**Tax Policy is Human Rights Policy: The Irish Debate**

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Let me begin by congratulating Christian Aid not just on organizing this conference but on the approach that it takes to development. There was a time, not so long ago, when such groups saw their primary and perhaps only role as service delivery. Today, its work attests to the fact that there will often be little to be gained by providing assistance unless the structures of the society can be encouraged to develop in directions that can make effective use of that aid.

The same transition is occurring in the human rights field, although much more gradually. Gone are the days when it was thought sufficient to expose killings, torture, arbitrary detention, and so on. We now realize that such policies are rooted in broader societal structures and that they too need to be addressed. If a police force relies for its daily bread on extortion and its main weapon against suspects is to eliminate them, calling for the ratification of a treaty or the cessation of the relevant practices is no more than the starting point in identifying potential solutions for bringing lasting change.

This brings us to today’s focus on tax and human rights. The focus of the role that I play for the UN Human Rights Council is extreme poverty. I can call for a wide range of measures to be adopted to address the immediate plight of those living in poverty, and such measures are important. But at the end of the day, tax policy might in many contexts actually be even more important. In fact, the focus needs to be even wider. Corruption, illicit financial transfers, undisclosed payments, transfer mispricing by corporations, all have a major impact on the human rights situation in any given country.

But to return to taxation, the link with human rights is not necessarily an intuitive one; it needs to be explained. First, there is the most obvious link which is that of resource availability. Refusing to levy taxes, or failing to collect them, both of which are commonplace in many countries, results in the availability of inadequate revenue to fund human rights related expenditures.

Second, tax policy is where the action really is in terms of setting priorities. Tax policies reflect better than all of the ministerial statements and white papers the real priorities of a government. We can see clearly the activities that it chooses to incentivize, those that it opts to disincentivize, the groups that it decides to privilege, and the groups that it decides to ignore or even penalize. It makes no sense to say that human rights policies will be made by the human rights people, while tax policies will be made by the Finance Departments of the world, and the two will not interact.

Third, whether we like it or not, human rights policies have an indispensable element of redistributing societal resources. The regressive or progressive nature of a state’s tax structure shapes the allocation of income and assets across the population, and thereby affects various types of inequality.

Fourth, tax policy is central to political accountability, which is an essential element in the human rights framework. When designed and implemented well, taxes can reinforce the state’s accountability to the public and strengthen democracy. Or the process can undermine democracy by having crucial decisions made behind closed doors in the name of ‘commercial in-confidence’ insider deals.

Finally, as we shall see today, there is a crucial international cooperation dimension. The differential tax treatment of domestic and foreign entities in a given country, and variations in tax law between jurisdictions, influence the global flow and distribution of assets.

A focus on “the human rights impact of tax and fiscal policy” might seem like a distinctively Irish debate because of the extent to which it brings together perhaps the two greatest pre-occupations of post-2007 Ireland: the costs of austerity and its appropriate limits, especially in relation to the poor, on the one hand, and the role of tax policy in promoting economic development, on the other.

But the debate is in fact no longer distinctively Irish. Ireland is today very much a reflection of broader global developments that have thrust these two once separate topics together in a broad range of international debates. The negotiation of the Sustainable Development Goals, the upcoming International Conference on Financing for Development, the work of the OECD on tax evasion and avoidance, the major inquiries in different countries and by the European Commission into the systematic nature of tax avoidance, all combine to put the spotlight increasingly on the linkages that have for far too long been ignored.

**Why has the link been neglected in the past?**

HR and economic policy-making have long remained separate. There are many reasons. One is that the human rights area is dominated by lawyers, and they have tended to steer clear of matters of economic policy, despite their centrality. Another is that the proponents of civil and political rights have long shielded behind the myth that resource availability is irrelevant to a government’s obligations in that domain. Bringing up the economics of human rights would seem to violate the status of rights as being above and superior to such mundane considerations. But the reality that is increasingly obvious is that many of the world’s worst human rights situations are driven overwhelmingly by economic factors. Theft, corruption, extortion, the failure to tax, the failure to regulate economic actors fuel these conflicts and help to perpetuate them.

And finally, economic and social rights have been kept determinedly marginal from many of the debates. The USA has worked hard over decades to undermine efforts to treat these rights as human rights. Judges and lawyers, in states like Australia and Ireland, have generally played a very negative role in arguing that social rights cannot be effectively protected by law, contrary to widespread experience even in far less wealthy countries. Ireland is by no means immune from this criticism. While the early Irish Constitution was a pioneer in recognizing these rights as directive constitutional principles, the intervening years have seen a strong reluctance to accept that there are minimum human rights of access to health care, to housing, and to food. Detailed proposals prepared for the Constitutional Convention have so far been ignored. But if Ireland’s advice for developing countries is to be taken seriously, it needs to lead by example.

There is a big price to pay for the neglect of economic and social rights at the domestic and international levels. There is a backlash these days, in both the North and the South, against human rights. Much of the criticism relates directly to the effects of approaches that effectively marginalize social rights, do not engage with the greatest challenges of the day in the form of inequality and the need for redistribution, ignore the challenges that confront developing economies in this area, has do little to bring the increasingly dominant corporate sector under the umbrella of human rights.

As long as social rights are seen largely at both the domestic and international levels as a matter of charity rather than of rights, the human rights framework will have all too little to say about the most pressing problems of the day and the bulk of the population in both developed and developing countries will see the debates are irrelevant to their most strongly felt needs.

**How does all of this relate to Ireland?**

Let me focus on only two dimensions of a much more complex picture.

The starting point is to acknowledge that Ireland has achieved dramatic economic success, notwithstanding the huge post-2007 setback, based on its distinctive tax policies. The 12.5% corporate tax rate and the willingness of Ireland to countenance a wide array of special arrangements designed to attract inward investment and make itself an attractive financial hub have become almost a defining characteristic of the society. The shamrock now has the euro and the dollar carefully embedded within it, and the leprechaun of old has been replaced by the Finance Department official ever ready to do what it takes.

But policies of this type can easily descend into mantras, and mantras are simply slogans that are repeated unthinkingly. Ireland’s much vaunted and hugely successful tax policies need to be kept under constant review and need to be re-examined in light of the broader priorities that it has as a society. Pre-eminent among those broader priorities is to ensure the protection of basic levels of social rights for all of its citizens and residents. Another is Ireland’s longstanding vision of itself as an altruistic good international citizen. Few countries are as active in the international human rights domain, few countries of its size play such a role in peace-keeping and peace-making, and few are as consistently generous with development assistance.

But unthinking versions of the low-tax mantra risk getting in the way of both of these critical priorities.

Take first of all the consequences of austerity. I am not here to recount the human costs of the drastic cutbacks in social services and other arrangements that have been carried out in recent years. Suffice it to mention just one of the most recent figures to have been made public. The Central Statistics Office reported last month that the number of children living in consistent poverty (both at risk of poverty and experiencing deprivation) doubled from 6% to just under 12% between 2008 and 2013. 135,000 children in Ireland, or one in eight.

We need to acknowledge that social policy is a matter of human rights and that extreme poverty is a negation of all human rights. It obviously makes the enjoyment of economic and social rights impossible. Equally importantly, it undermines the enjoyment of civil and political rights by effectively disenfranchising many of the poorest. As I noted earlier, legal recognition of economic and social rights is as crucial as legal recognition of civil rights. Here, Ireland was once a pioneer, motivated by its experience of colonialism and a determination to do better. Today, it is one of the laggards.

It is important to emphasize, however, that the deep pockets of poverty that persist in Ireland are the result of a series of deliberate and conscious decisions by key actors who have chosen to prioritize other goals. Those living in poverty have been largely disempowered and their economic position reflects their political marginality. There are always reasons why poverty can’t be eliminated and why alternative projects need to take priority. The sanctity of tax policy is too often invoked as though there are no choices to be made.

Let me turn then to the international dimension of tax policy. The question is often asked as to whether Ireland is a tax haven. In 2013, Tobin and Walsh, two very senior officials from the Department of Finance and the Office of the Revenue Commissioners, respectively, argued that Ireland simply does meet the 1998 definition of a ‘tax haven’ offered by the OECD. They also rebutted “a dated but influential academic paper from 1994 that incorrectly included Ireland in a list of tax havens, based on a reason that has long lost any validity.” The paper was much cited here in Ireland and became the basis for denials by Ministers and other officials.

The problem is that almost no one outside of Ireland accepts this line. When lists of tax havens are drawn up, Ireland is always prominently among them. When Australia launches a national inquiry into massive corporate tax evasion, the headlines always include Ireland. When the New York Times welcomed the plan to eliminate the double Irish scam, it still described Ireland as continuing to engage in “beggar-thy-neighbor policies.” And the Campaign for Tax Justice, in a widely republished analysis, headlined its report “American corporations tell IRS the majority of their offshore profits are in 12 tax havens”. The list carries few surprises: Bermuda, Cayman Islands, British Virgin Islands, Bahamas, Luxembourg, Ireland … . US Congressional reports on international tax avoidance and evasion continue to feature Ireland prominently.[[1]](#footnote-1)

The problem is not the 12.5% tax rate. Other countries have that too. The problem is that for many years now Ireland has supplemented that rate and its many natural attractions for investors with a range of schemes that look to all the world to be designed to facilitate tax avoidance by huge multinationals in return for a pittance of a reward to Ireland. But more importantly, the costs to other countries, including developing countries, have been immense.

It might help to use an analogy. It is as if I live in a large apartment complex, and the main rule is that I can do whatever I like within the confines of my own apartment. I rent it out for a small amount to a band that plays very loud music all night long. I have made a ‘rational’ decision and increased my income in a time of austerity. But the cost to my neighbours is immense and bears no real relationship to the tiny gains that I have made. Ireland’s double Irish arrangement was clearly anti-social in this respect. The Irish authorities knew exactly what was going on, long before the international community finally blew the whistle. But there was no acknowledgement and there really still is not of the fact that this was a deliberate policy decision to extract a tiny amount of tax from huge multinational corporations at a huge cost to the international system. There is a risk that the ‘knowledge innovation box’ proposals that were immediately wheeled out when the double Irish had to be killed, could be designed in a comparable way not to reward genuine innovation but to enable tech companies and others to continue effectively laundering their profits through Ireland. This does not need to be the case, and the international community will need to scrutinize the new proposals carefully.

Policies that give large multinationals a free pass on tax are especially damaging to developing countries. The latter rely heavily on investment from multinational corporations. And often the resulting profits provide the best chance for tax to actually be collected in those countries. When developed countries tolerate internal pricing mechanisms and other arrangements that enable those corporations to effectively avoid such taxes that would otherwise be due to the developing country, they do an immense disservice.

Ireland needs to acknowledge the spillover effect of its policies, and the inconsistency between these minor components of its overall tax policy and its broader role in the world. A spillover analysis needs to be serious and transparent. Ireland’s exceptionally positive image in the world, manifest in so many contexts, should not be spoiled by tax policies that are absolutely marginal to its basic economic and fiscal styrategy.

There needs to be a national debate as to what aspects of the much-vaunted tax policy have been successful and what elements have not. One hears all too little of acknowledged failures in the sense of policies that cost the treasury a lot in terms of revenue foregone, but achieved very little in return. Unless there is greater openness in this regard, the Irish public cannot be expected to continue to accept explanations that dire social conditions must continue to be endured.

1. Jane G. Gravelle, Tax Havens: International Tax Avoidance and Evasion, Congressional Research Service, January 15, 2015. [↑](#footnote-ref-1)