Revenue, Rule, and the Revenue Rule: Toward an Anthropology of Taxation

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This paper explores two interrelated problems in the anthropology of law and money. First, how should we understand international "soft law" – instruments, agreements, standards of practice without binding force? Second, how should we understand payments, as opposed to exchanges, in the movement of money around the world? When they have taken note of it at all, anthropologists and other social scientists have raised two questions about soft law: is it democratic, and is it effective? Promulgated by multilateral organizations not subject to the democratic process, soft law seemingly operates outside the control or purview of elected governments. And without enforcement

mechanisms compelling compliance, soft law may be only marginally capable of influencing the affairs of individuals or states. As for payments – monetary transactions like fees, fines, taxes, penalties, and royalties for which nothing is directly received in return – anthropologists and other social scientists either ignore them, or subsume them into the category of exchange. For example, they treat them as an exchange for an intangible, or alternately they cast them as rents that distort market transactions. This paper challenges both views, through an analysis of the international campaign against what came to be known as "harmful tax competition."

In the late 1990s, international standard-setting bodies, multilateral institutions and nongovernmental organizations began to worry that, in a world of the free movement of money, governments would lose tax revenue to those states that competitively lowered their rates to attract foreign investment. "Tax competition," it was feared, would erode the ability of states to provide needed social services to their citizens. Although market promoters around the world had been extolling the virtues of liberalization, even those institutions most associated with the promulgation of neoliberal reforms like the World Bank and the Organization for Economic Cooperation and Development (OECD) began to express alarm about the effect of those reforms on revenue collection as well as financial crime and money laundering interdiction.

The Organization for Economic Cooperation and Development (OECD 1998), the Financial Action Task Force of the G7 (e.g., FATF 2001), the Financial Stability Forum (FSF) and NGOs like Oxfam sought to "name and shame" tax havens like the British

Virgin Islands into compliance with international financial norms.[1] In the process, they created those norms, but not as they might have pleased. The impetus behind the actions of each was slightly different. For the OECD, the issue was tax competition. For the FATF, the issue was money laundering. For the FSF, the issue was stability in the wake of the Asian financial crisis. Countries on the receiving end of these efforts experienced them as of a piece, however. And nearly all countries initially named on so-called "blacklists" of non-compliant or non-cooperating jurisdictions – including almost all of the world's tax havens – complied, often rather quickly. In some cases, compliance came even before the blacklists were issued, preempting international "shaming" through "advance commitments."

Tax competition itself, meanwhile, is a product of an imagined future inspired by economic theory (Webb 2004:795), and thus a fine example of the way economic theory performs, rather than describes or predicts, the economy (after Callon's (1998:22) "performation" of the economy by economic theory). Rather than describing an actually existing condition whereby the lowing of tax rates in one jurisdiction in fact spurs a race to the bottom in revenue regimes elsewhere, tax competition is the logical, not empirically observable, outcome of a particular economic theory.[2] In calling for an end to

[1] Although not all of the jurisdictions targeted by these efforts are politically independent nation-states (many are dependent territories, like the British Virgin Islands), I will use the term "country" throughout this paper for convenience. And although the term "tax haven" is a highly charged one for those counties so labeled, I will employ it here in place of more convoluted locutions (like "countries or territories deemed not in compliance with the FATF's forty recommendations" or somesuch), also for convenience. See Sharman 2006:165, n.1.

[2] Webb (2004) makes the most sustained argument that the OECD's harmful tax competition initiative was based on and shaped by norms rather than actual revenue crises or rational policy decisions independent of the predictions of liberal economic theory. On the question of whether competition among states to attract investment leads to a taxation race to the bottom, the evidence is contradictory at best. As Webb puts it, "governments certainly behave as if tax competition has increased" (p.788) but the empirical evidence does

tax competition, nongovernmental organizations like Oxfam (2000) argued that tax competition saps revenue from poor countries when their wealthy elites squirrel their money offshore. That phenomenon, however, is not necessarily linked to tax *competition* so much as the mere presence of lower-tax jurisdictions, not a process of competitive lowering of rates internationally. It would occur regardless of whether the race to the bottom predicted by economic theory took place. That "tax competition" names a phenomenon of dubious ontological status makes the debate about it an interesting object for anthropological investigation – like Evans-Pritchard's (1937) ensorcelled granaries, or the divine.

In exploring the problem of soft law and the problem of payment, however, this paper also grapples with a particular and perhaps increasingly familiar representational dilemma (Riles 2001, Strathern 2004, Elyachar 2006). Not only have most of the critical or analytical positions one could take toward the matter already been articulated by various parties to the harmful tax competition debate. In addition, any narrative one might craft about the debate begins to write itself, almost as soon as one makes the attempt, and quite beyond the author's control. Taking a position on any of a number of questions, and sometimes merely asking them almost automatically throws the investigator into a set of moral and political conundrums. Is tax competition "harmful" after all? do multilateral institutions have the right to name and shame tax havens? does naming and shaming work? In the process, taxation itself, which is supposedly truly at issue, slips away from view.

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not always support the contention (see Steinmo and Swank 2002, Stewart and Webb 2003, Garrett 1998, Weiss 1999).

Taxation itself is surprisingly under-researched from a social or historical perspective (Cameron 2006; Chalfin 2006; Webber and Wildavsky 1986). Some scholars place taxation at the origins of enumeration, literacy, and human consciousness. Tribute records in ancient Mesopotamia consisted of tokens representing sheep, grain, oil and cloth sealed in clay envelopes imprinted on the outside by the tokens they contained (Schmandt-Besserat 1986, 1992). Later, imprints of the tokens were placed on clay tablets. Schmandt-Besserat surmises, "Whereas the markings on the envelopes repeated only the message encoded in the tokens held inside, the signs impressed on tablets *were* the message" (1992:129). Not only were these tribute tokens at the origins of writing, but the origins of abstract numeration and the inscription of symbolic thought more generally (see Mouck 2004:107; Ezammel and Hoskin 2002).

Now, most historians of taxation leave out the problem of thought and signification, to say nothing of the evolution of human consciousness. I bring it up here because I think it helps stretch the anthropological imagination, and I will return to these tribute tokens near the end of this essay. Most other scholarship on tax more prosaically views it in terms of a state's ability to rule (Levi 1988). Both by exacting revenue and by spending it, states stitch together taxation, sovereignty and citizenship, as the American Revolutionary War and the founding of the republic remind us (Einhorn 2006). The connection to sovereignty is also evident in the so-called Revenue Rule, Lord Mansfield's eighteenth century dictum that "no country ever takes notice of the revenue laws of another," a rule profoundly challenged by the harmful tax competition initiative.

Angus Cameron traces the origins of the publicly financed, tax-based fiscal state to the rise of statistics and audit that developed in tandem with modern European money and trading systems (Cameron 2006:236). He notes that the "overwhelming majority of modern fiscal states have only been in existence since 1945" and emphasizes the spatial dimension of taxation, since, in its redistributive capacity, it "involves the transmission of money, goods, services and so on through space from one group to another" and also helps to suture together the "social, political and economic citizen" with the "norms and institutions of the state" (p.237). The very idea of tax competition conjures threats to these norms and institutions and the bounded fiscal territories of contemporary states. But as with the Revenue Rule, questions of payment get subsumed so quickly under questions of sovereignty that the problem of payment itself is removed from view.

Payments are morally and epistemologically problematic in societies where money is supposed to index price and the value of goods marked to each other by free exchange in the market. Tribute often conveyed the sense of giving wealth to a higher cosmological order. One did not pay tribute to the king in return for protection or grace, even if such was often the result, but simply because he was king. Payments to the state become morally ambiguous when rules lose their cosmological or divine status: when a state is of the people rather than of the gods, then the rule of law must replace the whim of man lest payments to the state come to appear a protection racket, bribery or extortion (Bourdieu 1998:43, Elias 1994:xxx). It is no accident that the American patriots attacked British Customs agents by tarring and feathering, the same treatment meted out to thieves by Richard the Lionheart during the Crusades six hundred years before.

In another paper, I have discussed the procedures that offshore financial centers put into place in the wake of the OECD initiative. Chief among these are due diligence and "Know Your Customer" (KYC) policies to collect and maintain information on clients. I argued that due diligence is a specific kind of ethical regulation based on qualitative assessments of virtue. I also argued that due diligence and its critique fold into one another and obviate certain conventional forms of academic analysis (Maurer 2005). This paper fills in another piece of the ethical puzzle of offshore financial services by focusing not on the procedures, but on the moral assessments of the entities that warranted those procedures – multilateral organizations promoting best practices as well as small postcolonial states implementing and challenging them. I will argue that those moral assessments bankrupt a number of common analytical approaches to the contemporary global political economy, specifically, those that are unreflectively critical of neoliberalism, colonialism, capital mobility, and income inequality.

First, however, allow me to present a series of quotations from various observers of and parties to the debate over the harmful tax competition initiative.

> In the end, the OECD juggernaut was brought to a halt by the resistance of some of its other members – Switzerland, Luxembourg and Liechtenstein in particular – who refused to go along with the demands of their more strident sister states in the OECD for fear of the harmful effect on their vital financial services sector (Sanders 2006).

The failure to note widespread US derelictions in permitting anonymously owned companies is a significant shortcoming in the [OECD's 2006] Report. If illicit companies with secret ownership merely migrate out of the tax havens and into the United States, what is the point of the OECD project (Hay 2006:5)?

[The] OECD initiative has really run out of steam … the initiatives have really got diverted from their main goals… (Guernsey interviewees of Gregory Rawlings, quoted in Rawlings 2005:11)

[T]he jury is still out on whether the OECD's attempt to define and neutralize harmful tax practices by 'naming and shaming' tax havens as renegade states in the international tax regime will be successful (Eden and Kudrle 2005:124).

Without US support or the creation of a level playing field the OECD project is stalled (Woodward 2005:212).

OECD officials engaged in serious efforts to consult and pacify business opponents, and made concessions to those business criticisms that resonated most strongly with liberal economic ideology. … [T]his is the

equivalent to consulting with the fox about policies to protect the henhouse (Webb 2004:812).

[T]he OECD-sponsored campaign against 'harmful' tax competition has been unsuccessful because regulative norms have severely constrained the means legitimately able to be employed (Sharman 2006:143).

OECD countries embarked on a difficult challenge when we commenced our work on countering harmful tax practices and this report reflects the success we have had in bringing about change. In 2000, we identified 47 potentially harmful preferential tax regimes in OECD countries. Of those regimes, 19 regimes have been abolished, 14 have been amended to remove their potentially harmful features, 13 were found not to be harmful and only one has been found to be harmful. This Report, along with the report recently issued by the OECD Global Forum on Taxation on the transparency and exchange of information practices in 82 economies, shows that we are making real progress in addressing harmful tax practices (Ciocca 2006).

33 Jurisdictions have made commitments to transparency and effective exchange of information and are considered co-operative jurisdictions by the OECD's Committee on Fiscal Affairs (OECD website, 2006).

You no doubt feel dropped into the middle of a debate about which you still know little, and will hopefully indulge my introducing this debate with this lengthy series of quotations. They come from a number of academic political scientists, as well as a former ambassador of the Caribbean commonwealth of Antigua and Barbuda (Sanders), a professional consultant for the firm Stikemann Elliott, one of Canada's top seven corporate law firms (Hay), the Chair of the Organization for Economic Cooperation and Development's Committee on Fiscal Affairs (Ciocca), and the interviewees of an anthropological colleague (Rawlings). The diligent reader will detect the rhetorical shift, presaged in the quotations above, from competition to cooperation, as well as the use of the prepositional phrase, "toward a level playing field." The point of contention between the first seven and the last two quotations is whether the OECD initiative has been a success or a failure (and, in case the point is unclear somehow, only the OECD itself judged its effort a success!). The question of success or failure is not my question in this paper, but the argument I wish to develop requires me to outline its contours.

Different actors caught up by the OECD's initiative had different views on it. To many of the small states targeted by the effort, it was a neocolonial imposition by an undemocratic alliance of powerful, rich countries on the smallest and weakest players in the international political arena. Caribbean leaders complained that the OECD campaign was "nothing less than a determined attempt to bend other countries to [the OECD's] will," "a form of neo-colonialism in which the OECD is attempting to dictate the tax economic systems and structures of other nations for the benefit of the OECD's member states"

(Ronald Sanders, former Senior Ambassador from Antigua to the United Kingdom).[3] They accused the OECD of "bullying" (Julian Francis, Bahamas Central Bank) and called its actions a threat to the islands' "economic sovereignty" (Ambrose George, Dominica Finance Minister).[4] In the United States, both the Bush administration and the Congressional Black Caucus came out against the initiative, in the name of defending the sovereignty of small nations against powerful and non-democratic global entities. To conservative Washington, D.C. think-tanks, meanwhile, the OECD initiative was an effort by global institutions with world government aspirations to quash the free market and trample on American sovereignty. Others argued that the OECD held double standards, as several of its member states would not be deemed in compliance with its own recommendations on tax competition. The Bush administration, for its part, advocated for an information-sharing regime rather than the reduction of tax competition itself, in line with security concerns born of the post-9/11 climate but just as importantly based on its ideological commitments to both low taxes and surveillance.

The OECD effort also sparked the consolidation of existing professional networks of estate and tax planners (mainly through the Society for Trust and Estate Practitioners, or STEP) as well as the formation of new multilateral organizations (for example, the International Tax and Investment Organization, ITIO, later renamed International Trade and Investment Organization, made up of Caribbean, European and Pacific tax havens).[5]

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[3] Ronald M. Sanders, The OECD's "Harmful Tax Competition" Scheme: The Implications for Antigua and Barbuda," March 27, 2001.

[4] Catherine Kelly, "Don't Count on Friends in the New Global Economy," The Punch, July 17, 2000; Government of Dominica, Budget Speech 2000/2001, "Stabilization, Consolidation and Diversified Growth – Foundations for a Sustainable Recovery." See James 2002 for a further discussion of these comments.

[5] The FATF's distinct initiative also encouraged the formation of new regional multilateral organizations concerned with anti-money laundering, such as the Asia/Pacific Group (APG).

These new networks and organizations significantly reshaped the OECD's discursive and regulatory regime. The emphasis on tax competition shifted to tax cooperation and the establishment of a "level playing field," that is, a commitment to securing compliance of OECD member states before forcing non-members to do the same. And the emphasis on ending tax haven abuses and thereby reallocating revenue wealth back to countries in which it is owed shifted to information sharing. These discursive and practical shifts led to the charges that the effort was ultimately a failure.

Indeed, by now, most proponents and critics of the initiative concur with each other that the exercise has been meaningless: small states initially targeted have issued letters of commitment, but nearly all make as a condition of that commitment OECD member states' own compliance. In other words, they demand a "level playing field" before bringing their own practices into compliance. The result, commentators claim, is a stalemate. Or, as Ronen Palan argues, the result has been a shift from curbing tax haven abuses to ensuring that tax havens "play by the rules of the advanced industrial countries that by and large represent – let us have no illusions – business interests" (Palan 2003:xvi). Indeed, Palan notes, the liberalization of onshore regulatory regimes demonstrates more than ever the importance of the offshore to contemporary global political economy (p.xix). And, because of the HTC initiative – not despite it – offshore activity and onshore activity that takes the same form as offshore arrangements is growing at a fine clip: there are now "huge incentive[s] for companies and individuals to open multiple businesses in various havens in the hope that if an investigation occurs, it will drag on endlessly" (p.xvii).

The problem with the consensus that the OECD initiative has failed is that so much activity has taken place in the meantime, and so much work, paper, and argument continues to be generated by it. If we consider the actual effects of the HTC initiative separate from its stated goals, then what comes into view is, first of all, the massive generation of documents and discourse, most especially, commitment letters and a discursive regime organized in terms of the "level playing field", information sharing, and "tax cooperation." Second, we see the consolidation and enlargement of professional societies – STEP being the primary example, but also the creation of scholarly networks of those studying the phenomenon as well as and sometimes at the same time consulting on or contributing to it. We also see the expansion – regardless of how we ultimately evaluate it – of what scholars of the OECD have called "normative deliberations" or "epistemic governance," the use of peer consultation and review among participating countries and territories to generate, redefine and promulgate knowledge and norms about tax competition. We see new parties to those consultations, like the ITIO and new regulatory bodies in the countries targeted, like the Financial Services Commission of the British Virgin Islands. Whether or not it represents a cooptation of the HTC initiative, the imagination and deployment of the "level playing field" is, after all, a measurable effect of it.

The discursive convergence around the effort's "failure," however, turned on a number of other questions. Was the HTC initiative scuttled by the reluctance of the United States government under President George W. Bush, which withdrew its support for the effort?

Or was it hijacked, or at least watered down, by new professional bodies, new transnational actor networks of consultants, tax planners, lobbyists, and government officials? Was it a pointless endeavor from the beginning, given the refusal of some OECD members to abide by the same rules as the non-OECD countries it targeted, and given the fact that several US states permit practices deemed harmful, like anonymous corporate ownership? Does it demonstrate the effectiveness of so-called soft law, nonbinding directives, principles and commitments? Or does it rather show how easily soft law can be co-opted – and, if so, by whom, and how?

Again, these questions are shared by both analysts of and participants in the tax competition debate. This is a significant part of the social field within which the HTC initiative has taken place, and here I take it as "data" rather than second order commentary on another, prior phenomenon. It highlights that these are overlapping constituencies and co-constitutive knowledge practices. Scholars have been enlisted into the policy and regulatory debate and activity (see, for example, Sharman and Rawlings 2006 or AABA/Offshore Watch; Hampton and Christensen, who were instrumental in preparing Oxfam's 2000 report) and terms from the policy debate have wended their way into the scholarly argument, in a continuous loop (see Elyachar 2006:416). This is a part of the representational or narrative dilemma I alluded to earlier.

This convergence was possible because there is no place to stand, politically, ethically or epistemologically, in the debate over harmful tax competition *as it was constituted here* without having the rug ripped out from underneath one's starting premises. For example,

there are two widely held criticisms of the OECD effort in the literature and among the parties to the debate itself: one, that neoliberal institutions like the OECD, in promulgating best practices, are engaged in a neocolonial project, and two, that the OECD has double standards and unfairly targets small, powerless states while it allows its big, rich member countries to continue to engage in practices it otherwise condemns (like anonymous corporate ownership, permitted in several US states). However, arguments like these against the OECD fail to address that here, at least, it was trying to curtail unfettered capital mobility, restrain tax evasion by the ultra rich and prevent corrupt regimes from using tax havens to hide revenues skimmed for the profit of elites or rulers. Alternately, if analysis or critique begins from a position critical of capital mobility, tax haven abuses or money laundering, then the argument quickly becomes a colonialist one: it denies tax haven countries their sovereignty and supports soft law imperialism; it refuses small countries the options for attracting investment afforded big countries; and it cannot account for the fact that, in this case, at least, multilateral, neoliberal organizations that supposedly serve business interests were here acting against them. How much simpler, then, to worry over success or failure. The situation is not unlike that encountered by anthropologists and others attempting to grapple with the emergence of new fields that transcend traditional cultural and political vocabularies, like human rights, biotechnology and intellectual property.

The World Bank, IMF, and OECD are among the bogeymen of the age, decried by the left for promoting a profit-maximizing vision of economic development and increasing poverty by enforcing the retrenchment of state welfare policies, and decried by the right

for their supposed pretensions to imposing a world government. The HTC initiative, I am suggesting, demands that we come to grips with the assumptions behind the fear of or vehemence against neoliberalism: that marketization necessarily entails X or Y; that extension of audit or calculative rationalities means Z; that the dissemination of global standards, procedures or packages of conditionalities is always anti-democratic, and so on. There is a comfortable security in holding onto reigning ideas about neoliberalism. That comfort should be a cause for concern, not least because neoliberalism is essentially black-boxed when we condemn it tout court.

In particular, neoliberalism cannot be so quickly equated with marketization, audit, best practices, standards setting, neocolonialism or ruling class projects. Anthropologists often consider standards-setting to be suspect because it passes itself off as a technocratic, apolitical project yet simultaneously carries out a deeply political ranking of persons and places (see, e.g., Dunn 2004). There is also always a concern that the dissemination of best practices or standards is inherently antidemocratic. But democratic measured how? If we measure democratic participation in terms of votes or in terms of consultation, we are left in a uncomfortable position of relying on techniques of measurement and audit to hold in check a technique of measurement and audit, as Kimberley Coles (2005) has reminded us. These are forms of accounting that swallow up any critique of themselves (Strathern 2004).

If we understand neoliberalism to be the "infiltration of market-driven truths and calculations into the domain of politics" (Ong 2006:4), and we consider the OECD,

World Bank, IMF and other consultatory bodies as the agents of neoliberalism, as most anthropologists and left critics do, we have no way to grasp the harmful tax competition initiative. The very idea of curbing harmful tax competition depended on a vision of the maintenance of the fiscal state's integrity, not its evaporation; the HTI initiative was trying to promote a non-market based system of payments in the form of revenue collection that was detached from the market; indeed, it was trying to preclude or close off the formation of a market in sovereignty (see Palan 2003). It did so in terms of the logical extension of a theory about that market in sovereignty. One analytical lesson, then, is that evidence of the infiltration of market logic does not always guarantee "marketization" as an outcome. There are other things going on besides markets, calculation, equivalence, and so on, *even when – indeed, I would argue, especially when* – we *see* markets, calculation, equivalence going on.

This point, of course, opens up a whole series of questions about the empiricist standpoint in the analysis of any economic or social formation (after Thrift 200x; see Maurer 2005). It is also a familiar one in certain quarters of anthropology, but often forgotten in the rush of enthusiasm or fear for apparently new and inexorable circulations of money and expansions of exchange. As Marilyn Strathern reminds us, and as I have discussed elsewhere, we are too often so "dazzled" (Strathern 1992:171) by the counting whenever we see calculative rationalities in action to notice that other logics of evaluation may be in play, that may be incommensurable with the dynamics of algebraic comparison or price (Maurer 2003:789; see also Verran). Or, to pull an anthropological trick out of my sleeve, let us consider the problem in terms of bridewealth: high ranking brides cost more

not because rank is commensurate with price but because a system of inequality and relationships enables men and women to make claims on each other through an idiom other than that of money or commodity exchange (Collier 1987, 1988; see Strathern 1985:197-198). Just because high ranking brides cost more does not mean there is a "market" in women.

Now, you may think I go too far in bringing bridewealth to bear on the OECD's harmful tax competition initiative. Surely, the juxtaposition is just done for rhetorical effect, to produce the sort of jarring of consciousness and concepts for which anthropology is famous. But consider the OECD's definition of taxes, set forth at the very beginning of its standards-setting document, *The OECD's Classification of Taxes and Interpretative Guide* (OECD 2004):

> … the term 'taxes' is confined to compulsory, unrequited payments to general government. The payments are unrequited in the sense that benefits provided by government to taxpayers are not normally in proportion to their payments (OECD 2004:4, A.1).

What both Strathern and the OECD are trying to get across is similar, if not the same: an idiom of payment that is not requited, operating in systems in which persons and things can be equated with one another but not according to market calculations of price. Bridewealth systems do "turn … on equations between persons and things" but persons are "constructed as bundles of assets to be distributed among others (thus making

relationships)" (Strathern 1985:202). The bride is not bought, her capacities compensated for with valuables, but rather the "bridewealth stands only for aspects of the bride's relations with others" (p.203), and helps create and sustain new relationships.

As with bridewealth, however, which is our own concept about others' relations, my juxtaposition here of marriage payments with tax payments is a technique for sense-making based on the contrast with commodity exchange. Like gift and commodity themselves, payment and exchange "necessarily derive from the symbolic practices of a commodity economy" (Strathern 1988:175). How the technique works – its particular mode of efficacy, analytically or otherwise – depends on how the concepts are understood: as parts of a whole, internal to a "system," or as potentially outside of that system somehow. This, incidentally, is the problem with interpretations of Schmantt-Besserat's Mesopotamian tokens: not knowing whether, say, "six female lambs" means anything other than what it seems, we cannot approach the symbols for them as indexing a whole system without putting it in terms of our own. And there is not necessarily anything particularly mystical here, any more than there is in a dozen eggs, or the three knots on a Capuchin Franciscan friar's cord (one for poverty, one for chastity, one for obedience). This is a familiar problem in anthropology, but one the depth of which anthropologists plumb only rarely (Povinelli 2001).

Let me set to one side the problem of incommensurability for a moment and allow the juxtaposition to hang there, for there is another to be made before I can conclude this paper. For now, suffice to say that payments are morally ambiguous, and payments of tax

even more so in an international political economy where governments are delegitimated and in a world where money seemingly moves freely. Who should pay, to which jurisdiction should they pay – where they live, where they earn, where their money lives, where their money earns, etc. These are crucial questions for the entire infrastructure of the fiscal state in an era of increased foreign direct investment to say nothing of transboundary transactions made possible by electronic communication. There is also an individualized moral question: Do good people pay taxes? Or do good people invest? And what's the relationship between the two: to take an example close to home: am I a bad person if I change my income tax withholding so as to invest money that would otherwise be taken in taxes now in a tax deferred retirement account? Rather than decrying the creation of the responsibilized citizen of neoliberalism (Rose, etc.), I would like simply to flag the place of unrequited payment in this milieu. The anthropology of finance, my own work included, has been so caught up in new forms of exchange, new exchangeable commodities and moneys, and global circulations of capital that it has neglected methods of payment right at an historical moment when the payments from people to states and back is morally fraught and rendered messy by global flows of money. The rebellion against taxation was the pivot of sovereignty but also the duty of citizenship. This contradiction cannot be reconciled. So, are payments outside or inside "the economy?" Are they a noncapitalist relation laterally intertwined with capitalism (Gibson-Graham)? Are they an alternative financial space (xxx)?

I said there was another juxtaposition to be made before concluding. It is this. The OECD initiative against harmful tax competition proceeded through naming and shaming, soft

law, and norm-making. The OECD itself proclaims that its only means to effect change is "peer pressure." Scholarly debates over soft law typically focus on the factors that enhance compliance. Political scientists have attempted to explain what makes countries comply in terms of the nature of the "norms" that soft law supposedly emanates from and instills in others (Shelton 2000:14-17). So, for example, compliance with soft law is more likely when a norm is created in a context of an imminent hard law or treaty covering the same issue area than when there is no hard law on the horizon. States are also more likely to comply when other states comply (Sheldon 2000:14).

Some scholars of soft law argue that the pre-existing "cognitive frames" complicate the causal relationships hypothesized for compliance; states may act less out of self-interest than out of "socially generated convictions and understandings" (Haas 2000:62). In this approach, the research priority is to understand the relationship between the construction of the norm by transnational actors and the compliance of states with that norm. Compliance is explained by the extent to which these norm-makers are able to influence states through moral suasion or direct administration. This approach assumes that "transnational networks of policy professionals who share common values and causal understandings" (Haas 2000:63) establish the global norms first, and reach down to the state or local level to secure compliance next.

This latter approach should sound familiar to a social anthropologist or a sociolegal scholar, as it postulates a constitutive relationship between law and culture. The problem with the rubric of mutual constitution, however, is akin to that of the problem of gift and

commodity. Allow me to quote a remarkable paragraph from Sally Merry's recent review article on anthropology and international law:

> Some intriguing parallels can be found between the way international law works and the law of villages without centralized rulemaking bodies and formal courts … . Both rely on custom, social pressure, collaboration, and negotiations among parties to develop rules and resolve conflicts. In both, law is plural and intersects with other legal orders … . Each order constitutes a semiautonomous social field within a matrix of legal pluralism. Both depend heavily on reciprocity and the threat of ostracism, as did the Trobrianders in Malinowski's account. Gossip and scandal are important in fostering compliance internationally as they are in small communities. Social pressure to appear civilized encourages countries to ratify international legal treaties much as social pressure fosters conformity in small communities. Countries urge others to follow the multilateral treaties they ratify, but treaty monitoring depends largely on shame and social pressure. Clearly there are many differences between social ordering in villages and in the world, but there are some similarities (Merry 2006:101).

The OECD is explicit on its use of shame and social pressure, and those who have studied it both in the harmful tax competition context and with a broader view note its emphasis on norm and meaning making and peer review and consultation (Sharman 2006; Marcussen 2004).

What to do, then, with the similarities between international soft law and tribal custom, or between taxation and marriage payments? One solution would be to argue that they represent the interpenetration of traditional and modern, or hybrids between traditional and modern in a Latourian (1994) sense. Another would be to see the primitive, as it were, as trundling alongside the modern on a parallel track, or to see the development of modern institutions of international law and taxation as nonlinear but rather evolutionarily bush-like, after J.K. Gibson-Graham's reformulation of Steven J. Gould for political economy that permits a consideration of noncapitalist relations alongside and contemporaneous with capitalist ones. From any of these standpoints, one could then also criticize these apparently pre-modern holdovers and insist on their rationalization: replace payments-like taxes with fees for service on a market model; replace soft law with hard law. These are precisely what the OECD did *not* do.

Jason Sharman (2006), who has been closely following the OECD initiative from the beginning, presents another solution, one I find intriguing because it seeks to extend rather than replace payments. He is extending payments as a practical solution to the problem of tax competition. I am extending payments as an analytical solution to an anthropological problem. Sharman argues that, to get rid of harmful tax competition, avoiding charges of imperialism and respecting small states' sovereignty yet also curbing tax evasion, simply buy the tax havens off. "[T]here is no one," he writes, "who contests the fact that tax havens receive much less revenue … than higher taxing countries lose" (2006:154). The countries listed on the OECD's 2000 blacklist reported a combined government revenue of less than $13 billion dollars. The IRS estimates that Caribbean tax

havens alone cost $70 billion per year in lost income tax revenue (Sharman 2006:152-153). Pay thirteen, save fifty-seven.

But the tax havens will not be bought off. International norms prevent it. Why they prevent it is, of course, evidence for the claim advanced here that payments are different from exchanges. To pay off the tax havens would feel like bribery or extortion, but only because such a transaction would not be market-based.

My conclusion, tentative though it is, is simply to suspend judgment for the moment in order to try to see the contours of this thing, to foreground the difficulty of reconciling payment with exchange or normative governance with hard law. The apparent failure of finding analytical or moral/political solutions to the problem of harmful tax competition is a symptom of the inability to reconcile payment and exchange, moral suasion and legal sovereignty. And that in itself is an ethnographic discovery.