



HUMAN RIGHTS AND TAX IN AN UNEQUAL WORLD

September 22–23, 2016

NYU School of Law—Lipton Hall

108 West Third Street, New York NY 10012

CONFERENCE DAY ONE

12:30–2:00pm

LUNCH – KEYNOTE ADDRESS

Winnie Byanyima, Executive Director, Oxfam International

Resource constraints are regularly cited as the principal limitation on the ability of States to fulfill their human rights obligations, particularly when it comes to economic, social and cultural rights. Yet with few exceptions, human rights scholars and practitioners have shied away from core economic and financial debates, leaving the policies that shape resource availability and allocation largely in the hands of economists, tax lawyers, and “development” experts. Those technocrats, in turn, have rarely paid heed to the expanding corpus of human rights law and its implications for State and non-State actors. There has been very little dialogue between tax and human rights experts, and even less scholarship on the intersection of these fields. It is becoming abundantly clear, however, that economic policies are human rights policies, and economic crises, in turn, human rights crises. Economic problems, such as cross-border tax abuse, cannot be tackled effectively by tax experts working in isolation. Moreover, tax law and human rights law are both increasingly called upon to address cross-border and multi-jurisdictional phenomena, such as the extraterritorial human rights impacts of State conduct and the transactions of multinational corporations, the tax consequences of which are not confined to a single territory. But the legal and regulatory frameworks for managing these impacts have yet to catch up. Can the disciplines of tax law and human rights law—unlikely bedfellows—learn from and inform one another, particularly as they confront common challenges? The aim of Day One is to encourage dialogue across these fields, to illustrate why complex, global problems, including cross-border tax abuse, inequality, and unmet human needs, require not only inter-national but inter-disciplinary solutions.

2:15–3:45pm

SESSION ONE: Are Human Rights Really Relevant to Tax?

Speakers:

Allison Christians (McGill University Faculty of Law)

Reuven Avi-Yonah (University of Michigan Law School)

Edward Kleinbard (USC Gould School of Law)

Mitchell Kane (NYU School of Law)

This panel will ask a range of leading tax scholars and practitioners what relevance human rights law has or could have to the field of tax law. Do human rights matter to tax policy and practice? Are human rights laws and institutions relevant to understanding and regulating the global tax system? How do the core principles of the human rights regime—non-discrimination, equality, and dignity—inform thinking on the power to tax, the design of tax policies, and the implementation and enforcement of tax laws? Can human rights law help trace the line between permissible tax competition and impermissible interference with other States' tax sovereignty? Panelists will discuss how tax experts are, or whether they should be, grappling with concepts of human rights and corresponding duties as they chart reforms of domestic and global tax policies, and what they need from the human rights community to do so.

3:45–4:00pm

Coffee

4:00–5:30pm

SESSION TWO: The Human Rights Dimensions of Tax and Tax Abuse

Speakers:

Kathleen Lahey (Queen's University Faculty of Law)

Ahmed Kayum (Columbia University)

Sandra Fredman (University of Oxford Faculty of Law)

Alex Cobham (Tax Justice Network)

Olivier DeSchutter (Committee on Economic, Social and Cultural Rights)

This panel will ask a range of human rights experts, tax and non-tax scholars what relevance tax policy and practice have for human rights. Which forms of tax law-making and tax law-breaking have the greatest effects on human rights, where are those consequences most acute, and who bears responsibility? From its impacts on revenue-raising and redistribution, to its role in repricing conduct and reinforcing representative democracy, taxation affects the realization of human rights around the world. When individuals and corporate entities avoid paying their fair share of taxes, the

public suffers in multiple ways—and some populations disproportionately so. Nowhere does tax dodging take a larger toll than in developing countries, which depend more heavily than industrialized countries on corporate income tax as a source of public revenue and have far less cushion in their budgets to start. Panelists will address such questions as: How do the tax avoidance strategies of transnational corporations and wealthy individuals impair human rights? What responsibility does a State bear for the extraterritorial effects of its tax policies, including those that facilitate tax avoidance in other States, and for regulating the overseas conduct of its nationals? How can the design of tax policies and the regulation of tax practices positively affect the realization of rights?

5:30–7:00pm **Reception**

7:00–9:00pm **Speakers’ Dinner**

CONFERENCE DAY TWO

Day Two will focus on a series of current issues at the intersection of international taxation and human rights. Panelists will explore some of the most pressing, contemporary challenges in the effort to reform the international tax system and redress its adverse impacts on human rights. Topics will include: the North-South dimensions of tax abuse, including the disproportionate cost of tax abuse in developing countries and the spillover effects of the laws and policies in the North; the role and responsibilities of private sector actors for tax abuse and its consequences; the duty of governments to strike a balance between transparency and privacy in disclosure of tax information, including through country-by-country reporting by multinational corporations; the institutional architecture of global tax reform; and the enforcement of States’ extraterritorial obligations under international human rights law; and the role of tax in causing and mitigating global inequality. The objective of these panels is to advance the debate on concrete policy issues while inspiring new inter-disciplinary ideas and approaches to addressing problems that vex tax and human rights lawyers alike.

9:00-10:15am **SESSION THREE: Beyond “Spillover”: North-South Dimensions of Tax and Tax Abuse**

Speakers:

Attiya Waris (University of Nairobi, Kenya)

Niko Lusiani (Center for Economic and Social Rights)

Steven Dean (Brooklyn Law School)

Mary Cosgrove (J. E. Cairnes School of Business & Economics)

This panel will situate the discussion of tax abuse and human rights in its geopolitical context, addressing the differentiated responsibilities of the Global North and South for the causes and

consequences of tax abuse, and the relationship between cross-border tax abuse and inter-State inequalities. Experts from the fields of tax and human rights will discuss the methodological challenges of assessing the extraterritorial impacts of tax policies and secrecy regimes, some of which were laid bare in recent attempts to conduct “spillover analyses” of laws and regulations in the Global North. How can studies capture the human rights consequences of the policies that enable cross-border tax abuse, including the gendered impacts? Panelists will explore options for enforcing global tax rules and holding actors accountable for tax abuses that affect human rights, including the potential role for domestic courts, as well as regional and international human rights bodies.

10:15–10:30am **Coffee**

10:30–11:45am **SESSION FOUR: Private Actors and the Public Purse: The Roles of Corporations, Lawyers, and Accountants in Tax Abuse**

Speakers:

Dan Shaviro (NYU School of Law)

Joe Bankman (Stanford Law School)

Radhika Sarin (Oxfam GB)

Celine Braumann (*recent NYU LLM grad)

Consumers and regulators are increasingly scrutinizing the practices of corporations that hide assets to avoid or minimize taxes paid on the benefits they reap from operating in various jurisdictions, and the responsibilities of the law firms (like Mossack Fonseca of Panama Papers fame) and accountants that facilitate such practices. Recent high-profile tax scandals have underscored the reputational risks of tax abuses and have made tax planning an issue of corporate social responsibility and business ethics. Some of the questions panelists will explore include: How realistic is it to expect serious reform of tax practices to come from private actors? Are efforts to encourage ‘good corporate tax behavior’ delaying compulsory measures by suggesting there is voluntary progress? How do human rights principles and policies bear on the ethical obligations of accountants and lawyers who work in the area of taxation? In what ways, if any, should considerations of human rights law affect the ethics of accountants and lawyers in this field?

11:45am-1:00pm **SESSION FIVE: The Responsibilities of Governments: The Case of Transparency**

Speakers:

Miranda Stewart (Australian National University)

Joshua Blank (NYU School of Law)

Arthur Cockfield (Queen's University Faculty of Law)

Tracy Kaye (Seton Hall Law)

Alessandro Turina (IBFD)

This panel will focus on the unique role of the State with regard to the regulation of tax transparency, in view of State duties to respect, protect and fulfill human rights. Panelists will reflect on how governments are or should be legislating and enforcing transparency obligations, and the potential unintended consequences of doing so. The principles of transparency and accountability, firmly grounded in international human rights law, underlie demands for greater disclosure of information on tax payments and corporate ownership, within and between countries. Many States have agreed to begin automatic exchange of taxpayer information in 2017–2018 and some have adopted new provisions requiring country-by-country reporting of corporate profits, tax payments, and beneficial ownership. At the same time, privacy concerns regarding the use and abuse of taxpayer data loom large. Corporate actors are increasingly using human rights principles and institutions to vindicate their privacy and property rights against the State's powers to tax and to demand information regarding taxpayer practices. This session will examine in what ways the perspectives of tax and human rights experts coalesce or collide on issues of transparency and privacy in the realm of taxation, and address the proper role for States in regulating tax practices.

1:00–2:30pm

LUNCH – KEYNOTE ADDRESS

Gabriel Zucman, UC Berkeley, Department of Economics

2:30-3:45pm

SESSION SIX: The Role of International Organizations: The Architecture of International Tax Reform

Speakers:

Michael Lennard (Chief, International Tax Cooperation and Trade, U.N. Financing for Development Office)

Erika Siu (NYU Tax LLM alum, ICRICT consultant)

Annet Wanyana Oguttu (University of South Africa) / Monica Iyer (NYU alum; independent consultant)

Matti Ylonen (Fulbright PhD student, Yale)

Inter-governmental organizations, like the International Monetary Fund and the World Bank, have long been involved in shaping State tax regimes. Recently, political and economic bodies, like the G20, the European Commission and the OECD, have taken center stage as key actors in the global debate about cross-border tax abuse and reform. The OECD base erosion and profit-shifting (BEPS) initiative responded to widespread concerns about revenue losses due to corporate tax avoidance and regulatory gaps regarding tax information-sharing, cooperation, and accounting.

Although developing countries suffer most acutely from the loss of tax revenues due to corporate practices, they have been largely marginalized in the BEPS process and do not stand to benefit fully from measures to increase tax cooperation and information-sharing. In search of fairer alternatives, countries have sought to strengthen the UN Tax Committee, and a non-governmental coalition established the International Commission for the Reform of International Corporate Taxation (ICRICT). This session will offer critical perspectives on current approaches to international tax reform, challenges and opportunities for ensuring greater equity in the governance of the global tax regime. Panelists will explore human rights critiques of the BEPS process and imperatives for global regulation and cooperation regarding tax practices.

3:45–4:00pm **Coffee**

4:00–5:30pm **SESSION SEVEN: Tackling Inequality: Synergies between Tax and Human Rights Agendas**

Speakers:

Beverly Moran (Vanderbilt Law School)

Ricardo Martner (CEPAL)

Andre Smith (Delaware Law School)

Bridget J. Crawford (Elizabeth Haub School of Law at Pace University)/
Carla Spivack (Oklahoma City University School of Law)

Daniel Hemel (University of Chicago)

This panel will explore potential areas of convergence between the fields of tax and human rights around the issue of economic inequality. The human rights consequences of growing economic inequality within and between countries are becoming increasingly hard to ignore. And tax dodging by corporations and wealthy individuals entrenches inequalities between taxpayers in a given State and across the global North-South divide. Rectifying the unequal distribution of income and wealth is framed both as a tax problem and a human rights imperative. Studies have shown that taxation can be an important tool for redressing inequality and reducing poverty. But if poorly designed or implemented, tax laws can entrench disparity and exacerbate discrimination. Panelists will examine the ways in which tax contributes to inequalities of different types and the prospects of leveraging taxation as a tool of global justice. They will explore the complex relationships between inequality, taxation and human rights, and address such questions as: What role can tax policies play in redressing the global divide between the haves and the have nots? What can the human rights framework reveal about the distributive effects and implications of tax laws within and between countries?