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Philosophical Theorising on Taxation

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Abstract – This review article examines two collected-works books: Taxation: Philosophical Perspectives, edited by Martin O'Neill and Shepley Orr and Philosophical Foundations of Tax Law, edited by Monica Bhandari. It is argued that the two books reflect a high-quality but also fragmented body of philosophical work on taxation with a surprising degree of silo-working. A selection of contributions to the two books are examined and categorised into four distinct strands with the aim of developing stronger connections between those working on related philosophical questions within the four strands and across disciplines.

Keywords: distributive justice, justice, tax, legal theory, legal philosophy

1. Introduction

Philosophy unquestionably has a long history of engagement with taxation.[1] As an academic tax lawyer who has come across philosophical writing on taxation in my teaching and editorial work but has not (until now) focused my attention on it, I was prompted by the publication of two recent OUP collected works books *Taxation: Philosophical Perspectives*,[2] edited by Martin O'Neill and Shepley Orr, and *Philosophical Foundations of Tax Law*,[3] edited by Monica Bhandari, to dive deeper into this branch of

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[1] As a small selection see, eg T Hobbes, *Leviathan* (OUP 1998; 1651) esp chs XXIV and XXX; J Locke, *Second Treatise of Government* (1690), CB Macpherson (ed) (Hackett 1980) esp ch V; J Bentham, *Manual of Political Economy* (1790–95), *Jeremy Bentham's Economic Writings*, W Stark (ed) (Allen & Unwin for the Royal Economic Society 1952–1954); JS Mills, *On Liberty* (John W Parker & Son 1859); HLA Hart, *The Concept of Law* (Clarendon Press 1961); J Rawls, *A Theory of Justice* (Harvard UP 1971) esp chs 1-3, 5; R Nozick, *Anarchy State and Utopia* (Basic Books 1974), esp the Preface and Pt II; R Dworkin, *Taking Rights Seriously* (1977) esp ch 6.

[2] Martin O'Neill and Shepley Orr (eds), *Taxation: Philosophical Perspectives* (OUP 2018) 1.

[3] Monica Bhandari (ed), *Philosophical Foundations of Tax Law* (OUP 2017). Other notable recent collections include Helmut P Gaisbauer, Gottfried Schweiger and Clements Sedmark (eds), *Philosophical Explorations of Justice and Taxation: National and Global Issues* (Springer 2015) and Bruno Peeters, Jo Badisco and Hans Gribnau, *Building Trust in Taxation* (Intersentia 2017).

tax scholarship. The writing in these books includes work on the 'pressing and significant philosophical issues' connected with 'foundational questions regarding property rights, democracy, public justification, state neutrality, stability, political psychology, and a range of other issues' –to borrow from O'Neill and Orr in their introduction.[4] It also includes those writing on the 'basic questions' about tax that Bhandari cites in her introduction: 'Questions such as what in fact is a tax? Why should we tax? How much should we tax and on whom should tax be levied? What should taxes be used for? How do ideas of fairness and justice tie in with the tax system?'[5]

With the general caveat that I approach this literature as an interested member of the audience of scholarly tax lawyers rather than a leading actor, I have two main observations on what I will refer to hereinafter as 'the two books' that I want to explore in this review article. My first observation is that whilst the two books reveal a rich and high-quality body of philosophical writing on taxation, the contributions to the two books are thinly-spread across a very wide range of diverse topics. This may be unavoidable given the wide range of issues in taxation, but I argue here that there is scope for this work to be less fragmentary. Second, even within what seems to be related topics there is a surprising degree of silo-working evident in these two books from the same publisher, published around the same time, with similar-sounding titles and exploring similar issues. There is also a tendency for philosophers and other non-economists to engage with older economic theories when writing on taxation, which has created some tension between economists and non-economists.

In the remainder of the article I examine a selection of the contributions to the two books. To aid in and help structure this examination I categorise the work into four distinct strands: (1) on the nature of taxation generally; (2) on administration and enforcement of taxation; (3) on specific substantive issues in domestic tax systems; and (4) on specific issues in the international/global tax system. The contributions to the two books demonstrate an impressive quality of scholarship on taxation—very far removed from the sort of dry, black-letter, descriptive, practitioner-oriented writing that some might (unfairly) associate with tax. But the writing on taxation would benefit from stronger connections

[4] O'Neill and Orr (n 2) 1.
[5] Bhandari (n 3) 1.

amongst those working within these four strands on related philosophical questions involving taxation, and by more interaction amongst philosophers and others working on similar taxation topics in other disciplines, including lawyers and economists (from both sides).

2. Two Observations

Despite the long-standing interest in taxation by philosophers, in the not so distant past it seems that the level of interest had waned. In his introduction as guest editor to the 2005 special edition of the *Canadian Journal of Law and Jurisprudence* devoted to taxation, the American tax law academic Edward J McCaffery wrote: 'Tax needs help. Taxation is a strangely undertheorized subject despite its social and economic importance.'[6] McCaffery welcomed the then recent publication of *The Myth of Ownership: Taxes and Justice*,[7] by the American moral philosophers Liam Murphy and Thomas Nagel, discussion of which featured prominently in that special edition. In 2006, the Professor of Tax Law at the University of Cambridge, John Tiley, similarly wrote '[t]ax should be at the forefront of the minds of our political philosophers as the area where their theories can be tested yet… few of them appreciate this.'[8] McCaffery and Tiley both expressed the hope that *The Myth of Ownership* would be a catalyst for new philosophical writing on tax.[9] In their 2003 review article on *The Myth of Ownership* in this journal, AP Simester and Winnie Chan also called for 'a deeper analysis of the nature, function, and legitimacy of our taxation system—especially, in normative propositions about the relationship between the state and its citizens, about the distribution of costs and benefits within a society, and about the nature and requirements of social justice.'[10]

If these concerns about the state of philosophical theorising on taxation were accurate at the start of the 21st Century, they no longer apply today. The publication of Murphy and Nagel's book did spark some important new philosophical writing on taxation, including some that is highly critical of their book. But that is just a subset of much broader developments. In a 2013 survey article on justice and

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[6] Edward J McCaffery, 'Introduction' (2005) 18 Can J Law & Juris 3.
[7] Liam Murphy and Thomas Nagel, *The Myth of Ownership: Taxes and Justice* (OUP 2002).
[8] John Tiley, '50 years: tax, law and academia' (2006) BTR 229 at 238.
[9] McCaffery (n 6), 4; Tiley (n 8) 238.
[10] AP Simester and Winnie Chan, 'On Tax and Justice' (2003) 23 OJLS 711.

taxation in *Philosophy Compass*, Daniel Halliday cited the work of over 60 writers—mostly philosophers, including Murphy and Nagel, but also economists and lawyers, including McCaffery.[11] Which brings me now to my two main observations on the two books. First, the two books reflect a rich and impressive literature but one that is spread thinly across a wide range of diverse, often disparate, taxation topics. I am not the only one to see this. In Halliday's 2013 survey article, he characterises the philosophical literature on taxation as 'fragmentary' compared to other philosophical work:

> One of the most striking features of the philosophical literature on taxation… is how fragmentary it is. Taxation has not, at any rate, generated a philosophical debate centred around two or three general theories of how to make tax policy fit the requirements of justice. In this way, taxation contrasts quite sharply with other morally significant topics to do with state coercion, such as punishment. One can easily find book-length pieces of work defending the view that punishment has some very specific moral function. But philosophical work on tax is not like this at all. Instead, one tends to find philosophical debate clustered around relatively specific topics.[12]

I find further support for my view that philosophical writing is overly-fragmented in the limited cross-referencing *within* each of the two books to the work of other contributors to that *same* book. In O'Neill and Orr's book, the economists interact to a degree but otherwise there is strikingly little engagement amongst the various contributors.[13] The situation is even starker in Bhandari's book: Dominic De Cogan refers at several points to the work of John Snape[14] but that is it. This is not meant as a criticism of these books or their editors but it reinforces my view on the very diverse nature of the recent philosophical writing on taxation evident in these two collections—and I suspect more broadly.

My second observation, building on from the first, is that there appears to be a surprising degree of silo-working in the philosophical literature on taxation. It is striking that not one of the contributors to Bhandari's book appears in the bibliographies in O'Neill and Orr's book. Halliday's 2013 survey article

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[11] Daniel Halliday, 'Justice and Taxation' (2013) 8/12 Philosophy Compass 1111. The *British Tax Review* also regularly publishes philosophical pieces.
[12] Halliday (n 11) 1111.
[13] The specific references by a contributor to O'Neill and Orr (n 2) to another contributor comprise: Alan Hamlin and Alexander W Cappelen & Bertil Tungodden both engaging with Marc Fleurbaey's work (at 21 and 112-16, respectively); a brief reference by Hamlin to Geoffrey Brennan's work (at 29); by Barbara H Fried who lists an earlier work of Peter Vallentyne's in her bibliography (at 166); by Stuart White to Fried's views (at 175 and 181-82) and to newspaper articles by O'Neill and Iain McLean (at 172-73); and by Peter Dietsch to one of Cappelen's earlier work (at 209) and to Gillian Brock & Rachel McMaster generally (at 212). See also below at n 103.
[14] De Cogan, 'Michael Oakeshott and the Conservative Disposition in Tax Law' in Bhandari (n 3) 105, 110-14, 12-21.

lists some of the writers who went on to contribute to O'Neill and Orr's book—Fried, Brock, Brennan, Dietsch, and White[15]—but none who later contributed to Bhandari's book. And yet Bhandari notes in her introduction that many of her contributors 'have written articles in the arena of tax philosophy before now'.[16] Similarly, Bhandari's book makes only limited references to two of the contributors to O'Neill and Orr—Fried and Vallentyne are cited in three chapters each, but only very briefly.[17]

The silo-working here is especially puzzling because the material covered in the two books overlaps to a large extent. Bhandari's book is more legally focused, as the title would suggest. But the contributors in the two books cite many of the same philosophical works—most often Murphy and Nagel's book but also the writing of John Locke, John Rawls, Robert Nozick, Ronald Dworkin, and Thomas Pogge. Frequent mention is also made to a relatively small subset of other academics, generally economists, working primarily on taxation matters including James Mirrlees, Thomas Piketty, Anne L Alstott, Ed Kleinbard, Lawrence Zelenak, and also McCaffery. Further, the contributions to the two books even target many of the same issues—including taxing inherited wealth (discussed further below in part 3c), the relationship between tax and property rights, and the role of charities. If through some editorial accident at OUP some chapters from Bhandari mistakenly were swapped with some from O'Neill and Orr, I suspect readers may not have noticed.

Another theme that emerges from my review of the books is the attention paid by philosophers to economics. This is particularly evident in O'Neill and Orr's book, which starts with not one chapter but two written by economists. These contributions also reveal a tension between economists and philosophers (and other non-economists) who engage with economics in their writing. Hamlin begins by explaining the Optimal Tax theory approach which he describes as 'now firmly established as the mainstream approach within the economic literature'.[18] Essentially Optimal Tax theory seeks to identify

[15] Halliday (n 11) 1121-22.
[16] Bhandari (n 3) 1-2.
[17] Fried is cited in Bhandari (n 3) by Emerton and James, 'The Justice of the Tax Base and the Case for Income Tax' fns 121-126, Bird-Pollan, 'The Philosophical Foundations of Wealth Transfer Taxation' fns 36, 51 and Vording 'Talents, Types, and Tags: What Is the Relevance of the Endowment Tax Debate?' fn 17. Vallentyne is cited in Bhandari by Bird-Pollan, fn 55, Perry Fleischer, 'How Is the Opera Like a Soup Kitchen?' fns 52-54 and Delmotte, 'The Right to Autonomy as a Moral Foundation for the Realization Principle in Income Taxation' fn 57.
[18] Alan Hamlin, 'What Political Philosophy Should Learn from Economics' in O'Neill and Orr (n 2) 20.

the set of tax rules which can be expected to yield the optimal outcome in terms of a specified value function, once all economic actors have reacted, rationally, to those rules.[19] Hamlin[20] and Fleurbaey[21] both argue that much of Murphy and Nagel's criticisms of economists' work in tax are levied at the older Public Finance orthodoxy,[22] which whilst once the mainstream economic approach was supplanted by Optimal Tax theory in the 1970s. Further, Public Finance orthodoxy is criticised as piecemeal in the sense it typically focuses on specific forms of tax (eg should the UK's inheritance tax be abolished?), as opposed to the more ambitious Optimal Tax theory, which attempts to arrive at a holistic design for the entire tax (and benefits) system.[23]

Although Optimal Tax theory was well established at the time Murphy and Nagel's book was published, Fleurbaey criticises them for spending less than four pages on it.[24] Is this criticism valid? Although Public Finance orthodoxy, with its 'vague'[25] and 'ad hoc'[26] normative principles including 'taxable capacity' and 'ability to pay', has been replaced by Optimal Tax theory as the mainstream approach of economists, Public Finance theory remains highly relevant for many lawyers and philosophers theorising on tax—including this writer. Are these lawyers and philosophers really working with an obsolete orthodoxy? Or does the continuing reference to Public Finance theory outside the economic literature suggestion there might be some justification to its continued use by Murphy and Nagel and others? I think it is the latter.

Admittedly ability to pay and taxable capacity are difficult concepts to implement in practice. As the Meade Committee and more recently James Banks and Peter Diamond in their work for the Mirrlees Review have said, no matter how described, taxable capacity always turns out to be very difficult to

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[19] Hamlin (n 18) 21.
[20] Hamlin (n 18) 20, fn 6.
[21] Marc Fleurbaey, 'Welfarism, Libertarianism, and Fairness in the Economic Approach to Taxation', in O'Neill and Orr (n 2) 37.
[22] The Public Finance view is articulated in eg, RA Musgrave, *The Theory of Public Finance* (McGraw-Hill 1959) and informed the work of the 1978 Meade Committee review of the UK tax structure: see James Meade (ed), *The Structure and Reform of Direct Taxation* (George Allen and Unwin 1978).
[23] Hamlin (n 18) 20.
[24] Fleurbaey (n 21) 38.
[25] Fleurbaey (n 21) 37.
[26] Hamlin (n 18) 20.

define and to be a matter on which opinions will differ rather widely.[27] But economists, including supporters of Optimal Tax theory, put a lot of stock in measuring 'utility'—is that any more easily defined than taxable capacity?[28] Fleurbaey acknowledges that another of the major criticisms of Optimal Tax theory is its reliance on a utilitarian social welfare function, which 'embraces a narrow form of consequentialism that focuses on utility and completely disregards *the way in which utility is generated* [emphasis added]'.[29] Fleurbaey attempts to deal with this criticism by pursuing an enriched version of Optimal Tax theory, which allows for non-uniform preferences and is based on a 'no-envy' model.[30] This may go part way to addressing the specific criticism, but the general tension between the lawyers and philosophers, on the one hand, and economists on the other on the continuing relevance of Public Finance theory shows no sign of abatement.

3. Categorising and Engaging with the Philosophical Theorising on Taxation

In the remainder of this article I examine a selection of the philosophical writing on taxation in the two books, after first categorising the work into four distinct strands. My aim in undertaking this categorisation and examination is two-fold: first, to draw wider attention to the broad range of philosophical theorising on tax being undertaken and, second, to encourage stronger connections amongst philosophers and also with non-philosophers working on similar taxation issues within these strands.

Several approaches to categorisation are evident in the recent literature. Halliday divided his 2013 survey article on justice and taxation into three broad categories according to the functions of taxation: (1) taxation's role in solving certain sorts of collective action problems (eg paying for public goods), (2) the general problem of securing a just distribution of the tax burden (involving issues such as identifying the 'proper' tax base and rates) and (3) the case for using taxation as a device for suppressing harmful behaviour (eg sins taxes on alcohol, cigarettes and sugar).[31] Halliday selected this structure

[27] Meade (n 22) 12; James Banks and Peter Diamond, 'The Base for Direct Taxation' in Stuart Adam and others (eds), *Dimensions of Tax Design: The Mirrlees Review* (OUP 2010) 555.
[28] John Kay, 'The Base for Direct Taxation: Commentary' in Adam and others (n 27) 660-61.
[29] Fleurbaey (n 21) 38.
[30] Fleurbaey (n 21) 42-53.
[31] Halliday (n 11) 1111.

'because it corresponds to relatively well-defined themes that have generated rather separate bodies of literature'[32] but acknowledged it did not mark 'any "natural" division between different domains of philosophical inquiry about tax'.[33]

The editors of the two books and another 2015 collection adopt slightly different categories. O'Neill and Orr divided their book into two parts. The chapters in part 1 approach the debate about taxation in political philosophy by focusing on overarching issues regarding the tax system as a whole, whilst the chapters in part 2 concern theorising on more specific issues relating to particular forms of tax policy.[34] Bandari organised her book along similar lines, with a first part focusing on 'abstract' issues related to justifications for tax but also enforcement, and the remaining two parts on 'practical' issues related to the design and mechanics of the tax system.[35] The practical parts were then further subdivided according to whether the material related to general principles or focused on wealth and property. Gaisbauer, Schweiger and Sedmark categorise the contributions in their 2015 book as (1) questions about the grounding and justification of taxation in general, (2) examining different types of taxation, their benefits and disadvantages from a justice perspective, and (3) moving the discussion to the international and global taxation level.[36]

For present purposes, it strikes me that four distinct and internally coherent strands of philosophical questions on taxation can be identified: (1) on the nature of taxation generally; (2) on administration and enforcement of taxation; (3) on specific substantive issues in domestic tax systems; and (4) on specific issues in the international/global tax system. The first line of questioning covers those writing on fundamental questions about the nature of taxation, including why should taxes be levied at all? This strand corresponds to Gaisbauer, Schweiger and Sedmark's grounding category and O'Neill and Orr's overarching category, is a subset of Bhandari's abstract category and an amalgamation of Halliday's first and third categories. Halliday's third category has been merged for present purposes into this strand because it is about another fundamental aspect of why we have taxation—to control harmful behaviour,

[32] Halliday (n 11) 1111.
[33] Halliday (n 11) 1111-12.
[34] O'Neill and Orr (n 2) 2.
[35] Bhandari (n 3) 2.
[36] Gaisbauer, Schweiger and Sedmark (n 3) [1.3].

along with the primary aim of raising money to spend on public goods. This is admittedly controversial as sin taxes arguably raise different issues than other reasons for taxation such as funding public goods—particularly the extent to which the State should be permitted to interfere with personal choice and property rights for paternalistic reasons. The silo working here is primarily intradisciplinary; it would be desirable to see more extensive interaction amongst philosophers and philosophically-minded lawyers writing on these big issues.

The second strand separates the administration element of Bhandari's abstract category into its own category. Again the work here is principally intradisciplinary, but this time dominated by lawyers and legal theorists. The remaining two strands split Halliday's, Bhandari's and O'Neill and Orr's 'catch-all' second categories into two more refined strands—one focusing on specific substantive (as opposed to administrative) issues in domestic tax systems and the other on specific issues in the international/global tax system, along the lines adopted by Gaisbauer, Schweiger and Sedmark. It is in these final two categories where there is the greatest opportunity for interdisciplinary engagement on similar issues amongst philosophers, lawyers, economists and others.

a. Strand 1: Theorising on the Nature of Tax

In their introduction O'Neill and Orr summarise the core writing on this first strand of theorising on the nature of tax generally. They helpfully provide a brief overview of two highly-influential philosophical perspectives on taxation—those of Robert Nozick and John Rawls.[37] Nozick's description of the taxation of earnings from labour as on par with forced labour in *Anarchy, State and Utopia* is of course well-known.[38] The editors argue, and I would agree, that the libertarian view of taxation continues to exert a strong influence over the contemporary debates.[39] For Rawls, on the other hand, 'property rights are not pre-political constraints on the operation of political and economic institutions, but rather they are themselves creations of the "basic structure" of society…'.[40] Further, a just tax system needs to operate 'as part of an overall system of rules and institutions…that taken together satisfy the principles

[37] O'Neill and Orr (n 2) 2-5.
[38] Nozick (n 1) 169, discussed in O'Neill and Orr (n 2) 2-3.
[39] O'Neill and Orr (n 2) 2.
[40] O'Neill and Orr (n 2) 3, discussing John Rawls, *Justice as Fairness: A Restatement* (Harvard UP 2001) 8-9.

of justice'.[41] O'Neill and Orr opine that Rawls does not give a systemic account of the tax system within his view of a just society because he was fully aware of the difficulty of the task—though he did endorse a highly progressive recipient-orientated capital transfer tax.[42] This is a fair point, and brings to mind a quote from McCaffery in his 2005 Introduction recounting his chance meeting with Rawls at a party when McCaffery took the opportunity to raise the subject of tax:

> On hearing the word 'tax,' Rawls, a gentle and genteel man, recoiled, clutching his head in horror. 'Taxes!,' he cried out, 'I hate taxes. Give me a headache.'[43]

What is particularly striking for me about the Nozikean and Rawlsian philosophical approaches to taxation is that there is very little middle ground to develop between them. Either property rights are pre-political or they are constructed as part of the political system. O'Neill and Orr go on to describe Murphy and Nagel's book as the fullest development of a broadly Rawlsian approach to tax, which is evident in what I take to be Murphy and Nagel's central argument:

> [T]here are no property rights antecedent to the tax structure. Property rights are the product of a set of laws and conventions, of which the tax system forms part. Pretax income, in particular, has no independent moral significance. It does not define something to which the taxpayer has a prepolitical or natural right, and which the government expropriates from the individual in levying tax on it.[44]

O'Neill and Orr praise Murphy and Nagel for 'ingeniously' showing that that the idea of pre-tax income has no normative standing.[45] Simister and Chan were broadly sympathetic to Murphy and Nagel's views in their 2003 review article as well,[46] but added an important and cogent observation: '[p]re-tax ownership may in truth be a myth, but it is so pervasive a myth that it has the grip of social fact. The law, as a working social institution, cannot simply ignore it'.[47] But clearly Murphy and Nagel have their critics, too, and it strikes this writer that the contributions to the two books suggest that their place

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[41] O'Neill and Orr (n 2) 3.
[42] O'Neill and Orr (n 2) 3.
[43] McCaffery (n 9) 4.
[44] Murphy and Nagel (n 7) 74.
[45] O'Neill and Orr (n 2) 4.
[46] Simester and Chan (n 10), on pre-tax income at 713 and overall at 725 when they conclude: 'The Myth of Ownership is a perspicuous and perspicacious thesis that sheds a great deal of light on an immensely complex debate.' Other writing broadly sympathetic to Murphy and Nagel's arguments on the irrelevance of pre-tax income include Lawrence Zelenak, 'The Myth of Pretax Income' (2003) 101 Mich L Rev 2261, 2262 and Miranda Stewart, 'Taxes and Justice in Context' (2005) 30 Austl J Leg Phil 133.
[47] Simester and Chan (n 10) 725.

in the current philosophical literature on tax should not be over stated.[48] We have already seen two contributors to O'Neill and Orr, Hamlin and Fleurbaey, who are critical of Murphy and Nagel's engagement with economics.[49] I will come shortly to two more critics in O'Neill and Orr—the philosophers Brennan and Biron—along with others who simply ignore Murphy and Nagel completely.[50]

Peter Vallentyne's contribution to O'Neill and Orr illustrates that even under a restricted libertarian view of taxation there is still room for advancing the literature.[51] Vallantyne is an example of a philosopher who does not engage at all with Murphy and Nagel. Instead, he explores a range of libertarianism perspectives on taxation, aiming to push beyond the Nozickean sound bite that tax on earnings equates to forced labour. Vallentyne's main thesis is that certain *very limited* (emphasis is mine) forms of taxation would be acceptable as just under at least some form of libertarianism. First, he argues that libertarianism from the right to the left of the spectrum would accept that it is just 'to tax those who infringe libertarian rights for the reasonable costs of enforcement provided by the state'.[52] This seems straightforward and reflects my understanding of the Nozickean view. Second, and more controversially, Vallentyne contends that left-libertarianism would accept taxes that represent 'periodic payment for the value of one's excess share of rights over natural resources'.[53] Vallentyne acknowledges, however, that radical right-libertarianism would reject this position outright and Nozickean right-libertarianism would hold that such payments are more in the nature of private debts than taxes.[54]

Vallentyne's two potentially acceptable forms of taxation come, unsurprisingly, with spending limitations—(1) rights-enforcement taxes must be spent on rights enforcement and (2) natural resource taxes must be used to compensate those who have ended up with less than their fair share of rights over

[48] Most notably conservative commenters: see eg Richard A Epstein, 'Myth-Making on Taxes' National Review (1 July 2002), 49.
[49] See text beginning at n 18.
[50] On critics see text at n 60 (Brennan) and n 67 (Biron); on those who do not engage with Murphy and Nagel at all see, eg text at n 51 (Vallentyne) and n 75 (Fried).
[51] Peter Vallantyne, 'Libertarianism and Taxation' in O'Neill and Orr (n 2) 98.
[52] Vallantyne (n 51) 99-101, 108.
[53] Vallantyne (n 51) 103-108.
[54] Vallantyne (n 51) 109.

natural resources.[55] Since no existing tax system is restricted to these very narrow forms of taxation or these spending limitations, it follows for Vallentyne that libertarianism could condemn all existing systems of taxation as unjust.[56] It is hard to imagine a conclusion more difficult to reconcile with the present reality of tax systems worldwide. In a footnote, however, Vallentyne does briefly contemplate an exception for corporation tax, arguing that such a tax 'is not necessarily unjust' on the basis that tax is required as a condition for legal incorporation.[57]

There seems to be much greater scope for philosophical work on taxation from the Rawlsian perspective, especially on how the system of property rights (and taxation within that) should be serving goals of society. Writers can raise questions about what those goals are, how they can be defended as just, and how to best pursue them. Geoffrey Brennan's contribution in O'Neill and Orr is an example. Brennan has been characterised by Murphy as an 'everyday libertarian', by which he means Brennan does not espouse extreme libertarian views but rather takes the view that 'people are prima facie entitled to their pretax incomes and that, therefore, while taxation is not theft, just taxation must satisfy some criterion of fair distribution as measured against that baseline'.[58] Brennan's view on entitlement to pre-tax income is appealing, and would find some support from Simester and Chan.[59]

In O'Neill and Orr's book, Brennan challenges Murphy and Nagel's book head-on, along with some of the key economic theorising discussed earlier in this article.[60] Brennan starts his chapter by writing he does not think *The Myth of Ownership* is a very good book and that important arguments are either overstated or under-argued.[61] In this piece he takes aim at their central argument that 'property rights are the product of a set of laws and conventions, of which the tax system forms part', arguing that it fails to recognise that a Rawlsian theory of justice must distinguish between the *constitutional* rules determined by the basic institutions of the state—including the property rights structure—and the *in*

[55] Vallantyne (n 51) 109.
[56] Vallantyne (n 51) 109-110.
[57] Vallantyne (n 51) 109.
[58] Liam Murphy, 'Author's Response to the Commentators' (2005) 30 Austl J Leg Phil 147, 148.
[59] See text at n 46.
[60] Geoffrey Brennan, 'Striving for the Middle ground: Taxation, Justice, and the Status of Private Rights', in O'Neill and Orr (n 2) 60.
[61] Brennan (n 60) 60. See also Geoffrey Brennan, 'The Myth of Ownership' (2005) 30 Austl J Leg Phil 129 for additional criticisms, and Liam Murphy's response (n 68) 147-50.

period rules that operate within the constitutional rules, which would include details of the tax system.[62] He undermines his argument, however, by later reframing the divide between constitutional and in period rules as essentially a spectrum, with some basic institutions 'more basic than others', and the tax system occupying some place in the middle ground.[63]

Brennan also explores the relevance of another Public Finance concept—horizontal equity, the principle that similarly-situated taxpayers should face a similar tax burden. Richard Musgrave and Louis Kaplow debated the normative significance of horizontal equity at some length in the early 1990s, with Musgrave arguing in favour of horizontal equity as an independent principle and Kaplow disagreeing.[64] Although Brennan engages at length with Kaplow's view, which he describes as 'worth taking seriously',[65] Brennan refutes Kaplow's and Murphy and Nagel's dismissal of horizontal equity, arguing, persuasively, that it is a specific restriction on taxing power not a general distributional principle and, importantly, is a central requirement of any justifiable tax system.[66]

Laura Biron takes a different philosophical approach to challenging Murphy and Nagel by examining the 'puzzle about the relevance of the concept of property to studies of taxation'.[67] This is a puzzle for Biron because appeals to property rights are commonly asserted in popular debates on taxation and yet property theorists tend not to apply their work directly to taxation.[68] This does appear to be a puzzle, which for Biron is further complicated by Murphy and Nagel's 'unpersuasive' view that the concept of property is irrelevant to taxation.[69] Her primary argument is that 'taxation should occupy a more prominent place in the jurisprudence of property than it currently does'.[70] Key to Biron's argument is her attention to the difference between *expropriation or taking* and *taxing*. She takes issue

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[62] Brennan (n 60) 70.
[63] Brennan (n 60) 72.
[64] Louis Kaplow, 'Horizontal Equity: Measures in Search of a Principle' (1989) 42 Nat Tax J 139; Richard A Musgrave, 'Horizontal Equity, Once More' (1990) 43 Nat Tax J 113; Louis Kaplow, 'A Note on Horizontal Equity' (1992) 1 Fla Tax Rev 191; Richard A Musgrave, 'Horizontal Equity: A Further Note' (1993) 1 Fla Tax Rev 354; Paul R McDaniel and James R Repetti, 'Horizontal and Vertical Equity: The Musgrave/Kaplow Exchange' (1993) 1 Fla Tax Rev 607; Louis Kaplow, *The Theory of Taxation and Public Economics* (Princeton UP 2008) 396-401.
[65] Brennan (n 60) 65.
[66] Brennan (n 60) 64-67.
[67] Laura Biron, 'Taxing or Taking? Property Rhetoric and the Justice of Taxation' in O'Neill and Orr (n 2) 81.
[68] Biron (n 67) 81.
[69] Biron (n 67) 83.
[70] Biron (n 67) 81.

with Murphy and Nagel for sidestepping this distinction and challenges their central view that property rights are dependent on the legal system that defines and creates them, with the tax system merely part of that legal system.[71] Like Brennan, Biron finds Murphy and Nagel's justifications surprisingly difficult to pin down in their book and unconvincing once located.[72]

In the Bhandari book, David G Duff takes a very different approach by contrasting Ronald Dworkin's theory of distributive justice as equality of resources and Dworkin's fairly limited work on its implications for redistributive taxation against other leading theories of distributive justice in order to formulate a defence of progressive income and inheritance taxes.[73] In so doing Duff argues that Dworkin's theory 'provides a more compelling conception of distributive justice than welfare-based theories that do not take rights and responsibilities seriously; Rawlsian theory which is insufficiently attentive to individual rights and responsibilities; and classical libertarianism which fails to take equality seriously'.[74] Duff's writing, by contrasting the implications of the work of Dworkin, Rawls and Nozick for redistributive taxation, provides an instructive example of how the philosophical writing on tax in this strand can be less fragmentary.

A final example of this strand of philosophical theorising on the broad nature of taxation is Barbara H Fried's exploration of the case for rejecting 'a majoritarian, or even supermajoritarian, decision rule … for determining fiscal policy' in favour of a devolved approach based upon a mechanism for tracking preferences at the *individual* level.[75] O'Neill and Orr place Fried in their second, catch-all, specific issues category, but her work seems better located in this first strand because it focuses on the role of taxation in the state's provision of public goods, albeit from an alternative, individual-based way of determining that supply. Fried, like Vallentyne, ignores Murphy and Nagel completely, preferring to start with a Hobbesian/Lockean premise that the just state exists to provide public goods that private

[71] Biron (n 67) 86, referring to Murphy and Nagel (n 7) 74.
[72] Brennan (n 60) 61 and Biron (n 67) 86.
[73] David G Duff, 'Tax Policy and the Virtuous Sovereign: Dworkinian Equality and Redistributive Taxation' in Bhandari (n 3) 167.
[74] Duff (n 73) 168-69.
[75] Barbara H Fried, 'The Case for a Progressive Benefits Tax', in O'Neill and Orr (n 2) 147, 148.

markets undersupply.[76] Fried uses a predominantly Tiebout-inspired welfarist approach for determining the optimal level of production based on individual-level, which in turn rests on Tiebout's theory that individuals choose particular jurisdictions of residence according to the individual's preferences in terms of the taxes-for-public-goods package on offer.[77] Fried thus pursues what is essentially a form of the benefit theory of taxation—a theory that is mostly out-of-favour in the tax law literature, although has some supporters when it comes to taxing companies as a quid-pro-quo for limited liability.[78]

In summary, the writing in this strand is of high quality, benefitting from Murphy and Nagel's work but certainly not dominated by it. However, it is easy to imagine a new generation of more narrowly-focused collected works books devoted to particular foundational and basic questions in tax such as those identified in the introduction to this article, along the lines of a super-sized Duff's contribution to Bhandari and ideally with significant engagement amongst contributors.

b. Strand 2: Theorising on Tax Administration and Enforcement

The second strand of philosophical theorising on tax relates to tax administration and enforcement. This strand includes topics such as the role and powers of the revenue-collecting authority, approaches to drafting tax legislation (raising issues such as complexity), and tax avoidance. This work differs markedly from the abstract theorising on the nature of tax just discussed and also from the kinds of specific issues considered under strands three and four. In this strand the theorising shifts from a focus on political philosophy to legal theory and tax law generally. This is another area in which the theoretical literature is rich and of a high calibre, and a degree of interaction amongst writers is more evident. Bhandari includes a chapter by John Prebble, who famously transplanted the medical term 'ectopia' –referring to a displaced organ—into the tax literature[79] and uses the legal positivist Hans Kelsen in his work on general anti avoidance rules.[80] Bhandari also includes contributions from Snape

[76] Fried (n 75) 147. The difficulties in pricing public goods are also examined in Simester and Chan (n 10) 715-19.
[77] Fried (n 75) 149-51.
[78] This includes Vallentyne: text at n 57.
[79] See eg John Prebble, 'Ectopia, Tax Law, and International Taxation' (1997) BTR 383.
[80] John Prebble, 'Kelsen, the Principle of Exclusion of Contradictions, and General Anti-Avoidance Rules in Tax Law' in Bhandari (n 3) 79.

and de Cogan, both of whom have been influenced by Michael Oakeshott, a political philosopher who also wrote on jurisprudence.[81]

Some of the discussion in Simester and Chan's 2003 OJLS review article on Murphy and Nagel's would fit in this second strand. Simester and Chan examine at some length the courts' approach to statutory interpretation in tax and to tax avoidance at the time, beginning with the literal, taxpayer-friendly approach grounded in libertarian language about the taxman putting his hand in the taxpayer's pockets that had been *de rigour* in tax law for so many years but at that point was on the wane.[82] Taxation law clearly has moved even further along that tract in the intervening years. Her Majesty's Revenue and Customs (HMRC) have been very successful pursuing tax avoidance cases in the courts in recent times, including under the judicial approach to tax avoidance developed in the line of cases beginning with *WT Ramsay Ltd*.[83] The currently-favoured formulation of the *Ramsay* principle is that of Ribeiro PJ in the Hong Kong case *Collector of Stamp Revenue v Arrowtown Assets Ltd*, and approved by the House of Lords in *Barclays Mercantile Business Finance*[84]: 'The ultimate question is whether the relevant statutory provisions, construed purposively, were intended to apply to the transaction, viewed realistically.'[85] There is fertile grounds here for further inter-connected work amongst philosophically-minded lawyers, tax law scholars and legally-inclined philosophers—and in particular on what it means to 'realistically' view facts.

c. Strand 3: Theorising on Specific Substantive Issues in Domestic Tax Systems

The third general strand of philosophical writing on taxation is, unfortunately, a 'catch-all' group—but a more refined one. This strand encompasses writing on specific substantive issues in tax especially relevant to domestic tax systems, such as on the appropriate tax base and tax rates or critiquing particular taxes. I examine three works here on taxing wealth and transfers of wealth—Jennifer Bird-Pollan's

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[81] See John Snape, 'The "Sinews of the State"' in Bhandari (n 3) 9 and De Cogan (n 14) 101.
[82] Simester and Chan (n 10) 711.
[83] *WT Ramsay Ltd v IRC* [1982] AC 300.
[84] *Barclays Mercantile Business Finance v Mawson* [2004] UKHL 51, [35] and applied in *Tower MCashback LLP 1 and another v Revenue & Customs Commissioners* [2011] UKSC 19 and *UBS AG v Revenue & Customs Commissioners; Deutsche Bank Group v Revenue & Customs Commissioners* [2016] UKSC 13.
[85] *Collector of Stamp Revenue v Arrowtown Assets Ltd* [2003] HKCFA 46, [36].

chapter in Bhandari[86] and Stuart White's[87] and Iain McLean's contributions in O'Neill and Orr—to demonstrate the potential for stronger interdisciplinary links. Wealth taxes are a topical subject given the clear evidence of rising wealth inequality across the globe in recent years,[88] and the serious negative impact the coronavirus pandemic has had on government finances worldwide;[89] perhaps higher levels of taxation on wealth is part of the solution?

In her chapter Bird-Pollan provides a concise and helpful primer on how four central political philosophical theories (socialism, liberalism, libertarianism, and utilitarianism) view wealth transfer taxation. She concludes that whilst libertarians would reject redistributive wealth transfer taxes, such taxes would be consistent with the goals of socialism, would be supported by a Millian utilitarian calculus, and could be justified by the Rawlsian principle of equality of opportunity.[90] White takes a clear Rawlsian approach to this issue in his contribution. He sets out and then rejects four sets of moral objections to inheritance tax: the double tax objection, the equity objection; the virtue objection and the wrong problem. Inheritance tax for White's purposes encompasses 'any tax mechanism that seeks to tax the transfer of wealth across generations' and could thus include gift/accession taxes and estate taxes.[91] This is somewhat of an oversimplification as the advantages and disadvantages of different forms of wealth transfer taxes have been debated at some length in the legal and economic literature, most notably the Mirrlees Review which favoured accession taxes over estate taxes on the grounds that it is the amount of money received by individuals that matters most for equity albeit that accession taxes may be more difficult to administer.[92] Further, arguments in favour of wealth transfer taxes tend to focus

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[86] Jennifer Bird-Pollan, 'Philosophical Foundations of Wealth Transfer Taxation' in Bhandari (n 3) 217.
[87] Stuart White, 'Moral Objections to Inheritance Tax' in O'Neill and Orr (n 2) 168.
[88] White (n 87) 170-71, citing work including Thomas Piketty, *Capital in the Twenty-First Century*, trans. Arthur Goldhammer (Harvard UP 2014) and Andrew Hood and Robert Joyce, Inheritances and Inequality across and within Generations (Institute for Fiscal Studies 2017). For further recent work on inequality see eg International Monetary Fund, *IMF Fiscal Monitor: Tackling Inequality* (October 2017) and Gabriel Zucman, 'Global Wealth Inequality' (2019) Annu Rev Econ 109.
[89] See eg Ian Kumekawa, 'We need to revisit the idea of Pigou wealth tax' *Financial Times* (7 June 2020).
[90] Bird-Pollan (n 86) 222-31.
[91] White (n 87) 168.
[92] See eg Stuart Adam and others (eds), *Tax by Design: The Mirrlees Review* (OUP 2011) ch 15, and Robin Boadway, Emma Chamberlain and Carl Emmerson, 'Taxation of Wealth and Wealth Transfers' in Adam and others (n 27) 737. For more recent work see Emma Chamberlain, 'Does an Inheritance Tax Have a Future? Practical Options to Consider' in Glen Loutzenhiser and Rita de la Feria (eds), *The Dynamics of Taxation: Essays in Honour of Judith Freedman* (Hart Publishing, forthcoming 2020) ch 2 and the 2018 Office of Tax Simplification review of IHT available at <https://www.gov.uk/government/publications/ots-inheritance-tax-review-simplifying-the-design-of-the-tax> accessed 28 May 2020.

on recipients whilst arguments against wealth taxes tend to focus on the donor's perspective.[93] Whilst Bird-Pollan considers different forms of wealth taxation at some length,[94] White merely notes the main features and does not seek to defend any specific form.[95]

As O'Neill and Orr note in their introduction, Rawls was in favour of a highly-progressive accessions tax, which he thought necessary to address intergenerational transfers of relative advantage.[96] White draws on some familiar names, including Rawls, Murphy and Nagel, Cedric Sandford,[97] and Thomas Piketty,[98] in advancing his main arguments in support of inheritance tax: tax justice, equal opportunity and political equality. The first two arguments are similar to ones that would be made by tax lawyers but framed slightly differently—encompassing fairness in the distribution of the tax burden and equal chance for children of equal natural ability to develop and benefit from their skills rather than focusing on wealth as an alternative measure of ability to pay.[99] White's third argument, political equality, is less commonly-made in the legal and economic literature; it refers to the ways in which wealth can be used to influence political decisions.[100] Although there is much in White's arguments that this writer recognises, I was surprised by how many supporting works he cites that were unfamiliar to me. Whereas I would refer to the Mirrlees Review and Natalie Lee on the arguments in favour and against inheritance tax and in particular for criticism of the double taxation argument,[101] White instead cites Murphy and Nagel frequently, publications of the Fabian Society[102] and others including Alstott, McCaffery and, to a limited extent, several of his co-contributors to O'Neill and Orr.[103]

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[93] Adam and others, *Tax by Design*, (n 92) 348-49.
[94] Bird-Pollan (n 86) 219-22.
[95] White (n 87) 168.
[96] O'Neill and Orr (n 2) 3.
[97] Cedric Sandford, *Taxing Personal Wealth* (Allen & Unwin, 1971): see White (n 87) n 15.
[98] Piketty (n 88).
[99] White (n 87) 170-72.
[100] White (n 87) 172.
[101] Adam and others, *Tax by Design*, (n 92) 351-57; Boadway, Chamberlain and Emmerson (n 92) 754-77; Natalie Lee, 'Inheritance Tax - An Equitable Tax No Longer: Time for Abolition' (2007) 7 LS 678, 691-703.
[102] See eg the Fabian Society Commission on Taxation and Citizenship, *Paying for Progress: A New Politics of Tax for Public Spending* (Fabian Society, 2000), cited in White (n 87) 167.
[103] See eg Edward McCaffery, 'The Political Liberal Case against the Estate Tax' (1994) Philosophy and Public Affairs 281; Anne Alstott, 'The Uneasy Liberal Case against Income and Wealth Transfer Taxation: A Response to Professor McCaffery' (1995/96) Tax Law Review 51. He also cites earlier work by co-contributors to O'Neill and Orr including Martin O'Neill, 'Death and Taxes' *New Statesman* (8 October 2007), Iain McLean, 'Opinion: "Dead People Pay No Tax"' *The Observer* (21 October 2007) and, more extensively, to Barbara

A similar story is happening in McLean's chapter on UK land taxation.[104] As McLean correctly states, a oft-cited argument against a tax on land values centres on the 'Devon widow', who lives alone in the large former family home and is asset rich but cash poor. McLean's main recommendation, sensibly, is to replace the distortive Stamp Duty Land Tax and dysfunctional council tax with a Land Value Tax, and allow the Devon widow to defer her tax liability until her death or the house is sold.[105] There is a considerable legal and economic literature on the practical difficulties raised by taxes on wealth including main residences, notably liquidity and valuation concerns.[106] Like White, some of McLean's arguments draw on sources that I recognise (the Meade Committee and Mirrlees Review), along with very many more from the politics literature that I did not.

In summary, the scope for philosophical work in this third strand is quite broad, and as a 'catch all' category it is inevitably going to remain quite fragmented. However, there are still opportunities here for philosophers and non-philosophers to break down silos. I will say more on this point in my conclusion.

d. Strand 4: Theorising on Specific Issues in International/Global Tax

The fourth and final strand of theorising on tax has a more global perspective than the previous 'catch all' strand and raises different issues. As Gaisbauer, Schweiger and Sedmark wrote in their 2015 collection '….in taxation the state is not everything'.[107] The absence of a global tax authority means the theorising in this strand shifts from focusing on the relationship between the taxpayer and the state, and distribution within the state, to the relationship *between* states, including how the global tax pie is distributed amongst them. This in turn involves states making decisions on how to tax economic activity sourced within the state as well as economic activity carried on by its residents/citizens in another state—whilst encouraging inward investment, and not disadvantaging their residents carrying on

Fried, 'Fairness and the Consumption Tax' (1992) Stanford Law Review 961: see White (n 87) at n 17, 19 and 23.

[104] Iain McLean, 'The Politics of Land Value Taxation' in O'Neill and Orr (n 2) 185.

[105] McLean (n 104) 194-96. See also Adam and others, *Tax by Design* (n 94) ch 16.

[106] McLean (n 104) 197. That literature includes Sandford (n 97), the Meade Committee report (n 22), Lee (n 101), Adam and others, *Tax by Design* (n 92) and Boadway, Chamberlain and Emmerson (n 92).

[107] Gaisbauer, Schweiger and Sedmark (n 3) [1.2.1].

economic activities abroad.[108] Historically, the key consideration in this balancing act was avoiding multiple levels of taxation that would disincentivise cross-border trade in goods and services. More recently, however, attention has shifted to a global tax justice perspective, focusing on tackling double non-taxation, with states aiming to ensure some amount of tax is paid somewhere.[109]

As with the third strand, although it a broad category there is scope here for greater communication amongst those working on similar issues, particularly across disciplines. A good example of recent interdisciplinary work in this area is that undertaken by the Oxford University Centre for Business Taxation, led by economist Michael Devereux and lawyer John Vella, advocating radically reforming the international tax regime towards taxing a business's profit based on where their relatively less mobile factors are found, especially consumers.[110] As profit and taxing rights over profit have historically been closely-linked with the traditional factors of production—land, labour, capital, entrepreneurship–and their location, this is a radical proposal that would benefit from philosophical commentary. Along the same lines as the discussion earlier in this article on economists abandoning Public Finance orthodoxy in favour of Optimal Tax theory, Devereux and Vella also highlight in their work examples of economic concepts that have played an influential role in the literature on international taxation, have fallen out of favour with economists, but are nevertheless still cited frequently by lawyers and other policy makers—including capital import and export neutrality.[111]

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[108] For an introduction to international tax policy and the important distinction between source and residence see Brian Arnold, *International Tax Primer* (4th edn, Kluwer Law International 2019), 1-28.

[109] See, eg the UK's introduction of a digital services tax on the turnover of large multinationals with UK users of social media platforms, search engines or online marketplaces, available at <https://www.gov.uk/government/publications/introduction-of-the-new-digital-services-tax/introduction-of-the-new-digital-services-tax> accessed 28 May 2020.

[110] Michael Devereux, Alan Auerbach, Michael Keen, Paul Oosterhuis, Wolfgang Schön and John Vella, *Taxing Multinational Profit* (OUP, forthcoming). See also the OECD's work on the Global Anti-Base Erosion (GloBE) Proposal under Pillar Two (a global minimum tax), available at <https://www.oecd.org/tax/oecd-secretariat-invites-public-input-on-the-global-anti-base-erosion-proposal-pillar-two.htm> accessed 28 May 2020.

[111] Devereux et al (n 110). Capital export neutrality (CEN) requires residents of any given state to face the same tax burden regardless of where in the world they choose to invest. In so doing the aim is to neither favour nor discourage foreign investment vis-à-vis domestic investment by local residents. CEN is generally associated with residence-based tax systems. Capital import neutrality (CIN), on the other hand, requires that all investors in a given state pay the same marginal rate of tax regardless of the state of residence of the investor. The aim here is efficient allocation of capital by ensuring business activity within a state is taxed at the same level overall, whether undertaken by locals or foreigners. CIN is generally associated with source-based taxation. See also Arnold (n 108) 6.

An example of current philosophical theorising in this fourth strand is Peter Dietsch's writing on tax competition, which is the strategic, independent competition amongst states seeking to attract mobile capital through low tax rates and favourable regulation.[112] Dietsch argues that tax competition raises two kinds of normative questions:

> First…one may ask how to evaluate the distributive consequences of tax competition from the perspective of one's overall theory of distributive justice. Second, one can inquire whether the current institutional structure governing fiscal interdependence between states…is conducive to promoting the wider goals of fiscal policy.[113]

Dietsch analyses the implications of such competition against two relevant considerations—the 'autonomy prerogative' and the 'global justice constraint'. The autonomy prerogative essentially represents a state's basic choice over the level of revenues and expenditures and the level of redistribution within that state.[114] The autonomy prerogative is then subject to the global justice constraint—that it is reasonable to assume that there is some level of global institutions and some level of deprivation that any plausible theory of global justice would consider unjust.[115] He concludes that tax competition undermines the exercise of the autonomy prerogative and is incompatible with a minimal conception of global justice.[116] For Dietsch, the practical normative implications of this conclusion is, first, that tax competition needs to be regulated by jurisdictional rules and, second, that redistribution between states is required.[117] Dietsch's view is not universally accepted, however. Tsilly Dagan argues *against* curtailing tax competition through centralisation and instead supports 'structured' tax competition amongst states as a second-best way to promote both justice and efficiency in international tax policy.[118]

Another example of theorising along normative and international themes is the work of Gillian Brock and Rachel McMaster.[119] The authors outline policy recommendations aimed at addressing global

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[112] Peter Dietsch, 'The State and Tax Competition: A Normative Perspective' in O'Neill and Orr (n 2) 203.
[113] Dietsch (n 112) 203-04.
[114] Dietsch (n 112) 209.
[115] Dietsch (n 112) 209-10.
[116] Dietsch (n 112) 220.
[117] Dietsch (n 112) 220.
[118] See Tsilly Dagan, *International Tax Policy: Between Competition and Cooperation* (CUP 2018).
[119] Gillian Brock and Rachel McMaster, 'Global Taxation and Accounting Arrangements: Some Normatively Desirable and Feasible Policy Recommendations' in O'Neill and Orr (n 2) 224.

poverty in a meaningful way,[120] which, like Dietsch, involves global redistribution. They take as their primary influence the political philosopher Thomas Pogge, who writes on the relevant connections between people in affluent developed countries and those in poverty in developing countries—as well as the historical injustices that have played a role in explaining this situation.[121] As a moderate start to address this injustice, Pogge argued for a 'Global Resources Tax', later rebadged in his writing as a 'Global Resources Dividend' or GRD, which envisions states sharing a small part of the value of any natural resources the state uses or sells, eg 1 per cent.[122] Pogge's GRD would be levied with the aim of raising hundreds of billions of dollars to help the poor, especially in developing countries.[123]

Brock and McMaster discuss at some length how the international tax regime facilitates revenue flows out of developing countries through devices such as tax havens and transfer pricing. Their primary argument is that cracking down on this 'tax escape' could raise a similar amount of money as Pogge's GRD.[124] The authors briefly examine some of the literature on corruption and tax havens and highlight two examples of possible global taxes: (1) an air-ticket tax, which was unknown to this writer and apparently operates on a small-scale basis in about 10 countries and (2) a currency transaction tax or Tobin tax, first proposed by James Tobin in the 1970s.[125] These are big issues, quickly covered. A great deal of press and political time has been focused in recent years on problems in the international tax regime, including hearings in the UK's House of Commons Committee of Public Accounts.[126] The questions of (1) what the 'correct' amount of tax a multinational entity should be paying is and (2) where that tax should be paid are complex ones, however. The figures on 'tax escape' bandied about by Brock and McMaster and also Dietsch must be approached with a degree of caution.[127]

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[120] Brock and McMaster (n 119) 224.
[121] Brock and McMaster (n 119) 225.
[122] Brock and McMaster (n 119) 227, referring to Thomas Pogge, 'Eradicating Systemic Poverty: Brief for a Global Resources Dividend' (2001) 2 J of Human Develop 59.
[123] Brock and McMaster (n 119) 224.
[124] Brock and McMaster (n 119) 227.
[125] Brock and McMaster (n 119) 235.
[126] Most notably the 2012-14 Public Accounts Committee hearings chaired by the Rt Hon Dame Margaret Hodge, available at <https://www.parliament.uk/business/committees/committees-a-z/commons-select/public-accounts-committee/taxation/> accessed 28 May 2020.
[127] Economists have started to do more rigorous empirical work in this area: see Nadine Riedel, 'Quantifying International Tax Avoidance: A Review of the Academic Literature' (2014) Paper prepared for the European Tax Policy Forum <www.etpf.org/papers/PP002QuantAvoid.pdf> accessed 28 May 2020, and Dhammika Dharmapala, 'What Do We Know about Base Erosion and Profit Shifting? A Review of the Empirical

Further, I think it important that philosophical work in international taxation is mindful of the sea change in the international tax regime initiated in 2013 by the Organisation for Economic Co-operation and Development (OECD) in its Base Erosion and Profit Shifting (BEPS) initiative, which was backed by the G20 with some input from developing countries under the OECD's so-called 'Inclusive Framework'.[128] BEPS was aimed squarely at finding solutions for the concerns identified by Dietsch over competition amongst states for tax revenues and by the 'tax escape' problem highlighted by Brock and McMaster, including the use of tax havens. As BEPS moved into the implementation phase, the OECD has turned its attention to the especially difficult problem of taxing digital businesses—or BEPS 2.0.[129] The OECD has also pursued greater co-operation amongst states in tax matters through a series of multilateral conventions including on exchange of information on taxpayers.[130] Whether this co-operation will continue in light of the nationalistic response to the coronavirus pandemic and the adoption of unilateral measures to target profit-shifting such as the UK's digital services tax[131] remains to be seen. Brock and McMaster do not cover these admittedly recent developments and Dietsch gives them only the briefest mention in footnotes.[132]

4. Final Reflections

In 2005 McCaffery wrote that 'there is at long last some hope for better and deeper philosophical reflection about the great socio-economic institution of tax. It's about time.'[133] Fast forward fifteen years and it seems clear that a great deal of high quality and important philosophical work on taxation is taking place, particularly by the contributors to the O'Neill & Orr and Bhandari books. Whilst some

Literature' (2014) 35 Fiscal Studies 421-48. According to Riedel's 2014 survey of the academic literature, the then estimated profits that multinational entities transfer from high-tax affiliates to low-tax affiliates ranged from a high of 30% to a low of 5%.

[128] OECD, 'Base erosion and profit shifting' <www.oecd.org/tax/beps/> accessed 28 May 2020 and OECD, 'About the Inclusive Framework on BEPS <www.oecd.org/tax/beps/beps-about.htm> accessed 28 May 2020.

[129] See <www.oecd.org/tax/oecd-leading-multilateral-efforts-to-address-tax-challenges-from-digitalisation-of-the-economy.htm> accessed 28 May 2020. See also Michael Devereux and John Vella, 'Taxing the Digitalised Economy: Targeted or System-Wide Reform?' (2018) BTR 387.

[130] These include the Multilateral Convention on Mutual Assistance in Tax Matters, the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports and the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information: see <www.oecd.org/ctp/exchange-of-tax-information/> accessed 28 May 2020.

[131] See n 109.

[132] Dietsch (n 112) at n 23 and 24.

[133] McCaffery (n 6) 4.

degree of fragmentation and silo working in taxation is likely inevitable because tax covers so many big questions and narrow issues, for this interested audience member there does appear to be some scope for limiting it.

Ideally, the next step would be to see the publication of more philosophical collected works books, but focused within the four strands identified above rather than spread across all of them. One can imagine a new collection devoted to wealth transfer taxes that starts with a stage-setting chapter like that of Bird-Pollan, followed by writers applying a range of philosophical theories in some depth along the lines of White's chapter, and other writers drilling down their analysis to the taxation of specific assets like McLean's focus on land—and with substantial cross-engagement amongst contributors and more recourse to non-philosophical writing, too. Such developments would help to address the fragmentary nature and enhance the coherence of philosophical writing on taxation. It could also increase the profile of philosophical writing on tax, making this work more visible to tax lawyers and others, in turn encouraging them to draw on this literature and thereby engage with a broader range of arguments and additional, new perspectives on taxation issues—to the benefit of their own writing.