Brian Martin
"Trade deals and tax havens," chapter 11 of
Ruling Tactics
(Sparsnäs, Sweden: Irene Publishing, 2017),
available at http://www.bmartin.cc/pubs/17rt/

11
Trade deals and tax havens

Globalisation is the process by which goods, services and all sorts of activities become spread about the world rather than restricted to particular localities. Globalisation can occur with all sorts of things. Stamp collecting is a global activity, and many collectors trade stamps with people in other parts of the world.

The controversies over climate change, nuclear power, fluoridation, vaccination and pesticides are globalised in the sense that the same sorts of arguments, participants and actions are found in different places, and there is considerable sharing of information and ideas between groups in different places.[1] There are differences, to be sure. For example, in countries with nuclear power stations, opponents focus more attention on reactor accidents and long-lived radioactive waste than in countries with no nuclear facilities. In some places, where nuclear power has never been a serious option, there is little debate about it. Globalisation does not mean that exactly the same ideas, activities or products are found everywhere, but rather there is a process by which similar developments occur in many places, often with adaptations to the local circumstances.

---

1 Brian Martin, "The globalization of scientific controversy," *Globalization,* Vol. 7, No. 1, 2008, http://globalization.icaap.org/content/v7.1/Martin.html

Sport is increasingly globalised. There is one major global sport with a huge following, football (otherwise known as soccer), and many others for which there are international competitions, such as table tennis and swimming.

The English language is gradually becoming a global language, becoming the dominant second language in many countries in addition to countries where it is the first language.

Globalisation is not always a good thing. Organised crime is increasingly global, with ties between syndicates in different countries. In the illegal drug trade, production, distribution and sales often occur across country borders.

Despite globalisation, the majority of most activities in the world occur locally and nationally. Most families, for example, live together rather than being spread across several countries. Most commuting is local. Despite the increasing ease of international travel, many more trips are to nearby locations. Globalisation needs to be seen in conjunction with the contrary process of localisation.

My interest here is in one particular type of globalisation: the rise of large corporations whose operations span several countries, and the associated distribution of goods and services in markets in these countries. This can be called corporate globalisation, to distinguish it from other types of globalisation. Global trade has existed for centuries; corporate globalisation involves an increase in the number and power of corporations, with headquarters in one country, that have significant operations elsewhere. A well known example is McDonald's, whose outlets are found in dozens of countries and whose trademark arch is one of the world's most recognised logos.

Tactics and corporate globalisation

The state and globalisation seem, at least on the surface, to be in tension with each other. The state exercises its power from control over politics and economics within a country, whereas multinational corporations have as primary goals expansion and profits regardless of where they are based. State elites presumably have most to gain by putting state interests first, whereas multinational corporate elites care less about any particular state and more about corporate interests.

This tension is resolved by noting a common interest between elites, namely those with most power and money who are at the apex of political and economic systems. Governments derive much of their income, through taxation, from economic activity that is controlled and stimulated by large corporations. Governments cannot easily act against the interests of the largest corporations, and few politicians want to, because they are lobbied by corporate representatives and usually subscribe to a capitalist ideology. Similarly, corporations depend on governments to provide the legitimacy and coercion necessary to preserve private property and to establish and enforce rules for markets. Without governments, corporations could be challenged by their own workers, undermined by unscrupulous rivals, and lose access to markets.[2]

2 Robert L. Heilbroner, *The Nature and Logic of Capitalism* (New York: Norton, 1985), p. 105: "remove the state and the

A convenient way to understand the relationship between states and multinational corporations is in terms of a cooperative alliance of those with the most power and wealth against those with much less. However, there are tensions in the relationship, with leaders of the state and of multinational corporations being pulled in different directions by the logics of their respective enterprises. One important tension arises from a central contradiction in global capitalism, concerning the mobility of capital and labour. By the logic of capitalism, both capital (money for investments) and labour-power (workers) should be able to move freely, so that capital can be deployed in areas of greatest profitability and labour can similarly move to where wages are highest. According to neoclassical economic theory, this increases overall productivity to the greatest extent. Accordingly, leaders of multinational corporations have pushed against any restrictions on where and how they can run their operations, and finance capitalists have sought freedom to move money about as they wish. In this context, the so-called Tobin tax, a tiny percentage tax on any cross-border flow of money, is a radical proposal, because it would put a brake on the most volatile forms of financial speculation.

What then about the mobility of labour? Companies usually prefer to have access to labour at lower wages if skills are similar. One option is immigration; another is guest workers, who come from lower-wage countries but

---

regime of capital would not last a day." See also Michael Moran and Maurice Wright (eds.), *The Market and the State: Studies in Interdependence* (London: Macmillan, 1991).

do not gain citizenship. For example, most of the routine work in Saudi Arabia is done by millions of guest workers from India, Pakistan, Egypt, the Philippines and other countries. However, state elites put severe limits on the movement of people who otherwise like to serve the desires of corporate leaders. The reason is that state loyalty is served by fostering a sense of us versus them: the in-group bias of humans can be harnessed to build loyalty to the abstract entity of a country.

Think of it this way. If states did not exist, and there were no border controls or requirements for passports, then people would be free to move wherever in the world they liked, with the primary constraint that there was a place for them in a new location. Most people would probably prefer to stay near those among whom they grew up and built relationships, but some—especially in areas of exploitation and violent conflict—would prefer to move.

This does not work when there are states that create their own rationale by providing services to a population, such as education and military defence, while maintaining various forms of control over the population in order to extract a surplus (through taxes and other means). Unrestrained movement of people disturbs the connection. If people can move freely, they are less likely to be susceptible to the methods that state supporters use to build identification with a country and its government. If they travel widely, they are exposed to a variety of political leaders and systems and may decide that the one they grew up with could be improved.

Those with money and desirable skills have, for centuries, been better able to move across boundaries, and some of them have developed global perspectives as a result. But until the last century, most long-distance travel was slow and expensive, and hence restricted. There has been extensive migration, for example from Europe to various colonised parts of the world, and from Africa to life elsewhere as slaves. Mobility is nothing new, but the ease of going back and forth within weeks or days is unprecedented.

Cheap and easy mobility poses challenges to state administrators. The extensive use of identity cards (passports) is a recent innovation, introduced by states seeking to establish themselves as the only legitimate controller of people's movements.[3]

All this suggests that the contradiction between the mobility of labour, which would serve capitalists, and control over the mobility of labour, which serves states, has become ever more acute. This contradiction reveals itself in the different methods used by governments in relation to trade agreements.

Trade deals

Global trade has existed for millennia, well before the rise of the state system and the imposition of border controls. The industrial revolution and the emergence of modern

---

3 John Torpey, *The Invention of the Passport: Surveillance, Citizenship and the State* (Cambridge: Cambridge University Press, 2000).

states happened over the same period, and each transformation shaped the other.[4]

The usual thinking about trade is that it is mutually beneficial. Why then would a government set up barriers to trade, such as high tariffs or prohibitions against imports of specific goods? The reason is to protect local enterprises from foreign competition. Unrestricted trade, combined with protection of private property, typically results in the development of oligopolies and monopolies. Without restrictions, these could spread across boundaries, engulfing local businesses. Protectionism enables a local economy, under government or local business ownership, to survive and expand until ready to compete internationally. As a rule, free trade serves those with the greatest economic power.

So we come to contemporary trade agreements. They are often called *free* trade agreements, but this is misleading because they usually contain various restraints on trade, including quotas and intellectual property protection, and none enable significant mobility of labour. The label "free trade" is useful to proponents because it suggests that everyone will benefit while disguising the mechanisms that restrain local decision-making. For example, the North American Free Trade Agreement (NAFTA) contains provisions allowing corporations to sue governments over any law or regulation that hurts profits. Many of the legal actions initiated under NAFTA's Chapter 11 are against the Canadian govern-

---

4 Charles Tilly, *Coercion, Capital, and European States, AD990-1992* (Cambridge, MA: Blackwell, 1992).

ment due to its environmental regulations. Critics have said that trade deals enable corporations to override the policies of sovereign states.

Many trade deals mainly benefit the powerful groups in the stronger parties to the deals. In the US, Congress extends the duration of copyright whenever it is about to expire, so for books, it is now 70 years after the death of the author, with a related term for corporate works. This extension of copyright has been dubbed the Mickey Mouse Protection Act, because it retains the Disney Corporation's intellectual property rights over the cartoon figure of Mickey Mouse, which would otherwise expire.

Intellectual property includes copyright, patents, trademarks and trade secrets, among other forms of law that restrict people's use of ideas and their expression. It is a restraint on trade: a copyrighted text cannot be used by others for commercial purposes. The rationale for copyright is to allow a creator exclusive rights for a period of time in order to stimulate creative production. The duration of copyright, initially quite short, has been extended far beyond any rational basis. Will authors really want to write more novels because they know their heirs (or their publishers) will be able to restrict others from publishing them for decades after their death? What difference will 70 rather than 50 years of post-death protection make to their productivity or creativity? In nearly every case, the benefits from such extended protection flow not to the creator but to non-creators whose control is guaranteed by the government. Such examples make it obvious that intellectual property regimes are in the service of powerful groups, especially pharmaceutical companies, major publishing houses, software companies, and Hollywood producers.

Companies based in the United States gain most of the benefit from these restraints on trade, sometimes called monopoly privilege. In nearly every other country in the world, greater monopoly privilege is harmful as assessed on a national basis. For example, people and local companies in Australia pay vastly more for access to products covered by copyright, patents and other forms of intellectual property than any returns from Australian ownership. In practice, this means that Australians (individuals, companies and the government) pay far more for access to pharmaceutical drugs, proprietary software, books and Hollywood films produced in the US or other countries than returns from its own products similarly covered. However, this did not prevent the Australian government agreeing to extend its own copyright term from 50 to 70 years post-death, something overwhelmingly advantaging US owners over Australian ones.

This is just one example of many showing that trade deals serve multinational corporations over local interests, and that governments will make agreements that hurt national interests. They do it because their loyalties are more to wealthy and powerful groups: they see the world from the perspective of these groups and sincerely believe that their actions will also serve the general interest.

This does pose a difficulty for governments. They need to sell the deals to their own people. They are caught in a dilemma: how to serve the interests of corporate (and government) elites while convincing citizens that they are serving national interests. Few of them think of this challenge in these terms, because they believe they are serving national interests, but in practical terms they have to negotiate the two prongs of the dilemma. To highlight the dilemma, it is useful to look at the usual techniques used by those who take actions that others might see as unfair: cover-up, devaluation, reinterpretation, official channels and intimidation. My expectation is that when perpetrators in these circumstances are trying to serve two contradictory goals, their use of these methods will be inconsistent.

Let's begin with cover-up and its obverse, exposure. In negotiating trade deals, governments collectively operate with great secrecy, not revealing the proposed terms of the agreements. Yet at the same time they trumpet the great advantages of the deals for their citizens. The secrecy—the cover-up—of the provisions of the deals is to hide their damaging aspects from their own citizens, who might be able to mobilise to resist them. (Politicians say secrecy is needed so negotiators can discuss sensitive matters confidentially.) On the other hand, political leaders are quite happy to say how wonderful the deals will be for everyone. The tension between these two stances is bridged by "trust us."

In 1997, while the Multilateral Agreement on Investment (MAI) was being negotiated in secret, a US citizens' group, Global Tradewatch, obtained the text, which had hitherto been kept secret, and circulated it to campaigners in several countries. This exposure was instrumental in the popular efforts to stop the MAI.

You might think that if deals were really so good for everyone, politicians would be pleased to tell everyone about what conditions were being discussed and what trade-offs were being considered. The reality is that many of the points being discussed are unwelcome to citizens, especially to specific groups. When the Australian government was negotiating a "free trade" agreement with the US government, it does not look good to say, "We're going to agree that no Australian-produced sugar will be allowed to be sold in the US." It looks like a restraint on trade rather than free trade.

In 2015, while the Trans-Pacific Partnership (TPP) was being secretly negotiated, WikiLeaks obtained and published the proposed chapter on intellectual property. This was embarrassing to some of the governments, because they were seen as acting against the national interest, instead serving the interests of pharmaceutical and other companies. (This is not to mention that strengthening intellectual property provisions basically means restraining rather than freeing enterprise.) This is another example of how governments need to finesse the question of cover-up and exposure: this involves hiding the provisions and negotiations from citizens while telling everyone—especially politicians who have to approve the agreement—how wonderful life will be following approval. The idea is to obtain political backing without being influenced by popular resistance. (It should be noted that most politicians undoubtedly believe in the value of the trade deals they support.)

Next consider the value attached to trade agreements, positive or negative. As already mentioned, governments tout the advantages of the deals, appealing to the positive connotations of "free" in "free trade." Critics, on the other hand, have sought to discredit many trade deals, especially the ones mainly benefiting the rich and powerful.

Closely associated with values associated with trade deals are the many explanations of how they work or don't work. Proponents point to many advantages, usually ignoring harmful effects, and critics do the reverse. Critics often try to frame the deals as serving the interests of large corporations at the expense of national sovereignty, which nominally is under citizen control or at least influenced by citizens via elections and public debate. However, the responsiveness of elected representatives to the popular will is elusive when it comes to trade agreements, as indicated by the secrecy involved in the negotiations and the reluctance of governments to sponsor a wide-ranging public discussion.

The legitimacy of trade deals derives from their official status. They are inter-government agreements, and to the extent that governments have credibility, so then should the agreements. It would hardly seem fair if corporations simply stitched together a set of rules for trade and imposed it on the world's population. Governments, especially those with fair elections, have much greater credibility for this purpose. Many members of the public trust what political leaders say, at least until blatant hypocrisies emerge: new leaders often have a honeymoon period, short or long, and may be able to push through the deals, especially when critics do not have details in advance to muster contrary arguments: many deals are *faits accomplis*. For corporations, governments are an essential part of the process to make the deal and to provide protection of private property and regulations to enable large corporations to thrive.

However, the fact that trade agreements are negotiated by governments provides remarkably little leverage for critics. This is the appearance of justice without the substance. After all, trade agreements are seldom a major election issue and politicians in any case do not have to follow through on election promises.

Finally, there are the methods of intimidation and reward. Intimidation of trade-deal critics through funding cuts or discrediting individuals is probably not as important as the great awards for those who support the deals. Some corporations and industry sectors receive direct financial benefits. Some individuals receive jobs and promotions. Journalists can gain better access when they are sympathetic.

In summary, governments play a double game in praising trade deals while restricting what members of the public know about the process and outcomes. Their basic strategy has to be to please two audiences: the corporations that benefit from the deals and the public that elects the politicians and which can agitate in opposition. The main ways that unpleasant truths about the deals—especially that their primary benefits are to large corporations—are dealt with is by hiding them from the public as long as possible. Meanwhile, the deals are touted under the assumption that benefits to the economy automatically lead to benefits for everyone.

Tax havens

Another source of tension for governments is the existence of tax havens, which are locations enabling individuals and businesses to avoid or minimise the tax they pay.[5] For example, a multinational corporation can establish its central office in a jurisdiction with low taxes and high financial secrecy, such as Switzerland, Hong Kong or the Cayman Islands, and then use transfer pricing to reduce its apparent income in higher-tax places like France and Sweden.

Tax havens are just one aspect of a wider process of tax avoidance and corrupt money transfers. Taxation is one of the powers of governments, and indeed one that enables the state to exist. Taxation can be thought of as an imposition on free exchange between individuals and groups; it is intended to be compulsory, and perhaps is the only state compulsion that remains widespread.[6]

In this context, it is not surprising that many people do what they can to reduce their tax, and many otherwise law-abiding citizens think nothing of cheating when it

5 Nicholas Shaxson, *Treasure Islands: Tax Havens and the Men Who Stole the World* (London: Bodley Head, 2011); Gabriel Zucman, *The Hidden Wealth of Nations: the Scourge of Tax Havens* (Chicago: University of Chicago Press, 2015).

6 Slavery and serfdom have been legally abolished, though forms still continue in parts of the world. Military conscription has been abolished in most countries, and jury duty and voting, though compulsory in some countries, are neither onerous nor difficult to avoid if really desired. Taxation, though, is standard everywhere. Only the means of imposing tax vary.

comes time to file their income tax forms. When tradespeople ask to be paid in cash, it can be a sign that they do not intend to report the money as taxable income.

Although tax avoidance is widespread in many countries, the focus here is on the richest individuals and companies, the ones with annual incomes in the millions or billions of dollars. They have a capacity to pay, but commonly do what they can to reduce their tax bills. No surprise here. What might be surprising is that governments often seem quite happy to allow this to occur. They sometimes produce fiery rhetoric about tax avoidance but at the same time serve the rich at the expense of the poor, and this is something to be hidden when possible.

First, to take an extreme example of corrupt behaviour, consider loans to dictatorial regimes. In quite a few cases, the dictator and his family (very rarely her family) skim vast quantities of money from the loans into private bank accounts, held for example in Switzerland through a shell company in the Virgin Islands. Vast means billions of dollars. This is out-and-out theft. So what do Western governments do about it? They demand that the country honour the debt, namely that the corrupt government (or a successor government) cut government expenditure and raise taxes in order to pay interest and capital on the loans. Another approach would be to say to their own banks, "You made a bad loan. Too bad. You just lost the capital. Don't be foolish and do it again. If you want your money back, you'd better do something about Swiss banks that hide the proceeds of crime." In practice, Western governments usually allow these sorts of crimes to continue.

Then there is tax avoidance that is nominally legal. Large multinational corporations use transfer pricing to minimise their tax. This involves pricing internal transfers of goods and money within the company's operations in different countries in a way that ensures that tax is as low as possible. Usually this means that most of the profits appear to come from parts of the company based in low-tax places such as Ireland. In countries with higher taxes, it is seemingly miraculous that revenues of billions of dollars result in little or no profit.

If governments wanted to stamp out this sort of practice, it wouldn't be hard—at least in principle. After all, the rules for international finance are collectively made by governments and international bodies dominated by governments. In practice, corrupt practices and legal-but-unfair practices have continued for decades. The obvious explanation is that the most powerful governments operate to serve the wealthy and powerful at the expense of their own populations. This creates a challenge for governments: how to justify their policies to their own populations.

Consider possibilities for cover-up and exposure. I can speak of my impression of how this is dealt with in Australia: the role of tax havens and transfer pricing is seldom front-page news. It is more likely to be relegated to the business pages of some newspapers. Instead, governments encourage the media to report on cheating by those lower down, for example welfare fraud, when an unemployed person obtains more benefits than officially allowed. Low-level cheaters may be given stiff penalties, perhaps even going to prison, whereas executives of companies benefiting from massive rip-offs, legal or illegal, are seldom brought before a court.

There is a lot of reporting on taxation, with most of the attention on how taxes are too high, especially for high-income earners, with the explanation being that lower taxes are needed to offer incentives. However, tax evasion by rich individuals and companies only occasionally receives attention. There have been some scandals, for example the "bottom-of-the-harbour" schemes used to evade tax,[7] but these have not led to major reform. Official inquiries usually lead nowhere.

The following news report indicates the problem (the Coalition refers to the ruling Liberal-National Party government):

> Tax paid by companies controlled by Australia's richest business people, including Gina Rinehart, James Packer and Lindsay Fox, will remain secret after the Coalition succeeded in exempting private companies from new tax disclosure requirements.[8]

Australian billionaires found it embarrassing for information to be made public about how little tax they paid—sometimes almost none at all—so they quietly lobbied

7 Companies were stripped of their assets and profits and then, before taxes were due, transferred to new, poor owners. The stripped companies were metaphorically sunk to the bottom of the harbour.

8 Heath Aston, "Law change shields tax of wealthiest companies," *Sydney Morning Herald,* 16 October 2015, p. 4.

against the required disclosures. This illustrates how exposure can be a potent way of challenging injustice, and how governments can serve the interests of a wealthy minority at the expense of the Australian public.

It would be possible to examine additional methods to reduce outrage over tax havens and other forms of large-corporation tax evasion, under the categories devaluation, reinterpretation, official channels and intimidation. Only sometimes are these methods needed, because cover-up is usually adequate. Without going through a full gamut of methods, suffice it to say that governments play a dual game of stigmatising low-level tax evaders while avoiding giving attention to tax havens and high-level evaders.

Final comment

Economic inequality can be a source of public outrage, so government and corporate elites unite in dampening concern.[9] In relation to nationalism, there is a special challenge for state elites. By dint of their role in serving powerful groups, including those in other countries, they have a challenging task in maintaining the population's commitment to the country and to the state while reducing concern about inequality and actions that benefit the rich at the expense of others.

This is why corporate globalisation induces such a curious mixture of responses by governments, many of

9 Susan Engel and Brian Martin, "Challenging economic inequality: tactics and strategies," *Economic and Political Weekly,* Vol. 50, No. 49, 5 December 2015, pp. 42–48.

which promote or tolerate trade deals and tax havens that serve the global and mobile rich of the world at the expense of their own citizens who have less money and fewer options. Opposition to corporate globalisation can come from both ends of the political spectrum, from workers who feel threatened by cheap foreign labour, which can feed into racist feelings, and campaigners such as in the Occupy movement who challenge inequality. Examining the tactics used by governments provides a useful way of mapping the difficulties they face in reconciling nationalism and economic inequality.