

VII. Ethical considerations

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Having concluded the empirical analysis of the developments in, as well as the situation of, our three respective countries we have now to assess and evaluate its results to make transparent our underlying values, norms, assumptions criteria on which we will base our final conclusions and recommendations. Given the pluralist and culturally diverse nature of Germany, Kenya and Zambia, one has to be aware of the underlying values and norms and be clear about common foundations on which to build and proceed in the argument.

This explanation is normally done by the scholarly discipline of ethics. In other words: Ethics assists us to judge whether things in this world are “right” and “good” and, at the same time, pave the foundation to think about the direction of improvements. Ethics thus assists us in developing criteria and arguments to give us reasons for choosing one set of instruments rather than another.

The research “Tax Justice & Poverty” examines the link between existing tax systems¹ and poverty and asks how reforms can reduce poverty and improve the situation of the poor. But

¹ A tax system combines laws defining taxes and tax-like contributions on the one side and their enforcement on the other.

before we consider what “Tax Justice” means, we need to clarify more foundational, underlying assumptions.

1. Preliminary considerations: Exposing preferences

A first important issue in today’s pluralist and diverse societies is everybody’s attitude regarding the priority of (a.) the (free/unregulated) market globalization, (b.) state regulation and (c.) democratic governance. Starting point is the question whether “market(s)” or “state(s)” based paradigms are best for producing and allocating goods and services, creating jobs and reducing poverty. Depending on the preferences, market competition or state-cooperation are conflicting regulative principles and, within that, taxation is then seen to either disturb markets or assist in their proper functioning. For example, the ethical “Prisoners Dilemma Illustration” in game theory is used by some to advance tax competition, others to advance tax cooperation (Christensen, 2015).

As Dani Rodrik elaborated succinctly in his book “The Globalization Paradox” (2012), you can reconcile only two of the three “pillars” above, while the third pillar will be subjected and/or dominated by the alliance of the other two.

Of course the “success formula” is the best possible balance between market mechanisms and democratically controlled governance structures. On that background, and after four decades of free market dominance and globalization with undoubtedly existing successes in the quantitative reduction of absolute poverty, our research, is the opinion that those successes were achieved at a high price. Most importantly we want to mention increasing inequality, with private and corporate oligopolies gaining unacceptable influence over states and its institutions (“state capture”) and the overexploiting of natural resources which will be an increasing burden for future generations.

For that reason, our position here is as follows: A more balanced relationship between market, state and democracy is needed and taxation has, in our considered opinion, a role to play. Most importantly, we are for tax cooperation rather than tax competition: While competition is a proprium of markets, cooperation is a proprium of the state(s). Second, we also advocate for citizens’ participation in shaping our societies besides markets and governmental institutions. However, for the public and its bodies, e.g. citizens, churches and NGOs, to be able to fulfill its role in the joint search of a “good life” for all, transparency is required so that people are able to make informed decisions. For this to happen, provisions securing private and corporate interests via banking, tax, corporate, trade etc. secrecy need to be re-assessed against the public interest in knowing who is controlling what assets and the resulting ability to fight tax related and other crimes and to collect revenue for redistributive purposes and/or investment in public goods. Among the latter, education ranks high, since it is key in the empowerment of people to meaningfully participate in the democratic processes in the first place.

A second important issue concerns the conflicting views of whether equality of human beings or difference of human beings is a foundational starting point for reflection. It is important for answering the following questions, e.g. whether direct taxes or indirect taxes are preferable,

whether flat taxes or progressive taxes are more important, whether the development of tax rates and tax bands over the past years was the best policy to implement, whether the wealthy should be taxed at higher rates and in accordance to their ability to pay etc. For example: Whoever supports that difference of human beings is the starting point, then taxing the wealthy higher and harder might be “unfair” because we take something away from them they earned with hard work and efforts. In other words: We would punish them for their labour based “performance” and achievements.

This research assumes as starting point that Human Beings are first and foremost equal in rights and dignity and that any difference must serve to guarantee these equal rights and dignity. To us there is no difference between equal and just treatment as long as the equal is treated equally and the different is treated differently which corresponds to the horizontal and vertical tax justice dimensions of the Principle of Ability to Pay. Indeed: hard work needs to be rewarded, incentives may be important for individual work which, in the end, perhaps via investment into businesses, will benefit all. But exactly on that premise we ask what about a fair and just compensation for the hard work done by subsistence farmers or single mothers who themselves and whose children are disadvantaged under present arrangements.

2. What is Justice?

Having explained those foundational differences, we now have to consider potential definitions of “Justice”. Given the preceding chapter it is obvious, that those underlying assumptions also impact on the understanding and definition of what “Justice” is all about. Normally a definition process starts by clarifying and discussion some sort of relationship between established concepts, such as “legal justice”, “commutative justice”, “restorative justice”, “social justice” or “(re-)distributive justice”. For our research, the two latter are of greatest importance.

1.1 What is Social Justice?

Social justice is concerned about the institutions and structures of society as such, i.e. more comprehensive than mere redistribution, which makes merely up for deficits which are not/cannot be amended otherwise. The focus is rather, whether the institutions are capable to distribute goods in a way that they profit best not only society as such, but equally each and every individual. It was first used by the Jesuit priest Luigi Taparelli in the 1840s and spread in the context of the 1848 revolution. Today, John Rawls is the scholar commonly most prominently linked with social justice. According to John Rawls, people would, under certain ideal conditions of reflection (“veil of ignorance”), agree that they like to live in a society governed by the two following justice principles (Rawls, 1985, p. 227):

1. Each person has an equal right to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with a similar scheme for all.
2. Social and economic inequalities are to satisfy two conditions: first, they must be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they must be to the greatest benefit of the least advantaged members of society.

The problem here is fourfold: First, no such postulated ideal conditions of reflection exist in the real world. Second, given the multitude of world views, consensual agreement on the first principle is not likely. Third, the appeal to “fair equal opportunities” is nice, but first equity is needed for all so that they can make use of equal opportunities at all.² Fourth, his thinking regarding the second principle lends itself to be misused by neoliberal propagandists, from which our research team wants to distance itself: We doubt that the “Trickle-down” and “The rising tide lifts all boats” ideology of neoliberal economics. In the real world there is no adequate market-based and led generation of resources (without creating damaging collateral side effects) with which equity for the least advantaged members can be achieved – which is why our societies continue to be in need of redistributive justice reforms.

Amartya Sen is more pragmatic in his assumptions than Rawls (Sen, 2010). According to him, real people, because of their diversity, most likely do not agree about ideal and abstract principles leading to true social justice. They find more easily agreement about injustices and how to improve those in a given society. As a consequence, he argues, we may not be able to establish a just society, but we may be able to approach a *more* just society – view which is close to Karl Popper’s (1947) concept of “piecemeal engineering”. Those views are more in accordance to our life experience and our experience of how democracies operate. Therefore, we prefer his view as a more realistic starting point for approaching social justice in a socially (more) just society.

But even if we set out with Sen and Popper, it leaves us with yet another problem: Once we identify given injustices, we do not know automatically in what direction we should improve the situation because many proposals, are based on a variety of values put forward by societal actors for amending the underlying problems. What, therefore, are the guiding principles for the vision we want to implement? What do we want to achieve?

As Catholics we use Catholic Social Teaching for orientation.

1.2 What is (Re-)Distributive Justice?

A similar problem exists when we try to understand the concept and content of (re-)distributive justice which is, as is commonly agreed nowadays, seen to be a sub-category of social justice, i.e. one instrument with which to implement and secure social justice within a society. As mentioned, instruments of distributional justice are seen as a pre-requisite for people to move from a position of equity to equality of opportunities.

One has to be aware, however, that there are again many possible and legitimate starting points and guidelines to define distributive justice and, from that, decide on instruments and resources. The Stanford Encyclopaedia of Philosophy’s entry on distributive justice lists the following guiding principles as possible and legitimate starting points, resulting in very different outcomes (Lamont & Favor, 2013):

² To illustrate this important distinction: The question ‘Should per student funding at every school be exactly the same?’ is a question aiming for equality. But should students who come from a poor background get more in order to ensure that they can catch up? That’s a question of equity. Equality concerns the “level playing field”, where everybody has the same starting position and the same capacities, which is almost nowhere the case in real life. Here equity comes in with the attempt to make sure that everybody can start from a comparable position.

1. Strict Egalitarianism
2. The Difference Principle
3. Equality of Opportunity and Luck Egalitarianism
4. Welfare-Based Principles
5. Desert-Based Principles
6. Libertarian Principles
7. Feminist Principles

Given the diversity of possible starting points, Lamont and Favor ask which might be the best to define that which can be understood under distributive justice. They came up with a pragmatic solution: They recommend to ‘take the beliefs of the population seriously, though not uncritically.’ And indeed: this would also work in the real world of conflicting and contradiction value assumptions, entering into discussion with each other, looking for agreement or compromise. For that reason and the sake of argument in our three countries it might be helpful to see what our populations think about social and (re)distributive justice and take this as a starting point of our own argument. Here at least for Germany a number of representative population surveys exist, illustrating the populations notions of social and (re-)distributional justice (Institut für Demoskopie, 2013).

2 What is Tax Justice?

Similar as in the case of justice as such, there is no easy answer to the question of what constitutes “Tax Justice”. To start with, there is very little material available on the subject of tax justice and that which we can find does not operate with a clear concept of “justice” – if they bother about discussing this at all. We doubt, therefore, that there is any universally agreeable understanding of *Tax Justice*. Rather, and more likely when looking at publications (Dietsch & Rixen, 2016a) (Pogge & Krishen, 2016) or the work of NGOs such as the Tax Justice Network, we feel that it is easier to agree upon criteria which need to be fulfilled when looking for a *more just/more justified tax* or tax like contribution – true to the approach of Popper and Sen introduced above.

According to the German theologian and social ethicist Furger (1997), the following criteria would safeguard that an imposed obligation arising from a certain tax law is not merely legally, but morally justified: The tax needs to be passed by (a.) legitimate authorities, there needs to be (b.) a recognizable link to the common good and it should be (c.) proportional to everybody’s ability to pay. These three aspects require three corresponding requirements: Legitimacy can be secured (d.) via periodical elections, tax law formulation and administration need (e.) transparency in terms of procedures, input into policy formulation and supervision of administration and spending via courts of auditors, and (f) checks and controls need to be in place to secure that everybody contributes to his abilities and tax evasion is excluded.

The preceding definition encourages us to adopt a formal and criterion based comparative/relational approach, applicable differently in our three country case studies. It is based upon the evaluation of a particular context, assesses the development of previous and ongoing taxation and its impact upon society and its people within our respective countries. By draw-

ing from deficits assessed by applying the above mentioned criteria it may lead to a joint set of recommendations, or to diverging recommendations or indeed two sets of both.

For us, therefore, Tax Justice, as a constitutive element of Social Justice, is rather a regulatory norm in dealing with empirically identifiable injustice than a firmly defined concept. Looking at the body of tax laws and administrative practice in our respective three case study countries, it guides us to determine whether this law or that administrative practice is justified and/or whether reforms of those could make tax system more just.

The question now is, of course, what are the underlying values, principles and norms which guide Furger and the institutions and researchers of this research when undertaking any value based assessment? Here, again, Catholic Social Teaching retains its relevance.

3 Catholic Social Teachings' principles and values

Interesting enough, Catholic Social Teaching (CST) is almost as old as the search for, and concept of, social justice. Not surprisingly so, since both go back to the many problems, tensions and uprisings in the context of the Industrial Revolution, when even the church could no longer ignore "The Social Question". Leo XIII Encyclical "Rerum Novarum" started in 1891 a new strand of thinking within Catholic moral and ethical reflection, addressed not only to members of the Catholic Church, but to all people of "good will".

3.1 Principles and values

There is no universally agreed set of principles and values on which Catholic Social Teaching is based. For that reason, this research project agreed to base its work upon the collection which is given in the Compendium of Social Doctrine (Pontifical Council for Justice & Peace, 2005). According to this compendium, the values and principles of Catholic Social Teaching are the following:

1. The centerpiece of all reflection and policy is the Human Person
2. The Common Good is that which befits society as such and all its members and is more than the sum of individual goods and interests
3. For all public, natural and material resources applies the principle of Universal Destination of Goods
4. The principle of Subsidiarity suggests that social and political problems should be addressed at the lowest possible level of governance. Higher institutions should only intervene when this level is not able to resolve it.
5. The principle of Solidarity counterbalances the first principle, building on the relations of human beings and their obligation to care for each other.
6. The principle of participation suggests that each member of society is entitled to participate in managing common affairs and is entitled to education which empowers him/her to do so.
7. The preceding principles are complemented by the values of Freedom, Truth and Justice

Our research team would like to supplement this list with the “Principle of Sustainability” since reflection upon principles guiding our care for this world has progressed since this Compendium has been published. Especially Pope Francis warned of offsetting the need for social justice against the requirements of ecological justice by arguing that the social mortgage on private property is being paid at the expense of the ecological mortgage. Here, the Pope suggests: ‘We are faced not with two separate crises, one environmental and the other social, but rather with one complex crisis which is both social and environmental.’ (e.g. *Laudato Si*, Nr. 139).

Given the existence of plural views, those Principles and Values can be interpreted and implemented either in a market friendly way (i.e. little state, little taxation, lots of space for individual initiative), or in a more state/democracy friendly way with a stronger emphasis on higher taxation, regulation and redistribution.

Returning once more to the original research interest, namely the link between “Tax Justice and Poverty”, CST Principles and Values are of both indirect and of direct relevance for guiding our deliberations:

3.2 Indirect relevance

Regarding indirect relevance, the following examples shall be given:

Of major relevance is, as indicated already above in (1), the question whether poverty and inequality in today’s world is best fought by given markets or rather states have a larger stake. The implication being that traditionally, taxes are seen to be a major obstacle to business activities and any argument for more state or related governance structures automatically implies the option of higher taxation (see below, 4). On our part, while not ignoring the advantages of market based economics, our research favours a more counter-balancing state leaning position. It is our conviction that deregulation policies of the past decades, including lower tax rates and numerous options of aggressively avoiding and evading taxes as well as the depletion of natural resources, did more damage than good to the common good of all.

A core aspect of today’s economical and ecological woes is the attitude towards and treatment of “private property”. While not questioning in principle that private property is the best institution to advance the common good of all, recent developments turned property ownership into an instrument to achieve unacceptable wealth concentration for the benefit of ever fewer people on the account of the many. Here, therefore, we share the view of those arguing that, if property is no longer a means of service to, but a means to rule over humans, intervention by states are not only justified, but called for – e.g. (Nell-Breuning, 1980).

The Catholic idea of empowerment and participation of people in managing their own affairs, as mirrored in the principles of subsidiarity and participation is also a useful argument in favour of tax collection and tax spending within a democratic context. Here, CST aligns with the Tax Justice Networks 5 Rs, especially “representation”.

This research finally follows CSTs ongoing attempt to correct imbalances in the relationship between capital and labour. Here, for examples, a review of all tax privileges is appropriate which private and corporate wealth holders enjoy over labour.

3.3 Direct relevance

While principles and values of CST are useful for determining tax related positions, there is (so far) very little written directly upon tax and tax justice related issues. This deficit has been stated already by Nell-Breuning in his work on society and social justice in 1980, and little has been done ever since. This hesitancy is also due to CSTs reluctance to directly propose policy instruments. Even though and given the increasing debate about social injustice, some coherent views are emerging which are of direct relevance for the tax justice issue: It is our conviction that a case could be made towards the following

- Paying taxes is a legal obligation, which is tax evasion and other tax related crimes need to be prosecuted.
- Regarding the grey area of tax avoidance and “tax creativity” exploring grey areas between the legal, illicit and illegal, we are of the opinion that the payment of taxes, which are passed via processes satisfying the criteria outlined by Furger (see above, 2) is also morally obligatory and the letter as well as the spirit of the legislator should be observed.
- Taxes should be according to the Principles of Ability to Pay, which supports progressive taxation rather than regressive and Flat Taxes.
- Direct taxes are preferable to indirect taxes, because the latter disadvantage over proportionately the poor
- Unearned income and wealth needs to be taxed at much higher rates than earned income and earned wealth.
- Taxes and levies could be one way to curb the over-exploitation of natural resources and/or push back damaging consumption, e.g. carbon based fuels.

3.4 CST, private property, land ownership

Finally, a word about land ownership since this is one of our focal points for taxation, which is embedded in CSTs position towards private property. In CSTs earlier times, the Popes advocated for redistribution within society via wages or ownership in real property (land, shares of companies) to address poverty. This was during the era before taxation became the norm. CSTs view of private property is very different from neoliberal understanding of private property. For CST, both markets and private property are the best-known instruments to ascertain the best possible utilization of earthly goods for the largest possible number, i.e. there is always a social dimension, or mortgage (John Paul II) to private property. For neoliberals, however, the notion of private property is absolute and any social dimension is at best secondary and at best outflow of utility calculation. More specifically, regarding CST’s view towards the use of real estate and goods above (farming) or below (minerals). All that is meant for the benefit of all, not only those possessing a land title, i.e. here applies the Principle of the Universal Destination of Goods. If, so Nell-Breuning, a concentration of goods in the hand of the few transforms from service into an instrument of rule and dominance, the state is not only

entitled, but called to ensure the Social Dimension of real property – and this, in the purview of this research entails the use of taxation instruments to attain this goal.

4 Alternatives to taxation?

A final question depending on varying a priori values and assumption is the question, whether other alternatives are more suitable to combat inequality and poverty than taxation and a tax transfer based system of redistribution. Such differences can even emerge within a given world view, depending on the interpretation of underlying and guiding norms. Regarding CST, for example, it depends whether related discussions take place in an Anglo-Saxon (Booth, 2007a) or European-Continental/African discussion, as this research does.

This research takes the position that all extremes militate against the common good and only a balance between markets on the one side and state-government-democracy on the other can address inequality. Equally one has to be aware that advocacy for taxation does not inhibit private and other positive initiatives of individuals and corporations. Taxes affect consumers' behaviours, triggering economic changes that regularly shift some or even the entire economic burden of a tax to other parties, and alter total output and incomes. Taxes determine the mix of what people are willing to produce in their roles as workers, savers, and investors.

Therefore this research argues that taxation policies, laws and administration, should take place within the setting of a market economy working for the benefit of the many rather than the few. Successful and paradigmatic examples in our eyes are Lloyd George's 1909 „the people's budget“, Roosevelt's New Deal, or Ludwig Erhard's Social Market Economy (with many inspirations of CST contained!). All of them contained provisions for direct progressive taxation and social security, but they also regulated markets, prevented dominance of monopolies and oligopolies, encouraged small and medium businesses and empowered people. Within such a setting, also parity of capital and labour is important when it comes to the decisions how a business is operated. However, to implement such market reforms requires time and political resoluteness.

And until then?

There is a “very grave responsibility” (Pope Pius XI) upon private and corporate wealth holders to assist the poor. CST prefers traditional private initiatives and choice when determining, how “surplus income and wealth” could be brought to fruition for combating poverty, e.g. via (1.) redistribution of property, (2.) investment in jobs, (3.) foundations or (4.) charitable donations. Whereas redistribution of property was a rather time-bound discussion and is not a realistic option nowadays, options 2-4 are widely debated. For an adequate assessment of Pros and Cons, in the view of this research, a number of factors need to be considered when asking the question “Cui Bono?”, “Who profits most from those alternatives?” It is therefore recommended to ask the following questions;

- How does it relate to the payment of a “fair share of taxes”?
- What is the overall usefulness/“justice gains” to the larger community?
- What are the savings and gains in the policy initiative?

- What are the tradeoffs i.e. what do they give, what do they keep?
- Who is determining and participating in the spending decisions?

It seems to us, when looking at the development of poverty and inequality over the past decades, that those with high income and wealth do not live up to this moral obligation to a satisfactory extent. Furthermore, as can be shown when discussing alternatives, there are many reasons that alternatives serve more the interests of private and corporate wealth holders than the disadvantaged and poor. Most importantly, alternatives are ways for private and corporate wealth holder to keep control of their assets and their spending, there is hardly any democratic participation and oversight.

Because of this we feel that increasing the tax base coupled with higher taxes on wealth and other forms of mandatory contributions are preferable in order to finance redistribution to achieve more equity in our societies.

5 Conclusion

In accordance with CST we hold the view that taxation is perhaps not the best way to address inequality, poverty and governmental dependence from external finance – if considered in isolation. However: Taxation is one instrument in the hand of states to both correct market malfunctions directly and to counterbalance consequences of market malfunctions via redistribution of revenue. In the first case, a Carbon Tax would, for example, prevent businesses from over polluting the environment, in the second case, the situation of the poor can be improved by providing access to education.

Under the principle of efficiency, taxation has function of reducing distortions in the overall economy as economic agents pursue profits. In this regard taxation aims for the common good by extracting revenues from high income earners and corporations and directing the same towards public investments which benefit the greater part of the population. Hence, taxation may be viewed as a rent for the economic space occupied by individuals and corporations. This justifies the argument that corporations and individuals who derelict payment of taxes appropriate for their respective income category in effect exert harm to the common good as there are free riders or pay less rent than the economic space they occupy hence abusing the nation's capital stock than they actually contribute to it. Therefore, we hold the conviction that our proposals for tax justice are part of the larger package of reforms which are being advocated across the breadth of the world in the endeavor to create a more just and more sustainable and equitable global society.

Overall, CST principles and values can provide for a number of criteria whose best possible observance in formulating tax laws and policies assists in determining whether the outcome is more just than existing tax instruments and its impact upon the living conditions of the people in Germany, Kenya and Zambia. For example: A more just taxation advances the Common Good of (ideally) all by considering the following;

- goal of generating revenue
- context and options of globalization,

- interests of present and future generations,
- balance between equality and proportionality, nationally and internationally,
- serving function of markets and capital and the dignity of labour,
- sustainability of the utilization of natural resources,
- effective ways to spend the collected revenue (no explicit focus of this research).

In the argument regarding the extent of state intervention in the economy and what should be left to the operations of the markets we hold that taxation is one instrument that the state uses to regulate market failure. But what instruments exactly and how (long) they should be applied: In any plural society those answers are likely to diverge widely.

As a starting point for any solution oriented discussion, we recommend the following premises and sequence of questions:

1. What should the state do/what does he have to do and should not leave it to others, e.g. private and corporate initiative?
2. What should that cost/what costs are justifiable?
3. Where should this money come from?
4. How could this money be collected?

Depending on the answer to these questions, the discussion on policy recommendations will be determined. In resolving differences and tensions, the criteria presented in this chapter could be used for impact assessments upon the poor when new laws and policies are introduced, followed by a rating of competing alternatives.

Therefore, from the arguments advanced above, and as a research team;

1. We reject market based options to cope and/or reduce public debt such as privatization or Public Private Partnerships, since long term disadvantages outweigh short term gains.
2. We are skeptical if private and corporate initiative shall gain weight when it comes to fighting poverty, as decided at the Financing For Development Conference in Addis Ababa, as long as those initiatives are not incorporated in a wider, democratically controlled plan
3. We advocate for the improvement of public institutions, e.g., health care and education rather than the separation and creation of a distinction between public and private institutions in those areas.

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