2013-11-12

Pathologies in International Policy Transfer: The Case of the OECD Tax Transparency Initiative

Richard Eccleston
University of Tasmania, Australia

Richard Woodward
Technological University Dublin, richard.woodward@tudublin.ie

Recommended Citation

Richard Eccleston & Richard Woodward (2014) Pathologies in International Policy Transfer: The Case of the OECD Tax Transparency Initiative, Journal of Comparative Policy Analysis: Research and Practice, 16:3, 216-229, DOI: 10.1080/13876988.2013.854446

Triumph or tragedy? The OECD, international tax governance and the pathologies of international policy transfer

The importance of international organizations to the development and diffusion of international policy norms is widely recognised but is increasingly tempered by an appreciation of the pathologies of policy transfer. Using a case study of the OECD's campaign to promote transparency in global tax affairs this paper identifies a new and relatively distinctive form of dysfunctional policy transfer. Specifically we argue that international organizations face bureaucratic incentives to promote weak or lowest common denominator standards in order to maximize their prospects of brokering successful international agreements. However the paper also notes that while international organizations may have a short term interest in promoting weak standards, their longer term legitimacy is often tied to the effectiveness of the standards they promote. We argue that this dynamic often leads to incremental policy change.

Introduction

The central role of international organizations in promoting international policy transfer and norm diffusion through the provision of venues for sustained institutional and professional interaction and opening up discursive space is now widely recognised (Stone 2004: 555). However, somewhat surprisingly, the OECD's role in policy and norm diffusion has only recently been subject to systematic academic scrutiny (Mahon and McBride 2008, Woodward 2009, Martens and Jacobi 2010, Carroll and Kellow 2011; Pal 2012). Inkeeping with many international organizations, but unlike the other major multilateral economic institutions such as the IMF, WTO and World Bank, the OECD lacks any coercive instruments to pursue its mandate of achieving "the highest sustainable economic growth and employment and a rising standard of living" for its members and enhancing development opportunities of non-members (OECD 1960). Instead the OECD's effectiveness an institution of global governance rests upon its ability to engage in effective policy transfer and to promote conformity with OECD norms through peer review and other reputation-based compliance strategies. In turn the OECD's aptitude for this rests on its reputation for technical expertise, its transgovernmental structure and linkages to member and non-member states (Mahon and McBride 2008).

The growing recognition of the increasingly prominent role which international organizations play in knowledge dissemination has been accompanied by an appreciation of the limits of "soft law" and how this might produce policy transfer failures. Safe in the knowledge that no material damage will result from non-compliance with international initiatives scholars within the neorealist tradition have suggested "sham regimes", where states commit to adopting a regulatory standard at the international level yet intentionally fail to implement it domestically (Drezner 2007), are likely to prevail. For example, the OECD's Multilateral

Agreement on Investment (MAI) initiative of the late 1990s foundered upon the refusal of member states to implement agreements in order to appease powerful domestic interests (see Williams 2008; Carroll and Kellow 2011: XX). Others argue that veto power of domestic interest groups encourages states to engage in "mock compliance" (Walter 2008) adopting the form but not the substance of the agreement entered, as arguably many jurisdictions did in response to the OECD's initial proposals to promote tax transparency. A third type of failed policy transfer is when states commit to and implement an international standard, either under duress or in the hope of attracting diplomatic kudos, only to find that the regulatory framework is costly, unnecessary or hopelessly ill-suited to their domestic political circumstances. For example, Sharman (2011) demonstrates that many states have sought to comply with the Financial Action Task Force's anti money laundering principles despite possessing negligible financial centres.

This paper builds on this nascent literature on dysfunctional and counterproductive policy transfer by identifying and assessing a fourth type of policy transfer failure which arises when international organizations promote "sterile masterpieces" (Pal 2012: 119), weak or lowest common denominator standards which may undermine the stated objective of the policy or regulation in question. This occurs when international organizations privilege reaching an international agreement at the expense of the effectiveness of the subsequent regime. While such outcomes are a common occurrence in the pragmatic cut and thrust of real world diplomacy, where international organizations such as the OECD are under pressure to deliver outcomes rather than focus on their effectiveness, we argue that the extant literature of international policy transfer has largely ignored its potential for dysfunctional policy transfer and the processes which drive it (Marsh and Sharman 2009, Sharman 2010). As the next section discusses in greater detail, this neglect is a consequence of the foundational assumption in much of the literature on global governance that states and actors in the international system are rational in their pursuit of cooperation. Yet as Strange (1982: 479) warned, focusing on international cooperation as an end in itself directs attention away other aspects of the international order such as justice and freedom (Strange 1982: 479) and may blind us to the interests that benefit from the existing order (Gale 1998: 262). More recently Barnett and Duvall (2005: 1) have argued that most of the literature global governance naively assumes that any contribution to global governance “is thought to bring out the best in the international community and rescue it from its worst instincts”.

The analysis which follows departs from this dominant liberal-rationalist tradition and the assumption that developing and implementing agreed standards results in improved governance and policy success which has come to dominate the literature on policy transfer (Alderson 2001: 424, Marsh and Sharman 2009: 282). While we acknowledge the recent critical turn in the international relations literature on policy diffusion which argues that developing countries in particular may adopt inappropriate and counterproductive policies owing to coercive pressures or the need to enhance prestige or legitimacy (Lal 2001, Stone 2004, Sharman 2011), we focus on the related question of why and under what circumstances international organizations would play an active role in this process? Here the article builds on insights from Barnett and Finnemore’s (2004) study of international organizations as bureaucracies and the associated claim that international organizations are agents of their own evolution. It is argued that the policy positions promoted by organizations such as the OECD cannot be established deductively but should be regarded as being the complex product of internal culture and logics of appropriateness within an organization combined with the changing interests of member states and the broader legitimacy and effectiveness of the programs they promote. Stone’s (2011) theory of international organizations, with its emphasis on their need to balance great power interests and legitimacy, provides a useful framework for analysing how competing tensions shape the OECD’s evolving policy agenda in relation to international taxation.

Our analysis begins with a brief summary of the OECD’s role in developing and disseminating new international standards for tax information exchange in response to mounting concerns about the role of tax havens in facilitating international tax evasion. While this initiative has been a spectacular success in terms of promoting bi-lateral Tax Information Exchange Agreements (TIEAs), the OECD’s standard has attracted derision from those who believe it is counterproductive because it confers legitimacy on jurisdictions which meet the standard while doing little to enhance tax transparency. The second half of the article outlines this critique and provides evidence that complying with the OECD’s standard may have little impact on international tax evasion before assessing why the OECD may have been engaging in dysfunctional transfer.

The final section of the paper examines the OECD’s somewhat unexpected 2012 decision to endorse new and more rigorous standards for tax information exchange. We argue that this development is significant in that it provides insights into how the policy preferences of international organizations evolve and how this impacts on the policy prescriptions and norms which they disseminate. Moreover, this case study alerts those examining the process of dysfunctions in policy transfer not to be hasty in declarations of failure. The iterative nature of work at international organizations, especially the OECD, requires sensitivity to the possibility that by making incremental gains through victory in smaller, peripheral battles they are wheeling the battalions into position for victory in a longer and wider war.

Policy Transfer in Global Governance

One of the first and most enduring themes of the broader debate about globalisation concerns the extent to which economic, political and cultural integration has driven policy convergence. Predictably each of the major disciplines in the social sciences has developed distinctive methods and theories for analysing this phenomenon resulting in diverse findings concerning its causes and consequences (see Marsh and Sharman 2009). Perhaps the most relevant approaches for the purposes of understanding the role of international organizations in the creation, dissemination and adoption of policy knowledge is the public policy literature on policy transfer and the international relations scholarship on policy diffusion. The difference between these two approaches is largely one of scale and method. Whereas the domestic policy transfer literature employs case studies and qualitative methods to identify and examine the processes and interactions which lead one jurisdiction to emulate the policies of another, the policy diffusion literature tends to use large-n quantitative methods to establish the degree of policy convergence, either intentional or driven by structural processes, across large sets of states.

These literatures, including that on dysfunctional policy transfer, do however suffer from being too state-centric in that they maintain that weak states adopt, either by direct coercion or mimicry, damaging policies which are devised by and serve the interests of powerful actors in the international system. While there is a good deal of truth in such claims, our contention is that international organizations themselves are autonomous actors in world politics who have interests, agendas and resources which are independent from those of their member states. In particular, an international organization’s constant struggle for relevance, issues and resources acts as an incentive for them to develop and disseminate ‘weak’ standards and regimes which notionally address pressing governance problems but are benign and politically palatable in practise. This dynamic means that international organizations can be agents of dysfunctional transfer quite independently of powerful states in the international system. It is this process which we analyse in the case study of the OECD’s promotion of standards designed to improve international tax transparency.

The OECD and Tax Transparency: Triumph or Tragedy?

Created in 1961, the OECD has played a crucial role in the development of the international tax regime. Initially the focus was on promoting its Model Tax Convention, a prototype for developing bilateral tax agreements first developed by its predecessor the OEEC in 1958. More recently the organization and its Centre for Tax Policy and Administration (CTPA) has assumed a wider remit through leading international debate and promoting best practice in relation to an ever expanding range of tax issues (Picciotto 1992, Woodward 2009: 87-89, Carroll and Kellow 2011). Whereas the original aim of the Model Convention was to simplify the tax issues relating to transnational commerce and prevent the double taxation of international business transactions, by the late 1980s the international community and the OECD (1987) had become increasingly concerned about the causes and consequences of international tax avoidance and evasion and what the organization later defined as ‘harmful tax competition.’ These concerns assumed a tangible form with the release of the OECD’s report *Harmful Tax Competition: An Emerging Global Issue* (OECD 1998, For excellent summaries see: Webb 2004, Eden and Kudrle 2005, Sharman 2006, Rixen 2008, Palan et al. 2010: 210-221). This ambitious initiative aimed to identify tax havens, defined as low or no tax jurisdictions that were unwilling to hold or exchange tax and financial data with overseas tax authorities seeking information concerning the offshore affairs of their residents. The hope was that identified tax havens would be persuaded to adopt the OECD’s standard for information exchange. However if such voluntary compliance did not eventuate then sanctions or other “defensive measures” were threatened (Eccleston 2012, Ch.3).

By the mid-2000s the OECD’s tax transparency project was floundering amidst steadfast resistance from tax havens within and beyond the OECD, growing reticence from the Bush Administration in the United States, and opposition from the transnational tax planning industry (Webb 2004). Indeed the agenda which had been launched with such optimism in 1998 was rightly characterised by analysts as being the victim of a “politics without conviction” because in order to sustain waning support in the international community the OECD was forced to dilute the standard to the point that it was widely regarded as being ineffective in terms of promoting tax transparency (Palan et al. 2010). Yet contrary to expectations, over the past five years, and driven largely by the exigencies of the global financial crisis, there has been unexpected progress in promoting tax transparency, at least insofar as brokering bilateral information exchange agreements including TIEAs and Double Tax Treaties (DTCs) are concerned. Until 2006 a mere 11 OECD TIEA had been signed, but renewed enthusiasm for tax transparency is such that by mid-2011 659 had been agreed (Figure 1) with this number swelling to 800 TIEA/DTCs by mid-2012 (OECD 2012a). Beyond this progress on bilateral information exchange agreements there have been significant parallel developments. In September 2011, the G20 leaders committed to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters and in July 2012 all OECD members agreed to the revised Article 26 of the OECD Model Tax Convention with provisions requiring parties to exchange tax information under “foreseeably relevant” circumstances irrespective of bank secrecy provisions.

INSERT FIGURE 1 ABOUT HERE

In addition to the proliferation of new TIEAs, the G20's April 2009 meeting requested the OECD to "develop an effective peer-review mechanism to assess compliance" with these new commitments and dedicated funding to establish the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum) for this purpose (Porter and Vega 2011). The Global Forum was established in September 2009 with members agreeing to important substantive and procedural changes to the regime. First, the Global Forum introduced a more robust, two-staged peer review process designed to establish the extent that Forum members (which numbered 113 in November 2012) complied with the emerging tax information exchange regime. Phase one of the peer review process examines the merits of a jurisdiction's legal and regulatory framework for exchanging tax information whereas phase-two assesses the extent to which tax information is exchanged in practice. The second phase assessment responds to criticisms of the original OECD regime which measured only whether the requisite frameworks existed, but gave no consideration to whether a jurisdiction would exchange information in practice creating the potential for 'mock compliance'. Second, the Forum requires members to submit to a post-assessment follow-up process to ensure that jurisdictions do not backslide on their commitments and to keep the international community apprised of policy changes which may impair their ability to exchange tax information (OECD 2011b). Finally, the Global Forum has refined the assessment and grading criteria. Previously a jurisdiction was regarded having "substantially implemented" the international standard if it had 12 TIEAs. This emphasis on an arbitrary quantity of agreements rather than their quality and relevance meant a jurisdiction could meet the standard without compromising its offshore business by entering into agreements with obscure states of little economic significance rather than the financial centres on which they rely for investment (Murphy 2010). Now the Global Forum demanded member jurisdictions to finalise a "network of information exchange agreements.....[with] all relevant partners".

Greater nuance was also injected into the gradings awarded following peer assessment. Rather than a blunt distinction between jurisdictions regarded as compliant and those that were not the Global Forum's rating system now distinguishes between jurisdictions that are: i) compliant; ii) largely compliant; iii) partially compliant; or iv) non-compliant (OECD 2010: 14). As of November 2012, the Global Forum had initiated 110 peer reviews processes, from which 88 phase 1 reports had been completed and published (Pross 2012). Nevertheless, detailed rankings of jurisdictions based on phase 2 peer reviews had not been completed owing to the absence 'Of a subset of jurisdictions representing a geographic and economic cross section of the Global Forum… to ensure that the applications of the rating system is consistent across jurisdictions' (OECD 2011b: 25). Clearly the ranking of phase 2 reports and the credibility they confer will be a critical test of the Global Forum's legitimacy.

Collectively the G20's endorsement of the OECD's tax transparency agenda, the launch of the Global Forum, the rapid spread of both tax information exchange agreements and associated domestic reforms could be interpreted as a case of successful international policy transfer devised and promoted by the OECD. Indeed the Secretary General boasted of the organisation orchestrating a "revolution" in global tax transparency s (Gurria 2009) and, two years later to declare that 'the era of bank secrecy was over' (OECD 2011a). Yet such conclusions are challenged by expert commentators and tax justice activists who remain extremely sceptical about whether these developments will have any material impact on the international tax evasion denouncing the OECD programme as "a whitewash" (Shaxson 2011) whose "creeping futility" (Meizner 2012) serves only to legitimise the activities of tax cheats and the industries that abet them. One criticism in particular stands out, namely that the OECD's standard is likely to be ineffective because it is based on exchanging information "on request" requiring tax authorities to identify the taxpayers and the nature of offshore accounts they are investigating *before* they can approach their counterparts abroad, precisely the thing that opaque tax structures are designed to obfuscate (Meinzer 2012, Spencer 2010, Picciotto 2011). This approach derived from compromises made to placate opponents of the OECD's initial harmful tax proposals and to reassure countries such as Switzerland that they would not be subjected to so-called "fishing expeditions" and would only be required to provide information relating to specific investigations once "all other means available in its territory" had been exhausted (OECD 2011a). Information exchange on request therefore is only useful in a relatively small number of instances where tax authorities have detailed knowledge of offshore schemes acquired through "whistle blowers" or through amnesties and voluntary disclosure schemes (such as occurred in the recent high profile UBS and LCT cases) (Spencer 2010, Meinzer 2012). Ordinarily tax authorities have very limited precise knowledge of offshore tax evasion as senior tax official from an OECD member state explains:

> Information exchange by request is very useful when you have a taxpayer who you're pretty certain is involved in evasion through a specific jurisdiction. Then you can ask for information and you'd be able to get it - I'm confident about that, but that's a small part of the problem because generally you don't know the people who have evaded in the first place and that's why we need automatic exchange of information. Otherwise they have to be in your sights before you can use information exchange on request and a lot of these people are not. They go to great efforts to not to be. (Author interview March 2010)

In these circumstances even a well administered regime providing information exchange on request will only reveal the tip of the iceberg so far as international evasion is concerned. To paraphrase former US Secretary of Defence Donald Rumsfeld: Information exchange on request will help counter 'the known unknowns' but will do little to reveal 'the unknown unknowns', which arguably represent the greatest problem. Reflecting such concerns many analysts, some states and indeed the European Union have argued for a system of automatic information exchange of tax and banking information between tax authorities (Murphy 2009). In theory the systematic and routine transfer of tax information used in conjunction with data matching technology has the potential to transform offshore tax enforcement. Indeed this was tacitly accepted by the OECD under the auspices of the 1988 OECD-Council of Europe Multilateral Convention on Administrative Assistance in Tax Matters as well as the OECD's report on *Improving Access to Bank Information for Tax Purposes* (2000) and is a central feature of the EU Savings Directive introduced in 2005 (Spencer 2005).

Explaining dysfunctional transfer: a fourth pathology?

The above case study can be categorised as an example of dysfunctional policy transfer instigated and implemented by the OECD. Yet the diffusion of TIEAs described above does not strictly conform with the pathologies of policy transfer previously outlined. First, and in contrast to the early years of the initiative in the late 1990s, there is little evidence that implementation has miscarried because of successful domestic opposition. Indeed the prospect of peer review appears to have convinced the vast majority of offshore jurisdictions to implement the formal legislative and administrative measures required to exchange tax information on request, even in places such as Switzerland where reforms have taken place in the teeth of strident opposition from domestic financial groups for whom banking secrecy remains sacrosanct. Nor does the tax transparency initiative seem to have yielded a "sham regime" in which standards are developed in response to a pressing governance problem but which major powers intentionally fail to implement because they conflict with the national interest (Young 1999, Drezner 2007: 81-85, Joachim et al. 2008). Finally, jurisdictions party to the Global Forum have voluntarily engaged with the process and, moreover, many weaker members have assumed prominent positions in the process. For example, the small vulnerable jurisdictions of Bermuda, Jersey, and the Cayman Islands are part of the 17 member Global Forum steering group as are developing countries like Kenya and emerging powerhouses China, India and Brazil. Residual concerns about the process still being pushed by powerful countries notwithstanding, it does not appear that this case study conforms to the final type of dysfunctional transfer identified in the extant literature whereby relatively weak states are forced to comply with standards which are imposed on them by the powerful actors in the international system (Sharman 2011). While accepting that existing approaches may partly account for the shortcomings of the OECD's tax transparency regime we suggest that we need to turn to a fourth type of dysfunctional policy transfer linked to the autonomous role of international organizations in the development and dissemination of new international standards.

Importantly it was the OECD rather than member states or any other actors in the international tax regime that spearheaded efforts to have tax information exchange incorporated into the G20's post-financial crisis international reform agenda. Owing to growing inter-organizational competition the OECD has been seizing agendas and problems to bolster its credibility and to shore up its finances (Carroll and Kellow 2011; Woodward 2011). Securing a leading post-financial crisis role alongside other international financial institutions such as the IMF and the World Bank was an ideal way of prosecuting this mission. Nevertheless, high profile failures in relation to the MAI and the initial foray into tax transparency placed OECD under acute pressure to successfully 'solve' the issues it had identified. This context explains the OECD's renewed enthusiasm for international tax regulation after the onset of the financial crisis in 2008. International tax evasion was not a central cause of the crisis, but the OECD was able to trade on its established expertise by offering the newly established G20 leaders' Forum a developed and credible policy response. This was an extremely valuable political resource in late 2008 given the political pressure on the G20 to develop a timely retort to the crisis. In the short term, the OECD was able to exploit this resource advantage winning endorsement for its tax information exchange standard as well as securing additional financial resources to assist with its implementation. It is also important to acknowledge that this outcome was not inevitable but was the product of entrepreneurship by OECD Secretary General Gurria, aided by Jeffrey Owens, then Director of the OECD's Centre for Tax Policy and Administration, who proactively pushed the OECD's international tax agenda at successive G7 and then G20 leaders meetings. In the words of one senior OECD official 'our real impact has been in terms of setting a reform agenda. At the height of the crisis we were able to offer world leaders a considered and coherent course of action' (Author interview September 2009).

The OECD's activism in the international tax arena is broadly consistent with Barnett and Finnemore's account of international organizations acting independently of the states which created them. Similarly, either through agenda setting, supplying expert policy advice or through deeper processes of socialization, international organizations have the capacity to change the normative environment in which they are situated and, with time, the very preferences of states themselves (Barnett and Finnemore 2004: 28, Checkel 2005). This literature tends to stress cases where international organizations have been a force for 'good', with their principled agendas acting as a counterpoint to the instrumental concerns of powerful states. Nevertheless, it also recognizes that international organizations are not immune to the bureaucratic pathologies which afflict all organizations. In their seminal work on the subject Barnett and Finnemore (2004: 37) acknowledge how internal competition within agencies for resources, staff and prestige can lead to organizational inefficiencies, however they give scant consideration to the effects to increasing competition between agencies in the increasingly dense web of organizations and governance structures which defines the international arena (Yi-Chong and Weller 2004). Organizational rivalry and competition can potentially improve the quality of global governance but may also result incentive structures which privilege reaching international agreements over the substance and effectiveness of the resulting regime. These are conditions which are conducive to development of weak international standards and dysfunctional policy transfer.

In the case of international tax governance the OECD proposed the benign and widely criticised framework of information exchange on request because it was less likely to attract the opprobrium which would undermine the prospects of successfully reaching an international agreement. In contrast, advocating a new regime based on automatic information exchange would have provoked staunch opposition, not only from traditional tax havens but also from the conservative and financial actors in the United States who successfully opposed the original tax transparency initiative in 2001 in part by threatening to revoke American funding for the OECD (Sharman 2006: 61, Palan *et al* 2010: 217, Carroll and Kellow 2011: 140). So by actively promoting a relatively benign standard for tax information exchange and actively linking it to the post-financial crisis reform agenda the OECD has gained kudos and legitimacy as an organization arguably bolstering member states' financial commitment to the organization as well as €3 million Euro per annum in project specific, 'part 2' financial support for the Global Forum's ongoing work (Eccleston 2012).

In the short-run the OECD's desire to win support for its tax information exchange agenda may have promoted the development and transfer of a weak standard, but this does not mean that the organization can ignore critics who dismiss the standard as being ineffective. Indeed the ongoing viability of an organization such as the OECD is linked to its ability to balance political support for its programs with broader questions of legitimacy. Moreover, when the legitimacy of an important reform agenda is called into question then internal bureaucratic logic of the organization may demand policy change. This dynamic has been evident in the international tax arena over the past two years as the case for automatic information exchange for tax purposes has gained momentum forcing an accommodation on the part of the OECD. The final section of the paper describes these developments before concluding with an assessment of their theoretical implications.

Organizational learning and legitimacy: The campaign for automatic exchange at the OECD

For all the criticism of its preference for promoting information exchange on request as a “flawed standard” and a “wasted opportunity” (Christensen and Shaxson 2010, Meinzer 2012), the OECD’s standards have become the fulcrum of the international tax transparency regime. The EU, the United Nations and the IMF have all proposed variations on the OECD’s standard and the tax havens and transnational tax planning industry are content to support this as a bulwark against proposals promoting automatic exchange that “would be much more onerous” “with personal financial confidentiality being eliminated” (Hay 2005 as quoted in Spencer 2010: 51).

Nevertheless, the forces promoting automatic information exchange are massing. The EU and the UN’s Commission of Experts on the Reform of the International Monetary and Financial System (The Stiglitz Commission) have advocated, and in the case of the EU Savings Directive, implemented frameworks for the automatic exchange of tax information (United Nations 2009: 83-84). The growth of a transnational social movements dedicated to the promotion of transparency in international tax issues, embodied most notably by the Tax Justice Network, widespread public anger following revelations about celebrities and companies avoiding taxes while they endure austerity, plus enhanced funding and status of the UN Tax Committee which disproportionately represents developing countries have helped maintain the momentum towards automatic information exchange for tax purposes. The most profound development in automatic information exchange however was the passage in 2010 of Foreign Accounts Tax Compliance Act (FATCA) in the United States. FATCA’s significance lies in the fact that it requires international financial institutions (rather than foreign governments) to automatically provide tax and financial information on the offshore interests of US tax residents or face a 30% withholding tax on all United States sourced income (Browning 2011). FACTA not only has the potential to transform many aspects of international tax governance (Eccleston 2012: 128-131), but represents a “major step toward encouraging foreign governments to implement automatic exchange, thereby transforming the international financial architecture” (Spencer 2010: 64).

As the aforementioned OECD-Council of Europe Multilateral Convention attests, the OECD has longstanding expertise in assisting states to promote automatic information exchange (Pross 2012; OECD 2012b). Likewise neither the 2002 *Model Agreement on Exchange of Information on Tax Matters* (OECD 2002) nor Article 26 of the *Model Tax Agreement* prohibit automatic information exchange. Nonetheless, the OECD’s stresses that information exchange on request is the standard promoted by the Global Forum while counties are able to include automatic information exchange provisions in tax agreements on a voluntary basis. However the 2012 creation of an OECD committee exploring ways to incorporate automatic exchange provisions into the model standard is typical of the incremental steps OECD is taking in this direction.

Orthodox approaches would be unperturbed by such developments at the OECD, tracing them to changes external to the organization, especially in the prevailing patterns of power and interest in the international system. Undoubtedly the cumulative impact of civil society campaigns, rival standards being promoted by the UN and key OECD member states has influenced OECD policy prescriptions. Failure to adjust risked the OECD becoming a victim of a “forum shopping” process whereby states that wish to engage in automatic information exchange do so outside established OECD processes and frameworks thus undermining the OECD vis-à-vis its institutional competitors. In sum international organizations must balance the need to win support for their agendas given the financial dividends and power such support confers, with the longer term need to sustain and build legitimacy and a reputation for policy expertise.

The stress on external drivers of change reveals only part of the story. As with the OECD's post-financial crisis tax activism bureaucratic survival and self-interest were central factors explaining the change. The desire of OECD officials to maintain their position as the expert body for international tax affairs made adjustment to automatic information exchange imperative to retaining those discussions inside OECD. A second dimension to this is that OECD officials are playing a long game. Pal (2012) notes that the OECD often commences work in a particular area by developing relatively anodyne or banal recommendations. These recommendations are nonetheless important because they reflect the fact that these issues have been aired at an international level and catalyze an implementation process. OECD peer reviews start to examine enforcement with the resulting reports used to hone the original principles and develop additional dialogues and toolkits. What appear to be trivial agreements serve like "crampons" enabling OECD to gain purchase on a slippery surface before climbing higher by tackling related problems in the same field (Pal 2012: 138-139). Singly OECD agreements may be anemic but many OECD agreements in a particular area quickly coalesce to become a robust set of rules and the basis for an international regime. The sanguine interpretation of the OECD's promotion of information exchange on request is that it represented a staging post towards a more comprehensive system based on automatic information exchange. Certainly this is an argument advanced by the OECD secretariat both privately and in published reports (Author interview September 2009). Thus, what might first appear to be dysfunctional policy transfer may in fact be part of a deliberate strategy on behalf of international secretariats to reach desired objectives. This dual strategy of allowing and developing resources to support automatic information exchange while insisting that exchange on request is the international standard is best understood as a pragmatic compromise in the face of deep seated political resistance to automatic information exchange. Getting states to the point where exchange of information on request is relatively uncontroversial (seemingly an example of policy dysfunction) may be a necessary intermediate step to securing the ultimate aim of tax transparency through automatic information exchange.

Conclusion: Legitimacy, Power and Organizational Adaptation

This article argues that bureaucratic politics and competition can have a significant influence over the substance of standards promoted by international organizations and the extent to which they are transferred. However the case study also highlights the influence of other factors over both the extent of policy transfer and the role of organizations in influencing policy change. To this extent it is important to assess how criticism of an international standard can undermine the legitimacy of a sponsoring organization and how a wider set of power relations will shape the policy response to such criticism.

The effectiveness of international organizations is largely contingent of their legitimacy and this is especially true of the OECD given its dependence on informal modes of governance. Legitimacy is important because international organizations and the governance regimes they promote rely on a degree of voluntary participation in order to be effective. However legitimacy has many dimensions encompassing a wide range of actors. For example, Randall Stone's (2011) recent study of international organizations conceptualizes legitimacy as the ability to gain the consent of participating states. However it can be argued that if the authority and power of organizations such as the OECD depend on their reputation and their claim to technical expertise then their legitimacy among NGOs and policy experts is also significant. So at this level international organizations may be sensitive to an informed and sustained campaign which is critical of the standards they promote. Clearly not all civil society campaigns are effective, witness the sustained yet largely ineffective campaign to reform IMF conditionality provisions during the 1990s and 2000s. Only through an analysis of underlying power dynamics can we begin to understand when international organizations will be responsive to external criticism and when such campaign can be ignored.

There are two broad sets of factors which determine an organization's vulnerability to criticism and protest. As Stone (2011) argues a key factor is the extent to which an organization's agenda is supported by powerful states. If they enjoy this support then poorer countries and weaker states will continue to support the regime as part of the price for maintaining a regulatory structure over which they exert some influence. The second and related factor concerns the extent to which rival organizations offer alternative standards and regimes. If, for example, a coalition of states, NGOs and rival organizations cooperate and develop an alternative regulatory standard then the possibility of 'forum shopping' leaves the original international organization in a vulnerable position unless it actively responds to its critics. The preliminary evidence suggests that this is the situation in which the OECD finds itself in relation to international tax transparency. While proposing a weak standard was a rational response from a bureaucratic perspective, technical criticism of the standard when combined with the EU and UN promotion of automatic information exchange started to undermine the legitimacy of the OECD's regime. However the decisive development seems to have been the United States' promotion of an alternative standard under the auspices of its FATCA legislation which left the OECD with little alternative other than to belatedly endorse automatic information exchange.

We can draw two tentative conclusions in relation to our broader interest in the role of international organizations in policy transfer. Firstly, we believe the nascent literature on the topic should engage with and learn from the literature of bureaucratic politics and how a combination of organizational self- interest and bureaucratic construction of governance problems provides incentives for an organization to expand, seek resources and prestige. Given that 'success' is often judged in terms of reaching an international agreement rather than its ultimate effectiveness international organizations have an incentive to develop weak or lowest common denominator standards. This is an important but seldom recognized form of dysfunctional policy transfer. The second conclusion drawn from the study is that the OECD is in the process of responding to criticisms that the standard it has been promoting is relatively weak and is likely to have a marginal impact in terms of addressing the stated aim of the regime – reducing international tax evasion. We argue that this is because promoting information exchange on request was undermining the OECD's legitimacy as the preeminent actor in the international tax arena. However, drawing on Randall Stone's (2011) recent analysis we argue that we can only understand the OECD's incremental shift in policy in terms of the underlying power dynamics and the fact that rival organizations and key OECD member states were promoting and embracing automatic information exchange.

References

Alderson, K., 2001 Making sense of state socialisation. *Review of International Studies*, 27(3), pp. 415-433.

Barnett, M. and Duvall, R., 2005, Power in International Politics. *International Organization*, 59(1), pp. 39-75.

Barnett, M. and Finnemore, M., 2004, *Rules for the World: International Organizations in World Politics* (Ithaca: Cornell University Press).

Browning, L., 2011, Critics say new laws make them tax agents. *Reuters*, 19 August. Available at http://article.wn.com/view/2011/08/19/Analysis_Critics_say_new_law_makes_them_tax_agents/. Accessed 27 November, 2012.

Carroll, P. and Kellow, A., 2011, *The OECD: A Study in Organizational Adaption* (Cheltenham: Edward Elgar).

Checkel, J.T., 2005, International Institutions and Socialization in Europe: Introduction and Framework. *International Organization*, 59(4), pp. 801-826.

Christensen, J. and Shaxson, N., 2010, Time to black-list the White Wash. *The Financial Times*, 18 November Available at http://www.ft.com/intl/cms/s/0/0f687dee-5eea-11e0-a2d7-00144feab49a.html#axzz2DwTjlTG3 Accessed 27 November 2012

Drezner, D., 2007, *All Politics is Global: Explaining International Regulatory Regimes* (Princeton: Princeton University Press).

Eccleston, R., 2012, *The Dynamics of Global Economic Governance: The OECD, The Financial Crisis and the Politics of International Tax Cooperation* (Cheltenham: Edward Elgar).

Eden, L. and Kudrle, R.T., 2005, Tax Havens: Renegade States in the International Tax Regime? *Law & Policy*, 27(1), pp. 100-127.

Gale, F., 1998, Cave! Hic dragones': a neo-Gramscian deconstruction and reconstruction of international regime theory. *Review of International Political Economy*, 5(2), pp. 252-283.

Gurria, A., 2009, Remarks by Angel Gurría at the Global Forum on Transparency and Exchange of Information. Available at http://www.oecd.org/document/7/0,3746,en_2649_33767_43596999_1_1_1_1,00.html Accessed November 1, 2011.

Joachim, J., Reinalda, B. And Verbeek, B. (Eds), 2008, *International Organization and Implementation: Enforcers, Managers, Authorities?* (London: Routledge).

Lal, D., 2001, The development and spread of economic norms and incentives, in: R. Rosecrance and A.A. Stein (Eds) *The New Great Power Coalition: Toward a World Concert of Nations*, (Lanham: MD: Rowman & Littlefield Publishers), pp. 237-259.

Mahon, R. and McBride, S. (Eds), 2008, *The OECD and Transnational Governance* (Vancouver: UBC Press).

Marsh, D. and Sharman, J., 2009, Policy Diffusion and Policy Transfer. *Policy Studies*, 30(3), pp. 269-288.

Martens, K. and Jakobi, A. (Eds), 2010, *Mechanisms of OECD Governance: International Incentives for National Policy Making* (Oxford: Oxford University Press).

Meinzer, M., 2012, *The Creeping Futility of the Global Forum's Peer Reviews*. Available at http://www.taxjustice.net/cms/upload/GlobalForum2012-TJN-Briefing.pdf. Accessed November 27, 2012.

Murphy, R., 2009, *Information Exchange: What would help developing countries now?* Available at http://www.taxresearch.org.uk/Documents/InfoEx0609.pdf. Accessed November 27, 2012.

Murphy, R., 2010, Of Course There are Trillions Offshore – and Now the IMF Recognises the Fact. . Available at http://www.taxresearch.org.uk/Blog/2010/03/15/of-course-there-are-trillions-offshore-and-now-the-imf-recognises-the-fact/. Accessed November 27, 2012.

OECD, 1960, *Convention on the Organisation for Economic Co-Operation and Development* Available at http://www.oecd.org/general/conventionontheorganisationforeconomicco-operationanddevelopment.htm. Accessed September 1, 2012.

OECD, 1987, *International Tax Avoidance and Evasion* (OECD: Paris).

OECD, 1998, *Harmful Tax Competition: An Emerging Global Issue* (OECD: Paris).

OECD, 2000, *Improving Access to Bank Information for Tax Purposes*. Available at http://www.oecd.org/tax/exchangeofinformation/2497487.pdf. Accessed November 27, 2012.

OECD, 2002, *Agreement on Exchange of Information on Tax Matters*. Available at http://www.oecd.org/ctp/harmfultaxpractices/2082215.pdf. Accessed November 27, 2012.

OECD, 2010, *Tax Co-operation 2010: Towards a Level Playing Field – Assessment by the Global Forum on Transparency and Exchange of Information*. (Paris: OECD).

OECD, 2011b, *The Global Forum on Transparency and Exchange of Information for Tax Purposes: Information Brief June 2011.* Available at http://www.oecd.org/dataoecd/32/45/43757434.pdf Accessed September 2011. Accessed November 27, 2012.

OECD, 2012a, *Tax Transparency 2012 Report on Progress.* Available at http://www.oecd.org/tax/transparency/Tax%20Transparency%202012_for%20publication.pdf. Accessed November 27, 2012.

OECD, 2012b, *Automatic Exchange of Information: What it is, how it works, benefits, what remains to be done* (Paris: OECD).

Pal, L., 2012, *Frontiers of Governance: The OECD and Global Public Management Reform*. (Basingstoke: Palgrave).

Palan, R., Murphy, R. and Chavagneux, C., 2010, *Tax Havens: How Globalization Really Works* (Ithaca: Cornell University Press).

Picciotto, S., 1992, *International Business Taxation: A Study in the Internationalization of Business Regulation* (London: Weidenfeld and Nicholson).

Picciotto, S., 2011, *Regulating Global Corporate Capitalism* (Cambridge: Cambridge University Press).

Porter, T. and Rubio-Vega, V., 2012, Global Forum on Transparency and Exchange of Information for Tax Purposes, in Thomas N. Hale and David Held (Eds) *Handbook of Innovations in Transnational Governance: Institutions and Innovations*, (Cambridge: Polity Press), pp. 61-66.

Pross, A., 2012, Recent Developments on Exchange of Information. Presentation by Achim Pross, Head of International Co-operation and Tax Administration Division, OECD to the International Financial Centres Forum Annual Conference, London, November 8, 2012.

Rixen, T., 2008, *The Political Economy of International Tax Governance* (Basingstoke: Palgrave).

Rose, R., 1991, What is lesson drawing? *Journal of Public Policy*, 11(1), pp. 3-30.

Sharman, J.C., 2006, *Havens in a Storm: The Global Struggle for Tax Regulation* (Ithaca: Cornell University Press).

Sharman, J.C., 2010, Dysfunctional Policy transfer in National Tax Blacklists. *Governance*, 23(4), pp. 623-639.

Sharman, J.C., 2011, *The Money Laundry: Regulating Criminal Finance in the Global Economy* (Ithaca: Cornell University Press).

Shaxson, N., 2011, *Treasure Islands: Uncovering the Damage of Offshore Banking and Tax Havens* (New York: Palgrave Macmillan).

Spencer, D., 2005, The Cost of Capital Flight. *Accountancy and Business in the Public Interest*, 4(2), pp.151-160.

Spencer, D., 2010, Atmosphere is changing for information exchange. *International Tax Review*, 25(5), pp. ????

Stone, D., 2004, Transfer Agents and Global Networks in the 'transnationalization' of policy. *Journal of European Public Policy*, 11(3), pp. 545-566.

Strange, S., 1982, Cave! Hic dragones: a critique of regime analysis. *International Organization*, 36(2), pp. 479-496.

Stone, R., 2011, *Controlling Institutions: International Organizations and the Global Economy* (Cambridge: Cambridge University Press).

UN, 2009, *Report of the Commission of Experts of the President of the United Nations General Assembly on Reforms of the International Monetary and Financial System*. Available at http://www.un.org/ga/econcrisissummit/docs/FinalReport_CoE.pdf. Accessed November 27, 2012.

Underdal, A., 1998, Explaining Compliance and Defection: Three Models. *European Journal of International Relations*, 4(1), pp. 5-30.

Walter, A., 2008, *Governing Finance: East Asia's Adoption of International Standards* (Ithaca: Cornell University Press).

Webb, M., 2004, Defining the Boundaries of Legitimate State Practice: Norms, Transnational Actors and the OECD's project on Harmful Tax Competition. *Review of International Political Economy*, 11(4), pp. 37-58.

Williams, R.A., 2008, The OECD and Foreign Investment Rules – The Global Promotion of Liberalisation, in: R.Mahon and S.McBride (Eds) *The OECD and Transnational Governance*, (Vancouver: UBC Press), pp. 117-133.

Woodward, R., 2009, *The Organisation for Economic Cooperation and Development.* (Abingdon: Routledge).

Woodward, R., 2011, Fifty More Years? Reform and Modernisation of the OECD. *Political Insight* 2(2), pp. 18-20.

Yi-Chong, X. and Weller, P., 2004, *The Governance of World Trade: International Civil Servants and the GATT/WTO* (Cheltenham: Edward Elgar)

Young, O., 1999, *Governance in World Affairs* (Ithaca: Cornell University Press).