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A Path to International Tax Reform and Improved Wealth Distribution Across the Globe

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Tarcísio Diniz Magalhães, [What Is Really Wrong with Global Tax Governance and How to Properly Fix It](#), 10 **World Tax J.** (2018).

Thomas [Piketty's work](#) brought the reality of unequal distributions of wealth into [mainstream media](#) and [popular](#) discourse. In the [tax world](#), the conversation now [regularly](#) turns to a consideration of whether and how the international tax regime [contributes](#) to [existing patterns](#) of wealth and income distribution across nations. Certainly, the tax norms and rules that shape the basic roadmap of international tax (including source, residence and permanent establishment provisions) contribute to existing distributions of wealth—and relatedly taxable income—across jurisdictions. Why do these patterns persist? And perhaps more importantly, what would it take for change?

A [recent article](#) by [Tarcísio Diniz Magalhães](#) aims to develop answers to both questions. That article builds on an active conversation in international tax. In responding to the question, Magalhães argues that the international tax world we see today is the product of a 100 years of tax policy advocacy and design by a subset of nations and actors—and that this subset has maintained a hold on international tax policy norms through a combination of *power and expertise*. Although the story of developed economies dominating the origins of international tax is not new, Magalhães offers a nuanced argument regarding *how* these countries have maintained their level of influence in policy design. His weaving of technical tax expertise into a narrative that has typically been cast as a raw power play provides a closer look at the mechanisms by which privileged positions can be maintained. This process of tax law design is, in his view, more important than the substantive outcomes—although the substantive outcomes have been less than ideal from the perspective of many developing countries.

Magalhães builds on a claim from international relations theory that when issues and debates are framed as technical ones demanding expertise, that characterization allows their resolution to be placed in the hands of a small group of experts. To the extent parties are deemed to lack expertise, they are excluded from decision-making. The expertise approach allows important policy choices to be removed from the sphere of political debate and beyond the reach of most participants. As Magalhães describes the process, “technical discourses in general have the propensity to hide, behind a veil of neutrality and scientificity, normative assumptions about what is right and wrong, what is fair and unfair, while denying the presence of ideologies and entrenched power relations.” The claim does not require that experts affirmatively engage in a subversion of political dialogue—it is simply the outcome of a process that predictably and historically has excluded a range of players from direct participation. Magalhães notes that the “inherently political” nature of tax law, though known to tax scholars, has nonetheless received inadequate attention in the formulation and analysis of tax policy. Ultimately, expert driven conversations can “delegitimize[] moral disagreements” over rules, practices and norms.

Turning to tax, Magalhães challenges a characterization of the current international tax regime as a system of neutral principles so widely accepted that they should be considered part of customary international law. Moreover, even if these principles have been widely adopted, he contends that fact does not justify a process that generates significant distributional effects, is not universally accepted, and was not the product of broad-based participation among nations. Magalhães details the role of the OECD in serving as the locus of international tax expertise and dialogue over many decades in what he describes as a “club model” of global tax governance.

Following this line of argument brings us to the question of how this process of international tax law design might

change. Although the dissection of the international tax regime provides ideas regarding what kinds of changes to global governance would be needed to unseat both current actors and current processes, it turns out that promising alternatives are difficult to identify. Magalhães reviews a number of different recommendations offered by others seeking to broaden participation in international tax policy creation. Among the most prominent is creation of an international tax organization (ITO), which could provide technical analysis and support and serve as a truly global forum in which countries could coordinate or harmonize their taxes. Over the years, this option has been advocated by a variety of scholars, tax specialists and others including [Vito Tanzi](#), Fran Horner, Michael McIntyre, and [Kofi Annan](#). More recently, the prospects for an ITO have been revitalized by the work of three political theorists ([Thomas Rixen](#), [Peter Dietsch](#), and [Douglas Bamford](#)).

Magalhães details the OECD resistance to an ITO (an idea that in fact never secured a sufficient footing in tax policy circles to be pursued). But he does not stand behind the new calls for an ITO which are grounded in a goal of curbing tax competition and which envision a new body “entrusted with lawmaking and enforcement power [and] sanctioning governments that engage[] in tax competition.” Although acknowledging potentially serious concerns with tax competition, Magalhães resists the claim that there is a universally agreed anti-tax competition norm which can serve as a fundamental and binding norm of the newly re-proposed ITO. Because no such universal norm exists, an ITO regime would mean that developing countries (and here others) would find themselves under a body whose principles were both fixed and pre-established by nonmembers. Nonmajoritarian rule would be replicated once again in international tax.

Moving away from ITOs, three tax analysts ([H. David Rosenbloom](#), [Noam Noked](#), and [Mohamed S. Helal](#)) have come [together to advocate](#) for something different: an informal tax cooperation forum (TCF). Although this model has the appeal of enabling jurisdictions to identify those who share similar views and goals and work together on issues of common interest such as treaties, formulary apportionment, anti-avoidance rules, tax competition, tax harmonization, and dispute resolution, Magalhães questions the ability of such bodies to have any notable effect and create meaningful change given their envisioned informality.

The question, then, is what is left? What options can avoid the problems of the past and provide “a real space for political resistance, deliberation or empowerment”? Expanding on the efforts of some developing countries (including Bangladesh, China, India, and Singapore) to challenge the “status quo” of international tax policy, Magalhães encourages developing countries to pursue “counterhegemonic projects” and embrace “alternative epistemic communities.” The ultimate goal would be the “creation of a multipolar world order” with initial steps involving regional platforms and integration. To the extent that this alternative path anticipates reliance on its own set of experts, some of the issues with the global tax past risk replication, in particular the concern that political issues get framed as technical ones to be resolved by experts in a potentially nondemocratic fashion. Even if the experts create no democratic deficit in the tax policy design process, the group(s) must ultimately generate some discernible base of power in order to exert influence in global debates. It is certainly likely that by coming together they can strengthen their unified voice, but whether that voice is sufficient to be heard across the globe remains a question.

Magalhães offers an astute critique of current global tax policy-making that reaches beyond power and highlights the more subtle impact of framing and expertise. Even when these features of the process are not the product of calculated efforts, they can nonetheless combine to solidify a particular vision of international tax. Magalhães’ forthcoming work continues to explore these issues of global fiscal policymaking and promises continued insights in both understanding and in reforming global tax governance. I plan to stay tuned.

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