# Is Morality the Unwritten Law that Could Champion Tax Justice for Africa?

**By:**

Sumaya Nur

November 3, 2022

In the article, '*Africa in the Economy of Francesco*,' Fernando C. Saldivar (henceforth the author) argues that low-income countries have been disadvantaged by aggressive tax avoidance and tax evasion by Multinational Corporations (MNCs). The term tax avoidance refers to strategies used to reduce tax liability, and such strategies remain legal even though they violate the spirit of the law. Tax evasion, on the other hand, can be defined as intentional illegal behaviour in direct violation of tax laws designed to escape payment of tax[1].

This commentary focuses on the author's main argument, which grows from the view that the tax justice movement needs to involve Catholic Social Teaching as an intellectual and moral ally in the fight for systemic reform in the global financial order[2]. The author's main claim is critiqued on two fronts. Firstly, the blog questions whether a moral backbone, particularly the Catholic moral niche, is sufficient to prevent tax evasion and tax avoidance by MNCs. And secondly, it is argued that the author could have advanced a deeper analysis if he had explored the nature of tax law from both the perspective of its 'spirit' aspect and its more technical aspects.

The author's article situates Africa in the economy of Francesco, which refers to a different kind of economy: one that brings life, not death, one that is inclusive and not exclusive, humane and not dehumanizing, and one that takes care of the environment and does not dispossess it[3]. The author goes ahead to explore the intersection of tax justice and Catholic Social teaching[4]. The Catholic teaching on the economy contains and draws on the documents of Vatican II, Medellín, Aparecida, and the encyclicals and declarations of the Francis period[5]. Tax justice entails global redistribution justice, which explores ways of minimizing tax evasion through haven jurisdictions[6] and growing accountability in the taxation system[7].

Consequently, the question of tax justice in Africa is not so much whether or not these countries should align themselves with progressive and developed countries, but rather who they should align with[8]. The direct response of the author is the Roman Catholic Doctrine in the era of Pope Francis, the first Latin American Pope[9]. The Catholic teaching preaches a system that does not seek to 'accommodate' developing countries to modernity but builds a prioritized and favourable modernity for those adversely affected by the progressive global order[10]. This is because current modernity seems flawed and is underscored by unhealthy capitalism.

The underlying reason for the above claim is the author's belief that the Catholic Church has a deep tradition addressing the ethics of taxation, particularly during the era of Pope Francis, who greatly rearticulates this tradition[11]. According to the author, Pope Francis has reinvigorated this teaching by merging theory with practice[12]. One of the ways the Pope achieved this is by pointing out how to invest and what to invest in to attain justice[13]. To clarify, the Pope believes that investments should target employment and economic empowerment in Africa and not its opposite—unemployment and economic exploitation[14].

This tradition goes as far back as the Roman Empire when senior tax officials were referred to as the 'Katholikos' and later adopted by the Roman Catholic church[15]. Moreover, the global status quo, particularly that social scientists often include issues like inequality and damage in their tax research, emphasizes that, while taxation is a fragmented field, it is a morally charged one[16].

The question is, why should MNCs be subject to local taxation and have an ethical obligation to pay taxes levied by the authorities in the regions where they operate[17]? As a result, the Catholic Social Doctrine represents the tax justice campaign as a viable ally only to the degree that it can inspire lawmakers to bring substantial improvements to the global tax system[18]. One suggestion is that individual companies may be motivated to improve their behaviour by introducing Corporate Social Responsibility (CSR) or Socially Responsible Investment (SRI) programs[19]. There are many definitions of CSRs[20], but the general definition refers to 'obligations and inclinations, if any, of corporations organized for profit, voluntarily to pursue social ends that conflict with the presumptive shareholder desire to maximize profit[21]'. CSR provides a valuable mechanism for analyzing corporate activities that oppose the objective of benefit maximization and serves as a vehicle for discussing normative ideas about a corporation's intent[22].

However, the emerging question is whether a moral backbone, especially the Catholic moral niche, is enough to curb MNCs' tax evasion and tax avoidance. In a study by Kristina Bott published in the Harvard Business Review to determine the influence of moral obligation in filing taxes, two important variables were used in this commentary[23]. The first variable was the use of moral appeal to make people report their taxes, and the second was an attached warning of an audit if the individuals did not pay their taxes[24]. The result of the research was that the ones with the audit letter had a more lasting effect in terms of individuals reporting their taxes. Those with moral appeal only filed their taxes for a short period of time until the moral sense of paying taxes faded[25]. Moral appeals tend to work temporarily, without long-lasting consequences, and may not be sustainable and universal in reach[26]. The next logical step is to comprehend who needs a moral understanding when it comes to MNCs: is it the shareholders or business managers? When it comes to the latter, they strive to increase the profit they produce for their shareholders, which means holding tax expenses at a minimum within the realms of what is legal and, in the long run leading to tax avoidance.

Lastly, tax law is often seen as a technical area of law that mainly follows the letter of the law. The spirit of the law is usually of little relevance[27]. However, the spirit of the law may ensure accountability mechanisms and curb tax avoidance. While the letter of the law is what the law states, the spirit of the law is a social and moral consensus of the interpretation of the letter[28]. The best way to determine the spirit of the law is to verify the intention of the provision and explanations in national and international law in what they hope to achieve[29]. For example, the spirit of the law for the Organisation for Economic Co-operation and Development (OECD) is the intention of the statutory body; where there is a genuine attempt to enforce tax law according to the purpose behind that law, there is enforcement[30]. Finally, the balance of tax responsibility with economic substance is an integral component of conformity with the intent of the law; if there is a legitimate loophole, it is presumed that the taxpayer will 'reasonably believe' in his understanding of the statutory will[31].

From the foregoing analysis, it could be presumed that it would be difficult to avoid tax with a combination of both the letter and the spirit. The author should have explored this aspect of tax more to see the plausible outcomes since Roman Catholic doctrines and morality may not elucidate the obligatory element needed to secure tax returns. For example, a moral system that relies on CSRs makes tax more like a charity and not a 'due' necessary to achieve tax justice. Tax justice demands unequivocal and unwavering legal commitment, not just a moral conviction. Notwithstanding, the author's views throughout the paper form an important contribution to the literature and the complex discussion of tax justice for Africa.

## References

[1] Reuven Avi-Yonah, Omri Marian & Nicola Sartori, Global Perspectives on Income Taxation Law 101 (2011)

[2] Fernando J, ‘Africa in the Economy of Francesco:Rethinking the Ethics of the International Financial Order at the Intersection of Tax Justice and Catholic

Social Teaching,’ 1 African Journal of International Law, 1, 2020, 164.

[3] Fernando J, ‘Africa in the Economy of Francesco:Rethinking the Ethics of the International Financial Order at the Intersection of Tax Justice and Catholic Social Teaching,’ 163.

[4] Fernando J, ‘Africa in the Economy of Francesco:Rethinking the Ethics of the International Financial Order at the Intersection of Tax Justice and Catholic Social Teaching,’ 160.

[5] Fernando J, ‘Africa in the Economy of Francesco:Rethinking the Ethics of the International Financial Order at the Intersection of Tax Justice and Catholic Social Teaching,’ 191.

[6] A tax haven, or offshore financial center, is any country or jurisdiction that offers minimal tax liabilityInterest Tax ShieldsThe term "interest tax shield" refers to the reduced income taxes brought about by deductions to taxable income from a company's interest expense. to foreign individuals and businesses.

[7] Fernando J, ‘Africa in the Economy of Francesco:Rethinking the Ethics of the International Financial Order at the Intersection of Tax Justice and Catholic Social Teaching,’ 162.

[8] Fernando J, ‘Africa in the Economy of Francesco:Rethinking the Ethics of the International Financial Order at the Intersection of Tax Justice and Catholic Social Teaching,’ 163.

[9] Fernando J, ‘Africa in the Economy of Francesco:Rethinking the Ethics of the International Financial Order at the Intersection of Tax Justice and Catholic Social Teaching,’ 163.

[10] Fernando J, ‘Africa in the Economy of Francesco:Rethinking the Ethics of the International Financial Order at the Intersection of Tax Justice and Catholic Social Teaching,’ 189.

[11] Fernando J, ‘Africa in the Economy of Francesco:Rethinking the Ethics of the International Financial Order at the Intersection of Tax Justice and Catholic Social Teaching,’ 183.

[12] Fernando J, ‘Africa in the Economy of Francesco:Rethinking the Ethics of the International Financial Order at the Intersection of Tax Justice and Catholic Social Teaching,’ 184.

[13] Fernando J, ‘Africa in the Economy of Francesco:Rethinking the Ethics of the International Financial Order at the Intersection of Tax Justice and Catholic Social Teaching,’ 192.

[14] Fernando J, ‘Africa in the Economy of Francesco:Rethinking the Ethics of the International Financial Order at the Intersection of Tax Justice and Catholic Social Teaching,’ 192.

[15] Dr.Jörg Alt, ‘Tax Justice & Poverty’< https://www.taxjustice-and-poverty.org/fileadmin/Dateien/Taxjustice_and_Poverty/Ethics_and_Religion/General/05_The
>

[16] Fernando J, ‘Africa in the Economy of Francesco:Rethinking the Ethics of the International Financial Order at the Intersection of Tax Justice and Catholic Social Teaching,’167.

[17] Fernando J, ‘Africa in the Economy of Francesco:Rethinking the Ethics of the International Financial Order at the Intersection of Tax Justice and Catholic Social Teaching,’ 167.

[18] Fernando J, ‘Africa in the Economy of Francesco:Rethinking the Ethics of the International Financial Order at the Intersection of Tax Justice and Catholic Social Teaching,’ 196.

[19] Fernando J, ‘Africa in the Economy of Francesco:Rethinking the Ethics of the International Financial Order at the Intersection of Tax Justice and Catholic Social Teaching,’ 196.

[20] Jasmine M. Fisher, ‘Fairer Shores: Tax Havens, Tax Avoidance, and Corporate Social Responsibility,’ 94 Boston University Law Review 337, 2014, 349.

[21] David L. Engel, ‘An Approach to Corporate Social Responsibility,’ 32 STAN. L. REV. 1,1979,5-6.

[22] Jasmine M. Fisher, ‘Fairer Shores: Tax Havens, Tax Avoidance, and Corporate Social Responsibility,’ 349-350.

[23] Kristina Bott, Alexander W. Cappelen, Erik O. and Bertil Tungodden, Moral Appeals Can Help Reduce Tax Evasion, Harvard Business Review, 2017.

[24] Kristina Bott, Alexander W. Cappelen, Erik O. and Bertil Tungodden, Moral Appeals Can Help Reduce Tax Evasion, Harvard Business Review, 2017.

[25] Kristina Bott, Alexander W. Cappelen, Erik O. and Bertil Tungodden, Moral Appeals Can Help Reduce Tax Evasion, Harvard Business Review, 2017.

[26] Kristina Bott, Alexander W. Cappelen, Erik O. and Bertil Tungodden, Moral Appeals Can Help Reduce Tax Evasion, Harvard Business Review, 2017.

[27] Assaf L, ‘ Chasing Ghosts: On Writing Cultural Histories of Tax Law,’ 1 UC Irvine Law Review, 1, 2011, 850.

[28] Matthew T. Gordon, ‘The Letter Versus Spirit of the Law,’Published LLM Thesis, University of Michigan.

[29] Piergiorgio Valente, ‘Spirit of Tax Law and Tax (Non-)Compliance: Reflections on Form and Substance,’ European Taxation, 2018, 15.

[30] Piergiorgio Valente, ‘Spirit of Tax Law and Tax (Non-)Compliance: Reflections on Form and Substance,’ 15.

[31] Piergiorgio Valente, ‘Spirit of Tax Law and Tax (Non-)Compliance: Reflections on Form and Substance,’ 15.