

THOMAS PIKETTY AND INEQUALITY: LEGAL CAUSES AND TAX SOLUTIONS

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INTRODUCTION

Thomas Piketty's best seller,¹ *Capital in the Twenty-First Century*,² has acted as an accelerant fueling the fiery public debate over increasing inequality in America and around the world. Piketty makes the provocative empirical claim that the rate of return to private capital inevitably exceeds the rate of economic growth ($r > g$) and thus leads to growing concentrations of wealth among the richest members of society. Piketty also makes the normative case decrying high-end wealth concentration and prescribes a global wealth tax to alleviate this inequality.

Since publication of an English edition in March 2014,³ *Capital in the Twenty-First Century* has spawned heated debates in newspapers, magazines, and blogs, which soon will continue in academic journals and law reviews.⁴

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¹ Although CAPITAL IN THE TWENTY-FIRST CENTURY was a best seller this past summer, see, *Amazon Past Best Sellers*, AMAZON.COM (June 16, 2014), http://www.amazon.com/gp/bestsellers/2014-06-16/books/ref=zg_bsar_nav_vg_0_vg#2; *New York Times Best Sellers, Hardcover Nonfiction*, N.Y. TIMES (July 20, 2014), <http://www.nytimes.com/best-sellers-books/2014-07-20/hardcover-nonfiction/list.html>, Jordan Ellenberg, a professor of mathematics at the University of Wisconsin, Madison, reports that it may be the most "unread" book of 2014, "the book that you pick up, all full of ambition, at the beginning of June and put away, the bookmark now and forever halfway through chapter 1, on Labor Day. The classic of this genre is Stephen Hawking's A BRIEF HISTORY OF TIME, widely called 'the most unread book of all time.'" Jordan Ellenberg, *The Summer's Most Unread Book Is . . .*, WALL ST. J., July 5, 2014, at C3, available at <http://online.wsj.com/articles/the-summers-most-unread-book-is-1404417569>.

² THOMAS PIKETTY, CAPITAL IN THE TWENTY-FIRST CENTURY (Arthur Goldhammer trans., 2014).

³ The book was first published in French in August 2013. THOMAS PIKETTY, LE CAPITAL AU XXI^e SIÈCLE (2013).

⁴ New York University School of Law and UCLA School of Law hosted a symposium on the book on October 4, 2014, with the papers to be published in the TAX LAW REVIEW in 2015. *Fourth Annual NYU/UCLA Tax Policy Symposium Hosts Thomas Piketty for Discussion of "Capitalism in the Twenty-First Century,"* LOWELL MILKEN INST. FOR BUS. L. & POL'Y, <http://lowellmilkeninstitute.law.ucla.edu/events/archive/fourth-annual-nyu-ucla-tax-policy-symposium-hosts-thomas-piketty-discussion-capital-twenty-first-century> (last visited Jan. 26, 2015).

Shi-Ling Hsu is one of the first out of the gate with *The Rise and Rise of the One Percent: Considering Legal Causes of Wealth Inequality*.⁵

Hsu acknowledges some of the critics of Piketty's empirical claims⁶ and casually dismisses the critics,⁷ but does not focus on the details and validity of their claims.⁸ Neither does Hsu directly engage Piketty's normative and prescriptive argument.⁹ Instead, Hsu focuses on the interesting question of how law and legal institutions foster inflated returns on capital (Piketty's r). He writes that "[a]lmost always, an economic effect can be traced to some conscious policy decision, which in turn can be traced to a legal rule or institution. As between legal and economic explanations for inequality, it is almost surely a greater question of law than economics."¹⁰ Hsu also makes the important point that lawmakers often conflate Piketty's r (private capital returns) with g (public economic growth), resulting in laws that boost the

⁵ 64 EMORY L.J. ONLINE 2043 (2015); see also Michael J. Zimmer, *Intentional Discrimination that Produces Economic Inequality: Taking Piketty and Hsu One Step Further*, 64 EMORY L.J. ONLINE 2085 (2015).

⁶ Hsu, *supra* note 5, at 2045 n.7.

⁷ *Id.* at 2047 n.16.

⁸ I too do not address these critiques in this essay but note that they have accelerated in recent months. See, e.g., Richard Epstein, *Rickety Piketty*, HOOVER DIG., Fall 2014, at 35, available at <http://www.hoover.org/research/rickety-piketty>; David R. Henderson, *An Unintended Case for More Capitalism*, REGULATION, Fall 2014, 58, available at http://object.cato.org/sites/cato.org/files/serials/files/regulation/2014/10/regulationv37n3-9_2.pdf; Deirdre Nansen McCloskey, *Measured, Unmeasured, Mismeasured, and Unjustified Pessimism: A Review Essay of Thomas Piketty's Capital in the Twenty-First Century*, ERASMUS J. FOR PHIL. & ECON., Autumn 2014, at 73, available at <http://ejpe.org/pdf/7-2-art-4.pdf>; Michael Barone, *Nobody Is Pushing Thomas Piketty's Policies to Combat Economic Inequality*, HUM. EVENTS (Nov. 25, 2014), <http://humanevents.com/2014/11/25/nobody-is-pushing-thomas-pikettrys-policies-to-combat-economic-inequality>; Bill Gates, *Why Inequality Matters*, GATES NOTES: THE BLOG OF BILL GATES (Oct. 13, 2014), <http://www.gatesnotes.com/Books/Why-Inequality-Matters-Capital-in-21st-Century-Review>; Tino Sanandaji, *Piketty's Missing Entrepreneurs*, NAT'L REV. ONLINE (Nov. 13, 2014, 4:00 AM), <http://www.nationalreview.com/article/392596/pikettrys-missing-entrepreneurs-tino-sanandaji>; Michael Schuyler, *CBO Study Undercuts Piketty's Analysis*, TAX FOUND. (Nov. 24, 2014), <http://taxfoundation.org/blog/cbo-study-undercuts-piketty-s-analysis>; Tim Worstall, *Yes, Thomas Piketty Is Wrong, Why Do You Ask?*, FORBES (Nov. 14, 2014, 6:25 AM), <http://www.forbes.com/sites/timworstall/2014/11/14/yes-thomas-piketty-is-wrong-why-do-you-ask>. But see Matt O'Brien, *Top Economists Say Piketty Is Wrong About Wealth Inequality. They Misunderstood Him.*, WASH. POST WONKBLOG (Oct. 15, 2014), <http://www.washingtonpost.com/blogs/wonkblog/wp/2014/10/15/top-economists-say-piketty-is-wrong-about-wealth-inequality-they-misunderstood-him/>; Justin Wolfers, *Have Economists Actually Read Thomas Piketty? They Say They Have*, N.Y. TIMES UPSHOT BLOG (Oct. 16, 2014), <http://www.nytimes.com/2014/10/17/upshot/have-economists-actually-read-thomas-piketty-they-say-they-have.html>.

⁹ Jim Repetti and I recently documented the adverse societal consequences of inequality. Paul L. Caron & James R. Repetti, *Occupy the Tax Code: Using the Estate Tax to Reduce Inequality and Spur Economic Growth*, 40 PEPP. L. REV. 1255, 1257-64 (2013).

¹⁰ Hsu, *supra* note 5, at 2049.

former with little discernible impact on the latter.¹¹ Piketty tosses out a few “snippets” of laws that contribute to concentrations of wealth,¹² while the bulk of Hsu’s argument is devoted to explaining how four areas of American law contribute to “the legal enrichment of the one percent”¹³: financial regulation,¹⁴ oil and gas subsidies,¹⁵ transition relief,¹⁶ and electric utility regulation.¹⁷ Hsu eschews discussion of how law and legal institutions contribute to economic growth (Piketty’s *g*) because it “is a morass of economic and legal policy, and the source of too much partisan bickering.”¹⁸ Hsu concludes with a plea for greater federal funding of education to fuel greater economic growth and bridge the deepening inequality chasm in America.¹⁹

Hsu’s essay is a significant contribution to what is certain to be an energetic debate over the implications of Piketty’s work. Indeed, Frank Pasquale praises Piketty for “adopt[ing] a methodology capacious enough to welcome the contributions of legal academics and a broad range of social scientists to the study (and remediation) of inequality.”²⁰ The need to examine the impact of legal rules and institutions on both private capital returns and public economic growth will be an enduring contribution to future scholarship on the extent, consequences, and reduction of income and wealth inequality. I offer here two modest reactions to Hsu’s essay²¹: (1) recent inequality research has shifted the focus of high-end wealth concentration from the Top 1% to the Top 0.1% (and even the Top 0.01%),²² with important implications for the

¹¹ *Id.* at 2047–48. Jim Repetti and I recently summarized the empirical evidence that inequality has a long-term adverse impact on economic growth. Caron & Repetti, *supra* note 9, at 1264–74.

¹² Hsu, *supra* note 5, at 2047.

¹³ *Id.* at 2048–64.

¹⁴ *Id.* at 2051–56.

¹⁵ *Id.* at 2056–58.

¹⁶ *Id.* at 2058–61.

¹⁷ *Id.* at 2062–64.

¹⁸ *Id.* at 2051.

¹⁹ *Id.* at 2068–71.

²⁰ Frank Pasquale, *Capital’s Offense: Law’s Entrenchment of Inequality*, BOUNDARY2 (Oct. 1, 2014), <http://boundary2.org/2014/10/01/capitals-offense-laws-entrenchment-of-inequality/>.

²¹ Like Hsu, *supra* note 5, at 2051, I focus on the United States.

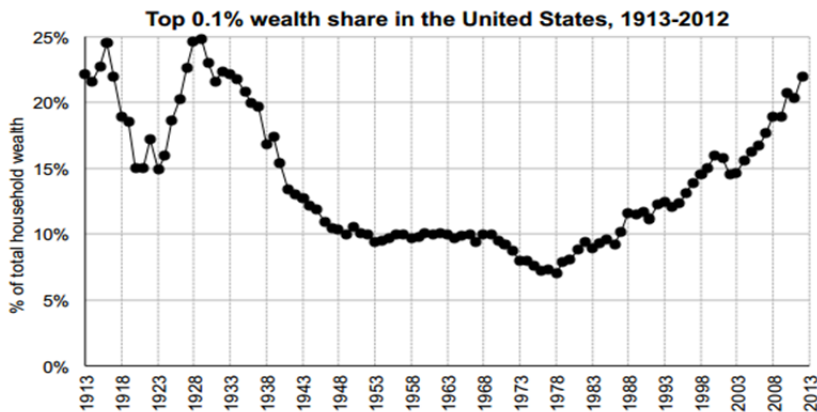
²² In 2012, the number of families, wealth thresholds, average wealth, and wealth shares of these wealth groups in the United States were as follows:

Thresholds and Average Wealth in Top Wealth Groups, 2012				
Group	No. of Families	Wealth Threshold	Avg. Wealth	Wealth Share
Top 1%	1,607,000	\$3,960,000	\$13,840,000	41.8%
Top 0.1%	160,700	\$20,600,000	\$72,800,000	22.0%
Top 0.01%	16,070	\$111,000,000	\$371,000,000	11.2%

work of both Piketty and Hsu, including (2) the inquiry into whether policymakers should intervene before the fact to reshape the distribution of the benefits and burdens of economic activity (Hsu's approach) or instead redistribute wealth after the fact (Piketty's approach).

I. HIGH-END WEALTH CONCENTRATION: THE 1% V. THE 0.1% (AND THE 0.01%)

Hsu's essay, like Piketty's book, views inequality through the prism of the Top 1%. (Indeed, Hsu titles his essay *The Rise and Rise of the One Percent.*) However, very recent work by Piketty's frequent collaborators argues that the rise of wealth inequality in America over the past thirty-five years is due almost entirely to the rise in the share of wealth captured by the Top 0.1%.²³ Emmanuel Saez and Gabriel Zucman estimated the distribution of household wealth in the United States since 1913 and found that the wealth share of the Top 0.1% rose from 7% in 1979 to 22% in 2012—a level almost as high as in 1929²⁴:

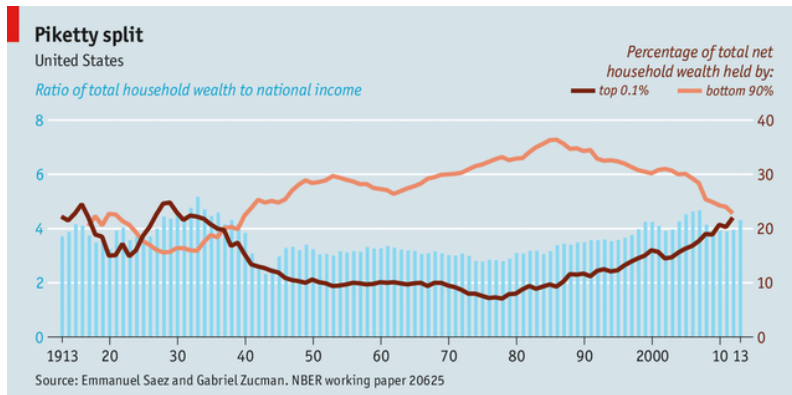


Emmanuel Saez & Gabriel Zucman, *Wealth Inequality in the United States Since 1913: Evidence from Capitalized Income Tax Data* 47 tbl.1 (Nat'l Bureau of Econ. Research Working Paper No. 20625, 2014), available at <http://www.nber.org/papers/w20625.pdf>.

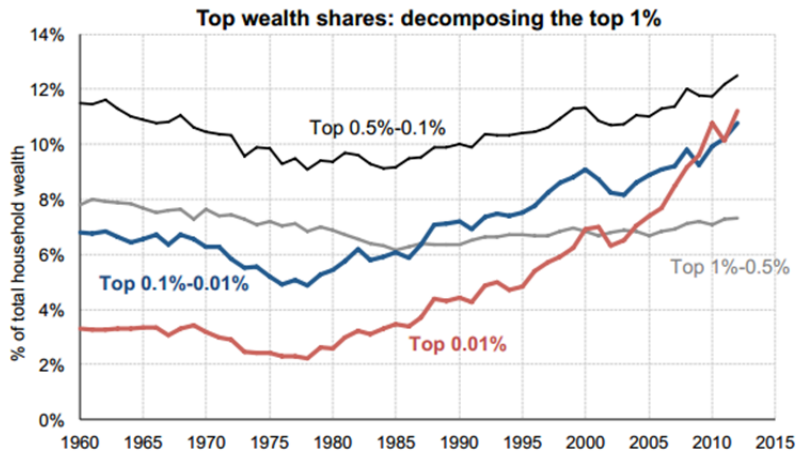
²³ *Id.* at 49 fig.1; see also Emmanuel Saez & Gabriel Zucman, *Exploding Wealth Inequality in the United States*, VOX CEPR'S POL'Y PORTAL (Oct. 28, 2014), <http://www.voxeu.org/article/exploding-wealth-inequality-united-states>.

²⁴ Saez & Zucman, *supra* note 22, at 49 fig.1.

This 22% wealth share of the Top 0.1% in 2012 matched the wealth share of the bottom 90%²⁵:



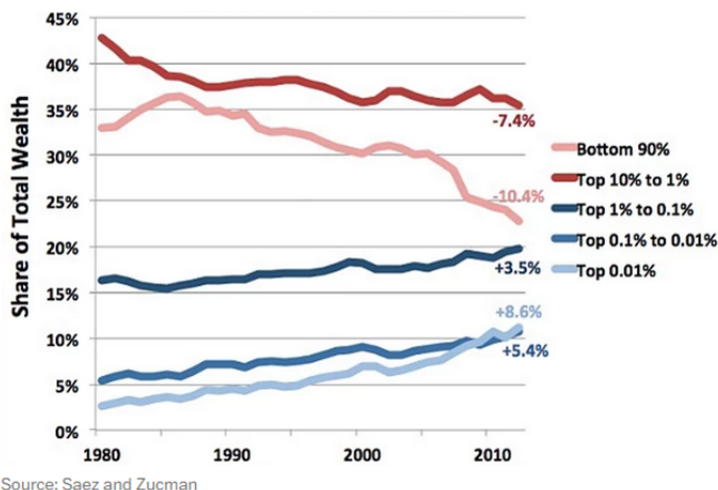
Saez and Zucman decomposed the Top 1% into four groups: Top 1% to 0.5%, Top 0.5% to 0.1%, Top 0.1% to 0.01%, and Top 0.01%²⁶:



²⁵ *Forget the 1%: It Is the 0.01% Who Are Really Getting Ahead in America*, *ECONOMIST*, Nov. 8, 2014, at 79 fig., available at <http://www.economist.com/news/finance-and-economics/21631129-it-001-who-are-really-getting-ahead-america-forget-1>.

²⁶ Saez & Zucman, *supra* note 22, at 49 fig.1.

Matt O'Brien used the Saez and Zucman data to illustrate the enormous share of the wealth gains since 1980 captured by the Top 0.01% (+8.6%), followed by declining shares of the gains enjoyed by the next two groups (Top 0.1% to 0.01% (+5.4%) and Top 1% to 0.1% (+3.5%)), with the final two groups suffering losses in their wealth shares (Top 10% to 1% (-7.4%) and Bottom 90% (-10.4%))²⁷:



²⁷ Matt O'Brien, *The Bottom 90 Percent Are Poorer Today Than They Were in 1987*, WASH. POST WONKBLOG (Oct. 22, 2014), <http://www.washingtonpost.com/blogs/wonkblog/wp/2014/10/22/the-bottom-90-percent-are-poorer-today-than-they-were-in-1987/>. For a global perspective, a recent report notes that the world population of ultra-high net worth (UHNW) individuals—defined as those with at least \$30 million of wealth—hit a record 211,275 in 2014, comprising 0.004% of the world's population and controlling 12.8% of the world's wealth:

World Wealth Report				
Wealth Tier (US\$)	Share of Population	2014 Adult Population	Share of Wealth	2014 Wealth US\$ Trillion
30+ Million	0.004%	211,275	12.8%	29.7
10–29 Million	0.01%	682,775	6.4%	14.9
5–9.9 Million	0.02%	835,950	2.7%	6.2
1–4.9 Million	0.3%	14,930,000	11.3%	26.2
100,000–999,000	7.5%	366,340,000	45.3%	105.4
10,000–99,000	25.8%	1,265,000,000	15.6%	36.3
< 10,000	66.3%	3,248,000,000	5.9%	13.8
Total	100%	4,896,000,000	100%	232.5

WEALTH-X & UBS, WORLD ULTRA WEALTH REPORT 2014, at 10 (Nov. 2014), <http://www.worldultrawealthreport.com>. The UHNW population includes 2,325 billionaires. *Id.* at 17.

Similarly, other recent data document increasing concentrations of income at the very high end. For example, the Internal Revenue Service's Statistics of Income Division last month released information on the 400 individual income tax returns with the highest adjusted gross incomes for 2002–2010.²⁸ The data reveal increasing amounts of income for these 400 individuals, as illustrated in this chart by David Cay Johnston²⁹:



II. RESHAPING AND REDISTRIBUTING WEALTH

Rather than relying on Piketty's proposed global wealth tax to redistribute excessive wealth already captured by those at the top, Hsu proposes that we more closely examine the distributional impact of proposed legal rules to curb the accumulation of such wealth in the first place.³⁰ Although Hsu does not flesh out this proposal, Presidents Clinton (in Executive Order 12,866)³¹ and Obama (in Executive Order 13,563)³² planted the seeds for such an approach by directing federal agencies in choosing among alternative regulatory approaches to select those approaches that "maximize net benefits (including potential economic, environmental, public health and safety, and other

²⁸ INTERNAL REVENUE SERV., THE 400 INDIVIDUAL INCOME TAX RETURNS REPORTING THE LARGEST ADJUSTED GROSS INCOMES EACH YEAR, 1992–2010 (2014), <http://www.irs.gov/pub/irs-soi/10intop400.pdf>.

²⁹ David Cay Johnston, *Top Incomes Soared as Tax Rates Fell*, AL JAZEERA (Nov. 21, 2014, 10:30 AM ET), <http://america.aljazeera.com/opinions/2014/11/taxes-rates-wealthyirsdatainequality.html>.

³⁰ Hsu, *supra* note 5, at 2071–72.

³¹ Exec. Order No. 12,866, 3 C.F.R. 638 (1993).

³² Exec. Order No. 13,563, 3 C.F.R. 215 (2011).

advantages; *distributive impacts; and equity*).”³³ However, federal agencies thus far have not engaged in much distributional analysis of proposed regulatory action.³⁴

In any event, refocusing high-end wealth concentration in the United States from the Top 1% (1.6 million families) to the Top 0.1% (160,000 families) and the Top 0.01% (16,000 families) suggests that Piketty’s redistributive approach may be a more desirable and achievable policy response to growing inequality.³⁵ But Piketty’s proposed global wealth tax³⁶ may not be the optimum redistribution vehicle.³⁷

Piketty outlines various possible wealth tax rate schedules, including the following “basic” and more “comprehensive” schedules³⁸ (converted from Euros to U.S. Dollars)³⁹:

Piketty “Basic” Wealth Tax		
Net Worth (Dollars)		Rate
From	To	
0	1,300,000	0%
1,300,000	6,500,000	1%
6,500,000	And Over	2%

³³ 3 C.F.R. at 639 (1993) (emphasis added); 3 C.F.R. at 215 (2011) (emphasis added).

³⁴ See Lisa A. Robinson, James K. Hammitt & Richard Zeckhauser, *The Role of Distribution in Regulatory Analysis and Decision Making* 20–21 (Mossavar-Rahmani Ctr. for Bus. and Gov’t, Harvard Kennedy Sch., Working Paper No. RPP-2014-03, 2014), available at http://www.hks.harvard.edu/content/download/70616/1255274/version/1/file/RPP_2014_03.pdf.

³⁵ Jim Repetti and I recently argued that the tax system should be used to reduce inequality. Caron & Repetti, *supra* note 9, at 1274–76.

³⁶ PIKETTY, *supra* note 2, at 515–39.

³⁷ Jim Repetti and I recently argued that the estate tax is a particularly apt tax vehicle for reducing inequality in light of the role of inherited assets among the very rich and the adverse economic effects of that inherited wealth. Caron & Repetti, *supra* note 9, at 1276–80. In earlier work, we showed that the estate tax plays a significant role in breaking up concentrations of wealth, with fewer adverse effects on taxpayer behavior than the income tax. Paul L. Caron & James R. Repetti, *The Estate Tax Non-Gap: Why Repeal a “Voluntary” Tax*, 20 STAN. L. & POL’Y REV. 153 (2009). In later work, we proposed five estate tax reforms that would generate needed revenue, reduce inequality, and contribute to economic growth. Paul L. Caron & James R. Repetti, *Revitalizing the Estate Tax: 5 Easy Pieces*, 142 TAX NOTES 1231 (2014).

³⁸ See Michael Schuyler, *The Impact of Piketty’s Wealth Tax on the Poor, the Rich, and the Middle Class*, TAX FOUND., 6 (Oct. 22, 2014), http://taxfoundation.org/sites/taxfoundation.org/files/docs/TaxFoundation_SR225.pdf; see also PIKETTY, *supra* note 2, at 517.

³⁹ See Schuyler, *supra* note 38, at 6.

Piketty “Comprehensive” Wealth Tax		
Net Worth (Dollars)		Rate
From	To	
0	260,000	0%
260,000	1,300,000	0.5%
1,300,000	6,500,000	1%
6,500,000	And Over	2%

Piketty recognizes that his global wealth tax is a “utopian idea,”⁴⁰ and others have criticized the political, practical, and potential adverse economic consequences of such a tax.⁴¹ Piketty muses about the desirability of a “much more steeply progressive tax on the largest fortunes (for example, a rate of 5 or 10 percent on assets above [\$1.25 billion]),”⁴² which would be more targeted at the source of most of the rise in inequality in the United States. But Joseph Bankman and Daniel Shaviro convincingly argue that Piketty’s wealth tax would be unconstitutional and thus should not be the focus of efforts to remedy inequality through the tax code.⁴³

⁴⁰ PIKETTY, *supra* note 2, at 515.

⁴¹ See, e.g., Schuyler, *supra* note 38; Tyler Cowen, *Capital Punishment: Why a Global Wealth Tax Won’t End Inequality*, FOREIGN AFFAIRS, May/June 2014, at 78, available at <http://www.foreignaffairs.com/articles/141218/tyler-cowen/capital-punishment>; Curtis Dubay, *Thomas Piketty’s Wealth Tax Would Be an Administrative Nightmare*, WASH. TIMES, May 26, 2014, <http://www.washingtontimes.com/news/2014/may/26/dubay-thomas-pikettrys-wealth-tax-would-be-an-admin/>; Danny Vinik, *What Would the World Look Like with Piketty’s Global Tax on Wealth?*, NEW REPUBLIC (Apr. 24, 2014), <http://www.newrepublic.com/article/117499/heres-what-we-know-about-thomas-pikettrys-wealth-capital-tax>; James Wetzler, *Thomas Piketty’s Wealth Tax Proposal Has Huge Problems*, NAT’L REV. ONLINE (Mar. 27, 2014, 3:31 PM), <http://www.nationalreview.com/agenda/374380/thomas-pikettrys-wealth-tax-proposal-has-huge-problems-james-wetzler>; Tim Worstall, *Why Thomas Piketty’s Global Wealth Tax Won’t Work*, FORBES (Mar. 30, 2014, 10:37 AM), <http://www.forbes.com/sites/timworstall/2014/03/30/why-thomas-pikettrys-global-wealth-tax-wont-work>.

⁴² PIKETTY, *supra* note 2, at 517.

⁴³ Joseph Bankman & Daniel Shaviro, *Piketty in America: A Tale of Two Literatures*, 68 TAX L. REV. (forthcoming 2015) (manuscript at 46–49), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2518586. Bankman and Shaviro note that Piketty has acknowledged that his proposed wealth tax “is unconstitutional, but constitutions have been changed throughout history. That shouldn’t be the end of the discussion.” *Id.* (manuscript at 49) (quoting *Economist and Bestselling Author Thomas Piketty Discusses Wealth Inequality with Diverse Experts*, NYU LAW (Oct. 8, 2014), <http://www.law.nyu.edu/news/thomas-piketty-capital-twenty-first-century-economist>) (internal quotation mark omitted). But Bankman and Shaviro rightly conclude that “the constitutional concern affects the merits of focusing current efforts to address rising high-end wealth inequality in the United States on the prospect of enacting a wealth tax.” *Id.*

In concluding his essay with a plea for greater public investment in education,⁴⁴ Hsu recognizes the importance of human capital in boosting public economic growth (Piketty's g), thus highlighting a criticism of *Capital in the Twenty-First Century*'s focus on financial capital in computing private capital returns (Piketty's r).⁴⁵ Bankman and Shaviro note that "[t]he dominant role of human capital in creating high-end U.S. wealth concentration may greatly complicate redistributive tax policy."⁴⁶ They sketch out various redistributive tax policies to remedy inequality caused in part by differences in human capital of several representative individuals among the Top 0.01%⁴⁷:

Human Capital Wealth and Redistributive Tax Policies		
Human Capital	Representative Figure	Redistributive Taxes
Entrepreneurial; Managerial; Skilled	Larry Ellison	Surtax on Financial Capital Surtax on Corporate Income Estate and Gift Tax Consumption Tax
Financial Sector; Managerial; Skilled	Jim Simons	Surtax on Labor Income Reform of Financial Sector Tax Estate and Gift Tax Consumption Tax
Managerial	CEO	Surtax on Labor Income Consumption Tax
Highly Skilled	Law Firm Partner	Surtax on Labor Income Consumption Tax
Athletic; Entertainment	Floyd Mayweather	Surtax on Labor Income Consumption

In the end, Bankman and Shaviro conclude that "it is difficult to translate Piketty's analysis or prescriptions into a world in which human capital plays a primary role."⁴⁸

In a recent essay,⁴⁹ Joseph Bankman and I argued that tax scholars need to focus more of our work on how policymakers should address the federal

⁴⁴ Hsu, *supra* note 5, at 2068–71.

⁴⁵ For more on the distinction between financial capital and human capital, see Paul L. Caron, *The Story of Murphy: A New Front in the War on the Income Tax*, in *TAX STORIES* 55 (Paul L. Caron ed., 2d ed. 2009).

⁴⁶ Bankman & Shaviro, *supra* note 43 (manuscript at 65).

⁴⁷ *Id.* (manuscript at 75 tbl.1).

⁴⁸ *Id.* (manuscript at 76).

government's unprecedented (and growing) fiscal imbalance.⁵⁰ Over the past forty years, federal spending has averaged 20.5% of GDP while federal revenues have averaged 17.4% of GDP.⁵¹ This 3.1 percentage point gap between spending and revenues has produced \$18 trillion of federal debt held by the public, an increase of seventy percent since President Obama took office.⁵² In Piketty terms, s (spending) $>$ r (revenues). We proposed that California's recent tax increases on the wealthy should provide a template for the nation to bring r more into alignment with s .⁵³

Piketty's pioneering work provides added impetus for deploying the tax system in this effort. Increasing the tax burden on the wealthy would both raise revenue to meet the nation's spending needs and redistribute wealth to alleviate Gatsby-level inequality in America. Hsu's proposed focus on the distributional impact of laws and legal institutions may prove to be helpful in the long run but a chimera in the short term as the nation's fiscal and equality challenges demand solutions that only the tax system stands ready to provide. In short, raising taxes on the wealthy would both increase r (revenues) to better match s (spending) and decrease r (private capital returns) to better match g (public economic growth).

CONCLUSION

Thomas Piketty paints a convincingly bleak picture of growing inequality caused by inflated returns to private capital. Shi-Ling Hsu inaugurates an important inquiry into how law and legal institutions contribute to outsized returns to private capital in the first place. But neither provides an achievable solution in the short term to address America's vexing inequality and fiscal problems. Using the tax system to raise taxes on the wealthy would do both.

⁴⁹ Joseph Bankman & Paul L. Caron, *California Dreamin': Tax Scholarship in a Time of Fiscal Crisis*, 48 U.C. DAVIS L. REV. 405 (2014); see also Paul L. Caron, *Tax Reform in a Time of Crisis*, 142 TAX NOTES 1106 (2014).

⁵⁰ Bankman & Caron, *supra* note 49, at 408–11.

⁵¹ CONG. BUDGET OFFICE, AN UPDATE TO THE BUDGET AND ECONOMIC OUTLOOK: 2014 TO 2024, at 10 fig.1-2 (2014), https://www.cbo.gov/sites/default/files/45653-OutlookUpdate_2014_Aug.pdf.

⁵² Compare U.S. DEP'T OF THE TREASURY, MONTHLY STATEMENT OF THE PUBLIC DEBT OF THE UNITED STATES: NOVEMBER 30, 2014, at 1 tbl.1 (2014), <http://www.treasurydirect.gov/govt/reports/pd/mspd/2014/opds112014.pdf> (showing approximately \$18 trillion in U.S. Treasury securities outstanding), with U.S. DEP'T OF THE TREASURY, MONTHLY STATEMENT OF THE PUBLIC DEBT OF THE UNITED STATES: JANUARY 31, 2009, at 1 tbl.1 (2009), <http://www.treasurydirect.gov/govt/reports/pd/mspd/2009/opds012009.pdf> (showing approximately \$10.6 trillion in U.S. Treasury securities outstanding).

⁵³ Bankman & Caron, *supra* note 49, at 411–18.