

2023

Cosmopolitan Rights, Global Tax Justice, and the Morality of Cooperation

Carlo Garbarino
Bocconi University

Follow this and additional works at: <https://scholarship.law.ufl.edu/fttr>

Recommended Citation

Garbarino, Carlo (2023) "Cosmopolitan Rights, Global Tax Justice, and the Morality of Cooperation," *Florida Tax Review*: Vol. 23, Article 23.

Available at: <https://scholarship.law.ufl.edu/fttr/vol23/iss2/23>

This Article is brought to you for free and open access by UF Law Scholarship Repository. It has been accepted for inclusion in Florida Tax Review by an authorized editor of UF Law Scholarship Repository. For more information, please contact jessicaejoseph@law.ufl.edu.

FLORIDA TAX REVIEW

Volume 23

2020

Number 2

COSMOPOLITAN RIGHTS, GLOBAL TAX JUSTICE, AND THE MORALITY OF COOPERATION

by

Carlo Garbarino*

ABSTRACT

This Article addresses two related first-order questions about morality that enable us to discern solutions that address second-order questions in the specific policy context of regulation of tax competition and BEPS: (1) what kind of justice conception has sufficient normative support to undergird regulation attempts of this global phenomenon to ensure cosmopolitan tax rights? (the global tax justice question); and (2) what are the pre-conditions of effective cooperation, not based on immediate self-interest, that eschew a market-based approach to tax competition, enabling background conditions for the morality of multilateral cooperation? (the morality of cooperation question). The Article addresses the global tax justice question by discussing the Rawlsian premises to the concept of tax justice and its developments within the internationalist approach; the Article then shifts the focus on the cosmopolitan challenge to Rawls, which introduces, at least theoretically, the possibility of fundamental rights of global tax justice to then draw conclusions about three available normative options for the governance of tax competition and BEPS, which can be derived from the previous analysis. The Article then addresses the morality of cooperation question by examining current literature

* J.D., LL.M., Ph.D. (law), Professor of Law, Bocconi University and Senior Emily Noël Fellow, N.Y.U. School of Law. I thank the participants of the University of Gävle, Conference “Sustainable Taxation—Global Challenges and Legal Solution,” of April 8–9, 2019, for comments and suggestions. Email address: carlo.garbarino@unibocconi.it.

about non-self-interested cooperation, extending this analysis to the social sanctioning of tax competition, and concludes by proposing a broad first-order framework for second-order policy decisions.

I. INTRODUCTION: TAX COMPETITION AND GLOBAL JUSTICE.....	744
II. RAWLSIAN PREMISES AND THE INTERNATIONALIST APPROACH	749
III. THE COSMOPOLITAN CHALLENGE	751
IV. THREE NORMATIVE OPTIONS FOR GOVERNANCE OF TAX GOMPETITION AND BEPS	756
<i>A. Option 1: The Minimalist Rawlsian Approach.....</i>	756
<i>B. Option 2: Addressing Cosmopolitan Rights Directly with Global Institutions</i>	757
<i>C. Option 3: Moving Beyond the Minimalist Version of Internationalism Through Supra-National Arrangements.</i>	758
V. THE MORALITY OF NON-SELF-INTERESTED COOPERATION	760
VI. EXTENDING THIS ANALYSIS TO THE SOCIAL SANCTIONING TAX COMPETITION.....	765
VII. CONCLUSION	768

I. INTRODUCTION: TAX COMPETITION AND GLOBAL JUSTICE

In the traditional approach, human rights and taxation are linked as taxation is viewed through the lens of human rights. In this view, the problem of human rights is addressed only at the state level: state taxation has a fundamental role in the realisation of human rights since taxes are necessary for raising revenue and state fiscal policies are a crucial instrument to mitigate inequalities.¹

A new seminal aspect of the connection between human rights and taxation is, however, emerging in light of the new challenges of sustainable taxation: countries unilaterally reduce their effective tax rates to attract capital, thereby affecting the mobile capital base. When this occurs, there is “tax competition,” which has unwanted distributive domestic consequences and increases international inequality.

In addition to the race to the bottom of tax rates through measures taken by governments, a new epochal phenomenon known as “base

1. LIAM MURPHY & THOMAS NAGEL, *THE MYTH OF OWNERSHIP: TAXES AND JUSTICE* (2002).

erosion and profit shifting” (BEPS) has recently been identified by the international community and the OECD in a project launched in 2013. BEPS has runaway effects because it compounds the structural negative effects of tax competition: multinational enterprises (MNEs) meeting certain organizational and dimensional features deliberately pursue BEPS and develop strategies that often conflict with those of governments.

These MNEs operate in a sort of geo-political “meta-nation,” which is not defined by traditional state boundaries—and thus in a regulatory vacuum—when they are asymmetrically confronted with the limited regulatory reach of territorial states. So, they can be denominated as “Global Actors” that interact not only with markets but also with governments and their local communities of citizens. Global Actors employ top-down coordinated “aggressive tax strategies” leading to no or limited taxation of their global profits at the expense of citizens.

In summary: not only governments, but also Global Actors contribute to the current situation of unregulated tax competition compounded with BEPS. This situation is a thoroughly *global* phenomenon (full mobility of capital across the globe) that has idiosyncratic *local* impacts on individuals. There is a complex relationship between these global and local impacts, which can be termed as “impact-glocalization,” defined here as the integration of global and local impacts of tax competition and BEPS. This phenomenon combines the word globalization with localization² and identifies a new dimension of taxation, which should also be analysed in its anthropological post-modern dimension, a novel perspective.³

So, the relevant question is the following: if tax competition is a global phenomenon that permeates human communities, are the individual members of those communities entitled to human rights to be protected from the negative impacts of tax competition compounded with BEPS? Can these rights be independent from the direct operation of state organizations? Can we define a new brand of human rights in taxation in terms of tax “*cosmopolitan rights*”?

The current literature does not really engage these fundamental ethical questions—i.e., “first-order questions”—and instead directly

2. See Roland Robertson, *Glocalization: Time-Space and Homogeneity-Heterogeneity*, in *GLOBAL MODERNITIES* 25 (Mike Featherstone et al. eds., 1995).

3. See THOMAS HYLLAND ERIKSEN, *OVERHEATING: AN ANTHROPOLOGY OF ACCELERATED CHANGE* (2016).

poses policy questions—i.e., “second-order questions.” This Article endeavours to address these first-order questions, which decouple individual rights from the exercise of state powers, asking whether there are cosmopolitan rights independent from the traditional exercise of state tax powers. Moreover, this decoupling raises relevant theoretical questions of global tax justice, a territory that is still rather uncharted. So, also relying on the tools of political philosophy, this Article strives to understand whether tax competition combined with BEPS, in addition to being politically sensitive, is unjust from an ethical standpoint and violates basic human rights.

This Article thus addresses two strictly related first-order questions about morality that enable us to discern solutions to second-order questions in the specific policy context of regulation of tax competition and BEPS: (1) what kind of justice conception has sufficient normative support to undergird regulation attempts of this global phenomenon to ensure cosmopolitan tax rights? (the global tax justice question); and (2) what are the pre-conditions of effective cooperation, not based on immediate self-interest, that eschew a market-based approach to tax competition, enabling background conditions for the morality of multi-lateral cooperation? (the morality of cooperation question).

After this introduction about tax competition and global justice in which a normative approach is propounded to the problem, Part II of this Article addresses the global tax justice question by discussing the Rawlsian premises to the concept of tax justice and its developments within the internationalist approach; Part III then shifts the focus to the cosmopolitan challenge to Rawls, which introduces, at least theoretically, the possibility of a fundamental right of global tax justice. Part IV then draws conclusions about three available normative options for the governance of tax competition and BEPS, which can be derived from the previous analysis. The Article then addresses the morality of competition question by examining current literature about non-self-interested cooperation. Part V extends this analysis to the social sanctioning of tax competition.

Economists introduced economic efficiency (or economic neutrality) as a criterion for evaluating the interactions of national tax systems.⁴ The classic tax neutrality analysis strives to keep investment and

4. The standard model for allocating a tax base in a world where states impose varying tax rates was introduced by the seminal work of Peggy and Richard Musgrave. See Richard A. Musgrave & Peggy B. Musgrave,

business decisions tax neutral, i.e., unaffected by tax considerations. The existence of tax rate differentials has transformed these tax neutrality theories into policy recipes that are implicitly normative in so far as they recommend top-down parametric solutions that maximize global welfare by ensuring tax neutrality across the board under different conditions.⁵ This generates a predominant narrative in which tax competition is viewed as the result of inescapable market forces and evaluated in terms of market parameters. A very good example of this narrative is a recent book of international tax policy in which a proposal is made to foster tax competition by eliminating market failures rather than limiting it.⁶

By contrast, the claim made in this Article is that, when it comes to deciding whether tax competition should be allocated by the market or by non-market principles, the traditional approach by tax economics based on tax neutrality is a poor guide. This type of utilitarianism seeks to maximize global welfare without regard for its distribution while there is need of a revival of welfare economics that acknowledges the defects

Inter-Nation Equity, in MODERN FISCAL ISSUES: ESSAYS IN HONOR OF CARL S. SHOUP 63 (Richard M. Bird & John G. Head eds., 1972); see also Richard M. Bird & Jack M. Mintz, *Sharing the International Tax Base in a Changing World*, in PUBLIC FINANCE AND PUBLIC POLICY IN A NEW CENTURY 405 (Sijbren Cnossen & Hans-Werner Sinn eds., 2003); Peggy B. Musgrave, *Fiscal Coordination and Competition in an International Setting*, in RETROSPECTIVES ON PUBLIC FINANCE 276 (Lorraine Eden ed., 1991); Peggy B. Musgrave, *Sovereignty, Entitlement, and Cooperation in International Taxation*, 26 BROOK. J. INT'L L. 1335, 1336 (2001). For a more recent discussion on these issues, see Kim Brooks, *Inter-Nation Equity: The Development of an Important but Underappreciated International Tax Policy Objective*, in TAX REFORM IN THE 21ST CENTURY: A VOLUME IN HONOR OF RICHARD MUSGRAVE 471 (John G. Head & Richard Krever eds., 2009).

5. Capital export neutrality (CEN) can be achieved unilaterally only through residence-based taxation with full creditability of foreign taxes or if all countries adopt source-based taxation at the same rates; capital import neutrality (CIN) can be achieved unilaterally through source-based taxation even with tax rate differentials; and national neutrality (NN) can be achieved through residence-based taxation with full deduction of foreign taxes. I do not consider capital ownership neutrality (CON), which can be achieved through either residence-based taxation or source-based taxation.

6. TSILLY DAGAN, INTERNATIONAL TAX POLICY: BETWEEN COMPETITION AND COOPERATION 224 (2018); see also Yariv Brauner, Book Review, *International Tax Policy: Between Competition and Cooperation*, 22 FLA. TAX REV. 571 (2019).

of utilitarianism and considers a broader range of distributive principles. The mission of social sciences is radically changed in the Anthropocene: they become normative rather than descriptive, and ethical problems require a sense of participatory necessity.

The mainstream approach based on tax neutrality asserts its independence from the contested terrain of moral and political philosophy and presents itself as a value-neutral description of tax rate differentials based on the assumption that the goal to be pursued is value maximization in a utilitarian economic version. This approach, however, has failed to provide a convincing basis for deciding what should, and what should not, be allocated by market forces. Deciding on social practices in general—and social practices such as tax competition—requires a form of economic reasoning that is bound up with moral reasoning.⁷

The notion that economics is a value-free science has always been questionable, and the more markets extend their reach into non-economic aspects of life, such as the glocal aspects of tax competition, the more entangled they become with moral and political questions. Another reason to doubt the market-based approach to tax base stems from debates about commodification: should tax sovereignty, like other public goods, be up for sale? This debate goes beyond debates about distributive justice and is entirely political.

Another moral objection to the predominant narrative is about the tendency of market practices to corrupt or crowd out non-market values worth caring about. Even where markets improve efficiency, they may be undesirable if they corrupt or crowd out non-market norms of political importance. So, before we can decide whether to create a market of tax sovereignty based on perfect capital mobility, we have to figure out what values and norms should govern the social practices of tax sovereignty.

In conclusion, a market approach to tax competition presupposes moral reasoning. The extension of market thinking into almost every aspect of social life complicates the distinction between market reasoning and moral reasoning, between explaining the world and improving it. To decide under what conditions tax competition should operate, economists must go beyond simply describing tax competition, they should also evaluate it. If economics is to help us decide where

7. See SAMUEL BOWLES & HERBERT GINTIS, *A COOPERATIVE SPECIES: HUMAN RECIPROCITY AND ITS EVOLUTION* (2011); Michael J. Sandel, *Market Reasoning as Moral Reasoning: Why Economists Should Re-engage with Political Philosophy*, 27 *J. ECON. PERSP.*, no. 4, 2013, at 121.

markets and tax competition serve the public good, it should relinquish its claim to be a value-neutral science and reconnect with its origins in moral and political philosophy.

II. RAWLSIAN PREMISES AND THE INTERNATIONALIST APPROACH

The term “justice” or “tax justice,” in current non-technical usage, refers to vague concepts of fairness or equity that evolve depending on social, economic, or historical conditions. In this Article, I look at the literature in political philosophy and specifically about “egalitarian justice,” or more simply “justice.” I refer to any conception of socio-economic justice that aims to limit the range of permissible social inequalities among individuals. Justice in the specific context of this Article aims to limit the range of permissible social inequalities among individuals that are brought about by tax competition and strategic BEPS. This aspect of justice is defined hereinafter as Global Tax Justice (GTJ).

GTJ should be investigated within the philosophical debate about the conception of justice famously introduced by Rawls and not as a vague attribute of historical processes. Questions about the inherent structure of GTJ are first-order questions that enable us to discern policy solutions that address second-order questions in specific contexts, such as the regulation of tax competition and BEPS.

According to Rawls⁸ there are three components of justice: (1) persons should have, irrespective of their economic and social class, equal opportunities;⁹ (2) institutions should maintain this fair equality of opportunities;¹⁰ and (3) institutions should be designed to the maximum benefit of those at the bottom of these inequalities (the so called “difference principle”¹¹). In particular, the difference principle provides that the only inequalities of these primary goods that could be justified are those that are to the advantage of the least advantaged position, and this represents a significant constraint to the market.

In *The Law of Peoples*¹² Rawls clarified that the principles advanced in *A Theory of Justice* describe justice only within the

8. JOHN RAWLS, *A THEORY OF JUSTICE* (1971).

9. *Id.* at 220–25.

10. *Id.* at 73, 301.

11. *Id.* at 76–77.

12. JOHN RAWLS, *THE LAW OF PEOPLES WITH, THE IDEA OF PUBLIC REASON REVISITED* (1999).

political organization represented by a territorial state. In that book, Rawls developed criteria that regulate the interactions among “peoples,” defined as territorially political agents that have a monopoly on the legitimate use of force.¹³ For the sake of simplicity, the term “people” will be used here as synonymous to “state,” even if this not necessarily the case in all situations because the word “people” also refers to non-state organized communities.¹⁴

Rawls argued that a just international regime would involve states agreeing to treat one another fairly in their mutual interactions, but that this would not involve any application of the three components of justice, and in particular, no application of the difference principle. So, these criteria would govern individuals only indirectly through domestic state action. According to Rawls, the criteria that govern the relations among states include non-aggression, respect of treaties, but also some assistance to peoples living under unfavourable conditions that prevent their having a just or decent political and social regime, but do not include any form of socio-economic justice.

Let us apply this overarching concept of justice to GTJ as follows: a just international tax regime would involve states agreeing to treat one another fairly in their mutual interactions, but this would not involve application of the three components of justice and, in particular, no application of the difference principle. So, according to Rawls, the requirements of tax justice apply to the basic structure of a nation-state, but do not apply to the relations between one state and another, or between the taxpayers of different states. Within this view, tax justice is a requirement on the internal political, economic, and social structure of nation-states and cannot be extrapolated as GTJ to the international level, which requires different standards. The obligations as taxpayers of a state toward the taxpayers of other states are not direct but are filtered through the relations between the states. Within this view, states deserve equal respect, provided they meet the basic conditions of decency, but taxpayers are not per se entitled to GTJ internationally.

In light of the fact the “Rawlsian imprint” is so significant, a fruitful discussion of GTJ should begin with the interpretations of Rawlsian principles that have generated “institutionalist” or “internationalist” positions. The “right institutionalist approach” follows Rawls’s two-level perspective (intra-state justice and inter-state relations) and

13. *Id.* at 119–20.

14. *Id.* at 37.

provides accounts of why we should distinguish between the domestic and international level. An extreme right institutionalist version is that the lack of an international legal system with sovereign coercive authority undermines claims of egalitarian distributive justice outside the state. Nagel, for example, claims that there are obligations of universal humanitarianism while there is limited room for justice in international politics.¹⁵ In his view, justice is linked to coercive institutions such as states, because such institutions are needed for large scale social coordination and cooperation, and distributive justice only applies to those institutions that coercively engage in coordination in the name of the individuals coerced.

A “left institutionalist approach,” by contrast, argues that international politics are characterized by a sufficiently robust set of institutions as to trigger principles of distributive justice that operate directly on the distributive consequences of international economic regimes. Left institutionalists are different from right institutionalists because of two reasons. First, left institutionalists blur the boundaries between domestic and international justice, viewing these two levels operating seamlessly. Second, left institutionalists believe that there are distributive obligations that operate directly at the level of international institutions that characterize international politics, qualifying their operation in terms of cooperation, the provision of basic goods, or economic interdependence.¹⁶

If one transposes the broader institutionalist approach to tax matters, one can conclude that, within the right institutionalist approach, the apparent lack of an international tax system with coercive authority radically undermines claims of tax justice outside the state and essentially denies the very existence of a concept of GTJ, while within the left institutionalist approach, a sufficiently robust set of to-be-established global tax institutions would support GTJ at the international level, under the condition that these institutions provide sufficient cooperation.

III. THE COSMOPOLITAN CHALLENGE

Recent research—denominated “cosmopolitanism”—developed principles of justice not linked to the Rawlsian approach. According to

15. Thomas Nagel, *The Problem of Global Justice*, 33 *PHIL. & PUB. AFF.* 113 (2005).

16. Andrea Sangiovanni, *Global Justice, Reciprocity, and the State*, 35 *PHIL. & PUB. AFF.* 3, 19–20 (2007).

cosmopolitanism, the demands of justice derive from a duty that each individual owes in principle to all other individuals, so that the institutions to which standards of justice can be applied are instruments for the fulfilment of that duty. In its extreme version, cosmopolitanism adopts the conception that individuals have duties of justice towards one another that do not depend upon shared institutions.

The duties governing the relations among states, according to Rawls, do not include any analogue of socio-economic justice. This limitation is rejected by cosmopolitan critics of Rawls because the basic issue for them is the choice of moral units: they argue that the basic unit for morality is individuals, not states, and that moral requirements that are ascribed to institutions at the international level must ultimately be justified by their effects on individuals. According to this view, morality must count all individuals as equally valuable, so that boundaries do not count at the most basic level in determining how one individual should take into consideration the interests of another. Within this approach, the moral basis for the requirements of justice is universal in scope: it is a concern for the fairness of the terms on which we share the world with anyone.

In the cosmopolitan view, the existence of separate sovereign states is a limitation to the establishment of global justice, while there is a moral duty to establish a common system of institutions that should realize, at a global level, the same standards of justice that are attributed to states in respect to their own citizens. Being born in a poor rather than a rich country is as arbitrary as being born in a poor or rich family in a given state; so, according to the cosmopolitans, the difference principle must apply at global level.

The existence of separate sovereign states may play as an insurmountable limitation to global justice, but this fact does not eliminate in the cosmopolitan view the moral duty to eliminate the absence of justice, a defect that must be remedied.¹⁷ In Charles Beitz's view, for example, this approach entails a form of cosmopolitan liberalism in which the moral units are individuals but not separate states, in stark

17. See, e.g., CHARLES R. BEITZ, *POLITICAL THEORY AND INTERNATIONAL RELATIONS* (1st ed. 1979); THOMAS W. POGGE, *REALIZING RAWLS* 240–80 (1989) [hereinafter BEITZ, *POLITICAL THEORY* (1st ed. 1979)]; THOMAS POGGE, *WORLD POVERTY AND HUMAN RIGHTS* (2d ed. 2008) [hereinafter POGGE, *WORLD POVERTY*]; PETER SINGER, *ONE WORLD: THE ETHICS OF GLOBALIZATION* (2002).

contrast to Rawls's social liberalism in which the moral units are not individuals but separate states.¹⁸

A remarkable strategy in this camp was developed by Pogge, who initially upended the Rawlsian approach on its own premises, arguing that all three of the egalitarian concerns that are valid at intra-state level must necessarily be valid at inter-state level, in the current world characterized by significant political and economic interdependencies. Pogge propounded a strategy that starts with a global original position that deals with the world at large while also posing the question of whether there should be states at all. In this approach, the two-tiered Rawlsian strategy of applying the principles of justice to the basic structure of a national state (intra-state tier) and then reconvening the parties for a second session to deal with the relations among such states (inter-state tier), morphs into a one-tiered strategy of applying the principles of justice at the global inter-individual level.

According to cosmopolitanism, the current basic structure of the world order fails to give members of different states equal chances. Pogge's recent work has argued that the existing institutions are directly violating cosmopolitan rights, in particular those of the poor.¹⁹ He argues that the modern system of international trade has all the features of the "basic structure" of justice in Rawlsian terms: international institutions allocate the advantages of trade, and their rules set the basic framework for the specific interactions taken among international agents because they constitute a site of cooperation to which the Rawlsian principles of justice ought to apply.

Another remarkable feature of cosmopolitanism is that national boundaries do not have fundamental moral significance because the evidence of global economic and political interdependence shows the existence of a global scheme of social cooperation. This is, for example, starkly evidenced by Beitz:

Since boundaries are not coextensive with the scope of social cooperation, they do not mark the limits of social obligation. Thus, the parties to the original position cannot be assumed to know that they are members of a particular national society, choosing principles of justice

18. See CHARLES BEITZ, *Afterword*, in CHARLES BEITZ, *POLITICAL THEORY AND INTERNATIONAL RELATIONS* 185, 214–16 (rev. ed. 1999).

19. See generally POGGE, *WORLD POVERTY*, *supra* note 17.

primarily for that society. The veil of ignorance must extend to all matters of national citizenship, and the difference principles will therefore apply globally.²⁰

In light of the foundational principles just summarized, the cosmopolitan approach addresses wide ranging questions and issues, such as: what does global distributive justice consist of? What obligations do people in one country have to foreigners? What do citizens of affluent countries owe those who live in extreme poverty in the developing world? Is partiality toward compatriots justified in a world filled with the more pressing needs of non-compatriots? What responsibilities, if any, arise from basic human rights? Does membership in a state matter to individuals' global obligations? Is there any role for national self-determination within accounts of global justice? How are obligations of global justice (if any) to be implemented or enforced? How should globalization be governed so that it promotes a fairer distribution of opportunities? Why would states be interested in taking any steps to promote a more just international order? How can individuals, organizations, and states be motivated to advance global justice?²¹

If one transposes the broader cosmopolitan approach to tax matters, one can conclude that the demands of GTJ derive from a duty that each individual owes in principle to all other individuals, so that the institutions to which standards of GTJ can be applied are instruments for the fulfilment of that duty. In its extreme version, cosmopolitanism develops from the conception that individuals have duties of GTJ towards one another that do not depend upon shared institutions.

The duties governing the relations among states, according to Rawls, do not include any analogue of socio-economic GTJ. This limitation is rejected by the cosmopolitan approach because, within this approach, the basic unit for morality consists of individuals not states, so the moral basis for the requirements of GTJ is universal in scope: it is a concern for the fairness of the terms on which all individuals share the world.

In the cosmopolitan view, the existence of separate sovereign states acting as an insurmountable limitation to GTJ does not eliminate

20. BEITZ, *POLITICAL THEORY* (1st ed. 1979), *supra* note 17, at 151.

21. Gillian Brock & Thomas Pogge, *Global Tax Justice and Global Justice*, 1 *MORAL PHIL. & POL.* 1 (2014).

the moral duty to eliminate the absence of GTJ. In this cosmopolitan approach to GTJ, the two-tiered Rawlsian strategy morphs into a one-tiered strategy of applying the principles of GTJ at the global inter-individual level.

According to cosmopolitanism, the current international tax regime that essentially allows unregulated tax competition fails to give individuals falling under certain conditions equal chances, in particular because it allows that there are losers of tax competition to the advantage of winners. In addition, systemic inequalities created by tax competition directly violate the rights of those individuals and communities who are impacted negatively by it. In a broader sense, the current system of international taxation, according to the cosmopolitan view, constitutes a site of cooperation to which the Rawlsian principles of justice ought to apply in the form of GTJ.

The cosmopolitan agenda affects the whole debate about GTJ, posing the basic issues in a completely novel light. So, this agenda, extended to GTJ, poses a set of new background questions, such as: what does GTJ consist of? What obligations do individual taxpayers in one country have to foreigners? In particular, what do taxpayers of affluent countries owe those in the developing world? What responsibilities, in terms of tax contributions, arise from basic human rights? Is there any role for national self-determination within an overarching concept of GTJ? How are obligations of GTJ implemented or enforced? Are there any institutional requirements that must be realized for GTJ to be possible? Is some global tax institution needed to implement GTJ? Why would states be interested in supporting GTJ? How can individuals and non-state actors be motivated to advance GTJ?

More specifically, in a to-be-established system based on principles of GTJ, other issues might be added to the agenda, for example, what moral justifications can be offered for global taxation? Who should be taxed? Would some individuals or countries be exempt? Should there be global taxes on global actors? What arguments favour taxing consumption, wealth, income, speculation, trade, sales, natural resources, or a host of other potential tax bases? Is there a problem of accountability at the global level of governance arrangements concerning taxation in matters of collection, disbursement of revenue, and other decision-making?²²

22. See Thomas Pogge & Kirshen Mehta, *Introduction: The Moral Significance of Tax-Motivated Illicit Financial Outflows*, in *GLOBAL TAX FAIRNESS 1* (Thomas Pogge & Kirshen Mehta eds., 2016).

IV. THREE NORMATIVE OPTIONS FOR GOVERNANCE OF TAX COMPETITION AND BEPS

In light of this debate in political philosophy there are essentially three options available for governance of tax competition and BEPS: (1) accepting the minimalist version of the internationalist approach, essentially denying the existence of cosmopolitan rights and focusing on the protection of rights exclusively at the state level; (2) addressing cosmopolitan rights directly with global institutions; or (3) going beyond the minimalist version of the internationalist approach through some sort of supra-national arrangement aimed at the gradualistic protection of cosmopolitan rights.

A. Option 1: The Minimalist Rawlsian Approach

A baseline of the internationalist approach accepts a minimalist stance, essentially denying the existence of cosmopolitan rights and focusing on the protection of rights exclusively at state level. In the extreme version of this minimalist approach, the lack of an international tax system with sovereign coercive authority undermines claims of GTJ, and tax justice is narrowly limited to coercive institutions such as states.

I claim that a minimalist approach to GTJ is not defensible essentially because of two reasons. First, the minimalist approach undermines claims of tax justice outside states, so it undermines GTJ as a foundational concept. Second, under the conditions of unregulated tax competition, the basic autonomy prerogatives of states, which constitute the conditions of fiscal self-determination are often threatened. These basic prerogatives are (1) the choice regarding the size of the public budget (the level of revenues and expenditures relative to GDP), and (2) the choice of relative benefits and burdens (the level of redistribution).²³ When this political autonomy of states is infringed, tax justice may not be attained even at state level.

In other words, a situation in which the only form of tax justice—in the sense of Rawlsian justice—is to be attained at state level, but states are limited in their capabilities of realizing it because of tax competition, implies that even Rawlsian justice at the state

23. See PETER DIETSCH, *CATCHING CAPITAL: THE ETHICS OF TAX COMPETITION* (2015).

level is hindered. This clearly requires an institutional response because single acts of assistance are not sufficient in the current situation.

Another reason why the minimalist approach to GTJ is not defensible is that states, to truly respect one another, must not only exercise self-restraint, honour agreements, and assist one another in exceptional cases, but must also jointly and mutually secure the structural preconditions for the two basic autonomy prerogatives. That is, decisions about government revenues define the level of redistribution. States need to regulate the negative impacts of tax competition because its impacts negatively affect tax justice at the state level in the Rawlsian sense.

In conclusion, option 1 is not adequate because the background conditions that allow states to protect human tax rights are radically modified by unregulated tax competition and BEPS. There is a paradoxical situation in which states, to protect their *de jure* tax sovereignty against other states, in practice lose their *de facto* sovereignty by caving in to the race to the bottom of tax rates, as rate reductions reduce welfare. Increased competition among states reduce the likelihood of their cooperation, so measures exclusively at the state level cannot really be effective.

B. Option 2: Addressing Cosmopolitan Rights Directly with Global Institutions

In the cosmopolitan approach, addressing rights arising from a GTJ should be attained in a one-tiered strategy of applying the principles of GTJ at the global inter-individual level, bypassing the two-tiered Rawlsian strategy (the intra-state and inter-state tiers). So, the proposal of the cosmopolitan approach is that GTJ should be established directly by global institutions. According to this approach, the current system of international taxation already constitutes a site of cooperation to which the Rawlsian principles of justice ought to apply. From a cosmopolitan perspective, tax competition increases inter-individual inequalities and so it violates not only the Rawlsian principles of justice, both between and within countries, but—and more importantly—it creates inter-individual inequalities directly at the global level.

Attempting to meet global inequalities with global tax and transfer mechanisms is an effective proposal in the context of ideal ethical theory, but in non-ideal circumstances this strategy faces a serious feasibility constraint. In a situation in which the demands of justice are global but the politics remain national, there is no existing cosmopolitan political community that can establish GTJ. By contrast, the more

focused goal of regulating tax competition compares favourably with direct redistribution because this would require a thinner normative consensus than redistribution at the supranational level. Moreover, once an initial coalition for reform exists, it is possible to apply pressure on other states to act multilaterally to regulate tax competition, in the extreme, through economic sanctions.²⁴

It is also argued that a tax discouraging the use of aggressive tax strategies is the most promising way of accomplishing this. Such a tax could be legitimized on the basis of existing national political communities, as it would strengthen these communities by protecting them from aggressive tax strategies. States would also have a strong incentive for imposing this type of tax, as limiting the use of aggressive tax strategies would allow them to collect revenues that are currently lost.²⁵ A combined action of protecting redistribution at the state level and regulating tax competition through multilateral cooperation represents a step towards GTJ that is an alternative, in the initial gradualist approach, to supranational tax and transfer mechanisms. One should restore the redistributive capacity of the states by changing the regulatory framework under which tax competition operates before turning to direct redistribution at the supranational level.

In conclusion, option 2 offered by the cosmopolitan approach in tax matters faces a different fundamental problem: as cosmopolitan rights are not enforceable directly through global institutions, they could then be ensured by the eventual stage of a process initiated through multilateral regulation of tax competition and BEPS.

C. Option 3: Moving Beyond the Minimalist Version of Internationalism Through Supra-National Arrangements.

A middle-of-the-way argument that has been propounded is that both cosmopolitans and internationalists must accept that tax competition has implications with respect to both the obligations that states have to one another in a Rawlsian context and the institutional responses that might be required at multilateral level. So, then, irrespective of a cosmopolitan

24. See generally Peter Dietsch & Thomas Rixen, *Redistribution, Globalisation, and Multi-level Governance*, 1 MORAL PHIL. & POL. 61 (2014) [hereinafter Dietsch & Rixen, *Redistribution*].

25. See generally Marcus Schulzke, *Developing a National Foundation for Global Taxation*, 1 MORAL PHIL. & POL. 105 (2014).

or internationalist stand, there must be agreement that tax competition generates stronger inter-state duties.²⁶

The regulation of tax competition would significantly curtail the inequalitarian impact this phenomenon has. It would do so both at the national level by restoring the redistributive capacity of the state and at the global level by limiting the negative impacts. Before calling for redistribution at the supranational level, we should use regulation to check the forces of globalisation that make it harder to redistribute at the national level.

States, therefore, should subject themselves to a system of rules that will partly constrain their fiscal behaviour in order to secure that the highest possible number of states enjoy an acceptable level of fiscal self-determination. Peter Dietsch and Thomas Rixen affirm that this kind of supranational regulation, that stops short of direct redistribution, can help shore up the capacity of nation states to redistribute internally, which indirectly tends to reduce global inequalities.²⁷

Option 3 is an intermediate solution that accepts the existence of states as basic political units but at the same time contemplates a gradualistic approach to cosmopolitan rights through multilateral cooperation. This solution implies that the protection of cosmopolitan rights presupposes the preservation of two basic autonomy prerogatives of states. Tax competition and BEPS undermine these two autonomy prerogatives because they put downward pressure on tax rates on mobile capital, thereby squeezing government revenues and resulting in regressive fiscal regimes that conflict with citizens' democratic preferences concerning the level of redistribution.

To gradually protect cosmopolitan rights, states must set up a supra-national framework aimed at that specific goal of protecting the two basic autonomy prerogatives of states. The regulation of tax competition and BEPS can only be achieved if states share part of their de jure tax sovereignty to regain their de facto sovereignty. Only through

26. See generally Miriam Ronzoni, *Global Tax Governance: The Bullets Internationalists Must Bite—And Those They Must Not*, 11 MORAL PHIL. & POL. 37 (2014).

27. See Peter Dietsch & Thomas Rixen, *Global Tax Governance: What It Is and Why It Matters*, in GLOBAL TAX GOVERNANCE: WHAT IS WRONG WITH IT AND HOW TO FIX IT 1, 1–25 (Peter Dietsch & Thomas Rixen eds., 2015) [hereinafter Dietsch & Rixen, *Global Tax Governance*]; see also Dietsch & Rixen, *Redistribution*, *supra* note 24.

targeted multilateral action can states obtain what they have lost acting individually.

In conclusion, under option 3, tax competition and BEPS are unjust from a normative standpoint because they hinder the background conditions of fiscal self-determination that occur at the state level, undermine the domestic social contracts, and thus violate GTJ, but this option does not require enforcement of cosmopolitan rights directly through global institutions.²⁸

V. THE MORALITY OF NON-SELF-INTERESTED COOPERATION

Another facet of the problem of protecting cosmopolitan rights is the morality of cooperation. The question here is to explain the pre-conditions of effective cooperation not based on immediate self-interest. This is another first-order question that enables us to discern policy solutions that address second-order questions in the specific context of the regulation of tax competition and BEPS.

In an era of global challenges, multilateral cooperation needs to be based on agreed upon principles other than the mere self-interest of the actors.²⁹ So, this concept of cooperation is different, for example, from that of tax treaties, which are based on utilitarian cooperation in which each party mutually benefits in bilateral relationships. The cooperation advocated by this Article instead occurs when agents cooperate in an activity that is not mutually beneficial in a strict bilateral sense but that is directed to the attainment of “global public goods” in broad multilateral settings.³⁰ In this context, the global public good involved is the protection of self-determination of states through the regulation of tax competition and BEPS. The conjecture here is that this multilateral cooperation needs to be based on a sovereignty-as-responsibility concept rather than on Westphalian formal sovereignty.

The traditional utility-based explanation of cooperation is that actors cooperate because they have a personal interest, i.e., they are

28. See Dietsch & Rixen, *Global Tax Governance*, *supra* note 27.

29. See BOWLES & GINTIS, *supra* note 7; see also SAMUEL BOWLES, *THE MORAL ECONOMY: WHY GOOD INCENTIVES ARE NO SUBSTITUTE FOR GOOD CITIZENS* (2016).

30. For explanation of global public goods, see generally SCOTT BARRETT, *WHY COOPERATE? THE INCENTIVE TO SUPPLY GLOBAL PUBLIC GOODS* (2007).

“self-interested,” except in cases in which self-interest leads to the prisoner’s dilemma and the tragedy of the commons, which are situations where cooperation fails just because of self-interest, even if it is essential to the pursuit of common ends. For example, in Mancur Olson’s “logic of collective action,” *n*-person prisoner’s dilemmas demonstrate the impossibility of cooperation due to ubiquitous free riders.³¹

The form of mutualism in which actors cooperate because they have a personal interest is defined here as “self-interested cooperation.” As Fehr and Gächter put it:

In most economic accounts of individual behavior and aggregate social phenomena, the “vast forces of greed” (Arrow, 1980^[32]) are put at the center of the explanation. In economic models human actors are typically portrayed as “self-interest seeking with guile [which] includes . . . more blatant forms, such as lying, stealing, and cheating . . . [but] more often involves subtle forms of deceit” (Williamson, 1985^[33]).³⁴

Utilitarian reciprocity, when violated, leads to hostile responses in repeated interactions that are solely motivated by future material gains.³⁵ This approach based on self-interest to cooperate, however, does not provide an explanation of the quite frequent situations—which are defined here as “non-self-interested cooperation”—in which actors enjoy cooperating and dislike actors who do not. Non-self-interested cooperation is a situation that occurs when the agents cooperate in an activity that is *not* mutually beneficial—i.e., an activity that does not immediately or directly increase the benefits of the two or more individual

31. MANCUR OLSON, *THE LOGIC OF COLLECTIVE ACTION: PUBLIC GOODS AND THE THEORY OF GROUPS* (1965).

32. Kenneth J. Arrow, *Discrimination in the Labour Market*, in *READINGS IN LABOUR ECONOMICS* 117, 124 (John E. King ed., 1980).

33. OLIVER E. WILLIAMSON, *THE ECONOMIC INSTITUTIONS OF CAPITALISM* 47 (1985).

34. Ernst Fehr & Simon Gächter, *Fairness and Retaliation: The Economics of Reciprocity*, 14 *J. ECON. PERSP.*, no. 3, 2000, at 159, 159 (omissions and alterations in original).

35. See BOWLES & GINTIS, *supra* note 7.

parties interacting in the cooperative process,³⁶ but that is directed to common goals, which in a broad multilateral setting may amount to global public goods.³⁷ In certain situations, in practice, one or more agents are willing to cooperate altruistically and bear costs, for example, by fully addressing the problem in lieu of other actors or by sustaining enforcement costs, even if there is no direct self-interest.

The problem here is to explain under which conditions non-self-interested cooperation can occur. Bowles provides an extensive account of these possible explanations. First, groups have devised ways to protect their non-self-interested members from exploitation by the self-interested, such as shunning, ostracism, sanctioning free riders who violate cooperative norms, as well as practices that limit hierarchy and inequality, including sharing information. Second, actors internalize the norms that induce cooperation, so that contributing to common projects and punishing defectors become objectives in their own right rather than constraints on behaviour. Third, groups with many cooperative members tend to survive between-group competition for resources and prevail over the less cooperative groups, thereby proliferating cooperative behaviours through cultural transmission.³⁸

These explanations converge in an extensive literature that shows humans became a cooperative species because cooperation was highly beneficial to the members of groups that practiced it and were able to construct social institutions that minimized the disadvantages of those with social preferences in competition with fellow group members, while heightening the group-level advantages associated with cooperation that these social preferences allowed.³⁹ Cognitive, linguistic, and physical capacities allowed us to formulate general norms of social conduct, to erect social institutions regulating this conduct, to communicate these rules, to alert other actors to their violation, and to organize coalitions to punish the violators. No less important is the psychological capacity to internalize norms and to experience such social emotions as shame and moral outrage.⁴⁰

36. *Id.*

37. *See* BARRETT, *supra* note 30.

38. *See* BOWLES & GINTIS, *supra* note 7.

39. *See, e.g., id.*

40. For an overview of this topic, see generally MICHAEL TOMASELLO, *THE CULTURAL ORIGINS OF HUMAN COGNITION* (1999).

So, the regulation of social interactions by group-level institutions explains non-self-interested cooperation. Institutions affect the rewards and penalties associated with particular behaviours, often favouring the adoption of cooperative actions over other actors, so that even actors motivated by self-interest are induced to act in the interest of the group. For example, Elinor Ostrom illustrated decentralized, tragedy-averting commons governance systems that defy the logic of self-interest.⁴¹ Moreover, in a series of experiments, Ernst Fehr and his colleagues confirmed that self-interest is indeed a powerful motive, but also that other motives are no less important. Even when substantial sums of money are at stake, many, perhaps most, experimental subjects were found to be fair-minded, generous toward those similarly inclined, and nasty toward those who violated these pro-social precepts.⁴²

The evidence developed by Fehr indicates that explanations of cooperation are often not based on self-interest as believed in mainstream economics⁴³ and that there are important conditions in which the self-interest theory is refuted. For example, in competitive markets with incomplete contracts, the reciprocal types dominate the aggregate results. Cooperative reciprocal tendencies are “positive reciprocity”

41. ELINOR OSTROM, *GOVERNING THE COMMONS: THE EVOLUTION OF INSTITUTIONS FOR COLLECTIVE ACTION* 182–214 (1990).

42. See, e.g., Ernst Fehr & Urs Fischbacher, *Third-Party Punishment and Social Norms*, 25 *EVOLUTION & HUMAN BEHAV.* 63 (2004); Ernst Fehr & Urs Fischbacher, *Why Social Preferences Matter—The Impact of Non-Selfish Motives on Competition, Cooperation and Incentives*, 112 *ECON. J.*, no. 478, 2002, at C1 [hereinafter Fehr & Fischbacher, *Why Social Preferences Matter*]; Ernst Fehr et al., *Strong Reciprocity, Human Cooperation, and the Enforcement of Social Norms*, 13 *HUM. NATURE* 1 (2002) [hereinafter Fehr et al., *Strong Reciprocity*]; Ernst Fehr & Simon Gächter, *Cooperation and Punishment in Public Goods Experiments*, 90 *AM. ECON. REV.* 980 (2000) [hereinafter Fehr & Gächter, *Cooperation and Punishment*]; Fehr & Gächter, *supra* note 34.

43. George J. Stigler wrote that when “self-interest and ethical values with wide verbal allegiance are in conflict [then] [m]uch of the time, most of the time in fact, self-interest-theory . . . will win.” *Economics or Ethics?*, in 2 *THE TANNER LECTURES ON HUMAN VALUES* 143, 176 (Sterling M. McMurrin ed., 1981), https://tannerlectures.utah.edu/_documents/a-to-z/s/stigler81.pdf. Similarly, when people face strong material incentives to free ride, the self-interest model predicts no cooperation at all.

while the retaliatory aspects are called “negative reciprocity.” However, if there are individual opportunities to punish others, then the reciprocal types vigorously punish free riders even when the punishment is costly for the punisher. As a consequence of the punishing behaviour of the reciprocal types, a very high level of cooperation can in fact be achieved. Indeed, the power to enhance collective actions and to enforce social norms is probably one of the most important consequences of reciprocity. The existence of reciprocal types may actually give rise to a world of incomplete contracts, so that reciprocity helps to generate those conditions under which it can flourish.⁴⁴

In their experiments, Fehr et al. in particular observed that actors sacrifice their own payoffs in order to cooperate with other actors, to reward the cooperation of other actors, and to punish free riding, even when they cannot expect to gain from acting this way. They call the preferences motivating this behaviour “strong reciprocity,” the term “strong” intended to distinguish this set of preferences from entirely amoral and self-regarding reciprocation that would not be undertaken in the absence of some payback. Fehr et al. argue that because the strong reciprocator would increase his game payoffs by not cooperating, the motives for behaving this way are non-self-interested (i.e., altruistic) preference and an important proximate cause of non-self-interested cooperation.⁴⁵

The feelings occurring in individuals leading to non-self-interested cooperation are usually termed “social preferences.”⁴⁶ The main social preferences as revealed by the experimental work conducted by Fehr et al. can be summarized as follows: strong reciprocity is common; free riders undermine cooperation while altruistic punishment

44. See Fehr & Gächter, *supra* note 34.

45. Fehr et al., *Strong Reciprocity*, *supra* note 42.

46. Bowles and Gintis explore the influences on an actor using the “preferences, beliefs, and constraints” approach common to economics and decision theory. BOWLES & GINTIS, *supra* note 7, at 9. According to this approach, what actors do when restricted to a specific set of feasible actions depends on their desires and goals on the one hand, and their beliefs on the other. The term “constraints” represents the limitations placed on the feasible actions an actor may take in a given situation. “Beliefs” are an actor’s representation of the causal structure of the world, including the relationship between the actor’s actions and the probabilities of the various possible resulting outcomes. “Preferences” are the pro or con sentiments that make up the actor’s valuation of the various possible outcomes of taking an action.

sustains cooperation; effective punishment depends on legitimacy; purely symbolic punishment is effective; actors punish those who hurt other actors; social preferences are not irrational; culture and institutions matter; behaviour is conditioned on group membership; actors enjoy cooperating and punishing free riders.⁴⁷

In conclusion, economic reasoning is typically based on the self-interest hypothesis, i.e., on the assumption that all people are exclusively motivated by their material self-interest and this assumption rules out other-regarding social preferences, but during the last decade experimental economists have gathered evidence that refutes the self-interest hypothesis. These experiments suggest that a person exhibits social preferences if she not only cares about the material resources allocated to her but also cares about the material resources allocated to relevant reference agents. In particular, actors show preferences for reciprocal fairness, and deviations from self-interest have a fundamental impact on core issues in economics. Evidence finally suggests that preferences for reciprocal fairness govern the laws of cooperation and collective action and that reciprocal fairness affects the prevailing interaction patterns and the constraints on individual behaviour, i.e., the prevailing contracts and institutions.⁴⁸

VI. EXTENDING THIS ANALYSIS TO THE SOCIAL SANCTIONING TAX COMPETITION

In the previous section we have evidenced that in non-self-interested cooperation *individual actors* feel morally obligated to cooperate with like-minded actors and enjoy punishing those who exploit the cooperation of other actors, or feel morally obligated to do so; likewise free riders frequently feel guilty, and if they are sanctioned by other actors, they may feel ashamed. These feelings occurring in individuals are termed social preferences, but a claim can be made that *institutional actors* can also exhibit similar social preferences that include a concern, positive or negative, for other institutional actors, as well as a desire to uphold ethical norms.

One can thus infer that institutional actors in global governance, such as states, may, like individuals within groups, cooperate because

47. See BOWLES & GINTIS, *supra* note 7, ch. 3.

48. Fehr & Fischbacher, *Why Social Preferences Matter*, *supra* note 42.

they are genuinely concerned to uphold shared norms, so that such institutional actors tend to punish those who exploit the cooperative behaviour of others even at their own expenses. Moreover, institutional actors, such as states that cooperate, may, as much as individuals within groups, tend to expand and predominate, and this may occur in a relatively closed community of institutional actors such as the international community.

This strategy of transposing findings about individual actors to institutional actors operates within this Article merely as a working hypothesis because empirical research to explain how states cooperate in global governance for common goals or truly public goods is still needed. An initial supporting argument to this transposition is that international law shows a structure based on consensus akin to those found in simplified forms of social interdependence (such as small communities, primitive societies, informal organizations). Although international law retains some features of municipal law, there is no central rule of recognition akin to that found in state-based legal organizations. So, in that very specific sense, the hypothesis that institutional actors may impose sanctions on other institutional actors involves a form of legitimacy that is different from that of sovereign states imposing internal sanctions on their citizens.

In conclusion, the seminal analysis of cooperative behaviour in these forms of social interdependence among individual actors can be applied to the community of state agents interacting in global governance, insofar as attributes of the behaviour of individual actors operating in those contexts are ascribed to such institutional actors. For the sake of simplicity, one can then ascribe attributes of the behaviour of individual actors to states that represent quintessential actors of international law. In this perspective, modern global governance, in spite of its complexity, appears to be akin to a kind of simplified social interdependence composed by a limited number of institutional actors.

The question addressed by the seminal studies on social groups described in the previous section (why individuals carry out “altruistic” non-self-interested cooperation) can thus hypothetically be transposed in the analysis of shared norms of international tax law, by collecting evidence about whether institutional actors such as states exhibit preferences that sustain non-self-interested cooperation.

The answer to this question can be developed by advancing the following hypothesis. In matters of regulation of tax competition and BEPS, non-self-interested cooperation may outcompete the pure self-interest of institutional actors for two reasons. First, these actors devise

ways to protect non-self-interested members from exploitation by the self-interested members through aggressive tax competition, resorting to ostracisms and sanctions imposed on the free riders. Second, these institutional actors adopt processes that lead to the internalization of norms of non-self-interested cooperation within defensive coalitions.

Attention should also be focused on group-level institutions of governance and socialization that favour cooperative institutional actors, essentially by disseminating information about the shared international norms, and by sanctioning defectors. So, the analysis of international actors is essential in understanding the emergence of non-self-interested cooperation at global level in regulating tax competition and BEPS. This analysis would collect evidence about selective pressures that may lead (or have led already) to global governance institutions that ensure the attainment of a common goal, although minimal.

In this specific context, this Article advances three propositions. First, institutional actors may cooperate in regulating tax competition and BEPS not only for self-interested reasons but also because they are genuinely concerned about the welfare of other actors, because they are trying to uphold social norms, and because they value behaving ethically for its own sake; institutional actors punish those who exploit the cooperative behaviour of other actors for the same reasons.

Second, groups of institutional actors predisposed to cooperate and uphold ethical norms in regulating tax competition and BEPS tend to survive and expand relative to other groups, thereby allowing these prosocial motivations to proliferate. In very general terms, literature shows that emergence of non-self-interested cooperation leads to shared proto-legal norms,⁴⁹ which are evolutionarily stable against the invasion by competing norms and which therefore establish relatively durable “regimes.”⁵⁰

Third, we can surmise that a widespread willingness of the cooperators to punish the free riders could be developed in the ambit of regulating tax competition and BEPS: the experimental results discussed in the previous sections about individual actors indicate that this holds

49. See generally ROBERT C. ELLICKSON, *ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES* (1991).

50. See, e.g., ROBERT AXELROD, *THE EVOLUTION OF COOPERATION* (rev. ed. 2006); ROBERT BOYD & PETER J. RICHESON, *CULTURE AND THE EVOLUTIONARY PROCESS* (1985); L.L. CAVALLI-SFORZA & M.W. FELDMAN, *CULTURAL TRANSMISSION AND EVOLUTION: A QUANTITATIVE APPROACH* (1981).

true even if punishment is costly and does not provide any material benefits for the punisher. In addition, there is evidence that free riders are punished more heavily the more they deviate from the cooperation levels of the co-operators, so that potential free riders can avoid or at least reduce punishment by increasing their cooperation levels. This suggests that in the presence of punishment opportunities carried out by institutional actors within to-be-established defensive coalitions against the negative impacts of tax competition and BEPS, there will be less free riding by non-co-operators.⁵¹

VII. CONCLUSION

The analysis of the two first-order questions addressed by this Article (the Global Tax Justice question and the morality of cooperation question) points to answering second-order questions in the policy context of regulation of tax competition and BEPS in the direction of multilateral policies aiming at the establishment of one or more coalitions of governments. These coalitions would tend to have a defensive nature against the negative across-the-board impacts of tax competition and BEPS because individual member states would undertake, under the aegis of these coalitions, the responsibility of sanctioning jurisdictions that enable aggressive tax planning.

This is a general first-order prescription that does not in itself address the details of the second-order policy questions, namely how these coalitions could effectively operate, as these second-order policy questions are beyond the scope of this Article. However, in light of the fact that Part IV has indicated that among the three available normative options Option 3 is preferable because it is an intermediate solution that accepts the existence of states as basic political units, at the same time contemplating a gradualistic approach to cosmopolitan rights through multilateral cooperation, the general conclusion is that the protection of cosmopolitan rights presupposes the preservation of the basic autonomy prerogatives of states and that defensive measures of the coalitions should operate in that direction.

Even if this first-order prescription does not specifically indicate the details of the possible defensive measure, in broad strokes the coalitions would preserve the common good of their members by rendering each member immune from the negative effects of tax

51. See Fehr & Gächter, *Cooperation and Punishment*, *supra* note 42.

competition and BEPS. Coalition states would thus be willing to cooperate “altruistically” and bear the costs of fully addressing the negative impacts of tax competition even when there is no immediate self-interest. The Article thus suggests that states should share at least part of their tax sovereignties in setting up defensive coalitions that address tax competition and BEPS, rather than facing that problem with unilateral national measures.