

Ethics Discussion Paper of the „Tax Justice & Poverty Research“

Ethics III: Tax Justice vs. more just taxation

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Introduction

Having identified major context determinants for the tax justice debate (the respective importance of markets/economy, state, democracy/civil society) in E/I and a better understanding of different concepts of “justice” in E/II, now, finally, the ground is prepared to ask explicitly the question of “Tax Justice”. The main thesis developed already in E/II is that hardly any agreement can be hoped for regarding that which defines “Justice” and, as consequence, “Tax Justice”. Accordingly, it will be argued that agreement can be found easier on what defines “unfair and unjust taxation” and, perhaps, even what defines a “more just” taxation.

1.1 Tax Morale vs. Tax Justice

Interesting enough, the OECD busied itself with finding out more about tax morale which sounds close to tax justice, e.g. (OECD, 2019). However, looking at the definition, the OECD emphasizes the “intrinsic motivation to pay taxes”, e.g. age and gender, religion and education, or belief in meritocracy, democracy and government (pp. 4 & 21). Clearly, the separation between “intrinsic” and external factors is blurred: For example, the very important factor “belief in meritocracy” (see p.22) requires trust in a state with democratic framework and legitimate institutions which enables each individual to lead a life unfolding its potentials to earn and pay in the first place, i.e. an institutional framework setting which then feeds back to intrinsic motivations. Given the mixed messages for the OECD study, therefore, our study concludes the following: While admitting that intrinsic motivations are very important, this study emphasizes external framework conditions which enable individuals and businesses to “enact” or live up to their intrinsic motivation in a fair and just way, i.e. outward structures making sure that the Principle of Ability to Pay is enacted, administrations are corruption free and transparent, budgets are decided with participation etc., so that citizens have trust in the legitimacy of government and tax administrations.

1.2 Equality vs. justice in taxation

Regarding the important question whether taxation should be applied equally or fair we have to recall the important distinctions between equality, equity and egalitarianism (E/I/5) as well as between (acceptable) diversity and difference and (unacceptable) inequality before being even able to ask the question regarding “justice” (E/II/1), let alone “tax justice”.

1.3 Scarce literature available

Early in time, the researchers noted that there is very little literature explicitly dealing with the question of “tax justice”.¹ This has been examined and confirmed by an extensive research of an intern of this project regarding the treatment of tax justice in Catholic Social Teaching or Christian Ethics. As conversation partners confirmed later on, tax justice related treatises are also scarce in other departments of scholarly reflection and it seems that this question is only beginning to interest a wider public.

1.4 Established international principles of taxation

Helpful for a start and to some extent overlapping with universally accepted principles of justice (E/II/1.6#) are some existing principles regulating taxation, as we examined already in the Introductory paper V to this research (Kabinga & al., 2016). Partly they go back to chapter 2 of Adam Smith’s “Wealth of Nations” and are the Principles of

- Equity, which is again sub-distinguished into horizontal equity (i.e. equal things are to be treated equally) and vertical equity (i.e. different things are to be treated differently). In this context resides the Principle of Ability to Pay.
- Neutrality
- Predictability/Certainty
- Proportionality/Progressivity
- Simplicity

In Germany, a number of those principles are enshrined in the federal and some state constitutions and, from there, impact on legislation, administration and the jurisdiction regarding tax laws and their administration and enforcement (see GER/III and below, 2.7.1).

1.5 The missing principle: Enforceability

In this introductory paper the researchers to this project noted already that one principle of taxation is not (yet) broadly considered when it comes to the proposition, discussion and development of tax laws: The Principle of Enforceability of tax law. The importance of this principle has been confirmed during the course of research, which is why we want to recall it here at the beginning:

There are many good laws nationally and internationally which exist merely upon paper because they cannot be enforced in a comprehensive manner. This is due to the following three aspects:

- The lack of staff and IT resources: Whether or not tax declarations are honest and comprehensive requires at least sample verification which in turn, due to legal complexity within and between states requires a lot of personnel and resources.
- The lack of transparency: Due to the existence of secrecy jurisdictions with a lot of “products” on offer which are used for hiding beneficial ownership (e.g. shell companies) as well as banking and tax secrecy a lot of financial flows cannot be traced (see I/IV/6).
- The lack of international cooperation: In a world of growing interdependence, enforceability depends on international cooperation. This in turn requires legal

¹ Given the skepticism towards neoliberal market ideology and the position adopted to a more balanced relationship between market, state and democracy as it is the case right now (see E/I/#), literature from that angle dealing with taxation has not been selected for further study

cooperation and cooperation upon staff level, e.g. Joint Audits if individual or corporate taxpayers have multiple citizenship and/or residence. At the same time our country reports indicate that many national efforts of administrations are still coming to a standstill as soon as transborder issues are involved.

In our view, this principle is considered to be extremely important: What use is there for good laws if they are not enforceable and enforced? For that reason, whenever lawmaker discuss and pass tax laws they ought to look whether legal definitions are precise and unambiguous, that they are compatible with legal terminology of other states, thus facilitating cooperation, and that those in charge of implementation and enforcement are adequately equipped to do their job. For instance, it is not possible to effectively enforce tax laws if the Revenue Agency has no skilled personnel who can interpret the tax laws and auditors to check whether they are applied in accordance with the letter, but also the spirit, of the law and the intention of the legislators.

1.6 Values, enforcement or leaks: What determines compliance?

Our study also asked, whether values, enforcement or data leaks had a bigger impact on tax compliance and the reply was clear: The fear of data leaks ranks first, followed by credible enforcement, with values, social and cultural norms ranking last (GER/VIII/4.9.2). This clearly advocates a focus on fair, just and transparent institutions as well as transparency for a more just taxation of all in accordance to the ability to pay.

1.7 Research focusing

In the following paper the focus is not so much what different religious, philosophical and other groups recommend to do regarding a more equal, just and fair taxation. This will flow into the compilation which is done in the section on policy recommendations. The focus here is rather, **what methods and criteria they employ when attempting to identify (1) that which is right and just to do, (2) with what priority and urgency it is to be done and (3) to identify those who are responsible for doing it.**

As might be guessed: This will be answered differently within an Anglo-Saxon and European context, even within each country (see E/I/1): This is, first of all, of importance, since KEN and ZAM are within the Anglo-Saxon, Germany within the European tradition, it is also important since our respective societies are getting increasingly plural, which is why world view inspired by tradition, religion, economic or cultural differ greatly and will subsequently lead to diverging conclusion and recommendations.

2 Sources assisting the determination of tax justice

2.1 Natural Law

An important and traditional avenue to justice is Natural Law² and the question is whether there is any link between that which people are obliged to do to each other due to their human nature on the one hand, and state and taxation on the other. As may be expected, this link is not a strong one and, interesting enough, here is no difference between the European and Anglo-Saxon tradition. The following argument builds on/is derived from the right to private property:

² Also for Christians, see (Nell-Breuning, 1980, p. 331ff.)

Discussion paper, not yet final version.

(V)arious considerations would appear to suggest what we might call a Natural Law Proviso on the use of property, according to which an individual has a natural right to use whatever property he acquires either via first occupation or by trade, gifts, wages, inheritance, etc., in any way he wishes, provided that (i) he does not use his property in a manner that is directly contrary to the general moral obligations imposed on us by the natural law, and (ii) he allows those who lack resources sufficient even for the possibility of the fulfillment of their own natural capacities and obligations to use or take ownership of his property to the extent and in the manner that their particular circumstances (and his own) dictate. (Feser, 2010, p. 46)

Authors from both traditions (Feser and Nass) agree that there is a justice requirement for humankind to assist those in existential, life-threatening need – provided there are no subsidiary means of support, e.g. by family, relatives and friends or in case those subsidiary groups are materially not able to support those in need. This is a strong, mandatory and perfect *right and entitlement*, but from that no conclusive *complementary obligation* arises to establish a Social Welfare State. A welfare state, a system of welfare rights is ‘not the sort of thing access to which could plausibly be guaranteed as a matter of justice by the Natural Law Proviso.’ (ibid. p. 48).

At the same time/on the other hand, it is up for negotiation among those living in an given state, to enter into social dialogue, assessing sense and nonsense to introduce (and finance) such a Welfare State. Feser, too, concedes that such a dialogue first requires some sort of agreement about what “public goods” are, who is in charge of providing them, by what means they should be paid for (taxation, donation, foundations...) and, linked to that, the kind of state this society wants to choose for themselves.

Suppose, in particular, that the individuals who make up such a society are in general so united in their basic values that the majority of them are willing to accept taxation for the purposes of aiding those relatively rare individuals who have no recourse to family, friends, etc., in obtaining decent health care, education, and the like. Again, they are not obligated in justice to accept such taxation. But may they do so? It seems to me that they may, even if there is a minority of individuals who would not agree to such taxation, but who are “outvoted.” For even this minority has an imperfect obligation to provide assistance; and while the usual reason for not enforcing imperfect obligations is that doing so would be impractical or draconian, that consideration does not seem to apply in this case. (Feser, 2010, p. 50)

But even then does not follow that any state automatically has the obligation to provide directly general services, employing large numbers of staff. There may well be alternatives, e.g. providing cash or cheque-subsidies to the needy which they then can spend by using their own freedom to choose. In other words: On the level of imperfect rights and obligations is a wide range of options up for negotiation among the members of a society.

This is agreed by Nass: He, too, agrees that support of those in existential need is mandatory required, whereby this obligation does not say anything about forms or institutions under which this assistance is given. This has consequences for the question whether top private and corporate wealth holder should be taxed harder as they are right now: For him, too, specific wealth taxes cannot be deducted from Natural Law Theology. However: Interesting is his argument starting from the Right to Self Defense: If, as often in Africa, people are without own fault in existential need and threat of starvation, while others live in luxury which they may even have obtained with illicit means, there is a strong argument to capture with some force some of that wealth for the upkeep of the starving.

Regarding global structures of injustice, Nass sees an obligation of the international community/international institutions to assist developing countries building up corruption

free, efficient institutions, up to providing justification for an external intervention of the state community into unjust states, if this is able to create and upkeep more just structures, improved tax systems operated by well-trained local staff included. Given the international nature of taxation issues he proposes to establish some sort of World Authority which is entitled to judge binding and mandatory over conflicting tax claims,³ which links to emerging ideas by (Dietsch & Rixen, 2016a) and (Tanzi, 2016) (see 8.3#).

2.2 John Rawls

Nobody talking about matters of social justice can ignore John Rawls. But what did Rawls say about an equal, just and fair taxation?

2.2.1 The ideal and the real

There is very little directly in Rawls thinking and writing which is puzzling for many, because: Rawls is very occupied with the question of distributive justice in society and taxation is one of the very few tools with which to correct market generated inequalities and injustices. However: here we see the priority the philosopher gives to the ideal society rather to the real world. Rawls main pre-occupation was not so much “real existing” and specific injustice in a given setting, but the search for an ideal concept of justice of the entire institutional framework making up a constitution based democratic society.

Rawls argues that, if everything works according to his two justice principles, taxation as a means of justice is of negligible importance. In his “Justice as Fairness” Rawls

‘describes an economic system of property-owning democracy, in which the background institutions of society “work to disperse the ownership of wealth and capital, and thus to prevent a small part of society from controlling the economy.” In its ideal form, a property-owning democracy would not produce wide disparities of income and wealth and a few privileged members of society controlling most of the economic and social resources. “Under these conditions...we hope that an underclass will not exist”.’ (Sugin, 2004, p. 2000)

And elsewhere in “Justice as Fairness”, Rawls even calls upon a ‘society “beyond justice”, where ‘taxation would only be about providing government financing for public goods and operations: redistribution would simply be unnecessary’ (Sugin, 2004, p. 2005).

Taxation within such a system makes up just one aspect for determining whether the given society as a whole is just or not. Probably Sugin is right when she argues that, if taxation would have been important for Rawls, he would have elaborated the topic to a larger degree.⁴

2.2.2 Rawls on taxation

More specifically, there are two places where Rawls endorses some type of taxation for the purpose of revenue raising:

³ ‚Ich halte in solchen Fällen auch das externe Eingreifen internationaler Institutionen in solche Länder für naturrechtlich gerechtfertigt, um Despoten mit ihren Clans auch mit Sanktionen (Konten einfrieren, Tribunale vor internationalen Gerichten etc.) zu entmachten und Strukturen der Sünde mit ausgebildeten einheimischen Kräften durch Strukturen des Heils zu ersetzen. Dies ist ein visionäres Ziel binnenökonomischer Steuergerechtigkeit, dessen Umsetzung sich aber die internationale Staatengemeinschaft stellen muss, und zwar nicht nur im Blick auf solche Länder, von denen wiederum eigener Profit erwartet wird (Öl oder andere Bodenschätze). Noch visionärer ist die grundsätzlich berechnete Idee eines internationalen (Steuer)Rechts, mit dem etwa über eine universale Weltautorität Befähigungsrechte international einklagbar gemacht werden könnten (Nass, 2010).‘ (Nass, 2016, p. 96f.)

⁴ ‘He could have easily offered a stronger endorsement of flat consumption tax than he did’ (Sugin, 2004, p. 2004).

First, in his “Theory of Justice”, he advocates ‘a *proportional expenditure tax* may be part of the best tax scheme’ Such a tax on total consumption ‘can contain the usual exemptions for dependents, and so on’ (Rawls, 1999, p. 246f.). This is puzzling for many since – seen from a justice perspective – a progressive income tax for redistribution purposes would seem to be fairer since it would burden the strong more than the poor and it would enable public institutions to support the least advantaged better.⁵ Referring to his first principle of justice, however, Rawls argues that taxing everybody according to his ability to pay would infringe basic liberties put as an absolute in the first principle of justice. A progressive income tax ‘would violate the priority of liberty. It would force the more able into those occupations in which earnings were high enough for them to pay off ... The point is clear and brings out a further aspect in which our native endowments are ours and not society’s. ... People will have a strong incentive to conceal their endowments, as well as a strong incentive not to realize them.’ (Rawls, 2001, p. 158). A tax on consumption would not infringe these basic liberties since the consumer can exercise his free choice of what he wants to buy and consume and only then tax is levied from which public institutions and services can be financed. As to the widespread critique that a consumption flat tax would disadvantage the poor more than the wealthy, Sugin argues, that a consumption flat tax following the criteria provided by Rawls has de facto progressive effects and would not burden the poor proportionally harder than the wealthy.⁶

Second and regarding inequality, Rawls argues in “Theory of Justice”, that the transfer of wealth from owner to those benefitting is as fair and unfair as the unequal distribution of intelligence. For that reason, inheritance is permissible, as long as it happens under the second principle of justice, i.e. that resulting inequalities profit those worse off and that liberties are not infringed.⁷ However: in his late opus “Justice as Fairness” Rawls supports some sort of wealth tax, preferably in the form of an *Inheritance Tax*, in order ‘to prevent accumulations of wealth that are judged to be inimical to background justice.’ (Rawls, 2001, p. 160f.). This taxation rests within the requirement of justice between generations, because the accumulation of wealth generated by market processes gives undue advantage and power to some as opposed to others. By way of an inheritance tax, inequality in opportunities between generations can be readjusted again. This tax might be even progressive. Here, however, it seems that Rawls is mainly concerned about the concentration of power which distorts liberties, participation and institutions, not so much about empowerment of those left behind.⁸

⁵ Examples for this puzzlement are provided by (Sugin, 2004, p. 1994ff.)

⁶ ‘To illustrate the point, consider two people in a hypothetical flat consumption tax with exemptions. A consumes \$100, B consumes \$30. If exemptions are each worth \$5 and they each have 4 exemptions, and the flat rate of tax is 20%, A will pay tax of \$16 (\$100 consumption - \$20 exemptions = \$80 taxable consumption x 20% = \$16 tax), while B will pay tax of \$2 (\$30 consumption - \$20 exemptions = \$10 taxable consumption x 20% = 2). While the statutory rate is a flat 20%, A pays tax at an effective (average) rate of 16%, while B pays at an effective rate of only 6.6%. Because A pays a greater proportion of consumption in tax than does B, the hypothetical flat tax is actually progressive.’ (Sugin, 2004, p. 1998)

⁷ ‘Unequal inheritance of wealth is no more inherently unjust than the unequal inheritance of intelligence. It is true that the former is presumably more easily subject to social control; but the essential thing is that as far as possible inequalities founded on either should satisfy the difference principle. Thus inheritance is permissible provided that the resulting inequalities are to the advantage of the least fortunate and compatible with liberty and fair equality of opportunity.’ (Rawls, 1999, p. 245)

⁸ ‘The purpose of these levies and regulations is not to raise revenue (release resources to government) but gradually and continually to correct the distribution of wealth and to prevent concentrations of power detrimental to the fair value of political liberty and fair equality of opportunity. For example, the progressive principle might be applied at the beneficiary’s end. Doing this would encourage the wide dispersal of property which is a necessary condition, it seems, if the fair value of the equal liberties is to be maintained... The taxation of inheritance and income at progressive rates (when necessary), and the legal definition of property rights, are to

Saying this, Rawls preoccupation is still more with the abstract-formal rather than the real world and its de facto developments in social and political debate, but there is very little in Rawls own writing providing diverging indications.

2.2.3 Taxation arising from applying Rawls' principles

Fortunately there are writers in the tradition of Rawls which try to develop his thought onwards, by applying his principles upon changing circumstances in the real world.

2.2.3.1 Linda Sugin

Linda Sugin points to yet another tax which would follow today if Rawls principles of justice were applied to the real world situation. Her starting point is that “trickle down” theory or “the rising flood lifts all boats” ideology, building upon and justified by Rawls second principle, is no longer working. ‘The prospects of the least advantaged are no longer chain-connected to the prospects of the most advantaged’ which is why ‘the tax system carries a particularly large burden among the institutions of society to correct economic injustices.’ (Sugin, 2004, p. 2010). The advantages of the wealthy develop faster than the advantages of the poor, thus the gap between the privileged and disadvantages grows to an “unjustified” extent: ‘As a matter of fact, there is no evidence that the chain connection actually operates, and tax benefits enjoyed by the rich do not seem to improve the lot of the poor.’ Since ‘in Rawls’s view, the least well-off must explicitly be given the greatest consideration’ (Sugin, 2004, p. 2011), there is need for correction and adjustment. If analysing the situation it appears that this gap is widening, among other reasons, because the taxation on capital investment has been reduced gradually, without this capital being invested into the domestic economy of the country, where the tax benefit has been given: Rather, capital leaves the country and is invested elsewhere, where returns hoped for are more promising. One of the fundamental problems here in Rawls’s theory is ‘that it allows a benefit to accrue to the most advantaged, and relies on the market to distribute those benefits to everyone else. The most recent tax legislation provides a good illustration of how the market often fails to do so. ... These tax cuts only translate into benefits for poor and middle-income people if the tax saving are invested in domestic jobs and industries that serve poor and middle income people.’ If tax benefits had not been granted here (or taxes on capital had been levied) there would be an alternative to market distribution of wealth, namely ‘the public sector. While high-income taxpayers might invest their savings overseas, the government could have targeted those funds more precisely through direct appropriations.’ (Sugin, 2004, p. 2012f.).

Following this reasoning, Sugin argues, alternative forms of taxation, beyond the flat consumption tax and additional to the inheritance tax, increase in plausibility also within the framework provided by Rawls’ two principles of justice.

Perhaps justice as fairness is more concerned with sufficient taxation than with the particular distribution of tax burdens. From that perspective, the demands of justice on tax design are minimal, or at least do not necessarily entail any particular arrangement. A proportional tax could certainly raise enough revenue to provide for substantial redistribution, both directly in the form of transfer payments to the neediest members of society, and indirectly, through the provision of public goods that disproportionately benefit the least well-off. (Sugin, 2004, p. 1999)

Sugin argues, thinking about taxation has to matter in today’s real world – and she supposes that here even John Rawls would (nowadays) agree.

For better or for worse, the tax law is the major tool of redistribution we have. Tax policy debate is one of the very few areas of the law in which discussions of distributive justice are considered appropriate. The political reality is that most other economic regulation is oriented towards maximization of wealth, rather than its distribution. The tax law comes in after productivity is maximized, and it should ... rearrange the results produced by markets that operate to concentrate wealth and opportunity. ... Taxation remains the most likely mechanism to address rising income inequality, wealth concentration, and the dangers to basic liberties that ... economic patterns present. (Sugin, 2004, p. 2013f.)

The finetuning of taxation, also Sugin agrees, needs to be determined in every society separately under its dominant values system, ensuring, that the most disadvantaged can be assisted best.

If the proceeds of taxes collected are redistributed to provide the greatest benefit to the least well-off-through whatever mechanism, whether direct transfers, schools, health care, or other programs that open opportunity and improve the prospects of the poorest - then it matters little what the tax itself looks like because the spending side of the budget corrects or adjusts the distributional consequences overall. (Sugin, 2004, p. 1997)

2.2.3.2 Joachim Wiemeyer

For Germany, Joachim Wiemeyer, using a Rawls-inspired contractarian setting, looked specifically into the question of taxing top private and corporate wealth holder. Different from Sugin it is soon obvious that his contextual and conceptual starting point is a European setting. For example, he starts off with the justification of an Income Tax, even though its progressive rate should be moderate (Wiemeyer, 2016a, p. 60ff). That way, the accumulation of exaggerated fortunes shall be slowed down and diminished.

Other taxes he would advocate for cutting wealth inequality and capturing some of accumulated assets for the common good are:

- Inheritance Tax along the guidelines given by the Federal Constitutional Court, including less privileges for business assets (pp. 61f.+65)
- Taxes reducing rent-seeking, out of touch with the real economy, e.g. via a Financial Transaction Tax (p.65)
- Removing the disbalance between the taxation of labour and the taxation of capital (ibid.)

Last not least he emphasizes the necessity of states to cooperate in tax matters rather than competing against each other (p.65).

2.3 Robert Nozick

Robert Nozick, one of the most influential critics of Rawls, also sees an obligation that the rich and strong need to support the weak and poor. At the same time, he argues, that the extent and ways in which they do it needs to be left to their own discretion: After all, they have worked hard for that which they own, and therefore they are entitled to dispose of it at their own free volition (Entitlement Theory). Nozick emphasizes that any transfer can be called “just” only, if it originates from a free gift, sale or other agreement, but not from theft. And here taxation comes in: ‘Nozick argues that all attempts to redistribute goods according to an

ideal pattern, without the consent of their owners, are theft. In particular, redistributive taxation is theft.’⁹

Only voluntary transfers are “pareto efficient”, meaning, that because of a transfer one group is better off, but nobody is worse off.¹⁰ This may sound strange at first sight but consider this: A wealthy person might have the insight that it is better for him to pay 1000 Euro from his purse for a social just society, which is therefore free of violent conflicts, than spending the same amount on a flat inside a gated community. Or: He might voluntarily pay for good road infrastructure since it also benefits his BMW.

Nozick, however, qualified (if not changed) his opinion later in his days, as is apparent in his book “The examined life”. There, he admits, that an unlimited passing-on of wealth leads to a concentration which might not be healthy for democracy. Accordingly, he concludes, some inheritance taxation might be in order.

Bequeathing something to others is an expression of caring about them ... yet bequests [are] sometimes passed on for generations to persons unknown to the original earner, ... producing continuing inequalities of wealth and position. .. The resulting inequalities seem unfair. One possible solution would be to restructure an institution of inheritance so that taxes will subtract from the possessions people can bequeath the value of what they themselves have received through bequests. People then could leave to others only the amount they themselves have added. The simple subtraction rule does not perfectly disentangle what the next generation has managed itself to contribute - inheriting wealth may make it easier to amass more - but it is a serviceable rule of thumb.”¹¹

The late insight of Nozick is welcome, especially since there is ample evidence to demonstrate, that this kind of voluntary support of the poor does not exist in the real world.

2.4 Thomas Pogge

In his essay “Are we violating the Human Rights of the World’s Poor” (2011) and the subsequent dialogue with his critics (2014), Pogge distinguishes two obligations of the wealthy towards the poor: first, to do pro-actively good (e.g. to provide food¹²) which he thinks is difficult to implement. Second, to prevent and/or not to contribute

to the design or imposition of institutional arrangements under which human rights foreseeably and avoidably remain unfulfilled.’ (p.75) ‘while positive duties to promote human rights fulfillment may be much stronger to those close to us than to distant foreigners, no similar gradient exists for negative duties not to harm. The recognition of negative duties not to contribute to the design and imposition of supranational institutional arrangements that are not human-rights compliant discloses then the real possibility that we – reasonably well-off citizens of affluent countries – are involved in large-scale institutional violations of the human rights of distant foreigners whose deprivations we are inclined to relegate to the bottom of our moral priority list. (p.76)

⁹ Taken from <http://en.wikipedia.org/wiki/Justice>, retrieved 18 November 2013.

¹⁰ For a general overview see the entry “Distributive Justice” in the Stanford Encyclopedia on Justice, retrieved from <http://plato.stanford.edu/entries/justice-distributive/>. As to the conflict between Rawls and Nozick see Lacey, M. Rawls and Nozick on Justice. Routledge, retrieved from <http://cw.routledge.com/textbooks/alevelphilosophy/data/A2/Political/JusticeRawlsNozick.pdf>

¹¹ Nozick 1989:30-31. Retrieved from http://en.wikipedia.org/wiki/Entitlement_theory

¹² Here, Pogge points to a development in international law which is visible already in the United Nation’s General Comment on the Right to Adequate Food, where it assigns a positive duty states to facilitate reforms to improve people’s access to the objects of their human rights.

Discussion paper, not yet final version.

Pogge presents two examples: First, slavery in the US, which was not merely held up by a handful wealthy farmer, but was thriving also by the complicity of state officials and other citizens. Second: Structures enabling international tax dodging of private and corporate wealth holder. He sees a direct link between tax dodging and poverty: 'Such strategies for dodging foreign taxes are ... lucrative only insofar as these profits can eventually be repatriated to the U.S. at a tax rate that is substantially lower than the tax rates on corporate profits in the relevant foreign country' (p.78). Otherwise taxes paid in developing countries could be subtracted and offset from the US taxes they owe.

Here, Pogge concedes, that top private and corporate wealth holder are not driven by evil intent against the world's poor. They merely aim to get the most out of it for themselves – being, because of the “Spaceship” within which they live and act, unaware of the damage and harm they inflict (or would otherwise not inflict). And: Because they are already powerful and influential, it is easy for them to allocate resources to legislation which increases again their share of the pie, most importantly via lobbying and by that they fuel and distort the “competitive environment” to their advantage so that they benefit most. This can be shown by studies, e.g. by the Strategas Lobby Index, i.e. that any investment into lobbying brings enormous rewards.

In this game, the global poor and the governments of developing countries are not in the position to forcefully and effectively assert their own interest in national and international power games, which places the responsibility to act upon our shoulders. Pogge 'argues that the more powerful states, which dominate the design and worldwide imposition of the new and still emerging supranational institutional order, bear a collective responsibility for the persistence of severe poverty.' (p. 79)

This accusation is directed first and foremost those private and corporate wealth holder which are actively involved, secondly state officials, third all citizens with all rights and freedoms to inform themselves and act via votes and consumption. The responsibility of the previously mentioned Pogge sees is twofold: First, to correct unjust structures. Second, 'compensating for our share of the harm we collectively cause through private efforts such as donations to effective NGOs.' (p.79).

Pogges argument would support not just the obligation to give donations, but also the obligation to establish foundations or practice CSR or CRI AND the moral obligation to engage for fairer and just global structures in all areas of society, taxation included. Not surprisingly, Pogge continues his thinking towards the argument of a Global Tax Regime (Pogge & Krishen, 2016).

This approach can be linked specifically with Popper and Sens approach to a more just society rather than a just one (E/II/8.3#) since it starts with addressing the most obvious and manifest institutional injustices in national and international taxation with the goal to make international relations more just.

2.5 Tax Justice Network and Financial Transparency Coalition

Any talk about tax justice, criteria and principles would be incomplete without referring to those doing tax justice advocacy work for many years: The globally active Tax Justice Network and cooperating NGOs such as the Financial Transparency Coalition which allegedly unites ca. 150 NGOs worldwide.

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On its websites they explain nowhere from what tradition their concept of “justice” is derived. When asking senior representatives of the Tax Justice Network International about their underlying justice assumptions they replied that, indeed, neither such a reflection nor a common paper or platform do exist. They also pointed to their network character which cooperates pragmatically and problem centred, not being in need of a theoretically clear cut orientation mark. John Christensen, TJN-I director and before that 11 years economic advisor to the government of the tax haven Jersey, puts it as follows in a mail from 25 February 2016:

I think it's fair to say that the various individuals who contribute to our network ... are inspired by a rich variety of concepts of justice, and I would not like to single out one concept ahead of others. One of the things that attracts me to the concept of being a network rather than an organisation is that it allows and encourages intellectual pluralism.

Nevertheless some more indicators of “justice inspiring ideas” of Tax Justice Network activists may be given to characterize their ideological frame of reference:

2.5.1 Special newsletter on Tax Justice 2009

In 2009, the Tax Justice Network published a special edition of its newsletter on the theme of tax justice, pointing to the fact that our world is ruled by ideas and that it is important to know where dominating ideas have its origin. For that, they call upon John Maynard Keynes who said ‘The ideas of economists and political philosophers, both when they are right and when they are wrong, are more powerful than is commonly understood.’ This applies even more, the editor Paul Sagar notes, if a person is economist and philosopher in person, as is the case with David Hume and Adam Smith. Sagar notes that both are widely known for being ‘champions of commerce, trade and industry’, but hardly known as persons also being concerned with the justice of taxation. Sagar provides one quote from each: From Hume regarding the tax burden and redistribution,¹³ from Smith regarding a wealth tax on income from real property.¹⁴ His personal conclusion is that ‘it is as true of the early debates of modern capitalism as it is today that taxation and justice are intimately related. In short, economists must still be philosophers.’

The conclusion and consequences arising for the understanding of “justice” for members of the Tax Justice Network are more opaque: The editor invited four persons to contribute views on justice, one each from a Marxist, a Christian, liberal Egalitarianism (Nagel, Murphy) and libertarian right (Cato Institute). He points to a consensus among the first three and opposition to that consensus by the last, but not trying to define a common position, not even spelling out the perceived consensus among the first three writer. Rather, and faithful to the network idea of the Tax Justice Network he sees this presentation as an example of ‘reasoned dialogue ... in

¹³ "It is easy for the rich, in an arbitrary government, to conspire against them [the poor], and throw the whole burthen of the taxes on their shoulders." ... "A too great disproportion among the citizens weakens any state. Every person, if possible, ought to enjoy the fruits of his labour, in a full possession of all the necessaries, and many of the conveniencies of life. No one can doubt, but such an equality is most suitable to human nature, and diminishes much less from the happiness of the rich than it adds to that of the poor. It also augments the power of the state, and makes any extraordinary taxes or impositions be paid with more chearfulness." Essays, Moral, Political, and Literary. Part II, Essay I ("Of Commerce") para. 17.

¹⁴ "A tax upon house-rents, therefore, would in general fall heaviest upon the rich; and in this sort of inequality there would not, perhaps, be anything very unreasonable. It is not very unreasonable that the rich should contribute to the public expense, not only in proportion to their revenue, but something more than in that proportion." Wealth of Nations, Book V, chapter II. As an aside: Economists question still that this can be used as Adam Smith endorsing a Wealth Tax, see <http://daviddfriedman.blogspot.de/2011/03/misrepresenting-adam-smith.html>

a world of increased polarisation’, leaving it up to the reader to form his or her own opinion and point of view.

2.5.2 John Christensen

John Christensen himself gave a talk in Germany (2015) where he explains implication arising from two concepts which are also used in social ethical deliberations: David Ricardos “comparative advantage” and the “Prisoners Dilemma” from Game Theory.

Starting point was the offsetting of Competitive Advantage from Comparative Advantage: In theory, politicians argue, that competing for capital means lowering tax rates so that capital comes to do investment for jobs. Any sovereign entity acting accordingly has, consequently, a comparative advantage about those who do not do it. That way, a clear choice between the tax burdened bulky Welfare State and the lean, competitive and business friendly state is given. Christensen argues that this does not match because of what he calls “Finance Curse”:
Whoever does what capital asks for is undercut by somebody else, cutting ever deeper, so that in the end nobody is left with any advantage whatsoever. Christensen illustrates this by referring to the economic “monoculture” which is result of Jerseys or the UKs tax policies, leaving the country with little more economic sectors than the “financial industry” which, as pointed out, is under threat by other states offering even more attractive and profitable conditions.

Politicians, Christensen argues, always point to the Prisoners Dilemma:¹⁵ If I do not do it, somebody else does it and then he is profiting and not me. The Prisoners Dilemma does not exist in the case of tax competition, Christensen argues, because the choice is no choice at all but a fake since acting like that does not benefit anybody in the middle run. Quoting the former US Treasury Secretary Paul O’Neill he states: ‘Tax cuts are normally not the priority for real investment in real jobs: In reality genuine productive investment (as opposed to portfolio inflows) seeks out factors such as resource availability, infrastructure provision, labour productivity, which genuinely support productive processes. Tax breaks come way down the investment criteria.’ That way, cooperation of states is indeed the only answer to the Prisoners Dilemma, not competition.

2.5.3 Dietsch/Rixen

Markus Meinzer, the Senior International Advocacy Officer of the Tax Justice Network International, pointed to publications of Peter Dietsch and Thomas Rixen on questions of international tax justice. When approaching them, they recommended the following article to be their most foundational and important work (Dietsch & Rixen, Tax Competition and Global Background Justice, 2014): Starting point is, as with Christensen, the global situation caused by tax competition and its impact on the ability of states to collect revenue and implement policies of distributive justice nationally and internationally. ‘While the importance of taxation as a means of implementing domestic public policy and conceptions of

¹⁵ Two members of a criminal gang are arrested and imprisoned. Each prisoner is in solitary confinement with no means of communicating with the other. The prosecutors lack sufficient evidence to convict the pair on the principal charge. They hope to get both sentenced to a year in prison on a lesser charge. Simultaneously, the prosecutors offer each prisoner a bargain. Each prisoner is given the opportunity either to: betray the other by testifying that the other committed the crime, or to cooperate with the other by remaining silent. The offer is:

If A and B each betray the other, each of them serves 2 years in prison

If A betrays B but B remains silent, A will be set free and B will serve 3 years in prison (and vice versa)

If A and B both remain silent, both of them will only serve 1 year in prison (on the lesser charge). Retrieved from https://en.wikipedia.org/wiki/Prisoner's_dilemma

justice is widely acknowledged—and indeed often taken for granted—issues of international tax justice are mostly neglected’ (p.150). On the background of existing international tax competition this is short sighted, even more, since tax competition does not only deprive states from resources needed for redistribution, but at the same times deepens income and wealth inequalities, calling even more for redistribution. ‘One way to address these issues is to condemn the distributive outcomes and to propose redistributive policies to correct what are perceived to be unjust inequalities. This approach is largely remedial. A second possibility is to examine the rules of the game of international taxation themselves, and to make sure they do not contain any unjust bias’ (p.151). Dietsch and Rixen turn to the second approach, targeting that way the conditions of global background justice very similar to the approach of John Rawls and his search for overlapping consensus behind the veil of ignorance: What would be principles of international tax policy and tax governance which every reasonable person would select so that everybody would profit from it to the largest extent. Dietsch and Rixen present their two principles:

1. The Membership Principle: ‘Natural and legal persons should be liable to pay tax in the state of which they are a member’ (p. 158)
2. The Principle of Constraint on the design of Fiscal Policy: ‘A tax policy is legitimate if it does not produce a collectively suboptimal outcome. A collectively suboptimal outcome is here defined as one where the aggregate extent of fiscal self-determination of states is reduced’ (p.161).

Those two principles could be institutionalized within a governance structure similar to the WTO which they call ITO, International Tax Organization. It remains the most important question why the states of the world (or its citizens) should work towards an institution like that? Here, the authors support the view that this question is self-evident when looking at the damage done by existing tax competition, where everybody loses in the middle run. They follow those making ‘the case that the absence of a global basic structure in the face of inequalities should not lead us to conclude that these inequalities somehow fall outside the purview of justice, but instead calls for the creation of such a basic structure. ... This is precisely the kind of claim we have attempted to substantiate’ (p.176).

2.5.4 Result and criteria

2.5.4.1 General

The Tax Justice Network, as other internationally operating NGOs, is aware of the plurality of background of its members, making it difficult to find agreement on a material definition of “tax justice”. Accordingly, they are careful not to publish commonly binding content and definitions, attracting some but repelling others, but rather formal criteria applicable and helpful in many contexts and circumstances.

More specifically, they advocate a pragmatic approximation from identifying injustices, followed by a common attempt to identify the best possible and most widely acceptable remedy in a process of discussion and evaluation. As a consequence, the Tax Justice Network and its co-operators is also close to Karl Poppers and Amartya Sen's starting point (see E/II/8.3#), namely to start with injustices and, from there, work towards a more just world.

And yet: Some agreement about important principles and guidelines seems to be at hand:

First, emphasizing the damage inflicted by the dominating paradigm of tax competition, which profits an ever smaller group over proportionate while in the middle- and long run it

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causes growing distress for a growing number of states and people. This is indeed also the finding of this research regarding developments on national and international tax law and tax administration in the participating countries Germany, Kenya and Zambia (see also E/I/4.8#).

Second: Taxation is no longer of national importance alone, but has global implications and needs to be analyzed and addressed globally

Third: Taxation is important to secure identification with, and equality and participation within society: Taxation is curtailing income and wealth at the top end, thus reducing the ability of private and corporate wealth holder to exert intransparent influence and power, e.g. via lobbyism. It empowers others to participate in democratic procedures, and it creates identification of people with a state via the payment of tax, which is why “representation” is such an important criteria among the 5 Rs of the Tax Justice Network.

By that and their experience, they arrive at intelligible criteria-checklists with which both to evaluate existing taxation systems and deciding among alternative reform proposals aiming for improvement:

2.5.4.2 The “5 Rs” for taxing

In I/V we introduced already the TJNs 5 reasons given for taxation in the first place: the “5 Rs” which (revenue, repricing, redistribution, representation and reorganization) outlining why taxation is important. Building on that, the Tax Justice Network and the Financial Transparency Coalition¹⁶ build further criteria outlining good, just and efficient tax systems:

2.5.4.3 The 10 “Cs” of a good tax system

An efficient taxation system has nine attributes with one over-riding characteristic to which they all contribute. An efficient tax system is:

1. Comprehensive – in other words, it is broad based;
2. Complete – with as few loopholes as possible;
3. Comprehensible – it is as certain as is reasonably possible;
4. Compassionate – it takes into account the capacity to pay;
5. Compact – it is written as straightforwardly as possible;
6. Compliant with human rights;
7. Compensatory – it is perceived as fair and redistributes income and wealth as necessary to achieve this aim;
8. Complementary to social objectives;
9. Computable – the liability can be calculated with reasonable accuracy;

All of which facilitate the chance that it will be:

10. Competently managed.

In combination these are key attributes of a good tax system.

2.5.4.4 The 6 steps to tax justice

Tax justice can be defined as a six stage process:

¹⁶ Financial Transparency Coalition (2010, May 24) The Foundations of Tax Justice. Retrieved from <https://financialtransparency.org/the-foundations-of-tax-justice/>

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1. Define the tax base. This is the first essential step in creating progressive taxation and in promoting the better use of resources within society.
2. Find what is to be taxed. If the tax base cannot be accurately located then there is no point trying to tax it.
3. Count the tax base. Unless the tax base can be quantified it cannot be taxed.
4. Tax the tax base at the right rates of tax. In the process making sure the inter-relationship between the various tax bases is properly managed to ensure that the essential revenue raising, repricing and redistributive qualities of a just tax system is vital.
5. Allocate the resulting revenues efficiently and to best social effect
6. Report – governments must be accountable for what they do with tax revenues or the democratic principle fails.

2.5.4.5 The 11 steps to financial transparency

Tax justice cannot happen by chance, but it needs to build on a foundation, especially in a world where international formal, informal and criminal financial markets and financial flows enable private, corporate and criminal wealth holder to hide their money from states and tax administrations. To achieve tax justice, therefore, information is needed. That means all potentially taxable people, whether they are human beings or legal entities created under law, must be transparent about what they do, are and have done.

Financial transparency exists when the following information is readily available to all who might need it to appraise transactions they or others might undertake or have undertaken with another natural or legal person:

1. Who that other person is;
2. Where the person is;
3. What right the person has to enter into a transaction;
4. What capacity the person has to enter into a transaction;

And with regard to entities that are not natural persons:

5. What the nature of the entity is;
6. On whose behalf the entity is managed;
7. Who manages the entity;
8. What transactions the entity has entered into;
9. Where it has entered into those transactions;
10. Who has actually benefited from the transactions;
11. Whether all obligations arising from the transactions have been properly fulfilled.

2.5.5 Conclusion and shortfall

However: The previous is largely understood and defined negatively: It is against excessive competition (but where is the limit and how much cooperation), it is against national reform only (but how much should be transferred to the international), it is against inequality (without saying exactly how more equality (or equity?) should be organized).

Here, therefore, is a shortfall: Finding agreement regarding problems and the need to remove them is only a first step. But how to proceed from removal of injustice towards more justice? Of course, one may apply a trial and error approach when no clear direction exists about what participants in the discussion want/aim to achieve with the instruments under evaluation.

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In such situations, it is better to have some “pointers”, i.e. perspectives and guidelines indicating the direction into which improvements should go. It is here, where guiding values and norms of world views and faith systems enter the debate.

2.6 Catholic Social Teaching (CST)

Different from the preceding, the institutions executing this research do have a platform upon which guiding norms and values provide with such a positive perspective: Catholic Social Teaching. In the following, however, only aspects overlapping with the previous tax-justice-related discussion will be presented, ahead of the chapter of presenting explicitly taxation relevant aspects of CST in general (E/IV) and taxation relevant statements of church leaders (E/V).

2.6.1 A distinctive approach to social injustice

All Christians and Christian churches start their ethical reflection with the bible and principles contained in the Old and New Testament.

In considering Yahweh's decrees, prophetic proclamation and Jesus' life and preaching one notices the fact that there is some “bent” towards the marginalized, displaying for the Judaeo-Christian tradition an “option for the poor.” This has been taken up in the early communities by some sort of sharing their worldly goods with each other in some form of communal life or money-collections to support poorer brothers, sisters and communities. The implications of the option for the poor for not only individuals, but communities, can be considered under the perspective of charity, but also justice. The latter takes into consideration socio-economic circumstances and it is here, where taxation can play a role. Building upon that reflection, Christian Individual and Social Ethics emerge to determine that which is right or wrong to do. The following, therefore, finds probably acclaim with all Christian denominations: “Theology is an essential influence in the shaping of Christian Aid's principles and moral values. The insights and traditions of the Christian scriptures and faith provide our guide as we wrestle with the issues of today's world.” (Christian Aid, 2014, p. 7+10ff.).

Another influential strand of Christian Individual and Social Ethics is, as implied in the preceding quotation, general philosophical and ethical reflection beginning with the Greek and leading up to contemporary, even secular, approaches.

Using the previous, most Christian denominations draw their material in order to come to ethically relevant conclusions for individuals and groups. Authors see, however, that there is a danger, namely, to end up with a personalized ethics, which leaves social and institutional structures, who have their own dynamic, out of the equation: “A problem is that reducing ‘Who?’ to answers that are predominantly personal can leave us ill-equipped to address questions of tax justice at the international level, where the question requires mediation through institutions, legal regimes and authorities as dubious as that of the Caesar upon whose image Jesus gazed having requested the denarius.” (Christian Aid, 2014, p. 16). For example: While it is easy to attribute ethical responsibility to a person: What about a Transnational Corporation? Is it adequate to declare and treat it as a “Corporate Citizen”? Or what about the “activities”, “laws” and “inherent necessity” (*Sachzwänge*) of “the markets” who, at times, assume an own “personality” when it comes to excusing this or that choice rather than others?

It is here, where Catholic Social Teaching fills a gap, because Catholic Social Teaching sees, for example, an emergent “Social Sin” side-by-side with personal responsibility. By being an own reality, developing own dynamics and then influencing again personal behavior (often

misused as an excuse for not being able to act in accordance with ones own value convictions), Catholic Social Teaching does justice to the increasingly complex dynamics of individual, social and institutional interaction, both locally and globally. Piously speaking: Besides personal sin, social and structural sin complement any comprehensive analysis of reality. Here, the church makes an explicit effort to reflect social (in)justice not only among individuals and social groups, but also society and its institutions as such and to develop principles with which to measure and assess both injustice and proposals of reform. This is being done by a “process of ethical discernment that is informed by both social theory (i.e., analysis of class, race and gender systems) and the Christian tradition (Biblical norms and church teaching).¹⁷ In this context, the foundation of the Pontifical Academy of Social Science has to be seen.¹⁸

Little surprising, therefore, that also authors from other Christian denominations draw from Catholic Social Teaching in order to make points in their argument.¹⁹

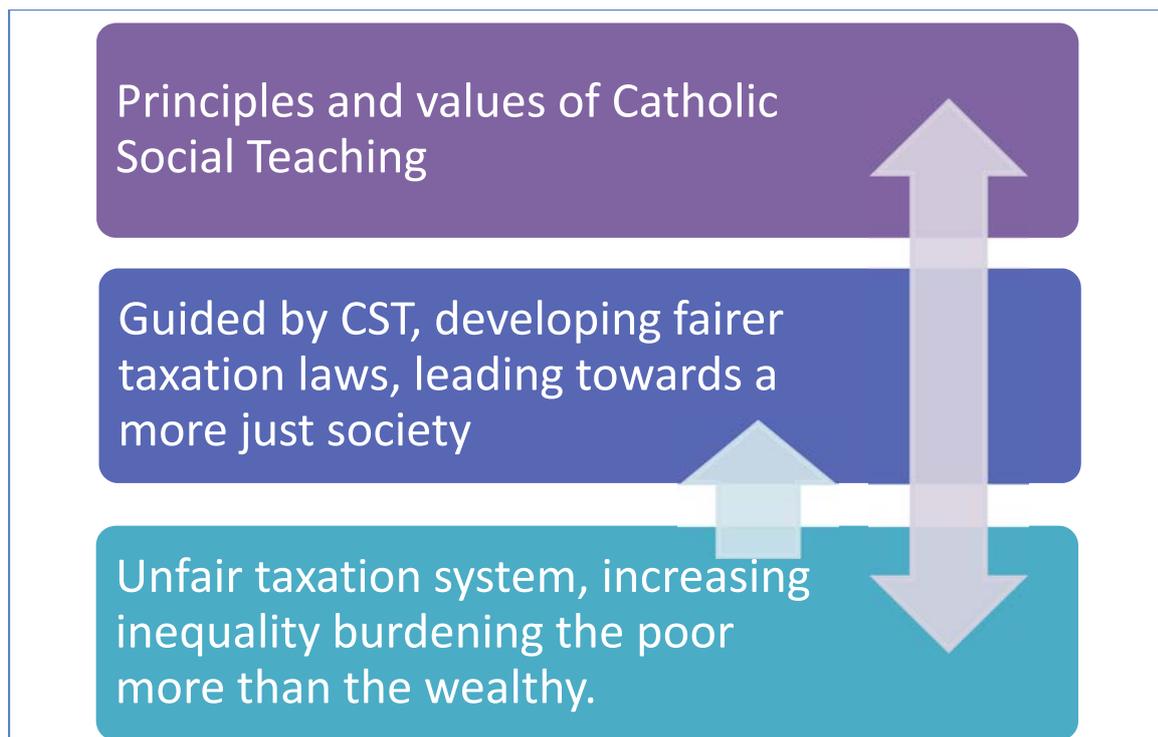
2.6.2 Principles and Values providing direction

Since CST is concerned about the wider issues of social justice in society (see E/IV and V), there are few outspoken references to taxation in CST, let alone systematic treatises on this topic. At the same time, it does inform our deliberations and choices with guidelines and direction. Given the fact that CST is based on very general values and principles rather than narrowly defined concept, it can be applied in multiple situations, plural contexts and from different vantage points.

¹⁷ See: <https://compact.org/resource-posts/christian-social-ethics/>. Besides this short version, see also regarding the importance of Social Science

¹⁸ In its establishing decree Pope John Paul II writes: “Social science research can effectively contribute to improving human relations, as has been shown by the progress achieved in various sectors of society especially during the century now drawing to a close. This is why the Church, ever concerned for man's true good, has turned with growing interest to this field of scientific research in order to obtain concrete information for fulfilling the duties of her Magisterium”: John Paul II, *Motu Proprio Socialium Scientiarum* (1 January 1994): AAS 86 (1994), 209. (Pontifical Council for Justice & Peace, 2005, p. 34)

¹⁹ See, e.g. Reed and Richie in (Christian Aid, 2014).



Interest in tax related issues, let alone tax justice related issues, was growing slowly and even in the second half of the last century, some (from today's point of view) surprising publications can be found:

2.6.3 Surprising earlier tax relevant recommendations

Furger (1997) refers in his seminal and stock-taking treatise to the fact Catholic moralists in previous centuries more often supported tax cheating than tax compliance – even well into the 20th century!

The handbook “Summarium Theologiae Moralis” of A. M. Arregui, reprinted in 20 editions between 1915-1952, admits a commutative aspect, emphasizes the obligation to obey ever correctly passed legal obligation and appeals to the reader that non-payment hurts the weak and poor. At the same time, he states that taxes are generally too high and that there is nothing wrong if the tax subject only declares 50% of his savings (also Noldin). Not very different is Jones Moralkompendium. He, too, puts the legal obligation arising from laws first and states that nobody sins who hides a quarter or a third of his wealth since (a.) some taxes are deemed to be unjust, (b.) others do the same and (c.) the state would calculate with such a behaviour anyhow. Where does this strange attitude have its roots?

One reason, the otherwise in social justice reflection eminent Oswald von Nell-Breuning supposes, that taxes through many centuries only served to finance the greed, wars and luxurious lifestyle of nobility and kings. Here, indeed, the church had a cautious view and more often than not defended the legitimacy of non-payment (p. 67) and on that background it is understandable that even Leo XIII still complained about the “immanitas tributorum” (Ungeheuerlichkeit der Steuerlast).

Nowadays, Nell-Breuning states, this has changed: Because the modern state can be understood as a “Steuerstaat”, serving no longer the interests of a few, but the common good of all, the state is in need to have the means in order to fulfil his tasks which have grown beyond recognition over the centuries. At the same time, taxes and levies are an important

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instrument to regulate useful and damaging practices, i.e. to further beneficial developments and put a price on damaging ones. On that background, tax non-compliance is damaging the Common Good of All. Even individual cases distorts competition and inflicts damages on those who are tax-honest and compliant (Nell-Breuning, 1980, p. 66ff.).

This is supported by US writer, e.g. Monsignor Edward J. Ryle, long time leader of the Arizona Catholic Bishops' Conference and key lobbyist on social justice issues makes some observations about taxation and tax evasion. According to him,

the state has the right to levy taxes for the common good. Correlative to this right of the state is the responsibility to pay taxes. There was, prior to Vatican II, something of an internal debate among Catholic theologians as to whether this obligation was merely one in penal law, i.e., one in which one was obliged to pay the penalty if caught in tax evasion, or a moral responsibility binding in justice. Today, at least for legally constituted states, the strong theological consensus is that there is a moral obligation to pay one's taxes. (Ryle)

However: the spirit of avoiding taxes for a higher good is still alive in some arguments contained among the contributors to (Booth, 2007a), pointing to the differences between an Anglo-Saxon and a more continental European tradition of interpreting CST principles and norms:

2.6.4 A market leaning vantage point

One of the very few contemporary comprehensive systematic treatment of issues relevant to the Tax Justice & Poverty project was undertaken in the Anglo-Saxon Context by authors with a market friendly leaning (Booth, 2007a). The authors prefer minimum state intervention in economy and society because that way not only individual freedom, but also market mechanisms would be infringed, that way the generation of growth and wealth be inhibited. By doing this, they can rely on Pope John Paul II who was a strong opponent of any bloated Social Assistance State whose prime achievement is to keep people in dependency (see E/V#). This shows in the book and in the positions presented, but indeed: the authors argue that, regarding the relationship between the individual, social groups, state and taxation, there is a lot of overlapping between market champions and followers of CST principles:

This is because CST determines the relationship between the individual and the state by balancing requirements arising from the principles of Subsidiarity and Solidarity. From there, the priority is on the individual, where the individual is not capable of doing things on the voluntary cooperation of individuals in groups and only if that fails to achieve the desired goal the state enters and takes over (O'Brien, 2007, p. 245).

The nature of the state is defined by the common good, which is the 'sum of those conditions of the social life whereby men, families and associations more adequately and readily may attain their own perfection' (GS 74). The common good is instrumental as it is directed to assist people, not to do it for them (Gregg, 2007, p. 263f.). Accordingly, the state should assist (!) free and responsible persons to attain perfection, by enabling them to make choices and implement them either alone or in family or voluntary associations. This justifies coercion in some areas, but it is certainly no argument for a state acting on behalf of people or telling them what to do unnecessarily and unjustifiably. All too often, authors argue, wherever the state comes in, it deals with coercion which overrides individual responsibilities, decision making and moral autonomy (O'Brien, 2007, p. 233). 'One way of prudentially discerning the role of government institutions in a given situation is to ask ourselves what the state can and cannot generally do well. This may be determined by identifying other groups deficiencies

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and asking when no other community, save the state, can render the assistance that will remedy the deficiency' (Gregg, 2007, p. 267).

The authors of the book therefore prefer “freedom of choice-solutions” even when it comes to issues such as basic education and healthcare: ‘It seems clear that Catholic Social Teaching supports giving the poor the means to purchase education and health provision, although this should not necessarily mean universal free access and certainly not state provision of these services’ (Booth, 2007d, p. 139).

As a consequence, the church should refrain from too detailed involvement into tax justice debate ‘As such, the precise level of taxation is a matter for prudential judgment informed, at least in part, by economic reasoning. Therefore, the Church, in Her teaching has limited Her statements to general principles and not made judgments about appropriate rates of taxation.’ (Booth, 2007d, p. 112).

There are, however, two slots for justifiable state involvement in the field of taxation even for the “state minimalists” presented in this book:

- First in the area of international taxation, where there is no apparent alternative to state action when fighting tax evasion. This requirement is an obvious outflow of the principle of subsidiarity since here evidently the state has to fill in what nobody else is able to do.
- Second, the authors give reasons to why charges and levies could be placed upon goods in order to put a price on externalities in the area of environmental issues.²⁰

2.6.5 A state leaning vantage point

A wider view of the role of the state is also starting from the CST concept of the common good. Pope John Paul II specified that the Common Good ‘is not simply the sum total of particular interests; rather it involves an assessment and integration of those interests on the basis of a balanced hierarchy of values; ultimately, it demands a correct understanding of the dignity and the rights of the person’ (*Centesimus Annus* 47). The Catechism notes three essential elements of the common good: respect for the individual, the social well-being and development of the group, and peace which results from the stability of a just society. The state shares responsibility for the common good since “the common good is the reason that the political authority exists.” (Nrs. 1907-1909).

Here it is made clear that the common good transcends individual and group interests by integrating and transcending them into something larger: Out of the individual parts emerges a quality in its own and proper right, being more than the sum of individual parts and interests assembled.

Within such an organic “wholesomeness”, the state has also the task to make sure that every individual is contributing to this whole. Vatican Council II makes this clear when emphasizing that the state is more than the sum of individual choices:

²⁰ (Booth, 2007d, p. 134f.) ‘Taxation or charges levied ... as a “price for the consumption of shared resources”, are effectively used to adjust the costs of private activity for the social costs associated with the activity. As such they are not necessarily a violation of property rights, nor do they necessarily impair economic efficiency.’ Likewise: ‘Charges for externalities, ‘on certain economic activities that cause harm to those not party to the activity’. (p.140)

Profound and rapid changes make it more necessary that no one ignoring the trend of events or drugged by laziness, content himself with a merely individualistic morality. It grows increasingly true that the obligations of justice and love are fulfilled only if each person, contributing to the common good, according to his own abilities and the needs of others, also promotes and assists the public and private institutions dedicated to bettering the conditions of human life. Yet there are those who, while possessing grand and rather noble sentiments, nevertheless in reality live always as if they cared nothing for the needs of society. Many in various places even make light of social laws and precepts, and do not hesitate to resort to various frauds and deceptions in avoiding just taxes or other debts due to society. ... Let everyone consider it his sacred obligation to esteem and observe social necessities as belonging to the primary duties of modern man. For the more unified the world becomes, the more plainly do the offices of men extend beyond particular groups and spread by degrees to the whole world. But this development cannot occur unless individual men and their associations cultivate in themselves the moral and social virtues, and promote them in society; thus, with the needed help of divine grace men who are truly new and artisans of a new humanity can be forthcoming. (GS Nr. 30)

That way, a state is acceptable or even necessary which collects taxes not merely for maintaining basic institutions and infrastructure, but also for redistribution to a smaller or larger extent. Eric Pavlat writes in his contribution “Why Taxation Isn’t (Necessarily) Theft” (2008), explicitly alluding to Robert Nozick’s dictum (see 2.3) and against champions of “free choice” only:

(A)s explained in the Compendium of the Social Doctrine of the Church: Each person must have access to the level of well-being necessary for his full development All other rights, whatever they are, including property rights and the right of free trade must be subordinated to this norm. (172) In other words, property rights must always take second place to the universal destination of goods. Some argue that only the individual, through his or her free choice, should help the poor. But this isn’t Catholic social teaching. Instead, “The ethical requirement inherent in these pre-eminent social principles concerns both the personal behavior of individuals . . . and at the same time institutions represented by laws” (163). The government, therefore, has an ethical requirement to help meet the basic needs of the poor. In fact, helping the poor is not charity but “a debt of justice” (184). And much of this debt is paid through taxes. The Catechism states, “Submission to authority and co-responsibility for the common good make it morally obligatory to pay taxes . . .” (2240). The further complaint that the State may not “redistribute income” is also without merit in Catholic thought. In fact, according to the Compendium: The economic well-being of a country is not measured exclusively by the quantity of goods it produces but also by taking into account the manner in which they are produced and the level of equity in the distribution of income, which should allow everyone access to what is necessary for their personal development and perfection. An equitable distribution of income is to be sought on the basis of criteria not merely of commutative justice but also of social justice that is, considering, beyond the objective value of the work rendered, the human dignity of the subjects who perform it. Authentic economic well-being is pursued also by means of suitable social policies for the redistribution of income which, taking general conditions into account, look at merit as well as at the need of each citizen (303).

2.6.6 Negative conclusion: Diminishing injustice

At first sight and on a theoretical level, it seems difficult to bridge this chasm between those two CST traditions and reach positive policy recommendations. One way to do it is here, as demonstrated already above, to pinpoint to existing injustices and ask those in charge to address the issue to the benefit of the most and minimal collateral damage for others.

One aspect of such a dialogue might also be to point out fundamental inadequacies of the private choice model, e.g. by pointing to mismatch between donations to children's hospitals on the one hand, and decaying streets or public infrastructure on the other.

By using this approach, quite a lot of progress regarding specific proposals could be achieved both nationally and internationally in building knowledge and opinion, perhaps even legislative clout against the lobbyism of the powerful few. This is also confirmed by Nell-Breuning in 1970²¹ who, nevertheless, comes to clear conclusions for Germany when he calls for compensation of dependent labour for the non-availability of tax avoiding options at the disposal of larger businesses²² or when he supports tax based redistribution against excessive inequality.²³

2.6.7 Formal conclusion: iustitiae legalis et commutativa

Formal criteria regarding a just and justified taxation could arise from a systematic treatment of the by Furger (1997). He reviews the treatment of taxation roughly within the 20th century and states that there are two main justifications for the payment of taxes in Catholic thought: First, legal obligation towards legitimately passed laws (iustitia legalis), second, reasons arising from commutative justice, i.e. an obligation towards the state because the state is providing services for the common good.

Of larger moral philosophical treatises, Furger refers to Cathreins Moralphilosophie. Here the author elaborates criteria for imposing a "just tax", namely (a.) imposition by a legitimate authority, (b.) for a justified reason, serving the common good, and (c.) moderate and proportionate to the citizen's ability to pay. If just one criterion is missing, a tax cannot claim to be just and justified. This, however, would occur so frequently, that St. Alfons of Liguori puts forward his opinion that injustice of taxation can generally be presumed (praesumiert). Noldin in his treatise admits, that direct progressive taxation in Germany and Austria can be called just and its payment obligatory, if one compares the situation with other countries in the world. Only Lehmkuhl is known to Furger among the "classical" authors to link legal justification explicitly to commutative justice: Taxes are passed ex iustitia legalis, but if this legislation is legitimate, the payment obligation arises due to commutative justice reasons.

²¹ „Auch bei noch so verschiedenen, ja gegensätzlichen Auffassungen über das, was gerecht ist, stimmt nahezu die ganze Menschheit darin überein, bestimmte Zustände, Verhaltensweisen und Maßnahmen als un-gerecht zu verurteilen. Diese Übereinstimmung des Menschengeschlechts zugrunde legend, können wir manchmal sehr deutliche und scharfe, manchmal auch weniger eindeutige Grenzen ziehen, mittels deren wir aus dem immer begrenzten Raum dessen, was allenfalls gerecht sein kann, einen ins Ungemessene sich erstreckenden Bereich dessen ausgrenzen, was die allgemeine Überzeugung als ungerecht und als Ausfluß reiner Willkür brandmarkt. Ist damit auch nicht eindeutig bestimmt, was in concreto gerecht ist, so ist damit doch schon einigermaßen der Raum umschrieben, in dem allein es zu finden sein kann.“ (Nell-Breuning, 1970)

²² „So lassen sich beispielsweise zur Verhältnismäßigkeit der Besteuerung verschiedener Gruppen von Steuerpflichtigen durchaus fundierte Aussagen machen, so z. B.: wenn die selbständig Erwerbstätigen (Unternehmer) über sog. "Gestaltungsmöglichkeiten" verfügen, um ihre steuerpflichtigen Gewinne zu manipulieren, die den unselbständig Erwerbstätigen nicht offenstehen, dann gebietet die Verhältnismäßigkeit der Besteuerung, diesen dafür in anderer Form einen Ausgleich zu bieten, beispielsweise in Gestalt eines ausreichenden Arbeitnehmerfreibetrags.“ (ibid.)

²³ Zum Redistributionsprinzip: „unter den heute bei uns bestehenden Verhältnissen sprechen auch gesellschafts- und wirtschaftspolitische Gründe gewichtig dafür. Wie ein Mindestmaß an Ungleichheit ein ungemein wirksamer Anreiz zum Streben ist und dadurch zum Aufstieg des allgemeinen kulturellen und materiellen Wohlstands beiträgt, so schließt allzu große Ungleichheit diejenigen, die auf der Schattenseite des Lebens sitzen, mehr oder weniger aus der Gesellschaft aus, lähmt ihre Tatkraft und ihre Schaffensfreudigkeit - zum Schaden des Ganzen; im Extremfall kann sie gewaltsamen Umsturz auslösen.“ (ibid.)

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More explicit than the previous is the younger Mausbach in his *Katholische Moraltheologie*: He establishes a clear link between taxes and commutative justice and the states need to finance common good related services. Mausbach does it by referring to Jesus, Paul, Justin and Tertullian. Preconditions are, however, that the tax is legitimate, advancing the common good and proportionate to the ability to pay of the tax subjects. In this tradition is also Nell-Breuning, who was awarded his PhD by Mausbach: Famous is his dictum “Wer Wohlfahrtsstaat sagt, sagt notwendigerweise auch Steuerstaat.“ Finally, Bernhard Häring is mentioned in support of this position. Häring calls for democratic participation of citizens to be an additional requirement for justified taxes: Only if the citizen has a say both in formulating laws and spending revenue, taxation is justified. If those rights are not adequately secured, he sees a justification to refuse tax payments (Steuerstreik).

Furger draws conclusions determining tax justice which can, to the opinion of this research, be shared by citizens in any part of the world by saying, that the following aspects need to be fulfilled together if a tax is justified beyond purely legalistic justifications: The tax needs to be passed by (a.) legitimate authorities, there needs to be (b.) a recognizable link to the common good and it (c.) should be proportional to everybody’s ability to pay. These three aspects require three corresponding underlying requirements, arising from the citizens entitlement to participate in the writing of laws and spending decisions. This can be secured (d.) via periodical elections, tax law formulation and administration needs to be (e.) transparency (in terms of procedures, input into policy formulation and administration via auditing courts), and (f) checks and controls, securing that everybody contributes to his abilities and tax evasion is excluded.

Are all of these requirements fulfilled, individual obligation via legal justice is supplemented by an obligation of commutative justice, because the citizen receives something back for that which he contributes. This applies even if, in modern and complex societies, transparency requirements are less easy to secure as in earlier times and Furger finally reminds that non-payment of that which is due burdens those who are honest and/or the weak and poor.

2.6.8 Positive conclusion: Advancing the Common Good of all...

Those formal criteria are nice, but they do not answer the question *where* a specific society wants to move, *what role* its state-institutions play and *what responsibilities* within society are with market mechanisms, private/corporate initiative, including charity and foundations, or public institutions. Here also Nell-Breuning reminds us that this question cannot be dealt with in the abstract sense, but needs to be dealt with in a specific way: That, which is for redistributive purposes in one social and economical setting just, reasonable, proportionate and beneficial for the common good would be damaging in another social and economic setting because the very same measures would, for example, stifle economic innovation and growth (Nell-Breuning, 1970).

Not surprisingly, our research showed, first of all, the answers differed for Germany, Kenya and Zambia due to the very different cultural, social, economical etc. settings.

At the same time and inspite of all differences it seemed to be the case, that our common catholic foundation enabled us to establish a number of overlapping conclusions which, then, could be collected in the policy recommendations of the Tax Justice & Poverty project as such. One reason being, probably, that the team rejected competitive, free market ideologies with its goals and ambitions in favour of a social market economic approach. Our ability to agree on many issues is an important observation which will also be important for the overall

assessment and opportunities which the Church has when it comes to bridge gaps between diverging concepts of “justice” between nations and cultures (see 2.7.5#)

2.6.8.1 ...nationally and/or internationally?

Besides advancing the national Common Good, members of the Catholic Church have to ask themselves not whether, but to what extent, the Common Good needs to be understood not just locally or nationally, but globally. As to “whether”, CST is clear: The Common Good is to be understood globally and universally (see E/IV# and V/#). This moral-ethical postulate is increasingly backed up by empirical science: The wellbeing of one group is interdependent with the wellbeing of others in the sense, that sacrifices for the sake of mitigating climate change will benefit a developed country twofold: First, because it will mitigate consequences of climate change for the own country, second, because it will lower the number of “environmental refugees” (see E/II/9#). This, of course, will also impact upon the obligation of, and/or the extent of assistance wealth states are expected to give to poorer states, see 8.3#

2.6.9 Examples for variety

It follows three examples of how CST values and principles are used as a yardstick to evaluate social injustices and to develop policy recommendations in a specific economical, political and social environment. First two Episcopal letters, the first regarding the US, the latter Germany but, at the same time, keeping the EU in view. The third presents taxation related activities of the *Justitia et Pax* Commission.

2.6.9.1 Example: US Bishops 1986

A major example here is Pastoral Letter on Social and Economic Justice of 1986 by the US Bishops Conference. As the name betrays, they have a wider view on society and economy, within which taxation is only one focus in formulating national economic policies (p.76). For example:

- Facing the de facto accumulation of wealth among small segments of the population they support a redistributive system beyond charity only. Nr. 76 of the letter says: ‘These duties call not only for individual charitable giving but also for a more systematic approach by businesses, labor unions, and the many other groups that shape economic life—as well as government. The concentration of privilege that exists today results far more from institutional relationships that distribute power and wealth inequitably than from differences in talent or lack of desire to work. These institutional patterns must be examined and revised if we are to meet the demands of basic justice. For example, a system of taxation based on assessment according to ability to pay is a prime necessity for the fulfillment of these social obligations.’ (p. 18),
- They support job creating programs: ‘The cost of providing jobs must also be balanced against the savings realized by the government through decreased welfare and unemployment insurance expenditures and increased revenues from the taxes paid by the newly employed.’ (p.38)
- They include a passage on the environment (p.28)

But: There is a specific list of criteria, defining a just taxation system. In Nr. 202d they write:

The tax system should be continually evaluated in terms of its impact on the poor. This evaluation should be guided by three principles. First, the tax system should raise adequate revenues to pay for the public needs of society, especially to meet the basic needs of the poor. Secondly, the tax system should be structured according to the principle of progressivity, so

that those with relatively greater financial resources pay a higher rate of taxation. The inclusion of such a principle in tax policies is an important means of reducing the severe inequalities of income and wealth in the nation. Action should be taken to reduce or offset the fact that most sales taxes and payroll taxes place a disproportionate burden on those with lower incomes. Thirdly, families below the official poverty line should not be required to pay income taxes. Such families are, by definition, without sufficient resources to purchase the basic necessities of life. They should not be forced to bear the additional burden of paying income taxes ... (United States Conference of Catholic Bishops, 1986, p. 45).

All in all, and on the background of the Anglo-Saxon skeptics of state intervention presented above (2.6.3) a surprisingly market skeptical approach by the bishops.

2.6.9.2 Example: German bishops 2014

Important statements about social and economic justice in Germany are at times formulated jointly by both Catholics (DBK) and Protestants (EKD), beginning with the first major one in 1997, as it was with the more recent one in 2014 (DBK; EKD, 2014). Here, taxation are also part of a wider complex of social justice and are mostly covered in chapters of the part on State Finance (pp. 26-29).

They start, however, with stating the injustice of rescuing private banks with taxpayers money (p. 8), concluding that this deplorable fact results from deficits in regulations. Here, one conclusion is ‘This means that institutions involving banking supervision and tax administration need to be equipped with the necessary competence, material resources, and staff’ (p. 22).

Having emphasized, that taxpayers’ money paid for unification, the 2007 crisis and the Euro Area Crisis affected the socially weakest most both in Germany and the EU, they commend nevertheless the Debt Brake (and resulting fiscal austerity) as a useful instrument both for Germany and other EU countries. More revenue could be collected by fighting inefficient and corrupt tax administrations (outside Germany mostly), also by removing tax exemptions for private and corporate wealth holder. Regarding the latter, the pending introduction of more transparency and information exchange between governments is seen to be useful to close existing legal loopholes and improve international cooperation, which eventually will also increase the tax burden on TNCs, thus removing their so far existing unfair advantage over small and medium businesses. Fighting tax havens and the Common Consolidated Taxation of TNCs are mentioned, but not explicitly supported. Finally the bishops conclude that ‘a just tax policy would not solve every budgetary problem, but would do much to bring about greater acceptance for any further austerity measures required. It would also afford governments greater leeway to take into account economic developments and to counter any long-term social and economic damage resulting from social problems and structural investments not made’ (p.28). This is followed by repeating that reducing the debt burden and the investing on costs of the ‘socially weak ...cannot be acceptable from an ethical point of view’ (p.29). Some positive proposals regarding how a socially just tax policy could look like are missing.

Something on mandatory social security contributions follows in the chapter on demographic development (pp. 35ff.), which is equally nebulous. It starts with the statement that a ‘just distribution of financial burdens’ between generations is important and that ‘this includes, for example, taking more clearly into account the contributions made by families with regard to parental and caregiver time.’ It further details well-known problems arising from the difficulties of pension security both in the pay-as-you-earn and the privately financed system. It appeals that ‘much needs to be done’ to secure that those coming to age will receive their

full entitlements, preventing cuts in pension levels, including those who are working in hazardous and/or low income jobs. Similar to the chapter on taxation: Nowhere the bishops state how the broken system could be healed: They talk of flexibility and constant learning, praise successful reforms in the past but end this chapter without a single positive proposal.

All in all, this statement is timid and more “Anglo-Saxon” than that of the US Bishops, who do talk about progressive tax rates, inheritances and the possession of real property.

2.6.9.3 Example: *Justitia et Pax*

There are some more specific publications of the Pontifical Council *Justitia et Pax*, a branch of bishops and laity explicitly devoted to questions of social justice and peace. It exists on the global, regional and national level. Some examples here:

In 2011 the Roman Council published a paper its note “Towards Reforming the financial and international systems in the context of public and global authority”, calling for more regulation of markets by public authority, global institutions included. It also supported explicitly the introduction of a Financial Transaction Tax, because: “Such taxation would be very useful in promoting global development and sustainability according to the principles of social justice and solidarity. It could also contribute to the creation of a world reserve fund to support the economies of the countries hit by crisis as well as the recovery of their monetary and financial systems.”²⁴

Justitia et Pax Europe entered the discussion surrounding the taxation of corporations with a declaration of the Executive Committee on 6 June 2016.²⁵ There, they comment on recent developments and discussions both within the OECD and EU context, endorsing some more than others, but they do not, as does the Tax Justice Network, criticize shortcomings or loopholes and submit own proposals.

The Head of the German Section of Justice and Peace, Bishop Ackermann, contributed a *Grußwort* (greeting/opening speech) when the research results of this studies were published on 29 September 2016.²⁶ In it he emphasizes that tax justice is an important instrument for reducing the wealth gap, at the same time, he points out that such insights need to be enforced and implemented, e.g. against financial markets (Financial Transaction Tax) or TNCs (OECD and EU initiatives against BEPS). In the context of the latter he explicitly welcomes the decision of EU Commissioner Vestager to ask of Apple the repayment of EUR 13 billion in avoided taxes. Bishop Ackermann ends with a plea to support developing countries with governmental structures to collect taxes efficiently and spend revenue transparently and pledges support of the German Justice and Peace section in the struggle ahead.

2.6.10 ...and what about resistance to (unjustified) taxation?

Regarding the long “tradition” of Catholic moral and social teaching regarding tax avoidance and evasion (2.6.3), the question is also current today there may be a justification of tax non-payment on grounds of conscientious objections. As indicated in 2.6.7, Häring argues, for example, that taxation is only justified if the citizen has a say both in formulating laws and in spending revenue.

²⁴ See:

http://www.vatican.va/roman_curia/pontifical_councils/justpeace/documents/rc_pc_justpeace_doc_20111024_nota_en.html#3.2 *An Authority over Globalization*

²⁵ <http://www.juspax-eu.org/en/dokumente/content/Statement-Fairer-taxation.pdf>

²⁶ See <http://www.taxjustice-and-poverty.org/events.html>

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Indeed, even if taxation follows a proper legal course and is essential for the general Common Good and public tasks, there are areas where some minorities within the state disagree regarding the utilization of their tax money, most importantly in the field of defence and armament. In case there is a grave moral issue the question arises whether, and under what conditions, a person might be entitled to justifiable resistance, subversion or tax evasion. There is, however a criterion for conscientious objector vs. ordinary tax evader: The latter do it in secret for selfish motives, the former do it publicly, (perhaps pays the share allotted to defence in the national budget on a fiduciary account) and risk fines and imprisonment, as it is the case in Germany with those refusing to pay that share which is normally spent on military and defence.²⁷

2.6.11 Conclusion

As will be demonstrated in E/IV+V: Catholic Social Teaching does not provide “ready to use” blueprints for fair and just taxation in every possible context, but rather guidelines applicable in a specific context. At the same time, as illustrated above (2.6.5+7) by referring to Nell-Breuning: There are specific policy recommendations possible if one applies this set to specific situations and contexts, most importantly, when it comes to remove unjust conditions.

In the view of this project, any taxation related proposals arising from Catholic Social Teaching nationally and internationally should operate within and consider the following parameter:

²⁷ <http://www.netzwerk-friedenssteuer.de/>



On the background of work done since the second half of the last century (2.6.3&ff.) it is still surprising how little direct guidance on tax justice related issues is contained in official Catholic compendiums. The current Catechism of the Catholic Church deals with the illegitimacy of tax evasion in the chapter treating the 7th commandment, sub-chapter “Respect for Persons and their Goods”,²⁸ explicit references towards taxation in the Compendium on Social Doctrine are not manifold either.

However: In the wakes of several data leaks, the public preoccupation with issues surrounding taxation and tax justice related issues is growing, and this can also be observed in the church from top to bottom (E/IV +V).

2.7 Other religious approaches

As mentioned already in 2.6.1, other Christian Churches do not have an explicit social teaching comparable to Catholic Social Doctrine. They rather build their ethical criteria and

²⁸ “The following are also morally illicit: speculation in which one contrives to manipulate the price of goods artificially in order to gain an advantage to the detriment of others; corruption in which one influences the judgment of those who must make decisions according to law; appropriation and use for private purposes of the common goods of an enterprise; work poorly done; tax evasion; forgery of checks and invoices; excessive expenses and waste. Willfully damaging private or public property is contrary to the moral law and requires reparation”. (Nr. 2409)

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approaches by reflecting about (1.) scripture, (2.) justice relevant philosophical reflection and (3.) analysis of critical contemporary issues.

Besides Christianity, there are many other religions and moral world views whose values and norms might impact also upon the question of a more just and fair taxation. Here, sadly, not much material could be gathered.

2.7.1 German Protestant Church

In 2009, the German Protestant Church published a seminal paper on tax justice (Evangelische Kirche in Deutschland, 2009) which even in 2017 was said to be still their centerpiece of tax justice arguments.²⁹ The paper has only short explicit foundational presentations: One paragraph on the implications of Christian Ethics (Nr. 4), without presenting explicit principles and values (except “social justice”) upon which this Ethics are based upon. Five more paragraphs are devoted to biblical foundations (Nr. 5-9). The subsequent historical discussion under the headline “The tasks of the State” contains the presentation and discussion of philosophical-ethical values and norms which are of importance for the specific positions adopted by the Protestant Church, followed by listing and discussing contemporary grievances. The paper confirms an important guiding principle also of this research project: It is difficult to say anything about “Tax Justice” since the concept of “Justice” (let alone “Tax Justice”), depends on many preceding assumptions. One of the most important is: What do people think is justifiably the task of the state? And what, do they think, is rather within the responsibility of individuals, businesses or social groups?

Interesting enough, and given the fact that this publication is ahead of Offshore and other data leaks, one of the most important recommendations is, as already indicated in the title of the brochure, that of “transparency”: For example, when it comes regarding the distribution of the overall tax burden or the lack of transparency regarding profits and taxation of TNCs or beneficial ownership of shell companies.

2.7.2 Christian Aid

The Anglican NGO Christian Aid is worldwide prominent in both discussing and advocating explicit issues of tax justice, both on its own and in cooperation with others, e.g. the Tax Justice Network. Eminent for the discussion are seminal publications such as

- 2008: Doing Justice to Poverty – Christian Aids understanding of poverty and its implications.
- 2009: Gospel of the Rich – Theological views on tax
- 2014: Tax for the Common Good – A study of tax and morality

Christian Aid, too, does not have an explicit Social Doctrine, but operates within the three parameters (1.) scripture, (2.) justice relevant philosophical reflection and (3.) analysis of critical contemporary issues. Esther Reeds contribution “Tax and international justice” (Christian Aid, 2014, pp. 9-19) wants to remind the reader that “Christian Ethics is properly and centrally concerned with questions about social justice, which entails debate about taxation.” (p. 11). She develops a contemporary concept of the “Common Good”, by drawing from philosophical sources such as Aristotle and Thomas Aquinas, saying that “the common good neither has nor requires clearly defined substantive content that may be specified a priori, because it is more like an activity, set of responsibilities or a common project,

²⁹ So, e.g., the Head of the EKD, the Bavarian Bishop Bedford-Strohm, and the relevant official in the EKDs Headquarter, in letters to the author.

Discussion paper, not yet final version.

inconceivable when individuals are thought about as isolated from each other.” (p.14). She, too, confirms one of the central assumptions of our study, namely “The precise ‘What?’ of tax justice will vary from place to place ... There is no single global ‘Who?’ or answer to the ‘what?’ of global justice” (p. 17). She is clear, too, that for the Christian tax justice cannot be confined to its own context, but has an international, even institutional, dimension.

2.7.3 Islam

Islam is even more diverse than Christianity and it is difficult to find systematic treatises on Islamic guidelines for economy and society. One of those is the book “Funds in the Khilafah State”, summary of which is on the Project Website.³⁰ There it says that the State Treasury of the Caliphate first receives revenue from different types of public property, oil included. Beyond that revenue arises from Booties, from land tax, a Head Tax and Zakat, which is translated as “Wealth Tax.”

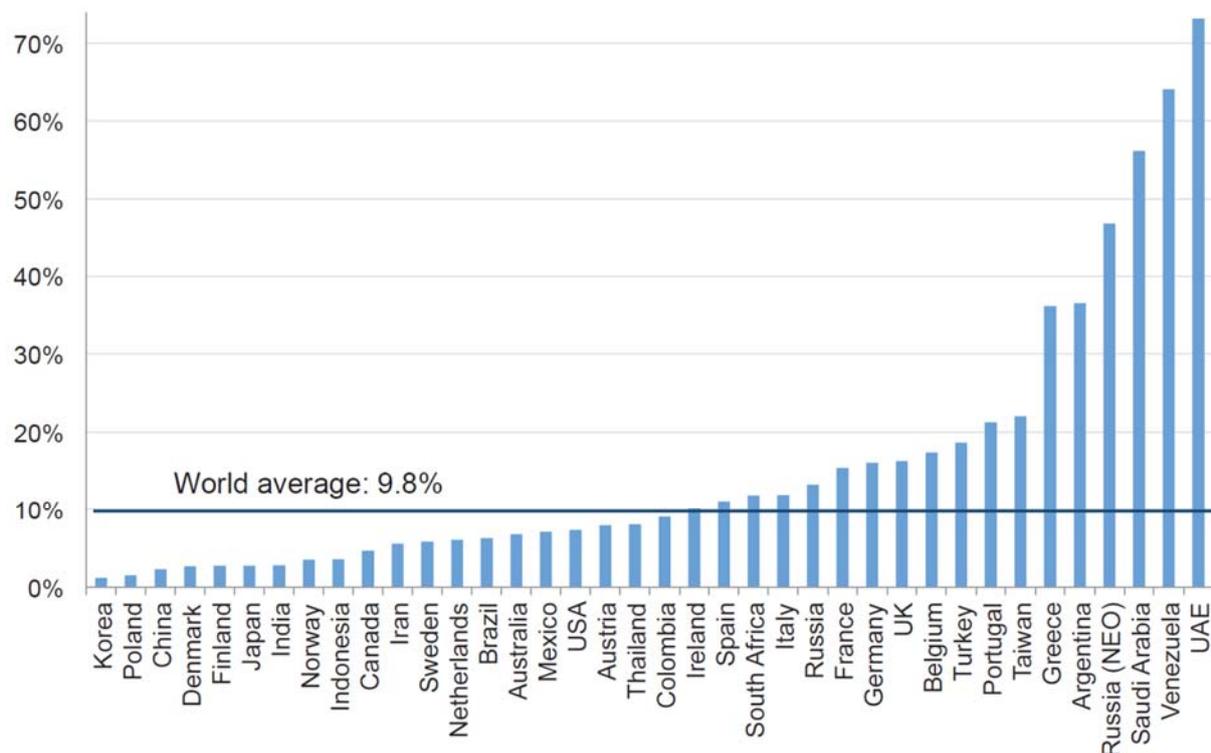
The author of the book, Abdul-Qadeem Zalloom, has the opinion that revenues from public property raises already plenty of revenue for any treasury, which may be true for oil-rich states. Additional taxes then are only collected if those revenues do not suffice to fulfill the five tasks of the state, namely expenses for Jihad and military industries, on the poor and needy and all forms of public social welfare, on salaries of public servants and expenses for emergencies such as famines, earthquakes and the like.

Head Tax and Wealth Tax (the latter at a rate of 2,5%) may be collected only from those who have surplus wealth, wealth being that what is left after someone has spent on his basic needs and also luxuries according to the normal standard of living. The state does not tax income nor does it impose indirect taxes, e.g. taxes on goods and services, nor does it collect levies and fees for public services such as registration, building permissions or the like.

The book distinguishes Islamic tax from the taxation in western capitalist society, where taxes penalize the poor and needy whereas the wealthy, such as the Queen of England, are tax exempt. The book deplors that a number of Muslim states ignore the commands of the Sharia and rather adopt the western system because they see the Western system as the only way to achieve economic progress.

Against this rather ideal situation one may consider that both the United Arab Emirates and Saudi Arabia, both being among the world’s most wealth states, are at the same time leading among those whose citizen use services of Offshore, thus hiding their wealth from the public treasury (Alstadsæter, Johannesen, & Zucman, 2017).

³⁰ http://www.taxjustice-and-poverty.org/fileadmin/Dateien/Taxjustice_and_Poverty/Ethics_and_Religion/Islam/Islam_Tax.pdf



2.7.4 Traditional African

For African countries, however, more problems arise: A person owning 500 cows may be wealthier than a labourer earning USD 500. And yet he is not paying any taxes or mandatory social security contributions because he has no easy access to a market where he could sell his cows in order to obtain financial income and subsequently balance his tax bill in cash. Even worse: In African states there is up to the present day a mix between modern governmental structures with its tax administration on the one hand, and additionally traditional governmental structures. There are cases, where a native King or Chief also collects traditional mandatory levies from his people. For example: In the case of the Bakongo for the purpose of redistributing wealth between those who are rich and those who are in need (Koudissa, 2016), in the case of the Bemba to support the annual traditional “celebration of the crocodile”, the founding myths of the tribe. Those regular contributions would also amount to that which commonly is discussed as “Double-Taxation” and should, of course, be avoided.

Ubuntu? Ujamaat?

3 Tax related social-ethical discussion in Germany

As indicated above (2.6.8), each positive discussion of how to obtain a more just and fair taxation will (1) depend on those values and norms informing the opinions of those taking part in a socio-political discussion and (2) on tax laws, tax administration and tax policies which is in place already. Some exemplification will follow for Germany, since this debate does not yet exist in Kenya and Zambia.

3.1 Constitution based arguments

As spelled out already in GER/III, and due to the world views present among the “Mothers and Fathers of Germanys Post-War Constitutions”, there are quite a number of tax justice relevant values, principles and norms contained in the German constitution (Grundgesetz,

Discussion paper, not yet final version.

Basic Law) as well as those of German States (Bavaria, Hesse), and law bodies and juridical interpretations deriving from there. The most important being in the Basic Law

1. The Principle of the Ability to Pay (Prinzip der Leistungsfähigkeit)
2. The Social (Welfare)State Principle (Sozialstaatsprinzip)
3. The Request for equal treatment (Gleichheits-/Gleichbehandlungsprinzip).
4. The Principle of the social dimension of private property (Eigentum verpflichtet)

In a recent publication, Andreas Fisch (2016b) examines tax justice relevant consequences arising especially from principles 1-3:

The Principle of the Ability to Pay arises from Art. 14 in combination with Art. 3 Basic Law.³¹ One has to note that the literal translation from German into English rather says “Ability to Perform”, i.e., in a good Kantian manner the inner and external “conditions of possibility” (Bedingungen der Möglichkeit) to work or reap income are of relevance! Therefore, the following issues need to be considered when determining the content and extent of this principle:

- The impact of supplementary public factors enhancing the Ability to Perform, such as public goods (Infrastructure, Education) or services (defence and legal institutions to safeguard and secure property) (pp10f.)
- Ability to Pay needs to be determined comprehensively and not in isolation (e.g. the burden arising from taxes AND SSCs or income from labour AND wealth assets) (pp.12f.).
- Implications of the Fund/Pool Theory (Fundustheorie) determine that the mere possession of wealth indeed constitutes a taxation relevant aspect regarding the ability to perform and pay (pp. 14ff.)
- That the efficiency of any taxation following the Principle of Pay must not be circumvented by tax privileges, tax exemptions, tax holidays, tax benefits, deductions, rebates etc., diminishing the tax base (p.16)

The Social (Welfare)State Principle is contained in Art. 20 Basic Law and calls for the implementation of social and common-good orientated goals such as the diminishing of inequality or polarization by securing comparable living conditions (gleichwertiger Lebensbedingungen, Art. 72 Basic Law) all over Germany.

- From this follows the need to provide for an existence-securing minimum and to take the edges of inequality via redistribution so that the realization of freedoms and equality of opportunity can be secured. In order to finance this, progressive taxation is the best instrument (pp. 17ff.)
- The other side of the coin regarding the realization of freedom/equality of opportunity is the exertion of force, i.e. by the state towards citizens to extract funds for the funding of respective programs via taxation (Sacrifice Theory/Opfertheorie). Here progressive taxation does neither diminish the ability of wealthy to enjoy life nor takes it away their motivation to work while redistribution makes a lot of difference for the poorer households (p. 19).

³¹ Following Tipke, the Principle of Ability to Pay is defined as follows: ‘Die Gleichheit der Besteuerung konkretisiert sich in der gleichen Besteuerung nach der Leistungsfähigkeit als qualitativ gleiche Verantwortung gegenüber dem Staatswesen bei quantitativ unterschiedlichen Voraussetzungen, Beiträge abführen zu können.’ See Fisch 2016b, p. 10.

- Last not least: A lower (non-progressive, perhaps Flat or Proportional tax rate) burden on the wealthy implies, given the same amount of public tasks, a higher burden upon the poor. Here even the risk has to be avoided.

Finally, the argument arising from equality and its implementation in democracy: It implies equal power and influence of each citizen which is, of course, distorted if social status and wealth inequality grow out of proportion.³² This in turn implies the obligation to take away extremes in the distribution of income and wealth via taxation and redistribution, but also, to avoid or revoke any taxation which has the potential to increase inequality and the concentration of power, thus increasing the power of few and diminishing the ability to participate and influence of many (p. 23f.).

The constitutional principle explicitly recalling the social responsibility of private property is Art. 14 Basic Law, Article 2: "Property entails obligations. Its use shall also serve the public good." The obligation is widely accepted, but, at the same time, the consequences are disputed: How exactly does private property serve the common good best? While left leaning authors advocate taxation, liberals advocate investment or foundations. Here, even legal experts are divided: One famous controversy regarding this article is the verdict of the Federal Constitutional Court regarding the German Wealth Tax in 1995, with one judge dissenting from the majority view (see 3.3.3), another controversy surrounded the verdict regarding the Inheritance and Gift Tax 2014, with three dissenting judges criticize the inadequate consideration of growing inequality and other social-justice aspects in the verdict (see GER/W/VII).

The previous illustrates that there are guidelines, but that it is far from obvious what follows from those constitutional principles. Does the Principle of the Ability to pay refer to income only, or does it include wealth? And if the latter is included, in what form: When wealth is received? When it is used? When it is simply owned, or a combination of it? (Vermögenszugang, Vermögensverwendung, ruhendes Vermögen).

Therefore, additional norms and criteria have to be used for more specific guidance which in Germany are influenced by the neoliberal world view as well as Christian norms.

3.2 Contribution of selected Christian/CST writers

Regarding social-ethical standard publications, tax related issues are not yet contained in important manuals, e.g. the 1978 ecumenical Handbuch der christlichen Ethik. Only in a 1982 addendum finds one sentence on p. 293, dealing with "taxes and children". The new edition 1993 still lacks a relevant key-word in its Index. But things are brightening up:

³² Dem Staat obliegt der Auftrag, jedem Bürger, jeder Bürgerin den prinzipiell gleichen politischen Einfluss bei gleicher Stimme zu bewahren. Alle Ämter sollen grundsätzlich jedem zugänglich sein. Die Gleichheit bei Wahlen darf nicht durch andere Formen eines einseitigen politischen Einflusses, etwa über extrem polarisierte Vermögensverhältnisse zerstört werden. Bürgern und Bürgerinnen in sozial schwachen Milieus mit hoher Arbeitslosenquote machen seltener von ihrem aktiven Wahlrecht Gebrauch. Neuere Studien erkennen in solchen Umständen nicht Unwillen, sondern „immense faktische Zugangsbeschränkungen zur Wahlteilnahme“ (Kaeding u.a. 2016, 31-61, 121; auch Schäfer 2015, 73-90) vor allem durch Arbeitslosigkeit. Um dem zu begegnen braucht es Bildung, aufsuchende Bürgerbeteiligung und eventuell eine Wahlteilnahmepflicht, um sich politisch mit gleichem Recht und gleichem Gewicht an zivilgesellschaftlichen und politischen Diskursen beteiligen zu können, denn „[j]e ungleicher die verfügbaren Haushaltseinkommen zum Zeitpunkt einer Wahl verteilt sind, desto niedriger fällt die individuelle Wahlbeteiligung aus“ (Schäfer 2015, 87). (Fisch, 2016b, p. 22)

More publications are emerging in the second half of the 20th century (see 2.6.3). Some of it is very general and can be applied without any modification in other contexts as well (Furger, 1997), other publications need to be seen on the background of a German debate (Vogt, 2011). The following three authors shall be presented exemplarily:

3.2.1 Nell-Breuning 1952

As indicated in 2.6.3, a change in attitude and attention towards taxation and tax justice occurred with Oswald v. Nell-Breuning. The first seminal treatment which could be found by him was a lecture delivered in 1952 and published in (1954).

In that, he first confirmed the justification of tax avoidance in earlier times, then repeated that the situation has changed under present day circumstances: Nowadays, states not only have more legitimacy and transparency, but also their need of finance increased with the amount of new tasks moving towards them following the principle of subsidiarity. He discusses the use of taxation as a means to advance non-revenue-collecting policy goals (“Lenkungsziele”), and explains that taxation does not work for the sake of justice if a tax burden is forwarded by those upon whom it is imposed (e.g. house owner) to others, who eventually have to pay them (tenants). Therefore and most importantly, modern times require a comprehensive analysis of taxation in the context of a complex interrelationship between economy, state, public goods and finances and – very contemporary! – monetary regulation. ‘The state’, he argues, does not need taxes for financing his tasks. For that he could simply start the money printing press. ‘He needs to collect taxes in order to regulate the amount of money.’ Given the complexity of modern time, any isolated consideration of taxation is a fallacy. Rather, it needs to be considered in its entirety of collection, spending and all other impact on modern society – which is why any “organic tax reform” is so difficult and for that it needs criteria and guidance which so far social ethicists and moral theologians do not provide in adequate measure. This, he concludes not without self-criticism, has to be developed and spread.³³ As areas in specific need of reflection, he lists the following:

- taxes, tax avoidance and tax evasion as means of unfair competition;
- taxes as means to protect, regulate and advance wider goals of the economy;
- whether Income Tax is the most just tax of all, or whether there are forms of income which need specific/supplementary (“ergänzend”) treatment, e.g. wealth, recurring to the debate of income from funds vs. income from labour (fundiertes vs. nicht-fundiertes Einkommen).

3.2.2 Wiemeyer 2004 onwards

Joachim Wiemeyer wrote his seminal contribution in (2004). At that time, the neoliberally interpreted EU Maastricht Treaty and globalization being already in full swing, his article is placed within the tax reform debate of the 2004/2005, which eventually also turned out to be largely neoliberal inspired.

Wiemeyer confirms, as Nell-Breuning does, the complexity of dimensions within which a comprehensive reform and its balancing of issues needs to be placed, including taxation being an instrument for the implementation of wider policy goals. He does not permit any doubt regarding the moral obligation to pay taxes in modern time democracies, but links this obligation to honesty and payment to a number of principles and criteria, which in his view

³³ „Wir müssen Schritt für Schritt ein echtes Verantwortungsbewusstsein gegenüber diesem Sachbereich aufbauen. In dem Maße, wie uns das gelingt, können wir dann auch wieder an die Menschen klare Forderungen stellen.“ (p. 12f.)

Discussion paper, not yet final version.

could emerge in a setting like Rawls “veil of ignorance” (see 2.2), starting with a social contract regarding tasks and services which should be provided by the state. The principles and criteria emerging from such a setting are, in his view:

1. Adequate finances, enabling the state to execute the agreed tasks and services.
2. Everybody should pay taxes, no group should be exempted or enjoy to many exemptions in principle (Allgemeinheit der Besteuerung).
3. Equality of taxation (Gleichmäßigkeit), against which the wealth tax offended with its outdated Standard Value for real property on the one hand, and market value on the other making up the tax base.
4. The Principle of Ability to Pay.
5. Transparency, which, as he puts it, resembles rather the criterion of simplicity, i.e. that it is easy to understand and to comply. It is not meant in the sense of equal transparency of income and assets towards the tax administration.
6. Efficiency of tax administration, including the need to check, e.g. businesses, regularly and equally in all German states.
7. Constancy (Konstanz) in the sense of Predictability, so that, e.g., businesses can calculate tax burden ahead of investments.
8. Adjustment of tax rates to inflation
9. The availability of legal redress
10. Neutrality as towards measures considering competition and reforms in the sense that no business form should be selected mainly and primarily for tax reasons -

Wiemeyer then continues to discuss selected issues and illustrate how nevertheless conflicts emerge and how they could be resolved, for example:

- Limits for reducing direct-progressive taxation in favour of indirect-proportional taxation (which nevertheless occurred in the subsequent political reform)
- The need to tax inheritances and gifts
- Replacing tax holidays and exemptions by direct subvention so that there is no non-payment of unknown dimension, but rather a list of specific support which continually could be evaluated and assessed in its justification
- Issues emerging with increasing mobility of capital and skilled labour, linked to low tax areas within and outside the EU, leading to lowering of the tax on capital income even though it should, compared with labour, be taxed higher,
- The Pros and Cons of a reintroduced wealth tax.

As to the latter, he rejects its necessity, as long as income arising from wealth assets is captured to a comprehensive extent. Wiemeyer continued publications on the topic, e.g. (Grenzen der Unfreiheit - Progressive Besteuerung aus vertragstheoretischer Sicht, 2016a) and (Rechtstreue Anleger brauchen keine Finanzoasen, 2016b)

3.2.3 Fisch 2016 onwards

A contemporary researcher entering the field is Andreas Fisch (2016a), (2016b) and (2017). In his most recent publication he first warns of a selective discussion of the “tax burden”, as it happens when certain taxes (e.g. Income Tax only) or specific components (impact of taxation on the generation of jobs) are selected, but others are neglected.

His holistic approach to the assessment is to examine the relation of the totality of income with the totality of the combined burden of taxes and mandatory Social Security

Contributions. Here, and drawing from empirical research of the Deutsche Institut für Wirtschaftsforschung (Bach, Beznoska, & Steiner, 2016) he first illustrates that the main tax burden is borne by the Deciles 7-9, while the burden of the wealthiest decile 10 is declining again. This, he argues, is due for various reasons: First, because of the payment limit for SSCs, a flat tax on capital income, the absence of a wealth tax, loopholes for taxes on inheritances and gifts and other opportunities for the top income and wealth holder to minimize their tax burden. This has to be seen in the historic context of tax reforms, which brought a 5% tax relief for the top decile 10, but an increase in the tax burden of 5.4% for the bottom deciles (2017, p. 58ff.).

Fisch develops nine social-ethical criteria with which to evaluate present tax policy, tax legislation and tax administration (2016b und 2017).

- Criterion A asks what the state is supposed to do and, therefore, is entitled to raise in tax revenue.
- Criteria B-D build upon established and constitutional taxation principles (see 3.1), namely the Principle of Ability to Pay, which is unfolding into three sub-principles: B1: All forms of income shall be taxed equally. B2: Wealth, and income arising from it, shall be taxed more heavily since it makes labour an option, but not a necessity, B3: Tax benefits, narrowing the tax base, offend against the Principle of Ability to Pay. Principle C calls for securing the functioning of the Welfare State and Principle D for securing democratic Equality.
- Criteria E1-3 are other justice-securing “orientations” such as preserving entrepreneurial freedom, considering “merit” (i.e. has it be earned or, e.g., donated and inherited) or removing (unjustifiable) tax privileges.³⁴

³⁴ „(A) Der Staat muss das für ihn und seine Aufgaben Notwendige an Steuern erheben, die Höhe der notwendigen Staatsausgaben ist abhängig von seinen Aufgaben als Sozialstaat und kann nur im Hinblick auf das Gemeinwohl bestimmt werden. Die Höhe der Steuern soll jedoch um der Freiheit seiner Bürger/innen willen auf das Notwendige beschränkt bleiben.

(B1) Die Steuerhöhe soll nach der Leistungsfähigkeit bemessen werden. Alle Einkunftsarten und Vermögensphasen (Vermögenszugang, Vermögensverwendung, ruhendes Vermögen) eines Haushalts bestimmen zusammen die umfängliche Leistungsfähigkeit.

(B2) Sehr hohe ruhende Vermögen stellen eine besondere Leistungsfähigkeit dar. Die Einkommensarten Kapitalerträge und Erbschaften zeichnen sich als fundierte Einkommen prinzipiell dafür aus, im Vergleich zum Erwerbseinkommen höher besteuert zu werden, weil sie die Option zur Arbeitsaufnahme belassen.

(B3) Vom Leistungsfähigkeitsprinzip wird abgewichen, wenn nicht zu rechtfertigende Steuervergünstigungen in die Bemessungsgrundlage integriert werden, also schon vor der Besteuerung die Höhe des zu versteuernden Vermögens(zugangs) mindern.

(C) Die höhere und progressiv steigende Besteuerung von besonders Leistungsfähigen ist auch gemeinwohlorientiert begründet als Preis gesellschaftlichen Friedens, der sich mit der Existenz sehr polarisierter sozialer Ungleichheit nicht vereinbaren lässt und eine gewisse Umverteilung benötigt. Zu vermeiden sind daher zudem Steuerelemente, die soziale Ungleichheiten verstärken.

(D) Exorbitante finanzielle Vermögen verschaffen ihren Besitzer(inne)n Möglichkeiten, unverhältnismäßigen Einfluss auf die Politik und die öffentliche Meinung zu nehmen. Eine besonders intensive Belastung extrem Leistungsfähiger durch entpolarisierend wirkende Steuern rechtfertigt sich mit dem Schutz der Demokratie und der prinzipiell gleichen Einflussmöglichkeit auf die Politik und die öffentliche Meinung.

(E1) Steuerpolitische Rahmenbedingungen sollen unternehmerische Initiative unterstützen und es Unternehmen erleichtern, Arbeitsplätze zu schaffen, weil die Erwerbsarbeit weiterhin zentral für die Erwirtschaftung des Lebensunterhalts ist. Steuerverschonung ist vorrangig zum Empfang von Sozialleistungen, um auf finanzielle Transfers angewiesene Menschen nicht zu entmündigen. In diesem Sinne sollen steuerpolitische Rahmenbedingungen dafür sorgen, dass vor allem untere Lohngruppen nur mäßig mit Steuern und Sozialabgaben belastet werden.

(E2) Die Besteuerung beim Vermögenszugang soll dem Verdienstprinzip entsprechen, indem nach der Besteuerung Spreizungen der Vermögensverhältnisse entsprechend des eigenen Verdienstes belassen bleiben und nicht auf ein gleiches Niveau eingeebnet sind. Anteile an exorbitantem Vermögensbesitz, die sich nicht

Fisch does not plead for simple tax increases, but an adjustment and correction of the present distribution of the tax burden: What is added to the tax burden of the wealthy needs to be used to relieve the burden upon the lower and middle deciles and thus going against their tax burden increases in previous.

3.3 Focus: Taxing private wealth

3.3.1 Why this focus

As was explained in E/I/5.2, a limit to amassing property and resulting inequality in a country can be seen if asset ownership no longer contributes to the common good of all, but advances interests and power of the few on the expense of the many. As Nell-Breuning and Michael Walzer argue jointly: if asset ownership turns into instruments of domination, the state is obliged to go against this threat and to secure the socio-economic and/or democratic to the equality of all.

Nowadays, this kind of power is exerted by private, corporate and criminal wealth holder, partly openly, partly hidden and secret. In that context, the focus of the Tax Justice & Poverty project was rather on private than on corporate wealth and taxation – for various reasons (see G/W/I). Two are of particular importance: First, that there are already many NGOs looking into taxations issues related to TNCs, second, because, in the end, even investment funds and TNCs are owned by morally responsible individuals.

On that background, the Tax Justice & Poverty project reveals that so far there is hardly anything worth calling a “tax on private wealth” in Kenya and Zambia – not even regarding a progressive tax rate of high income. There is, however, growing awareness, which might be advanced with the knowledge and experience Germany has already regarding the taxation of wealth assets.

3.3.2 Tax on capital vs. tax on labour

In Germany, income from capital is taxed with a flat rate of 25% - which privileges it from all income arising from all the other six categories of income, most importantly income from labour. While this privileged rate was introduced in order to limit capital outflow, which became an increasing problem due to the mobility of capital, the feeling never ceased that this is an unjustified privilege. A second injustice is linked to this Flat Tax: Once paid via withholding tax and transferred by banks, there is no obligation left for capital owner, i.e. tax officials had no means to control origin and destination of that income.

By now, given improvements in transparency and data-exchange among countries, there is widespread agreement that this privilege is no longer justifiable and that income from capital could be brought back into the progressive income tax.

eigener Arbeit verdanken, lassen sich nicht auf dieselbe Weise vor einer Besteuerung, die Vermögensunterschiede abflacht, abschirmen.

(E3) Steuerverschonungen müssen gerechtfertigt werden. Sozialstaatsprinzip und Gemeinwohlorientierung können „lenkende“ Ausnahmen vom Leistungsfähigkeitsprinzip rechtfertigen, wenn diese erstens mit sachgerechtem Grund erfolgen, zweitens wenn die Privilegierung oder Belastung bestimmter Gruppen zusätzlich als notwendig und verhältnismäßig für das Erreichen eines Gemeinwohlzwecks bestimmt wird und drittens wenn damit überwiegend Vorteile für die Allgemeinheit und besonders benachteiligte Gruppen realisiert werden. Dagegen sind unsachlich begründete Steuerverschonungen ethisch gesehen ungerechtfertigte Privilegien, die abzuschaffen sind. Sie müssen durch eine weitgehende Transparenz demokratisch überprüfbar bleiben.“ As quoted in (Fisch, 2017, p. 63f.). Fisch 2016b has a different arrangement.

During the campaign ahead of the 2017 election to the Federal Parliament, the manifestoes of most parties contained the promise to put away this privilege in a more or less unequivocal way: CDU/CSU, SPD, Green, Linke. This promise was not contained in the election manifesto of the FDP and AfD – the former not surprising since they always followed an economy-friendly course, the latter very surprising since they want to come across as a “peoples party”.

Reform is made difficult since three categories of capital income need to be separated:

First, regular income arising from interest; second, regular income arising from dividends; third, capital gains arising from selling assets. Regular income from dividends poses a problem since this income is already taxed once on the level of the business via the Corporation Tax. At the same time and in particular between countries, “hybrid financial instruments” can be constructed with which taxation can be avoided: What counts as interest payment in one country (tax deductible) is considered to be dividend income in another (tax privileged), which lowers the tax bill twice. This trick does not only work between countries with corporate assets but, as tax advisors are confident, it can also be done domestically by using complex derivative constructions which would be difficult to detect at a prima facie tax audit. Here, another injustice seems to loom, requiring a lot of attention.

More on this topic in G/W/III (Income Tax) and G/W/IV (Taxation of interests and capital gains).

3.3.3 Tax on unearned vs. earned wealth

A major problem was and is the question of how to handle the possession of (unearned) wealth, because: Income from labour and income from wealth assets are two different issues and the latter privileges its owner fourfold (Deutscher Gewerkschaftsbund, 2016a, p. 52):

1. Additional income, e.g. via interest (Einkommensfunktion)
2. Privileged use of property, e.g. own house vs. rented house (Nutzungsfunktion)
3. Security against losses of income elsewhere, e.g. unemployment (Sicherungsfunktion)
4. Additional assets for the education of offsprings (Sozialisationsfunktion).

Tax relevant questions here were first discussed after the unification 1870, leading to the “Second German Empire”. Here, Bismarcks Minister of Finance, Miquel, distinguished explicitly between income from work and income from owned wealth assets and funds (“fundierte Einkünfte”).

Crucial here, as in the case of the Inheritance and Gift tax, is the understanding of “private property”: Is private property really the result of individual labour and effort? Then it is unethical for the state to tax most of it away. Or does every wealth contain also some shares of contribution by the general public and more specific workers, whose education, skills and dedication enters into its value?

In Bismarcks time, Miquel had the position that income from those assets should be taxed harder since it stands for income which ordinary worker do not have and, at the same times, leaves taking up paid work to be an option. But: Should it be taxed with a higher income tax rate or with some special tax on wealth assets? Eventually the taxation of wealth assets was understood as a supplement/addition to the Income Tax by those having earnings from wealth

assets, i.e. the regular income tax was complemented with a Wealth Tax, taxing potential income (Sollertrag) arising from wealth assets.³⁵

The tax existed more or less uninterrupted also in the Weimar Republic and, later on, in the Federal Republic of Germany. However: In 1995 the Second Senate of the Federal Constitutional Court had to evaluate whether the design of that tax was in tune with constitutional rights because capital, real estate and business assets were assessed and taxed at different rates. This was seen to offend against Article three of the Basic Law, namely the principle of equal treatment and equal taxation. The Court ruled in favour of the plaintiff and requested to bring the assessment and calculation of taxes upon real property in line with current market values and set a deadline of 31 December 1996 for the reform.³⁶

It is interesting to note that the 1995 verdict of the second senate of the Constitutional Court was more comprehensive than it would have been required when looking at the case submitted for treatment. The most influential passages of the verdict, e.g. regarding the prohibition to tax the substance of wealth or the “50% Rule” (Halbteilungssatz) regarding the taxation of (potential) income³⁷, are not really related to that case, but were added for the sake of a more general treatment of wealth-tax relevant issues by the Constitutional Court, that way changing previous constant ruling of the court regarding the taxation of wealth.

This was immediately highlighted and criticized by the minority opinion attached to the verdict proper by the Federal Judge Ernst-Wolfgang Böckenförde, who judged the verdict to be an example of violating the principle of “judicial self-restraint”. Points of contention were³⁸

- The uncalled-for treatment of questions related to wealth (after all 4 of the 5 headlines (Leitsätze!)), were an infringement of the legislators power to design taxation policy and to pursue certain goals serving social justice
- The restrictive interpretation of what can be taxed – only de facto or potential proceeds or the substance of wealth as such - is not backed by the constitution, the same applies to the “50% Rule”.
- The majority of judges followed rather uncritically a (neoliberal) argument put forward by a known proponent of these ideas, namely Paul Kirchhof.
- Böckenförde criticized finally that the kind of tax which is possible after the 1995 verdict does not really justify the name „wealth tax“ anymore.³⁹

³⁵ Das Neue Preußische Ergänzungsteuergesetz in der Fassung vom Juli 1893 http://digital.staatsbibliothek-berlin.de/werkansicht?PPN=PPN730526429&PHYSID=PHYS_0001&DMDID=DMDLOG_0001

³⁶ BVerfG-Beschluß vom 22.6.1995 (2 BvL 37/91) BStBl. 1995 II S. 655 http://www.bfh.simons-moll.de/bfh_1995/XX950655.HTM

³⁷ Halbteilungssatz: The Court established as a general guideline that the state is prohibited to take away more than 50% of proceeds arising from wealth assets from the tax subject. This was interpreted in the way that at no time, in no situation and in nobody’s case the total taxation of wealth should not exceed 50%, so that always at least 50% of proceeds can remain with the taxed subject. Otherwise, the argument went, the owner would no longer be owner of assets, but the state, since the state would reap most of the harvest.

³⁸ (Böckenförde, 1995). For an overview of the subsequent debate see (Wieland, 2003, p. 43ff.) and (Fisch, 2016b)

³⁹ „Zulässig allein als Besteuerung von Sollerträgen ist sie "Vermögensteuer" nur noch in einem formellen Sinne. Die Möglichkeit echter Vermögensteuern, die am Vermögen selbst Maß nehmen, ist demgegenüber als eine der ältesten Steuerarten abgeschafft; der - auch in Art. 106 Abs. 2 GG verwendete - Ausdruck "Vermögensteuer" wird so im Grunde zur Fehlbezeichnung.“

The government failed to oblige, which is why the tax is suspended, but NOT abandoned. In other words: the verdict explicitly holds a specific wealth tax to be constitutional; and not only a specific tax on de-facto income, but even on potential income (Sollertragsbesteuerung).

This is even more important, since eventually some issues were clarified and some of the conditions formulated, and impediments erected, by the Second Senate were removed.

- In 1998, Court clarified that wealth as such is not protected by the Constitutional guarantee of Art. 14 BL: Wealth is no right and entitlement in itself, but the epitome (Inbegriff) of the monetary value of all goods owned by a person – and therefore taxable.⁴⁰
- Next, the criticized assessment base has been reformed on the occasion of a reform of the Inheritance Tax and Gift Tax, other reform efforts for assessing real property according to market value are ongoing and could be incorporated.⁴¹
- And: In 2006 the “50% Rule” has been abandoned by the First Senate of the Constitutional Court in 2006:⁴² the Court clarified that its “50% Rule” was meant to be a guideline, no legal binding rule.

On that background, any ethical justification for upholding the present suspension of the wealth tax is seen by this research to reside in an exaggerated belief in the individual person (abstracting from the facilitating contributions of society as a wider entity) as well as an exaggerated concept of private property. From a CST point of view, the wealth tax could be understood as an acknowledgement of society’s share (as such and cumulative by its members) in whatever private or corporate wealth exists in this country.

And yet: Up to the present day, in spite of steeply growing wealth-inequality, even in the 2017 election, the taxation of wealth is not a majority issue: While CDU/CSU, FDP, AfD oppose this tax, the Social Democrats want to “clarify” contentious issues via a specific commission. Only Green and Left party call for it – the former cautiously, the latter loudly.

More on that in G/W/V (Wealth Tax, Wealth Levy).

3.3.4 A wealth levy in times of crisis

Another instrument of German law to be applied to “stronger shoulders being able to carry a heavier burden” is the Wealth Levy. This is an exceptional levy on wealth, it could be justified by the increase of both public debt and private wealth in the aftermath of the 2007 Global Financial and Economic crisis. The charm: It is due only once, but not payable at once. It could be a once off levy of 10% on the market value of net wealth at a given date, payable

⁴⁰ „Unter den Schutz der Eigentumsgarantie fallen grundsätzlich alle vermögenswerten Rechte, die dem Berechtigten von der Rechtsordnung in der Weise zugeordnet sind, daß er die damit verbundenen Befugnisse nach eigener Entscheidung zu seinem privaten Nutzen ausüben darf. Der verfassungsrechtliche Eigentumsschutz reicht damit zwar erheblich weiter als das zivilrechtliche Eigentum und erstreckt sich auch auf nicht dingliche vermögenswerte Rechtspositionen. Er bleibt aber an Rechtspositionen gebunden. Kein Eigentum im Sinne von Art. 14 Abs. 1 GG ist daher das Vermögen, das selber kein Recht, sondern der Inbegriff aller geldwerten Güter einer Person darstellt (vgl. zuletzt BVerfGE 95, 267 <300>).“ BVerfG verdict of 5 May 1998 - 1 BvR 1131/94, II/2.

⁴¹ See (Bach, Beznoska, & Thiemann, *Aufkommens- und Verteilungswirkungen einer Wiedererhebung der Vermögensteuer in Deutschland*, 2016), (Wieland, *Rechtliche Rahmenbedingungen für eine Wiedereinführung der Vermögensteuer*, 2003) and (Jarass & Obermair, 2012).

⁴² Beschluss vom 18. Januar 2006 - 2 BvR 2194/99

http://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2006/01/rs20060118_2bvr219499.html

in rates over a long period of time. A high amounts could be exempt from the levy as is the case at the wealth tax, to make sure that only the super rich are being hit.

At first sight, such a levy put only on a specific group of people would be even more offending Article 3 of the Basic law as the Wealth Tax with its different tax rates. However, the Constitutional Court concedes, that there were precedences which entitle the state to treat groups of citizens unequal: 1919, during the Weimar Republic, and more relevant 1952, with the Burden Compensating Law (Lastenausgleichsgesetz).⁴³ After the Second World War, West German residents had to pay the levy, but not refugees coming to West Germany after being evicted from their traditional homesteads in the East. This was acceptable since this unequal burden was only following a preceding "fatefully unequal treatment" of those refugees.⁴⁴

Ever since, Germany had other severe incidents costing a lot of general taxpayers money, most importantly the costs of re-unification in 1989 and the consequences of the 2007 World Financial and Economic Crisis with its "rescue packages" or the subsequence "Euro Crises". In both cases, however, government and political parties failed to introduce such a Wealth Levy but rather resorted to financing based upon higher public debt.

There are reasons for acting that way, for example, that the speed of events did not permit lengthy consultations but called for immediate financial response. But even if this is acceptable (since 1952 also was a "crisis situation"), the failure to collect funds via a wealth levy are an even higher argument for reinstating the Wealth Tax.⁴⁵

More on that in G/W/V (Wealth Tax, Wealth Levy).

3.3.5 Tax on gifts and inheritance

Most ethical reflection exists, probably regarding the taxation of inheritances and gifts (Beckert, 2013). Here, too, the main bone of contention is the position which the individual and its labour has when acquiring wealth assets and, deriving from there, his right to pass on that which he amassed to his personal offsprings. All this is firmly rooted in liberal philosophy and ideals. In Germany the question is complicated by a strong value of family, arising from the Germanic tradition – arguing, that ownership does not belong to the individual, but the family or clan which, in turn provides support and security. A final complication arises from the times when inheritances were the last means of support parents could give their children, that way keeping them from harm.

All those reasons, however, are partly obsolete and partly contradictory to other firmly held beliefs. They are obsolete, since nowadays the concept of family and solidarity is changing as well as public means of solidarity and support come into the picture. The concept of ownership based upon individual labour gets into contradiction with a very important other liberal belief, namely that all members of society must have equal rights, opportunities and market access when competing with their fruits of labour. And: The promise of modern society is that everybodys hard work is fairly rewarded. Against that, wealth and fortunes amassed via gifts and inheritances, which nowadays are widely acknowledged to be the greatest contributor to wealth inequality, distort this playing ground equality by giving those

⁴³ Decision from 1995, June 22 <http://lexetius.com/2001/8/224>, Nr. 54f.

⁴⁴ An extensive legal presentation of the instrument is contained in (Wieland, 2012).

⁴⁵ See also (Fisch, 2017, p. 73)

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being born into wealthy families and enjoying the best of all care and education many other advantages over and above their contemporaries.

But inheritances do not only disadvantage the majority of citizens nowadays, the every now and again also offend against the rights and preferences of the heir of a large fortune. If, for example, somebody inherits a large business he is under a lot of pressure to perform and live up the expectations even if he is not interested in economics but rather arts.

Linked to the concentration of assets and wealth is the concentration of power within society, as has been reflected in Article 123 of the Bavarian Constitution where it says that the Inheritance Tax is meant to prevent the accumulation of large power in the hand of very few. Similar, Alexis de Tocqueville, two President Roosevelts, Thomas Piketty and many others have warned that inheritances are the most visible expression of the fact that no longer hard work, but the right birth determines about who has what say in this society. And: If citizens no longer belief that merit alone determines about a citizens social status the cohesion of society might falter as well as the belief in a “one man one vote” kind of democracy.

More on that in G/W/VI (Taxation of Inheritance and Gifts).

3.3.6 Taxation of real estate and property

This issue “unearned income via the ownership of real property” is of particular importance for all three countries. And here we are not talking about the farmer or homeowner. Rather about those who accumulate huge areas of land and real estate sometimes without working for it, sometimes inheriting it, sometimes coming to its possession via very unethical means and ways. Their power and dominance dictates prices for houses and rents and, at times, even blackmailing communities into paying very high prices if the land is needed, e.g., for expanding towns and municipalities. Here is also one of the main areas which enabled the owner of large fortunes to preserve their wealth during times of crises, war, inflation and other afflictions (Turner, 2014).

Private ownership of real estate is acceptable for CST if it is for personal sustenance or, in a wider context, the best way to make use of it and to supply society with found and housing (Nell-Breuning, 1980). Excessive ownership, where somebody owns more real estate than he can reasonably work or administrate or where he is exploiting people due to their lack of alternatives with abusive rents, or even speculative ownership where land is idle and not used for anything socially useful cannot be justified by ethics. Here, taxation can recoup at least something of excessive gains.

Little surprising, the tax on real property is (one of) the oldest tax on wealth. It is little distortionary and cannot be relocated and hidden in Tax Havens. Stepping up taxation is widely recommended, not only by Adam Smith, but also the IMF, the OECD or European Institutions.⁴⁶

⁴⁶ Adam Smith: “A tax upon house-rents, therefore, would in general fall heaviest upon the rich; and in this sort of inequality there would not, perhaps, be anything very unreasonable. It is not very unreasonable that the rich should contribute to the public expense, not only in proportion to their revenue, but something more than in that proportion.”

‘Recurrent taxes on residential property...are widely seen as an attractive and underexploited revenue source ... Especially outside Anglo-Saxon countries, there is evident scope to raise more’ (International Monetary Fund, 2013a, p. 38).

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Given present day tendencies of landgrabbing, expulsion and the foreseeable diminishing of arable land one may ask the question whether land should not be treated as a public good to the same extent as air and water. If this is the case, taxation would no longer be an option, of course, but also a lot of today's problems would diminish.

More on that in G/W/VII (Taxation of real estate and property).

3.3.7 Growing interest in the topic

A systematic attempt to advance a debate of tax justice related issues was a "Think Tank" on private wealth which was organized by this research project in May 2015, whose papers were published in (Alt & Zoll, 2016). Here, representatives of different backgrounds were invited to discuss justice related challenges arising from the increasing wealth gap in Germany and its implications for taxation. Some were rejecting a higher taxation of wealth holder (Höffe, Nass). Others were in favour of some instruments, e.g. an increase in income taxation or the taxation of financial transactions, by coming from different philosophical traditions; for example Wiemeyer contract philosophy, (Möhring-Hesse) from discourse philosophy. Yet others were advocating a more general increase of the tax burden upon private and corporate wealth holder (Fisch 2016a). At the same time it was seen that the discussion of (better) alternatives to taxation should be considered as far as jobs, environment or the reduction of inequality is concerned (Hoffmann). In the end, never mind the variety of starting and view points, still some agreement could be found, especially on the higher taxation of income or some wealth taxes. Since most of this discussion relates to the German context, people interested in results are referred to the book itself.

As of lately, some individual bishops come forward with statements in favour of a higher taxation of private and corporate wealth holder, e.g. the Cardinal of Cologne, Archbishop Woelki (2016), Archbishop Becker (2015), Bishop Ackermann of *Justitia et Pax* (2.6.9.3), or the Chairman of the German Conference of Bishops, Marx (Marx, 2017).

'There may be a case for taxing different forms of wealth differently according to their mobility', meaning, especially taxing real estate and other immobile assets, because '(P)erhaps surprisingly, that nonfinancial assets are very important for the wealthy' (International Monetary Fund, 2013a, p. 40).

OECD authors in 2008: Regarding the little distortionary impact taxation of real property has on economic growth and jobs suggests that here, besides taxation of inheritances and gifts, more taxes will be collected (Johansson, Heady, & et.al.)

'Make the tax system more supportive of inclusive growth. Broaden tax bases by updating property tax valuations and extending capital gains taxes on residential real estate, except for owner-occupied housing. Lower social security contributions, especially for low-pay worker.' (OECD, 2014a, p. 11)

'Property tax revenues in Germany in relation to GDP in 2011 (0.9 %) were well below the EU-27 average of 2.1 %. Property tax revenues have remained stable since 2000, varying from 0.8 to 0.9 % of GDP. The share of revenues from recurrent taxes on immovable property in 2011 amounted to 0.5 % of GDP whereas the EU-27 average stood at 1.3 %.' (Eurostat, 2013, p. 86)

'Broaden the tax base and make different forms of taxation on wealth and inheritance more equitable, e.g. by updating property tax valuations or removing capital tax exemptions.' (OECD, 2015b).

4 Focus external financing, IFFs

4.1 Implications for a “Tax Justice” project

Following the original research proposal, another focus of the research as such was dependence on external financing (Tax Justice & Poverty, 2013a) and, at least of the German and Kenyan country study, the impact and importance of illicit financial in- and outflows.⁴⁷

Regarding dependence on external finance, it is the conviction of this research that this dependence could be reduced dramatically – if not totally removed – if developing countries could tax that which is their due. This, however, is not possible due to a number of issues, not the least because of the existence of IFFs.

IFFs are the (right now) most well-known offence against the principle of self-determination and self-help: African states, even 50 years and more being politically independent, are severely impeded in their freedom to act by “financial markets”, their dependence on external financing, FDI included, and the hemorrhage of financial life-blood via IFFs, which includes all sort of aggressive tax avoidance, tax evasion, tax fraud such as Carrousel-Fraud and related crimes such as terrorist financing, corruption/bribery and money laundering.

As long as that condition persists, independence, self-determined governance and sustainable development are impossible. IFFs further offend against the Principles of the (global) common good, the universal destination of goods, of subsidiarity and solidarity, the option for the poor and all sorts of justice requirements. All this comes in addition to the (since E/II/8) repeatedly mentioned ethical criteria, namely, that a prime step towards a more just world is that injustice, and even crime, should be diminished. This is why combating IFFs, especially taxation related offenses, should be a priority.

Little surprise that IFFs find increasingly attention of supranational and international bodies and move up the international agenda of commissions, think tanks and bi- and multilateral meetings and conferences as well as a growing body of declarations and memoranda of understanding – for example the Declaration of SDGs, which united developed and developing countries in a rare moment of unity and the spirit of solidarity.

4.2 Obligation of developed countries

At that stage the question needs to be asked: Who is primarily in charge of combating IFFs and who has to contribute what

On the background of growing global interconnectedness, in this case via financial flows from developing to developed countries, that way making the former poor, the latter rich, depriving the former of resources to care for their people, resulting in turn into out migration etc. it can be justifiably said that combating IFFs is of joint interest for developing and developed countries and that, first of all, each of those has to contribute its due share.

On top of that, however, developed states are in a much stronger position as developing countries, since they have more resources – which they should share with developing countries on ground of the principles of subsidiarity, solidarity and justice. This applies to both sharing information which they gather and possess about deposited assets from

⁴⁷ See GER/VII and KEN IV/#, V/#, VI/#.

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developing countries, and regarding training and equipment of tax administrations in poor countries.

In addition they have a strong ethical obligation to assist developing countries due to the arguments of retributive/restorative/compensatory justice, developed in E/II/5.4+5.

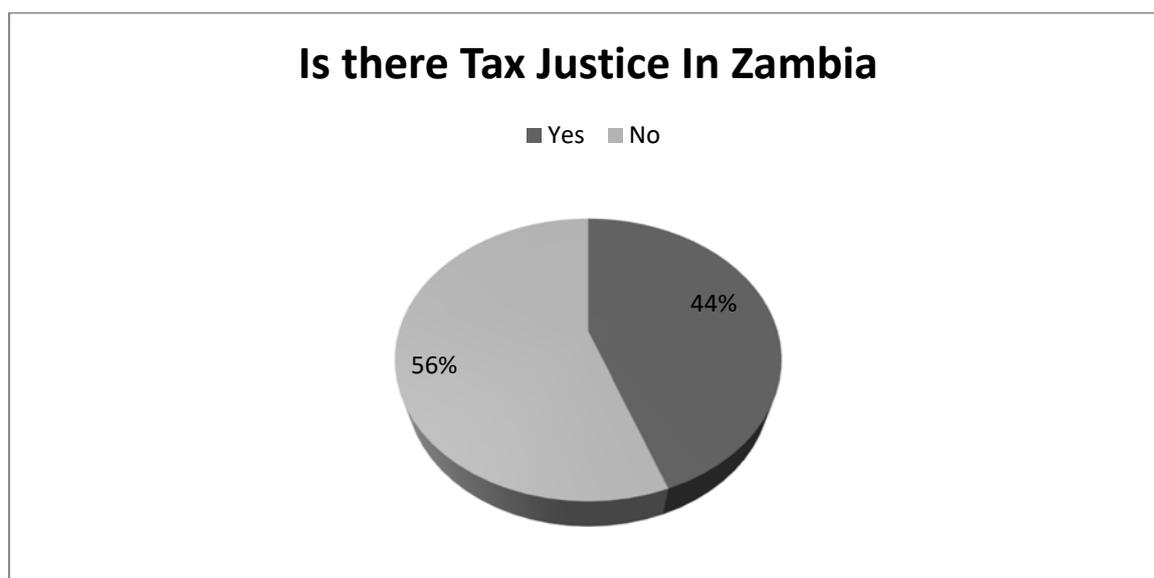
As long as developed countries do not admit their complicity and profit of IFFs and, resulting from that, their reluctance to take the interest of developing countries seriously who struggle to curb them, they make themselves guilty of (yet another facet of) neo-colonialism which adds present misery to that which has grown out of historic developments. Refusing to assist in combating IFFs, they delay and obstruct the complete independence of developing countries and keep them intentionally and knowingly in their dependent submission.

5 GER and ZAM research surveys on tax justice

Both the German and the Zambian partner in this research conducted a mini-survey in order to find out more about tax justice related perceptions in their respective country. The German part, because here an early interest emerged on personal income tax related matters approached individuals, the Zambian part, whose interest was on business taxation matters, approached small and medium businesses, rounded up with some selected large businesses. The Zambian had an additional interest in assessing the impact of a recent reform of the taxation system. The Zambian survey had multiple choice options and very few options for open replies, the German survey contained multiple choice and open questions in equal shares. The Zambian survey was representative, based on criteria provided by the Zambian Revenue Authority, the German sample chance guided, e.g. distributed at meetings, download from Website. The size of the sample was 60 in Zambia and 147 in Germany. The findings in Zambia are given in percent shares, the findings in German according to the answers given.⁴⁸

In spite of the difference in composition and outreach, there were not only differences in findings, but also coherence.

First of all: What do people think about tax justice in their respective country?



⁴⁸ The raw data of the German mini-surveys can be retrieved from the project website via the shortlink <http://tinyurl.com/tjp-GER-Umfrage>

When the Germans were asked, whether they think the German taxation system in theory and principle was fair, 97 replied “No”, 30 with “Yes”.

At the same time, when asked whether they personally feel treated fairly by this system, 82 Germans responded affirmatively, 36 rejected it. The solution to this discrepancy is the feeling, that this system privileges private and corporate wealth holder (100 “Yes”, 31 “No”). More specifically, the tax burden is not seen to be too heavy. Here the answer to the question “How much tax, do you think, do you pay effectively in relation to that what your income is?”

Up to 10%	5
11-20%	26
21-30%	42
31-40%	24
41-50%	8
51-60%	2
61% and more	3
No tax	2

When asked this way, it seems that the ordinary German is pretty happy with his/her own personal situation, which is in accordance with other representative surveys conducted by newspapers or research institutions. For example: When the *Süddeutsche Zeitung* team in the course of its research into the justice of the German taxation system puts the question to its reader, how people feel about their taxation system, most of the 9,000 people taking part in the quantitative survey perceive their personal situation in it as (fairly) just.⁴⁹

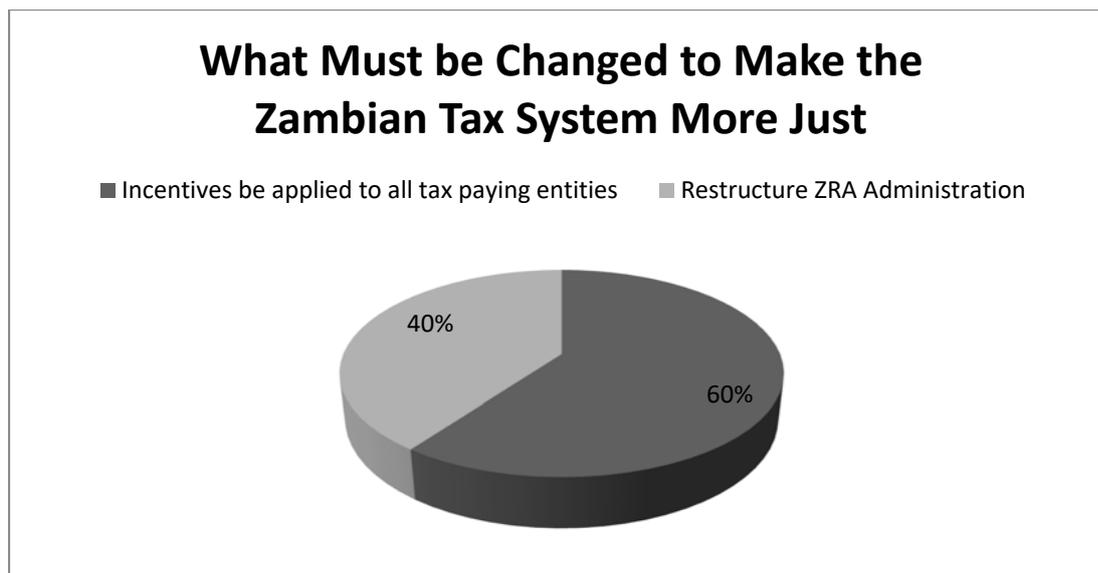
Where does perceived injustice come in, then? The next question in the German survey had been: “Do you find that the wealthy contribute proportionally to the common good, enabling to relief and support those those worse off? Here the replies were

Yes	31
No	98
No reply	8

This is pretty similar to a finding arising from the Zambian survey. Here, respondents were asked why the Zambian tax system is perceived to be predominantly unfair. Here the replies indicated the perception that the most recent reforms (and therefore the system as such) were exclusive in a sense that they privileged some rather than others (86%).

This is confirmed by a later question when the Zambians were asked, what the most important issues are to be tackled right now. The replies were:

⁴⁹ The quantitative vote was visualized in a *Mood Map*. This tool visualizes votes insofar that people taking part can insert themselves in a coordinate system whose one axis concerns the question whether (or not) people pay too little, too much or adequate tax, and the other axis asks whether the extent in which this assessment is given regarding the own personal income and tax situation. The map is darker in spots where many people place themselves and light where few people place themselves. See: So fair finden unsere Leser ihre Steuerlast (2013, July 25). *Süddeutsche Zeitung*. Retrieved from www.sueddeutsche.de/1.1726151. As to the personal assessment: Ebtsch, S. (2013, July 22). Was wir verdienen, was wir versteuern. *Süddeutsche Zeitung*. Retrieved from (Süddeutsche Zeitung, 2013b)



The Germans were also asked what needs to be tackled as a matter of priority to increase tax justice. The survey being an open collection of replies, provides the following “top replies”:

1. Re-Introduce Wealth Tax/Increase top income tax rate: (20)
2. Close tax loopholes and put away tax privileges (15)
3. Simplify tax law and tax law administrative procedures (14)
4. Combat tax evasion (12)
5. Increase transparency (9)

Even though Germans and Zambians disagree in the overall evaluation, whether their systems are just or unjust both agree that their present tax systems are more of use and benefit for some, but not for all. When, on the background of the above listed German proposals, looking again at the Zambian findings it is striking that transparency was also a major issue in Zambia when Zambians were asked what they appreciate most when assessing their last tax system reform. Here the responses were that the reforms made payment modes more flexible (67%) and that they increased transparency (33%). It is a safe bet that, if Zambians were asked about comments regarding the German proposals, most of them would agree as well.

Those findings indicate that there is some common sense or even overlapping consensus among the common citizen as to the direction legal and institutional reforms need to take.

6 Emerging findings

6.1 Context dependence

6.1.1 Focus: reduction of inequality and poverty

The main focus and goal of the Tax Justice & Poverty research project is, as its name betrays, the problem and alleviation of poverty. Linked to this are questions such as how taxation benefits or burdens the poor. This applies also in view of alternative ways to reduce poverty: If they are more effective in reducing poverty, taxation should not impede or hamper them and/or discourage people to invest into them and use them. Here, however, also the distinction between short- and long term benefit should be kept in mind, since a number of present-day answers related to poverty such as “more economic growth” are at odds with requirements of

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social and ecological justice. Or: Capital based provisions for social security may be unreliable in the long run: They are profitable in times of a flourishing economy (dividends from shares), but disastrous in low-interest phases on financial markets.

6.1.2 Agreement upon “Leitbilder” – the role of tax competition

Natural Law, CST and other groups of Christian Ethics emphasize that, before entering into the discussion of tax justice, one has to find agreement regarding the more foundational issue of “What are taxes needed for?” The answer to this question is intimately linked with the idea people have regarding the role of the state vs. the role of market/capital based provisions and/or the initiative and responsibility of private and small group initiative and solidarity.⁵⁰

For such a preceding deliberation, the German Protestants come up with the following four questions to ask (Evangelische Kirche in Deutschland, 2009, p. 28):

1. What should the state do/what does he have to do?
2. How is the overall and total burden of taxes and mandatory Social Security Contributions distributed and is there adequate transparency for all to perceive this burden sharing?
3. Upon what does taxation impact? (Verteilungswirkung und systemimmanente Widersprüche)? Does it destroy better alternatives?
4. The specific ways and amount of taxation.

Here, obviously, not only Anglo-Saxon and continental European views will diverge greatly (see 2.6.4+5), but all groups making up a nowadays pluralist society, as the researcher also noticed when surveying the discussion within our respective countries.

Once agreement is found for a given context, Fisch recommends the following four general Leitbilder (guiding images), within which a broad based public debate could try to agree upon how that which we want the state to do could be financed:⁵¹

- Strong shoulders must carry the heavier burden.
- Social cohesion via social redistribution.
- Democratic equality via redistribution and the restriction of wealth.
- Economical success via own effort and skills.

Given the discussion among researchers of the Tax Justice & Poverty project and given the different contexts of our respective countries, to us the following questions seem to be adequate for starting any tax justice related discussion in our countries. We conflate some distinct questions from the Protestant list and add thoughts about the direct and indirect costs since in the African partner states too much revenue enters the financing of bloated administrative structures.

⁵⁰ See E/I/4, especially the thoughts of Pope Benedict in 4.9 in Caritas in Veritate

⁵¹ ‚Bürger und Bürgerinnen gestalten über den Staat ihre gemeinsamen Belange. Der Staat hat dabei den Auftrag, für das Gemeinwohl zu sorgen, ist den Menschenrechten und den Prinzipien der Demokratie verpflichtet. Auf diese Weise trägt er zum gesellschaftlichen Zusammenhalt bei, bewahrt die Gleichwertigkeit der Lebensverhältnisse in den Bundesländern, sichert soziale Teilhabe und politische Beteiligung ab. Für die Erfüllung dieser Aufgaben benötigt der Staat finanzielle Mittel. In einer Marktwirtschaft kann er diese nicht selber erwirtschaften und ist daher über Steuern auf Beiträge der Bürger und Bürgerinnen angewiesen. Diese tragen die von ihnen mitbestimmte Politik durch gezahlte Steuern auch finanziell.‘ (Fisch, 2016b, p. 8)

1. What should the state do/what does he have to do? This asks for the responsibility of the state vs. private and market actors and the role of (better) alternatives.
2. What should that cost/what costs are justifiable? This asks for the direct costs of collection, but also looks at indirect costs and disadvantages caused by taxation.
3. Where should this money come from? This asks who should bear what tax burden, including the question of tax categories (Income, consumption, wealth...).
4. How could this money be collected? This asks for the best way to organize a tax administration.

An important issue to be dealt with here is the role of tax competition. While competition is something good for sports, market economics or political elections, it has nothing to do regarding the relationship between states: Competition for the establishment of private and corporate wealth holder within ones jurisdiction with the help of tax presents is, in the end, destructive for the state since the tendency is to move headquarters and factories as soon as tax presents expire and other states/municipalities offer something new instead. As not only the findings of the German and Kenyan Country report illustrate, tax competition is at the expense of others and, in the middle term, does not benefit anybody except those paying less than their due. Our research also supports those saying that for investment directed to the real economy (and not towards rent seeking), criteria other than taxes are important: Security, educated workforce, established markets for products or well developed infrastructure. This, by now, is seen by the OECD, IMF and even champions of neoliberal ideas such as former constitutional court judge Paul Kirchhof (E/I/4.8).

6.1.3 Diminish injustice rather than increase justice

Ideally, there should be agreement regarding the formal criteria provided for judging, whether some taxation can be called just or justified (see 2.6.6,7+8). Given the plurality of views within every state it can be assumed, of course, that every country and society will “fill” those formal criteria with different content. Criteria b, for example, for deciding whether some tax is just and justified says that “there needs to be (b.) a recognizable link to the common good.” Here it will be difficult to find positive agreement.

Therefore it is our view that one can state a parallel with Tax Justice as it is the case when trying to find agreement regarding “Justice”, “Social Justice”, “Distributional Justice” (see E/II/3ff.): we doubt that there is a nationally, let alone universally, agreeable understanding of *Tax Justice*. Rather, and more likely, we can also understand “tax justice” nationally and internationally as a regulative concept and agree upon criteria which need to be fulfilled if we are talk about a *(more) just/(more) justified tax or tax-like contributions*. Here, therefore, too, we follow a criterion guided comparative/relational approach, arising from the evaluation of a particular context, assessing the development of taxation and its impact upon society and its people. Looking at the body of taxation and administrative practice it is asking whether this law or this administrative reform is justified and/or makes the tax system more just and the burden sharing/treatment of tax subjects more equal and fair.

6.1.4 Evaluation of alternatives

The existence of (better) alternatives to taxation needs always to be examined, because there are indeed better ways to reduce poverty within a social market economy, e.g. an economy directed by a social partnership between capital and labour. However, such partnerships tend often to be biased on the side of social justice, tending to neglect ecological sustainability for competitive advantage or a short time gain. Therefore guidelines and frameworks also by the state need to be put in place, trying to secure both social and ecological sustainability. This, in

turn, needs to be thought of globally, implying that those determining the course of any country's development, economical development included, need to be at eye level with TNCs and other influential wealth holder.

One needs to be careful, however, when proposals come from economic and financial actors since all too often they follow the interest of their owner or shareholder rather than the wider public: Sweet talk of a "more inclusive economy", "Corporate Social Responsibility", "Socially Responsible Investment" or the activity of "non-profit" Trusts and Foundations need to be scrutinized in each individual case before deciding whether their offer deserves tax privileges (see for a more extensive discussion G/W/II).

Possibly utilitarian calculations might be of help when assessing alternatives for the reduction of inequality and poverty. Such an utilitarian calculus could, however, undermine the situation of the poor – because some instruments recommend themselves already to policy maker if they improve the situation of more than 50% of the population. Here, basic safeguards must be in place.

6.1.5 Impact assessment of tax policies

As it is in the case of evaluating the justice or injustice of general policies or alternatives to taxation, there is also ethical relevance in an impact assessment when discussing merits and side-effects of tax policies, both any positive reform of laws, but also the abolition of present instruments, benefits or subsidies. Such an assessment could be in view of the impact upon/reduction of poverty or inequality or jobs, or environment.

Saying this, a nice "aside" is the reference to Robert McGees book "The Ethics of Tax Evasion" (2012)⁵², which illustrates that the tax-sceptical views originally at home among church scholars (see #) are still alive: McGees topic is not the exploitation of aggressive tax avoidance options to the limits. He does concede that tax evasion is not justified in all situations and constellations because of social contract considerations and the importance of law and democracy for a functioning community. At the same time, it is often justified by the argument that saving taxes is expected by shareholder and increases shareholder value; to which, after all, also health and pension insurances belong, serving low and middle income households. He indeed is asking the question whether there is an ethical dimension to illegal tax evasion. And, depending on one's world view, there are indeed possible strands of arguments: Public Choice economists indicate that tax evasion is one way to limit bad public spending or the overbearing power of the state, who ignores the choices and preferences of his citizens. Other economists indicate that tax evasion in the informal sector generates jobs and is beneficial for overall economic growth as such. The issue could be of importance in developing countries, where corruption and the inefficiency of administrations is more blatant than in developed countries. At the same time it should be paid attention that the money thus withheld from the state is invested elsewhere in the endeavour to advance the Common Good of all and not merely dumped in Tax Havens.

6.1.6 Conclusion and the need for review

Given the plurality of society, general agreement on the previous is as difficult to find. Equally difficult it is to draw a commonly agreed line between the ethical and unethical behaviour. Negotiations have to be done by being aware of underlying, non-spoken value assumptions as well as the respectful search for overlapping consensus and compromise (see E/I/2). Here, contract philosophy provides the powerful image of finding agreement behind

⁵² See Schöbel E (2014) Buchbesprechung. In: Jahrbücher für Nationalökonomie und Statistik, Vol. 23

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the “veil of ignorance” (Rawls, Wiemeyer), but discourse philosophy reminds us that participants in any real world social discourse not at all equal (Habermas, Möhring-Hesse).

In any democracy temptation exists to put policies in place which secure majorities at the next election but neglecting the others. This in turn endangers the social cohesion of a society by giving rise to violent unrest, any polarization, combined with decreasing social and income mobility, will increase the economic-financial-social-political power of those who have vs. those who have not and experience shows that the powerful do not hesitate to misuse their influence besides democratic transparency and control.

It is the conviction of this research that it is much easier to agree on the removal of injustice than to establish agreement as to how positive approaches to a more just society could be taken. Following this cautious approach, there is still plenty of potential to reduce crime and inequality as well as to raise revenue for combating poverty and inequality, invest more into infrastructure, public services and to ameliorate resource exploitation, environmental degradation and climate change.

The previous can be summarized to the following main avenues which could be taken to

1. Combat unjust, immoral and criminal behaviour
2. Correct distortions in the distribution of the overall burden regarding taxes and mandatory SSCs, both legal and administrative
3. Correct inequalities regarding the Ability to Pay as well as consequential power imbalances by taxing high income and wealth: Above there is wide agreement, e.g. between Rawls and Nozick, that stiff taxation of inheritances and gifts are an important way to curtail the growth of inequality at the top.
4. Correct inequalities positively by securing human and social rights, living conditions and social mobility.

While the negative curtailing of inequality at the top via inheritance taxation finds increasing support, it is more difficult to find agreement as to how money should be spent positively in the attempt to empower the poor: More money? Vouchers? Direct welfare and services? (2.2+3 as well as 2.6.4+5).

Arguing from the Option for the Poor, it seems important to us that minimum standards for all, e.g. based upon agreed a human rights or social rights for all, need to be in place in order to avoid that some are left behind as society progresses. To us, state based and, accordingly, tax and SSC funded provisions are the best way to secure assistance to all, aiming to secure the development of everybody’s capabilities in accordance to our approach to poverty reduction.⁵³ Here, the following is favoured by us:

- Tax rebates for low income groups are better than „means tested“ support: It is less humiliating, gives more freedom and self-determination and is cheaper for the state. Besides relief with taxes, also the payment of SSCs should be made fairer for low income groups accordingly (6.6).
- The state, democratically controlled and adequately audited, should provide institutions for health care and education for all of such quality, that privately financed alternatives are less attractive anyway – see Sandel in E/II/8.1)

⁵³ See I/IV/6 and the CST link between the Personalist Principle and Human Rights (Pontifical Council for Justice & Peace, 2005, p. 66ff.).

Whatever is being put in place, it needs to be reviewed in its adequateness and side effects periodically or occasionally. What is good today, may lose its purpose as circumstances change

- The outside economic conditions may change, e.g. the need of labour (and taxes raised from there) diminishes due to the growing importance of machines and digital progress
- Experience shows that Pigovian environmental levies and taxes burden poor households rather than businesses
- Inflation devalues income from labour or payrises (cold progression) or devalues instruments originally useful to combat climate change (Carbondioxid Certificates)
- Improvements in data exchange and intergovernmental cooperation does no longer justify a Flat Tax on capital income
- The composition of society changes due to changes in world views and ideological preferences, hence decisions having a majority at some stage may lose that social backup due to that change
- ...

6.2 Enforce existing laws equally and justly

Once responsibilities, laws and procedures are in place to finance a community and if these laws have been passed by observing the necessary procedures, each private and corporate citizen is obliged to follow those laws. However, experience illustrates, that tax honesty exists with grave exceptions in the rule.

As said already above in 1, there are plenty of good laws which are not enforced equally and justly. Hence, plenty of improvement regarding revenue collection and the acceptability regarding the burden of taxes and mandatory SSCs if this can be corrected.

6.2.1 Simplicity vs. justice?

Here, a frequent argument is that, if tax law were simpler, they could be enforced more easily and justly. As our research demonstrated, however, “simple” tax laws are very unlikely to exist. First of all because of the growing interconnectedness of the world. Secondly, because lobbyists ask for tax privileges all the time. Thirdly, because simplicity always is at the cost of justice, most importantly, because it offends against the Principle of Ability to Pay.

Conversation partners to the project were unambiguous that, as soon as simpler tax laws came into existence, people would appeal to courts for justice and, due to court decisions, the originally simple law would soon get complicated again (on all that see GER/Va). Therefore, other instruments need to be considered.

The call of more simplicity in the area of tax law is justified when it comes to harmonize and reconcile different legal concepts and/or their interpretations by different states in a way that cross-border tax enforcement is easier (see 6.3).

6.2.2 Transparency

Of paramount importance here would be equal transparency for all tax subjects. Here, in all our countries is a misbalance towards social disadvantaged and dependent labour on the one side, and private, corporate and criminal wealth holder on the other. Tax and other public administrations know a lot about the first group, either by actively screening their financial situation or via collecting taxes from dependent labour via withholding taxes. The second

group has many options at its disposal to disguise income and wealth assets with the help of tax consultants and lawyers both within a country (e.g. disguising income from interest as income from dividends), most of all by using transborder constructs in secrecy jurisdictions. Here, more transparency is needed and the benefit of existing business “veils of secrecy”, trade secrecy, banking secrecy and tax secrecy have to be balanced against the benefit of the many, not the few

It needs to be emphasized that our research does not want to discriminate private, corporate and criminal wealth holder by calling for specific treatment. All we ask is equal treatment of all tax subjects, which implies equal transparency towards tax administration. Arguments of wealth holder saying that this transparency would endanger privacy or would reveal business secrets and investment options do not count: First, the violation of privacy is equal to that of other citizens, second, tax secrecy is among the best protected secrets in the world, third, and here we follow German Constitutional arguments, that private interest and public interest needs to be kept in balance and distinction is needed between the Intimacy, Privacy and Social Sphere. While the Sphere of Intimacy is indeed strictly protected, the Protection of Private and Social Spheres may conflict with interests of the community.⁵⁴ Hence we concur with former EU Commission Semeta who said “Tax transparency is more important than data privacy.”⁵⁵

This, of course, would also call for more transparency in international treaty law, for example the publication of Double Tax Agreements between countries.

Admittedly, there is a lot of movement here since Offshore Leaks, for example Country-by-Country Reporting. But still there are too many gaps regarding the publicity of beneficial ownership of trusts and other forms of shell companies or the accessibility of ownership registers.

As long as such comprehensive transparency is not secured, special protective provisions towards Whistleblower are justified (see GER/VII/5.10)

6.2.3 Personnel

Given the complexity of tax laws and difficulties in tax administration, the question of personnel is crucial when it comes to the equal and just administration and enforcement of laws. Here our research reveals that less than proportionate attention is given to private and corporate wealth holder as well as to the prosecution of criminal wealth holder. Given tax avoidance and tax evasion options wealth holder have with the help of complicated legal constructions and clever tax lawyers, equal expertise and care needs to be employed on part of tax auditors and tax fraud investigators, starting by examining the content of legal concepts to the permissibility of legal construction. Given the public admission that the Big 4 consider tax avoidance legal if they are 50:50 chance that the construct is on the legal side, one may consider the sophistication and effort needed when evaluating those constructs and uncover misuse (GER/VII/2.3). In addition there are problems arising from international cooperation, especially secrecy jurisdictions, as illustrated in GER/VII) and KEN#.

Knowing about those complexities, both the German Federal Constitutional Court as well as Germany's President of the Federal Court of Auditors called for more and more qualified

⁵⁴ See (Hüsken) and GER/VII/5.9.4+5

⁵⁵ Semeta, A. (2013, June 5) Offshore Leaks transformed tax policy. Press Release. Retrieved 2015, February 10 from <http://euobserver.com/economic/120382>

personnel on part of tax administrations. Only then, they argued, equal and just taxation of all can be credibly secured (see GER/Va/7.3). This, as our research illustrated, is not the case in Germany, Kenya and Zambia.

The excuse of costs, namely, that the employment of qualified personnel would cost the state too much, can, first of all, be rejected: Qualified tax officials earn much more than they cost. At the same time, especially on the African part, is some hesitancy due to bad experiences with bloated administrations. Here, monitoring and auditing could secure that resources are efficiently employed.

6.2.4 Computerization

A serious issue to consider at that stage is the question to what extent increasing Computerization is able to remove deficits in the equal and fair treatment of tax subjects. As the Bavarian and Kenyan case demonstrates: There are good arguments that computerization are of use, as long as an adequate chance-selected sample is cross-checked by experienced tax inspectors and there is also a high approval rate by the population for electronic “simplification” of tax procedure. At the same time one may wonder whether losses and deficits of computerizations do not outweigh its benefits – at least for the time being (see GER/V).

With a middle term perspective, however, the argument is worth consideration that a more automated processing of simple tax cases frees qualified personnel to devote time to more complex issues. And here politicians in Bavaria and Kenya might have a point. Here, therefore, computerization deserves monitoring and evaluation up to the point that computerized Risk Management Systems are indeed taking more work away from employees than adding to the already heavy work load.

In favour of more computerization is also that it seems to be accepted by a wide range of people since it makes the submission of tax returns easier. Hence computerization of tax administration and procedures could present a form of simplification in taxation, since the issue of simpler tax laws can clearly be discarded.

6.2.5 Conclusion

The previous would also enable tax administrations better to enforce existing law as it is right now, where the larger number and (in too many situations) better lawyers are on the side of private, corporate and criminal wealth holder. Our research illustrated that in too many situations, e.g. during tax audits, contested interpretation and application of legal norms used in tax avoidance and saving options were not further investigated and followed up by tax administrations because it would bind personnel for too long which is urgently needed elsewhere. For that reason, promising cases are abandoned and an “out-of-court” settlement is used which is normally far below that which could be awarded by courts – as was the case with the Engelhorn sisters as opposed to Bavaria President Uli Hoeneß (see GER/VI/#).

Even less successful court proceedings are reported from Kenya and Zambia.

Hence, for the time being and as soon as possible, more (qualified) personnel needs to be employed at the level of tax administration, prosecution and courts in order to look adequately into malpractices by private, corporate and criminal wealth holder. Costs for that personnel will be outweighed by revenue surplus earnings. More checks and balances also have an

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indirect effect since the “credible threat scenario” of potential checks will also increase “voluntary” tax compliance.

In the middle term, the need of personnel may perhaps decrease, before this is the case, however, not only computerization needs to be improved, but legal terms and concepts in international relationships need to be worked at in order to make transborder enforcement of taxation gets easier and aggressive tax avoidance and tax evasion gets harder.

6.3 Fighting tax crime and IFFs

Given the criteria to diminish injustice, any engagement in the field of IFFs is of priority. The extent of today’s aggressive tax avoidance and tax evasion, as revealed in several data leaks from Offshore Leaks in 2013 to the Panama Papers in 2016, is totally unacceptable and therefore the first priority is to fight tax evasion. Here is widespread agreement, see

- the survey among policy makers of developing countries (I/IV/2.5.1)
- the survey among Germans in E/II/6.2
- the survey among German taxpayers made by this research project (see 2.10)
- those who are reluctant to advocate any higher or additional taxes and preferring private alternatives, such as (Höffe, 2016a)
- market friendly authors in (Booth, 2007a) who agree that there is no alternative to state action when fighting tax evasion,
- in Germany parties in government, covering all colours of the political spectrum ranging from the Green Kretschmann in Baden-Wuerttemberg to the conservative Söder in Bavaria.

Since individual states here are soon meeting their literal boundaries, international cooperation is key and it is a welcome development that international cooperative efforts here are increasing aiming to, for example:

- clarify legal options by paying more attention to the intention of the legislator when judging “legal” tax avoidance options.
- close national and international loopholes: crimes in one state need to be accepted as meriting prosecution also in other states (Principle of Dual Criminality).
- examine “legal” Offshore Constructs in view of their usefulness for the Common Good on the one side, and small interest groups only on the other,
- to combat tax havens

Since tax fraud is part of IFFs, involving also related crimes such as corruption and money laundering it is also appropriate to keep the context in view, and to develop and implement tools which are appropriate for actions against all of that.

National and international institutional setups need to be reviewed here especially within federal settings, where a lot of redundancy exists which can be exploited by the clever and the criminal. Redundancies and inefficiencies can be demonstrated both in the German and Kenyan context, equally the deficit of qualified personnel. In variation of the request put forward by a political party requests during the German 2017 election campaign: Combating

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tax fraud and IFFs need to be better organized than criminal behaviour of those committing it.⁵⁶

6.4 Tax base and tax privileges

As important as the tax rate are decisions about the tax base, i.e. regarding that which then is taxed with a certain tax and its rate. Here we talk about tax exemptions (Befreiung) and concessions (Vergünstigung), but also about (non-taxable) benefits, extras and subventions. This is a tricky area since those aspects exist both for the poor and the wealthy and a case-to-case examination is justified.

It is, however, a wide area of contention and a fruitful field of engagement for lobbyists. Since private and corporate wealth holder have plenty of resources to pay the latter, it is not surprising that private and corporate wealth holder profit most from those tax privileges. Fisch (2017b, p. 65f.) lists some examples regarding private persons, benefitting especially the wealthy:

- Work related deductions from income (Werbungskosten), e.g. for an office in ones private house or private use of the company car
- The payment of (e.g. child) benefits also to the wealthy rather than rising the tax exempt minimum of the poor
- Concessions regarding the taxation of boni, severance packages, or donations to certain foundations

Even more of those privileges can be named for TNCs and other businesses, as is detailed in the KEN and ZAM country report.

A different intention lies behind reduced tax rates in Consumption Tax, where one rationale is to protect low income households from high costs on food. The discussion here has to determine whether those reduced rates are the best way to serve this purpose.

Regarding the advancement of social and ecological intentions, this research follows those advocating for direct support rather than indirect subvention: While direct support can be published and periodically reviewed, the problem with rebates and other forms of privileges causes losses of an unknown and unquantifiable amount of revenue losses (see 3.2.2).

Such a screening of the tax base and the removal of exemptions may indeed increase revenue in spite of a simultaneous decrease in tax rate, as the reform of Corporation Tax demonstrated in Germany in 2009.

6.5 Tax types and rates

In the next step questions as the following need to be asked:

- Is a different taxation of income from labour and income from capital still justified?
- Does equality count (then a Flat Rate would be the response) or difference (which would call for progressive taxation?)
- Taxation of earned and unearned income, of income from labour and capital: privileged rates, equal rates, extra tough rates, extra taxation?

⁵⁶ FDP: Unsere Sicherheit muss besser organisiert sein als das Verbrechen

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- What form of tax based redistribution contributes best to the reduction of poverty and inequality (via wealth tax or inheritance tax to counterfinance the tax burden of the poor, via redistribution of money or vouchers, or via financing of direct public services)
- How does direct, how indirect tax, burden low-income households?
- Is a differentiated or unified VAT rate better in view of its special impact upon businesses and low income households?

It is here where principles of taxation (e.g. that of vertical and horizontal equity, of the Ability to pay...) need to be kept in mind. One should equally consider that nowadays the number of opportunities for tax evasion and aggressive tax avoidance is diminishing and international prosecution is improving. Therefore, a revocation of tax presents given in earlier time to private and corporate wealth holder is justifiable and possible.

An idea gaining popular support is to use some taxes with the purpose of cross financing other non-fiscal goals, e.g. increasing Green Taxes with the intention to decrease inequality and lower the costs of human labour.⁵⁷ The need of that is not seen since it is up to (ideally) transparent and participative democratic control to determine on what purpose tax revenue is spent upon.

6.6 Non-fiscal use of taxation

Non-fiscal options arising from taxation were always part and parcel of this instrument. This could be done by using taxes as negative addition with the intent to curtail undesired behavior (taxing tobacco or alcohol), as indirect (tax reduction) or direct (paying subvention) support of certain activities, e.g. support of certain industries. This non-fiscal use is seen to be legitimate, and is also accepted by this research. But, as discussed in 6.4., to this research it seems to be preferable if positive support is given directly and transparently rather than indirectly without any option to quantify its extent. More important at that stage is something else:

We observed the expansion of market mechanisms, thinking and ethics, into areas where it causes damage to the common good. For example: advancing climate change and other forms of pollution, destruction of biodiversity or resource over-exploitation. Here, taxation might be a tool to put a price on “negative externalities” – a point even supported by market friendly authors (see above, 2.6.4). The talk is not so much of a tax whose prime goal is not to collect revenue with which to amend damage done, but to put a price on damaging practices and behavior: the so-called Pigovian-Taxes. They can be placed upon

any market activity that generates negative [externalities](#) (costs not internalized in the market price). The tax is intended to correct an inefficient [market outcome](#), and does so by being set equal to the social cost of the negative externalities. In the presence of negative externalities, the [social cost](#) of a market activity is not covered by the private cost of the activity. In such a case, the market outcome is not [efficient](#) and may lead to over-consumption of the product.^[1]

An often-cited example of such an externality is environmental pollution, but also the Financial Transaction Tax which could be used, for example, also to skim of at least something from illicit financial in- and outflows.

⁵⁷ See: 20 Solution Proposals for the G20 from the T20 Engagement Group (2017, June 15). <http://www.t20germany.org/2017/06/15/20-solutions-g20/>

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As long as negative externalities exist, those taxes collect revenue, which then indeed may be spent on repairing damage or compensating victims. To the extent, however, those extra taxes prompt those causing damage to change production or behavior, revenue collection will, of course, decline. This, however, was the main goal right from the beginning. Since we are talking about long term developments, here periodical review is even more important since originally useful instruments might lose their usefulness over time due to their own efficiency or other developments as was the case, for example, with the trade of CO₂ certificates.

6.7 Mandatory Social Security Contributions

While there are tax-exemptions for low income households, SSCs need to be paid from the first Euro onwards. It is here, where low income households are most in need of reform, support or relief.

Different from taxation, where there is no link between the money paid by the taxpayer and the money spent by the state via parliament, the link exists between the payment of SSCs and that which people receive, namely, medical care or pensions. Especially the latter causes problems due to the Principle of Equivalence (Äquivalenzprinzip): One receives in relation to what one pays of somebody's professional life – which is why there is a payment limit (Beitragsbemessungsgrenze) for those well-to-do: If it would not exist, wealthy people would eventually be entitled to receive a pension in relation to that which they contributed to the insurance, which could be very much.

Regarding Germany, the calls are growing that all citizens should be paying into one insurance system, the Citizens Insurance (Bürgerversicherung). This implies either that the existing three pillar system of legal, private and business options should be scrapped or, private and capital based options should be only permissible AFTER contributing to the mandatory solidarity system.

Here, Austria and Switzerland seem to have done it better than Germany:

- Austria has a system where more citizens pay into a common solidarity system.⁵⁸
- Switzerland too, but here they also abolished the Principle of Equivalence, i.e. when pensions are being paid, there is a limit for Billionaires, even though they might have contributed much more in terms of SSCs.⁵⁹ Fisch, therefore, also argues to abolish the Principle of Equivalence for Germany (2017, p. 68)

6.8 The need for Global Tax Justice - the obligation to assist

Given the kind and extent of global network-society which we find already in finance, trade, migration, climate change and so on, one needs to spend some serious thinking how public/state governance can also be extended so that developments spinning out of control may again be re-captured and brought under democratic control. Saying that, developed countries need to understand and accept that they cannot secure and defend the advantage of desirable network activities against undesirable side-effects, e.g. reap benefits from global financial flows and trade, but stop the reverberations of migration and climate change.

Piously spoken: The Common Good nowadays can increasingly be understood globally, and no longer selectively and locally. Pragmatically spoken: My wellbeing is increasingly

⁵⁸ <https://www.ovb-online.de/politik/renten-paradies-oesterreich-8464851.html>

⁵⁹ <http://www.fr.de/wirtschaft/arbeit-soziales/rente-deutschland-blickt-mit-neid-auf-die-schweiz-a-818805>

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influenced by the wellbeing of others: If I do not sacrifice some of my wealth to assist people in their country I have to put up with them if they come to me as migrants.

As our experience as team cooperating in the Tax Justice & Poverty project confirmed (see 2.6.8), it is possible to find agreement on many useful policy recommendations when being clear about differences in world views and, at the same time, being able to agree upon commonly acceptable values, principles, norms and criteria upon which analysis as well as the development of reforms is being based and thus, eventually, being able to conclude a compromise.

In the view of our team, taxation is an already established framework which could be extended also globally in

- a protective way (e.g. poor countries could protect fledgling industries from overpowering competition),
- a cooperative way and
- a preventive way (e.g. by decreasing or remedying harm with Pigovian Taxes).

As to the second (cooperative) dimension, this research holds the opinion that developed countries are under the obligation to assist developing countries:

First, by earmarking surplus revenue in developed countries for international redistribution, perhaps even compensation payments for earlier injustice (see E/II/# and above 2.4). For example, the German Minister for Development suggested a “Marshall Plan” for Africa in order to combat root causes of refugee and migratory movement,⁶⁰ otherwise more could be done to advance the SDGs. Here, however, also requirements of participation on part of local populations, transparency and better auditing needs to be in place to make sure that the money reaches deserving projects and is not wasted through corruption.

Second, by assisting developing countries in fighting IFFs (Nass, see above 2.1). Here, for the foreseeable time, developing countries do not have adequate resources to participate in OECD BEPS or AEOI initiatives. Here, concessions on part of developed countries are called for as long as developing countries have not caught up.

Third: Developed countries should assist poor countries in building up effective tax administrations and related institutions needed to combat IFFs (Nass, see above 2.1). This can be done by training people, by providing equipment and even providing loans to employ and pay an adequate number of well-trained people.

Fourth: As has been shown in the conflict between developed and developing countries at the Addis Ababa Financing For Development Conference in July 2015 (see G/W/II/#), the entire international tax regime is heavily bent towards the advantage of developed countries. In order to achieve global tax justice, therefore, developing countries should not merely invited as observers into the Club of the Wealthy, or should not merely be handmaids in the execution of rules decided by others, but have also a say in how they prefer an international tax regime has to look like, i.e. have a say in how international tax laws and regulations should be.

⁶⁰ <http://www.bild.de/politik/inland/fluechtling/wie-stoppen-wir-den-fluechtlingsstrom-aus-afrika-47189540.bild.html>

Until the latter is the case, disputes between developing and developed nations could be mediated and settled by an international tax governance structure with an own and independent mandate to do so (Dietsch & Rixen, 2016a) (Tanzi, 2016) (Pogge & Krishen, 2016).

7 Conclusion

Ethical reflection on tax justice seems to be in its infancy which is why time is far too early for a comprehensive manual or treatise on Tax Justice and its link to the alleviation of poverty. At the same time it seems that, in spite of the differences between world views presented in this chapter, there seems to be a growing agreement that fighting tax injustice is already a big step forward. In spite the explicit exclusion of neoliberal (business) ethics from the examination (1.2), it seems to be reasonable to assume that a considerable number of representatives of that ideological school would agree that at least some wrongs and bads deserve to be addressed as a matter of priority.⁶¹ Combating IFFs, tax crimes included, as well as administrating and enforcing existing laws equally and fairly would already generate considerable surplus revenue which could be spent on securing public goods and services.

At the same time, much more disagreement is likely when discussing the question of how a “more just and fair” taxation could be looking like. Here it is our conviction that groups which are able to agree upon a joint vision of a Common Good of All will also be able to answer this question: A more just taxation is that which treats the equal equally and the unequal unequally, in accordance with the Principle of Ability to Pay. By employing taxation, adherents of this vision will also attempt to secure social cohesion, equality in opportunity for all, including social and income mobility. In order to defend the human dignity and everybody’s capacity to contribute, equity and equality in democratic participation must be secured which excludes power imbalances where few determine everything on the expense of the many.

Regarding a more positive, content-filled determination of the “Common Good of all”, it is our view that there is an emerging overlapping consensus between the CSTs acceptance of Human Rights on part of the Catholic Church, and a growing agreement that basic Human and Social Rights should be secured for. Support could probably also found among green ecologists,⁶² adherents of “Happiness Economics” (E/I/4.5), post-growth and Common Good Economics.⁶³ If those groups could forge general or topical alliances, neoliberal, neoclassic, nationalist or populist champions might not be convinced in negotiating specific issues, but at least they would have difficulties to object to goals and means agreed and carried forward by that group, such as spending money on the removal of hunger, the advancement of care for the sick and elderly and education or the implementation of the Sustainable Development Goals via a more state friendly avenue, including tax and tax cooperation.

Our research sees an important role for the Catholic Church to play in this discussion: In its Catholic Social Teaching, the Catholic Church has a solid foundation upon which to place a debate of how to increase human rights and social justice locally and globally. At the same time, the Catholic is present in many different regions of the world, in many different

⁶¹ For example, agreement could be hoped for when it comes to tax evasion, carousel fraud and other ills which privilege TNCs, but damage SMEs. Certainly no agreement will be given when it comes to the taxation of inheritances and gifts as a means to reduce inequality.

⁶² At least those known to the German author are having a comprehensive approach to ecological AND social justice.

⁶³ Alt, J. Donald Trump, Brexit etc.: An opportunity for a Common Good based European Union. Publication imminent.

pluralist, cultural and socio-economical environments, therefore having experience with different opinions and views when it comes to the effort to implement CST values and norms in a specific environment. Due to experiences gathered that way, the Catholic Church should increase its efforts to broker bridges and compromises within countries, but also between countries. The church should also, based upon its experience, develop own proposals and bring them into the debate.

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