

**«*Non-Fiscal Tax Policies and State Sovereignty.
From the Rise of Modern Nation States
to Globalization and Corporate Feudalism*»**

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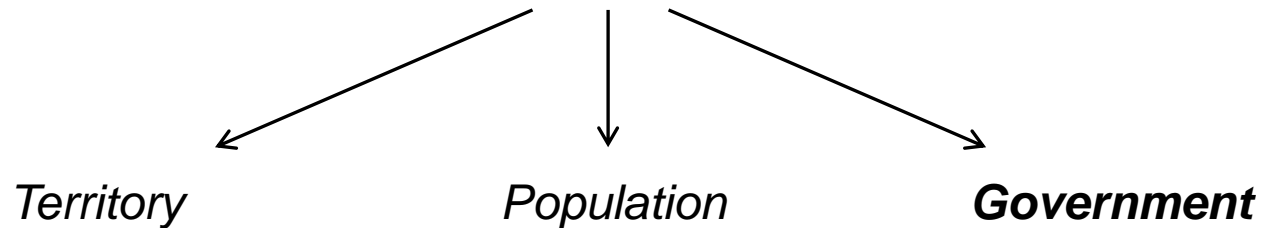
Tax Sovereignty and State Sovereignty

“To speak of tax sovereignty is generally to suggest that taxation is an inherent and necessary component of state sovereignty”

(A. Christians)

Sovereign Modern Nation State

Three core elements:



↓

Essential governmental functions

aimed at controlling and protecting the two other core elements of state sovereignty safe from interference by both external and internal actors

↓

External and internal dimension of sovereignty

Taxing Power and the Power to Govern

“No function is more at the core of government than its system of taxation”

(M. Graetz)

Taxing power is *“an essential part of the power to govern”*

(S. Ratner)

WHY?

Taxing Power and the Power to Govern

- **Fiscal** function:
 - ✓ Taxes provide governments with most of their **financial resources**

 - **Non-Fiscal** function:
 - ✓ **Redistribution**
 - ✓ **Regulation**
- **Recognition:**
 - ✓ **National constitutions**
 - ✓ **National case law**
 - ✓ **EU case law and legislation**
 - ✓ **Scholarship**

Non-Fiscal Tax Policy vs. Tax Neutrality

- **Tax Neutrality Theory**
(developed by the standard public finance model)

- ✓ Taxation should **not** play any role in **redistributing wealth** and **controlling** and **regulating** behaviors
- ✓ Tax policy is **efficient** only when it does **not change** the **relative prices/costs** of goods, services and any other economic activities
- ✓ **Tax-distorted** decisions produce **less total wealth**

- **Opponents** to the tax neutrality theory:

- ✓ **Impossible** to structure taxation in a way that deprived it of any **non-fiscal consequences**
- ✓ Even merely incidental **redistribution** (increasing or decreasing inequalities) and **regulation** is **inherent to the exercise of taxing power**.
- ✓ Therefore, voluntarily **abdicating to such regulatory function** in favor of tax neutrality would represent an **implausible and unrealistic self-limitation of governments' sovereignty**

Book's Goals and Structure

- **Goals:**
 - ✓ **Demonstrate the correlation btw:**
 - exercise of the **taxing power's non-fiscal function**; and
 - **establishment, consolidation, maintenance and re-establishment of essential ruling authority**

- **How:**
 - ✓ **Analysis of:**
 - **waves of unilateral (purposely) regulatory tax policies** which present **similar features among nation states (Part I)**; and
 - **non-fiscal tax policies designed and/or implemented as a result of international coordination**. or advanced as subjects of potential international coordination (**Part II**)

- **Sources:**
 - ✓ **Past and current domestic and international legislative, case law, public policy and scholarship materials**

Book's Goals and Structure

- **Part I: The Creation and Consolidation of Modern Nation States**
 - ✓ Chapter 1
 - **The strengthening of central governments and industrialization: the role of mercantile policies**
 - ✓ Chapter 2
 - **Shift to income tax-based system and the consolidation of the power to govern**

- **Part II: Coordinated Non-fiscal Tax Policy to Govern Global Issues: Three Illustrative Cases**
 - ✓ Chapter 3
 - **Tax Policy to Reform the Financial Sector and the Need for a Coordinated Regulatory Response**
 - ✓ Chapter 4
 - **The Energy Price Surge and the Renaissance of Excess Profit Taxes**
 - ✓ Chapter 5
 - **The Rise of a “Corporate Feudalism” and the Need for Non-fiscal Tax Countermeasures**

Regulatory Tax Policy and the Rise of Nation States

- **Protective Tariffs**

- ✓ **Link** between:

- the **use of taxing power for regulatory public policy goals** and
 - **the creation of modern sovereign nation states**

Regulatory Tax Policy and the Rise of Modern Nation States

- **Scenario arising from Late Middle Ages:**
 - ✓ **Extreme fragmentation of sovereign authority:**
 - exercise of substantial rulings placed at the local levels (numerous lords, princes, bishops, municipalities)
 - ✓ (as a consequence) **large number of local barriers to trade** (especially tolls)

Regulatory Tax Policy and the Rise of Modern Nation States

- **Emergence of nationalist movements advocating:**
 - ✓ **Unification**, consolidation and finally protection of **national interests**
 - ✓ **National industrial development**
- ↓
- ***Mercantile doctrine*** (T. Mun):
 - ✓ **Accrual of national wealth by means of trade policies:**
 - a country, in order to flourish, has to export more than what it imports (**trade balance surplus**)
 - ✓ **Supremacy of political power** over the spontaneous economic dynamics
- ↓
- **Condition:**
 - ✓ **Modern nation states** built around the authority of **stronger centralized governments**

Regulatory Tax Policy and the Rise of Modern Nation States

■ Protective Tariffs and State Formation

*“**Mercantilism is at root nothing but state formation (Staatsbildung)** – but not simply the formation of a state, rather the combined formation of state and economy. This is **state formation in its modern sense**, in which the state community is formed into an economic entity at the same time, thus lending it an enhanced significance. **The nature of the system lies** not only in the doctrine of monetary accumulation or of the balance of trade, not only in frontiers, protective tariffs and shipping regulations, but in very much more: to wit, in the total reformation of society and its organization, as well as of the state and its system, **in the replacement of local and regional economic policy by that of state and nation**” (G. Von Schmoller)*

Regulatory Tax Policy and the Rise of Modern Nation States

Dualism

Domestic *laissez-faire*

elimination of internal restrictions on internal traffic



Elimination of internal tariffs
(fiscal unification)

Protectionism

heavy protections against the imports from other regions and of concurring manufactured goods and exportation of strategic raw materials



Protective tariff policy towards foreign economies

Mercantilistic Tax Policies:

E.g.: France (Colbertism), Germany, United States

Shift to Income Tax-based System

- **Link between**
 - **Introduction of individual and corporate income taxes and**
 - **Further consolidation or restoration of state sovereignty**

Shift to Income Tax-based System

- **Two issues arising from industrialization:**

- ✓ **Concentration of wealth and unaccountable power of influence** in the hands of few individuals and large corporations
- ✓ **Uneven distribution of the tax burden** among the society (indirect tax systems = regressive)



Government's inability to rule, supervise and control

Shift to Income Tax-based System

- Introduction of progressive individual income and corporate income taxes:

- ✓ Non-fiscal justifications

- (i) Redistribution
- (ii) Businesses downsizing
- (iii) Supervisory control)

“Taxation as a method of regulating the larger corporations, preventing monopoly, and preserving the smaller enterprises”

A.G. Buehler, Regulatory Taxation, Harvard Business Review 17 (1939)

Tax Expenditures

- **Measures mostly within the existing (income) tax system:**
 - ✓ Tax credits, deductions, exemptions, special lower rates or deferral of tax payment
- **Alternative or complementary to direct spending programs and direct regulation**
 - ✓ *Administrative efficiency* (no start-up and program management, economies of scale,
 - ✓ *Political feasibility* (enactment advantages, lower level of transparency)
- **Substantial contribution to consolidation and extension of power to govern**

In the Age of Globalization and Digital Economy

Necessary change in the concept of national state sovereignty and tax sovereignty

State sovereignty is dead,

or is dying

(A. James)

***A new
dimension of sovereignty***

“No danger or dilution of state sovereignty... there is re-characterization involved”

(A.M. Slaughter)

In the Age of Globalization and Digital Economy

- **Effective policies** in areas impacted by globalization and technological enhancements:
 - i. **Developed and implemented by broader and representative international body**, such as international organizations or special purpose institutions (*supranationalism*);
 - ii. Result of **coordination and cooperation among several nation states** (*international cooperation*):

In the Age of Globalization and Digital Economy

- **Link between:**
 - ✓ **Supranational and Internationally-coordinated non-fiscal tax policies, and**
 - ✓ **Preservation or restoration of national state sovereignty**

Coordinated Non-Fiscal Tax Policies to Govern Global Issues

- **Three illustrative cases:**
 - ✓ **Financial speculation**
 - ✓ **Energy Price Surge**
 - ✓ **The Rise of a Corporate Feudalism**

Tax Policies to Reform the Financial Sector

- **2008 Financial Crisis:**

- ✓ Unprecedented governmental bailouts
- ✓ **Inability** of national governments **to unilaterally regulate** their financial markets and the economic and social consequences of financial turmoils



Impairment of national governments' sovereign power

- **Countermeasures:**

- ✓ **Strengthening of the traditional regulatory** framework both at national and international level (e.g., “Doff-Frank Act”, Basel III)
- ✓ **Tax measures**

Tax Policies to Reform the Financial Sector

- **Efforts for the design and adoption of tax measures aimed at:**
 - i. Discourage excessive risk-taking** conducts by players of the financial industry;
 - ii. Create an insurance-like system** in the event of defaults or a new systemic crisis; and
 - iii. Raise revenue from the industry which creates negative externalities**

Tax Policies to Reform the Financial Sector

- Domestic initiatives
- IMF proposals
- **EU Financial Transaction Tax Proposal**
- **US Financial Crisis Responsibility Fee**

2020-2022: The Perfect Storm

▪ Covid-19 Pandemic

- ✓ Economic, trade, financial and social restrictions

✓ Energy crisis

- ✓ Pre- Russia-Ukraine war restrictions to gas supply by Russia to Europe
- ✓ Increase in ETS permits prices
- ✓ Russia-Ukraine War
- ✓ Surge in energy prices

✓ Impairment
of global
supply chains

✓ Governments'
indebtedness

✓ Inflation

2020-2022: The Perfect Storm

- **Immediate responses**

- ✓ **Cash and non-cash subsidies**
- ✓ **Price caps**
- ✓ **Extension of traditional and more polluting energy sources**
 - ✓ **Public revenues drainers (taxpayers pay twice)**
 - ✓ **Limit the pass-through of international prices to domestic market**
 - ✓ **Affect energy transition process**
 - ✓ **Encourage rent seeking conducts**

2020-2022: The Perfect Storm

Uneven consequences

- **Most businesses and households**
 - ✓ **Trade and real income loss** affecting most businesses and households

- **Few market players**
 - ✓ **Drastic increase in the profitability**, due to exogenous extraordinary circumstances (“**excess/windfall/super normal profits**”)

✓ **Distortion of competition**

✓ **Concentration of economic and financial power**

✓ **Unaccountable power of influence**

Ideal response should pursue:

- ✓ **Revenue raising**
- ✓ **Redistribution**
- ✓ **Regulation**

Excess Profit Taxes

▪ Calls for Excess Profit Taxes

✓ **Scholars**

- **Law:** Avi-Yonah, *It's Time to Revive the Excess Profits Tax*, the Am. Project (March 27, 2020); *Covid-19 and Us Tax Policy: What Needs to Change?*, 48 Intertax (2020); Christians-Diniz, *Rethinking Tax for the Digital Economy after Covid-19*, Harvard Business L. Rev., 2020); *The Case for taxing Away Unsustainable Profits*, Geo. Wash. L. Rev. 2022).
- **Economics:** Saez&Zucman, *Jobs Aren't being Destroyed This Fast Elsewhere. Why is That?*, N.Y. Times (Mar. 30, 2020)
- **Political Science:** Cammet&Lieberman, *Building Solidarity: Challenges, Options and Implications for Covid-19 Responses* (2020).

✓ **International organizations**

- **IMF**, *Fiscal Policy for Mitigating the Social Impact of High Energy and Food Prices*" June 2022

✓ **Governments**

- **EU Commission**, *REPowerEU Communication*, March 2022
- **Italy, Romania, Spain, UK:** unilateral adoption of excess profit taxes

EU Regulation No. 2022/1854

- **Adopted within the meaning of Art. 122 TFEU**

- ✓ **Par. 1:** “*Without prejudice to any other procedures provided for in the Treaties, the Council, on a proposal from the Commission, may decide, in a spirit of solidarity between Member States, upon the measures appropriate to the economic situation, in particular if severe difficulties arise in the supply of certain products, notably in the area of energy*”

- **Three temporary measures**

- ✓ Mandatory cap on market revenues of inframarginal electricity producers
 - ✓ Targeted reductions in electricity use
 - ✓ **Solidarity contribution on the excess profits of the fossil fuel sector** (Arts. 15-18)

EU Solidarity Contribution

- **Scope** (Arts. 15 and 2(15)(16)(17))
 - ✓ **EU companies and PEs of non-EU companies** generating at least **75 % of turnover** from activities in the **crude petroleum, natural gas, coal and refinery sector**
- **Base** (Arts. 15 and 2(18))
 - ✓ «**Surplus profits**»: i.e., **taxable profits** – according to domestic legislations – **exceeding the average profits of the four fiscal years** prior to 2022 (i.e. 2018-2019-2020-2021), **increased by 20%**
- **Rate** (Art. 16)
 - ✓ At least **33%**
- **Duration** (Art. 18)
 - ✓ **2022** and/or **2023**
- **Goals:**
 - ✓ “Address and mitigate the harmful effects of the current ongoing energy crisis for households and companies” (**redistributive**)
 - ✓ Boost transition to renewable energy (**regulatory**)

EU Solidarity Contribution

- **Tax nature** of the contribution



Collective exercise of taxing power to achieve non-fiscal goals which:

- ✓ **Dealt with a cross-border phenomenon** which, indeed, imposes collective action
- ✓ **Prevented inaction by national governments**
- ✓ **Preserved national power to govern** from the detrimental effects of an international issue such as the energy price surge



View of the **EU as an organization through which Member States**, rather than losing their sovereignty, **have been able to strengthen their power to govern** with respect to the new challenges posed by globalization and technological enhancements (JHH Weiler)

The Rise of Corporate Feudalism

- **Harmful Tax Practices + BEPS** (and, potentially, the Metaverse and other virtual ecosystems):



Impairment of:

- ✓ **Income taxation's regulatory and redistributive function**
- ✓ **National governments' proper functioning and prerogatives**
(especially in liberal democratic systems)



Rise of “Corporate Lords”

The Rise of Corporate Feudalism

- **BEPS1** and **BEPS2** = Non-Fiscal Tax Policies



coordinated exercise taxing power aimed at the maintenance and the protection of full state sovereignty

*«The rise of MNEs has significantly weakened the sovereign regulatory power of the state since MNEs by definition operate across jurisdictions and can set one jurisdiction against another. **Taxation offers a promising venue to regulate MNEs**» (R. Avi-Yonah)*

- ✓ **The recent UN Resolution**
- ✓ **Special coordinated measures to preserve the CIT from the implications of the Metaverse and other virtual ecosystems**

Thank you!

Any questions?