysis." *UBC Law Review* 42: 363.
Lahey, Kathleen A. 2010. "Women, Substantive Equality, and Fiscal Policy: Gender-Based Analysis of Taxes, Benefits, and Budgets." *Canadian Journal of Women and the Law* 22: 27.
Lahey, Kathleen A., and Paloma de Villota. 2013. "Economic Crisis, Gender Equality, and Policy Responses in Spain and Canada." *Feminist Economics* 19 (3): 82–107. https://doi.org/10.1080/13545701.2013.812267.
Levy, Horacio, Christine Lietz, and Holly Sutherland. 2007. "Swapping Policies: Alternative Tax-Benefit Strategies to Support Children in Austria, Spain and the UK." *Journal of Social Policy* 36 (4): 625–647.

Lewis, Jane. 2001. "The Decline of the Male Breadwinner Model: Implications for Work and Care." *Social Politics: International Studies in Gender, State & Society* 8 (2): 152–169.

Lister, Ruth. 2006. "Children (but Not Women) First: New Labour, Child Welfare and Gender." *Critical Social Policy* 26 (2): 315–335.

Lombardo, Emanuela. 2003. "EU Gender Policy: Trapped in the Wollstonecraft Dilemma'?" *European Journal of Women's Studies* 10 (2): 159–180.

Lund, Brian. 1999. "'Ask Not What Your Community Can Do for You': Obligations, New Labour and Welfare Reform." *Critical Social Policy* 19 (4): 447–462.

Macklem, Timothy. 2003. *Beyond Comparison: Sex and Discrimination*. Cambridge: Cambridge University Press.

Martin, Isaac William, Ajay K. Mehrotra, and Monica Prasad. 2009. "The Thunder of History: The Origins and Development of the New Fiscal Sociology." In *The New Fiscal Sociology: Taxation in Comparative and Historical Perspective*, 1–27. Cambridge: Cambridge University Press.

Mauricio, Ana Julia. 2014. "Overview: Tax Law." *Cambridge Journal of International and Comparative Law* 3: 316.

McCaffery, Edward J. 2009. "Where's the Sex in Fiscal Sociology?" In *The New Fiscal Sociology*, edited by Isaac William Martin, Ajay K. Mehrotra and Monica Prasad, 216–236. Cambridge: Cambridge University Press.

McKeever, Grainne. 2018. "Universal Credit." *Journal of Social Security Law* 25: 4.

McLaughlin, Eithne, Janet Trewsdale, and Naomi McCay. 2001. "The Rise and Fall of the UK's First Tax Credit: The Working Families Tax Credit 1998–2000." *Social Policy & Administration* 35 (2): 163–180.

Mill, John Stuart, and Stephen Nathanson. 1875. *Principles of Political Economy (Abridged): With Some of Their Applications to Social Philosophy*. Indianapolis: Hackett Publishing.

Musgrave, R. 1980. "Theories of Fiscal Crises: An Essay in Fiscal Sociology." In *The Economics of Taxation, Brookings Institution*, edited by Henry J. Aaron and Michael J. Boskins, 316–390. Washington, Brookings Institution.

Moreau, Sophia. 2010. "What Is Discrimination?" *Philosophy & Public Affairs* 38 (2): 143–179.

Morris, Andrew J. 1995. "On the Normative Foundations of Indirect Discrimination Law: Understanding the Competing Models of Discrimination Law as Aristotelian Forms of Justice." *Oxford Journal of Legal Studies* 15: 199.

Newman, Janet. 2001. *Modernizing Governance: New Labour, Policy and Society*. London: Sage.

O'Brien, Rourke L. 2017. "Redistribution and the New Fiscal Sociology: Race and the Progressivity of State and Local Taxes." *American Journal of Sociology* 122 (4): 1015–1049.

O'Donovan, Katherine. 1989. "Engendering Justice: Women's Perspectives and the Rule of Law." *The University of Toronto Law Journal* 39 (2): 127–148. https://doi.org/10.2307/825736.

O'Hagan, Angela, Eva Neizert, and Lynn Carvill. 2018. "Gender Budgeting in the UK: Devolution, Divergence and Diversity." In *Gender Budgeting in Europe: Developments and Challenges*, edited by Angela O'Hagan and Elizabeth Klatzer, 293–316. Berlin: Springer.

Pfau-Effinger, Birgit. 2004. "Socio-Historical Paths of the Male Breadwinner Model–An Explanation of Cross-National Differences 1." *The British Journal of Sociology* 55 (3): 377–399.

Phung, Viet-Hai. 2008. "Ethnicity and Child Poverty Under New Labour: A Research Review." *Social Policy and Society* 7 (4): 551–563.

Prosser, Tony. 2011. "'An Opportunity to Take a More Fundamental Look at the Role of Government in Society': The Spending Review as Regulation." *Public Law* (3): 596–616.

Puttick, Keith. 2017. "Working Tax Credit." WestLaw Insight.

Rafferty, Anthony, and Jill Rubery. 2013. "Gender, Recession and Austerity in the UK." In *Women and Austerity*, edited by M. Karamessini and J. Rubery, 145–165. London: Routledge.

Raz, Joseph. 1972. "Legal Principles and the Limits of Law." *Yale Law Journal* 81 (5): 823–854. https://doi.org/10.2307/795152.

Rowlands, Jo. 2002. "Alive and Kicking: Women's and Men's Responses to Poverty and Globalisation in the UK." *Gender & Development* 10 (3): 31–40.

Royston, Tom, and Charlotte O'Brien. 2017. "The Cap Doesn't Fit." *Journal of Social Security Law* 24 (3): D96–D97.

Salomon, Margot E. 2015. "Of Austerity, Human Rights and International Institutions." *European Law Journal* 21 (4): 521–545.

Sainsbury, Roy. 2010. "Twenty-first Century Welfare—Getting Closer to Radical Benefit Reform?" *Public Policy Research.* 17: 102–107.

Sanders, Anna, Claire Annesley, and Francesca Gains. 2019. "What Did the Coalition Government Do for Women? An Analysis of Gender Equality Policy Agendas in the UK 2010–2015." *British Politics* 14: 1–19.

Schumpeter, Joseph A. 1955. *Imperialism; Social Classes: Two Essays*. Vol. 4. Ludwig: von Mises Institute.

Schumpeter, Joseph A. 2010/2013. *Capitalism, Socialism and Democracy*. London: Routledge.

Smith, Noel. 2008. "Tackling Child Poverty Dynamics: Filling in Gaps in the Strategy." *Social Policy and Society* 7 (4): 507–519.

Somek, Alexander. 2011. *Engineering Equality: An Essay on European Anti-Discrimination Law*. Oxford: Oxford University Press.

Spencer, Nicola S. 1986. "Taxation of Husband and Wife: Lessons from Europe." *Fiscal studies* 7 (3): 83–90.

Steccolini, Ileana. 2019. "New Development: Gender (Responsive) Budgeting—A Reflection on Critical Issues and Future Challenges." *Public Money & Management* 39: 1–5.

Stratigaki, M. 2012. "Gendering the Social Policy Agenda: Anti-discrimination, Social Inclusion and Social Protection." In *Gendering the European Union: New*

Approaches to Old Democratic Deficitis, edited by Gabriele Abels and J. M. Abels, 169–186. London: Palgrave-Macmillan.

Stotsky, J. G. 2006. "Gender Budgeting." IMF Working Paper No. 06/232.

Taylor-Gooby, Peter, Trine Larsen, and Johannes Kananen. 2004. "Market Means and Welfare Ends: The UK Welfare State Experiment." *Journal of Social Policy* 33 (4): 573–592.

Walby, Sylvia. 1994. "Is Citizenship Gendered?" *Sociology* 28 (2): 379–395.

Walker, Robert. 1998. "Does Work Work?" *Journal of Social Policy* 27 (4): 533–542.

Walker, Robert, and Michael Wiseman. 2003. "Making Welfare Work: UK Activation Policies Under New Labour." *International Social Security Review* 56 (1): 3–29.

Westen, Peter. 1982. "The Empty Idea of Equality." *Harvard Law Review* 95 (3): 537–596. https://doi.org/10.2307/1340593.

Wilson, Shaun. 2013. "The Limits of Low-Tax Social Democracy? Welfare, Tax and Fiscal Dilemmas for Labor in Government." *Australian Journal of Political Science* 48 (3): 286–306.

Conclusion

Historic budgets are akin to fiscal rings in trunks of trees, leaving traces of years thick with plenty and generous allocation of resources, and of years thin with financial strain. They represent both choice and process. Schumpeter stressed that through budgets we might perceive the "thunder of history," (1918) and the choice of allegory was deliberate and accurate. The flash and strike of political process has passed, but the echo, and resonance, of the choices made within that moment remain.

A *balanced* budget is widely perceived to be emblematic of a sound government making sound financial choices. Yet such perceptions need not necessarily produce just outcomes, and, indeed, economic theory, whilst relevant, need not necessarily provide blueprints for how budgets might function. The controversy, inevitably, concerns debt, and the extent to which a government should risk it.

Fiscal sociologists, starting with Schumpeter, have warned societies to take heed of the importance of historic budgets and fiscal narratives for modern governance, and this book very much followed these admonitions. It did so, however, not following precisely the paths established by the founders of fiscal sociology, but, rather, aimed to follow a path informed by developments in socio-legal theory, and an appreciation of the importance of reflecting upon claims to 'global' and universality.

To make the centenary of fiscal sociology, this book considered one of Schumpeter's favourite budgeting processes—the UK—from the perspective of specific, culture-shifting laws that have targeted budgeting over the remarkable history of UK public finance. First Lords of the Treasury and Commissioners for Debt were found to have important modern relevance.

A. Mumford, *Fiscal Sociology at the Centenary*, Palgrave Socio-Legal Studies,
https://doi.org/10.1007/978-3-030-27496-2

Then, the pragmatic potential of fiscal sociology for twenty-first-century challenges was considered in the context of calls for a global approach to capital and wealth. This consideration was sparked by the writings of Piketty, who has transformed and expanded the discourse surrounding the intersection of global wealth and the legal regimes underpinning capital and income.

Throughout, this book acknowledged that the theory of the tax state has led to the development of a rich literature, which traces the place of tax in the social contract over many, mostly Western, countries. The engagement of this literature with the global south and developing economies, however, remains limited. Fiscal sociology carries the potential of expanding this discourse.

Within this literature, Schumpeter was the starting point, but even he would have admonished that not only his writings should be the sole focus of such a project. To make sense of Schumpeter as fiscal sociologist, as theoretical economist, and as politician, this book considered, briefly, his biography. This revealed that, although Schumpeter is renowned for identifying both the concept of the "tax state" and the field of fiscal sociology, he in fact drew heavily on the writings of Goldscheid and others. Thus, when he delivered the *Crisis of the Tax State*, considered himself to be *joining* a movement, as opposed to starting one. In fact, he strictly declined to be viewed as the head of a school, or a movement, although he was keen to encourage others to join him in interdisciplinary analyses. His great innovation was to take pre-existing theories, and to include them first in a heavily political speech, and later to publish them as an essay. He used the term fiscal sociology, generally, to refer to a union between sociology and economics which views taxation as a particularly important tool for understanding both historical and modern change.

Such a discourse would appear timeless. And, indeed, after the financial collapse in 2008, Schumpeter's name often was invoked in public discussion, as part of an effort to make sense of the machinations of capitalism. The echoes of the "thunder of history" to be found in a nation's budget were not a particular focus of the UK parliamentarians, for example, who turned to another of Schumpeter's observations—essentially, the prediction that capitalism was doomed to consume itself, and, systemically, collapse. Schumpeter was oft quoted in Parliament during these early, post-crash years—the important point being that one of his observations, from another era, provided a language for legislators attempting to express a variety of things, including lack of faith in what perhaps had been accepted principles of Keynesian economics. Those who mentioned Schumpeter did not always claim expertise, but they aimed to acknowledge their fears of a complete, systemic failure.

In the aftermath of the economic crisis of 2008, Schumpeter's writings were perhaps more famous in a popular sense than they had been previously—but, this popular recognition did not appear to include discussion of the tax state, or for his status within fiscal sociology. Popular objection to banks, which simmered soon after the crash—notably acknowledged by then-Prime Minister Gordon Brown in his suggestion at the time that a Tobin tax could be levied against banks with the aim of regulating international transactions in currencies (Krugman, 26 November 2009)—was the focus of this public discourse, followed (later) by attention to the tax arrangements of international corporations. As the years passed and the discourse developed, however, public discussion of Schumpeter waned.

This book aimed to demonstrate that this interest merits reinvigoration, and not simply because a Schumpeterian, fiscal sociological framework can aid efforts to discern the origins of triggered tensions. The challenge of a fiscal sociology revival, however, is that the tax state traditionally is understood as existing within the boundaries of the nation state. It is less easy to 'draw a line' from transnational corporations to….. where? Which nation state? It is not easy to identify the 'origin of the tax state' for transnational business actors.

An over-simplification of fiscal sociology would ask one to draw a line from a modern tax crisis…

> … for example, generally compliant taxpayers have stopped paying tax X in large numbers, risking fines and more, but seem content to continue paying all other taxes. It is not immediately evident why tax X is less tolerable than other forms of taxation….

…to the formation of the tax state; thus: when did this country experiencing the crisis move from pillage and plunder to organised tax collection? Over-simplification, perhaps, is risked in this kind of exercise, particularly when assessing relatively old tax states. So, for example, may the opposition to the Poll Tax, or the Community Charge, under UK Prime Minister Margaret Thatcher in the 1980s be understood by 'drawing a line' back to, for example, the case *of Ship-Money*? ([1637] 3 State Trials 826; The Ship Money Act 1640 [16 Car 1 c 14] [repealed]) Is the line more comfortably drawn from the property tax revolt in 1990s Japan to the division of land by the occupying, allied forces at the end of World War II? (Jinno and DeWit 1998) If so, is this because those who revolted in Japan, although this occurred fifty years after the formation of their tax state during the allied occupation, nonetheless may be presumed to have inherited a sense of the injustice of the apparently random redesign of land boundaries—thus, the tensions inherent at the formation of the state remain vivid, and are expressed in resistance to property tax? Perhaps, but this kind of connection is not the primary purpose of what has come to be known as the New Fiscal Sociology.

Schumpeter was most cited, in those early post-recession days, as a critic of capitalism—the attention on tax arrangements seemed to concern something different; or, rather, the connection between tax and capitalism was not immediately evident. Thus, this book has aimed to bridge a number of gaps, including the discourse between tax and capitalism. Marx may not have addressed tax in detail, but Schumpeter, and others, did, and thus this book summarised this literature, and suggested its relevance to modern problems. Ultimately, this book aimed to forge connections between the rich literature of fiscal sociology, and questions within tax law, with a focus on issues relating to development and legal pluralism.

This book also aimed to consolidate the literature of, and provide a timeline for, fiscal sociology. Of course, emphasising Schumpeter's contributions, it also considered the contributions of the Italian school, and, ultimately, detailed a history leading to the identification of the fiscal sociology "revival." In order to engage with the post-crash era, this section sought to introduce the question—where is the place of fiscal sociology in the transnational context? The question starts at the point of non-governmental agencies like the OECD, the IMF and the UN. So, on a simple level, transnational law starts at the point of considering the policies and practices of these agencies. The idea that some form of law emanates from these agencies is, however, controversial. If policies are drafted, for example, by the OECD or the UN, then, when these policies are adapted by states, traditionally, then they become law, and issues pertaining to them are best addressed by existing discourses within international law. Before this point, the argument runs, they are simply policies of agencies or institutions that do not view themselves as advancing the policies of any one state, but, rather seek to serve global interests. This book concludes by suggesting that the concept of the tax state will need to be located within that discourse.

The budgets of Gladstone, and other accounts, were not offered for the point of simple historical retelling, although the stories do provide compelling illustrations of the machinations of government, but as part of an effort to construct the foundations of a modern understanding of the fiscal sociological roots of budgeting process. The UK budgeting process has been enormously impactful. Its reach, thus, extends beyond its shores.

The legislation underpinning the budgeting process was analysed against the background of several developments in socio-legal theory, including the perspectives of Schumpeter, but also from the perspective of isomorphism. The instantiation and development of the Office of Budget Responsibility in the UK is a significant development in this context. Historical examples were considered against the background of developments in the twenty-first century.

The final two chapters had a number of objectives. First, readers were introduced to the important role that tax may play in a number of existing discourse, from (modern iterations of) 'law and development,' to transnational legal theory. Just over one hundred years ago, Schumpeter predicted the eventual fall of capitalism. This prediction led to the development of a diverse, theoretical literature, which was collected and considered within this monograph. The project here was to extend the fiscal sociological literature to debates within socio-legal studies. Growing importance is being placed on tax and spending analyses in a number of debates. Tax was, once, only just about providing money for the sorts of choices that can lead to debate. It enabled the debate. It was not the *source* of the debate itself. Thus, the old law and development literature did not really consider tax, and the newer legal pluralism literature did not either.

Secondly, examples of issues that would benefit from a fiscal sociological analysis were identified. These chapters also allude to the interest that Schumpeter might have taken in the modern discourse of tax. In this sense, they were an extension and an application of the main themes of the book, which include: first, the value of fiscal, sociological, institutionalist analyses in understanding the power dynamics of budgetary processes; and, secondly, the significance of combined, reflective studies of budgeting legislation.

Chapter 6 covered some of the canonical pieces in transnational legal discourse—and, for example, addressed the Cotterrell/Zumbansen debate, (Cotterrell 2012; Calliess and Zumbansen 2010) and several of the insights (including the important chapter on tax) from Halliday and Shaffer's recent collection (which sets the terms of transnational theoretical exploration in a significant way) (Halliday and Shaffer 2015). An ambition of this book has been to offer transnational legal theorists a contribution to the slowly developing material which focuses on tax. In Chapters 6 and 7, the disconnect between citizens and the tax state was addressed with two examples. First, Piketty's call for a global tax on capital was considered. Piketty called for a ten per cent global tax on capital, on the basis that the ability to move money offshore means that it is impossible to achieve economic justice within domestic borders. There are limits of the "tax principles" concept, but, nonetheless, Chapter 6 proposes what might broadly be described as a principled response to Piketty's global wealth tax proposal, justifying the use of a non-prescriptive approach as a means of achieving Piketty's aim of redressing global economic inequality.

Secondly, the issues considered by the Supreme Court in the *DA and DS* cases were addressed in Chapter 7. This chapter also addressed issues raised by the cases of *SG* and *SC*, in which indirectly discriminatory impact was connected to "objective and reasonable justification", and, thus, the legislation survived challenge. *First*, on the point of the exception: the history of the *DA* case involved an assessment of the legality of the household benefit cap. The court reached the conclusion that although the welfare cap violates Article 3 of the United Nations Convention on the Rights of the Child, this did not render it unlawful. Additionally, it was not compatible with protections guaranteed under Article 14, ECHR. The court ruled that, because the Benefit Cap (Housing Benefit) Regulations 2012 have a reasonable justification, however, the conflict with Article 14 does not defeat the legislation. The *DA* case held that the appropriate test is "…whether the difference is treatment is manifestly without reasonable foundation (MWRF)" (as confirmed within the *Humphreys* case).

Indirect discrimination arises from the fact that the cap applies to "non-working households which would otherwise receive benefits in excess of the cap", and from the fact that such households are overwhelmingly likely to be headed by single women, who care for several children. The outcome is that, whilst the cap does have some problems, none of these are sufficient to render it unlawful. The reasonable justification behind the legislation is adequate to rebuff the problems suffered by the indirect discrimination against households, largely headed by single women, who are "capped".

Chapters 6 and 7 both lead to a number of possibilities. For example, Piketty posited that inequality of wealth was a global problem. The law, however, resists treating it in this way. The treatment of the UNCRC in the *DA* litigation provides an illustration of the challenges (and promise) of global approaches. Violating a protection within the UNCRC was not enough, in earlier litigation, for the court to decide that the benefit cap is illegal. This demonstrates a desire to keep decisions about budgeting and spending law within the realm of domestic law. It would appear that it is acceptable for instruments of international law to provide aspirations, or principles, but not actionable, legal rights.

The crash of 2008 only exacerbated this. Within the context of EU law, obligations that predated the crash of 2008, such as gender budgeting, were abandoned when the union itself was threatened. Interestingly, the response from the EU to this threat led to challenges of illegality: that the bailout of some member states was illegal within European constitutional law, or that the imposition of punitive, austerity-based measures was illegal. The EU, *de facto*, provided an answer by forging ahead without successful challenge, but a review of the literature revealed challenges that the engagement with *legal* analysis had been light, such that the post-crash era was driven by an impetus only to follow recommendation from experts on the economy who insisted that austerity was the only way ahead.

This is an area which will require future research. Interesting questions might include, for example: how gender inequality in tax currently is understood, against the potential of the "shifting terrain" of transnational, socio-legal research; and, how to map the link between tax avoidance and the global poverty of women (for more on this, see, e.g., Lahey 2010, 2015; Lahey and de Villota 2013); and, further work on mapping the link between gender and budgeting (for example, the idea of gender responsive budgeting, see Steccolini 2019). Until this expansion in research occurs, the focus probably will continue to be upon the insights that fiscal sociology can offer towards understanding developments within nation states. And yet, perhaps, one way of describing fiscal sociology is to suggest that it serves to complicate questions. Thus, as Schumpeter emphasised in his *Crisis of the Tax State*, the problems faced by Austria after the first world war were not solely ascribable to that country's failure to balance its budget, although that failure was an important symptom of wider difficulties. It is important not to be distracted by simple answers, and to acknowledge the significance of evolving legal and economic structures.

This book has argued that an awareness of globalisation encroached upon fiscal sociological scholarship, in a way that made it difficult to continue to consider taxation as solely the preserve of the nation state. A new lexicon is necessary. This book also concludes that the link between taxation, inequality and the state requires, in 2019, analysis within a transnational context; that is to say, a context which transcends the conceptual limitations of tax as defined and controlled solely by individual states. Finally, this book also sought to advance the discipline of theoretical fiscal sociology, and move the literature on from *The New Fiscal Sociology* (Martin et al. 2009b).

In closing, it is fair to note that this book has declined to answer two of the key, fiscal sociological questions: "what does 'failure of the tax state' mean?" and "Must it now disappear and why?" There is a reluctance to forge an equivalence between post-WWI Austria, and the UK in 2019. The tax state is continuing to function. The form that it will assume when this post-financial crisis period is over, however, is uncertain. On the one hand, it may seem odd to describe the period ten years after the financial crisis as a “post” era. It is true, the markets have stabilised since then, and some indicators of prosperity gradually have returned. The era of austerity which followed 2008, however, has had a profound impact. For example, the UK may not have shared Portugal’s experience with the EU in its aftermath with budget control, but its relationship with the EU certainly has changed fundamentally.

In many ways, that is the lingering idea from this examination: everything is changing—from the boundaries of the nation state, to the evolution of tax and spending as transnational issues. And, yet, even with these seismic shifts, there are examples such as the dominance of the male breadwinner model in many areas of law pertaining to the taxation of women. The transnational structures show promise in redressing this, but little more than that. The benefit cap litigation defines its concepts strictly within the boundaries of seeking to determine what Parliament intended. The neo-liberal thread in this analysis reaches far back, earlier than the Coalition government. The seismic shifts of the crisis of the tax state of 2008 revealed that women had few protections in law, when the choice was made to place a significant part of the burden of paying for the crisis on their shoulders. Nonetheless, the tax state is unlikely to disappear, just as Schumpeter predicted of Austria one hundred years ago. The tax state has not failed, but there is little reassurance that the crisis is yet over.

Bibliography

Adelman, Paul. 2014. *Peel and the Conservative Party 1830–1850*. London: Routledge.

Adler, Michael E. 1975. "IFS Conference on Proposals for a Tax-Credit System." *Journal of Social Policy* 4 (1): 97–98.

Aldridge, H., and T. MacInnes. 2014. "Multiple Cuts for the Poorest Families." Oxfam Research Reports.

Allen, Robert Loring. 1994. *Opening Doors: The Life and Work of Joseph Schumpeter*. Vol. I. New Brunswick: Transaction Publishers.

Alt, James E., and David Dreyer Lassen. 2006. "Transparency, Political Polarization, and Political Budget Cycles in OECD Countries." *American Journal of Political Science* 50 (3): 530–550.

Amoroso, Luigi. 1938. "Vilfredo Pareto." *Econometrica: Journal of the Econometric Society* 6: 1–21.

Atkinson, Anthony B. 2012. "The Mirrlees Review and the State of Public Economics." *Journal of Economic Literature* 50 (3): 770–780.

Atkinson, Tony. 2011. "The Case for Universal Child Benefit." In *Fighting Poverty, Inequality and Injustice: A Manifesto Inspired by Peter Townsend*, edited by A. Waller, A. Sinfield, and C. Walker, 79–90. Portland: Policy Press.

Atkinson, Tony. 2014. *Public Economics in an Age of Austerity, Graz Schumpeter Lectures*. London: Routledge.

Aydin, Derya Guler, and Itir Ozer-Imer. 2018. "At the Crossroads of History and Theory: Weber, Schumpeter and Economic Sociology." Panoeconomicus.

Backhaus, Jürgen G. 2004. "Joseph A. Schumpeter's Contributions in the Area of Fiscal Sociology: A First Approximation." *Journal of Evolutionary Economics* 14 (2): 143–151.

Backhaus, Jürgen G. 2005. *Fiscal Sociology: What For?* Boston: Springer.

A. Mumford, *Fiscal Sociology at the Centenary*, Palgrave Socio-Legal Studies,
https://doi.org/10.1007/978-3-030-27496-2

Backhaus, Jürgen G. 2012. *Navies and State Formation: The Schumpeter Hypothesis Revisited and Reflected*. Münster: LIT Verlag.

Bagguley, Paul. 1996. "The Moral Economy of Anti-Poll Tax Protest." In *To Make Another World: Studies in Protest and Collective Action*, edited by C. Barker and P. Kennedy, 7–24. Abingdon: Routledge.

Bakker, I. 2006. "Gender Budget Initiatives: Why They Matter in Canada." Canadian Centre for Policy Alternatives. Last Modified 2006. http://www.policyalternatives.ca/documents/National_Office_Pubs/2005/afb2006_techpaper1_gender_budget_initiatives.pdf.

Banerjee, Nirmala, and Maithreyi Krishnaraj. 2004. "Sieving Budgets for Gender." *Economic and Political Weekly* 39 (44): 4788–4791.

Bankman, Joseph, and Daniel Shaviro. 2014. "Piketty in America: A Tale of Two Literatures." *Tax Law Review* 68: 453.

Barker, Elisabeth. 1973. *Austria 1918–1972*. London: Springer.

Bastida, Francisco, and Bernardino Benito. 2007. "Central Government Budget Practices and Transparency: An International Comparison." *Public Administration* 85 (3): 667–716. https://doi.org/10.1111/j.1467-9299.2007.00664.x.

Baum, Sandy. 1992. "Poverty, Inequality, and the Role of Government: What Would Adam Smith Say?" *Eastern Economic Journal* 18 (2): 143–156.

Bebbington, David William. 1993. *William Ewart Gladstone: Faith and Politics in Victorian Britain*. Grand Rapids: Wm. B. Eerdmans Publishing.

Beckert, Jens. 2009. "The Great Transformation of Embeddedness: Karl Polanyi and the New Economic Sociology." In *Beckert Jens*, edited by C. Hann and K. Hart, 38–55. New York: Cambridge University Press,

Beckert, Jens, and Milan Zafirovski. 2005. *International Encyclopedia of Economic Sociology*. London: Routledge.

Beckett, John V., and Michael Turner. 1990. "Taxation and Economic Growth in Eighteenth-Century England." *The Economic History Review* 43 (3): 377–403.

Bekker, Pieter H. F., Rudolf Dolzer, and Michael Waibel. 2010. Introduction: A Festschrift to Celebrate Detlev Vagts' Contributions to Transnational Law. In *Making Transnatioal Law Work in the Global Economy: Essays in Honour of Detlev Vagts*. Cambridge: Cambridge University Press.

Bell, Daniel. 1974. "The Public Household-on Fiscal Sociology and the Liberal Society." *The Public Interest* 37: 29.

Bendix, Reinhard. 1974. "Inequality and Social Structure: A Comparison of Marx and Weber." *American Sociological Review* 39: 149–161.

Benedetto, G., and S. Milio. 2012. *European Union Budget Reform: Institutions*. Policy and Economic Crisis: Springer.

Benito, Bernardino, and Francisco Bastida. 2009. "Budget Transparency, Fiscal Performance, and Political Turnout: An International Approach." *Public Administration Review* 69 (3): 403–417.

Berman, Paul Schiff. 2012. *Global Legal Pluralism: A Jurisprudence of Law Beyond Borders*. Cambridge: Cambridge University Press.

Berwick, Elissa, and Fotini Christia. 2018. "State Capacity Redux: Integrating Classical and Experimental Contributions to an Enduring Debate." *Annual Review of Political Science* 21: 71–91.

Besson, Samantha. 2008. "Gender Discrimination Under EU and ECHR Law: Never Shall the Twain Meet?" *Human Rights Law Review* 8 (4): 647–682.

Best, Michael H., and Jane Humphries. 2003. "Edith Penrose: A Feminist Economist?" *Feminist Economics* 9 (1): 47–73.

Bittker, Boris I. 1969. "The Tax Expenditure Budget—A Reply to Professors Surrey & Hellmuth." *National Tax Journal* 22 (4): 538–542.

Blochiger, Hansjorg, and Junghun Kim. 2016. *Fiscal Federalism 2016: Making Decentralisation Work*. Paris: OECD.

Blomberg, Helena, and Christian Kroll. 1999. "Do Structural Contexts Matter? Macro-Sociological Factors and Popular Attitudes Towards Public Welfare Services." *Acta Sociologica* 42 (4): 319–335.

Blundell, Richard. 2001. "Welfare-to-Work: Which Policies Work and Why?" Proceedings of the British Academy.

Blundell, R., A. Duncan, J. McCrae, and C. Meghir. 2000. "The Labour Market Impact of the Working Families' Tax Credit." *Fiscal Studies* 21 (1): 75–104.

Blyberg, Ann. 2009. "The Case of the Mislaid Allocation: Economic and Social Rights and Budget Work." *Sur—International* 11 (1): 123–140.

Boron, Atilio A. 1999. "A Social Theory for the 21st Century?" *Current Sociology* 47 (4): 47–64. http://dx.doi.org/10.1177/0011392199047004006.

Boucoyannis, Deborah. 2013. "The Equalizing Hand: Why Adam Smith Thought the Market Should Produce Wealth Without Steep Inequality." *Perspectives on Politics* 11 (4): 1051–1070. https://doi.org/10.1017/s153759271300282x.

Bowler, Tracey. 2007. "Taxation of the Family, Tax Law Review Committee", Discussion paper No. 6, The Institute for Fiscal Studies. https://pdfs.semanticscholar.org/f6ca/49da4464aa0f8e7f98263ae4431868924a74.pdf. Last accessed 4 September 2019.

Bowler, Tracey. 2010. "Tax Policy Making in the UK."

Braddick, Michael J. 1996. *The Nerves of State: Taxation and the Financing of the English State, 1558–1714*. Manchester: Manchester University Press.

Bradshaw, Jonathan. 2002. "Child Poverty and Child Outcomes." *Children & Society* 16 (2): 131–140.

Brazier, Alex. 2007. "The Fiscal Maze: Parliament, Government and Public Money." *Parliamentary Affairs* (60): 346–355.

Brewer, Mike, Tom Clark, and Alissa Goodman. 2003. "What Really Happened to Child Poverty in the UK Under Labour's First Term?" *The Economic Journal* 113 (488): F240–F257.

Brittain, Samuel. 1959. *The British Budgetary System*, 69. New York: Allen & Unwin/ The Macmillan Company.

Brooks, David. 1995. *The Age of Upheaval: Edwardian Politics, 1899–1914*. Manchester: Manchester University Press.

Brownlee, W. Elliott. 2003. *Funding the Modern American State, 1941–1995: The Rise and Fall of the Era of Easy Finance*. Cambridge: Cambridge University Press.

Bryson, Valerie, and Timothy Heppell. 2010. “Conservatism and Feminism: The Case of the British Conservative Party.” *Journal of Political Ideologies* 15 (1): 31–50.

Budlender, Debbie. 1997. “The Women’s Budget.” *Agenda* 13 (33): 37–42.

Burg, Elliot M. 1977. “Law and Development: A Review of the Literature and A Critique of Scholars in Self-Estrangement.” *American Society of Comparative* Law 25: 492–530.

Burger, Thomas. 1978. “Max Weber’s Theory of Concept Formation: History, Laws and Ideal Types.” *Philosophy and Phenomenological Research* 38 (4): 585–586.

Butler, David, Andrew Adonis, and Tony Travers. 1994. *Failure in British Government: The Politics of the Poll Tax*. Oxford: Oxford University Press.

Calliess, Gralf-Peter, and Peer Zumbansen. 2010. *Rough Consensus and Running Code: A Theory of Transnational Private Law*. London: Bloomsbury.

Campbell, John L. 1993. “The State and Fiscal Sociology.” *Annual Review of Sociology* 19 (1): 163–185.

Campbell, John L. 2009. “Epilogue: A Renaissance for Fiscal Sociology.” *The New Fiscal Sociology: Taxation in Comparative and Historical Perspective*, edited by I. W. Martin, A. K. Mehrotra, and M. Prasad, 256. Cambridge: Cambridge University Press.

Campbell, J. L., Jens Beckert, and Milan Zafirovsky. 2005. *‘Fiscal Sociology,’ in International Encyclopedia of Economic Sociology*, 285–289. London: Routledge.

Caporaso, James A., and David P. Levine. 1992. *Theories of Political Economy*. Cambridge: Cambridge University Press.

Carson, Edward. 1972. *The Ancient and Rightful Customs: A History of the English Customs Service*. London: Archon Books.

Caron, Paul L. 2015. “Thomas Piketty and Inequality: Legal Causes and Tax Solutions.” *Emory Law Journal Online* 64: 2073.

Casper, Lynne M., Sara S. McLanahan, and Irwin Garfinkel. 1994. “The Gender-Poverty Gap: What We Can Learn from Other Countries.” *American Sociological Review* 59 (4): 594–605. https://doi.org/10.2307/2095933.

Chai, Andreas, and Alessio A. 2010. “Retrospectives: Engel Curves.” *Journal of Economic Perspectives Moneta* 24 (1): 225–240.

Chalmers, Impey & Co. (Chartered Accountants). 1975. Capital Transfer Tax. In *Booklet on File at the British Library*, 14 April.

Cini, Michelle. 2000. “Organizational Culture and Reform: The Case of the European Commission Under Jacques Santer.” EUI Working Paper RSC No. 2000/25.

Clancy, Peter, James Bickerton, and Ian Stewart. 2000. *The Savage Years: The Perils of Reinventing Government in Nova Scotia*. Nova Scotia: Formac.

Cockfield, Arthur J. 2013. “The Limits of the International Tax Regime as a Commitment Projector.” *Virginia Tax Review* 33: 59.

Coffman, D’Maris. 2018. “Modern Fiscal Sociology.” *The Palgrave Handbook of Political Economy*: 529–541. https://www.springerprofessional.de/en/political-economy-outlining-a-field/16042632?fulltextView=true.

Collins, Hugh. 2003. "Discrimination, Equality and Social Inclusion." *Modern Law Review* 66 (1): 16–43. https://doi.org/10.1111/1468-2230.6601002.

Collins, Lawrence. 2014. "The Enforcement of Foreign Revenue Laws'." *The Law Quarterly Review* 130: 353.

Collins, Randall. 1992. "Rediscovering Schumpeter." JSTOR.

Cooper, Davina. 1996. "Institutional Illegality and Disobedience: Local Government Narratives." *Oxford Journal of Legal Studies* 16 (2): 255–274.

Cooper, Richard. 1982. "William Pitt, Taxation, and the Needs of War." *The Journal of British Studies* 22 (1): 94–103.

Cooter, Robert. 2000. "Do Good Laws Make Good Citizens? An Economic Analysis of Internalized Norms." *Virginia Law Review* 86 (8): 1577–1601.

Cotterrell, R. 2012. "What Is Transnational Law?" *Law & Social Inquiry* 37 (2): 500.

Cousins, Mel. 2013. "Equal Treatment and Objective Justification in Social Security Cases Under the European Convention on Human Rights." *Journal of Social Security Law* 20: 13–23.

Cousins, Mel. 2017. "The Bedroom Tax and the Supreme Court: Pragmatism over Principle." *Journal of Social Security Law* 24 (3): 135–148.

Cox, Harold. 1901. "The Public Debt of Great Britain." *The North American Review* 173 (538): 355–376.

Creedy, John. 2011. "Reflections on Tax by Design." *Fiscal Studies* 32 (3): 361–373.

Crowhurst, Isabel. 2019. "The Ambiguous Taxation of Prostitution: The Role of Fiscal Arrangements in Hindering the Sexual and Economic Citizenship of Sex Workers." *Sexuality Research and Social Policy* 16: 166–178.

Daintith, Terence, and Alan C. Page. 1999. *The Executive in the Constitution: Structure, Autonomy, and Internal Control*. Oxford: Oxford University Press.

Danielsen, Dan. 2005. "How Corporations Govern: Taking Corporate Power Seriously in Transnational Regulation and Governance." *Harvard International Law Journal* 46: 411.

Daunton, Martin. 2007a. *Just Taxes: The Politics of Taxation in Britain, 1914–1979*. Cambridge: Cambridge University Press.

Daunton, Martin. 2007b. *Trusting Leviathan: The Politics of Taxation in Britain, 1799–1914*. Cambridge: Cambridge University Press.

Dau-Schmidt, Kenneth G. 1997. "Economics and Sociology: The Prospects for an Interdisciplinary Discourse on Law." *Wisconsin Law Review* 3: 389.

David Lindsay Earl of Crawford. 1984. *The Crawford Papers: The Journals of David Lindsay, Twenty-seventh Earl of Crawford and Tenth Earl of Balcarres (1871–1940), During the Years 1892 to 1940*. Manchester: Manchester University Press.

Dawson, Andrew. 2010. "State Capacity and the Political Economy of Child Mortality in Developing Countries Revisited: From Fiscal Sociology Towards the Rule of Law." *International Journal of Comparative Sociology* 51 (6): 403–422.

De Agostini, P., J. Hills, and H. Sutherland. 2014. "Were We Really All in It Together? The Distributional Effects of the UK Coalition Government's Tax-Benefit Policy Changes." Social Policy in a Cold Climate, Working Paper 10, CASE, London.

Delalande, Nicolas, and Romain Huret. 2013. "Tax Resistance: A Global History?" *Journal of Policy History* 25 (3): 301–307.

Deutsch, K. W. 1956. "Joseph Schumpeter as an Analyst of Sociology and Economic History." *The Journal of Economic History* 16: 41–56.

Dewey, Matías. 2018. "The Other Taxation: An Ethnographic Account of 'Off-the-Books' State Financing." *Latin American Research Review* 53 (4): 726–740.

Dicey, Albert Venn, J. H. C. Morris, and Lawrence Collins. 2016. *Dicey, Morris and Collins on the Conflict of Laws*, 15th ed. London: Sweet & Maxwell, Thomson Reuters.

Dickens, Richard, and David T. Ellwood. 2003. "Child Poverty in Britain and the United States." *The Economic Journal* 113 (488): F219–F239.

Dilnot, Andrew, and Paul Johnson. 1993. "Tax Expenditures: The Case of Occupational Pensions." *Fiscal Studies* 14 (1): 42–56.

DiMaggio, Paul J., and Walter W. Powell. 1983. "The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields." *American Sociological Review* 48 (2): 147–160.

Disraeli, Benjamin. 1862. *Mr Gladstone's Finance, from His Accession to Office in 1853 to His Budget of 1862, Reviewed by the Right Hon. B. Disraeli*. Saunders: Otley & Company.

Docksey, Chris. 1991. "The Principle of Equality Between Women and Men as a Fundamental Right Under Community Law." *Industrial Law Journal* 20: 258.

Dolowitz, David P. 2003. "A Policy-Maker's Guide to Policy Transfer." *The Political Quarterly* 74 (1): 101–108.

Dothan, Michael, and Fred Thompson. 2009. "A Better Budget Rule." *Journal of Policy Analysis* and *Management* 28 (3): 463–478.

Doyle, Oran. 2007. "Direct Discrimination, Indirect Discrimination and Autonomy." *Oxford Journal of Legal Studies* 27 (3): 537–553.

Dworkin, Ronald M. 1967. "The Model of Rules." *The University of Chicago Law Review* 35 (1): 14–46.

Dymond, Robert. 1977. *Dymond's Capital Transfer Tax: A Companion Volume to the Fifteenth Edition of Dymond's Death Duties*. Edited by Robert Dymond, Reginald Kimsey Johns, and Roy R. Greenfield. London: Oyez Publishing.

Eames, John. 2012. "Human Rights: Discrimination—Tax Credits—Children—Separated Parents—Humphreys v Revenue and Customs Commissioners." *Journal of Social Security Law* 19 (3): D126.

Eisenstein, Louis. 1955. "The Rise and Decline of the Estate Tax." *Tax Law Review* 11: 223.

The Economist. 2014. "A Modern Marx."

Ellickson, Robert C. 1998. "Law and Economics Discovers Social Norms." *Journal of Legal Studies* 537–552.

Elsby, Michael W., Bart Hobijn, and Aysegul Sahin. 2010. "The Labor Market in the Great Recession." National Bureau of Economic Research Working Paper No. 15979.

Elwes, Sylvia. 2013. "The Internal Market Versus the Right of Member States to Levy Direct Tax—A Clash of Fundamental Principles." *Intertax* 41 (1): 15–26.

Eskridge Jr., William N., and Gary Peller. 1990. "The New Public Law Movement: Moderation as a Postmodern Cultural Form." *Michigan Law Review* 89: 707.

Exner, Gudrun. 2004. "Rudolf Goldscheid (1870–1931) and the Economy of Human Beings." *Vienna Yearbook of Population Research* 2: 283–332.

Fagan, Colette, and Jill Rubery. 2018. "Advancing Gender Equality Through European Employment Policy: The Impact of the UK's EU Membership and the Risks of Brexit." *Social Policy and Society* 17 (2): 297–317.

Fahy, Nick. 2012. "Who Is Shaping the Future of European Health Systems?" *BMJ: British Medical Journal* 344 (7849): 44–45.

Farell, Sean. 12 April 2018. "Use Inheritance Tax to Tackle Inequality of Wealth, says OECD." *The Guardian*. https://www.theguardian.com/inequality/2018/apr/12/use-inheritance-tax-to-tackle-inequality-of-wealth-says-oecd. Last accessed 9 July 2019.

Feeley, Malcolm M. 2017. "Coercion and Compliance: A New Look at an Old Problem." In *Crime, Law and Society*, 505–520. London: Routledge.

Fennell, Phil. 1986. "Roberts v Hopwood: The Rule Against Socialism." *Journal of Law and Society* 13 (3): 401–422.

Fenster, Herbert L., and Christian Volz. 1979. "The Antideficiency Act: Constitutional Control Gone Astray." *Public Contract Law Journal* 11: 155.

Fenton-Glynn, Claire. 2015. "Austerity and the Benefit Cap: In Whose Best Interests?" *Journal of Social Welfare and Family Law* 37 (4): 467–469. https://doi.org/10.1080/09649069.2015.1121961.

Feske, Victor. 2000. *From Belloc to Churchill: Private Scholars, Public Culture, and the Crisis of British Liberalism, 1900–1939*. Chapel Hill: The University of North Carolina Press.

Fineman, Martha Albertson, and Nancy Sweet Thomadsen. 2013. *At the Boundaries of Law (RLE Feminist Theory): Feminism and Legal Theory*. London: Routledge.

Finley, James J. 1975. "The 1974 Congressional Initiative in Budget Making." *Public Administration Review* 35: 270–278.

Folbre, Nancy. 1995. "'Holding Hands at Midnight': The Paradox of Caring Labor." *Feminist Economics* 1 (1): 73–92.

Foord, Archibald S. 1947. "The Waning of 'The Influence of the Crown'." *The English Historical Review* 62 (245): 484–507.

Forbath, William E., and William E. Forbath. 2009. *Law and the Shaping of the American Labor Movement*. Cambridge, MA: Harvard University Press.

Foster, Christopher. 2004. "Cabinet Government in the Twentieth Century." *Modern Law Review* 67 (5): 753–771.

Fraser, Derek. 1973. *The Evolution of the British Welfare State: A History of Social Policy Since the Industrial Revolution*. Berlin: Springer.

Friedman, J. 1974. "Marxism, Structuralism and Vulgar Materialism." *Man* 9: 444–469.

Fukuyama, Francis. 2012. "The Future of History: Can Liberal Democracy Survive the Decline of the Middle Class?" *Foreign Affairs*: 53–61.

Fulbrook, Julian. 2001. "New Labour's Welfare Reforms: Anything New?" *Modern Law Review* 64 (2): 243–259.

Ganev, Venelin I. 2011. "The Annulled Tax State: Schumpeterian Prolegomena to the Study of Postcommunist Fiscal Sociology." *Communist and Post-Communist Studies* 44 (4): 245–255.

Gardner, John. 1996. "Discrimination as Injustice." *Oxford Journal of Legal Studies* 16 (3): 353–367. https://doi.org/10.2307/764598.

Gedalof, Irene. 2018. "Academic Reflection—Narratives of Justice and the Welfare State in Times of Austerity." *feminists@ law* 8 (2). https://journals.kent.ac.uk/index.php/feministsatlaw/article/view/664. Accessed 4 September 2019.

Gibbs, Jack P. 1979. "The Elites Can Do Without us." *The American Sociologist* 14 (2): 79–85.

Giddens, Anthony. 1979. *Central Problems in Social Theory: Action, Structure, and Contradiction in Social Analysis*. Vol. 241. Berkeley: University of California Press.

Giersch, Herbert. 1984. "The Age of Schumpeter." *The American Economic Review* 74 (2): 103–109.

Gilley, Bruce. 2017. "Taxation and Authoritarian Resilience." *Journal of Contemporary China* 26 (105): 452–464. https://doi.org/10.1080/10670564.2016.1245891.

Glennerster, Howard. 2012. "Why Was a Wealth Tax for the UK Abandoned? Lessons for the Policy Process and Tackling Wealth Inequality." *Journal of Social Policy* 41: 233.

Glennerster, Howard, Anne Power, and Tony Travers. 1991. "A New Era for Social Policy: A New Enlightenment or a New Leviathan?" *Journal of Social Policy* 20 (3): 389–414.

Goldscheid, Rudolf, and Robert Lazarsfeld. 1917. "Staatssozialismus oder Staatskapitalismus? Ein finanzsoziologischer Beitrag zur Lösung des Staatsschulden-Problems." *Archiv für Rechts-und Wirtschaftsphilosophie* 11: 255–259.

Goldthorpe, John H. 1994. "The Uses of History in Sociology: A Reply." *The British Journal of Sociology* 45 (1): 55–77.

Gordon, Roger H. 1983. "An Optimal Approach to Fiscal Federalism." *Quarterly Journal of Economics* 98 (4): 567–586.

Gott, Jason B. 2011. "Addressing the Debt Crisis in the European Union: The Validity of Mandatory Collective Action Clauses and Extended Maturities." *Chicago Journal of International Law* 12: 201.

Gowdy, John. 2005. "Toward a New Welfare Economics for Sustainability." *Ecological Economics* 53 (2): 211–222.

Graetz, M. J., and I. Shapiro. 2005. *Death by a Thousand Cuts: The Fight Over Taxing Inherited Wealth*. Princeton: Princeton University Press.

Graetz, M. J., J. F. Reinganum, and L. L. Wilde. 1986. "Tax Compliance Game: Toward an Interactive Theory of Law Enforcement." *The Journal of Law, Economics, & Organization* 2: 1.

Great Britain Parliament House of Lords European Union Committee. 2011. "EU Financial Framework From 2014: 13th Report of Session 2010–11." The Stationery Office.

Green, Donald, and Ian Shapiro. 1996. *Pathologies of Rational Choice Theory: A Critique of Applications in Political Science*. New Haven: Yale University Press.

Griffiths, John. 1986. "What Is Legal Pluralism?" *Journal of Legal Pluralism and Unofficial Law* 24 (18): 1–55.

Guest, Stephen. 2000. *UCL Jurisprudence Review*. London: Faculty of Laws, University College London.

Gurney, Peter. 2015. *Wanting and Having: Popular Politics and Liberal Consumerism in England, 1830–70*. Oxford: Oxford University Press.

Hagemann, Robert P. 2010. "Improving Fiscal Performance Through Fiscal Councils." OECD Economics Department Working Paper.

Haig, Robert M. 1921. *The Concept of Income-Economic and Legal Aspects*, *Volume 1*: *The Federal Income Tax*. Columbia: Columbia University Press.

Haigh, Christopher. 1990. *The Cambridge Historical Encyclopedia of Great Britain and Ireland*. Cambridge: Cambridge University Press.

Halliday, Terence C., and Gregory Shaffer. 2015. *Transnational Legal Orders*. Cambridge: Cambridge University Press.

Hamnett, C. 2014. "Shrinking the Welfare State: The Structure, Geography and Impact of British Government Benefit Cuts." *Transactions of the Institute of British Geographers* 39: 490–503.

Hampton, Jean. 1988. *Hobbes and the Social Contract Tradition*. Cambridge: Cambridge University Press.

Harding, Sandra. 2016. *Whose Science? Whose Knowledge? Thinking from Women's Lives*. Ithaca: Cornell University Press.

Hart, H. L. A., and Leslie Green. 2012. *The Concept of Law*. Oxford: Oxford University Press.

Hartmann, Dominik. 2012. "Sen Meets Schumpeter: Introducing Structural and Dynamic Elements into the Human Capability Approach."

Harvey, David J. C. 2014. "Afterthoughts on Piketty's Capital in the Twenty-First Century." *Challenge* 57 (5): 81–86.

Heald, David. 2003. "Fiscal Transparency: Concepts, Measurement and UK Practice." *Public Administration* 81 (4): 723–759. https://doi.org/10.1111/j.0033-3298.2003.00369.x.

Heilbroner, Robert. 1993. "Was Schumpeter Right After All?" *Journal of Economic Perspectives* 7 (3): 87–96.

Hemerijck, Anton C., Frank Vandenbroucke, Torben M. Andersen, Philippe Pochet, Christophe Degryse, Gaetano Basso, Mathias Dolls, Werner Eichhorst, Thomas Leoni, Andreas Peichl, and Peter Taylor-Gooby. 2012. "The Welfare State After the Great Recession." *Intereconomics* 47 (4): 200–229. https://doi.org/10.1007/s10272-012-0422-y.

Hennessy, Peter. 1991. "The Last Retreat of Fame: Mrs Thatcher as History." *Modern Law Review* 54 (4): 492–498.

Hennessy, Peter. 2001. *The Prime Minister: The Office and Its Holders Since 1945*. New York: Palgrave Macmillan.

Henricks, Kasey, and Louise Seamster. 2017. "Mechanisms of the Racial Tax State." *Critical Sociology* 43 (2): 169–179.

Hepker, M. Z., and C. J. Whitehouse. 1975. *Capital Transfer Tax*. London: Heinemann.

Himmelweit, Susan. 1991. "Reproduction and the Materialist Conception of History: A Feminist Critique." In *The Cambridge Companion to Marx*, edited by Terrell Carver, 170–190. Cambridge: Cambridge University Press.

Himmelweit, Susan. 2002. "Making Visible the Hidden Economy: The Case for Gender-Impact Analysis of Economic Policy." *Feminist Economics* 8 (1): 49–70.

Hirsch, Werner Z. 1973. "Program Budgeting in the United Kingdom." *Public Administration Review* 33 (2): 120–128.

Hobbes, Thomas. 1935. *Leviathan: Or, The Matter, Forme, and Power of Commonwealth, Ecclesiastical and Civil*. New Haven: Yale University Press. Originally published in 1651.

HM Treasury. 2007. *Meeting the Aspirations of the British People: 2007 Pre-Budget Report and Comprehensive Spending Review*. Vol. 7227. London: The Stationery Office.

HM Treasury. 2017. "The New Budget Timetable and the Tax Policy Making Process." Policy Paper, 6 December.

Hodkinson, Stuart, and Glyn Robbins. 2012. "The Return of Class War Conservatism? Housing Under the UK Coalition Government." *Critical Social Policy* 33 (1): 57–77. https://doi.org/10.1177/0261018312457871.

House of Commons Treasury Committee. 2019. *Budget 2018: Twenty-Sixth Report of Session 2017–2019*. Edited by Parliamentary Committee, 12 February.

House of Lords. 2014. "House of Lords—EU Financial Framework from 2014—European Union Committee." https://www.publications.parliament.uk/pa/ld201011/ldselect/ldeucom/125/12516.ht.

Howe, G. 2001. "Simplicity and Stability: The Politics of Tax Policy." *British Tax Review* 2: 113–123.

Hsu, Shi-Ling. 2014. "The Rise and Rise of the One Percent: Considering the Legal Causes of Wealth Inequality." *Emory Law Journal Online* 64: 2043–2072.

Hunter, Rosemary. 1992. *Indirect Discrimination in the Workplace*. Annandale: Federation Press.

International Monetary Fund. 2010. *United Kingdom: 2010 Article IV Consultation: Staff Report; Staff Supplement; Public Information Notice on the Executive Board Discussion; and Statement by the Executive Director for the United Kingdom*. International Monetary Fund.

Isaac, John Gower. 2006. "Development of Tax Policy Formulation and Presentation: A Retrospect." *British Tax Review* 3: 222–228.

James, Harold. 1984. "The Causes of the German Banking Crisis of 1931." *The Economic History Review* 37 (1): 68–87.

Jansson, Bruce S. 1993. *The Reluctant Welfare State: A History of American Social Welfare Policies*, 2nd ed. Pacific Grove, CA: Brooks.

Jennings, Ivor. 1969. *Cabinet Government*. Cambridge: Cambridge University Press Archive.

Jessop, Bob. 1993. "Towards a Schumpeterian Workfare State? Preliminary Remarks on Post-Fordist Political Economy." *Studies in Political Economy* 40 (1): 7–39.

Jinno, N., and A. DeWit. 1998. "Japan's Taxing Bureaucrats: Fiscal Sociology and the Property-Tax Revolt." *Social Science Japan Journal* 1 (2): 233–246. https://doi.org/10.1093/ssjj/1.2.233.

Johnson, Paul. 2014. Few Signs of a Wide and Coherent Tax Strategy. Edited by Institute for Fiscal Studies. http://ifs.org.uk.

Jones, Clyve. 1999. "Jacobites Under the Beds: Bishop Francis Atterbury, the Earl of Sunderland and the Westminster School Dormitory Case of 1721." *The British Library Journal* 25 (1): 35–54.

Jones, L. R. 1996. "Wildavsky on Budget Reform." *Policy Sciences* 29 (3): 227–234. https://doi.org/10.1007/bf00136105.

Jordan, Grant. 2002. *The British Administrative System: Principles Versus Practice*. London: Routledge.

Judson, Frederick N. 1915. "The Extent and Evils of Double Taxation in the United States." *The American Academy of Political and Social Science* 58: 105–111.

Kaiser, Wolfram, and P. Starie. 2005. "Introduction." In *Transnational European Union: Towards a Common Political Space*. New York: Routledge.

Kantowicz, Edward R. 1985. "The Limits of Incrementalism: Carter's Efforts at Tax Reform." *Journal of Policy Analysis and Management* 4 (2): 217–233.

Katzenbach, Nicholas de B. 1957. "Book Review." *University of Chicago Law Review* 24 (2): 413–417.

Kaye, Tracy A. 1993. "Sheltering Social Policy in the Tax Code: The Low-Income Housing Credit." *Villanova Law Review* 38: 871.

Kaye, Tracy A. 1998. "Show Me the Money: Congressional Limitations on State Tax Sovereignty." *Harvard Journal on Legislation* 35: 149.

Kenworthy, Lane. 2009. "Tax Myths." *Contexts* 8 (3): 28–32.

Key, V. O. 1940. "The Lack of a Budgetary Theory." *American Political Science Review* 34 (6): 1137–1144.

Keynes, John Maynard. 2018. *The General Theory of Employment, Interest and Money*. Cambridge: Palgrave Macmillan. Originally published 1936.

Khaitan, Tarunabh. 2015. *A Theory of Discrimination Law*. Oxford: Oxford University Press.

Kilpatrick, Claire. 2015. "On the Rule of Law and Economic Emergency: The Degradation of Basic Legal Values in Europe's Bailouts." *Oxford Journal of Legal Studies* 35 (2): 325–353.

Kirst, Roger W. 1978. "Administrative Penalties and the Civil Jury: The Supreme Court's Assault on the Seventh Amendment." *University of Pennsylvania Law Review* 126 (6): 1281–1343.

Knight, Frank Hyneman. 2003. *Max Weber's General Economic History*. Mineola: Courier Dover Publications.

Krugman, Paul. 2009. "Taxing the Speculators." *The New York Times*, Op-Ed. 26 November http://www.steuer-gegen-armut.org/fileadmin/Dateien/Kampagnen-Seite/Unterstuetzung_Wissenschaft/09-11-27_Krugman.pdf.

Kuhnert, Stephan. 2001. "An Evolutionary Theory of Collective Action: Schumpeterian Entrepreneurship for the Common Good." *Constitutional Political Economy* 12 (1): 13–29.

Lacey, Nicola. 1987. "Legislation Against Sex Discrimination: Questions from a Feminist Perspective." *Journal of Law and Society* 14 (4): 411–421.

Lacey, Nicola. 2017. "Analytical Jurisprudence Versus Descriptive Sociology Revisited." In *Legal Theory and the Social Sciences*, 111–148. London: Routledge.

Lahey, Kathleen A. 1987. "Feminist Theories of (In)Equality Papers from the 1986 Feminism and Legal Theory Conference." *Wisconsin Women's Law Journal* 3: 5–28.

Lahey, Kathleen A. 2000. *The Benefit/Penalty Unit in Income Tax Policy: Diversity and Reform*. Ottawa: Law Commission of Canada.

Lahey, Kathleen A. 2009. "International Transactions, Taxation, and Women: The Critical Role of Gender Analysis." *UBC Law Review* 42: 363.

Lahey, Kathleen A. 2010. "Women, Substantive Equality, and Fiscal Policy: Gender-Based Analysis of Taxes, Benefits, and Budgets." *Canadian Journal of Women and the Law* 22: 27.

Lahey, Kathleen. 2015. "Uncovering Women in Taxation: The Gender Impact of Detaxation, Tax Expenditures, and Joint Tax/Benefit Units." *Osgoode Hall Law Journal* 52 (2): 427–459.

Lahey, Kathleen A., and Paloma de Villota. 2013. "Economic Crisis, Gender Equality, and Policy Responses in Spain and Canada." *Feminist Economics* 19 (3): 82–107. https://doi.org/10.1080/13545701.2013.812267.

Lamb, Margaret. 2002. "Defining 'Profits' for British Income Tax Purposes: A Contextual Study of the Depreciation Cases, 1875–1897." *The Accounting Historians Journal* 29: 105–172.

Latzer, Hélène. 2011. "A Schumpeterian Model of Growth and Inequality." Citeseer.

Laybourn, Keith. 2001. *British Political Leaders: A Biographical Dictionary*. Oxford: ABC-CLIO.

Ledger-Lomas, Michael. 2004. "The Character of Pitt the Younger and Party Politics, 1830–1860." *The Historical Journal* 47 (3): 641–661. https://doi.org/10.1017/s0018246x04003899.

Lee, Maria. 2014. *EU Environmental Law, Governance and Decision-Making*. New York: Bloomsbury.

Lee, Natalie. 2007. "Inheritance Tax–An Equitable Tax No Longer: Time for Abolition?" *Legal Studies* 27 (4): 678–708.

Levin, M. A., M. K. Landy, and M. M. Shapiro. 2001. *Seeking the Center: Politics and Policymaking at the New Century*. Washington, DC: Georgetown University Press.

Levine, Daniel. 1988. *Poverty and Society: The Growth of the American Welfare State in International Comparison*. New Brunswick: Rutgers University Press.

Levy, Horacio, Christine Lietz, and Holly Sutherland. 2007. "Swapping Policies: Alternative Tax-Benefit Strategies to Support Children in Austria, Spain and the UK." *Journal of Social Policy* 36 (4): 625–647.

Lewis, Jane. 1992. "Gender and the Development of Welfare Regimes." *Journal of European Social Policy* 2 (3): 159–173.

Lewis, Jane. 2001. "The Decline of the Male Breadwinner Model: Implications for Work and Care." *Social Politics: International Studies in Gender, State & Society* 8 (2): 152–169.

Liebig, Stefan, and Steffen Mau. 2007. "When Is a Taxation System Just? Attitudes Towards General Taxation Principles and Towards the Justice of One's Own Tax Burden." In *Social Justice, Legitimacy and the Welfare State*, edited by Steffen Mau and Benjamin Veghte, 143–183. Aldershot: Ashgate.

Lienert, Ian. 2007. "British Influence on Commonwealth Budget Systems: The Case of the United Republic of Tanzania." International Monetary Fund Working Paper WP/07/78.

Likoksky, Michael. 2002. *Transnational Legal Processes: Globalisation and Power Disparities*. Vol. 9. Cambridge: Cambridge University Press.

Lindbekk, Tore. 1992. "The Weberian Ideal-Type: Development and Continuities." *Acta Sociologica* 35 (4): 285–297. https://doi.org/10.1177/000169939203500402.

Lister, Ruth. 2006. "Children (but Not Women) First: New Labour, Child Welfare and Gender." *Critical Social Policy* 26 (2): 315–335.

Lister, Ruth, C. Holden, M. Kilkey, and G. Ramia. 2011. "The Age of Responsibility: Social Policy and Citizenship in the Early 21st Century." *Social Policy Review* 23: 63–84.

Llewellyn, Karl N. 1949. "Law and the Social Sciences: Especially Sociology." *Harvard Law Review* 62 (8): 1286–1305.

Lombardo, Emanuela. 2003. "EU Gender Policy: Trapped in the Wollstonecraft Dilemma'?" *European Journal of Women's Studies* 10 (2): 159–180.

London, Ted, and Stuart L. Hart. 2004. "Reinventing Strategies for Emerging Markets: Beyond the Transnational Model." *Journal of International Business Studies* 35 (5): 350–370.

Lund, Brian. 1999. "'Ask Not What Your Community Can Do for You': Obligations, New Labour and Welfare Reform." *Critical Social Policy* 19 (4): 447–462.

Lynch, Gerard E. 1997. "The Role of Criminal Law in Policing Corporate Misconduct." *Law and Contemporary Problems* 60 (3): 23–65.

MacArthur, Brian. 2012. *The Penguin Book of Modern Speeches*. London: Penguin.

MacDonald, Robert A. 1912. "Ricardo's Criticisms of Adam Smith." *Quarterly Journal of Economics* 26 (4): 549–592. https://doi.org/10.2307/1883798.

Macklem, Timothy. 2003. *Beyond Comparison: Sex and Discrimination*. Cambridge: Cambridge University Press.

Mallinak, Brenda. 2006. "The Revenue Rule: A Common Law Doctrine for the Twenty-First Century." *Duke Journal of Comparative & International Law* 16: 79.

Manji, Ambreena. 2010. “Eliminating Poverty? ‘Financial Inclusion’, Access to Land, and Gender Equality in International Development.” *Modern Law Review* 73 (6): 985–1004.

Mann, Michael. 1980. “State and Society, 1130–1815: An Analysis of English State Finances.” In *Political Power and Social Theory*, edited by Maurice Zeitlin, 165–208. Greenwich, CT, US: JAI Press.

Manos, Karen L. 1993. “The Antideficiency Act Without an M Account: Reasserting Constitutional Control.” *Public Contract Law Journal* 23: 337.

Mansbridge, Jane. 1998. “Feminism and Democracy.” In *Feminism and Politics*, edited by Anne Phillips, 142–160. Oxford: Oxford University Press. Reprinted 2009. Original edition, I: Feminism and Politics.

Marcus, Laura, and Peter Nicholls. 2004. *The Cambridge History of Twentieth-Century English Literature*. Cambridge: Cambridge University Press.

Martin, Isaac William, and Monica Prasad. 2014. “Taxes and Fiscal Sociology.” *Annual Review of Sociology* 40: 331–345.

Martin, Isaac William, and Nadav Gabay. 2012. “Fiscal Protest in Thirteen Welfare States.” *Socio-Economic Review* 11 (1): 107–130.

Martin, Isaac William, Ajay K. Mehrotra, and Monica Prasad. 2009a. “The Thunder of History: The Origins and Development of the New Fiscal Sociology.” In *The New Fiscal Sociology: Taxation in Comparative and Historical Perspective*, 1–27. Cambridge: Cambridge University Press.

Martin, Isaac William, Ajay K. Mehrotra, and Monica Prasad. 2009b. *The New Fiscal Sociology: Taxation in Comparative and Historical Perspective*. Cambridge: Cambridge University Press.

Martin, Isaac William, Jane Lilly Lopez, and Lauren Olsen. 2018. “Policy Design and the Politics of City Revenue: Evidence from California Municipal Ballot Measures.” *Urban Affairs Review*. https://doi.org/10.1177/1078087417752474.

Matthew, Henry Colin Gray. 1979. “Disraeli, Gladstone, and the Politics of Mid-Victorian Budgets.” *The Historical Journal* 22 (3): 615–643.

Matthew, Henry Colin Gray. 1997. *Gladstone 1809–1898*. Oxford: Clarendon Press.

Mauricio, Ana Julia. 2014. “Overview: Tax Law.” *Cambridge Journal of International and Comparative Law* 3: 316.

McCaffery, Edward J. 2009. “Where’s the Sex in Fiscal Sociology?” In *The New Fiscal Sociology*, edited by Isaac William Martin, Ajay K. Mehrotra, and Monica Prasad, 216–236. Cambridge: Cambridge University Press.

McCaffery, Jerry L. 1996. “On Budget Reform.” *Policy Sciences* 29 (3): 235–246.

McClure, Michael. 2003. Fiscal Sociology. On file at the British Library: Economics Program, School of Economics and Commerce, The University of Western Australia.

McCraw, Thomas K. 2007. *Prophet of Innovation: Joseph Schumpeter and Creative Destruction*. London: The Belknap Press of Harvard University Press.

McGarry, Fearghal. 2010. *The Rising: Easter 1916*. Oxford: Oxford University Press.

McKeever, Grainne. 2016. “Universal Credit.” *Journal of Social Security Law* 23 (1): 15–16.

McKeever, Grainne. 2018. "Universal Credit." *Journal of Social Security Law* 25: 4.

McLaughlin, Eithne, Janet Trewsdale, and Naomi McCay. 2001. "The Rise and Fall of the UK's First Tax Credit: The Working Families Tax Credit 1998–2000." *Social Policy & Administration* 35 (2): 163–180.

McLure, Michael. 2007. *The Paretian School and Italian Fiscal Sociology*. Berlin: Springer.

Meade, James. 1978. *The Meade Review*. Allen & Unwin. Accessed 9 November 2015. http://www.ifs.org.uk/publications/3433, 1 January.

Meade, James E. 2013. *The Structure and Reform of Direct Taxation (Routledge Revivals)*. London: Routledge.

Medearis, John. 1997. "Schumpeter, the New Deal, and Democracy." *American Political Science Review* 91 (4): 819–832.

Meisel, Joseph S. 2012. *Public Speech and the Culture of Public Life in the Age of Gladstone*. New York: Columbia University Press.

Mendel, Jonathan, and John Bevacqua. 2010. *International Tax Administration: Building Bridges*. Sydney: CCH Australia Limited.

Menéndez, Agustín José. 2013. *Justifying Taxes: Some Elements for a General Theory of Democratic Tax Law*. Berlin: Springer Science & Business Media.

Merry, Sally Engle. 1988. "Legal Pluralism." *Law & Society Review* 22 (5): 869–896.

Mian, Atif, and Amir Sufi. 2010. "Household Leverage and the Recession of 2007–09." *IMF Economic Review* 58 (1): 74–117. https://doi.org/10.1057/imfer.2010.2.

Mihályi, Dávid. 2010. "Conference on Independent Fiscal Institutions." *Acta Oeconomica* 60 (3): 321–325.

Mill, John Stuart, and Stephen Nathanson. 1875. *Principles of Political Economy (Abridged): With Some of Their Applications to Social Philosophy*. Indianapolis: Hackett Publishing.

Minsky, Hyman. 1988a. "Back from the Brink." *Challenge* 31 (1): 22–28.

Minsky, Hyman P. 1988b. "Schumpeter: Finance and Evolution." Bard Digital Commons. https://digitalcommons.bard.edu/cgi/viewcontent.cgi?article=1313&context=hm_archive.

Minsky, Hyman P. 1992. "Schumpeter and Finance." Bard Digital Commons. https://digitalcommons.bard.edu/cgi/viewcontent.cgi?article=1279&context=hm_archive.

Minsky, Hyman P. 1993. "The Economic Problem at the End of the Second Millenium: Creating Capitalism, Reforming Capitalism, Making Capitalism Work—viewcontent.cgi." Bard Digital Commons: Bard College. https://digitalcommons.bard.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1100&context=hm_archive&sei-redir=1&referer=http%3A%2F%2Fscholar.google.co.uk%2Fscholar%3Fhl%3Den%26q%3Dauthor%253A%2522hyman%2Bminsky%2522%2Bschumpeter%2Bbudget%26btnG%3DSearch%26as_sdt%3D0%252C5%26as_ylo%3D%26as_vis%3D0#search=%22author%3Ahyman%20minsky%20schumpeter%20budget%22. Last accessed 9 July 2019.

Mirrlees, James. 2011. *Tax by Design: The Mirrlees Review*. Edited by Institute for Fiscal Studies. Oxford: Oxford University Press.

Mirrlees, James, Stuart Adam, Tim Besley, Richard Blundell, Stephen Bond, Robert Chote, Malcolm Gammie, Paul Johnson, Gareth Myles, and James Poterba. 2012. "The Mirrlees Review: A Proposal for Systematic Tax Reform." *National Tax Journal* 65 (3): 655–684.

Mitchell, William C. 1984. "Schumpeter and Public Choice, Part I: Precursor to Public Choice?" *Public Choice* 42 (1): 73–88.

Molovinsky, Lemuel. 1979. "Continuity of the English Tax Experience in Early Pennsylvania History." *Pennsylvania History: A Journal of Mid-Atlantic Studies* 46 (3): 233–244.

Monson, Andrew, and Walter Scheidel. 2015. *Fiscal Regimes and the Political Economy of Premodern States*. Cambridge: Cambridge University Press.

Moore, Barrington. 1993. *Social Origins of Dictatorship and Democracy: Lord and Peasant in the Making of the Modern World*. Vol. 268. Boston: Beacon Press.

Moreau, Sophia. 2010. "What Is Discrimination?" *Philosophy & Public Affairs* 38 (2): 143–179.

Morley, John. 2011. *The Life of William Ewart Gladstone*. Cambridge: Cambridge University Press.

Mornati, Florenzo. 2018. *Vilfredo Pareto: An Intellectual Biography, Volume I. From Science to Liberty (1848–1891)*. Translated by Paul Wilson. Basingstoke: Palgrave.

Morris, Andrew J. 1995. "On the Normative Foundations of Indirect Discrimination Law: Understanding the Competing Models of Discrimination Law as Aristotelian Forms of Justice." *Oxford Journal of Legal Studies* 15: 199.

Moss, Laurence S. 1993. "Review: Robert Loring Allen's Biography of Joseph Schumpeter." *American Journal of Economics and Sociology* 52 (1): 107–118.

Mouffe, Chantal. 1994. "Democracy and Pluralism: A Critique of the Rationalist Approach." *Cardozo Law Review* 16: 1533.

Mugler, Johanna. 2019. "Regulatory Capture? Fiscal Anthropological Insights into the Heart of Contemporary Statehood." *The Journal of Legal Pluralism and Unofficial Law* 50: 1–17.

Mulgan, Geoff, and Robin Murray. 1993. *Reconnecting Taxation*. London: Demos.

Mullen, Tom. 1989. "The Social Fund—Cash-Limiting Social Security." *Modern Law Review* 52 (1): 64–92.

Muller, Jerry Z. 2013. "Capitalism and Inequality: What the Right and the Left Get Wrong." *Foreign Affairs* 92: 30.

Murray, Bruce K. 1973. "The Politics of the 'People's Budget'." *The Historical Journal* 16 (03): 555. https://doi.org/10.1017/s0018246x00002946.

Musgrave, R. 1980. "Theories of Fiscal Crises: An Essay in Fiscal Sociology." In *The Economics of Taxation, Brookings Institution*, edited by Henry J. Aaron and Michael J. Boskins, 316–390. Washington, Brookings Institution.

Musgrave, R. 1992. "Schumpeter's Crisis of the Tax State: An Essay in Fiscal Sociology." *Journal of Evolutionary Economics* 2: 89–113.

Nasar, Sylvia. 2012. *Grand Pursuit: The Story of Economic Genius*. New York: Simon & Schuster.

Naumann, Ingela K. 2005. "Child Care and Feminism in West Germany and Sweden in the 1960s and 1970s." *Journal of European Social Policy* 15 (1): 47–63.

Neuby, Barbara L. 1997. "On the Lack of a Budget Theory." *Public Administration Quarterly* 21 (2): 131–142.

Neuren, Cathy S. 1984. "Addressing the Resurgence of Presidential Budgetmaking Initiative: A Proposal to Reform the Impoundment Control Act of 1974." *Texas Law Review* 63: 693.

Newcomb, Simon. 1880. "Principles of Taxation." *North American Review* 131 (285): 142–156.

Newman, Janet. 2001. *Modernizing Governance: New Labour, Policy and Society*. London: Sage.

Nicholas, Tom. 2003. Why Schumpeter Was Right: Innovation, Market Power, and Creative Destruction in 1920s America. *The Journal of Economic History* 63 (4): 1023–1058.

Nogueira, Joao Félix Pinto. 2012. "The Feared Austerity Budget Enters into Force." *European Taxation* 52 (2): 127–131.

Noregaard, John. 1997. "Tax Assignment." In *Fiscal Federalism in Theory and Practice*, edited by Teresa Ter-Minassian, 49–72. Washington, DC: International Monetary Fund.

North, Douglass C., and Barry R. Weingast. 1989. "Constitutions and Commitment: The Evolution of Institutions Governing Public Choice in Seventeenth-Century England." *The Journal of Economic History* 49 (4): 803–832.

Norton, Philip. 2015. "Parliament: A New Assertiveness?" In *The Changing Constitution*, edited by Jeffrey L. Jowell, Dawn Oliver, and Colm O'Cinneide, 171–193. Oxford: Oxford University Press.

Note. 2011. "Constitutional Law—Separation of Powers—Congress Delegates Power to Raise the Debt Ceiling." *Harvard Law Review* 125: 867–874.

Nuta, Alina Cristina. 2018. "Some Considerations on Fiscal Sociology." EIRP Proceedings 12: 392–395.

Oates, Wallace E. 2005. "Toward A Second-Generation Theory of Fiscal Federalism." *International Tax and Public Finance* 12 (4): 349–373.

O'Brien, Patrick. 2001. "Fiscal Exceptionalism: Great Britain and Its European Rivals: From Civil War to Triumph at Trafalgar and Waterloo." Economic History Working Papers 22369.

O'Brien, Rourke L. 2017. "Redistribution and the New Fiscal Sociology: Race and the Progressivity of State and Local Taxes." *American Journal of Sociology* 122 (4): 1015–1049.

O'Donovan, Katherine. 1989. "Engendering Justice: Women's Perspectives and the Rule of Law." *The University of Toronto Law Journal* 39 (2): 127–148. https://doi.org/10.2307/825736.

Offer, Avner. 1981. *Property and Politics 1870–1914: Landownership, Law, Ideology and Urban Development in England*. Cambridge: Cambridge University Press.

Office of Budget Responsibility. 2015. OBR, Tax Credits Costings, November 2015.

Office for Budget Responsibility. 2019. "Welfare Trends Report." Command Paper, 15 January.

O'Hagan, Angela, Eva Neizert, and Lynn Carvill. 2018. "Gender Budgeting in the UK: Devolution, Divergence and Diversity." In *Gender Budgeting in Europe: Developments and Challenges*, edited by Angela O'Hagan and Elizabeth Klatzer, 293–316. Berlin: Springer.

Oliver, Christine. 1996. "The Institutional Embeddedness of Economic Activity." *Advances in Strategic Management* 13: 163–186.

O'Riordan, Tim. 2014. "Sustainability Beyond Austerity: Possibilities for a Successful Transition to a Wellbeing Society." *Análise Social* 49 (211): 497–520.

Pampel, Fred, Giulia Andrighetto, and Sven Steinmo. 2018. "How Institutions and Attitudes Shape Tax Compliance: A Cross-National Experiment and Survey." *Social Forces* 97 (3): 1337–1364.

Park, Gene. 2010. "The Politics of Budgeting in Japan: How Much Do Institutions Matter?" *Asian Survey* 50 (5): 965–989. https://doi.org/10.1525/as.2010.50.5.965.

Pateman, Carole. 1997. "Contributing to Democracy." *Review of Constitutional Studies* 4: 191.

Paterson, David. 2001. *Liberalism and Conservatism, 1846–1905.* Oxford: Heinemann.

Pearce, Edward. 2008. *Great Man: Sir Robert Walpole-Scoundrel, Genius and Britain's First Prime Minister*. London: Random House.

Pearcy, Mark. 2015. "'Playing the President': The Value of Simulations in Promoting Civic Literacy." *The Ohio Social Studies Review* 52 (1): 40–49.

Persson, Torsten, Gerard Roland, and Guido Tabellini. 1997. "Separation of Powers and Political Accountability." *Quarterly Journal of Economics* 112: 1163–1202.

Perthel, David. 1975. "Engel's Law Revisited." *International Statistical Review/Revue Internationale de Statistique* 43: 211–218.

Pfau-Effinger, Birgit. 2004. "Socio-Historical Paths of the Male Breadwinner Model–An Explanation of Cross-National Differences 1." *The British Journal of Sociology* 55 (3): 377–399.

Philipps, Lisa 1996. "Discursive deficits: A Feminist Perspective on the Power of Technical Knowledge in Fiscal Law and Policy." *Canadian Journal of Law & Society/La Revue Canadienne Droit et Société* 11 (1): 141–176.

Philipps, Lisa, and Miranda Stewart. 2009. "Fiscal Transparency: Global Norms, Domestic Laws, and the Politics of Budgets." *Brooklyn Journal of International Law* 34 (3): 797–860.

Phung, Viet-Hai. 2008. "Ethnicity and Child Poverty Under New Labour: A Research Review." *Social Policy and Society* 7 (4): 551–563.

Picciotto, Sol. 2019. "Constructing Compliance: Another Look at Game-Playing in International Taxation." Centre for Tax System Integrity Workshop on 'Tax Havens: Too Easy For Whom?' Canberra, 8 March 2004.

Piketty, Thomas. 2003. "Income Inequality in France, 1901–1988." *Journal of Income Inequality* 111 (5): 1004–1042.

Piketty, Thomas. 2014. "Capital in the Twenty-First Century: A Multidimensional Approach to the History of Capital and Social Classes." *The British Journal of Sociology* 65 (4): 736.

Piketty, Thomas. 2017. *Capital in the Twenty-First Century*. Cambridge: Harvard University Press.

Piketty, Thomas, and Gabriel Zucman. 2014. "Capital Is Back: Wealth-Income Ratios in Rich Countries 1700–2010." *Quarterly Journal of Economics* 129 (3): 1255–1310. https://doi.org/10.1093/qje/qju018.

Piomelli, Ascanio. 2008. "The Challenge of Democratic Lawyering." *Fordham Law Review* 77: 1383.

Pollard, David, Neil Parpworth, and David Hughes. 2007. *Constitutional and Administrative Law: Text With Materials*. Oxford: Oxford University Press.

Porter, Andrew. 2010. "Conservative Party Conference: George Osborne Announces Benefit Cap." *The Daily Telegraph*, 24 October 2010, Politics.

Posner, Paul L. 2009. "Budget Process Reform: Waiting for Godot." *Public Administration Review* 69 (2): 233–244.

Posner, Richard A. 2005. *Law, Pragmatism, and Democracy.* Cambridge: Harvard University Press.

Prabhakar, Rajiv. 2003. "Stakeholding and New Labour." In *Stakeholding and New Labour*, 119–154. Berlin: Springer.

Prisching, Manfred. 1995. "The Limited Rationality of Democracy: Schumpeter as the Founder of Irrational Choice Theory." *Critical Review* 9 (3): 301–324. https://doi.org/10.1080/08913819508443385.

Prosser, Tony. 2011. "'An Opportunity to Take a More Fundamental Look at the Role of Government in Society': The Spending Review as Regulation." *Public Law* (3): 596–616.

Prosser, Tony. 2014. *The Economic Constitution.* Oxford: Oxford University Press.

Prosser, Tony. 2016. "Constitutionalising Austerity in Europe." *Public Law* 1: 111–129.

Puttick, Keith. 2012. "'21st Century Welfare' and the Wage-Work-Welfare Bargain." *Industrial Law Journal* 41 (1): 122–131.

Puttick, Keith. 2017. "Working Tax Credit." WestLaw Insight.

Rafferty, Anthony, and Jill Rubery. 2013. "Gender, Recession and Austerity in the UK." In *Women and Austerity*, 145–165. London: Routledge.

Raz, Joseph. 1972. "Legal Principles and the Limits of Law." *Yale Law Journal* 81 (5): 823–854. https://doi.org/10.2307/795152.

Reisman, David A. 2005. *Democracy and Exchange: Schumpeter, Galbraith, TH Marshall, Titmuss and Adam Smith.* Cheltenham: Edward Elgar Publishing.

Reitan, Earl A. 1966. "IV. The Civil List in Eighteenth-Century British Politics: Parliamentary Supremacy Versus the Independence of the Crown." *The Historical Journal* 9 (3): 318–337.

Reksulak, Michael, Laura Razzolini, and William F. Shughart. 2013. *The Elgar Companion to Public Choice*. Cheltenham: Edward Elgar Publishing.

Ring, Diane M. 2002. "One Nation Among Many: Policy Implications of Cross-Border Tax Arbitrage." *Boston College Law Review* 44: 79.

Rodden, Jonathan. 2006. *Hamilton's Paradox: The Promise and Peril of Fiscal Federalism*. Cambridge: Cambridge University Press.

Rodi, Michael, and Hope Ashiabor. 2012. "Legal Authority to Enact Environmental Taxes." In *Handbook of Research on Environmental Taxation*, edited by Janet E. Milne and Mikael Skou Andersen, 59–82. Cheltenham: Edward Elgar Publishing.

Rodino Jr., Peter W. 1982. "Proposed Balanced Budget/Tax Limitation Constitutional Amendment: No Balance, No Limits." *Hastings Constitutional Law Quarterly* 10: 785.

Roe, Emery M. 1988. "Deconstructing Budgets." *Diacritics* 18 (2): 61–68. https://doi.org/10.2307/465299.

Roine, Jesper, and Daniel Waldenström. 2008. "The Evolution of Top Incomes in an Egalitarian Society: Sweden, 1903–2004." *Journal of Public Economics* 92 (1): 366–387. https://doi.org/10.1016/j.jpubeco.2007.06.012.

Roiphe, Rebecca. 2016. "The Decline of Professionalism." *Georgetown Journal of Legal Ethics* 29: 649.

Ross, Michael L. 2004. "Does Taxation Lead to Representation?" *British Journal of Political Science* 34 (2): 229–249.

Rowlands, Jo. 2002. "Alive and Kicking: Women's and Men's Responses to Poverty and Globalisation in the UK." *Gender & Development* 10 (3): 31–40.

Roy, Raj. 2004. "No Secrets Between 'Special Friends': America's Involvement in British Economic Policy, October 1964–April 1965." *History* 89 (295): 399–423. https://doi.org/10.1111/j.1468-229x.2004.00306.x.

Royston, Tom, and Charlotte O'Brien. 2017. "The Cap Doesn't Fit." *Journal of Social Security Law* 24 (3): D96–D97.

Rubin, Irene S. 2009. "Response: Prospects for Budget Process Renewal." *Public Administration Review* 69 (2): 245–248.

Ruffert, Matthias. 2011. "The European Debt Crisis and European Union Law." *Common Market Law Review* 48 (6): 1777–1805.

Russell, Conrad. 1962. "The Ship Money Judgments of Bramston and Davenport." *The English Historical Review* 77 (303): 312–318.

Sabine, B. E. V. 2013. *History of Income Tax: The Development of Income Tax from Its Beginning in 1799 to the Present Day Related to the Social, Economic and Political History of the Period*. London: Routledge.

Sainsbury, Roy. 2010. "Twenty-first Century Welfare—Getting Closer to Radical Benefit Reform?" *Public Policy Research.* 17: 102–107.

Salomon, Margot E. 2015. "Of Austerity, Human Rights and International Institutions." *European Law Journal* 21 (4): 521–545.

Samuelson, Paul A. 1951. "Schumpeter as a Teacher and Economic Theorist." *The Review of Economics and Statistics* 33: 98–103.

Sanders, Anna, Claire Annesley, and Francesca Gains. 2019. "What Did the Coalition Government Do for Women? An Analysis of Gender Equality Policy Agendas in the UK 2010–2015." *British Politics* 14: 1–19.

Sanger, Chris. 2018. "The New Budget Process and Its Implications for Tax Policy Making." *British Tax Review* 2: 168–174.

Saporiti, Alejandro, and Jorge M. Streb. 2008. "Separation of Powers and Political Budget Cycles." *Public Choice* 137 (1–2): 329–345. https://doi.org/10.1007/s11127-008-9331-9.

Sauvain, Philip. 1996. *Key Themes of the Twentieth Century.* Cheltenham: Nelson Thornes.

Schauer, Frederick. 2005. "(Re) Taking Hart." HeinOnline.

Schick, Allen. 1970. "The Budget Bureau That Was: Thoughts on the Rise, Decline, and Future of a Presidential Agency." *Law and Contemporary Problems* 35 (3): 519–539. https://doi.org/10.2307/1191008.

Schmidt, Karl-Heinz. 2003. "Schumpeter and the Crisis of the Tax State." In *Jospeh Alois Schumpeter: Entrepreneurship, Style and Vision*, edited by Jurgen Backhaus, 337–352. London: Springer.

Schumpeter, Joseph A. 1918. "The Crisis of the Tax State." In *The Economics and Sociology of Capitalism*, edited by Richard Swedberg. Princeton, NJ: Princeton University Press (1991).

Schumpeter, Joseph A. 1918/1953. "Die Krise des Steuerstaates." Graz-Leipzig: Leuschner & Lubensky; reprinted as pp. 1–71, in J. A. Schumpeter, "Aufsätze zur Soziologie." English translation by W. F. Stolper and R. A. Musgrave, in International Economic Papers. London: Macmillan, 1954.

Schumpeter, Joseph A. 1934. *The Theory of Economic Development: An Inquiry into Profits, Capital, Credit, Interest, and the Business Cycle*. Vol. 55. London: Transaction publishers.

Schumpeter, Joseph A. 1939. *Business Cycles*. Vol. 1. New York: McGraw-Hill.

Schumpeter, Joseph A. 1946. John Maynard Keynes 1883–1946. *American Economic Review* 36(4): 495–518.

Schumpeter, Joseph A. 1949. "Vilfredo Pareto (1848–1923)." *The Quarterly Journal of Economics* 63: 147–173.

Schumpeter, Joseph A. 1950. "The March into Socialism." *The American Economic Review* 40: 446–456.

Schumpeter, Joseph A. 1954. *History of Economic Analyses*. Abingdon: Psychology Press/Routledge.

Schumpeter, Joseph A. 1955. *Imperialism; Social Classes: Two Essays*. Vol. 4. Ludwig: von Mises Institute.

Schumpeter, Joseph A. 1982. "The 'Crisis' in Economics-Fifty Years Ago." *Journal of Economic Literature* 20 (3): 1049–1059.

Schumpeter, Joseph A. 1983. "The Theory of Economic Development: An Inquiry into Profits, Capital, Credit, Interest, and the Business Cycle (1912/1934)." *Transaction Publishers* 1: 244.

Schumpeter, Joseph A. 2003. *Capitalism, Socialism and Democracy*. New York: Routledge.

Schumpeter, Joseph A. 2010/2013. *Capitalism, Socialism and Democracy*. London: Routledge.

Schumpeter, Joseph A. 2017a. *Business Cycles: A Theoretical, Historical and Statistical Analysis of the Capitalist Process*. London: McGraw-Hill Book Company. Original edition, 1939.

Schumpeter, Joseph A. 2017b. *Theory of Economic Development*. London: Routledge.

Schurtz, Nancy E. 1986. "A Critical View of Traditional Tax Policy Theory: A Pragmatic Alternative." *Villanova Law Review* 31: 1665.

Schütze, Robert. 2012. *European Constitutional Law.* Cambridge: Cambridge University Press.

Scotti, Paschal. 2006. *Out of Due Time: Wilfrid Ward and the Dublin Review*. Washington: The Catholic University of America Press.

Seiz, Janet. 1993. "Feminism and the History of Economic Thought." *History of Political Economy* 25 (1): 185–201.

Seligman, E. R. A. 1912. "Recent Tax Reforms Abroad." *Political Science Quartlery* 27 (3): 454–469.

Seligman, Edwin R. A. 1924. "Comparative Tax Burdens in the Twentieth Century." *Political Science Quarterly* 39 (1): 106–146.

Sen, Amartya Kumar. 2009. *The Idea of Justice.* Cambridge: Harvard University Press.

Sen, Amartya. 2010. "Adam Smith and the Contemporary World." *Erasmus Journal for Philosophy and Economics* 3 (1): 50–67.

Shionoya, Yuichi. 2007. *Schumpeter and the Idea of Social Science: A Metatheoretical Study*. Cambridge: Cambridge University Press.

Shoup, Carl S. 1975. "Surrey's Pathways to Tax Reform–A Review Article." *Journal of Finance* 30 (5): 1329–1341. https://doi.org/10.2307/2326658.

Simon, Karla W. 1987. "The Budget Process and the Tax Law." *Capital University Law Review* 17: 455.

Simpson, Mark. 2017. "The Benefit Cap Fails Human Rights Test." *Journal of Social Security Law* 24 (3): 149–154.

Smith, Adam. 1776. "An Inquiry into the Nature and Causes of the Wealth." London 17S6.

Smith, Adam. 2010. *The Theory of Moral Sentiments*. London: Penguin. Originally published 1759.

Smith, Adam, and John Ramsay McCulloch. 1838. *An Inquiry into the Nature and Causes of the Wealth of Nations*. A. and C. Black and W. Tait. Originally published 1776.

Smith, Noel. 2008. "Tackling Child Poverty Dynamics: Filling in Gaps in the Strategy." *Social Policy and Society* 7 (4): 507–519.

Smoke, Paul. 2011. The New Fiscal Sociology: Taxation in Comparative and Historical Perspective. Edited by Isaac William Martin, Ajay K. Mehrotra, and Monica Prasad, 313 pp. New York: Cambridge University Press, 2009. 103.99cloth 55.00 paper. MIT Press.

Solow, Robert. 2014. "Thomas Piketty Is Right. Everything You Need to Know About Capital in the Twenty-First Century." *New Republic*: 22.

Somek, Alexander. 2011. *Engineering Equality: An Essay on European Anti-Discrimination Law*. Oxford: Oxford University Press.

Spencer, Nicola S. 1986. "Taxation of Husband and Wife: Lessons from Europe." *Fiscal studies* 7 (3): 83–90.

St John, Ian. 2010. *Gladstone and the Logic of Victorian Politics*. London: Anthem Press.

Steccolini, Ileana. 2019. "New Development: Gender (Responsive) Budgeting—A Reflection on Critical Issues and Future Challenges." *Public Money & Management* 39: 1–5.

Stein, Stuart D. 1980. "The Sociology of Law-Some Comments on Theoretical Paradigms and Case Studies." *British Journal of Criminology* 20: 99.

Steinbach, Susie L. 2012. *Understanding the Victorians: Politics, Culture and Society in Nineteenth-Century Britain*. London: Routledge.

Steinmo, Sven. 1996. *Taxation and Democracy: Swedish, British, and American Approaches to Financing the Modern State*. New Haven: Yale University Press.

Stinchcombe, Arthur L. 1986. "Review: Milieu and Structure Updated." *Theory and Society* 15 (6): 901–914.

Stolper, Wolfgang F. 2019. *Joseph Alois Schumpeter: The Public Life of a Private Man*. Vol. 5257. Princeton: Princeton University Press.

Stotsky, J. G. 2006. "Gender Budgeting." IMF Working Paper No.06/232.

Stratigaki, M. 2012. "Gendering the Social Policy Agenda: Anti-discrimination, Social Inclusion and Social Protection." In *Gendering the European Union: New Approaches to Old Democratic Deficitis*, edited by Gabriele Abels and J. M. Abels, 169–186. London: Palgrave-Macmillan.

Sugin, Linda. 2011. "Tax Expenditures, Reform, and Distributive Justice." *Columbia Journal of Tax Law* 3: 1–42.

Sullivan, Michael, and Daniel J. Solove. 2003. "Can Pragmatism Be Radical-Richard Posner and Legal Pragmatism." HeinOnline.

Sundelson, J. Wilner. 1934. "The Emergency Budget of the Federal Government." *The American Economic Review* 24 (1): 53–68.

Sunkin, Maurice. 1994. "Judicialization of Politics in the United Kingdom." *International Political Science Review/Revue internationale de science politique* 15 (2): 125–133.

Surrey, Stanley S. 1947. "Federal Taxation of the Family–The Revenue Act of 1948." *Harvard Law Review* 61: 1097.

Surrey, Stanley S. 1973. *Pathways to Tax Reform: The Concept of Tax Expenditures.* Cambridge: Harvard University Press.

Sutherland, Edwin Hardin. 1983. *White Collar Crime: The Uncut Version*. New Haven: Yale University Press.

Swedberg, Richard. 1989. Joseph A. Schumpeter and the Tradition of Economic Sociology. *Journal of Institutional and Theoretical Economics* 145 (3): 508–524.

Swedberg, Richard. 1991a. *Jospeh A. Schumpeter: His Life and Work*. Cambridge: Polity Press.

Swedberg, Richard. 1991b. "Major Traditions of Economic Sociology." *Annual Review of Sociology* 17 (1): 251–276.

Swedberg, Richard. 1991c. *Schumpeter: A Biography*. Princeton, NJ: Princeton University Press.

Swedberg, Richard. 1998. *Max Weber and the Idea of Economic Sociology*. Princeton, NJ: Princeton University Press.

Swedberg, Richard. 2003. *Principles of Economic Sociology*. Princeton, NJ: Princeton University Press.

Swedberg, Richard. 2018. *Max Weber and the Idea of Economic Sociology*. Princeton: Princeton University Press.

Tannenwald, Robert. 1998. "Implications of the Balanced Budget Act of 1997 for the 'Devolution Revolution'." *Publius: The Journal of Federalism* 28 (1): 23–48.

Taylor, Miles, and Michael Wolff. 2004. *The Victorians Since 1901: Histories, Representations and Revisions*. New York: Manchester University Press.

Taylor-Gooby, Peter, Trine Larsen, and Johannes Kananen. 2004. "Market Means and Welfare Ends: The UK Welfare State Experiment." *Journal of Social Policy* 33 (4): 573–592.

Timmons, Jeffrey F. 2010. "Taxation and Representation in Recent History." *The Journal of Politics* 72 (1): 191–208.

Toma, Eugenia Froedge. 1991. "Congressional Influence and the Supreme Court: The Budget as a Signaling Device." *The Journal of Legal Studies* 20 (1): 131–146.

Tomkins, Adam. 1999. "Responsibility and Resignation in the European Commission." *The Modern Law Review* 62 (5): 744–765.

Travers, Tony. 1989. "Community Charge and Other Financial Changes." In *The Future of Local Government*, 9–29. Berlin: Springer. Original edition, The Future of Local Government.

Trubek, David M. 1972. "Toward a Social Theory of Law: An Essay on the Study of Law and Development." *Yale Law Journal* 82 (1): 1–50.

Trubek, David M. 1996. "Law and Development: Then and Now." *Proceedings of the Annual Meeting (American Society of International Law)* 90: 223–226.

Trubek, David M., and Alvaro Santos. 2006. Introduction: The Third Movement in Law and Development Theory and the Emergence of a New Critical Practice. In *The New Law and Economic Development: A Critical Appraisal*. Cambridge: Cambridge University Press.

Turner, B. S., and P. Hamilton. 1994. *Citizenship: Critical Concepts*. London: Routledge.

Twining, William. 1994. *Rethinking Evidence: Exploratory Essays*. Evanston: Northwestern University Press.

Vagts, Detlev. 1956. *Transnational Legal Problems*. New Haven, CT: Yale University Press.

Van de Braak, Hans. 1983. "Taxation and Tax Resistance." *Journal of Economic Psychology* 3 (2): 95–111.

Van Der Veen, Hans. 2003. "Taxing the Drug Trade: Coercive Exploitation and the Financing of Rule." *Crime, Law and Social Change* 40 (4): 349–390.

Ver Eecke, W. 2003. "Adam Smith and Musgrave's Concept of Merit Good." *The Journal of Socio-Economics* 31 (6): 701–720. https://doi.org/10.1016/s1053-5357(02)00144-0.

Vis, Barbara, Kees Van Kersbergen, and Tom Hylands. 2011. "To What Extent Did the Financial Crisis Intensify the Pressure to Reform the Welfare State?" *Social Policy & Administration* 45 (4): 338–353.

Von Hagen, Jürgen, and Ian Harden. 1995. "Budget Processes and Commitment to Fiscal Discipline." *European Economic Review* 39 (3–4): 771–779.

Walby, Sylvia. 1994. "Is Citizenship Gendered?" *Sociology* 28 (2): 379–395.

Walker, Robert. 1998. "Does Work Work?" *Journal of Social Policy* 27 (4): 533–542.

Walker, Robert, and Michael Wiseman. 2003. "Making Welfare Work: UK Activation Policies Under New Labour." *International Social Security Review* 56 (1): 3–29.

Walters, R. M. 1978. "Finance Act 1978: Taxation Changes/Prepared for the Society of Company and Commercial Accountants." Society of Company and Commercial Accountants: 2.1.

Waylen, Georgina. 1994. "Women and Democratization Conceptualizing Gender Relations in Transition Politics." *World politics* 46 (3): 327–354.

Webb, M. 2004. "Defining the Boundaries of Legitimate State Practice: Norms, Transnational Actors and the OECD's Project on Harmful Tax Competition 1." *Review of International Political Economy* 11 (4): 787–827.

West, Edwin G. 1977. "Adam Smith's Public Economics: A Re-Evaluation." *Canadian Journal of Economics* 10: 1–18.

Westen, Peter. 1982. "The Empty Idea of Equality." *Harvard Law Review* 95 (3): 537–596. https://doi.org/10.2307/1340593.

Whalen, Charles J. 2011. "Rethinking Economics for a New Era of Financial Regulation: The Political Economy of Hyman Minsky." *Chap. Law Review* 15: 149.

Wheatcroft, G. S. A., and G. D. Hewson. 1977. *Introduction to Capital Transfer Tax*. Vol. 1A, *The Encyclopedia of Capital Taxation—Capital Transfer Tax*. London: Sweet & Maxwell.

White, Fidelma, and Kathryn Hollingsworth. 1999. *Audit, Accountability and Government*. Oxford: Clarendon Press.

Wildavsky, Aaron. 1961. "Political Implications of Budgetary Reform." *Public Administration Review* 21 (4): 183–190. https://doi.org/10.2307/973628.

Williams, Andrew T. 2010. "Promoting Justice after Lisbon: Groundwork for a New Philosophy of EU Law." *Oxford Journal of Legal Studies* 30 (4): 663–693.

Wilson, Shaun. 2013. "The Limits of Low-Tax Social Democracy? Welfare, Tax and Fiscal Dilemmas for Labor in Government." *Australian Journal of Political Science* 48 (3): 286–306.

Young, Stuart. 2006. "The British Budget Process: A Case Study." Briefing Paper 32, Federal Budget Policy Seminar, Harvard Law School.

Zander, Michael. 1998. "The Government's Plans on Legal Aid and Conditional Fees." *Modern Law Review* 61 (4): 538–550.

Zimmerman, Carle C. 1928. "The Family Budget as a Tool for Sociological Analysis." *American Journal of Sociology* 33 (6): 901–911.

Zwaan, Jaap de, Martijn Lak, Abiola Makinwa, and Piet Willems. 2016. *Governance and Security Issues of the European Union: Challenges Ahead*. Berlin: Springer.

Zweimüller, Josef. 2000. "Schumpeterian Entrepreneurs Meet Engel's Law: The Impact of Inequality on Innovation-Driven Growth." *Journal of Economic Growth* 5 (2): 185–206.

Index

A. Mumford, *Fiscal Sociology at the Centenary*, Palgrave Socio-Legal Studies, https://doi.org/10.1007/978-3-030-27496-2