

## Article

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# Global Tax Governance: The Bullets Internationalists Must Bite – And Those They Must Not

**Abstract:** Under conditions of high capital mobility, states are pressurised into various forms of tax competition to attract or retain capital and investors. When this occurs, the capacity of domestic institutions autonomously to generate fiscal policies is constrained. What exactly, if anything, is unjust about this phenomenon? This paper argues that tax competition puts particular pressure on internationalists, who must acknowledge that its occurrence makes our obligations of global justice more demanding, and that such obligations require supranational institutions in order to be discharged. However, to the extent that tax competition is unjust from an internationalist point of view, this is due to the specific harm it does to states. Thus, the paper makes three contributions to the literature: it shows that (1) tax competition has an impact on the demandingness of internationalist obligations of justice; (2) discharging such obligations commits internationalists to accept a higher level of supranational institutionalization than is currently acknowledged; yet (3) both the specific content of such obligations, and the kind of supranational regulation that is needed to discharge them, differ from those which cosmopolitans support. In sum, there are some cosmopolitan bullets which internationalists must bite, and others which they should continue to resist.

**Keywords:** global justice, tax competition, global institutions

DOI 10.1515/mopp-2013-0015

## 1 Introduction

In a globalised economy, states are no longer capable of determining their fiscal policy in full autonomy. International tax competition is the most evident aspect of

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such a phenomenon: under conditions of high capital mobility, mobile factors of production (i.e., mainly, capital) can “shop around” to minimise their tax burden (Dietsch and Rixen 2012), their labour costs, or both. As a result, states are pressurised into various forms of tax competition<sup>1</sup> in order to attract or retain capital and investors. When this occurs, the fiscal decisions of competing states have important externalities on one another, and the capacity of domestic institutions autonomously to generate and implement the fiscal policies which they/their citizens deem fairest or most suitable to the polity’s needs is thereby constrained. As a result, domestic injustices can have international causes: the level of inequality in a country, for instance, can largely be affected, not only by domestic socio-economic decisions, but also by the aggressive fiscal policies of another country. What exactly, if anything, is unjust about this phenomenon? How, if at all, does tax competition affect the nature, content, and scope of obligations of justice beyond borders?

In this paper, I argue that tax competition puts particular pressure on internationalist accounts of global justice. I define internationalism as the specific anti-cosmopolitan view according to which obligations of justice beyond borders do exist, but differ from intra-state obligations as to what their agents and/or content are.<sup>2</sup> For internationalists, demanding inter-individual obligations of social justice only hold within a self-contained polity. Obligations of justice beyond borders are both less demanding in content, and are obligations which states, rather than individuals, have towards one another. My aim in this paper is to suggest that the occurrence of tax competition commits internationalists to a significantly demanding view of what polities owe one another – one which sits uneasily with the fairly thin accounts of inter-state obligations which internationalists usually subscribe to.<sup>3</sup> What is more, it commits them to acknowledging that the new and strengthened international obligations which tax competition generates require the establishment of supranational institutions in order to be discharged. There is, in other words, an *internationalist case for global tax governance* (see also Rixen 2011). However, the fundamental normative commitments of internationalist accounts (and, as a result, their reasons for finding tax competition problematic) remain different from those of cosmopolitan theories, and this has implications for institutional design. To the extent that unregulated tax

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1 As well as in a competition to offer attractive labour standards for capital, which is a problem worthy of separate discussion (see for instance Dahan *et al.*, 2011).

2 In doing so, I follow Rawls (1999), Sangiovanni (2007) and Risse (2012). Internationalists differ from more radical anti-cosmopolitans (see for instance Nagel 2005) who hold that the language of justice only pertains to the domestic realm.

3 For a more general discussion of the underappreciated demandingness of internationalist accounts of global justice, see Ronzoni (2009) and (2012). Among other things, this paper aims at providing an application of this general view to the specific case of tax competition. In doing so, I follow Dietsch (2011b), Rixen (2011), and Dietsch and Rixen (2012).

competition might be unjust from an internationalist point of view, this is due to the specific harm it does *to states*, in that it challenges their fiscal self-determination, and therefore (an important aspect of) their capacity to be just. And a global institutional agenda guided by the rationale of protecting the fiscal self-determination of states will differ from one which aims at reducing inequalities between individuals across the globe.<sup>4</sup> Thus, the contribution that this paper aspires to make is threefold: it aims to show that

- (1) tax competition has an impact on the content and demandingness of obligations of justice even for internationalists (rather than for cosmopolitans only); and
- (2) discharging such obligations commits internationalists to a higher level of supranational institutionalization than is currently acknowledged within the literature; yet
- (3) both the specific content of such obligations and the *kind* of supranational regulation that is needed to discharge them differ from those which cosmopolitans would support.

In sum, there are some cosmopolitan bullets which internationalists must bite, and others which they should continue to resist.

The paper unfolds as follows. Section 2 provides a brief overview of the phenomenon of tax competition. In so doing, the section also flags some preliminary reasons why it has come under the scrutiny of normative political theory. Section 3 outlines the main differences between cosmopolitan and internationalist accounts of global justice and argues that internationalists have reason both to worry about certain aspects of tax competition and to respond to it with global institutional regulation. Section 4 articulates the idea that, whereas internationalists must concede that more global tax governance is needed to tackle harmful tax competition, they need not accept that *global taxation* in particular is always the best way to achieve this goal. Instead, an institutional response to international tax competition aimed at protecting the fiscal self-determination of states (rather than at reducing inter-individual world inequalities) is likely to require a more complex and multifaceted strategy. With no ambition of spelling out such a strategy in a comprehensive manner, I attempt to sketch what its main guidelines might be. Within such guidelines, some forms of global taxation would play a role,

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<sup>4</sup> Thus, the argument put forward in this paper differs somewhat from the claim made in Rixen (2011). Rixen suggests that globalists (which I prefer to call cosmopolitans in this paper) and internationalists would converge on a similar (if not identical) assessment of tax competition. This paper, instead, suggests that interesting areas of divergence would persist.

but only a limited one. Section 5, finally, briefly describes some forms of global taxation which, albeit not aimed at protecting fiscal self-determination in particular against the specific threats of tax competition, internationalists (and not only cosmopolitans) might nevertheless have reason to accept, because they might constitute valuable ways to protect other aspects of state self-determination.

## 2 Tax competition: a very short overview

What is tax competition, and why has it come to attract the attention of global justice theorists (Brock 2008; Dietsch 2011a, 2011b; Dietsch and Rixen 2012)? Let me start with a fairly general definition:

*Tax competition* is defined as independent governments adopting their tax policies strategically. They design their tax systems to attract new investment and tax bases of other countries. Governmental tax strategies can involve every aspect of a national tax system. International tax differentials may thus be reflected in tax rates, tax bases, and the enforcement of tax laws. The expectation is that countries will attempt to undercut one another in tax burdens.<sup>5</sup>

Tax competition, so defined, illustrates one way in which globalization has given public-like power to private actors capable of acting across borders, such as transnational corporations. It is states that compete to attract capital, yet it is capital and business that are capable of inducing states to compete, thanks to the increased ease and speed with which they can move in a globalised economy. It is their increased bargaining power that triggers the competitive dynamic. This remark sheds some preliminary light on the fact that, whereas tax competition is ostensibly pursued by states, its occurrence is an indicator of their decreased capacity to protect their agency in domestic socio-economic matters from the strategic behaviour of powerful transnational non-state actors. This, as we shall see in Sections 3 and 4, bears on whether limiting the capacity of states to compete might be a way of protecting, rather than infringing upon, their fiscal self-determination.

Now, rational choice predicts that such a practice of mutual, strategic and competitive undercutting should lead to a race to the bottom in taxation rates.<sup>6</sup> According to this model, tax competition leads to a dramatic drop in taxation rates

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<sup>5</sup> Rixen (2011: 449).

<sup>6</sup> For non-technical presentations of this, see for instance Scharpf (1997); Avi-Yonah (2000); Wilson and Wildasin (2004).

everywhere; this leads both to an under-provision of public goods in all polities (because there are no revenues to fund them) and to an exasperation of inequality everywhere (because redistribution via taxation becomes impossible). If this model were empirically verified, its normative significance would be strong and unambiguous regardless of whether one is a cosmopolitan or an internationalist. Cosmopolitans would worry about the impact of a race to bottom on the worst-off across the globe (since both poor redistributive capacity and public goods under-provision would affect them most), whereas internationalists would denounce the fact that tax competition undermines the capacity of polities to be internally just (assuming, as I think one can safely do, that both redistribution and public goods provision are part of what domestic social justice requires).

In reality, as usual, things are more complex. Some scholars argue that domestic institutions, when appropriately designed, have their own means to offset or indeed even erase race to the bottom dynamics (Basinger and Hallerberg 2004) – which would suggest that the quality of national institutions matters more than international factors in determining the resilience of a country to competitive pressures. Even without subscribing to such an optimistic picture, there is widespread evidence that tax competition impacts on different countries differently, rather than generating a simple and uniform race to the bottom everywhere (Steinmo 2002; Swank and Steinmo 2002; Genschel and Schwarz 2011). For instance, small countries have both a stronger incentive to become tax havens,<sup>7</sup> and can on balance benefit from it, even when their tax rate is set at a very low level – the smaller their population and their economy, the more they will gain, on balance, from low corporate taxes as the inflow of foreign tax base will outweigh the revenue loss from the lower rate on the (small) domestic base (Kanbur and Keen 1993; Dharmapala and Hines 2009). Among larger countries, moreover, service economies (such as the UK) have a stronger incentive to become tax havens than countries with a strong manufacturing sector (such as Germany). To the extent that it is happening, tax competition does not generate a race to the bottom that harms all countries to the same degree, but tends instead to affect them differently, and indeed even to benefit some of them. Finally, the race to the bottom model assumes states to be uncooperative utility maximisers operating in a prisoner's dilemma-type of situation. In reality, states are much more complex beasts, and a good deal of harmonization, as opposed to race to the bottom dynamics, occurs (Genschel 2002).

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<sup>7</sup> A tax haven is a jurisdiction where certain or all taxes are levied at a low rate or not at all; most tax havens subscribe to the principle of bank secrecy, which legally prevents banks from sharing account information with legal authorities unless in exceptional cases (thus preventing foreign jurisdictions from tracking tax evaders).

However, the fact that no perfect race to the bottom is occurring is not, per se, a guarantee that tax competition does no “harm.” Indeed, “harmful tax competition” is still a major concern both for most of the empirical literature and for several international organizations (and for the OECD most prominently). But what exactly can qualify as harm, if a race to the bottom is excluded? The OECD claims that “if the spill-over effects of particular tax practices are so substantial that they are concluded to be poaching other countries’ tax base, such practices would be doubtlessly labelled “harmful tax competition” (OECD 1998). This definition, however, rests on a tension between an outcome-based (“so substantial”) and an intentional (“poaching”) criterion. If intentions are what matters, then they matter (other things being equal) regardless of how substantial the outcomes are; if outcomes are the problem, then they are troubling when they are sufficiently substantial (but how substantial is sufficiently substantial?), whether or not they are the result of intentional poaching. Dietsch and Rixen (2012: 4) offer a more specific rationale, according to which tax competition is harmful when it undermines the fiscal self-determination of states,<sup>8</sup> whereby the latter is defined as having two aspects: (a) the capacity of the state to maintain the overall desired size of the budget (in terms of overall revenues and expenditures), and (b) its capacity to maintain the desired extent of redistribution. With this criterion in mind, things start to look less harmless even in the absence of a race to the bottom. OECD countries, generally speaking, remain capable of preserving the overall desired size of the budget, but they do so by broadening and changing the tax base; most notably, the tax burden is shifted from capital to labour, and from income to consumption (i.e. from direct to indirect taxes). Thus, the preservation of the size of the budget is secured at the cost of the second aspect of fiscal self-determination: changes in the tax base make the nature of national tax systems less progressive, and therefore undermine the extent of the overall redistribution (Loretz 2008; Dietsch and Rixen 2012: 6). Developing countries, instead, have difficulties in preserving both sides of their fiscal self-determination, because they often lack the institutional, administrative and infrastructural capacity to change and/or broaden the size of the budget (Keen and Simone 2004; Dietsch and Rixen 2012: 7). Thus, tax competition does impact on the capacity of states to levy taxes,

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<sup>8</sup> Dietsch and Rixen, however, formulate a much narrower principle of fiscal policy constraint later on in the paper, when they define under what circumstances the domestic fiscal decisions of a state may be contested as impermissible by other states within the International Tax Organization which they propose to establish (2012: 13–16). Their suggestion is that only “policies that are formulated strategically *and* have a negative outcome [...] should [...] be prohibited” (16, emphasis in the original). This seems to indicate that not all harmful tax competition (according to their own definition of harm) may legitimately be regulated but only competition that is harmful *and* is ill-motivated.

albeit in milder or graver forms depending on the country, even when no race to the bottom occurs. Moreover, the very fact that tax competition does not affect *all* countries equally may well be a reason for normative concern and a source of unfairness in and of itself. Some countries (particularly small states) use tax competition to increase their fiscal self-determination at the expenses of that of other states. Moreover, tax competition has a deeper impact on developing countries, whose *de facto* sovereignty is, plausibly, already under strain. Both facts, intuitively, seem to stand in need of a justification.

Finally, if it is true that harmonization is just as common a reaction to tax competition than race to the bottom dynamics, it is equally true that harmonization itself might force countries into patterns of rigidity in their fiscal policy which themselves undermine their fiscal autonomy. Harmonization can help countries in maintaining the size of the budget and the extent of redistribution under control (if perhaps not exactly at the desired level) at a given time; however, in the long run, it tends to deprive them of the capacity to react to specific circumstances in a sufficiently swift and context-sensitive manner. It can, for instance, prevent “governments from raising taxes in response to rising spending requirements and from detaxing labour in response to growing unemployment” (Genschel 2002: 245). Thus, we might say that there exists a third aspect of fiscal self-determination, (c) flexibility – understood as the capacity to react to new challenges or circumstances with sufficient pace and discretionality –, which practices of harmonization may undermine. We may say, then, that harmonization, understood as the most common practice in which states engage to protect (a) and (b), might end up being a threat to (c).

To sum up, although the race to the bottom hypothesis seems to be disproved, tax competition nevertheless has a number of intuitively problematic effects, which causes talk of “harmful” tax competition to be still thriving. Tax havens do exist and contribute to tax evasion; tax competition does lead to changing the tax base towards more regressive forms of taxation; and developing countries in particular experience increasing difficulties in preventing revenue losses and providing services that are financed by taxes (thus losing out on both first two aspects of fiscal self-determination). Thus, tax competition both leads to increases in domestic inequality in a number of (wealthy as well as poor) countries and affects the global South more heavily than the global North. Finally, even when states manage to resist uncooperative tendencies by (intentionally or unintentionally) harmonizing their fiscal structure, they thereby lose the capacity to react to their domestic circumstances with a sufficient degree of flexibility and context-sensitivity. Thus, many countries do suffer losses in their fiscal self-determination as a result of tax competition, with respect to either a) the size of the budget, b) the extent of redistribution, or c) flexibility – and some countries in more than one or even all of the above. Are these phenomena sources of *injustice*, and if so, of which kind?

### 3 Tax competition as a global injustice worthy of institutional response

In order to understand whether and to what extent tax competition might constitute a problem of justice, asking two more specific questions might be helpful:

- (1) Does the occurrence of tax competition change the content of our obligations of justice beyond borders – and if so in what way?
- (2) Does tax competition call for new forms of institutional regulation at the supranational level – and if so of which kind?

My aim in this paper is to argue that *both* cosmopolitans and internationalists are committed to answering yes to *both* (1) and (2). One need not be a cosmopolitan to do so. On the contrary, I shall suggest that it is internationalists who have the most distinctive reasons to find tax competition unjust. In other words, tax competition helps us unveil how internationalist accounts have more demanding normative implications at the global level than they often seem willing to do. Nevertheless, important differences between internationalism and egalitarian cosmopolitanism remain. Internationalists are committed to answering yes to (1) and acknowledge that obligations beyond borders become more demanding in the presence of harmful tax competition – but such increased obligations remain recognizably internationalist in kind. Similarly, they are committed to answering yes to (2), but their global institutional agenda remains importantly different from a cosmopolitan one. In this section, I illustrate how the content of internationalist obligations of global justice expands (yet remains distinctively internationalist) due to tax competition and how such new obligations cannot be discharged interactionally, but require the establishment of a supranational institutional setting. In the next section, I offer some sketchy remarks as to how such a setting could nevertheless retain internationalist specificity. First, however, let me briefly highlight the most distinctive differences between cosmopolitan and internationalist theories.<sup>9</sup>

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<sup>9</sup> The characterization of the global justice debate as being split into cosmopolitan and internationalist approaches is a simplification, which I only maintain for the limited purposes of this paper. For instance, a number of *intermediate* approaches have been put forward in the literature in recent years (Cohen and Sabel (2006) and Valentini (2011) are but two particularly insightful examples). For an account of why a simple and stark dichotomy between cosmopolitans and anti-cosmopolitans within the global justice debate is both factually inaccurate and normatively counterproductive, see for instance Ronzoni (2013).

Cosmopolitan approaches take *individuals* to be the ultimate units of moral concern in all questions of justice, regardless of whether these occur within or across borders (Pogge 2002, 169–170). Moreover, and relatedly, they regard the scope of justice to be global: *all* persons are units of moral concerns to everybody, regardless of whether they are our compatriots or not (Pogge 2002, 169). Cosmopolitans usually endorse these assumptions and use it to conclude that at least most (if not necessarily all) obligations of justice are global in scope and roughly equal in content. For cosmopolitans, therefore, global inter-individual inequalities are always *pro tanto* problems from the point of view of justice – even if, for some and in some cases, they can be justified all things considered. As a result, the harmful effects of tax competition are clearly problems of justice, at least *pro tanto* – for, in one way or another, they increase inequalities among individuals (even if not necessarily in a race to the bottom fashion).

Internationalists, instead, consider the state and the state only to be the domain within which strong egalitarian demands of social justice between individuals hold. It is as members of a polity that individuals have a claim to be equal to one another in some specific way (which varies from theory to theory). Egalitarian social justice is therefore limited in scope. Obligations of justice do hold beyond borders, but are different (and much weaker) in content. Moreover, from an internationalist perspective, individuals are not necessarily the relevant units of moral concern in all domains. Domestic social justice is inter-individual: we care about individuals and we care about the comparative stands between them.<sup>10</sup> We do so, internationalists argue, because the members of a polity are in a joint venture, part of a self-determining sovereign state.<sup>11</sup> Beyond borders, it is mainly such sovereign entities that have moral personality. Therefore, obligations of justice beyond borders do exist, but are largely obligations among autonomous sovereign states (Rawls 1999)<sup>12</sup> and concern the

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**10** The reason why we do, however, need not be the same for all internationalists: Different scholars might disagree as to the fundamental reasons why inequalities among individuals only matter within the borders of a single polity. See, for instance, Blake (2005); Miller (2007); and Sangiovanni (2007).

**11** Why exactly being together in this project matters so much is, again, a question to which different internationalists answer differently (Rawls 1999; Blake 2005; Miller 2007; Sangiovanni 2007; Risse 2012) and an issue which I cannot explore here. What concerns me here is that, if one is committed to the idea that it matters, one should be concerned by the external obstacles to the possibility of domestic justice – and that harmful tax competition is one such obstacle.

**12** For many non-cosmopolitans, there exist also inter-individual global obligations of a roughly sufficientarian nature, such as the duty to make sure that human rights are universally enjoyed and to make sure that all individuals around the globe have the means to lead a minimally decent life (Blake 2005; Miller 2007; Sangiovanni 2007).

constraints that these must honour in order to respect one another's status as free sovereign polities. States have the domestic responsibility to honour egalitarian obligations of social justice, and the external responsibility to respect one another qua autonomous agents with such internal domestic responsibilities of justice. That is why, from an internationalist perspective, global justice is about the (preconditions for) the justice of societies, rather than individual well being (Rawls 1999). Since polities are responsible for delivering domestic social justice, they must be able to do so (Rawls 1999, 118); therefore, states are under reciprocal obligations (1) not to interfere with one another's activity as agents of domestic justice and (2) to assist one another when one or more polities are so badly off that they cannot possibly be internally just even if they want to.

Internationalist obligations among states can be interpreted in more or less demanding ways.<sup>13</sup> More often than not, minimalism prevails: states, most internationalists argue, bear reciprocal obligations to refrain from interfering in one another's internal affairs, to honour agreements, and to assist one another in case of dire need – when some polities (which Rawls famously labels “burdened societies”) are so badly off that they lack “the essentials of political autonomy.”<sup>14</sup> Moreover, internationalist duties are usually understood, not only in minimalist terms as to their content but also in *interactional* terms as to their structure. They are conceived of as duties of just conduct, rather than as obligations to uphold ongoing institutional arrangements which would enforce specific relationships, patterns, or, as Pogge would put it, a “public criterion of justice” (2004) among them.<sup>15</sup> Indeed, the interactional nature of these duties is one of the central ways in which their minimalism is spelled out: they are understood as being “merely” duties to conduct in certain ways – and indeed, more often than not, as duties to *refrain from* doing certain things. The duty of assistance, as already mentioned, constitutes a partial exception, as it involves positive obligations to provide burdened societies with help and resources. However, Rawls is eager to point out that obligations of assistance should not constitute *ongoing* institutional schemes, but one-off

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**13** For a fairly demanding account of what sovereign polities owe to one another, see Dietsch (2011).

**14** The duty of assistance, according to Rawls, only applies when societies “lack the political and cultural traditions, the human capital and know-how, and, often, the material and technological resources needed to be well-ordered” (1999: 106).

**15** The latter point is often justified by reference to state sovereignty: since states are sovereign entities, their compulsion is impermissible, and duties of justice that apply to them can therefore only be understood as rules of conduct. For an attempt to illustrate how state sovereignty may be made compatible with the existence of supranational institutions with enforcement powers, see Ronzoni (2012).

acts with a clear cut-off point: when “a people can stand on its own” no further assistance is needed.

However, at closer inspection, minimalist/interactional accounts are not defensible. If the state is responsible for domestic justice, then it must be *capable* of realizing justice to begin with, and under untamed globalization there seem to be several structural obstacles to such a capacity, which require an institutional response. Under conditions of economic globalization, the “essentials of political autonomy” are often threatened, not only by purely domestic factors or one-off events such as natural disasters, but also by structures of incentives and/or power inequalities between different global actors. In such cases, it is hard to see how single acts of assistance, rather than a structured institutional response, could ever be enough (see also Ronzoni 2009 and 2012, and Orrù and Ronzoni 2011). One example is constituted by inter-state domination: when the power of different states is disproportionately unequal in a deeply interconnected world economy, some become capable of dominating others. When states are exposed to domination (understood as the possibility of arbitrary interference and alien control, see Pettit 1997 and Lovett 2010), they can neither regard themselves nor act as free members of the international community; what is more, they cannot govern themselves as self-determining policies, for what happens within their borders is more influenced by forces which they do not control than by domestic public policies. Arguably, international development aid policies, which are often conditional on borrowing countries implementing rigid reforms of budgetary control and opening their markets to lending ones (often in a unilateral way, see Hertel and Martin 1999) constitute a good example in this respect. When the international arena is open to inter-state domination, the case for its institutionalization becomes stronger, for only institutional safeguards, rather than mere rules of conduct for states, can secure non-domination as a robustly guaranteed status. A further example is constituted by the power of non-state actors under circumstances of economic globalization, which allows, for instance, transnational corporations to keep states under their thumb in several policy areas – such as labour regulation, and (what is most relevant to this paper) taxation. When states are pressurised into offering attractive deals in terms of labour regulations and/or fiscal treatment, this easily generates structural incentives to compete, which can hardly be addressed by the imperative that single states “act” differently.

Therefore, the minimalist/interactional account seems implausible: in order to truly respect one another, states must not only exercise self-restraint, honour agreements, and assist one another in one-off cases of dire need – they must also jointly and mutually *secure* the structural preconditions for the “essentials of political autonomy.” They must make sure that all states enjoy sufficiently

favourable conditions to be truly self-determining polities, capable of steering their own fate. And doing so might entail countering and regulating some of the socio-economic dynamics that globalization triggers, even if what we care about internationally is “only” the “justice of societies” (Rawls 1999, 119–120), rather than inter-individual inequalities.<sup>16</sup>

Drawing the precise contours of what such favourable conditions are – of what exactly states owe to one another in a globalised economy – is beyond the scope of this paper. In light of the observations made above, however, I would like to suggest that harmful tax competition is one of those empirical phenomena whose occurrence commits internationalists to move both beyond minimalism and beyond purely interactional accounts. Tax competition undermines the background conditions for the self-determination of states in fiscal matters. Tax havens prevent other states from collecting revenues in an adequate manner. As the discussion of harmonization in Section 2 has shown, even when the size of the budget can be maintained by broadening the tax base or harmonizing tax structures, this nevertheless deprives states of crucial aspects of their fiscal self-determination. Moreover, tax competition affects developing countries more strongly than OECD countries, and it surely is a problem of inter-state fairness, from an internationalist perspective, if the self-determination of some countries is structurally and systemically more endangered than that of others. Therefore, internationalists must bite the bullet and accept that (1) obligations of justice beyond borders become more demanding in a world where harmful tax competition thrives. Tax competition requires moving beyond internationalist minimalism about justice: to honour their duties of international justice, states must jointly secure the conditions for the enjoyment of (a sufficient level of)<sup>17</sup> fiscal self-determination by all states – which is likely to be a fairly demanding task. Moreover, the obligations triggered by tax competition cannot be discharged in an interactional manner only. The excessive power and mobility of mobile factors

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**16** This does not mean that, within an internationalist paradigm, states are responsible for the internal justice of *other* states. What they are responsible for is, rather, guaranteeing that all polities, by enjoying sufficiently favourable conditions for internal self-determination, be *capable* to be or become just. States and their citizens, then, have the responsibility to make good of such conditions – and if they do not, this is a problem of domestic, rather than international, justice.

**17** Determining where such a level lies exactly is beyond the scope of this paper. However, meaningful claims about the demandingness of international duties in a world economy characterised by tax competition – as well as about the kind of institutional responses that the discharge of such duties would need – can be made without establishing that level in a precise manner (a rough measure is provided, however, by aspects a-c of fiscal self-determination as defined in Section 2).

of production in a globalised economy, as well as the collective action problems which lead states to undercut one another's tax base rather than cooperate, can hardly be addressed through norms of conduct only. Moreover, as we have seen, when states seek to respond to harmful tax competition interactionally, by harmonizing their fiscal outlook, this also has negative effects on their fiscal self-determination. Purely interactional cooperation, without structured institutional regulation, seems to lead to suboptimal results in these cases. Tax competition requires, therefore, a (2) structured institutional response to its causes.

There is, therefore, an internationalist case of global tax governance. Nevertheless, such a case remains a distinctively internationalist and retains important differences from cosmopolitanism, with respect to both (1) the content of the relevant duties and (2) the institutions that are needed to discharge them. From a cosmopolitan perspective, international tax competition is a problem because (and only *to the extent that*)<sup>18</sup> it increases inter-individual inequalities, both between and within countries. From an internationalist perspective, instead, inter-individual inequalities per se are only a problem within the shared institutions of a polity. What we owe to one another beyond borders is to respect our equal right to establish and maintain a polity that is genuinely self-determining, namely one that can steer its own fate and over which citizens can exercise genuine control (it is then their responsibility to also make it just). Under circumstances of harmful tax competition, such a duty of respect becomes fairly demanding, because it not only entails self-restraint from poaching and other kinds of aggressive fiscal behaviour (although it entails those, too), but also obligations to secure the conditions for the guaranteed and safeguarded fiscal self-determination of all states. Moving beyond minimalism, thus, implies moving beyond the interactional approach and accepting a supranational system of tax governance. To restore the capacity of state institutions to tax “as they see fit” (or, better still, as their citizens see fit), a structured institutional response is required. States, therefore, have fairly stringent and demanding obligations to subject themselves to a system of rules that will partly constrain their fiscal behaviour in order to secure that all polities enjoy an *acceptable* level of fiscal self-determination. However, the fact that tax competition commits internationalists to accept stronger global institutions does not mean that it commits them to accept the *same* institutions that cosmopolitan would support. For cosmopolitans, the main problem with harmful tax competition is that it exacerbates

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18 If tax competition had an equalizing effect, cosmopolitans would have at least a *pro tanto* reason to endorse it, even if it still had a negative impact on the fiscal self-determination of polities.

inter-individual inequalities. Therefore, the most natural institutional response to harmful tax competition is, at least *prima facie*, to move the power to tax – and redistribute – beyond the nation-state. Things could be different all things considered: Depending on the precise empirical diagnosis of the phenomenon of tax competition that one makes, this might not be the only measure, not the appropriate measure in all sub-fields of taxation, or even not the right measure period. There could be, for instance, reasons other than reasons of distributive justice for resisting such a reform, such as the despotic dangers of a global fiscal authority. Cosmopolitan might also reject global fiscal institutions on a series of empirical grounds, ranging from feasibility to efficiency. But as such, cosmopolitanism has no *principled moral reason* to resist a supranationalisation of the power to tax. From an internationalist point of view, instead, a more robust system of global tax governance need not be a system based on global *fiscal* institutions.<sup>19</sup> To the contrary, we might need, at least to a great extent, to supranationalise sovereign powers *other than* the power to tax in order to tame the most harmful aspects of tax competition. For obvious reasons, simply transferring the power to tax elsewhere in each and every case where the state's capacity to tax is challenged cannot be a good way of securing fiscal self-determination – it would be a way of *destroying* it. Once we understand this point, the issue of institutional design becomes more complex and multifaceted for internationalists than it is for cosmopolitans. Tackling tax competition in order to restore the fiscal sovereignty of states might well require acting simultaneously from more than one angle, rather than simply transferring the power to tax to a supranational authority. In the next section, I attempt to provide a very tentative (yet, hopefully, sufficiently illuminating) sketch of how such a complex strategy might look like in its general guidelines.

## 4 Countering tax competition to protect effective fiscal statehood: a Sketch

The previous section has argued that internationalists, too (and not only cosmopolitans) have important reasons to see supranational institutional regulation as a necessary means to counter tax competition. In this section, I shall provide a

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<sup>19</sup> I here use the term “fiscal institutions” in a narrow sense, namely as institutions with the specific authority to levy taxes – rather than institutions whose competence is in the area of taxation more broadly conceived (such as institutions with the authority to sanction specific forms of fiscal behaviour).

very brief sketch of the kind of institutional agenda that internationalists might adopt to counter tax competition whilst remaining faithful to their internationalist commitments. Before I do so, a caveat is in order. Global institutional design is an immensely difficult – some would say daunting – task. It is not clear that we have a sufficiently good understanding of how such institutions would operate in practice, nor that they could avoid falling prey of the powers that be. Like all normative arguments, the one provided in this paper has a *pro tanto* component to it: an all things considered case for global tax governance can only be made once considerations of feasibility are fully addressed – a task which I cannot, for obvious reasons, undertake here. Indeed, if global tax governance is an entirely new institutional project, it might very well be the case that existing empirical research can not tell us what the prospects of success are. Yet, if the argument so far developed is correct, the stakes are too high and taking certain risks might well be worth it.

The previous section has established that internationalists should oppose harmful tax competition because of the damaging effects it has on fiscal self-determination and therefore on (one central aspect of) the capacity of a polity to be just. Yet, this cannot simply be done by globalizing the power to tax in an unqualified manner, for that would alienate any fiscal agency from states and thus eliminate state fiscal self-determination altogether. I suggest, instead, that a complex tripartite strategy – one within which global taxation might play a role, but a suitably limited one – might be more promising.<sup>20</sup> Elaborating one such strategy in a comprehensive manner is itself a complex and interdisciplinary task, which cannot be conducted here; hopefully, however, a brief sketch of what its main guidelines might be will illustrate its plausibility, and why it is worth pursuing further. Such guidelines, I suggest, are the following: (1) moving *some* fiscal powers to the supranational level, yet with extreme caution, in a selective way, and with a rationale different from that of cosmopolitans; (2) harmonizing certain fiscal areas *up to a certain level* to facilitate the

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<sup>20</sup> In so doing, I differ from Rixen (2011), who advocates *one* specific reform (Unitary Taxation with Formula Apportionment (UT + FA), 458–461) in that I suggest that, from an internationalist perspective, tackling tax competition requires a *plurality* of institutional strategies. Partly drawing on Rixen (2011), Dietsch and Rixen (2012) advocate the establishment of an International Tax Organization (the ITO) to tackle harmful tax competition and implement UT + FA. An institution like the ITO might also constitute the right kind of forum to spell out the plural strategy sketched here. Its advocates, however, conceive of it as a means to implement UT + FA in particular. Moreover, the ITO is explicitly modelled after the WTO with regard to its structure and modus operandi. Whether this would be appropriate for the tripartite strategy sketched in this section remains open.

possibility of variation beyond that level; and (3) sanctioning specific kinds of fiscal behaviour. I shall briefly describe 1–3 in turn.

- (1) Internationalists have reasons to consider global taxation to be a measure of last resort. Yet it is not clear that they should always, unconditionally oppose it in all its forms. Indeed, in some restricted cases, some might turn out to be the best, or indeed even the only, way to tackle some of the harmful effects of tax competition on effective statehood. There are two important reasons why internationalists might find some forms of global taxation to be an appropriate way to counter harmful tax competition. First, in a globalised economy, only a global authority might be able to tax certain global actors with a sufficient degree of certainty and regularity. This is the case, for instance, for financial transactions, but the same could be said for other actors that operate *across* borders, such as transnational corporations. The transnational nature of these actors is such that it might well prove too difficult for a territorial authority to hold them accountable from a fiscal point of view. A global fiscal authority, instead, could tax those kinds of economic transactions that occur transnationally, and for which identifying a territorial jurisdiction might prove impossible. Internationalists, then, might have reason to support global taxation when the alternative to global taxation would be no taxation at all.<sup>21</sup> Second, and perhaps even more importantly, internationalists have reason to favour, on balance, those forms of global taxation which create effective *incentives* against harmful tax competition. A tax on financial transactions (such as the Tobin Tax) to slow down international financial speculation (and thus “throw sand in the wheels of global finance”) could be one such case. Conversely, tax benefits to companies that decide to invest locally could generate a positive incentive to encourage financial capital to invest on social and human capital on a stable territorial base, rather than be lured by the next attractive opportunity for low taxation elsewhere. These forms of direct global tax regulation would be grounded on the political goal of incentivising or disincentivising certain kinds of behaviour, rather than to collect revenues in order to redistribute wealth or provide services globally. Internationalists might nevertheless have reasons to be extremely cautious towards them. Yet, a full veto seems unwarranted.
- (2) As already noted, harmonization can be yet another harmful effect of tax competition, even if it manages to reduce the race to the bottom, for it can lead to rigid uniformity in fiscal policy in cases where both diversity and flexibility might be required. Nevertheless, some forms of harmonization

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<sup>21</sup> Revenues, then, could be distributed back to states according to some appropriate criterion.

can be helpful, especially when due attention is paid to harmonizing *without* making domestic fiscal policies excessively rigid. The introduction of a universal minimum rate for income and corporate tax could be a suitable example in this respect. On the one hand, a minimum baseline could be a good protection against threats to the second aspect of fiscal sovereignty, namely the capacity of a state to maintain (or at least not excessively to reduce) the extent of redistribution – by preventing fiscal systems from becoming too regressive. On the other hand, if taxation never falls below a certain a minimum (that is to say, if certain extreme cases of tax havens are ruled out) this can, under the right circumstances, slow down competition even above the baseline. Especially in the case of business (as opposed to private wealth), tax advantages might not be enough to offset the loss in know-how, human capital, good infrastructure, etc. If the baseline is high enough everywhere, these costs associated to moving might not be sufficiently offset by transfers to a “cheaper” jurisdiction. If this occurs, the pressure to retain capital and business by offering attractive fiscal packages weakens, and it might become easier for different jurisdictions to implement different fiscal systems over and above the baseline, without fearing the competitive dynamic too much. This, in turn, would allow states to retain flexibility and context-sensitivity. This kind of harmonization works as a *constraint*, rather than as a convergence, on fiscal policy *objectives*: one gives up some flexibility in fiscal policy through it, but in order to regain flexibility within the boundaries set by it. Indeed, this might constitute a high price to pay for polities which genuinely intend to have very low fiscal rates. Yet, in a world of high fiscal interdependence, it might well turn out to be the case that all polities must, on grounds of fairness, give up on their *ideal* redistribution in order to preserve *sufficient* discretion. A minimum tax rate might discourage competition to a sufficient degree, thus enabling states to differ within the constraints set by it. If the effect on competition is sufficiently robust, libertarian states may still decide not to have any further taxation. Egalitarian polities, on the other hand, may decide to go as much beyond it as is sustainably possible without discouraging business – which might also, plausibly, be less than what genuine egalitarian peoples would desire.

- (3) Finally, and perhaps most importantly, internationalists have reason to transfer coercive sovereign powers *other* than the power to tax from the national to the supranational level. In particular, they might favour the transferral of the power to sanction certain harmful fiscal behaviours. Plausibly, a duty that states have from an internationalist perspective is to jointly outlaw certain kinds of aggressive fiscal behaviour. Such an

agreement would also constitute an agreement on establishing a global authority with the power to enforce such prohibitions and sanction states which carry on engaging in tax haven-like behaviour. This power to enforce certain kinds of behaviour need not be associated with the power to levy taxes. Consider, for instance, the minimal tax rate proposal suggested in the sub-section above. Such a minimal tax rate does not need to be collected at a global level – states can perfectly well take care of it. For such a remedy to be effective, however, global institutions must be in place, and they must enjoy the power to enforce such agreements – which includes sanctioning non-compliers in a reliable, regular and sufficiently certain and costly manner. In other words, states would have to give up certain aspects of their sovereignty – understood as the right to non-interference – in order to gain, overall, in terms of substantive internal problem-solving capacity (one might say, they would have to relinquish some of their sovereignty for the sake of self-determination). Global institutions designed to counter tax competition would, in many cases, not collect revenues themselves, but enjoy the coercive power to regulate the fiscal behaviour of states and effectively enforce such rules on them.

How the three strategies should be exactly combined and balanced against each other is an issue I cannot address fully here – and a largely empirical question. My aim here is to suggest what the promising ingredients of a reform agenda might be – how these should be dosed in a well-balanced recipe is a task for another day. Nevertheless, such a tripartite strategy can be a useful blueprint for more concrete and specific proposals of actual institutional design.

## 5 Other global taxes that internationalists might accept

In the previous section, I have suggested that internationalists should pursue a complex tripartite strategy to counter the effects of harmful tax competition. Within such a strategy, global taxes do play a role, but a limited one. In particular, I have argued that coercive forms of global taxation might be necessary (a) in areas where states simply lack the structural capacity to collect taxes under conditions of globalization (where the alternative to global taxation would be no taxation at all) and (b) to create certain kinds of incentives and disincentives. A tax on financial transaction and tax cuts for companies that invest locally were the two examples I made.

The present section concludes the paper by conceding that there might be further global taxes that internationalists might have reasons to accept without necessarily buying into cosmopolitanism. Levying such taxes would protect the effective self-determination of states better than the status quo, but their specific rationale would be to protect aspects of self-determination other than *fiscal* self-determination in particular. I shall provide two examples.

- (1) The so-called resource curse – the phenomenon which leads states that are rich in resources but poor in institutional infrastructure to be particularly prone to civil violence – is arguably caused by the fact that, in such jurisdictions, political groups and elites have a strong incentive to gain political power with violence and then appropriate such resources to secure their power by selling them to the international community (Pogge 2002, 153–166). Thus, the resource curse is an obstacle to the internal self-determination of some states. Another obstacle of this kind is, of course, extreme poverty. An extremely poor polity is very likely to lack the resources to build and sustain a functioning institutional infrastructure over time, as well as to be exposed to domination by external (public and private) actors due to its vulnerability. Pogge (2002, 196–215) has put forward the proposal of a Global Resource Dividend (GRD) – namely a flat tax on the use of natural resources, whose revenues would be used to tackle extreme poverty worldwide – as a way of both financing anti-poverty reforms and disincentivising predatory attitudes towards natural resources by political factions. Whilst I cannot outline the details of such a proposal here, I would like to suggest that internationalists can, other things being equal, support a global tax grounded in these two rationales. Most internationalists explicitly support measures against extreme poverty (as opposed to inequality), on grounds that the former undermines the “essentials of political autonomy.”<sup>22</sup> What is more, the GRD would also be an incentive against the kind of violent dynamics that lead resource-rich countries with weak institutional capacity to be “cursed” – for its universal enforcement would make it impossible for political groups and would-be dictators to appropriate natural resources to secure their power whilst enjoying nearly full impunity. It therefore constitutes of a form of global tax which internationalists might have

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<sup>22</sup> In Rawls’s framework, which constitutes the paradigm for internationalists, burdened societies are those which “lack the political and cultural traditions, the human capital and know-how, and, often, the material and technological resources needed to be well-ordered” (1999: 106). Therefore, other polities are under a duty of assistance to bring those to societies to a “threshold” which will allow them to enjoy the “essentials of political autonomy” (1999: 118).

reasons to support on internationalist grounds, even if it is not a measure aimed at supporting *fiscal* self-determination in particular.<sup>23</sup>

- (2) Climate change is likely to cause serious threats to the internal self-determination of some states in the near future. First, the geographical effects of climate change on some states will be so devastating that the conditions for the effective institutional control over a territory might become impossible. Without appropriate mitigation, some countries will be so strongly affected by climate change that anarchy will rule over them. Second, if the fair distribution of the costs of reduction of carbon emissions and the conversion to greener sources of energy is not addressed in an adequate way, some countries will not have the chance to develop their internal economy in a way that will allow them to grow out of poverty and to do so on their own terms. Against this picture, a suitably designed system of taxation of carbon emissions<sup>24</sup> could:
  - (a) Redistribute resources for mitigation to countries where lack of mitigation would mean collapse of the state or anyway grave consequences for internal self-determination;
  - (b) Distribute the costs of reduction in a fairer way, taking into account that some countries would not otherwise have a chance to develop in a balanced way and on their own terms (i.e. by deciding which sectors to invest in and how);
  - (c) More generally, disincentivise emissions, thus slowing down the process altogether.

In sum, and to conclude, internationalists have good reasons to endorse a rich system of global tax governance in order to address the problems raised by harmful tax competition. However, both their reasons for doing so, and the kind of governance they should advocate, differ from those which cosmopolitans would favour. For internationalists, global tax governance does not automatically entail moving the power to levy taxes to global authorities – although it may entail transferring *other* sovereign prerogatives and proper coercive powers with enforcement mechanisms to the global level. This, however, does not mean that internationalists should oppose *all* kinds of global taxation. Internationalists have reason to approve of suitably *limited* structures of global

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<sup>23</sup> There might be, however, proposals for countering the resource curse that are even more congenial with internationalism, in that they do not require global taxation and redistribution of any kind (see for instance Wenar, 2008).

<sup>24</sup> For an overview of different proposals in this respect (including proposals other than a carbon tax) see Gardiner *et al.* (2010).

revenue collection (a) when the alternative to global taxation would be no taxation at all; (b) to create incentives and disincentives against harmful competitive dynamics; and (c) when these can be robustly justified on internationalist grounds as a means to protect aspects of self-determination beyond the fiscal level in particular.

**Acknowledgements:** I am grateful to Peter Dietsch, Thomas Rixen, Christian Schemmel, Laura Valentini, the anonymous reviewers of *Moral Philosophy and Politics*, and the participants in the ECPR Joint Session on Global Tax Governance (Mainz, March 2014) for helpful feedback, and to Patrick Tomlin, Jacob Levy and David Rodin for feedback on the title of this paper.

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