The Hypocritical Hegemon

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The Hypocritical Hegemon: How the United States Shapes Global Rules against Tax Evasion and Avoidance.


Students of international tax politics agree that the lack of support from the Bush administration eventually killed the Organisation for Economic Co-operation and Development’s (OECD) harmful tax competition (HTC) initiative. Accordingly, there is broad acknowledgment of the US government’s ability to determine the direction of the OECD’s tax work (cf. Eccleston 2012; Palan, Murphy, and Chavagneux 2010; Rixen 2010; Sharman 2006b). Yet analysts disagree over the reasons for its hostile attitude. Whereas some claim that the Bush administration was indifferent toward the project when it entered office and adopted a negative stance only after intense lobbying from libertarian activists (Sharman 2006b), others refer to an intrinsic motivation based on the apparent mismatch between the administration’s supply-side tax cut agenda and international efforts to increase the effective tax burden on capital as well as the administration’s general skepticism toward multilateral cooperation (Eccleston 2012).

This chapter will demonstrate that the Bush administration was critical of the project from the outset of the administration’s first term and therefore had an open ear for the anti-OECD narrative proposed by libertarian advocacy groups. Despite recurrent exchanges between senior Bush appointees and these lobbyists, however, the US Treasury did not fully embrace their requests. Much to their chagrin, it merely removed the anti–tax avoidance elements from the project, while still providing nominal support to its anti–tax evasion measures. The Bush administration’s policy was thus more in line with the position of US multinationals represented by the United States Council for International Business (USCIB) than with the fundamental libertarian critique of tax cooperation in
The administration’s ability to transform this position into actual OECD policy despite being isolated within the Group of Seven (G7) is testimony to US power in international bargaining over tax matters.

The Bush Administration’s Tax Policy Agenda

During the 2000 presidential campaign, his electoral platform presented George W. Bush as a “compassionate conservative,” who favored both tax cuts and increased spending on health care and education. This strategy was, of course, credible only against the background of the budget surplus achieved under Clinton (Steuerle 2008, 199). The cornerstone of the strategy was the Bush tax plan, which provided for an across-the-board reduction in marginal income tax rates, an expansion of the child tax credit, and the abolition of the estate tax on inheritance. Bush and his advisers claimed that “the Bush tax cuts benefit all Americans but reserve the greatest percentage reduction for the lowest income families.” Moreover, Bush and his advisers stated cuts would not lead the budget into deficit but leave room for debt reduction instead (Bush Campaign 2000). However, analyses soon revealed the supply-side tax cut agenda behind the plan. According to a widely cited study by Citizens for Tax Justice (2000), the Bush proposals actually provided the top 1 percent of the income distribution with a 13.6 percent tax cut, whereas the bottom 20 percent received only a 5.5 percent cut. Expressed as a share of the proposed tax cut’s overall value, the top 1 percent could expect 43 percent of the benefits, whereas the bottom 20 percent would receive less than 1 percent. In addition, the study found that, everything else being equal, this exoneration of the rich would completely eat up the projected budget surplus over the course of the ten-year fiscal period for which the tax cuts were devised.¹

Despite the Bush team’s rhetoric, these numbers suggested that the plan provided for a strongly regressive outcome, matching the traditional Republican conviction that “in order to be successful, tax cuts had to be directed primarily to the wealthy because of their larger role in saving and investment” (Karier 1997, 76). In fact, Lawrence Lindsey, the plan’s main author and Bush’s chief economic adviser, had built his Washington career in the 1980s on “an academic defense of tax cuts as a spur to economic growth [that] endeared him to the Republican Party’s supply-side wing” (Stevenson 1999). Accordingly, Democrats criticized the Bush tax proposals for their lack of fairness. Vice President Al Gore, Bush’s main electoral opponent, called the plan “a risky scheme to reward the wealthy” (Stevenson 2000), whereas the Democratic Party’s spokeswoman, Jenny Backus,
warned the plan would “jeopardize the future of Social Security and Medicare” (Fournier 1999). On the conservative side, commentators were split. Grover Norquist, president of Americans For Tax Reform, praised the plan for “[putting] serious reductions in marginal tax rates, Ronald-Reagan style, back on the table” (Dionne 1999). Likewise, a group of reputed economists known for their neoliberal convictions endorsed the plan in a newspaper ad (Coy 2000). Martin Feldstein, a member of the group, also wrote two op-eds for the Wall Street Journal praising the proposals (Feldstein 1999, 2000). Skeptical voices from among the supply-siders merely criticized the plan as “too timid,” and George W. Bush countered with an announcement that he was open to additional tax cuts. “It’s the beginning. It’s not the end,” he told critics, according to the Washington Post (Dionne 1999). In contrast, several moderate Republicans, including Alan Greenspan and John McCain, considered the extent of the cuts “fiscally irresponsible,” given the uncertainty linked to projections of future growth in gross domestic product (GDP) (Steuerle 2008, 200). McCain, Bush’s main opponent in the Republican primaries, even embraced the analysis by Citizens for Tax Justice during a TV debate, stating, “Gov. Bush’s tax plan has 60 percent of the tax cuts for the wealthiest 10 percent of America” (Dionne 2000).

Despite opposition from Democrats and moderate Republicans in Congress, deep tax cuts remained the Bush administration’s priority after entering office in January 2001. By February 8, the president was already presenting his tax package to Congress as part of the annual congressional budget resolution. Including the package in this type of bill had several procedural advantages. Budget resolutions prevent filibusters and limit the time for debate as well as the number of amendments. As one commentator wrote at the time, “in the evenly split Senate, these advantages will be essential to enact anything like the [proposed] tax package” (Taylor 2000). Despite widespread skepticism as to its chances of adoption, Chairman Chuck Grassley and Ranking Member Max Baucus got the bill past the Senate Finance Committee by extending phase-ins for certain measures, slightly limiting the scope of others, and including some pet projects of skeptical members to secure their support. After similar maneuvering on the Senate floor, the bill eventually passed by a 62–38 margin. Twelve Democrats, all of them either involved in drafting the bill in the Finance Committee, facing reelection the same year, or multimillionaires themselves, voted with the Republicans (Bartels 2009). As a result, President Bush signed one of the biggest tax cuts in history into law on June 7, 2001. Its supply-side orientation was once more underlined in a Treasury companion paper to the bill. Justifying the phaseout of the estate tax, the authors argued that it “impedes economic growth because it levies yet another layer of taxes on capital. More capital investment means higher incomes for all workers” (US Treasury 2001, 8). While critics still lamented the act’s unfairness
and its adverse impact on the budget, Republican deputies and corporate lobbyists were just warming up. The US Chamber of Commerce announced further requests for business tax breaks, while Glenn Hubbard, the White House’s chief economist, prepared a proposal for a reduction of the dividend tax (Bartels 2009).

President Bush and his advisers continued to be sympathetic to these requests, despite projections of a growing deficit. In addition, the modest downturn following the September 11 attacks gave the administration another pretext for abandoning fiscal discipline in favor of what it sold as a boost to the economy. In accordance with their supply-side convictions, the president and his economic advisers thus put together another tax package giving major relief to capital, while leaving the tax bill of the middle and lower classes virtually unchanged (Steuerle 2008). In addition, September 11 also convinced law enforcement services within the Bush administration of the need to prevent terrorist financing. This conviction gave a boost to international anti-money-laundering activities at the Financial Action Task Force (FATF), and provided a backstop against efforts from the Center for Freedom and Prosperity (CFP) and congressional Republicans to completely unravel the OECD’s transparency and information exchange work (Palan, Murphy, and Chavagneux 2010; Eden and Kudrle 2005).

The Bush administration’s first post-2001 tax initiative was the Job Creation and Worker Assistance Act of 2002. Among other things, it provided US corporations with more generous depreciation allowances for purchases of certain assets and tax refunds on business losses incurred as far as five years back. That is, companies were allowed to deduct 50 percent of an asset’s value from their tax bill in the year of purchase, instead of deducting only the depreciated value of the asset in every year it is utilized. As Slemrod and Bakija (2008, 49) explain, “spreading the deduction out over time is generally less favorable to the firm than allowing a full deduction at the time of purchase because the tax savings from an immediate deduction can be invested and accumulate interest.” In general, making depreciation allowances more generous and extending the period during which past business losses are eligible for tax refunds are ways to reduce the effective tax rate on corporate income. Still, both parties in Congress were in favor of the measures because they not only provided supply-siders with lower marginal tax rates on capital but could also be sold to Keynesians as a government stimulus, freeing up a large sum for additional investment over a relatively short period of time (Steuerle 2008).

In contrast, the Bush administration’s second proposal for a major tax package after 2001 was highly contentious. Its main elements were the exemption of dividends from taxation as personal income and the reduction of capital gains taxes on sales of corporate stock. Moreover, the package provided for the acceleration of cuts to marginal tax rates imposed on upper income brackets, which
would have been phased in over a longer time period under the 2001 package. Given that it is usually upper-income people who earn dividends and capital gains, the overall proposal provided for a $700 billion loss in tax revenue almost exclusively to the benefit of the richest members of society (Bartels 2009). The sheer size of the tax cuts even led several moderate Republican senators to oppose the package, which made them the subject of aspersive campaigns by the Club for Growth, a conservative lobby group financed by unnamed wealthy individuals (Hacker and Pierson 2005). Still, they joined Democratic members of the Senate Finance Committee in requesting a $350 billion ceiling for the proposed cuts. In view of reconciling these concerns with massive pressure from Republicans in the House, the committee leadership decided to tweak the bill through the heavy use of sunsets and phase-ins. By having the most expensive provisions expire after a few years, the leadership reduced the bill’s immediate cost below the ceiling requested by the Senate Finance Committee. However, the changes also provided Congress with the ability to extend the cuts beyond their initial date of expiry, with a cost at the time projected to be $736 billion (Hacker and Pierson 2005).

Because of this design, the bill easily passed the Republican-controlled House. In the Senate, however, Vice President Cheney had to cast his tie-breaking vote to enable the adoption of the tax package against opposition from forty-six Democrats, three Republicans, and one Independent (Bartels 2009). Whereas critics outdid one another in the use of pejorative rhetoric in their commentary on the final act, conservative lobby groups and most Republicans rejoiced. As Hacker and Pierson (2005, 48) recount,

> Senate Republican leaders gathered at a press conference to celebrate passage of a cut that was formally far smaller than the one they had originally sought but anticipated to cost far more. When a reporter skeptically inquired as to whether the tax cut just passed was “smoke and mirrors” designed to make a large tax cut smaller, Senator George Allen of Virginia said, “I hope so.” All the senators laughed.

Another observer described general optimism among Republicans as to future tax cuts and extensions as follows:

> To conservative groups, who have every intention of pushing for an annual tax cut, arguments over the size of each one are hardly worth worrying about in the long run. “We’re going to be negotiating over the size of the tax cut every year for 10 years,” said Grover Norquist, president of Americans for Tax Reform. “At the end of 10 years, you’re going to see how much progress ‘not getting everything you want’ gets you.” House Majority Leader Tom DeLay called the shrunken...
some,” adding, “And it’s only the beginning.” Senate Majority Whip Mitch McConnell echoed DeLay’s assessment: “All I can tell you is, we keep on winning, and we expect to win again.” (Ota 2003, 1245)

Despite projections of a ballooning deficit and the modest economic slowdown after September 11, the Bush administration’s supply-side tax cut agenda was thus in full swing. Congressional Republicans were eager to extend sunset provisions built into tax packages, while conservative lobby groups with substantial sway over Republican representatives were even seeking additional cuts. The entire Republican establishment was thus geared toward reducing the tax burden and limiting government. Accordingly, the committed pursuit of international cooperation against tax dodging would have been rather inconsistent. As the next sections make clear, this is why the Bush administration withdrew support from the HTC initiative and resorted to a “politics without conviction” strategy at the OECD during the following years (Eccleston 2012, 60).

**In Praise of International Tax Competition**

Owing to its supply-side tax cut agenda, the Bush administration was “ideologically predisposed to accept the critiques of the right-wing coalition that had formed in the US to oppose the HTC project” (Webb 2004, 813). Accordingly, associations like the Center for Freedom and Prosperity (CFP), the USCIB, and the US Chamber of Commerce intensified their lobbying of Treasury and Congress, produced alarmist newspaper op-eds, and rounded up support from the same group of neoliberal economists that publicly backed the Bush tax package (Levin and Lieberman 2001; Shaxson 2012). In his publications, Daniel Mitchell, the CFP chief lobbyist, incessantly warned against OECD attempts to establish “a cartel for the benefit of high-tax nations” that would “emasculate financial privacy and undermine fiscal sovereignty . . . , impoverish less-developed nations and hamstring America’s competitive advantage in the world economy.” “Fortunately,” he reminded his readers, “President Bush can pull the plug on this misguided initiative simply by telling high-tax European nations that America will not impose financial protectionism against low-tax countries” (Mitchell 2001c, 24). Whereas Mitchell pushed a die-hard libertarian agenda, vilifying any form of international tax cooperation as a socialist plot against flat taxes and small government, Richard Hammer, USCIB’s chief tax counsel, chose a more moderate approach. Representing the interests of US multinationals, he continued to argue against the OECD’s interference with “legitimate tax-planning opportunities” in his communication to Treasury. Yet he acknowledged “the need for responsible and legitimate information exchanges, . . . [counseling] Treasury to use its best
efforts to change the focus of the [HTC] project to deal solely with transparency” (Hammer 2001, 164–65).

The lobbying soon bore fruit. The media discovered the issue, with the Washington Post even adopting the CFP characterization of the OECD as “global tax police” (Novak 2001). Likewise, eighty-six members of Congress applied CFP rhetoric in a joint letter to Secretary of the Treasury Paul O’Neill, characterizing the HTC initiative as an infringement on fiscal sovereignty and urging him to withdraw US support. In addition, “Nobel prize-winning economists Milton Friedman and James Buchanan came out in support of the CFP and against the OECD campaign” (Sharman 2006a, 62). Most important, however, the buzz that had been created earned the CFP and US Chamber of Congress a “sympathetic hearing” by virtually every competent political appointee within the Bush administration (Webb 2004, 813). In February 2001, Mitchell and several other CFP lobbyists were given the opportunity to “[make] their pitch to a half-dozen Treasury officials in the office of Mark Weinberger, the department’s chief tax official and a new Bush appointee” (Giridharadas 2001). In addition to a score of follow-up appointments with senior Treasury officials, another meeting between Weinberger and the CFP was held in March. Moreover, Mitchell and his colleague Andrew Quinlan met with Lawrence Lindsey, Glenn Hubbard, and Cesar Conda, a senior adviser to Vice President Dick Cheney. Eventually, these consultations culminated in a meeting in mid-April between Ed Feulner, the president of the Heritage Foundation, which is the CFP’s main sponsor, and Secretary O’Neill (Sharman 2006a).

The intensification of the lobbying effort is, indeed, reflected in the evolution of O’Neill’s attitude toward the HTC project. Following a meeting of G7 ministers of finance in February, he still announced quite nebulously that certain aspects of the initiative were “under review by the new Administration.” He claimed to support “the priority placed on transparency and cooperation to facilitate effective tax information exchange,” but underlined that it was “critical to clarify that this project [was] not about dictating to any country what should be the appropriate level of tax rates” (O’Neill 2001a, 82). The secretary further elaborated this position over the course of the following months, arguing in May that “in its current form, the project [was] too broad and . . . not in line with this Administration’s tax and economic priorities” (O’Neill 2001c, 84). Questioned at a Senate hearing in July, he then clarified that the US had argued for a removal of the substantial economic activity criterion from the OECD’s tax-haven definition and against the use of ring-fencing as an indicator for PTRs, given that “it [did] not provide an adequate basis to distinguish regimes that facilitate tax evasion from regimes that are designed to encourage foreign investment but that have nothing to do with the evasion of any other country’s tax law” (O’Neill 2001b, 51).
After the OECD had already diluted the substantial economic activities criterion with the acquiescence of the Clinton administration and in response to lobbying from the USCIB, the Bush administration now further refocused the OECD initiative according to the counseling it had received from US multinationals in the guise of Richard Hammer. Using its weight in the OECD’s Committee on Fiscal Affairs (CFA), Treasury removed virtually all elements interfering with corporate tax planning from the HTC project, including conditionality of tax residency on substantial economic activity and critical reviews of PTRs. As a result, the initiative soon dealt exclusively with increased transparency and information exchange, just as Hammer had requested in his communication with Treasury (Palan, Murphy, and Chavagneux 2010; Eden and Kudrle 2005). The CFP’s concerns were most visibly taken into account in O’Neill’s rhetoric and the timing of his withdrawal from the HTC project. By refocusing the OECD’s tax work on information exchange and the fight against tax evasion, however, Treasury did not comply with the more extreme requests from Mitchell and his colleagues. Accordingly, the CFP showed an ambivalent reaction to O’Neill’s turnaround. Although Quinlan and Mitchell celebrated the end of the OECD’s tax harmonization agenda, which was their wording for measures against tax avoidance, they complained in June “that it is still not clear whether we have stopped the assault on financial privacy.” Still, they assured their sponsors and supporters that “in the coming months, we will be fighting to ensure the correct outcome” (Quinlan and Mitchell 2001, 105).

**The Demise of the OECD’s HTC Initiative**

As part of its progress report, the OECD had published a blacklist of thirty-five tax havens in June 2000. With the public backing of the Clinton administration, the OECD threatened these tax havens with sanctions should they not remove the harmful features of their tax codes by July 2001. In the following months several of the listed jurisdictions sat down with the OECD to find an agreement, be removed from the blacklist, and avoid sanctions (Adams, Mallet, and Peel 2001). While the Bahamas announced it would prohibit the anonymous registration of international business companies (IBCs) and withdrew banking licenses from seven suspicious institutions, Grenada shut down seventeen banks in March 2001 to clean up its financial sector (Canute 2001a). At the same time, the prime minister of St. Vincent complained about a 20 percent reduction in IBC registrations over the course of 2000, while the number of banks registered in Antigua fell from seventy-eight in 1998 to eighteen by 2001 (Canute 2001b). From the perspective
of the OECD, things were developing in the right direction at the beginning of that year. Yet the optimism soon faded. The Bush administration’s foot-dragging, along with outreach from the CFP encouraging tax haven governments to stand firm while the libertarian lobbyists were working Treasury (Mitchell 2001b), brought negotiations with the OECD to a halt. Instead of making overhasty commitments, many tax havens now preferred to wait and see, hoping that the United States would eventually withdraw its support from the HTC initiative. As a senior OECD official told the Financial Times in April: “There is a hiatus. Nothing is happening because the US position is unclear” (Adams, Alden, and Peel 2001, 6).

Indeed, the OECD’s Secretariat and its large European members grew increasingly nervous, sensing that without unambiguous US support the HTC initiative could fail. Accordingly, the OECD sent a delegation to Washington to persuade Treasury of the project’s merit and to make sure Treasury would back the OECD’s tax work in the conclusions to an upcoming meeting of G7 ministers of finance (Adams, Alden, and Peel 2001). But neither the OECD, nor the secretary’s European counterparts, could convince O’Neill to support the initiative. Accordingly, the April communiqué of G7 ministers of finance expressed support for the FATF’s anti-money-laundering work but made no mention at all of the OECD’s tax initiative (cf. G7 Ministers of Finance 2001). Instead of seeking consensus with European partners, O’Neill (2001c, 83–84) announced the withdrawal of US support two weeks later in an official statement. “Following up on the thoughts I shared with my G7 counterparts at recent meetings,” he began, “I want to make clear what is important to the United States and what is not.” He then explained that the United States was in favor of tax competition because it forced governments to become more efficient. In fact, it provided his government with an additional incentive to reduce the tax burden for all Americans and simplify the tax system. Nonetheless, tax cheats were breaking the law and had to be caught. But the United States would use bilateral information exchange agreements for that purpose. When the US government shared common goals, it would continue to work with G7 partners. “In its current form,” however, the HTC project was “too broad and . . . not in line with this Administration’s tax and economic priorities” (O’Neill 2001c, 83–84).

While the USCIB and the CFP were celebrating, European G7 members tried to pick up the pieces. The UK exchequer stated, “Our position is absolutely clear. We support the initiative. The US concerns will be discussed in the OECD.” Along the same lines, Bruno Gibert, the French chairman of the harmful tax practices working group, confirmed, “Member countries would consider how to respond ‘in a constructive way’” (Adams and Peel 2001, 14). However, these diplomatic reactions only masked the major discontent in European capitals that became apparent at the OECD’s Ministerial Meeting a week later. In the absence of O’Neill,
who was represented by Glenn Hubbard, European ministers tried to put pressure on the United States, which was isolated on the issue. But Hubbard stuck to his position, reaffirming that the US government would participate only in a stripped-down version of the project that focused on information exchange. This time, the Europeans responded angrily. Laurent Fabius, then French minister of finance, told his colleagues: “Whether it concerns the struggle against the greenhouse effect, or against money laundering and tax havens, the largest power in the world cannot disengage from the planet’s problems” (Beattie 2001, 10). A European OECD official concurred: “How far can it go? Do we scrap all attempts to make people pay taxes?” (Alden and Peel 2001, 12). But their enragement did not help. After several rounds of negotiations in the CFA, OECD ambassadors agreed in July that the HTC’s tax avoidance elements should be scrapped and no sanctions imposed on blacklisted tax havens at least until 2003 (Peel 2001a, 2001b). In order to save some elements of the HTC initiative, the Europeans had thus agreed to a reform of the OECD’s tax work that fully matched the Bush administration’s priorities.

Their surrender was eventually enshrined in the OECD’s 2001 Progress Report. It defined the fight against “anti-competitive . . . practices designed to encourage noncompliance with the tax laws of other countries” as the HTC initiative’s new goal and made clear that the OECD would only rely on “the transparency and effective exchange of information criteria” when blacklisting noncooperative jurisdictions (OECD 2001, 4). Most important, it withdrew the collective sanctions threat by acknowledging that “each OECD member country retains the sovereign right to apply or not to apply any defensive measures as appropriate” (OECD 2001, 10). Although the Bush administration’s anti-tax ideology found little support among other OECD members, the organization had still minimized the regulatory burden for multinationals and corporate tax havens accordingly. As Webb (2004, 815) observes, “no other country has the power to single-handedly alter the course of the OECD.”

**Implementing the “Politics without Conviction” Strategy**

Treasury had acceded to most of the demands from the right-wing lobbying coalition when removing the “tax harmonization” elements from the HTC initiative. Yet the department had continued to support the initiative’s transparency and information exchange dimension for several reasons. First, information exchange did not interfere with national tax codes and therefore did not oblige corporate tax havens to remove provisions that enabled multinationals to avoid
taxes elsewhere. From the perspective of Secretary O’Neill this lack of interference meant that information exchange did not affect international tax competition, which he and the libertarian opponents of tax cooperation interpreted as a desirable constraint on government profligacy. Second, tax evasion, the activity to be tackled by information exchange, was a criminal offense. Providing law enforcement agencies with additional information to prosecute such offenses matched the law-and-order instincts of many Republicans. In fact, O’Neill underlined that he had taken an oath obliging him to execute US tax laws as written, which implied going after those “who illegally evade taxes by hiding income in offshore accounts” (O’Neill 2001c, 83). Third, the September 11 attacks and the ability of Al-Qaeda to finance both their perpetrators and their preparation gave law enforcement agencies another reason for wanting to pierce the veil provided by secrecy jurisdictions (Eccleston 2012; Shaxson 2012).

In contrast, the libertarian lobbying coalition and many Republicans under its influence were still seeing their ultimate goal of minimal taxes and a minimal state endangered by international information exchange. As their wealthy sponsors’ desire to reduce their tax burden to zero was difficult to communicate, however, they argued instead that information transfers from banks to tax authorities were an infringement of citizens’ right to privacy. Daniel Mitchell of the CFP reminded his followers that “information exchange for tax purposes, even when limited to specific cases, is inconsistent with sound tax policy, respect for privacy, and international comity” (Mitchell 2001a, 108). Along the same lines, the Prosperity Institute accused Treasury of ignoring “the important balance between due process and privacy concerns on the one hand, and law enforcement or tax administration efficiency on the other” (Mastromarco 2001, 104). Most important, several libertarian lobby groups teamed up to form the “Task Force on Information Exchange and Financial Privacy.” The group was chaired by former Republican senator Mack Mattingly and included former appointees in the Reagan and George H. W. Bush administrations, members of the Mont Pelérian Society, and senior figures from George Mason University (cf. Task Force on Information Exchange and Financial Privacy 2002). In its final report, the task force observed that the US government was itself “[allowing] foreigners to invest confidentially in the US” and thus engaged in the same behavior the OECD criticized in secrecy jurisdictions. Hence, if the US government continued to support the OECD’s efforts, it would only motivate high-tax European nations to use the OECD to impose reporting requirements on the United States also. These requirements would hurt the United States’ attractiveness for foreign investment, lead to massive capital outflows, and sacrifice the privacy of US taxpayers. Accordingly, the US government should prevent the OECD from “the total abolition of any finan-

These arguments were taken up by the business press and several senior Republicans such as House Majority Whip Tom DeLay. In a letter to Secretary O’Neill he criticized information exchange initiatives as “assaults on financial privacy and due process legal protection . . . driven by a desire to thwart international tax competition.” “But since the United States is the world’s biggest beneficiary of tax competition,” he added, “it makes no sense for America to participate in an endeavor that will undermine our competitive advantage in the global economy” (DeLay 2001, 101). Interestingly, however, arguments stressing the risk that reporting requirements imposed on secrecy jurisdictions could eventually also be imposed on the United States apparently did not gain currency with the potentially affected financial sector. Of course, US banks were still opposed to providing additional data on their foreign clients. They were, however, indifferent toward new reporting requirements for foreign banks, and corresponding sanction threats against secrecy jurisdictions. The most likely reason is that US banks—in contrast to libertarian lobbyists—were aware of the established US practice of seeking additional reporting from foreign banks while shielding the US financial sector and its clients from similar requirements (Eccleston 2012). This approach was reflected in the QI program. Moreover, Treasury often negotiated tax information exchange agreements (TIEAs) providing for unilateral information reporting from the treaty partner, whereas the IRS did not per se respond to requests for administrative assistance from foreign governments. As a former Treasury official explains, Latin American countries, which provide the largest client base for wealth managers in Florida and Texas, cannot usually count on cooperation from the United States:

The truth is, half of Latin America we don’t have information exchange agreements with. There are other countries where it is clear that the US would act very slowly. So in theory we should exchange information with Venezuela, but we are not going to, it’s not actually going to happen.8

Given this configuration of domestic interests, the Bush administration wanted to avoid being perceived as lenient on law enforcement issues, while also taking the criticism of die-hard libertarians among its core constituency into account. The result of its strategic deliberations was the pursuit of “politics without conviction” (Eccleston 2012, 60). In accordance with demands from libertarian lobby groups, the administration made sure that the criminal (money-laundering, terrorist-financing) and civil (tax evasion) aspects of financial opacity were dealt with separately. The FATF continued to be responsible for the former and the OECD for the latter. In addition, domestic efforts to combat terrorist financing
were linked to the FATF’s money-laundering work, instead of the OECD’s transparency and information exchange efforts (Palan, Murphy, and Chavagneux 2010). More important, however, the United States advocated for information exchange upon request at the OECD, instead of the automatic information exchange that had just been established within the EU for interest payments to non-residents (Shaxson 2012). The upon-request standard was, however, known to be ineffective because it conditioned requests for administrative assistance on substantiated suspicions against particular individuals. That is, tax authorities had to present prior evidence of tax evasion before they could ask their foreign counterparts for information. Yet prior evidence was hard to come by in the absence of information from their foreign counterparts about a taxpayer’s foreign accounts (Genschel and Rixen 2015). A potential workaround would have been the permission of group requests. Such requests would have enabled tax authorities to demand information on a particular category of individuals, for instance investors in a particular fund associated with tax evasion. However, Secretary O’Neill denounced such requests as “fishing expeditions” irreconcilable with citizens’ right to financial privacy (O’Neill 2001b, 53). Therefore, the OECD’s information exchange and transparency work did not increase pressure on tax evaders to repatriate their hidden funds (Johannesen and Zucman 2014).

The first element of the Bush administration’s “politics without conviction” strategy was the endorsement of a toothless standard for international information exchange to address concerns over “financial privacy.” The second element of the strategy was the deferral of sanctions against uncooperative secrecy jurisdictions until OECD members Switzerland and Luxembourg had also agreed to grant greater administrative assistance in tax matters. This was a direct response to criticism from libertarian lobbyists and tax haven governments concerning the “hypocrisy and double standards between the OECD’s treatment of nonmember havens as opposed to abstaining members” (Sharman 2006a, 91). By abstaining from the vote on the HTC report and its progeny, Switzerland and Luxembourg had made clear from the beginning of the project that they would not consider themselves bound by its recommendations. Of course, this stance invited other tax havens and their libertarian advisers to decry the initiative’s discriminatory character. Such arguments had not kept the Clinton administration from backing the OECD’s sanction threat. For reasons described earlier, however, the Bush administration endorsed these concerns and distanced itself from countermeasures proposed by the OECD. At a Senate hearing in July 2001 Secretary O’Neill made the following confession:

I do not have any trouble with the idea of sanctions properly applied and fairly applied at all, but I did have trouble—now, I must tell you I found
it pretty compelling to listen to the finance ministers of people from countries as small as 4,500 people say, “Well, if you are going to do this to us, is Switzerland going to comply?” I thought that was not a bad argument: “Well, if you are going to do this to us and you are going to use the power of the 30, are you going to do it to yourself or not?” I thought that was a pretty good question. (O’Neill 2001b, 21)

Of course, the credibility of any sanctions threat from the OECD is greatly reduced without the United States on board. Accordingly, the organization reframed its discussion of countermeasures based on the Bush administration’s position. The OECD’s 2001 progress report, released in November, stated “that a potential framework of coordinated defensive measures would not apply to uncooperative tax havens any earlier than it would apply to OECD member states with harmful preferential regimes” (OECD 2001, 10). Instead of using coercion, the OECD now had to revert back to its traditional “method of dialogue and persuasion” (Palan, Murphy, and Chavagneux 2010, 218). In the words of Jeffrey Owens, the OECD’s chief tax official, the organization abandoned “the Al Capone approach and replaced it with the Martin Luther King approach” (Easson 2004, 1066). First, this shift implied rhetorical de-escalation. Senior OECD officials now expressed their understanding for tax haven concerns over the establishment of a level playing field. Accordingly, they pledged to pursue common principles applicable to both OECD members and nonmembers (Sharman 2006a). In addition, the OECD established the Global Forum on Transparency and Information Exchange. Instead of fixing standards and imposing them on nonmembers, the Global Forum invited secrecy jurisdictions and other third countries to join OECD members in the elaboration and monitoring of information exchange standards. The first result of this more inclusive approach was the Model Agreement on Information Exchange published in 2002 (Rixen 2008).

In accordance with the Bush administration’s general suspicion of multilateral agreements and Secretary O’Neill’s announcement that the United States would implement greater information exchange by means of bilateral treaties, the Model Agreement was essentially a template for bilateral TIEAs. It also provided for a multilateral mechanism, which, however, allowed a country acceding to the agreement to select the other signatories with which the country was willing to exchange information. Otherwise, the Model Agreement effectively made information exchange upon request the international standard for international cooperation in tax matters (Rixen 2008). The Model Agreement even included some incremental improvements over the pre-HTC period in that it prohibited compliant countries from refusing to transfer information on the grounds that they (1) did not collect requested data domestically or (2) had bank secrecy provisions
in place that outlawed such transfers. Yet when the CFA also included these provisions in the OECD’s Model Tax Convention, the template for double-tax agreements, Switzerland and Luxembourg (subsequently joined by Austria and Belgium), upheld reservations against the relevant articles 23–26 (Webb 2004). Previously, they had already vetoed a CFA decision obliging OECD member states to provide domestic tax authorities access to banking information, marking the first time a veto had been used in that body (Parker and Burton 2003). Once more, these countries made clear that they did not consider themselves bound by OECD recommendations. Since their cooperation was the crucial prerequisite for countermeasures against noncompliant jurisdictions outside the OECD, these countries’ sustained opposition took the sanction threat off the table for good.

At this point, what had started as a dynamic anti–tax haven initiative “[slowed] to the speed of the last ship in the convoy” (Parker and Burton 2003, 17). John Snow, O’Neill’s successor as secretary of the Treasury, urged Switzerland, the most important opponent to financial transparency, to be more forthcoming in its replies to requests for administrative assistance. Yet this came in the form of appeals rather than requests backed up by credible sanction threats (Parker and Burton 2003). At the same time, the Global Forum set out to review the implementation of the “upon-request standard” in its eighty-two member countries. In a report published in 2006, the Global Forum concluded that most national tax authorities were able to access bank data. However, only fifty countries also exchanged such information for tax purposes (Rixen 2008). In addition, members of the Global Forum had also begun to sign TIEAs. The situation was, however, far from sufficient for putting a meaningful constraint on tax evasion. The United States, for instance, had pledged to strike agreements with 50 percent of the thirty-five tax havens originally blacklisted by the OECD by 2002 (Levin and Lieberman 2001). By 2008, however, the United States had concluded only eleven such agreements (Global Forum 2014). Along with industry champions Switzerland and Luxembourg, there were thus plenty of jurisdictions left that did not even grant administrative assistance under the restrictive conditions of the upon-request standard.

**Theoretical Implications**

The Bush administration’s main goal was to reduce the tax burden on corporate profits and capital income. Because of this supply-side tax cut agenda, the administration was skeptical toward the HTC initiative from the outset of its first term and gave libertarian critics of the OECD’s tax work a sympathetic hearing. While the Bush Treasury Department bought into these critics’ arguments against the
removal of PTRs, however, the department could not be convinced to completely abandon the transparency agenda. Hence, the department gave priority to removing those elements from the HTC initiative’s scope that interfered with the tax-planning practices of multinational firms, thereby unraveling the project in its original form. In contrast, the administration adopted an ambivalent position concerning the OECD’s work on information exchange. Giving in to the Republican Party’s law-and-order instincts, the Bush administration formally kept the fight against tax evasion and financial secrecy on the agenda. Yet the administration made sure that the OECD withdrew its sanctions threat against secrecy jurisdictions that refused to become more transparent, thereby reducing the effectiveness of the organization’s efforts in this area.

We have thus observed a Republican administration skeptical toward multilateral attempts at curbing tax evasion and avoidance. From its perspective, international tax competition provided a perfect reason for its preferred domestic tax policy of reducing taxes on capital. Against this background, the reduction of competitive pressures by means of international cooperation seemed counterintuitive. Hence, the Bush administration put priority on neutralizing those OECD recommendations that were likely to impose costs on US multinationals. Yet it also withdrew the sanctions threat against secrecy jurisdictions that refused to become more transparent. The Clinton administration had aimed to reduce both tax evasion and avoidance but abandoned the latter goal in response to corporate lobbying. In contrast, the Bush administration was not particularly keen to end either tax evasion or tax avoidance but kept the fight against tax evasion on the agenda to cater to the Republican Party’s law-and-order instincts. Yet the administration pursued this agenda without conviction. Finally, the Bush administration’s ability to transform its priorities into OECD policy despite being isolated in the G7 reflects the US government’s ability to change the direction of the organization’s tax work through unilateral defection.