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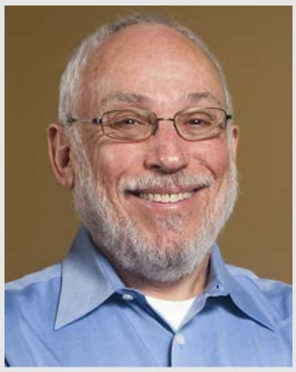

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In this article, the authors explore the notion of fairness in international tax using the parable of the Village of Billionaires to highlight the moral dilemma posed by redistributing tax revenue to address relative poverty within a developed country when absolute poverty exists beyond the village walls.

Aptly named, the Village of Billionaires is populated exclusively with billionaires. Every family living there has abundant wealth and privilege. Every driveway is lined with luxury vehicles like Rolls Royces, Bentleys, and Ferraris. Each house has its own swimming pool, gym complex, helicopter, and helipad. The village airport is filled with private Gulfstream and Boeing aircrafts. Residents have access to the top-notch health services, education, road systems, information and communications technology equipment, and shopping facilities. Simply put, villagers enjoy the very best of what the world has to offer. The village governs itself by committee, and each family nominates someone to sit on the council.

Sadly, as a result of overspending on yachts and fine wines, one of the families in the village has suffered a financial setback — they are down to their last $100 million dollars. The family appeals to the village council, which sets up a social metrics commission to develop an approach to measuring poverty.[1] The commission's remit is to identify those least able to make ends meet. It takes into account all material resources, not just incomes, and accounts for all the inescapable costs that families may face including child care, maintenance of super yachts, replenishing stocks of fine wine, extensive foreign holidays, helicopter maintenance, and mortgage costs.[2] The commission concludes that any family with less than 40 percent of the median income and wealth for the village falls within the poverty category, and it resolves to develop interventions and support to reduce the incidence of poverty and mitigate the impact of poverty for those who experience it.

To address the immediate problem, the villagers impose a progressive wealth tax on the billionaire families such that the family down to their last $100 million has its wealth restored to the $400 million range and therefore is no longer

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[1]The Legatum Institute Foundation's Social Metrics Commission report uses similar language to explain its methodology for generating a working definition of poverty for the United Kingdom. Philippa Stroud, "Measuring Poverty 2019 — A Report of the Social Metrics Commission," The Legatum Institute Foundation (July 2019).

[2]This is not to suggest that super yachts, fine wine, and extensive foreign holidays are inescapable costs per se, but that they appear so based on a relative — rather than an absolute — analysis. In other words, the definition of inescapable costs is relative.

suffering from poverty based on the commission's assessment. The family is also given access to an emergency fund to ensure it does not fall into poverty again. To save embarrassment, the emergency fund is available on a universal basis and is not means tested. The villagers happily declare the problem solved.

Outside the village walls, there is another town. That town is suffering from actual poverty as defined by the U.N., that is:

> a condition characterized by severe deprivation of basic human needs, including food, safe drinking water, sanitation facilities, health, shelter, education and information. It depends not only on income but also on access to services.[3]

The Village of Billionaires is the principal place of employment for town residents. Workers from the town commute to the village to maintain its facilities and perform other routine and menial functions. Some workers provide household services and child care on a residential basis and must be available around the clock; they are housed in quarters similar to the housing in their own town, but with more attractive exteriors to maintain the village's overall aura. Wages are based on the prevailing wage that residents of the other town earn when working in their own town or elsewhere to ensure that workers receive a fair, comparable wage for their town. Workers who have completed at least 40 quarters of employment in the Village of Billionaires are entitled to a retirement benefit beginning at age 65. Anyone who works in the Village of Billionaires must contribute a nonrefundable 20 percent of their wages to the retirement benefit fund. Those who do not complete 40 quarters of employment receive nothing from the fund. Of course, those who work in the Village of Billionaires probably pay taxes where they live as well.

When criticized for the opulence of their community alongside the impoverished town, residents of the Village of Billionaires are quick to point out that they are job creators. Without them, conditions in the town — to which the residents of the Village of Billionaires owe nothing — would be much worse. Unemployment would be higher without the wealthy neighbor. And nothing prevents resourceful residents of the poorer town from becoming billionaires and eventually applying to immigrate to the Village of Billionaires. Nevertheless, the Village of Billionaires allocates up to 2 percent of its annual budget to foreign assistance, and residents of various impoverished communities thank the residents of the Village of Billionaires for the assistance with nice letters and remember the aid in their evening prayers. Most billionaire residents happily pay their fair share of the taxes needed to maintain the community and provide foreign assistance, although some grumble about expenditures like foreign assistance that do not benefit them directly.

I. Introduction

This *reductio ad absurdum*[4] parable introduces the stark contrast between relative and absolute poverty. Both concepts are important when determining tax structures. Recent discussions about tax justice and the principles underpinning the international tax regime often emphasize the idea that companies and individuals should pay their fair share — not just in the domestic sense, but also in an international sense.[5] It is reasonable to assume that taxation is the means by which the state funds public services and, in some jurisdictions, contributes to greater equality. The parable, however, shows that relative poverty within a society may be a false indication of genuine need, and it reminds the reader that empirical data can help us refocus our definition of fairness. This is not to suggest that relative poverty is a pseudo-need, but that the moral obligation to resolve relative poverty is minimal when compared with the far more pressing problem of absolute poverty. Setting a goal of

[3] U.N., "Report of the World Summit for Social Development" (Mar. 6-12, 1995).

[4] Absurdity is itself relative — after all, the Village of Billionaires has features reminiscent of several developed democracies.

[5] OECD, "Ensuring Multinationals Pay a Fair Share of Taxes" (last accessed Mar. 1, 2020); Tax Justice UK, "Fair Share: Increasing Company Tax Contributions" (last accessed Mar. 1, 2020); IRS, "The Agency, Its Mission and Statutory Authority" (last accessed Mar. 1, 2020); and HM Revenue & Customs, "Tackling Tax Avoidance, Evasion, and Other Forms of Non-Compliance" (Mar. 2019).

contributing to greater equality within a society necessarily gives rise to competing claims internationally. This is especially the case when considering international tax challenges such as those the OECD discusses in its 2019 work program for taxing the digital economy.[6]

This article examines competing claims for tax revenues and considers the specific categories of relative, as opposed to absolute, poverty. If one accepts that taxation is to fund public services, the question then arises, at least in international tax: Which jurisdiction's public services should be funded? If the motivation for raising taxes is to tackle inequality, what has the greater claim, international inequality or national inequality? These questions require us to consider whether relative or absolute poverty is more pressing. If we conclude that international inequality and absolute poverty are more pressing, are we still permitted to use resources to address national inequality and relative poverty? What if we lack the resources, political will, and popular support necessary to confront international inequality and absolute poverty?

This article contends that there is a far stronger moral claim[7] for tax revenue to be redistributed on an international basis rather than a national basis. Further, it argues that the purported moral authority to address inequality within national borders is really a political demand to further the economic interests of particular groups that are already among the most economically privileged when viewed on an international spectrum. This article also finds that we lack the political will to truly confront international poverty — at least beyond contributing minimal resources to fight international poverty, which ultimately means we acknowledge the problem, but refuse to make the sacrifices necessary provide a remedy.

Resource availability is also a relative concept: The bulk of any national budget is committed to maintaining existing infrastructure leaving little funding for international development unless one opts to sacrifice maintenance for the morally superior aim of eliminating absolute poverty. Accordingly, the resources that are considered available for allocation in this article are only those resources dedicated to addressing either local or international poverty.

This article is divided into six sections, including this introduction. Section II tackles slippery definitional problems around the terms "tax justice" and "fair share." What do these terms mean when they are used by different economic agents and to what end? What do those agents want to achieve when they use these terms, and what moral basis do they rely upon to make those claims? Can claims of fairness pertaining to equality extend to redistribution beyond specific absolute levels of resource allocation and, if so, what levels?

Section III sets out a proposal for ongoing discourse based on the idea that claims for using tax resources to fund efforts within national boundaries are political as opposed to moral — that is, they are not based on economic merit. If we take redistribution as a moral imperative seriously, we must put the greater international need above national, political demands.

Section IV considers the practical implications of this analysis in the context of the latest iteration of the OECD's base erosion and profit-shifting initiative, known as BEPS 2.0. The OECD's work program is aimed at revising the existing structure of profit allocation as well as the nexus rules, efforts that may generate a novel set of international tax rules.

Section V assesses the political philosophical arguments for and against global distributive justice. It considers the cases of cosmopolitans, realists, nationalists, and Rawlsians.[8] The article concludes that the complex interplay of political, economic, and social cooperation in the 21st century requires an urgent reevaluation of the way in which distributive justice is and should be practiced.

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[6] OECD, "Programme of Work to Develop a Consensus Solution to the Tax Challenges Arising From the Digitalisation of the Economy" (May 2019) (hereinafter, work program).

[7] Morality is itself a contentious term. This article contends that its moral force works on any of a utilitarian, Kantian, or Aristotelian definition.

[8] From the works of John Rawls, an American political philosopher (1921-2002), discussed in greater detail *infra* notes 90-93, Rawlsian justice, broadly speaking, revolves around the idea that differences in society are largely a legacy of luck. In order to determine how political institutions ought to be arranged, Rawls proposes that differences in society ought only to be tolerated insofar as they improve the position of the weakest members. Rawls does not suggest that "society" should be viewed from a global perspective; this article suggests otherwise.

The final section considers whether there is any continuing moral value in redistribution to address relative poverty within national borders absent the resources and political will to also address absolute poverty internationally, and concludes that there is none. It also yields insight into the motives of those with wealth and power who choose to share only as much of their wealth as may be necessary to prevent the less wealthy in their vicinity from forcibly seizing wealth and power.

II. Tax Justice

Everyone believes in justice. After all, who will publicly declare a goal of injustice? The term has found its way into the names of tax lobbying groups such as the Tax Justice Network and Global Alliance for Tax Justice. Their aims, however, are highly political and their perspectives often differ from other lobbying groups that invoke their own (politically informed) perspective on justice. Likewise, it is difficult to imagine there are many economic agents who would express their desire not to pay their "fair share." Language as loose as "fair share" can mean such different things to different people that it ends up not really meaning anything beyond expressing the political predilections of the utterer. To a multinational enterprise's board of directors, the terms "justice" and "fair share" mean operating within the legal framework of the jurisdictions in which they operate.[9] Others, as discussed below, have a very different perspective.

Given the politically charged nature of these terms, it is surprising how frequently those tasked with the administration of the tax system use them. For example, HM Revenue & Customs appears to substitute references to the amount of tax large businesses legally need to pay with the statement that they should pay their fair share[10] — suggesting there are additional obligations beyond that which is legally necessary. When discussing cross-border tax arrangements, HMRC states that "the government supports a competitive corporate tax system but is clear that companies must pay their fair share." Much of the difference, in HMRC's view, relates to tax avoidance; however, it is far from clear that the definition is restricted to only that issue.

The IRS's mission statement states that its role is to ensure the "minority who are unwilling to comply [with tax law] pay their fair share."[11] The violation of unambiguous tax laws constitutes noncompliance and evasion, but compliance is itself an ambiguous term. Compliance could also mean not structuring one's affairs at the very limits of tax law ambiguity in a way that minimizes tax liability — that is, not engaging in tax avoidance.[12] Tax avoidance is a far more difficult concept than tax evasion since avoidance depends on an accepted understanding of the legislative intent underlying ambiguous tax law language. While the United States relates fairness — a term explored in greater depth in Section III — back to legality as opposed to more politically driven notions of justice or fairness, those notions control the activities of the IRS as it responds to the legislative will. Those ideals also influence the legislature and tax administrators when they decide to respond to planning by eliminating ambiguity or decide not to act, although the latter can also occur because the authorities lack the resources to respond immediately as tax planners continuously devise structures at the limits of the law.

A recently disclosed sophisticated tax planning scheme involving so-called "cum-cum" and "cum-ex" share trading exemplifies the tension between tax planning within the law and violations of the law. Germany did not expressly outlaw transactions that enabled German

[9] *See, e.g.*, Apple, "The Facts About Apple's Tax Payments" (Nov. 6, 2017). How corporations ought to behave is far from a settled matter. Milton Friedman argues that directors-as-individuals may have their own personal political and moral views, but their legal duties require them to operate in accordance with the law and their fiduciary duties require them to maximize shareholder value. Friedman, "The Social Responsibility of Business Is to Enhance Its Profits," 32(13) *The New York Times Magazine* 122 (Sept. 3, 1970). Others disagree with this, suggesting that corporate social responsibility is in the interest of a wider group of stakeholders that directors ought to consider. *See* Judith Freedman, "Tax and Corporate Responsibility," 695 *Tax J.* (Jan. 1, 2003).

[10] HMRC, *supra* note 5.

[11] IRS, *supra* note 5.

[12] Henry Ordower, "The Culture of Tax Avoidance," 55 *Saint Louis U. L.J.* 47 (2010).

taxpayers to claim a credit for a dividend withholding tax that was not actually paid on shares that non-Germans owned and lent or sold short to Germans near the ex-dividend date that were then returned to the non-German owner, and it permitted both the owner of shares and the buyer of the shorted shares to claim the German credit for dividend withholding.[13] It is difficult to imagine how two taxpayers paying their "fair share" can receive a refund of the same tax. Nevertheless, because the scheme was not made expressly illegal, one might argue that claiming the refund was compliant with the tax law and thus consistent with tax justice.

While it is understandable that tax authorities want to reduce tax evasion and tax avoidance, it seems reasonable to expect their role to be restricted to the apolitical realm — that is, limited to their legal fiat. On this analysis, moral questions about justice and one's fair share should be restricted to the political realm.

However, it also seems legitimate for political lobbying groups to argue in favor of a particular political or moral position even if this means claiming that their use of terms like "fair share" is not a legal prescription, but rather a normative expression. Tax Justice UK, for example, asserts that "large companies in the UK do not contribute their fair share of tax to the exchequer."[14] The group acknowledges that when it uses the term "fair share," it means businesses should pay more tax than they owe. Tax Justice UK encourages public review of the cost-benefit analysis used to draft corporate reliefs and subsidies; it hopes to see an abandonment of the ideology of tax competition, a tightening of efforts to reduce avoidance, and better enforcement. Once again, it difficult to imagine that many would disagree with the idea that economic agents should pay what they legally owe, but it is far from clear that justice requires paying more — although it is clear that the terminology is political and cannot easily be characterized objectively.

There are cogent, albeit contested, arguments in favor of the idea that increases in corporate tax lead to reductions in overall tax yield.[15] If true, this would appear to harm those reliant on tax revenue and reduce the welfare of everyone in the system. Assuming, however, that increases in taxation did lead to increases in tax revenue, what would that mean in terms of justice? For many on the communitarian end of the political spectrum, justice would require increases in taxation. They would claim that vital public services are underfunded,[16] noting that there are significant welfare needs throughout the public sector and increasing reliance on food banks.[17] Looking at the United Kingdom as an example, they would argue that the National Health Service (NHS) is in a permanent crisis; education is underfunded; teachers, doctors, and nurses are not paid enough; local authority services have been cut; and that the whole austerity enterprise has created devastation and misery since the financial crisis in 2008.[18] The point being made here is that there are many academics, lobby groups, and other organizations actively making moral claims for more money (that is, demanding scarce resources from the state for the alleviation of relative poverty without reference to the demands of absolute poverty). What is clear from these sources is that they all attempt to dress their demands as moral claims as opposed to straightforward political or economic bargaining requests. Use of the word "crisis" is prevalent, indicating that unless their demands are met, something "terrible" will happen to the public, which requires immediate attention.

Based on this analysis, the demands of justice require increases in public services that have a redistributional effect and are paid for by taxing those who can comfortably afford to pay more.[19] The argument, put in these terms, is one based on

[13] Lee A. Sheppard, "Anticipating EU Tax Haven Hybrid Rules," *Tax Notes Int'l*, Sept. 23, 2019, p. 1217.

[14] Tax Justice UK, *supra* note 5.

[15] *See, e.g.*, Richard Teather, "The Effect of Labour's Corporation Tax," Adam Smith Institute blog, May 12, 2017; Alex Brill and Kevin A. Hassett, "Revenue-Maximizing Corporate Income Taxes: The Laffer Curve in OECD Countries," AEI Working Paper No. 137 (2007); and Joel Slemrod, "Chapter 6: On the High-Income Laffer Curve," in *Tax Progressivity and Income Inequality* (1996).

[16] Kam Gill, "Austerity Won't Be Over Until Our Public Services Get the Funding They Need," TUC blog, Oct. 26, 2018.

[17] Rachel Loopstra et al., "Austerity, Sanctions, and the Rise of Food Banks in the UK," The BMJ Online blog, Apr. 8, 2015.

[18] Sophie Arie, "Austerity in the UK: Rising Poverty Threatens Stability and Health," The BMJ Online blog, Nov. 19, 2018.

[19] Chris Giles and Delphine Strauss, "Costs Soars for Labour's Grand Pledge to Reshape the Economy," *The Financial Times*, Sept. 2, 2019.

justice and fairness: After all, shouldn't a country as wealthy as the United Kingdom provide minimum levels of public services?[20] An issue that arises, however, is how to define the acceptable minimum. How much resource redistribution should the state engage in? Is there a level of comfort beyond which the state can say that further intervention to narrow wealth distribution is beyond its mandate? To understand this issue, one must consider the problems of relative versus absolute poverty.[21]

A. Absolute Poverty: Analysis

In 2015 it was estimated that around 10 percent of the world's population — more than 700 million people — were living in conditions of actual poverty.[22] Childhood deaths are one of the threats of absolute global poverty.

In 2018 the World Health Organization estimated that 6.2 million children and adolescents under the age of 15 died from preventable causes.[23] The leading causes of childhood deaths were preterm birth complications, pneumonia, birth asphyxia, congenital anomalies, diarrhea, and malaria. The WHO suggests that:

> more than half of these early child deaths are preventable or can be treated with simple, affordable interventions including immunization, adequate nutrition, safe water and food and appropriate care by a trained health provider.

Goal number one in the U.N.'s sustainable development goals is to "end poverty in all its forms everywhere." Outside of our hypothetical Village of Billionaires, having a job does not guarantee a decent living. Discussing this goal, the U.N. cites some sobering statistics for 2018 (although there is little reason to believe there has been major change in two years). Worldwide, 8 percent of employed workers and their families lived in extreme poverty. For ages 24-34, there were 122 women living in extreme poverty for every 100 men. The majority of those who were living on less than $1.90 per day were in sub-Saharan Africa. One in five children lived in extreme poverty. Fifty-five percent of the world's population had no access to social protection. Only 41 percent of women giving birth in 2018 received maternity benefits.

At the same time, as the world is facing the very real problem of absolute poverty, developed countries like the United Kingdom are devoting large amounts of money to far different priorities. In the United Kingdom, John McDonnell, Labour shadow chancellor[24] from 2010 to 2015, argued that the provision of Universal Basic Services is consistent with Labour's belief in universalism and the importance of the services we all share.[25] Estimates suggest that in 2014 the United Kingdom spent more than £5 billion on benefits for those with incomes that exceeded £100,000 per annum (about $6.22 billion and $124,000, respectively).[26] According to one report, in 2018 the U.K.'s foreign aid budget came to around £14 billion with £1.75 million going toward paying bonuses to civil servants, including £243,000 for top officials.[27] In excess of £400 million of the U.K. government's money is spent on its arts and entertainment program, which includes funding for lavish productions at the Royal Opera House.[28] The Sovereign Grant, which maintains the Queen, the royal family, and their palaces, came to a total of £82.2 million for 2018-2019.[29] In 2019 the Labour

[20] Sven-Olof Lodin, "Swedish Tax Reforms 1071-77 — Why So Many?" 56 *Acta Universitatis Stockholmiensis Studia Juridica Stockholmiensia* 181 (1977) (observing that building the welfare state required the bulk of taxes to be imposed on the middle class, but steeply progressive rates applicable to wealthy taxpayers were necessary to ensure that the middle class would accept the plan).

[21] *See* U.N., *supra* note 3 and accompanying text.

[22] Zack Beauchamp, "The World's Victory Over Extreme Poverty in One Chart," Vox, Dec. 14, 2014.

[23] WHO, "Children: Reducing Mortality" (Sept. 2019).

[24] *Longman Dictionary of Contemporary English* defines shadow chancellor as "the politician in the main opposition party in the British parliament who would become chancellor etc. if their party was in government, and who is responsible for speaking on the same subjects."

[25] Ordower, "Uniform International Tax Collection for Global Development, a *(**)topian BEPS Alternative" (unpublished manuscript on file with author).

[26] Taxpayers' Alliance, "New Bumper Book of Government Waste Exposes £120 Billion of Wasteful Spending — That's £4,500 for Every Household in the UK" (June 15, 2014).

[27] David Wilcock, "Staff in Charge of the UK's £14 Billion Foreign Aid Budget Shared £1.75 Million in Bonuses Last Year Including £10,000P to Senior Civil Servants," *Daily Mail*, Aug. 12, 2019.

[28] The Arts Council England, "How We Invest Public Money" (2018).

[29] Deputy Treasurer to the Queen, "The Sovereign Grant and Sovereign Grant Reserve" (Mar. 2019).

Party proposed increasing U.K. government expenditure on public services by around £80 billion in addition to the £800 billion already devoted to those services.[30]

The Labour Party's vision for international development is set out in a document entitled, "A World for the Many, Not the Few." It states:

> The Labour Party stands ready to lead the transition to a fairer world. The singular mission of international development under Labour will be to build a world for the many, not the few. Labour will wholeheartedly back the Sustainable Development Goals (SDGs) as a progressive route to building that world.[31]

In spite of government spending commitments totaling more than £800 billion and in spite of the Labour leadership being among the most egalitarian Western political parties, the government only proposes directing 70 pence out of every £100 made in the United Kingdom toward eradicating absolute poverty — a commitment that had already been met by the center-right Conservative administration.[32] Instead, the country spends its vast tax revenue on its royal family, with their private jets, fine wines, and royal palaces; opera performances; and welfare handouts to those with incomes in excess of £100,000 per year — an approach to global poverty that is similar to other countries in the OECD.

The United States doesn't have a monarchy or royal palaces to maintain. The White House is merely a cottage in comparison with the grand palaces of the United Kingdom. Salaries for government officials remain modest relative to those of highly compensated corporate executives. The president receives $400,000 per year plus expenses, certainly well above the average of $45,000 for American workers, but far below the income earned by CEOs of major corporations who often earn in excess of $50 million annually.[33] Direct government support for the arts has disappeared almost entirely in the United States, but indirect support through an income tax deduction for charitable contributions is a significant benefit that lacks any meaningful government oversight. Excluding donations to healthcare and education, the expected cost of providing tax breaks to donors for charitable contributions will exceed $555 billion for the 10-year period from 2019 to 2028.[34] Many income tax expenditures inure primarily to the benefit of high-income or high-net-worth taxpayers in the United States, including the stepped-up new "basis at death" rule (an estimated $222 billion expenditure for 2019 to 2028) and preferential rates for long-term capital gains (estimated to cost more than $1.5 trillion from 2019 to 2028).[35] Proposals from some of the former candidates for the 2020 Democratic Party nomination for president would have made the United States more like the United Kingdom in terms of the universal provision of benefits with plans including providing Medicare to all and free college tuition[36] or a universal basic income.[37] The presumptive Democratic presidential nominee Joe Biden's plans are far more tame and traditional. His policy proposals emphasize support for jobs through unions, environmental improvement, and infrastructure projects for roads, railroads, broadband, and airports.[38]

The total U.S. budget for 2020 is estimated to be more than $4.6 trillion (not including the extraordinary expenditures associated with the ongoing economic relief from the COVID-19

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[30] Institute of Fiscal Studies, "Labour Manifesto: An Initial Reaction From IFS Researchers" (Nov. 2019).

[31] Kate Osamor, "A World for the Many, Not the Few," Labour Party policy paper (Mar. 2018).

[32] Richard Braham, "UK Spending on Foreign Aid," Full Fact, Feb. 15, 2018. *See also* DFID Media Room, "The Aid Budget Only Goes Up as the UK Economy Grows," DFID in the News: Gov.UK Blog (Apr. 6, 2018).

[33] *See* Kathleen Elkins, "Here's the Last Time the President of the United States Got a Raise," CNBC Make It, Feb. 19, 2018; and AFL-CIO, "Highest-Paid CEOs" (last accessed Mar. 1, 2020).

[34] Depending on the donor's tax characteristics, each dollar donated reduces the donor's tax liability by up to 37 cents — a subsidy with no government oversight beyond determining whether the recipient is qualified to receive charitable contributions. Most arts organizations do. *See* U.S. Department of the Treasury, Office of Tax Analysis, "Tax Expenditures" (Oct. 29, 2018) (including specific tables for 2018, 2019, and 2020).

[35] *Id.* The basis at death rule means that any increase in the value of the property while the decedent owned it is untaxed and capital gains on assets held for longer than a year receive a preferential tax rate.

[36] Brian Riedl, "America Might Be Ready for Democratic Socialism. It's Not Ready for the Bill," Vox, Aug. 20, 2018.

[37] "The Freedom Dividend, Defined," Yang2020 (last accessed Mar. 2, 2020).

[38] Joe Biden, "The Biden Plan to Invest in Middle Class Competitiveness" (accessed June 1, 2020).

pandemic) with some $32 billion — approximately 60 cents out of every $100 spent — devoted to foreign assistance, which includes approximately $9 billion for "peace and security" (primarily stabilization efforts).[39] Of the $4.6 trillion, only $6.5 million is dedicated to humanitarian assistance, including migration management; $7 billion to health, with only $690 million focused on maternal and children's health; and a mere $2 billion for economic development, most of which takes the form of industry subsidies.

Even among the most socialistic of those who ran to be the 2020 Democratic presidential nominee, there was no discussion about substantially increasing the U.S. development budget to relieve world poverty — although section 170 of the U.S. tax code continues to offer a charitable contribution deduction for eligible taxpayers who contribute to U.S. charitable entities working to relieve world poverty. It also is clear that the COVID-19 pandemic has caused the United States to look even more inward. The first $2 trillion economic relief package did not include foreign aid.[40] Also, the United States suspended funding for WHO and closed its borders to immigrants, except low-wage temporary workers needed to harvest crops and some specialized workers.

B. Relative Poverty: An Analysis

The parable that opens this article is designed to provoke. It is a *reductio ad absurdum* demonstrating how definitions of relative poverty fare when compared to the more serious issue of absolute poverty. The Village of Billionaires, however, is a modern tale about the differentials in global wealth and the way in which the language used by redistributionalists in developed economies has led to the appropriation of resources that, on any legitimate moral ground, could be dedicated to far more serious and pressing issues.

When considering questions of global inequality and redistribution, the key issue is not whether billionaires or multinationals ought to pay more, it is whether residents of the Village of Billionaires who are less affluent — or the less affluent residents of OECD countries — should expect that redistributed funds will accrue to them or to those who are far needier. The scale and scope of relative need compared with the real problem of absolute poverty is such that even some groups who claim to be in crisis and in desperate need themselves have a moral duty to redistribute their own assets toward the absolute poor as defined by the U.N. It is interesting to observe that individuals in developed economies who experience need (but not absolute poverty) demonstrate a greater willingness to share limited resources than is seen among the wealthy. On average, low-income individuals contribute a far higher percentage of their income to charities than high-income individuals.[41]

When comparing GDP per capita, per annum — a useful but imperfect comparison tool that materially overstates the resources at the lower end of the scale because, in all countries, distribution of GDP is skewed toward those with property and power — the EU averages about $43,700, with the United Kingdom's coming in at $45,500, which also happens to be the OECD average.[42] The United States stands at $62,600. The world's poorest economies, such as Burundi, the Central African Republic, the Democratic Republic of Congo, Niger, Liberia, Malawi, and Mozambique, all have GDPs per capita below $1,500 a year.

According to GDP per capita data, which may change materially because of the worldwide impact of the COVID-19 pandemic, the average person in the United Kingdom is more than 61 times better off than the average person in Burundi, which has per capita GDP of only $744 per year. Perhaps that method of assessment is too crude, and a better metric might be looking at how someone in the lower-income bracket in the

[39] *See* Congressional Budget Office, "Budget" (last accessed Mar. 2, 2020); and "Map of Foreign Assistance Worldwide," ForeignAssistance.gov (last accessed Mar. 2, 2020).

[40] U.S. Department of Treasury, "The CARES Act Works for All Americans" (accessed June 1, 2020).

[41] Katia Savchuk, "Wealthy Americans Are Giving Less of Their Incomes to Charity, While Poor Are Donating More," *Forbes*, Oct. 6, 2014.

[42] The World Bank, "GDP per Capita, PPP (Current International $)" (last accessed Jan. 3, 2020). All GDP figures are in international dollars with a purchasing power equal to that of the U.S. dollar in the United States and are rounded to the nearest hundred.

United Kingdom fares in comparison with someone in Burundi.

A single person with a disposable income of £169 per week (nearly £9,000 per year) with no children is considered to be in the lowest 10 percent in the United Kingdom.[43] That data set, however, does not take into account the range of other benefits and services available at no cost in the United Kingdom. Every pupil in the United Kingdom is entitled to around £5,000 per year for primary education and £6,300 per year for secondary education.[44] The average per-person cost for the U.K.'s National Health Service comes in at around £3,000 per year.[45] Averaged across all individuals, the low-income housing benefit amounts to approximately £5,000 annually.[46] Ultimately, someone with no job and no resources in the United Kingdom can reasonably expect to receive around £22,000 per annum in welfare, health, education, and housing benefits, which equates to around $28,000 annually — more than 38 times the average per capita GDP in Burundi.

Perhaps even more surprising when comparing relative poverty with absolute poverty is the impact that removing national boundaries has on data sets. According to the Giving What We Can Global Rich List, which is run in collaboration with Care International, that income of £22,000 mentioned above places someone in the top 1.46 percent of the richest people in the world by income.[47] Therefore, when compared against an international scale of income, the very poorest in the United Kingdom are among the richest in the world. The United Kingdom, on this analysis, is indeed the proverbial Village of Billionaires.

Most likely, the United States is also akin to the Village of Billionaires, although the welfare amount per capita is more difficult to measure for the bottom wealth segment, which may be needier than that segment in the United Kingdom. The United States lacks universal healthcare but does offer Medicaid, a healthcare program for low-income individuals and families administered by the states,[48] and Medicare for older U.S. citizens and residents who paid, or whose spouses paid, the Medicare tax for at least 40 calendar quarters.[49] Free public elementary and secondary education is available for all authorized U.S. residents and many unauthorized residents, although rules and funding amounts vary by state. Some public housing and housing assistance is available, but it is not universal. Even the basic retirement benefit under Social Security is, like Medicare, eligibility-based.[50]

Other benefits are available, including temporary assistance for needy families[51] and the supplemental nutrition assistance program (food stamps),[52] but again, eligibility is not universal. The largest welfare benefit — supplemental income provided through the refundable earned income tax credit — is a function of the individual's income from wages or other earnings, so unemployed individuals do not share in the benefit. Set forth in section 32, the EITC is estimated to be a $49 billion tax expenditure over the decade beginning in 2019.[53]

Returning to the United Kingdom, in a Labour press release, McDonnell refers to the top 1 percent as the "super rich." He says:

> It's shocking that so many of the top 1 percent are getting tax advantages. . . . A Labour government will be for the many, not the few — and will tackle regional inequality, introduce a fairer taxation system, and clamp down on tax advantages exploited by the super-rich.[54]

[43] Feargal McGuinness and Daniel Harari, "Income Inequality in the UK," House of Commons Library Briefing Paper 7484 (May 20, 2019)

[44] Chris Belfield, Claire Crawford, and Luke Sibieta, "Long-Run Comparisons of Spending per Pupil Across Different Stages of Education," Institute for Fiscal Studies (Aug. 2018).

[45] Office for National Statistics, "Healthcare Expenditure, UK, Health Accounts: 2017" (last accessed Jan. 3, 2020).

[46] Dawn Foster, "Who Gets Housing Benefit and What Does It Cost?" *The Guardian*, Jan. 22, 2016.

[47] Giving What We Can, "How Rich Am I?" (accessed June 1, 2020).

[48] U.S. Department of Health and Human Services, "Who Is Eligible for Medicaid?" (updated Aug. 4, 2017).

[49] Patricia Barry, "Do You Qualify for Medicare?" AARP (updated Sept. 29, 2019).

[50] Social Security Administration, "Explore the Benefits You May Be Due" (last accessed Mar. 2, 2020)

[51] U.S. Department of Health and Human Services, "What Is TANF?" (updated Nov. 7, 2012).

[52] U.S. Department of Agriculture, "SNAP Eligibility" (updated Aug. 14, 2019).

[53] "Tax Expenditures," *supra* note 34.

[54] Labour Party release on the top 1 percent (Aug. 6, 2019).

Looking at the United Kingdom from a global perspective, however, the data suggest that even the people to whom he is looking to redistribute tax advantages are among the superrich. They are, ultimately, "the few," not "the many." On a global scale, McDonnell's proposals merely take from the top 1 percent of the top 1 percent and redistribute to the world's top 1 percent. On any reasonable analysis, if based on a wider global perspective, this is not egalitarian. It is simply the expression of political power within a wealthy jurisdiction to redistribute money from the fabulously wealthy to the simply wealthy. When McDonnell talks about regional inequality, why restrict the discussion to regions within the U.K. borders? Why not acknowledge that the United Kingdom itself is just a region within a global community?

In 2019 the Institute for Fiscal Studies reported that in order for a U.K. taxpayer to find themselves in the top 1 percent of income earners, they would have to earn £160,000 per year.[55] By way of contrast, reaching the top 0.1 percent of income earners required earning around £650,000. The levels of inequality faced by income earners between 0.1 and 1 percent is higher than any other part of the income spectrum. However, recalling the Village of Billionaires, it is as absurd to suggest a redistribution of income from the top 0.1 percent of U.K. income earners to the top 1 percent of income earners in the name of egalitarianism[56] as it is to suggest that the top 1 percent of global income earners ought to receive the level of benefits they receive from the top 0.1 percent of global income earners. Egalitarianism must face this problem if it is going to be a serious moral force in the world, rather than representing the narrow interests of a small but lucky group of people who happen to have been born in a particular geographic location.

Conceptually, the system has created a problematic moral dilemma — one not anticipated by those within the OECD village unless and until they look outside its walls. With the problem noted, the discussion can turn to how one can distinguish genuine egalitarian claims from narrow political claims made by the privileged few who, because of where they were born, can claim significant benefits in large welfare economies.

III. Economic vs. Egalitarian Discourse

Recognizing the problem with claims for resource allocation in the context of relative as opposed to absolute poverty, this section considers whether redistributional claims made in the name of "fairness" fulfill egalitarian aims if they are restricted to within national boundaries. The following discussion involving international wage arbitrage sharpens the focus to lay the groundwork for considering fairness in the context of international tax.

Fairness is a quintessentially relative term. Suggesting that a particular state of affairs — X — is unfair requires an explanation. Why is X unfair? It must be unfair relative to some other state of affairs — Y — that is fair.

If one is talking about wages, for example, a fair wage should be relative to some situation in which the wage paid is unfair, and that judgment must be based on some kind of reasoning. The comparator group is clearly important. One person earning £8 per hour in London might be said to be receiving and unfair wage relative to someone earning £5,000 per hour for doing the same work. Why should one person get paid more than another for the same thing? This reasoning is applied in discrimination legislation, which outlaws paying one person less because of a protected characteristic such as gender, race, and age. The U.K. Equality Act 2010 is just one example. Notably, like other discrimination laws, it does not, as we shall see below, apply between jurisdictions. There also may be regional variations within a jurisdiction, although those tend to be a function of the cost of living. How does one consider the fairness of a wage of £8 per hour in one country versus a group that might be making £8 per week elsewhere?

Claims of fairness are frequently made by groups within a jurisdiction or a region seeking to advance their economic or political position. Trade unions, for example, often use the term "fair

[55] Robert Joyce, Thomas Pope, and Barra Roantree, "The Characteristics and Incomes of the Top 1 Percent," Institute of Fiscal Studies Briefing Note BN253 (Aug. 2019).

[56] Egalitarianism is the doctrine that all people are equal and deserve equal rights and opportunities. In the context of this article and along with communitarianism, egalitarianism is the belief that inequality is a problem that needs to be addressed using government action.

pay" to advance an economic demand for higher wages and improved conditions for their workers. The fair pay being demanded by certain trade unions, however, is not the sort of fairness that matters in a more traditional Marxist analysis.

Take, for example, the demands of the British Airline Pilots Association (BALPA), a pilots' union, in a recent call for a strike against British Airways. The airline's pilots were dissatisfied with an offer to increase their £167,000 per annum salaries by 11.5 percent to around £186,000. The union declared that the pilots wanted more because the company was making large profits, describing the demands as "fair and reasonable."[57] BALPA was not concerned by the inequality between its members and the cabin crew (who earned between £16,000 and £27,000), instead focusing the claim of fairness on the £1.3 million salary afforded to the chief executive officer.[58]

Can a pilot earning over £185,000 a year really be considered to be suffering from unfairness in the egalitarian sense? It seems reasonable to assume that those making demands of this sort — demands that they present as issues of fairness — are in fact simply economic agents using their collective ability to disrupt business to enrich themselves. These demands are not really examples of egalitarianism at work; rather, they show the exercise of economic power.

In classic Marxist theory, as discussed below, fairness is central to organizing labor markets. This ubiquitous term suffers from a problem when one removes national boundaries and considers fairness across an international spectrum. Friedrich Engels suggests that:

> the produce of the workman's labour goes to the Capitalist, and the workman gets out of it no more than the bare necessaries of life. And thus the end of this uncommonly "fair" race of competition is that the produce of the labour of those who do work, gets unavoidably accumulated in the hands of those that do not work, and becomes in their hands the most powerful means to enslave the very men who produced it.[59]

Writing in the late 19th century, Engels might be forgiven for simplifying the complex relationship between rewards afforded to one who risks capital in developing new, uncertain enterprises (that is, equity capital) and returns afforded to capital provided on a lower risk basis (for example, interest on a loan). However, in the context of an international economy, the concept of fairness needs to be further explored.

Consider the way in which the advantages of international trade, specifically that which involves international labor arbitrage, accrue and to whom. Labor arbitrage occurs when a company elects to move its workforce to a country where wages are lower and the overall cost of doing business is reduced. One of the most successful companies to engage in international labor arbitrage is Associated British Foods, the holding company that owns Primark. Primark, a huge MNE in its own right with more than 75,000 employees around the world, sells a range of fashion and homeware items to stores in developed economies. The company has been hailed as an enormous success; according to its 2019 annual revenue numbers, it sells around £7.8 billion of its products, generating a pretax profit of around £913 million.[60] For investors, however, the returns have not been spectacular. Over the last 10 years, an investor would have received dividend income of around 1.6 percent, and their capital would have increased by around 7 percent per annum on a compound basis.[61] This compares with a risk-free return on the 10-year U.K. government bond yield of about 5 percent over the same period.[62]

From an investor's perspective, returns that only exceed those from a risk-free investment in government bonds by 3.6 percent have been adequate, but they are fairly pedestrian when

[57] BALPA release on pilots' demands and planned strike (Sept. 8, 2019).

[58] Basit Mahmood, "BA CEO Slammed for Taking £530,000 Pay Rise Before Pilot Strike," Metro, Sept. 9, 2019.

[59] Engels, "A Fair Day's Wages for a Fair Day's Work," *The Labour Standard*, May 1, 1881.

[60] Associated British Foods PLC, "Annual Report and Accounts 2019" (last accessed May 7, 2020).

[61] Associated British Foods, "Performance" (last accessed Mar. 1, 2020).

[62] "United Kingdom Government Bond 10Y," Trading Economics (last accessed Mar. 1, 2020).

compared with other large companies.[63] Who, then, has benefited the most from Primark's spectacular rise? The consumer. Primark's consumer demographic, which is at the lower end of the developed economy's labor market, has benefited from lower prices that Primark has achieved using labor arbitrage. In other words, the relatively poor are benefiting at the expense of the absolute poor. As Richard Hyman, an ex-director of market research firm Mintel pointed out:

> There has been a lot of justifiably bad publicity about ethical sourcing, paying people a pittance and all that, but I am afraid the truth is that comfortable middle-class people may be able to adopt the moral high ground, but most people can't.[64]

In 2008 an investigation into Primark revealed that the firm had been benefiting from child labor with workers as young as 11.[65] Investigators found that workers in India were being paid as little as the equivalent to 60 pence per day. By way of contrast, the national living wage in the United Kingdom, applicable to workers age 25 and older, rose to £8.72 as of April 2020.[66] These figures, however, underestimate the benefits that individuals living in modern, developed welfare economies receive, as discussed in the previous section.

Consumers in developed economies saw the price of apparel drop about 4.25 percent from 2000 to 2019.[67] Compare that with the U.K. consumer price index's growth of around 67 percent over the same period. Who has benefited from, to use Engel's term, the workman's labor? Based on the data, the lower-income brackets in developed economies.

What the analysis above shows is that use of economic bargaining groups within well-off nationalities, including even the poorest in those societies, will not result in a cogent egalitarian redistribution. Compare the minimum wage in the United Kingdom with the sorts of wages being paid in, for example, Bangladesh[68] — on an hourly basis, that is £8.72 versus around 45 pence. In those circumstances, where would the tax on the profits of, for example, Primark be allocated in a fair global economy? Should we look to increase the tax revenue allocated to the U.K. where Primark has its head office and the annual government revenue amounts to about $1 trillion, or to Bangladesh where it produces many of the goods that it sells and the annual government revenue amounts to about $24 billion?

If international government welfare budgets and international wages were taken into account when considering the nebulous term "fairness," how can we possibly argue in favor of increasing developed countries' demands for tax revenue? Surely any egalitarian can only advocate for a large-scale redistribution toward the low-wage and low-government-welfare economies in which many MNEs operate.

IV. BEPS 2.0

The work program produced by the OECD in May 2019 was approved by 129 members of the inclusive framework. It sought to resolve issues that members believed the initial BEPS package failed to address and to limit what appeared to be a proliferation of unilateral actions by individual jurisdictions.

The work program's proposals rest on two pillars that form what is commonly referred to as BEPS 2.0. The first pillar seeks to reallocate taxing rights toward countries that control the users or consumers (the market jurisdiction). The second pillar is designed to address the residual problems relating to BEPS risk, specifically the problem of profits being allocated to countries with no or low taxation. The focus of the second

[63] Gary Jackson, "The UK Funds With the Strongest Returns After 10 Years of QE," Trustnet, Mar. 6, 2019. Over 10 years, reinvesting interest in government bonds would have yielded approximately 175 percent of the original investment compared with 250 percent of the original investment for Primark, more than 300 percent for the FTSE all shares index, and over 650 percent for the best performing funds.

[64] Gaby Hinsliff, "Cheap and Cheerful: Why There's More to Primark's Success Than You Thought," *The Guardian*, May 28, 2019.

[65] "Exposed: Primark's Sweatshops That Pay Children Just 60p a Day," *Evening Standard*, June 22, 2008.

[66] GOV.UK, "National Minimum Wage and National Living Wage Rates: 2020" (last accessed Mar. 1, 2020).

[67] Official Data Foundation, "Historical Pricing for Apparel Since 1913" (last accessed Mar. 1, 2020).

[68] Marjorie van Elven, "Bangladesh Raises Minimum Wage for Garment Workers," Fashion United, Sept. 4, 2018.

pillar is the global anti-base-erosion (GLOBE) proposal. Paragraph 54 of the work program explains that a key aim of GLOBE is:

> to stop a harmful race to the bottom, which otherwise risks shifting taxes to fund public goods onto less mobile bases including labour and consumption, effectively undermining the tax sovereignty of nations and their elected legislators.

The proposal continues to suggest that it is often developing countries that offer those tax incentives to try and recruit economic activity in their jurisdictions. The document states this often harms those developing countries and that the GLOBE proposals could:

> effectively shield developing countries from the pressure to offer inefficient incentives and in doing so help them in better mobilising domestic resources by ensuring that they will be able to effectively tax returns on investment made in their countries.

The proposals, which are in keeping with the general principles surrounding the wider BEPS project, focus on tackling international tax arbitrage and preventing companies from using the international system to erode the tax base of higher-tax jurisdictions by placing profits in low- or no-tax jurisdictions.

The OECD suggests that pillar 2:

> seeks to develop rules that would provide jurisdictions with a right to "tax back" where other jurisdictions have not exercised their primary taxing rights or the payment is otherwise subject to low levels of effective taxation.[69]

Notably, this statement makes no reference to whether the state that has the right to tax must take into account whether it is appropriate to do so. For example, is it appropriate for a wealthy country with high tax and a comprehensive welfare system to take advantage of this tax back even if it is to the detriment of a poorer nation?

The U.S. system has long given rise to concerns of this sort, and other OECD members have criticized the United States because of its worldwide taxation of domestic taxpayers described in Treas. reg. section 1.1-1(b). While U.S. individuals and entities are subject to tax in the U.S. on all income from all sources, the United States cedes primary taxing authority to the country in which the income is generated through a foreign tax credit. The amount of the credit is the lesser of the amount of tax properly paid in the foreign jurisdiction or the amount of U.S. tax attributable to the income produced in that jurisdiction. By capturing the excess of the U.S. tax over the foreign tax, the United States frustrates any attempt by developing jurisdictions to use tax concessions to encourage investment of capital in that jurisdiction. Some discussions suggested that an exclusive tax savings clause in the governing tax treaty could limit taxes to those imposed where the economic activity takes place and prevent the United States and other jurisdictions from claiming tax that the developing economy intentionally relinquished to attract capital investment.

In the past, U.S. persons could temporarily avoid the U.S. tax by operating through a foreign entity (other than one that is tax transparent for U.S. tax purposes, like a partnership). Under that regime, which had been detailed in sections 901 and 902, repatriation of foreign-source income was taxable in the United States — that is, U.S. tax applied (with direct and indirect credits for foreign taxes paid) when the foreign entity distributed funds to its U.S. owner. However, U.S. tax legislation enacted in 2017 (the Tax Cuts and Jobs Act (P.L. 115-97)) substantially eliminated the tax on distributions from a foreign corporation to its U.S. corporate shareholders through the 100 percent dividends received deduction in section 245A. This aligns the U.S. tax structure for corporations and their subsidiaries with the territorial tax systems characteristic of the United Kingdom and the member states of the EU. Given the long-standing criticism of U.S. exceptionalism and its worldwide taxation, it is ironic that the BEPS project is now initiating a tax back conversation to prevent the supposed race to the bottom.

For all the talk in connection with the BEPS project about undermining the "fairness and

[69] OECD, "OECD Secretariat Invites Public Input on the Global Anti-Base Erosion (GloBE) Proposal Under Pillar Two" (Nov. 8, 2019).

integrity of our tax systems,"[70] the project does not address the far bigger issue of where any additional tax ought to go in accordance with an egalitarian analysis. Instead, BEPS 2.0 focuses on quantifying the profits subject to the new taxing rights, designing a nexus rule that is not constrained by physical location, and issues relating to implementation and administration.

Perhaps the OECD's proposals to consider a minimum rate of tax might address some of these issues. The OECD states that:

> a minimum tax rate on all income reduces the incentive for taxpayers to engage in profit shifting and establishes a floor for tax competition among jurisdictions.[71]

The problem with this proposal, however, lies in the fact that minimum levels of taxation imposed on MNEs may simply lead to head-office jurisdiction shopping — to some extent, it already has when taking into account, for example, Ireland's ultralow corporation tax.[72] It is difficult to see a minimum tax falling below the Irish corporate tax rate. Further, the GLOBE proposal is largely targeted at solving specific issues pertaining to the digital economy along with ancillary and perennial issues such as those relating to the taxation of permanent establishments and foreign branches. The type of problems the OECD is addressing do not come close to the changes that must be made if the world decides to take international wealth, income, and tax resource inequality seriously. For international inequality to be addressed in a meaningful way, taxation rights and revenue would need to be allocated with wholesale redistribution of resources across the world in mind and without regard to any other consideration. Judging by the pending OECD proposals, this sort of redistribution is not on the near horizon.

The proposal here is straightforward. If the technical debate surrounding BEPS 2.0 proceeds as expected, jurisdictions should refrain from using terms such as "fairness" and "justice" in presenting their case. The debate should proceed solely on the premise that there are multiple parties with varying interests and degrees of political and economic power, and they all fully intend on expressing that power to further their desired individual welfare. The international forum for tax agreements between countries is rather like the Hobbesian state of nature[73]: There is no overarching Leviathan who can determine the rules and arbitrate disputes. Instead, the mutual and complementary self-interests of the participants and the expression of power will ultimately drive the outcome.

Evidence suggests that, at least in the debate surrounding BEPS, the OECD's deliberations and consultations are really an effort to referee the sparring match among international economic powers. It is not about justice or fairness — rather, it is about distributing power across wealthy nations. States with high-tax, high-spend economies were poised to explore unilateral action, particularly in the form of digital services taxes, which disproportionately affected U.S. internet corporations. By spring of 2020 at least 14 countries had either enacted DSTs or made plans to do so: Austria, Belgium, the Czech Republic, France, Hungary, Italy, Latvia, Norway, Poland, Slovakia, Slovenia, Spain, Turkey, and the United Kingdom.[74]

For example, the 3 percent DST that France passed in July 2019 targeted around 30 large technology businesses, including Facebook, Amazon, and Google.[75] The tax applied to firms with revenues of greater than €750 million that were generated from "digital activities," including revenue greater than €25 million in France. The United States immediately launched an investigation suggesting France's DST unfairly targeted U.S. interests. President Trump also suggested that the imposition of the DST might result in retaliatory tariffs on a number of French

[70] Angel Gurría, "Joint Action for Efficient and Fair Taxation," OECD (July 20, 2013) (remarks given at the G-20 finance ministers' meeting in Moscow).

[71] OECD, *supra* note 69.

[72] IDA Ireland, "Ireland's Tax Regime" (last accessed Apr. 15, 2020).

[73] Allison Christians, "Human Rights at the Border of Tax Sovereignty," NYU Spring 2017 Tax Policy Colloquium (Feb. 2017).

[74] Robert Goulder, "Rethinking the Taboo: Do DSTs Deserve Their Bad Rap?" *Tax Notes Int'l*, Apr. 27, 2020, p. 477.

[75] Stephanie Soong Johnston, "U.S. Sanctions Won't Make France Drop Digital Tax, Le Maire Says," *Tax Notes Int'l*, Jan. 20, 2020, p. 328; and "French Tax on Internet Giants Could Yield 500 Million Euros Per Year: Le Maire," Reuters, Mar. 3, 2019.

products sold into the U.S. market, including wine. In an unedifying display of diplomacy, Trump described French President Emmanuel Macron's decision to press ahead with the DST as "foolishness," while French Finance Minister Bruno La Maire urged the United States to avoid mixing the DST debate with general trade policy.[76] By the end of August 2019 the United States and France had reached a compromise. Under the teams of the deal, France agreed to scrap its DST once a new international levy had been agreed upon at the OECD level.

Despite the compromise with France, the U.S.'s aggressive approach to international trade led to a ruling in its favor allowing it to impose $7.5 billion of countermeasures against European goods.[77] This ruling arose as a result of European subsidies to Airbus, which the WTO agreed had caused harm to the U.S. economy over several decades.

The economic negotiations surrounding how countries trade and tax each other's goods and services will no doubt continue. It appears likely that multilateral institutions such as the WTO and the OECD will help ensure rules-based systems remain in place and allow trade to flourish. But are these international rules-based institutions truly dispensing justice and fairness? We would argue, at least from an egalitarian perspective, that the answer is no.

We believe that terms like "fairness" or "justice" should be reserved for actions or discussions that involve a global understanding of inequality, and we respectfully assert that this is the only cogent position that an egalitarian can honestly take. Lobbying groups, trade unions, and domestic political bodies have devoted large amounts of time and resources purporting to advance socialism, but instead they merely advanced the narrow, parochial, and regional interests of their members. They have focused on the economic and political well-being of their small constituent groups, arguing for advancing the global top 1 percent at the expense of the global 0.1 percent.

True communitarians must feel regret when they recognize there is another 99 percent living outside their Village of Billionaires. If they truly care about justice and fairness, the mission starts and finishes with this acknowledgment.

V. Global Distributive Justice

The Village of Billionaires parable demonstrates the absurdity of limiting redistribution to a small and privileged community. This section examines why the arguments in favor of global redistributive justice have comprehensively failed to gain traction.

As we have noted, those arguing for a narrow domestic redistribution wealth are not doing so based on morality or fairness — rather, this position is simply an expression of power. The proponents' interests are defined by virtue of the power they hold.[78] Kenneth Waltz argues that the system of international relations is akin to anarchy with no central agent enforcing the rules.[79] This realist perspective helps to explain why hopes for fairness or justice are unlikely to result in practical arrangements that reflect morality. Setting aside the realists' concerns about practical application, if a fair system could be introduced, what would it involve?

Many thinkers, including a group known as cosmopolitans, have considered this question. In "Famine, Affluence and Morality," Peter Singer poses a thought experiment, asking what moral responsibility may arise if, while on the way to work, someone discovers a child drowning in a pond.[80] Singer concludes that the inconvenience of getting wet and dirty can never outweigh the possible loss of a child's life. We suggest there is a parallel between that situation and the obligations we face when we are aware of the extreme, absolute poverty that many suffer from around the world.

Other cosmopolitan thinkers have discussed these issues since Singer published his article in

[76] Corazon Miller, "France Rejects Trump's Wine and Digital Tax Remarks: 'Please Do Not Mix the Two,'" *The Independent*, July 27, 2019.

[77] Willem Marx, "WTO Formally Backs US Tariffs on EU Goods," CNBC, Oct. 14, 2019.

[78] *See, e.g.*, Hans Morgenthau, *Politics Among Nations: The Struggle for Power and Peace* (1978).

[79] Waltz, *Man, the State, and War: A Theoretical Analysis* (1959); and Waltz, *Theory of International Politics* (1978).

[80] Singer, "Famine, Affluence, and Morality," 1(3) *Phil. and Pub. Aff.* 231 (1972).

1972.[81] Broadly, the cosmopolitan theory revolves around three essential elements, which Thomas Pogge sets out in several of his works.[82] The first element identifies individuals, as opposed to family, cultures, or religions as the correct unit of concern. The second element requires universality, meaning there can be no discrimination of gender, race, or age. Finally, there is a requirement of generality so that all people ought to have concern for all other people equally, removing national, religious, and cultural ties. In the end, the cosmopolitans adhere to the golden rule, an imperative with a long, rich heritage.[83]

Even within the cosmopolitan community, there is disagreement about how a universal, nondiscriminatory distribution might take place. Martha Nussbaum, for example, argues that "it is right to give the local an additional measure of concern if it is the only sensible way to do good."[84] Similarly, Robert Goodin argues that one might be compelled to privilege one's fellow countrymen in order to fulfill one's general duties.[85] In our view, however, these positions do nothing to alleviate the concern that distributions from the top 0.1 percent to the top 1 percent do not meaningfully fulfill any moral duties to the other 99 percent.

What might justify the obvious abandonment of those suffering in the global 99 percent? The theory of nationalism, which sets forth several duties that apply to individuals within a smaller collective, offers one possible response. David Miller identifies five aspects to a nationalist obligation: (i) a common identity (ii) that is marked off by a distinctive public culture, (iii) in which members recognize special obligations to one another, (iv) regard the nation as a valuable good, and (v) aspire to be politically self-determining.[86] Yael Tamir suggests that liberal nationalism is not grounded in consent or reciprocity; instead, it is based on shared feelings of belonging or connectedness.[87]

Small collective units of humans engender a closeness and, inevitably, a feeling of mutual obligation. The family unit is the most obvious example. However, when the ties that bind individuals are stretched too far and the elements of common identity or public culture are so strained that they render their application meaningless, they may no longer warrant mutual obligation.

Consider three towns: Utqiagvik (formerly known as Barrow), Alaska; El Paso, Texas; and Ciudad Juarez, Mexico. Utqiagvik is the northernmost city in the United States. It falls inside the Arctic Circle on Alaska's northern coast. The city has been a home to an indigenous Inuit group for more than 1,000 years. The lifestyle, jobs, and economy revolve around the activities one might expect given its location. It is difficult to imagine two places with greater contrasts in terms of size, weather, lifestyle, jobs, and economy than Utqiagvik and El Paso, a west Texas city that lies adjacent to Ciudad Juarez. In 2019 Ronald Rael and Virginia San Fratello designed an art installation: a set of pink seesaws bridging the border between the United States and Mexico, with a beam in the border wall itself acting as the fulcrum.[88] According to Rael, it is an effort to bring "jobs, excitement and togetherness [to] the border wall."

Despite being in different countries, images of children on either side of the wall playing together illustrate a connection similar to that one might expect from the conditions like those described by Miller — a connection that could never be achieved between El Paso and Utqiagvik. Even the languages spoken in El Paso and Ciudad Juarez (English and Spanish) bear a closer link than the languages in El Paso and Utqiagvik, where the locals speak Inupiaq and have long

[81] *See, e.g.*, Kwame Anthony Appiah, *Cosmopolitanism: Ethics in a World of Strangers* (2006); and Martha Nussbaum, "Patriotism and Cosmopolitanism," in *For Love of Country: Debating the Limits of Patriotism* (1996).

[82] Pogge, "Severe Poverty as a Human Rights Violation," in *Freedom From Poverty as a Human Right: Who Owes What to the Very Poor?* (2007); Pogge, *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms* (2002); and Pogge, "Cosmopolitanism and Sovereignty," in *Political Restructuring in Europe: Ethical Perspectives* 89-122 (1994).

[83] *See* Leviticus 19:9-18; and Luke 22:37-39. *See also* Immanuel Kant, *Groundwork of the Metaphysics of Morals* [Grundlegung zur Metaphysik der Sitten] (1785); and Søren Kierkegaard, *Works of Love* [Kjerlighedens Gjerninger] (1848).

[84] Nussbaum, *supra* note 81.

[85] Goodin, "What Is So Special About Our Fellow Countrymen?" 98(4) *Ethics* 663 (1988).

[86] Miller, *On Nationality* 70 (1995).

[87] Tamir, *Liberal Nationalism* 137 (1993).

[88] Lanre Bakare, "Pink Seesaws Reach Across the Divide at US-Mexico Border," *The Guardian*, July 30, 2019.

rejected outside (read: U.S.) cultural influences, even changing the city's name from Barrow to Utqiagvik in 2016.[89]

Is instinctive human closeness — such as the connections established on the seesaws of El Paso and Ciudad Juarez — less relevant than the obligations that connect El Paso and Utqiagvik merely because of the shape of U.S. borders? Which pair of cities really shares a connection, a culture, and mutual obligations? Do El Paso and Utqiagvik have a way of sharing aspirations, including the mutual desire to be politically self-determining, or regard the nation as a valuable good because they share a common culture? It seems difficult to base obligations on arbitrarily drawn borders.

John Rawls suggests that richer nations should provide aid to poorer societies to help them develop better political systems based on justice. In *Law of Peoples*,[90] he argues a weaker version of his original position on global justice, a concept expressed in his *A Theory of Justice*.[91] But he remains indifferent to the inequalities that might arise once this goal has been achieved, which is why his global theory is said to focus on the equality of peoples as opposed to persons.

Rawls has been widely criticized for the narrow scope of his work. For example, Derek Parfit believes that Rawls should better account for global inequality.[92] Parfit suggests that the difference principle — which gives absolute priority to ensuring a benefit to those who are worse off — cannot credibly be limited to borders of a nation state. Instead, he says there is no reason not to extend the principle globally. Separately, Pogge and Charles Beitz argue that the things that bind nations together, including complex economic and social interdependence, have grown increasingly complex such that the interconnectedness could justify the type of cooperation on a global level that Rawls argued for within the state.[93]

This position is important in the context of discussions about how to tax MNEs fairly and distribute the income derived from that tax revenue. The Rawlsian analysis, which recognizes obligations that arise in complex systems of social cooperation, cannot ignore the fact that MNEs span the globe. By their very nature, they cross national boundaries; therefore, when considering how justice applies to MNEs and the tax revenues that arise from their operations, a global solution is inviting. Pillar 1 of BEPS 2.0 doesn't couch the idea that taxing rights should focus on consumers or users in the language of justice or fairness. Rather, it is the language that one might expect to be used in the boardrooms of MNEs or the government offices of countries seeking to further their own individual interests without regard to what Rawlsian justice, global prioritarianism, or egalitarianism might require.

In the 21st century, the complex interplay between economic entities renders the concept of the nation-state far more amorphous than it was before. Cities like London, Tokyo, and New York have far more in common with each other than they do with Scunthorpe, Niseko, and Utqiagvik, despite each of those towns sharing a country with each of those cities. Similarly, international treaties confirming economic, defense, and political arrangements — including the complex relationships represented by the EU, Association of Southeast Asian Nations, and NATO — make it difficult to isolate the interests of one country as a wholly separate unit. Written in 1624, the oft-quoted line from John Donne's *Devotions Upon Emergent Occasions* has never been more apt: "No man is an island, entire of itself; every man is a piece of the continent, a part of the main."

The political and economic obligations that arise as in this connected world must, at some stage, invite political philosophers to reconsider the parochial nature of their work — especially those who take the Rawlsian position on nationally confined redistribution. From an egalitarian perspective, the moral imperative demands one take account of global inequalities. One who argues for a position that ignores global inequalities is simply advocating for the interests of the top 1 percent and is acting as a political lobbyist, not a moral beacon.

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[89] Shady Grove Oliver, "Barrow Voters Support Name Change to 'Utqiagvik,'" *The Anchorage Daily News*, Oct. 13, 2016.

[90] Rawls, *The Law of Peoples* (1999).

[91] Rawls, *A Theory of Justice* (1971).

[92] Parfit, "Equality or Priority?" in *The Ideal of Equality* (2002).

[93] Pogge, *Realizing Rawls* (1989); and Beitz, *Political Theory and International Relations* (1979).

VI. Conclusion

The Village of Billionaires parable debunks the "fairness" and "fair share" concepts favoring redistribution of wealth and resources when the redistribution is limited to the borders of developed nations. Instead, the presence of absolute poverty globally renders the relative poverty within developed economies trivial and not fit for fairness or fair share redistribution demands. Resource allocation locally — whether that means within a family unit, a region within a state, a single state, or even within all OECD member states — simply demonstrates the use of political power in advancing self-interest. Sadly, much like a single meal supplied to an impoverished individual, the parable of the Village of Billionaires leaves one feeling emptiness and despair — a truth with which international relief agencies are all too familiar. Durable solutions to international wealth disparity are elusive. Citing a deeper understanding of fairness and the meaning of a true fair share, charities, engaged scholars and political actors may continue to press for change, taking small steps to encourage the global 1 percent — and the governments of the countries in which they live — to contribute more revenue to international development regardless of whether that revenue is attributable to successful BEPS adjustments. In so doing, the elite need not cede taxing power to undeveloped and developing economies that may not deploy their taxing power efficiently. Instead, the OECD and other international agencies dedicated to developing and improving tax structures could emphasize allocating a larger share of the worldwide tax base to regions where wages and resources are low, which invites international exploitation by MNEs, by defining the tax base and its allocation in terms of value created by labor and resources rather than consumer markets.[94]

Or one might seek to level worldwide resources under a utopian (or dystopian) system of redistribution based on a worldwide Marxian model, a theory that has already proven unworkable even on a small, national scale.[95] ■

[94] *See, e.g.*, Michael P. Devereux et al., "The OECD Global Anti-Base Erosion ('GloBE') Proposal," Oxford University Centre for Business Taxation (Jan. 2020); Christians, "Taxing According to Value Creation," *Tax Notes Int'l*, June 18, 2018, p. 1379 (arguing assigning greater value to the contribution in developing economies); and Devereux and John Vella, "Value Creation as the Fundamental Principle of the International Corporate Tax System," European Tax Policy Forum Policy Paper (2018).

[95] *See* Ordower, "Uniform International Tax Collection for Global Development," *supra* note 25.