

What is Tax Scholarship, and Who Decides?

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Shari Motro, [Scholarship Against Desire](#), 27 *Yale J. L. & Human.* 115 (2015).

I typically begin my Federal Income Tax course discussing how tax is the one area of law that touches every aspect of life, from birth to death, from marriage to divorce, from retirement to child-care, and everything in between. Similarly, tax scholars write on topics ranging from same-sex marriage and the earned income tax credit, on the one hand, to carried interest and corporate inversions, on the other. By this point, my colleagues are surely tired of hearing me repeat how tax law has something meaningful to say about everything.

Given this incredible breadth and diversity of the tax law, why is it that most people think of tax scholarship primarily as number-crunching, or business planning, or law and economics? While I happen to be sympathetic to this point of view, primarily because it happens to coincide with my primary interests, why is it so often considered the standard for the best of tax scholarship?

[Shari Motro](#) considers this phenomenon in her article *Scholarship Against Desire* (“SAD”). In particular, among other things, in SAD Motro examines the role of the legal academy as a conforming institution by examining the path of one of her recent, and by all objective measures successful, articles—[Preglimony](#). Motro published *Preglimony* in the *Stanford Law Review* and presented it at several faculty workshops (including one at Washington University) and numerous other conferences. In SAD, however, Motro details how the institutions of the legal academy—tenure, conference invitations, publication placement, among others—subtly influenced her to change the scope and focus of *Preglimony* from her initial normative goals.

SAD is a powerful piece of writing. In it, Motro is honest and vulnerable in a way that few legal academics are willing to be. She writes about how the desire to be accepted and validated can weaken or undermine the normative goals of legal scholarship; in her own words, how “*Preglimony* was like consensual unwanted sex.” SAD is compelling both as a narrative of the legal writing and publishing process, and as a familiar story of an emerging academic within the legal academy. These points notwithstanding, my initial reaction was that SAD was not necessarily “scholarship” as I typically thought of it. My second reaction was to stop and ask myself a number of questions—why did I feel this way? what contributes to the academic debate? what adds to the state of knowledge in the world? This internal debate ultimately led me to the question that became the title of this post: what is tax scholarship, and who decides?

From this perspective, by any objective metric, I have had a deeply privileged academic career and I am extremely grateful for it. But in reading SAD I began to consider to what extent I too may have faced subtle pressures that have affected my scholarship, or even worse to what extent I may have contributed to them for others. For example: if I only review articles sympathetic to my own scholarship am I reinforcing existing biases in the legal academy? Do I place models in certain articles because they are truly necessary or to impress readers? Do I submit papers to conferences to get feedback or to be included in the club? Even if I do such things for less than ideal reasons, does that really undermine my ultimate scholarly goals?

Ultimately, SAD invites, and challenges, each of us to examine ourselves as academic writers. In particular, Motro’s article prompted a realization for me, one that forced me to examine the arc of my own career. If the premise of SAD is correct, the then the legal academy as a whole, of which I am a part, (though perhaps implicitly or unintentionally) could well be imposing multiple types of conformity not only on legal scholarship, but also ultimately on ideas. Collectively, we as tax professors (and law professors more generally) can profess to the ideals of diversity of viewpoints all we

want, but if the institutions we build and perpetuate undermine those ideals, then perhaps we are not truly as committed to them as we believe.

[A couple of years ago I wrote that](#) before I joined the academy the one thing I most admired and respected about academia was the nature of the scholarly debate... “Being wrong was almost as valuable as being right, so long as the ideas contributed to [the] advancement of knowledge in the world.” In reading SAD, I ultimately came to realize (admittedly slowly) that it accomplishes much of what I described as the ultimate goals of legal scholarship, even if it looks and feels completely different from what I have considered “scholarship” in the past. This is true notwithstanding that I am still not convinced that I agree with many, if not most, of the portrayals of the legal academy in SAD. Thus, upon reflection, and measured by the standard for scholarship to which I aspire, I consider SAD a successful piece of scholarship. Perhaps that is enough for a start.

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