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Nicholas A. Mirkay & Palma Joy Strand



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ECONOMIC DIGNITY CREATES A PRO-TAX STORY FOR RACIAL EQUITY

Nicholas A. Mirkay & Palma Joy Strand***

We are honored to have participated in the American Tax Policy Institute’s “Race and Tax Symposium,” dedicated to the important project of documenting systemic racism in the tax system.¹ In our view, contributing to this project is an imperative for lawyers and legal academics. It is, after all, lawyers who have done the hands-on work of constructing the tax system—drafting and promulgating its laws, regulations, and interpretations. As lawyers, we have a responsibility to assess the effects of our handiwork. We have a duty to perform the institutional forensics that examines how the tax system is actually functioning, which includes illuminating tax’s substantial role in perpetuating long-standing racial wealth disparities—a topic on which we have previously written.²

At the same time, we must recognize that facts aren’t enough. Rather, stories capture our imagination and propel us forward.

The antitax narrative of neoliberalism has been a siren song for almost half a century now. Of course, antitax really means shifting the tax burden from wealthy people to those with less ability to pay. Antitax is the rhetoric; moving from progressive to regressive is the reality.³ These regressive effects

* Professor of Law and Associate Dean for Academic Affairs at the University of Hawai’i William S. Richardson School of Law.

** Professor Emerita, Creighton University; Visiting Professor of Law at Marquette University Law School.

¹ Symposium, *Race and Tax Symposium*, AM. TAX POL’Y INST. (2023), <https://www.americantaxpolicyinstitute.org/race-and-tax-symposium/>.

² See Palma Joy Strand & Nicholas A. Mirkay, *Racialized Tax Inequity: Wealth, Racism, and the U.S. System of Taxation*, 15 NW. J.L. & SOC. POL’Y 265 (2020) [hereinafter *Racialized Tax Inequity*]; see also Palma Joy Strand & Nicholas A. Mirkay, *Interest Convergence and the Racial Wealth Gap: Defusing Racism’s Divide-and-Conquer via Universal Basic Income*, 110 KY. L.J. 693 (2021) [hereinafter *Interest Convergence*].

³ *Racialized Tax Inequity*, *supra* note 2, at 294.

are racialized because well-off Americans are disproportionately white and less-well-off Americans are disproportionately people of color.

“Antitax” goes hand in hand with an obsession with reducing government expenditures, especially those that support low- and middle-income Americans.⁴ Reducing these expenditures also has regressive effects, and again these regressive effects are racialized because well-off Americans are disproportionately white and less-well-off Americans are disproportionately people of color.

To counter and reverse the racial inequities manifest in the tax system, we need a new narrative. We need a post-neoliberal narrative, a *pro-tax* narrative, that calls Americans both to equity and to the value of contributing to the common good through paying taxes. This kind of narrative will make addressing the racial equity issues identified by the tax scholars who presented at the Symposium civically and politically possible.⁵

I. LOOKING BACKWARD

The racial wealth gap is connected to the antitax narrative.

The racial wealth gap in the United States is persistent.⁶ Historically, it closed significantly after the Civil War and then continued to narrow slowly over much of the twentieth century. Since the 1980s, however, in significant part because of preferential treatment of capital gains, which have primarily benefited white households, the wealth gap has expanded again.⁷

⁴ See, e.g., RANDOLPH HOHLE, RACE AND THE ORIGINS OF AMERICAN NEOLIBERALISM 1 (2015) (“Neoliberalism is the political project designed to create the conditions for capital accumulation based on the upward distribution of resources, and an ideological adherence to meritocratic notions of individual success and personal responsibility. The main neoliberal policy preferences are privatization, austerity, tax cuts for the wealthy, and regulatory changes to benefit a handful of elites and market sectors.”); see also STEPHANIE A. MALIN & MEGHAN E. KALLMAN, BUILDING SOMETHING BETTER: ENVIRONMENTAL CRISES AND THE PROMISE OF COMMUNITY CHANGE 49–62 (2022).

⁵ See Palma Joy Strand, *The Civic Underpinnings of Legal Change: Gay Rights, Abortion, and Gun Control*, 21 TEMPLE POL. & CIV. RTS. L. REV. 117 (2011) (civic narratives underlie political and legal change).

⁶ *Interest Convergence*, *supra* note 2, at 694–95.

⁷ Ellora Derenoncourt et al., *Wealth of Two Nations: The U.S. Racial Wealth Gap, 1860–2020*, at 3–4 (Nat’l Bureau of Econ. Rsch., Working Paper No. 30101, 2022), <https://www.nber.org/papers/w30101>.

The tax system overall contributes to perpetuating racialized wealth. Wealth is racialized white in the sense that wealth is disproportionately held by white households. Because of this, tax structures that advantage wealthier taxpayers disproportionately benefit white taxpayers. Most tax expenditures, for example—including not only the preferential rate for capital gains but also the step-up in basis for inherited assets, the home mortgage interest deduction, 401(k) pension subsidies, the tax subsidy for employer-provided health insurance, and § 529 plans—disproportionately benefit white taxpayers.⁸ State tax systems have a similar effect.⁹

Wealth is racialized white not only in reality but in our psyches in the sense that we are socialized to associate wealth with whiteness and whiteness with wealth. The “Monopoly man”—rotund, jovial, and sporting a top hat and mustache—who captures our image of wealth over a century after the era of the robber barons, is white. Conversely, poverty is racialized Black, even though in absolute numbers there are more white people experiencing poverty than Black people.¹⁰

The racialization of poverty has been exploited to undermine public support for antipoverty programs and expenditures. President Ronald Reagan’s “welfare queen” rhetoric was an infamous and overt example.¹¹ More recently, several states, concentrated in the former Confederacy, have resisted Medicaid expansion under the Affordable Care Act. Sociologist Randolph Hohle observes:

The language of neoliberalism was the result of the white response to the black struggle for civic inclusion. The language of neoliberalism is organized around the white-private/black-public binary. White-private defined the market and economic policy that benefited businesses as white and superior. The other side

⁸ *Racialized Tax Inequity*, *supra* note 2, at 268, 284.

⁹ *Id.* at 279.

¹⁰ *Basic Statistics*, TALK POVERTY, <https://talkpoverty.org/basics/index.html> (last visited Oct. 20, 2023).

¹¹ Bryce Covert, *The Myth of the Welfare Queen*, NEW REPUBLIC (July 2, 2019), <https://newrepublic.com/article/154404/myth-welfare-queen>.

of this binary was black-public that defined public works and social services for the marginalized as black, and thus, inferior.¹²

At the level of individuals, physician and sociologist Jonathan Metzl's interviews with white men in Tennessee, transcribed in *Dying of Whiteness*, reveal that these men would rather forgo healthcare than lose the identity of being white.¹³ The association between poverty and public benefits to alleviate property, on the one hand, and nonwhiteness, on the other, is strong.

These narratives tie into racism's divide-and-conquer essence.¹⁴ Racism in the United States is a wedge strategy used by elites to prevent class solidarity among laborers and workers, to prevent non-elites from joining forces against elite power and privilege. This was true when racism began to be enacted into U.S. law in the 1600s. Historians Jacqueline Battalora¹⁵ and Ibram X. Kendi¹⁶ have documented how the construct of whiteness drew designated white poor people to ally with elites rather than with other poor people who were not designated white.¹⁷

And this divide-and-conquer dynamic persists today, as evidenced by the policies supported by the racial “dog whistles” that have driven U.S. politics over the past half-century—what law professor Ian Haney López in *Dog Whistle Politics* terms “strategic racism.”¹⁸ Racial dog whistles call to

¹² HOHLE, *supra* note 4, at 4.

¹³ See JONATHAN M. METZL, *DYING OF WHITENESS: HOW THE POLITICS OF RACIAL RESENTMENT IS KILLING AMERICA'S HEARTLAND* (2019).

¹⁴ See *Interest Convergence*, *supra* note 2, at 701–02.

¹⁵ See JACQUELINE BATTALORA, *BIRTH OF A WHITE NATION: THE INVENTION OF WHITE PEOPLE AND ITS RELEVANCE TODAY* (2013).

¹⁶ See IBRAM X. KENDI, *STAMPED FROM THE BEGINNING: THE DEFINITIVE HISTORY OF RACIST IDEAS IN AMERICA* (2016).

¹⁷ Palma Joy Strand, *This Is the House That Law Built: A Systems Story of Racism*, 58 *SAN DIEGO L. REV.* 811, 820–23 (2021).

¹⁸ IAN HANEY LÓPEZ, *DOG WHISTLE POLITICS: HOW CODED RACIAL APPEALS HAVE REINVENTED RACISM AND WRECKED THE MIDDLE CLASS* 35–53 (2014).

the racial anxiety of white voters and taxpayers, telling them that losing whiteness is worse than losing their jobs, their health, and even their lives.¹⁹

But strategic racism doesn't benefit all white Americans. Rather, strategic racism benefits the wealthy, who are disproportionately white, at the expense of everyone else, who are of all racial groups. Strategic racism has targeted progressive taxation for broad public welfare expenditures such as schools, libraries, and hospitals. Antitax means disinvestment in these public goods; antitax instead channels wealth to the top.

This divide-and-conquer narrative, also appearing as an "antisocialism" trope, was used in the South to shut down Reconstruction.²⁰ And it has been used nationwide over the past half-century as part of the neoliberalist agenda, documented by historian Nancy MacLean in *Democracy in Chains*,²¹ rooted in massive resistance to *Brown v. Board of Education*.²² The antitax narrative is an integral thread in this story.

And yet, running alongside the antitax narrative is another quite different narrative. Most Americans view taxpaying and being a taxpayer as making an important contribution to the public good. Tax policy scholar Vanessa Williamson's *Read My Lips: Why Americans Are Proud to Pay Taxes*²³ counters the antitax frame. Americans may not like the idea that they are paying while others evade or get off without paying their fair share. But the essential identity of taxpayer as positive, as supporting the whole, is widespread.

There are, it turns out, two mindsets about taxes, which correspond to two mindsets about race. Reflecting one mindset, (white) people have a deep-seated, neoliberalism-nurtured racial anxiety that rejects taxes to support people in need. Reflecting the other, (white) people also have a strong sense

¹⁹ *Id.*

²⁰ Heather Cox Richardson, *Killing Reconstruction*, JACOBIN (Aug. 19, 2015), <https://jacobin.com/2015/08/racism-reconstruction-homestead-act-black-suffrage>.

²¹ See NANCY MACLEAN, *DEMOCRACY IN CHAINS: THE DEEP HISTORY OF THE RADICAL RIGHT'S STEALTH PLAN FOR AMERICA* (2017).

²² See HOHLE, *supra* note 4.

²³ See VANESSA S. WILLIAMSON, *READ MY LIPS: WHY AMERICANS ARE PROUD TO PAY TAXES* (2017).

of shared citizenship that supports the importance of contributing to the broader well-being as well as a commitment to racial equity, grounded in the cultural shifts created by the civil rights movement. And both of these mindsets, in tension with each other, are held concurrently.

Recognizing the duality represented by these conflicting narratives, the race-class narrative has tested how to bring that latter, shared citizenship mindset to the fore.²⁴ Naming racism as a divide-and-conquer strategy and explicitly embracing class solidarity and cross-racial equity open the door to a different narrative. This story points toward the value of taxes as essential to investing in the population at large.²⁵

II. LOOKING FORWARD

The innate human right to dignity under the law provides a unique path to flip the tax narrative to one that embraces solidarity and equity. Both the United Nations' 1945 Charter and its Universal Declaration of Human Rights in 1948 advanced the concept of human dignity as a crucial foundation for human rights.²⁶ Human dignity signifies “the inherent, equal, and inalienable worth of every person” and is recognized as an essential component of a just rule of law and governmental policy.²⁷ At its core, dignity is a “commitment to equality and non-discrimination.”²⁸ More than four out of five of the world's constitutions recognize dignity as an enforceable legal right.²⁹ In the

²⁴ *The Race Class Narrative*, WE MAKE THE FUTURE, <https://www.wemakethefuture.us/history-of-the-race-class-narrative> (last visited Oct. 20, 2023).

²⁵ See, e.g., HEATHER MCGHEE, *THE SUM OF US: WHAT RACISM COSTS EVERYONE AND HOW WE CAN PROSPER TOGETHER* (2021).

²⁶ See U.N. Charter pmb. ¶ 1; see G.A. Res. 217 (III), at 72 (Dec. 10, 1948) (“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”).

²⁷ See AM. BAR ASS'N HOUSE OF DELEGATES RES. 113B (adopted Aug. 2019), <https://www.americanbar.org/content/dam/aba/directories/policy/annual-2019/113b-annual-2019.pdf>.

²⁸ *Id.* at 7.

²⁹ ERIN DALY & JAMES R. MAY, *DIGNITY LAW: GLOBAL RECOGNITION, CASES, AND PERSPECTIVES 1* (2020); see ERIN DALY & JAMES R. MAY, *DIGNITY UNDER LAW: A GLOBAL HANDBOOK FOR CIVIL SOCIETY* (2021), <https://static1.squarespace.com/static/5f384e3445a5af3e6c13d27b/t/61d9af525e8e0701b548d717/1641656148101/Dignity+Handbook+FOR+CSO.pdf> [hereinafter *GLOBAL HANDBOOK*].

United States, the Bill of Rights is arguably imbued with protections of dignity rights.³⁰

By illuminating the substantial role of tax policy in perpetuating enduring racial wealth disparities, we embark on the path of examining our economic and fiscal policies in which tax plays a central role. Within the framework of dignity, an examination must necessarily focus on the effect of these policies at a human level—on the average working-age citizen. Economist and presidential adviser Gene Sperling says, “[E]conomic dignity” must be the “central, organizing goal of economic policy . . . not [as] a quest for an unreachable utopian ideal,” but rather as a “basic level of economic dignity for everyone.”³¹ In alignment with this assertion, some countries’ constitutions recognize and protect a citizen’s right to economic dignity, typically by denoting rights to minimum subsistence, safe housing, health care and nutrition, and education, among others.³² A recent German constitutional court decision, for example, ruled that the country’s constitutional right of human dignity guarantees an “existential minimum” to its citizens, thereby providing a framework for the legislature in designing basic welfare benefits.³³

Integral to economic dignity is people’s capacity to provide for their families (for example, a livable wage), pursue purpose and potential in their work lives, and partake freely in the economy.³⁴ Essentially, economic dignity affirms the worth and well-being of every person, as reflected in progressive efforts in our history. The New Deal, the civil rights movement, and the Great Society are all examples of this.³⁵ However, many Americans

³⁰ GENE B. SPERLING, ECONOMIC DIGNITY 16 (2020).

³¹ *Id.* at xvi–xvii.

³² GLOBAL HANDBOOK, *supra* note 29, at 10–11.

³³ BVerfG, 1 BvL 10/10, paras. 1–113, July 18, 2012, https://www.bverfg.de/ls20120718_1bvl001010en.html.

³⁴ SPERLING, *supra* note 30, at 30.

³⁵ *Id.* at 20–26.

have been denied this dignity because of a long history of systemic discrimination and racial violence.³⁶

Economic dignity is not an all-or-nothing choice between self-sufficiency and governmental-assistance policies, which are sometimes portrayed as creating dependent and slothful recipients.³⁷ Rather, dignity can counter this antitax rhetoric of “unworthy” recipients and create a pro-tax story in which tax-funded assistance is an investment in our fellow citizens, promoting their long-term self-reliance and sufficiency. One need look no further than the federal government stimulus checks during the COVID-19 pandemic for examples of beneficial governmental assistance, with initial data revealing that most families used the stimuli to buy basic necessities such as food and fuel.³⁸ Guaranteed income programs across the country are another example where basic, government-provided subsistence yields powerful results in the form of improved financial, physical, and emotional health for recipients.³⁹ Sperling buttresses these results with data establishing the positive economic impacts on recipients of governmental assistance, such as the federal Supplemental Nutrition Assistance Program and certain states’ Medicaid expansion programs.⁴⁰ Contrary to the often-propagated notion that such programs foster complacency and reduced work efforts, the data show overall no appreciable difference in employment, with an actual increase for expanded Medicaid recipients with disabilities.⁴¹

A Swedish program further illustrates that targeted government assistance can result in greater long-term sufficiency. Private companies in Sweden fund “job security councils” that offer skills improvement, basic income support, and counseling for transitioning workers upon an announced reduction in force.⁴² The outcome has been resoundingly positive: over eighty-five percent of unemployed workers secure a new job within one year,

³⁶ *Id.* at xvii.

³⁷ *Id.* at 91.

³⁸ See *Interest Convergence*, *supra* note 2, at 701–02.

³⁹ *Id.* at 706–10.

⁴⁰ SPERLING, *supra* note 30, at 92–94.

⁴¹ *Id.* at 93.

⁴² *Id.* at 95–96.

one of the highest such rates worldwide.⁴³ This kind of program illustrates that economic dignity is not just a governmental responsibility but can be effectively achieved by increased private-sector involvement and private-public partnerships.

Economic dignity also provides a foundation for a pro-tax story, calling us to reexamine and reconfigure our tax policies and systems to promote the economic dignity of all persons, not just those with substantial accumulated wealth. Economic dignity calls us, essentially, to realize tax justice.⁴⁴ By viewing our federal and state tax systems through an economic dignity lens, we can revisit a time when wealth inequality was not so drastically high, in part because of significantly more progressive income taxes and more consequential wealth transfer taxes.

Moreover, a tax system rooted in economic dignity must support people of all races and ethnicities. We can also reassess some “upside-down” tax breaks that support activities that can build economic dignity—homeownership, college education, and retirement savings—but that currently benefit wealthier, white households to a significant and disproportionate extent.⁴⁵ States’ overreliance on sales and other consumption taxes and increased use of fees also typically results in low- and middle-income families experiencing higher overall state and local tax burdens.⁴⁶

An economic dignity framework for viewing and reconstructing our tax systems can be a racial equalizer. Ultimately, it is a shared benefit as taxes fund our roads and bridges, our K-12 schools and higher education institutions, medical research, emergency services, national defense, and numerous other gains. Dignity recognizes our equal worth and potential. Dignity aligns with the idea of investing in people—all people.

⁴³ *Id.*

⁴⁴ Jenice R. Robinson & Kamolika Das, *The Pendulum Is Swinging Toward Tax Justice*, 102 TAX NOTES STATE 151 (2021); cf. Ryan Messmore, *Justice, Inequality, and the Poor*, 57 NAT’L AFFAIRS 108–20 (2012), <https://www.nationalaffairs.com/publications/detail/justice-inequality-and-the-poor> (challenging the notion that inequality between the rich and the poor is inherently unjust and is the fundamental problem to be solved).

⁴⁵ *Racialized Tax Inequity*, *supra* note 2, at 301.

⁴⁶ *Id.* at 286.

III. A PRO-TAX STORY FOR RACIAL EQUITY

A pro-tax story prevailed in the United States not that long ago—stretching from the New Deal into President Lyndon B. Johnson’s War on Poverty. These revenues supported the creation of a robust and resilient middle class. The problem was that the middle class created and sustained by those taxes was limited to white citizens.

Today, we need a story that will once again support investing in a robust and resilient middle class—this time one that will bring together prosperity *and* equity. Economic dignity offers a positive grounding for a pro-tax story for racial equity.