USA AND ITS CHANGING ROLE IN THE REGULATION OF THE OFFSHORE ECONOMY

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Abstract:

The fiercest battle over the regulation of the offshore economy to date took place between 1998-2002 and ended in a spectacularly embarrassing defeat for the OECD regulators when USA, initially a key driver of the initiative under Clinton, lifted its support under the Bush administration. Academic literature touts this success of what were mostly geopolitically insignificant island states as proof of the "primacy of sovereignty" in international relations and the "power of the weak", specifically their ability to "rhetorically entrap" more powerful state and institutional actors by appealing and holding them to their own declared norms and ideas, especially the pervasive discourse of "competition". A close examination of the historical evolution of dominant ideas coupled with a historical overview of US policies and conduct towards tax havens tells an entirely different story however. True causes are found to lie with the differential alignments of interests between certain segments of the offshore economy, individual US administrations, their financial backers in Washington DC, and their ability to control the flow of dominant ideas. "Competition", "sovereignty", and other influential ideological constructs thus certainly play a role, but are more accurately seen as tools to be used or temporarily discarded as an when it fits the prevailing interests. These interests and their entanglement are not static. They shift with time and are forced to react to numerous environmental stimuli, from truly massive critical junctures such as the shock of the global financial crisis and the promised regulatory aftermath, to smaller rifts like the growing incidence of widely publicized leaks, increasing pressures from NGOs, international organizations, and developing countries. The battle for the regulation of the offshore economy is thus not about the "power of the weak", but of the very opposite.

1. Introduction

Tax havens have proven to be an instrument for the facilitation of numerous illicit activities from financing of terrorism and money laundering, to tax evasion and avoidance, with anywhere between US$21 to US$32 trillion in financial assets parked offshore as of 2010. Given that they are at the root of most of the social, economic and political crises of contemporary times, the resilience with which tax havens continue to navigate and even grow in the global economy is astounding. (Houlder 2013)

To add to the puzzlement, regulating or even eradicating the parasitic practices of tax havens is in reality not a terribly complex undertaking and can effectively be tackled by leading powers also from the demand side, for instance by forbidding domestic financial institutions to provide services to selected tax havens. (Sullivan 2007) According to the Tax Justice Network (2014), automatic exchange of information, country-by-country reporting, unitary tax, public registers of beneficial owners of companies, foundations, trusts, and other entities as a global standard would be enough to make it a reality.

Following the global financial crisis, tax havens have shot up to the top of the global and national regulatory agenda, with a number of exciting regulatory developments taking shape that would have been thought impossible just a decade ago. The most interesting and potentially far reaching have taken place in the USA with the passing of the Foreign Account Tax Compliance Act (FATCA), broadly and correctly considered to be a game changer on the regulatory front, though still falling short of effectively preventing tax abuse.

The paper aims to analyze the most important phenomena that have led to the passing of FATCA, as well as the perplexing ability of tax havens to have survived regulatory efforts for so long, essentially unscathed. The starting point of this analysis is that in order to fully grasp this regulatory odyssey in its complexity, it is necessary to take a step back, and see the larger picture within the context of relevant historical processes, the changing balance of power between classes, and the resulting dominant ideological narratives through which power is applied.

The paper is divided into three main sections. The first consists of a very brief introduction to tax havens, their role in the rise of the neoliberal paradigm, and how it all relates to contemporary systemic woes. The second contains a nonexhaustive historical overview of the most important events and regulatory innovations in the century long saga of US authorities and their attempts to rein in tax havens, with special attention given to the last two decades. The third and final section is an attempt to synthesize the previous two, analyze the key takeaways that have arisen, and theorize the implications they may have for future developments in the regulatory arena.

2. Rise of tax havens and the new "common sense" of neoliberal hegemony

Tax havens are generally sovereign states - or at least jurisdictions with enough autonomy to write laws - that use their legislative powers to attract wealthy international clientele, usually in order to facilitate the dodging of regulatory or tax responsibilities. While it is almost impossible to clearly define a tax haven, ideal-typically tax havens offer their international clientele 1) very low or nil taxation; 2) secrecy provisions; and 3) light and flexible incorporation. Some tax havens specialize in one or a combination of these services, some in all, and there is a great variety of selection and degree within each of these three primary clusters. (Palan, Murphy and Chavagneux 2010, p. 30-35) This triple combination is all it takes to enable wealthy individuals and corporations with the help of experienced bankers, lawyers and accountants to engage in all kinds of illicit activities including financing of terrorism, money laundering, embezzlement, corruption, various types of fraud, or tax and regulatory abuse. All this can be accomplished through pernicious tactics like transfer-pricing, round-tripping disguised as foreign direct investment (FDI) (Rovnick 2013), or utilization of the numerous incorporation instruments like foundations and trusts, practically with impunity and in complete secrecy.

Tax havens are not a recent phenomenon. The earliest ones can be traced back to the late 19th century, but their modern proliferation is tied to three main factors. First, rapid advances in transportation and communication technologies leading to the eventual computerization of finance made tax havens vastly more accessible than ever before. Secondly, the process of decolonization in the 1960s unleashed dozens of newly independent jurisdictions looking for niches in the global market. (Palan, Murphy and Chavagneux, 2010, p. 140-141) And finally but perhaps most importantly, it was the rise of the Euromarket, especially a peculiar 1957 Bank of England ruling which decreed "that transactions undertaken by UK banks on behalf of a lender and borrower who themselves were not located in the UK were not to be officially viewed as having taken place in the UK for regulatory purposes even though the transaction was only ever recorded as taking place in London." As no other authority had regulatory jurisdiction over such transactions, they practically became unregulated, or offshore. (Palan 2009)

2.1 A pie drops from the sky

The 1957 ruling, though likely oblivious to the ramifications at the time, proved to be a game changer, because the establishment of an essentially wholly unregulated market that enabled banks to circumvent key regulatory provisions torpedoed the whole Bretton Woods system which was almost entirely based on strict financial regulation and restrictions on capital movements. (Palan 2012) With the foundations of financial offshorization laid down, pressure on the national system of Fordist regulation - already under significant duress due to the falling rate of profits - increased, leading to the inflation crises of the 1970s, the gradual discrediting of Keynesian demand management, and the eventual abandonment of the Bretton Woods system.

(Cameron and Palan 2004; Crouch 2011) With capital controls finally lifted, capital became hypermobile and power once again shifted decidedly towards the capitalist class, putting an end to the postwar capital-labor compromise of high growth and shared prosperity.

2.2 Ideological whitewashing

Capital was ready to pounce on the opportunity for some time by then, diligently working on an ideological justification for this power grab.

In the economic sphere, an alternative to Keynesianism was being revived as early as 1947, the first meeting of the Mont Pelerin Society, where Friedrich von Hayek and Milton Friedman commenced their battle of ideas, over thirty years later resulting in a new form of global capitalism much more in line with the interests of Capital - neoliberalism.

Neoliberalism is a slippery term with numerous definitions, but in the most generous interpretation, its overarching theme is that "free markets in which individuals maximize their material interests provide the best means for satisfying human aspirations, and that markets are in particular to be preferred over states and politics, which are at best inefficient and at worst threats to freedom". (Crouch 2011: vii) It is a form of market fundamentalism that mandates fiscal policy discipline, restructuring of public expenditure priorities, lower taxes, market determined interest rates, competitive exchange rates, trade liberalization, encouragement of FDI, privatization, deregulation, and protection of property rights. (Williamson 2002) Anointed by the invisible hand of the laissez-faire free market, hypermobile capital is granted a reverent position in society, with disciplined states and workers competing among and against each other in successive rounds of regulatory and redistributive race to the bottom. A more nuanced definition thus describes neoliberalism as based on a "systematic use of state power to impose, under the veil of ñnon-interventionῥ, a hegemonic project of recomposition of capitalist rule in most areas of social life". (Saad-Filho and Yalman 2010: 1)

In a more or less parallel process in the sphere of philosophy, the first right-wing libertarian think tank - Foundation for Economic Education - was founded in 1946 by Leonard Reed, a longtime executive of the US Chamber of Commerce. A radicalized version of classical liberalism, its adherents supported individual liberty, private property, and free market capitalism, with a minimal state role. Unsurprisingly, both Hayek and Friedman had close ties to the movement and contributed to it with their own work.

It is important to highlight that this is not to say that past and present supporters of either neoliberalism or right-wing libertarianism are cynical servants of big money interests. Indeed, most rank and file adherents would be appalled at such a connection and vehemently deny it. It is rather that the representative figures of these ideologies and some members of the capitalist class quickly realized that there are significant overlaps on the road towards their respective end goals. Whatever their primary motive, the sought after desired effect was to weaken the regulatory and redistributive power of the state, and in that way also weaken the social cohesion and general standing of the opposing "vested interests" - labor unions, leftist movements, and their political party representation. According to the Buchanan Committee, a congressional review of illegal lobbying activities in 1950: "It is difficult to avoid the conclusion that the Foundation for Economic Education exerts, or at least expects to exert, a considerable influence on national legislative policy. ... It is equally difficult to imagine that the nationôs largest corporations would subsidize the entire venture if they did not anticipate that it would pay solid, long-range legislative dividends." (Schriftgiesser 2010)

And subsidize they did. Enormous sums of money were marshaled for the neoliberal/libertarian cause, paid for by leading Fortune 500 companies (GM, Chrysler, Ford, Gulf Oil, Standard Oil, Sun Oil, US Steel, National Steel, Republic Steel, Montgomery Ward, Marshall Field, Sears, Monsanto, DuPont, General Electric, Merrill Lynch, Eli Lilly, BF Goodrich, ConEd, and more), wealthy individuals (Joseph Coors), and their foundations (Olin, Scaife, Smith Richardson, Pew Charitable Trust). These funds were used to establish neoliberal/libertarian think tanks (Heritage Foundation, Hoover Institute, Center for the Study of American Business, American Enterprise Institute, National Bureau of Economic Research, Cato Institute), fund economics departments and business schools of the major research universities (University of Chicago), and finance the dissemination of numerous materials ranging from books (Robert Nozick's Anarchy, State, and Utopia) to TV shows (Milton Friedman's Free to Choose). (Harvey 2005; Ames 2013) These examples are just a small fraction of the massive ideological socialization onslaught undertaken with the express purpose of constructing consent, paving the way for neoliberalism to emerge as the new "common sense", in Gramscian (1971) terms.

That "common sense" was taken over by Margaret Thatcher and Ronald Reagan, subsequently spread throughout the former Bretton Woods institutions (International Monetary Fund, World Bank and the World Trade Organization), remaking them along the neoliberal Washington Consensus line in a manner resembling a clandestine coup dôétat. Through these and others where the USA has a decisive stake (e.g. OECD), neoliberal ideology has been rapidly exported and often even imposed abroad with devastating societal costs. (Stiglitz 2002) All the same, these institutions, sometimes referred to as institutions of global governance, have emerged as expert bodies with significant influence and a certain degree of legitimizing norm-setting power. More than that, they tend to project a veneer of independence and impartiality, and through the combination of these perceived qualities are able to present their world view "not simply as ñcommon senseợ, but as ñexpert senseợ, claiming power through expertise in economic policy formation." (Peet 2007)

Given the grotesque redistribution from the poor to the rich we have witnessed, this class campaign has undeniably been a success, fully correlating with the onset of neoliberalism. (Saez 2013) After this brief but necessary detour into recent past, let us return to the 21st century to analyze the results of the forty odd years of neoliberal hegemony, and the role tax havens played throughout, starting with the global financial crisis.

2.3 Merry crisis and a happy new fear

The global financial crisis is in many ways the most pivotal event of the 21st century, a demonstration of a major market failure, a systemic shock that was hoped to put an end to the ideological and practical hegemony of neoliberalism. Just as the global financial crisis of our time drew comparisons with the Great Depression, its aftermath too was thought to lead to as momentous and revolutionary a change in the regulatory reform process as that which lead to the creation of the original Bretton Woods system. (Moschella and Tsingou 2013) The chaos it has unleashed on the middle and working classes everywhere, and the following crises it has set off or exacerbated meant that public pressure was relentless, achieving the immediate politicization of the reform process. The G20 was formed already shortly after the "Lehman moment" in 2008, and assumed primacy in the international financial regulatory negotiations. Pressure did not let up years into the aftermath, ultimately exploding into the Occupy Wall Street movement in 2011, as the details of the massive scope of mismanagement, subsequent bailouts, and impunity for those responsible were widely publicized and sunk into the collective psyche.

However, it soon became clear that not all of the necessary conditions for the change demanded were in place. Neoliberalism has in the past decades proved particularly apt at decimating the power bases of its historical adversaries, leaving no mass organized force to lead the reform agenda. (Baccaro et al. 2010; Tilly 1995) Another sobering moment came with the realization that the elite's (not altogether surprising) solution to the problems so cruelly exposed by the crisis was to merely patch up the system which produced them in the first place, rather than change it in any fundamental way.

Tax havens played a prominent role in the run-up to the crisis. Broadly speaking, one of the primary causes of financial crises is the tendency of market actors to utilize existing regulatory gaps in order to increase profits and one-up their competitors. This naturally decreases transparency, increases risk, and undermines the regulatory infrastructure, which in market systems strives to approximate the ideal of a perfect information environment. One of the key regulatory gaps of this crisis has been the excess use of numerous intransparent shadow banking entities like special purpose vehicles (SPVs), collateralized debt obligations (CDOs), securities, hedge funds, and others. (Rixen 2013; Krugman 2009) With a majority of them being incorporated there, these shadow banking entities were heavily reliant on tax havens to keep their workings camouflaged from regulatory oversight. (Palan, Murphy and Chavagneux 2010)

For illustration, in 2007 the German IKB Deutsche Industriebank and Landesbank Sachsen were among the first European banks to fail, managing mortgage-backed securities through structured investment vehicles (SIVs) in the US state of Delaware and Ireland (both major tax havens), respectively. (Schmidt 2014) Later in 2007, Northern Rock, the fifth largest mortgage provider in the UK and a major player in the CDO market, collapsed. Its CDOs were issued by Granite Master Issuer plc and Associates, which was owned by a UK charitable trust located in Jersey. Bear Sterns, a US investment bank heavily involved in securitization and hedge funds registered in the Cayman Islands (the largest foreign holder of US mortgage-backed securities) and Ireland, followed in 2008. (Lane and Milesi-Ferretti 2010) In September of the same year, Lehman Brothers, incorporated in Delaware and exposed to similar risks, suffered the most devastating collapse of the entire crisis. These are just some of the most recent examples, but in fact most major financial failures of at least the past twenty years can be traced back to tax havens. (Palan, Murphy and Chavagneux 2010)

2.4 From the crisis of finance to the crisis of neoliberalism

The global financial crisis however itself turned out to be only the most visible symptom of a much larger crisis that has afflicted the entire system, with tax havens playing a key role.

Streeck's (2014) recent work serves as a useful proxy for the enormity of the challenges facing the system. He joined the long line of thinkers spanning almost two centuries by declaring that capitalism - at least of its current variety - is in its final throes, though its convulsions may still last for decades. Whether he is right or capitalism will find yet another way to reinvent itself, what makes this death sentence worth considering is a lethal combination of several natural limits and socio-economic calamities appearing at about the same time. With the fall of the Soviet Union and the decimation of the Western labor movements and their traditional social democratic party allies, the ruling class has lost its outside opposition, and with it much of its restraint. Without that restraint, the capitalist logic of infinite expansion has dangerously spilled over into what Karl Polanyi called the three fictitious commodities: money, labor, and land (or nature). These are defined as resources which are originally not produced for sale, and total unrestrained commodification will destroy them or make them unusable. (Polanyi 1944)

The excessive commodification of money began shortly after the aforementioned fall of the Bretton Woods system, with globally liberalized capital flows opening up a Pandora's box of private production and marketization of money, restoring growth and profitability through a seemingly limitless supply of cheap credit, and rewarding itself with several rounds of deregulation. This process later came to be known as financialization, and while the crisis appears to have put further rounds of deregulation to rest at least for the time being, the process itself appears to be nowhere near over, with too big to fail institutions and too big to jail perpetrators growing bigger still. This is in stark contrast to the rest of the economy, the so called productive or real economy, which continues to trudge along what is often called the "slowest recovery in history". Confirming this interpretation is the secular stagnation theory, which contends that even if innovation were to continue at the same high rate as before the crisis indefinitely, long-term growth in the US (and by a plausible extension in other advanced industrialized countries) would not exceed 1.9% annually even at the best of circumstances. One of the main reasons for this is that the largest productivity boosts have already taken place, like the increase in the speed of transportation, the installation of running water in cities, or other massive infrastructural projects. (Gordon 2012) The theory is gaining growing support from both sides of the political spectrum and from international institutions alike (OECD 2014), with Paul Krugman (2013) joining Laurence Summers in arguing that the current slump could well be the "new normal".

The theme of the current "recovery" - which is most often associated with the adjective jobless, brings us to the excessive commodification of labor and another "new normal", that of a growing precariat of the unemployed, underemployed (part-time contracts, zero hour contracts, self-employment scams), and unpaid interns. The continuing deregulation of labor markets offsets some of these trends through immigration, but often at the cost of fomenting xenophobia. Middle and working class incomes in advanced industrialized countries lag behind inflation and have not kept up with the increases in individual productivity due to increased competition in the labor markets, which only increases with the slashing of social welfare benefits and services as well as with continuing assaults on the remaining labor standards. (Greenhouse 2014) According to a landmark study by Brynjolfsson and McAffee (2014), new technological innovations are set to eliminate certain job categories altogether, increasing unemployment, and further exacerbating inequalities in the labor market for possibly decades to come, before some form of adjustment eventually sets in. This obsolescence by technology will hit already highly unequal labor markets where the steady increases in executive pay and the expansion of the financial sector by itself accounts for two-thirds of increased incomes at the top (Wolf 2014), with social mobility, already low, hardly making any headway at all. Staying on the topic of inequality, one cannot omit Thomas Pikkety's (2014) magnum opus, in which he argues that the already massive wealth inequality is going to continually increase if robust redistributive corrective action is not undertaken, simply because the returns from capital grow faster than economies themselves. Inequality fuels both the sluggish growth as well as macroeconomic as and thus societal instability, and is in turn fed by them in a vicious loop. (Ostry, Berg and Tsangarides 2014)

The excessive commodification of land pertains to the mismatch between the capitalist logic of infinite expansion and the very finite amount of natural resources, predominantly with regards to the generation of energy and the impact it has on the climate. In May 2013, the level of the most important heat-trapping gas in the atmosphere, carbon dioxide, has passed a long feared milestone, reaching a concentration not seen on Earth for millions of years, and scientists believe the rise portends large changes in the climate and sea levels. (Gillis 2013) According to a major study jointly written by more than fifty scientists, economists and policy experts, and commissioned by 20 governments, climate change is already said to cost the world economy 1.6% of the annual global GDP, and this is predicted to double by 2030. (F. Harvey 2012) Perhaps aside from the rather stunted discussion among some segments of society in the USA, the world has mostly come to terms with the need to reorient the global economy and consumption towards more environmentally sustainable outcomes. At the same time, with the severe consumer and government debt overhangs facing most advanced industrialized countries, austerity politics slashing already drained budgets left and right, and fierce lobbying efforts by some of the biggest polluters, we are resigned to a race between the total exhaustion of our natural habitat and a hope for messianic technological progress enabling the continuation of the ever-growing pattern of consumption.

With this depressing broad stroke sketch of contemporary systemic woes behind, let us briefly turn our sights back to tax havens and highlight how their emergence links with the excessive commodification of the three fictitious commodities.

In terms of money, it was in light of this new competition from the tax haven sector - "a non-regulated global financial market sucking in most of the funds in any case" - and between the major financial centers that states were forced to react by undergoing and speeding up the processes of deregulation and financialization. (Palan 2012)

In terms of labor, the capital flights of the 1970s caused massive government debts leading to severe slashes to redistributive welfare states to make up for declining fiscal revenues. (Cameron and Palan 2004) This contributed to the general decline of labor rights and kept incomes low, as the need to attract FDI led to a race to the bottom, followed by a general decline of the middle and working classes. This in turn fed into the contemporary distress about inequality, as enormous profits concentrated into the hands of a privileged few individuals and corporations that in many cases ended up exempt from paying their share, both through successive rounds of tax breaks and complex tax avoidance schemes unaffordable to most. (McIntyre, Gardner and Phillips 2014; ICIJ 2014, 2015) The result: 80 wealthiest individuals today own as much wealth as the entire bottom half of the planet. (Oxfam 2015)

In terms of land, the connection is twofold. With tax avoidance schemes creating a competitive advantage for the largest corporations - most importantly in this case those with a vested interest in fossil fuels - green ventures face an uphill battle trying to displace them. Some states attempt to level the playing field with various inducements, but most lack the finances, power, and resolve of the past to steer the global economy towards environmental sustainability with the required urgency.

2.5 Tax havens and their impact today

Tax havens currently "serve as domicile for more than two million paper companies, thousands of banks, funds and insurers and at least half of all registered ships above 100 tonnes" (Valencia 2013). According to the Bank of International Settlements (BIS), half of all international banking assets and liabilities and about a third of all multinational corporations' FDI has gone through tax havens since the 1980s. "Individual tax avoidance and evasion is estimated conservatively to be somewhere between US$800 billion to a trillion a year, constituting the single largest drain on developing countries' economies." (Palan 2009) Zucman (2013) calculated that about 6% of the global financial wealth of households resides in tax havens unrecorded, and just taxes from these proceeds would obliterate the Eurozone's sovereign debt (second largest in the world), turning the region into a net creditor, and significantly slash USA's debt (the largest in the world). USA itself "loses approximately US$184 billion in federal and state revenue each year due to corporations and individuals using tax havens to dodge taxes". (Van Heeke et al. 2014) US corporations alone purposely keep almost US$2 trillion overseas in order to avoid paying tax, as foreign profits are taxed only upon repatriation. (Rubin 2014)

According to Henry (2012), US$21 to US$32 trillion in financial assets were parked offshore as of 2010. What is more, based on his rigorously crafted methodology, supported by several other studies measuring offshore wealth, that sum is a very conservative estimate, and does not include non-financial assets like real estate, art, yachts, racehorses, or gold bricks. His study also focused on a subsample of 139 low and middle income countries, finding that "since the 1970s, with eager (and often aggressive and illegal) assistance from the international private banking industry, it appears that private elites had accumulated US$7.3 to US$9.3 trillion of unrecorded offshore wealth in 2010, conservatively estimated, even while many of their public sectors were borrowing themselves into bankruptcy, enduring agonizing structural adjustment and low growth, and holding fire sales of public assets. ... So in total, by way of the offshore system, these supposedly indebted source countries - including all key developing countries - are not debtors at all: they are net lenders, to the tune of US$10.1 to US$13.1 trillion at end-2010." (Henry 2012: 5-6)

Kar and Spanjers (2014) report "that the developing world lost US$6.6 trillion in illicit financial flows from 2003-2012, with illicit outflows alarmingly increasing at an average rate of more than 9.4 percent per year." Based on the above data, had illicit outflows through and to tax havens been eliminated, developing countries would on aggregate be net lenders, not net debtors, supporting Henry's (2012) findings. These massive sums cast discussions about developing country poverty, debt servicing, and debt restructuring into a new light. For a simple illustration of the magnitudes we are dealing with, global official development assistance peaked in 2010 with US$136.7 billion - utterly dwarfed by the illicit outflows. (Renner and Sherer 2013)

3. Evolution of the US tax system and the struggles over its enforcement

The issue of taxation lies at the very heart of the American foundation myth. Even foreigners like myself learned in elementary school about the struggles of the patriots that stood up to the British Crown under the slogan "no taxation without representation". What is less known is that one of the most ostentatious and pivotal events that led to the American Revolutionary War - the Boston Tea Party protest - was also equal parts about corporate welfare via a tax cut and unfair competition. In a desperate attempt to bailout the too big to fail British East India Company - ridden with debts and huge inventories of unsold tea - the British Parliament passed the Tea Act in May 1773, repealing the tax on tea imported to Great Britain for subsequent reshipment to the American colonies. This constituted a tax cut so massive, that it not only undercut the prices of American colonial merchants, but also smugglers. While this meant cheaper tea for the colonies, the local mercantile class would have none of it. In what was anything but a spontaneous action, Samuel Adams and his Sons of Liberty gathered a group of men, boarded the three British ships and jettisoned their tax-exempt cargo. (Thorndike 2010) Thinking about the role that tax havens, powerful entrenched interests, corporate welfare and competition play in our contemporary struggles, one gets the sense that we have not really strayed very far from 1773, whether in the USA or elsewhere.

3.1 Taxation based on citizenship

US taxes have gone through a tumultuous history driven by wars, crises, and ideological realignments. The first US personal income tax was levied in 1862 in order to raise revenue for the Civil War, and it applied to overseas citizens as well. Due to a rather unfavorable and distrustful view towards expatriates during what was a time of war, they were taxed at a higher rate and were denied any exemptions. (Thorndike 2014) That tax was completely repealed in 1872, and barring a few false starts, federal taxes became a permanent fixture since the 1913 ratification of the 16th Amendment to the Constitution (excise taxes on corporations were in effect already since 1909). (IRS 2013) The 1913 tax code retained the peculiar quality of applying to all US citizens and corporations wherever they may be, and was levied on "the entire net income arising or accruing from all sources", including foreign income. (Thorndike 2014) The US citizenship-based system of taxation survived to this day, and aside from an Eritrean 2% diaspora tax, is a unique phenomenon, with most countries using a territorial-based system. The US rates themselves have gone through a rollercoaster of a history. Personal income top bracket rate started at 7% in 1913, reaching an all time high of 94% in 1944. (Blodget, 2011) Corporate income top bracket rate started at 1% in 1909, reaching an all time high of 52.8% in 1942. (IRS, 2013) The Tax Reform Act of 1986, the second of Ronald Reagan's tax cuts, was the last major overhaul of the US tax code, continuing and exacerbating the trend of lowering taxation, especially for the wealthy. The current top bracket statutory rate for personal income is 39.6% and for corporate income 35%. Due to numerous tax subsidies, deductions and credit schemes, the effective corporate tax rate is however much lower than the statutory one, amounting to 13%. (GAO 2013)

Taxation is a core element of modern democracies and their redistributive welfare systems, indispensable for setting up and maintaining the numerous public services that most of us rely on - infrastructure, education, healthcare, pension system, transportation, the list goes on. These have historically helped reduce the scourges of poverty, inequality, illiteracy, and in that way also contributed to unprecedented sustainable growth. A less acknowledged function also relates to scientific progress, as it is state funding and research that is the leading source of innovation and groundbreaking technologies, more so than the competition conscious private sector entrepreneurs as is often believed. The internet and its transformational impact stands out as a particularly representative case, but examples are abundant. (Mazzucato, 2013) For the supporters of neoliberalism and libertarianism, taxation generally symbolizes state power and its inefficient use of resources. At best it is grudgingly tolerable in order to fund certain core functions of the state like national defense and enforcement of individual and property rights, at worst it constitutes theft.

With taxation becoming a permanent fixture, tax abuse has inevitably followed suit, and the US citizenship-based system provided an exceptional extraterritorial complication on top of the already difficult task of enforcement that US authorities had to contend with. Tax havens were soon found to add a new layer of complexity.

3.2 Enforcement denied

Their role has not gone unnoticed by US authorities. Early mentions of US corporations using foreign subsidiaries to avoid taxes date back to the 1920s, and while this attracted considerable attention in the US Congress and the media, it was not enough to effect changes on the legislative front. The seismic wave of the Great Depression did not leave tax havens unscathed. In the midst of the Keynesian New Deal reforms in 1937, an investigation by the US Secretary of the Treasury Henry Morgenthau implicated some of the most well known industrialists of the day as well as a slew of lawyers that helped them avoid US taxes by stashing their incomes in the Bahamas, Panama, and Newfoundland. The authorities responded by passing a law against foreign personal holding companies. (Palan, Murphy and Chavagneux 2010, p. 192)

Tax havens returned to the fore in the 1960s. Tax avoidance by individuals and companies via tax havens was perceived as a problem of such magnitude that the Kennedy administration prepared a sweeping reform designed to do away with tax haven abuse altogether. Kennedy (1961) recommended the "elimination of the ñtax havenṗ device anywhere in the world, even in the underdeveloped countries, through the elimination of tax deferral privileges for those forms of activities, such as trading, licensing, insurance and others, that typically seek out tax haven methods of operation." Fierce opposition by the Republicans and the business sector on the grounds that the proposed legislation would decrease the competitiveness of US firms abroad eventually led to a significant weakening of the final legislation. (Rixen, 2008)

In the 1970s, in what was a precedent shattering development, frustrated US authorities began experimenting with extra-territorial application of their laws. In 1976, a Cayman national was subpoenaed by US authorities to testify in court, only to find that by testifying he would be committing a criminal offence against the bank secrecy laws of the Cayman Islands. The US Court of Appeal was unswayed In its verdict it declared: "We regret that our decision requires Mr. Field to violate the legal commands of the Cayman Islands, his country of residence. In a world where commercial transactions are international in scope, conflicts are inevitable. ... This court simply cannot acquiesce in the proposition that US criminal investigations must be thwarted whenever there is conflict with the interest of other states." (US Congressional Record 1976) This was the first of many such "border skirmishes" that followed in the decades ahead, with US authorities skirting the line between following the letter and spirit of their laws and breaching tax haven sovereignty.

By the early 1980s, increasing suspicions that double tax agreements were being abused for tax purposes prompted the Carter administration to commission the Gordon report. It was published just eight days before Ronald Reagan took office, and was the most comprehensive examination of tax havens and their clientele to date. Its findings confirmed the staggering growth of the offshore sector. In 1968, the total assets of tax haven based foreign corporations controlled by US corporations was US$11.7 billion (12.1% of the worldwide assets of US controlled foreign corporations). In 1976 it was already US$55.4 billion (17.6%). Direct investment into tax haven based subsidiaries rose from US$4.7 billion in 1968 to US$23 billion in 1978, constituting a five-fold increase, versus the two-and-a-half fold increase for direct investment into non tax haven based subsidiaries in that same period. Earnings of tax haven entities increased from US$0.5 billion in 1968 to US$4.4 billion in 1978, constituting a nine-fold increase, versus the three-and-a-half fold increase for non tax haven based entities in that same period. This growth was especially concentrated in certain sectors. In 1976, the US transportation sector had 74.2% of its foreign subsidiary assets stashed in tax havens. For the US construction sector it was 41.8%. For finance (including banking, insurance, and real estate) it was 28%. Banking activity in tax havens was also found to have grown: "Total deposits in banks in the tax havens surveyed were US$385 billion in 1978; deposits by nonbanks were US$89 billion of this amount. Comparable figures for year-end 1968 were US$11 billion and US$5 billion, respectively." (Gordon 1981)

The report clearly identified the problem: "Lack of meaningful exchange of information is the real problem and that lack encourages abuse. ... Exchange of information provisions in the existing tax treaties with tax havens are simply inadequate because they do not override local bank or commercial secrecy laws. In any event, the United States does not have treaties with most tax havens. The only mutual assistance treaty in force to which the United States is a party is with Switzerland, and it has not been useful for dealing with tax crimes." (Gordon 1981)

The proposed solution was clear and far reaching: "What is needed is a coordinated attack on the use of tax havens, including better coordination and funding of administrative efforts to deal with tax haven problems, and perhaps substantive changes in United States law and treaty policy. The United States should take the lead in encouraging tax havens to provide information to enable other countries to enforce their laws. For example, the United States could terminate tax treaties with abusive tax havens, increase the withholding tax on United States source income paid to tax havens and take other steps to discourage United States business from using tax havens. However, such steps taken unilaterally would place United States business at a competitive disadvantage as against businesses based in other OECD countries. Accordingly, a multilateral approach to deal with tax havens is needed." (Gordon 1981)

History repeated itself again. The proposal itself went nowhere - defeated by opponents led by Chase Manhattan Bank - succeeding only in prompting renewed efforts by US authorities to sign more on request tax information exchange agreements (TIEAs), especially in the Caribbean, and despite tax haven reticence. (Palan, Murphy and Chavagneux 2010: p. 196)

In 1981, USA also reluctantly abandoned its efforts to renationalize the Euromarket through the BIS. Resistance from the UK, Switzerland and a few other countries eventually resulted in the USA creating its own restricted version in 1981, the International Banking Facilities (IBF), with Japan following closely after by establishing the Japanese Offshore Market (JOM) in 1986, exacerbating 'offshore' jurisdictional competition. (Palan 2012a)

3.3 The attack of the alphabet (OECD - HTCI, FATF, FSF)

In the 1990s, policy makers of the most advanced industrialized countries started to be even more acutely aware of the tremendous growth of the offshore sector. They also realized that the rapid pace of globalization, changes in the global economy and the resultant declining influence of state power might severely undermine their ability to tax. With the coming to power of left-of-center governments in the USA and key European powers, the stage was set for the first major multilateral showdown with tax havens. At the 1996 summit in Lyon, G7 heads of state tasked the Organization for Economic Co-operation and Development (OECD) to look into the issue of harmful tax competition and report back. As instructed, the OECD (1998) launched its Harmful Tax Competition Initiative (HTCI) by publishing its report in 1998, and in a more or less parallel process, the Financial Action Task Force (FATF) took interest in tax havens in terms of money laundering, and the freshly established Financial Stability Forum (FSF) in terms of financial stability.

OECD's landmark report found that: "tax schemes aimed at attracting financial and other geographically mobile activities can create harmful tax competition between States, carrying risks of distorting trade and investment and could lead to the erosion of national tax bases". (OECD 1998: p. 7) Their ultimate goal was to identify and dismantle various forms of tax abuse and to induce member states and nonmember tax havens alike to adopt a common set of minimal standards under the threat of "coordinated defensive measures". Embarrassingly but not surprisingly, OECD's very own tax havens Switzerland and Luxembourg publicly denounced the report, refused to be bound by any of its provisions, and acted as major spoilers throughout the process, though refrained from going as far as vetoing it outright.

It became clear that the OECD meant business when its newly established Forum on Harmful Tax Practices began compiling a blacklist of tax havens, with thirty-five jurisdictions making it to its June 2000 report. They were given one year to comply by signing a Memorandum of Understanding (MoU) with the OECD and begin introducing its recommendations, or risk being "named and shamed" in a subsequent blacklist of "uncooperative tax havens", subject to the aforementioned "defensive measures". While some tax havens seemed to have folded under the pressure and began signing the MoUs, others joined forces and fought back. They established the International Tax and Investment Organization (ITIO) to represent their common interests, and began lobbying bilaterally with individual OECD member states and other organizations like the Commonwealth. In what turned out to be an important development, the Isle of Man made commitments to the OECD, but only on the condition that whatever reforms were to be introduced, all OECD members, including Switzerland and Luxembourg, must introduce likewise. This became known as the "Isle of Man clause". Eventually, the initial widespread support for the campaign began to wane.

According to Sharman (2006) and his authoritative constructivist examination of these events, the key battles were won predominantly through a verbal contest over ideas, norms and appropriate courses of action, constituting an interesting case wherein a group of internationally insignificant states managed to overcome the odds and turn the tables on some of the world's most powerful actors, utilizing rhetorical "weapons of the weak". (Sharman 2007) He argued that tax havens formed a successful coalition that managed to "rhetorically entrap" the OECD on several fronts, damaging the organization's reputation by pointing out several contradictions between its proclamations and actions. They succeeded in exposing the double standards with regards to the noncompliance of Switzerland and Luxembourg. They pushed forward the view of OECD as an exclusive club of wealthy and powerful bullies imposing reforms on weak nonmembers, violating their sovereign rights, all in a neocolonial bid to rig the system to their benefit. More importantly, the campaign was said to be at odds with upholding the ironclad virtues of free market competition, liberalization and deregulation, which the tax havens proclaimed themselves to be the true guardians of. Not long after the Bush administration was sworn into office in January 2001, these arguments, combined with a multi-pronged lobbying effort by domestic think tanks, paid dividends. In May 2001 USA, initially a key driver of the initiative and its tough approach under the Clinton administration, lifted its support for it and singlehandedly reoriented the whole process towards the much less ambitious goal of signing on request tax information exchange agreements (TIEAs), notorious for their ineffectiveness, as they are costly, time-consuming, and the requesting authority already has to possess evidence of a crime, defeating the entire purpose. (Palan, Murphy and Chavagneux 2010: p. 244) This was still too much for Switzerland and Luxembourg, claiming that their competitiveness would suffer unless other competitors like Singapore and Hong Kong reciprocated, illustrating just how vital secrecy is to tax havens. The embattled OECD capitulated to this too, and the "Isle of Man clause" essentially meant that tax havens were under no obligation to carry out any of the commitments hitherto made until Swtizerland and Luxembourg did too. Fully aware of this, most tax havens decided to sign the MoUs, pledging themselves to nothing. The language employed went through quite a metamorphosis itself. From 2003 onwards, what used to be "tax havens" were now referred to as "participating partners". The fiercest multilateral challenge to date ended in a spectacular defeat of the regulators. (Sharman 2006)

While Sharman concluded that business interests played no significant role in the indisputably pivotal US decision, or during any other stage leading to the final outcome, his own research findings coupled with some historical perspective suggest this is not the case. Serious efforts to counter the HTCI in the USA began with the founding of the Center for Freedom and Prosperity (CFP) in October 2000, a lobbying group established with the express purpose of derailing the whole OECD initiative. Sharman (2006: p. 61), based on interviews with critics and supporters alike, identified its members as "genuine ideologues", and thus not constituting business interests per se. The CFP comprised of well connected key figures from the Heritage Foundation, the American Enterprise Institute, and the Cato Institute, "incensed at the idea of a ñglobal tax policeò operating on behalf of high-taxing European ñsocialistò governments, directed by a supranational bureaucracy based in France". (Sharman 2006: p. 61) While their genuine ideological alignment is not disputed, the allegedly lacking connection to business interests is, with all three of these organizations controlled and continuously funded by some of the wealthiest business tycoons in the USA. (SourceWatch 2015; SourceWatch 2015a; SourceWatch 2015b) While the CFP was found to have spent "not much more than US$ 600 000" in the period between 2000-2005, they made up for it with their connections and access. Their massive lobbying effort swayed not only a number of Congressional Republican heavyweights, 86 of which wrote a letter to the US Secretary of Treasury Paul O'Neill on behalf of the tax havens, but also numerous other high ranking officials in the new Bush administration, including the Assistant Treasury Secretary for Tax Policy, the domestic policy advisor to Vice President Cheney, and the Chairman of the White House Council of Economic Advisors. To top it off, Milton Friedman himself, by then a Nobel prize-winning economist supported their activities and lobbied on their behalf. (Sharman 2006: p. 62) As others pointed out, banks and financial institutions that made significant contributions to Bushôs presidential campaign likely played their role too. (Palan, Murphy and Chavagneux 2010: p. 217) Amusingly enough, CFP managed to garner some support from the left too. The Congressional Black Caucus founded and chaired by the Democrat Charles B. Rangel expressed concern about the campaign's developmental impacts on the impoverished local populations of the small Caribbean havens. Given what we know about the cost of the offshore sector to the developing world today, to say that the Caucus made a serious mistake would have been quite an understatement. It was however a mistake that Rangel would come to realize and atone for in 2010.

It is in this context that the Secretary of the Treasury Paul O'Neill came out in May 2001 to sabotage OECD's original intent and pursue the little that remained of it. In his own words: "I share many of the serious concerns that have been expressed recently about the direction of the OECD initiative. I am troubled by the underlying premise that low tax rates are somehow suspect and by the notion that any country, or group of countries, should interfere in any other country's decision about how to structure its own tax system. I also am concerned about the potentially unfair treatment of some non-OECD countries. The United States does not support efforts to dictate to any country what its own tax rates or tax system should be, and will not participate in any initiative to harmonize world tax systems. The United States simply has no interest in stifling the competition that forces governments - like businesses - to create efficiencies. ... The work of this particular OECD initiative, however, must be refocused on the core element that is our common goal: the need for countries to be able to obtain specific information from other countries upon request in order to prevent the illegal evasion of their tax laws by the dishonest few. In its current form, the project is too broad and it is not in line with this Administration's tax and economic priorities." (US Department of the Treasury 2001)

Separating ideology and vested interests makes little sense when those interests spent decades and millions of dollars to force that ideology into the global consciousness. The OECD HTCI episode leaves no doubt as to the overwhelming dominance and sway of the neoliberal paradigm in that institution as well as the whole discipline of economics. OECD's landmark 1998 report was itself unambiguously neoliberal both in letter and spirit, with numerous passages praising globalization, the progressive liberalization of cross-border trade and investment, and even the virtues of tax competition itself. (OECD 1998: p. 7) OECD's mission to curb the deleterious effects of its "harmful" variety - which is defined in the report - is to "safeguard and promote an open, multilateral trading system". (OECD 1998: p. 9) Indeed, the very phrase "harmful tax competition" came to haunt its drafters. A special report on the subject in the Economist (2000) inadvertently summed up this neoliberal hold over language and concepts: "Some officials at the OECD now regret ever using the phrase ñharmful tax competitionò. As one of them puts it, ñAs an economist, how can you ever say anything bad about competition?ò"

As Sharman (2006: p. 89) attests: "References to ñunfair tax competitionò and ñharmful tax competitionò gave way to ñharmful tax practices,ò and by the November 2001 progress report, the OECD was criticizing harmful tax practices precisely because of their *anti*competitive effects, a line followed by some national tax authorities commenting on the issue as well. The 2000 report and various public statements took pains to indicate that tax competition was a good thing that ought to be promoted." But by that point they have already lost favor with the US lobby groups to such an extent, that the latter tried to block all US government funding to the OECD (US$ 60 million, or 25% of its budget). They failed, but "language condemning the OECD's ñanticompetitiveò tendencies was inserted into the Senate Appropriations Bill in late 2004". (Sharman 2006: p. 141)

3.4 USA starts playing 'hardball', softly...

Paul O'Neill's worries about unfair treatment of tax havens by the OECD did not actually extend to US conduct. After the Bush administration castrated the HTCI, tax havens were "encouraged" to sign TIEAs with OECD countries on a bilateral basis. Tax havens were reticent to enter into these agreements, because their reputation on the market depended on impenetrable secrecy. TIEAs, as ineffective as they were, might potentially compromise this perception of safety. Because of the persisting "Isle of Man clause" and thus the absence of a "level playing field", most tax havens were able to, and indeed did, "gratefully" decline TIEAs. In the few cases where reaching some form of an agreement was showing promise, OECD members were asked for compensation to cover the administrative costs of any such move. None of this applied to the USA, which approached the issue unilaterally. Not only was compensation not on the menu, but due to its structural weight and the enormous pressure it put on tax havens, USA managed to secure nine of the sparsely used TIEAs in the period between 2000 and 2003. (Sharman 2006: p. 153) Other OECD members managed to secure exactly zero in the same period, with first successes for the Netherlands and Australia coming only in 2005. (OECD 2015)

After decades of failures to tax the ever-growing wealth of US individuals and corporations abroad, in January 2001, still under the Clinton administration, US authorities launched the Qualified Intermediary (QI) system. Garnering little attention, it would ultimately result in developments of monumental significance. It was an attempt to resolve the primary reason for these failures, which was that foreign financial institutions (FFIs) were not required to report any information on their US customers to the US Internal Revenue Service (IRS), which therefore effectively operated on the honor system. (Harvey 2012: p. 473) Allegedly, "QI sought to deal with potential tax abuses by foreign, or apparently foreign, portfolio investors in US markets. ... QI also sought to deal with the problem of ñtreaty shoppingò as American or non-American investors could set up shell companies to appear as if they were investing from countries that benefit from particularly favorable double tax treaties with the US." (Palan and Wigan 2014: p. 338) In theory, it was an elegant regulatory innovation whereby the onus of complying with US tax law was shifted to QIs operating on US territory. QIs were thus also stuck dealing with any fallout arising from legal clashes with foreign jurisdictions, for example tax haven bank secrecy laws. (Palan and Wigan 2014: p. 339)

In practice, the QI system was riddled with loopholes. To name just a few, since there was no requirement to report on foreign source income of US customers, it was very easy to avoid reporting by investing in foreign source assets or simply hiding behind a foreign shell entity, as QIs were also not required to determine beneficial owners of such structures. Because the web of QIs consisted primarily of banks or trust companies, reporting could also be easily avoided by investing via other entities like foreign mutual or private equity funds. In order to prevent fraudulent behavior by the QIs themselves, the system mandated an "audit" by the IRS or an independent auditor. In reality, what was called an "audit" was not much more than a pro forma exercise with very few requirements and a wholly misplaced focus. (Harvey 2012: p. 474-476) Shaxson's (2012: p. 135-136) interviews with a number of experts suggest that the loopholes may very well have been intentional. According to them, the QI system was designed by Clinton's second Secretary of the Treasury Robert Rubin to put up a front of tough regulatory activity, while the specific provisions would assure foreign tax cheats that their investments were safe from US regulators. This would enable American borrowers to borrow from foreign tax cheats at reduced interest rates, as well as prevent the massive foreign capital outflow which would likely result if the QI system was free of loopholes. Rubin's successor, Clinton's third Secretary of the Treasury Laurence Summers proposed regulations to close these loopholes towards the end of his term, but US banks lobbied hard and the proposals were dropped by the Bush administration.

Whether this interpretation is accurate or not, as a consequence of this regulatory laxity, banks, surprising few, simply lied. In 2008, a major scandal erupted when it was revealed that one of the QIs, the Swiss banking giant UBS, helped tens of thousands of US clients evade billions in taxes. The arrest and conviction of a former UBS private banker Bradley Birkenfeld in May 2008 revealed the cloak-and-dagger methods UBS used to avoid detection, including encrypted computers, code words, special protocols, smuggling diamonds in toothpaste tubes and more. In 2009, UBS capitulated and agreed to a deferred prosecution agreement of the criminal charges, to pay a US$ 780 million fine (otherwise known as peanuts for a bank of such size and standing), and to disclose account information on a selection of around 4500 of its 52 000 US clients, the criteria for which were carefully determined to reach the most abusive accounts. (Harvey 2012: p. 476-478) Birkenfeld was an IRS whistleblower already since 2007, but because he withheld information about one of his biggest clients, the billionaire Igor Olenicoff, he was forced to serve a two and a half year jail term. In 2012, he was however awarded with US$ 104 million by the US authorities for his services as part of a whistleblower rewards scheme offering up to 30% of any fines and unpaid taxes recouped by the authorities. The repercussions of the scandal set off an avalanche of 14 000 panicked wealthy Americans joining the tax amnesty program, helping IRS recover more than US$5 billion in unpaid taxes by 2012. (Kocieniewski 2012) The scandal was followed by a long series of cases involving Swiss banks helping American clients evade taxes, and marked the initiation of the gradual unraveling of Swiss bank secrecy, vis-à-vis US authorities that is. The QI system at once provided a cover for the illegal conduct of UBS and other banks, and a precedent for the regulatory reply that was to come.

3.5 The FATCA game changer

Catalyzed by the global financial crisis, the UBS tax evasion scandal of 2008, and the gains made in prying open Swiss bank secrecy provisions, US authorities saw an opportunity to keep the ball rolling, improve upon the QI precedent, and apply it to the whole world. Luckily for them, Barack Obama, for years a strong proponent of reining in tax havens, won the 2008 elections and took office in January 2009. That same year, FATCA surfaced in the House of Representatives, and after a few draft changes was finally enacted in March 2010 as part of the Hiring Incentives to Restore Employment Act. Charles B. Rangel, eight years ago opposed to the OECD campaign due to worries about the developmental impacts it could have on the local populations of tax havens, was FATCA's sponsor.

FATCA is an unprecedented game changer in the field of tax haven regulation. It asks all FFIs anywhere in the world to register with the IRS and report the relevant account information of all their US clients effective from 2015. While the registration is technically voluntary, all non-participating FFIs will face an automatic 30% withholding tax on certain payments of US source income (e.g. dividends, interest, insurance premiums), effective from July 2014. (IRS 2015) Given the size and importance of the US market for an overwhelming majority of FFIs, it amounts to a Hobson's choice, as non-participating FFIs would essentially be excluded from investing in the US. More than that, FATCA likewise requires all participating FFIs to withhold on payments to non-participating FFIs, meaning that its regulatory/punitive reach extends to hundreds of thousands of intermediaries. (Palan and Wigan 2014: p. 339) Exactly as in the QI system, any legal jurisdictional conflicts this creates is technically left up to the FFIs to resolve, their reward being access to the crucial US market. However, in order to minimize such conflicts and facilitate FATCA's implementation, USA is in the process of securing Intergovernmental Agreements (IGAs) to implement FATCA with as many foreign jurisdictions as it can. According to the US Department of the Treasury (2015), 62 jurisdictions have already signed the IGA, including all major European powers and such tax haven heavyweights as Switzerland, Luxembourg, Liechtenstein, the British Virgin Islands and the Cayman Islands. 50 more jurisdictions agreed on the substance and are expected to sign on at a later date.

The game changing aspect is immediately apparent. FATCA turned the tables on most of the world's FFIs, transforming them into a web of IRS agents tasked with helping USA enforce its laws while bearing the compliance costs. To be clear, some of those costs also apply to US financial institutions, as most of the signed IGAs contain a reciprocity clause. According to Knobel (2015) however, reciprocity is in most cases not applied equally. The US reporting pledge covers fewer types of accounts, fewer types of income, and there are no look-through provisions to identify individuals attempting to avoid reporting by hiding behind a company or a trust. In the few cases where equal reciprocity was pledged, no timeframe was set. Despite what is certainly a groundbreaking precedent on the regulatory front, optimism should not be overstated. All the implications of this law are only gradually being understood, and a 181-page bipartisan Senate Subcommittee report already found numerous loopholes that make it relatively easy for both wealthy individuals and corporations to circumvent FATCA provided they have qualified council, which these actors tend to have in large supply. The report states that "among other problems, the FATCA regulatory loopholes:

- will require disclosure of only the largest dollar accounts;
- they will permit banks to ignore, in most cases, bank account information that is kept on paper rather than electronically;
- they will allow banks to treat accounts opened by offshore shell entities as non-US accounts even when the entity is owned by a US taxpayer;
- and the remaining disclosure requirements can be easily circumvented by US persons opening accounts below the reporting thresholds at more than one bank." (Permanent Subcommittee on Investigations 2014)

While FATCA applies to US taxpaying entities only, and by way of the reciprocal IGAs bilaterally to a number of partner countries, it falls short of the ideal of a global automatic exchange of information. At the same time, it has shifted the boundaries of what is "possible", inspiring for example the UK to implement a similar automatic tax information exchange scheme with its Crown Dependencies and Overseas Territories (HM Revenues & Customs 2014), as well as the most recent multilateral efforts developed by the OECD, this time requested by the G20.

Automatic exchange of information rose to the top of the G20/OECD tax haven agenda in 2012, with the G20 leaders committing to it as the new global standard at the St. Petersburg Summit in September 2013. At the moment, 54 jurisdictions have signed up to the Common Reporting Standard (CRS, but also nicknamed GATCA by some industry insiders, as in Global Account Tax Compliance Act), with 49 of them starting from 2017 and the rest from 2018. CRS mandates that governments compile tax information reported by their respective financial institutions including banks, insurance companies, brokers, custodians and even various investment vehicles, and annually share that information with others party to the agreement. The net is cast wide, covering all sorts of investment incomes and entities including trusts and foundations. (OECD 2015a) Of course, numerous limitations and loopholes have also been identified, with the most glaring weaknesses pertaining to restrictive entry barriers for many developing countries and the lack of any sanction or punitive mechanism like FATCA's 30%

withholding tax. (Knobel and Meinzer 2014) Significantly, despite being in many ways an inspiration for the CRS, USA itself is not a signatory.

4. Concluding takeaways and implications

The preceding sections are certainly not an exhaustive account of the century long battle to rein in the offshore sector by US authorities, nor of the complexity of the dominant ideological shifts and their structural influence on the global regulatory agenda. Nevertheless, they suffice in allowing us to take stock of these events and formulate plausible inferences about some of the key developments, the numerous challenges, and the far reaching implications they hold not only for the future of the offshore, but of the form and substance of global capitalism itself.

4.1 Zombie neoliberalism

Given the enormous size and pernicious impact of the offshore economy, regulatory responses have in the past been perplexingly piecemeal and disappointing. While the intensity of the response has reached historically unprecedented levels, results continue to fall short of what is vitally needed to tackle the most significant challenges facing the system, challenges which tax havens have themselves greatly exacerbated. Why has the crisis and the numerous leaks and scandals exposed since it exploded not been enough to effect meaningful change? The cases are clearly too plentiful to be taken as mere aberrations in an otherwise functioning system, yet tax havens continue to thrive. What is the explanation for this resilience? One of the primary arguments of this paper is that power flows through ideas by having them structure the "choices" of actors. As such, while technical obstacles certainly play their role, this puzzle is best understood in the context of a historical development of dominant ideas at the systemic level.

As shown, tax havens played a pivotal role in the rise of neoliberal capitalism, and have in time evolved into one of the key pillars of its power. Successfully doing away with their parasitism would be a major blow to the disciplinary power base of the system, undermining its very foundations. Despite the crisis, such an outcome appears to be decidedly utopian. Palan (2003, p. 191) went as far as to say that: "offshore can end only when either the state system has ended its long half-millennial journey or capitalism itself has been replaced by another system". I see strong parallels to how Ģiģek put it with regards to a related issue, the "utopianism" of Thomas Piketty's 80% global wealth tax: "...if you imagine a world organization where the measure proposed by Piketty can effectively be enacted, then the problems are already solved. Then already you have a total political reorganization, you have a global power which effectively can control Capital, we already won". (Ģiģek 2014) That it is possible without all the necessary prerequisites in place - like a viable alternative or at the very least a powerful opposition to the ruling hegemony that would formulate one - is an irrational leap of faith. The absence of both is one of the striking features of the post-crisis global environment, exposing how total the decimation of Capital's organized opposition has been.

And yet undeniable progress, unimaginable just a few years ago, is taking place. The crisis and its attendant scandals have done nothing to alter the material balance of power between Capital and the rest. On the contrary, the rich grow richer, leaving the rest behind at a faster rate than at any point in history. The most powerful banks and corporations continue to conduct themselves not only unethically but often illegally, with penalties amounting to nothing more than the costs of running business. But something did change. The crisis inflicted irreparable damage to the ideological legitimacy of the neoliberal paradigm, opening up the space for its contestation.

This is the structural source of the advances we have seen. It is not that until now there were no challenges to neoliberal dogmas, whether related to tax havens specifically or wider issues more generally. Certain sections of the civil society and academia have never let up. The difference is that now they are getting much more attention. This opening up enabled the Occupy Wall Street movement - while not amounting to much in practical terms - to succeed in radically changing the agenda. Consider for example inequality. While it keeps rising, it was hardly any more excusable and less egregious twenty years ago. Inequality has shot up to the top of the global agenda not because it has passed some magical threshold beyond which it became unacceptable, but because the always suspect neoliberal idea that inequality is necessary or even desirable has become contestable. Had Piketty published his book ten or fifteen years ago, would it have become the hit we know today? Nowadays, even traditional institutional stalwarts like the International Monetary Fund, World Bank, and the OECD openly challenge the old "common sense", churning out study after study about the detrimental effects inequality and poverty have on growth. The effects are far reaching. Economics students now challenge neoclassical orthodoxy, calling for the discipline to enact changes. A growing number of capitalists themselves now feel the need to at least pay lip service to the idea of a sustainable capitalism. They may or may not mean it, but the important thing is that they are being forced to react, with the "common sense" imposed by their class compromised.

Still, advances are not the same as victory, compromising the hegemony of a "common sense" is not the same as replacing it. Forty odd years of neoliberal sedimentation, supported by immense and growing material means, are not easily displaced. The resulting clash is increasingly being described in "undead" terms. Harman (2009) wrote about a "zombie capitalism", Crouch (2011) about the "strange non-death of neoliberalism", and Peck, Theodore and Brenner (2010) put it thusly: "Neoliberalismôs intellectual project may be practically dead, but, as a mode of crisis-driven governance, it could be entering its zombie phase, animated by technocratic forms of muscle memory, deep instincts of self-preservation, and spasmodic bursts of social violence". The unique opportunity found in the ashes of the crisis must be utilized in a way that does not merely challenge established dogmas, but replaces them with viable alternative narratives. Tax justice advocates are succeeding on this front, and are consequently gradually less held back by the lingering constraints of an era's "common sense", and more by the blunt force of Capital's material means. While effective in the short to medium term, it is a weapon much less sophisticated - and unless Capital somehow manages to regain ideological ground - ultimately unsustainable.

4.2 Weaponization of competition

Competition has been a core concept of the neoliberal ideational repertoire since the beginning, though its own history is of course much older. It was by the imposition and fetishization of the logic of free and unfettered competition into all areas of society as well as the international arena that uncomfortable "uncompetitive" opposition could be brushed aside and over time eliminated as a political force. Competition as a concept was thus appropriated and weaponized by the ruling class. Under the veil of the meritocracy myth, the wealthy automatically became virtuous and revered, and the poor became lazy leeches unable to pull their own weight, unfairly living off the hard work and industriousness of the former, thanks to the bloated welfare states they were so generously funding but were growing tired of doing. The growing offshore world intensified this process, as it provided the political class a front for both the right and the new pacified left to hide behind, "to support unfettered capitalism while denouncing it: to bemoan their loss of power and sovereignty, while contributing to that very loss". (Palan 2003, p. 190)

In reality, competition without restraints naturally advantages those who are already powerful. It is barely acceptable between companies at the lower end of the market, where the sheer number of actors and a relatively level playing field ensure that some semblance of fairness is present, leading to competitive progress. It however becomes a mockery of its purported self at the higher end. Examples are countless. Cartelization in the banking sector - artificially inflating and deflating LIBOR, conspiring to manipulate foreign exchange rates, Silicon Valley "no poach" agreements between Apple and Google, division of the cable provider market between Comcast and Time Warner, and various "wink and nod" deals between the myriad other oligopolies. State subsidies and tax breaks only add another level. Market entry and exit at this higher end is simply a rarity, unless wholly new hitherto nonexistent industries are counted, where a brief, relatively competitive period establishes a new oligopoly or a monopoly. So much for the virtues of competition even when applied to its supposed bastion - the market.

Between states, which by definition should ideally operate on a completely different logic from corporations, it gets even worse. Leading to beggar thy neighbor policies, races to the bottom in all areas that do not benefit Capital as a class, and a logic that undermines trust and discourages multilateral action at the global level. One of those races to the bottom encouraged by a doctrinaire acceptance of the competitive imperative is of course taxation. Competition has been used as an argument against regulating tax havens ever since such ideas entered the public policy sphere, with tax competition emerging as the new "common sense" later. The success of inducing a race to the bottom in the area is hard to dispute, with top bracket tax rates dropping drastically in the second half of the 20th century. Appendix 1 and Appendix 2 provide an interesting correlation between deregulation and taxation to ponder.

Whether tax competition really is a virtue as the mainstream neoclassical economic discipline would have us believe (Tiebout 1956; Brennan and Buchanan 1980) has been discussed and disproved numerous times (Black 2005; Shaxson and O'Hagan 2013) and is in any case not within the scope of this paper, but since perhaps the best example can be found in the USA itself, a short detour is in order. States in the USA have engaged in fierce competition for decades. The result? The most recent of a series of studies conducted by the Institute on Taxation & Economic Policy (ITEP) found that on average, the combined rate of state and local taxes in the USA is regressive, as shown in Appendix 3. (ITEP 2015) Furthermore, "states with ñhigh rateò income taxes have economies that equal or surpass those in states lacking an income tax". (ITEP 2012) The common fear that increasing taxes on the wealthy will result in cross-border capital flight is not supported by the available data on the US state level either. (CTJ 2012)

Capital has always been keenly interested in tax policy, and its interest has only gotten stronger over the years. According to the Center for Responsive Politics (2015) taxation was on average the fourth most lobbied issue area in the USA between 1998-2015 based on the number of lobbying clients, rising to the second spot between 2013-2015. In the single instance where the ranking was based not on the number of lobbying clients but on the actual number of lobbyists, between 1999-2000, taxation was by far the most lobbied area, with 2945 lobbyists working on it, 256 more than the issue area below it. (Center for Responsive Politics 2015a)

This was of course during the height of the OECD's Harmful Tax Competition Initiative, where the concept of tax competition played a crucial role in the embarrassing defeat of the campaign. And while the OECD's post-crisis regulatory agenda has been pursued with renewed vigor, the "C word" (competition, of course), let alone with the addition of "harmful" and "tax", has been all but purged in the hundreds of pages of new documents. In the tiny few cases when the "C word" bravely shows up, it is being praised, and the phrase "harmful tax competition" shows up only three times, all in a single report put together by the OECD's Development Working Group. Such is still the lingering power of some of these concepts.

4.3 From vulgar unilateralism to enlightened multilateralism?

Finally, USA and its role. It is exactly because the mythical virtue of tax competition has been eroded among a significant segment of the political class in USA that the precedent shattering FATCA was able to emerge and radically expand the space of the "possible". This came only eight years after the US almost singlehandedly scuttled OECD's HTCI. Despite some of its blemishes mentioned above, there is possibility of more good news regarding FATCA.

Harvey (2012, p. 488), one of the experts involved in the development of FATCA, states that providing a reporting model for other countries to emulate was one of the goals of at least some of the experts working on the project. As he admits, unilateral imposition of FATCA, while a major step forward in the fight against tax evasion, would ultimately still leave a lot of space for tax cheats to exploit. To eliminate this wiggle room, FATCA should ideally be part of a global consensus, for example by implementing it via OECD, though that seems highly unrealistic at the moment. Alternatively, barring global consensus, Harvey (2012, p. 495) suggested that USA could at least pursue multilateral action (instead of its reciprocally limited bilateral pursuits, as is the case today) with at least some of the major players, effectively removing abusive investment options for US and participating member tax cheats country by country. Palan and Wigan (2014) argue that a similar sort of internationalization of FATCA is actually taking place and may very well emerge, citing the regionally constrained efforts of the European Union. In their theory, this internationalization would take place not so much through a US multilateral policy design, but rather by a parallel emulation of FATCA by the EU and in the future possibly by other major powers or groups of powers. With several parallel and relatively compatible versions of FATCA, the vulgar unilateralism with which USA embarked upon to put a stop to tax abuse would only be a small step from an enlightened multilateral solution that transcends previous pitfalls. This is a fascinating insight, but before we start jumping up and down, it is worth analyzing a few assumptions, ifs, and buts it is taking for granted.

Most importantly, it disregards the reaction of Capital. In Ģiġekian terms, it imagines a world where Capital is somehow already under significant control. This point may sound superficial, as I myself have in this paper, for the purposes of simplification, been using Capital as an all encompassing term, a unified class in itself and for itself. This is of course not an accurate representation, there is a lot of complexity associated with the class that is outside the scope of this paper, but we can shed a little light on it in the context of contemporary USA and FATCA. While both the Democrats and Republicans are generally speaking capitalists through and through and both parties are under outsize control of powerful vested interests (Gilens and Page 2014), there is, as also evident from the brief historical overview presented in this paper, a noticeable difference between the two. Fundamentally, the Democrats are mostly interventionist welfarist liberals with internationalist leanings. Though often displaying a neomercantilist streak, international coordination and multilateral solutions are not exactly throwing them into fits of rage. Republicans, on the other hand, generally fully subscribe to neoliberalism (whether genuinely or self-servingly makes no matter here), and since most voters in the rest of the world tend to have qualms about embracing it so fully, Republicans tend to fall back on rather conflictual unilateral neomercantilism. This short and admittedly simplistic detour into US politics brings us back to FATCA.

Republicans hate FATCA almost as much as they do Obamacare. FATCA passed as a result of its temporal proximity to the global financial crisis and the UBS tax evasion scandal, and the lucky coincidence of the Democrats not only having a progressive president in the White House, but also majorities in both Houses of the Congress. With all this going for it, FATCA passed by a slim 217 for to 212 against, with exactly zero Republicans voting for it, and 37 Democrats voting against. Republicans currently control both Houses of the Congress and have already made several direct attempts to repeal or at least undermine FATCA, so far unsuccessfully. Failing to repeal it directly, Republicans set their sights on the IRS. Despite each additional US$1 spent on tax enforcement yielding US$6 or more in collected revenue, the American IRS has suffered severe spending cuts. Since 2010, funding was cut by 18%, and more than 13 000 employees were fired, severely constraining the agency's ability to fight tax evasion and other illegal activities, all at the time FATCA was being implemented. (Marr, Friedman and DeBot 2015)

Another potential problem could be growing resentment by foreign jurisdictions themselves. While 62 jurisdictions have signed the IGA and most major FFIs have registered, some experts believe that the law's implications are so gargantuan and complex that signatories could not have envisaged the totality they were signing on to and challenges will mount once that becomes clear. (Groves 2014) In Canada for instance, the IGA has already been taken to the Federal Court.

A big if relates to whether USA would even be interested in properly multilateralizing FATCA. USA itself comprises of a number of tax free and secrecy jurisdictions. Its past conduct, both under the Democrats and the Republicans, already contains precedents for being particularly interested in finding its own tax cheats while content with inviting and catering to foreign ones. Not committing to the OECD's new efforts to enact a global automatic exchange of information, and its bilateral pursuit of IGAs including only partial reciprocity are hinting in exactly this direction. And this is happening under Obama. Republicans, if unable to repeal FATCA outright, would certainly be steering it towards this direction.

Finally, not many actors aside from USA are currently important enough to pull off a FATCA. The EU currently operates a regional version of it, and could likely successfully upgrade to a global one, but that is about where it ends. Is a world where the West is a tax evasion free zone while the rest continues to struggle with it, including against Western tax cheats, a desirable scenario to begin with?

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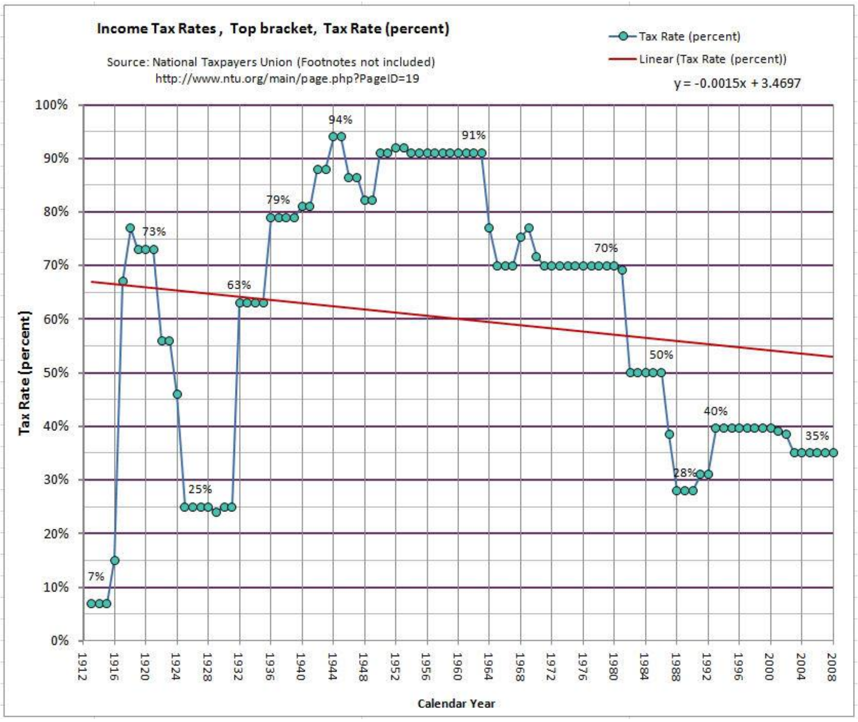
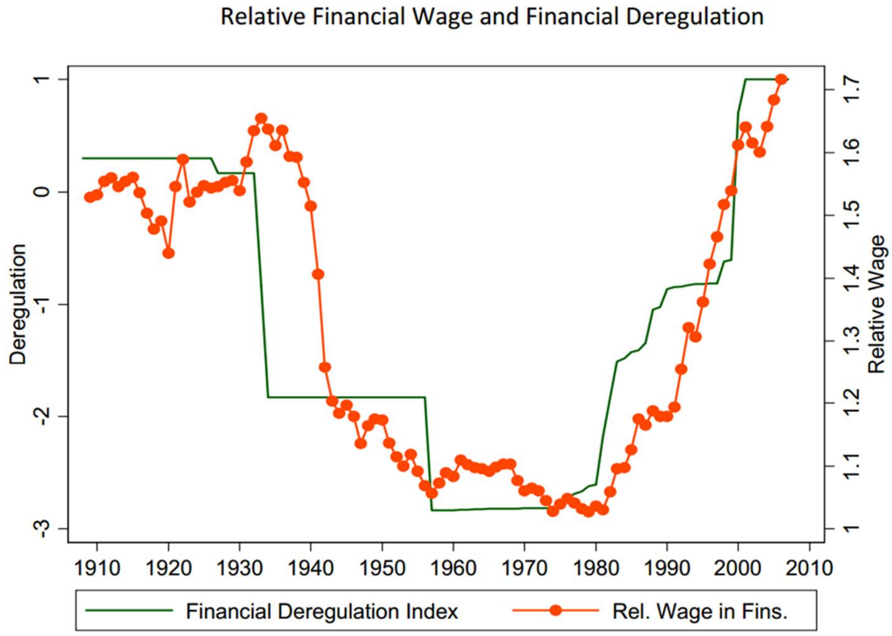
Appendix 1 - Source



Appendix 2 - Source



Notes: Wages are computed from the Industry Accounts of the U.S., from Kuznets (1941), and from Martin (1939). The relative wage is the ratio of Fins to Non Farm Private wages. See the text for the definition of the deregulation index.

Appendix 3 - Source

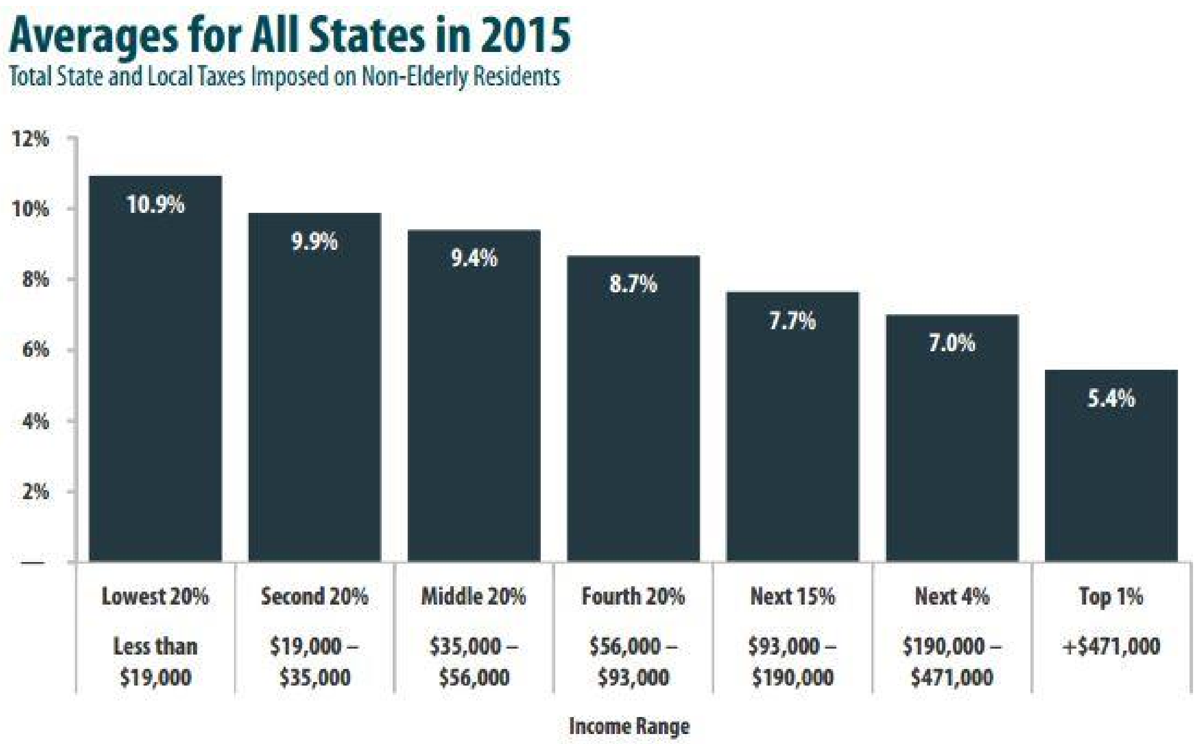


Figure represents 50 state (and District of Columbia) average for total state and local taxes paid as a share of 2012 income, post- federal offset