

# Tax Simplification

Edited by  
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## CHAPTER 3

# Tax Complexity and Symbolic Power

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### §3.01 INTRODUCTION

Much has been written about the vested interests associated with tax complexity, and the manner in which such interests inhibit simplification projects. Much less has been written about the ideological underpinnings of tax simplicity, although there is some acknowledgement of this nested within critiques, for example, of optimal tax theory. Using insights from French sociologist Pierre Bourdieu, the latter form of vested interests and ideologies are explored in this chapter as a field analysis, in which the tax field is conceived of as a site of struggle and in which symbolic power plays an important role.

As Cooper astutely notes, '[t]here are no developed theories to explain why the cause of simplification is at the same time so lauded by government, practitioners and taxpayers, and yet so universally disregarded in practice'.<sup>1</sup> Much of the literature dealing with the suggested undesirability of tax complexity starts from the premise that simplicity has inherent 'goodness' and is something worth striving for; for example, '[o]ne of the practical design rules that comes out of standard welfare analysis of taxation is that, other things being equal and in very general terms, simplicity is a goal of tax policy'.<sup>2</sup> Yet complexity has been a feature of tax system design and its practical operation for a very long time.

Approaches to tax complexity take on a variety of guises and can be addressed from different perspectives. This chapter aims to provide an alternative reading of the simplicity/complexity debate, in an attempt to provide a note of caution in relation to uncritical adoption of the 'simple is good' discourse. It does so by invoking concepts

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1. Graeme Cooper, *Themes and Issues in Tax Simplification*, 10(4) *Austl. Tax F.* 417, 420 (2003).
  2. William Congdon, Jeffrey R. Kling & Sendhil Mullainathan, *Behavioral Economics and Tax Policy*, NBER Working Paper 15328, 6 (2009).

developed by French sociologist Pierre Bourdieu, whose insights have to date been used only sparsely in tax scholarship.<sup>3</sup>

A Bourdieusian lens allows us to construct an interdisciplinary understanding and critically question the actions and motives of agents or actors involved in the tax field, both those that advocate more simplicity and those for whom a simplification of the tax code is less compelling. As will be explained below, ‘[t]he work of Bourdieu is particularly useful ... because of its understanding of practice as emerging from the relational interaction of subjective experiences and the objective social structures that frame those experiences’.<sup>4</sup>

The chapter begins with a brief overview of the various dimensions of tax complexity before identifying key Bourdieusian concepts and illustrating how the concepts are crucially interrelated, offering a framework of significant explanatory power. These concepts are then applied to the tax field more broadly and to the complexity debates within that field. It concludes that great care is needed when assessing attempts that seek to provide solutions to the (perceived) problems associated with tax complexity, and that it is important firstly to identify and recognize and then understand the significance of, and the workings of symbolic power (§3.05 and §3.06, below) in driving the simplification agenda.

### §3.02 DIMENSIONS OF TAX COMPLEXITY

Tax simplicity and complexity has been a topic of vigorous debate for many years, most vociferously in the US, partly perhaps as a result of the dogged dominance at the Federal level of income taxes, but also in other countries where it has manifested in overt attempts to simplify the tax system, for example Australia, New Zealand and the UK. The complexity debates are wide-ranging, and emanate from a variety of disciplinary perspectives including economics, law and psychology. Numerous commentators have articulated the various dimensions of complexity in the tax context, some of whom are noted in this section below (in no particular order).

Cooper, for example, notes that ‘complexity is evident at four levels in the tax system, in the choice of tax base, in the design of the rules applied to that base, in the expression of those rules and in the administrative requirements imposed on those who must comply’.<sup>5</sup>

Harris, in dealing with the notion of simplicity as the obverse of complexity, divides it into three broad categories: policy simplicity – that is, the type of tax and its

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3. The following works have used a Bourdieusian approach in relation to taxation: Louise Gracia & Lynne Oats, *Boundary Work and Tax Regulation: A Bourdieusian View*, 37(5) *Acct., Org. & Soc’y* 304 (2012); Diane Kraal, *Paul Keating, tax alchemist? A study proposing the interpretive tools of Pierre Bourdieu*, 8(1) *J. Australasian Tax Teachers’ Ass’n* 77 (2014); and Ann Mumford, ‘Inheritance Taxation, Notions of Legitimacy and Bourdieu’, in Guido Erreygers & John Cunliffe (eds), *Inherited Wealth, Justice and Equality* 173 (Routledge, 2012).

4. Gracia & Oats, above n. 3, at 306.

5. Cooper, above n. 1, at 459.



incidence, form simplicity – referring to how the intentions of government appear in statute form, and action simplicity – specifically the administration of the tax system.<sup>6</sup>

Donaldson identifies at least seven components of complexity that he argues will always be present.<sup>7</sup> These are as follows: using tax laws to affect behaviour, frequent change, socio-economic complexity, the ‘certainty trade off’, judicial gloss, the income tax base definition and the legislative process.

In presenting an argument that the US tax code be divested of trivial provisions, Veliotis identifies from prior literature four aspects of complexity – judgmental complexity (resulting, for example, from attempts to mirror ‘economic reality’ in the design and application of tax rules), computational complexity (‘numerous and tedious calculations ... required to determine tax liability’), density complexity (relating to the wording of the code), and compliance complexity.<sup>8</sup>

Schenk, in an analysis of tax salience, suggests that categories of complexity used by previous scholars overlap, but are, broadly, compliance, transactional, and rule complexity, the last of these, difficulty in understanding the law, being most obviously related to salience.<sup>9</sup>

As a modest adaption of the above categorizations, the following elements of complexity within the tax field can be distinguished with a view to subsequent analysis in light of Bourdieu’s notion of symbolic power. These categories are not intended to provide clean distinctions; they overlap to some extent and influence each other in subtle ways.

## [A] Code Complexity

### [1] Language of Legislation: Type and Number of Words

Several studies seek to measure complexity in terms of the specific wording of the tax code. Katz & Bommarito, for example, propose an empirical framework based on computational linguistics for the measurement of relative legal complexity.<sup>10</sup> The framework uses a hypothetical individual engaging with acquiring tax knowledge through a process that entails identification of the appropriate rules, assimilating their information content coping with any latent uncertainty, assessing the cost of complying and weighing the costs and benefits of compliance. Based on this process, the authors produce a composite measure of three qualitative features of the tax code: structure (in terms of layers or density of provisions), language (including the length

6. Peter Harris, *Corporate/Shareholder Income Taxation and Allocating Taxing Rights Between Countries*, 8 (IBFD Publications, 1996).

7. Samuel Donaldson, *The Easy Case against Tax Simplification*, 22(4) Va. Tax Rev. 645, 660 (2003).

8. Stanley Veliotis, *Sweating the Small Stuff: The Cost of Immaterial Tax Law Provisions*, 3(1) Wm. & Mary Pol’y Rev. 36, 59 (2011).

9. Deborah H. Schenk, *Exploiting the Salience Bias in Designing Taxes*, 28(2) Yale J. on Reg. 253 (2011). See also Ann Mumford, *Tax Complexity, Tax Salience and Tax Politics*, paper presented at the Political Power of Tax Complexity colloquium, Birmingham, 19 September 2013.

10. Daniel Martin Katz & Michael J. Bommarito II, *Measuring the complexity of the law: the United States Code*, 22(4) Artif. Intell. & L. 337 (2014).

and diversity of the words) and interdependence between various provisions (the more cross-references, the greater the complexity).

### [2] *Anti-avoidance Rules*

Many commentators point to the incremental complexity of the tax code that arises from successive attempts to tackle tax avoidance.

In a historical investigation of attempts by the Australian government to distinguish private companies with a view to treating them differently, and which in turn led to various tax avoidance practices, Oats notes:

The definition of private company for tax purposes was not intrusive when rates of tax were not high, but when circumstances changed, during WWII and subsequently when rates of tax were pushed higher, the definition took on much greater significance.<sup>11</sup>

The importance of this is the diachronic dimension, which is sometimes overlooked. However, changes to a tax code prompted by a desire to deal with the prevention or deterrence of tax avoidance do not always create additional complexity. In the recent hearings before the UK Public Accounts Committee, this issue was discussed in oral evidence by Edward Troup (Tax Assurance Commissioner, HM Revenue & Customs), who said:

Yesterday we announced the closure of four specific loopholes. Three of those were not simplifying measures. They are having to close off some complicated loopholes that have arisen. One of them, interestingly, abolished a relief that is now outmoded. It was something introduced many years ago, which was deduction [sic.] for patent royalty payments by individuals who weren't carrying on a trade. That we found was being used just for avoidance now. For once, the Government have introduced an anti-avoidance measure that is simplifying.<sup>12</sup>

### [3] *Rules or Principles*

Tax complexity arises also in the context of the structure of the tax code and the extent to which the rules are codified. There is a large body of literature dealing with the question of the relative merits of principles over rules in the drafting of tax legislation. However in seeking to understand the distinction between rules and principles and how the adoption of one approach rather than another is relevant to the tax simplicity/complexity debate, a number of important distinctions must be made in

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11. Lynne Oats, *Distinguishing Closely Held Companies for Taxation Purposes: The Australian Experience 1930–1972*, 15(1) *Acct. Bus. & Fin. Hist.* 35, 38 (2005).

12. Edward Troup, in *Transcript of Evidence to the House of Commons Public Accounts Committee inquiry into Tax Avoidance Marketed Schemes*, 6 December 2012, Evidence 21 (question 303) in relation to the Office of Tax Simplification. Available at: <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmpubacc/uc788-i/uc78801.htm> (accessed on 21 November 2014).

order to clarify the framework and content of the discussion. For example, Freedman has suggested that an understanding of the rules or principles debate requires a recognition that a purposive interpretation of the tax code and even the enactment of purpose clauses which in some manner seek to explain the relevant legislation are not necessarily the same as adopting a principle based approach (in contrast to a rules based approach) to structuring a tax code, although both might be relevant to the complexity/simplicity debate.<sup>13</sup> Before such distinctions are made and a robust understanding of the differences between rules or principles can be demonstrated, little clarity can be achieved on the relevance that the rules or principles debate has for assessing the relative complexity or simplicity of a tax system.

**[B] Structural Complexity**

**[1] Number of Rates**

Some scholars focus in particular on the number of different rates of tax, arguing that the more rates within a given rate schedule, the more complex the tax computation will be. While this may well have been problematic in times gone by, modern computational capability means that such concerns are no longer paramount, although there is evidence that taxpayers have difficulty, for example, in determining the marginal tax rates they face when making investment or other financial decisions.

**[2] Number of Provisions**

The number of provisions in a tax code is frequently cited as indicative of complexity and attempts are also frequently made to eliminate or at least reduce outdated provisions on this basis, as in the work of the UK Office of Tax Simplification.<sup>14</sup> In a US study, Veliotis decries incremental change increasing complexity and recommends, drawing on institutional (transaction cost) economics, incremental elimination of ‘trivial’ or ‘immaterial’ provisions in the US tax code, including tax expenditures that could be converted to direct subsidies, as a means of reducing ‘clutter’.<sup>15</sup> Arguably this analysis overlooks the political imperatives associated with the use of tax expenditures including a desire to disguise the extent of support given to particular sections of society and the difficulties associated with administering direct spending provisions.

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13. Judith Freedman, *Improving (Not Perfecting) Tax Legislation: Rules and Principles Revisited*, [2010] 6 Brit. Tax Rev. 717.

14. Office of Tax Simplification <https://www.gov.uk/government/organisations/office-of-tax-simplification>.

15. Veliotis, above n. 8, at 59.

**[C] Policy (System) Complexity****[1] Socio-Economic Imperatives**

It goes without saying that tax policy is at the mercy of prevailing, and changing, socio-economic imperatives. The current worldwide discussions related to base erosion and profit shifting (BEPS)<sup>16</sup> reflect this. Interestingly, these discussions also highlight the different understandings of how the tax code should work in practice. As noted by Lin Homer (Permanent Secretary and Chief Executive, HM Revenue & Customs):

...there is a complexity to the system, which sometimes separates the outcomes from the common-sense view of what should happen. That is not the same as saying that it is a mess. The law is rarely involved in areas that are simple and this is an area where I think there is a complexity – the last debate about permanent establishment illustrates that – which sometimes creates a gap between what people would like to happen and what is possible within the law.<sup>17</sup>

This view of a tax code is also reflected by Edward Troup, again when giving oral evidence to the Public Accounts Committee (§3.02[A][2] above):

But if you look at the cases that we have litigated, and if you look at the example of film schemes that you were talking about with the previous witnesses, it was not so much the complexity of the tax system, it was abuse of a genuine purpose that Government had in making a change to the tax system. So, while simplification is part of where we should tackle this, I think to believe that somehow a simpler tax system would cure all these problems is not going to work.<sup>18</sup>

**[2] Tax Expenditures**

There is a substantial literature also on the role of, and necessity for, tax expenditures. Tax expenditures not only create complexity when considered in isolation, but also the complexity is magnified when they are considered in aggregate. In the context of tax complexity, the OECD survey of country practices in relation to tax expenditures observes that:

... aspects of tax expenditures can cause the resulting complexity of the whole to exceed the sum of the complexity of the parts, in public perception as well as reality. As legal provisions, regulations, instructions and forms are piled upon one

16. See, for example, the description of BEPS and the OECD/G20 BEPS Project at: <http://www.oecd.org/tax/beps-about.htm>.

17. Lin Homer, transcript of evidence on 16 May 2013 (in response to Question 246 from Guto Bebb, Welsh Conservative Party Member for Aberconwy), in House of Commons Committee of Public Accounts, *Tax Avoidance – Google, Ninth Report of Session 2013-14, together with formal minutes, oral and written evidence*, Ev. 28 (13 June 2013). Available at: <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmpubacc/112/112.pdf> (accessed on 21 November 2014).

18. Edward Troup, in transcript of evidence to the House of Commons Public Accounts Committee inquiry into Tax Avoidance Marketed Schemes, 6 December 2012, Evidence 21 (question 303) in relation to the Office of Tax Simplification, above n. 12.

another, the body of tax wisdom needed to navigate the system can grow beyond the capacity of many non-experts. The marginal added provisions, even if they do not apply to a particular taxpayer, obscure that taxpayer's field of vision of what he or she needs to know. From a simple systems perspective, the potential interactions among additional tax expenditures could grow geometrically as more are added.<sup>19</sup>

Donaldson makes the distinction between mass complexity and specific complexity.<sup>20</sup> The former relates to provisions that are of universal application. The latter is complexity that arises for taxpaying entities that are affected by specific aspects of the tax code, for example tax expenditures. Such provisions, however, create mass complexity also, in the sense that even if not directly affected by specific provisions, taxpayers, their advisors and tax administrators all have a need to be apprised of specific provisions to assess their potential applicability.

### **[3] Political Goals**

The raw politics of tax legislation is often neglected when tax policy is discussed,<sup>21</sup> although some scholars do acknowledge it as a constraint in achieving simplification. Slemrod examined variations in US state income tax systems in terms of compliance complexity and the correlation with political ideology, among other things, in attempt to identify the aspects of a state's political system that engender tax complexity.<sup>22</sup> Given the usual caveats about statistical significance, he found some evidence that complexity is higher in states with a more liberal ideology, when proxied by the number of pages in the instruction book.

## **[D] Administration and Compliance Complexity**

### **[1] Compliance Complexity**

Filing and information provision requirements arise because of the need to provide information to the tax authority to enable them to evaluate tax liabilities. In some cases this can involve the creation of bespoke information sets for the tax authority.

The relationship between complexity and compliance is not entirely clear. Forest and Sheffrin, for example, challenge the notion that simplifying the system will increase compliance in an empirical study, based on a US 1990 Taxpayer Opinion Survey, that seeks to examine the relationship between taxpayer perceptions of

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19. OECD, *Tax Expenditures in OECD Countries*, 29 (OECD, 2010).

20. Donaldson, above n. 7, at 660-661.

21. As observed in Mark A. Covalleski, Mark W. Dirsmith & Katrina L. Mantzke, *Institutional destabilisation and the new public management: the case of tax incremental financing*, 1(1/2) Int'l J. Pub. Pol'y 122 (2005).

22. Joel Slemrod, *The Etiology of Tax Complexity: Evidence from U.S. State Income Tax Systems*, 33(3) Pub. Fin. Rev. 279 (2005).

fairness and compliance with the tax rules.<sup>23</sup> Their results suggest that simplification may not in fact deter tax evasion as taxpayers do not necessarily equate complexity and unfairness, i.e., complexity and non-compliance are not consistently linked. Here, though, the authors equate non-compliance and evasion; they do not consider the concept of creative compliance with the tax rules.

## [2] *Administrative Complexity*

The flipside of the practical operation of the tax system is complexity as experienced by the tax administration. The following further observation by Lin Homer (see §3.02[C][1] above) illustrates that the functioning of the tax system is not rule-bound; that tax administrations are adaptable organizations capable of improvisation to achieve their goals:

Truthfully, there are other things that we can do in this space without having to wait for legislative changes, which is to be much better and clearer about informing people about tax regimes. Some of our improved data analytics, which we have talked to you about, also allow us to be more challenging in the area where people use that complexity to be mischievous with us, so I do not think that we in any sense wait until the complexity goes away; I think there are things we can do. I do not believe that there are many places in the world with simple tax systems, so ways of making the complexity less of a barrier to good, effective administration is the alternative.<sup>24</sup>

What is evident from this discussion of the various aspects of what can be considered to be tax complexity is that the practice of taxation (considered in all its aspects) has to operate in a social world that is, of itself, remarkably complex.

There is evidence to suggest that the *complexity v. simplicity* debate is one that does not focus on issues that might also be important. As the Office of Tax Simplification recognizes, clarity and understandability are key attributes of a tax code. This suggests that an important dimension of any discussion as to the content, application and administration of a tax code is that it be framed in terms of clarity and understandability (which together encourage certainty), and to assume that simplicity is some form of synonym for these characteristics is a mistake.

In the next section, we present an overview of Bourdieu's theory of social practice, prior to applying it specifically to the tax field, and to simplification debates in particular.

## §3.03 BOURDIEU'S THEORY OF SOCIAL PRACTICE

Throughout Bourdieu's work there is a 'common thread' which seeks 'to uncover the specific contribution that symbolic forms make to the constitution and perpetuation of

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23. Adam Forest & Steven M. Shefrin, *Complexity and Compliance: An Empirical Investigation*, 55(1) Nat'l Tax J. 75 (2002).

24. Lin Homer, transcript of evidence on 16 May 2013, above n. 17, at Ev. 29, in response to another question (Q. 251) from Guto Bebb.

structured inequality by masking its economic and political moorings'.<sup>25</sup> He does this primarily by using three key concepts: field, capital and *habitus*, each described here, in brief overview, in turn.

'Field' is the term used to describe the various social spaces which comprise the social world. Fields are neither discrete nor static, rather they overlap and intertwine and their boundaries are constantly shifting. The actors that inhabit these social fields challenge each other to acquire various forms of capital, the most dominant actors being those with the most capital in the particular configuration valued by the particular field. The capital, over which field actors struggle, is not capital as understood in an economic sense, but embraces a range of things of value, and of which economic capital, money and property, is but one. Other forms of capital that may be valued in a particular social field are cultural capital, referring to attributes recognized as important in society such as educational credentials, and social capital, which refers primarily to networks of personal and professional social contacts.<sup>26</sup> Other forms of capital identified by Bourdieu and those who draw on his work, include informational capital<sup>27</sup> and political capital.<sup>28</sup>

The third key feature (in addition to that of field and capital) of Bourdieu's thinking brings into play a subjective notion that interweaves with the structural elements; specifically *habitus*. Individual actors in social fields carry with them a *habitus* which is a 'set of attitudes, values and behaviours that dispose agents to behave in particular ways'.<sup>29</sup> *Habitus* is durable and deeply internalized, although not completely incapable of adaptation; a product of life chances – upbringing, education, early exposure to facets of social life including class etc. *Habitus* is central to the 'continual reproduction of belief in the game, interest in the game and its stakes'.<sup>30</sup>

Together, these three interconnected concepts, field, capital and *habitus*, help us to better understand aspects of social practice.

Another important feature of social fields is the *doxa*, a term which Bourdieu adapts from the Greek term for common belief. Swartz describes it as 'the taken-for-granted everyday life realities that form the primary experience of the social world'.<sup>31</sup> In Bourdieu's description of fields as analogous to a 'game', he states that fields follow rules, or regularities, and the field actors, as players in the game, 'concur in their belief (*doxa*) in the game and its stakes; they grant these a recognition that escapes

25. Loïc J.D. Wacquant, *On the Tracks of Symbolic Power: Prefatory Notes to Bourdieu's 'State Nobility'*, 10(3) *Theory, Culture & Soc'y* 1 (1993); Pierre Bourdieu, *Pascalian Meditations* ([1997], tr. Polity Press, 2000).

26. See Pierre Bourdieu, 'The Forms of Capital', in John G. Richardson (ed.), *Handbook of Theory and Research for the Sociology of Education* 241 (Greenwood, 1986).

27. Pierre Bourdieu, *Practical Reason*, Ch. 3 ('Rethinking the State: Genesis and Structure of the Bureaucratic Field') ([1994], tr. Polity Press, 1998).

28. Bourdieu also refers to 'political' capital as a subset of social capital; '[h]eads of political machines, parties, unions and lobbies are powerbrokers of institutionalised political capital', as described in David L. Swartz, *Symbolic Power, Politics, and Intellectuals: The Political Sociology of Pierre Bourdieu*, 65 (University of Chicago Press, 2013).

29. Gracia & Oats, above n. 3, at 307.

30. Pierre Bourdieu, *The Rules of Art: Genesis and Structure of the Literary Field*, 227 ([1992], tr. Susan Emanuel, Polity Press, 1996).

31. Swartz, *Symbolic Power, Politics, and Intellectuals*, above n. 28, at 80.

questioning'.<sup>32</sup> Indeed, Bourdieu suggests that each field has its own unique *doxa* and 'is characterised by the pursuit of a specific goal'.<sup>33</sup> To continue the analogy of a game, the purpose of rugby union as a game is to win through scoring tries, conversions and penalties in accordance with the laws of rugby union; in contrast, football (soccer) as a game provides a set of rules in accordance with which teams play to score goals. Rugby union and football (soccer) are different 'fields' with different '*doxa*'; each field and the players on the field abide by 'different rules of the game'.

How then can we use these ideas to conceptualize a tax 'field', as a way of exploring its dynamics, including, for the purpose of this chapter, the dynamics of tax complexity?

### §3.04 THE TAX FIELD

In the context of taxation, both tax scholars and tax practitioners frequently refer to the operation of the tax system as akin to a 'game', which, as noted above (§3.03), is a metaphor used by Bourdieu in his explanations of fields, reflecting the competitive element of the struggles that occur within and between them.<sup>34</sup> Gracia and Oats present a view of tax regulation as a relational process that sees it in terms of 'struggles between groups within the tax field where participants shape, and are shaped by, the game being played'.<sup>35</sup>

We can all describe a number of the main players in the tax game: the taxpayer called upon to pay the tax, the tax authority charged with collecting it, the politicians who construct the tax code, the legislative drafters who translate the politicians' will into statute, the advisors who help taxpayers navigate the code's requirements, the judges who are called upon to adjudicate different interpretations of the code and the media which disseminate views of the field for the wider public. Less prominent (and maybe less influential), perhaps, but nonetheless important, are tax academics and researchers, who are able to influence the development of the tax system and the tax code in more subtle ways.

Applying Bourdieu's conceptual 'toolbox' or framework to the tax arena allows us to conceive of it as overlaid and intertwined with various other social and professional fields and, in part, shaped by a series of constantly changing questions about the design and operation of the tax system. The tax field has economic, social, political, legal and bureaucratic dimensions. Consequential upon the *habitus* of each actor:

[e]ach protagonist in the game attempts to impose the definitions that are favourable to their own interests. The game in this sense is not one of benign play,

32. Pierre Bourdieu and Loïc J.D. Wacquant, *An Invitation to Reflexive Sociology*, 98 (tr. Loïc J.D. Wacquant, Polity Press, 1992).

33. Bourdieu, *Pascalian Meditations*, above n. 25, at 11.

34. See, for example, Bourdieu, *Practical Reason*, above n. 27, at 65.

35. Gracia & Oats, above n. 3, at 305.



but rather a constant and competitive struggle for power in which tensions are most acutely present at the boundaries of practice.<sup>36</sup>

The purpose of such struggle is the maintenance and acquisition of one or more of the various forms of capital. The nature of the capital sought in this struggle will depend on the *habitus* of the player and the role undertaken or position occupied within the tax field.

The tax administration is a prominent player in the tax field, and as part of the government is also an actor in a 'bureaucratic' field. Such matters as a reputation for efficiency, objectivity, and fairness might be important forms of capital for the tax administration. The tax administration may provide guidance to taxpayers, or may withhold guidance, creating what Osofsky calls 'strategic uncertainty'.<sup>37</sup> Lawyers and judges obviously also belong to the 'juridical field' and import into the tax field a legal *habitus*; approaching the tax system as primarily a legal text to be interpreted.

In relation to the tax field, we can also think, for example, of a taxpayer *habitus* as emerging 'from their experiences and interactions with the tax field'.<sup>38</sup> Arguably, 'the dense complexity of tax law puts its requirements beyond the grasp of many taxpayers, strengthening the cultural capital of the tax authority'.<sup>39</sup> Complexity creates an important role for advisors: '[s]ome taxpayers therefore choose to acquire the expertise of professional advisors to help not only with compliance, but also with strategies to minimise future tax obligations through judicious planning'.<sup>40</sup>

The tax field *doxa* can be thought of as the way in which we all understand the game; taxpayers can be reluctant to pay taxes, professional advisors act in the interests of their clients and possibly also in the interests of maintaining the integrity of the tax system. The tax administration is politically neutral in its work of collecting revenue, although through a 'desire' to be approved of by government it might seek taxation in accordance with its own *habitus* which, on a Bourdieusian understanding, cannot be neutral. The tax system is complex, imposing burdens (economic and psychological) on all concerned.

A Bourdieusian analysis allows for an unravelling of the relational struggle for the stakes in the game, including the power to name and define boundaries within the tax field, for example, boundaries between tax compliance and non-compliance.<sup>41</sup> Another important concept in Bourdieu's work is that of symbolic power, which is now explored in more detail.

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36. Gracia & Oats, above n. 3, at 307.

37. Leigh Osofsky, *The Case against Strategic Tax Law Uncertainty*, 64(4) Tax L. Rev. 489 (2011).

38. Gracia & Oats, above n. 3, at 309–310.

39. Gracia & Oats, above n. 3, at 309–310.

40. Gracia & Oats, above n. 3, at 309–310.

41. Gracia & Oats, above n. 3, at 308.

### §3.05 SYMBOLIC POWER

The question of power is a thread that runs through Bourdieu's sociology. Bourdieu uses the notion of symbolic power, in particular, to signify a power to make facets of social life appear to be natural, given, inevitable and, importantly, apolitical.<sup>42</sup>

'Symbolic power' emerges from 'the recognition of authority as legitimate which confers its carrier with an additional "value added" power above and beyond the specific form and amount of power upon which that authority is originally based'.<sup>43</sup> Bourdieu's use of the concept of symbolic power is a feature of his work that distinguishes him from other sociologists. Symbolic power is 'the capacity that systems of meaning and signification have of shielding, and thereby strengthening, relations of oppression and exploitation by hiding them under the cloak of nature, benevolence and meritocracy'.<sup>44</sup>

Symbolic power can be thought of as the means whereby the 'rules of the game' possess their power, significance and influence. The 'rules of the game' are assumed as given and yet, it is actors with power (which arises as a result of their *habitus* and the capital they possess) in the pursuit and maintenance of capital within a field that 'unconsciously' arrange the 'rules of the game' in their favour; the dice are loaded through the operation of symbolic power.

Swartz observes that:

Bourdieu's sociology makes no distinction between the sociological approach to the study of the social world and the study of political power...[indeed he] sees *all* of sociology as fundamentally dealing with power...not as an independent domain that can be separated from culture or economics but a force that pervades all human relations.<sup>45</sup>

Bourdieu did not pay explicit attention to law, but in one paper<sup>46</sup> described the juridical field, in which he explains how powerful actors have the capacity to manipulate interpretation of legal texts as a mechanism for controlling field practices.<sup>47</sup>

Loveman distinguishes Bourdieu's symbolic power from other forms of power,<sup>48</sup> such as Mann's four sources of power (ideological, economic, military and political),<sup>49</sup> noting that symbolic power may be based on any or all of these or other forms of social power. Loveman describes it as a form of metapower, that 'accrues to carriers of specific forms of power to the extent that their particular basis of power is recognised

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42. Pierre Bourdieu, *Language and Symbolic Power*, 170 ([1977–1984], tr. Polity Press, 1991); see Mara Loveman, *The Modern State and the Primitive Accumulation of Symbolic Capital*, 110(6) *Am. J. Sociology* 1651, 1655 (2005).

43. Loveman, above n. 42, at 1655.

44. Wacquant, *On the Tracks of Symbolic Power: Prefatory Notes to Bourdieu's 'State Nobility'*, above n. 25, at 1–2.

45. David Swartz, *Culture and Power: The Sociology of Pierre Bourdieu*, 87 (University of Chicago Press, 2006).

46. Pierre Bourdieu, *The Force of Law: Toward a Sociology of the Juridical Field*, (tr. Richard Terdiman), 38(5) *Hastings L.J.* 805 (1987).

47. Gracia & Oats, above n. 3, at 315.

48. Loveman, above n. 42, at 1655–1666.

49. Michael Mann, *The Sources of Social Power* ([1st ed.] Cambridge University Press, 1986).

as legitimate'.<sup>50</sup> Symbolic power can also be distinguished from ideology, which also relies on symbols, but arguably lacks a cultural dimension.

Bourdieu conceives of the state as being the primary, but not exclusive, repository of symbolic power, accumulated, as noted by Loveman, over time: '[b]ureaucratic administration is at the heart of the modern state's ability to exercise symbolic power... [and] also enables the state to define more effectively the parameters of individual identities and existence', through the accumulation of informational capital.<sup>51</sup>

Having outlined various aspects of tax complexity, and the Bourdieusian conceptual framework, we now bring together the two issues and ask the question, in what way is symbolic power present in debates that seek to minimize tax complexity?

### §3.06 VESTED INTERESTS AND SYMBOLIC POWER

Symbolic power is used to create a framework within which the 'rules of the game' operate in favour of one or more actors. Such actors participate in the exercise of such symbolic power with a view to enhancing their opportunities to retain and obtain capital. One way of identifying vested interests, and the potential for symbolic power to come into play, is to think about the related fields which actors or groups of actors occupy and the relative importance of different forms of capital therein.

Using such an analysis, it is possible to categorize various groupings of interested parties on each side of the simplicity/complexity debate and, by offering descriptions of capital which are of value to these groupings, to also identify opportunities for the exercise of symbolic power.

Cooper suggests that both administrators and legislators may not actually want complexity to disappear;<sup>52</sup> the former benefit from complexity as a source of power within government and the latter create and maintain complexity as a mechanism for securing votes. As we saw earlier (§3.04), the tax administration is also part of the bureaucratic field, where value is attached to impartiality and procedural fairness. Notwithstanding this, the tax authority in the tax field is powerful in the sense of being able to promulgate authorized (by virtue of symbolic capital bestowed through state sanction) interpretations of the tax code and its application even though on occasion such interpretations might spring from the *habitus* of the tax administration.

The question of expertise is pervasive here. Tax knowledge is a valuable form of (informational) capital in the practical operation of the tax field. It is a feature of the tax field that generates considerable struggle between field actors.

This leaning towards complexity arises, in part, out of the *habitus* of such actors. For example, as an agent of government, a tax administration is concerned with ensuring that tax policy is reflected in the tax code as accurately as possible; there is a need to identify that set of circumstances in which tax will crystallize and also that set of circumstances in which a relief is available. In the exhibition of objective, impartial, bureaucratic virtue, complexity is allied to accuracy. In contrast, the *habitus* of tax

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50. Loveman, above n. 42, at 1656.

51. Loveman, above n. 42, at 1660.

52. Cooper, above n. 1, at 449.

advisors values professionalism, expertise and knowledge, virtues more naturally linked to dealing with the complex rather than the simple. Knowledge is also relevant elsewhere in terms of tax policy design. Here it is a different form of knowledge that dominates debates, specifically economic knowledge. Philipps demonstrates, in a Canadian setting, how the presentation of tax rules as objective and ‘scientific’ can have the effect of delegitimizing value-based critiques.<sup>53</sup>

Symbolic power is evident in the work of optimal tax theorists, who present compelling arguments for policy simplification, for example the removal of tax preferences, consistent with the ‘simplification is good’ discourse, while disguising the neoliberal agenda that underpins such policy prescriptions.

The power of the simplification discourse is further illustrated in the World Bank publication *A Handbook for Tax Simplification*,<sup>54</sup> which is designed for use by policy-makers and tax practitioners. This highlights another player in the tax game, with an increasingly significant role, the supra-national organization. Bodies such as the World Bank, OECD, European Commission, relying as they do on the symbolic power associated with the ‘virtue’ of expertise and of being a supra-national organization, produce texts that are designed to promulgate best practice in tax system design as well as tax administration. They provide legitimacy for courses of action and proposals for change in countries where this may otherwise be difficult to achieve. However, little attention is paid to the *habitus* of the individuals that constitute such organizations, each of whom, on a Bourdieusian analysis, is operating within their fields of work seeking economic, social and cultural capital. The tax system in these texts is invariably treated as an economic issue, reaching out to the tax field *doxa* that efficiency is of paramount importance, although to be balanced against equity, and administrative ease. The World Bank Handbook also states: ‘[t]ax experts agree that a good tax has a low rate and a broad base. This principle captures, to a large extent, the goals of equity, efficiency, and administrative feasibility’.<sup>55</sup> Note here the appeal to expertise, which has the effect of diminishing objections to the ‘low rate, broad base’ efficiency mantra and also that the nature of efficiency within the tax field might be very different from efficiency as a *doxa* within the field of economics.

### §3.07 CONCLUSION

How we understand tax complexity, and the call for simplification, is partly a result of our own *habitus*. Systems of education, which we would argue includes professional education, naturalize ‘principles of vision and division’,<sup>56</sup> that is, ways of categorizing the world that shape how we understand the society in which we live. Symbolic power

53. Lisa Philipps, *Discursive Deficits: A Feminist Perspective on the Power of Technical Knowledge in Fiscal Law and Policy*, 11(1) Can. J.L. & Soc’y 141 (1996).

54. World Bank, *A Handbook for Tax Simplification* (World Bank Group, 2009). The Handbook acknowledges (at iii) that it was published with ‘the generous support of the UK Department for International Development (DFID) under the partnership program between DFID and the Investment Climate Advisory Services of the World Bank Group’.

55. World Bank, *A Handbook for Tax Simplification*, above n. 54, at 6.

56. Bourdieu, ‘Rethinking the State: Genesis and Structure of the Bureaucratic Field’, above n. 27.

attaches to the ability to make arbitrary distinctions appear as imperatives. There are many aspects of the call for tax complexity that illustrate symbolic power at work. Two of these will, in conclusion, be discussed further here.

The first relates to compliance complexity, and paternalistic calls for simplification to reduce the administrative burden of taxation and hence improve its economic efficiency. Such arguments are grounded in a small state ideology, the idea that we should roll back the state.<sup>57</sup> Symbolic power rests with those who are able to make people believe it is in their interests to ‘cut red tape’. The promulgation of a small state ideology has the effect on actors (in many fields) of simply accepting such a principle to be relevant and ‘better’ than any alternative. When considered in Bourdieusian terms, the actors who promote such ideology do so in order to enhance their capital (in its various manifestations) and fix ‘the rules of the game’ to their advantage. The aim of the exercise of such symbolic power is for such a principle to be part of the *doxa* of the field. By failing to recognize such calls for simplicity as the exercise of symbolic power, the ‘rules of the game’ of the tax field are surreptitiously changed. The exercise of symbolic power means that unfortunately such changes are not challenged but instead accepted by all and yet, what is important, the changes benefit (initially) only the vested interests.<sup>58</sup>

By way of example, cash accounting for small business has recently been introduced in the UK and is presented as if helping struggling budding entrepreneurs. An alternative view, however, is that such processes actually engender bad practice – businesses should keep proper books of account for a whole range of reasons. Many small businesses would go to accountants for help regardless of how simple the system is. Another example, which illustrates the principle of unexpected consequences, is the ‘Check the Box’ election possible in the US as discussed by Dean.<sup>59</sup> This was introduced to satisfy administrative and compliance simplicity, but created considerable dysfunctional behaviour potentially damaging to wider society particularly outside the US. For example, it has resulted in complex anti-arbitrage legislation in the UK which is not as clear or as certain as would have been ideal.

The second illustration of symbolic power relates to the stubborn persistence of tax expenditures. Calls for reductions in tax expenditures are largely based on welfare economics thinking: broadly, that tax should not interfere with decision-making more than is absolutely necessary, and tax expenditures should be removed to make the code simple, and make tax economically efficient. But arguably this overlooks the very important social role of tax and risks harming those in need of special treatment. It also potentially denies the possibility of using differential taxes to accommodate social differences.

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57. In the 21st century this is exemplified by the ‘Tea Party’ in the US but can be traced back to the work of the Chicago School as taken up by former UK Prime Minister Margaret Thatcher and President Ronald Reagan.

58. As time passes, the rules of the game will be accepted by actors other than the ones who initially exercised and sought the exercise of symbolic power. Such new actors, through their evolved *habitus*, will also benefit and thereby enhance and maintain their capital.

59. Steven A. Dean, *Attractive Complexity: Tax Deregulation, the Check-the-Box Election, and the Future of Tax Simplification*, 34(2) Hofstra L. Rev. 405.

In this case, what is important within the field is that consideration is given to the relationship between efficiency, objectivity, knowledge and even the desire for truth. The field of economics (out of which comes optimal tax theory) claims to itself the virtues of being objective, neutral and, perhaps above all, scientific. In the modern age of evidence based policy-making, significant credence is given to these virtues. Proponents of optimal tax theory are exercising symbolic power by associating their proposals with virtues that are highly valued. If adopted, the status (and hence capital) of those that propose such theory will be enhanced.

However, when the calls for the adoption of the principles of optimal tax theory as a means of simplification of the tax system are recognized as being reliant upon the exercise of the symbolic power that resides in the vision of economics as a neutral and objective science, then the debate on simplification can be assessed in a more useful manner.

This chapter set out to offer an alternative reading of the tax complexity debates. By thinking with Bourdieu's concepts, in particular that of symbolic power, it is possible to probe the various dimensions of tax complexity and ask some difficult questions. How is the tax field constituted, and what is the relationship between the various actors; individuals, organizations and institutions? What forms of capital are valued in the tax field, and what capital do field participants bring with them from other social fields that they inhabit? Who are the successful field actors who demonstrate mastery of the rules of the game?

In closing we reiterate the need for caution in embracing uncritically the 'simplicity is good' discourse. History has shown in many instances that measures adopted to simplify either tax policy or its practical operation have unforeseen consequences. This is particularly so when tax is treated as being primarily an economic phenomenon and the social dimensions of its operation are neglected. Tax complexity is a reflection of the complexity of wider society, including, but most definitely not limited to, its economic dimensions.