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Exploitation, international taxation, and global justice

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ABSTRACT
I investigate the central principle that underlies the OECDs tax base erosion and profit shifting initiative. The principle claims that (corporate) profits should be taxed where economic activities deriving the profits are performed and where value is created. First, I argue that its plausibility depends on establishing that states have an entitlement to the productive factors in their territory, and therefore to a share of the value created by employing those factors. Second, I maintain that this cannot presently be established. If states fail to discharge duties requiring wealth redistribution, they do not have an unqualified right to the productive factors in their territory. Even if they are not subject to such duties, states can only legitimately claim a share in the *fair value* of the goods created. I show that given widespread exploitation in global value chains, the market prices of (intermediary) goods do not reflect their fair value.

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1. Introduction

In this paper, I investigate the central principle that underlies the Organisation for Economic Co-operation and Development's (OECD's) tax base erosion and profit shifting (BEPS) initiative. The principle – which in recent years has been very widely endorsed by governments, businesses, and international and non-governmental organisations – claims that (corporate) profits should be taxed where economic activities deriving the

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profits are performed and where value is created. I seek to explain what kind of normative theory supports this principle and subject the principle to a critique. The argument will proceed as follows. I start in section 2 by suggesting that the principle allocates the tax base (corporate profits) in accordance with market prices of internationally traded (intermediary) goods and services. The appropriateness of this allocation is best understood as grounded in the dominant society of states model of international relations, according to which states have an entitlement to their wealth and resources, and may therefore claim a rental share in the value produced in their territory. I then argue that, in the present context, high-income states cannot make a legitimate claim to a rental share of the full value (as reflected in market prices) created in their territory. In section 3, I show that trade data indicates that global value chains (GVCs) generally have the shape of smile curves. High-income countries mostly engage in high value-added activities such as research and development while low-income states mostly engage in low value-added activities such as resource extraction and manufacturing. This distribution of added value in GVCs is unjust, I argue in section 4, because and insofar as it is the result of the exploitation of labour in low-income countries. I do so on the basis of a distributive injustice conception of exploitation. The workers who suffer human rights deficits or do not receive a living wage capture an unfairly small a portion of the value added in global value chains. In section 5, I conclude that, given the prevalence of such labour exploitation, states have no unqualified entitlement to a rental share in the value produced in their territory. First, as long as states have not discharged their redistributive obligations (if any) to alleviate conditions of exploitation, they cannot legitimately claim an unqualified entitlement to the wealth and resources in their territory, nor, therefore, to a rental share in the productive use made of those resources. Second, their claim to a rental share is limited to a share in the fair value of the economic products. Given the widespread exploitation of the global working poor, the market prices of (intermediate) goods traded in GVCs do not reflect their fair value, and low-income countries are due a greater share of the tax base than these market prices indicate. In section 6, I briefly suggest an alternative to the to the OECD's attempt to tax where value is created.

2. Taxing where value is created and the society of states

Recent years have seen intense debate about how best to prevent what the Organisation for Economic Co-operation and Development (OECD) calls tax base erosion and profit shifting (BEPS). With the reduction of trade barriers and capital controls in last decades of the previous century, states have been pushed to use attractive tax environments to compete for increasingly mobile economic factors. Multi-national enterprises (MNEs) have been able to use this competitive environment to significantly decrease their tax burden. The OECD estimates conservatively that 4%–10% of global corporate income tax revenue (100–240 billion USD annually) is lost to BEPS (OECD 2015: 4). Low-income states are affected most severely, since they have difficulty offsetting a decrease in corporate income tax revenue by shifting the tax burden to less mobile economic factors. (Avi-Yonah 2000; Dietsch 2011). Some have estimated the revenue loss of low-income states to be greater than the combined foreign aid budgets of high-income states (Christian Aid 2008).

In response, the OECD, backed by the G20, has in its BEPS initiative proposed a large number of policy proposals that should prevent base erosion and profit shifting in the future. While there is some disagreement about whether the proposed measures are appropriate and sufficient, a remarkable consensus is emerging about the principle underlying the initiative. In 2013, the G20 maintained in its Saint Petersburg Declaration that '[p]rofits should be taxed where economic activities deriving the profits are performed and where value is created.' (G20 2013: 12) The principle that taxes should track value creation (from now on 'the principle' for short) has since been almost universally endorsed. It is at the very core of the OECDs BEPS initiative, with many of the actions being explicitly aimed at aligning the taxation of corporate profits with value creation (see e.g. OECD 2015), and was recently reaffirmed in the 'Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting', signed in 2017 by representatives of over 70 countries. It also underlies other prominent international tax reform initiatives such as the EU's 'Anti-Tax Avoidance Directive' (EU 2016: 1) and its plan to implement a Common Consolidated Corporate Tax Base (European Commission 2016: 2). Non-governmental organisations and advocacy groups, including Oxfam, ActionAid, Christian Aid, Tax Justice Network and the Fair Tax Mark (2015), have affirmed the principle as essential prerequisite for fair corporate taxation. (Christian Aid 2011: 4; Oxfam *et al*. 2015: 15; Tax Justice Network 2016: 8) For instance, the Fair Tax Mark, which accredits businesses who are 'good taxpayers', writes that the 'basic premise of the Fair Tax Mark' is that a business seeks 'to pay the right amount of tax (but no more) in the right place at the right time, where "right" means that the economic substance of the transactions undertaken coincides with the place and form in which they are reported for taxation purposes'. (Fair Tax Mark 2014: 8) Companies are increasingly taking such calls to heart. A 2016 review of statements on tax strategies published by FTSE 100 companies revealed that about 25% are committed to 'paying the right amount of tax where value is created'. (Forstater 2016) Finally, the principle also regularly appears in the growing philosophical literature on international taxation. For instance, in his influential recent book *Catching Capital: The Ethics of Tax Competition*, Peter Dietsch arguably defends a version of the principle: he maintains that companies are liable to pay tax 'where they benefit from public services and infrastructure' (Dietsch 2015: 82–83), that is to say, where they employ economic activity. (Dietsch 2015: 85) It is then no overstatement to say, as the OECD has it, that '[n]early everyone seems to agree that taxes should be paid where value is created.' (OECD n.d.)

Before suggesting an explanation for this consensus I clarify the meaning of the principle, which is ambiguous in two ways. First, in some expressions – such as in the Saint Petersburg Declaration – it includes a conjunction of two potentially divergent aspects of corporate profit-making, as it requires taxation where 'economic activities are performed' and where 'value is created'. Second, the OECD in its many BEPS documents and reports, perhaps surprisingly, never defines what it means by 'value'. I propose the following reconstruction of the OECD's position. It is based fact that the principle is supposed to justify implementations of the 'arm's length principle' in transfer pricing (See for instance OECD 2015). The arm's length principle requires that that the prices of transactions between affiliated parties (such as subsidiaries of an MNE) are set in accordance with market prices, or in accordance with the price that would be agreed upon between two unrelated market participants operating at arm's length. In global value chains (GVCs), where several subsidiaries contribute intermediate goods or services to the final products, MNEs can, in the absence of the arm's length principle, lower their tax burden by manipulating the prices of (intermediate) goods transacted between their subsidiaries. For instance, if an entity in a high-tax jurisdiction sell an (intermediate) good significantly below market price to an entity in a low-tax jurisdiction, a higher percentage of the profit of the sale of the final good can be booked in the low-tax jurisdiction. Such transfer price manipulation, the OECD maintains, 'can lead to outcomes which do not correspond to the value created through the underlying economic activity carried out by the members of an MNE group' (OECD 2015: 9). This implies that the OECD takes the arm's length market price of an (intermediate) good or service as equivalent to its value. The arm length's principle, if applied correctly to transactions between subsidiaries in multiple jurisdictions, would ensure that profits derived from supply chain are allocated in accordance with where value, understood in terms of arm's length market prices, is created. This also clarifies that the first part of the conjunction in some formulations of the principle (requiring taxation where 'economic activities are performed') is otiose. The OECD understands (the degree of) economic activity in terms of the (the degree of) value creation, since what ultimately matters – as the OECD's treatment of transfer-pricing indicates –

is that profits are allocated in accordance with where value, understood in terms of market prices, is created.[1]

What could justify such allocation? On the assumption that we can identify the geographical location of the economic activity, why might the state controlling that territory have a right to levy a tax on the profits realised by that economic activity? The most plausible answer relies on a model of international relations as a society of states.[2] The model conceives of states as independent and autonomous, entitled to shape their social, political and economic institutions as they see fit. They have obligations to respect a similar autonomy in other states by refraining from interfering in their domestic affairs and respecting their territorial integrity. They may also have obligations to come to the aid of those incapable of securing their most basic needs. However, there are no principles of international distributive justice: states are presumed to have an unqualified right to the resources they control and the wealth they create in their territory (For a discussion, see Beitz 1999: 65–66).

The philosophical literature contains several accounts of this internationalist position (e.g. Risse 2012; Ronzoni 2009). Here I focus on the classic and most prominent defence provided by John Rawls. Rawls accepts that states have a duty of assistance to what he calls 'burdened societies', societies incapable of effectively realizing internally just political, social and economic institutions because of a lack of 'human capital and know-how' or 'material and technological resources' (Rawls 1999: 106–112). However, he does not think that they have an obligation to regulate economic inequalities between states in accordance with some principle of global distributive justice. He justifies the exclusive jurisdictional authority over a territory in analogy with the institution of property. Property incentivises agents to maintain and cultivate assets that would otherwise deteriorate or be wasted.

[1]This raises the question whether Dietsch is committed to the principle as understood by OECD. In the case of MNEs, Dietsch glosses the requirement that tax should be paid where natural and legal persons benefit from services and infrastructure, in terms of 'where their substantive activities take place' (Dietsch 2015: 85), which he in turn proposes to capture in a formula that includes factors such as property, sales and payroll (Dietsch 2015: 107). As he admits the possibility of modifying the formula to reflect morally relevant considerations, he is not committed to equating, as the OECD does, economic activity with value creation understood in terms of market prices. Having said that, he leaves unquestioned the assumption that the economic factors included in the formula (such as payroll) should be determined with reference to the market prices of those factors.

[2]The main alternative answer, to my mind, draws on a minimalist conception of justice that denies the existence of duties of justice beyond the state, except perhaps a duty of humanitarian assistance (e.g. Nagel 2005). This alternative has few adherents in the philosophical literature today. (For early critics of Nagel's position, see Cohen and Sabel 2006; Julius 2006). One reviewer for this journal suggests to me that another alternative could appeal to the argument that taxes must be paid as charge for the provision of public goods, which are crucial to the creation of economic value. My response is that such 'benefit-based' arguments implicitly trade on the society of states model of international relations in order to establish that the MNEs profiting (rather than, say, the local population) must pay for the provision of public goods.

Similarly, the institution of jurisdictional authority incentivises states to cultivate their land and resources (Rawls 1999: 8, 39). He further denies that national prosperity depends on access to resources, but rather on 'the political culture, the political virtues and civic society of the country, its members' probity and industriousness, [and] their capacity for innovation' (Rawls 1999: 108). For these reasons it would be inappropriate to require the redistribution of wealth across state borders. He asks us to consider the following example: take two countries with effective political and social institutions at the same level of wealth. The first decides to industrialise while the other 'preferring a more pastoral and leisurely society' does not. Since the resulting wealth inequality is the result of the autonomous choices of the respective states, it is inappropriate to require the former to redistribute its newly acquired wealth to the latter (Rawls 1999: 118).

Since, on the internationalist position, states are entitled to the productive economic factors they control (such as capital, natural and technological resources), they are also entitled to benefit from the productive use that is made of those economic factors. They may do this by charging rent. This is what Musgrave and Musgrave (1972: 73) call the national rental principle. States may tax individuals and MNEs who create value by making productive use of the economic factors in their territory. The tax represents the share of the states' contribution to the value created. On this account, profit shifting by MNEs, for instance by means of transfer mispricing, prevents states from taxing the economic value derived from the resources to which they are entitled. Hence, the principle that taxes should be paid where value is created accords with the dominant society of states model of international relations. This must explain much of its attractiveness.

3. Smile curves in global value chains

In this section I argue that, based on the distribution of value creation in global value chains (GVCs), the principle entails that the tax base should be allocated predominantly to high-income OECD countries. In the subsequent sections, I contend that this is unjust, and that the principle should not therefore, at present, be relied upon in the reform of the international taxation regime.

Trade liberalisation, the increased ease of communication, and reduced transportation costs, among other things, have made it easier and more lucrative to develop geographically fragmented production processes. Global value chains contain 'all functional activities required in the process of value creation' (Banga 2013: 6). Such activities include research and development, product design, the sourcing of materials, manufacturing and assembly of intermediate and final products, packaging, branding,

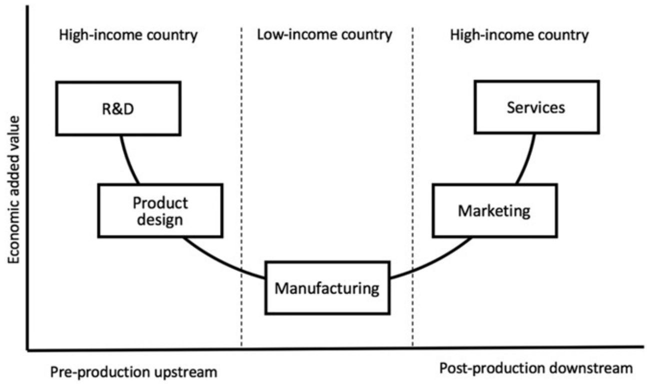

Figure 1. Based on Gereffi and Fernandez-Stark (2016: 14).

marketing, and the transport and sale to the consumer. GVCs may include unrelated market parties or they can be fully integrated, entirely made up of the economic activities of controlled entities of one MNE. (For a typology see Gereffi, Humphrey, and Sturgeon 2005). Each of the activities in the chain increases the value of the final product, with the price paid by the consumer forming the sum of the added value of each of the activities in the chain.

When considering the distribution of value-added in GVCs two aspects stand out. First, the distribution of value-added along the value chain generally looks like a smile curve. (Gereffi and Fernandez-Stark 2016: 14). The gains are very unevenly distributed between participants in value chains with most of the value being added at the beginning and the end of the production process. Activities such as product design and research and development, upstream, and marketing and branding, downstream, are generally high value-added activities, while manufacturing and assembly midstream are low value-added activities. Second, high value-added activities are mostly located in high-income countries while low value-added activities are mostly located in low-income countries (see Figure 1).

A recent study on the geographical distribution of value-added generated within GVCs of manufacturing products estimates that 55% of value is added in 21 high-income countries (Australia, Canada, the United States, Japan, South Korea, Taiwan, and the 15 countries that joined the European Union before 2004). (Timmer *et al*. 2014: 110) It also notes a strong trend (between 1995 and 2008) of value-added activities shifting further towards capital and highly skilled labour, away from less-skilled labour. In 91% of the value chains the share of low-skilled value added decreased with an average decline of 5% (Timmer *et al*. 2014: 108). This finding, the authors note, is consistent with argument that the reduction of capital controls has led to a decline in the bargaining power of labour around the world (Timmer *et al*. 2014: 109). Another study, based on OECD-WTO data, estimates that globally 67% of total value created in GVCs accrues to OECD countries while only 8% of total value is added in low-income countries (Banga 2014: 267). To give one famous example, several estimates of the value chain of Apple's iPhone, suggest that only a fraction of the value of the phone is added in China. One study found that of the total value of an iPhone, Apple itself captures 58%, which the study attributed to 'design and marketing', while just 1.8% or less than $10 is captured in China in the form of the labour costs of the final assembly. (Kraemer, Linden, and Dedrick 2011: 4–6) Another estimation shows that the iPhone's bill of materials mostly includes components of manufacturers based in high-income countries, with 34% of the value attributed to components sourced from Japan, 17% from Germany, and 13% from South Korea (Xing and Detert 2010: 4).

The geographical distribution of added value in GVCs provides a good indication of how the principle would distribute the tax base. If MNEs are taxed where they create value, they will mostly be taxed in high-income OECD countries. Low-income countries, generally engaging in low value-added economic activity, are allocated a small share of the tax base, while high-income OECD countries, generally engaging in high value-added economic activity, are allocated a large share of the tax base.

One caveat should accompany this general observation: taxes are included in the above-mentioned reported measures of added value. Indeed, Aguiar de Medeiros and Trebat (2017: 404) cite tax avoidance and profit shifting strategies as one important reason why the distribution of value-added in GVCs is skewed against low-income countries. If profits are shifted away from low-income countries, the added value recorded for those countries will be lower than it would have been in the absence of these practices. There are two reasons to think that this warning is inconsequential for the argument here developed. First, profit shifting within firms is not necessarily towards high-income states (which often, though not always, are high tax jurisdictions). Second, the above-mentioned added value trade statistics includes not only intra-firm trade but also trade between unrelated parties where presumably no profit shifting takes place. It is therefore safe to conclude that, given the enormous difference of value-added reported in high-income OECD countries and low-income countries (67% vs 8% of total global value created in GVCs), on the principle MNEs would be predominantly be taxed in high-income OECD countries, also in the absence of profit shifting.

4. Exploitation in global value chains

Is this allocation of the tax base fair? I will argue that it is not, and do so by questioning the appropriateness of the distribution of the value-added in GVCs. My argument is that the market prices of (intermediate) goods traded in GVCs are unjust and that these market prices therefore form an inappropriate basis for the allocation of the tax base. In this section, I outline the first half of that argument. I maintain, in brief, that market prices are unjust if they are based on exploitation and I conceive of exploitation as market exchanges against the background of distributive injustice. (Conversely, the fair value of an economic product is the market price established in the absence of exploitation, that is, against the background of distributive justice.) Insofar as the market prices of (intermediate) goods traded in GVCs are established against the background of distributive injustices, these prices are unjust. In the next section, I argue that market prices in GVCs therefore form an inappropriate basis for the allocation of the tax base.

I start by presenting some perhaps depressingly familiar facts about the labour-market position of the world's poor. The International Labour Organisation (2017a: 17) estimates that in 2016 there were a total of 783 million workers in developing and emerging economies who lived in working poverty (that is, below the World Bank poverty line of less than US$3.10 purchasing power parity a day). This included 49% of all workers in Southern Asia and 63% of all workers in sub-Saharan Africa (of which more than half lived in extreme poverty, on less than US$1.90 purchasing power parity a day). Many of these low-paid workers participate in the value chains of MNEs. In an assessment of worker compensation data in apparel and footwear factories in 2015, the Fair Labor Association (2016: 17) established that the average compensation in Bangladesh was below the World Bank poverty line, and less than twice the poverty line in Cambodia, the Dominican Republic, India, Sri Lanka, and the Philippines, leaving workers at risk of receiving compensations insufficient to meet the standard of a living wage. In a 2013 study of Unilever's supply chain in Vietnam, Oxfam found that the wages paid in Unilever's own factory, while exceeding the poverty line, were insufficient to meet the basic needs of the workers and their families according to several living wage benchmarks (Oxfam 2013: 9). China Labour Watch (2015: 1) found that in 2015 workers assembling Apple's iPhone's in a factory owned by the Taiwanese Pegatron Group were required to work overtime often in excess of the overtime permitted by China's labour laws, and that their pay before overtime – the local minimum wage – was insufficient to meet basic needs.

Not only are the global working poor confronted with very low wages, many suffer human rights deficits including slavery and child labour. In 2016, about 16 million people globally were victim of forced labour in the private economy, with forms of coercion including withheld wages, physical violence, and being locked in work or living quarters. (ILO 2017b: 10) In the same year a total of 152 million children (almost one in ten children worldwide) engaged in child labour, with nearly half of them in ways that directly jeopardised their health and safety. (ILO 2017c: 9) Over 80% of child labour took place in low-income and low-middle income countries. (ILO 2017c: 28) MNEs continue to be regularly confronted with such human rights abuses in their value chains. For instance, in 2016 the electronics giants Samsung and Panasonic faced allegations of worker exploitation in factories in Malaysia, where employees had their passports confiscated and were forced to work 12-h shifts assembling microwaves. (Pattisson 2016) In 2015, Human Rights Watch documented how workers in garment factories in Cambodia and Bangladesh producing apparel for such brands as H&M and Marks and Spencer, were subject to labour rights abuses, such as forced overtime, lack of rest breaks, and sexual harassment. (Human Rights watch 2015a, 2015b) Nestlé and other food companies continue to face difficulties rooting out child labour in the production of their cocoa. (Sandler Clarke 2015) And recently, Amnesty International reconstructed in painstaking detail how cobalt, extracted in the Democratic Republic of the Congo, entered the value chains of 16 companies, including Apple, Dell, LG, and Samsung. The mining operations included large numbers of children, who were paid about a dollar a day, facing significant health risks from direct exposure to cobalt and because of inadequate safety procedures and equipment (Amnesty International 2016; see also Johannisson 2013).

In response to such observations, commentators sometimes note that it may be counterproductive to implement stronger labour protection laws or higher minimum wages, as this could make these local economies less competitive, leaving workers unemployed and preventing further economic growth and poverty reduction (e.g. Wolf 2004: 187–188). Trade generally makes all participants better off even if some remain very poor in absolute terms. As one observer puts it pithily, 'the central challenge in the poorest countries is not that sweatshops exploit too many people, but that they don't exploit enough' (Kristof 2009). These points are immaterial to the argument developed in this section, although they become relevant below. The question is not what, if anything, we should do about the plight of the global working poor, but whether the global working poor are indeed exploited.[3] I argue that this question should be answered in the affirmative.

For the purposes of this paper, I conceive of exploitation as market exchanges made against the background of distributive injustice. More precisely, individuals are exploited if they suffer an injustice as the result of which their bargaining position in market exchanges is worse than it would

[3]See also Mathias Risse's response to Paul Krugman's claim that trade may benefit the poor even if they are paid very little. Risse answers that 'this misses the point. The usefulness of the concept of exploitation partly derives from its description of a problematic situation (unfair advantage-taking) that may be an improvement for all over an earlier state.' (Risse 2007: 366).

have been in the absence of the injustice. In cases of exploitation the resulting market prices are unjust, since they reflect the unjust bargaining positions of the parties in the exchange. I conceive of exploitation in this way for two reasons. First, it a version of a widely defended conception of exploitation, sometimes called a distributive injustice conception. (See in particular Cohen 1979; Roemer 1985, and for more recent discussions Mayer 2007a: 145; Snyder 2010: 192). Second, regardless of its plausibility as account of exploitation, it facilitates judgements about unjust price formation, based on antecedent judgements about the existence of distributive injustices. As such, it is well-suited for my purpose here, which is to argue that the in many instances the market prices of (intermediate) goods traded in GVCs are unjust.

The global working poor, insofar as they suffer human rights deficits and are unable to secure a minimally decent standard of living, are exploited, if being forced to accept work on those conditions (because alternatives would leave them even worse off) is unjust. There is broad agreement in the global justice literature that being in such a position is unjust. This conclusion is most straightforward on a cosmopolitan conception of global distributive justice which requires that individual advantages are fairly distributed between individuals globally (e.g. Caney 2009). Any such theory will condemn present global socio-economic inequalities as unjust and demand significant redistributive measures to decrease it. On the internationalist conception, defended by Rawls, the existence of extreme global socio-economic inequalities is not in itself a sign of injustice. What matters is whether states are capable of effectively realizing internally just political, social and economic institutions. Above-cited figures show that many low-income states are unable to do so. They are unable to effectively prevent human rights abuses in the workplace and ensuring that all workers receive a living wage (which any defender of the internationalist conception will agree is minimally required for a state to be internally just). These states are therefore owed (additional) assistance. Accordingly, while the bargaining position of the global working poor is not unjust because it fails to satisfy some principle of distributive justice that is global in scope, the internationalist would nevertheless condemn as unjust the absolute deprivation that force individuals to accept work that does not pay a living wage and leaves them vulnerable to human rights abuses (since in a world where the duty of assistance had been discharged, individuals would not have had to accept work on those conditions). Even global justice sceptics generally accept the existence of a duty of humanitarian assistance to those cannot secure for themselves a minimally decent life (although they might resist calling this a duty of justice strictly speaking) (e.g. Nagel 2005: 118).

While these conceptions of distributive justice may give conflicting accounts of what would be minimally acceptable labour conditions (and concomitantly conflicting accounts of the just price of labour), they all condemn the bargaining position of the global working poor as unjust. Many individuals in low-skilled jobs in resource extraction and manufacturing, from the Bangladeshi sweatshops to the Congolese mines, accept labour conditions (including wages below the World Bank poverty line or wages that are insufficient to meet their basic needs and those of their families) that they would not have accepted if justice had been realized. The market exchanges giving rise to these wages are therefore made against the background of distributive injustice. The implication is that the prices for low-value added economic activity in low-income countries are in many cases the result of exploitation and therefore unjust. These workers capture too small a portion of the value in GVCs in the sense that they would have commanded higher prices had they been able to refuse to work on unjust terms. Hence, we must conclude with Oxfam (2014: 4) that many workers in low-income countries receive an '[u]nfair share of value in the chain'. In a just world, the smile curves in GVCs would be considerably less smiley.

5. Exploitation and taxing where value is created

I now turn to the second part of the argument and argue that market prices in GVCs form an inappropriate basis for the allocation of the tax base. I present two arguments for this conclusion. The first argument questions the presumption that states are currently entitled to the resources and wealth they control. Recall that the national rental principle presumes that states are entitled to a share of the value created by the productive use made of the economic factors in their territory. The first argument contends that, given current global income inequality, states do not have such an entitlement. The argument is strongest on a cosmopolitan account of global justice that requires redistributive measures in the face of extant global wealth inequality. If high-income states must redistribute a significant portion of their resources and wealth to low-income states and they fail to discharge this duty, then they cannot legitimately claim an unqualified entitlement to the productive factors of their economy nor, therefore, to the extracted rents. The normative force of the national rental principle, in other words, is dependent on the absence of distributive injustices. This undermines the applicability of the principle in the present circumstances. On the internationalist conception of global justice the same conclusion follows if the duty of assistance requires wealth redistribution. The aim of the duty of assistance, recall, is not address intra-state wealth inequalities as such, but to ensure that all states have the capacity to ensure just internal social, political and economic institutions. Rawls suggests that duty of assistance may generally be discharged by giving advice and technical support in capacity building, except in rare cases where immediate material support is needed to prevent human rights deficits caused, for instance, by famines. (Rawls 1999: 108–109) I will come back to this below. For now I note that if the duty of assistance requires wealth redistribution, and if high-income states fail to discharge this duty, then the conclusion follows that high-income states have no unqualified entitlement to the resources and wealth they control.

The second argument does not question that states are entitled to the wealth and resources they control, but notes that the national rental principle only has plausibility when the value of the tax base (corporate profits) is realized in fair market exchanges. According to the national rental principle, states have a right to a share of the value created by the productive use that is made of the resources and wealth they control. Such claims to rental payments, however, are limited to a share *in the fair value* of the economic products that are taxed. If the prices of these economic factors are higher than they would have been in the absence of exploitation, the state would claim a share in ill-gotten gains, which is illegitimate. In the previous section, I have sought to show that market prices of the (intermediate) goods in GVCs are in many cases unjust. They are the result of exploitation, established in exchanges against the background of distributive injustices. The workers who suffer human rights deficits or do not receive a living wage capture an unfairly small a portion of the value added in global value chains. Given the widespread exploitation of the global working poor, the market prices of (intermediate) goods traded in GVCs do not reflect their fair value, and low-income countries are due a greater share of the tax base than these market prices indicate. To allocate the tax base in accordance with where value is created (where by value is understood the market price of a good or service) is to enable high-income countries to share in profits extracted by means of exploitation of the global poor. At present, we should therefore reject the principle as guide in the reform of the international taxation regime.

David Quentin has recently argued for a similar conclusion on the basis of a different argument. He emphasizes that GVCs are often characterized by relationships of domination and control between the lead firms (usually located in high-income countries) and the sub-contractors and suppliers, and that market prices may not reflect value creation because of rent-extraction that is attributable to these power inequalities: 'If part of the value added in a multinational group comes from forcing down the prices of squeezed suppliers further up the chain, it seems perverse or even positively unjust to say that the "value creation" is being effected in whatever jurisdiction the mechanisms of market domination are located' (Quentin 2017: 6). Hence, 'if the allocation of corporate profits to jurisdictions for tax purposes is to be conceptualized as an allocation of rewarding value creation in that jurisdiction' then the allocation of the tax base should reflect the possibility there might be 'more value created by manufacturers' than prevailing market prices indicate (Quentin 2017: 13). Quentin's argument is suggestive but leaves some questions unanswered. It does not explain the difference between morally acceptable power inequalities in market transactions and power inequalities that are exploitative and give rise to unjust price-formation. Nor does it explain why it may be appropriate that a jurisdiction is 'rewarded' for the value creation that takes place in its territory. The argument in the preceding sections is meant to show in what conditions the allocation of the tax base to jurisdictions is justified, why the market prices of the distribution of value-added in GVCs is unjust, and why it therefore forms an inappropriate standard for the allocation of the tax base.

6. Alternative

In this final substantive section, I briefly discuss and defend an alternative to the OECD's attempt to tax where value, understood in terms of market prices, is created. Musgrave and Musgrave offer a reform proposal in their work on inter-nation equity that would allocate a greater share of tax revenue to low-income countries. They suggest a progressive distribution of corporate tax revenue among states by means of a set of internationally agreed upon withholding tax rates that are inversely related to the per capita income of the source country (the country where the investment is made and the value is created) and directly related to the per capita income of the residence country (the country where the investor is resident). This would mean that the lower the per capita income of source country is compared to residence country, the higher the withholding tax is that the source country may apply to income accruing to investors from the residence country.[4] If residence countries guarantee capital export neutrality by means of tax credits, such a rate schedule would not deter

[4]Take the following example. Table 1, adapted from Musgrave and Musgrave (1972: 74), gives withholding rates applied by the source country on income accruing to investors in the residence country. If the source country is poor (with a per capita income of <250$) while the residence country is rich (with a per capita income of >1000$) the source country imposes a tax of 60% on that income. If, conversely, the source country is rich while the residence country is poor, the source country imposes a tax of 20% on that income. If two countries have the same per capita income the withholding rates would be the same (40%) regardless of which is the source and which is the residence country.

Table 1. Source country withholding tax rates.

	Per capita income residence country ($)		
Per capita income source country ($)	<250	250–1000	>1000
<250 (%)	40	50	60
250–1000 (%)	30	40	50
>1000 (%)	20	30	40

investment in low-income source countries (since the effective tax payed by the investor would be independent of the tax rate in the source country).[5] This proposal would distribute a greater amount of the revenue from corporation taxes to low-income countries. (Musgrave and Musgrave 1972: 74).

Two arguments support institutional reforms along these lines. First, such reforms can be justified as required by a duty of assistance. From the prevalence of exploitative labour practices in low-income countries, it appears that many are unable to effectively secure internally just institutions. On the internationalist account, wealthy states (capable of securing minimally just internal institutions) have a duty to assist these countries in developing the capacity to become internally just. Of course, discharging the duty of assistance can plausibly take many forms, mirroring the many ways in which states can be prevented from becoming internally just. Rawls himself noted the importance of the citizens' probity, industriousness and capacity for innovation. The ability to raise revenue for government spending, is no doubt an important means to such ends. Healthcare, education, and infrastructure all play an essential role in spurring economic growth and increasing citizens' productivity. For instance, commentators note that countries in sub-Saharan Africa spend far too little on paved roads, communication networks, and power generation, and that this 'infrastructure deficit' significantly limits growth and productivity. (Bevan 2012: 6). One estimate, based on growth-related and social demands for infrastructure, suggests that for entire region infrastructure spending should be about 15% of GDP, rising to 23% and even 60% of GDP in the fragile low-income countries in region such as Ethiopia, Niger and the Democratic Republic of Congo. (Foster and Briceño-Garmendia 2010: 58–59) For most of these low-income countries the recommended infrastructure spending alone far exceeds the entire government budget. Low-income countries generally have difficulty raising revenue, as reflected in their tax take as percentage of GDP which is on average 13% (as compared to on average 35% for high-income OECD countries) (Moore 2013: 7). (That is why it is hard for them to

[5]For instance, when investors in a rich country pay a 60% withholding tax in a poor country, they are given a tax credit by the source country to cover the difference between the withholding tax and the tax that would have been levied had the investment been made domestically. This amounts to a transfer of wealth from the treasury of the rich to the poor country.

offset a reduction in the relatively easy to collect corporate income tax due to increased tax competition.) These figures suggest that assistance to these low-income states may be (partly) discharged by reforming the international taxation regime so that a greater share of corporate tax revenue of MNEs is allocated to low-income states. It would allow them to invest in infrastructure, so increasing economic growth, making their economies more competitive, and ultimately helping them to improve the labour market position of their populations. Analogous arguments can be made with regard to increasing public spending on education and healthcare, which are also generally recognized to be instrumental to economic growth (e.g. Bloom and Canning 2008). The appropriateness of this way of discharging the duty of assistance is especially salient if exploitation is structural. Structural exploitation occurs when market conditions are such that employers cannot offer jobs but on exploitative conditions, and are therefore confronted with a dirty-hand dilemma of sorts where halting the exploitative labour practices would leave their workers jobless and in an even worse condition. (Mayer 2007b: 610) In that case, tackling the exploitative practices directly, for instance by implementing stronger labour protection laws or higher minimum wages, may hinder rather than help country-wide labour productivity growth. (Powell and Zwolinski 2012: 451) In short, if public spending in healthcare, education, and infrastructure in low-income production countries increases economic growth and labour productivity (as a means to improving the labour market condition of the working poor), and if reforms of the economies of these low-income countries to directly address exploitation are counterproductive, then the duty of assistance may be discharged by means of reforms such as proposed by Musgrave and Musgrave.

The second argument supporting such reforms notes that if states wish to defend, on the basis of the national rental principle, the entitlement to tax profits of MNEs operating within their territory, they must accept that the allocation of these profits should be in accordance with the *fair value* of the (intermediary) goods created in each state where the MNEs are active. Insofar as the allocation of profits tracks the market prices of the (intermediary) goods (rather than their fair value), and these market prices are partly shaped by exploitation in low-income production countries, high-income countries are allocated too great a share of the profits of MNEs. In that context they have a negative duty not to continue to appropriate wealth that they have no entitlement to. Engaging in reforms such as proposed by the Musgraves can help ensuring that low-income countries are allocated a greater share of the tax base, as the national rental principle demands in this context. By failing to engage in such reforms, the members of the OECD would fail to discharge their negative duty not to illegitimately share in ill-gotten gains, namely that part of the profits of MNEs that is allocated to them by virtue of the fact, and to the extent that, labour practices in low-income countries are exploitative. That wealth (assuming the veracity of the national rental principle) rightfully belongs to the low-income countries where the exploitation takes place. (This argument is reminiscent of the negative duty-based argument for global institutional reform found in Pogge 2002; 2005).

7. Conclusion

I started this paper by noting the emerging consensus on the appropriateness of the principle that taxes should be payed where value is created. This consensus can perhaps be explained by the fact that the principle is supported by the dominant society of states model of international relations. However, the argument in this paper has shown that even on that model there is, at present, sufficient reason to reject the principle as guide in reform of the international taxation regime. The OECD's BEPS initiative, when implemented, may have capacity to curtail the profit shifting of multi-national enterprises (MNEs). However, insofar it ensures that MNEs pay tax where they create value, and value is understood in terms of market prices, it above all protects the tax base of OECD member states (where, as trade data indicates, 67% of all value in GVCs is presently created). Seen from this perspective it is perhaps unsurprising that the OECD has been such a vocal proponent of the principle. (The objection that the OECD appears insufficiently attentive to the position of low-income countries has been made before. See eg. Brown 1999.) Less clear is why non-governmental organisations and advocacy groups such as Oxfam and Christian Aid have added their voices to this consensus. For instance, as noted above, Oxfam has claimed that labour in low-income countries often receives an unfair share in value chains. It is precisely on the basis of that claim I have sought to show that the principle unfairly allocates the tax base predominantly to high-income countries. Reasons of expediency and feasibility may of course prevent advocacy groups from voicing certain controversial positions. Yet, I hope to have shown in this paper that more explicitly redistributive reforms of the international tax regime, such as the proposal by Musgrave and Musgrave, can be defended as one way of discharging the duty of assistance and to help correct the wrong of high-income countries sharing in profits extracted by means of exploitation of the global poor. Such reforms deserve more vocal support than they currently receive.

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