What agency for tax evasion?
On Brooke Harrington, 2016, *Capital without Borders. Wealth Managers and the One Percent,* Cambridge MA, Harvard University Press

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Brooke Harrington's *Capital without Borders. Wealth Managers and the One Percent* is a timely book for many reasons. First, wealth is back (Piketty, 2014). As a research topic, as a social phenomenon, and as a source of public concern. Second, a substantial share of world's wealth (8%) is hidden in off shore tax havens (Zucman, 2013) and therefore avoids nation-state tax systems. Third, numerous leaks —Luxembourg tax files in 2014, HSBC files in 2015, Panama papers in 2016, Paradise Papers in 2017— revealed to the world the industrial dimension of tax avoidance. While the extent of this system is now well documented, we do not know how it functions. In a recent interview, Gabriel Zucman urges for more research in this area: "To fully understand this phenomenon, instead of focusing on fraudsters, we need to study those who help them, this industry of advisors, lawyers, bankers who receive high fees."[1] Harrington provides an important contribution in this direction.

In order to shed light on one of these professions, the wealth managers, Harrington conducted several years of qualitative research: she trained for two years as a wealth manager, which led her to acquire both the techniques and the confidence of this profession, and continued with 65 interviews with wealth managers located in 18 countries, ranging from the Cook Islands to San Francisco. She both gave the priority to the world's main tax havens such as Panama (4 interviews), British Virgin Isles (3), Channel Islands (4), but also to larger countries such as the United States (10) and Switzerland (8).

Harrington starts her book with an intriguing history of the medieval origin of wealth managers' activity (Chapter 2). Paradoxically, this profession at the forefront of neoliberalism also relies —like the American pension fund industry (Montagne, 2007)— on a very illiberal form of contract: trust. Hence, this contract dates from the medieval ages where knights heading for a crusade used these managers to protect their wealth during their absence. In order to do so, the settler (the knight) transfers the titles of properties to a benevolent trustee through a trust contract which binds the trustee to manage the property for the benefit of a beneficiary, generally a "minor" one (the spouse or the children) or the settler himself. Hence, given that one of the parties is seen as a "minor", those contracts were traditionally subject to equity law (where parties are not viewed as equals) rather than to common law.

Although trusts are not the only contractual device used by wealth managers to protect wealth —they also offer foundations and corporations contracts (cf. the appendix of chapter 4 for a detailed comparison)— they encapsulate well the type of service that wealth management provides. Wealth management protects wealth through the transfer of formal property rights from the settler to the trustee. It enables therefore the wealthy to say: "I'm not

[1] Gabriel Zucman, « Comprendre les implications de l'évasion fiscale », *Le Monde Economie*, 28 May 2018. https://abonnes.lemonde.fr/idees/article/2018/05/28/gabriel-zucman-comprendre-les-implications-de-l-evasion-fiscale_5305758_3232.html. I translated.

the owner", and to avoid all obligations related to wealth. This enables wealth managers to protect wealth not just against taxes, as they are commonly blamed for, but also against many types of stakeholders: the state's changing policies, the business partners, or the family incumbents. Beyond tax avoidance, ruling families in unstable states often try to protect themselves against any potential revolution or change in the political regime which would encroach upon their power and question the origin of their wealth. Consequently, recent tax haven leaks showed that, despite insignificant income taxes in their countries, many relatives of authoritarian regime leaders invested heavily in tax havens. Wealth management is also sometimes used to hide wealth from creditors. If the wealthy do not "own" their wealth, they can't be forced to repay their debts. Interestingly, this shows that wealth management, often thought as a hyper-capitalist institution, is not just undermining states' power but also capitalism itself by enabling some economic actors to renege on business promises. Finally, wealth managers are also initiated to the deep secrets of the owner's family and can set up devices to protect its wealth against spouses (especially in case of divorce), lovers, official or natural children and help consequently the owner to transmit with great discretion wealth to the favored kin.

Harrington describes in much detail the construction of an intimate long-term relationship between wealth managers and their clients (cf. also Herlin-Giret, 2017). One issue of this intimacy is for wealth managers to build "trust" and get a deep understanding of the wealth of their customers and how their wealth should be protected against multiple threats. But by doing so, wealth managers also make themselves indispensable and capture the client relationship for their own benefit. As for traders and salespersons in front offices (Godechot, 2017), wealth managers can move from one firm to another with their team and their clients. While these wealth managers serve with great zeal the most intimate wishes of their clients, they also help them to make sense of their fortune (p. 208-217). Their daily practice insists on the perpetuation and the passing-on of the fortune to the next generation rather than its consumption in eccentric projects.

Finally, the book also focuses on the role of wealth managers regarding tax avoidance (p. 150-154). It describes the great skills these professionals have for exploiting tax loopholes in a given country. They systematically take advantage of differences and even conflicts of jurisdiction. The mobility of the ultra rich and the possibility to "buy" a passport of many tax havens and pro-wealth countries enable wealth-holders to avoid taxes and if needed to escape prosecutions. Moreover, in tax havens, financial firms not only play with the rule, they also set the rule of offshore financial centers in a sense that is more favorable to their clients (p 221-225).

However, the book fails to tackle an important issue in the public debate on wealth managers and tax havens: tax evasion. The book makes a distinction between tax avoidance which is legal and tax evasion which is illegal (p.150). While it devotes a specific section to the former, it says little about the latter. By focusing more on tax avoidance, the book seems to argue that wealth managers shift the laws rather than break them. Legal tax avoidance is certainly an object of concern. However, governments depended heavily upon recent leaks, especially the HSBC leak, in order to fine fraudsters, thus showing the extension of the illegal use of tax havens. Rich owners from western countries used the tax haven vehicles not only in order to exploit loopholes in the tax

systems and to game conflict in jurisdiction. They also omit (probably deliberately) duly declaring interest, dividend, or capital gain of their assets stored in tax havens to the tax system of their home country. Hence, Denmark and Norway find that 90 to 95% of their citizens owning an account leaked in the HSBC papers did not properly report their income to the tax authority and were thus involved in tax evasion (Alstadsæter et al., 2017).

It would be interesting to understand the origin of this massive fiscal wrongdoing. Does it all come from the clients, who are desperate to cheat on their fiscal declaration, even despite their wealth managers' warnings? Does it all come from the wealth management industry, eager to earn high fees, thereby deliberately minimizing the risks this strategy entails for their clients' wealth and reputation? The book doesn't offer many answers here. One reason for this may be due to the timing of the research. The author conducted her research in the aftermath of the global financial crisis at a moment where wealth management and tax havens were a source of global outrage. This profession tried to exhibit a sign of good conduct both in reforming its training and in strengthening its compliance code. In this time of uproar, wealth managers are more likely to be very cautious during short interviews of not revealing any of their wrongdoings. Despite claims of moralization of the industry, the most recent leaks still show that tax evasion remains an important motive, if not the main driver, for using these services. Other methods (like participant observation) and other sources (leaks, trials, statistical data, etc.) might therefore help to determine the origins of tax evasion. This question is not just one for social science but also for public policies. Answering it would help to set the legal responsibility of wealth managers (both the persons and the employers) in the tax evasion of the clients they advise.

References

Alstadsæter, Annette, Niels Johannesen, and Gabriel Zucman. 2017. *Tax evasion and inequality*. No. w23772. National Bureau of Economic Research.

Godechot, Olivier. 2017. *Wages, bonuses and appropriation of profit in the financial industry: the working rich*. London, Routledge.

Herlin-Giret, Camille. 2017. "Avoiding and protesting taxes: Wealthy people and tax consent." *economic sociology_the european electronic newsletter* 19(1): 29-37.

Montagne, Sabine. 2007. "In trusts we trust: Pension funds between social protection and financial speculation." *economic sociology_the european electronic newsletter* 8(3): 26-32.

Piketty, Thomas. 2014. *Capital in the 21st Century,* Cambridge MA, Harvard University Press.

Zucman, Gabriel. 2013. "The missing wealth of nations: Are Europe and the US net debtors or net creditors?" *The Quarterly journal of economics* 128(3): 1321-1364.

A life without obligation, in other words. Who are these professionals? Harrington thinks most are members of the UK-based Society of Trust and Estate Practitioners (STEP), which was the body whose exams she took to undertake her study. This is no ordinary professional body, though. As Harrington notes, the work of its members in creating the abusive trust laws of the British Virgin Islands helped to create the situation where wealth in trusts can now be held in perpetuity out of the reach even of those who are meant to inherit it.Â Capital Without Borders: Wealth Managers and the One Percent By Brooke Harrington Harvard University Press, 400pp, Â£22.95 ISBN 9780674743809 Published 29 September 2016. Please login or register to read this article. Register to continue.