

---

## REVIEW ARTICLES

---

### Global and local approaches to tax justice in digital times

Pogge, Thomas & Mehta, Krishen (ed.) (2016): Global Tax Fairness. Oxford: Oxford University Press, 366 p.

Gaisbauer, Helmut; Schweiger, Gottfried; Sedmak, Clemens (eds.) (2015): Philosophical Explorations of Justice and Taxation. New York: Springer, 232 p.

Ojo Público: El Club de Deudores: online: <https://ojo-publico.com/sites/apps/el-club-de-los-deudores/> (Access 01.12.2016)

---

Constantin Groll

Freie Universität Berlin

The data leaks of the Bahamas and Panama Papers made an astonished global public aware of the excess of financial flows towards tax heavens around the globe. These leaks, secretly analyzed by a global journalist network (International Consortium of Investigative Journalists (ICIJ)), showed in detail what, after decades of global capital market liberalization and rising wealth concentration in most countries around the globe, had so far remained a “best-known secret” among tax experts: economic elites have resigned from contributing to state financing, multinational corporations frequently use tax heavens to bypass domestic tax obligations and reduce - or even eliminate - tax payments, and consulting firms set up an industry with the very aim to help their clients to cheat.

These insights were shocking because of their amplitude and detail. The underlying rationale of corporative and private actors,

however, was not surprising for scholars critical of the dynamics in global finance. What was new, though, was that after decades of regulatory meltdown, global capital liberalization was put into question and taxation finally found its way back to the discussions about inequality and development. While for too long the focus of attention was put on the supply side of the state, i.e. expenditure, the question of fair and just state financing was back on the table. Taxation was intended to be liberated from the neoclassic mantra that limited its role to two of the three functions of fiscal policy defined by Musgrave, stabilization and (efficient) allocation, omitting its importance for distribution (Musgrave 1939).

The three publications reflect this shift of attention, although they approach the question of taxation and justice from different fields and angles. While the book edited by Gaisbauer, Schweiger and

Sedmak is a collection of philosophical and ethical considerations written by political theorists, philosophers, and law professors neatly following the footsteps of Murphy and Nagel's *The Myth of Ownership* (2002), the book edited by Yale philosophy Professor Thomas Pogge and the tax consultant Krishen Mehta combines contributions by scholars and tax experts in a kind of policy agenda to increase fairness in global and domestic taxation. Finally, crossing the boundaries of academic publishing, the Peruvian web portal *Club de Deudores*, programmed and published by the journalist collective *Ojo Público*, provides novel information of tax illusion practices of top enterprises in an exercise of bottom-up activism for tax justice.

Clearly, at first sight these contributions seem to speak to different audiences and in different languages – the technocratic regulatory discourse in the volume by Pogge and Metha, the ethical and moral argumentation in Geisenbauer et al., or the accusatory digital journalism of *Ojo Público*. What they have in common, though, is their goal to revalue taxation as a legitimate and necessary policy for social development. The (implicit and explicit) connection they draw to account for their argument is the relation between taxation and human rights: social, political and civil human rights are only guaranteed via tax fairness, as it ensures sufficient public

finances for the provision of public goods which help to assure these rights.<sup>1</sup>

This is the starting point of the book edited by Pogge and Mehta (p.2). Their volume, written for an informed audience, combines 15 chapters by academics and tax experts that circle around the common aim to provide advice on how to increase fairness in “global taxation”. At first sight, these contributions read like a wish list of long-term experts and, thus, are not free of hopeful thinking. The noble, albeit utopic, proposals include a global tax authority (chapter by Vito Tanzi), the implementation of the Financial Transaction Tax (chapter by Peter Wahl), an International Convention of Financial Transparency to curtail financial secrecy (chapter by Harald Tollan)<sup>2</sup>, or an unfounded call to domestically engage in the fight against base erosion (chapter by Michael Durst). A second group of chapters combines proposals for increased tax fairness via legal means. For example, treating multinational companies as single firms (rather than a collection of separate entities), and thus avoid profit shifting (chapter by Sol Picciotto), reforming international tax norms in order to tax “stateless income” of multinational corporations currently untaxed (chapter by Edward Kleinbard)

1 See also UN General Assembly (2016): Human Rights Council 31st session: Final study on illicit financial flows, human rights and the 2030 Agenda for Sustainable Development of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights; A/HRC/31/61. Online: <http://tinyurl.com/jn72zf3> (accessed 01.12.2016).

2 For up-to-date empirics on financial secrecy, see <http://www.financialsecrecyindex.com/> (accessed 01.02.2017).

or, finally, implementing a uniform multilateral automatic information exchange between countries to tackle tax evasion (chapter by Itai Grinberg). These proposals are important, as they point to some major shortfalls of transnational taxation and offer solutions, but they cast doubts if single legal modifications alone are sufficient to bring fairness into global taxation.

Nevertheless, two contributions deserve the attention of scholars interested in Latin America, as they are connected to ongoing processes in the region. The chapter by Lee Corrick, a senior advisor to OECD and the South African Revenue Service (SARS), provides a balanced critique of the most far-reaching international agreement so far to fight corporate tax shifting – BEPS<sup>3</sup>, created by the OECD. Although this agreement is highly technical, the analysis deserves attention as it highlights the persisting north-south dependence in global treaty negotiations and the suboptimal design of BEPS for developing countries. A second chapter of interest, written by the activist Johnny West, is a proposal to enhance corporate taxation in the oil and mining sector via the introduction of a disclosure of corporate profits in mining and oil contracts. His proposal, although guided by African experience, is also of high relevance to Latin America, especially taking into account the missed chance of some Latin American countries to take full advantage of the windfall profits resulting from the ultimate commodity boom. The

chapter is also a reminder that global digital transparency initiatives, such as the EITI (Extractive Industries Transparency Initiative)<sup>4</sup>, are still in creation and some Latin American countries (Chile, Argentina, Bolivia, Ecuador, and Mexico) are not yet committed to them.

Notwithstanding the merit of the proposals presented, their drawback is the authors' insensitivity to existing power relations. In fact, these contributions advocate that by reforming some legal or policy parameters, global and domestic taxation becomes fair and just. The book thus fails to address objection to implementation, as the contributions lack a critique of the historical, structural, and economic preconditions which made the existing deficits in fairness of global and domestic taxation possible. Finally, the book lacks a coherent concept of fair global taxation. What is fair and what is just in taxing global flows remains theoretically unexplored.

Investigating such underlying concepts and their relation to taxation in general (part 1), to specific tax instruments (part 2), or in global contexts (part 3), is the very purpose of the volume by Gaisbauer and his co-editors. Although the chapters address different topics, they share the argument that mindful debates on taxation and justice must reflect the underlying concepts of property, justice, trust, and the State. Without proper reflection on these interrelated concepts, calls for measures to enhance tax justice are argumentatively flawed. Such a reflection can inform us

<sup>3</sup> BEPS stands for Base Erosion and Profit Shifting. See also <http://www.oecd.org/tax/beps/> (accessed 01.02.2017).

<sup>4</sup> See [www.eiti.org](http://www.eiti.org)

about the meaning of tax justice at an abstract level, but also help us to assess types and the design of specific taxes (p.3).

The authors in this book, mainly with a background in philosophy or law, take on this task and discuss the underlying relationship between taxation and poverty (Gottfried Schweiger), property and wealth (Bruno Verbeek), or taxation and trust (Clemens Sedmak and Gaisbauer). Other contributions discuss concrete taxes, such as inheritance tax (Rajuv Prabhakar), taxation on consumption (Xavier Landes), or the relationship between justice and tax avoidance (Benjamin Alarie). They also make propositions to expand domestically framed concepts of justice to the global level and link them to (transnational) tax instruments, such as a Global Luxury Tax (Vittorio Bufacchio) – which interestingly includes levying a tax on international academic conferences –, currency conversion taxes, or carbon taxes (Gillian Brock). The strength of these proposals is not their empirical fundament, which is rather neglected as the volume does not include statistics, tables, or graphs of empirical data, but their inference from moral and theoretical reasoning, even if some of the authors' conclusions do not appear to be fundamentally new.

The exploration of this moral soil of taxation is the added benefit of this volume, which enables readers familiarize with the current debates and the theoretical and methodological form of reasoning which links taxation and justice. However, with one limitation, justice in this volume is

primarily understood in re-distributive and material terms. Although mentioned, the understanding of taxation as a relationship of the individual with the State – as a legitimized representative of the common public –, in the form of belonging and representation, remains underexplored. For example, what does it mean not to pay taxes? Can this justify exclusion, i.e. the opposite of representation? This blind spot gains relevance because it fails to connect much of the discussions to non-European political realities. Thus, not only do the normative recommendations formulated in the book remain empirically unchallenged, but they also seem to be biased towards democratic polities and individually based concepts of justice. Therefore, an extension of the high-quality theoretical reasoning that includes such concerns would have increased the scope of the book.

The philosophical and moral questions discussed in Geisenbauer et al. have high empirical relevance for the current struggles for tax justice in developing countries. Interestingly, such fights are frequently fought from the ground, meaning that they are taken up by NGOs, heterodox academics, investigative journalists, or individuals that put current tax systems into question. This observation does not simply refute the common assertion that views citizens as mere recipients of tax policy, reacting, if at all, only via protest or deviation. Quite in contrast, civil society can take on a pro-active role in creating counter-discourses to the institutionalized legitimation of existing tax systems. In the

case under review, the “partner in crime” of *Ojo Público* is the internet, their tool investigative journalism, and their goal the production of a counter discourse and of public awareness of the misconduct of top corporate taxpayers in Peru.

In a simplistic and descriptive view, the portal contains processed and visualized information based on an unedited database, which contains pending tax debts of the major economic groups with the Peruvian tax authority, SUNAT. The portal provides information about the type of debts, tax debt in economic sectors, and type of company. Altogether, these companies’ total tax debt adds up to US\$7 billion, where 75 per cent of this amount applies to tax debt of only 50 companies. Their debt alone – 15 billion Soles - surpasses the total health care expenditure of the state for 2016. Pending tax debt occurs if taxpayers appeal to the legal mechanism and present actions before judicial authorities. In total, 800 of such cases are pending in Peru.<sup>5</sup> In other words, what this information shows is the fruit of aggressive tax planning strategies of profit-making companies and the disinterest of governments in securing necessary funds to finance public goods.

In economic terms, this alone would be worrisome, as it shows that the Peruvian tax system is far from guaranteeing horizontal equality– companies big enough to engage in aggressive tax planning gain a

competitive advantage by not being taxed, those too small pay the price and are disadvantaged.<sup>6</sup> However, *Ojo Público* does much more than highlighting an economic problem. Via their digital interventions, they create a public for arguments, which breaks with the dominant discourse of a neoliberal economic model, such as enhanced extraction of natural resources and deregulation. In fact, the information shows three remarkable facts: first, companies from the extractive sectors (mining and petrochemicals) lead the club of tax debtors, highlighting the poor ability of domestic tax policies to take full advantage of the commodity boom, despite all regulation established in the past. Secondly, top tax debtors are companies with headquarters in foreign countries, which use these mechanisms to ship their profits overseas. Finally, tax debtors have sophisticated personal ties with the government, often with former employees working on the government payroll. This pulverizes the idea of the meritocratic success of these companies’, one principal argument of the free market discourse that dominates Peruvian economic policy. In sum, the web portal is a prime example of contemporary investigative journalist output and provides fresh ideas and information for those interested in understanding the mechanisms of tax avoidance. Nevertheless, the aim of this intervention remains policy-centered and limited in its territorial scope. Consequently, the generalizability of the findings beyond

<sup>5</sup> As legal processes are very slow, there is a high probability that, at the end of the day, these companies’ tax debt will expire, resulting in no tax imposed on them at all

<sup>6</sup> In addition, besides other influences, tax rates are higher than necessary, as few have to pay for what all could afford with a lower tax rate.

the Peruvian case are limited and more comparative work should be pursued.

All of the three publications make a consistent claim to enhance justice in global and domestic taxation. This call is of urgent importance and high relevance for all countries around the world. However, they also show the disconnection between the debate on tax justice and recent bottom-up investigations of tax matters in developing countries. Yet, bottom-up research provides fresh insights on the relational and transnational dimension of taxation and contributes to our understanding of the persistent challenges in tax systems around the world. The next step, therefore, is to link the debate on tax justice to such empirical research, in order to achieve the ultimate goal of making taxation fairer.

### Bibliography

Musgrave, R. (1939). The Voluntary Exchange Theory of Public Economy. *Quarterly Journal of Economics*, 53, pp. 213-237.

Murphy, L., & Nagel, T. (2002). *The myth of ownership: taxes and justice*. Oxford: Oxford University Press.