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A Basic Needs Baseline for Distributional Analysis

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Studies of income inequality and the distributive effects of taxes and government spending drive debates over progressive fiscal reform and economic justice. These distributional studies provide vital information on inequality in market outcomes and how government policies mitigate these disparities.

Despite its critical importance, however, distributional analysis encounters inevitable and familiar limitations. These studies face practical challenges in measuring income and the distributional impacts of government policies. Distributional analysis also faces inherent complications in seeking to distinguish between the effects of the market and the government.

Even if distributional analysis could precisely measure income and the effects of government policies, these studies would still embed assumptions as to which measures of inequality matter. For example, the measure of market income used in distributional studies offers one possible measure of inequality. This measure, however, does not compare taxpayers' disposable income available for discretionary consumption or savings, and therefore does not reflect accurately differences in household spending ability.

No methodology can offer an objectively correct way to perform distributive analysis. Because of their limitations, however, current distributional studies can understate inequality of household budgets. They can also overstate the distributive

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effects of government benefits to lower-income individuals and understate benefits at the top of the distribution.

This Article introduces a new approach which yields a different assessment of income inequality and the effects of government policies. This method first deducts costs individuals incur for basic needs from the baseline of market income to construct what this Article terms a "basic needs baseline." The method then assesses the distributive effects of explicit taxes and government spending from this new baseline. In effect, this methodology treats expenses for basic needs as implicit taxes or burdens from government inaction, when the government does not provide for them, rather than as affirmative benefits when the government does provide for them.

A basic needs baseline does not offer a "solution" to the measurement challenges and inherent limitations in distributional analysis. It does, however, offers a different—and valuable—measure of economic inequality and the effects of government policies. This method more accurately reflects the reality of differences in household budgets and redresses the imbalances in distributional analysis resulting from its unavoidable limitations.

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> *Economic statistics, like . . . concentration of income, are not physical facts . . . . Instead, they are creations that reflect social, historical, and political contexts. How the data sources are assembled, what conceptual framework is used to combine them, what indicators are given prominence: all of these choices reflect objectives that must be made explicit and broadly discussed*.[1]

INTRODUCTION

Studies of income inequality and the distributive effects of taxes and government spending drive debates over progressive fiscal reform and economic justice. Policymakers cite rising inequality and declining tax progressivity to justify new taxes on capital income and wealth,[2] while others marshal competing data in

1. Emmanuel Saez & Gabriel Zucman, *The Rise of Income and Wealth Inequality in America: Evidence from Distributional Macroeconomic Accounts*, 34 J. ECON. PERSPS. 3, 4 (2020).

2. For example, Senator Elizabeth Warren (D-MA) cites to studies on the wealth gap to justify her proposal for a wealth tax. *Tax the Ultra-Rich*, WARREN DEMOCRATS, https://elizabethwarren.com/wealth-gap (last visited Mar. 20, 2023) (citing to data on wealth inequality in Letter from Emmanuel Saez & Gabriel Zucman to Sen. Elizabeth Warren (Jan. 18, 2019), https://elizabethwarren.com/wp-content/uploads/2019/01/saez-zucman-

objecting to such reforms.[3] Distributional studies also inform understandings of how the tax system and other legal rules account for economic differences[4] and the role of economic inequality in other pressing social challenges, including racial injustice,[5] declining democratic accountability,[6] and the global threat from climate change.[7]

Despite its central importance for fiscal and social policy, however, distributional analysis encounters inevitable and

wealthtax-warren-v5-web.pdf); *see also* Jim Tankersley & Ben Casselman, *The Liberal Economists Behind the Wealth Tax Debate*, N.Y. TIMES (Feb. 21, 2020), https://www.nytimes.com/2020/02/21/us/politics/the-liberal-economists-behind-the-wealth-tax-debate.html (describing how distributional studies have influenced progressive tax reforms). The Biden administration similarly cites distributional studies to justify progressive capital income tax reforms. *New OMB-CEA Report: Billionaires Pay an Average Federal Individual Income Tax Rate of Just 8.2%*, THE WHITE HOUSE (Sept. 23, 2021), https://www.whitehouse.gov/omb/briefing-room/2021/09/23/new-omb-cea-report-billionaires-pay-an-average-federal-individual-income-tax-rate-of-just-8-2/ (citing Greg Leiserson & Danny Yagan, *What Is the Average Federal Individual Income Tax Rate on the Wealthiest Americans?*, THE WHITE HOUSE (Sept. 23, 2021), https://www.whitehouse.gov/cea/written-materials/2021/09/23/what-is-the-average-federal-individual-income-tax-rate-on-the-wealthiest-americans/).

3. *See, e.g.*, Phil Gramm & John Early, *Incredible Shrinking Income Inequality*, WALL ST. J. (Mar. 23, 2021, 12:34 PM), https://www.wsj.com/articles/incredible-shrinking-income-inequality-11616517284 (citing alternative findings of relatively low income inequality and larger distributional effects from current policies); *see also* Phil Gramm & John F. Early, *The Myth of American Inequality*, WALL ST. J. (Aug. 9, 2018, 6:51 PM), https://www.wsj.com/articles/the-myth-of-american-inequality-1533855113.

4. *See, e.g.*, Jedediah Britton-Purdy, David Singh Grewal, Amy Kapczynski & K. Sabeel Rahman, *Building a Law-and-Political-Economy Framework: Beyond the Twentieth-Century Synthesis*, 129 YALE L.J. 1784, 1786–89 (2020) (describing findings of rising income inequality as "a deep challenge to prevailing models of legal thought and scholarship"); *see also* Jeremy Bearer-Friend, Ari Glogower, Ariel Jurow Kleiman & Clinton G. Wallace, *Taxation and Law and Political Economy*, 83 OHIO ST. L.J. 471, 495–98 (describing the role of economic inequality in tax scholarship and progressive tax design).

5. *See, e.g.*, DOROTHY BROWN, THE WHITENESS OF WEALTH: HOW THE TAX SYSTEM IMPOVERISHES BLACK AMERICANS—AND HOW WE CAN FIX IT 200–25 (2021) (evaluating the effect of tax laws on the black-white wealth gap and arguing that these disparities could be remediated through redistributive tax policies).

6. *See generally, e.g.*, MARTIN GILENS, AFFLUENCE AND INFLUENCE: ECONOMIC INEQUALITY AND POLITICAL POWER IN AMERICA (2012) (examining the relationship between individuals' economic resources and political power); *id.* at 197 (finding that "[t]he influence of increased campaign expenditures on representation is likely to have been exacerbated by the concomitant increase in economic inequality over the past decades").

7. *See, e.g.*, Cinnamon P. Carlarne, *Climate Courage: Remaking Environmental Law*, 41 STAN. ENV'T L.J. 125, 131 (2022) (describing how "[c]limate change threatens to destabilize society and exacerbate existing patterns of inequality").

familiar limitations.[8] These studies face practical challenges in measuring income and the distributional impacts of government actions such as taxes and spending.[9] These studies also face inherent complications in seeking to distinguish between the effects of the market and government policies.[10] Finally, any distributional analysis also embeds assumptions as to which measures of inequality are most valuable and relevant.[11]

This Article first reviews traditional approaches in distributional analysis, as well as their advantages and limitations.[12] To illustrate the choices and assumptions in distributional analysis, the Article considers in detail three influential studies of income distribution and the effects of taxes and government policies—by economists Thomas Piketty, Emmanuel Saez, and Gabriel Zucman ("PSZ");[13] by economists Gerald Auten and David Splinter ("AS");[14] and by

8. For examples of prior works in the literature examining the choices in distributional analysis and in measuring tax progressivity, see generally, for example, David Kamin, Note, *What is a Progressive Tax Change?: Unmasking Hidden Values in Distributional Debates*, 83 N.Y.U. L. REV. 241 (2008); Manoj Viswanathan, *Retheorizing Progressive Taxation*, 75 TAX L. REV. 91 (2021); *see also infra* note 52 and accompanying text.

9. *See infra* Section I.B.

10. *See infra* Section II.B.

11. *See infra* Section I.B.1.

12. For discussion of these considerations in the prior literature, including the embedded assumptions in distributional analysis and their implications, see generally Kamin, *supra* note 8 (describing how views of justice inform choices in defining and measuring tax progressivity); Viswanathan, *supra* note 8 (describing assumptions in both defining progressivity and in the variables used to calculate the distributive effects of taxes and spending); *see also* C. Eugene Steuerle, *And Equal (Tax) Justice For All?*, *in* TAX JUSTICE: THE ONGOING DEBATE 253, 267–70 (Joseph J. Thorndike & Dennis J. Ventry Jr. eds., 2002) (describing the role of both taxes and spending in distributional analysis). This Article focuses on distributional analysis of income inequality in particular. For a discussion of other possible measures of economic difference in distributional analysis, see *infra* note 66 and accompanying text.

13. *See* Thomas Piketty, Emmanuel Saez & Gabriel Zucman, *Distributional National Accounts: Methods and Estimates for the United States*, 133 Q.J. Econ. 553 (2018) [hereinafter Piketty, Saez & Zucman, *National Accounts*]; Thomas Piketty, Emmanuel Saez & Gabriel Zucman, *Simplified Distributional National Accounts*, 109 AEA PAPERS & PROC. 289 (2019) [hereinafter Piketty, Saez & Zucman, *Simplified Accounts*]; Saez & Zucman, *supra* note 1; Emmanuel Saez & Gabriel Zucman, *Trends in US Income and Wealth Inequality: Revising After the Revisionists* (Nat'l Bureau of Econ. Rsch., Working Paper No. 27921, 2020), https://www.nber.org/papers/w27921.

14. *See* Gerald Auten & David Splinter, *Income Inequality in the United States: Using Tax Data to Measure Long-Term Trends* (2022) (working paper), http://davidsplinter.com/AutenSplinter-Tax_Data_and_Inequality.pdf [hereinafter Auten & Splinter, *Income Inequality*]; Gerald Auten & David Splinter, *Top 1 Percent Income Shares: Comparing Estimates Using Tax Data*, 109 AEA PAPERS & PROC. 307 (2019).

the Congressional Budget Office ("CBO")[15]—and describes both their points of departure and common assumptions.[16] The Article then introduces a new approach which yields a different—and valuable—assessment of income inequality and the effects of government policies.

Debates over proposals for universal healthcare (or "Medicare for All") in recent years illustrate how definitional choices and assumptions can shape the distributional analysis of policy reforms.[17] In this context, different assumptions in distinguishing between private costs and public burdens led to different assessments of the reform. To justify raising taxes to fund the healthcare proposal, some proponents argued that many lower and middle-income taxpayers would not face a net tax increase, because the higher taxes would be offset by their savings from no longer purchasing private insurance. This argument suggests that taxpayers are already "taxed" with respect to their healthcare costs when they must purchase private insurance that is not provided by the government.[18] Other proponents focused on the implications of this framing for evaluating the progressivity of taxes and spending.[19] They argued that evaluating private health insurance costs as taxes would indicate that the overall system is less progressive, or even regressive, since these costs represent a proportionally higher burden for lower and middle-income taxpayers.[20]

15. *See* CONG. BUDGET OFF., THE DISTRIBUTION OF HOUSEHOLD INCOME, 2018 (2021), https://www.cbo.gov/system/files/2021-08/57061-Distribution-Household-Income.pdf.

16. *See infra* Sections I.A.1, I.B.

17. *See, e.g.*, *Tax the Ultra-Rich*, *supra* note 2; *How Does Bernie Pay for His Major Plans*, FRIENDS OF BERNIE SANDERS, https://berniesanders.com/issues/how-does-bernie-pay-his-major-plans/ (last visited Mar. 16, 2023).

18. *See, e.g.*, Matt Bruenig, *Universal Health Care Might Cost You Less Than You Think*, N.Y. TIMES (Apr. 29, 2019), https://www.nytimes.com/2019/04/29/opinion/medicare-for-all-cost.html (arguing that private healthcare premiums should be characterized as taxes when evaluating the net cost of healthcare reform). Of course, in many cases the federal government does in fact provide in-kind healthcare services to taxpayers, such as through Medicare, Medicaid, and healthcare for veterans. *See infra* note 107. This example refers instead to a hypothetical healthcare benefit for a taxpayer who would not otherwise qualify for currently available government-provided healthcare programs.

19. For a discussion of tax progressivity and how it is defined, see *infra* Section I.A.2.

20. *See, e.g.*, Saez & Zucman, *supra* note 1, at 23–24 (arguing that mandatory healthcare premiums should be characterized as taxes in distributional analysis); Emmanuel Saez & Gabriel Zucman, *Make No Mistake: Medicare for All Would Cut Taxes for Most Americans*, THE GUARDIAN (Oct. 25, 2019, 2:00 PM), https://www.theguardian.com/

Framing private healthcare costs as implicit taxes can serve a rhetorical function by allowing policymakers to argue that healthcare reform would not result in a net tax increase.[21] Characterizing a private expense as a tax, however, is more than purely semantic in distributional analysis. To the contrary, the defined scope of taxes and other government burdens will impact the findings of distributional studies and their assessments of economic inequality and the effects of government policies.

There is no single and objectively "correct" method for making such choices in distributional analysis.[22] Rather, any chosen method will necessarily reflect choices and assumptions in measuring economic difference and the scope of government policies.[23] The studies examined in this Article by PSZ, AS, and the CBO illustrate the role of these choices and assumptions in distributional analysis. These studies all begin by measuring the distribution of "market" income, which is economic income resulting from market

commentisfree/2019/oct/25/medicare-for-all-taxes-saez-zucman (arguing that the overall tax system is "highly regressive" if the definition of taxes includes "mandatory private health insurance premiums"); Annie Lowery, *The Rich Are Different From You and Me. They Pay Less in Taxes.*, THE ATLANTIC (Jan. 23, 2020), https://www.theatlantic.com/ideas/archive/2020/01/tax-code-regressive/605362/ ("If you understand health-insurance premiums as taxes . . . replacing the country's public-private system of insurance with a purely public system would reduce most working families' tax burden."). For discussion of the distinctions and commonalities between measures of progressivity and the distributional effects of taxes and spending, see *infra* Section I.A.2. For discussion of Saez and Zucman's suggestion that certain mandatory private costs should be characterized as taxes in distributional analysis, see *infra* Section III.B.2.

21. Choices in framing tax reforms can affect voter perceptions and preferences. *See, e.g.*, Jan Lorenz, Fabian Paetzel & Markus Tepe, *Just Don't Call it a Tax! Framing in an Experiment on Voting and Redistribution*, 4 J. EXP. POL. SCI. 183 (2017) (finding that implementing progressive reform through either a rate adjustment or a minimum income benefit can affect voter preferences); *see also* Darius Fatemi & John Hasseldine, *Framing Effects on Preferences for the Income Tax System*, J. TAX. ADMIN., Aug. 2019, at 58; Stian Remiers, *A Paycheck Half-Empty or Half-Full? Framing, Fairness and Progressive Taxation*, 4 JUDGMENT & DECISION MAKING 461 (2009) (describing how framing can affect preferences for progressive taxation). For one example of how framing affects tax reform, in 1991 Congress structured the (currently suspended) Section 68 "haircut" on itemized deductions to achieve the same effect as a tax increase on high earners while avoiding an explicit rate adjustment. Deborah H. Schenk, *Exploiting the Salience Bias in Designing Taxes*, 28 YALE J. REG. 253, 277–78 (2011).

22. *See, e.g.*, Saez & Zucman, *supra* note 1, at 4–5; Kamin, *supra* note 8, at 257 ("Given that a theory of distributive justice must motivate any serious concern for tax equity, one should evaluate progressivity measures based on their consistency with the theory of distributive justice in which one believes."); Viswanathan, *supra* note 8, at 92 (arguing that the "divergent conclusions" regarding tax progressivity result from "the implicit definitional and normative assumptions associated with the terms 'progressive' and 'regressive'").

23. *See infra* note 41 and accompanying text.

transactions, before accounting for taxes and government spending. The studies then estimate the distribution of taxes and government spending, and consequently the distribution of income after these government actions.[24]

Distributional studies offer valuable insights on market outcomes and the effects of tax and spending policies, including how these measures have changed over time.[25] Because of their limitations, however, distributional studies can offer only a limited account of income inequality and how government policies affect the income distribution. The current methodologies in distributional analysis can understate income inequality of household budgets. In addition, these methodologies can both overstate government benefits at the bottom of the income distribution and understate benefits to the highest earners.[26]

This Article introduces a new approach which yields a different assessment of income inequality and the effects of government policies.[27] This method first deducts costs individuals incur for basic needs from the baseline of individuals' market income to construct what this Article terms a "basic needs baseline." The method then assesses the distributive effects of explicit taxes and government spending from this new baseline.

This methodology fundamentally changes the approach of distributional analysis but requires only simple adjustments to the methods used in current studies. The methodology recharacterizes private expenditures for basic needs as equivalent to implicit taxes[28]—to the extent they are not provided by the

24. *See infra* Section I.A.1.

25. *See infra* Section II.A.

26. *See infra* Section II.C.2.

27. For a detailed description of this methodology, see *infra* Section III.A.

28. In this context, and for the purposes of this Article, treating a private expense as an implicit tax simply refers to treating the expense as an affirmative government burden for purposes of distributional studies. This Article does not focus on other contexts where the labeling of a government burden as a tax may affect legal or policy analysis. For example, Congress may have different constitutional limits on its ability to enact rules characterized as taxes or regulation. *See, e.g.*, Nat'l Fed'n of Indep. Bus. (NFIB) v. Sebelius, 567 U.S. 519, 561–74 (2012); *see generally* MARK G. KELMAN, WHAT *IS* IN A NAME? TAXES AND REGULATION ACROSS CONSTITUTIONAL DOMAINS (2019) (evaluating the distinction between taxes and regulation across areas of constitutional law, including in the contexts of the free exercise of religion, takings and equal protection, and the limits of congressional power). *See also infra* notes 109–110 and accompanying text (describing economic equivalencies between taxes and

government—instead of characterizing these items as affirmative benefits in the scenario where they are provided by the government.[29] As compared to current methods, the basic needs baseline repositions the distinction between income before and after government taxes and spending. It understands household income as inextricably defined not only by what the government provides but also by what it does not provide.

Starting distributional analysis from a basic needs baseline does not solve the measurement challenges and inherent complications in distributional analysis. Like current studies, this method continues to distinguish between market income and the effects of government policies, as this distinction is necessary for any study seeking to measure the government's role in the income distribution. This method also necessitates many of the same choices in measuring both market income and the distributive effects of those government policies.

This alternative methodology offers two advantages, however, as compared to current methods in distributional analysis. First, this alternative methodology more accurately reflects the reality of differences in household budgets by comparing taxpayers based on their actual disposable income available for discretionary consumption or savings.[30] Second, this alternative methodology redresses—but does not resolve—the imbalances in distributional

regulations). Similarly, this Article does not focus on the possible behavioral costs of taxes or other government programs. *See generally, e.g.*, N. Gregory Mankiw, Matthew Weinzierl & Danny Yagan, *Optimal Taxation in Theory and Practice*, 23 J. ECON. PERSPS. 147, 148 (2009) (describing the importance of behavioral responses to taxation in an optimal tax framework). This Article also does not focus on the relative advantages and costs of providing benefits through tax or nontax rules. *See generally, e.g.*, David A. Weisbach & Jacob Nussim, *The Integration of Tax and Spending Programs*, 113 YALE. L.J. 955 (2004) (arguing that the decision whether to implement a program through the tax system is a matter of "institutional design" in assigning programs to specific units of government). *See infra* note 105 and accompanying text. Finally, this Article also does not focus on the relative costs and advantages of provisioning goods through government programs or through private markets. *See, e.g.*, Martin Feldstein, *How Big Should Government Be?*, 50 NAT'L TAX J. 197, 198 (1997) (arguing that decisions as to the proper size and scope of government should generally be evaluated by weighing the relative "benefits that would flow from increased spending and the cost of financing that spending").

29. Saez and Zucman suggest a similar approach in the limited context of evaluating the costs of mandatory private healthcare. *See* Saez & Zucman, *supra* note 1, at 23–24 ("The cost of . . . mandatory private health insurance is . . . a heavy burden on low-paid workers. In conceptual terms, part of this cost should be considered as a tax on workers that the government imposes to achieve wider health insurance coverage.").

30. *See infra* Section III.C.1.

analysis resulting from its unavoidable limitations by offering a different understanding of how higher- and lower-income households share the burdens and benefits of government policies.[31]

The remainder of this Article proceeds as follows. Part I describes distributional analysis in general and its relation to measures of progressivity, reviews measurement challenges in distributional analysis, and describes the studies by PSZ, AS, and the CBO as well as their findings. Part II describes the advantages, limitations, and inherent challenges of current methods in distributional analysis. Part III introduces the basic needs baseline as an alternative approach for distributional analysis. Part III then evaluates both the advantages of this approach and its implications for measuring income inequality and the effect of taxes and government policies.

I. METHODS IN DISTRIBUTIONAL ANALYSIS

This Part offers a general introduction to distributional studies of income inequality and the effects of taxes and government policies. This Part's detailed analysis of studies by ASZ, AS, and the CBO illustrates the variety of methodological approaches to distributional analysis, as well as the common assumptions these studies all share.

A. What is Distributional Analysis?

1. Distributional Analysis in General

Distributional studies measure the distribution of economic resources and how government policies, including taxation, affect this distribution.[32] These studies provide critical insights on the extent of economic inequality. They inform policy debates over tax and spending reforms[33] and the role of inequality in social challenges.[34]

31. *See id.*

32. This Article focuses primarily on distributive studies of federal taxes and policies. Although many similar considerations would apply in the analysis of state and local taxes and policies, these subfederal interventions also typically have more limited distributive effects. *See, e.g.*, Johannes Fleck, Jonathan Heathcote, Kjetil Storesletten & Giovanni L. Violante, Tax and Transfer Progressivity at the US State Level (Sept. 12, 2021) (unpublished manuscript), https://www.jofleck.com/files/state_progressivity.pdf.

33. *See supra* notes 2–3 and accompanying text.

34. *See supra* notes 4–7 and accompanying text.

For example, distributional studies concluding that inequality is not too severe or that current taxes and spending significantly mitigate it may suggest there is no need for further policy interventions. On the other hand, studies finding that economic inequality is wide and widening or that current policies do not have a significant mitigating effect may justify progressive reforms with greater distributive effects.

Despite this direct policy relevance, in principle, distributional analysis describes rather than prescribes. These studies offer descriptive measures of inequality and the effects of taxes and government spending. These findings may inform redistributive policy, but the findings of these studies alone do not directly speak to separate normative determinations as to the socially desirable distribution of resources. This Article similarly focuses on the descriptive account in distributional analysis and does not directly address the separate questions of how much distribution should be achieved through taxes and spending, or how to weigh the possible tradeoffs or costs from these policies.[35] As described below, however, distributive studies also embed inescapable normative assumptions in their measures of inequality and the government's role in the income distribution.[36]

The distributional studies that are the focus of this Article—by PSZ, AS, and the CBO[37]—measure income inequality as well as the effect of taxes and government spending through a two-step process. The studies first estimate the distribution of "market income," which is income resulting from market activities such as working and investing.[38] They then estimate the distributional effects of taxes and spending to yield a distribution of income after accounting for these government actions.[39]

The findings of distributional studies necessarily depend upon the measurement choices adopted in these studies. These choices reflect not only the practical challenges in measuring income and

35. *See generally, e.g.*, Mankiw, Weinzierl & Yagan, *supra* note 28 (describing the potential tradeoffs between redistributive taxation and the costs of taxation in an optimal tax framework); Feldstein, *supra* note 28.

36. *See infra* Sections I.B.1, I.B.4, II.B.

37. *See supra* notes 13–15 and accompanying text.

38. *See, e.g.*, Auten & Splinter, *Income Inequality*, *supra* note 14, at 2 ("We start with income as reported on tax returns and develop an improved measure of market income . . . .").

39. *See, e.g.*, *id.* ("We [then] account for total national income with estimates of pre-tax and after-tax income . . . .").

the effects of government policies, but also normative assumptions in defining income and the government's role.[40] For these reasons, no single approach can offer an objectively "right" measure of income inequality or the effect of government policies. Rather, the design of any distributional study will depend on its priorities and what it seeks to measure. CBO researcher Kevin Perese observes: "There are many questions one can ask about how federal tax and transfer policies affect the distribution of household income. Unfortunately, no single framework can be used to answer all of them; choosing to analyze the distribution of household income under any one framework comes with inherent trade-offs."[41]

Section I.B below describes the most important of these choices made in the three studies in defining income and inequality, in netting the effects of taxes and spending, in equating tax or nontax benefits and burdens, and in choosing an antecedent baseline of income before government actions.[42] These studies also reflect different technical choices in the use of datasets, as well as in the assumptions and inferences made in imputing different types of income and in distributing government spending.[43]

The studies described in this Article yield three different assessments of income inequality, its trendline over time, and the effects of taxes and government spending. The groundbreaking studies by PSZ, which have pioneered new methodologies and insights on income and wealth inequality, generally find rising income inequality in recent decades and limited mitigating effects from taxes and spending.[44] These studies have significantly influenced both scholars and policymakers concerned with income inequality and its consequences.[45] In contrast, AS generally find

40. *See, e.g.*, Saez & Zucman, *supra* note 1, at 4–5; Kamin, *supra* note 8, at 257; Viswanathan, *supra* note 8, at 92.

41. Kevin Perese, *CBO's New Framework for Analyzing the Effects of Means-Tested Transfers and Federal Taxes on the Distribution of Household Income* 10 (Cong. Budget Off. Working Paper No. 2017-19, 2017).

42. *See infra* Sections I.B.1–4.

43. *See, e.g.*, *infra* notes 98–103 and accompanying text (describing different methods for allocating diffuse government spending and debt).

44. See *infra* Section I.C.

45. *See, e.g.*, Britton-Purdy et al., *supra* note 4, at 1786 (citing work by PSZ in diagnosing a contemporary crisis of "inequality and intensified precarity"); Tankersley & Casselman, *supra* note 2 (describing how Emmanuel Saez & Gabriel Zucman's studies have influenced progressive tax reforms).

both that income inequality has not increased dramatically and that taxes and spending significantly mitigate inequality.[46] Finally, the CBO assesses a narrower scope of taxes and government transfers, and finds that the progressivity of these taxes and transfers has increased, but not enough to keep pace with rising inequality.[47]

2. Relation to Progressivity

The general approach of distributional analysis described above has implications for measuring the progressivity of taxes and spending. In a progressive tax system, taxpayers with greater income pay taxes at higher average rates.[48] In accordance with this basic definition, assessing the progressivity of fiscal policies begins by measuring a numerator of a taxpayer's total taxes paid—or of net transfers resulting from both taxes paid and government spending[49]—and a denominator representing her total pre-tax income.[50]

Measuring the fiscal system's progressivity alone does not indicate its distributive effects. A tax system can be formally

46. *See infra* Section I.C.

47. *See id.*

48. *See, e.g.*, the definition of progressivity in Kamin, *supra* note 8, at 243 ("A progressive tax system is defined as one in which the average tax rate—the proportion of income paid in taxes—increases with income, while a regressive tax system is defined as one in which the opposite is the case."). For an example of a progressive rate schedule, see the marginal income tax rates in I.R.C. § 1(a)–(d), (j). In contrast, a regressive system would be one where taxpayers with lower ability to pay bear a proportionally higher burden.

49. *See infra* Section I.B.2 (on the netting of taxes and spending in distributional analysis).

50. *See, e.g.*, Piketty, Saez & Zucman, *National Accounts*, *supra* note 13, at 598–600 (defining effective tax rates for purpose of evaluating progressivity as a "percentage of pretax income"); Viswanathan, *supra* note 8, at 100–01 (describing the significance of the choices of variables used in measuring tax burdens and progressivity). Distributional studies also observe a distinction between measuring the progressivity of the total fiscal system and the progressivity of particular policy changes or reform packages. *See* Kamin, *supra* note 8, at 243–44; David Splinter, *U.S. Tax Progressivity and Redistribution*, 73 NAT'L TAX J. 1005, 1007 (2020); Viswanathan, *supra* note 8, at 116. In the former case, progressivity has a single possible definition—a system is progressive if taxpayers with greater ability to pay bear a proportionally greater tax burden, as measured by a ratio of taxes paid to the chosen measure of ability to pay, such as income. The progressivity of a policy *change*, in contrast, can be defined in different possible ways, such as by reference to relative or absolute changes to tax burdens, or to after-tax income. For discussion of different possible definitions of a progressive reform, see Kamin, *supra* note 8, at 248–51; Donald W. Kiefer, *Progressivity, measures of*, *in* THE ENCYCLOPEDIA OF TAXATION AND TAX POLICY 305–07 (Joseph J. Cordes, Robert D. Ebel & Jane Gravelle eds., 2005); Viswanathan, *supra* note 8, at 115–19; *How Should Progressivity Be Measured?*, TAX POLICY CENTER BRIEFING BOOK, https://www.taxpolicycenter.org/briefing-book/how-should-progressivity-be-measured (last updated May 2020).

progressive without having a significant impact on the distribution of income because progressivity indicates relative tax burdens rather than their absolute magnitude.[51] For example, assume Taxpayer 1 has $50,000 of pre-tax income and Taxpayer 2 has $100,000 of pre-tax income. Assume the government imposes a tax of just 1% on income above $50,000. In this case, Taxpayer 1 would pay $0 in tax, for an average tax rate of 0%,[52] while Taxpayer 2 would pay $500 in tax, for an average tax rate of 0.5%.[53] This rate schedule is formally progressive—Taxpayer 2 pays tax at a higher average rate—but would only have a minimal impact on the distribution of income between Taxpayer 1 and Taxpayer 2, regardless of how the tax revenues are spent or distributed.[54] Similarly, two tax rules can be formally progressive to the same degree, even if one rule has a greater distributive effect.[55]

While measuring the progressivity of government policies does not indicate their distributional effect, measuring the distributional effects of taxes and spending does indicate their progressivity.[56] For example, once a distributional study determines both the pre-tax and after-tax income of both Taxpayer 1 and Taxpayer 2, it can also calculate the progressivity of these taxes.[57] That is, unlike measures of progressivity, measures of distributive effects from taxes and spending indicate the magnitude of these effects as well as the extent to which they increase or decrease each individual's income.

51. *See* Splinter, *supra* note 50, at 1007 ("Tax progressivity measures . . . should be distinguished from redistribution measures. Whereas progressivity is independent of the tax level, redistribution changes with the tax level.").

52. $0/$50,000.

53. $500/$100,000.

54. Even if the $500 in revenue is transferred directly to Taxpayer 1, then Taxpayer 1's income after taxes and the transfer would be $50,500 and Taxpayer 2's after tax income would be $99,500.

55. For this reason, David Splinter describes an alternative method for calculating a "redistribution rate," as a way to quantify the overall distributional effects of taxes and spending, and as an alternative to simply measuring progressivity. Splinter, *supra* note 50, at 1016.

56. Of course, progressivity itself can be measured in different manners. For discussion, see Kamin, *supra* note 8.

57. For example, if the distributional study determines that Taxpayer 1's pre-tax and after-tax income is both $50,000, and that Taxpayer 2's pre-tax income is $100,000 and after-tax income is $99,500, then these values could be used to calculate the progressivity of this tax system. Furthermore, these values would also indicate the magnitude of the distributive effect from this progressive tax.

B. Measurement Challenges

Distributional studies encounter four general measurement challenges when assessing the benefit and burdens of taxes and government policies: defining income and inequality, netting taxes and spending, equating tax and nontax benefits and burdens, and selecting a baseline measure of market income. [58]

This section reviews these familiar measurement challenges and illustrates their role in the studies by PSZ, AS, and the CBO.[59] Despite their divergent choices and findings, these studies generally follow a common pattern. These studies all start with a measure of market income and then distribute the effects of explicit taxes and government spending. Within this basic framework, these studies make different choices in measuring and distributing income and the effects of government policies, which explain their different findings. The discussion in this section also provides necessary context for this Article's alternative methodology described in Part III.

1. Defining Income and Inequality

a. In general. In principle at least, the term "income" refers to net economic proceeds during a specified period, which can be used for either consumption or savings.[60] Any measure of income (and consequently of income inequality) will necessarily reflect both normative judgments as to how individuals should be compared[61] as well as practical considerations in defining and measuring income and its components using incomplete data sources.

In the case of the federal income tax, the income definition serves as both the base for determining substantive tax liabilities

58. This Article focuses on the role of these measurement choices in distributional analysis, but for the reasons described in the preceding section these considerations also have consequences for evaluating the overall progressivity (or regressivity) of government taxes and transfers.

59. *See supra* notes 13–15 and accompanying text.

60. For example, the "Haig-Simons" definition of income would include consumption plus changes to wealth during the observation period. *See* HENRY C. SIMONS, PERSONAL INCOME TAXATION: THE DEFINITION OF INCOME AS A PROBLEM OF FISCAL POLICY 50 (1938).

61. *See* AMARTYA SEN, ON ECONOMIC INEQUALITY 3 (1973) ("[I]n some complex problems of comparing alternative income distributions among a large number of people, it becomes very difficult to speak of income inequality in a purely objective way, and the measurement of the inequality level could be intractable without bringing in some ethical concepts.").

as well as a measure of taxpayers' relative ability to pay.[62] In this context, the income tax rules typically limit the income definition to a subset of realized market income, while generally excluding such items as "unrealized income" (such as capital income from asset appreciation prior to its sale) or "imputed income" (such as the value of services provided within one's household).[63] These limitations have often been justified as practical concessions in light of the challenges of measuring unrealized or non-market income.[64] Scholars have also described, however, how even if these practical challenges could be overcome the definition of taxable income would still depend upon underlying assumptions of the ideal basis for income taxation and for comparing taxpayers in a progressive tax system.[65]

Different measures of income will also be relevant for different understandings of economic inequality. The choice between these different measures will depend in the first instance on assumptions as to why inequality is a social concern, and consequently which measures of inequality matter. For example, the measures of market income before and after taxes and spending used in the studies by PSZ, AS, and the CBO yield insights into the distribution of annual income.

Of course, studies of economic inequality may examine other indicia of economic well-being, such as the distributions of wealth,

62. *See* Ari Glogower, *Taxing Inequality*, 93 N.Y.U. L. REV. 1421, 1461–62 (2018) (distinguishing between these "calculating" and "comparing" functions of the income tax base).

63. *See, e.g.*, I.R.C. § 1001(a) (only taxing income from realized capital gains). For exceptions to this general rule which provide for income inclusion prior to a realization event, see, e.g., I.R.C. § 475 (mark-to-market accounting for dealers in securities); I.R.C. § 1272 (current inclusion of income from "original issue discount" debt instruments). Examples of excluded imputed income includes the value of services an individual provides for themselves and the nonmarket benefits from holding property, such as the rental value from owner-occupied homes. *See* MICHAEL J. GRAETZ, DEBORAH H. SCHENK & ANNE L. ALSTOTT, FEDERAL INCOME TAXATION: PRINCIPLES AND POLICIES 122–25 (8th ed. 2018).

64. *See, e.g.*, Helvering v. Horst, 311 U.S. 112, 116 (1940) (characterizing the realization requirement as a rule of administrative convenience).

65. *See, e.g.*, Alice G. Abreu & Richard K. Greenstein, *Defining Income*, 11 FLA. TAX REV. 295, 321–33 (2011) (describing the failed "[q]uest for [s]cientific [p]recision" in the definition of income); *id.* at 300–20 (describing the distinction between realized and unrealized income in the context of the evolving definition of taxable income); John R. Brooks, *The Definitions of Income*, 71 TAX L. REV. 253, 259–74 (2018) (describing the failure by tax theorists to articulate an objective and consistent definition of income); Victor Thuronyi, *The Concept of Income*, 46 TAX L. REV. 45, 45–46 (1990) (describing the unresolved debate as to the proper definition of the income tax base).

consumption, or lifetime income.[66] Even within the literature studying annual income inequality, different studies adopt different understandings of how income should be measured. For example, the Bureau of Economic Analysis ("BEA") estimates the distribution of "personal income", which measures households' cash income available for consumption and savings.[67] In principle, the personal income measure aims to identify actual disposable income available to households more directly than would a measure of market income alone.[68]

Other researchers and theorists of economic inequality argue that even a cash income measure does not accurately reflect the reality of household budgets, since cash income also does not indicate a household's actual income available for discretionary consumption or savings. Works in both tax and distributive theory argue in favor of distinguishing between income that must be reserved for basic needs and net disposable income available for discretionary consumption and savings after accounting for these basic needs.[69]

Economist Dimitri Papadimitriou, for example, argues that distributional analysis should differentiate between expenditures for discretionary consumption and expenditures for "basic needs."[70] For these purposes, Papadimitriou defines "basic needs" as those "required to maintain 'socially acceptable norms or standards.'"[71]

66. *See generally, e.g.*, A COLLECTION OF SURVEYS ON SAVINGS AND WEALTH ACCUMULATION (Edda Claus & Iris Klaus eds. 2016) (reviewing contemporary studies of wealth inequality); Gilbert E. Metcalf & Don Fullerton, *The Distribution of Tax Burdens: An Introduction* 19–22 (Nat'l Bureau of Econ. Rsch., Working Paper No. 8978, 2002) (considering the differences between studies of annual and lifetime income inequality).

67. *See generally Personal Income*, U.S. BUREAU ECON. ANALYSIS https://www.bea.gov/data/income-saving/personal-income (last visited Mar. 16, 2023). For an example of this analysis, see U.S. BUREAU ECON. ANALYSIS PERSONAL INCOME AND OUTLAYS, NOVEMBER 2021 (2021), https://www.bea.gov/sites/default/files/2021-12/pi1121.pdf. The BEA also estimates the distribution of "disposable personal income" which is personal income reduced by personal taxes. *See id.* at 4.

68. *See* Saez & Zucman, *supra* note 1, at 16–17.

69. This Article does not directly address the separate question of why economic inequality may be a social concern in the first instance, and the implications of answers to this question for how it should be measured. For a discussion of literature focusing on the effects of disparities in economic spending power, see Glogower, *supra* note 62, at 1445–51.

70. *See* Dimitri B. Papadimitriou, *Government Effects on the Distribution of Income: An Overview*, *in* THE DISTRIBUTIONAL EFFECTS OF GOVERNMENT SPENDING AND TAXATION 1 (Dimitri B. Papadimitriou ed. 2006).

71. *Id.* at 2.

From this perspective, expenses for basic needs—in contrast to other expenditures or savings—should be distinguished by their effectively compulsory nature as costs necessary to maintain a baseline level of subsistence.

Early theorists of progressive taxation similarly argued that only "clear income" above an amount necessary for basic subsistence should be considered in measuring relative ability to pay and therefore be subject to taxation. For example, economist R.A. Seligman traced the evolution of the view that "only that part of income which exceeded what was necessary for existence" indicated a taxpayer's "faculty" or "ability to pay," and that consequently a "minimum of subsistence" should be exempted from tax.[72] This notion that only "clear income" available for discretionary consumption or savings should be taxed influenced the inclusion of the standard deduction[73] and personal exemptions[74] in the federal income tax.[75]

b. Choices in distributional studies. The studies by PSZ, AS, and CBO that are examined in this Article all begin with a measure of realized market income from tax data, and then adjust this measure to account for other income components using additional data sources. As described in this section, these studies also include certain government transfers in the baseline market income measure when those transfers resemble private savings or consumption.[76]

PSZ estimate the distribution of income based on what they term the "distributional national accounts" method.[77] This method estimates the distribution of all national income[78] by combining

72. *See* EDWIN R.A. SELIGMAN, PROGRESSIVE TAXATION IN THEORY AND PRACTICE 129–30 (1894).

73. I.R.C. § 63.

74. I.R.C. § 151.

75. *See* LAWRENCE HOWARD SELTZER, THE PERSONAL EXEMPTIONS IN THE INCOME TAX 39 (1968).

76. *See infra* notes 81, 84, 138–139, 144 and accompanying text.

77. *See* Piketty, Saez & Zucman, *National Accounts*, *supra* note 13, at 560–64 (describing the general method); *see also, generally*, Piketty, Saez & Zucman, *Simplified Accounts*, *supra* note 13.

78. For this purpose, "national income" is defined as total national gross domestic product ("GDP"), reduced by capital depreciation and increased by net income from abroad, which represents the "sum of all the labor income—the flow return to human capital—and capital income—the flow return to nonhuman capital—that accrues to U.S. resident individuals." Piketty, Saez & Zucman, *National Accounts*, *supra* note 13, at 561.

IRS, survey, and national account data.[79] This approach seeks to capture a broader measure of total income than would be accounted for in studies relying on tax and survey data alone, which account only for a portion of total national income.[80] Their methodology also includes a limited scope of government transfers for social insurance in the income baseline, including public pensions, social security, and disability and employment insurance.[81] AS's methodology follows a similar pattern by supplementing tax return data with survey and national account data to estimate a comprehensive distribution of all national income.[82]

Although PSZ and AS follow a similar general pattern in estimating the distribution of all national income, their methods for estimating this income baseline diverge most prominently in their technical adjustments and inferences, not only in allocating unreported income, retirement income, and corporate income, but also in translating tax unit income to individual income.[83] In contrast to PSZ's approach, AS also exclude social insurance benefits,

79. PSZ begin with fiscal income reported on income tax returns, and then supplement this data with information reported on the Current Population Survey ("CPS") and the Survey of Consumer Finances ("SCF") to account for such factors as non-filers, tax-exempt labor income, and tax-exempt capital income. *Id.* at 566–71. By adjusting the fiscal income measure through these adjustments to equal total national income, this approach also accounts for the distribution of macroeconomic growth. *Id.* at 555. For a description of the CPS, see *Current Population Survey (CPS)*, U.S. CENSUS BUREAU, https://www.census.gov/programs-surveys/cps.html (last visited Mar. 20, 2023). For a description of the SCF, see *Survey of Consumer Finances (SCF)*, FEDERAL RESERVE BOARD, https://www.federalreserve.gov/econres/scfindex.htm (last visited Mar. 20, 2023).

80. *See* Piketty, Saez & Zucman, *National Accounts*, *supra* note 13, at 555, 562–64 (describing rising discrepancies between taxable and total income derived from both labor and capital). In contrast to narrower income measures, their approach yields a comprehensive baseline of both taxable and untaxable labor income (including fringe benefits, employer payroll taxes, and unreported income) and capital income (including the imputed rental value of housing and corporate retained earnings). *Id.* at 561.

81. *Id.* at 565.

82. Auten & Splinter, *Income Inequality*, *supra* note 14, at 7-10; *see also id.* at 17 ("Many of our adjustments have similar effects to those in PSZ."). AS similarly make adjustments to account for additional income sources not included on tax returns—tax-exempt interest, corporate retained earnings, imputed rental income from housing, and retirement income—to measure the distribution of all national income. *Id.* at 7–14.

83. *See id.* at 17-19; *see also id.* at 33 tbl. 4 (summarizing methodological differences between AS and PSZ and estimating how much each difference contributes to their divergent findings).

such as for social security, from their income baseline, and instead characterize these amounts as explicit government transfers.[84]

The CBO estimates the distribution of an intentionally narrower measure of household income, rather than all national income. The CBO also begins by estimating the distribution of market income using a combination of tax and survey data.[85] The CBO also adjusts this income baseline to account for certain public social insurance benefits, including for Social Security, Medicare, unemployment insurance, and workers' compensation.[86] Unlike the PSZ and AS studies, however, the CBO methodology does not make further adjustments to match total household income to national income.[87]

Each possible income definition offers advantages and disadvantages for distributional analysis. PSZ argue that total national income is a "more meaningful starting point" since it is "internationally comparable," comprehensive, and accounts for all macroeconomic growth.[88] Saez and Zucman note that measures other than national income also may yield relevant data on income inequality—depending again on the underlying assumptions made when comparing individual's economic differences. They note, for example, that a narrower measure of disposable cash income—such as that used by the BEA[89]—would not consistently distribute all national income, but would instead yield a measure focusing on differences in households' relative cash available for consumption.[90]

2. Netting Taxes and Government Spending

After defining a baseline of market income, distributional studies then estimate the distribution of taxes and government spending and their consequent effects on that market income baseline. This section and the two that follow review familiar challenges when measuring the effects of these government actions, as well as the choices made in distributional studies.

84. *Id.* at 7, 14, 16.

85. *See* CONG. BUDGET OFF., *supra* note 15, at 39. This market income measure includes all income from labor, capital, and businesses. *Id.*

86. *Id.* at 5.

87. *Id.* at 41. For example, the CBO does not allocate additional components of national income which are not available from tax or survey data, such as unreported income. *Id.*

88. *See* Piketty, Saez & Zucman, *National Accounts*, *supra* note 13, at 559.

89. *See supra* notes 67–68 and accompanying text.

90. *See* Saez & Zucman, *supra* note 1, at 22–25.

a. In general. In principle, a complete distributional analysis should account for the effects of both taxes and the government spending funded by the taxes. Saez and Zucman explain that "according to a widespread view, a government transfer is simply a tax with a minus sign, and all that matters is people's budget sets, net of all taxes and transfers."[91] From this perspective, the distributional effects of taxes cannot be evaluated without considering both the sources of federal revenues (such as taxes) and its uses (such as transfers and government spending),[92] and distributional analysis should account for the net economic effects to different households from changes to both.

To illustrate the limitations of evaluating the distributional effects of taxes in isolation, without regard to the uses of the tax revenues, consider again Taxpayer 1 and Taxpayer 2. If Congress imposed a $1000 tax on each taxpayer and used the funds to provide each taxpayer with $1000 of in-kind public health insurance (that they would have otherwise purchased privately), then the policy change would have no net effect on the household budgets. The only change would be that the healthcare is now provisioned publicly instead of privately.[93]

Accounting for both taxes and government spending can change assessments of the overall progressivity of government policy. For example, Professor Ariel Jurow Kleiman argues that a full accounting of the net effects from both government taxes and transfers can reveal that some low-income taxpayers are subject to "fiscal impoverishment" and made poorer as a result of these

91. *Id.* at 18; *see also* Perese, *supra* note 41, at 2 ("Taxation . . . is not the only mechanism through which the federal government affects the distribution of resources among U.S. households: Social insurance benefits and means-tested transfers also directly affect that distribution."). Saez and Zucman note, however, that it may be relevant for purposes of distributional analysis that a tax would decrease cash income, whereas a corresponding in-kind transfer would not provide a commensurate increase to cash income. Saez & Zucman, *supra* note 1, at 18; *see also infra* notes 120–121 and accompanying text.

92. *See, e.g.*, EDWARD KLEINBARD, WE ARE BETTER THAN THIS: HOW GOVERNMENT SHOULD SPEND OUR MONEY 355 (2014) ("The important question is not the progressivity of our tax system, but rather the progressivity of the country's fiscal system—the net of its spending and taxes.").

93. This analysis sets aside the separate question of whether healthcare would be provisioned more efficiently through the public programs or through private markets. *See supra* note 28.

policies—as compared to their market income.[94] Economist Gene Steuerle explains that even a flat or regressive tax can have an overall progressive effect when the revenues fund transfers to all taxpayers.[95] In general, whenever taxes are collected according to one distributional pattern and spent according to another, the net effects of the taxes and spending will affect the baseline income distribution.[96]

b. Choices in distributional studies. Distributional studies typically consider the net distributional effects from both taxes and government spending to yield a comprehensive measure of the distributional effects from both. These studies differ, however, in defining the scope of government spending to be allocated, as well as the assumptions and methods used in allocating the benefits of certain types of public spending.

All of the representative studies allocate the distributional effects of direct transfers. For example, the CBO estimates the distribution of household income after the effects of both taxes and means-tested transfers such as for Medicaid, housing assistance, and nutrition programs.[97]

A comprehensive account of the distributional consequences from all taxes and government spending programs would also allocate diffuse government spending that benefits the public generally, such as for infrastructure and national defense. The CBO and other distributional studies omit diffuse government spending from the analysis and focus only on transfers with designated and

94. *See generally* Ariel Jurow Kleiman, *Impoverishment by Taxation*, 170 U. PA. L. REV. 1451 (2022) (describing how some taxpayers can be made poorer after accounting for the net effects from federal and subfederal taxes, and from offsetting cash and near-cash public benefits).

95. In this case, the package of reforms could have a net progressive effect as long as the transfers offer a proportionately higher benefit to lower income taxpayers. *See* Steuerle, *supra* note 12, at 267–70; *see also* Daniel Hemel & Kyle Rozema, *Inequality and the Mortgage Interest Deduction*, 70 TAX L. REV. 667, 677–80 (2016) (describing how the elimination of the mortgage interest deduction can result in a progressive, proportional, or regressive change, depending upon the use of the revenue resulting from the tax reform).

96. For a simple example, if the government simply collected $1 in taxes from each individual and used the revenue to fund $1 of transfers to each individual, the net effect would not change the prior distribution. If the government instead collected $1 in taxes from each individual and then used the revenue to fund $2 of transfers to half of the population, these policies would relatively benefit individuals receiving the transfers and disadvantage individuals who do not.

97. *See* CONG. BUDGET OFF., *supra* note 15, at 31.

identifiable beneficiaries.[98] In contrast, both PSZ and AS allocate an approximation of diffuse government spending, even if these estimates are necessarily speculative.[99] These studies, however, adopt different assumptions in allocating their distributional effects.[100]

Finally, the proper allocation of government debt presents a further challenge for distributional studies. The government also funds spending by issuing debt obligations in addition to collecting current tax revenues.[101] This government debt represents a source of funds with uncertain distributional burdens, depending upon which taxpayers are assumed to bear its future cost.[102] In this case

98. *See, e.g.*, Edward N. Wolff & Ajit Zacharias, *An Overall Assessment of the Distributional Consequences of Government Spending and Taxation in the United States, 1989 and 2000*, *in* THE DISTRIBUTIONAL EFFECTS OF GOVERNMENT SPENDING AND TAXATION (Dimitri B. Papadimitriou ed., 2006) (describing a methodology that accounts for a broader scope of government expenditures but that excludes spending attributable to "general social overhead" such as national defense and maintenance of the legal system).

99. *See* Saez & Zucman, *supra* note 1, at 24 ("Computing post-tax national income requires assigning collective consumption expenditures as well as the current government deficit to individuals. There is no obvious, universally 'correct' way to do such an imputation, and there will never be."). For a discussion of the difficulty in making such allocations, see also Viswanathan, *supra* note 8, at 127–28.

100. PSZ assume a neutral allocation of these "collective consumption expenditures" so that the assumed distribution of these expenditures does not change the distributional effect of other identifiable taxes and transfers. They allocate collective consumption expenditures proportionally to "post-tax disposable income," which is pre-tax income, minus taxes and plus monetary transfers. Piketty, Saez & Zucman, *National Accounts*, *supra* note 13, at 572; *see also* Saez & Zucman, *supra* note 1, at 22. AS, in contrast, allocate half of all "government consumption" (non-transfer government spending) per-capita, and half in proportion to income. Auten & Splinter, *Income Inequality*, *supra* note 14, at 15-16. To the extent that income is disproportionately concentrated at the top of the income distribution, AS's method of allocating a portion of the diffuse government spending per-capita would reduce the perceived level of income inequality. *See* Saez & Zucman, *supra* note 1, at 22.

101. This debt has accounted for 40% or more of total federal spending in recent years. For fiscal year 2021, the CBO estimated a total federal deficit of approximately $2.8 trillion, with estimated outlays of approximately $6.8 trillion and estimated receipts from taxes and other sources of approximately $4 trillion. CONG. BUDGET OFF., MONTHLY BUDGET REVIEW: SUMMARY FOR FISCAL YEAR 2021 (Nov. 2021), https://www.cbo.gov/system/files/2021-11/57539-MBR.pdf.

102. For example, researchers at the Tax Policy Center find that lower and middle-income taxpayers could bear a higher burden of the costs from the 2017 tax legislation, depending on assumptions as to how the legislation would be funded through future deficit reduction measures. WILLIAM G. GALE, SURACHAI KHITATRAKUN & AARON KRUPKIN, URBAN-BROOKINGS TAX POLICY CTR., WINNERS AND LOSERS AFTER PAYING FOR THE TAX CUTS AND JOBS ACT 1–2, 9–11, 15–16, 18–29 tbls. 1–12 (Dec. 8, 2017), https://www.taxpolicycenter.org/publications/winners-and-losers-after-paying-tax-cuts-and-jobs-act/full.

as well, PSZ and AS adopt different simplifying assumptions in allocating costs attributable to public debt.[103]

3. Equating Tax or Nontax Fiscal Policies

The challenge described in the preceding section concerns the relationship *between* the sources and uses of government funds, and more generally in netting the benefits and burdens of taxes and spending. In contrast, this section describes how a comprehensive distributional analysis should, in principle, also take account of alternatives for delivering benefits to recipients or imposing burdens on taxpayers, in either case either within or outside of the tax system.

a. In general. Tax or nontax fiscal policies—where the nontax policies are not formally designated as tax rules—can have similar economic effects on household budgets.[104] A narrow distributional analysis of only benefits and burdens formally labeled as tax rules would consequently offer an incomplete measure of the distributional impact of government policies.[105]

103. PSZ assign 50% of the debt burden in accordance with the distribution of taxes paid and 50% in accordance with the distribution of government spending. *See* Piketty, Saez & Zucman, *National Accounts*, *supra* note 13, at 573. AS, in contrast, allocate government deficits in proportion to federal payroll and income taxes paid. Auten & Splinter, *Income Inequality*, *supra* note 14, at 19. In this case as well, AS's method of allocating deficits in accordance with taxes paid would generally shift a greater portion of the debt burden to higher income taxpayers.

104. See Viswanathan, *supra* note 8, at 125 ("There is no economic distinction between transfers effectuated via the tax code and transfers dispensed via budgetary allocation."). The potential economic equivalency of tax or nontax rules for purposes of distributional analysis does not imply, however, that they are similar in all respects, or that policymakers should be neutral when choosing between these alternatives. A broad literature examines different aspects of the choice between implementing policy through tax or nontax rules or programs, and their relative merits and disadvantages. *See, e.g.*, OFF. MGMT. & BUDGET, A BUDGET FOR AMERICA'S FUTURE, FISCAL YEAR 2021: ANALYTICAL PERSPECTIVES 187 (2020); (evaluating the relative advantages and disadvantages of tax expenditures as compared to direct outlay programs); Victor Fleischer, *Curb Your Enthusiasm for Pigovian Taxes*, 68 VAND. L. REV. 1673 (2015) (arguing that using taxes as an alternative to direct regulation of costly social behavior can result in a misallocation of social resources).

105. An example of a combined approach evaluating commensurate benefits both inside and outside the tax system within a specific policy area is a 2005 Tax Policy Center study introducing comprehensive models evaluating the distributional impacts of federal higher education subsidies delivered through both the tax code and direct spending programs. *See generally* LEONARD E. BURMAN, ELAINE MAAG, PETER ORSZAG, JEFFREY ROHALY & JOHN O'HARE, URBAN-BROOKINGS TAX POLICY CENTER, THE DISTRIBUTIONAL

The economic equivalence of tax or nontax fiscal policies manifests in different areas of tax policy analysis. In one familiar application of this concept in the context of budget analysis, tax expenditure analysis identifies tax benefits or subsidies which are economically equivalent to direct government spending or transfers providing the same benefit.[106] This analysis helps to identify government expenditures that would not otherwise be reflected as explicit budgetary outlays.[107]

For example, the government could expend $1000 per person for publicly funded healthcare by providing a $1000 tax benefit for individuals who purchase $1000 of private healthcare (such as a fully refundable credit) or by providing $1000 of healthcare in-kind. In this case, either reform would have the same effect on the individual's budget, setting aside the separate question of how the public expense is funded.

Tax expenditure analysis typically focuses on economic benefits delivered through the tax system or through nontax spending. It thereby equates costs to the government—and corresponding benefits to taxpayers—incurred through both tax and nontax programs.

CONSEQUENCES OF FEDERAL ASSISTANCE FOR HIGHER EDUCATION: THE INTERSECTION OF TAX AND SPENDING PROGRAMS (2005); *see also* Elaine Maag, David Mundel, Lois Rice & Kim Rueben, *Subsidizing Higher Education Through Tax and Spending Programs*, 18 URBAN-BROOKINGS TAX POLICY CENTER 1 (2007).

106. *See generally* STANLEY S. SURREY & PAUL R. MCDANIEL, TAX EXPENDITURES (1985). Tax expenditures are typically defined as departures from a "normative" tax system to benefit particular taxpayers or activities. *Id.* at 1–6. *See also* JOINT COMM. ON TAX'N, ESTIMATES OF FEDERAL TAX EXPENDITURES FOR FISCAL YEARS 2020–2024, at 2 (Comm. Print, 2020) (defining tax expenditures as "any reductions in income tax liabilities that result from special tax provisions or regulations that provide tax benefits to particular taxpayers."). For examples of contemporary tax expenditure analysis, see OFF. MGMT. & BUDGET, A BUDGET FOR AMERICA'S FUTURE: ANALYTICAL PERSPECTIVES, 147–98 (2020).

107. Of course, the government does not have to choose between advancing a particular policy through a tax or nontax program. In many cases the government provides benefits through a combination of both tax subsidies and nontax benefits. For one example, the government subsidizes healthcare through both tax benefits for private care as well as through in-kind healthcare services, such as Medicare, Medicaid, and the VA hospital system. *See, e.g.*, the tax benefits for healthcare in I.R.C. § 36B (premium tax credit), §§ 104–06 (exclusions from income for health insurance premiums and benefits), § 213 (deduction for medical expenses). Similarly, the government subsidizes higher education through both tax benefits and nontax programs including student loans and direct support to educational institutions. For example, the government provides limited tax benefits for education, such as the American Opportunity Tax Credit and the Lifetime Earning Credit in § 25A and the deduction for student loan interest in § 221, as well as direct education benefits such as through federal subsidies for educational institutions and through subsidized student loans.

The same reasoning may also be applied when equating economic burdens imposed on individuals through the tax system and through nontax rules. For example, a tax "penalty" or a "negative tax expenditure" can have an equivalent economic effect to a burden imposed through nontax government rules or programs.[108]

Other nontax government rules and policies can also have economically equivalent effects, as would explicit taxes on the same behaviors. For one example, jurist and professor Richard Posner argues that direct regulation of utilities can have the same allocative and distributive effects as would similarly structured tax rules.[109] Scholars have also described how other nontax rules or policies, such as government takings or regulatory takings,[110] and nontax fines or fees[111] can also impose economic burdens equivalent to those imposed through the tax system.

The potential equivalence of tax or nontax fiscal policies implies a related equivalence between cash (monetary) and "in kind" payments or transfers between taxpayers and the government. In the example above, the government can offer healthcare benefits to individuals through either a cash payment or tax benefit. The government can choose instead to provide in-kind healthcare benefits. Either structure can result in an equivalent effect on household budgets and an equivalent cost to the government.[112]

108. In this case, a tax penalty refers to a departure from a normative tax base which disadvantages the taxpayer. *See* JOINT COMM. ON TAX'N, DISTRIBUTIONAL EFFECTS OF THE REVENUE PROVISIONS OF TITLE XIII—COMMITTEE ON WAYS AND MEANS, OF H.R. 5376, THE "BUILD BACK BETTER ACT," AS PASSED BY THE HOUSE OF REPRESENTATIVES 3 (Comm. Print 2021). For example, § 162(c) disallows deductions for illegal bribes or other payments even when these expenses represent costs in earning taxable income. 26 U.S.C. § 162(c).

109. *See generally* Richard A. Posner, *Taxation by Regulation*, 2 BELL J. ECON. & MGMT. SCI. 22 (1971). As another example, a carbon tax imposed through either the tax system or direct regulation can have an equivalents effect in imposing an economic burden on carbon producers or users, and in reducing overall production and consumption. *See* Brian Galle, *Tax, Command . . . or Nudge?: Evaluating the New Regulation*, 92 TEX. L. REV. 837 (2014).

110. *See* WILLIAM A. FISCHEL, REGULATORY TAKINGS: LAW, ECONOMICS, AND POLITICS 172–74, 209–10 (1995) (describing economic similarities between takings, regulatory takings, and taxes). Of course, if a government action is found to be a formal taking, the Fifth Amendment's Takings Clause requires "just compensation" whenever private property is "taken for public use." U.S. CONST. amend. V.

111. *See, e.g.*, Ariel Jurow Kleiman, *Nonmarket Criminal Justice Fees*, 71 HASTINGS L.J. 517, 523–26 (2021) (describing economic similarities and distinctions between taxes, fees, and fines).

112. This simplified discussion sets aside other possible factors such as transaction costs and efficiencies resulting from the alternative structures.

In principle a tax burden could also be structured to require either cash payments or in-kind payments of property or services, just as a government benefit can be structured through either cash or in-kind transfers.[113] For example, Taxpayer 1 and Taxpayer 2 may bear a similar economic burden if they pay their taxes through a transfer of property or services, instead of cash (if the government accepted such in-kind payments).[114] Similarly, as described above, the government can impose nontax rules and regulations with a similar economic burden on taxpayers as explicit taxes.[115] For the same reason, if a taxpayer bears these nontax burdens—by undertaking costly actions or forbearance in compliance with laws or regulations—these burdens can have comparable effects on the taxpayer's budget as would other in-kind "payments" paid in lieu of explicit taxes.

b. Choices in distributional studies. In principle, a comprehensive distributional analysis of all benefits provided—and burdens imposed—both within and outside of the tax system could account for a broad scope of nontax benefits and burdens. In practice, however, distributional studies typically examine only a narrower set of explicit tax rules and direct government spending. PSZ, AS, and the CBO all generally follow this same approach when accounting for taxes and government spending, both within and outside of the tax system.[116] As described in the preceding section, these studies allocate the net burdens from taxes—including from tax expenditures which are equivalent to direct government spending—and from government spending—including from direct spending for in-kind benefits which could have instead been implemented through the tax system.[117] These studies do not, however, account for the distributional effects from other nontax burdens or benefits not resulting from explicit government spending or revenues—such as takings, regulatory burdens, or

113. *See generally* Jeremy Bearer-Friend, *Tax Without Cash*, 106 MINN. L. REV. 953 (2021).

114. For examples of in-kind tax remittances which have been accepted by revenue collection agencies, see *id.* at 963–89.

115. *See supra* notes 109–110 and accompanying text.

116. *See* KEVIN PERESE & BILAL HABIB, CONG. BUDGET OFF., METHODOLOGICAL IMPROVEMENTS FOR CBO'S ANALYSIS OF THE DISTRIBUTION OF HOUSEHOLD INCOME 6 (2017), https://www.cbo.gov/system/files/115th-congress-2017-2018/presentation/53095-presentation.pdf ("Increasingly, the distinction between tax and spending policies is more about the legislative process and less about the impact on households.").

117. *See supra* Section I.B.2.b.

fines and fees—even though they may have equivalent effects on household budgets as explicit taxes.[118]

The choice of when to equate cash with in-kind benefits and burdens can depend on the purposes of the analysis and its assumptions as to the relevant measures of economic inequality. Saez and Zucman note, for example, that cash transfers allow taxpayers more discretion in their consumption choices.[119] A distributional analysis that compares taxpayers on the basis of their disposable cash income would distinguish between cash and in-kind benefits and burdens, because cash benefits or burdens would directly affect the household's disposable cash while in-kind benefits and burdens may not.[120] In a case where the taxpayer would have otherwise purchased privately a good or service provided by the government as an in-kind benefit, either a cash transfer or an equivalent in-kind benefit would have a similar effect on household budgets.[121] If, however, the taxpayer would not have otherwise purchased the in-kind government benefit, then imposing a tax and providing the commensurate in-kind benefit would result in a net reduction in the household budget.

* * *

A comprehensive analysis of government benefits and burdens would in principle account for a broad range of factors. As described in section I.B.2., a comprehensive analysis would account for the effects of both taxes and spending, or more generally the benefits and burdens from government policies. As described in section I.B.3., a comprehensive analysis would also account for benefits and burdens from both within and outside of the tax system. The three

118. *Id.*

119. *See* Saez & Zucman, *supra* note 1, at 18 (describing differences between cash and in-kind transfers, including different effects resulting from the timing of different forms of support).

120. For example, providing a cash transfer to an individual will increase their disposable cash, while requiring a cash tax payment will reduce their disposable cash. In contrast, providing an in-kind benefit to an individual or requiring an in-kind tax remittance (such as in the form of property or services) will not directly affect their disposable cash. For a discussion of an alternative income baseline of disposable cash income as a basis for comparing taxpayers, see *supra* notes 89–90 and accompanying text.

121. That is, if the government offers either a $5000 in-kind healthcare benefit or a $5000 cash benefit to an individual who would use the cash benefit to purchase $5000 of private care, the individual's household budget after accounting for this expenditure would be the same in either event. This example assumes again that the good or service would cost the same whether it is provided by the government or purchased in the market.

distributional studies examined in this Article, however, account only for a narrower subset of explicit taxes and benefits provided through explicit government spending.

4. The Antecedent Baseline

Distributional analysis also encounters a fourth measurement challenge. The two-step analysis in distributional studies requires selecting an antecedent baseline for assessing the effect of taxes and government spending and therefore a division between market income and income after these government actions.[122] In principle, this antecedent baseline defines an individuals' entitlements or holdings before accounting for benefits provided—or burdens imposed—by taxes and government policies.[123] In effect, this baseline serves as a dividing point between these baseline entitlements and the effect of government actions. As this section describes, distributional studies also encounter challenges in defining this antecedent baseline and in distinguishing between forms of income which should be attributed to market outcomes and the effects of government policies. This added consideration of distinguishing between the market and government actions poses an additional layer to the income definition challenge described in section I.B.1.

a. In general. Different areas of tax policy analysis encounter this same challenge in defining an antecedent baseline, for the purposes of evaluating tax rules as departures from the chosen baseline. For example, tax expenditure analysis begins with the selection of a baseline defining a "normative" tax system and then characterizes a tax rule departing from this baseline as a "tax expenditure" or a

122. For the same reason, the choice of an antecedent baseline also has consequences for determining the progressivity of taxes and spending. In this case, the antecedent income baseline defines the denominator (as a measure of an individual's baseline income or "ability to pay"), and the net effects of taxes and spending defines the numerator (as a measure of the individual's net benefit or tax burden). *See supra* note 51–52 and accompanying text; *see also* Viswanathan, *supra* note 8, at 101–07 (describing how progressivity can only be evaluated by reference to a chosen income baseline, or more broadly with respect to any chosen "progressivity base").

123. For these purposes, the term "entitlement" does not necessarily imply a particular claim of right on behalf of the taxpayer, but rather simply implies a starting point of the taxpayer's holdings for purposes of evaluating the subsequent effects of government policies.

"tax penalty."[124] For example, the Joint Committee on Taxation's tax expenditure analysis estimates individual tax expenditures as departures from the baseline of a "normal structure of the individual income tax." This "normal structure" is defined by a selected scope of rules for calculating taxable income.[125] As a result, choices in defining the income baseline will also determine the scope of the tax expenditures identified as departures from the baseline.[126]

The selection of the antecedent baseline also has consequences for evaluating the budgetary effects of Congress's treatment of an expiring tax rule. If Congress extends an expiring tax increase, this act can be characterized as having no distributional effect at all, from a "status quo" baseline of current law with the temporary tax in effect. On the other hand, this same act can be characterized as imposing a new tax burden, from a "current law" baseline assuming the tax will otherwise expire.[127] Similarly, if Congress repeals a tax benefit or allows it to expire, these acts can be considered as either a tax increases—from a baseline that includes the benefit—or simply reversions to a baseline that doesn't include the benefit. In this context, the definition of the antecedent baseline can determine both Congress' procedural constraints in

124. *See generally, e.g.*, JOINT COMM. ON TAX'N, *supra* note 106. For a discussion of how the choice of the baseline affects tax expenditure analysis, see generally Daniel N. Shaviro, *Rethinking Tax Expenditures and Fiscal Language*, 57 TAX L. REV. 187 (2004) (describing the role of the baseline choice in tax expenditure analysis and proposing an alternative method for identifying tax expenditures which would distinguish between rules with allocative and distributive functions).

125. *See, e.g.*, JOINT COMM. ON TAX'N, *supra* note 106, at 3–6 (defining the "normal income tax law" for purpose of identifying and measuring tax expenditures in the individual income tax as departures from this baseline).

126. *See, e.g.*, *id.* at 5 (defining the income baseline as only including realized income, and therefore not characterizing the tax benefit from the realization requirement as an expenditure). For discussion of the realization requirement in the income tax, see *supra* notes 65–66 and accompanying text.

127. *See* David Kamin, *Basing Budget Baselines*, 57 WM. & MARY L. REV. 143, 174–91 (2015) (introducing a taxonomy of different baselines for measuring policy reforms). For example, the CBO evaluates the budgetary effects of tax and spending reforms from a baseline assuming current law remains in effect. CONG. BUDGET OFF., HOW CBO PREPARES BASELINE BUDGET PROJECTIONS 1 (2018), https://www.cbo.gov/system/files/115th-congress-2017-2018/reports/53532-baselines.pdf.

the legislative process[128] and the political framing of congressional action or inaction.[129]

The definition of the antecedent baseline can have similar consequences for framing the distributional effects of phase-outs or phase-ins of particular tax benefits.[130] The phase-out of a tax benefit can be framed as a separate tax increase on taxpayers subject to the phase-out—from a baseline that assumes every taxpayer receives the benefit—or simply a reversion to a baseline that assumes that the taxpayers subject to the phase-out are not entitled to the benefit.[131] The definition of taxpayers' baseline entitlements and obligations can also have consequences for international tax rules.[132]

These examples illustrate how the choice of the antecedent baseline has consequences for specific areas of tax law and

128. *See, e.g.*, Kamin, *supra* note 127, at 169–70 (describing how legislators can construct baselines to manipulate constraints on legislation passed through the budget reconciliation process, such as rules requiring compliance with budget directions and limiting deficit increases outside a ten-year budget window).

129. For a recent example, commentators and policymakers characterized the expiration of the refundable child tax credit in January 2022 as a "tax increase" on families who would no longer receive the benefit. *See, e.g.*, Bruce Fuller, *Killing the Child Tax Credit is a Middle-class Tax Hike in Disguise*, THE HILL, (Dec. 29, 2021, 11:31 AM), https://thehill.com/opinion/finance/587485-killing-the-child-tax-credit-is-a-middle-class-tax-hike-in-disguise. In 2010, President Barack Obama similarly framed the extension of the 2001 Bush tax cuts as simply a continuation of prior law, rather than as the introduction of a new tax benefit that would primarily accrue to higher-income taxpayers. *See* Brian Montopli, *Obama Signs Bill to Extend Bush Tax Cuts*, CBS NEWS, (Dec. 17, 2010, 5:10 PM), https://www.cbsnews.com/news/obama-signs-bill-to-extend-bush-tax-cuts/ (quoting President Obama as explaining that the continuation of the lower tax rates was necessary to "avoid a tax increase" that would affect middle class taxpayers).

130. A tax benefit phases-out or phases-in when the amount of the benefit increases or decreases in proportion to a taxpayer's income or another taxpayer attribute. *See* Manoj Viswanathan, *The Hidden Cost of Cliff Effects in the Internal Revenue Code*, 164 U. PA. L. REV. 931, 937–38 (2016) (describing the phase-in and phase-out of the § 32 Earned Income Tax Credit).

131. For example, a basic income program limited to lower-income taxpayers could be structured mechanically as either a grant to all taxpayers combined with a separate tax on higher income taxpayers, or as an income-based phase-out of the grant. *See generally* Hilary Hoynes & Jesse Rothstein, *Universal Basic Income in the United States and Advanced Countries*, 11 ANN. REV. ECON. 929 (2019); Miranda Perry Fleischer & Daniel Hemel, *The Architecture of a Basic Income*, 87 U. CHI. L. REV. 625 (2020).

132. For example, Professor Ruth Mason evaluates the consequences of baseline choices for the identification of illegal tax subsidies under European Union rules preventing member states from distorting market competition. *See* Ruth Mason, *Identifying Illegal Subsidies*, 69 AM. U. L. REV. 479 (2013). In this context a tax benefit can be characterized as an illegal subsidy providing an undue benefit to a taxpayer, or a normative (and therefore legal) feature of a tax system, depending on the presumed baseline of the tax system's rules and taxpayers' relative obligations and entitlements. *Id.* at 497–504.

policy analysis.[133] The same principle can also be applied more generally when characterizing the distributional effects of any tax benefit or burden. Any income-based benefit to particular taxpayers—such as a benefit for lower income taxpayers—can be recharacterized as burdening higher income taxpayers who do not qualify for the benefit, from an baseline that assumes all taxpayers are entitled to the benefit.[134] Even more broadly, any tax can be characterized as a burden on taxpayers, from an antecedent baseline presuming taxpayers are entitled to their pre-tax holdings.[135] Alternatively, permitting taxpayers to retain a portion of their after-tax resources can be characterized as a benefit extended to these taxpayers, from a baseline presuming taxpayers are only able to claim property holdings in the first instance due to government enforcement of property rights.[136]

133. The choice of the antecedent baseline will not matter for evaluating certain effects of taxes. Regardless of the selected antecedent baseline, any particular rule change may be evaluated with respect to its expected marginal revenue and behavioral effects, and net effect on household budgets. For example, regardless of the presumed baseline, an income-based phase-out of an economic benefit will effectively reduce the after-tax return to marginal dollars of income earned within the phaseout range, which could in turn affect the taxpayer's decision whether and how much to work. For example, the phase-out of the Earned Income Tax Credit in § 32 for higher income earners creates a potential disincentive for taxpayers to earn additional marginal dollars of income within the phase-out range. Hoynes & Rothstein, *supra* note 131, at 947. Any particular rule change may also be expected to entail additional costs (or cost savings) to the government, and benefits (or disadvantages) to particular taxpayers, and from the starting point of any chosen baseline, policymakers can estimate the degree to which a rule change will result in additional costs or cost savings to taxpayers or the government. *See generally, e.g.*, JOINT COMM. ON TAX'N, DISTRIBUTIONAL EFFECTS OF THE REVENUE PROVISIONS OF TITLE XIII – COMMITTEE ON WAYS AND MEANS, OF H.R. 5376, THE "BUILD BACK BETTER ACT," AS PASSED BY THE HOUSE OF REPRESENTATIVES (2021), https://www.jct.gov/publications/2021/jcx-47r-21/ (evaluating the distributional effects of specific tax reforms proposed by Congress in 2021).

134. For an additional example of this general principle, Congress could indirectly tax wealth through the income tax by adjusting a taxpayer's income tax liability on account of their wealth. Ari Glogower, *A Constitutional Wealth Tax*, 118 MICH. L. REV. 717, 752–57 (2020). In this scenario Congress could structure the wealth-based adjustment to the income tax as either a burden on taxpayers with wealth or as a benefit to taxpayers without wealth, without changing the economic effects of the adjustment. *Id.* at 770–72. Professor Dorothy Brown similarly proposes a refundable tax credit for taxpayers with net wealth below a specified threshold. BROWN, *supra* note 5, at 220–22.

135. *See, e.g.*, ROBERT NOZICK, ANARCHY, STATE, AND UTOPIA 169 (1974) (articulating an entitlement-based theory of property holdings and arguing that taxes unduly interfere with such entitlements).

136. *See, e.g.*, LIAM MURPHY & THOMAS NAGEL, THE MYTH OF OWNERSHIP 32–33 (2002) (articulating an alternative view in which taxpayers have no antecedent entitlement to their pre-tax income).

b. Choices in distributional studies. Distributional studies adopt different approaches in defining the antecedent income baseline and therefore in distinguishing between the effects of market outcomes and government actions.

The CBO has adjusted its baseline definition over time. This evolution illustrates the inevitability of choices and tradeoffs in drawing a line between income before and after the effect of taxes and government transfers. As described above, the CBO currently defines the antecedent baseline to include market income plus certain social insurance benefits.[137] In prior years, the CBO treated these social insurance benefits similarly to other government transfers, as government benefits departing from the baseline of market income.[138] The CBO subsequently shifted these social insurance benefits to the antecedent baseline because these benefits are economically comparable to private savings—even though they are structured as government transfers—and because excluding these items from income understates the baseline income of retirees who have less market income.[139] At the same time, the CBO notes that shifting these transfers to the antecedent baseline also results in distributive analysis no longer capturing their modest distributive effects, and no longer treating "those benefits and the taxes that finance them . . . symmetrically."[140]

PSZ also adopt certain assumptions in distinguishing between antecedent and "after-government" income.[141] Like the CBO, they include certain government transfers for social insurance in the antecedent baseline.[142] Their measure of after-tax income, in contrast, subtracts taxes and adds their allocations of all government spending and public debt.[143] AS begin with a narrow

137. *Supra* notes 85–86 and accompanying text.

138. Perese, *supra* note 41, at 1, 39–40.

139. *See* PERESE & HABIB, *supra* note 116, at 18–27 (describing the changes and the rationale for including certain social insurance benefits in the antecedent baseline). This change may also be justified on the grounds that these benefits have lower redistributive effects. Perese, *supra* note 41, at 10 (describing the relatively neutral distributive effects of social insurance programs).

140. Perese, *supra* note 41, at 11.

141. *See generally supra* Sections I.B.1–2 (defining methods for defining pre-tax income and allocating government spending in distributional studies).

142. *See supra* notes 77–81 and accompanying text (PSZ's method for measuring pre-tax income).

143. *See supra* notes 99–103 and accompanying text (PSZ's method for allocating government spending and debt).

baseline of market income and then derive an intermediate measure of income after cash transfers, which adds social insurance benefits, other cash transfers, and certain non-cash transfers.[144] Their final measure of after-tax income then deducts federal and sub-federal taxes and then allocates residual government spending and public debt.[145]

C. Findings of Distributional Studies

The measurement choices reviewed in the preceding sections impact the ultimate findings of distributional studies. PSZ find—based on their methodology and assumptions—a significant increase in income inequality in recent decades. They estimate that the pre-tax income share of the bottom 50% of the distribution fell nearly in half between the early 1980's and 2012, from 20% to 12% of total income, while the pre-tax income share of the top 1% nearly doubled from 12% to 20% during this period.[146] They also find that redistribution through taxes and transfers has only partially mitigated this increase in pre-tax inequality.[147]

In contrast, AS generally find lower levels of income inequality and a greater mitigating effect from government transfers.[148] They find, using their alternative assumptions and antecedent baseline, that the top 1% pre-tax income share only grew from approximately 9.3% to 13.7% between 1979 and 2019[149] while the bottom 50% pre-tax income share has only decreased by approximately 5% since 1962.[150] They also find that "increasing

144. Auten & Splinter, *Income Inequality, supra* note 14, at 14. *See also supra* notes 82–84 and accompanying text (AS's method for measuring pre-tax income).

145. *See supra* notes 99–103 and accompanying text (AS's method for allocating government spending and debt).

146. Piketty, Saez & Zucman, *National Accounts*, *supra* note 13, at 557, 575 tbl. 1. These findings suggest that in effect these two groups—the bottom 50% and the top 1%—roughly "switched their income shares" during this period. *Id.* at 557. For revised estimates by Saez and Zucman finding comparable trends, see also Saez & Zucman, *Revising After the Revisionists*, supra note 13, at 52–53.

147. Piketty, Saez & Zucman, *National Accounts*, *supra* note 13, at 557, 575–77. They find that, even after accounting for taxes and transfers, the after-tax income share of the bottom 50% only increases to 19% of total income, whereas the share of the top 1% still accounts for more than 15% of total income. *Id.* at 575 tbl. 1.

148. Auten & Splinter, *Income Inequality*, *supra* note 14.

149. *Id.* at 31 tbl. 1.

150. *Id.* at 17.

transfers and tax progressivity offset increases in top income shares of pre-tax income."[151]

The CBO finds, using its narrower measures of both income and government spending,[152] a significant increase in inequality of pre-tax market income in recent decades. The CBO finds that between 1979 and 2018 average market income in the top quintile grew by 111%, while average income in the first through fourth quintiles only grew by 37% to 40%.[153]

The different choices in these studies have similar consequences for assessing the progressivity of taxes and spending. PSZ find that overall progressivity of the system has declined in recent decades and that the system now resembles a flat or proportional, rather than a progressive, rate schedule.[154] Using their definitions of pre-tax income and taxes, AS find, in contrast, that overall progressivity has not declined significantly in recent decades.[155] The CBO, which only allocates the distributive effects from a narrower scope of means-tested transfers, finds that the progressivity of taxes and transfers has increased between 1979 and 2018, but not fast enough to keep pace with increases in the inequality of baseline market income.[156]

These different findings illustrate how the measurement choices described in section I.B. above can affect measures of income inequality and the degree to which government taxes and spending mitigate economic disparities. At the same time, these approaches all share a common pattern. These studies all begin with

151. *Id.*

152. *See supra* notes 87–89, 99–100 and accompanying text.

153. CONG. BUDGET OFF., *supra* note 15, at 4.

154. Piketty, Saez & Zucman, *National Accounts*, *supra* note 13, at 598–600. They estimate that in the 1950s taxpayers in top 1% of the income distribution paid an effective rate of approximately 40–45% while taxpayers in the bottom 50% paid a rate of 15–20%, whereas by 2013 the effective rate on the top 1% declined to 30–35% and the effective rate on the bottom 50% increased to 25%. *Id.*

155. AS estimate that the average tax burden on the top 1% ranged between 33% and 46% between 1962 and 2019 with "no clear trend" to the variations, while the average tax burden for the bottom 90% declined from 25% to 20% since 1979. Auten & Splinter, *Income Inequality*, *supra* note 14, at 21–22, 39 fig. 6.

156. CONG. BUDGET OFF., *supra* note 15, at 4 (finding that "overall, the transfer programs and the tax system reduced income inequality by more in 2018 they did in 1979. Consequently, inequality income after transfers and taxes increased by less than inequality of income before transfers and taxes.").

a baseline line measure of market income, and then estimate the distributive effects from explicit taxes and government spending.

II. ASSESSING CURRENT METHODS

This Part assesses both the advantages and limitations of current methods of distributional analysis. In general, these studies provide valuable and critical insights in estimating conventional measures of income inequality, the effect of government policies, and changes in these measures over time. As these studies readily acknowledge, however, the inevitable choices and assumptions in defining both income inequality and the effect of taxes and government programs entail necessary tradeoffs. No single approach can offer an objectively "right" measure.

This Part describes how distributional studies all also encounter inherent complications and the consequence of these complications for their findings. These complications result from the basic assumption in distributional studies of a distinction between market income and income after certain government actions, as well as their narrow focus on the distribution of taxes and explicit government spending. Because of these complications, distributional studies—notwithstanding their vital insights—can elide the role of government in the distribution of market income and overstate government benefits at the bottom of the income distribution while understating benefits for the highest earners.[157]

A. Advantages

Current methods of distributional analysis—despite their assumptions and limitations—offer critical insights which can inform policymaking and understanding of inequality. Most importantly, these studies derive tractable measures of inequality and policy effects from observable and consistent data sources. These studies also offer a comprehensive view of income inequality resulting from a broad scope of market activities and government policies. These studies are often also transparent regarding their assumptions and limitations, which can help clarify what their findings measure and what they do not.[158]

157. *See infra* Section II.C.

158. *See, e.g.*, Saez & Zucman, *supra* note 1, at 24–25 (describing the advantages and disadvantages of different possible income measures).

In many cases, the limitations and assumptions in distributional studies also do not affect the relevance of the studies' insights. For any given set of data sources, assumptions, and inferences, these studies can yield critical insights into how income inequality and the effects of government policies change over time. For example, the distributional analysis performed regularly by the CBO tracks how their measure of household income has changed in each income quintile over time. It also tracks trends in income inequality both before and after the effect of taxes and the transfers (in accordance with the CBO's methodology) in recent decades.[159]

Distributional studies can also identify the effects of discrete government programs or reform proposals, which can inform policy debates regarding particular elements of the tax and fiscal system.[160] These studies can also allow for cross-country comparisons of trends in inequality and government polices so long as distributional studies in other countries use the same assumptions and methods.[161]

Finally, in some cases the limitations of these studies can serve to reinforce, rather than undermine, the relevance of their findings. For example, these studies may find high income inequality but understate its severity. Similarly, they may find limited mitigating effects from current government policies but overstate their effects. In either case, these findings could nonetheless justify new redistributive policies notwithstanding their limitations, and the possibility that these studies understate the problem could reinforce rather than undermine the importance of the findings.[162]

159. *See* CONG. BUDGET OFF., *supra* note 15, at 1–4; see also *supra* notes 152–153 and accompanying text.

160. For example, the CBO's basic methodology also informs its studies of the distributional effects of particular tax rules. *See generally, e.g.*, CONG. BUDGET OFF., THE DISTRIBUTION OF MAJOR TAX EXPENDITURES IN 2019 (2021), https://www.cbo.gov/system/files/2021-10/57413-TaxExpenditures.pdf; *see also id.* at 29-31 (describing how the CBO uses its analytic methodology to estimate the distributional effects of these particular rules).

161. *See, e.g.*, Piketty, Saez & Zucman, *Simplified Accounts*, *supra* note 13, at 289 (describing how the distributional national accounts method can allow for comparisons between countries of income inequality and its trends over time).

162. That is, in these cases the studies may sufficiently diagnose a problem as to warrant policy interventions, even if they understate the scope of the problem.

B. Three Inherent Complications

Notwithstanding their valuable insights which can inform policy and understandings of inequality, the methods of distributional analysis described in the preceding Part all encounter three inherent—and irresolvable—complications when constructing a baseline of market income before the effects of government actions. These three complications are conceptually related both to one another and to the measurement challenges described in section I.B.

1. Beyond Government Spending

The first inherent complication arises from characterizing and measuring the effects of government actions on the distribution of income. If distributional analysis aims to study individual income inequality and how government policies affect it,[163] then this analysis should in principle account for benefits or burdens from the perspective of the affected individuals. In practice, however, the most direct way to measure burdens and benefits to taxpayers is by estimating only the distribution of explicit taxes and government spending.[164] This distribution is consequently calculated from the perspective of the government's—rather than strictly the individual's—budget.

This section considers two different aspects of the complication in using data from the government's perspective to characterize and measure the effects of government policies on individuals' income. First, explicit government spending may not directly translate into commensurate economic benefits for affected individuals. Second, government policies that are not reflected in explicit budget outlays can also have distributional consequences for affected individuals. These policies, however, will not be accounted for in distributional studies limited to allocating explicit government spending.

In the case of a readily observable cash or in-kind transfer program, the cost to the government may generally be presumed equivalent to the benefit to the individual.[165] With respect to tax

163. *See, e.g.*, *supra* text accompanying notes 32–34.

164. *See supra* Section I.B.2.

165. As described above, *supra* notes 119–20 and accompanying text, cash transfers afford households greater discretion in their consumption choices. If, however, the taxpayer

burdens, a tax paid mechanically reduces the household budget by the amount of tax revenue collected by the government.[166] A tax credit or cash benefit will benefit the taxpayer by the same amount of the government's lost revenue, and the government's cost of direct transfer programs for basic needs[167] may approximate the consequent benefit to recipients.[168]

As described above, some distributional studies comprehensively allocate the costs from all government spending among individuals, to account for the distribution of all government outlays.[169] In many cases, however, the amount of government spending—as measured as explicit budgetary outlays—may not correlate with the consequent benefits to affected individuals.[170] A government may incur expenditures which either do not affect household budgets at all, or which affect household budgets to a greater or lesser degree than the amount of corresponding government spending.[171] In some cases, government spending can

would have otherwise purchased an in-kind benefit or service provided by the government, then either a cash or an in-kind transfer will have the same effect on the household budget.

166. This discussion sets aside costs incurred by the taxpayer in compliance with tax reporting and remittance, and the government's expenses in collecting the tax revenues. *See* Joshua D. Blank & Ari Glogower, *Progressive Tax Procedure*, 96 N.Y.U. L. REV. 668, 685 (2021) (describing the different costs of tax administration and compliance for booth taxpayers and the government).

167. For examples of such transfer, the government provides benefits for food such as through the Supplemental Nutritional Assistance Program ("SNAP") and for housing such as through the housing choice voucher program. See *Supplemental Nutrition Assistance Program (SNAP)*, U.S. DEP'T AGRIC., https://www.fns.usda.gov/snap/supplemental-nutrition-assistance-program (last visited Mar. 18, 2023) (describing the SNAP program); *Housing Choice Vouchers Fact Sheet*, U.S. DEP'T. HOUS. & URB. DEV., https://www.hud.gov/topics/housing_choice_voucher_program_section_8 (last visited Mar. 18, 2023) (describing the Housing Choice Voucher Program).

168. Setting aside other factors such as the governments costs in administering the transfer program.

169. *See supra* notes 99–100 and accompanying text.

170. For an extreme example, the government could simply waste tax revenues in a manner that does not yield any benefits to any individuals. This discussion also sets aside the separate question of individual policy preferences as to how the government should spend tax revenues and focuses instead on the narrower question of the effect of government policies on household income.

171. For example, Saez and Zucman observe that the cost of universal education appears to be a large transfer to individuals when the associated government spending is allocated to household budgets, even though this education spending does not necessarily affect household budgets in these amounts. Saez & Zucman, *supra* note 1, at 23.

burden—rather than benefit—some subset of individuals, such as public expenditures for criminal enforcement.[172]

As described in section I.B.3., either tax or nontax fiscal policies can also have similar effects on household budgets. This consideration implies a further complication for distributional studies limited to accounting for taxes and explicit government spending. Other nontax and non-budgetary government policies and rules, such as regulations and nontax fees and fines, can also have distributional consequences for household budgets. These consequences, however, would not be reflected in a study limited to the distribution of explicit taxes and government spending.[173]

For one example, Professor Alex Raskolnikov evaluates the 1990s North American Free Trade Agreement (NAFTA) as a paradigmatic example of a government policy which was not reflected in explicit government spending but entailed significant distributional consequences for many households.[174] NAFTA disadvantaged many American workers (and consequently reduced their household budgets) even as it offered new opportunities for many businesses and industries.[175] Raskolnikov then argues that "a similar story may be told about the evolution of U.S. competition policy, immigration policy, labor policy, and environmental policy . . . . All these policies, we are now learning, gave rise to large, unintended distributional burdens that were missed by academics and ignored by policymakers ."[176]

Scholars have similarly studied the distributional effects of a broad range of government policies. For example, researchers study the distributional impacts of monetary policy,[177] market

172. For discussion of the adverse effects of incarceration on income earnings and social mobility, see generally Bruce Western & Becky Pettit, *Incarceration & Social Inequality*, DÆDALUS, Summer 2010, at 8; Bruce Western, *The Impact of Incarceration on Wage Mobility and Inequality*, 67 AM. SOC. REV. 526 (2002).

173. *See supra* notes 109–11 and accompanying text.

174. Alex Raskolnikov, *Distributional Arguments, in Reverse*, 105 MINN. L. REV. 1583, 1583–85 (2021).

175. *Id.*

176. *Id.* at 1586.

177. *See, e.g.*, Valentina Bonifacio et al., Distributional effects of Monetary Policy (IMF Working Paper no. WP/21/201), https://www.imf.org/en/Publications/WP/Issues/2021/07/30/Distributional-Effects-of-Monetary-Policy-461841.

competition,[178] and environmental policy.[179] These examples illustrate the potentially limitless scope of a comprehensive distributional analysis taking account of all relevant government policies.

2. The Circularity Problem

A broader view of the distributional effects from all government policies—and a shift from a focus on government spending to the perspective of the individuals and their household budgets—suggests a further complication in distributional analysis. As described above, the two-step process in distributional analysis first measures an antecedent baseline of market income and then the distributional impacts of taxes and government spending in adjusting these market outcomes.[180]

This two-step approach, however, encounters an irresolvable circularity problem. If individuals also benefit from—and are burdened by—government policies not reflected in explicit taxes or spending, then the baseline measure of their antecedent market income will already reflect these benefits. That is, a distributional study seeking to evaluate the net distributional effects of government policies necessarily begins with a baseline of antecedent market income that already reflects the effects of government policies.[181] Stated differently, government policies create and shape the conditions for earning market income which is the starting point for distributional analysis.

For one example of this circularity problem in distributional analysis, consider again the case of a diffuse government benefit (a "collective consumption expenditure") such as for military protection.[182] In principle, a distributional analysis evaluating the

178. *See, e.g.*, Carlos Rodríguez-Castelán et al., *Distributional Effects of Competition: A Simulation Approach* (IZA Discussion Paper Series No. 14043, 2021), https://docs.iza.org/dp14043.pdf.

179. Professor Cinnamon Carlarne evaluates distributional effects resulting from environmental policies and argues that climate change resulting from these policies "deepens inequality by disproportionately affecting members of society who already face higher levels of vulnerability." Carlarne, *supra* note 7, at 152.

180. *See supra* Section I.A.1.

181. *See* EDWARD HARRIS, KEVIN PERESE & JOSHUA SHAKIN, CONG. BUDGET OFF., FRAMEWORKS FOR DISTRIBUTIONAL ANALYSES 12 (2016), https://www.cbo.gov/publication/51106 ("'Market income' suggests no government intervention, but the measure includes the effects of other, less direct governmental policies.").

182. *See supra* notes 99–100 and accompanying text.

benefit of this government spending would begin with an antecedent baseline of household budgets when the government does not support a military at all. In this case, individuals would either have to pay for private protection or suffer lower income—or perhaps even none at all—if they are unable to secure equivalent protection through private markets. From this perspective, the distributional consequences of government spending on the military might then be evaluated as a public benefit that removes the security cost from the individual's private household budget and that many confer an additional benefit that the individual was unable to secure privately.

Instead of attempting to distinguish between income before and after government expenditures, current distributional studies instead use a circular analysis. They begin with a baseline of observed market income—including income due to the benefits from this public spending—and then adjust this measure by the amount of government spending for diffuse public purposes such as military protection.[183] Any chosen starting point or baseline, however, will necessarily already reflect the effects of government policies. As a result, any study that seeks to distinguish between income before and after these policies will measure departures from a baseline that necessarily factor into the construction of that same baseline.

The case of military protection illustrates how certain expenditures can affect the amount of market income in the antecedent baseline. More generally, both government spending and non-budgetary policies enable individuals to earn market income and hold property entitlements in the first instance. Government spending and policies ensure the provision of some public goods, such as for the protection of persons and property, which directly determine the amount of "pre-tax" income the individual can earn and claim in the first instance. Liam Murphy and Thomas Nagel argue that even property ownership cannot be evaluated separately from the government's role in defining and protecting property claims:

> Private property is a legal convention, defined in part by the tax system; therefore, the tax system cannot be evaluated by looking at its impact on private property, conceived as something that

183. *See supra* notes 99–100 and accompanying text.

> has independent existence and validity. Taxes must be evaluated as part of the overall system of property rights that they help to create.[184]

Professor Katarina Pistor similarly argues that entitlements to property and income from market activity result from their legal "coding" as property through legislation, judicial law, and private contracts enforceable through the legal system.[185] In the absence of the government spending necessary to support these sources of property entitlements, these economic entitlements would not exist in their current form.

This circularity problem can also be understood as reflecting the same logic underlying the measurement choices described above. A comprehensive distributional analysis would in principle account for the net effects from both taxes and government spending,[186] as well as the benefits provided—and burdens imposed—both within and outside of the tax system.[187] This same reasoning, however, would also imply accounting for benefits and burdens that are reflected in the baseline of antecedent market income. For the same reason, this circularity problem also highlights the irresolvable tension with selecting any antecedent baseline of market income in distributional analysis.[188] Any antecedent baseline measures a set of a taxpayers' holdings or entitlements, which is the untraceable consequence of both private actions and public policies.

The circularity problem poses a challenge to any distributional analysis predicated on a distinction between antecedent market income and income after the effect of taxes and government policies. In principle distributional analysis could instead begin with a baseline of antecedent market income that did not reflect any government action or policy, and that is characterized solely by purely private entitlements and claims of right. This counterfactual

184. MURPHY & NAGEL, *supra* note 136, at 8.

185. *See generally* KATHARINA PISTOR, THE CODE OF CAPITAL (2019) (describing legal structures for defining and protecting property entitlements to land, business forms, intangible property, and financial instruments); *see also id.* at 46 ("[P]roperty rights and similar legal entitlements evolve in the interstices of states, power, and the law . . . Vesting some with legal entitlements while denying similar treatment to others . . . are actions that make and destroy wealth.").

186. *See supra* Section I.B.2.

187. *See infra* Section I.B.3.

188. *See infra* Section I.B.4.

antecedent distribution of income before government might be that found in a state of nature[189] or under a "minimal state" providing for limited public needs such as mutual protection,[190] and in any case would embed assumptions as to a taxpayer's baseline entitlements. Even such a hypothesized counterfactual baseline antecedent to government actions, however, could still not consistently assess the distributional burden of taxes and spending. In all events, a taxpayer would still pay taxes out of income that itself is the product of the government benefits that the taxes help to fund.[191]

3. Government Action and Inaction

Distributional analysis typically focuses on affirmative government actions that impose explicit burdens such as taxes or regulations and that provide explicit benefits such as transfers or other public spending.[192] This focus on explicit government action, however, also encounters a third inherent complication to distributional analysis: The potential for both government actions (or commissions) and inaction (or omissions) to affect household budgets. This possibility for the government to affect the distribution of income through either action or inaction further expands the range of possible counterfactual baselines when assessing the distributional effects of government policies.

For a simple example of how the government can impose private burdens through inaction, consider the two following scenarios. In Scenario 1, the government builds a public road that benefits taxpayers, and collects tax revenue from them to fund the road.[193] In Scenario 2, the government does not build the public

189. For example, Thomas Hobbes famously characterized this state of nature antecedent to government as "solitary, poore, nasty, brutish, and short." THOMAS HOBBES, LEVIATHAN, OR THE MATTER, FORME, & POWER OF A COMMON-WEALTH, ECCLESIASTICALL AND CIVILL 92 (Barnes & Noble Pub., Inc. 2004) (1651).

190. For example, Robert Nozick considers a minimal or an "ultraminimal" state concerned solely with protecting private "rights against violation." *See* ROBERT NOZICK, ANARCHY, STATE, AND UTOPIA 26–28 (2013).

191. That is, in this case the taxes could not be properly conceived as a burden and a departure from an antecedent baseline, if the income which funds the tax payments is the product of government policies and is therefore not included in the antecedent baseline.

192. *See supra* Sections I.A–B.

193. For example, the Federal Highway Trust fund is currently funded in part by a gasoline excise tax under I.R.C. § 4041.

road and does not collect the corresponding tax revenue. As a result, taxpayers will have to incur private costs to provide for alternative methods of transportation.[194] The government, in turn, will conserve public funds and any transportation will instead be funded by taxpayer's private costs, rather than through taxes. In Scenario 2 the government's inaction—in not building a publicly funded road—can have economic effects similar to those resulting from an affirmative policy intervention in Scenario 1, in imposing an economic burden on households who must instead pay for private transportation.

The distinction between government action and inaction blurs further if distributional studies were to account for the full scope of government policies and rules, as well as their effect on individual's entitlements and rights. In these cases, the characterization of a government policy as either the imposition of a burden, or simply as the forbearance from conferring a benefit, will depend again upon the presumed antecedent baseline of the individual's entitlements and rights. The denial of a benefit—whether through a tax provision, spending program, or non-budgetary policy—can be characterized as a burden to the taxpayer or not, depending on whether the baseline assumes that the taxpayer is otherwise entitled to the benefit.[195] Conversely, the government's forbearance from imposing a burden on the taxpayer—whether through a tax or a nontax rule—can be characterized as providing a benefit to the taxpayer or not, depending again on whether the baseline assumes that the taxpayer is otherwise obligated to bear this burden.

For one example, the law authorizes the IRS to request the revocation or limitation of a taxpayer's passport if they have significant unpaid tax liabilities.[196] From a presumed baseline that the government should not interfere with the right of international passage, then the government's non-provision or non-recognition of a passport would be characterized as a government action imposing a burden on the individual. If, however, the facilitation of international passage is characterized as an affirmative benefit, then the government's withdrawal of a passport would instead be

194. For example, these alternative methods could include privately or semi-privately maintained roads.

195. See discussion *supra* notes 134–35 and accompanying text.

196. I.R.C. § 7435; *see also* Joshua D. Blank, *Collateral Compliance*, 162 U. PA. L. REV. 719, 736–37 (2014).

characterized a case of government inaction and the reversion to a baseline where the benefit is not provided.

Similarly, the government may deny a taxpayer regulatory approval to engage in certain activities, just as it may impose regulatory burdens on a taxpayer.[197] In this case as well, if the antecedent baseline presumes that a taxpayer has the right to engage in a regulated activity, then withdrawal or non-provision of the regulatory approval may be characterized as a government action imposing a burden. If, however, a distributional study characterizes the regulatory approval as an affirmative government benefit, then government's withdrawal of the benefit would again be characterized as reversion to a baseline where a government benefit is not provided.

Scholars have identified varied scenarios where the government burdens individuals through inaction rather than action. As described above, a government taking or regulatory action may also impose an economic burden on affected individuals, but would not typically be evaluated as a tax in distributional analysis.[198] Professor Christopher Serkin evaluates the limitations of what he terms the "act/omission distinction" in the context of government takings and argues that the government can also impose economic burdens on individuals through inaction or "passive takings," just as it can through the paradigmatic case of an affirmative taking.[199] For one example, the government can impose a burden on beachfront homeowners equivalent to an affirmative taking by failing to relax building height limits in response to rising sea levels.[200]

According to some views, the government also imposes burdens on individuals when it fails to affirmatively protect them

197. *See, e.g.*, 33 U.S.C. § 1344 (providing for the issuance of permits to discharge material into navigable waters under the Clean Water Act); *id.* at § 1344(e)(2) (providing for the revocation of general permits issued under this provision, if "the Secretary determines that the activities authorized by such general permit have an adverse impact on the environment . . . ."). Under this rule, the Secretary could revoke a permit even in the absence of any fault or wrongdoing by the permit holder.

198. *See supra* notes 109–110 and accompanying text.

199. *See* Christopher Serkin, *Passive Takings: The State's Affirmative Duty to Protect Property*, 113 MICH. L. REV. 345, 345 (2014).

200. *Id.* at 391–93. In this case, in the absence of affirmative government action the homeowner's buildable space will gradually decline with the rising sea level, with a consequent decline in the value of the homeowner's property right. *Id.*

from harms. Professor Barry Friedman argues that the government's basic duty to ensure public safety also entails an affirmative obligation to provide for basic needs necessary for safety and security, including for "food, clean water and air, housing, a basic income, and the means to obtain that income through an education and a job."[201] Current methods of distributional analysis would characterize these items as affirmative benefits when the government provides for them.[202] Professor Friedman's argument implies, however, that the government affirmatively harms individuals when it fails to provide individuals with these basic needs, just as if it violated essential rights to protection and personhood.

C. Limitations

Distributional studies provide critical information that informs understandings of income inequality and the effect of government policies. These studies also offer the advantage of deriving insights on the economic distribution from available and tractable data. As this section argues, however, comparing taxpayers on the basis of their market income provides only a limited measurement of taxpayers' relative economic difference and does not fully reflect the reality of household budgets. Furthermore, because of their inherent complications, distributional studies can offer only a limited account of the government's role in the income distribution. As a consequence of these limitations, distributional studies can both understate income inequality and overstate the redistributive effects of government policies.

1. Measuring Income Inequality.

As described above, the goal of any distributional study is to yield a meaningful or relevant measure of economic difference and the impact of government actions.[203] The baseline measure of market income used in distributional studies—whether measuring based on national or personal income[204]—offers one possible

201. *See generally* Barry Friedman, *What is Public Safety?*, 102 B.U.L. REV. 725, 725 (2022).

202. *See supra* notes 98–100 and accompanying text (describing methods for allocating government expenditures in representative studies).

203. *See supra* Section I.A.1.

204. *See supra* Section I.B.1 (describing different possible income measures based on market income).

measure of economic difference but offers only a limited account of income inequality. In particular, market income does not measure differences in household spending ability. It obscures the distinction between income that individuals must reserve for basic consumption needs and residual income available for savings or discretionary consumption. As a result, comparing taxpayers based on their market income can understate inequality of true disposable income which is available for discretionary consumption or savings. For illustration, consider again Taxpayer 1 with $50,000 of pre-tax income and Taxpayer 2 with $100,000 of pre-tax income. Simply comparing these taxpayers on the basis of their market income offers one possible account of economic inequality: Taxpayer 2 has twice the income of Taxpayer 1 and earns 2/3 (approximately 67%) of their total market income.[205]

Comparing the two taxpayers in this way, however, would not account for the fact that not all of each taxpayer's pre-tax market income is available for discretionary savings and consumption because a portion of this income must be reserved for basic needs. Section III.C.1 explains how accounting for each taxpayers' income which must be reserved for basic needs yields a different assessment of the taxpayers' relative economic differences. This accounting instead measures taxpayer's disposable income available for savings and discretionary consumption.[206]

2. Unequal Effects of Government Policies.

Current distributional studies can also offer only a limited account of the government's role in the distribution of income, because of both their use of a market income baseline and the intractable complications in distributional analysis. This limited account can overstate the benefits of government policies for lower income individuals and understate benefits at the top of the income distribution. This approach can cement inequalities resulting from government policies into the market baseline and can skew understandings of how high and low-income individuals share the benefits and burdens of government policies.

205. That is, Taxpayer 2 earns $100,000 out of the total $150,000 of market income earned by both Taxpayer 1 and Taxpayer 2.

206. *See infra* notes 258–259 and accompanying text.

This limitation plays a role in both steps of distributional analysis: in selecting the antecedent baseline and in distributing the effects of government actions. With respect to the baseline, using the starting point of market income elides the role of government policies which determine this distribution of market income.[207] This starting point can thereby normalize inequalities resulting from government policies enabling a subset of earners to increase their market income.

With respect to the effects of government actions, current methods focus narrowly on the distributional effects from explicit government actions through both taxing and spending. They do not address the effects of other non-budgetary policies or the distributional effects of government inaction. When these government policies create the conditions for taxpayers to earn income, higher income taxpayers by definition disproportionately benefit from these policies. Focusing on a narrower scope of explicit transfers and other government spending, in contrast, can overstate the degree to which the government benefits lower income taxpayers and mitigates market inequality.

For illustration, consider again Taxpayer 1 with $50,000 of market income and Taxpayer 2 with $100,000 of market income. Also assume that the income tax system taxes the first $50,000 at a 20% rate, and additional income at a 40% rate, so that Taxpayer 1 pays $10,000 in taxes, with $40,000 of after-tax income, and Taxpayer 2 pays $30,000 in taxes, with $70,000 of after-tax income. Assume further that the government uses the $40,000 in tax revenues to provide a $20,000 in-kind housing benefit for each of the two taxpayers. A traditional approach which first compares the taxpayers based on their market income and then nets the distributional effects of taxes and spending as departures from this market income baseline would find that Taxpayer 1 experiences a net $10,000 benefit, and $60,000 of income after accounting for taxes and government spending[208] while Taxpayer 2 experiences a net ($10,000) cost, and $90,000 in income after taxes and government spending.[209] Taxpayer 2 would have approximately 67% of the total market

207. *See supra* Section II.B.2.

208. The $50,000 of market income, less the $10,000 taxes paid, plus the $20,000 housing benefit.

209. The $100,000 of market income, less the $30,000 taxes paid, plus the $20,000 housing benefit.

income[210] but only 60% of the total income after accounting for taxes and government spending.[211] Section III.C.1 explains how, in this case as well, accounting for each taxpayer's income which must be reserved for basic needs yields a different assessment of each taxpayer's relative benefits and burdens from government policies.[212]

III. A BASIC NEEDS BASELINE FOR DISTRIBUTIONAL ANALYSIS

The measurement challenges and inherent complications in distributional analysis highlight the difficulties with any chosen methodological approach or income baseline. Any methodology will necessarily embed assumptions as to taxpayers' baseline holdings and the effect of government policies on the income distribution. In this case, the choice of methodologies in distributional analysis will depend on the purpose and priorities of the measurements as well as their relevance for understanding inequality and for policymaking.

This Part explains how a basic needs baseline offers a different approach to distributional analysis, to measuring income inequality, and to assessing the effects of taxes and government policies. In general, this approach departs from the basic pattern of distributional analysis in one critical respect, by accounting for private expenditures for basic needs as equivalent to government burdens or implicit taxes when they are not provided by the government, rather than as explicit benefits when they are provided.

Section III.A introduces a method for treating a scope of private costs as equivalent to burdens imposed by the government and explains how this approach both follows and departs from current methods in distributional analysis. As this section argues, implementing this methodology requires only simple adjustments to current methods. Section III.B then considers possible alternative approaches in identifying the scope of private costs evaluated in this fashion, including a basic needs baseline which only recharacterizes a narrow scope of private expenditures for basic needs as taxes when they are not provided by the government.

Section III.C then explains how a basic needs baseline offers a different—and valuable—measure of economic inequality and the

210. *See supra* note 205 and accompanying text.

211. $90,000/$150,000.

212. *See infra* Section III.C.1.b.

effects of government policies. Like the traditional methods in distributional analysis, this alternative method does not yield an objectively "correct" measure of inequality or the government's role in the income distribution. Likewise, this method does not resolve the measurement challenges and inherent complications in distributional analysis. This method does, however, offer two key advantages. It yields a measure of inequality that more accurately reflects the reality of differences in household budgets. It also redresses the imbalances in distributional analysis resulting from its unavoidable limitations, which can overstate government benefits at the bottom of the income distribution and understate benefits accruing to the highest earners.

A. The Methodology

Starting distributional analysis from a basic needs baseline recharacterizes certain private costs as equivalent to government burdens or taxes when they are not provided by a government. For example, the costs a taxpayer incurs to acquire private healthcare services can be evaluated in the same manner as a tax when the government does not provide the healthcare to the taxpayer or reimburse the taxpayer for the private costs incurred.[213]

As also described in section I.A.1, distributional studies typically first measure a baseline of antecedent market income and then measure the distributional effects of all explicit taxes and government spending as a departure from this baseline. The alternative method described in this Article only requires the following simple adjustment to these current methods.

The methodology begins by measuring the distribution of market income, as in current distributional studies.[214] In an intermediate step, the methodology reduces market income by the amount of certain private costs borne by the taxpayer. This calculation yields an intermediate baseline reflecting the economic burdens from these private costs.[215] This adjustment effectively introduces a type

213. *See supra* note 21 and accompanying text.

214. This measure of market income could be either the narrow measure used by the CBO, as described *supra* notes 85–87 and accompanying text, or the broader measure summing up to national income used by PSZ and by AS, as described *supra* notes 77–84 and accompanying text.

215. As discussed *infra* Section III.B.3, the exact amount of the deduction for basic needs could be determined based upon different views as to what these needs encompass.

of "standard deduction" for distributional analysis, operating in a manner similar to the standard deduction in the current income tax rules, and similarly yields a measure of "clear income."[216]

The methodology then evaluates the distributional effects of explicit taxes and government spending as additional adjustments from this new intermediate baseline, as in current studies.[217] As a result, to the extent that the government does provide benefits through spending or direct transfers, these amounts effectively offset the implicit tax deducted in the first step of the analysis.

In effect, this method departs from the approach in the representative distributional studies in just one simple respect. The method recharacterizes a designated scope of private household expenses as an implicit tax or an affirmative burden on households, to the extent they are not provided by the government. As a result, these government transfers corresponding to these amounts are not treated as affirmative benefits, but rather as simply negating the implicit tax burden. In contrast, current distributional analysis assumes an antecedent baseline where the expenses are not provided by the government. As a result, such expenses are

216. *See supra* notes 72–75 and accompanying text (describing the origin of the standard deduction in the principle that the federal income tax should only burden "clear income" in excess of amounts reserved for basic needs).

217. As described below in section III.C.1, the advantage of first reducing market income by private costs for basic needs in an intermediate step is that this approach also yields a measure of disposable market income after accounting for basic needs. This Article introduces a simple method to account for private expenses as equivalent to implicit taxes in distributional analysis that would be easy to implement, but these private costs could also be accounted for in other possible ways. These other methods, however, may be more complex to implement. For example, instead of deducting all expenses for basic needs from the baseline of market income, and then offsetting this implicit tax with explicit government spending and transfers, an alternative method could see to estimate the degree to which the government does provide support for basic needs. This alternative approach could then deduct from the baseline of market income only the excess amount of the basic needs which is not provided, and then reduce the allocation of government spending by the corresponding amount by which the needs are provided (so they are no longer treated as affirmative benefits). *See infra* notes 248–252 and accompanying text (describing current benefits for basic needs). This alternative approach would offer the advantage of specifically matching implicit taxes with their offsetting benefits but would require additional calculations in both determining the specific levels of current government support for these needs, and then deducting these amounts from the allocation of government benefits. Furthermore, this approach could not consistently account for government support in the form of general—and fungible—cash transfers, which would not be identifiable as specifically providing for the basic needs.

characterized as affirmative government benefits when they are provided by the government.

For an illustration of this alternative methodology, assume again that Taxpayer 1 has $50,000 of pre-tax income and Taxpayer 2 has $100,000 of pre-tax income. Also assume that each taxpayer spends $5000 per year on private healthcare that is not provided by the government and that the healthcare costs are included in the scope of private costs characterized as equivalent to taxes when they are not provided by the government.[218] Also assume that the applicable income tax system taxes the first $50,000 of pre-tax income at a 10% rate, and additional income at a 20% rate, with these explicit tax revenues used for other public spending.

Under the adjusted intermediate baseline, Taxpayer 1 has $45,000 of income after accounting for the private healthcare cost as equivalent to a tax, and Taxpayer 2 has $95,000 of income. From this new baseline, the explicit taxes (and benefits of the public spending which they fund) are then calculated in other distributional studies. Taxpayer 1 pays $5000 per year in explicit taxes,[219] while Taxpayer 2 pays $15,000 in explicit taxes.[220] The government spending funded by these taxes is also allocated as in other distributional studies, to yield an estimate of the distributional effects from both taxes and government spending. For purposes of evaluating the benefits and burdens of taxes and government policies, the analysis accounts for both the implicit and explicit taxes and government spending. In this case, Taxpayer 1 has a total implicit and explicit tax liability of $10,000,[221] and Taxpayer 2 has a total implicit and explicit tax liability of $20,000.[222]

Now consider the alternative scenario where the government *does* provide a $5000 healthcare benefit.[223] In this case, the taxpayer would not be burdened by this private cost. Rather, the government spending for healthcare simply offsets the private cost characterized as a tax, and the taxpayers is not treated as having a net tax burden

218. *See supra* note 19 and accompanying text. Assume for the purposes of this illustration that the government does not provide other benefits or subsidies for private healthcare.

219. 10% of Taxpayer 1's pre-tax income of $50,000.

220. 10% of Taxpayer 2's first $50,000 of pre-tax income plus 20% of the next $50,000.

221. The $5000 in explicit taxes plus the $5000 in implicit taxes.

222. The $15,000 in explicit taxes plus the $5000 in implicit taxes.

223. *See supra* note 107 and accompanying text (describing both tax and in-kind benefits for healthcare).

or benefit. For example, if the government provides healthcare to Taxpayers 1 and 2, their antecedent baseline is still their market income less the healthcare cost: $45,000 of income to Taxpayer 1 and $95,000 of income to Taxpayer 2. When the government provides for the healthcare benefit, Taxpayer 1 is treated as having $50,000 of income after accounting for this benefit, and Taxpayer 2 as having $100,000. The distributional effects of all explicit taxes and other government spending are similarly allocated as in other distributional studies. In effect, the provision of the government healthcare results in a reversion to the baseline of market income, which is the starting point for distributional analysis in the studies described in Part II.

B. Characterizing Private Costs as Implicit Taxes

In principle, the methodology described in the preceding section could be used to characterize different categories of private costs as implicit taxes in distributional analysis. In this case as well, there is no objectively correct choice in defining which private costs should be so recharacterized as implicit taxes. Rather, different choices will yield different measures of economic inequality and of the effect of government policies, which may be more or less relevant for distributional analysis.

This section considers different possible approaches when defining the scope of private costs recharacterized as implicit taxes and the degree to which they would yield valuable findings for distributional studies. The discussion then evaluates the advantages of a basic needs baseline, which accounts only for a narrow set of expenditures for basic needs not provided by the government as implicit taxes.

1. All Private Expenditures

The broadest possible definition of private costs to be recharacterized as implicit taxes might include any private expenditure borne by a taxpayer for any purpose, including for purely discretionary consumption.[224] This perspective would imply deducting all private expenditures from the baseline of

224. For example, in this broad definition, a taxpayer may be considered to be "taxed" for purposes of distributional analysis if they purchase a haircut, or a yacht, which is not provided by the government.

market income. While technically feasible,[225] this approach would not yield a valuable measure of income inequality and would collapse any distinction between private rights and public duties.

In effect, deducting from income all private expenditures or consumption would yield a measure of savings inequality, rather than a measure of income inequality.[226] While a measure of savings inequality may be an independently valuable finding for distributional analysis, it would not compare taxpayers based on a measure of their income available for discretionary spending or savings.

More importantly, accounting for all such costs as taxes or government burdens would also imply an improperly broad scope of public duties, and of affirmative harms resulting from government inaction. For this reason, this approach would also not yield a meaningful measure of how government policies affect the income distribution. An approach characterizing all private consumption as taxes would be justified only from a baseline where individuals are presumed entitled to public provision for all their private consumption and are affirmatively burdened whenever the government fails to do so. For example, under this perspective a taxpayer who privately purchases a yacht would be characterized as affirmatively harmed or burdened by the government, when the yacht is not publicly provisioned for her private use.

More generally, this baseline would imply that all private consumption preferences are public obligations or responsibilities, with no role for private markets in providing for this consumption. Any distributional analysis measuring the effects of government interventions depends, however, upon a distinction between private entitlements and public benefits and burdens.[227] Treating all

225. For example, the Bureau of Labor Statistics published data on aggregate annual expenditures as well as expenditures for specific goods and services in different income groups. *See* U.S. BUREAU LAB. STAT., CONSUMER EXPENDITURE SURVEYS, CALENDAR YEAR AGGREGATE EXPENDITURE SHARES ACROSS SELECTED GROUPS TABLES BY DEMOGRAPHIC CHARACTERISTICS, 1989 FORWARD, https://www.bls.gov/cex/tables.htm (last visited Mar. 20, 2023). This data could be used to calculate the distributional effects of a deduction for these expenditures across income groups.

226. This approach would also encounter the additional practical challenge in distinguishing between expenditures that have elements of both consumption and savings. *Cf.* U.S. DEPT. OF TREASURY, BLUEPRINTS FOR BASIC TAX REFORM 108–09 (1977) (describing the proper treatment of expenditures for consumer durables under a consumption tax reform).

227. *See supra* Section I.A.1.

private expenditures as public responsibilities would essentially collapse this distinction and render the concept of a tax burden—or any burden imposed by government policies—meaningless.

2. Mandatory Spending

An alternative possible scope of private costs recharacterized as implicit taxes might include any private expenditure that laws or other government policies mandate. For example, some views suggest that a private cost should be evaluated as a tax burden only when it is compelled by the government through explicit legal requirements or obligations. For example, Saez and Zucman argue that the private costs of "mandatory" healthcare premiums should be treated as taxes in distributional analysis.[228] Comparing a mandatory private cost to an explicit tax in this manner may appear reasonable because a legal obligation to incur the expense more directly resembles an affirmative government burden. This logic also implies that purely discretionary private expenses not mandated by law should not be treated as taxes.

Defining the scope of private costs recharacterized as implicit taxes in this manner would not be objectively correct or incorrect. It would simply adopt another approach in delineating the scope of government actions. Distinguishing between discretionary or compulsory expenses, however, would not yield a clear limiting principle for defining the scope of taxes by omission. Many expenses have elements of both compulsion and discretion. For example, taxpayers are compelled to purchase food and shelter in order to subsist—regardless of whether doing so is mandated by the government or not—and even if taxpayers exercise discretion in deciding what forms these purchases take. Furthermore, many forms of consumption can be understood as indirectly compelled by legal requirements, such as purchasing food or shelter to avoid violating laws or sanctions for child neglect or vagrancy.[229]

Evaluating this category of mandatory private costs alone would characterize only a small subset of nontax rules and policies

228. Saez & Zucman, *supra* note 1, at 23–24.

229. *See, e.g.*, Sarah H. Ramsey & Douglas E. Abrams, *A Primer on Child Abuse and Neglect Law*, 61 JUV. & FAM. CT. J. 1, 11 (2010) (describing the United States Health and Human services standard for child neglect and arguing that "neglect may be found even though the parents' deficiencies stem primarily from financial distress rather than from intentional failure to meet their children's basic needs").

as affirmative tax burdens—when they mandate consumption—without accounting for the distributional effects from other legal rules and policies which do not take the form of mandatory expenditures.[230] As a result, this approach, like the prior definition of all private expenditures, would also yield only a limited measure of income inequality and the effect of government policies. As described above, the government can confer either benefits or burdens through tax rules, explicit spending, or non-budgetary rules and policies, as well as through either affirmative actions or inaction. This approach would characterize the burdens from an additional subset of government policies as taxes, based on their formal label as a legal mandate. In reality, however, an individual who purchases private healthcare that is not provided by the government will be economically burdened to the same degree, regardless of whether the purchase was required by the government or not.

3. Expenditures for Basic Needs

A basic needs baseline instead recharacterizes as implicit taxes only private expenditures for an individual's basic needs. This section first describes in general why distributional analysis should characterize private expenditures on basic needs as implicit taxes. The discussion then considers alternatives for defining the scope of these private expenditures.[231]

230. *See, e.g.*, *supra* notes 173–179 and accompanying text (describing other types of nontax legal rules and policies that can have distributional effects but would still not be accounted for under a basic needs baseline).

231. The costs of basic needs may also vary geographically. For example, housing costs vary significantly across both states and localities, and current tax subsidies and government policies often do not account for these varying costs. *See generally, e.g.*, Michelle Layser, *How Place-Based Tax Incentives Can Reduce Geographic Inequality*, 74 TAX L. REV. 1, 7–11 (2020) (describing how current tax rules often fail to take geographic factors into account). These varying costs can also result, however, from personal choices to live in costlier or more affordable areas, and therefore may also reflect consumption preferences. Any distributional study focused on market income encounters this same complication, since comparing individuals based on their market income alone does not indicate their varying basic living expenses. The simplest method for constructing a basic needs baseline would be to use simplified and uniform estimates of the costs of basic needs, without accounting for these geographic variations. Geographic adjustments could also be made to these uniform estimates, however, based on indices of relative prices for different categories of basic needs in different geographic areas. For example, the Bureau of Economic Analysis publishes data on regional price parities for consumption across states. *See, e.g.*, U.S. BUREAU ECON.

Distributional analysis should evaluate expenses for basic needs differently for three reasons. First, starting distributional analysis from a baseline of basic needs reflects the areas of broad agreement—at least in principle—across varying views of distributive justice as to the government's basic responsibilities or duties to its citizens, and individuals' basic entitlements or expectations. A diversity of approaches to distributive justice agree that at least a minimum scope of private individual needs and rights should be publicly assured. Some views articulate these basic needs from a deontological perspective, as basic human rights to which every individual is entitled.[232] From a consequentialist perspective, in contrast, these needs may not be viewed as inviolable government obligations or duties,[233] but may still be afforded sufficient weight and priority to ensuring certain basic needs as to render these policies effectively necessary because of their large potential welfare effects.[234] Even libertarian or entitlement-based perspectives—which would generally sanction only minimal government intervention in private holdings—nonetheless typically contemplate public support for at least a minimum level of basic needs.[235] Of course, these different perspectives would still define the scope of these basic needs or entitlements differently, despite the extent to which they agree on the basic premise that such a category of expenses exists.

Second, a basic needs baseline would reflect the scope of private costs that most closely resembles affirmative government harms when they are not provided.[236] There is no conceptually right answer to the question of when a government inaction should be equated with an affirmative harm. A basic needs baseline would

ANALYSIS, REAL PERSONAL CONSUMPTION EXPENDITURES AND PERSONAL INCOME BY STATE, 2020 (2021), https://www.bea.gov/sites/default/files/2021-12/rpp1221.pdf.

232. *See, e.g.*, G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

233. *Id.*

234. *See, e.g.*, Arnold C. Harberger, *Basic Needs Versus Distributional Weights in Social Cost-Benefit Analysis*, 32 ECON. DEV. & CULTURAL CHANGE 455 (1984) (describing an alternative rationale for meeting basic needs through their distributional weighting in a welfare economics framework).

235. *See, e.g.*, MILTON FRIEDMAN, CAPITALISM AND FREEDOM: FORTIETH ANNIVERSARY EDITION 190–95 (2002); *see also, generally*, Miranda Perry Fleischer & Daniel Hemel, *Atlas Nods: The Libertarian Case for a Basic Income*, 2017 WIS. L. REV. 1189 (describing how libertarian perspectives could sanction a minimum level of public economic support).

236. *See supra* Section II.B.3.

account for the expenses that have an essential role in subsistence and personhood and therefore are most likely to constitute affirmative deprivations when they are not provisioned.

Finally, and relatedly, a basic needs baseline would account for a scope of expenses that are not discretionary but rather compulsory, and therefore should not be included in comparing individuals' relative spending ability. As described in greater detail in Section III.C below, performing distributional analysis from a basic needs baseline also provides a valuable measure of inequality. This baseline accounts for the expenses that every individual incurs in providing for basic subsistence, where basic subsistence is defined as avoiding essential deprivations. In effect, this baseline adopts the same "clear income" principle underlying tax rules for purposes of distributional analysis.[237]

As a practical matter, the scope of these needs can be defined in accordance with different articulations of the prerequisites for a person's basic standard of living, security, dignity, and opportunity. For example, the United Nations Universal Declaration of Human Rights provides that all people are entitled to certain basic rights integral to personhood, including the rights to personal liberty, security, equality before the law, and property ownership.[238] Articulations of basic human needs also often include material needs necessary for a basic standard of living, including the rights to housing, healthcare, food,[239] and education.[240] A broader view might also account for a minimum level of economic or financial support.[241] For example, many basic income advocates

237. *See supra* notes 72–75 and accompanying text.

238. United Nations, *supra* note 232.

239. *See id.* at art. 25; *see also supra* notes 201–202 and accompanying text (describing Friedman's articulation of a scope of basic needs which the government should provide to fulfil its duty of protection).

240. *See* G.A. Res. 217 (III) A, at art. 26.

241. *See* Diana T. Myers, *Introduction* to ECONOMIC JUSTICE: PRIVATE RIGHTS AND PUBLIC RESPONSIBILITIES 1, 2 (Kenneth Kipnis & Diana T. Meyers eds., 1985) (describing how "[a] theory of economic justice may start from a list of rights and ask what economic arrangements are necessary to respect them"); Shareen Hertel & Lanse Minkler, *Economic Rights: The Terrain, in* ECONOMIC RIGHTS: CONCEPTUAL, MEASUREMENT, AND POLICY ISSUES 1, 1–2 (Shareen Hertel & Lanse Minkler eds., 2007) (articulating the view that poverty should be eliminated on the basis of an "individual's inherent entitlement," and not just because it may be a "desirable social goal").

argue that a minimum level of economic support is necessary to ensure basic human dignity,[242] autonomy, and civic participation.[243]

Different articulations of basic needs may also imply different levels of support, rather than just different categories of needs. While some views would require the government to provide a level of basic support for minimum subsistence,[244] other views would require a more substantial level of support—beyond that necessary for subsistence—to ensure basic human dignity and citizenship.[245]

For purposes of constructing the basic needs baseline, one approach would be to subtract specific amounts attributable to specific categories of expenditures. These category-specific amounts could be calculated using available data on household expenditures for different forms of consumption.[246] A simpler approach approximates these amounts by reference to aggregate estimates of costs necessary to support a basic standard of living. For example, the simplest way to construct the basic needs baseline would be to deduct from market income the applicable U.S. federal poverty guidelines used to determine eligibility for federal aid programs.[247]

Of course, the government does currently provide—or partially provides—for many of the basic needs advocated by these views.[248] The government provides in-kind benefits for many basic needs,

242. *See* GENE SPERLING, ECONOMIC DIGNITY 23–26 (2020) (arguing that the principle of "positive dignity requires the affirmative use of public resources to ensure the basic elements of economic security and economic opportunity that are integral to dignity").

243. *See generally, e.g.*, PHILIPPE VAN PARIJS & YANNICK VANDERBORGHT, BASIC INCOME: A RADICAL PROPOSAL FOR A FREE SOCIETY AND A SANE ECONOMY (2017).

244. *See, e.g.*, Milton Friedman's proposal for a negative income tax designed to provide a minimum level of economic support to alleviate extreme poverty. FRIEDMAN, *supra* note 235, at 190–95.

245. *See, e.g.*, JEREMY WALDRON, LIBERAL RIGHTS: COLLECTED PAPERS 1981–1991, at 270 (1993) (arguing that the social minimum should be designed so as "to secure not just the simmering acquiescence of an underclass, but enough active support to constitute an entire social structure and sustain it through the ordinary vicissitudes of political life").

246. For example, these adjustments could be made using the data provided in U.S. BUREAU LAB. STAT., *supra* note 225.

247. These guidelines are used to determine eligibility for federal programs including Medicaid. For 2022, the federal poverty guideline for a family of 4 is $27,750. Annual Update of the HHS Poverty Guidelines, 87 Fed. Reg. 3315 (Jan. 21, 2022).

248. *See generally Government Benefits*, USA.GOV, https://www.usa.gov/benefits (last visited Mar. 18, 2023) (offering a comprehensive list of current government benefit and financial assistance programs).

including for medical care[249] and for food and housing.[250] The government also provides economic benefits and subsidies in these areas through the tax system—and cash transfers in some cases—such as through the child tax credit[251] and the earned income tax credit.[252] In these cases where the government does fully or partially provide for a basic need, the methodology introduced in the preceding section accounts only for any net residual private costs for these needs as implicit taxes, in excess of amounts provided by the government.[253]

C. Implications for Distributional Analysis

This section evaluates the advantages and limitations of starting distributional analysis from a basic needs baseline. This approach measures income in a way that more accurately reflects the reality of household budgets and economic difference and yields a different assessment of income inequality and the effect of government policies. As this section describes, the rationale for the basic needs baseline does not represent a radical departure from general principles of distributional analysis, but rather a different approach in addressing its measurement challenges and inherent complications.

1. Measuring Income Inequality and the Effect of Government Policies

a. A Different Measure of Income Inequality. Starting distributional analysis from a basic needs baseline offers a measure of economic difference which more accurately reflects the reality of household budgets. Instead of comparing taxpayers based on their market income, a basic needs baseline compares individuals based on their disposable income available for savings or discretionary consumption, after accounting for their basic needs. This measure reflects the view that disposable income is an important measure of economic inequality and that income which must be reserved for basic needs should be accounted for differently because it does not

249. *See supra* note 107 and accompanying text.

250. For discussion of these programs, see *supra* note 168.

251. I.R.C. § 24.

252. *Id.* at § 32.

253. *See supra* note 223 and accompanying text.

reflect disposable income available for discretionary consumption or savings.[254]

Comparing individuals by reference to a basic needs baseline will generally indicate greater income inequality—as compared to the inequality of all market income—although the magnitude of this change will depend upon the scope of the household consumption expenditures characterized as implicit taxes in the distributional analysis. Household expenditures for basic needs, such as for food, healthcare, or housing, generally represent a regressive economic burden,[255] to the extent that lower-income households pay a proportionally higher percentage of their income on these basic needs.[256] Conversely, subtracting these amounts from household income to construct a basic needs baseline will imply proportionally less income at the bottom of the distribution.

This different measure of income inequality may be illustrated by reconsidering the example in Section II.C, where Taxpayer 1 has $50,000 of income and Taxpayer 2 has $100,000 of income. In that scenario, comparing their market income suggests a relatively moderate level of inequality, with Taxpayer 2 earning approximately 67% of the taxpayers' combined market income.[257]

To illustrate how a basic needs baseline offers a different understanding of economic difference, consider now a scenario where each of the two taxpayers pays $20,000 in private housing costs. After accounting for these costs, Taxpayer 1 only has $30,000 of remaining disposable income, and Taxpayer 2 has $80,000 of remaining disposable income. If income inequality were measured by reference to income after accounting for basic needs, including their housing expenses, Taxpayer 2 would now have more than double the disposable income of Taxpayer 1[258] and would earn approximately 73% of the taxpayers' combined disposable income

254. *See supra* notes 69–75, 89–90 and accompanying text.

255. This consideration reflects the same logic suggested by economist Gabriel Zucman and others when describing the regressive effects from treating private healthcare costs as taxes. *See supra* note 21 and accompanying text.

256. *See, e.g.*, the estimated expenditures for basic needs across income groups in U.S. BUREAU LAB. STAT., *supra* note 225; *see also* U.S. BUREAU LAB. STAT., CONSUMER EXPENDITURES IN 2020, at 8–13 (2021), https://www.bls.gov/opub/reports/consumer-expenditures/2020/pdf/home.pdf (describing expenditures for basic needs for each income quintile).

257. *Supra* notes 208–211 and accompanying text.

258. $80,000/$30,000.

available for discretionary consumption or savings.[259] Comparing taxpayers on this alternative basis allows for a measure of their actual relative economic spending ability, or discretionary disposable income, after accounting for their basic consumption expenses.

b. The Effect of Government Policies. A basic needs baseline also offers a different assessment of the effect of taxes and government policies, as compared to the findings in traditional distributional analysis. Most critically, this method characterizes a scope of government inaction—when it does not provide for basic needs—as equivalent to affirmative burdens imposed on affected individuals, instead of characterizing corresponding government actions as affirmative benefits when it does provide for these needs. In this way, a basic needs baseline repositions the distinction between income before and after government taxes and spending. It does so by treating household income as inextricably defined not only by what the government provides but also by what it does not provide.

A basic needs baseline will also likely suggest lower redistributive effects from current taxes and government spending. Adding an additional tax that disproportionately burdens lower-income taxpayers to the calculation of total tax burdens reduces the overall relative benefit to lower-income taxpayers from progressive taxes and government spending. Where the government does provide the benefit for the basic need, the value of this benefit offsets the implicit tax but will not result in a net government transfer to the individual.[260]

For illustration of the different effects of taxes and spending under a basic needs baseline, consider again the example in section II.C where Taxpayers 1 and 2 are each subject to a progressive rate schedule which taxes the first $50,000 of income at a 20% rate and additional income at a 40% rate, and where each receives a $20,000 housing benefit. Under the traditional approach to distributional analysis that begins with a baseline of market income, Taxpayer 2 would have approximately 67% of the total market income

259. $80,000/$110,000.

260. The CBO finds, for example, that the narrow scope of government transfers it measures, many of which provide for basic needs, tend to have significant progressive effects. CONG. BUDGET OFF., *supra* note 15, at 32–35. Of course, many of these transfers are currently means-tested and therefore by definition have even smaller proportional benefits for high earners than would universal transfers to all taxpayers.

but only 60% of the total income after accounting for taxes and government spending.[261]

A basic needs baseline indicates more moderate distributional effects from the tax rate schedule and the housing benefit. In this scenario, each taxpayer initially bears an implicit tax of $20,000 equal to their housing costs. As described above, Taxpayer 1 has $30,000 in the intermediate basic needs baseline of remaining disposable market income while Taxpayer 2 has $80,000, or approximately 73% of the total income after accounting for basic needs.[262]

From this alternative basic needs baseline, the distributive effects of the explicit taxes and spending are allocated as in other distributive policies. In this case, the $20,000 benefit of the government-provided housing offsets the implicit tax attributable to this expense. In this case, Taxpayer 1 experiences a net $10,000 benefit from the explicit taxes and government spending,[263] and Taxpayer 2 experiences a net $10,000 burden.[264] After accounting for these explicit taxes and government spending, Taxpayer 1 has $40,000 of remaining disposable income, and Taxpayer 2 has $70,000. In this case, Taxpayer 2 still has approximately 64% of the total disposable income after explicit taxes and spending,[265] instead of the 60% of the total income after these government policies found under a traditional distributional analysis.

Netting these explicit taxes and spending with the implicit taxes used in constructing the basic needs baseline yields a total net burden for Taxpayer 1 of $10,000,[266] while Taxpayer 2 bears a total net burden of $30,000.[267] From this alternative perspective, Taxpayer 1 bears a net burden of $10,000, for 25% of their total burden, instead of receiving a net benefit of $10,000 as a traditional distributive analysis would suggest.

The differing outcomes in these examples under the alternative methodologies also highlight again the central importance of

261. *See supra* Section II.C.2.

262. *See supra* notes 258–259 and accompanying text.

263. The sum of the ($10,000) of explicit taxes paid and the $20,000 housing benefit received.

264. The sum of ($30,000) of explicit taxes paid and the $20,000 housing benefit received.

265. $70,000 / $110,000.

266. The sum of the ($20,000) implicit tax, the ($10,000) of explicit taxes paid, and the $20,000 housing benefit received.

267. The sum of the ($20,000) implicit tax, the ($30,000) of explicit taxes paid, and the $20,000 housing benefit received.

assumptions in characterizing the benefits and burdens of taxes and government spending in distributional analysis. As these examples illustrate, choices in defining the baseline of market income and in characterizing government actions and inaction will have first-order consequences for the ultimate assessments of income inequality and the effect of taxes and government policies.

Accounting for private costs as burdens in a basic needs baseline departs from a symmetric accounting of both the benefits and burdens from taxes and spending.[268] If the government provides for a basic need, then its funding would have to come from additional taxes or other revenue sources. Under a basic needs baseline, however, the provision for the basic need does not count as an affirmative benefit. Alternatively, in the case where taxpayers instead bear private healthcare costs, taxpayers also potentially save the extra taxes that would be paid to fund healthcare as a public benefit, which in either case could be an economic "wash" for the taxpayer.[269] That is, this approach does not treat a certain government transfer as a benefit, even as it treats the taxes used to fund it as a burden. For the same reason, a basic needs baseline embeds an asymmetry by accounting for certain effects from government policies—and specifically the government's role in providing for basic needs—in the initial baseline used for assessing the effects of taxes and government spending.

These asymmetries, however, are intentional features of a basic needs baseline—rather than conceptual flaws—that are designed to redress limitations of current methods in distributional analysis. Furthermore, these current methods reflect similar asymmetries in accounting for both taxes and spending, and in determining the income baseline used for assessing the effects of taxes and government spending. As described above, current methods of distributional analysis also do not consistently account for the benefits and burdens of spending and corresponding taxes symmetrically.[270] In this manner, the choices motivating a basic

268. *See supra* Section I.B.2.

269. This basic economic equivalency between public benefits and the additional tax revenue required to fund them explains the semantic or rhetorical aspect of framing private costs as implicit taxes described *supra* note 22 and accompanying text.

270. *See, e.g.*, Perese, *supra* note 116, at 11 (noting that the CBO's new framework for distributional analysis "does not treat" certain "benefits and taxes that finance them . . . symmetrically"); *see also supra* note 140 and accompanying text.

needs baseline reflect a similar choice in distributional analysis between methods that can offer mathematical symmetry and those that provide relevant measures of inequality.[271]

Furthermore, in recent years more than 40% of federal spending has been funded by public debt rather than by tax revenues,[272] and distributional studies can only speculate as to who will ultimately bear the burden of this debt.[273] To the extent that public debt with uncertain distributional burdens funds government spending that is allocated in distributional analysis, current methods similarly reflect an additional potentially asymmetric allocation of the sources and uses of public funds.

It may also appear contradictory to account for a scope of effects from government policies in the initial baseline used for assessing the effects of taxes and government spending. As argued above, however, all distributional studies use an antecedent baseline of market income. Any such income baseline necessarily reflects certain benefits from government spending and policies that result from taxes explicitly accounted for as affirmative government burdens.[274] None of these approaches reflect a fully consistent or principled distinction when accounting for some government benefits in the antecedent baseline and not others. In all events, the overriding goal of distributional analysis is to yield meaningful measures of economic difference and the effect of government policies,[275] rather than an unattainable conceptual symmetry in accounting for income both before and after the effects of government policies.

2. Revisiting the Measurement Challenges

A basic needs baseline reflects a different approach in addressing the measurement challenges in distributional analysis, rather than a radical departure from its general principles. In other cases, a basic needs baseline encounters many of the same challenges and choices as any method of distributional analysis.

271. *See* Saez & Zucman, *supra* note 1, at 24–25 (discussing these unavoidable tradeoffs in distributional analysis).

272. *See supra* note 101 and accompanying text.

273. *See supra* notes 101–103 and accompanying text.

274. *See supra* Section II.B.2.

275. *See supra* Section I.A.1.

With respect to the challenge in defining income and inequality,[276] a basic needs baseline reflects a different view of the relevant measure of income inequality.[277] In particular, this method compares taxpayers' actual disposable cash income after accounting for basic needs and thereby offers a different perspective on economic inequality and how it is affected by taxes and government policies. This approach draws from the arguments in the prior literature that distributional analysis should account differently for income that must be reserved for basic needs and is therefore not available for discretionary consumption or savings.[278] Beyond this basic adjustment, however, the method introduced in this Article encounters the same additional measurement challenges and choices as in other distributional studies, including the choice between distributing all national income or a smaller subset of household income, and the choices in imputing income which is not readily observable or reported on tax data.[279]

With respect to the challenges in netting both taxes and government spending,[280] distributional studies typically conduct an integrated analysis of both the sources and uses of government funds and of both taxes and spending programs. A basic needs baseline applies this same approach but offers a different characterization of benefits and burdens from taxes and government spending. In the familiar scenario where taxes and spending are netted in distributional analysis, the scope of taxes netted against spending includes only private costs explicitly paid to the government for public purposes. A basic needs baseline, in contrast, broadens this definition to also account for taxes incurred in the form of private burdens paid for private consumption. In this case, an implicit tax imposed on an individual through government inaction is evaluated together with the distributional effects of both explicit taxes and government spending.

A basic needs baseline similarly offers a different approach to the challenges in equating tax or nontax fiscal policies.[281] In the typical case where distributional analysis equates tax or nontax

276. *Supra* Section I.B.1.

277. *See supra* notes 256–63 and accompanying text.

278. *Supra* notes 73–77 and accompanying text.

279. *See supra* notes 79–92 and accompanying text.

280. *See supra* Section I.B.2.

281. *See supra* Section I.B.3.

rules, the expense characterized as a "tax" is a public burden incurred by taxpayers from either explicit taxes or equivalent nontax rules, and the benefit takes the form of either cash or in-kind transfers or spending from the government. A basic needs baseline extends this same logic in equating forms of private in-kind consumption with explicit public tax burdens. In this case, a nontax rule or policy (such as the government not providing in-kind healthcare) is implicitly equated with an affirmative tax imposed on the individual.

Finally, with respect to the challenges in defining the antecedent baseline,[282] a basic needs baseline defines a different scope of private entitlements and public obligations than in traditional distributional analysis and therefore a different dividing line between market outcomes and the effect of government actions. As described above, the choice of the antecedent baseline necessarily reflects assumptions as to taxpayers' obligations to pay taxes, to bear nontax public burdens, or to receive benefits from the government.[283] A basic needs baseline, in contrast, broadens this perspective to also account for certain private burdens that are not provided by the government in defining the antecedent baseline. That is, this baseline reverses the traditional assumptions by also accounting for benefits the government does not provide to individuals as burdens individuals consequently incur as a private cost, instead of only accounting for benefits the government affirmatively provides and burdens individuals incur as public costs.

3. Revisiting the Inherent Complications

A basic needs baseline also offers a different approach in addressing the inherent complications in distributional analysis, as compared to the approach in traditional distributional analysis. Like any method of distributional analysis, this approach does not offer a resolution to these inherent complications. Rather, a basic needs baseline offers a rebalancing of the compromises made in light of these challenges when defining the antecedent baseline and the effect of government policies. This approach can address the limitations resulting from these complications as well as their

282. *See supra* Section I.B.4.

283. *See supra* Section I.B.4.b.

distortive effects on assessments of income inequality and the effect of government policies.

As described above, distributional studies typically measure the distribution of government spending. This choice may appear reasonable, in light of the challenges in accurately measuring the distributive effects of spending and other government policies from the perspective of affected individual budgets.[284] This choice, however, can result in a skewed assessment of the effects from government actions, since this spending may not result in commensurate changes to household budgets and reflects only a portion of the distributive impacts from all government policies.[285]

A basic needs baseline neither resolves this challenge nor offers an objectively correct method for comprehensively evaluating the distributive effects of government policies from the perspective of individual budgets. Instead, this approach offers a more limited adjustment to reflect an individual's budget constraints when the government does not provide for basic needs. In effect, this approach incorporates an additional adjustment from the perspective of affected private budgets within an approach to distributional analysis that still generally measures benefits by reference to the distribution of government spending.

A basic needs baseline also offers a rebalancing, rather than a resolution, in addressing the circularity problem and the basic challenge in distinguishing between market income and income after government actions. As described above, distributional studies typically adopt conventions in distinguishing between antecedent market income and income after both benefits and burdens provided by the government, even though market income already reflects benefits and burdens from government policies.[286]

A basic needs baseline offers a narrow adjustment to the baseline of market income to yield a more balanced assessment of the effects from government policy at the top and bottom of the income distribution. The baseline of market income already reflects

284. Alex Raskolnikov argues, however, that policymakers should nonetheless take into consideration the anticipated distributive effect of a broader scope of policies despite these measurement challenges, particularly when the efficiency effects from the policies are smaller or suspect, or when the policies are likely to "be socially beneficial overall." Raskolnikov, *supra* note 174, at 1646–47.

285. *Supra* Section II.B.1.

286. *Supra* Section II.B.2.

benefits from government policies that tend to disproportionately benefit higher-income individuals.[287] A basic needs baseline offers a partial correction to this imbalance, by also including a category of private costs disproportionately born by lower-income taxpayers in this same baseline.

Finally, distributional studies typically account only for the distributive effects of affirmative government actions, notwithstanding the potential for both government action or inaction to burden or benefit affected individuals.[288] An accurate accounting of the burdens and benefits imposed through both government action and inaction would not be possible, since such an accounting would necessarily depend upon contingent assumptions as to an individual's baseline entitlements and how they are affected by government policies.

In addressing this inherent complication, a basic needs baseline once again offers a readjustment rather than a comprehensive solution. It only accounts for a limited scope of government inaction as equivalent to imposing affirmative burdens. By limiting these expenses to basic needs, this approach conforms to views in the literature as to the government's basic duties or obligations as well as an individual's basic expectations or entitlements.[289] It thus defines a scope of government inaction which might be more readily understood as imposing affirmative harms on individuals.[290]

CONCLUSION

This Article identifies basic limitations of current methods of distributional analysis—in measuring income inequality and the effects of taxes and government policies—and introduces a new methodological approach that can address these limitations. First, the starting baseline of market income used in traditional distributional studies does not reflect the reality of differences in household budgets, because it does not distinguish between

287. *See, e.g.*, the benefits from the definition and protection of property entitlements described *supra* notes 185–186 and accompanying text.

288. *Supra* Section II.B.3.

289. *See supra* Section III.B.3.

290. *See, e.g.*, Barry Friedman's argument described *supra* notes 201–202 and accompanying text that the government affirmatively harms individuals when it fails to provide for basic needs, in the same manner as if it violated essential rights to protection and personhood.

true disposable income available for discretionary consumption or savings and income which must be reserved for basic needs. Second, any approach to distributional analysis also encounters measurement challenges and inherent limitations when defining a baseline of market income and measuring the effects of government actions.

Because they begin from a market income baseline, current distributional studies can understate inequalities in true disposable income. Furthermore, because of their measurement limitations, these studies can both overstate the distributive effects of government benefits to lower-income individuals and understate benefits at the top of the distribution. These approaches can also cement government benefits that disproportionately accrue to higher-income individuals into the neutral market baseline.

This Article's new methodology begins distributional analysis from an alternative "basic needs baseline"—which treats expenditures for certain basic needs as implicit taxes to the extent they are not provided by the government—rather than from a measure of market income. This alternative methodology more accurately reflects the reality of differences in household budgets and redresses—but does not resolve—the imbalances in distributional analysis resulting from its unavoidable limitations. This approach also strikes a different balance in distinguishing between public and private entitlements and obligations, as well as between government action and inaction, as compared to the assumptions in traditional distributional studies. As a result, this Article's approach ultimately yields a new and valuable account of income inequality and how it is affected by government policies.