

NEOLIBERALISM IN AUSTRALIA AND THE HENRY TAX REVIEW

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ABSTRACT

This paper looks at the development of tax reform in Australia in the light of the rise of neoliberalism globally and its impact on tax policy. It argues that the fall in profit rates across the globe and the lack of class struggle in Australia have allowed neoliberalism and neoliberal tax policy to dominate the agenda. That agenda is to shift more wealth to capital to address falling profit rates and the Henry Tax Review is part of that process by both reducing taxes on capital and increasing tax burdens on labour. A return to class struggle offers the best opportunity to reintroduce equity into the tax debate.

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I INTRODUCTION

In this paper I examine the neoliberal nature of Australia's Future Tax System Report, the Henry Tax Review.¹ Because tax is a deduction by the state from surplus value,² tax reform is about the form (the 'tax mix') and level of that state extraction. Given the decline in profit rates in much of the developed world since the late 1960s and early 1970s³ and the collapse of strike levels in Australia since the mid-1990s,⁴ neoliberal tax policy attempts to address this decline by reducing the State's share of surplus value and hence increasing the share going to capital without any resistance by workers as workers.

¹ Ken Henry et al, *Australia's Future Tax System Report to the Treasurer* (AGPS, 2010). There are 3 parts to the Report and they have 3 distinct footnote references in this article. 1 (a) Ken Henry et al, *Australia's Future Tax System Report to the Treasurer* (AGPS, 2010) Part One the Overview; 1 (b) Ken Henry et al, *Australia's Future Tax System Report to the Treasurer* (AGPS, 2010) Part Two Detailed Analysis Volume One and 1 (c) Ken Henry et al, *Australia's Future Tax System Report to the Treasurer* (AGPS, 2010) Part Two Detailed Analysis Volume Two. The link to the Final Report – all 3 sections plus other material - can be found here. <http://taxreview.treasury.gov.au/content/Content.aspx?doc=html/pubs_reports.htm>.

² Chris Harman *Zombie Capitalism: Global Crisis and the Relevance of Marx* (Bookmarks 2009) 114. Surplus value is the wealth that workers create through their labour. It is the difference between what workers are paid and the value they create. Joseph Choonara, *Unravelling Capitalism: A Guide to Marxist Political Economy* (Bookmarks London 2009) 21. Workers sell their labour power and receive in return wages which reflect their value – the cost of necessities and raising the next generation - but they create more value than that and the difference is the surplus value the bosses expropriate and realise on the market.

³ See for example Chris Harman, 'The rate of profit and the world today' (Summer 2007) 115 *International Socialism Journal* <<http://www.isj.org.uk/?id=340>>; Andrew Kliman, *The Failure of Capitalist Production: Underlying Causes of the Great Recession* (Pluto Press 2011); Joseph Choonara, *Unravelling Capitalism: A Guide to Marxist Political Economy* (Bookmarks London 2009) 74 et ff; Kieran Allen, *Marx and the Alternative to Capitalism* (Pluto Press 2011) 142 et ff; Gerard Duménil and Dominique Lévy, 'The profit rate: where and how much did it fall? Did it recover? (USA 1948-2000)' (Fall 2002) 34 (4) *Review of Radical Political Economics* 437; Gerard Duménil and Dominique Lévy, *The Economics of the Profit Rate* (Edward Elgar 1993); Gerard Duménil and Dominique Lévy, *Capital Resurgent: Roots of the Neoliberal Revolution* (Harvard University Press, 2004); Guglielmo Carchedi, 'Behind and beyond the crisis' (Autumn 2011) 132 *International Socialism Journal* <<http://www.isj.org.uk/index.php4?id=761&issue=132>>; Alex Callinicos, 'The crisis of our time' (Autumn 2011) 132 *International Socialism Journal* <<http://www.isj.org.uk/index.php4?id=755&issue=132>>; Joseph Choonara, 'Once more (with feeling) on Marxist accounts of the crisis' (Autumn 2011) 132 *International Socialism Journal* <<http://www.isj.org.uk/index.php4?id=762&issue=132>>; Michael Roberts, 'The long depression – the waste of capitalism' *Michael Roberts Blog: blogging from a Marxist Economist* 3 May 2012 <<http://thenextrecession.wordpress.com/2012/05/03/the-long-depression-the-waste-of-capitalism/>>; Michael Roberts, 'The UK rate of profit and others' *Michael Roberts Blog: blogging from a Marxist Economist* 4 January 2012 <<http://thenextrecession.wordpress.com/2012/01/04/the-uk-rate-of-profit-and-others>>; Minqi Li, Feng Xiao and Andong Zhu, 'Long Waves, Institutional Changes, and Historical Trends: A Study of the Long-Term Movement of the Profit Rate in the Capitalist World-Economy' (December 2007) XIII:1 *Journal of World-Systems Research* 33, 46 <http://jwsr.ucr.edu/volumes/vol13/Li_et_al-vol13n1.pdf>.

⁴ Australian Bureau of Statistics, *4102.0 - Australian Social Trends, 2008: Industrial Disputes* <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4102.0Chapter7302008>>; Tom Bramble, *Trade Unionism in Australia: A history from flood to ebb tide* (Cambridge University Press, Melbourne, 2008) 7.

The rise of neoliberalism globally over the last 4 decades⁵ and in Australia since 1983⁶ can only be understood against this background of falling profit rates in the developed world⁷ and, in relation specifically to Australia, the collapse in the level of class struggle here. The decades long policy and practical shift to and deepening of neoliberalism⁸ is as true of tax policy as it is of other areas of policy.⁹ One almost universal state response to falling profit rates has been to reduce taxes on capital.¹⁰ Optimal tax theory is one justification for lessening taxes on capital and adopting other neoliberal tax policies. Optimal tax theory is the idea ‘...that different activities respond to different degrees to the same level of taxation...’¹¹ Perhaps even more appropriately, in light of its arguments for differential taxation, it might also be described as the idea that different activities respond to in optimum ways to different levels of taxation. Optimal tax theory gives intellectual weight and justification to the process of reducing extractions from surplus value and thus improving the amount of surplus value going to capital. What underlies

⁵ David Harvey, *A Brief History of Neoliberalism* (Oxford University Press 2005) 7. Harvey identifies General Pinochet’s US supported dictatorship in Chile from September 11, 1973 as ‘the first experiment with neoliberal state formation.’ See also John Quiggin, ‘Globalisation, neoliberalism and inequality in Australia’ (1999) 10(2) *The Economic and Labour Relations Review* 240, 241.

⁶ Tom Bramble and Rick Kuhn, ‘Making Capitalism Acceptable? The economic policy of Australian social democracy since the 1970s’ 2010 *Marxism* 21 306, 318. <http://nongae.gsnu.ac.kr/~issmarx/eng/article/20/20_bramble&khun.pdf>; Bramble and Kuhn argue the first hints of neoliberalism were evident in the Whitlam government’s response to deepening global economic crisis such as the 25% cut in tariffs in 1973 and the 1975 Bill Hayden ‘monetarist-inspired’ Budget. See pages 315 and 317 respectively.

⁷ Karl Marx, *Capital Volume III* (Foreign Languages Publishing House, Moscow 1959) 207-261. For an explanation of the theory see Chris Harman, *Zombie Capitalism: Global Crisis and the Relevance of Marx* (Bookmarks 2009) 68-72.

⁸ This is exemplified politically by the election of Thatcher in 1979, Reagan in 1980 and Hawke in 1983.

⁹ Duane Swank and Sven Steinmo, ‘The New Political Economy of Taxation in Advanced Capitalist Democracies’ (2002) 46(3) *American Journal of Political Science* 642; Duane Swank, ‘Tax Policy in an Era of Internationalization: Explaining the Spread of Neoliberalism’ (2006) 60(4) *International Organization* 847. Swank, and Steinmo, attribute the diffusion of neoliberal tax policy to the influence of US capitalism and its groundbreaking 1986 Tax Reform Act. What they don’t explain is why the turn to neoliberalism has and is occurring. See also Johan Christensen, ‘Bringing the bureaucrats back in: neo-liberal tax reform in New Zealand’ (2012) 32 (2) *Journal of Public Policy* 141 where Christensen argues that neo-liberal tax reform in New Zealand is best understood as the product of autonomous bureaucratic action, an argument I find unconvincing; Johan Christensen, ‘Bureaucracies, Neoliberal Ideas, and Tax Reform in New Zealand and Ireland’, forthcoming in *Governance: An International Journal of Policy, Administration and Institutions*; preview version published online 21 November 2012 DOI: 10.1111/gove.12009; Adam Jamrozik, *Social Policy in the Post-welfare State: Australian Society in a Changing World 3rd edn.*(2009, Frenchs Forest, Longman). For a rebuttal of sorts to Jamrozik’s post-welfare state thesis in Australia see Alan Fenna & Alan Tapper, ‘The Australian Welfare State and the Neoliberalism Thesis’ (2012) 47(2) *Australian Journal of Political Science* 155.

¹⁰ Ken Henry et al, above n 1 (b), 160. This is true for both the headline (b) and effective company tax rates. Ken Henry et al, above n 1(b), 160-162.

¹¹ Jacob Saulwick, ‘Balancing act between tax theory and reality’ *The Sydney Morning Herald* 19 April 2010 <<http://www.smh.com.au/business/balancing-act-between-tax-theory-and-reality-20100418-smls.html>>.

the Henry Tax Review is a pragmatic, almost disguised, adoption and adaptation of optimal tax theory, a form in my view of neoliberalism in tax theory and increasingly, although with some difficulty,¹² in tax policy and practice.

The paper is divided into 5 parts. Part II looks briefly at some indicators of and reasons for the collapse of class struggle in Australia and the impact this has had on the development of policy, including tax policy, in Australia. Part III examines what neoliberalism is and the Australian Labor Party's embrace of the ideology in light of falling profit rates in the developed world and the lack of counterbalancing class struggle in Australia. In Part IV the paper looks at neoliberalism in the context of tax policy and the rise of optimal tax theory. It argues that the Henry Tax Review is both a reflection of that neoliberal trend and the catalyst for future deepening of neoliberal tax policy in Australia. The paper concludes that only a return to class struggle can put a progressive tax system back on the policy and political agenda.

Given the importance I attach to class struggle or lack of it in setting the political and economic environment and its flow through to tax policy and tax reform, what then has been happening to strike levels in Australia over the last 3 decades?

II THE COLLAPSE OF CLASS STRUGGLE IN AUSTRALIA

Tax is a deduction from surplus value. As Harman puts it taxes '...are part of the total social surplus value – part of the total amount by which the value of workers' output exceeds the cost of reproducing their labour power.'¹³ The ultimate incidence of tax both in terms of the direct burden and indirectly through the impact on living standards, jobs, prices, profits, wages and so on depends on the level of class struggle in Australian society. That level today is very low. As Tom Bramble puts it class struggle has moved from the flood of the late 1960s to the ebb tide today, an ebb tide that began in 1983 with the election of the Hawke Labor government and which continues to this day.¹⁴ Bramble says that '[t]he Accord marked the onset of the ebb tide in union affairs, a

¹² For a discussion of both the difficulties of implementing optimal tax theory as on the ground policy, and the trend in policy towards optimal tax theory, see Robin Boadway, *From Optimal Tax Theory to Tax Policy: Retrospective and Prospective Views* (The MIT Press, 2012). See also N. Gregory Mankiw, Matthew Weinzierl and Danny Yagan, 'Optimal Taxation in Theory and Practice' (2009) 23(4) *Journal of Economic Perspectives* 147.

¹³ Chris Harman, above n 2, 114.

¹⁴ Tom Bramble, *Trade Unionism in Australia: A history from flood to ebb tide* (Cambridge University Press, Melbourne, 2008). His chart at page 7 shows the decline graphically.

period of retreat that is still in progress.¹⁵ The Accord engineered not only a cut in real wages,¹⁶ a collapse in union membership,¹⁷ the destruction of effective grass roots and rank and file organisation in unions,¹⁸ the suppression of militancy and in some cases militant unions,¹⁹ but a massive collapse in the number of strikes and the number of days lost. Two graphs from the Australian Bureau of Statistics illustrate the magnitude of the collapse in class struggle, the first one from 1987 to 2007 and the second from 2008 to 2013.

INDUSTRIAL DISPUTES, NUMBER OF WORKING DAYS LOST²⁰



The strike figures since 2007 have continued at historically low levels, with minor ups and downs.²¹ Here are the quarter by quarter figures from March 2008 to March 2013 from the Australian Bureau of Statistics, keeping in mind the decline outlined above puts these figures into their real context at the very low end of class struggle.²²

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¹⁵ Ibid 125.

¹⁶ Tom Bramble and Rick Kuhn, *Labor's Conflict: Big business, workers and the politics of class* (Cambridge University Press 2011), 106.

¹⁷ Ibid 169.

¹⁸ Tom Bramble, above n 14, 130.

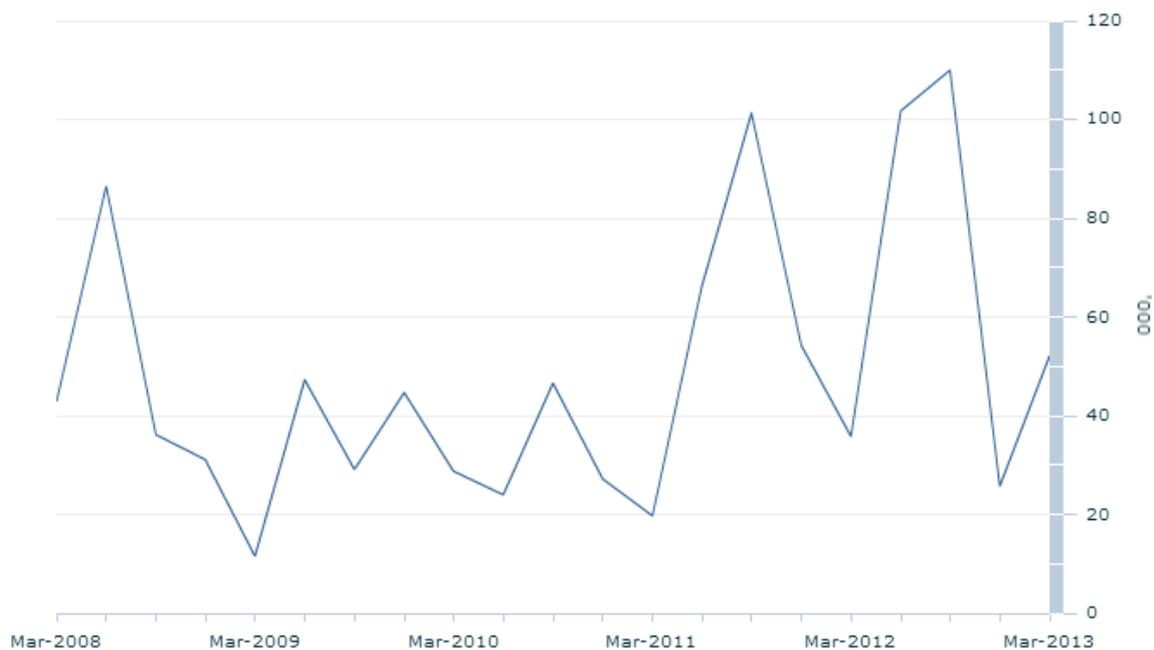
¹⁹ Tom Bramble and Rick Kuhn, above n 16, 106.

²⁰ Australian Bureau of Statistics, *4102.0 - Australian Social Trends, 2008: Industrial Disputes* <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4102.0Chapter7302008>>. The graph refers to working days lost per 1000 employees.

²¹ Tom Bramble and Rick Kuhn, above n 16, 169.

²² Australian Bureau of Statistics, *6321.0.55.001 - Industrial Disputes, Australia, Mar 2013* <<http://www.abs.gov.au/ausstats/abs@.nsf/mf/6321.0.55.001>>.

Working days lost, Australia



Save Chart Image

Australian Bureau of Statistics

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It is this loss of class combativeness, this lack of class struggle, that helps explain the ongoing and deepening neoliberalisation of Australia. This has impacted on tax policy. Without struggle, in particular class struggle, the ability to win progressive change becomes less likely.²³ This is because without pressure from below social democratic parties like the ALP will move to the right economically (and often socially) under pressure from capital and conservative elements in society in times of declining profit rates, or where there are perceptions of economic crises and the need for the policies of austerity to address them.

Collective action can force progressive policies on supportive and sometimes even on reluctant governments.²⁴ For example after the Second World War mass strikes in Australia over wages pressured government to extend the welfare state.²⁵ The election of the Whitlam government was in part a response to the industrial and social ferment

²³ Tom Bramble and Rick Kuhn, 'Continuity or Discontinuity in the Recent History of the Australian Labor Party?' (June 2009) 44 (2) *Australian Journal of Political Science* 281, 290.

²⁴ Ibid 292-293. See also Erin E. O'Brien, *The Politics of Identity: Solidarity Building among America's Working Poor* (State University of New York 2008) 147.

²⁵ Tom Bramble and Rick Kuhn, above n 6, 315-316. This was not a peculiarly Australian phenomenon. For example, David Harvey says: 'As in almost all advanced capitalist societies, labour unrest [in Sweden] burgeoned in the late 1960s, sparking a wave of regulatory reform that curbed the power of capital and extended the power of labour even into the workplace.' David Harvey, above n 5, 112.

of the 1960s and that background of militancy saw it adopt a number of progressive policies which also advantaged capital by producing a more educated and healthy workforce.²⁶ On the other hand a passive working class will accept, however unwillingly and reluctantly because of a sense of powerlessness,²⁷ the neoliberalisation of society, including shifts in national income to capital over time.²⁸ The tax system has contributed to this shift as it has become less progressive.²⁹

The reasons for a link between working class struggle and progressive and sometimes overtly pro-working class policies³⁰ are complex. Bramble and Kuhn identify the nature of the ALP's policies as dependent on the interactions, conflicts and battles in what they call its material constitution – its working class base of voters, its members and their class, the trade union leadership, the Party's leadership itself and the pressure from the capitalist class.³¹ Changes in the strengths of each component of that material base, and the level of pressure they bring to bear, can see Labor move to the Left or the Right³² but in the context of the ALP being a 'steadfast defender of the capitalist system.'³³ Without working class pressure it is more likely to move to the right in times of declining profit rates globally.³⁴ With working class pressure it can move to the left.³⁵

Without that working class base fighting for its own material interests in any major way there is little or no pressure on the Party and its leadership to develop or implement pro-working policies and the ruling class's economic ideology du jour or de siècle can and does then dominate Labor Party thinking and practice. Traditionally the Labor Party has 'followed the economic orthodoxy of the day.'³⁶ When the world is Keynesian, Labor is Keynesian. When the world is neoliberal, Labor is neoliberal. The neoliberalisation of the Party's policies and practice can continue unchecked, especially if the trade union leadership is embedded in the process and workers are quiescent.³⁷ Tax policy becomes

²⁶ Tom Bramble and Rick Kuhn, above n 6, 316.

²⁷ Tom Bramble and Rick Kuhn, above n 23, 284.

²⁸ Tom Bramble and Rick Kuhn, above n 6, 315-316.

²⁹ Organisation for Economic Cooperation and Development (OECD), *Divided We Stand: Why Inequality Keeps Rising - Country Note: Australia* (Paris 2011) 1 < <http://www.oecd.org/australia/49177643.pdf>>; Andrew Leigh, *Battlers and Billionaires: The Story of Inequality in Australia* (Redback Press 2013).

³⁰ At least in times of relative economic good times when profit rates are adequate and the pool of surplus value out of which reforms can be paid is adequate.

³¹ Tom Bramble and Rick Kuhn, above n 16, 14-18.

³² Tom Bramble and Rick Kuhn, above n 23, 293.

³³ Tom Bramble and Rick Kuhn, above n 16, 186.

³⁴ Tom Bramble, above n 14, 15.

³⁵ Ibid 240.

³⁶ Tom Bramble and Rick Kuhn, above n 16, 183.

³⁷ Ibid 183-14.

part of that process of societal neoliberalisation. To this end the Rudd Labor government established the Henry Tax Review and its terms of reference focused on efficiency and the market rather than equity. These are the concerns of neoliberalism.

It is these two systemic drivers – a collapse in strikes in Australia and the fall in profit rates globally – that explain the turn to neoliberalism and its expression in Australia in the tax field in the neoliberal recommendations of the Henry Tax Review.

What then is neoliberalism?

III NEOLIBERALISM

It was Elizabeth Martinez and Arnaldo Garcia in an oft quoted piece who identified five main elements of economic neoliberalism – the rule of the market, cutting public expenditure for social services, deregulation, privatisation and eliminating the concept of public good or community and replacing it with individual responsibility.³⁸ This concentrates on the aims and outcomes of neoliberalism and not the mechanism for arriving at these outcomes, a strong state. Eddie Cimorelli identifies these deeper concerns. He says that '[n]eoliberalism is a particular organisation of capitalism. Its most basic feature is the use of the state to protect capital, impose market imperatives on society and curb the power of labour.'³⁹ Tax reform is about reinvigorating or protecting capital and the flow of profits. It reinforces or extends market imperatives by attempting to reduce the level of state extractions from surplus value and allowing more to flow to capital for reinvestment.

Under neoliberalism the state uses its power to open up or impose the market on and across society and not all sectors will be accepting and compliant. Reducing the tax take of the state and its spending on the working class allows more surplus value to go to capital and hence back into the capital accumulation and production process. The state exercises its monopoly of legislative power to deliver tax cuts to capital and often spending cuts to labour.

What is the point of neoliberalism? As David Harvey puts it, neoliberalism is 'a *political* project to re-establish the conditions for capital accumulation and to restore the power

³⁸ Elizabeth Martinez and Arnaldo Garcia, 'What is Neoliberalism? A brief definition for activists' *CorpWatch – holding corporations accountable* <<http://www.corpwatch.org/article.php?id=376>>.

³⁹Eddie Cimorelli, 'Taking neoliberalism seriously' (Autumn 2009) 122 *International Socialism Journal* <<http://www.isj.org.uk/index.php4?id=537&issue=122>>.

of economic elites.⁴⁰ The crisis of profitability from the late 1960s and early 1970s forced a rethink on those who own capital and those who oversee the capital accumulation process, for example, capitalists, the state, the main political parties, high ranking managers, mainstream academics, think tanks, media commentators and the rest of the industry devoted to manufacturing consent.⁴¹ That rethink was not aimed at re-establishing the class power of capital but reinforcing and strengthening its economic and political power of capital over labour, (i.e. the power they already had,) and thus increasing surplus value going to capital to address falling profit rates in the developed world. Neoliberalism is thus about the redistribution of surplus value, not its creation.

Of course, if the state reduces its tax take it allows more surplus to flow to capital and this will have short and long term consequences for accumulation and the creation of future surplus value, especially for small open economies like Australia.⁴² The argument is that low taxes on capital attract foreign investment. The paradox is that success in diverting more surplus value back to capital and hence into accumulation or re-investment doesn't of itself increase the amount of surplus value created. That occurs in the production process with the surplus value created by the labour of productive workers, that is, workers who produce goods and services for the market. What capital does is harness that process and appropriate that value. Tax cuts on capital and other pro-capital reforms do however reinforce the very production process – increasing investment in capital, the means of production, at a rate greater than in value producing labour⁴³ - that leads to declines in profit rates.⁴⁴

The band of hostile brothers that is the various sections of capital and the state⁴⁵ battle among themselves for a share of surplus value, both within and across industries. The

⁴⁰ David Harvey, above n 5, 19.

⁴¹ Edward S Herman and Noam Chomsky, *Manufacturing Consent: The Political Economy of the Mass Media* (Pantheon Books, New York 1988).

⁴² Ken Henry et al, above n 1(a), 8.

⁴³ Marx called this an increase in the organic composition of capital. It is the key to understanding the tendency of the rate of profit to decline. See for example Chris Harman, above n 2, 70-71.

⁴⁴ Ibid 68-72.

⁴⁵ The band of hostile brothers is made up of the various members of the capitalist class such as productive capital, finance capital, landlords and the state. I would use siblings instead of brothers but the phrase is now so entrenched in Marxist and leftwing writing that it is seemingly untouchable. Interestingly, although Marx talked about hostile brothers, he never called them a band. Later writers ascribed the whole phrase to Marx and it is now so entrenched in leftwing discourse that I use it to describe capitalists who own and control the commanding heights of the economy and have interests in common (against labour) and opposed (in competition) to each other, and their state. Productive capital is that section of capital in which workers create surplus value, i.e. produce goods and services for sale on the market. See for example Karl Marx, *Capital Volume I* (Progress Publishers, Moscow 1977) 149 and

battle is over state revenues as an extraction from the social surplus value.⁴⁶ In essence then neoliberalism is an attempt to lessen the state's share of surplus value to enable more to go to capital. The use of the tax monopoly to reduce taxes on capital and to shift the tax mix from capital (especially mobile capital) to consumption and fixed assets like resources and land and to some extent labour⁴⁷ is an exercise of state power to ensure its retreat from purloining the surplus value the other brothers extract. The return of the amounts the state has appropriated from the expropriators to the expropriators is neoliberalism itself.

What unifies these various neoliberal matters into a cohesive whole, with debates between different factions of capital and the pro-capitalist parties about the way forward, is the need for policies and actions - countervailing tendencies - to address the tendency of the rate of profit to fall.⁴⁸ Reducing taxes on capital is one way to do this.

Tax reform is part of the wider political and economic neoliberal process of shifting wealth from labour and the poor to capital and the rich.⁴⁹ As David Harvey puts it: 'The main achievement of neoliberalism ... has been to redistribute, rather than to generate, wealth and income.'⁵⁰ It is also about increasing ruling class power and hegemony.⁵¹ Tax reform both reflects and reinforces ruling class power and the attempts of that class to reduce the tax burden on itself and increase if needed the burden on workers.⁵² This wealth shift from labour to capital has been in part an achievement of tax policy and tax reform, directly through for example income tax cuts that have disproportionately

201; Alex Callinicos, *The Revolutionary Ideas of Karl Marx* (Bookmarks, London, 1996) 219; Chris Harman, above n 2, 114.

⁴⁶ Chris Harman above n 2, 114.

⁴⁷ Ken Henry et al, above n 1 (a), 8.

⁴⁸ Karl Marx, *Capital Volume III* (Foreign Languages Publishing House, Moscow 1959) 207 - 261. For a discussion of the theory, see Chris Harman, *Zombie Capitalism: Global Crisis and the Relevance of Marx* (Bookmarks 2009) 68-72. Harman also discusses countervailing tendencies like lengthening the working day, devalorisation, cutting real wages, increasing productivity and so on at pages 72-75.

⁴⁹ Australian Bureau of Statistics, *5206.0 - Australian National Accounts: National Income, Expenditure and Product, Mar 2013*
<<http://www.abs.gov.au/Ausstats/ABS@.nsf/Latestproducts/5206.0Main%20Features4Mar%202013?opendocument&tabname=Summary&prodno=5206.0&issue=Mar%202013&num=&view=>>; Australian Council of Social Service Poverty in Australia ACOSS Paper 194 (ACOSS 2012) <http://www.acoss.org.au/uploads/ACOSS%20Poverty%20Report%202012_Final.pdf>.

⁵⁰ David Harvey, above n 5, 159.

⁵¹ Gérard Duménil and Dominique Lévy, *The Crisis of Neoliberalism* (Harvard University Press, Cambridge, Mass, 2011) 1.

⁵² Because taxes, including those on workers, come out of the surplus value productive workers create they don't necessarily impact on the value of workers' labour power. If they do, and that depends on the level of class struggle among other factors, it may lead to battles over the real price of labour power, that is, the after tax wage.

favoured the rich⁵³ or companies⁵⁴ and indirectly through tax mix changes for example from income to consumption.

One result of the 3 decades of neoliberalism in Australia has been that income and wealth inequality in Australia have increased since the 1980s.⁵⁵ According to the OECD '[i]ncome inequality among working-age people [in Australia] has been rising since 2000 and is today above the OECD average.'⁵⁶ At the same time the tax and transfer system in Australia has become less able to address this growing income and wealth inequality. The OECD has found that in Australia now '...taxes and benefits reduce inequality by 23%...'.⁵⁷ The increase in inequality is a pre-tax issue,⁵⁸ suggesting its resolution will occur in that pre-tax environment, that is in the workplace in the battle over wages.⁵⁹ Class struggle for better wages and thus great equality can then flow through to demands for greater equity and equality, including in tax.

The Henry Tax Review was about finding 'efficient' taxes⁶⁰ which both improve the capital accumulation process and the power of the dominant class but also in the main fall on workers to facilitate that.⁶¹ A major direction for a robust and efficient tax system that the Review suggested⁶² was focusing taxes on immobile tax bases including resources, land and by implication that section of labour that is immobile, i.e. most labour in Australia. For example, there are not many opportunities for Australian tax teachers to ply their trade overseas. Dr Henry summed up the approach recently when he said: 'Over time we need to find ways to apply higher rates of tax to natural resources including mineral resources and land. And lower rates of tax to more mobile labour and

⁵³ The Australia Institute, 'Australia: A low-tax country' < <https://www.tai.org.au/?q=node/277>>. According to Andrew Leigh MP 'one-third of the rise in top incomes over recent decades is due to cuts in top tax rates.' Andrew Leigh, *Battlers and Billionaires: The Story of Inequality in Australia* (Redback Press 2013) 77. Indeed, Leigh says there that 'for most high income earners, a generation of reforms to "broaden the base and lower the rate" has seen a reduction in their average tax rate.'

⁵⁴ Ken Henry et al, above n 1(b), 160-161.

⁵⁵ Andrew Leigh, above n 53.

⁵⁶ OECD, above n 29, 1.

⁵⁷ Ibid.

⁵⁸ Andrew Fieldhouse, 'Rising Income Inequality and the Role of Shifting Market-Income Distribution, Tax Burdens, and Tax Rates' *Economic Policy Institute* 14 June 2013 < <http://www.epi.org/publication/rising-income-inequality-role-shifting-market/>>; Jared Bernstein, 'Trickle-up Economics' *On the Economy* 3 January 2012 <<http://jaredbernsteinblog.com/trickle-up-economics/>>

⁵⁹ The rise of inequality and the role of tax in it is a large topic deserving of in-depth discussion in another article.

⁶⁰ Ken Henry et al, above n 1 (a), 12-13.

⁶¹ John Passant, 'Lessons from the Recent Resource Rent Tax Experience in Australia', (2011) 10(2) *Canberra Law Review* 159, 177; for a more global and less recent analysis, see R. Avi-Yonah, 'Globalization, Tax Competition, and the Fiscal Crisis of the Welfare State (2000) 113(7) *Harvard Law Review* 157.

⁶² Ken Henry et al, above n 1 (a), xvii.

capital. The least damaging way of imposing tax is on the least mobile things.⁶³ Mobile labour is well paid labour; less tax on that section of labour is about lower marginal tax rates on top income earners, one optimal tax approach.⁶⁴ Land tax too is in effect a tax imposed on workers, taxing part of the surplus value some of them reclaim or recapture through home ownership.

Tax reform can also be about redistributing surplus value among the hostile brothers. This is especially so in the hands of a Labor Party which traditionally, because of its links to the trade union movement and in the past its lack of links to specific sections of capital, has sometimes been able to impose solutions that are at the expense of some of the hostile brothers but benefit them all.⁶⁵ The Minerals Resource Rent Tax (MRRT) and its proposed but ultimately doomed predecessor, the Resource Super Profits Tax, (RSPT), were attempts by the Labor government to tax the economic rent or super profits accruing to mining capital and to redistribute those profits to all capital through company tax cuts.⁶⁶ The tax on economic rent mimics competition by helping to equalise high profit rates back towards the average.⁶⁷ The failure to implement the RSPT and the structural weaknesses of the MRRT suggest that Labor's role of sometimes being able to impose solutions on some capitalists for the benefit of capital is in doubt.⁶⁸

The neoliberal move to the market was and is a global phenomenon.⁶⁹ Reductions in taxes on capital are part of that move – to allow more of the surplus value to go to capital and thus to be reinvested in further capital accumulation.⁷⁰

As profit rates in most of the developed world fell and continue to fall, tax policy in OECD country after OECD country has more and more been about the search for ways to address that decline. Government after government has attempted to remove tax burdens on capital and the rich, and return some of the surplus value taken by the state

⁶³ Peter Hartcher, 'Henry warns of need to increase taxation' *The Canberra Times* 6 August 2013 <<http://www.canberratimes.com.au/federal-politics/federal-election-2013/henry-warns-of-need-to-increase-taxation-20130805-2ra5w.html>>.

⁶⁴ Robin Boadway, above n 12, 12-13; Gregory Mankiw, Matthew Weinzierl and Danny Yagan, above n 12, 147.

⁶⁵ Tom Bramble and Rick Kuhn, above n 16, 184.

⁶⁶ John Passant, above n 61, 172.

⁶⁷ John Passant, 'A basic guide to taxing economic rent in Australia' (2012) 11(2) *Canberra Law Review* 100, 102.

⁶⁸ Tom Bramble and Rick Kuhn, above n 16, 184.

⁶⁹ Jennifer Curtin, Francis G. Castles and Jack Vowles, 'Public policy in Australia and New Zealand: The new global context' (2006) 41 (2) *Australian Journal of Political Science* 131, 142.

⁷⁰ Ken Henry et al, above n 1(b), 166.

through for example tax cuts for capital in general.⁷¹ It has seen company taxes cut and shifts to consumption taxes and flatter income tax systems.

Treasury in the run up to the Review in 2008 released its *Architecture of Australia's Tax and Transfer System* to provide some facts, figures and analysis for the then forthcoming discussions and debate about tax reform prompted by the establishment of the Henry Tax Review that year. It said that by comparison to other OECD countries 'Australia has a low share of tax revenue from labour income and the highest share from capital income. In part, this reflects the relatively greater contribution of corporate income taxes to total tax revenue.'⁷² The tax burden on capital was the fourth highest and that on labour the fourth lowest of any OECD country.⁷³ The consumption tax burden was also the fourth lowest.⁷⁴

It is no surprise then that the Henry Tax Review made recommendations to lower the company tax rate,⁷⁵ to give a 40% discount on the tax on savings⁷⁶ and strongly backed a broad based consumption tax and further reliance on it.⁷⁷ Apart from anything else these recommendations and suggestions if adopted would bring Australia closer to the international average in terms of tax mix.

At times a counterbalance to the fall in capital taxation - exemplified by falling company taxes across the developed world⁷⁸ - has been a relative increase in the tax burden on labour or, what is essentially the same thing but less directly, taxing or increasing the tax on its consumption.⁷⁹ The trend over the last five decades to consumption taxes and increasing their rate and breadth is a global one.⁸⁰ Compared to income tax it is an efficient (i.e. a less distorting) tax.⁸¹ The danger for capital is that such taxes might see wages fall below their value and provoke workers to fight for better remuneration.

⁷¹ Ibid 160-162.

⁷² The Treasury, *Architecture of Australia's Tax and Transfer System* (AGPS 2008) 215.

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ Ken Henry et al, above n 1 (a), 86.

⁷⁶ Ibid 83.

⁷⁷ Ibid 80 and 91.

⁷⁸ PwC, Corporate Income Tax - a global analysis (PwC, 2012) 2 <http://www.pwc.com/en_GX/gx/paying-taxes/pdf/pwc-corporate-income-tax-report.pdf>.

⁷⁹ Duane Swank and Sven Steinmo, above n 9, 642.

⁸⁰ Organisation for Economic Cooperation and Development, *Consumption Tax Trends 2012 VAT/GST and Excise Rates, Trends and Administration Issues* (Paris, OECD, 2012) 44.

⁸¹ Ibid 52.

It was one of the principles of the Henry Tax Review that ‘the personal income tax system should raise revenue fairly...’⁸² This means a broad income tax base and progressive rates.⁸³ Yet its recommendations were actually about moving towards a less progressive tax system with 97% of taxpayers, those earning between \$35000 and \$180,000, in the 35 cents in the dollar rate⁸⁴ and differential tax rates for different types of income with for example higher rates on labour than capital income. Indeed the Review suggests that in an ideal world for a small open economy like Australia’s there should be no taxes on capital income.⁸⁵ So despite the Review’s rhetoric about tax fairness, the reality seems somewhat different. As Neil Brooks has noted:

[T]he growing inequality in Anglo-American countries is, and will continue to be, one of the most serious social problems those societies face and that the tax system is both a necessary and appropriate instrument for mitigating extremes of income and wealth distribution. Somewhat surprisingly, *Australia’s Future Tax System* had almost nothing to say about the use of the tax system to achieve a more equitable distribution of income...⁸⁶

To understand why, we need to look a little more closely at the Henry Tax Review and neoliberal optimal tax theory, in my view the underlying philosophy of the Review.

IV NEOLIBERALISM, OPTIMAL TAX THEORY AND THE HENRY TAX REVIEW

Why did the Rudd Labor Government set up the Henry Tax Review? In the 2008/09 Budget the Treasurer Wayne Swan announced a comprehensive review of Australia’s tax system⁸⁷ ‘... to create a tax structure that will position Australia to deal with its social, economic and environmental challenges and enhance economic, social and environmental wellbeing.’⁸⁸ There was discussion about a modern economy needing a more modern tax system⁸⁹ and one ‘... that is fairer, that is simpler, that better rewards people for their hard work, that responds to our environmental and demographic

⁸² Ken Henry et al, above n 1 (b), 4.

⁸³ Ibid.

⁸⁴ Ibid 22. According to ACTU Research Officer Matt Cowgill ‘anyone earning between \$35600 and \$94100 would pay more tax under this system, while anyone earning above that amount would get a tax cut.’ Matt Cowgill, ‘Against the flat tax’ *We are all dead* 1 November 2010 <<http://mattcowgill.wordpress.com/2010/11/01/against-the-flat-tax/>>.

⁸⁵ Ken Henry et al, above n 1 (b), 155.

⁸⁶ Neil Brooks ‘Taxing the wealthy’ in Chris Evans, Richard Krever and Peter Mellor (eds), *Australia’s Future Tax System: The Prospects After Henry* (Thomson Reuters 2010) 197, 197.

⁸⁷ Wayne Swan, *Budget Speech 2008-09* (Canberra 13 May 2008) 12. <<http://www.budget.gov.au/2008-09/content/speech/download/speech.pdf>>.

⁸⁸ Ken Henry et al, above n 1 (a), v.

⁸⁹ Wayne Swan, above n 87, 12.

challenges, that makes us internationally competitive, and that creates the incentives to invest in our productive capacity.’⁹⁰

There remain a number of pressures on the Australian economy, governments and society. These include an ageing population, the shift of production to Asia, the ongoing integration of the Australian economy into the global economy, the fact that Australia is a capital importing nation, the mobility of finance capital, the desire of the Australian population for adequate spending on social services like health, education and aged care, environmental challenges and the global economic uncertainty unleashed by the GFC and continuing to today.⁹¹ Deeper reasons might well be revealed by examining if that global economic uncertainty arises from the tendency of the rate of profit to fall⁹² and the pressure this puts on capital and its politicians to develop countervailing policies and actions to combat the fall. Allowing capital to expropriate more surplus value at the expense of the state – essentially what optimal tax theory and neoliberal reforms do – is from the point of view of capital a sensible and deliverable response to falling profit rates.

Membership of the Henry Tax Review gives us a good background to understanding the neoliberalism of the Henry Tax Review. The Review was led by Ken Henry, the then head of the Treasury and the chief economist for government. One member was Heather Ridout, the then head of the Australian Industry Group – a business group - and often described as a de-facto member of the Labor Cabinet.⁹³ In December 2011 she was appointed to the Reserve Bank Board.⁹⁴ The other members of the Panel were Greg Smith, former Treasury official and an Adjunct Professor in Economic and Social Policy at the Australian Catholic University, Dr Jeff Harmer, Secretary to the Department of Families, Housing, Community Services and Indigenous Affairs and Professor John Piggott, Professor of Economics and Associate Dean, Research in the Australian School of Business at the University of New South Wales. It says much about the distance from the

⁹⁰ Ibid.

⁹¹ Ken Henry et al, above n 1 (a), 3.

⁹² See Andrew Kliman, *The Failure of Capitalist Production: Underlying Causes of the Great Recession* (Pluto Press 2011). See also the authors referred to above in n 3, including Kliman, on the tendency of the rate of profit to fall.

⁹³ Christine Jackman, ‘A woman of influence’ *The Weekend Australian Magazine* 6 August 2011 <<http://www.theaustralian.com.au/news/features/a-woman-of-influence/story-e6fgr8h6-1226108361541>>.

⁹⁴ Reserve Bank of Australia, ‘Appointments to the Reserve Bank Board’ *The RBA Media Release* 6 December 2011 <<http://www.rba.gov.au/media-releases/2011/mr-11-27.html>>.

union movement that the Rudd government has kept⁹⁵ that, despite being established by a Labor government, there was no union representation on the Review. This was very much a group of like-minded pro-capitalist individuals.

The terms of reference also give an indication of the outcomes the Rudd Labor Government wanted. For example the second term of reference refers to the idea that taxes should do the least harm to economic efficiency, provide horizontal, vertical and intergenerational equity and minimise complexity.⁹⁶ This is standard Adam Smith fare and rhetoric. The test is in the reality. Neither equity nor equality received much of a mention after that⁹⁷ and the dominant ethos in the terms of reference and the Review was that an efficient tax system provides benefits for all – the tax trickle down approach.

A Efficiency

Efficiency is one of the key tax policy principles,⁹⁸ and its dominance in the age of neoliberalism at the expense of equity⁹⁹ is reflected in the Henry Tax Review.¹⁰⁰ Thus the Review not surprisingly emphasises economic growth¹⁰¹ and says for example that its vision is of a 21 st century tax and transfer system that would ‘support per capita income growth rates at the upper end of developed country experience ...’¹⁰² The mechanism for doing this is the market and that includes the least interference by tax in the market. The terms of reference capture this when they say that ‘[r]aising revenue should be done so as to do least harm to economic efficiency.’¹⁰³ This equating of least harm with tax efficiency is one key to understanding the Review recommendations for a move to four robust and efficient tax bases to replace the more than 100 mainly State and Territory inefficient taxes.¹⁰⁴ These efficient bases were:

⁹⁵ Tom Bramble and Rick Kuhn, above n 16, 169.

⁹⁶ Ken Henry et al, above n 1 (a), vii.

⁹⁷ Neil Brooks, above n 86, 198-199.

⁹⁸ Adam Smith, *An Inquiry into the Nature and Causes of the Wealth Of Nations* (An Electronic Classics Series Publication, Pennsylvania State University 2005) 677 < <http://www2.hn.psu.edu/faculty/jmanis/adam-smith/wealth-nations.pdf>>.

⁹⁹ Duane Swank, ‘Tax policy in an era of internationalization: an assessment of a conditional diffusion model of the spread of neoliberalism’ in Beth A. Simmons, Frank Dobbin, Geoffrey Garret, (eds), *The Global Diffusion of Markets and Democracy* (Cambridge University Press 2007) 64 et ff; Duane Swank and Sven Steinmo, above n 9, 643.

¹⁰⁰ Ken Henry et al, above n 1 (a), 12-13.

¹⁰¹ *Ibid* xvii.

¹⁰² *Ibid*.

¹⁰³ *Ibid* vii.

¹⁰⁴ *Ibid* 11.

- personal income, assessed on a more comprehensive base;
- business income, with more growth-oriented rates and base;
- private consumption, through broad, simple taxes; and
- economic rents from natural resources and land, on comprehensive bases, noting that revenue from rent taxes will likely be more volatile than from the existing resource royalties it will replace.¹⁰⁵

Efficient taxes are about improving the capital accumulation process. They are an attempt to raise revenue in ways that impact less harmfully on the distribution of already existing surplus value and to make attractive the creation of surplus value in Australia by improving after tax rates of return for local and foreign investors.¹⁰⁶ Some of the most inefficient taxes are State and Territory taxes.¹⁰⁷

Neoliberalism dominates tax policy as much as it does all other economic policy.¹⁰⁸ One consequence is a concentration on efficiency. As Scholte puts it 'neoliberalism assigns priority to efficiency over equity when the two conflict.'¹⁰⁹ Conflict they do in times of economic decline. Thus the focus of tax policy has become efficiency.¹¹⁰ That is why the Henry Tax Review talked almost exclusively about efficiency.¹¹¹

What is efficiency in a tax context? An efficient tax is a tax which does the least economic harm, or as the Review puts it: 'An efficient tax system involves taxes that result in relatively low losses in consumer welfare per dollar of revenue raised.'¹¹² The lesser this deadweight loss is, the more efficient the tax is.¹¹³ According to the Henry Tax Review 'most taxes result in some loss of economic efficiency.'¹¹⁴ This is because all taxes in some way and to differing degrees 'alter [people's] incentive to work, save, invest or

¹⁰⁵ Ibid xvii.

¹⁰⁶ If of course the systemic trend is for those returns (crudely, profit rates) to fall, then the tax cuts 'solution' can at best only be temporary, morphine for a mortal wound.

¹⁰⁷ Ken Henry et al, above n 1 (a), Chart 1.5, 13.

¹⁰⁸ Swank is slightly more circumspect. He says that '[n]ational structures of taxation have not been immune to neoliberalism.' See Duane Swank, above n 99, 64. Swank says the 1986 Tax Reform Act in the US is the key to understanding the diffusion of neoliberal tax policies across the developed world. However this doesn't explain why they have become popular in the first place to business and politicians. Falling profit rates in much of the developed world and the decline of class struggle are the two key ideas, in my opinion, which help explain the dominance of neoliberalism since the 1970s and 1980s.

¹⁰⁹ Jan Aart Scholte, 'The Sources of Neoliberal Globalization' *UNRSID Programme On Overarching Concerns Paper* Number 8 (UN, Geneva, 2005) 13
<[http://www.unrisd.org/80256B3C005BCCF9/\(httpAuxPages\)F/9E1C54CEEB19A314C12570B4004D0881/\\$file/scholte.pdf](http://www.unrisd.org/80256B3C005BCCF9/(httpAuxPages)F/9E1C54CEEB19A314C12570B4004D0881/$file/scholte.pdf)>.

¹¹⁰ Duane Swank and Sven Steinmo, above n 9, 643.

¹¹¹ Neil Brooks, above n 86, 197.

¹¹² Ken Henry et al, above n 1(a), 13.

¹¹³ Alan J Auerbach and James Hines Jr, 'Taxation and economic efficiency,' in A J Auerbach and M. Feldstein (eds), *Handbook of Public Economics*, (Elsevier 2002) edition 1, volume 3, chapter 21, 1347, 1347.

¹¹⁴ Ken Henry et al, above n 1 (a), 13.

consume things of value to them.¹¹⁵ This is not about the administrative cost imposed on the taxpayers. It is about the price changes the taxes produce and the changed economic activity, if any, the tax produces. As the Henry Tax Review says, '[t]axes change the prices that consumers or businesses face. But a price change is not the source of the efficiency cost of a tax. The efficiency cost depends on whether people change their behaviour in response to the change in price.'¹¹⁶ In summary inefficient taxes adversely affect economic activity more than efficient ones.

The more efficient taxes include the petroleum resource rent tax (with arguably no lessening of efficiency), local government rates and broad based taxes on land and consumption.¹¹⁷ That is why the Review recommended a shift from the less efficient taxes¹¹⁸ to these more efficient ones, coupled with the politically possible, namely retention of the income tax system but with flatter individual income tax rates.¹¹⁹ Further, the Review proposed a move over the short to medium term, subject to economic and fiscal circumstances, to a company tax rate of 25 percent,¹²⁰ a 40% tax discount for '... income from bank deposits, bonds, rental properties and capital gains,¹²¹ a flatter individual income tax, a uniform resource rent tax of 40%¹²² and broadening the land tax base to include all land, at progressive rates and using the revenue among other things to cover the loss of State and Territory revenue for abolishing inefficient conveyancing stamp duties.¹²³

B Optimal Tax Theory

What underlies the Henry Tax Review is the neoliberal philosophy of efficient markets and, unacknowledged, optimal tax theory. Optimal tax theory is about differential taxation to produce so-called optimum outcomes. Those outcomes are often framed in terms of economic efficiency as the guide to appropriate social, revenue or other

¹¹⁵ Ibid 17.

¹¹⁶ Ken Henry et al, above n 1 (b), 247.

¹¹⁷ Ken Henry et al, above n 1 (a), 13.

¹¹⁸ The very inefficient ones include State and Territory taxes on payroll (because of the exemptions), insurance, and stamp duty on property conveyances. Other less inefficient ones include the income tax, especially company tax.

¹¹⁹ Ken Henry et al, above n 1(a), 29-30. The recommendation was for a \$25,000 tax free threshold and a 35% tax rate for 97% of taxpayers. The Labor government rejected it because it would have meant an increase in tax paid by workers earning between \$37,000 and \$94000.

¹²⁰ Ibid 40. It is currently 30%. Part of the argument in favour of reducing the company tax rate was that such a reduction would help attract highly mobile capital to Australia. Ken Henry et al, above n 1(a), 8.

¹²¹ Ibid 33.

¹²² Ibid 47-48.

¹²³ Ibid 49.

outcomes with a progressive chimera.¹²⁴ Because it accepts that capital accumulation is the key to best or second best societal outcomes,¹²⁵ because rates of profit globally have been falling, because class struggles in Australia have collapsed dramatically in the last 30 years, capitalist efficiency, not equity, is the focus of optimal tax theory as a way to justify the transfer of more surplus value to capital compensate for the decline in profit rates. Even if in one or two specific developed countries their profit rates were or are holding up because of a mining boom, the global ideology of low taxes on capital that has spread from the US¹²⁶ means that tax reviews, academics, think tanks, politicians and others will repeat the mantra of low taxes, especially on capital, as a way to (re)invigorate the economy.

Optimal tax theory can be framed as a question. 'What is the optimal tax ... for a government which has some social welfare function when a given revenue has to be raised without using lump sum taxes?'¹²⁷ Given that lump sum taxes are politically difficult to impose, optimal tax theory searches for second best options¹²⁸ and those include schedular tax systems, with no or low rates for capital, sheltering asset income, higher taxes on labour income, flat taxes on company income, a shift to consumption taxes and a flattening of progressive tax rates, most notably large reductions in the top marginal rates of high income earners.¹²⁹

Mankiw, Weinzierl and Yagan look at some major elements of optimal tax theory. According to them:

...[there are] eight general lessons suggested by optimal tax theory as it has developed in recent decades: 1) Optimal marginal tax rate schedules depend on the distribution of ability; 2) The optimal marginal tax schedule could decline at high incomes; 3) A flat tax, with a universal lump-sum transfer, could be close to optimal; 4) The optimal extent of redistribution rises with wage inequality; 5) Taxes should depend on personal characteristics as well as income; 6) Only final goods ought to be taxed, and typically they ought to be taxed uniformly; 7) Capital income ought to be un taxed, at least in

¹²⁴ Some leftists support Optimal Tax Theory as progressive because of its theoretical potential to address systemic disadvantage, for example women and work. This I think misses the point that in a time of falling profit rates in much of the developed world and the lack of class struggle, and the resulting neoliberalisation of tax policy arising from these two fundamental drivers, such hopes appear fundamentally misplaced.

¹²⁵ Robin Boadway, above n 12, 7.

¹²⁶ Duane Swank, above n 99, 64-65.

¹²⁷ Knud Jorgen Munk, 'Optimal taxation and Pure Profit' (1978) 80(1) *The Scandinavian Journal of Economics* 1, 1.

¹²⁸ Robin Boadway, above n 12, 7.

¹²⁹ *Ibid* 3-4.

expectation; and 8) In stochastic dynamic economies, optimal tax policy requires increased sophistication.¹³⁰

The search for a trade-off between the revenue needs of governments and the adverse impacts on work, investment, savings and consumption that various taxes can have¹³¹ has produced broadly similar results across the developed world over the last 50 years.¹³² They include the adoption of value added tax systems, flatter income tax rate structures, flat tax rates for capital income, sheltering of some forms of asset income from income tax, such as savings and housing, the demise of wealth and wealth transfer taxes, refundable tax credits, and states beginning to cast an eye over resource taxes, including rent taxes.¹³³

The Henry Tax Review recommended many of these optimal tax theory prescriptions or variations on them. So the Review wanted to concentrate revenue raising on 'four robust and efficient tax bases' encompassing a comprehensive personal income tax, growth oriented business income tax, a broad simple consumption tax and taxes capturing economic rents in resources and land.¹³⁴ The Henry Tax Review differentiates between personal income and business income, creating tax shelters¹³⁵ and cutting rates for business income.¹³⁶ In proposing a resource rent tax at 40% the Review recognised its potential efficiency.¹³⁷ The Review also recognised the potential efficiency of the current consumption tax, the GST, but lamented its lack of a truly comprehensive base¹³⁸ – in effect an attack on its current exemptions for fresh food, health and education. It argued for replacing a number of State and Territory inefficient consumption taxes and narrow payroll taxes with 'a low-rate broad-based cash flow tax that more effectively utilised the consumption base.'¹³⁹ In addition the Review saw a broad based and progressive

¹³⁰ N. Gregory Mankiw, Matthew Weinzierl and Danny Yagan, above n 12, 147.

¹³¹ Ken Henry et al, above n 1 (a), 17; Michael P Keane, 'The Tax-Transfer System and Labour Supply' in *Melbourne Institute – Australia's Future Tax and Transfer Policy Conference: Proceedings of a Conference* (Commonwealth of Australia 2010) 108,108 <http://www.taxreview.treasury.gov.au/content/html/conference/downloads/AFTS_Tax_and_Transfer_Policy_Conference.pdf>.

¹³² Robin Boadway, above n 12, 3.

¹³³ Ibid 3-4.

¹³⁴ Ken Henry et al, above n 1 (a), xvii.

¹³⁵ Ken Henry et al, above n 1 (a), 33. These include a tax rate on superannuation fund earnings of 7.5% and a broad 40 per cent discount for individuals' income from bank deposits, bonds, rental properties, and capital gains and for certain interest expenses.

¹³⁶ Ibid xix.

¹³⁷ Ken Henry et al, above n 1(b), 221-224.

¹³⁸ Ken Henry et al, above n 1(a), 51.

¹³⁹ Ibid.

land tax as presenting an opportunity to reduce or abolish stamp duty, especially on property transfers.¹⁴⁰

The Review drew an important distinction between mobile and immobile factors as objects of taxation. Immobile factors include land and resources and the review made recommendations for them to become a greater focus for efficient taxation.¹⁴¹ Further, as a capital importing nation,¹⁴² and in light of the shift of growth in and hence competition for investment from the Asia region, the Review recommended that mobile investment be taxed lightly¹⁴³ and immobile factors like fixed capital, land, resources¹⁴⁴ and (in the main workers') consumption,¹⁴⁵ be taxed more.

The development of optimal tax theory and its attraction for academics and a growing number of politicians and policy makers since it was rebooted by Mirrlees' groundbreaking 1971 paper¹⁴⁶ appears no accident against a backdrop of the fall in profit rates in the developed world since the late 1960 and early 1970s. Optimal tax theory directs the debate towards what are the most efficient tax systems¹⁴⁷ and suggests lower tax rates on capital for a growing economy.¹⁴⁸ If my argument that tax is a deduction from surplus value is correct, and against the background of a tendency of profit rates to fall, then optimal tax theory reflects and reinforces the search for more efficient taxes and taking less from surplus value, leaving more for the non-state hostile brothers to receive and fight over. It is about picking tax winners such as mobile capital. The actual incidence of tax¹⁴⁹ in real life at the point of production, exchange and consumption will

¹⁴⁰ Ibid 90.

¹⁴¹ Ibid xvii.

¹⁴² OECD, *Economic Policy Reforms 2013 Going for Growth: Going for Growth* (OECD 2013) 100.

¹⁴³ Ken Henry et al, above n 1(a), 18.

¹⁴⁴ Ibid xxi.

¹⁴⁵ Ibid 51.

¹⁴⁶ J. A. Mirrlees, 'An Exploration in the Theory of Optimum Income Taxation' (1971) 38 (2) *The Review of Economic Studies* 175.

¹⁴⁷ Globalisation theory suggests this will be on labour through consumption and land taxes for example. See Duane Swank and Sven Steinmo, above n 9, 642 for both an explanation and critique – up to the mid 90s – of this approach. The Henry Tax Review made the point that while revenue from personal income tax as a percentage of GDP 'has fallen over the past two decades,' in order to keep social spending at reasonable levels in light of various challenges including an aging population, and to avoid increasing debt or cuts to government services, 'action will be needed to increase the amount of revenue raised from this or other tax bases.' Ken Henry et al, above n 1 (b), 3.

¹⁴⁸ N. Gregory Mankiw, Matthew Weinzierl and Danny Yagan above n 12, 147. A long term reduction in company tax has in fact been occurring in many countries. Analysis by the Henry Tax Review shows that both headline and effective company income tax rates have fallen globally and in Australia over the past 3 decades. See Ken Henry et al, above n 1(b), 160-163.

¹⁴⁹ This includes not just where the tax actually falls, but also the impact on jobs, living standards, prices, profits, wages and the like.

then depend on the class struggle or lack of it. The low level of strike days lost indicates that capital is winning the tax battle.

Many optimal tax theoreticians intellectually if not in practice see the non-taxation of capital income as optimal.¹⁵⁰ Some also argue for a zero marginal tax rate at the top personal income tax rate scale because otherwise high achievers might be tempted to become low achievers.¹⁵¹ They note too that tax policy has moved partly in the directions optimal tax theory has suggested.¹⁵² Thus the Henry Tax Review hints strongly about broadening the consumption tax base and recommends a greater use of taxing fixed assets like land and resources, as well as flatter income tax rates and a less progressive income tax system. This is the Henry Tax Review drawing on optimal tax theory in the realm of the possible; it is pragmatic optimal tax theory in practice.

Nothing in this broad overview of the Henry Tax Review suggests it is outside the general vision and direction of optimal tax theory. The neoliberalism of the market and 'efficiency' dominate its thinking, vision, directions and recommendations. It is aimed at reducing the tax take on surplus value going to the State and redirecting it to capital. The Henry Tax Review has an optimal tax theory neoliberal vision - an efficient economy 'creating' profit and jobs or in its terms 'strong and sustainable economic growth'¹⁵³ assisted by an efficient tax system or systems that impose few impediments on capital accumulation. The Review emphasises that growth is more important than redistribution. This is the idea that equity is dependent on the process of capital accumulation. Thus the Review counsels that '[w]e need policies that not only redistribute income but also promote the growth of incomes at all levels.'¹⁵⁴ The Review is then effectively silent on real redistribution.¹⁵⁵

The failure of the working class to fight industrially has resulted in a shift of the tax battle field, the tax war, in favour of capital. As Neil Brooks points out, even if the Review had a fundamental focus on progressivity, rather than mere verbiage, the real point is developing a tax system which is redistributive, which taxes the 'undeserving'

¹⁵⁰ Anthony Atkinson and Joseph E. Stiglitz 'The Design of Tax Structure: Direct Versus Indirect Taxation' (1976) 6(1-2) *Journal of Public Economics* 55-75.

¹⁵¹ N. Gregory Mankiw, Matthew Charles Weinzierl and Danny Ferris Yagan, above n 12, 147-148; Robin Boadway, above n 12, 3.

¹⁵² N. Gregory Mankiw, Matthew Charles Weinzierl and Danny Ferris Yagan, above n 12, 147.

¹⁵³ Ken Henry et al, above n 1 (a), xvi.

¹⁵⁴ Ibid.

¹⁵⁵ It does have a brief chapter on and discussion of a wealth transfer tax but makes no recommendations. Ken Henry et al, above n 1(b), 137-146.

(i.e. all) rich as he calls them¹⁵⁶ in ways which really do make Australian society more equal.¹⁵⁷ It should also, in Brooks' view, put wealth transfer taxes firmly on the table.¹⁵⁸ The underlying systemic drivers of the need for tax reform - demographic changes, demands for adequate social spending on health, education and the like, globalisation, the inefficient mix of current taxes, the need to attract foreign investment, the changing nature of Australia's role in the global economy, the rise of Asia and climate change¹⁵⁹- remain. Irrespective of short term political considerations and timidity the vision and direction the Henry Tax Review has identified for tax in Australia remains relevant to all the members of the band of hostile brothers today and into the future. The Review has planted further seeds for a thoroughly neoliberal tax future. Those seeds will sprout and blossom unless there is an upsurge in class struggle to put a progressive tax system on the political and economic agenda.

V CONCLUSION

Declining profit rates across the globe and the collapse of class struggle in Australia have seen tax policy neoliberalise and move towards optimal tax theory outcomes. The Henry Tax Review recommendations as a consequence are about increasing the amount of surplus value going to the other members of the band of hostile brothers at the expense of the state. They lay the groundwork for a further turn to neoliberal tax policy unless class struggle breaks out to put equity and equality in wages, and by extension in tax, on the table.

¹⁵⁶ Neil Brooks, above n 86, 206.

¹⁵⁷ Ibid 216- 219.

¹⁵⁸ Ibid 223-228.

¹⁵⁹ Henry et al, above n 1 (a), 3.

