

TAX JUSTICE FOCUS

The newsletter of the tax justice network



THE SOCIAL INJUSTICE OF CORPORATE TAX AVOIDANCE

When thinking about the injustice of corporate tax avoidance, the most important thought to keep in mind is that there is nothing “natural” or unavoidable about the particular structure of that now-ubiquitous economic institution, the limited-liability corporation. By Martin O’Neill.

It is significant to note that the corporation in its modern form is granted certain privileges. Firstly, the privilege of limited liability, whereby corporate investors are not held liable for losses beyond the value of their investments; and, secondly, the privilege of corporate ‘personality’, whereby the corporation is treated as an ‘artificial person’, legally distinct from its owners and managers, and with its own legal rights and entitlements.

As a society, we collectively have no reason to grant these kinds of privileges if it is not for a concomitant public benefit. A straightforward conception of *reciprocity* suggests that, as we

have granted these organizations the benefit of being treated as self-contained legal entities, so we can demand some social good back from them in return. Moreover, the benefit provided by corporations needs to be sufficiently substantial, such that we are able to justify these arrangements to the members of society who are affected by them.

There is a conventionality to the corporate form, just as there is a conventionality to the distribution of property under any particular system of taxation and property rights. There is, indeed, an analogy between these two kinds of convention, and between the ways in

which each convention has become so deeply entrenched that it can create certain kinds of distortion in our political thinking.

Political philosophers Thomas Nagel and Liam Murphy make the following important observations regarding the strength of people’s intuitions that they have some right of ownership of their pre-tax income. They first note that “most conventions, if they are sufficiently entrenched, acquire the appearance of natural norms; their conventionality becomes invisible. That is part of what gives them their strength, a strength they would lack if they were not internalized in that way.”¹ Nagel and Murphy note that it seems completely natural to appeal to property rights when arguing about rules of taxation. But in truth, property

¹ Liam Murphy and Thomas Nagel, (2002), *The Myth of Ownership: Taxes and Justice* (OUP), p. 9.

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How many companies can you fit onto a Luxembourg postbox?

argue in a circle. One can neither criticize nor justify an economic regime by taking as an independent norm something that is, in fact, one of its consequences.”²

Similarly, an error of circular reasoning is made whenever one hears an appeal to corporate rights, or to the entitlements of corporations considered as legal persons, with regard to questions of how we should regulate their tax affairs. “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 has independent existence and validity.”

If one believes in the conventionality of both the distribution of property within a society, and of the corporate form itself, then there is even a kind of *double conventionality* with regard to corporate property rights. Corporations, rather than being holders of *ex ante* entitlements, therefore need to earn their ‘social license to operate’. One important way in which they can do this is if they can be placed in a regulatory framework, and taxed in such a way that is conducive towards the pursuit of social justice, rather than being inimical to such goals. If particular corporations cannot demonstrate that they meet such a standard, then we have no reason to grant them their ‘social license to operate’. We would be infringing no *ex ante* rights or entitlements if we outlawed any forms of corporate activity that created substantial barriers to the attainment of social justice, or other shared democratic goals.

² Liam Murphy and Thomas Nagel, (2002), *Ibid.*, p. 9.

“Corporations earn their ‘social license to operate’ insofar as they contribute to the general good of the societies in which they exist, facilitating rather than frustrating the achievement of social justice.”

With this general framework for thinking about corporations, property rights and taxation now in place, we can turn to dealing directly with the injustice of corporate tax avoidance itself.

Traditionally, a distinction has been drawn between tax evasion, as the illegal activity of evading one’s full tax liabilities, and tax avoidance, as the legal activity of arranging one’s affairs, within the letter of the law, so as to minimize one’s tax exposure. Unsurprisingly, it is hard to hold a clear line between the two, and many schemes of tax avoidance shade over towards tax evasion.

Despite its technical legality, however, tax avoidance is an extremely troubling business, especially when undertaken on the scale that it is practiced by large corporations. Some of the problems with tax avoidance are these:

Tax avoidance is deeply anti-democratic. It frustrates the legislative intentions embodied in tax legislation, in favour of allowing the distribution of ownership in the economy to be determined by unaccountable private agents.

Tax avoidance ignores the principle of reciprocity discussed above. If the privileges of limited liability incorporation are to be balanced by corporate responsibilities to

society, then the very minimum of meeting those responsibilities should be meeting the full expectation of a tax contribution. Tax avoidance oversteps the legitimate freedom of corporations in a democratic society.

Tax avoidance destabilizes the fair division of responsibility between the state and the corporation. Corporations earn their ‘social license to operate’ insofar as they contribute to the general good of the societies in which they exist, facilitating rather than frustrating the achievement of social justice. They can only do this when they contribute towards the achievement of social justice by providing revenue to the state that can be used to pursue valuable social policies. A corporation which shirks its minimal commitment to uphold ‘the basic rules of society’, including its taxation rules, frustrates the agencies of the state in performing the functions which hold up the state’s side of the division of moral labour.

So it is straightforward to explain what is wrong with corporate tax avoidance, especially when one considers the fundamental nature of the relationship between corporations and states. With the philosophical issues settled, it is time to find solutions to the problem.

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TAX JUSTICE AND PHILOSOPHY

editorial

Paul Sagar

Welcome to a special edition on the theme of tax justice and political philosophy. This may seem a strange combination. After all, the Tax Justice Network is a research and advocacy group, dedicated to raising awareness and promoting reform of such practicalities as international accounting standards and tax information exchange. Philosophy, by contrast, turns the mind to quiet and abstract contemplation; to tweed jackets, dusty tomes and ivory towers.

Yet there is a connection here that escapes the hasty observer. John Maynard Keynes remarked that practical men “are usually the slaves of some defunct economist.” Less remembered is the sentence preceding it: *the ideas of economists and political philosophers, both when they are right and when they are wrong, are more powerful than is commonly understood. Indeed the world is ruled by little else.*”

In a world ruled by ideas, the apparently disconnected enquiries of philosophers eventually shape world-views, orientate debates, influence elections and direct policies. Those doubting this statement should cast an eye to history. For whilst applied Marxism was certainly a humanitarian disaster, who could deny the profound impact of Karl Marx the philosopher-economist?

But there is more value to philosophy than its long-run impact on practical politics. For

it is through philosophy that we explore our beliefs and discover where our values lie. This, after all, is particularly important for the Tax Justice Network and everyone who demands tax *fairness* – two terms loaded with centuries of philosophical baggage.

Fittingly, this edition introduces a spectrum of philosophical approaches. John Pugh MP offers insights from a faith perspective, drawing upon the centuries-old tradition of philosophical Christianity. One need not share Dr Pugh’s spiritual commitments to find significance in his reflections.

In similar vein, Martin McIvor offers us a perspective from the Marxian tradition. The financial crisis has generated an upsurge of interest – frequently superficial – in Marx’s thinking. Dr McIvor shows that notwithstanding the legacy of history (and the lazy outpourings of journalists) Marx’s legacy takes the form of a powerful analytic

tool for the critical assessment of capitalism. And as with all good philosophy, one need not be an acolyte in order to gain profound insights from such analysis.

No edition focusing on political philosophy would be complete without reflection from the great intellectual tradition of liberalism. Martin O’Neill accordingly draws on the work of Thomas Nagel and Liam Murphy to show how modern liberal egalitarian insights can make a compelling case for tax justice.

Yet no important philosophical issue ever commands even a broad universal consensus. Thus it is fitting to feature a contribution from Daniel Mitchell and Hiwa Alaghebadian of the Cato Institute, arguing against the consensus of our other contributors. We at TJN firmly believe that their arguments are unsound and inadequate, and have previously set-out some reasons [here](#). Yet we nonetheless thank them for their enduring willingness to engage and contribute. In a world of increased polarisation where reasoned dialogue seems ever rarer, it is a pleasure to have opponents such as they.

Thanks must also be given to Sheila Killian for her review of a new publication of an essay by George Warde Norman on how taxation might promote human happiness. Norman



“it is easy for the rich, in an arbitrary government, to conspire against them [the poor], and throw the whole burthen of the taxes on their shoulders.”

David Hume, 1752

“it is as true of the early debates of modern capitalism as it is today that taxation and justice are intimately related”

penned the essay in 1821, not long after the introduction of income tax to the UK. While much of his analysis may seem anachronistic and counter to TJN’s aims, it nonetheless yields important insights.

In our second review Thomas Rixen considers the merits of a new book exploring the possible role of a World Tax Organisation and how such a thing might be organised. Especial thanks also to Richard Murphy, who at short notice provided an excellent summary of the first decade of what is likely to be an ongoing struggle for tax justice.

Before vacating the floor to our contributors, however, I would like to make a few further remarks about the issue of tax justice and philosophy.

The connections between philosophical reflection, economics and real-world outcomes have already been noted. But in these dizzying times it is worth casting our gazes back to ages past. While it may now appear that market-capitalist societies are a necessary fact of life, this was not always so. If we return to the thinkers of the 18th Century in particular – who struggled to understand, and in many cases legitimise, the

emergence of capitalism in its modern form – we see this most clearly.

While philosophers such as Jean Jacques Rousseau decried and denounced the nascent “commercialism”, it is more interesting to examine the thinkers who championed the emerging capitalism. Two in particular stand out.

Although David Hume is now remembered as a philosopher, he was also one of the first modern economists. Indeed, he had an enormous intellectual impact upon his great friend Adam Smith, the “founder” of modern economics. And Smith, of course, was in his day known as a philosopher. Only after his death did his name become synonymous with economics.

Both men were champions of commerce, trade and industry (though neither were free-market zealots, as Smith has so often been mis-characterised). Yet within the worldview of capitalist enthusiasm, both Hume and Smith paid particular attention to the importance of justice in taxation.

In his essay *Of Commerce*, Hume warns of the danger that the wealthy may exploit the worse-off: “it is easy for the rich, in an arbitrary government, to conspire against

them [the poor], and throw the whole burthen of the taxes on their shoulders.” Hume urged strongly against such a state of affairs:

“A too great disproportion among the citizens weakens any state. Every person, if possible, ought to enjoy the fruits of his labour, in a full possession of all the necessaries, and many of the conveniencies of life. No one can doubt, but such an equality is most suitable to human nature, and diminishes much less from the happiness of the rich than it adds to that of the poor. It also augments the power of the state, and makes any extraordinary taxes or impositions be paid with more cheerfulness.”

In the year of Hume’s death Adam Smith published his seminal *Wealth of Nations*, the second volume of which discussed principles of taxation. Although much of Smith’s discussion is now anachronistic, one passage is of particular interest, and worth quoting at length:

“A tax upon house-rents, therefore, would in general fall heaviest upon the rich; and in this sort of inequality there would not, perhaps, be any thing very unreasonable. It

is not very unreasonable that the rich should contribute to the public expence, not only in proportion to their revenue, but something more than in that proportion.”

Like Hume, Smith was preoccupied by the social impacts of tax, and was attuned to the issues of justice that arose. Both were champions of trade and commerce, and acutely conscious of tax and its multifaceted importance. They were economists, as well as philosophers.

While it would be disingenuous to claim, across a chasm of 250 years, that either figure provides direct support for any modern viewpoint, there are nonetheless important lessons to be drawn. For it is as true of the early debates of modern capitalism as it is today that taxation and justice are intimately related. In short, economists must still be philosophers.

Paul Sagar is a TJN supporter and a postgraduate student at the University of London.

THE EYE OF THE NEEDLE

“Render unto Caesar that which is Caesar’s” is one of the better known New Testament sayings. I take it as tacit support from Jesus for the Inland Revenue and prompt tax payment. The follow on – “render to God what is God’s” – cements the division between the sacred and the secular.

The message? That bothering unduly about the legitimacy of tax is a distraction from higher purposes.

It does not, however, imply that paying tax itself could be a contribution to a higher purpose. Nor does it recognise that withholding tax could frustrate plans for morally questionable expenditure (government spending on armaments, say). Thus Jesus’ side-stepping of the issue leaves the crux of the Pharisee’s question about whether to pay Roman taxes largely unaddressed.

Thereafter, however, the churches have tended to regard taxes for godly purposes – such as supporting the church – as thoroughly justified, whilst taking a fairly agnostic position on the obligatoriness of secular state tax. Even if the level of tax was democratically fixed it was not axiomatic

“a greedy free-rider is not a figure Christian ethics supports”

that it should never be evaded or avoided. After all, even the democratic majority can potentially have a sinful, or at any rate a mere worldly, purpose. Thus in Italy – where elements of the Catholic hierarchy have long voiced misgivings about liberal democracy – it has not been unknown for clerics to take a ‘relaxed’ view of their tax affairs.

Yet moral outrage at tax avoidance and tax evasion stems, in essence, from a feeling that its motives are venial, selfish, acquisitive and stimulated by the desire of an individual or institution to dodge their fair share of a social burden. Or still worse, to profit from social benefits that others in society – often themselves less well resourced – have to fund, whilst free-riding on that contribution. And a greedy free-rider is not a figure Christian ethics supports.

However, someone who questions the legitimacy, purposes or efficacy of tax, and acts accordingly, is not always so easily or appropriately demonised. Those who overtly resisted paying Charles I’s taxes, or later in America those imposed by George III, for



“There is a higher court than courts of justice and that is the court of conscience. It supersedes all other courts.” – Gandhi

many still hold an honoured place in history, and it is not simply due to their resistance taking a very overt fashion, with spectacular consequences. Neither *vox regis* nor *vox populi* counts as *vox dei*. Refusing to pay tax is not always regarded with moral disdain by those with a Christian ethic.

A faith perspective, however, does not resultantly license a judicious moral

feature

John Pugh MP

agnosticism on the issue – if only because it in essence requires a sincere and continuous self evaluation of one’s mortal journey. Although there are differing intellectual and moral takes on tax, one is not spared the task of explaining what, as an individual, one thinks one is up to when one nails the brass plate to the door of an accommodation address in the Cayman Islands. If the answer is that one is seeking venial advantage and to escape social responsibility – and let’s be honest, it usually is – clever defences are mere masking rhetoric. Hypocrisy and the avoidance of moral insight compound the evil, they do not dispel it.

The vast bulk of those who busy themselves, either in a corporate or an individual capacity, with the construction and utilisation of schemes to avoid or evade tax fail to provide an account of their activities which is both coherent and commendable within a faith perspective. Oddly enough it is only by illogically keeping at arm’s-length the sacred and the secular in one’s personal life that the veniality and deception that characterises tax avoidance and evasion can co-exist with a faith perspective. One cannot serve God and Mammon – but many try.

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THE MORAL AND PHILOSOPHICAL CASE FOR TAX HAVENS

feature

*Daniel Mitchell and
Hiwa Alaghebadian*

For a number of years there have been efforts by high-tax nations to try to curtail tax competition. The politicians from these nations do not like the fact that jobs and investment flow to jurisdictions with better tax policy, particularly since this puts pressure on them to lower tax rates to remain competitive. At the very least, these lawmakers want low-tax jurisdictions to emasculate their human rights laws on privacy so that the tax police from high-tax nations can track – and tax – flight capital.

Much of this battle revolves around standard fiscal policy issues. Proponents of tax competition generally believe in the Leviathan model of government and view so-called tax havens as a **necessary check** on the tendency of politicians to expand their power at the expense of the general population. This is why Nobel Laureate Gary Becker wrote, “...competition among nations tends to produce a race to the top rather than to the bottom by limiting the ability of powerful and voracious groups and politicians in each nation to impose their will at the expense of the interests of the vast majority of their

populations.” Defenders of tax havens point to the global shift to lower tax rates and explain that these liberalizing reforms might not have happened if politicians thought taxpayers had no escape options.¹ Many other Nobel Laureates have **echoed these sentiments**.

Opponents of tax competition, by contrast, want bigger government. From this perspective, a Leviathan state is necessary to facilitate income redistribution and other activities of a welfare state. High tax rates (generally targeting “rich” people and big companies) are not something to be avoided.

Indeed, they are celebrated for reasons of “fairness” – even if they do not result in more revenue, as then-candidate Barack Obama **famously stated** during last year’s campaign.² Tax havens, needless to say, need to be persecuted and eliminated because they hinder this statist agenda.

However, the debate about tax competition, tax havens, and financial privacy is not just limited to economic issues. There is a very powerful case to be made for tax havens, based on fundamental **moral and philosophical** issues, involving everything from the nature of the relationship between citizens and the state to the protection of minorities living in oppressive and/or unsafe nations. In the limited space available, let’s focus on four reasons why tax havens are critical for reasons that often have nothing to do with taxation.

Tax havens protect people from tyrannical and oppressive government by providing a secure place for persecuted minorities to hide their assets. This is not a trivial concern,



Cato: promoting anarchism for multinationals

particularly for the people who live in any of the 108 nations **labeled** “not free” or “partly free” by Freedom House. In such places there often is persecution of ethnic, religious, racial, sexual, political, and economic minorities by oppressive governments, and rich people who fit into any of these categories are particularly targeted. For example, a Jewish entrepreneur in the Middle East would be unwise to keep his money in local banks. The same is true of a rancher in Zimbabwe, where the nation’s dictator could arbitrarily seize money from a local bank. There are many other examples, including ethnic Chinese in places such as Indonesia and political dissidents in nations like Russia. Last but not least, it is worth

¹ Between 1980 and 2009, top personal income tax rates have dropped by over twenty-five percentage points, falling from more than 67 percent to about 41 percent. In that same period, corporate tax rates fell from about 48 percent to less than 27 percent, an average reduction of more than 20 percentage points. And more than 25 nations today now have a flat tax, compared to three in 1980.

² <http://www.cato-at-liberty.org/2008/04/17/obamas-truly-radical-capital-gains-tax-agenda/>

“tax competition and tax havens have pushed tax policy in the right direction, largely by steering politicians away from class-warfare tax policies designed to ‘soak the rich.’ ”

remembering that Switzerland’s strong human rights policy on privacy was strengthened in the 1930s to protect German Jews who were seeking to protect their assets from the National Socialists.

Tax havens protect people from bureaucratic incompetence and economic mismanagement. Many nations are governed by politicians who may not necessarily be evil, but they certainly are incompetent. But this goes far beyond the failure to fill potholes. In places such as Argentina, bad monetary policy can result in dramatic losses of wealth because of devaluation. For citizens with their money in local banks, this can have catastrophic consequences. In other nations, the inability to provide the core conditions of a civilized society – such as the rule of law and property rights – makes domestic asset accumulation highly risky. People should not be compelled to bet their family’s futures on governments that display gross negligence. Yet in many cases, because of policies such as capital restrictions, it is difficult to move – and keep

– money offshore without running afoul of protectionist rules.

Tax havens protect people from criminals. One of the most horrifying features of living in certain nations is rampant kidnapping, particularly of children. This practice, which is disturbingly common in regions such as Latin America, targets anybody with wealth. Successful people can try to diminish risks by living modestly, but rampant corruption throughout government, including the tax bureaucracy, undermines that approach. Criminal gangs simply bribe members of the tax police, and the next thing that happens is a family gets a child’s finger or ear in the mail. Putting money offshore, in a well-governed jurisdiction such as Switzerland or the Cayman Islands, offers considerable protection from this type of depravity.

Tax havens protect wealth creators from discrimination. There is a wealth of evidence that low tax rates (along with other factors such as property rights, sound money, etc) facilitate economic growth. Tax competition and tax havens have pushed tax policy in the right direction, largely by steering politicians away from **class-warfare tax policies** designed to “soak the rich.” This helps explain why the global economy is much stronger today (even with the current recession) than it was in the 1970s. This also has been a positive development from a moral and philosophical perspective. Leading statesmen and philosophers, ranging from classical liberals such as James Madison during the American Revolution to contemporary liberals such as Ronald Dworkin, argue that

protecting the rights of minorities from a “tyranny of the majority” is a key measure of a civilized and just society.

Let’s close with a brief discussion of hypocrisy. The campaign against so-called tax havens is based on the notion that it is somehow unfair if jobs and investment migrate from high-tax nations to low-tax jurisdictions. As mentioned above, politicians from high-tax nations want to strip away privacy protections so they can track and tax

“tax havens protect people from tyrannical and oppressive government by providing a secure place for persecuted minorities to hide their assets”

cross-border economic activity. This means, of course, that some nations – especially in the developing world – are deprived of some of the benefits of having better tax law. Yet most OECD nations did not have income taxes in the 1700s and 1800s, when they were growing and became rich. Now those same countries are interfering with the right of other nations to follow the same path to prosperity. It is also worth pointing out that bureaucrats at the OECD receive very generous tax-free salaries, yet make it their business to persecute jurisdictions that have the same policy for ordinary people.

Another hypocritical component of this debate is that there seems to be one set of rules for smaller jurisdictions and another set of rules for powerful nations. The original OECD blacklist, for instance, targeted little nations and territories such as San Marino and the Cook Islands, but **no OECD members were named**. This has changed over time, to be sure, but even today the United States gets a free pass – even though states such as Delaware are excellent havens for foreigners seeking to preserve wealth.

People should not be treated like fatted calves by the state. It does not matter if a majority of voters happen to agree. That was not a legitimate excuse when monsters like Adolf Hitler came to power, so at some level all of us agree that untrammled majoritarianism is illegitimate. Fiscal policy issues don’t present the same clear-cut moral issues, of course, so let’s close by quoting a study published by the OECD: “the ability to choose the location of economic activity offsets shortcomings in government budgeting processes, limiting a tendency to spend and tax excessively.”

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TAX JUSTICE: A VIEW FROM THE LEFT

feature

Martin Mclvor

The problem of tax evasion and avoidance expresses one of the most fundamental tensions of liberal capitalist societies. This is the way that they legitimise and institutionalise an opposition of public and private interests. As a matter of public and political morality, we all agree on the need to respect the law and support the necessary public functions of the state. But in our ‘private’ lives – including, crucially, our economic and commercial activities – we are expected, indeed encouraged, to maximise our personal wealth or welfare, if necessary at the expense of others, and indeed the public good itself.

Marx thought this ‘contradiction’ at the heart of liberal political communities would ultimately be fatal to their integrity and stability. In his early writings he argued that under modern political conditions ‘man leads a double life ... He lives in the political community, where he regards himself as a communal being, and in civil society, where he is active as a private individual, regards other men as means’.¹ (In rather more satirical mode, Marx and Engels wrote in the *German Ideology* that ‘the attitude of the bourgeois’ to ‘the institutions of his regime’ was that ‘he evades them whenever it is possible

to do so in each individual case, but he wants everyone else to observe them’).²

Marx did not address the specific issue of the threat this posed to tax revenues, but the relevance of his account of the ‘schizophrenic citizen’ has been highlighted by Georgios Daremas, who writes:

‘In his/her political/public identity as member of the state [the modern citizen] understands that taxation is necessary to provide for social welfare and the other collective functions (education, public health, pension,



Marx on tax justice: In November 1848, responding to the dissolution of parliament by King Frederick William IV, Marx published the following editorial:

“From today, therefore, taxes are abolished! It is high treason to pay taxes. Refusal to pay taxes is the primary duty of the citizen!”

from “No Tax Payments!” Neue Rheinische Zeitung #145

defence, material infrastructures) needed to maintain the social integration of the whole society intact. But in his/her private/egoistic identity s/he does not want to pay any taxes (or the less the better) “feeling” taxation as an “oppressive” burden on his/her “free” individuality. Instead, in a self-contradictory fashion s/he desires everyone else to pay his/her taxes (the “free rider” strategy) or in the form of a spurious universality no-one to pay any taxes in blatant opposition to his/her status as a citizen and its concomitant political and ethical obligations.’³

In his later work Marx developed a more sophisticated version of this critique, analysing ‘civil society’, or the private economy, as a domain of ‘commodification’ in which all goods, including human labour-power, are treated as items of private property to be hoarded or traded. Thus the ‘sphere of circulation’ appeared as ‘a very Eden of the innate rights of man. There alone rule Freedom, Equality, Property and Bentham’ - because buyer and seller ‘are constrained only by their free will’, they contract as equal parties, each disposes ‘only of what is his own’, and each ‘looks only to himself’.⁴ Against this background, insofar

¹ Karl Marx, *On The Jewish Question*.

² Karl Marx and Friedrich Engels, *The German Ideology*.

³ Georgios Daremas, ‘Marx’s Theory of Democracy in his Critique of Hegel’s Theory of the State’, in A. Chitty and M. Mclvor (eds) *Karl Marx and Contemporary Philosophy*, London 2009.

⁴ Karl Marx, *Capital* Vol I.

“Marx expected the development of the capitalist economy to create unprecedented concentrations of wealth and power that would make a mockery of liberal ideals of fairness and democracy unless the countervailing force of civil society organisations and social movements could be brought to bear.”

as market transactions appeared to their parties to be free and fair, they generated a sense of entitlement that could be very hard to dislodge and highly resistant to post-hoc policy interventions aiming to redistribute market outcomes.

Contemporary egalitarian philosophers have explored these problems in compellingly precise and analytical terms. G. A. Cohen, who died suddenly and sadly in summer 2009, laid bare with devastating acuity the commonplace contradiction of arguing (in political or philosophical debate) for social arrangements by reference to the interests of the worst off in society, at the same time as acting (as a private agent) in ways that worked against those interests. Similarly, Liam Murphy and Thomas Nagel have worked to unpick the ‘myth of ownership’ that underpins contemporary ‘libertarian’ perspectives on taxation as akin to theft or forced labour.

Such writers provide powerful arguments for challenging the hypocrisy of individuals and companies who use all legal means at their disposal to minimise their financial contribution to the public institutions, infrastructure and programmes upon which they rely to live their lives and conduct their business.

But the point of Marx’s analysis was not simply to expose the logical inconsistencies of ‘bourgeois’ culture, but to highlight the practical force of the conflicting social practices and historical dynamics building up behind it. In particular, he expected the development of the capitalist economy to create unprecedented concentrations of wealth and power that would make a mockery of liberal ideals of fairness and democracy unless the countervailing force of civil society organisations and social movements could be brought to bear.

“tax evasion and avoidance must be treated not as an anomaly within a liberal democratic society, but as a symptom of an unjust, unaccountable and fundamentally unbalanced economy.”

In the early twenty-first century that nightmare is frighteningly close to realisation, as depicted in the closing passages of Robert Peston’s *Who Runs Britain*, with its chilling description of the ‘stateless plutocrats’ flying above us in their private jets and rendering ‘elected politicians... less and less relevant to the daily lives of the majority’ struggling to maintain living standards and pay for decent public services out of dwindling tax bases and squeezed disposable incomes.⁵

The problem all too familiar to tax justice campaigners is that the resources at the disposal of wealthy individuals and large multinational corporations have now far outstripped the capacity of most national governments to effectively monitor and regulate their behaviour; while the few powerful states who might have it within their power to bring such outlaws to heel (not least the UK) are subject to such ferocious lobbying and skilful political manipulation that their moves in this direction are, at best, hesitant and half-hearted.

The implication, I think, is that making real headway on reducing tax evasion and avoidance will be dependent on attacking these pinnacles of power and privilege from a number of directions at once, developing campaigns and institutions that can hold them to account, and redirecting our economy in ways that disperse wealth and power more widely and evenly. That would mean strengthening unions and reducing

pay differentials; building up the role of cooperatives and the public sector; cleaning up politics and deepening democracy; suppressing speculation, and ensuring our financial system serves instead to support socially useful and ecologically sustainable production.

I do not wish in any way to criticise or demean the kind of targeted, single-issue campaigning that the Tax Justice Network focuses upon; I happen to think that this is exactly what is needed and that TJN does it brilliantly. But I see this as one of a number of pressure points that egalitarians and democrats need to be pushing on at this time.

If I am asked to draw one key insight from the writings of Marx and the traditions of critical thinking and organisation building he inspired, it is that tax evasion and avoidance must be treated not as an anomaly within a liberal democratic society, but as a symptom of an unjust, unaccountable and fundamentally unbalanced economy.

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⁵ Robert Peston, *Who Runs Britain? How the Super-Rich are Changing Our Lives*, London 2008.

THE NOUGHTIES: A DECADE OF PROGRESS

Campaigners, by nature, always want more than they get. We are driven by ideals and principles. The compromises of realpolitik are bound to frustrate us. And viewed from that perspective the Noughties – the first decade of the 21st century – offers much to be concerned, even angry, about.

At the same time, the progress made during this decade surpassed any expectation those of us who helped create the Tax Justice Network could have dared hope for when we set out on this journey.

Go back to 2000. In that year Oxfam published the first NGO report on tax havens, estimating that they deprived developing countries of some \$50 billion a year. The report was scarcely noticed at the time, and Oxfam backed off from the subject for several years. Yet an opportunity had been created.

The Monterrey Consensus of March 2002 demanded creative action on financing for development. At the same time the OECD's tax haven initiative, labelled an attack on harmful tax competition, had been gutted by the new Bush administration. For eight long years secrecy jurisdictions plied their trade almost without fetter, under the protection of Washington.

Against that background the Tax Justice Network was launched in early 2003. It is appropriate at the turn of the decade to consider what we have achieved, and what our goals might be for the years ahead.

First and foremost TJN has brought tax havens to the heart of the global agenda. What were previously seen as relatively innocuous places, used by tax dodgers to cause minor inconvenience to their domestic tax authorities, have been reframed in contemporary economic and political discourse. They are now viewed as a major structural component of globalised markets, contributing to the accounting opacity that underlies the financial crisis which began in 2007 and reached its apex in 2008.

comment

Richard Murphy

Tax abuse remains a major issue, and by providing an early and still endorsed view of the scale of losses caused, we helped emphasise that issue. But secrecy is now seen as the most pernicious product of secrecy jurisdictions. Indeed, we have introduced the term secrecy jurisdiction into the tax lexicon, and defined it in a way that many now see as useful. And we have shown that only by cracking secrecy will the tax, economic, social and development costs of secrecy jurisdictions be addressed.

The impact of illicit financial flows is massive – and we helped put this issue on the agenda. Working with colleagues like Raymond Baker at Global Financial Integrity, we have established that secrecy jurisdictions enable huge capital outflows from poorer countries, and facilitate tax evasion on an awesome scale. Our work in this area has encouraged some of the world's major development agencies to look at this issue as a key cause of world poverty. Few outside the remaining supporters for the Washington Consensus would challenge that view. Participating in a conference on this issue at the World Bank in September 2009, with the explicit support

for our cause from their managing director, shows how far we have advanced in a short period of time.

Our work has impacted directly on secrecy jurisdictions, especially those linked to the UK. Campaigns targeting the UK's Crown Dependencies have focused on showing how they do not comply with the requirements of the EU's Code of Conduct for Business Taxation. We have been vindicated: it is now agreed that they do not. A similar campaign arguing that the UK was massively and inappropriately subsidising the Isle of Man's role as a secrecy jurisdiction has also been proven right – and the subsidy has been withdrawn.

“Few apart from the remaining supporters of the Washington Consensus would challenge the view that secrecy jurisdictions are a key cause of world poverty.”



Who would have foreseen the dozens of demonstrations against tax havens that took place in Europe in 2009?

“The Noughties was the decade when homo economicus – the self-absorbed being who profit-maximises regardless of cost to others or the environment – reigned supreme. And then, like Humpty Dumpty, he fell off his wall.”

Our broader argument that being a secrecy jurisdiction is not a viable long-term economic model is likewise being proven true: Cayman, Dubai, the Crown Dependencies, the Turks & Caicos Islands, Antigua, Bermuda and others have faced crises of various sorts, and are under pressure to radically reform their economies.

In April 2009 the G20 indicated its agreement. As yet the OECD has not backed up their promise of action with something we can endorse, but the signs of progress are there to be seen even in that forum. Country-by-

country reporting would not exist but for the Tax Justice Network. The governments of the UK, France and elsewhere have given it support, and the OECD is considering it through its Global Forum on Taxation, as is the International Accounting Standards Board with regard to extractive industries. These are major achievements.

Yet we should not ignore the fact that TJN exists to promote justice, something we equate with enhanced economic well-being for poor people and reduced inequality within and between nation states. This, at the

end of the day, is the criteria by which we will judge our success. By that measure TJN has a long way to go.

The Noughties was the decade when *homo economicus* – the self-absorbed being who profit-maximises regardless of cost to others or the environment – reigned supreme. And then, like Humpty Dumpty, he fell off his wall. And just as with Humpty Dumpty it seems that despite the best efforts of all the king’s horses and all the king’s men, nothing will put him together again.

This raises an additional challenge. The Tax Justice Network was launched to fill the intellectual void created by mainstream economists ignoring the impact of secrecy jurisdictions on so many dimensions of economic and social life. The latest financial crisis has revealed the flawed thinking that underpins the deregulated form of financial capitalism associated with the Anglo-American financial markets. Secrecy jurisdictions played a key part in incubating that crisis. We now face the challenge of helping fill an intellectual vacuum with ideas that promote the cause of social justice.

Richard Murphy is a founding member of the Tax Justice Network UK and director of Tax Research LLP.

news

New Haven Declaration On Human Rights and Financial Integrity

by John Christensen, TJN



In December 2009 TJN participated in a seminar at Yale University on the subject of illicit financial flows and human rights. This event opened up an important new front in the battle against international financial secrecy, bringing human rights more formally into the frame and

involving a new partnership between the human rights and financial integrity communities.

TJN has now signed up to the following declaration which was agreed after the Yale seminar and published in January 2010.

New Haven Declaration On Human Rights and Financial Integrity

Human rights and international financial integrity are intimately linked. Where poverty is pervasive, civil, political, and economic rights often go unrealized. Today, large outflows of illicit money – many times larger than all development assistance – greatly aggravate poverty and oppression in many developing countries.

Illicit money leaves poorer countries through a global shadow financial system comprising tax havens, secrecy jurisdictions, disguised corporations, anonymous trust accounts, fake foundations, trade mispricing, and money-laundering techniques. Much of this money is permanently shifted into western economies.

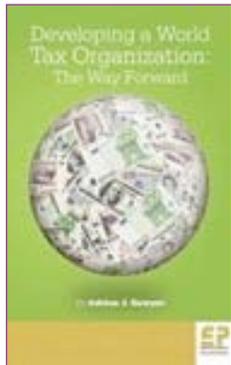
Reducing these illicit outflows requires greater transparency and integrity in the global financial system. Achieving this

is a prerequisite to creating an economic framework that is open, accountable, fair, and beneficial for all.

We call upon the United Nations, the G8, G20, WTO, IMF, World Bank, and other international fora, as well as on national governments, world leaders, faith groups and civil society organizations to recognize the linkage between human rights and financial transparency. We further call for decisive steps to ensure that developing countries can retain their resources for sustainable growth and poverty alleviation, which they must achieve if the human rights of all people are to be realized. The undersigned individuals and organizations shall be working together in the coming months to pursue this agenda and look to add additional voices to this effort:

Amnesty International
Human Rights Watch
Oxfam
Global Financial Integrity
Center for Applied Philosophy and Public Ethics
Open Society Institute Justice Initiative
Asia Initiatives
Basel Institute on Governance
Task Force on Financial Integrity and Economic Development
Tax Justice Network
Christian Aid
National Council of Churches
Harrington Investments, Inc.
Asociación Civil por la Igualdad y la Justicia
Thomas Pogge, Yale University
Robert Hockett, Cornell University
Frank Pasquale, Seton Hall

reviews



Developing a World Tax Organisation: The Way Forward

Adrian J. Sawyer

Birmingham: Fiscal Publications, 2009.

Why we need a World Tax Organisation

Various scholars and political actors, including the Tax Justice Network, have proposed the creation of a global tax organisation. However, the specific tasks and competences that this organisation should fulfil vary significantly among proposals. Whilst TJN envisages an organisation which would “monitor the impacts of fiscal policies on trade and investment patterns, and ... protect national tax policies from harmful practices [such as] transfer mispricing, thin capitalisation, tax competition and tax avoidance” (*Tax us if you can*, 2005, pp. 52 f.), others have less ambitious goals in mind, arguing instead that such an organisation should serve only as a forum for discussion and to distribute information.

In his book Adrian J. Sawyer (Professor of Taxation at the University of Canterbury, Christchurch, New Zealand), takes an intermediate position. He recounts in great detail the entire, though small, scholarly literature on a world tax organisation and puts forth his own proposal for an International Tax Organisation (ITO), a stand-alone institution with universal membership rather than a unit of some existing institution like the WTO, OECD or IMF. Contrary to the approach favoured by TJN, Sawyer also dismisses the UN as a potential host organisation.

Sawyer argues that harmful tax competition, evasion and avoidance are problems that need to be addressed by an ITO. But he views

the possibility that countries would willingly relinquish enough of their national tax sovereignty to achieve a functional international standard for domestic tax regimes as unobtainable. Sawyer argues, therefore, for a gradualist approach to tax cooperation.

As a first step his ITO would only strive to harmonise binding rulings and advance pricing agreements (APAs). These are administrative procedures for tax assessment in many developed countries: a national tax administration commits itself to a specific handling of a business transaction prior to that transaction actually occurring (a binding ruling), or tax administrations and businesses negotiate about and agree on certain transfer pricing methods in advance. APAs may involve two or more national tax administrations, so that multinational enterprises are guaranteed a degree of certainty regarding their tax status in the countries involved. If this proves to be successful, the ITO should then gradually be assigned further tasks and could eventually develop the competencies to effectively prevent harmful tax competition.

Sawyer emphasises that an ITO will need an independent dispute resolution and enforcement mechanism. Contrary to most scholarly opinions on the subject, which consider it unlikely that governments would subject themselves to such a mechanism (and thus do not propose it), Sawyer considers it to be a necessary component of an ITO. While he does not systematically develop an argument for why an enforcement mechanism is needed (at times his primary motivation for such a mechanism appears to be to guarantee legal certainty for taxpayers), his contention is correct.

In fact, the absence of effective enforcement on a global scale is the single most important deficiency of the current international tax system. Effective enforcement is needed because the issues of harmful tax competition, tax evasion and avoidance are of such a nature that some governments (viz. tax havens / secrecy jurisdictions) will always have an incentive to deviate from any internationally agreed tax standards, because it pays individually to undercut the standard, even if it hurts collectively. Sawyer suggests,

correctly, that the model of dispute resolution and enforcement used by the World Trade Organization would be viable for the ITO.

It is doubtful, however, that the best course of action for an ITO with effective enforcement capabilities would be to confine its initial focus to binding rulings and APAs. For it is far from obvious that APAs are welcome instruments from a tax justice perspective. Ought taxes not to be assessed according to general rules, rather than case-by-case negotiations between taxpayers and administrators?

More importantly, APAs and binding rulings were developed to lower the administrative and compliance costs of existing international tax rules and principles, for example like the arm's length principle (ALP) for transfer pricing. Due to the internationalisation of production chains, the ALP has become increasingly dysfunctional and enables taxpayers to engage in transfer mispricing. The result of promoting more effective and internationalised binding rulings and APAs is thus likely to be the entrenchment of current

reviews (cont'd)

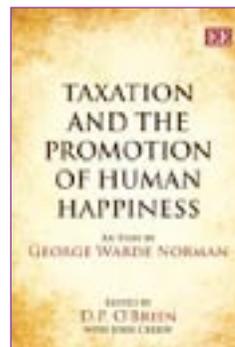
international tax rules and principles rather than facilitating a gradual shift to unitary taxation with formula apportionment – a reform that Sawyer would like to see developed by the ITO in the long run (and which TJN promotes).

The first building block of Sawyer's gradualist strategy thus risks becoming a stumbling block for far-reaching reform. This does not negate the usefulness of a gradualist strategy *per se*, but more thorough consideration should be given to what an appropriate first step would be. The initial scope of an ITO should aim at more intensive *political* cooperation in the design of substantive tax rules, rather than promoting ever more sophisticated *administrative* procedures, which achieve no more than a minimal coordination in the application of diverging national tax systems – a task by and large already fulfilled by the OECD.

Overall, Sawyer's book is a welcome contribution. It addresses an issue of paramount importance and it directs its readers to all scholarly contributions on this matter. Unfortunately the book is not written for a broader audience:

its appeal is for experts only. Furthermore, the structure of Sawyer's literature review and his argumentation do not always make perfect sense. The book contains many redundancies on the one hand (e.g. the literature reviews at the beginning of each chapter), but on the other it neglects key aspects of enquiry and fails to deal with them sufficiently in-depth (most significantly, a thorough derivation of the need for enforcement mechanisms is lacking). Nonetheless, the book is a welcome call for further investigation into the key issue of how to develop an effective institutional design for a World Tax Organisation that promotes international tax justice.

Dr. Thomas Rixen is a political scientist and economist at the Social Science Research Center Berlin (WZB). Contact: <http://www.wzb.eu/zkd/tki/people/rixen.en.htm>.



This interesting book published by Edward Elgar in 2009 is a modern presentation of an essay on taxation started in 1821 by George Warde Norman, then in his late twenties. Norman's only formal education came at Eton, but he was a man of great intellectual curiosity, described by Charles Darwin as "my clever neighbour". After school, he worked in his father's timber company, spending much of his youth in Norway. He went on to spend fifty years as director of the Bank of England where he was influential in bank regulation, and was a founding member of the Political Economy Club. He was always interested in taxation, and its influence on society, but the essay, which runs to two hundred pages, has never before been published in its complete form.

Taxation and the Promotion of Human Happiness:

An essay by George Warde Norman edited by D. P. O'Brien with John Creedy

Edward Elgar, 2009.

Norman's view on taxation can be described as essentially utilitarian, in that he felt the taxation system should be designed to maximise the happiness of as many people as possible. He favours small government, with the minimum number of public employees, and low taxes designed to meet the expense of a small bureaucracy. He was, of course, operating in a very different world, one in which a country, particularly one as powerful as the UK at the start of the Industrial Revolution, could reasonably dictate terms to business.

His essay is in two parts: initially he outlines the general purpose of tax, and sets out eleven criteria on which any given tax should be judged. Inevitably, these will be compared to the four canons of taxation devised

by Adam Smith some forty years earlier. Smith's canons are: **equality**, meaning that all taxpayers should contribute in proportion to their income; **certainty**, meaning that the timing and amount should be clear and predictable; **convenience of payment** and **economy in collection**. Norman's eleven qualities of taxation are broadly similar, as follows:

Computability roughly equates to Smith's canon of certainty. In order for taxes to be computable, Norman favours their imposition on income or property rather than on commodities

Simplicity leads him to favour few and similar taxes rather than a broad range

Frugality in collection is best addressed, he feels, by reducing the overall number of taxpayers. In particular, he feels that taxation should be levied on merchants and landowners rather than on workers

Constancy refers to the likely take from a particular tax

Divisibility is a rather technical concept, referring to the ease of

reviews

increase or reduction of a particular tax rate.

Popularity was considered important in order to reduce “*alarm or dislike*” among the taxpayers. Norman felt that an unpopular tax would generate unhappiness among taxpayers, and so the government should ideally choose popular targets for taxation, and secondly embark on public education in order to render unpopular taxes more palatable

Non-interference is broadly equivalent to the common concept of neutrality, as applied to trade activities. A tax is non-interferent when it does not impact on the price or volume of commodities traded. Norman argued that all indirect taxes are by definition interferent, as they create imperfections in the market for goods, and in particular for preferences between imported and domestic produce. As such, he would be against value added tax, for instance

Equality is similar to Smith’s canon of equality – the idea that all taxpayers will contribute an equal proportion of their income. He does not favour progressive taxes,

but does completely exclude from taxation labourers who do not possess wealth. His arguments against the taxation of labour are not based on civil rights, but rather on the idea that taxes paid by the labouring class will inevitably increase wages, and so are ultimately borne by the merchants and capitalists. In the meantime, he notes, “*a considerable interval may elapse ... before this effect is produced, during which time the tax is cruelly unequal, and occasions a large mass of suffering to the lower orders.*”

Uncorruptiveness is essentially another aspect of tax neutrality, as applied to human behaviour generally rather than simply trade. An uncorruptive tax does not incentivise undesirable behaviour, or deter useful actions. However, he stops short of the idea of using taxes to positively encourage “good” behaviour, and so would probably have been against modern Pigouvian or environmental taxes.

Unvexatiousness is equivalent to Smith’s convenience of payment

Unevasibility means difficulty in evading or avoiding the payment of the tax. In his analysis of this aspect of tax, Norman is notably dealing

with a nation state that is more powerful than most businesses operating within its borders, and largely in control of imports.

Having set out these eleven qualities of taxation, Norman uses them as a framework with which to analyse taxation systems generally, and popular or proposed taxes in particular. Some of this analysis is largely of interest to historians, since he considers obsolete taxes such as the window tax. He also evaluates the idea of a poll tax, which he rejects due to it being potentially expensive, unpopular, unequal and vexatious. He favours probate and stamp duties as being largely unevasible, and levied on a relatively small set of taxpayers. His idea of income tax is a tax on capitalists rather than labourers, and he argues that it should relate to wealth as well as income. He is concerned about the ease with which traders who do not possess property could evade the tax by the production of inaccurate accounts.

His final proposal is the abolition of most taxes, and their replacement with a single property tax, assessed and paid locally. Traders and professionals who do not possess

property would instead be liable to a fixed annual sum of taxation, depending on the class of their income. Labourers in general would not pay any taxes.

Clearly, Norman’s analysis was of his time, and so is of limited direct application to a world of powerful multinational firms, global trade in goods and services, and mobility of capital and labour. However, even today he has a contribution to make. In particular, his eleven qualities of taxation include some ideas that have not been formally incorporated into modern tax theory. The idea of popularity as a desirable social goal rather than a political expedience is interesting, and the principles of simplicity and unevasibility are useful.

As a broader point his philosophy of tax is relatively simplistic. He regards tax as a necessary evil in order to support a minimal level of government services. He would reject any ideas of tax as a necessary part of participation in a democracy, for example, or of taxation having any relationship to accountability. Neither does he envisage or support any change in the social order. Labourers are foreseen to remain

labourers; professionals to continue in that vein. He is not imagining taxation as a means of redistribution of wealth or regulating an economy, but as a minimal mechanism to finance the government bureaucracy.

All in all, the book is an interesting take on the role and purpose of taxation, though limited because of the different world in which it was written. It should be of value to political economists, and anyone with an interest in the philosophy of taxation. For example, it is enlightening to apply his eleven qualities to the idea of corporation tax in a modern world populated by powerful international companies. Clearly, corporation tax as we know it would need to be modified in order to meet the standards of computability, frugality in collection for each individual taxing authority, divisibility, equality and unevasibility. The most obvious way would be the adoption of country-by-country reporting.

Sheila Killian lectures in finance and accounting at the University of Limerick in Ireland.

CALENDAR

1 January

Spain takes over the EU presidency
Canada takes over the G-8 presidency
South Korea takes over the G-20 presidency

25–26 January

International Tax Compact governmental workshop in Brussels, supported by the EU presidency and the European Commission. A civil society workshop is scheduled for 27 January.

22–31 January

Local, regional and international social fora – details:
forumsocialmundial.org.br

28 January

OECD Global Forum on Development meeting in Paris in conjunction with the Centre for Tax Policy and Administration, Development Assistance Committee, and the Development Centre

24 February

Caesar's Coin: Morality and Taxes. Treasury Secretary Stephen Timms and leading politicians from all parties will gather at St Martin-in-the-Fields Church to discuss the link between corporate taxation and morality. Free entry to all comers. From 19h00. Organised by Christian Aid.

20 March

National training day for tax campaigners organised by Christian Aid at their London head office. Details: email campaigns@christian-aid.org or call 020 7523 2264

24–26 March

TJN Africa research workshop on the theme Mobilising Tax Revenue for Development in Nairobi, Kenya

14–16 April

Tax Justice Research Workshop 'The Erosion of Public Finances and Illicit Financial Flows in Latin America', The Central American Institute for Fiscal Studies (ICEFI), Guatemala City

24–25 April

Spring Meeting of Bretton Woods Institutions, Washington

22/26 June

US Social Forum 2010, Detroit, Michigan – further details:
www.ussf2010.org/

25–27 June

G-8 / G-20 Summit Meeting in Canada

20–22 September

UN Summit to review progress towards achievement of Millennium Development Goals

18–22 October

6th Session of the UN Tax Committee, Geneva

Date to be announced

European Social Forum, Istanbul – details:
wsf.be/European-Social-Forum-2010,743