

UVA LAW | Oxford Va Tax Piles Schon

RUTH MASON: Welcome, everyone. Thanks for joining us today. This is our first session of the second year of the Oxford-Virginia Legal Dialogs. We are excited to be able to open with such a thought provoking, if alarming, paper. Before we begin, I'd like to make the introduction. So, I'm Ruth Mason. I'm the Edwin S. Cohen distinguished Professor of Law and Taxation at the University of Virginia. And, I'm an affiliated faculty member with the Virginia Center of Tax Law.

My co-convenor for this series is Tsilly Dagan, known to all of you. She's a Professor at the University of Oxford Law School, and she's one of the directors in the MSC in taxation at Oxford. So by now, everybody knows our format. Tsilly and I pick a tax Professor that we admire, who then picks a non-tax Professor that they admire, and then we invite this author to our Zoom, and we have a discussion.

So, let me introduce first our commentator for today. I don't think this person really needs an introduction to this group, but Wolfgang Schon is the faculty director of the Max Planck Institute in Munich. The Max Planck Institute for Tax Law and Public Finance. He's been a vice president of that organization, a member of the permanent scientific committee of IFA, and the European Association of tax law professors. He's chaired the OECB panel at IFA, during a period where I think we can all agree has been pretty exciting.

Wolfgang has been a visiting Professor at NYU, among other places. And, he has written on book tax conformity. I mention this for the Americans at this particular moment. But, given his position at the Max Planck Institute, he's no stranger to interdisciplinary studies. So, I think he's a perfect person for us to have invited here, and he's familiar with what Tsilly and I are trying to do with this seminar. It's old hat for him.

Both things also written about tax and democracy. That was the subject of its Max Weber lecture, and his interest in this subject is probably what led him to choose today's featured author, Rick Pildes.

Rick is the Sudler Family Professor of Constitutional Law at NYU School of Law. He's a leading constitutional law scholar and a specialist in issues concerning democracy. He clerked for Justice Thurgood Marshall and is a member of the American Law Institute, and he's currently serving on the Commission on the Supreme Court of the United States, having been appointed to that position by President Biden.

In dozens of articles and in his acclaimed case book, *The Law of Democracy*, Rick has helped create an entirely new field of study in law schools. We're lucky to have read part of this work for our discussion today, political fragmentation in democracies today. Before we move on to the discussion, I also want to mention that Rick works outside the Academy. So, he successfully argued voting rights cases and election law cases before the US Supreme Court and courts of Appeals.

He's also a well-known public commentator. He writes for the New York Times, the Washington Post, and he was part of the Emmy nominated NBC breaking news team coverage for the 2000 Bush Gore contest. So, welcome Wolfgang and Rick. Before we jump into the paper, I just want to say a word about the format. So, Wolfgang will comment, Rick will respond, and then Tsilly and I will make some remarks before opening the conversation up.

If you would like to be in the queue, use the Raise Hand function in your browser in your Zoom, click on Participants, and then raise hand. This session is recorded, but only the first part, not the Q&A will be posted, if any of its posted, online. OK. And then you can check out all of the past recordings for these sessions. They're all on our website. So, please also let us know your name and institutional affiliation in the chat, so that we can give that information to Rick after the session.

So, without further ado, Wolfgang.

**WOLFGANG
SCHON:**

Yeah, thanks to Ruth. Thanks to Tsilly for inviting me. And also, congratulating them on this format, which I think is really a wonderful thing. This is your second season, and it's absolutely something I love, being a tax person who wants to go beyond tax in many respects. Now, thanks in particular to Rick for agreeing to join us here. We ran into each other a couple of times at NYU, and it is indeed my interest in taxation and democracy which made me choose him and this paper for today's session.

This is indeed not a taxpayer, but it speaks to tax academics. Because taxation is about redistribution within a given community, it's about financing public goods by a community, and this requires decision making. So whenever you have tax, you need someone to decide on what to tax and how to allocate the revenue, et cetera. And then you are in the midst of the political system. So, nobody I think, should ever think about taxation without thinking about the political background, in particular, the Constitution and its institutions.

Whether you talk about Trump's tax reform in 2017, or the current deliberations about the Biden proposals in the House and in the Senate, this is talking about democracy. But, I would like to go a bit further and state I'm not only an academic, I'm also a citizen in one of those Western democracies, which work so nicely described. So, I'm wildly interested in the future of my own country of the United States as a political entity.

And, I'm quite happy, and congratulations to Rick on all that comparative work you did. Because this is really something where Europeans, Americans, and many others can learn from each other's experiences. So, what's the paper about? It's about what Rick calls political fragmentation. Political fragmentation leading to disfunctionalities in political decision making.

And, one of his examples is legislation. There is, he writes, less and less significant enactments in the United States. Now, some people might say is this a problem. Some people might say less is more, and when I look at, let's say, the European Union and its institutions, I sometimes wish that less is more. Because there can be underproduction and overproduction of legislation, but I think what you mean in the end is that Democratic institutions should be able to address the most pressing issues within a polity to find compromises to settle things, at least for the medium term, and that's not happening in some of the countries you mentioned in your paper.

What do you mean by political fragmentation? The thing to give is we are talking about dispersion of political power. Now that can mean a lot of things. Taking a closer look, we can talk about dispersion among institutional players, the president and the Senate and the House and what political economists call veto players, so all these institutions that can block decisions. You can take a look at the polity, at the people of a country, and find more and more divisions and divergence here.

And then we have a lack of gravitational pull exercised by traditional parties, we have a proliferation of smaller parties, we have more and more extremist parties, in some cases. And we have as you nicely described, these political entrepreneurs, which try to bypass traditional career trajectories, traditional Democratic institutions. My position would be fragmentation is a problem, but maybe polarization is an even bigger one. And this is not the same. In the United Kingdom, you have still a two party system, but you have polarization under Brexit.

In the US we are still a two party system, but you found your high watermark of polarization in the Trump administration. When you look at the most recent election in Germany just a couple of weeks ago, extremist parties were losing out. All those parties in the middle are somehow finding together. And our still working Chancellor Merkel, her recipe for success was to a certain extent to integrate all their opponents views into her own party program.

So, you can have a number of parties in the middle, as long as they are willing to cooperate. Even that kind of fragmentation can work. Now, you very impressively compare system shaped by proportional representation in Continental Europe and those first past the post system in the UK and in the US. I find this extremely interesting. And what you write about the time it takes in Europe to form coalition governments, like in Spain or like in Belgium, or just to mention Israel. This is really quite striking.

And, on the other hand, I sometimes think that one of the main reasons for the changes that happened in the recent decades was in the end the fall of the Iron Curtain, at the end of the Cold War. In Continental Europe, you never lost this feeling of this communism, capitalism, antagonism of a political global political situation, where parties did not go to the extremes.

We did not have many leftist parties because of the existence of the Soviet Union. You did not have so many right wing parties because memories of the Nazi regime were still quite fresh. And it was basically the 1990s when that cult blues and all the other parties came on the plane. And I learned from the paper, which I very much was impressed by that, that if you have a two party system like in the UK and in the US, then you will have a lot of diversity within those parties.

And that is, of course, what's also going to extremes in the current situation. Now, if I understand you correctly, the mere fact that you have a lot of diversity and a lot of divisions within parties does not mean that the system is blocked. What is needed then is what in the US to my knowledge, has always been called bipartisanship.

And so, as long as you have some form of willingness to come together for bipartisan approaches, then diversity within the parties is fruitful and helpful because people feel integrated. But, once you start polarizing parties against each other, that doesn't work anymore.

Now, in the next part of your paper, Rick goes into what he calls the structural causes for fragmentation, in particular, the lack or the loss of coherence between, let's say, center-left parties, like the social Democrats in Europe or the Democrats in the US, being linked to the working class, while more right wing, or center-right parties like the conservatives in Britain or the Christian Democrats in Germany, would be linked to middle classes and upper classes.

Why has that gone away? We see this not only in the Trump situation, we also see this in Boris Johnson, who smashed what they call the red wall in the UK Midlands, by taking over a lot of safe seats from labor. Again, I would like to refer to that erosion of the Cold War situation, where capitalist and communist concepts were pitted against each other. Because, this was not just about two superpowers. This was in my view, also about two master narratives. This was about two ways to explain the world.

Whether you are on a trajectory that leads you into paradise by more or less socialist ideas or more or less libertarian, capitalist ideas. Now, that has gone down. Communist broke down first, discrediting many forms of socialist dreams. Capitalism stayed on. But as we now know, wasn't able to deliver a better life to everyone. In many cases, there have been downgradings.

You refer in your paper, Rick, to the loss of millions of jobs in the US, where millions of people in China got a better life. Now, social Democrats, as you rightly say in the 2000s try to find a better way, like Tony Blair, [INAUDIBLE] Bill Clinton, and others. But again, they did not meet all the expectations.

So, what is missing now, and this is in my view, part of the reason for the fragmentation you describe. There is no clear way out anymore. There is an economic situation where many people do not see that master narrative anymore, which might provide a better overall situation for them. So, you do not have a coherent agenda addressing a coherent community.

And again, in most democracies, politics was quite easy as long as there was a big surplus to distribute, but these good old times have gone. So, in my view, there's also an economic story behind that, not only a political story, that simply no party is able to offer a clear way out of the current situation.

As you absolutely correct and superbly describe, Rick, the social Democrats in Europe or Democrats in the US, have to a certain extent left behind their clear focus on the well-being of the working classes. And there are kind of two additional work streams here. One is globalization.

Social Democrats embrace globalization in the 1990s, and this included a very liberal view as to immigration. Now, immigration might run into the face of the existing working class. And in so far, social Democrats heavy as you rightly described, lost out. The second work stream which I would like to add is sustainability. The program of greening the economy, because again, it's traditional industries, like coal and steel, losing out.

Now, once you try in a Center left party to combine internationalist views, pro-immigration, pro-globalization, and pro sustainability, then of course, the working class as it existed before, is on the other side. But again, this is not simply an element of the political system. In my view, it's economic forces in the background driving that reality.

When I look at my own country, in the Leftist Party the linker, there is a bitter divide between those who want simply to protect the domestic working class and others who adhere to the internationalist view, which has always been part of the international socialist movement.

The biggest problem seems to be that the expectation gap as to what politicians can deliver, against the background of the economic and environmental overall situation is rising and rising, and nobody knows how to feed that gap. As you impressively tell us in your paper, Rick, the very same people who voted for Obama, under the Yes we can slogan, went for Trump under the America First slogan because they simply expected to get out of their miserable situation.

So, the number of disappointed people will rise and rise, and this will open up avenues for ever more extreme positions and conspiracy theories will come up and outright nonsense, as well. And, my feeling is this brings up not only differences, as regards political interests. So, we are not only pitting different interest groups against each other here. We are pitting different perceptions of reality against each other here.

And, I think Americans know much better than I what it means to live in a world where people simply do not accept the same facts. I remember that Senator Moynihan famously once said, everybody's entitled to their own opinion, but nobody to their own facts. And this-- you're beyond that statement in the US, but also of course, in some parts of Europe.

Now, in this context, Rick, I find your analysis of monoamines of communications quite insightful and fascinating because social media contributes to that kind of culture. On the one hand, I stress the participatory element of politics. People are really getting engaged. On the other hand, it gives room to all sorts of manipulation, including riots. There are bubbles coming into existence, And that what we really mean by talking about democracy, meaning a broad discourse across all relevant groups. That does not happen anymore.

And, I think there are two points which you make here, which I find particularly interesting and insightful. The first point refers to the lack of organization and the lack of a coherent platform that is required to form or to exercise political pressure in these informal groups. Because that enables people who are simply angry to communicate and to express themselves. You do not need an alternative platform or a coherent agenda. You are just angry.

And again, you might be angry at something which politicians cannot change because we are talking about much larger development of the economy and the environment. And the second point we first, and I didn't know anything about that before I read your paper, about the relative ease for individuals to set up parties in no time and to control them.

Rick describes how better Grillo in Italy and Nigel Farage in the UK, single handedly created parties, which are completely in a legal sense, dependent on their founders. So, Grillo obviously being in control of the brand name of the five star movement, while Nigel Farage was the main shareholder of the Brexit party.

In some countries like Germany, such a thing would have been forbidden. So, this would be prohibited. You cannot control the party, but I live in a country where you can't even own a football soccer club, so, in the end we always like these collective structures.

Another element which was not clear to me before I read Rick's paper is this category of free agent politicians. I mean this is what political economists call the political entrepreneur, and this seems to have taken Center stage. Of course, we in Europe, learned a lot about Trump, but what I learned from your paper is that he was preceded by quite a number of individuals who made their political career bypassing all those traditional steps and decision making bodies and levels within the party framework.

I even learned that I have to buy this memoir of John Biolab, which seems to be fascinating with all those anecdotes you mentioned. But of course, we have some examples like that, as well. So, Emmanuel Macron basically created a party just to win the presidential election, which he duly did. And, we have more and more situations in Europe where party chairpersons are no longer accepted if they are simply appointed by some leading body, by some board, or by some closed group.

And in a couple of weeks, even the Christian Democrats in Germany, will have a sounding with the membership to find out who shall be the successor to the unhappy incumbent. But, of course, it's very easy for that kind of political entrepreneur to present themselves as an alternative to the establishment swamp or whatever name they want to use here.

And, so when I take a final look at the manifold development, Rick, in your paper, I asked myself why the fragmentation is truly the umbrella term for this. In my view, there are two elements which you describe very nicely. One is polarization, and one is what might be called disintermediation. So, a disrespect for the institutions of representative democracy.

There is more and more things going towards direct democracy, where you have individual politicians addressing directly what they call the people. So, the populist movement, while the attenuating and filtering effects of representative democracy are more and more sidelined. So, what am I going to make of it?

I had a talk a couple of months ago with a German sociologist, and his story was the storyline was the following. Around 100 years ago, people were told, now a democracy is coming, and you will get two things. You will participate in the political process, and you will gain economically. Now, that went hand in hand for 100 years. But now, there are not many economic gains to be distributed anymore.

So, his theory was and now people say the second bit I got, the political participation. This is what I'm now taking much more seriously, and this is why we have these grassroots movement, and this is why populists are so popular, et cetera. This creates room for direct democracy, and I read your paper as pleading for maintaining the value of representative institutions. And I'm fully on your side on that. And I am looking forward to your comment.

RICK PILDES: Thanks. Now, is it to me, or is it to Ruth and Tsilly first?

RUTH MASON: To you, Rick.

RICK PILDES: OK, well, first of all, thanks, of course, for drawing me into this, or bringing me into this. I love both the interdisciplinary kind of nature of this and, of course, the international dimension. And this is sort of what academic life is like at its best, to be able to have these kinds of conversations. It's also fun for me to see a number of people I know on this, or people who I haven't met, but whose work I've read. So, that's also a plus for me.

I'll try not to talk for too long because I think it's better to get into conversation as quickly as we can. Let me say a few overview words about how I understand what this project is about. So, at the largest level I think that one of the principal challenges to the democracies of the West these days, is actually being able to deliver effective government for large numbers of citizens.

I think it's quite interesting that President Biden here, very self-consciously, actually defines that as his historic role. He has now several times said that his position is to show not just to the United States, but more generally, that democracies can effectively deliver for their citizens. And, of course, the fact that he has to define his role in that way, tells you quite a lot about the anxieties that are running through a lot of these democracies.

And in political and legal theory about democracy, we don't tend to talk about effective governance, actually, as one of the important political values in the way we think about designing and organizing and evaluating our institutions. But, I think that's a mistake, and I think events are forcing that much more into our awareness as a central thing we have to think about, in terms of the design of the processes.

I am kind of an institutionalist. I do tend to think very institutionally about the organizations of democracy. Now, why is it across so many of the Western democracies that we seem to be in this period, where there's widespread perceptions that governments are not able to deliver effectively. And, what I see at one level, as Wolfgang was pointing out, is a tremendous fragmentation as I call it. A political power that's emerged over the last 20-some years, across a lot of democracies.

We don't always tend to see this as something that is existing across democracies because the fragmentation takes different forms and different political systems. But, in the European systems, the PR systems, we have seen the disaffection from the two dominant parties, or coalitions of the left and right, that basically govern in most of these countries since World War II.

We see the alienation from those parties, or those coalitions. We see that alienation sometimes taking the form of significant withdrawal from political participation, which is what we saw among working class voters in places like the US and the UK until Brexit and Trump in 2016, when a lot of those voters returned to participation. We see it in the rise of a lot of these smaller new insurgent parties, some on the right, some on the left, some with very different kinds of views.

And, the further sort of manifestations of that in the PR systems is the much greater difficulty of finding governing majorities or being able to form coalitions. The much greater likelihood those coalitions are incoherent to an extent, because you have to bring together the greens and the free, I forgot, the FTP, or what's it called in Germany? The Liberal Party. But, in other countries, similar kinds of incoherent coalitions that makes it more difficult or can make it more difficult for those governments to deliver effective policy.

It will make those governments more fragile, more likely to fall to votes of no confidence. We see in a number of these systems, the more extreme expressions of that like in Spain, where the two dominant parties had governed for-- since Spain had become a democracy. And by the last decade, Spain ends up that-- just fragments. And, we have six parties or so leading to elections that are indecisive, governments get formed, they barely last, they fall.

I forgot, four elections in three or four years in Spain. So, those are some of the manifestations of this dispersal of political power away from the traditional, institutional structures that helped organize and channel and give content and bring effectiveness to the political process, the dominant political parties.

In the US, because of the two party system, fragmentation doesn't take the form of third or fourth parties rising up. It's just the disincentives are too strong, given the structural incentives of the first past the post elections. But, what you see is the internal fragmentation of our two major parties, with all sorts of consequences.

So, the more extreme version of this is that when the Republican Party was in charge of the US House, the Republican Speaker of the House, twice, basically was thrown out of office by his own Republican members because there was too much division over the direction of the party. On the Democratic side, of course, we're seeing this right now, as the Democrats are fractured internally between the moderates and the progressives, which have led them to be unable to do anything for four months after President Biden managed to put together a huge bipartisan deal in the Senate on infrastructure.

And instead, there's kind of the self-destructive dynamic that's taken place over the last four months. I think it's partly responsible for the bloodbath that the Democratic Party took in our elections on Tuesday. Not the only cause, but part of it. So, in general, there's a very strong link between these this challenge of providing effective government and the reality of how much more fragmented politics and political parties have become.

And as I say, the fragmentation is partly a reflection of the inability or dissatisfaction with governments being able to deliver effective policy that leads to searches for other alternatives. But at the same time, perhaps perversely, that very fragmentation makes it all the harder for governments to go ahead and be able to put together the concerted power that's necessary to move these systems, to actually deliver.

And just in response quickly to Wolfgang's initial comment, and I think he recognized this in the comment. It's not an issue about the number of laws generated per se, and it's hard, of course, to define metrics for effective governance and delivery of effective governance, but in the US I think some of the best metrics that political scientists have come up for this look at things like the issues that voters identify as the 10 most urgent issues, or other measures of the most salient issues for voters. And then, on what percentage of those issues does Congress end up legislating over the next four or five years.

And you can look historically, and compare the present with 30, 40 years ago, and there are dramatic differences, at least in the US. And I think, as I say in the paper, this issue of fragmentation and effective governance is a deeper and more pervasive issue than the kinds of questions that we spend a lot of time thinking about now, with what's going on among democracies in the West. The issues of illiberal-- the rise of illiberalism, the worries about Democratic backsliding, the role of various populist forces in different countries.

All of that's true and important, but the fragmentation is something that I see is pretty pervasive, not limited to a few countries that have had already gone through a certain amount of Democratic backsliding. Poland, Hungary, the two ones the people focused on the most. In other places, there are anxieties about that, including here in the US.

But, but this seems to me an enormous challenge. And the paper goes on to then try to look at what the underlying causes of all of this fragmentation might be. Some of them are large, economic, cultural kinds of forces. A lot of them tied to the way the political parties, or coalitions of left and right, are now essentially inverted from what they had been ever since World War II, with all this movement across these traditional party identities. And working class voters, at least white working class voters, are lower economic status, lower educational levels, who used to traditionally be the base of the parties of the left, now having moved to the parties of the right.

And the parties of the left having become the parties of the higher educated, more affluent voters, and in the United States, at least, a significant portion of minority voters. And, a lot of people have written about those larger forces. The thing I want to bring to the table here is, I don't think we've appreciated how much the communications revolution is also a major driver of the kind of fragmentation these democracies are struggling with.

We are very focused on the issues of disinformation in the social media system, or maybe misinformation, or amplification of this or that. But, I think the challenge is, the communications revolution poses to democracies is much more profound than those issues. Or put another way, if we could-- even if we could handle those issues, could find some way to manage those issues, whether it's self-regulation by the platforms, or government regulation of one sort or another, I think the fragmenting forces that the communications revolution unleashes on politics would still be there, would be very profound, and very difficult for the political system to manage.

And I have more familiarity with this in the United States. And so, let me just make one point to link that to the larger story, and then I'll stop, so we can actually engage in conversation. If you want to know why the Democrats-- if you've been following the drama, if you will, over months here, about whether the Democrats will bring their progressive and moderate forces together to enact major economic and social legislation-- one of the things you may have noticed is that the speaker of the House, Nancy Pelosi, has several times promised a vote on a specific date on these issues and then been unable to hold the vote because she realized she would not be able to get a majority.

And as a Speaker of the House, you don't put something on the floor that's going to get voted down. You have the president asking for this to be done, you have the Speaker of the House, the two most powerful Democrats, two of the three most powerful Democrats, trying to bring this together, and they can't, and why is that? And, it's in part because there have always been factions and differences within political parties, particularly in the two party system of the United States. But there used to be ways the political leaders had tools, leverage, power, to kind of bridge those divides and keep the party as a kind of organized structure and bring along recalcitrant members once party leaders had decided some deal was in the interest of the party as a whole.

And Nancy Pelosi simply does not have that kind of leverage anymore over members who are only in office one, two, three, four years. This is also remarkable. The people resisting making a deal, and the terms of the deal are actually fairly obvious and have been fairly obvious for four months.

But one wing of the Democratic Party in the House, the progressive wing, has been resisting that deal. Many of them are recently in office. Those ought to be the most vulnerable members, the members who are most dependent on the leadership, or would have been in the past. And the reason they're not now, is the communications revolution, at least in my view.

They are able to raise money for themselves for running for office, through the internet, through social media. They don't have to be on important committees to have extremely high profiles, as many of them do. They are on Twitter, they are in other social media platforms, they are in cable television, which is part of the communications revolution.

They are able to act, as I said, as Wolfgang mentioned, independent political free agents, unconstrained in a major way by the party structure. They don't have to work their way up through the party structure to get to a certain level where they have a profile and can stand on their own. They can do that almost as soon as they come into office.

And that means, what is it Nancy Pelosi can threaten to do to them? Not much. And so, that's part of the fragmentation within the party structure in the US. Now, our politicians are much freer in some ways of a party structure than they are in many of the PR systems. But, in any event, that's just a point about what's going on right now, how the communications revolution helps explain that, how what you're seeing is a manifestation of this fragmentation, and of course, what it's producing is this tremendous struggle about whether with unified control of the government, which rarely happens in the US now, can the Democratic Party actually deliver?

Now, I assume eventually it will, but it it's going to have damaged itself enormously in this long, drawn out process of trying to get there. And it just would not, and in my view, this is not how things would have happened in the prefragmentation, precommunications revolution age. So, let me stop there.

RUTH MASON: OK, thank you so much. Wolfgang, did you want to respond directly to that, or--

WOLFGANG Just to [INAUDIBLE]. First of all, I absolutely agree with Rick, that this emergence of this free agent really makes a difference. And that it's way harder to contain these people, or even to organize a compromise among these people or with these people, than in the past. On the other hand, I still think that the issues at hand may have become more complicated than in the past, when we are we were only talking about rich countries being well-organized, which did not have a demographic problem, which did not lose millions of jobs to Asia, et cetera.

SCHON: And in so far, I think things are coming together. The emergence of these free agents might also be a result of the lack of credible answers to the questions people have out there in the current situation.

RUTH MASON: Rick, did you want to respond, or [INAUDIBLE]?

RICK PILDES: No, I want to hear what you guys have to say.

RUTH MASON: OK, great. So, to participants, if you would like to ask a question, please use the Raise Hand function on Zoom, and please let us know your institutional affiliation by putting it into the chat. So, Rick, thanks so much for this paper. The discussion has already been so interesting.

I hadn't paid attention to those quotes that you pull out from President Biden. I find them really unnerving. You know, you have the President of the United States essentially talking about existential threat to democracy, and that he sees himself as pushing back against that. And then, to see that this is not something that's just happening in the United States, that it's across system and across type of system, was really interesting for me.

And, so I'm glad to have this paper. We tax people sometimes get bogged down in the Mnuchin, and it's nice to be brought out to a higher level. Overall, I find the argument persuasive. Fragmentation to me, is clearly an important part of the story, and I think I agree, underemphasized. I also agree about social media and its role in fragmentation, and that regulation of social media is unlikely to make much of a difference.

We tax people tend to think that anything can be solved with the Peruvian tax or subsidy. And I just think the genie is out of the bottle on this one, and there's no tax that's going to put it back in. So one issue I want to raise because I'm sure it's on the mind at least of the Americans, is this reconciliation bill, and you've already talked about it.

For people outside the US who aren't following this, including in this bill, are the pillar to changes. So, Rick, pillar two is just OECD jargon for the corporate minimum tax proposal. This proposal has widespread international support, but in the United States it's going to be enacted under this particular legislative procedure reconciliation that's subject to some pretty tight restrictions.

And the reason why the Democrats, who control the government, right, are using reconciliation is to bypass a Senate filibuster. And the Democrats have razor thin major-- well, there's no majority in the Senate. Every Democrat has to vote in favor, and there's a really slim majority in the House. And so, the reconciliation bill is expected to pass if it passes with zero bipartisan support.

And this is not just a Democrat thing. In 2017, the Republicans too passed a tax bill in the literal dead of night with no Democrat support or input. So, this raises a couple of additional risks that could be part of your analysis as you go forward with this, I think, critical project, right.

So, fragmentation doesn't only make government less able to deliver, but it also introduces kind of pathologies to the legislative process. And you talk about the abandonment of regular order in congressional committees, but fragmentation also forces what might be called procedural innovation. So, now everything has to pass through reconciliation, which means that every provision has to affect revenue, and it's just highly restrictive.

And then, another place you could see this is the other part of this big international deal, which the tax people call pillar one. This is just a new tax nexus for international tax. But this has large support. 137 countries agreed to this. And normally, a change like this would happen in the United States through treaty, either a multilateral treaty or through updates to bilateral treaties.

But, the worry is 67 votes in the Senate for ratification. So instead, the Democrats are talking about-- they're getting creative-- and they're talking about using congressional executive agreement or something that requires fewer votes. So basically, we see government trying to substitute less accountable legal forms for more accountable legal reforms. And this is to get at, to get around, right, political polarization but in part fragmentation.

And so this raises the question of whether these changes can endure beyond the current party that's in power. And I would guess that this is not-- the United States is not the only place where this is happening. So, another example of secret Congress might be the flight to international law.

So, I think it's pretty clear that the Biden administration is using this international tax deal, not exactly to tie Congress's hands, but at least to strongly influence the outcome on the tax rate. And I think you see the same thing in Europe. So, France and Germany can't get Ireland to do what they want on these big tax amortization projects or on digital taxation. So, they turn to the OECD forum. And, they try to get the Americans to bludgeon Ireland into submission, and then that's what happens.

And compared to internal processes, these international forms of policy making, are way less transparent, way less accountable. You know, there's no c-span for the OECD. And so, you can see multilateralism as a kind of self-help tool to combat fragmentation on the National level, or maybe on the EU level. No one is going to tweet, no one is not on this call is going to tweet anything about anything that happens at the OECD and the Committee on fiscal affairs. It's completely opaque and so insulated from the communications revolution, right. So, you have to find ways to get out of the twitterverse.

But then you have these unelected treasury and finance ministry officials essentially making policy, deliberating completely out of sight. Another pathology is the amplification of the voice of the linchpin voters, the Manchin, and the cinemas. So, you may have policy churn, and you may have unexpected results within party fragmentation, right. So Manchin is making all the decisions. He's been the dominant party.

I wonder too, if fragmentation can affect the other prong of David Runciman's story of the appeal of democracy, right. So, as you say that Runciman argues that democracy is appealing for two reasons, right. It delivers benefits, and that's a problem under fragmentation for the reasons you give. And then it offers dignity and respect to citizens. Now that's probably about a formal voice in the political process.

But, you could tell a story about the corrosive effects of fragmentation and social media the communications revolution on dignity and respect. And they massively amplify indignities and disrespect. Tax Twitter is a very nice place to be, but don't step one foot outside of Tax Twitter, or you will be very sorry.

And so you can sort of-- this is not just a social breakdown among citizens. Right, the President of the United States can use his Twitter account to insult individual citizens and whole groups of citizens, right. And you know you can-- this kind of ties up with your story about the disdain of the political elites and the credentialed for those who don't have those credentials. But you can see it right there in Congress.

So, I don't know if this is a standalone paper, or if it's part of a book. I mean it's a very big idea, and so I wonder if you have any recommendations, I'm guessing campaign finance reform. But I mean, if it's inproportionate representation systems, it's in first past the post. Should states be smaller to minimize fragmentation. Will remote work help, so that we don't get concentrate-- urban concentrations.

I guess what I'm asking is, is there any help for us? Is there any hope for democracy? Is Biden going to save us? So, that's some food, some food for thought. I don't know if you want to respond now, or.

RICK PILDES: Yeah I'll respond to at least some of this because I really like the observation that one of the effects of fragmentation is to introduce pathologies if you will, to the political process. Because if it's impossible to move it through the traditional structures of Congress or parliaments or the process and there's demand, then, there's inevitably going to be pressure to see if there are workarounds that can emerge.

And I don't know how many people have read the paper or read the paper all the way through, but I do want to mention something that you flagged that I realized that happened with the US Congress that I had not fully understood until I really worked this through.

There have been complaints over 20, 30 years or so now, that Congress used to function in a way where there was more decentralization. There were individual committees. They specialize, they had expertise, they had developed a lot of knowledge about particular issues. Legislation would be initially developed in these committees, tested, discussed, modified. It would work its way up through the system. Then there would be amendments on the floor of the House or the Senate.

And this changed. This has changed dramatically, and we had a much more top-down and centralized Congress, in which most of the major policies are worked out in the leadership office of whoever, whichever party is in charge, with major leaders of the party, behind closed doors. They produce a massive bill. It then gets sent out with the understanding that sort of this is it, and you're going to vote for it.

There's much less deliberation, there's much less public process and a lot of-- and there's been a lot of criticism of that. But, what people don't realize is there's a reason that this has happened, and it's not because legislative leaders suddenly got more power hungry than they had been in the past. Because presumably, they always were very attuned to power.

But, because with social media and the communications revolution, the more open process, compounded by some very extreme transparency requirements we have in the United States that were adopted in the 70s, just the process has become so vulnerable to being blocked at early stages, before deals and trade offs and negotiations can be made, that it's really that Congress sort of figured out that this is part of what made it more paralyzed. And so, as a response, the centralization of policymaking in the leadership was meant to insulate the process from transparency, not for sinister kinds of reasons, but because in the communications age that we're in, that kind of insulation came to be viewed as necessary to be able to actually get things done.

And with treaties in the US, this is actually a much longer prob-- this problem goes back much longer, because the Constitution has this 2/3 requirement for approval of treaties. So, we have stopped having significant international agreements done by treaty for quite a while now. It's so rare to be able to get that level of support.

Just as an aside, I've written about this quite a bit. But, when the Constitution was formed, the hope was that political parties wouldn't emerge. And political parties were thought to be kind of antithetical to the kind of democracy a Republican governance that was hoped to be created. Of course, that turned out to be a misunderstanding of how politics would work in a modern society.

We do get parties, and as the parties developed and then particularly hardened over time, rules that were thought to promote wise decision making, like the 2/3 requirement, became insurmountable because of partisan conflict. Because so much of politics got organ-- it came to be organized through the parties. But in any event, I like the general point about process distortions that themselves reflect these forces of fragmentation, and I want to think about that more.

I'll save any response to the plea for salvation till later on because maybe other people will ask questions along those lines. Tsilly?

TSILLY DAGAN: Yeah, so, I'd like to join Ruth and thank you both, and you, Rick, for joining us today. I think I speak for both Ruth and myself in saying that when we envisioned this series of workshops, this is the kind of interaction we were looking for. So, not only both new and long lasting interest in taxation and democracy, but when I read your paper I thought it was exactly the kind of interaction we're looking. Not only between different disciplines within law, but also the international perspective and the comparative perspective.

I think so many of us found ourselves in this paper state ourselves in our state in this paper for better or worse. And not surprisingly, maybe I would like to take this opportunity to comment on the international perspective. And I have two comments. One of them actually closely resembles what Ruth was thinking about, and we didn't discuss this before, which is interesting.

But I was wondering whether the international arena is significant, both in amplifying the problem of fragmentation, but possibly also by offering ways to contain it. So my first comment actually goes on the amplifying the problem, and the problem and focuses on fragmentation. And I read your paper as one that highlights the fragmentation of votes, right, in the voice versus exit discussion. And, I would like to highlight another dimension of fragmentation, and I think tax law makes it very clear that it's-- but I don't think tax is in any way unique in that law, and that's the fragmentation of exit options.

So, we're used to thinking about exit in binary terms, right. So a person is a part of a political community of a state, or when she decides to expatriate, she's no longer a member of such a community. And the paper, of course, very neatly describes the new rifts that this difference between people creates when anywhere is in the somewhere, and I really like that part in the paper that describes that. But as tax law has made clear, some constituents don't have to make this binary choice, and they are actually able to diversify their affiliation with the state.

And this actually makes exit itself a fragmented option. So, when constituents can diversify their interaction with states, that is when they can simultaneously reside, invest, both pay taxes, work, and do business in any number of states. They enjoy both greater flexibility, but also a greater ability to influence state policies and to influence state politics.

And this is not only true voice, but also through partial exit, or sometimes the threat of exit is enough for that, as in the case of foreign direct investment, for example. So, if for example, they don't like a specific policy of Country A, they don't have to fight or challenge it in the political arena. In many cases, they can simply opt out of this particular policy.

And again, tax provides a very good example for that. So, Wolfgang was starting his comments with referring, and I think rightly so, to the issue of redistribution. So, if I don't like redistribution, I could fight the political fight to lower taxes, or I could opt out of the system by tax planning. So, at least prior to the recent developments in international taxation, this further undermines the ability of the government to promote policies that would actually serve the public.

The second point I wanted to make, and this is again goes through very closely to what Ruth was talking about, is that for better or worse, the international arena offers domestic policy makers an option to increase their power. And the idea is Putnam's to level the game, when domestic, political actors make maybe cooperating with parallel actors in foreign countries across national borders, right. And this may help them twist the arms of domestic stakeholders in a certain way.

And again, one example that may demonstrate this is the US joining, or indeed leading, the global minimum tax, right. Just to cite the New York Times from a few days ago, that the headlines said Biden finds raising corporate tax rates easier abroad than at home. OK, so I think that's a really good example of how international leverage allows domestic politicians to actually get their way in terms of policy.

Now, the results of such moves could be good or bad. When you're looking at it from a normative perspective, they could help governments raise taxes that are desperately needed to help the government raise taxes for a vaccine, or to sustain the environment, but they can obviously also help the government raise taxes to finance undesirable levels, and of course, a whole range of other policies. And as you mentioned in the paper, that these leverage can actually empower democratically elected leaders, but also dictators.

But my point is that whatever they are, these leverages are actually a way to use the International arena in order to increase domestic power and that may be a way forward on fighting these fragmentations.

RICK PILDES: Well, so, I really like the idea of using Hirschman to organize a way of seeing things here that I'm writing primarily about fragmentation on the voice option. And I don't think I've really thought about it on the exit side, and you offer some interesting examples about that, with the note that the rejection of the simple binary kind of idea of where you're a citizen and what that means. I don't know how much-- I mean those issues seem to me, ones at least in principle, could be managed by policy, if policymakers were willing to address them and have the political capability to do it.

Rules about attributing income here or there. I don't know how deep the fragmentation of the exit option that you're talking about kind of runs as a challenge to modern democracies because we do sometimes close some of these arbitrage opportunities. It has been a problem obviously, as you know better than me in the international tax arena with business. But anyway, it's an interesting question to think about. Do we have more fragmentation on these sort of exit front, presumably globalization, the openness to movement of capital, at least obviously creates more opportunities for what you're describing.

But as I say, my first instinct at least is that I can imagine policy solutions to that, whereas the things I'm trying to describe here, going back to Ruth's question, are much more daunting in terms of thinking about whether this is our fate, and this is the kind of democracies we're going to experience in this era, or whether there are significant changes externally, internally, matters of policy or not, that may kind of change the dynamic I'm trying to describe here.

RUTH MASON: Thank you so much. And to everyone else, we can't sign you up. You have to sign yourselves up for the emails. So, if you're not getting the invitations, go on the website and sign yourself up, and then you'll get the invitations in the future. So, thank you to everyone, and I hope to see you next time.