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**ANTHROPOLOGY OF FREEDOM
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BETWEEN EXCHANGE AND GIFT.
THOUGHTS FOR AN INTERDISCIPLINARY
RESEARCH AGENDA**

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Paolo Silvestri¹

Abstract

With this paper I try to sketch a research agenda on the basis of which humanities and social sciences might interact with each other, searching for a human common ground in tax issues. To this purpose I shall proceed as follows: (§2) I will sketch two working hypotheses showing how and why tax system raises anthropological issues at the intersection of Philosophy of law, Politics and Economics; to restrict the field of enquiry, I will then analyse, firstly (§2.1), the most common theories of taxation – benefit-cost principle and ability-to-pay principle – usually meant as attempts to answer the demand for tax justice; and, secondly (§2.2), the issue of freedom in taxation as a problem of legal-political and economic obligation. I will then show how the research might gain some insight from both (§3.1) the literature on *homo reciprocans*, and (§3.2) the literature on gift-giving, which might allow us to better articulate the demands for justice and freedom, as well as to glimpse the human foundations of a new fiscal democracy.

Keywords: freedom; justice; tax; ability-to-pay principle; benefit-received principle; gift; exchange; voluntary exchange; trust; reciprocity; fiscal democracy.

JEL codes: A12; A13; D63; D64; H20; Z13

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This little essay is dedicated to a great man, a man who one day gave me a great gift, rekindling my hopes for the future. At the time when I received that gift, I immediately felt an immense sense of gratitude, and an immediate boost to find ways to be able to pay my debts and honour, at my very best, the credit and trust I was given. So, I said: “How could I ever repay you?”; and he said: “Paolo, I give you this for what you have already done, and not so that you could give it back, but with the hope that one day you could do the same gesture towards someone else”. From him I learned the truly human meaning of gift and (positive) debt.

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the research here sketched. Part of the researches developed in this essay and its final version were brought to completion during my stay as External Senior Fellow at Freiburg Institute for Advanced Studies (FRIAS), University of Freiburg (Germany), and thanks to the grant “World Wide Style II” from the University of Torino. A special thanks goes to FRIAS’ Director, prof. Bernd Kortmann, the Managing director, Carsten Dose, and FRIAS’ staff, for their constant care and support. I benefited a lot from FRIAS’ interdisciplinary intellectual environment, and I sincerely wish to thank all those with whom I had the chance to share and discuss some of my research ideas: first of all, prof. Lars Feld, but also professors: Günter Schulze, Guilherme Assis de Almeida, Joseph J. Capuno, Kristen R. Ghodsee, Judith Schlehe, Catherine Rigby, Francisco Arenas-Dolz, Agus Suwignyo.

I’m well aware that for every single issue touched on in this paper there is an immense literature that I barely quote and, perhaps, even ignore. Nevertheless, I would like to consider this paper as a first attempt to sketch an anthropological, or simply ‘human’ unitary framework which I believe to be at the intersection of many ‘human’ sciences (of course, any critique is always very welcome).

1. Introduction.

The way in which fiscal institutions and fiscal policies are conceived and implemented raises problems at the intersection of so many ethical, institutional, legal, political and philosophical issues, both practical and theoretical, that a unified framework of all these rather fragmented issues seems to be quite impossible. Let us consider just a few of these issues. The performance of fiscal institutions is crucial for its effects on equality, inclusiveness and social mobility. Tax issues, or, rather, tax injustices are at the core, if not the origin of modern democratic and legal-political (and not only economic) institutions. The arrangement of fiscal institutions touches salient political-social issues, many of them at the heart of a sound and democratic good governance both at local and global level: transparency, accountability, efficacy, legitimacy, and trust. Last but not least, taxation is ambivalently connected to citizens' trust/distrust relationships: among themselves as well as toward political, legal, and administrative institutions, since taxation is often perceived as the most immediate presence (for better or for worse) of such institutions in their lives.

To complicate the picture, the European economic crisis, the restrictive fiscal policies and their social consequences have done nothing but to sharpen the citizen's distrust in such legal-political institutions, increased their resentments, and even undermined the very possibility of a democratic discussion on taxes¹. This is due to many reasons.

First of all, the economic crisis and the sovereign debt crisis have given a final blow to the long crisis and transformation of the welfare state, destabilizing its very foundations: with the looming burden left from earlier generations (and politicians) and the risk (a certainty, in some cases) of a 'lost generation', the foundational ideas of distributive justice and intra- and intergenerational mobility, including equal chances for new generations, have proved to be highly problematic, especially where the so called 'politics of redistribution' and 'solidarity' turned out to be 'politics of taking'. All in all, the crisis has increased the perception of social inequalities, the sense of vulnerability of the weak, the resentment and / or envy of the 'young' who have not had their 'fair' share of the cake, and compromised the social bond.

Moreover, fiscal rules, budgetary disciplines and related fiscal policies – often implemented in the name of the much-debated 'austerity' or for 'reasons of revenue' rather than in the name of some idea of justice – have appeared to many as a mere

external imposition made by European and/or international institutions of dubious democratic legitimacy (such as the so-called ‘Troika’), with all due respect for the principle “no taxation without representation” and the sovereignty of the citizen, re-awakening, *inter alia*, the issue of the democratic deficit of the European Union, as well as the issue of the status of the European citizenship.

These problems call for new and urgent answers to some classic questions, at the intersection of many disciplines: why to pay (or not to pay) taxes? Namely, what is the foundation of tax obligation, power to tax and fiscal policies? What are the humane values – property, freedom, autonomy, free consent, equality, justice, social justice, efficiency, benefit and/or ability to pay principle, human dignity, etc., or a certain balance of them – that should found, legitimize and guide the analysis, development and implementation of a sound fiscal system? If the principle “no taxation without representation” appears to be a kind of unfinished revolution, how are the human foundations of a new fiscal democracy to be re-thought after the crisis?

Without claiming to solve such (rather fragmented) puzzles that have challenged philosophers, legal and political scholars and economists for centuries², I would like to adopt an anthropological perspective that might help us, if not to re-compose such puzzle, at least, hopefully, to focus on that which might constitute its centre: namely, the human.

My aim is to sketch a research agenda – through a series of scattered thoughts susceptible of further enquiries and, of course, critiques – on the basis of which humanities and social sciences – at least Anthropology, Philosophy of law, Political philosophy, Economics and, of course, Public Economics – might interact with each other fruitfully, searching for a human common ground in tax issues.

To this purpose I shall proceed as follows: (§2) I will sketch two working hypotheses showing how and why tax system raises anthropological issues at the intersection of Philosophy of law, Politics and Economics; to restrict the field of enquiry, I will then analyse, firstly (§2.1), the most common theories of taxation – benefit-cost principle and ability-to-pay principle – usually meant as attempts to answer the demand for tax justice; and, secondly (§2.2), the issue of freedom in taxation as a problem of legal-political and economic obligation. I will then show how the research might gain some insight from both (§3.1) the literature on *homo reciprocans*, and (§3.2) the literature on gift-giving,

which might allow us to better articulate the demands for justice and freedom, as well as to glimpse the human foundations of a new fiscal democracy.

2. An anthropological issue at the intersection of Philosophy of law, Politics and Economics

An extensive research agenda with an anthropological focus should keep in mind two working hypotheses:

A) that the tax system is a focal point of the social contract, at the intersection between horizontal and vertical social relationships – among citizens, and between citizens and legal-political institutions – and, therefore, a vantage point for a reflection on the anthropological foundations of virtuous/vicious circles of good/bad societies and good/bad governance.

B) that it is not possible to find a suitable answer to the problem of the trade-off between the human values that should found the legitimacy of a sound fiscal system, without a minimal and shareable vision of the human, and that an economy without human foundation is literally inhuman and dehumanizing.

The problem, of course, arises as soon as we try to define what is human, to the point that the only thing that seems to be shared is just the idea that it is impossible to find a unitary conception of the human. A symptom of this is the fragmentation of the ideal-types of the human in the various social sciences: *homo oeconomicus*, *politicus*, *juridicus*, etc.³

This difficulty does not mean that such a broad research agenda is not worth trying. In order, for example, to keep a focus on the human, the research might be subdivided into three steps:

1) broad survey on philosophical, ethical, economic, political, legal arguments (pros and cons) about tax obligation, power to tax, fiscal policies, and their strong or weak relationship to conceptions of human;

2) search for a 'human common ground' through an analysis of identities and differences between thinkers/schools whom, starting from a conception of the human, have advocated such arguments;⁴

3) narrowing the research to humane, people-oriented and sharable solutions for the re-building of a trustworthy and sustainable fiscal democracy.

Even so, such a research agenda still remains too extensive, and an entire life might not be enough to bring it to completion.

Perhaps the best way to further narrow down the field of enquiry is to start right from the 'beginning', i.e. to address two issues which are particularly controversial and often mentioned at the beginning of each economic, legal or political work on theories of taxation, and then show how these issues may be reinterpreted through anthropological lens.

2.1. *Tax Justice, or 'just distribution' of tax burden*

The many theories or principles of taxation elaborated by economists have been trying to search for a criterion of justice or equity in taxation, and are usually meant as an attempt to answer to the question: *how to share or distribute the tax burden?*. Nevertheless, a satisfying criterion of justice is still to be found.

Very briefly, the main theories or principles of taxation can be roughly summarized as follows:

1) *Benefit principle and/or cost of the service principle*. The *benefit* principle implies that the state should levy taxes on individuals in proportion to the benefit they receive from public services (those who benefit more from government expenditure should pay more taxes to support such expenditure). It also implies that the individual is (ideally) free to choose among the services provided by the state. Many criticisms have been levelled against such principle. Among them: in most of the cases taxation is and remain a form of coercion or compulsory contribution; as the expenditure is incurred by the state for the general benefit of its citizens, it is not possible to estimate accurately the benefit enjoyed by an individual and/or calculate exactly the *quid pro quo*; since the poor benefit more from public services, they will also have to pay the heaviest taxes, unless we decide to exclude them from the benefit of public services (since they do not have money for paying such services).

The *Cost of Service* principle shifts the emphasis from the benefit received to the actual cost of the service the individual should pay (from which he/she would anyway enjoy a benefit). It is usually applied in those cases where cost of services are more 'easily' determinable through the mechanism of prices (postal and railway services, electricity, etc.). Nevertheless, the difficulty of determining the cost for each individual

of most of the services provided by the state (police, armed forces, judiciary, etc.) still remains.

In any case, the well-known characteristics of public goods – non-excludability and non-rivalry – together with the issue of the free rider are considered serious limits to any attempt to conceive the distribution of tax burden in terms of benefit-cost analyses.

2) *The ability-to-pay principle*. It is usually held the most commonly accepted principle of tax justice, and in many countries it is explicitly or implicitly (via the principle of equality or solidarity) recognised as a constitutional principle. It claims that individuals should pay taxes in proportion to their ability to pay, measured on the basis of the ‘taxable capacity’ of an individual (those who have a higher taxable capacity should pay more). Nevertheless, criticisms of the ability to pay principle are not few: from the difficulty to find a unanimous definition of the ‘ability to pay’ to the issue of whether this ability to pay is to be considered a ‘sacrifice’, and, if so, how to measure such sacrifice (not to mention the issue of interpersonal comparison of individual utilities), all the way to what should be considered the ‘right’ taxable base and its exact measure: ownership of property, expenditures, income, or a certain mixture of them.

Usually income has been held the best test for such a measure, as well as the best taxable basis in order to apply a certain criterion of *progressive* taxation. As if it were not enough, some scholars maintain that progressive taxation, considered to be the expression of vertical equity (“unequal treatment of unequals”) is to be integrated with horizontal equity (“equal treatment of equals”),⁵ re-proposing new and better ways of measuring such a horizontal equity;⁶ but others claims that the *proportional* taxation is the only acceptable criterion, not only because those who have more already pay (in proportion) more, but also to avoid to discourage those willing to work hard and produce more. In this regard, it is not surprising that the flat-tax rate has been claimed as the fairest tax of all.⁷

The ability-to-pay principle seems to find a shareable meaning only when it is interpreted as *guarantee* or *limits* against the power to tax, at least in the sense that those who do not have an ability to pay cannot be obliged to pay taxes and must be exempt from taxation.

Perhaps this is not surprising because, even if we had found an agreeable and shareable notion of tax justice and a correlated criterion to distribute tax burden, the issue of taxation as a form of coercion and the question “why (not) to pay taxes?” still

remains open, usually calling for a justification of the power to tax. This is also the reason why some scholars consider the issue of freedom against tax-coercion prior to that of justice.

2.2. *Freedom and Taxes: the issue of legal-political and economic obligation*

The question of why pay taxes should not be unknown to legal and political philosophers as it resembles the problem of the legal-political obligation: *why obey the law?*⁸ However, here the difference is that the duty to pay taxes is an obligation that is extinguished by a payment, thus adding to the legal-political obligation also an economic obligation.

Although in past times the issue of taxation was typically faced in terms of why obey the power to tax and if and how it is to be justified (especially because of the arbitrariness of such power), legal-political philosophers⁹ have left the issue of taxation as a form of coercion in the hands of economists. This is perhaps due to the fact that the subjective value theory allowed to treat taxes as prices, and the relationship between taxpayers and state as “voluntary exchange”.¹⁰

In this respect, it is worth noting that the paradigm of the voluntary exchange and the possibility of treating taxes as prices have not changed the *contractarian* approach (and the anthropological assumptions) implied by the cost/benefit principle,¹¹ for the exchange is conceived as a sort of *do ut des, quid pro quo* or synallagmatic or *reciprocal* performances between citizen-taxpayer and the state.¹² In my view this is also due to the fact that in the paradigm of the voluntary exchange both the *will* and the *exchange* have often been assumed as a figure (and guarantee) of freedom.

This notwithstanding, if the problem of the legitimacy of taxation as coercion is posed in terms of ‘voluntary vs coercion’, or freedom vs coercion, the maximum that one can ask it is to minimize coercion and maximize possibilities for voluntary exchanges, and / or minimize the role and size of government and leave as much room as possible to the private sector.

3. The promises of the Gift: Freedom and justice. Searching for a new fiscal democracy.

An anthropological re-reading of the aforementioned issues and controversies will help us to better understand and perhaps overcome their limits, to re-read more carefully the past, and have some little hope for the future.

3.1. *Anthropology of taxation and homo reciprocans*

In this regard, I think it would be important to re-start from (and further develop) the intuitions and reflections of one of the greatest representatives of the Italian tradition in Public Finance, Luigi Einaudi, especially his *Myths and paradoxes of justice in taxation*, where the significance of the last two chapters, added in the second edition (1940), is still to be assessed and weighted up¹³. Moving from the limits of the voluntary exchange (as economic) approach to taxation, he ends up facing the inescapable question of the legitimacy of the power to tax, within the context of a wider and longer reflection on invisible foundations of a good/bad society and good/bad government¹⁴.

For our purposes it is worth mentioning the following points of his reflection, each of which is susceptible of further enquiries and researches: 1) through a reformulation of the theories of the élites and legitimacy¹⁵ Einaudi understands how the so called tax-coercion would not be necessarily perceived as a brute coercion if power (and the power to tax) is founded on shared and recognized values and on a shared sense of reciprocal trust, or, as he calls it, on an atmosphere of “compromise and mutual recognition”, first of all between majority and minority. Significant, in this regard, is his critique of Wicksell.¹⁶ In other words, he refers to the cultural-moral foundations and resources of trust/distrust (or what is today called the “social capital”) on which any society is founded, and through which societies are used to overcome “social dilemmas” such as that of the public goods and of the free-rider; 2) to better understand the fiscal phenomenon, Einaudi studies it through a historical-anthropological research, almost ethnographic, or, as it were, following the principle *ubi homo, ibi societas; ubi societas, ibi jus; ergo ubi homo, ibi jus ...* and *ubi homo, ubi societas and ibi tributum*. In this way, he detaches tax obligation from any imperativism of his epoch (based on the notion of state sovereignty), in order to understand such obligation within the framework of the always problematic anthropological tension between law and freedom, institutional and

individual; 3) by doing so, he discovers, through a thorough analysis of the public finance of Periclean Polis (as a historical example of good society), the existence of *liturgies*, that is, “spontaneous oblations” or “voluntary donations” or fiscal gifts to the *res publica*; 4) The *fiscal gift* is here a fundamental figure of *free and non-constrained contribution* that goes beyond the mere costs-benefits calculus of the individual tax burden, of which, nevertheless, Einaudi highlights its potential for the social bond and, at the same time, its structural fragility and ambiguity, for the gift is always susceptible of being perverted into a form of harsh competition¹⁷ as well as capable of undermining that same social bond; 5) in this way, Einaudi discovers the latent presence in the Periclean polis, as in any society, of *virtuous and vicious circles* – in this case, for example: “ambition” and “emulation”, and “fear” and “envy” among those who perform such liturgies (mainly the rich), and between them and other citizens. Such virtuous/vicious circles, mainly depending on societal and political (horizontal and vertical) relations of reciprocity, are at the core of an “extremely delicate” social equilibrium, where the tax system plays an important role in distributing burdens and benefits among citizens, since the tax system is “the *condition*, the *effect* and the *sign* of a city that had achieved political perfection”;¹⁸ 6) this, in turn, led him to the discovery of the theory of the *critical point*¹⁹ as an epistemological and anthropological theory of limit and freedom,²⁰ useful to explain the ambiguous virtuous/vicious circles founding any society and institution, whose ultimate foundation is based, for better or for worse, on human freedom;²¹ 7) The ruling class, provided that it is recognised (and rules) in the name of shared values, is a figure of *thirdness* that stands beyond the mere legality or positivity of the law and guarantees the equilibrium of the system and its *legitimacy*, included the legitimacy of taxes.²²

All these insights can also be fruitfully compared to the more recent philosophical, social and anthropological literature on trust and institutions²³ as well as to the literature on tax compliance, tax evasion, behavioral economics and psychology of taxation.²⁴ This literature has long demonstrated the difficulty of explaining taxpayers behavior with the lens of homo oeconomicus model and cost-benefit calculus²⁵, invoking the necessity of a more complex anthropology or a sort of ‘anthropological turn’ in order to better explain the tax compliance with new lens, i.e. with the *homo reciprocans*²⁶ provided with other dimensions of behavior such as respect of social norms, voluntary provision of public goods, altruism, fairness, charitable donations, group motivations and trust.

“Trust breeds trust”, as Feld and Frey have argued with reference to “how taxpayers are treated” by Tax Authorities,²⁷ also showing the existence of an implicit or “psychological tax contract” between citizens and government, which goes well beyond the traditional “deterrence model” (which, in my view, can also be understood as an economic version of legal imperativism). Interestingly enough, such a contract is not meant by citizens as a rigorous equivalence (in terms of *do ut des*) between paying taxes and receiving public goods “as long as the political process is perceived to be fair and legitimate”.²⁸ The same might be argued as to the horizontal circulation of trust/distrust within society, posing once again the need to better study this kind of virtuous/vicious circles.

This should also lead us to better understand the performative character of any discourse on the human, whether it be implied by tax authorities or by scholars. What is at stake here is not so much an issue of anthropological pessimism vs anthropological optimism, and even less an issue of anthropological ‘realism’ (as if we were looking for ‘how humans *really* behave’), for any statement on the human being will model the human being, becoming, sooner or later, a self-fulfilling prophecy.

If “trust breeds trust”, gift breeds gift. The point, as well as the anthropological issue at stake here, has been clearly grasped by the philosopher Peter Sloterdijk,²⁹ who has recently insisted on both the necessity of an anthropological turn and the need of introducing an ethics of the gift in taxation: from a passive citizen, often assumed to be as mere debtor towards the state, to an active citizen who gives or donates voluntarily to his fellow citizens, without the mediation of the “grasping hand” of the state. The interesting aspect of this approach is that it is envisaged also as a way to invert the vicious cycle of the economic crisis, the growing resentment about taxation and rising state debt, and to make citizens more conscious about the obligations we owe to each other as well as about the destinations of their taxes that often end up into the black hole of state budget, without knowing how such funds are then redistributed (if not wasted or stolen).

Sloterdijk’s thought is not entirely new and not only a thought experiment, as we have seen with the historical cases of fiscal gift analysed by Einaudi, nevertheless realizing a society entirely based on voluntary contributions is full of practical and technical obstacles that cannot be hidden.³⁰ This notwithstanding, it should not prevent

us from trying some kind of practical experiment aimed at gradually expanding the share of such fiscal gifts and put them under the control of donors.³¹

Perhaps, and in some respects, we do not even need to imagine a society *entirely* based on voluntary contributions, if by ‘voluntary’ we imply a notion of ‘free will’ as opposed to any kind of obligation. Rather, what we need is a better understanding of the kind of freedom and justice implied by reciprocity in human relations. And, so far, only the literature and (much more than the literature) the practice of the gift-giving promises the possibility of a balanced articulation of the demands for freedom *and* justice, however precarious it may be.

3.2. *Freedom and Justice in taxation*

It is precisely on this point that the literature on gift-giving³² can help us to escape from the doldrums of the aforementioned discussions on both principles of justice in taxation (benefit and / or ability to pay principle) and freedom from taxation.

Such discussions, in fact, closely resemble the problem, widely discussed in the literature on gift-giving, of the relationship between interest and gratuity. The problem, indeed, exists in so far as interest and gratuity are conceived dichotomically, that is isolating and opposing interest in receiving and gratuity of giving, or a purely utilitarian exchange and a purely gratuitous gift.³³

The question is obviously controversial, but, with reference to the aforementioned discussions on the theories of taxation, it is revealing that the conceptual and legal distinction between taxes and other levies (such as fees, contributions, etc.) – existing in many countries, but with different nuances – resembles this way of posing the problem: levies “are paid in change of something received by the taxpayer while taxes are paid without anything in return”.³⁴ Usually such a distinction between taxes and (other) levies parallels also the distinction between benefit-cost principle and ability-to-pay principle.³⁵

Instead, if we assume a conception of the gift as, for example, that proposed by Caillé and Godbout:

we define as a gift every lending of goods or services effected, without guarantee of restitution, towards the end of creating, nourishing or re-creating the social bond between the people involved,³⁶

and stress the words “without guarantee of restitution”, the perspective changes: we can legitimately expect something in return, even though this return is not guaranteed.

The issue at the heart of the phenomenon of the gift turned out to be not so much gratuity, but freedom, and, on the other hand, “freedom and non-guarantee are two sides of the same phenomenon”.³⁷

If there is indeed something that the literature on gift-giving has taught us is the fact that the *gift conjugates obligation and freedom* of each person involved in the circulation of the gift. The ‘only’ true (and anthropological) question, is the *free* recognition (or non-recognition) of the obligation or debt, in the sense that human freedom is asserted as such at the very moment in which it recognizes (or not) his debt.

Obligation and freedom remain in a constitutive tension that cannot be resolved theoretically, because both freedom and obligation depend on the concrete experience of life and living together, and they can also give rise, once again, to virtuous or vicious circles, or, as Godbout calls them, “negative” (or “positive”) “reciprocal debts”, occurring when the individual is convinced to give *more* (or *less*) than he/she receives. The situation characterized by negative reciprocal debts slides easily into a spiral of reciprocal recriminations and accusations about who did or gave more or less. Instead, the situation of positive reciprocal debts turns on a desire to give back and further feeds the cycle of giving. It is only the latter case that triggers a virtuous circle in which everyone has something to ‘gain’, fuelling further mutual trust and social ties: “trust arises and remains in a situation where everyone wins”.³⁸

And this brings us back, ultimately, to the limits of how to set the issue of tax justice in terms of just distribution of the tax burden: gift implies a different idea of justice.

On closer inspection the differences between benefit principle and ability-to-pay principle are not as great, since both principles remain within an idea of distributive justice understood as *proportion*. One might argue that the difference between the two principles lies in the *degree* of proportion. On the other hand, both principles find serious limits in determining accurately the benefits enjoyed by or the sacrifices required to taxpayers. Maybe we should stop with this accountancy of giving and taking.

As Sloterdijk claims (though not thinking about the aforementioned debates on tax justice, but implicitly referring to the literature on gift), gift-giving inevitably implies a incalculable surplus and asymmetry:

in every authentic exchange between human beings the advantage of giving is unbridgeable. Justice can only be thought beyond the symmetry between giving and taking. It can never be imagined without injustice and unilateralism. Consequently, the act of ‘responding’ can never end up in the

equal return of a gift received. The 'right answer' can only be a further giving, with which an asymmetrical relationship is established again³⁹.

Despite its fragility and precariousness, the gift is one of the most powerful and sustainable 'renewable energy'. Rethinking the social bond starting from gift,⁴⁰ in this case the fiscal gift, may involve the sustainability of a new fiscal democracy.

And this may also lead us to have *hopes* for the future, given also the intrinsic link between gift-giving and hope.⁴¹ It's time to reverse the current 'depressive' economy into an economy of 'hope'. But this cannot but depend on us, and on our freedom. Who is expected to invert the vicious circle?

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Notes

¹ In this regard one of the major stakes in tax issues and fiscal policies, was well summarized years ago by Musgrave: “[it is not surprising and indeed appropriate that fiscal policy] should be among the most controversial of policy issues. The fiscal process, as much as any other democratic institution, occupies the middle ground between anarchy and absolute rule. It provides the forum on which interest groups and ideologies may clash without resort to the barricades and on which compromise and cooperation may be sought” (Musgrave, 1981). Nevertheless, it is quite amazing what we have seen in these years of crisis: a kind of repression of history or a “skeptical or nihilistic” attitude towards questions of tax justice, thus forgetting “how many ferocious seditions and bloody riots have erupted in the past centuries, in every European country, as a reaction to tax injustice” (Falsitta, 2008: IXX).

² Only to quote some recent attempts to find a unitary philosophical framework for tax issues, see McGee (2004), Murphy, Nagel (2002), Halliday (2013), Gaisbauer, Schweiger, Sedmak (2015).

³ The problem of “*homo oeconomicus vs homo politicus*” is at the intersection of several social sciences and is still extensively debated today; see, for example, the monographic number of *Public choice* (137), especially Brennan (2008), Buchanan (2008) Milgate, Stimson (2008); as to *homo juridicus* see Supiot (2006).

⁴ This would imply to explore, ranging from libertarian to egalitarian approaches, the different perspectives claimed by: Mises (1949), Hayek (1960, 1973), Brennan, Buchanan ([1980] 2000), Buchanan (1967 [1999]), Nozick (1974), Epstein (1986), Salin (1996), Rawls (1972) – also in comparison to the works of Harsanyi (1975) and Binmore (2005) (see Holler, Lerloch (2014)) – Dworkin (2000, 2006), Holmes, Sunstein (1999), all the way to the “libertarianism without inequality” proposed by Otsuka (2003), Ostrom, for her works on governing the commons, institutions, trust and reciprocity (1990, 2003, 2010), but also Sen (1999, 2009) Nussbaum (2011) with reference to their capabilities approach.

From an anthropological point of view, Dworkin's perspective is significant, if only because it is conceived as search for a 'common ground' for opposing ideologies (though geographically limited to legal-political debates in the US) based on the notion of 'human dignity' – articulated in terms of Liberty and Equality – applicable also to tax issues and debates (Dworkin, 2006). For a good introduction (with further bibliographical references) to egalitarian and libertarian perspectives in the Anglo-American political philosophy see Kimlika (2002: 53-165).

⁵ On the Musgrave-Kaplow debate see Repetti, McDaniel (1993).

⁶ Auerbach, Assett (2002).

⁷ Hall, Rabushka (1995). For a critical survey on proportional taxation and its advocates see Fried (1999).

⁸ For a recent reappraisal of this issue, with specific reference to the legal conventionalism and its limits, see Schiavello (2010).

⁹ Though the issue of legitimacy and authority of law was exemplified by Kelsen just by recurring to the famous issue: how to distinguish the command of an income-tax official from that of a gangster (Kelsen 1967, 8), to my knowledge the issue of taxation in terms of legal-political obligation as been studied more by scholars of tax law or by constitutionalists rather than by legal philosophers.

¹⁰ Musgrave (1939), and, in a legal perspective, Vanoni (1932).

¹¹ It is also worth noting that even the ability-to-pay principle can be reduced to a contractarian approach, for example if we consider the ability to pay as a measure of the benefit received by the public services, see Griziotti (1949). On the difficulty of separating rigorously the benefit principle from the ability-to-pay see Gardina (1961).

¹² Francesco Forte ("The social pact-contractarian approach to taxes as prices of public services"; Paper presented at the Conference of International Atlantic Economic Society (Milan, March, 13, 2015, not published)) has recently summarized this longstanding contractarian tradition as follows: "The social pact-contractarian approach to taxes as prices of public services appeared with the anti-Hobbesian theory of social contract contractualism based on natural laws relating to individual rights of property, health and liberty of Samuel Pufendorf (1668) and of John Locke (1690). In the Hume approach, the evolutionary aspect of the pact as reciprocity behaviour is evidenced. Adam Smith's approach to taxation in *Wealth of Nations* (1773) adopts the contractarian theory of taxes in the interaction between supply and demand in an ambiguous way, the benefit principle being mixed with the ability to pay principle. Alexis De Toqueville (*Democracy in America*) links the tax-public expenditure relationship to the democratic system under the majority principle with redistribution limited by mutual interest and other factors. The first theoretical formulation in terms of marginal utility of taxes equalized with that of public services, by the Austrian economists Sax and von Wieser, overlooks participation of individuals in choices both in the formation and application of rules. The task of considering the interaction between government structure and individuals and market economy structure was undertaken by the marginalist Italian schools of Ferrara,

Ricca Salerno, Mazzola, De Viti De Marco, Pantaleoni, Einaudi and by the Griziotti and Vanoni Law and Economics School. The Swedish School of Wicksell and Lindhal developed the public process by individuals through the voting system. James Buchanan and Gordon Tullock building on Italian and Wicksellian tradition developed a two-level public choice system at the constitutional and post-constitutional level with a dual Italian model without exploitation and with exploitation. However, they differ because Buchanan's approach includes ethical elements as in the natural law tradition, while Tullock's approach is strictly utilitarian. Alan Peacock's approach emphasizes the importance of the supply side aspect inherent to government as an organization and to politicians as entrepreneurs. In the Coasian Law and Economics approach, the fruitfulness of a private law approach is evidenced. Feld and Frey follow a parallel line in their paradigm of the implicit psychological social contract. Alm explains that tax compliance is more often much greater than that explicable thorough deterrence of tax enforcement policy via group motivation. In experimental economics research, such as that of Burlando and Hey, the existence of an implicit social fiscal contract emerges with varying results, under altruism, cooperation and reciprocity hypotheses, with accompanying factors dealt with through development of the public choice approach".

¹³ Though Luigi Einaudi's works in public finance is widely known among scholars, in the following analysis I will be referring to Einaudi's *Myths and paradoxes of justice in taxation* (1940) that has only recently (and only partially) been translated into English (2014 [1940]), and in particular to the last two chapters, which were the fruit of the debate with his pupil Fasiani (Fossati, Silvestri, 2012) and the subject of further thoughts in an unpublished essay (Einaudi, 2015).

¹⁴ See Silvestri (2008, 2012a, 2012c), and the essays included in Heritier, Silvestri (2012).

¹⁵ Forte, Silvestri (2013).

¹⁶ Through the mechanism of consent and democratic vote, Wicksell tried to overcome one of the major limits of the benefit principle (the difficulty to know or measure the benefit received by the individual, and the preference revelation problem), and, at the same time, the issue of coercion, being the decision on tax policies the expression of a free consent (through complicated mechanism of democratic vote and unanimity rules). Though ideally endorsing Wicksell's thought, Einaudi pointed out that the consent is the precondition of the democratic vote and not its result, otherwise the decision of the majority would never be recognised by the minority.

¹⁷ The issue is known since Mauss' ground-breaking work (Mauss 1990 [1923-24]), but see also Starobinski (1995 [1994]).

¹⁸ "The city reached its crowning glory not because of the way it conducted its financial affairs, but because Periclean finances were at one and the same time the *condition*, the *effect* and the *sign* of a city that had achieved political perfection" (Einaudi, 2006 [1940]: 127).

¹⁹ Further developed in Einaudi (1949).

²⁰ Silvestri (2012a: 89-91); Heritier (2012).

²¹ See Anspach (2007).

²² As Einaudi (2014 [1940]: 147) writes, concluding his *Myths and paradoxes of justice in taxation*, “any ruler is perfectly capable of coercing people into paying taxes. But the leader chosen by the valentior pars of the citizens [...] intends to elevate the mortals of the earthly city to the divine city, where the word ‘tax’ is unknown, because all the people understand the value of the sacrifice offered on the altar of the common good”.

²³ See Luhmann (1979), Douglas (1986), Gambetta (1988).

²⁴ See Allingham, Sandmo (1972); Alm, McClelland, Schulze (1992); Alm (2014); Torgler (2007); Androni, Enrard, Feinstein (1988); Cullis, Lewis (1997); Feld, Frey (2000); Cox (2012).

²⁵ More generally, for a fundamental critique of the limits of the rational choice theory and an integration of it in terms of rule following behaviour see Vanberg (1994).

²⁶ See also Bruni (2010).

²⁷ Feld, Frey (2000).

²⁸ Feld, Frey (2007). In this regard, it would never be enough to reflect on the words of a representative of the Movement “Vedove della crisi” [“Recession Widows” or “Widow of the crisis”], a movement created in the wake of a series of suicides – mainly due to the economic crisis, the growing indebtedness and/or the impossibility of paying tax debt –, and triggered, in particular, by the tragic act of a man who, fallen in desperation for not being able to pay his tax debt, set fire to himself outside the tax office. The representative, speaking also in the name of the widow of this man, said: “We are not here to say that one doesn’t have to pay taxes, because they have to be paid, it’s a duty. We are here to seek a *human relationship between taxpayers and tax authorities*” (“Widows of the crisis”, Public demonstration, Bologna, May 4, 2012, italics mine).

²⁹ Sloterdijk (2010). Sloterdijk’s articles raised a hot debate. Among the critical responses see Honneth (2010), and Zizek (2012).

³⁰ Rothbard (2004: 199 ff). To my knowledge, the only theoretical attempt to conceive voluntary taxation, moving from a contractualist approach, is Sugden (1990).

³¹ For example, as suggested by Carrico (2013) in his review of Sloterdijk’s work, “while taxation should remain mandatory, ballots might be affixed to personal tax returns, so that taxpayers can decide where their funds, or rather their gifts, will be allocated. The results of these ballots, maintaining compulsory taxation yet incorporating philanthropic input, will then determine the federal budget for the next fiscal year”.

Another example is that of the “percentage legislation” or “percentage philanthropy”, see Bullain (2004). It defines the mechanism by which taxpayers can freely designate a certain percentage of their income tax paid to churches, a specific non-profit, non-governmental organization (NGO) or entities whose main activity is of public interest. In Italy such a mechanism of ‘voluntary’ contributions, originally thought for churches

(0,8%), has been enlarged to many other entities (0,5%, also known as “five per thousand”), with a huge success. Though it can be questionable whether such a mechanism represent a form of gift (since it remains within a statual-coercive framework, but the issue, of course, is open to further enquiries), an expansion of this very modest rate would be desirable anyway, at least to reach a more significant threshold, thanks to which the fiscal gift enters into a virtuous circle, as well as to enlarge the citizen sovereignty and his choice in fiscal issues. Not by chance, this mechanism has been seen as a truly form of fiscal democracy at least in terms of fiscal subsidiarity and fiscal sovereignty of the taxpayer, see the essays included in the report edited by Montedoro, Marucci (2012).

³² For a recent reappraisal of the relevance of the gift in a legal-aesthetic and philosophical perspective see Heritier (2014). For an attempt to reintroduce the gift into the economic discourse and against Economics imperialism see Cedrini, Marchionatti (2013).

³³ For a reassessment of this issue, against the idealization of the gift as absence of any personal interest and return see Sequeri (1999) who also insists on the affective and relational dimension of the gift. For a re-reading of Sequeri’s thought and his “anthropology of justice” see the monographic number of this Journal 7/2013. For an appraisal of Sequeri’s thought in terms of “affective turn” see, *ivi*, Heritier (2013).

³⁴ Barassi (2005).

³⁵ Here, once again, the issue is open as to whether one can equate ‘taxes’ and the ‘redistribution’ of the welfare state to a modern system of circulation of the gift (as Mauss and Titmuss thought), or if the *coercion* of taxation is incompatible with any idea of gift, with the further aggravating circumstance that the institutionalized redistribution perverts the very idea of gift, as claimed by Godbout (2002: 68-85).

³⁶ Godbout (2002: 30).

³⁷ Godbout (1998: 80).

³⁸ Caillé (1998: 107).

³⁹ Sloterdijk (2010: 86 (transl. mine)).

⁴⁰ Pulcini (2001).

⁴¹ Miyazaki (2004).