

In response to escalating social, economic, and environmental crises, the field of Law and Political Economy would reorient legal thought by centering considerations of power, equality, and democracy. This reorientation would replace approaches to legal thought that prioritize efficiency and neutrality, and that imagine a pre-political market “encased” from legal scrutiny or intervention.

The recently published “Building a Law-and-Political-Economy Framework, 129 Yale L.J. 1784 (2020), by Professors Jedediah Britton-Purdy, David Singh Grewal, Amy Kapczynski, and K. Sabeel Rahman proposes a “Law and Political Economy Framework” for implementing this reorientation. While the Framework has implications that span areas of substantive law, the proposal does not address its implications for tax scholarship, nor how tax scholarship could inform Law and Political Economy.

This Article describes the interdependence of tax scholarship and the Law and Political Economy project. It explains both why taxation is central to Law and Political Economy and the importance of this project for the future of tax scholarship. Unlike many other areas of law, the tax system explicitly accounts for economic differences and serves an overt distributive function—two considerations that Law and Political Economy would center in legal thought. Tax scholarship also reflects both the priorities and considerations at the center of Law and Political Economy, as well as the market-based frames it would supplant. Tax scholarship offers lessons for how Law and Political Economy might similarly navigate the insights and limitations of current legal thought and reshape its future.

Despite its commitment to redistribution, the progressivity of the federal tax system has declined in recent decades. This trend has precipitated a crisis in progressive taxation and mirrors the broader contemporary crises Law and Political Economy seeks to address. The project offers an opportunity to envision new priorities and analytic modes for tax scholarship, and future possibilities for the tax system.