

to treat such constituents with equal concern), I believe they cannot ignore the duty of their contracting partners to treat their own citizens with equal concern either. In other words, even though the intergovernmental agreement does not give rise to new normative requirements, it cannot purport to act justly by relying on their partner-states to completely mediate justice if such states purport to implicate the will of their own people without treating them with equal concern.

Unlike other agreements between legitimate sovereigns, a multilateral arrangement that provides legitimacy in one country by increasing illegitimacy in another cannot provide the necessary justification since, although officially based on the consent of the two countries, such consent is no guarantee for justice. For justice to prevail, I argue, a multilateral regime should be bound by the ability of each state to supply domestic justice. A regime that does not actually support states' ability to provide domestic justice is illegitimate because the states — on which the regime's legitimacy is grounded — similarly lack legitimacy in the absence of such justice. This position will probably be endorsed by non-statists (who may argue that the multilateral accord in itself imposes increased such duties of justice), but — I argue — statist as well cannot hide behind the alleged state-mediated justice, when the multilateral accord in itself creates injustice within some of the cooperating states.

The rhetoric of multilateral cooperation makes it sound as though any cooperation will inevitably be justice-promoting and, therefore, desirable. However, the fact of the matter is that this is not necessarily the case, for not all states are cut from the same cloth. Hence, cooperation that may be unquestionably justice-promoting for some states could result in completely different outcomes for other states. To demonstrate this, I consider an admittedly hypothetical version of harmonization and examine whether cooperation among nations designed to sustain domestic justice does, indeed, necessarily produce a just solution.

Imagine a multilateral regime in which the cooperating states agree to impose a unified tax of X% above the value of the public goods each state provides, in order to facilitate redistribution (that is, the X% collected by each state will be progressively distributed among its constituents). Proponents of harmonization present this result as indisputably just, as it allows states to redistribute wealth domestically by taxing mobile capital.

Such a scheme could, however, entail asymmetric results for residents of different countries. While in some countries (call them "rich countries"), which are mainly *capital-exporting countries*, the government will, indeed, be better able to collect taxes from capital owners (and thus able to redistribute wealth), this will not be the case in what we would call "poor countries," which are primarily *capital-importing countries* and, I would assume, more typically

developing countries. In these latter countries, local factors of production (most importantly labor) benefit the most from foreign investments.⁹² The increased tax imposed by a universal regime on cross-border investments (and the tax wedge it creates) could reduce the level of foreign investment in such capital-importing countries and, with it, the demand for local labor. This regime therefore comes at a cost to local labor. True, a harmonized tax regime may allow host countries to collect more tax revenue from incoming investments and to collect taxes from their own capital owners investing overseas. Such taxes, however, will not necessarily compensate local factors of production for the lost inbound investments, for a number of reasons. First, the amount of outbound investments (and tax revenues collected therefrom) might be small relative to the inbound investments being lost. Second, the enforcement abilities of such countries on foreign-source income might be limited. Thus, even if they have the right to tax foreign-source income, they might not be able to enforce this. Third, these countries might rely on consumption taxes rather than income taxes; thus, again, the right to tax income will not necessarily be translated into greater or more progressive tax revenues. And fourth, they might suffer from capture by the rich as well as by multinational corporations or even from corruption; thus, the taxes that do get collected may be used to benefit interest groups rather than the public at large. If host countries are, in fact, unable to collect enough taxes to compensate labor for their lost wages, cooperation might not be a good idea from a distributive perspective. Although in residence countries, governments may be better able to tax capital owners in order to redistribute wealth to labor, in host countries, labor may be harmed by the coordinated regime, with labor in those countries paying for the redistribution to labor in residence countries.

Of course, residence countries could give a larger share of the increased revenues to host countries and thereby balance the gains and losses across national borders. But should they? Assuming the residence countries wish to do the right thing, is there a duty of justice for them to (re)distribute these benefits? This, of course, is the question at the heart of this Article: Does the cooperation in itself impose a duty of justice on the cooperating states? Cosmopolitans will surely support such redistribution between states. In fact, they would likely recommend completely ignoring any state-structured cooperation and have the multilateral mechanism directly redistribute wealth among the people of all countries.

92 By contrast, local capital owners in poor countries may actually lose from a higher supply of capital from foreign investments (since the return to capital within the country may fall).

For statist, however, the answer is more complex. I believe that even statist would not deny that such a multilateral regime is no more than a bargaining move by sovereign states and therefore entails no duty of justice. When harmonization helps (some) states to promote domestic justice, it seems desirable. If, however, it impairs justice in other countries, the cooperation agreement itself loses legitimacy. When the regime promotes domestic justice within some of the states but does injustice in others, it seems that the cooperating states cannot hide behind the argument that the will of the people of such states is completely mediated by the state. As stated above, the cooperating states cannot entrust the multilateral regime with anything short of the power to enable them to treat their constituents justly. The (legitimate) power to help other states regain their coercive power is accompanied by a requirement that this bargained-for power is not used to treat domestic constituents unjustly. Otherwise, (rich) states will be using other (poor) states' illegitimate coercive powers in order — allegedly — to gain legitimate power to promote justice within their own borders.

If the multilateral regime undermines domestic justice in some states, other states cannot legitimately gain coercive powers with the help of that regime. Thus, an international regime would not be legitimate, even when it brings justice to some states, if it renders injustice in other states.⁹³ My argument suggests that when (rich) states need the cooperation of other (poor) states in order to promote domestic justice, their bargaining position is constrained by the requirement that justice within their cooperating partners not be compromised. It is — I argue — unjust for a state to promote domestic justice at the expense of justice in other states.

A regime that is built on injustice in some states cannot resort to the theory of bargaining to claim that justice is completely mediated by sovereign states. The states that operate unjustly are illegitimately using their sovereign powers (i.e., their coercive as well as their bargaining power). The rich states cannot legitimize their justice-based domestic coercive power on an agreement that causes domestic *injustice* within their cooperating states. A multilateral regime established through cooperation is justified in promoting justice *if and only if* it improves (or at least does not worsen) the welfare of the least well-off in all cooperating states.⁹⁴ Consequently, a multilateral agreement that pursues harmonization will only be valid if it ensures domestic justice in all states involved.

93 Nagel considers a similar arrangement (allowing poor countries to preserve their comparative advantage in low-cost labor in trade agreements) to be humanitarian in nature rather than a duty of justice.

94 See *supra* note 82.

CONCLUSION

Although in theory, states could cooperate to maximize global welfare and justly distribute it by transferring wealth from richer to poorer countries, the prevailing decentralized nature of international taxation creates some serious coordination problems. Assuming transfer payments between states to be utopian and that promoting redistribution in rich countries at the expense of the poor in poor countries (without such transfer payments) is unjust, I suggest (in my forthcoming book⁹⁵) a third and, I believe, more viable option, namely, to perfect, rather than curtail, tax competition. I propose that countries work together in an effort to perfect tax competition by targeting market failures such as externalities, information asymmetries, and strategic behavior. These classic inhibitors of competition translate, in international taxation, into issues of tax avoidance and tax evasion, local corruption, and governmental cartels.

Some of these issues (particularly tax evasion and avoidance) are currently being given serious attention in international tax policy circles (notably the BEPS report); others (corruption and cartels) less so. Although avoidance, evasion and corruption could encourage the flow of more capital into certain host countries, both create externalities, so that instead of paying the “real” competitive price for public services, taxpayers are free-riders who enjoy the benefits of their countries of residence (in the case of evasion) and/or of their host countries (in the case of corruption) at little or no cost. Evasion and corruption also increase transaction costs and entail information asymmetries. Hence, cooperatively fighting corruption and evasion through such measures as a global exchange of information could bolster efficient competition.

To avoid cartelistic behavior among states, a multilateral antitrust agency could be created. Ideally, such an agency would work to disband cartels of states that are crowding out competitors, to prevent them from increasing cartel profits at the expense of less powerful actors, and to reduce governmental waste. The likelihood of securing such a limited and perhaps less glorious type of cooperation is unclear. Yet there is certainly some room for optimism: such a regime would potentially increase the global welfare pie by diminishing transaction costs, free-riding, and other market failures, as well as more justly distribute this added value. Although this type of cooperation would also come up against strategic challenges, I believe a careful design of the governance of these cooperative mechanisms could help to secure this more modest, but more distributively-just regime.

95 TSILLY DAGAN, *INTERNATIONAL TAX POLICY: BETWEEN COMPETITION AND COOPERATION* (forthcoming 2017).

