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Take Their Tax and Relax?

Real-political and retroactive reflections on tax havens

“Kick their ass and take their gas” – a message on a bumper sticker somewhere in the Midwest of the United States during the time of the Iraq war. (I recall reading about this in the *Monde Diplomatique*, but it could have been some other newspaper.) Critical political analysts often reflected on the control of oil reserves as the real reason, the real-political reason, for the war. The bumper sticker, however, made short thrift of refined or sophisticated reflection. It simply accepted that oil was the reason for the war and cynically wallowed in it. There is a big difference between real politics (*Realpolitik*) and this cynicism, notwithstanding the fact that, if oil had in fact been the real reason for the war, there would have been little difference between this kind of cynicism and this particular instance of real politics.

In what follows, I will take this as a “tax haven” transposition of the wallowing cynicism of the Midwest bumper sticker. I will, however, not simply proceed to equate tax havens with this wallowing cynicism. At issue in this inquiry will be an attempt to distinguish between this cynicism and real-political reasons for tax havens, assuming such a distinction is at all possible. Perhaps it is not. Be it as it may, the attempt at articulating such a distinction that follows here will pivot on the concept of “retroactivity”, an old Aristotelian concept that has found new resonances in contemporary social scientific thinking.¹

Let me begin by defining the key terms “tax haven”, “real-political” and “retroactivity”. I take it the term “cynicism” is not in need of express definition here.

Turning dead private wealth into active and vibrant public wealth that can drive a new economy, may well be one of the crucial ways in which Luxembourg might come to justify its tax haven years retroactively.

Key terms

The term “tax haven” will be assumed to include especially the full array of political-economical regimes that pursue foreign benefits from domestic tax concessions. On the one hand, they especially include incentives that attract the formal registration of companies in a country without requiring those companies to actually relocate their main business activities along with that registration. On the other hand they also include incentives that entice foreign individuals to invest personal wealth in and through domestic financial institutions in order to avoid higher taxation of wealth in their countries of origin or residence.

The “real-political” considerations at issue in what follows will reflect a way of thinking that is realistic about the material concerns and exigencies that drive all political-economical projects and inform all national institutional frameworks. The thinking at issue will, in other words, not

be overly moralistic or idealistic. It will seek to steer clear of blue-eyed naivety. But as already indicated, it will also seek to distinguish “real politics” from the sheer cynicism evinced by the Midwest bumper sticker. Again, it will do so by simply assuming that such a distinction is possible. It cannot claim to know that it is.

The “retroactivity” that the reflections below will bring into focus concerns, in the first place, the way the “truth” or “essence” of historical realities always reveals itself retrospectively. One never knows until much later, long after the time at issue, what was really at stake in some or other particular historical period. But retroactivity does not only concern the fact that we only have access to all or at least more facts later and therefore only come to a better or more adequate understanding later. Retroactivity is more than “retrospection”. It also concerns the way history is literally made much later than an overly simplistic understanding of time might lead one to think. What people do “afterwards”, invariably bestows meaning on what happened “before”. To rephrase in terms of the central theme of our reflection: Whether some or other tax haven operated on the basis of sheer incomprehensible cynicism or real-political reasons that one might comprehend, will only become evident in the wake of developments that take their course after the tax haven at issue has given way to a different form of political-economical organization. Let us assume for instance, as would seem plausible, that Luxembourg has been a tax haven until recently, but will soon no longer

be one, at least as far as Europe and the United States are concerned. It is plausible to make this assumption in view of Jean-Claude Juncker's recent announcement that Luxembourg will henceforth comply with the demands of the United States and Europe regarding the automatic disclosure of American and European investments in Luxembourg. Whether the tax haven status that has hitherto been ascribed to Luxembourg was driven by sheer incomprehensible cynicism or real-political reasons that one may comprehend will become evident in the years to come. It will become evident in view of new facts that may become public, but also in view of how Luxembourg is going to respond to the termination of its tax haven status.

Tax Havens and Real Politics

Real politics is perhaps most idiomatically associated with the exclusively strategic political thinking that Niccolò Machiavelli articulated in *The Prince* and *The Discourses on Livy*. We need not venture very deep into Machiavelli's thought for present purposes, but one should note the significance that he attaches to the concept of *virtù*, as distinct from the concept of "moral virtue". At issue for Machiavelli, is the political and even military *virtù* without which no commonwealth stands any chance of significant durability.² With *virtù* Machiavelli contemplates something akin to a disciplined and purposeful skillfulness with which a prince or political leader promotes the real concerns of a commonwealth with welfare, durability

and survival. It is the recognition of this skill as indispensable for any significant politics that should caution one against naïve moralistic dismissals of real politics. But it is also the recognition of this skill as a political virtue, analogous to the way Aristotle regarded virtues (*aretai*) as particular manifestations of the good (*agathos*),

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that cautions one against severing political skill or *virtù* completely from virtue and goodness. And it is for purposes of heeding the latter caution that the distinction between cold cynicism and real politics becomes crucial.

Tax havens evidently operate in ways that undermine the interests of other commonwealths. They consider it worthwhile to do so for purposes of promoting domestic concerns. Consider the words of my colleague Christian Wolff quoted in the previous edition of *forum* regarding the introduction of a financial transaction tax in Luxembourg: "L'absence d'une tax financière est sans aucun doute un avantage concurrentiel pour le Luxembourg, même si politiquement il y a un risque à prendre. Nous montrons aux voisins que nous ne jouons pas le même jeu. Mais c'est le prix à payer."³ What is at stake here, *virtù* or

cynicism? The answer is not as simple as some might take it to be. Let us look into the considerations that might inform one's assessment of Wolff's statement.

The wealth and welfare of the commonwealth of Luxembourg is for historical reasons a highly precarious concern. The territorial boundaries bequeathed to Luxembourg in the course of nineteenth century board games between the larger political and military powers of Europe hardly enabled it to become an industrial and economical power of note. The period of steel production constitutes some exception in this regard, but even if a country the size of Luxembourg were to float from border to border on significant iron deposits, those deposits alone would surely not guarantee indefinite economic stability and prosperity. When one adds to this all the other factors that rendered steel production less significant in postmodern economies than it was before, it becomes clear that Luxembourg quite predictably would come to face significant and even dire challenges towards the end of the twentieth century as far as the avoidance of another era of national and individual poverty is concerned.

The minute territory that Luxembourg's powerful neighbours granted to it in the nineteenth century in pursuit of their own respective interests, not Luxembourg's interests (goodness, they could not even leave the citadel intact that might have been "rented out" lucratively in the horrendous times to come), was not big enough

Disneylux, Serge Ecker, 2010 (extrait)



to sustain enduring industrial and commercial development without engaging in very clever footwork, the essence of which cleverness was probably bound to include considerable elements of “deviousness”.

The people of Luxembourg found a solution in becoming a home for financial services to which were attached tax concessions and benefits that would make them highly competitive in the world of postmodern capitalism, so much so that the country soon established itself as one of the richest in the world. However, a “prince” with the political skill that Machiavelli had in mind, would have realized very soon, that the tax run would one day end in the same way the steel run would end. The tax run could at best be a temporary window of opportunity that would soon be closed. It would be closed as soon as other countries, neighbouring countries at that, would become painfully alert to the revenues they were losing as a result of their neighbour’s political-economical ingenuity. All that was needed for this to happen, it turned out in the end, was a global economic crisis that put unprecedented financial pressures on these neighbouring countries and other countries further afield or further offshore. A certain concerned “tolerance” of lost revenues and the predominant direction of the “concerned” side of this tolerance towards the criminal prosecution of tax avoidance by own citizens, would rapidly give way to intolerance with the tax “stealing” countries themselves; hence also Juncker’s recent announcement that the tax run is basically over. But again, the

politically skilled and disciplined prince, the *virtù*-ous prince as one might call him with reference to Machiavelli, would have seen this coming all along. *Virtù* is *par excellence* an acute regard for temporality and the evanescence of opportunity. It is a regard for the temporal conjunctures that briefly allows *virtù* an opportunity.⁴

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The crucial question at issue here is how this opportunity would ultimately be exploited. But the answer to this question would be revealed only later, much later. This “answer” is what will be discussed below in the section on “retroactivity”.

The very way in which I describe the historical political-exigencies that Luxembourg faced in the latter half of the twentieth century and how it responded to them, may well be appalling and distasteful to many. Tax havens do nothing less than steal food from the plates of the poor of those countries that lose revenue as a result of tax haven practices, they could say. “How could one at all describe such practices in terms of real-political ingenuity”, may they well ask. But the real-political answer to such a question would turn on a simple *tu quoque* retort that is very able to raise the stakes.

Suppose we are talking about some tax haven stealing food from the plates of Germany’s poor. Germany, for one, has in any case also been putting the food on the plate of their poor with considerable revenues earned from the darkest of economic practices, among which would count arms manufacturing and the unscrupulous marketing of those arms in which more “innocent” sectors of the economy did not hesitate to take part. Daimler Benz played a significant role in the corruption of South African politicians in the 1990’s in order to facilitate a cynical arms deal that burdened the ailing economy of that country meaninglessly and disastrously. This arms deal took considerable quantities of food from the plates of masses of poor people in South Africa.⁵ Germany surely does not only sell arms to rich countries like Saudi-Arabia (as if this is not already hugely questionable). It also does so to poor countries that cannot afford them, and the German government is obviously doing much too little to discourage this kind of commerce effectively. The selling of military hardware with little regard to who is buying is part of its household plan and it is not likely that its “arms run” is going to end soon.

But Germany is just a random example. One would be hard pressed to find an innocent economy on the face of the earth that does not exploit either its own poor or the poor of other economies. The human race is all in all a nasty piece of work when it comes to economic self-preservation.



Recognising this real-political reality is one thing. Taking comfort from it is another. The line between a Machiavellian appreciation for the fact of evil among humans – “it is necessary for anyone who organizes a republic [...] to take for granted that all men are evil”⁶ – and sheer cynicism is hair thin. Taking comfort from the ubiquitous evil among humans is a sure sign that one has crossed that line. The reason for recognizing the ubiquity of real politics among humans is not to embrace it, but to resist it as far as is plausibly possible. And the crucial point here is this one: Naïve moralistic denunciations of real politics do nothing that effectively and intelligently resists it. Naïve moralism is one of the signs of social atheism – *Atheismus der sittlichen Welt*, Hegel called it.⁷ Moralism denounces easily, but it never or hardly ever intervenes meaningfully. Significant resistance begins with a duly regretful but intelligent recognition of the full complexity of socioeconomic constraints and difficulties. Luc Frieden’s responses to the questions put to him in the *forum* of April 2013, especially the resistance he expressed to Wolff’s apparently casual acceptance of Luxembourg’s self-interest regarding financial transaction taxation, does not tell the story of one who takes comfort from or cynically embraces the fact that Luxembourg’s economy is vulnerable and precarious and therefore simply justified or entitled to take whatever dubious measures it is taking to survive. It does not tell the story of complacency – a story of “take their tax and relax”. It tells the story of a man who is using all his wits to deal with a very difficult situation. “*Alternativlos*”, the title of the interview, aptly reflects his predicament. But the question is whether this story is credible. How and when one might come to know whether it deserves the trust that it obviously demands or requests?

Retroactivity

In a recent interview with the *Frankfurter Allgemeine Sonntagszeitung* (FAS) Frieden observed that tax concessions might well have been the main draw card for foreign investments in Luxembourg when the financial services industry was just establishing itself. But this is no longer the case, he maintained further. He insisted that



Lux'em, bitch!, Serge Ecker, 2012

the attraction of Luxembourg for international investors is now mostly based on the expertise that the financial services in Luxembourg offer.⁸ Here in the FAS, Frieden would seem to appear somewhat less “*alternativlos*” than he appears in the *forum* of April 2013. Alternatives have been created and put in place, he seems to suggest in the FAS interview. Should this indeed be the case, it should be obvious that Luxembourg has less to fear from the termination of its tax haven status than many might think. But whether this is so or not, will only become known in times to come when the revenue earned from tax concessions indeed begins to dry up. Only then will one know whether the years of lucrative tax concessions indeed had “take their tax and relax” as its motto. If retrospection would eventually disclose the reality that those years consisted in the regrettable but intelligent use of foreign taxes for purposes of establishing a sustainable and prosperous domestic economy, one might well argue that Luxembourg did nothing more than cunningly take back what it needed from a Europe and a world that capriciously played hard ball with it in the nineteenth century.⁹ However, should the future to the contrary reveal that Luxembourg’s economy ultimately failed to survive the termination of its tax haven

status, the opposite observation would indeed become uncircumventable: Luxembourg’s tax havens years will then surely be revealed as years of luxurious relaxation.

But retroactivity involves more than mere retrospection, we said above. Luxembourg’s past ultimately still lies in its future, not only because future retrospection must still reveal its past, but also because future activity will, as it were, still reach back into its past to either redeem or condemn it. Again, history is always made much later than would appear to be the case. We do not know it yet, but the tax haven years may indeed have been years of undue privatization of public wealth. The foreign revenues that should have been earned with due regret, should have been utilized for necessary purposes that befit that regret. Principal among such necessary purposes would surely have been the construction of a sustainable economy that is no longer dependent on foreign revenues. But it could be that the Luxembourg political economy channeled or allowed the channeling of much of its “regrettable” foreign revenue into dead wealth, private wealth that does not contribute one iota to the sustenance of the Luxembourg economy. There may well have been elements of sheer cynicism evident in this



Provinz ist kein Ort, sondern ein Zustand, Serge Ecker, 2010

process. Recent revelation of statistics regarding private wealth in Luxembourg tells an ominous tale in this regard,¹⁰ as does the exorbitant price of private property in Luxembourg. As if to caricature this dead wealth, empty residences, many of them simply left to elemental degradation and decay in expectation of speculative gains, abound in Luxembourg. A responsible government that realizes the integrity and dignity of almost a quarter of a century of Luxembourg history is at stake in the challenges that it is facing today and tomorrow and in the years to come will surely act decisively to make this dead wealth alive again.

Turning dead private wealth into active and vibrant public wealth that can drive a new economy, may well be one of the crucial ways in which Luxembourg might come to justify its tax haven years retroactively. What it does in the future might still come to redeem what may have gone wrong in the past.¹¹ The alternative – the retrospective disclosure of a small country's gigantic cynicism – is too ghastly to contemplate. It should be avoided as far as humanly feasible. And again, there is no suggestion here that the gigantic cynicism invoked here was or is a fact. The point is to prevent it retroactively from becoming

a fact. The "truth" of Luxembourg's past, like the "truths" of all pasts, lies in its future. The way Luxembourg responds to the challenge of establishing an independent economy that is not dependent on revenues earned from foreign tax evasion will come to tell one of two possible tales; a tale of cunning real politics, if somewhat devious, through which a small and vulnerable country carved out a place in the sun among powerful neighbours who have been pushing it around like a pawn for ages, or a tale of cynical private enrichment. ♦

1 Aristotle already articulated the insight that the happiness of a life cannot be determined until that life has come to an end. Cf. Aristotle, *Nicomachean Ethics* (Penguin Classics, 1976) 1098a8-27. For an engagement with more contemporary (open ended) versions of this insight, cf. Van der Walt, "Vertical Sovereignty, Horizontal Constitutionalism, Subterranean Capitalism – A Case of Competing Retroactivities" (2010) *South African Journal for Human Rights*, p. 102-129, accessible at http://repository.up.ac.za/bitstream/handle/2263/15992/VanDerWalt_Verical%282010%29.pdf?sequence=1

2 Cf. Althusser, *Machiavelli and Us* (Verso, 1999) p. 57.

3 *forum*, April 2013, p. 27. Originally in *L'essentiel*: <http://www.lessentiel.lu/fr/news/luxembourg/story/17240970>.

4 Althusser, *op. cit.*, p. 18.

5 Cf. Van der Walt "Blixen's Difference: Horizontal Application of fundamental rights and the resistance to neocolonialism" *Law, Social Justice and Global Development Journal*, 2003 (1), http://www2.warwick.ac.uk/fac/soc/law/elj/lgd/2003_1/walt/ for an engagement with these adventures and misadventures of Daimler Benz and company in South Africa.

6 Althusser, *op. cit.*, p. 57, quoting Machiavelli, *Discourses on Livy* (Oxford World Classics Paper Back, 2003), Book I, Chapter 3, p. 28.

7 Hegel, *Grundlinien der Philosophie des Rechts in Werke* in 20 Bänden, Bnd 6 (Suhrkamp, 1970), p 16.

8 "Bankgeheimnis lockern", *Frankfurter Allgemeine Sonntagszeitung*, 7 April 2013: "Heute schätzen [die Kunden] die gute Beratung, die internationalen Produkten in der Vermögensverwaltung und das solide politische Umfeld. Luxemburg baut nicht auf Kunden die Steuern sparen wollen."

9 This is a forceful argument, but it has its limits. It works with regard to powerful neighbours such as Germany and France, but not with regard to a country like Greece that faces similar and worse economic vulnerabilities than Luxembourg does. It is for this reason that one should agree with Jürgen Stoldt (see his editorial "Friss oder Stirb" in *forum*, November 2012) that Luxembourg should at least have drawn a line of decency and solidarity with regard to tax evasion from Greece. Against the background of benefits that Luxembourg may have drawn and might still be drawing from tax evasion in Greece and other economically vulnerable countries, the admirable stance in favour of more solidarity in Europe that Luxembourg's foreign minister Jean Asselborn took on German television when the Cyprian crisis exploded, attains more than a touch of empty artfulness. Taking tax money from a country like Greece in times like the present risks a record of cynicism that can hardly be redeemed in future short of giving that tax back, as Stoldt suggests.

10 Cf. Böll et al., "Armes Deutschland" *Der Spiegel*, p. 64-71. This article should be read with caution, for it leaves too many things unsaid. However, the basic reflection of European Central Bank's assessment of the Luxembourg median (not average) of household patrimonies at € 397 800 speaks volumes. One of the implications of my real-political regard for Luxembourg's historical economic vulnerability is the idea that any present or future demand that Luxembourg change its taxation and secrecy practices should be accompanied with a facilitative comprehension for the country's historical vulnerability that may even include the negotiation of special transitional concessions to Luxembourg. But this facilitative comprehension and negotiation hardly stand a chance of materializing against the background of statistics that suggest too much of the revenue already gained and still to be gained has ended up and will continue to end up in economically passive private wealth.

11 The thought is borrowed, perhaps scandalously in this context, from Walther Benjamin's second thesis on the concept of history. Cf. Benjamin, "Über den Begriff der Geschichte" in *Gesammelte Schriften* Band I-2, p. 693: "[So] besteht eine geheime Verabredung zwischen den gewesenen Geschlechtern und unserem. Dann sind wir auf der Erde erwartet worden. Dann ist uns wie jedem Geschlecht, das vor uns war, eine schwache messianische Kraft mitgegeben, an welche die Vergangenheit Anspruch hat."