Crawford School of Public Policy

TTPI

Tax and Transfer Policy Institute

Redistribution between rich and poor countries

TTPI - Working Paper 4/2018
February 2018

Professor Miranda Stewart
University of Melbourne Law School and
Tax and Transfer Policy Institute, The Australian National University

Abstract

The topic of redistribution between rich and poor countries opens a can of worms. This paper first inquires into what we mean by some of these words and second, considers the role of taxation in redistribution. It briefly considers the various modes of redistribution to address poverty and inequality, including the role of taxation, *within* a country before turning to consider modes of redistribution *between* rich and poor countries. The paper then turns to consider whether we are asking the right question. Should the question, really, be about redistribution between rich and poor *people*? In an increasingly global and digital era, how might we reconsider the role of taxation in achieving this? The paper briefly touches on state-based and cosmopolitan theories of international distributive justice, before considering whether we need to unpack the very concept of the country, nation-state, or government to achieve the transnational provision of public goods and redistribution between rich and poor.

Keywords: International tax, economic development, poverty, inequality, redistribution
JEL codes: H23, H41, H77,H87

[*] *Tax and Transfer Policy Institute, Crawford School of Public Policy, ANU and Professor, University of Melbourne Law School, m.stewart@unimelb.edu.au*

Tax and Transfer Policy Institute

Crawford School of Public Policy

College of Asia and the Pacific

+61 2 6125 9318

tax.policy@anu.edu.au

The Australian National University

Canberra ACT 0200 Australia

www.anu.edu.au

The Tax and Transfer Policy Institute in the Crawford School of Public Policy has been established to carry out research on tax and transfer policy, law and implementation for public benefit in Australia. The research of TTPI focuses on key themes of economic prosperity, social equity and system resilience. Responding to the need to adapt Australia's tax and transfer system to meet contemporary challenges, TTPI delivers policy-relevant research and seeks to inform public knowledge and debate on tax and transfers in Australia, the region and the world. TTPI is committed to working with governments, other academic scholars and institutions, business and the community.

The Crawford School of Public Policy is the Australian National University's public policy school, serving and influencing Australia, Asia and the Pacific through advanced policy research, graduate and executive education, and policy impact.

Redistribution between Rich and Poor Countries

Miranda Stewart*

Contents

---

* University of Melbourne Law School and Tax and Transfer Policy Institute, The Australian National University. The author can be contacted at m.stewart@unimelb.edu.au. A version of this paper is forthcoming in the Bulletin for International Taxation (2018). This paper ws presented and has benefited from comments received at an interdisciplinary conference “International Tax Policy in a Disruptive Environment” organized by the Max Planck Institute for Tax Law and Public Finance in Munich on 14-15 December 2017. The conference was supported by The Harvard Fund for Tax and Fiscal Research and The H. Heward Stikeman Chair in the Law of Taxation at the McGill University Faculty of Law. The paper has also benefited from comments by two anonymous referees for the Tax and Transfer Policy Institute, Australian National University, working paper series.

1. Introduction

The topic of redistribution between rich and poor countries opens a can of worms. Each of the words “redistribution”, “between,” “rich,” “poor” and “countries” raises questions about meaning, while the topic itself raises numerous philosophical, legal, economic, political and administrative questions. If we can establish, first, what we mean by rich and poor countries and, second, what we mean by redistribution, we are faced with a third, fundamental question: should there be “redistribution” between rich and poor countries at all? If the answer to this question is yes, we must inquire, how should or can this be done? More specifically and relevantly for this audience, what is the role of taxation (domestic and international) in redistribution between rich and poor countries?

There is only scope here to touch very briefly on the moral or philosophical debates about distributive justice that underlie these questions.[1] On a literal interpretation, “redistribution” requires taking from those who have more and giving to those who have less. Applied in a national or global context, redistribution typically is intended to address either poverty or inequality. The goal of halving absolute poverty was established as a global challenge in the Millennium Development Goals. The Sustainable Development Goals (SDGs) take a significant step further, identifying Goals of eliminating poverty (Goal 1), gender equality (Goal 5), and reducing inequalities (Goal 10) by 2030.[2] The SDGs aim to “end poverty, protect the planet and ensure prosperity for all” and argue that “everyone needs to do their part: governments, the private sector, civil society and people like you”.[3]

Part 2 discusses what we mean by rich and poor countries, while Part 3 discusses redistribution, poverty, inequality and economic growth. Part 4 outlines the various modes of redistribution, including the role of taxation, *within* a country and part 5 does the same for current modes of redistribution *between* rich and poor countries. In Part 6, we turn to consider whether we are asking the right question. Should the question, really, be about redistribution between rich and poor *people*? In an increasingly global and digital era, how might we reconsider the role of taxation in achieving this? Part 6 explores some possible approaches, before Part 7 concludes.

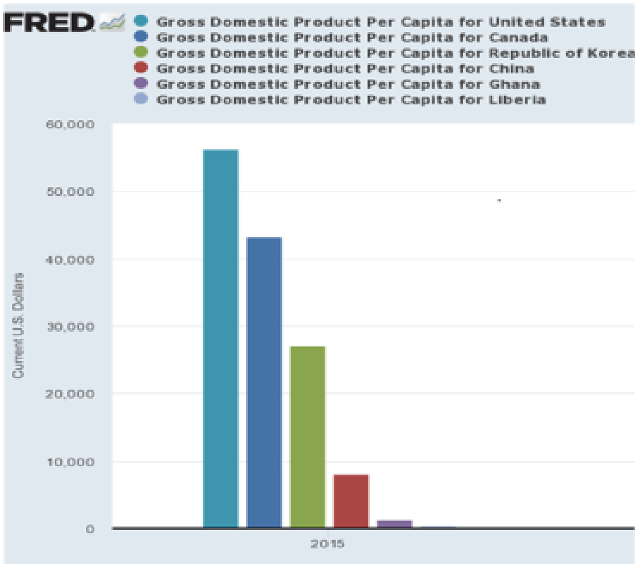
---

1. See, e.g. L. Murphy and T. Nagel, *The Myth of Ownership: Taxes and Justice* (2002, Oxford University Press) for an account of these moral debates in the national context.
2. UN, *Sustainable Development Goals*, available at www.un.org/sustainabledevelopment/sustainable-development-goals/ and UN, *Millennium Development Goals*, available at www.un.org/millenniumgoals/, including Goal 1 (No poverty); Goal 5 (Gender equality) and Goal 10 (Reduced inequalities).
3. UN, *Sustainable Development Goals*, *supra* n. 2.

2. Rich and Poor Countries

The standard metric of the richness or poorness of countries is Gross Domestic Product (GDP) or Gross National Income (GNI), or a slightly more nuanced metric of GDP or GNI per capita. The GDP per capita of selected countries is illustrated in Figure 1 for the United States, Canada, Korea (Rep.), China, Ghana and Liberia. Figure 2 shows the GDP per capita for these countries over the period since 1963, revealing that all these countries have grown richer since the 1960s, but some have grown much richer than others. Even after 70 years of the post-colonial economic development project that dates from Bretton Woods, there remains an enormous gap in GDP between rich and poor countries.

Figure 1: GDP (2015) (selected countries)



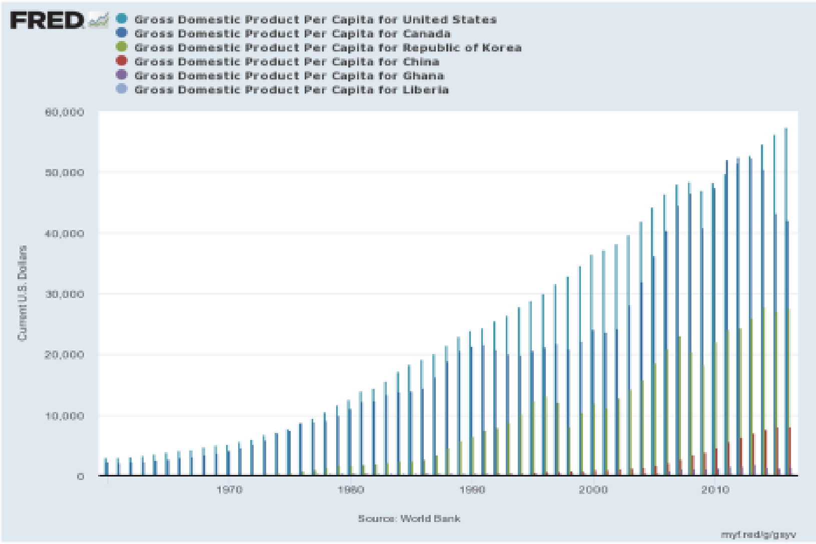
Source: Fed Reserve Bank Louisiana; World Bank Data https://fred.stlouisfed.org/graph/?g=erxy

The GDP per capita presented in Figures 1 and 2 measures the market value of goods and services produced, based on prices (inputs) in the economy, adjusted for population and determined from standardized national accounts and income surveys. This measure has been criticized as inadequate both for economic management and as a measure of well-being in a society.[4] A country's GDP per capita fails to account for the household, care and subsistence activities in that country, including home childcare, breastfeeding or food growing and preparation (all of which are much more widespread in households in poor countries) or the value of digital activities such as the internet or social media. It also misses national

4. *See*, for example, J.E. Stiglitz, A. Sen & J.-P. Fitoussi, *The measurement of economic performance and social progress revisited; Reflections and overview*, French Observatory of Economic Conditions: Economics Research Center, (2009), available at http://spire.sciencespo.fr/hdl:/2441/5l6uh8ogmqildh09h4687h53k/resources/wp2009-33.pdf.

liabilities and debt; the loss of capital in destruction of infrastructure; the economic costs of degradation of the environment and depletion of natural resources.

Figure 2: GDP per capita (since 1963) (selected countries)



Source: Fed Reserve Bank Louisiana; World Bank Data https://fred.stlouisfed.org/graph/?g=erxy

The weaknesses in the measure of GDP per capita have led to the development of a great many other indices of wellbeing, or richness/poorness of countries. The United Nations (UN) releases various indices that aim to capture diverse information about wellbeing include the Human Development Index (HDI), Inequality-adjusted HDI, Gender Inequality Index, Gender Development Index and Multidimensional Poverty Index.[5] Others have proposed a Happiness Index[6] and the OECD produces a Better Life Index.[7]

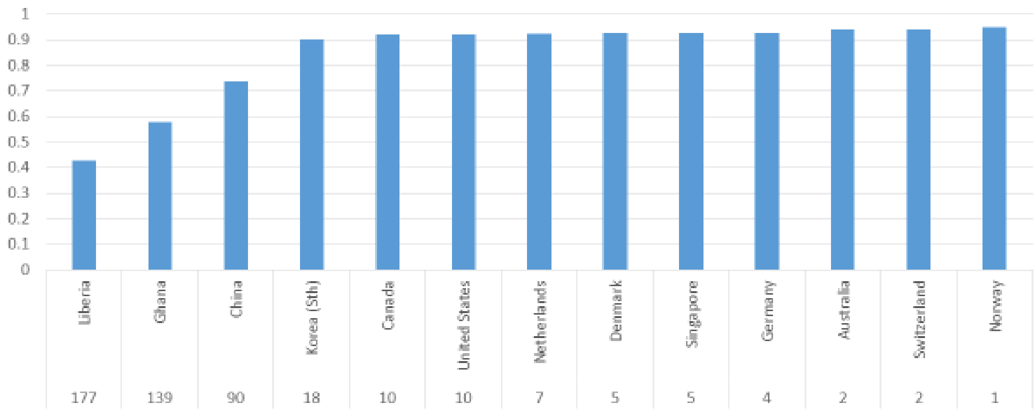
For our purposes, we do not need to go into detail about these indices, except to observe one key result which is relevant to taxation. The indicator of GDP takes account of government-produced goods and services by measuring input costs, differently to privately produced, or market, goods and services (measured at market prices). Thus, GDP may overstate the “richness” of countries where more goods and services are privately provided in the market – including the richest country in the world, the United States - compared to countries with larger governments and more public provision. Yet the people in countries with larger public sectors may be as well, or better off, than those who must pay privately for these goods, in spite of the higher tax burdens of the former, in general, which is required to pay

5. United Nations Human Development Report Office, *International Human Development Indicators* (UN), available at http://hdr.undp.org/en/countries.
6. *World Happiness Report 2017*, available at http://worldhappiness.report/overview/.
7. OECD, *Better Life Index* (OECD), available at www.oecdbetterlifeindex.org.

for a larger government. This is illustrated in the consistent representation of some countries with high tax and public expenditure levels at the top of the human development, happiness and better life indices.

Figure 3 presents the HDI rankings for selected countries in 2015, enabling comparison with Figures 1 and 2, with the addition of the six countries in the "top 5" HDI: the high-taxing Nordic countries Norway and Denmark; relatively high-taxing Switzerland and Germany; medium-taxing Australia; and relatively low-taxing Singapore. (*see* section **3.1** on tax levels). The United States ranks tenth on the HDI, with Canada, although it has dramatically higher GDP per capita than any other country.

Figure 3: Human Development Index (2015) (selected countries)



Source: UN HDI Data (2015), level and rank, http://hdr.undp.org/en/data# *Author chart* (2015)

Despite the limitations of all comparative indices, a consistent gap appears between developed (especially very rich) countries and developing (especially very poor) countries. In the HDI, Liberia and Ghana have less than half the human development level achieved by Canada, the United States, Australia and Norway. This is consistent with the very low GDP per capita of Liberia and Ghana. While there is diversity among rich countries, they all achieve a similar ranking on this aggregate statistic.

3. Economic Growth, Redistribution and Taxes

3.1. Growing the pie

The question of why some countries are rich and other countries are poor is a founding question of economics that dates at least to Adam Smith's *Wealth of Nations*.[8] However, the question of redistribution *between* rich and poor countries would likely have made no sense to him. Smith saw the main goal of political economy as to build the wealth of one's own country, thereby enriching both the people and the sovereign.[9] At least, in the new approach of gains from trade, this might also enable other countries to becoming wealthier, thereby enhancing the wealth, or economic growth, of all countries. However, any redistribution between rich and poor would remain solely the responsibility of the sovereign *within* the country.

In respect of poverty, "redistribution" usually refers to whether a person, or a country attains a baseline level of income or wealth, which could be defined in absolute or relative terms. To end poverty, it may not be necessary to take from anyone else. At this point, it is useful to distinguish the goal of economic growth from redistribution as such. A strategy to end poverty is what economists would term a Pareto-improvement in income or wealth, that is, to "grow the pie" such that even the poor obtain a sufficient share of the growth to reach the baseline.

However, we may not accept that relying on market outcomes is enough to address poverty, so some form of redistribution is required. Moreover, we might also care about inequality of income, wealth or other measure of wellbeing. To address either poverty or inequality may therefore require some level of "taking" from the rich to give to the poor. Redistribution to address inequality might be considered important as a goal in itself, or because unlike the classic idea of a trade-off between growth and redistribution, addressing inequality is seem as instrumental to achieving growth.[10]

In a global context, measured by some benchmark, we may argue that individuals, or countries, are entitled to a "fair share" of income, wealth, or the benefits of global economic growth. Nonetheless, we still perceive both economic growth (growing the pie) and redistribution as primarily tasks for governments acting *within* or *for* their own countries.

---

8. A. Smith, *An Inquiry into the Nature and Causes of Wealth of Nations* (1776), available in full text at www.econlib.org.
9. Id.
10 . Classical economics assumes a trade-off between growth (efficiency) and redistribution (equity), and further that market outcomes are the job of economics and distribution is the job of politics; however, more recent economic analysis acknowledges the endogeneity of inequality and growth and the role of government institutions. The relationship between growth and inequality is increasingly debated; see classically S. Kuznets, "Economic Growth and Income Inequality" *American Economic Review* XLV (1955) 1-28; and OECD, *Economic Policy Reforms 2012: Going for Growth* (OECD 2012), Chapter 5, "Reducing income inequality while boosting economic growth: can it be done?".

However, as discussed further in part 5 below, in the international context, the term "redistribution" has been applied to tax bases. The concept of inter-nation equity pioneered by Peggy and Richard Musgrave (1972)[11] implies that countries have an entitlement to a tax base, perhaps because of the location of business activity in a country or the benefits of investment. In this context, "redistribution" may be required if it is perceived that international tax settings lead to an "unfair" distribution of the tax base.

The global economic development discourse that underpins the SDGs takes the approach that economic growth is still the main anti-poverty strategy. That is, poor countries should "develop" their way out of poverty – just as, it seems, rich countries did. This strategy relies on the market to lift incomes, including mechanisms to deliver an increased return to workers in wages (rather than to capital, or profits) and to consumers in lower prices and more and better consumption goods.

The financing for development project that has accompanied the economic development agenda also calls for poor countries to raise taxes. The aim is to enhance *domestic revenue mobilization* which is said to support both economic growth and the reduction of poverty.[12] Thus, in 2001, the UN High-Level Panel on Financing for Development said:

> The primary responsibility for achieving growth and equitable development lies with the developing countries themselves ... . Financing an adequate level of social public expenditure while limiting budget deficits calls for substantial tax revenues. Most countries of the developing world must undertake significant tax reforms if they are to raise the additional revenue that they need. …[13]

A similar message is in the UN Financing for Development report of 2017 about the SDGs:

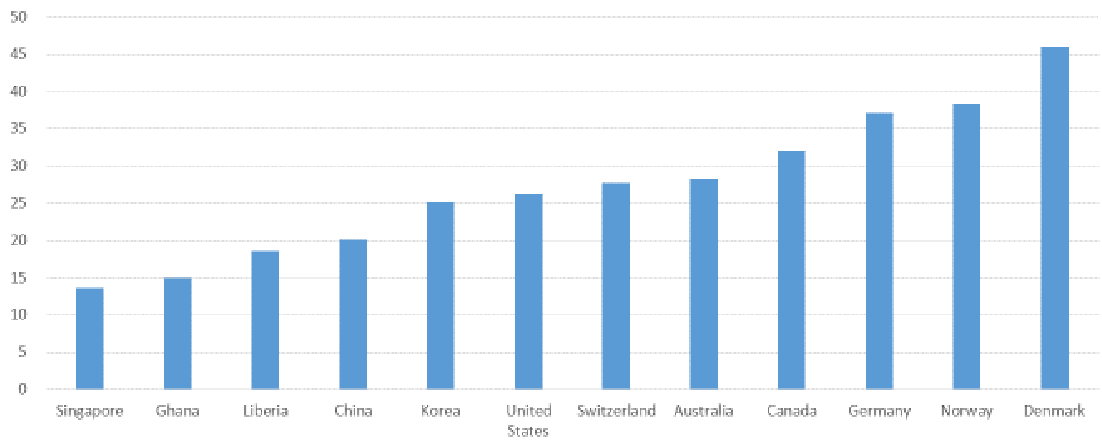
> For all countries, public policies and the mobilization and effective use of domestic resources, underscored by the principle of national ownership, are central to our common pursuit of sustainable development, including achieving the Sustainable Development Goals [SDGs]. We recognize that domestic resources are first and foremost generated by economic growth, supported by an enabling environment at all levels.[14]

---

11. R.A. Musgrave & P.B. Musgrave, *International Equity*, in *Modern Fiscal Issues: Essays in Honor of Carl S Shoup* p. 63 (R.M. Bird & J.G. Head eds., U. of Toronto Press 1972); P.B. Musgrave, *Sovereignty, Entitlement, and Cooperation in International Taxation*, **26** Brooklyn J. Intl. L. **4** p. 1335 (2001).
12. United Nations Department of Economic and Social Affairs, *Financing for Development* (UN), available at www.un.org/esa/ffd/index.html.
13. UN High-Level Panel on Financing for Development, *Report of the High-Level Panel on Financing for Development: Recommendations*, at paras. 3, 13 and 15 (UN 2001), delivered to the General Assembly, UN Doc. A/55/1000 (2001).
14. United Nations Economic and Social Council, *Report of the Economic and Social Council forum on financing for development follow-up*, E.FFDF/2017/3 para. 9 (8 June 2017).

The most common, although simplistic, comparative tax measure builds on the GDP indicator discussed above: the tax to GDP ratio or "tax level".

Figure 4: Tax to GDP ratio (Tax level) (%) (2015) (selected countries)



Source: OECD Tax Statistics (2015); OECD Africa Tax Statistics; OECD Asia Tax Statistics; IMF , *Author chart*

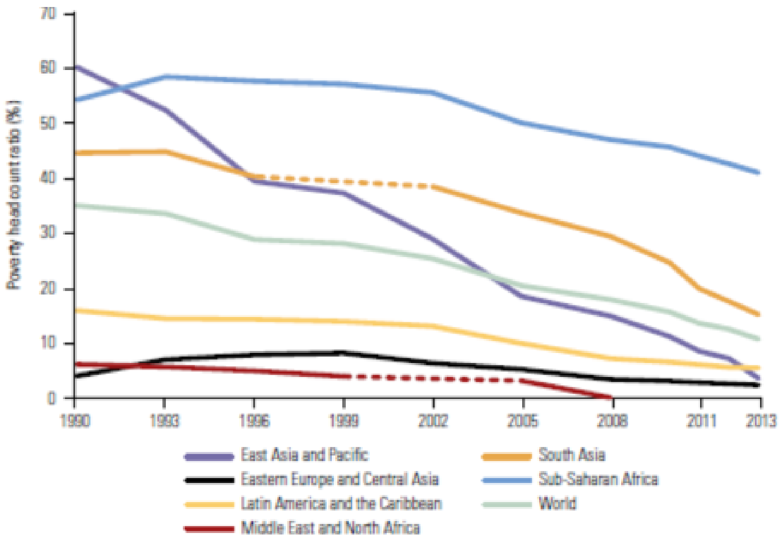
As economic growth occurred in countries (they became richer), tax levels increased. In general, poor countries have lower tax levels than rich countries. Figure 4 presents the tax levels for selected countries including those represented in the above Figures 1 to 3. It also shows significant variation in tax levels; clearly, taxation is not the whole story. The causal relationship between tax level and economic growth is even less well understood. Overall, poor countries do show a slow trend upward in their tax levels over the last few decades. However, this has proven very challenging and in many developing countries, revenues remain stuck at a stubbornly low fraction of GDP even as growth has increased significantly.[15]

Nonetheless, global economic growth (accompanied by institutional and policy change) has dramatically reduced the number and proportion of the global population in extreme poverty(leaving aside many caveats about how to measure poverty and about the successes and costs, short and long term, of economic development agendas). This is shown in the poverty statistics. Figure 5 presents the decline in the poverty headcount ratio, being the proportion of the population living on less than USD 1.90 per day in purchasing power parity dollars, by region since 1990.

---

15. *See*, e.g OECD, *Tax Statistics in Asian Countries*, Figure 1.4, Tax to GDP ratios, 1990-2014 (OECD).

Figure 5: Trends in Global Poverty Headcount Ratio by region (2015)



Source: World Bank, *Taking on Inequality* (2016) , Figure 0.2.

The role of tax in achieving economic development has been long debated and the recommended tax policies have changed over time.[16] However, it is accepted that taxes are needed to raise public finance for infrastructure, market institutions and redistribution. The post-colonial consensus in the 1950s and 1960s proposed that tax policy should ensure protection of domestic industry and provide favourable tax regimes for it, as well as building progressive taxes specifically to redistribute from rich to poor within developing countries. In the 1980s to 2000s, tax policy to encourage economic development shifted towards recommending enactment of the value added tax; low, flat rate broad-based corporate and personal income taxes, “neutrality” of taxes with respect to market activities and the gradual reduction and planned elimination of tariffs to support free trade. Progressivity was considered less important and even a hindrance to growth.

Can we talk of redistribution between rich and poor countries in sharing the benefits of economic growth? Perhaps, the most that can be argued is that rich countries have obligations, which may be established through the international institutions, to set framework conditions, transition rules and tax policy to support economic development in poor countries. That is, rich countries (including former colonial powers) have an obligation to help poor countries to develop; to stop exploiting poor countries; and to provide access to a fair share

16. *See*, among a large literature, R.M. Bird, *Tax Policy and Economic Development* (The Johns Hopkins U. Press 1991) and OECD, *Tax and Development Programme* (OECD), available at www.oecd.org/ctp/tax-global/tax-and-development.htm. I have discussed this elsewhere, for example, in M. Stewart, *Global Trajectories of Tax Reform: Mapping Tax Reform in Developing and Transition Countries*, 44 Harvard Intl. L. J. 1, pp. 170-172 (2003).

of economic growth through investment, debt capital and trade. Poor countries could also be assisted by being given access to decision-making in international institutions that help establish the levers of economic growth; and provided with trade concessions; permission to maintain tariffs and protection; and concessional tax treaty rules. Nonetheless, all of these obligations still assume that economic development takes place in a statist, or, frame of reference and remains the obligation of the nation-state. They are not about redistribution *between* countries. Nor are they about "sharing" a global tax base.

3.2. The raison d'etre of the state

It is arguable that redistribution is the raison d'etre of contemporary governments.[17] The contemporary "tax state" developed over the last two centuries has a capability unique in recorded history to manage mass redistribution from rich to poor. The power to tax and deliver social spending became a defining characteristic of democratic governments in the 20th century.[18] Ideas about, and capability to do, redistribution through fiscal policy evolved from the 19th century especially in the German states, where the specialist subject of public finance for "communal wants" became known as *Finanzwissenschaft* and was influential around the world.[19] At the end of the nineteenth century, Adolph Wagner (1883; 1954) argued:

> [Taxation] ... can become a regulating factor in the distribution of national income and wealth, generally by modifying the distribution brought about by free competition ... this second, regulatory purpose to interference with the uses of individual incomes and wealth ... leads to an extended, or if preferred, a second conception of taxation. This is a 'social welfare' concept beside the 'purely financial' one.[20]

In the United States, Seligman[21] and later Simons[22] argued for the progressive income tax as a key instrument for redistribution. However, there were doubts. Joseph Schumpeter wrote in 1918 about the potential collapse of the tax state in the face of increasing social demands:

> While the tax state has been able to survive rising costs of administration and war, changing attitudes towards property and demands for social expenditures offer a more

---

17. As noted above, politics or government is the domain of redistribution. Other purposes of government include, of course, national security. Less benevolently, the state could be coercive and rapacious, aiming to extract as many resources as possible for the benefit of the leader or the few, *see*, for example, M. Levi, *Of Rule and Revenue* (U. Cal. Press 1989).
18. J. Campbell, *The State and Fiscal Sociology*, 19 Annual Rev. Sociology p. 163 (1993) and A. Gould & P. Baker, *Democracy and Taxation*, 5 Annual Rev. Political Sci. p. 87 (2005).
19. See, e.g., the Irish economists C.F. Bastable, *Public Finance*, 3rd edn. ch. II., p. 15 (Macmillan, 1892 & 1917), available at www.econlib.org, who discusses the German scholarship in detail.
20. A. Wagner, *Three Extracts on Public Finance*, in *Classics in the Theory of Public Finance* p. 89 (R.A. Musgrave & A.T. Peacock eds., Palgrave MacMillan (1883; 1954).
21. E.R.A. Seligman, *Progressive Taxation in Theory and Practice*, 2nd edn. (Princeton U. Press 1908).
22. H. Simons, *Personal Income Taxation* (U. Chicago Press 1938).

> ominous signal for its future. These may generate a crisis which the tax state cannot survive.[23]

By the second half of the 20th century, it appeared that the "tax state" had triumphed in its redistributive aims. As Richard Musgrave (2000) observed:

> [T]he western world saw the typical state share in GNP rise from 20 to over 40 percent. In part this reflected rising military budgets, but more importantly the growth of social programs to serve the interests of lower and middle income groups. The propertied class did not dominate voting rights and, in strategic areas, even sponsored the infusion of social concern into the market system. By and large, the rise in expenditures was matched by rising tax revenue; and where instances of over-indebtedness led to fiscal collapse (typically as the product of war finance), that crisis was soon liquidated by bankruptcy and inflation. Thereafter, the capitalist system with its tax state reemerged none the worse.[24]

Today, we can identify four modes of fiscal policy addressing redistribution between rich and poor within countries. To identify these common modes of redistribution is not to say that all countries are the same. However, all successful tax states manage these four modes of redistribution to a varying extent. Of course, all law and policy has distributional effects and other institutions and regulatory functions that may have a particularly significant effect on redistribution are immigration policy; wages and work policy; and land regulation.

3.2.1 Public goods

Richard Musgrave described the provision of public goods as a function of the "allocation" branch of government.[25] It is usually treated as distinct from redistribution, but I would argue that the provision of public goods delivers importantly on redistribution. It can significantly support poverty relief in an economic development context, as advocated in the SDG agenda. Even if funded by a proportional (flat) tax rather than by progressive taxation, as proposed by Musgrave (**1959**), those with more income pay for more of the cost of public goods than those with less and wide benefits are achieved.

---

23. J.A. Schumpeter, *The Crisis of the Tax State*, in Musgrave & Peacock, *supra* n. 20.
24. R.A. Musgrave, *Public Finance in a Democratic Society* vol. 3 p. 101 (Edward Elgar 2000). *See also* V. Tanzi & L Schuknecht, *Public Spending in the 20th Century* (Cambridge U. Press 2000) and K. Messere, *The Tax System in Industrialised Countries* (Kluwer 1993). The history of this fiscal state is explained by many, including A. Mehrotra, *Making the Modern American Fiscal State* (Cambridge U. Press 2014).
25. R.A. Musgrave, *The Theory of Public Finance* (New York, McGraw-Hill 1959).

Musgrave (1959) also referred to merit goods,[26] which provide benefits to individuals or households funded or delivered by government. These, I would argue, are today better considered as public or social goods. The rather narrow economic definition of a public good as non-rival and non-excludible, and solely for collective consumption, such as law and order and defence, comprises from 10 to 20 per cent of the expenditure of rich country governments. Instead, expenditures on health, housing and education are by far the most substantial, fiscally costly and widely distributed public goods in these countries, comprising as much or more than 30 per cent of OECD member state budgets.[27]

3.2.2 Progressive Taxes and Transfer Systems

The use of taxes and cash transfer (welfare or social protection) systems to "regulate" the market distribution of income and wealth is a second crucial mode of redistribution within countries. This redistributive technique is inter-personal, but relies on the state to mediate between individuals and families who are identified through various criteria of eligibility, and need. Musgrave (**1959**) described this as the "distribution" branch of government, which would often be financed by progressive taxes or have means tested cash benefits based on need. It is much less effective in redistributing or regulating the distribution of wealth. Today, social protection or cash transfers average more than 30 per cent of OECD member state budgets (ranging from about 20 per cent in Korea to nearly 45 per cent in Finland).[28]

The level of redistribution achieved through tax and transfer systems within countries is usually presented by examining the Gini coefficient of a country for disposable income (after taxes and transfers have applied). The disposable income Gini for OECD member countries is shown in Figure 6 (the lower the Gini, the more equal the disposable income distribution). Income inequality has risen in the last two decades but tax and transfer systems still have substantial income equalizing effects in most OECD member countries, offsetting about two thirds of market inequality in household income.[29]

---

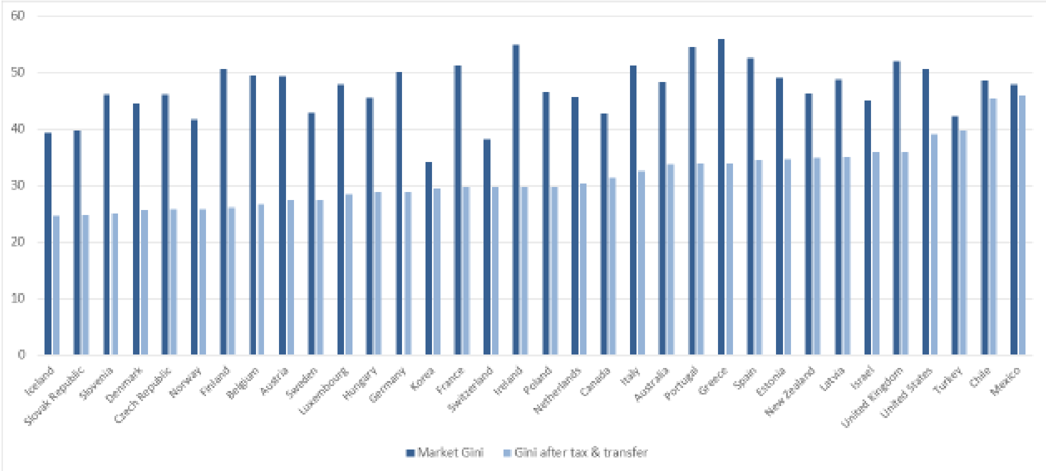
[26] Ibid.

[27] OECD, Structure of General Government Expenditures by Function, *Government at a Glance,* http://dx.doi.org/10.1787/gov_glance-2017-en (13 July 2017).

[28] Ibid.

29. C. Wang, K. Caminada & K. Goudswaard, *Income redistribution in 20 countries over time*, 23 Intl. J Soc. Welfare 3, pp. 262-275 (2014).

Figure 6: Gini coefficient (before and after taxes and transfers) (OECD)



Source: OECD Inequality Update (2017) (data from 2014), available online at http://www.oecd.org/social/income-distribution-database.htm

Some countries rely more substantially on highly progressive tax-transfer systems than others. As an example, Australia has the most "redistributive" tax and transfer system of any OECD country, because it relies more on need-based cash transfers and progressive income tax and less on insurance-style wage based systems than most other countries.[30] However, as indicated by **Figure 6**, Australia is not the most equal society in the world by disposable income: That award goes to the relatively high taxing and high spending Nordic states, which have more universal public cash payments, goods and services.

3.2.3 Charity

A third mode of redistribution at the national level is charity or philanthropy, which has older antecedents than governmental redistribution. Charity continues to play a significant role but, at least in rich countries, it is significantly intertwined with state-based mechanisms for redistribution. Poor relief and homelessness services, for example, are often delivered by charities, but these days they are substantially funded by government. In some countries, such as the United States, private philanthropy plays a large role in the delivery of some kinds of public goods – higher education is an example – although the (re)distribution of these public goods may be somewhat doubted, given the benefit derived by high income earners

30. P. Whiteford, *Social security and welfare spending in Australia: Assessing long-term trends* Tax & Transfer Policy Inst. Policy Br. 1/2017 (July 2017), especially Figure 25, available at https://taxpolicy.crawford.anu.edu.au/sites/default/files/publication/taxstudies_crawford_anu_edu_au/2017-07/combined_pdf_whiteford_trends_in_soc_sec_spending_2017.pdf.

from them. In other countries, such as Australia, private and historically religious-based schools and hospitals make up about one third of total service delivery. The state subsidises these privately delivered services, spending nearly as much on them as on public services.

3.2.4 Fiscal equalization and sharing tax bases

Most countries apply (more or less effectively) some kind of fiscal equalization process to redistribute government revenues from one region to another (horizontally) or from one level of government to other (vertically).[31] Even in unitary states that are not formal federations, governments redistribute revenues across rich and poor regions, states, areas and local governments.

The forms of fiscal equalization vary widely. They include mechanisms for allocation of tax bases to different levels of government within countries and formula based or ad hoc grants or revenue distribution processes among poor(er) and rich(er) regions, provinces or local governments. In constitutional federations such as Germany, Australia and Canada, fiscal equalization may be highly regimented and formal. In other countries, it may be depend more on historical factors to do with resources and the allocation of tax bases. In many poor countries, it is done poorly or not at all, likely contributing to regional or ethnic strife, or even civil war, where some regions are much poorer than others.[32]

4. Modes of Global Redistribution

While the nation-state remains of central importance in economic development and redistribution, there are various international modes of "redistribution" *between* countries. These parallel, to some degree, the four modes of redistribution *within* countries outlined in section 3. These include the provision of international public goods, international aid, global philanthropy and the allocation of tax bases across borders in the international tax regime.

---

31. *See*, for example, C. Dziobek, C. Gutierrez Mangas & P. Kufa, *Measuring Fiscal Decentralisation – Exploring the IMF's Databases*, IMF Working Paper WP/11/126 (2011) and OECD, *Fiscal Federalism 2016,* A bird's eye view of fiscal decentralisation, (OECD 2016), available at http://dx.doi.org/10.1787/9789264254053-3-en and www.keepeek.com/Digital-Asset-Management/oecd/governance/fiscal-federalism-2016/a-bird-s-eye-view-of-fiscal-decentralisation_9789264254053-3-en#.WnaHLDeYPcs.

32 .See, e.g., analysis of the troubling ethnic conflict in Myanmar as a function of regional inequalities and a failure to establish regional resource revenue sharing: A. Bauer and M. H. Aung, *Could Natural Resource Revenue Sharing Help Secure Peace in Myanmar?* https://resourcegovernance.org/blog/could-natural-resource-revenue-sharing-help-secure-peace-myanmar (27 August 2015).

4.1. International public goods

A wide variety of international institutions and cooperation provide what could be termed international public goods.[33] This includes the framework rules and conditions that support (on the whole) global economic trade and investment and the many treaties and institutions governing everything from the laws of war to postal services to air traffic control, from sea beds to heritage (most recently, pizza making),[34] wild animals to climate change. These regimes are important for global economic growth and wellbeing and they also contribute to "redistribute" from rich countries to poor countries. Some of these programmes inevitably benefit poor countries much more directly than rich countries, as the latter manage this public good provision domestically through their own laws and government spending. For example, public health activities of the World Health Organization (WHO), such as disease eradication programmes, benefit everyone but are focused primarily on poor countries, thereby having a beneficial redistributive effect.[35]

However, if we take a broader view of the role of government in delivering merit goods such as health and education, or social protection systems, *within* countries as a benchmark, it seems obvious that the delivery of international public goods has scarcely reached its potential. It seems that we fail, as much as we succeed, in obtaining international cooperation or delivery of committed funds to deliver even minimal global public goods, while almost no redistribution of income or wealth is achieved. Moreover, the financing of such international public goods has not been achieved by global taxes, or even, in many cases, by national taxes or adequate sharing of tax revenues.

4.2. International aid

The main mode of direct redistribution from rich to poor countries to deliver what could be considered merit goods is the international regimes for aid, disaster relief, concessional or low interest debt financing and debt relief, and supplementary provision of services such as technical assistance between governments. Foreign aid has become increasingly well organized as Official Development Assistance (ODA) delivered either bilaterally or through a multilateral development agency.[36] International concessional lending and debt relief may be bilateral or from the International Monetary Fund (IMF), the World Bank, or regional development banks.

---

33. *See*, e.g., *International Public Goods: Incentives, Measurement and Financing* (M. Ferroni & A. Mody eds., World Bank 2002) and I. Kaul, I. Grunberg & M. Stern, *Global Public Goods: International Cooperation in the 21st Century* (Oxford U. Press; United Nations Development Programme, 2003).
34. UNESCO, *Intangible Cultural Heritage, Art of Neoapolitan 'Pizzaiuolo'*, Available at https://ich.unesco.org/en/RL/art-of-neapolitan-pizzaiuolo-00722 .
35. WHO, *Who we are, what we do*, available at www.who.int/about/en/.
36. OECD, *Official development assistance - definition and coverage* (OECD), available at www.oecd.org/dac/stats/officialdevelopmentassistancedefinitionandcoverage.htm.

In total, ODA amounted to USD 130 billion in 2015.[37] This is a small proportion of rich country budgets. In dollar terms, the United States was the biggest donor in 2015 (USD 30 billion), but as a proportion of GNI, Sweden was the largest donor (1.41% of GDP).[38] However, foreign aid can be large relative to poor country national income or budgets, where it may drastically outweigh tax revenues. In recent years, Liberia, one of the poorest countries in the world as indicated in Figure 1, relied most heavily on ODA, receiving 176% of its GNI in aid.[39] The interaction between foreign aid and recipient country budgets may be difficult, however, as many donor countries (and private donors) seek to directly control expenditure of aid on specific projects. Where this occurs, ODA bypasses the recipient country budget and is therefore not really a country to country redistribution.

4.3. International philanthropy

International philanthropy operates in two ways: (1) activities across borders by charities; and (2) charitable gifts across borders (philanthropy). The international charitable and donative framework operates in close relationship to the political and taxing domain of the state, as well as to private returns achieved by individuals in the global market. This relationship may be illustrated by the title of a recent bestseller, *Philanthrocapitalism: How Giving Can Save the World*.[40]

Although depending on national or state based laws, international not-for-profit (NFP) or charitable activity at times appears more flexible than state aid in achieving "redistribution" across borders. There is evidence that both international charity and philanthropy have increased dramatically in recent decades. In 2012, the OECD launched a global network of foundations for development.[41] Some forms of international public goods, such as vaccination

---

37. OECD, *Final Official Development Assistance Figures in 2015* (OECD), available at www.oecd.org/dac/financing-sustainable-development/development-finance-data/final-oda-2015.htm. *See also* OECD, *Geographical Distribution of Financial Flows to Developing Countries* (OECD 2017), available at http://dx.doi.org/10.1787/fin_flows_dev-2017-en-fr.

38. OECD, *Final Official Development Assistance Figures in 2015*, *supra* n. 34 and *Geographical Distribution of Financial Flows to Developing* Countries, *supra* n. 34. *See also* J. Myer, *Foreign aid: These countries are the most generous,* World Economic Forum (19 Aug. 2016), available at www.weforum.org/agenda/2016/08/foreign-aid-these-countries-are-the-most-generous/.

39. L.-A. Pilapil, *Top 10 countries with the highest ODA to GNI ratio*, devex (6 Feb. 2012), available at www.devex.com/news/top-10-countries-with-the-highest-oda-to-gni-ratio-77423.

40. M. Bishop & M. Green, *Philanthrocapitalism: How Giving Can Save the World* (Bloomsbury Press 2009). I discuss the intersection of market and state in international philanthropy in M. Stewart *The Boundaries of Charity and Tax* in M. Harding, A. O'Connell and M. Stewart (eds) *Not for profit law: Theoretical and Comparative Perspectives* (Cambridge University Press: Cambridge) 232-253 (2014).

41. Global Network of Foundations Working for Development, *About Us*, available at https://www.oecd.org/site/netfwd/ ; M. Edwards, *The Role and Limitations of Philanthropy*, Commissioned Paper, Bellagio Initiative (Nov. 2011); OECD, *Philanthropic Foundations and Development Cooperation*, 4 DAC Journal 3, p. 73 (2003).

or seeking to eradicate malaria or HIV, are currently being substantially delivered by private philanthropy, in cooperation with global institutions and national governments.[42]

The growth in international charity and philanthropy is a part of what has been called a “global associational revolution”.[43] This growth may have been prompted by an apparent “crisis” of nation states “to cope on [their] own with the social welfare, developmental, and environmental problems that face nations today”, as well as being stimulated by enhanced communications and an expansion in the middle class in many countries.[44] Transnational charities and other NFP organizations also seem to be growing as key institutions in international civil society, with the goal of counteracting directly the neoliberal economic discourse of globalization and of enhancing distributional justice and a diversity of voices in international policy.[45]

4.4. International allocation of the tax base

Ilan Benshalom (2014) plausibly argues that direct redistribution between countries cannot be achieved at scale, pointing to the great challenges (and frequent failures) of international aid as evidence of this.[46] Benshalom argues that global redistribution – which he describes (without specifically defining this) as wealth distribution – must be achieved *indirectly* through various framework, economic or institutional changes. A key such institution that he identifies is international taxation, in particular the allocation of the right to tax.

Can the long-standing international regime for the allocation of jurisdiction to tax on the bases of residence and source be considered as a mode of distribution between countries? In superficial ways, the allocation of the tax base is analogous to the allocation of tax bases to different levels of government in a federation. However, it is quite different in distributional effect. This is because there is no overarching equalizing global mechanism to moderate the distributional effects of tax jurisdiction through the other domestic modes of redistribution summarized in section 3. As Tsilly Dagan (2018) observes, the international tax regime is fully decentralized.[47]

---

42. *See*, e.g. the goal of the Bill and Melinda Gates Foundation to eradicate polio: www.gatesfoundation.org/What-We-Do/Global-Development/Vaccine-Delivery.
43. L.M. Salamon et al., *Civil Society in Comparative Perspective*, in *Global Civil Society: Dimensions of the Nonprofit Sector* pp. 3 and 4 (L.M. Salamon et al. eds., John Hopkins Ctr. for Civ. Socy. Stud. 1999) and I.A. Koele, *International Taxation of Philanthropy* p. 4 (IBFD 2007), Online Books IBFD.
44. Salamon et al., *supra* n. 48, at p. 4.
45. Id.
46. I. Benshalom, *How to redistribute? A critical examination of mechanisms to promote global wealth distribution* 64 U. Toronto L. J. (2014). DOI: 10.3138/utlj.0717.
47. T. Dagan, *International Tax Policy: Between Competition and Cooperation* p. 3 (Cambridge U. Press 2018).

However, in her celebrated work on inter-nation equity, Peggy Musgrave (2001) has argued that the international tax system – both residence and source principles – is specifically about redistribution, both domestically and between nations.[48] She argues that the residence basis, at least for individuals, but also for corporations as important intermediary entities, is necessary for countries to protect horizontal and vertical equity in their domestic income tax. Moreover, investment capital especially in intangibles, and highly skilled and high wealth individuals, are much more likely to be mobile and so, as Kim Brooks (2009) suggests, ignoring equity in international taxation misses inter-individual equity issues within countries.[49] On this analysis, the rules of international tax allocation support national redistribution *within* countries, rather than being about redistribution *between* countries.

However, the source basis for taxation of economic activity remains, as P. Musgrave claims it to be, a foundation of inter-country distribution. The source basis is the "bedrock of most international tax treaties" with clear relevance to distribution between rich and poor countries:

> This permits a country to share in the gains of foreign-owned factors of production operating within its borders; gains which are generated in cooperation with its own factors, whether they be natural resources, an education and/or low-cost work force, or the proximity of a market. The tax revenue so obtained may be thought of as a national return to the leasing of these complementary factors to non-resident investors or temporary workers, or, such taxation may be thought of in benefit terms, as a quid pro quo payment for cost-reducing, profit-enhancing services provided by the host country.[50]

The territorial or economic connection approach to allocating tax jurisdiction still "works" for many kinds of tax, whether on income, wealth or consumption. Most of us and our economic activities including earning wages, conducting business activities and consuming goods and services remain territorially grounded even in a global era. However, as is well known and discussed in other issues in this volume (so I will not rehearse it here), digital global capitalism, multinational value chains and entity control across tax havens contribute to base erosion and profit shifting (BEPS) and fundamentally challenge this traditional approach to tax allocation.

Peggy Musgrave (2001) argued for increased levels of international coordination to achieve inter-nation equity at least in corporate taxation, for example, setting a basic corporate tax rate and sharing revenues through formulary apportionment.[51] On the other hand, some have

48. P. Musgrave, *supra* n. 4 and R. Musgrave & P. Musgrave, *supra* n. 4. *See also* N.H. Kaufman, *Fairness and the Taxation of International Income*, 29 L.& Policy Intl. Bus. 2, p. 145 (1998).
49. K. Brooks, *Global Distributive Justice: The Potential for a Feminist Analysis of International Tax Revenue Allocation* 21 Can. J. Women & L. Issue 2, p. 289 (2009).
50. P. Musgrave, *supra* n. 4, at pp. 1341-1342.
51. P. Musgrave, *supra* n. 4.

suggested that the entitlement or economic allegiance approach to tax allocation cannot be supported on moral distributional grounds under benefit, communitarian or voluntarist political theories, in part because nation-state borders do not align with or justify any morally relevant group for redistribution.[52]

A key challenge to a “fair” inter-nation allocation of the tax base on the source basis is, as P. Musgrave (2001) acknowledged, global competition of nations through tax and other policies.[53] The international allocation of the tax base interacts with the competitive drive for economic growth and harnessing a share of global economic growth through investment. Thus, while it is likely that base erosion and profit shifting (BEPS) harms poor countries more than rich countries, and this can be addressed to some extent by international tax reforms and better administration as proposed by the OECD BEPS project, it is also the case that poor countries frequently do not fully exercise their jurisdiction to tax foreign investment. Despite the importance of corporate tax for poor countries, the evidence is that increasingly, corporate tax revenues are given away in tax incentives that narrow the base, and in lower tax rates, poor administration or special deals.[54]

5. Rethinking Tax and Redistribution

5.1. The right question?

Are we asking the right question, being about redistribution between rich and poor countries? Some have suggested that fairness in the international tax context has no meaning, or at least, is a blurry and contested concept.[55] According to the SDGs, we should be concerned about people not countries: the huddled masses, the poor compared to the rich and growing inequality between rich and poor people.

However, it is difficult for tax policy to move beyond the statist view of international taxation. Tax law remains national or sovereign law. Any cooperation between states is intended to help collect national tax revenues or to bolster national tax sovereignty. This statist view is only reinforced by the acknowledgement of a global commons of the oceans, Antarctica and space outside the territorial boundaries of states.

---

52. A.W. Cappelen, *The Moral Rationale for International Fiscal Law*, 15 Ethics & Intl. Affairs 1, p. 97 (2001).
53. P. Musgrave, *supra* n. 4.
54. *See*, for example, L. Abramovsky, A. Klemm & D. Phillips, *Corporate Tax in Developing Countries: Current Trends and Design Issues*, 35 Fiscal Stud. 4, pp. 559-584 (2014). L. Schoueri argues forcefully that the delivery of tax incentives is the sovereign right of capital importing countries which should be respected by rich countries, for example through tax sparing in tax treaties: *Tax Sparing: A Reconsideration of the Reconsideration*, in *Tax, Law and Development* (Y.R. Brauner & M. Stewart eds., Edward Elgar 2013).
55. I.J.J. Burgers & I.F. Misquera Valderrama, *Fairness: A Dire International Tax Standard with No Meaning?* 45 Intertax 12, p. 767 (2017).

As well as having a monopoly on taxing power, the state also *limits* redistribution, as much as it delivers it and thereby control the extent and pattern of distribution between rich and poor people. There is more attention than ever being paid to these boundaries, which are not always aligned with territorial or citizenship concepts, to identify who is “in” and who is “out” for purposes of tax, social welfare and entitlement to merit goods such as healthcare. This is increasingly important as countries may be facing increasing fiscal challenges in preventing poverty and addressing inequality.

5.2. Reframing the question

Dagan (2013) suggests that nations are facing “tragic choices” between redistribution and tax competition.[56] A similar view of this “tragedy” is suggested by Walter Scheidel (2017), who claims that history shows that the biggest drivers of reduced inequality have been war and disaster and who doubts the ability of governments to counter it:

> Even the most progressive welfare states of continental Europe are now struggling to compensate for the widening income disparities that exist before taxes and transfers. In the coming decades, the dramatic aging of rich countries and the pressures of immigration on social solidarity will make it ever harder to ensure a fairly equitable distribution of net incomes.[57]

Unfortunately, simply “sharing” the tax jurisdiction between states, even fairly and in accordance with inter-nation equity, will not necessarily lead to greater redistribution between rich and poor. There is little sign of the increased coordination in fundamental tax rules and a harmonised tax rate, which Peggy Musgrave (2001) sought.

One new approach to this dilemma is proposed by Dagan (2018) who re-examines the challenge of competition and the goal of coordination to understand and weigh the welfare outcomes of both options better. She advocates improving tax competition, by establishing fair rules of the game. This approach recognises the global challenge for justice, and presents a new kind of statist solution, relying on governments to continue managing redistribution within their borders. Dagan also proposes establishing genuine transfers of income between rich and poor countries, as a possible element of this system. This requires global governance, but to obtain greater gains from tax competition, not to eliminate it.[58]

Another approach is to move *beyond*, or insert ourselves *into* the nation-state in order to reconsider redistribution. This could be a matter of framing. It is a cliché that globalization is

---

56. T. Dagan, *Tragic Choices* in *Tax, Law and Development* (Y.R. Brauner & M. Stewart eds., Edward Elgar 2013) and *supra* n. 52.
57. W. Scheidel, *The Only Thing, Historically, That's Curbed Inequality: Catastrophe* (21 Feb. 2017), available at www.theatlantic.com/business/archive/2017/02/scheidel-great-leveler-inequality-violence/517164/.
58. Dagan, *supra* n. 52.

causing national boundaries of states (and economies) to weaken, so that we come to see ourselves as directly, rather than indirectly, connected to the global economy, or across borders to multiple jurisdictions.[59] The national frame of reference for growth and redistribution has been termed by Nancy Fraser (2005) the "Keynesian-Westphalian frame".[60] This phrase refers to the boundaries of the sovereign[61] state at international law and to its economic character, relying on taxation to fund social welfare and playing an interventionist role through fiscal policy in the national economy. Fraser (2005) calls for us to "reframe" debates about fundamental questions of redistribution (distributive justice) and representation (democratic citizenship) to take account of globalization. This hints at a reconfiguration of the political and economic boundaries of the state, but does not take it much further.

A third alternative to a statist approach is the turn to cosmopolitanism. There is a significant moral and ethical debate between "cosmopolitans" who argue for people as *individuals* as the basis for determining global distributive justice, compared to a Rawlsian position of "peoples", that is, *nation-states*.[62] There are various reasons why cosmopolitans call for us to move beyond states, but we can highlight two concerns. First, countries (governments) might actually work against the pursuit of global redistribution, or they may (and undoubtedly in some cases do) actually cause poverty and inequality. Second, as suggested by Dagan and Scheidel, countries may be increasingly *unable* to achieve redistribution, as they face the realities of globalization.

Cosmopolitans such as Thomas Pogge (2011) and Gillian Brock (2006)[63] see the importance of taxation and argue for international tax mechanisms to achieve redistribution between rich and poor, including cooperation and global taxes. However, unlike Peggy Musgrave (2001), the goal is not redistribution between rich and poor countries. Rather, it is the use of whatever mechanisms are available to achieve redistribution between rich and poor people. While redistribution between people may be the motivation, however, cosmopolitans must face the reality already discussed: the legal and political mechanisms of taxation and social welfare are state-based. Thomas Nagel (2005) presents a nuanced examination of this challenge to theories of global justice and argues persuasively that the nation-state remains "the primary locus of political legitimacy and the pursuit of justice".[64] At least, we can accept that the nation-state has both a legitimate claim and viable institutions to achieve redistribution.

---

59. W. Twining, *Globalization and Legal Theory* pp. 7-8 (Cambridge U. Press 2000) and S. Sassen, *Globalization and Its Discontents* (New Press 1998).
60. N. Fraser, *Reframing Justice in a Globalizing World*, 36 *New Left Rev*. p. 69 (2005).
61. R. Falk, *Revisiting Westphalia, Discovering Post-Westphalia*, 6 *Journal of Ethics* 4, p. 311 (2006).
62. *See* https://plato.stanford.edu/entries/cosmopolitanism/#Bib. *See also Global Justice* (T. Pogge ed., Blackwell 2011), in contrast to J. Rawls, *The Law of Peoples* (Harvard U. Press 1999).
63. Pogge, *supra* n. 69; G. Brock, *Egalitarianism, Ideals, and Cosmopolitan Justice*, 26 The Phil. Forum 1 (2005) and *Global Justice: A Cosmopolitan Account* (Oxford U. Press 2009); and K.A. Appiah, *Cosmopolitanism: Ethics in a World of Strangers* (W.W. Norton 2006).
64. T. Nagel, *The Problem of Global Justice*, 33 Phil. & Pub. Affairs 2, p. 113 (2005).

Some argue that unsettling the state-based taxation regime will be very difficult or that it requires a very significant alteration of the political dynamics.[65] This is evidenced by failures to date. John Braithwaite and Peter Drahos (2000) nearly 20 years ago identified the failures of the international tax regime compared to other forms of international regulation, comprising “polycentric, regulatory diversity” between “rogue fiscal sovereigns”, constantly out-played by the “monocentric complexity” of multinational enterprises (MNEs) operating globally.[66] We have been recently affronted by the concept of “stateless income”, like outer space, unreachable by any taxing state.[67] The reaction of governments in the OECD/G20 BEPS project suggests that this is against the natural order of things. Ironically, the Trump tax reform of 2017 may have restored order to this chaos, eliminating “stateless income” by ensuring that the United States asserts jurisdiction, or permits another country to have jurisdiction, to tax in various situations.[68] It also takes us further down the path of straightforward international tax competition.

5.3. Towards transnational taxation and redistribution

I suggest that another approach to rethinking redistribution between rich and poor countries is to problematize the very concept of a *country*, that is, what is national and what is international in tax and redistribution. The features of sovereignty, or statehood of countries, are defined by Saskia Sassen (2008) as territory, *authority and rights*. Sassen (2008) explains that:

> a good part of globalization consists of an enormous variety of microprocesses that begin to denationalise what had been constructed as national ... They reorient particular components of institutions and specific practices – both public and private – toward global logics and away from historically shaped national logics.[69]

Globalizing processes have already unmade and remade aspects of the state, reconfiguring territory, authority and rights in new forms. An example is the relationship between countries or their governments, and MNEs. This is where taxation, in particular, has garnered public attention. Taxation and welfare are tightly connected, or even constitutive of the nation-state

---

65. P. Genschel & T. Rixen, *Settling and Unsettling the Transnational Legal Order of International Taxation*, in *Transnational Legal Orders* pp. 154-183 (G. Shaffer & T. Halliday eds., Cambridge U. Press 2015).
66. J. Braithwaite & P. Drahos, *International Business Regulation* (Cambridge U. Press 2000).
67. E. Kleinbard, *Stateless Income*, 11 Fla. Tax Rev. p. 699 (2011).
68. Tax Cuts and Jobs Act 2017 (enacted December 2017) (H.R. 1) (US) which enacted a 21% company tax rate and shifted the US tax system for active business profits from a residence based foreign tax credit system to a territorial (exemption) system in line with most other countries, while also levying a one-time tax on previously untaxed profits held offshore in tax havens by MNEs such as Apple and Google.
69. S. Sassen, *Territory, Authority, Rights: From Medieval to Global Assemblages* pp. 172-173 (Princeton 2008).

(hence, we can call it the "tax state"). Perhaps we can unpack these core functions of the state, taking a transnational perspective "to deconstruct the various law-state associations", and thereby changing the boundaries of the state itself.[70] What could an approach that unpacks the "tax state" and reconsiders it as something else look like? I briefly outline some possible options here.

First, the ever-growing space of international tax administrative cooperation has the potential to reconfigure national tax bureaucracies towards a new form of global tax bureaucracy. This extension of technologies of regulation across borders may have the ultimate effect of extending the state's capacity to govern or else it may disaggregate aspects of the democratic "tax state", reconstituting it in new forms.[71] The BEPS project has taken this further as Country-by-Country Reporting has now commenced, automatically sharing at least some information on MNE profits.[72] The EU-MOSS system for collection of VAT also extends tax cooperation beyond national borders in new ways.[73]

Second, it may be feasible – and, indeed, may already be happening in some respects – to unpack elements of historically "national" public or merit goods and to finance and deliver this through a transnational regime. Consider proposals for "brain drain" taxes.[74] For example, such a tax could be collected by a country such as Australia, to which individuals migrate having completed tertiary studies in a (poorer) developing country such as Papua New Guinea. To fund Papua New Guinean education, the brain drain tax that Australia collects would be remitted to Papua New Guinea. New Zealand and Australia both have Higher Education Contribution Schemes in which university debts are repaid through the tax system when students earn enough. Both countries now continue the obligation while their students are overseas. This requires cooperation in enforcement; with intergovernmental cooperation and the ability to collect and remit tax debts, this is potentially solved. We could take the concept further and seek to establish a regional or global public good of higher education, financed in a layered way by the countries involved but, of course, mostly by rich countries. This proposal takes a "slice" of the tax and redistribution activity of a nation-state and extends

---

70. P. Zumbansen, *Defining the space of transnational law: Legal theory, global governance and legal pluralism* 21 Transnatl. L. & Contemporary Problems p. 309 (2012).
71. L. Weiss, *The State-augmenting Effects of Globalization*, 10 New Political Econ. 3, p. 345 (2005) and A.M. Slaughter, *Global Government Networks, Global Information Agencies and Disaggregated Democracies*, 24 Michigan J. Intl. .L 4, pp. 1041-1074 (2003). *See* my discussion in M. Stewart, *Transnational Tax Information Exchange Networks: Steps Towards a Globalized, Legitimate Tax Administration* 4 World Tax J. 2, (2012), Journals IBFD.
72. OECD, *Action Plan on Base Erosion and Profit Shifting* (OECD 2013), International Organizations' Documentation IBFD.
73. EU, Mini One-Stop Shop (MOSS), https://europa.eu/youreurope/business/vat-customs/moss-scheme/index_en.htm (updated 19/02/2018).
74. Y.R. Brauner, *Brain Drain Taxation as Development Policy*, 55 St. Louis U. L.J. 221 (2010); B. Chapman et al., *Income Contingent Collection of a 'Brain Drain Tax': Theory, Policy and Empirical Potential*, 54 Population Rev. 2, 13-27 (2015), available at http://muse.jhu.edu/journals/prv/summary/v054/54.2.chapman.html.

it across borders. This is not currently done, but neither is it fanciful in the current political, technological, tax and development context.

Is such an approach possible for aspects of international tax itself? The most likely candidate, surprisingly given the controversy that surrounds it, could be the corporate tax applicable to MNEs. Not so long ago, MNEs were perceived as pioneers or extensions of power from their home or resident states, which could lead in delivering shared economic development to that home state. That is, a US MNE was perceived as an extension of US state power. Yet today, we see as Braithwaite and Drahos (2000) identified, the “monocentric complexity” and power of MNEs, leading to the rise of what has been called “functional sovereignty” of the new digital capitalist behemoths, such as Amazon.[75] The implication is that the locus of power is shifting and perhaps, governments will be unable to manage redistribution or regulatory control.

A source, or jurisdictional base, still make sense for many MNEs which have resource, or manufacturing operations in a jurisdiction. Although their financial and intellectual property aspects are transnational, such MNEs are still arguably under the territorial jurisdiction of the particular country in which they operate. However, the MNEs that are the focus of most attention are those that own and leverage intangibles globally: Google, Apple, Facebook and so on. These MNEs seem to have attained, in the analysis of Sassen (2008), the defining sovereign features of territory, authority and rights, in particular by incorporating tax havens into themselves.[76]

As a result of the *deterritorialization* (and *reterritorialization* across state borders) of these MNEs, the notion of corporate “residence” through incorporation or through the locus of management or shareholder ownership and control, seems no longer to be a good basis for allocating tax jurisdiction. The various tax definitions of corporate residence – ranging from the place of legal incorporation, to concepts of central management and control by directors or managers, to identification of majority shareholders or voters (for example, the OECD Model;[77] various domestic laws) - extend the fiction of location or connection to a jurisdiction so as to extend the territorial reach of taxation. At the same time, these elements can be manipulated to enable the location of these companies and their allocated income in tax havens. Thus, the concept of residence has itself produced new modes of transnational flow and location in MNEs and has contributed to the agglomeration of control and distribution of the value-chain across the globe.

75. F. Pasquale, *From Territorial to Functional Sovereignty: The Case of Amazon*, L. & Political Econ. Blog, (6 Dec. 2017).
76. Although this might be expressed by those tax havens themselves as a *reassertion* of their own sovereignty (to have a low taxed jurisdiction that is legitimate): G. Rawlings, *Taxes and Transnational Treaties: Responsive Regulation and the Reassertion of Offshore Sovereignty*, 29 L. & Policy 1, p. 51 (2007).
77. Most recently, *OECD Model Tax Convention on Income and on Capital* (21 Nov. 2017), Models IBFD.

The concept of "source" also remains problematic, as identified by many others, although as discussed, a core of this concept related to economic activity may still be relatively straightforward. However, a "source" basis cannot apply to the deterritorialized elements of MNEs. A transnational approach could be to "slice" the MNE "rent" or surplus from its global intangible activities and divide this up between nation states. This could be done unilaterally, as is proposed by the United Kingdom in its "digital" tax on turnover (which essentially abandons source).[78] Or, we could consider it as a global resource and seek to develop a formula or process for sharing that return. This leads us back to global coordination, as Peggy Musgrave (2001) argued, but this time to share benefits derived from global synergies of MNEs.

Finally, we should acknowledge the recent proposals for a global tax on wealth, in the context of research confirming the role of progressive taxation in redistribution between rich and poor. The evidence on world income distribution suggests that the decline in progressive taxation since the 1980s towards tax policy aimed primarily at generating economic growth, has increased inequality even though, as explained in section 3, we have also reduced global poverty.[79] Piketty (2014), Zucman (2014) and others who have developed the world top incomes and wealth research, have focused our attention on individuals and the income and wealth that they control globally. They have called not only for strengthening of national tax bases, raising of tax rates in national personal income taxes and the stamping out of tax avoidance across countries. They have called specifically for a progressive global wealth tax on individuals, to be administered by and through national governments using technological platforms and institutions.[80] However, simply "taxing" such wealth (even if it were easy) is not going to be enough. We really do need to redistribute it, either through public or merit goods or through social welfare systems. These proposals leave the redistributive task to governments of countries to achieve and do not address redistribution from rich to poor across countries.

6. Some Concluding Thoughts

Neither state-based nor individual-based modes of redistribution between rich and poor are fully workable in a global context. Both taxation and redistribution must be mediated through processes and institutions; they require legitimate, binding or strongly compelling systems of engagement and enforcement. Historically, these systems have crystallised in the nation-

---

[78] UK Treasury, Corporate Tax and the Digital Economy Discussion Paper, available from https://www.gov.uk/government/consultations/corporate-tax-and-the-digital-economy-position-paper (22 November 2017).

79. *See* the World Income Inequality Database and referenced work, available at http://wid.world/.
80. T. Piketty, *Capital in the 21st Century* (Harvard U. Press 2014); T. Piketty & E. Saez, *Rethinking capital and wealth taxation* (2013), available at http://piketty.pse.ens.fr/files/PikettySaez2014RKT.pdf; and G. Zucman, *Taxing across Borders: Tracking Personal Wealth and Corporate Profits*, 28 J. Econ. Persp. 4, pp.121-148 (2014).

state. If we are to take the idea of international redistribution seriously, we therefore need to unpack the very concept of the “country” (or state) that has at its core, the ability to tax and redistribute.

How can we approach this task? We could start by investigating new ways of connecting state-based modes of tax and redistribution with rich and poor individuals globally. An approach could be to take a “slice” of state-based tax or redistribution and to reconfigure this transnationally. We also need to evaluate how global processes are affecting redistribution within borders, and vice versa. We see a tentative step in this direction in the new phrasing of the SDGs, which aim to promote “shared prosperity” in all countries, through global sustainable development.[81] The World Bank has now developed a “shared prosperity” measure, which relates growth to the benefit to the bottom 40% of the population of a particular country, relative to the top 60% in that country. Poverty is measured globally, but “shared prosperity” looks at market income of people *within* countries. An extension would seek to evaluate the effects of national tax and redistribution as a part of global policy development.

Walter Scheidel’s (2017) pessimistic analysis of redistribution requiring war or disaster focuses on nation-states. Perhaps Scheidel underestimates the ability and resilience of contemporary tax states to both tax and redistribute. He also does not consider the potential to reconfigure tax and redistribution across borders. However, Scheidel’s work does suggest that we may be at a new critical juncture and it is the tax state itself that we must reconstitute to achieve redistribution between rich and poor.

81. World Bank, *Poverty and Shared Prosperity 2016 Report* p. 23 (World Bank 2016).