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Why Atlas Hasn't Shrugged: Review Essay

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WHY ATLAS HASN'T SHRUGGED: *REVIEW ESSAY*

by

Ajay K. Mehrotra*

Taxing the Rich: A History of Fiscal Fairness in the United State and Europe. By Kenneth Scheve & David Stasavage. Princeton, N.J.: Princeton University Press. 2016. Pp. xv, 266. \$29.95.

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INTRODUCTION

In 1957, the anti-statist public intellectual Ayn Rand published *Atlas Shrugged*—a best-selling dystopian novel depicting a United States devastated by excessive taxation and government regulation.¹ The book was an instant success and quickly became a classic text among American libertarians.² Although Rand wrote her novel at the height of post-war New Deal liberalism, when the top marginal federal income tax rate in the United States exceeded 90%,³ her book was a didactic, anti-New Deal story meant to convey the importance of the “prime movers” or “producers”—the gifted elite who, like the Greek god Atlas, carried the weight of the world on their shoulders.⁴

In Rand’s account, prime movers played a pivotal and indispensable role in American capitalism. They were the drivers of economic growth and prosperity. Without their talents and efforts, market capitalism itself would come to a crashing halt. Rand’s fictional narrative portrayed how the rise of unbearable government regulation and high levels of progressive taxation would eventually drive producers to go on strike, thereby destabilizing the economy and society, and bringing an end to human prosperity. An activist state, fueled and propelled by a “soak-the-rich” system of taxation, was, for Rand, the source of all evil.⁵

1. AYN RAND, *ATLAS SHRUGGED* (1957).

2. For more on Rand and the success of *Atlas Shrugged*, see generally JENNIFER BURNS, *GODDESS OF THE MARKET: AYN RAND AND THE AMERICAN RIGHT* (2009).

3. Statutory marginal income tax rates reached 92% in the United States in 1952 and 1953. See *Historical Highest Marginal Income Tax Rates*, TAX POL’Y CTR. (Mar. 22, 2017), <http://www.taxpolicycenter.org/statistics/historical-highest-marginal-income-tax-rates>.

4. RAND, *supra* note 1.

5. BURNS, *supra* note 2, at 212; see also ANNE C. HELLER, *AYN RAND AND THE WORLD SHE MADE* 139 (2009). Although Rand did not explicitly use the term “soak-the-rich taxation,” the phrase has been commonly used in the historiography of American taxation. See, e.g., W. ELLIOT BROWNLEE, *FEDERAL TAXATION IN AMERICA: A HISTORY* 100 (3d ed. 2016) [hereinafter BROWNLEE, *FEDERAL TAXATION*]; MONICA PRASAD, *THE LAND OF TOO MUCH: AMERICAN ABUNDANCE AND THE PARADOX OF POVERTY* 16, 131 (2012); W. Elliot Brownlee, *Economic History and the Analysis of “Soaking the Rich” in 20th-Century America*, in *TAX JUSTICE: THE ONGOING DEBATE* 71, 78 (Joseph J. Thorndike & Dennis J. Ventry Jr. eds., 2002).

While top marginal tax rates in the United States have dramatically declined since Rand wrote her magnum opus, the relationship between progressive taxation and economic prosperity remains a perennial concern. Indeed, well before Rand published *Atlas Shrugged*, thinkers and commentators debated whether high levels of taxation on the rich shaped the behavior of the affluent, and whether potential changes in such behavior had an adverse effect on overall economic growth. Despite much investigation, these remain unsettled empirical questions and highly controversial political ones.⁶

In their insightful new book, *Taxing the Rich: A History of Fiscal Fairness in the United States and Europe*, Kenneth Scheve and David Stasavage explore this topic from a slightly different register. Rather than examine the economic consequences of taxing the wealthy, these authors take a step back to ask the broader, and perhaps more compelling, historical question: “When and why do countries tax the rich?”⁷ Instead of simply questioning whether Atlas shrugs, they seek to explain empirically why Atlas has not shrugged, especially when top marginal tax rates have reached astronomically high rates. In other words, Scheve and Stasavage address the more fundamental question: Under what conditions have governments been able to ensure that Atlas does not shrug? More specifically, the authors seek to explain why modern democracies have been able to tax the rich without negative consequences.

To address these timely and highly significant queries, the authors have conducted an impressive comparative and historical study. Using a data set of tax laws and policies from twenty industrialized democracies across nearly two centuries, the authors persuasively document how, what they refer to as, “compensatory arguments” made during wartime have led to robust taxation of the rich.⁸ They also

6. For essays on the empirical question, see DOES ATLAS SHRUG? THE ECONOMIC CONSEQUENCES OF TAXING THE RICH (Joel B. Slemrod ed., 2000). On the political controversy surrounding the claim that tax cuts invariably lead to economic growth, see, for example, Danielle Kurtzleben, *FACT CHECK: Do Tax Cuts Grow The Economy?*, NPR (Oct. 30, 2015), <http://www.npr.org/sections/itsallpolitics/2015/10/30/452905475/fact-check-do-tax-cuts-grow-the-economy>.

7. KENNETH SCHEVE & DAVID STASAVAGE, *TAXING THE RICH: A HISTORY OF FISCAL FAIRNESS IN THE UNITED STATES AND EUROPE* 3 (2016) [hereinafter *TAXING THE RICH*].

8. *Id.* at 5.

supplement their large-*n*, quantitative investigation with brief qualitative case studies of several Western nation-states and their twentieth-century tax laws and policies. These historical case studies, unsurprisingly, support the book's central claim that specific ideas about fairness became increasingly persuasive during twentieth-century conflicts when technology facilitated mass mobilization for war. Along the way the authors attempt to debunk the conventional wisdom behind the rise of progressive taxation—the spread of democracy and the increasing salience of inequality—to show that calls for fairness and equality of sacrifice during wartime were the primary, if not exclusive, cause for high taxes on the rich.

Scheve and Stasavage have provided an outstanding historical account of the rise and fall of high taxes on the rich in the United States and Europe. As political scientists, they have taken seriously the primacy of political ideas and beliefs in structuring policy debates and influencing legal outcomes. They have convincingly chronicled how conceptions of taxation have changed with changing political, social, and economic contexts. They have made a major contribution to the comparative-historical literature on fiscal policy. The authors, in short, have written an analytically rigorous account—akin to a legal brief—identifying the key variables behind the rise and fall of “soak-the-rich” taxation.

Yet, in the process of providing a global, panoramic view of Western fiscal history, the authors have flattened the richness of the past. Their otherwise fascinating account does not pay sufficient attention to pre-war patterns of tax law and policymaking that laid the groundwork for subsequent changes. It does not appreciate the intensity of opposition to heavy taxes on the rich, even during wartime. And their story unabashedly embraces technological determinism, as it unflinchingly accepts the conventional notion that wars are discrete events that can be easily disentangled from peacetime.

The book's analytical rigor in supporting its central claims comes with a price: the apparent tradeoff of simplifying the complexity of the past. In their social scientific efforts to identify and defend *the* one key independent or explanatory variable, the authors frequently elide the interdependency of historical factors, especially in their overly determined explanations of the post-1970s decline of taxes on the wealthy. Similarly, in their search for a generalizable theory to explain the rise and fall of steeply progressive taxes, Scheve and Stasavage discount the importance of human agency and historical contingency. Rather than uncover the plasticity and complexity of previous historical moments, the authors construct an overly deterministic model of historical change

that too neatly categorizes the messiness of the past. As a result, they conclude their study with a rather pessimistic prediction about the future of progressive taxation—a prediction that may misinterpret or exaggerate the lessons of history.

This Review Essay is divided into two parts. Part I examines more closely the book's central claims and its original contributions to the comparative and historical literature on taxation and fiscal policy. The authors adroitly show how ideational constructs have interacted over time with changing material conditions to shape tax laws and policies. Part II explores the unavoidable tradeoffs that come from conducting a broad social scientific study of the past. It explains how the benefits of the book's analytical rigor come at the perhaps unavoidable cost of obscuring historical complexity. This Essay concludes by examining the book's main implications for the future, and how the authors' predictions about the fate of progressive taxation may be overly pessimistic.

I. CONCEPTS, CONDITIONS, AND CONSEQUENCES

To be sure, Scheve and Stasavage are not the first scholars to explore when and why countries tax the rich. Indeed, part of their goal is to challenge the “received wisdom,” which relies mainly on the spread of democracy and increasing inequality as explanatory factors for the rise of steeply progressive taxation.⁹ In the process of challenging these two traditional explanations, the authors posit their central claim: “Societies tax the rich when people believe that the state has privileged the wealthy, and so fair compensation demands that the rich be taxed more heavily than the rest.”¹⁰

Throughout the rest of the monograph, the authors elaborate on their thesis. They explain the political concept that captures the notion of “fair compensation.”¹¹ They identify the changing historical conditions—especially new technologies which fostered the mass mobilization for war—that provided lawmakers with opportunities to leverage salient political concepts to enact highly progressive income and inheritance taxes on the rich. And they conclude by discussing the consequences of the combination of political concepts and historical

9. *Id.* at 12.

10. *Id.* at 4.

11. *Id.*

conditions—consequences both for the rise and fall of “soak-the-rich” taxation and for present and future tax policy.

A. *The Received Wisdom*

There are two versions of what Scheve and Stasavage describe as the “received wisdom” or conventional explanation for the rise of high taxes on the rich. The first, which the authors claim is the “dominant narrative of the politics of redistribution,”¹² highlights the importance of democracy.¹³ The second underscores increasing economic inequality.¹⁴ Neither, according to Scheve and Stasavage, sufficiently explains the rise of high taxes on the rich.

The initial “democracy hypothesis”¹⁵ itself has two parts. The first holds that as suffrage expands, all political parties begin to select tax policies that appeal to newly franchised poor and middle-class voters—voters who inherently have a greater economic self-interest in shifting the tax burden to wealthy taxpayers.¹⁶ “With an expanded suffrage,” write Scheve and Stasavage, “parties of the right would face an incentive to shift left in order to remain electable.”¹⁷ Therefore, according to this argument, the expansion of the franchise should lead directly to higher taxes on the rich, regardless of which type of political party is trying to gain or hold power.

As Scheve and Stasavage demonstrate, the overall historical evidence does not always support this version of the democracy hypothesis. The authors compare the top marginal tax rates for the twenty countries in their data set to debunk this conventional wisdom. Although they concede that the average top income tax rate for countries with universal male suffrage in the pool (40.7%) is significantly greater than

12. *Id.* at 63.

13. *Id.* at 73; see PABLO BERAMENDI, *THE POLITICAL GEOGRAPHY OF INEQUALITY: REGIONS AND REDISTRIBUTION* (2012); Alberto Alesina & George-Marios Angeletos, *Fairness and Redistribution*, 95 AM. ECON. REV. 960 (2005).

14. TAXING THE RICH, *supra* note 7, at 15; see THOMAS PIKETTY, *CAPITAL IN THE TWENTY-FIRST CENTURY* (2014) (Arthur Goldhammer trans.); TOP INCOMES OVER THE TWENTIETH CENTURY: A CONTRAST BETWEEN CONTINENTAL EUROPEAN AND ENGLISH-SPEAKING COUNTRIES (A.B. Atkinson & T. Piketty eds., 2007).

15. TAXING THE RICH, *supra* note 7, at 12–14.

16. *Id.* at 63.

17. *Id.*

the average top income tax rate for countries without universal male suffrage (4.5%), they correctly note that “[t]his sort of cross-country evidence is generally not compelling in determining whether and to what extent democracy leads to heavy taxation of the rich.”¹⁸ They stress that greater historical specificity is necessary.¹⁹ Thus, they focus, instead, on longitudinal data within countries to show the importance of change over time within one jurisdiction.²⁰ By examining change over time within countries, they begin to take history seriously.

The empirical evidence from within countries provides even less support for this prong of the democracy thesis. Scheve and Stasavage examine the top income tax rates for the ten years before and after a country adopts full universal male suffrage. This analysis shows that while one country (the United Kingdom) did witness a substantial increase in top marginal income tax rates after the transition to universal male suffrage,²¹ the other 14 countries in the pool did not see an increase in top income tax rates after greater democratization of the ballot box.²² Moreover, the average top tax rate of the entire pool remained relatively constant (roughly 20%) in the year before universal male suffrage and for the ten years after the transition.²³ From this evidence, the authors conclude that it is difficult to believe that greater voting power leads to, or causes, increased taxation on the rich.

The second variant of the democracy thesis follows up on the expansion of voting to focus on the dynamics of political power. This “partisan hypothesis” suggests that “the impact of the inclusion of poor and middle-class voters is only fully realized when political parties of the left actually lead governments.”²⁴ When liberal, labor, or socialist

18. *Id.* at 64–65.

19. *Id.* at 65.

20. *Id.*

21. The top marginal income tax rate in the United Kingdom increased from 8.3% in 1914 (four years before universal male suffrage) to over 45% in the years following the introduction of universal male suffrage. See Federica Genovese, Kenneth Scheve & David Stasavage, *Comparative Income Taxation Database (CITD): Top Marginal Income Tax Rates in the UK, 1799–2010*, STAN. U. LIBR., <https://data.stanford.edu/comparative-income-taxation-database-citd> (submitted Feb. 28, 2014; last updated 2016).

22. TAXING THE RICH, *supra* note 7, at 65–67.

23. *Id.*

24. *Id.* at 69–70.

party governments take power, this argument predicts higher taxes on the wealthy.

Once again, the historical evidence provides mixed support for this conventional claim about the power of liberal democracy. Scheve and Stasavage begin with cross-country comparisons. Throughout the course of the twentieth century, there is little evidence from their data to suggest that politically left governments are significantly more inclined to tax the rich. In 1925, for instance, the two countries in their data set with liberal or left governments actually had an average top tax rate (21.8%) that was lower than the average top rate (33.4%) for the other 17 countries with non-left governments.²⁵ By 1950, there were more left governments in the sample, but they were taxing the rich at only marginally higher rates than non-left governments.²⁶ That trend continues well into the 1970s and through to 2000.²⁷

Turning to the more specific analysis of change over time within countries, the authors concede that there is some support for the partisanship thesis.²⁸ By examining top tax rates five years before and after the establishment of a left government, Scheve and Stasavage show that liberal, labor, or socialist parties often do bring with them gradual increases in taxes on the rich.²⁹

Still, these tax hikes are relatively small, rising only three or four percentage points on average.³⁰ More importantly, tremendous heterogeneity within the country-level data indicates that the partisan hypothesis cannot be supported across the entire sample.³¹ While countries like the United Kingdom have a political history that supports the partisanship hypothesis in both directions, other nations such as Sweden completely contradict this theory.³² Greater voter participation and more robust democratic institutions may play a part in explaining high taxes on the rich, the authors conclude, but these explanations are not

25. *Id.* at 70.

26. *Id.* In 1950, there were 6 left governments that had an average top rate of 68.3% compared to the 14 non-left government that had an average top rate of 66.5%. *Id.*

27. *Id.*

28. *Id.*

29. *Id.* at 71.

30. *Id.* at 72.

31. *Id.*

32. *Id.*

robust enough to be generalized across space and time.³³ As serious social scientists, the authors are eager to generalize their findings, but one wonders if this desire for generalizability does not come at the price of obscuring the complexity of the past.

Beyond the “democracy hypothesis,” Scheve and Stasavage also analyze the argument that greater economic inequality has led to increased taxes on the rich. Here too, they are skeptical. There are several intuitive rationales for why increased inequality may lead to higher taxes on the rich. Voter self-interest, the perceived unfairness of unequal opportunities, or fears about the stability of a democratic order may all cause citizens to tax the wealthy more when income inequality is more prevalent or salient.³⁴

Despite the intuitive appeal of the inequality thesis, comparative-historical evidence does not support this claim. Using data constructed by a team of leading economists,³⁵ Scheve and Stasavage show that, at least in six Western, industrialized democracies, there is weak correlation between rising income inequality and higher taxes on the rich.³⁶ Over the course of the twentieth century, moreover, the relationship between inequality and higher taxes varies greatly. In the middle of the century, the correlation between these two variables strengthened considerably.³⁷ But by the mid-1970s, there is a profound reversal, with growing inequality being accompanied by lower marginal tax rates. From this evidence, the authors conclude, “there has been no stable static correlation between top shares of income and top rates of income taxation over the course of the twentieth century.”³⁸

In fact, what the historical evidence does show, according to Scheve and Stasavage, is that the causal arrows may run in the opposite direction. “What we do see,” the authors write, “are clear indications that high top rates reduce income inequality.”³⁹ Scheve and Stasavage concede the challenges of disentangling the relationship between inequality and high taxes on the rich, but ultimately they appear to have

33. *Id.*

34. *Id.* at 73–74.

35. WORLD WEALTH & INCOME DATABASE, <http://wid.world/> (last visited Mar. 18, 2018).

36. TAXING THE RICH, *supra* note 7, at 74.

37. *Id.* at 73.

38. *Id.* at 74.

39. *Id.* at 76.

great faith in their broad comparative data.⁴⁰ In the process, they seem to overlook how a more refined and detailed historical analysis of the development of “soak-the-rich” taxation in particular countries might shed greater light on the causal mechanisms behind the rise of progressive taxation.⁴¹

B. Political Concepts

If the spread of democracy and increasing inequality are insufficient explanations for the rise of steeply progressive taxes, what can explain why countries have taxed the rich? Why, in other words, doesn't Atlas shrug in the face of “soak-the-rich” taxation? The authors turn, first, to their hypothesis about the significance of political ideas or concepts, namely, the important role of “compensatory arguments” in framing tax policy debates. As a first principle, Scheve and Stasavage contend that liberal democracies are premised on the general normative belief that the state “ought to treat people as equals.”⁴²

Equal tax treatment, or “equality of sacrifice” with regards to taxation, can have multiple meanings, however. For some, equality in taxation may mean a fixed or lump-sum tax on all individuals.⁴³ For others, equal treatment may entail a flat tax rate on all citizens, whereby all pay the same percentage rate of taxation.⁴⁴ And still others may believe that treating citizens as equals implies a progressive tax, where graduated rates increase with rising income or wealth. The authors are interested mainly in how and why the last category has gained traction historically and sociologically in modern liberal democracies.

Steeply progressive taxes on the rich have been adopted, Scheve and Stasavage argue, because of the power of ideas. More specifically,

40. *Id.*

41. For examples of other scholarship that does, in fact, examine the historical development of progressive taxation within the United States, see generally STEVEN A. BANK ET AL., *WAR AND TAXES* (2008); BROWNLEE, *FEDERAL TAXATION*, *supra* note 5; TAX JUSTICE: THE ONGOING DEBATE, *supra* note 5.

42. *TAXING THE RICH*, *supra* note 7, at 24.

43. Peter Smith, *Lessons from the British Poll Tax Disaster*, 44 NAT'L TAX J. 421 (1991); see also Joseph J. Cordes, *Head Tax*, in *THE ENCYCLOPEDIA OF TAXATION AND TAX POLICY* 175, 175 (Joseph J. Cordes et al. eds., 2d ed. 2005).

44. See ROBERT E. HALL & ALVIN RABUSHKA, *THE FLAT TAX* (2d ed. 1995).

they claim that a “compensatory theory” of taxation has had a profound impact in framing fundamental tax policy debates.⁴⁵ According to this concept, “the rich should be taxed to compensate for the fact that they have been unfairly privileged by the state.”⁴⁶ Under this theory, “soak-the-rich” taxation is a form of corrective justice. It is meant to counterbalance an earlier advantage created by the state. Compensatory claims are “strongest when the rich owe their good fortune not just to being lucky but to being made lucky by state action. In such cases,” the authors explain, “the norm of the state treating citizens as equals has been violated, and so there is a compensatory argument for taxation of the rich to restore it.”⁴⁷ The state taxes the rich, according to this theory, not to penalize them, but to make up for past favoritism and to restore equal treatment for all citizens.

To underscore the importance of the compensatory theory, Scheve and Stasavage contrast it with the “ability to pay” doctrine. The latter, they accurately claim, stands for the belief that “those with more should be able to pay a higher rate of tax.”⁴⁸ Although they concede that “ability to pay arguments have had a substantial impact on attitudes toward taxing the rich,”⁴⁹ the authors too easily dismiss “ability to pay” as a flawed and “imprudent basis for policy.”⁵⁰ They point out the traditional critiques of ability to pay: (1) that it is difficult to implement in practice and (2) that some people have a philosophical objection to paying more in taxes on money they have rightfully earned through talent and effort.⁵¹ By stressing these two criticisms, the authors seem to use ability to pay doctrine as a foil to make the case for the political superiority of compensatory arguments.⁵²

Yet Scheve and Stasavage are not always clear and consistent in explaining the relationship between these two theories of taxation.

45. TAXING THE RICH, *supra* note 7, at 7.

46. *Id.* at 19.

47. *Id.* at 34.

48. *Id.* at 26.

49. *Id.*

50. *Id.* at 47.

51. *Id.*

52. Other scholars have leveled similar critiques against the “ability to pay” theory of taxation. *See, e.g.*, WALTER J. BLUM & HARRY KALVEN JR., THE UNEASY CASE FOR PROGRESSIVE TAXATION (1953); LIAM MURPHY & THOMAS NAGEL, THE MYTH OF OWNERSHIP: TAXES AND JUSTICE (2002).

After providing a rich intellectual history of the “ability to pay” doctrine and “compensatory arguments,” and the conventional critiques that have been leveled against them,⁵³ the authors appear to take an inconsistent position on the relationship between these two rationales for progressive taxation. On the one hand, they describe these two theories as contrasting or competing justifications for steeply progressive taxation on the wealthy. “The compensatory theory of progressive taxation provides an alternative to the ability to pay doctrine,” they write.⁵⁴ “Compensatory arguments have proved to be the most politically powerful claims in favor of progressive taxation.”⁵⁵ Compensatory theory is depicted as analytically distinct from, and often more influential than, the ability to pay doctrine.

On the other hand, the authors show that the genealogies of these ideas are often intertwined, and at times complementary. Some of the same thinkers and lawmakers who promoted the “ability to pay” logic, Scheve and Stasavage acknowledge, were also the progenitors of compensatory arguments, if not outright supporters.⁵⁶ Indeed, a more nuanced historical analysis might suggest that compensatory arguments were a subset of the ability to pay doctrine, rather than strictly distinct ideas. More importantly, Scheve and Stasavage seem to accept that ultimately these two concepts have worked in unison to support progressive taxation. “In the end,” the authors write, “the greatest support for taxing the rich will exist when it is possible to refer not only to ability to pay, but also to a compensatory argument for making taxes progressive.”⁵⁷ Collaboration rather than competition between the two concepts seems to be most important.

53. While the book’s intellectual history stretches from sixteenth-century Florence to the U.S. present, it overlooks how the genealogy of these two ideas stretches even further back in time to at least ancient Athens. *See, e.g.*, Maureen B. Cavanaugh, *Democracy, Equality, and Taxes*, 54 ALA. L. REV. 415 (2003); David Cay Johnston, *Donald Trump’s Tax Reform Plan Won’t Really Reform Anything*, DAILY BEAST (Feb. 22, 2017), <http://www.thedailybeast.com/donald-trumps-tax-reform-plan-wont-really-reform-anything>.

54. TAXING THE RICH, *supra* note 7, at 47.

55. *Id.* at 33.

56. *Id.* at 33. One early scholar who used both arguments was Edwin R.A. Seligman. *See generally* EDWIN R.A. SELIGMAN, *ESSAYS IN TAXATION* (MacMillan & Co. 1895).

57. TAXING THE RICH, *supra* note 7, at 47.

C. Historical Conditions

A focus on the general political concept of fairness and the more specific arguments for compensatory taxation are merely the starting points for the book's main thesis. Scheve and Stasavage acknowledge that while ideas are important, they can only lead to effective law and policy under the appropriate set of historical conditions. For them, the key historical condition is mass mobilization for war.

Indeed, for Scheve and Stasavage, large-scale warfare is the crucial and necessary context for the rise of steeply progressive taxation on the rich. For it is during wars, the authors contend, that compensatory arguments for taxation have their greatest traction. “[W]ar mobilization changed beliefs about tax fairness,” the authors note.⁵⁸ “It created an opportunity for new and compelling compensatory arguments.”⁵⁹ Using historical case studies of World War I mobilization in the United Kingdom, France, Canada, and the United States, the authors explain the two aspects of wartime mass mobilization that provided the necessary preconditions for “soak-the-rich” taxation.

The first was the new material inequities created by modern wartime conscription. Once the United States, for example, entered World War I in April 1917 and began to conscript men for wartime service, Scheve and Stasavage observe, “[t]he impact on fairness arguments about taxation was almost immediate and was evident across the country.”⁶⁰ Although Scheve and Stasavage miss this opportunity to provide precise quantitative evidence of the extent of wartime sacrifice in terms of blood and treasure, they do provide ample qualitative evidence of the historical thinking at the time. Economic experts and lawmakers alike argued that because the conscription of men was a tax-in-kind on the masses, it was necessary to tax high incomes and wealth so as to approximate equality of sacrifice in the war effort. Calls to match the conscription of men with the “conscription of income and wealth” rang throughout the halls of Congress and in small town newspapers across the country.⁶¹

The second aspect of modern war mobilization that enhanced the currency of compensatory arguments was the tremendous business

58. *Id.* at 135.

59. *Id.*

60. *Id.* at 157.

61. *Id.* at 20, 157–59.

profits generated by global conflicts. Although the authors provide sparse quantitative evidence about World War I war profiteering, the existing scholarship has well documented how both world wars allowed certain sectors of the economy to profit handsomely from the international conflicts. Other scholars have documented the extent of war-time profiteering, and how the creation of such innovative levies as the “excess-profits tax” was an attempt to curb such seemingly undeserved profiteering.⁶² Many people at the time believed that these wartime profits were, in fact, undeserved. They were, after all, the result mainly of state involvement in the conflict rather than the entrepreneurship or management wisdom of business leaders. As a result, lawmakers in each of the countries studied by the authors enacted not only steeply progressive income tax laws but also graduated capital levies and wartime profits taxes. Taxing these undeserved gains was one way for the state to restore equal treatment.

D. Present-Day Consequences

The focus on the historical context of “[m]ass mobilization for war” is a critical component to the book’s main thesis.⁶³ Not only does the wartime context help explain the impact of past arguments for “compensatory taxation,” it also supports the authors’ contentions about the more recent decline of “soak-the-rich” taxation. Indeed, one of the book’s most provocative claims is that advances in military technology and strategy since the 1970s have radically altered social and political perceptions of warfare, and thus undermined the key historical conditions necessary for the influence of compensatory arguments supporting steeply progressive taxation. “Over the last two centuries the most politically powerful arguments in favor of heavy taxation of the rich were compensatory claims made in a context of mass mobilization for war,” Scheve and Stasavage observe.⁶⁴ “[A]s countries like the United States transitioned away from an era of mobilization, parties of the left were

62. See *THE ECONOMICS OF WORLD WAR I* (Stephen Broadberry & Mark Harrison eds., 2005); *THE ECONOMICS OF WORLD WAR II: SIX GREAT POWERS IN INTERNATIONAL COMPARISON* (Mark Harrison ed., 1998); HUGH ROCKOFF, *AMERICA’S ECONOMIC WAY OF WAR: WAR AND THE US ECONOMY FROM THE SPANISH-AMERICAN WAR TO THE PERSIAN GULF WAR* (2012).

63. *TAXING THE RICH*, *supra* note 7, at 20.

64. *Id.* at 213.

deprived of the compensatory war sacrifice argument that had proven so powerful.”⁶⁵

Why have the United States and other advanced industrialized nations moved away from an era of war mobilization? Military conflicts, to be sure, continue to riddle the globe. But what has changed, Scheve and Stasavage contend, is the way that these conflicts are fought. Unlike the early twentieth century, when international rivalries led geopolitical powers to wage wars with mass armies, conflicts today are frequently more constrained. In the first half of the twentieth century, with the establishment of railroads throughout the world, powerful nation-states waged wars by moving mass armies across large land masses.⁶⁶ By contrast, in the second half of the twentieth century, the development of advanced weapons systems has decreased the need for the deployment of mass armies.⁶⁷ The creation of cost effective and more precise weapons in the last few decades, Scheve and Stasavage conclude, has “arguably spelled the end of the mass army and with it the potential for compensatory arguments involving the conscription of wealth.”⁶⁸

Contemporary warfare, according to the authors, has changed in other ways as well. The end of the Cold War and the decline of international rivalries more generally, Scheve and Stasavage maintain, have decreased the likelihood of large-scale wars.⁶⁹ Simply put, present-day great powers are more likely to wage electronic cyber warfare rather than traditional material war.⁷⁰ Even when they do engage in traditional warfare, today’s large armies are frequently facing internal rebels rather than each other. “When they are deployed today, great power armies are much more likely to find themselves fighting insurgencies against which a mass army is less effective,” note the authors.⁷¹ With the decline of traditional geopolitical rivalries and the advent of new technology, the meaning of war, itself, has changed.

65. *Id.*

66. *Id.* at 175–81.

67. *Id.* at 181–84.

68. *Id.* at 181.

69. *Id.* at 183–84.

70. See CONFLICT IN CYBER SPACE: THEORETICAL, STRATEGIC AND LEGAL PERSPECTIVES (Karsten Friis & Jens Ringsmose eds., 2016); FRED KAPLAN, DARK TERRITORY: THE SECRET HISTORY OF CYBER WAR (2016).

71. TAXING THE RICH, *supra* note 7, at 184.

There is little doubt that international rivalry and technological change have shaped the history of modern warfare. But the authors' unabashed embrace of technological determinism seems misplaced and in tension with their otherwise sharp historical analysis. "The era of the mass army, and therefore the conscription of wealth, was to a great extent technologically determined," the authors proudly proclaim.⁷² They stress the particular importance of the development of mass railway systems. "Even accounting for the other factors," write Scheve and Stasavage, "there is a clear and unambiguous correlation between the extent of a country's railway network and the scale of military mobilization."⁷³ Although the authors are careful to note that this correlation may not imply causation, their conclusion is clear: they believe the advent of the mass railroad was the critical factor in the increase of military mobilization.

In some sense, this turn to a "hard" technological determinism may be understandable. Unlike their primary focus on the power of abstract ideas, such as compensatory arguments for fairness, the turn to technology as a driver of historical change provides the authors with a comfortable sense of causal efficacy. The tangibility of technology serves as a "hard" antidote to the "softness" of ideas.⁷⁴

Yet this implicit faith in the autonomy of technology as a historical agent seems out of place. Not only is such determinism "cold and mathematical" as American philosopher William James once noted, it also implies a kind of inescapable necessity.⁷⁵ It is as if the development of a mass railway system inextricably led to the mass mobilization for war. Like all technologies, railroads were simply tools. The use of railroads for mass war mobilization in the first half of the twentieth century was a political decision made by human agents. As scholars of Science and Technology Studies have long noted, one of the principal problems with the "hard" version of technological determinism is that

72. *Id.* at 170.

73. *Id.* at 178.

74. For more on the differences between "soft" and "hard" technological determinism, see Leo Marx & Merritt Roe Smith, *Introduction to DOES TECHNOLOGY DRIVE HISTORY?: THE DILEMMA OF TECHNOLOGICAL DETERMINISM*, at ix, xii–xiii (Merritt Roe Smith & Leo Marx eds., 1994).

75. WILLIAM JAMES, *The Dilemma of Determinism*, in *ESSAYS IN PRAGMATISM* 37, 40 (Alburey Castell ed., 1948).

it leaves little space for human agency and intervention; it absolves us from seriously examining the way technology is made and used.⁷⁶

To be sure, the authors are careful about the correlation between railroads and military mobilization. They even consider and discredit the possibility of reverse causality: that states may have expanded railways to mobilize mass troops.⁷⁷ Still, their ultimate conclusion is unmistakable: “The era of the mass army,” they write, “was dependent on a specific state of technological development.”⁷⁸ Indeed, they go even further. From this premise, they conclude that because it is unlikely that we will see a return to the technologically driven era of mass mobilization for war, compensatory arguments for taxing the rich are unlikely to hold sway.⁷⁹

This prediction may be the most troubling aspect of the authors’ embrace of technology as the main driver of history. Rather than modestly limit their technological determinism to the “soft” end of the spectrum by simply identifying the key role that railroads have played historically, they seem overly eager to draw on the lessons of history to make a more generalizable social scientific claim about the predictive value of their central thesis.⁸⁰ They seem to have transformed a useful heuristic of historical analysis into a normative prediction. They have privileged forecasting over forensics.

II. UNAVOIDABLE TRADEOFFS: AGENCY, CONTINGENCY, AND HISTORICAL COMPLEXITY

In some ways, Scheve and Stasavage’s “hard” technological determinism is a result not only of their desire to provide tangible causal efficacy for

76. Sally Wyatt, *Technological Determinism Is Dead; Long Live Technological Determinism*, in *THE HANDBOOK OF SCIENCE AND TECHNOLOGY STUDIES* 165, 173–74 (Edward J. Hackett et al. eds., 3d ed. 2008).

77. *TAXING THE RICH*, *supra* note 7, at 178.

78. *Id.* at 184.

79. *Id.*

80. As political scientists, Scheve and Stasavage have made the valid and legitimate methodological choice to use historical data and past patterns to anticipate and predict the future. But, as this essay and other reviewers have suggested, the conclusions they draw about future tax law and policy do not inevitably follow from their data and historical evidence. For other reviewers who have made a similar point, see generally Daniel Hemel, *Taxation as Compensation*, *NEW RAMBLER* (May 25, 2016), <http://newramblerreview.com/book-reviews/economics/taxation-as-compensation> (book review).

their main arguments; it is also the product of a broad social scientific study that eschews the nuances and intricacies of historical analysis. This is less because of authorial intent than it is an inexorable side effect of trying to use the past to support generalizable social scientific claims, especially those that focus narrowly on independent variables. The book's analytical rigor, thus, comes with the seemingly unavoidable tradeoff of simplifying the complexity of the past.

To be sure, the authors treat the study of the past just as most historians would. They realize that their use of comparative and historical data is meant to convey a rough representation of previous tax laws and policies aimed at taxing the rich. They are, in a sense, taking a sample size of past experience. This is what all studies of the past attempt to do. The best a student of the past can hope for, as historian John Lewis Gaddis reminds us, "is to *represent* reality: to smooth over the details, to look for larger patterns, to consider how you can use what you see [from the past] for your own purposes."⁸¹

Yet, in the process of searching for a "usable past" by identifying broad patterns of cause and effect,⁸² Scheve and Stasavage seem to elide the importance of several key aspects of serious historical analysis. They pay little attention, for example, to the power of human agency and the importance of historical sequence. Although their focus on "compensatory arguments" implies human action, the reader is given little insight into the menu of choices that important lawmakers faced over time and during critical historical periods. Similarly, while Scheve and Stasavage underscore how wartime conditions provided the critical context for heavy taxes on the rich, they downplay the political and social contestation that accompanied the enactment of steeply progressive taxes on the rich, even during wartime. As a result, the authors have chronicled an overly deterministic and perhaps even simplistic account of past progressive taxes on the wealthy.

81. JOHN LEWIS GADDIS, *THE LANDSCAPE OF HISTORY: HOW HISTORIANS MAP THE PAST* 7 (2002).

82. Although Scheve and Stasavage do not use the term "usable past," their attempt to draw direct lessons for today from historical experience is part of a long tradition of historical analysis. See generally PETER NOVICK, *THAT NOBLE DREAM: THE "OBJECTIVITY QUESTION" AND THE AMERICAN HISTORICAL PROFESSION* (1988).

A. Agency

There is no denying that large-scale structural changes like the onset of military conflicts, changing technology, and shifting geopolitical rivalries have had a profound impact on the history of taxation and fiscal policy. Indeed, there is a vast and growing social scientific, legal, and historical literature on the development of taxation and fiscal institutions during wartime.⁸³ Like *Taxing the Rich*, much of this existing literature overlooks the interplay among individual decisions, social movements, and institutional development—the interplay, that is, between agency and structure.⁸⁴ While higher-level explanations of structural change can be insightful, especially in confirming social and political theories about historical development, they frequently overlook how political power, wielded by particular individuals and groups during crucial historical moments, can shape institutions like tax laws and policies.⁸⁵

Consider, for example, the United States during World War I. The authors devote a chapter (Chapter 6) to exploring how the United States and several other Western nation-states taxed the rich during the Great War. In this rather thin analysis, Scheve and Stasavage contend that their specific case studies support their central thesis that wartime contexts provided the opportunity for lawmakers to convince their colleagues and their constituents of the need for compensatory taxes on the rich. “[A]s a result of the war,” they note, “both elites and ordinary people changed the type of fairness arguments they employed when justifying their preferred tax system.”⁸⁶ The raw persuasive power of rational

83. Colleagues and I have elsewhere described this strand of legal and social scientific historical literature as “militarist theory.” See Isaac William Martin, Ajay K. Mehrotra & Monica Prasad, *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, 1–27 (Isaac William Martin et al. eds., 2009).

84. For more on the social science literature that does explore the tension between agency and structure, see generally William H. Sewell Jr., *A Theory of Structure: Duality, Agency, and Transformation*, 98 *AM. J. SOC.* 1 (1992).

85. James Kloppenberg makes a similar claim about the importance of history to the literature on “historical institutionalism.” See generally James T. Kloppenberg, *Institutionalism, Rational Choice, and Historical Analysis*, 28 *POLITY* 125 (1995).

86. *TAXING THE RICH*, *supra* note 7, at 135.

political arguments, they imply, carried the day. In the United States, this meant that once war was formally declared in April 1917, there was an “almost immediate” shift in the impact of fairness arguments “evident across the country.”⁸⁷

Although the authors acknowledge that a coalition of populist and progressive lawmakers influenced the Democratic Party in adopting steeply graduated income and profits taxes,⁸⁸ little is made of the broader and arguably more important political shift in national politics and policymaking that came just *before* the war—a shift that had a consequential impact on the future trajectory of American tax policy. The election of Woodrow Wilson in 1912 was, as many scholars have shown, a watershed in American political history.⁸⁹ The four-way race for president demonstrated the political potency of left-leaning parties, such as the Bull Moose Party led by Theodore Roosevelt and the Socialist Party of America led by Eugene V. Debs. Wilson’s victory and the strong showing by Roosevelt validated the nation’s embrace of progressive ideals, including direct and graduated taxation.⁹⁰

Wilson’s presidential victory itself was the result of a much deeper shift in American politics. As numerous historians have shown, populist and progressive-era political and social reforms were created and sustained not only by key individual leaders but also by organized political interests, including agricultural associations, organized labor, suffragettes, conservationists, and the like.⁹¹ The power and agency of these types of groups seem wholly absent from *Taxing the Rich*.⁹²

The social and political forces and groups that propelled liberal Democrats and progressive Republicans into office in 1912 also led the charge for the ratification of the Sixteenth Amendment in the following

87. *Id.* at 157.

88. *Id.* at 154.

89. See generally JAMES CHACE, 1912: WILSON, ROOSEVELT, TAFT & DEBS—THE ELECTION THAT CHANGED THE COUNTRY (2004); ARTHUR S. LINK, WOODROW WILSON AND THE PROGRESSIVE ERA, 1910–1917 (Henry Steele Commager & Richard B. Morris eds., 1954).

90. See, e.g., PROGRESSIVISM AND THE NEW DEMOCRACY (Sidney M. Milkis & Jerome M. Mileur eds. 1999).

91. See, e.g., MICHAEL MCGERR, A FIERCE DISCONTENT: THE RISE AND FALL OF THE PROGRESSIVE MOVEMENT IN AMERICA, 1870–1920 (2003).

92. For a more elaborate critique about the absence of organized political contention in *Taxing the Rich*, see generally Isaac William Martin, Book Review, 46 CONTEMP. SOC. 355 (2017).

year.⁹³ That amendment invalidated the 1895 U.S. Supreme Court decision striking down an income tax.⁹⁴ In 1913, President Wilson and his Treasury Secretary (and son-in-law) William Gibbs McAdoo led an alliance of powerful progressive Democrats and Republicans in adopting the first *peacetime* progressive income tax, and hence set the foundation for the “soak-the-rich” tax policies of World War I.⁹⁵ This new formation of powerful individuals made a conscious decision to steer wartime tax policy in a particular direction. Thus, it was not only ideas about “compensatory arguments” and wartime conditions that led to the rise of steeply progressive taxes on the rich; the new configuration of political power was equally important.

Of course, Scheve and Stasavage are not oblivious to the significance of political power. As political scientists, they are acutely aware of the importance of partisan politics. In their analysis of the background of U.S. tax politics, they concisely document how “the income tax had been an important dimension of political conflict in American politics” during the Civil War and for much of the Gilded Age and Progressive Era.⁹⁶ Still, in their unyielding efforts to bolster their main thesis, they provide little primary source evidence of what U.S. lawmakers actually said and did about taxation, how they actually wielded their political power. Instead, the authors rely almost exclusively on secondary historical sources and a brief analysis of newspapers to support their claim that American elites and ordinary people changed the arguments they used to back high taxes on the rich.⁹⁷

93. U.S. CONST. amend. XVI. For more on the ratification of the Sixteenth Amendment, see generally JOHN D. BUENKER, *THE INCOME TAX AND THE PROGRESSIVE ERA* (1985); RANDOLPH E. PAUL, *TAXATION IN THE UNITED STATES* (1954); SIDNEY RATNER, *AMERICAN TAXATION: ITS HISTORY AS A SOCIAL FORCE IN DEMOCRACY* (1942). For a contrasting interpretation of the emergence of the Sixteenth Amendment and the income tax, see generally ROBERT STANLEY, *DIMENSIONS OF LAW IN THE SERVICE OF ORDER: ORIGINS OF THE FEDERAL INCOME TAX, 1861–1913* (1993).

94. *Pollock v. Farmers' Loan & Trust Co.*, 158 U.S. 601 (1895).

95. See BROWNLEE, *FEDERAL TAXATION*, *supra* note 5, at 89–106; DAVID M. KENNEDY, *OVER HERE: THE FIRST WORLD WAR AND AMERICAN SOCIETY* 93–143 (1980); AJAY K. MEHROTRA, *MAKING THE MODERN AMERICAN FISCAL STATE: LAW, POLITICS, AND THE RISE OF PROGRESSIVE TAXATION, 1877–1929*, at 242–332 (2013).

96. *TAXING THE RICH*, *supra* note 7, at 151.

97. *Id.* at 156–59.

Likewise, the authors seem to discount historical evidence that runs counter to their central claim. The adoption, for instance, of the first *peacetime* progressive income tax in 1913 amid massive inequality and outside the context of wartime mass mobilization is given short shrift by the authors.⁹⁸ The 1913 income tax law lowered regressive consumption taxes such as the tariff and implemented a graduated income tax with a top rate of seven percent.⁹⁹ Although such a top marginal income tax rate may appear modest by today's standards, it was a notable feat for the federal government to enact such a graduated tax aimed exclusively at wealthy elites.¹⁰⁰ At the time, progressive lawmakers faced tremendous resistance from the rich and their representatives in Congress. Many of the same legislators who opposed the Sixteenth Amendment also resisted the new tax law.¹⁰¹

Scheve and Stasavage downplay the resistance to the 1913 tax law, describing it as “modest.”¹⁰² They also write off how important the new income tax was in both attacking the massive inequalities at the time and laying the foundation for future tax hikes. “The most important observation for our purposes,” they write, “is that, after two decades of conflict, amid highly politicized inequality, the end result was an income tax with a top rate of only 7 percent.”¹⁰³ The implication that a top marginal rate of seven percent was somehow insufficient is highly ahistorical. As primary evidence from the time period shows, the many rich Americans who had to pay the new income tax saw it as a serious threat to their wealth and status. So too did the U.S. Supreme Court when it struck down the more moderate 1894 income tax.¹⁰⁴

Similarly, the authors seem to ignore the importance of historical sequence in understanding how World War I taxes on the rich came

98. *Id.* at 155.

99. The 1913 income tax levied a “normal” tax of 1% on incomes above \$3,000 for single persons (\$4,000 for married couples) and had a maximum “surtax” rate of 6% for incomes over \$5,000. Revenue Act of 1913, Pub. L. No. 63-16, § II(A), (C), 38 Stat. 114, 166–68 (1913).

100. See W. Elliot Brownlee, *Historical Perspective on U.S. Tax Policy Toward the Rich*, in DOES ATLAS SHRUG?, *supra* note 6, at 29.

101. MEHROTRA, *supra* note 95, at 277.

102. TAXING THE RICH, *supra* note 7, at 155.

103. *Id.*

104. See BROWNLEE, FEDERAL TAXATION, *supra* note 5, chs. 3–4; RATNER, *supra* note 93, at chs. 14–15.

into being. Rather than studying the chronology of seminal events, human actions, and structural forces, Scheve and Stasavage are preoccupied in marshalling evidence to support their central thesis about the significance of war. “Even with democratic institutions and with individuals making ability to pay arguments,” they note, “on the eve of World War I the wealthy in the United States were still very lightly taxed.”¹⁰⁵ The main inference seems to be that the war was the central cause of the tax hikes on the rich. In their relentless attempt to suggest that pre-war taxes were modest, the authors ignore how these taxes—which were enacted by democratic institutions and by human actors concerned about inequality—became the foundation for the wartime “soak-the-rich” tax state. In this sense, World War I may have been less the cause of higher taxes on the rich, as the authors maintain, than simply a triggering event—an event that released forces created by more deep-seated democratic developments and long-standing concerns about the growing concentration of wealth.¹⁰⁶

B. Contingency

Overlooking the importance of human agency and historical sequence is not the only drawback that comes from positing a grand theory of historical change. With its desire to offer a universalistic explanatory thesis, *Taxing the Rich* does not explore the multiplicity of possible pathways that tax policy could have taken in the past. It fails, in short, to take historical contingency seriously. While the development of heavy taxes on the rich was, as the authors concede, a path-dependent process,¹⁰⁷ the book investigates only a limited number of “critical junctures” in the overall development of progressive taxation.¹⁰⁸ And even when it does

105. TAXING THE RICH, *supra* note 7, at 155.

106. For more on the subtle distinction between historical “causes” and “triggers,” see, for example, Lal Jayawardena, *Preface* to THE GOLDEN AGE OF CAPITALISM: REINTERPRETING THE POSTWAR EXPERIENCE, at v, vi (Stephen A. Marglin & Juliet B. Schor eds., 1990).

107. TAXING THE RICH, *supra* note 7, at 22.

108. For more on path-dependency theory and the importance of critical junctures to that theory, see generally DOUGLASS C. NORTH, INSTITUTIONS, INSTITUTIONAL CHANGE AND ECONOMIC PERFORMANCE (1990); PAUL PIERSON, POLITICS IN TIME: HISTORY, INSTITUTIONS, AND SOCIAL ANALYSIS (2004); Paul A. David, *Clio and the Economics of QWERTY*, 75 AM. ECON. REV., no. 2, May 1985, at 332.

examine key wartime contexts, the book does not show how steeply graduated income and profits taxes on the rich were just one of many different policy options.

One possible reason why the authors miss an opportunity to study potential paths not taken is because of their thin depiction of state power and the lawmaking process. Throughout their case studies in Chapter 6, Scheve and Stasavage focus on the arguments made by lawmakers, economic theorists, and even newspaper editors—all in an effort to show how the wartime context led to a shift in rationales and justifications for taxing the rich. The authors, however, pay little attention to the details of the legislative process or the many ways in which state power is exercised and challenged. As a result, they overlook the political and social contestation that occurred over various forms of war financing. They thus fail to uncover the potential alternative paths of past tax policy development.

In their case study of the United Kingdom, for example, the authors provide a persuasive argument for how and why compensatory arguments became the main source of support for steeply progressive taxes on the rich.¹⁰⁹ They conduct a systematic analysis of nearly all of the war financing speeches made in parliament immediately before the war, during the conflict, and shortly afterwards. Their study shows that “the war dramatically increased the use of compensatory arguments.”¹¹⁰ According to their quantitative calculations, “[t]he percentage of fairness arguments that were compensatory increased by a factor of ten, to 62 percent.”¹¹¹

While this broad statistical analysis is persuasive in showing the shifting legislative rhetoric and rationales for heavy taxes on the rich, it treats the British nation-state as a monolith. Such an account ignores not only how other government experts, such as officials at the U.K. Treasury and Inland Revenue, felt about the implementation of tax policy but also how other lawmakers and private stakeholders may have challenged the supposedly growing consensus behind heavy taxes on the rich. A deeper qualitative analysis of how other parts of the British state and private constituencies responded to the parliamentary

109. TAXING THE RICH, *supra* note 7, at 136–45.

110. *Id.* at 143.

111. *Id.* at 143–44.

debates and the enactment of new laws could have shed light on these important questions.¹¹²

Indeed, a greater focus on the details of lawmaking could also uncover the contested nature of the legislative process, and the alternative options that government officials faced. Although Scheve and Stasavage do, from time to time, acknowledge that certain groups, such as business leaders, protested high wartime taxes,¹¹³ they do not document the intensity of these complaints, and how they may have shaped the trajectory of tax policy. They overlook those times and places when and where Atlas may have been willing to shrug.

One reason for this oversight is the book's exclusive reliance on published primary and secondary historical sources. Not surprisingly, business leaders and other wealthy individuals were publicly reticent in complaining about high taxes during World War I because they did not want to be perceived as unpatriotic. This was certainly evident in the United States. During the wartime crisis, most Americans wanted to display their patriotic commitment to shared sacrifice.¹¹⁴ Nonetheless, influential business leaders in the United States regularly wrote private (unpublished) letters to lawmakers and Treasury officials to complain about the enactment and enforcement of excess-profits taxes and to suggest alternative means of financing the war. Research limited to published sources naturally misses these more subtle forms of protest.¹¹⁵

112. For such a history, see, for example, MARTIN DAUNTON, *JUST TAXES: THE POLITICS OF TAXATION IN BRITAIN, 1914–1979* (2007).

113. In the U.K. context, the authors write that “[a] number of firms complained that the Excess Profits Duty had an unequal incidence across industries because of arbitrary differences in their prewar standards of profits.” *TAXING THE RICH*, *supra* note 7, at 145. Still, the authors leave this important moment of contestation understudied when they conclude just a few sentences later: “But overall, support for war profits taxes resonated across the political spectrum. This support existed because the tax was justified by a compensatory logic.” *Id.*

114. See CHRISTOPHER CAPOZZOLA, *UNCLE SAM WANTS YOU: WORLD WAR I AND THE MAKING OF THE MODERN AMERICAN CITIZEN* (2008); KENNEDY, *supra* note 95.

115. See MEHROTRA, *supra* note 95, at 337. The fact that business leaders only complained privately may support Scheve and Stasavage's point about how compensatory arguments during mass mobilization for war muffled objections to high taxes. But given that many of these business leaders

In the process of protesting wartime “soak-the-rich” taxes, many elites suggested other ways to finance the war. Heavy income and profits taxes, after all, were not the only ways to underwrite the conflict. American business leaders were especially agitated by the excess profits tax, which they claimed had a disparate impact on different types of businesses.¹¹⁶ Some recommended that the federal government consider loans and bonds, rather than increased taxes, to pay for the war. Economic experts, likewise, disagreed about wartime fiscal policy. Whereas some approved of the heavy reliance on income and profits taxes, as Scheve and Stasavage show,¹¹⁷ others believed that bonds and monetary policy ought to play a larger role.¹¹⁸ By discounting the tensions over war financing options, the authors miss the opportunity to underscore the plasticity of wartime financing decisions. While their account is, of course, historically accurate—a coalition of lawmakers and other elites did, indeed, coalesce around heavy taxes on the rich to finance World War I—they neglect to show that the policy that was ultimately adopted was just one among many possibilities.

C. Historical Complexity

By neglecting the malleability of past tax laws and policies, the authors tend to provide a simplistic account of the history of wartime taxes on the rich. At its base, their story is about how elites used compensatory arguments during wartime mass mobilization to enact steep taxes on the rich. In the language of the social sciences, their key independent or explanatory variable is the power of compensatory arguments. Their catalyst is wartime mass mobilization. And their dependent variable is

had significant influence over lawmakers, ignoring their protests conceals the alternative proposals that lawmakers had before them.

116. See, e.g., Edwin R.A. Seligman, *The Excess-Profits Tax*, 106 NATION 365 (Mar. 28, 1918).

117. TAXING THE RICH, *supra* note 7, at 135.

118. See WILLIAM G. McADOO, *CROWDED YEARS: THE REMINISCENCES OF WILLIAM G. McADOO* (1931). In fact, economic historians have estimated that World War I was financed with roughly 30% from taxes, 30% from monetary policy, and 40% from loans. See ROCKOFF, *supra* note 62, at 125; Hugh Rockoff, *Until It's Over, Over There: The U.S. Economy in World War I*, in *THE ECONOMICS OF WORLD WAR I*, *supra* note 62, at 310, 310–43.

taxes on the wealthy. This is, indeed, a persuasive tale, supported by compelling historical evidence.

Yet, their story is also highly reductionist, complete with an implied teleology. Rather than concede that there may have been more than one explanatory variable behind the rise of the “soak-the-rich” tax state, the authors are keen to discredit alternative hypotheses and the possibility that multiple explanations or variables may be overlapping and interactive. Instead of embracing the interdependency of key variables, they are focused on proving that their story is the only one that can possibly capture the essence of the past. In their narrative, compensatory arguments made during wars with mass conscription remain the essential actors. By disregarding the importance of human agency and historical contingency, their story perpetuates the historical fallacy that past events occurred along a linear and inexorable path to a natural or pre-determined outcome. In their account, past actors seem to anticipate future events and there is little possibility of unintended consequences.

A more critical historical account would, by contrast, embrace and perhaps even celebrate the messiness of the past.¹¹⁹ It would attempt to denaturalize our common understanding of the history of heavy taxes on the rich. Such a critical perspective would interrogate rather than accept fundamental premises to show the social and cultural power of historical categories. Even the notion of “wartime,” as legal historian Mary Dudziak has recently demonstrated, can be seen from a critical historical frame as a cultural artifice rather than a natural fact.¹²⁰ Dudziak notes, “‘wartime’ is an argument, rather than an inevitable feature of our world.”¹²¹ “Built into the very essence of our idea of wartime is the assumption that war is temporary,” she writes. “When we look at the full time line of American military conflicts, however, including the ‘small wars’ and the so-called forgotten wars, there are not many years of peacetime. This shows us that war is not an exception to normal peacetime, but instead an enduring condition.”¹²²

119. See Robert W. Gordon, *Critical Legal Histories*, 36 *STAN. L. REV.* 57 (1984).

120. MARY L. DUDZIAK, *WAR TIME: AN IDEA, ITS HISTORY, ITS CONSEQUENCES* (2012).

121. *Id.* at 136.

122. *Id.* at 5.

To be sure, Scheve and Stasavage do not endorse Dudziak's cultural sense of the slipperiness of wartime. Indeed, doing so would undermine one of their central claims. One of the key insights of Dudziak's study is to show that a nation can be at war without acknowledging the shared sacrifices that war demands—in both blood and treasure. The authors claim that this social obliviousness exists because of new military technology, which in recent years has eliminated the need for mass mobilization for war.¹²³ But Dudziak convincingly demonstrates that this blindness goes back much further than recent improvements in military technology and that its origins rest not with changing technology but with political arguments about what constitutes wartime and peace. By revealing the complex nature of historical time, Dudziak's convincing argument not only dismantles Scheve and Stasavage's faith in technological determinism, it also undercuts the authors' claims about the discrete nature of earlier international conflicts.

A more complex history of heavy taxes on the rich would also reveal the possibility of unintended consequences. *Taxing the Rich* frequently presumes that all tax laws and policies on the rich had the outcomes that their authors had intended. But that was not always the case. A careful examination of the historical development of past policies—frequently revealed through unpublished primary documents—would show that tax laws such as the World War I U.S. excess profits tax hardly had the effect its supporters expected. Whereas most lawmakers believed that such a levy would enact a heavy toll on the large-scale corporate businesses that were profiteering enormously from the war, Treasury officials soon learned that the excess profits tax was having a wildly unpredictable impact on all types of businesses owned by the wealthy.¹²⁴ In fact, large manufacturing corporations—the primary targets of the excess profits tax—were often eluding the incidence of the tax, while smaller businesses were often caught in its web. This unintended consequence remains unexamined in *Taxing the Rich* mainly because the book's broad social scientific narrative cannot account for it.¹²⁵

123. TAXING THE RICH, *supra* note 7, ch. 7.

124. MEHROTRA, *supra* note 95, ch. 6.

125. One way the authors could have addressed the issue of the effectiveness of heavy taxes would have been to focus on the difference between marginal and effective tax rates. Although they analyze this difference

Ultimately, a more complex and critical history of “soak-the-rich” taxation would not only provide a deeper and richer view of the past; it would also prevent present-day readers from romanticizing an earlier era of steeply progressive taxes on the wealthy. Although the authors are careful not to express their normative views on progressive taxes, it is hard to miss their implicit preference in favor of an activist state enforcing equal treatment and shared sacrifice among its citizens through heavy taxes on the rich. Unfortunately, their simple and reductionist narrative distills an intricate historical tale into an uncomplicated and nostalgic story about a supposed golden age of progressive taxation—a golden age when the wealthy happily paid their taxes with little resistance or without much forethought. By eliding historical complexity, Scheve and Stasavage reinforce rather than dispel the romantic power of such nostalgia. In the end, this obscures our ability to understand the past on its own terms.

CONCLUSION: IMPLICATIONS FOR THE FUTURE

Taxing the Rich is, in the end, an important contribution to the growing scholarly literature on the comparative history of tax law and fiscal policy. With its focus on the importance of ideas about fairness, the book provides a much-needed corrective to the overly materialistic studies of taxation and their obsession with measuring the distortions and inefficiencies of tax policy. With its broad global perspective, the book complements existing studies that focus in depth on tax laws and policies in particular countries. And with its attention to the importance of wartime contexts, *Taxing the Rich* exemplifies why history matters to our contemporary understanding of tax law and fiscal policy. In short, the book succinctly explains why, despite the historical adoption of heavy taxes on the rich—of the sort that Ayn Rand warned against—Atlas has not shrugged.

Yet the book misses an opportunity to do much more. With its explicit technological determinism, *Taxing the Rich* undermines its otherwise excellent historical analysis. The authors' core belief that changes in military technology have forever altered the potential impact of fairness arguments during wartime ultimately proves too much. The authors are certainly correct that American political culture has changed

elsewhere in the book, they do not do so in the specific case studies of World War I policies in different nation-states.

since the days of earlier global conflicts like World War I. We have, indeed, entered a new era when lawmakers respond to national crises and emergencies not by calling for shared sacrifice in the form of high taxes, but instead claim that “nothing is more important in the face of a war than cutting taxes.”¹²⁶

Still, the causes of the shift to our new era of political and social thinking about taxation are complex and multifaceted. The recent rightward turn in American politics and culture cannot be explained by a simple reference to the development of technology, changes in war mobilization, and the power of compensatory arguments. In fact, if steeply progressive taxes on the wealthy require the power of compensatory arguments made during mass mobilization for war, it is highly unlikely that we will ever return to an era similar to the post–World War II period.

Indeed, the authors concede as much. In their concluding remarks, they note that “it is very unlikely” that we will see “a repeat of twentieth-century patterns.”¹²⁷ Yet they provide some hope “for proponents of taxing the rich today.”¹²⁸ Drawing lessons from their global history, Scheve and Stasavage suggest that “massive political or economic shocks” may once again “put new compensatory arguments on the table, just as happened in 1914.”¹²⁹ If such exogenous crises do arise, proponents of progressive taxation will “need to make a credible and compelling claim that current government policies are heavily biased toward the rich.”¹³⁰ Scheve and Stasavage have thus provided a roadmap for future tax policy—at least for those who believe heavy taxes ought to be levied on the rich.

Yet the road ahead, according to the authors, is rather narrow. By focusing exclusively on the variables they have identified as the key elements behind steeply progressive taxes on the rich, the authors have provided a constrained interpretation of history—one that limits future possibilities. By overlooking the complexity that comes from a greater attention to human agency and historical contingency, the authors miss an opportunity to remind their readers that the future is up for grabs,

126. Paul Krugman, *The DeLay Principle*, N.Y. TIMES (June 9, 2006), <http://www.nytimes.com/2006/06/09/opinion/09krugman.html> (quoting Tom DeLay, former House majority leader).

127. TAXING THE RICH, *supra* note 7, at 218.

128. *Id.* at 217.

129. *Id.* at 218.

130. *Id.*

and that all of us play a part in shaping the course of future events. Looking ahead there may be a variety of other reasons why Atlas may not shrug, many of which we cannot even anticipate today.

Much, of course, has changed since 1957 when Rand first published *Atlas Shrugged*. While her dire warnings about excessive taxation may not have caused Atlas to shrug during earlier historical periods or even during her own time, Rand's overall anti-statist message has had a resounding impact on American politics, society, and culture—especially after the 2008 financial crisis.¹³¹ Yet, just as Rand in 1957 held out hope that the future was malleable, so too should we keep in mind today that though the heavy hand of the past always exerts pressure on the present and the future, we should be cautious in drawing direct analogies from the past to the present and the future. What we learn from history ultimately depends on how we interpret it.

131. In 1987, *New York Times* columnist Maureen Dowd referred to Rand as the Reagan Administration's "novelist laureate" because of Rand's influence on many Reaganites. Maureen Dowd, *Where "Atlas Shrugged" Is Still Read—Forthrightly*, N.Y. TIMES (Sept. 13, 1987), <http://www.nytimes.com/1987/09/13/weekinreview/where-atlas-shrugged-is-still-read-forthrightly.html>. For more on the continued popularity and influence of Rand, particularly after the 2008 financial crisis, see BURNS, *supra* note 2, at 279–86.