“An Unacceptable Surrender of Fiscal Sovereignty”: Arbitration and Sovereignty in the Double Taxation Regime

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Introduction

Many authors, implicitly or explicitly inspired by Karl Polanyi, contend that liberal democracies are experiencing a political backlash against neoliberal globalization (Margalit 2012; Martin 2013; Colantone and Stanig 2018; Rodrik 2018). A fundamental driver of this “double movement” is the deepening of inequality since the turn of the 1980s, and the erosion of trust in the fairness of tax systems, which have come to be seen as a cause of, rather than a brake on, inequality (Stiglitz 2012; Piketty 2017; Boushey 2019; Saez and Zucman 2019). As popular discontent came to a head in the wake of the financial crisis of 2007-9, “tax havens” have become a pressing political concern precisely because of their role in the growth of inequality.

Literature on the international dimension of tax injustice has focused for decades on the conflict between tax havens and developed welfare states. The Panamas and Cayman Islands of the world helped rich individuals and corporations shield their assets from tax collectors, largely unchallenged before the crisis because states were unable or unwilling to build an international regime that would trespass on each other’s autonomy over taxation (Palan 2003; J. C. Sharman 2006; Rixen 2008). This result seemed to confirm the implication of work by generations of fiscal realists, that states would jealously guard tax sovereignty: “The revenue of the state is the state,” as Edmund Burke argued in 1790 (Burke 1955:105). The intimate relationship between revenue, social contract, and statehood is an important theme in the emergence of the Westphalian state, and one explanation for why international governance institutions in the area of taxation entail significantly less pooling of sovereignty than others (Schumpeter 1918; Goldscheid 1958; Tilly 1992).

In this article we demonstrate how an increase in sovereignty-constraining cooperation was in fact occurring behind the scenes. Our story differs in two ways from the earlier literature on tax havens.
First, the sovereignty-pooling that we document was to the benefit of cross-border capital: the creation of a quasi-judicial regime for the enforcement of states’ obligations under international tax treaties, beginning as early as the 1970s. This provides an important counterpoint to the narrative that sovereignty-constraining cooperation on taxation has only recently been made possible by the political countermovement against inequality (Christensen and Hearson 2019; Hakelberg 2020).

The second difference is that this process was driven by a growing intensity of tax conflicts between large economies themselves. Recently, these conflicts have entered the mainstream of international politics. When in July 2019 France announced plans for a “GAFA” tax that would fall largely on Google, Apple, Facebook and Amazon, the US responded by threatening tariffs, and reviving a New Deal-era law that would allow it to double rates on French citizens and corporations that owe U.S. tax (Hufbauer 2019).

New institutions of tax cooperation place a premium on “tax certainty”, a euphemism for a new kind of enforceable tax commitment. Tax certainty is at the core of a deal currently being brokered by the OECD to resolve the GAFA controversy. It builds on a commitment made by 27 states acting through the OECD in 2017, to introduce “mandatory binding arbitration” provisions into over 150 bilateral double taxation treaties amongst themselves, requiring that disputes over interpretation be submitted to panels of independent adjudicators. At around the same time, EU member states committed to making tax arbitration between one another enforceable through the Court of Justice of the European Union (CJEU). Both proposals had been explicitly rejected at the turn of the 1980s, with the OECD concluding that tax arbitration would be “an unacceptable surrender of fiscal sovereignty” (OECD 1984a:para. 115).

It would be a mistake to diagnose this change of position purely as a corollary to the resurgence of nationalist economic policy since 2008. Our analysis shows that the loud defections from longstanding tax law norms that followed the crisis are merely the latest in a series of quieter
non-compliant actions over a forty-year period. To protect businesses from excessive taxation as a result, developed countries have been pushed over decades into an increasingly sovereignty-compromising, mandatory, binding, and judicialized enforcement regime. This article seeks to understand how states came gradually to accept an institutional change they had long resisted. In so doing, we add to the historical institutionalist, hierarchies of world politics, judicialization, and fiscal sociology literatures by outlining ways they can be better integrated. In particular, the emphases on distributional conflicts and unequal structures in the first two literatures can shed light on how and when states will move towards judicializing sovereignty cession. In Section II, we begin by discussing theories of institutional change and sovereignty, and how these might inter-relate. We develop a categorization of dimensions of sovereignty and of sovereignty-diminishing change paths, which we apply to the case of the development of tax arbitration in Section III. Section IV concludes.

Tax sovereignty, stasis, and change in world politics

It would seem highly improbable that states would ever delegate their tax powers. Scholars have long argued that taxation has a special relationship with sovereignty, as it is constitutive of the modern state, providing it with the financial means to maintain the security of its citizens, as well as characterizing its relationship with them. Thus, in *Leviathan*, Thomas Hobbes ascribes to the sovereign the right “to levy mony upon the Subjects” to fund the making of war (Hobbes 1994:134), while for Charles Tilly, tax ultimately underwrote war financing, and was thus essential to the mechanism through which “war made the state” (Tilly 1992:85). “The power to tax and make fiscal policy is a quintessential prerogative of sovereign states,” asserts Jason Sharman (J C Sharman 2006:81), while Sol Picciotto regards taxation as “one of the most jealously guarded of sovereign
powers” (Picciotto 1992:76). For Roland Paris, “with the possible exception of national defense, no policymaking competence is more central to the idea of the modern state than taxation” (Paris 2003:157–8).

In this telling, state jealousy helps explain the relative weakness of the international tax rules that do exist. Ronen Palan notes that tax havens exist because of state sovereignty, and that, “any serious attempt to combat the tax havens phenomenon would have to be conducted at a multilateral level, and would have great implications for the modern doctrine of sovereignty” (Palan 2002:173). Finally, for Thomas Rixen, rules on international taxation “are chosen in such a way as to interfere as little as possible with national tax laws... Once jurisdiction to tax is established, the country is basically free to use its own domestic tax law on the respective income... The tax treaty regime is built on sovereignty-preserving cooperation” (Rixen 2010).

Yet international relations scholars are increasingly advancing more nuanced versions of sovereignty, and calling into question whether the international order is properly characterized as one of independent sovereign states operating under anarchy. Powerful hierarchies (or inequalities or stratifications) can and do exist between and within states, whereby sovereignty is present in some domains but not in others, and to different degrees. For instance, while some would have us believe that states are equal and non-intervention a binding global norm, racial hierarchies in global politics drive many violations of the norm (Lake 2017). Economic hierarchies have implications for whether states and firms can weaponize supply chain interdependence to achieve political goals (Farrell and Newman 2019).

These hierarchies end up mattering for the shape of governance. At moments in history where states engage in many diverse activities domestically, this creates a functional differentiation menu whereby states can delegate (or have taken from them) one or more functions to other states or international
bodies (Butcher and Griffiths 2017). Today, overseas territories of metropole countries may formally retain tax and currency authority, but enjoy the implicit fiscal backing of their patron (Sharman 2017).

In the past, the overseas dominions of the British Empire enjoyed substantial independence on tax matters, but were brought into World War I by virtue of London’s control over security functions. These *de facto* and *de jure* arrangements have led scholars to theorize about a wide variety of hierarchical types. This includes variation in division-of-labor bargains: do all subunits enjoy a uniform relationship with the center (U.S. states to the federal government) or are they heterogeneous (Quebec within Canada)? Can the center act without the prior consent of the subunits (the U.S.)? Which level has the ability to invest the other with final authority? These distinctions allow us to theorize about a wider range of units than just atomic states, such as federations, empires, and more (Mcconaughey, Musgrave, and Nexon 2018).

**Hierarchy and tax cooperation**

While Mcconaughey et al. frame their typology in federalist terms, we think in terms of inter-branch powers. Several leading contributions in the tax literature, for instance, distinguish between *de facto* and *de jure* sovereignty (Dietsch and Rixen, 2014; Rixen, 2008: 26–29). The former refers to the ability to achieve efficiency and equity goals through the tax system, while the latter means having the sole formal right to determine tax laws and administration to the exclusion of others. Rixen further subdivides *de jure* sovereignty into *legislative* and *administrative* variants – the designing of tax law and the collecting of taxes, respectively – and suggests that states place greatest priority on legislative *de facto* sovereignty.

To this typology, we could add another dimension: judicial sovereignty, or the ability to make binding and final authoritative legal judgments. We see many examples of sovereignty ceding in this space.
European governments retain many functions at the national level, but have partly outsourced judicial functions to the European Court of Human Rights (ECHR) and the CJEU, which maintain a complex hierarchical relationship with national courts (Helfer and Voeten 2014). Alexander Cooley and Hendrik Spruyt have theorized that European states could transfer more sovereignty to international courts in Luxembourg and Strasbourg than their North American counterparts did through NAFTA – in large part because European diplomats left their initial treaties very imprecise (lowering the political costs ex ante), but with provisions that courts would be empowered to fill in ex post (Cooley and Spruyt 2009).

Combining these insights allows us to frame the relationship between state autonomy and international cooperation with more precision. Rather than the monolithic conceptualization offered by the “strong” version fiscal sovereignty outlined above, we can ask under what circumstances hierarchy is possible in matters as intimate for states as taxation of income and wealth. By analogy, we have seen states increasingly delegate decision-making power to transnational networks and other states in the area of finance (Newman and Posner 2018), which is also close to the beating heart of state power, and one in which some organs of state exist in a variety of hierarchical relationships with financial market actors. Note here that Rixen’s division into de jure and de facto, administrative and legislative, was based on a weaker, more functional understanding of fiscal sovereignty that is more consistent with hierarchy (Rixen 2010).

As the examples of the ECHR and CJEU imply, we might especially expect to see sovereignty sacrificed when it comes to domestic courts’ monopoly on legal interpretation. Judicial review of legislation often emerges as a seeming accident. In the early US context, anti-federalists worried that judges would “be able to extend the limits of the general government gradually, and by insensible degrees.” This was precisely because judges exercise their power “in cases which arise between
individuals, with which the public will not be generally acquainted. One adjudication will form a precedent to the next, and this to a following one [even though] these cases will immediately affect individuals only” (Brutus 1788). While federalists disputed these worries, the opponents of central power were proven right by Marbury v. Madison in 1803, where the Supreme Court unilaterally asserted its judicial review powers in a “split the baby” decision (Kahn 1997). The ECJ had a similar “Marbury moment” in the Costa case, where a seemingly low stakes dispute over a $3 unpaid electric bill asserted European level review of national legislation to an extent that negotiators had not agreed (Alter 2003). In the cases of international courts like the WTO or ISDS, it is not always clear ex ante how different judicial arrangements will affect states’ practical sovereignty over time, we can now begin to state our argument about when and how states might sacrifice tax sovereignty. We see the state as in a hierarchical tension with domestic and transnational constituents, which put it under pressure to give up different facets of legislative, administrative and judicial autonomy. As different constituencies organize and gain influence at different times, states respond by clinging to their sovereignty in some areas, while conceding in others. This dynamic allows them to simultaneously placate opposing constituencies, and to reassert sovereignty in some areas while pooling it more aggressively in others.

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1 Of course, these branches of the state themselves exist in tension, with the legislature circumscribing the executive’s ability to pool sovereignty, and courts frequently siding with taxpayers against the state. and lawmakers can have plausible deniability as to what judges will do in the future. This is especially true when non-states have access to the courts, allowing judicialization to move at a different pace and according to a different logic than that of inter-state negotiation (Alter, Hafner-Burton, and Helfer 2016; Tucker 2018).
For capital, state sovereignty is an obstacle to cross-border trade and investment. Wealthy individuals and corporations’ objective international tax policy preferences are for their own discretion over how to allocate taxable income across jurisdictions, and against taxes on income also taxed by other jurisdictions (“double taxation”).

Achieving these requires a curtailing of state powers. For labor, meanwhile, sovereignty enables tax avoidance and evasion. This is why commentators focused on this problem have proposed much deeper inter-state cooperation, a “Global New Deal” on taxes (Rixen 2016; Stiglitz, Tucker, and Zucman 2020). The notion that, in a world of financial globalization, national sovereignty is an obstacle to democratic control will be familiar to scholars that describe international economic integration as a political trilemma (Rodrik 2000) (Stein 2016).

**Temporal dynamics**

Up until now, we have been dealing with static design decisions, of the type that can be taken at critical junctures, when the weight of the past is minimal, there are few incumbent interests powerful enough to block or shape change, and political entrepreneurs’ agency is at its highest (Baumgartner and Jones 2009). But as this article will show, the tax regime has not been static over time. What could explain the move from one settlement (say, capital-friendly rules with sovereignty preservation) to another settlement (capital friendly rules with some or total cession of sovereignty)? Was there something about the way international tax rules were set up a century ago that heightened sensitivity to exogenous shocks and made certain types of cessions of sovereignty more likely? Our starting point here is Thomas Rixen’s (2008) model of the international tax regime as path-dependent, with states not merely keen to preserve certain aspects of sovereignty, but also locked into initial design decisions made at a time when they placed a premium on such sovereignty-preservation.
Certainly, historical institutionalist scholars of path dependence have documented many instances where path dependence displays increasing returns to certain types of behavior, while also generating unanticipated positive or negative outcomes. The classic example is the network effects induced by the KWERTY keyboard, which has been demonstrated as ergonomically inferior to alternative models. Once it was introduced, however, people invested energy in learning it and it soon became standard. Likewise, in political and policy processes, path dependence can emerge because of either a one-time or ongoing transfer of resources from old incumbents to new incumbents – now armed with even more resources to defend new regimes (Pierson 2004) (Pierson 2015). By the time political actors recognize any suboptimalities of the outcome, there would be substantial transaction costs to reversal – which may be politically unfeasible (Mahoney 2000).

Nonetheless, change does happen – even if infrequently. Generally, incumbent veto players will resist changes to original bargains that benefit them. But exogenous shocks can heighten inequalities of power within a regime. Thus, even when veto players retain their vetoes, “subversives” can argue for layered-upon changes that they claim will live up to the spirit of the original bargain. For instance, the Brazilian military dictatorship in the 1970s wanted to extend its reach to the countryside. Left-wing community health providers leveraged this ambition to sow the seeds for an eventual de-privatization of health care upon the return to democracy (Falleti 2010). In the 1960s, World Bank officials circumvented states’ unwillingness to have a multilateral investment dispute body (and investors’ general lack of interest) by gradually lobbying them to include advance consent to arbitration in their bilateral investment treaties. Because there were no cases as of that date, the relative sovereignty cost seemed low (St. John 2017). This layering is distinct from other types of change, such as when veto players’ hand is weak (making displacement possible) or an enforcement apparatus grants discretion to third parties to adapt or convert the rules (Mahoney and Thelen 2010). Moreover, two or
more layers will often develop at different speeds and according to different logics (Streeck and Thelen 2005).

Our power-driven historical institutionalist approach complements both rational and sociological institutionalist explanations. States are in a hierarchical dynamic with interest groups, especially business capital, as well as with a transnational community of technical professionals, who have agency in our framework. An external shock, the growth in cross-border capital flows, only provoked incremental change and sovereignty-pooling on administrative and judicial axes; legislative sovereignty was shielded by a combination of institutional rigidity and capital’s efforts to preserve a system from which it benefited. It was an institution developed among states that set the structural conditions within which exogenous economic change and the agency of individual actors operated.

**Defection, sovereignty, and tax arbitration**

In this section, we outline the emergence and development of the institutions of international taxation over the period of a century. We have analyzed three forms of data. First, we use historical documents drawn from governmental and press archives. Arbitration has attracted interest in the tax industry press, and so specialist media reports (often documenting remarks made at industry conferences by tax negotiators) were a key source. Second, we were participant observers during formal and informal discussions on this topic conducted over 30 days at ten international tax conferences attended by governmental and private sector representatives. Third, we conducted interviews with individuals who had been involved in tax arbitrations and/or the negotiation of arbitration provisions. Twelve interviews were conducted on the specific topic of tax arbitration, of which eight were formal, semi-structured discussions and four were more informal in nature. Of the interview subjects, six had participated in the negotiation of arbitration provisions at multilateral and/or bilateral level, four had
been arbitrators, and seven had represented taxpayers or governments in tax disputes. In particular, the sample included two US and two Canadian tax officials, whose experience covered both the negotiation of a mandatory binding arbitration clause signed in 2006, and its subsequent implementation. This sample of interviewees thus covers a significant proportion of the arbitrations that are known to have taken place to date. Many of the interviews took place at the margins of intergovernmental tax meetings, and the main selection methodology was snowball sampling.

3.1. Establishment of international tax rules: 1920-1939

The moment when tax affairs were most open to institutional innovations was the 1920s. The second half of the 19th century had seen the diffusion of corporate income taxes throughout the Western world, often – as in the United Kingdom and Austria – initially as a temporary measure (Seligman 1914). By the turn of the 20th century, these states had begun to consolidate corporate income taxes, and were joined by late starters, notably the United States in 1894 and France in 1909. Rates were raised further during the First World War. At this point, international taxation of multinational corporations was not a major concern, since most international investment flows were in the form of loans to governments and most of what we would today think of as multinationals were in fact separate companies acting as cartels (Picciotto 1992). Nonetheless, limited cross-border investment resumed after the war, and businesses began to complain about the problem of what they rhetorically framed as double taxation.

The problem as they saw it was this. If a multinational company owed U.S. tax on its worldwide income (including that generated in France) and owed French tax on that same French-derived income, then it could be said to be double taxed. To complicate matters, businesses also labeled as “double taxation” the co-existence of the corporate tax and a tax on dividend payments to individuals.

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2 Due to the “revolving door” between public and private, some interviewees had experience of more than one of these roles; two interviews were with two participants.
– conflated in countries like France by additional tax withholdings for dividends paid to foreigners, or so-called “triple taxation.”

There is no necessary reason business’ view should have prevailed. Indeed, governments still do not accept that there a normative wrong in taxing both corporations and dividends (Bank 2010). What businesses saw as international double taxation could have instead been described as a tax on capital mobility and a way to root capital nationally. Indeed, Edwin Seligman, a principal architect of the anti-double taxation system, conceded as much in 1895, when he wrote that double taxation was an inevitable by-product of “the modern mobility of capital and labor” (Seligman, 1895: 96). In the words of Senator Charles Curtis (R-Mo.), a rare dissident, U.S. tax policy should penalize American firms that invest abroad: “Our people get the worst of it, and they ought to, if they go to another country to invest. Let them invest in their own country” (Penrose, 1921: 64). Or as Rep. John Nance Garner – who would become Franklin Roosevelt’s first vice-president – put it in 1930, lessening double taxation “is going to lose money and give an opportunity and a haven for large taxpayers to escape paying taxes” (Stam 1961: 47).

Nevertheless, prevail business did – using a number of techniques. First, lawmakers were subjected to threats of a capital strike. Testifying before Congress in 1918, Phanor Eder of the Mercantile Bank urged lawmakers to exempt overseas income from any taxation, and sharply reduce the corporate income tax at home. If they did not, “the first effect will be that these corporations will be compelled to give up their American charters and will be compelled to seek incorporation in foreign jurisdictions, naturally in the place where they are doing business, and in that way this Government is going to lose that revenue from those corporations.” (Kitchin, 1918: 649). Second, business penetrated government. Conservative parties dominated the U.S., U.K., and French legislatures for most of the 1920s. Robber Baron Andrew Mellon was the U.S. Treasury Secretary, and called double taxation “evil,” “unscientific
and unsound” (Stam 1961: 18). Thomas S. Adams – an International Chamber of Commerce lawyer – effectively ran international tax policy during the decade, part of the time as an advisor to Treasury.³ He was of the view that international double taxation was immoral, because it discriminated between people or corporations alike in every way except that one has overseas investments (Adams 1929). Adams observed that: “In my experience with legislative bodies I have found that you can accomplish more for equity and justice in taxation in the name of eliminating or preventing double taxation, than with any other slogan or appeal” (Adams 1929:197). By the time Congress considered the first tax treaties in the 1930s, they declined to even hold hearings – rubberstamping the Treasury view.

These US national changes were mirrored on the diplomatic stage. An International Chambers of Commerce resolution in 1920, one of a series addressed to the League of Nations, called for “prompt agreement between the Governments of the Allied countries in order to prevent individuals or companies from being compelled to pay a tax on the same income in more than one country” (Graetz and O’Hear 1997:1066). The League responded in 1921 by creating an ad hoc committee of fiscal experts, consolidated in 1929 into a Fiscal Commission. Both Seligman and Adams were deeply involved from the U.S. side, participating in the writing of a series of expert reports investigating the problems and general principles.

Much as Curtis and Nance had opposed elimination of double taxation in general, developing countries worried that the emerging regime would disadvantage them by placing disproportionate restrictions on their ability to tax inward investment, such as for example their right to tax the profits of companies’ unincorporated branches, or interest payments made to foreign lenders. The early draft

³ Adams explained the situation to Congress thusly: “You see, Mr. Bacharach, you are busy, the Treasury is busy with other things and their minds did not get round to international double taxation until 1928. Since that time I have done a great deal of work on this project, and this bill is in some degree my baby.” (Stam 1961) 32
proposals had been assembled from 1923 to 1925 by a committee of seven experts from developed countries. These proposals were used as departure point in discussions among a wider constituency including Argentina and Venezuela in 1927 when it “significantly reduced the influence of…the representatives from ‘developing countries’” (Jogarajan 2018:165) When new participants from Bulgaria and Spain raised similar objections the following year, they were again closed down by an insistence that previous settled questions not be opened up. Thus a regime emerged that limited developing countries’ ability to tax inward investment, a result that matched the preferences of multinational firms and their home governments (Hearson 2018).

Yet business did not get everything it wanted. The regime left national governments’ veto powers intact. The Commission opted for a bilateral treaty regime, negotiated using model agreements agreed by the body in 1928. It made this recommendation in spite of a recognition that multilateral agreement would be a more effective solution to the problem at hand. As the League explained in an interim report:

It would certainly be desirable that the States should conclude collective conventions or even a single convention embodying all the others. Nevertheless, the Committee did not feel justified in recommending the adoption of this course. (League of Nations 1927:8)

For the U.S. by 1930, any treaty at all was undesirable. Instead, they favored a unilateral reciprocity regime, where the U.S. would eliminate double taxation on any country that did likewise. This position was motivated by a conclusion that each country in a bilateral setting would drive the hardest bargain for its own nationals. The U.S. found this a distasteful deviation from sound economic principle, but also believed practically that U.S. market access desires would yield better concessions (as lawmakers then believed they accomplished through tariff reciprocity in the trade space) (Stam
1961)6-12. Nonetheless, after European countries had already concluded a number of treaties between themselves, the ICC pressured the U.S. to join the bandwagon in the mid-1930s (Harrison 1934) 56; (Stam 1961) 826.4 States vetoes – especially by the dominant capital exporters – continued through the decade. In the 1930s, the Commission (now a Committee) made two subsequent attempts to elaborate multilateral conventions, recognizing the desirability of doing so and the pressure from businesses. The first, in 1931, was a “plurilateral convention” designed to replace only the elements of bilateral treaties on which a broad consensus on the precise details could be found. With the momentum behind bilateral negotiations, however, the Committee was unable to reach a consensus on the form such a convention should take, and three separate drafts fell by the wayside (League of Nations 1931:4).

The second effort, concluded in 1935, was a set of rules to allocate taxable profits using the method of separate accounting, which fragmented multinational firms for tax purposes into separate entities, each of which would be taxed independently on its profits as if it were not part of a multinational group. The decision to use separate entity accounting was favored by capital exporting countries such as the United Kingdom, as well as businesses – who would enjoy substantial discretion in reporting income gains in favorable jurisdictions. The decision was heavily influenced by Mitchell B Carroll, a lawyer on the Committee and a representative of the International Chamber of Commerce, who drafted the report and convention (Carroll 1927).

In so doing, they beat out advocates of methods such as “fractional apportionment,” used predominantly in Spain, but also to a lesser extent in other capital importing countries such as France.
and Germany. This method of accounting would have sharply limited business discretion, instead linking profits to the location of business. Carroll’s Committee argued that high tariff walls and differences in language, currency, and accounting methods forced companies to have completely separate accounts anyway. In the end, the Committee made its recommendation on still other grounds: political and distributional ones. Namely, by allocating profits by recourse to such a formula, income that under separate accounts would have gone to Country X would instead go to Country Y (Weiner 1999). Notably, these reforms were put in place during a low-point of international capital flows and international trade in the 1930s. Had it been otherwise, the drawbacks might have been more apparent. And thanks to the Bretton Woods system of capital controls through the 1970s, the costs were also made less visible.

To sum up, insurrectionaries such as Seligman, Adams, and Carroll took advantage of the non-existence of international tax rules in the 1920s and 1930s to make their own. During this critical juncture, they established a normative presumption against double taxation, as well as a system of corporate accounting that favored business interests. Both were sticky innovations, in that they created private constituencies that would push back against attempts to refine the formal bargain. Yet the insurgents did not get everything they wanted. In particular, states insisted on a regime with no particular enforcement apparatus. This holding onto sovereignty was sustainable until the system was hit by an exogenous shock – an issue to which we now turn.

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4 Nonetheless, the Americans put in place (over the objections of business, who again threatened a capital strike) a backstop in domestic law, whereby taxes would be doubled on U.S. income of citizens and corporations of any country that reneged on treaty obligations.

5 With low tariffs, English-language reports, common currency zones, accountancy harmonization, the arguments against the system have not aged well.
3.2 Capital flows increase, but states hold onto sovereignty: a missed Critical Juncture? (1971-1982)

Under-taxation and enforcement problems

By the early 1970s, hundreds of bilateral tax agreements based on the League of Nations settlement had been concluded. But it was only in that decade that trade and capital flows began to return to their past heights. As Bretton Woods came to an end and governments removed restraints on capital flows, business found itself less tethered to the nation-state, creating problems for the network of bilateral tax treaties. Namely, the regime did not impose enough obligations on states to prevent them from engaging in the kinds of harmful tax competition that gave rise to tax havens. Its sovereignty-preserving, bilateral nature meant that states could pick individual countries with which to negotiate, as well as which obligations they took on. “As an unintended consequence of its institutional setup,” argues Rixen, “the tax regime, which originally only dealt with double tax avoidance, endogenously creates under-taxation” (Rixen 2011). The conceptual fragmentation of separate accounting also allowed multinational taxpayers to navigate the network of bilateral agreements, taking advantage of those that gave them the most preferential treatment and shifting profits to jurisdictions with lower tax rates.

Likewise: hundreds of bilateral treaties, and a superstructure of soft international and hard national laws built on them, could not easily be dismantled and replaced with a new regime based on different principles. As a senior British tax official wrote, regarding some of the pressures created by capital account liberalization on the British tax regime, “thirty years of history...effectively preclude us from taking [another] course. We cannot now go back to square one” (Lord 1967). Furthermore, the major capital exporting states recognized that the present system, though imperfect, gave them large advantages over capital importers, because it reduced the taxes that multinational companies paid in
operating countries, increasing the tax base available to their home countries. The capital exporters did not want to put this advantage at risk by putting the regime’s core design features up for discussion (Genschel and Rixen 2015).

Harmful tax competition is only half the story of the conflict between globalization and the international tax regime, but it has preoccupied international relations scholarship on the international tax regime to date. The other side of the coin was the increasing number of cases in which the regime failed to serve the function for which it was designed: eliminating double taxation. As capital mobility increased, multinational taxpayers increasingly ran up against gaps in the rules’ ability to manage the interface between different countries’ tax systems. When two countries both tried to interpret international agreements to their own advantage, the result was double taxation. Just as with the under-taxation problem, solutions to the double taxation problem were constrained by lock-in effects created by prior formal regime design decisions. Transfer pricing enforcement, based on the principle that transactions within a multinational group should be priced as if they took place between companies transacting at arm’s length, became particularly problematic as international capital flows increased and became more complicated. An OECD report published in 1979 observed that, “[t]he process of establishing an arm’s length price is often complex and difficult and the difficulties are likely to be greater for both taxpayers and tax authorities if there is a lack of a common approach to the matter” (OECD 1979).

In short, the 1970s saw the emergence of what Thelen refers to as institutional “parasites”, feeding off the settlements of the 1930s. Tax havens – by holding steadfast to that settlement’s privileging of sovereignty – got the benefits of capital mobility without helping pay for the public good of regulating it. Multinational taxpayers benefitted from the existence of tax havens, as well as from double taxation rules that presented numerous options to arrange their tax affairs favorably between states. Finally,
developed country governments could exploit the room for discretion in the rules to gain a momentary fiscal advantage over their peers, even while they saw their overall revenue claim drop.

**Resistance by state veto players and missed critical juncture**

By the end of the 1970s, states faced a choice. They could replace the legislative sovereignty-preserving combination of bilateralism and transfer pricing with a unitary taxation system that tackled multinational companies as global entities. Attempts by the state of California to tax British multinationals in this way had led to considerable controversy within the US and internationally during the 1970s (Picciotto 1992:241–242). Alternatively, they could retain their legislative sovereignty and instead accept greater cooperation over the interpretation and application of transfer pricing rules - a sacrifice of administrative sovereignty.

The 1979 OECD report opted emphatically for the latter, laying out a set of rules – separate from the model treaty, but formally linked to it – on how transfer pricing transactions should be policed. The 1977 OECD model also included a commentary that clarified a variety of implementation rules. Over time, the OECD commentaries ballooned. The total number of words in the OECD model and transfer pricing guidelines combined has grown tenfold, from 56,000 in the first OECD model to 560,000 in the 2017 edition. Ostensibly intended to avoid double-taxation, the OECD interpretations left open the potential for both double taxation and double non-taxation, because of the potential for discretion and disagreement in the interpretation of their rules, especially the arms’ length principle.

Even as capital mobility put pressure on states to cooperate their taxation procedures, states still insisted on a solution that maximized sovereign discretion: the Mutual Agreement Procedure (MAP). MAP is a diplomatic process to resolve individual disputes on the application of a treaty. Because it is
an inter-state negotiation, as one industry commentator explains, the MAP “is not only an extension of, but also supplants, the diplomatic processes undertaken to create a tax treaty in the first instance” (Wilkie 2016). Crucially, no formal sacrifice of sovereignty is involved, because the MAP rules only require that states negotiate, not reach an agreement. Although the role for such a procedure had been foreseen as far back as the League of Nations, it was strengthened and its remit expanded, beginning with the 1977 OECD model, which specified its procedural rules in much greater detail. Most importantly, an OECD report first published in 1982 clarified that the MAP should cover all transfer pricing disputes (OECD 1984b). It delegated the ultimate decision to semi-autonomous negotiators, known as “competent authorities,” acting confidentially, but still bargaining on behalf of their country, and with little incentive to back down from the aggressive positions taken by their revenue officials.

As more recent evidence illustrates, this rear-guard attempt to retain fiscal control in an era of increased capital mobility was improvised and ultimately ineffectual. The OECD has only published MAP statistics since 2006, but they illustrate an exponential growth in the total number of failed MAP processes. From 2006 to 2015, the inventory of unresolved disputes tripled (OECD 2017). It is a common complaint from businesses that governments’ participation is not in good faith. For example, it is suggested that governments reject requests to commence MAP discussions, and enter into “package deals,” where individual cases are traded off against each other by governments rather than treated individually (Clayson et al., 2017). Some countries are seen as more liable to frustrate resolution than others: interviewees pointed at procedural obstacles in Italy, and the German practice of threatening firms with a greater tax bill if they trigger a MAP (interview 11; Hyde and Thomas 2016). A list of complaints from businesses submitted to the OECD in 2015 includes that “Competent authorities demonstrate little willingness to compromise;” “Some countries have also allowed MAP cases to remain pending for 8 to 10 years with no obvious prospect of resolution in the near term;”
and “Politicization of MAP process, often with public comments regarding particular cases or threats of press leaks” (Morris 2015). These were long-simmering complaints. As arbitrator William Park concluded 14 years earlier: “In short, the tax authorities are permitted to pay only lip service to international cooperation while following their narrow national interests” (Park 2001:809).

An unacceptable surrender of sovereignty: tax arbitration is rejected

As early as the 1970s, private sector and transnational organization elites advocated some type of international tax court to restrict states’ ability to foot-drag (Lindencrona and Mattsson 1981). These proposals gained wider traction, as transfer pricing began to become a more complex and contentious affair. The European Community attempted to respond to businesses’ call. A wide-ranging Communication from the Commission in 1973 laid out the difficulties created by the growth of multinational companies:

The area of taxation probably best reveals the inadequacy of nationally-devised systems supplemented by bilateral agreements for tackling the phenomenon [sic] of the growth of multinational undertakings. The coexistence of different non-harmonized tax systems complicates and even often penalizes the international functioning of an undertaking (European Commission 1973).

By 1975, the Commission stated in an “Action Programme for Taxation” that it would tackle the problem of double taxation emerging from transfer pricing adjustments as part of work “on establishing tax conditions which would enable the highest possible degree of liberalization in the movement of persons, goods, service and capital and of interpenetration of economies” (European Commission 1975:2). The Commission advocated arbitration as the means of enforcing these rules. States balked. While the Mutual Assistance Directive was passed by the Council, the Arbitration Directive did not gain support from member states. The difficulty was that the enforcement of the
Directive (and hence of arbitral decisions) would have ultimately been placed under the jurisdiction of the CJEU (known earlier as the ECJ), as well as admitting the possibility of infringement action by the European Commission. An interviewee and tax lawyer who had followed the EU debates at the time explained the difficulty thus:

The problem with arbitration is you give jurisdiction to decide the tax base away. Some states are extremely squeamish about this. In its heart, in its DNA, you do give authority to decide the assessment away. Some jurisdictions were dead against giving authority to the ECJ.6

As happened in parallel with the MAP, states responded to the challenge of increased capital flows by attempting to enforce the old sovereignty-preserving bargains. All member states apart from Denmark opposed the Commission’s proposal.7

Business interests were active in other domains as well. At the OECD, business lobbyists and tax lawyers had begun a process of technical work, lobbying, and bureaucratic infiltration. In written and verbal responses to the OECD’s 1979 report establishing the principles for transfer pricing enforcement, the Business and Industry Advisory Committee to the OECD (BIAC, composed of multinational companies) expressed its concern that more intensive regulation of transfer pricing transactions by tax authorities was likely to lead to more instances of double taxation. BIAC also expressed dissatisfaction with the time-consuming and uncertain nature of MAP procedures that its members had experienced (OECD 1984a:para. 36). BIAC’s advocacy for mandatory and binding dispute settlement in such cases was accompanied by a series of studies and reports published by the World Association of Lawyers of World Peace through Law (1979), International Fiscal Association (1981), and International Chambers of Commerce (1984). These proposals did not gain sufficient

6 Interview 11
7 Inland Revenue, 1978, Briefing document for meeting with representatives of the CBI, 12 June 1978. National Archives file IR40/18109
support at the OECD, and the US in particular was unconvinced by the calls to cede some of its sovereignty over international tax matters. A council-endorsed report noted the “strength of interest” in the topic among the business community, but rejected it on grounds of the “unacceptable surrender of fiscal sovereignty” entailed (OECD 1984a:para. 115).

3.3 Capital begins to get its way: layering of arbitration provisions (1989-2017)

_Tentative steps in Brussels and Washington, DC_

The problem of double taxation did not go away: it grew. As stocks of foreign direct investment increased, governments came under pressure to tax foreign companies more aggressively, culminating in the United States, where Congress mandated Treasury to develop new transfer pricing rules that departed from the approach agreed within the OECD (Radaelli 1998; Durst and Culbertson 2003). This assertion of _legislative_ sovereignty created howls of protest from investors and other governments, typified by this piece of industry commentary:

_It is evident that in line with the political goal, the new rule is meant to result in a substantial increase of the U.S. tax revenue from international companies...it is either a matter for other countries to adjust to the new American method and to lower their tax base accordingly, or it is a matter for the international business community to accept such double taxation (Becker 1994)._
In 1992, Robin Beran, Corporate Tax Director of Caterpillar Inc, wrote an open letter to the International Tax Counsel of the IRS stating that:

Multinational corporations who have contended with uncertainty of U.S. and foreign tax jurisdictions’ acceptance of transfer pricing of tangible and intangible property, now heightened by the proposed Section 482 regulations, need an arbitration requirement as a safeguard to double taxation (Beran 1992, emphasis added).

The traffic was not all one way, however: the executive simultaneously agreed to a modest pooling of judicial sovereignty, incorporating a series of “first generation” arbitration clauses into its bilateral treaties, beginning with a 1989 pact with Germany (Monsenego 2014).

These first-generation clauses were far from the mandatory and binding proposals that BIAC and others sought. Once triggered, all parties had to comply with the decision, but both states had to agree to initiate the arbitration in advance, as did the taxpayer; furthermore, the underlying tax policy or domestic tax law couldn’t be at stake. Moreover, arbitration clauses in five other treaties signed by the US during the 1990s did not come into force, as the US indicated its desire to observe the functioning of its arbitration clause with Germany first. That clause’s sovereignty-preserving design prevented it from acting as a useful tie-breaker in unresolved disputes, and it was never used.
For the EU’s part, the 1976 proposal for a Directive soon re-emerged as a proposal for a separate Convention, which required each member state’s accession, and satisfied concerns about sovereignty by operating outside of the Commission’s and CJEU’s jurisdiction (Schelpe 1995; de Carolis 2013). Despite agreement among the Member States in principle, the Commission’s repeated efforts between 1978 and 1985 to elaborate the Convention were hampered by foot-dragging among states. Agreement was finally reached in 1990, as part of a package of measures reducing taxation on intra-EU investment. The Commission announced it in a press release entitled “A Companies’ Europe,” in which Commissioner for Taxes, Revenue Harmonization and Consumer Policies Christiane Scrivener was quoted as follows:

**Improving competitiveness has always been the Commission's basic concern in its approach to company taxation. I am therefore particularly pleased about the political agreement which has been reached because it meets a need constantly expressed by companies and because it should enable companies to take full advantage of the dynamic effects of the large single market as it helps to strengthen their competitiveness on a worldwide scale. (European Commission 1990)**

According to a European Commission official, “The legal form was a political decision made by Member States, which has been based on the collective hesitation to surrender a significant part of their fiscal sovereignty” (Schelpe 1995). Furthermore, the arbitration rules themselves took a sovereignty-preserving form: states had no way to force each other to abide by arbitration decisions, and could obstruct progress towards arbitration, for example by imposing vexatious penalties on companies that they offered to waive in return for not triggering arbitral proceedings: “Actually it wasn’t working at all, because the countries wouldn’t let you go in,” according to an interviewee. As a result, arbitrated disputes within the EU were small in number: though there are no formal statistics,
Tacit knowledge among interviewees and in the industry press suggests a total of four disputes in total by the early 2010s. At the end of 2013, 432 active MAP cases in the EU had passed the 2-year time limit at which arbitration proceedings should have been triggered, but only one was in arbitration.

Participants in early disputes have discussed how procedurally messy they were. Swedish company Electrolux triggered MAP proceedings between France and Italy in 1997, and in 2000 the case was the first to be referred to arbitration. It took a year and a half to establish the arbitration panel, in part because of the difficulty of finding a chair, given the time commitment involved. The agreed list of potential arbitrators had become out of date, to the extent that some people listed on it were at that point deceased. The second case, between France and Germany, began in 2000. It could not be arbitrated until 2004, as there was a gap while the convention was renewed after its initial five-year period. The revenue authorities had tried to resolve the case through mutual agreement, but “became more and more stubborn” according to the outside counsel for the taxpayer. Lack of clarity over the procedure meant that the arbitration was still not concluded after three years, at which point the parties reached an agreement outside of the arbitration process (Moses 2010).

**Mandatory and binding arbitration begins to emerge**

A majority of OECD members were now party to some kind of tax treaty arbitration agreement, flawed though the US and EU models were, and the OECD itself gradually began to shift in the same direction. In 1995 it published new transfer pricing guidelines, which reconciled the new US approach

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9 Despite the three-year process and the cost of €100,000, the case did result in an agreement that resolved double taxation, and the French revenue official who participated in proceedings struck a positive tone in comments about the case, observing nonetheless that “Taxation is at the heart of state sovereignty. If we want [states] to come to the table, we want them to know they haven't lost that sovereignty” (French Competent Authority Details First Arbitration, Says Process Works 2004).
with existing international rules at a policy level. They also proposed to “analyse again and in more detail” the question of arbitration. The OECD noted four important changes that had occurred since its negative 1984 assessment: the finalization of the EU convention, the precedent of trade adjudication at the WTO, the inclusion of arbitration clauses in a few bilateral tax treaties, and “the dramatic increase of interest in transfer pricing questions with their attendant potential for tax controversy” (OECD 1995:62).

In 2004, the OECD published its first report on dispute resolution since leaving the question open in 1995. It proposed yet more work to explore “supplemental dispute resolution” procedures, leaving open the question of whether the submission of disputes to this process and the resolution of disputes through it might be made mandatory. It explained that, “while the existing procedures generally are able to resolve outstanding disputes, there continue to be situations in which the cases cannot be satisfactorily concluded. For a number of reasons [such as the growth and complexity of international transactions], it is likely that the frequency of these types of cases will increase” (OECD 2004:2). By 2007, this tentative exploration had become a proposal for arbitration, included in the 2008 revision of the OECD model tax convention. This form of arbitration provided for the “mandatory resolution of unresolved MAP issues,” and stipulated that the outcome of the arbitration would be “binding on both Contracting States” (OECD 2007:5).

Given that the OECD’s European members had already committed to somewhat mandatory and binding arbitration among themselves, the main reason for the change of OECD line was the thawing of the US position, visible in a second generation of US arbitration clauses that replaced the older versions from the mid-2000s. The US change of policy took place between 2000 and 2003, under the tenure at the IRS of Carol Dunahoo, to whom interviewees and the industry press attribute the
change. Dunahoo was hired by the IRS from PricewaterhouseCoopers in 2000, by a Commissioner himself hired the previous year from Hewlett-Packard. She went on to become a well-known tax lobbyist for US businesses: almost as soon as she left the IRS in 2004 she authored a report for the National Foreign Trade Council that advocated tax arbitration among a range of business-friendly tax reforms (National Foreign Trade Council 2005). Speaking in 2004, she explained:

The problem is that the competent authority process is presently the only means of ensuring that countries honor their treaty obligations. And it does not require the competent authorities to reach agreement within a reasonable timeframe on a reasonable basis, or even to agree at all. It provides no recourse, even where one of the countries simply declines to enter into discussions on a case or an issue. There is no mechanism to ensure that the competent authority process -- and, therefore, the treaty -- operate as intended (cited in Bell 2004).

Some businesses had suffered considerably from this lack of enforcement mechanism, which left double taxation unresolved. There were “reported impasses in very large US-Canada cases,” (Tillinghast 2006) and a widely publicized dispute between the UK and US affecting GlaxoSmithKline, in which the MAP failed to produce an agreement and the company eventually incurred double taxation amounting to US$3.4 billion (Green 2006).

The Bush administration convinced the Senate to agree to new US protocols to several of its European treaties in 2007. Treasury official John Harrington, addressing Congress at the ratification hearing for the first two treaties with Germany and Belgium, explained that the proposal was based on “our review of the U.S. experience with arbitration in other areas of the law, the success of other countries with arbitration in the tax area, and the overwhelming support of the business community” (Biden 2007), 10). The new treaty clauses made arbitration mandatory: neither state could veto the formation of a board once MAP talks dragged past two years. Instead, the formation of a panel could
only be blocked if both states agreed, thereby erasing unilateral foot dragging as a viable tactic. Gone was the technical commentary that the underlying tax policy or domestic tax law couldn’t be at issue (though there were a number of substantive carve-outs that retained some policy space). The arbitrators and private taxpayers were now the ones calling the shots. Convened automatically after two years, arbitration boards could impose their solution on the states. The investors were more powerful still – able to block formation of a board beforehand and reject their decision once rendered if not to their liking (something even the states by agreement would not be able to do).

Notably, however, the US’ second generation model still had sovereignty-preserving elements designed to restrict judicial autonomy. The treaties’ accompanying guidance stipulated that arbitrators would not produce written awards or provide legal reasoning. Their role was reduced to picking which state’s tax law interpretation was correct. This system, called “last best offer” or “baseball” arbitration (based on the procedure used to resolve pay disputes in major league baseball), was designed to get states to put their most considered offers on the table, and to minimize the creation of a body of case law (Park 2001). It thus limited the sacrifice of judicial sovereignty entailed. “It would have been harder to get Congress to approve” a “reasoned opinion” approach to arbitration, stated one former Treasury official, while another concurred that “I’m not interested in creating a new body of precedent and jurisprudence.” Another former official added that “a whole phase of turning the battleship around was getting Congress willing to ratify,” which the choice of “baseball” arbitration helped with. According to one US tax treaty negotiator, the United States had initially opposed arbitration on sovereignty grounds, but became more accepting after examining the baseball-style approach, with its sovereignty-preserving elements (Henry Louie, cited in Parillo and Gupta 2015).

10 Interviews 4, 8
11 Interview 3
11 Remark made at ‘An Evening with Tribute’, London, 9 September 2019
The principled objection to a mandatory and binding form of arbitration, already the basis of the EU convention, had now broken in the US. True, the practice was still far from the total surrender of sovereignty that the term “mandatory and binding” used by the OECD suggests. Nonetheless, arbitration had progressed from being off the table in Brussels, Washington, DC, and Paris, to the default option for all three. States continued fighting to preserve sovereignty, and had retained their legislative sovereignty by preserving the bilateral basis of international tax law and the arm’s length principle. In return, however, they had given up one of the most sovereign attributes of all: the ability to make final judicial determinations on what income can be taxed and by how much.
A once-fringe interest of private actors interested in minimizing taxes had now become mainstream, and they continued to push still further, reaching a breakthrough in 2017. That year, OECD and G20 members agreed on a new multilateral instrument to amend their bilateral tax treaties, including by introducing mandatory binding arbitration. Some 27 countries agreed to this part of the instrument, even as many of them entered reservations on provisions that protected countries against tax avoidance. Meanwhile on the European side, the Convention was replaced with a Directive that has a wider scope and is enforceable by the CJEU through judgements that have legal force in member states and can be followed up with fines. This is precisely the sacrifice of sovereignty that member states had rejected forty years before. The degree of judicialization is enhanced by the EU Directive’s requirement that at a minimum, decision abstracts be published. Sven-Olaf Lodin, who has participated in two arbitration procedures under the EU convention, was one of those arguing for such publication:

Information about these decisions and the basis and motives for the decisions could be very valuable both for tax authorities in other states and for other multinational enterprises. It could also form the basis for an internationally more homogenous treatment of the problems involved in transfer pricing issues (Lodin 2014).

At a meeting of tax practitioners to advocate for greater institutionalization of this new generation of tax arbitrations, the direction of travel was clear. As expressed by one participant, a permanent tax tribunal would offer more of “what we already see developing: an international common law of tax.”

12 Remark made at ‘An Evening with Tribute’, London, 9 September 2019
Conclusion

Sovereignty preservation, if it ever was a characteristic of the international tax regime in such absolute terms, is no longer a rigid norm. Instead, states have increasingly given up their judicial sovereignty. The 2017 changes to arbitration provisions in the OECD model and the new EU Directive have consolidated an approach that is much more mandatory and binding than their first attempts during the 1980s and 1990s. These changes also envision greater judicial autonomy, which represents a transfer of fundamental attributes of sovereignty from domestic revenue authorities and courts to private individuals acting as arbitrators. In many recent arbitration clauses, taxpayers have more rights of veto over the process than do states. Indeed, the latest generation of treaties also has a much greater role for non-state actors – with taxpayers allowed in some cases to trigger the proceedings. Looked at from a more practical perspective, the result is a net transfer of revenue from governments (in double taxation cases where they cannot agree among themselves) to multinational taxpayers, who can now force a resolution on them.

Throughout all this time, states could have chosen to pool sovereignty in other ways. In particular, they could have opted to share legislative sovereignty, through a unitary approach to the taxation of multinational companies. This proposal was rejected in the 1920s and 1930s, again when pushed by California in the 1970s, and yet again in the 2000s when the European Commission unsuccessfully proposed a Common Consolidated Corporate Tax Base. In introducing the new Arbitration Directive, the Commission observed ruefully that replacing the transfer pricing system altogether “would eliminate the risk of double taxation in the EU” (European Commission 2015:11). Arbitration is a second-best solution, and one that states had been clearly been reluctant to adopt.
Why did they choose legislative over judicial sovereignty? It is not enough to posit sovereignty preservation *toute courte* as an explanation, because the choice to retain legislative sovereignty ultimately compromised sovereignty in other branches of the state: administrative and judicial. We must also take into account the path-dependent effects of the regime design: not only lock-in due to the costs of institutional change, but also the creation of interest groups that came to benefit from the regime design. The preservation of legislative sovereignty suited the interests of multinational firms, which profited by arbitraging the differences between legal systems in their tax planning structures. Pooling judicial sovereignty served to insulate them from the downside – double taxation – that accompanied these opportunities. The regime came under pressure from the 1970s onwards because foreign direct investment was becoming more prevalent and more complex, a development that also increased businesses’ influence over governments. Notably, the US’s two major steps towards arbitration came under Republican administrations, treaties signed in 1989 and 2007.

If states are willing to sacrifice sovereignty even over their tax systems – the very thing that enables them to exist – what wouldn’t they sacrifice? Ironically, one factor in making states more comfortable with tax arbitration was dispute settlement in trade and investment law. Yet neither goes as far as what states have accepted in the tax arena, where final fiscal determinations by national courts can now be replaced with those of independent arbitrators. Record levels of inequality offer an opportune time to rethink our centuries old tax model. Without such steps, the sovereign may reassert itself in system-damaging ways, as Karl Polanyi warned us long ago and the rise of the right show us today.
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