

INTRODUCTION AND OBSERVATIONS ON PROMOTING TAX JUSTICE IN THE ONLINE PUBLIC FORUM

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I TAX JUSTICE AND SOCIAL MEDIA

Before introducing the articles in this special edition of the *Journal of Australian Taxation*, I would like to reflect on the practice of taking tax justice research from the relative comfort of academia into the hurly burly of online public forums.

New Zealand is unusual, if not unique, in not only guaranteeing academic freedom but also requiring universities to play an active conscientious role in society. *Education and Training Act 2020* (NZ) s 267 provides:

(1) It is the intention of Parliament in enacting the provisions of this Act relating to universities and wānanga that academic freedom and the autonomy of those institutions are preserved and enhanced ...

(4) In this section, **academic freedom**, in relation to an institution, means –

(a) the freedom of academic staff and students, within the law, to question and test received wisdom, to put forward new ideas, and to state controversial or unpopular opinions:

(b) the freedom of academic staff and students to engage in research ...

The Act further establishes that one of the five characteristics of a university lies in its accepting ‘the role of critic and conscience of society’.¹

It is difficult to envisage a contemporary corporatized university in New Zealand having concerns beyond its own financial survival. Indeed, the inclusion of this role in the earlier *Education Act 1989* (NZ), which generally implemented the neoliberal recommendations of the Hawke Report,² is somewhat puzzling,³ since a charity, such as the Salvation Army,⁴ presents as a more plausible candidate for an *institutional* critic and conscience of society than the corporate university. Furthermore, since this provision refers to a university, it is a moot point whether the institution as a body corporate is expected to be the critic and conscience of society or the academic staff (collective and singular) and students (postgraduates and alumni) who partly constitute a university.⁵ Nevertheless, the duty, read with individual academic freedom, only makes sense if it is incumbent on academics and

¹ See *Education and Training Act 2020* (NZ) s 268(2)(d)(i)(E).

² See G R Hawke, *The Hawke Report: what future path for tertiary education?* (Final Report, 1988).

³ See Gilbert Wong, ‘Critic and conscience: where did the idea even come from?’ *University of Auckland* (Web Page, 3 November 2021) <<https://www.auckland.ac.nz/en/news/2021/11/03/ingenio-critic-and-conscience.html>> on the origins of the obligation being included in the 1989 Act.

⁴ See eg, Social Policy & Parliamentary Unit, ‘State of the Nation 2023’ *The Salvation Army New Zealand, Fiji, Tonga & Samoa Territory* (Report, 2023) <<https://www.salvationarmy.org.nz/research-policy/social-policy-parliamentary-unit/state-nation-2023>>.

⁵ Cf *Victoria University of Wellington Act 1960* (NZ) s 3 ‘Constitution of the University’.

research students to fulfil the obligation, with the institutional university’s role being to maintain the integrity structures, including funding, for research.

The theorist and social activist Antonio Gramsci argued that ‘all men are intellectuals, one could therefore say: but not all men have in society, the function of intellectuals’.⁶ Academics perform the function of traditional or formal intellectuals but may also act as an ‘organic intellectuals’, who, unlike traditional intellectuals, ‘who seem more or less to remain in place, doing the same kind of work year in year out’, are ‘actively involved in society, that is, they constantly struggle to change minds’.⁷ In a related view, for Edward Said, a principal role of the intellectual is to ‘speak truth to power’.⁸ While this invocation may sound loftily idealistic, Said argues it is a matter of ‘carefully weighing the alternatives, picking the right one, and then intelligently representing it where it can do the most good and cause the right change’.⁹

If ‘controversial or unpopular opinions’ are to be *put forward* and ‘controversial or unpopular opinions’ are to be *stated*, it seems they must be taken into the public forum, which today is typically online.¹⁰ Some academic research may be exploratory or arcane, in which case it would not generate public interest and is better suited to discussion and development among subject specialists but very little tax research falls into this category of the academic occult. In short, as tax researchers, we can and should be taking our research to the public to promote general debate about taxation, and tax justice in particular. If we fail to stake a claim in that space, others may take it.

Some Australasian tax publications, notably this journal, the *eJournal of Tax Research*, and the *Journal of the Australasian Tax Teachers Association* are open source, but only the second journal has an A ranking, as categorised by the Australian Business Deans Council (ABDC). The ABDC ranking is notorious – from a New Zealand perspective, at least – for its parochialism and manifest lack of understanding of the quality of law journals. For example, under the discontinued journal ranking of the Excellence in Research Australia (2010), the *New Zealand Law Review* was ranked A* but ABDC ranks it B, the same category as the *New Zealand Law Journal*, which is aimed at practitioners and is not double-blind peer reviewed. Nevertheless, academics face managerial pressure to pursue publication in A or A* journals, which are typically sequestered behind exclusionary paywalls. It appears, for example, that not all Australian tax academics have access to the A ranked *New Zealand Journal of Taxation Law and Policy*, and less so academics based in Moana (Pacific) universities.

⁶ See Antonio Gramsci, *The Prison Notebooks: Selections* tr Quentin Hoare and Geoffrey Nowell-Smith (Lawrence and Wishart, 1973) 140.

⁷ See Edward W Said, *Representations of the Intellectual: The 1993 Reith Lectures* (Vintage, 1994) 4.

⁸ The phrase ‘speak truth to power’ is thought to have originated with a Quaker pamphlet, *Speak Truth to Power, A Quaker Search for an Alternative to Violence* (American Friends Service Committee, 1955). See Henry W Sawyer III, ‘Reviewed Work(s): Speak Truth to Power, a Quaker Search for an Alternative to Violence’ (1956) 104(8) *University of Pennsylvania Law Review* 1138.

⁹ See Said (n 7) 75.

¹⁰ Scope is not available here to discuss open-source publication, paid-for open-source publication, and a government’s legitimate expectation that, if it funds research, results should be made publicly available. Sufficient to note, the issues are complex, and the power accumulated by corporate academic publishers is remarkable. See eg, Brian Resnick and Julia Belluz, ‘The war to free science: How librarians, pirates, and funders are liberating the world’s academic research from paywalls’ *Vox* (Blog Post, 10 July 2019) <<https://www.vox.com/the-highlight/2019/6/3/18271538/open-access-elsevier-california-sci-hub-academic-paywalls>>.

The explosion of digital publication and copying in recent decades has seen, on the one hand, idealistic attempts to free information from the constraints of individualist copyright law,¹¹ and, on the other hand, corporations seeking to monetise and protect that information behind paywalls.¹²

With willing universities, writers, reviewers, and editors, we can produce high quality, digital-only academic journals, and make them available to anyone with internet access who wishes to read and develop their own research. But, however easy access to electronic journals is made, a 10,000-word article on, say, the OECD’s BEPS initiative is unlikely to attract a readership beyond fellow specialist academics, diligent professionals or policymakers in the Australian Tax Office, the New Zealand Inland Revenue Department, or national Treasuries, and so may not constitute *putting forward* or *stating* to members of the public who, of course, pay the taxes to government which makes public universities possible.

The *Austaxpolicy* blog, housed at ANU’s Tax and Transfer Policy Institute, commonly publishes digests of tax research in non-technical language, but, again, how much of this more accessible research is only read by specialists, professionals or people who have a particular interest in tax is not obvious.¹³ Possibilities exist for publishing through other forms of social media, such as LinkedIn, but once we move away from trusted editorial oversight, the less reliable information may become and the worse informed the tax justice debate becomes.

As a not-for-profit social media platform, *The Conversation* has certain unique features, including its joining professional journalists as editors, and academics as content providers. This set-up ensures that published articles benefit from the skills, standards, and ethics of both professions, such as the disclosure of conflicts of interests. The website is a feeder source for other reputable media, such as Radio New Zealand, which promotes potential reach. An article with general appeal can garner as many as 50,000 reads – an audience penetration for tax researchers that would be unimaginable through traditional academic channels. Following publication, authors may also be interviewed by media that may range from national to community radio stations, and emerging news platforms, such as Twitch.tv.

The Conversation operates under a Creative Commons licence Attribution-NoDerivatives 4.0 International (CC BY-ND 4.0). ‘This license lets others reuse the work for any purpose, including commercially; however, it cannot be shared with others in adapted form, and credit must be provided to you.’¹⁴ *New Zealand Herald* and *Stuff* newspapers, including Wellington’s *The Post* and Christchurch’s *The Press* – have established paywalls which may exclude free access to important articles. And so, a piece on tax justice first published in, say, *The Post*, may not be available to everyone, but, if it is first published in *The Conversation* and then taken up by for-profit media, the open access licence ensures that it is likely to be available elsewhere. (It is presumed that a leading newspaper would not seek to put an article it gained for free behind a paywall.)

¹¹ See generally, Sharee L Broussard, ‘The Copyleft Movement: Creative Commons Licensing’ (2007) 26(3) *Communication Research Trends* 3.

¹² See generally, Stephan Puehringer, Johanna Rath and Teresa Griesebner, ‘The political economy of academic publishing: On the commodification of a public good’ (2021) *PLOS ONE* <<https://doi.org/10.1371/journal.pone.0253226>>.

¹³ Disclaiming any claim for scientific validity, when I have published items in *Austaxpolicy* Blog, the responsive comments have been technical in nature. When I have published in *The Conversation*, the comments have often been along the lines of ‘Marxists in ivory towers’.

¹⁴ See ‘CC BY-ND 4.0 Deed: Attribution-NoDerivs 4.0 International’ *Creative Commons* (Web Page) <<https://creativecommons.org/licenses/by-nd/4.0/>>.

An unscientific survey of articles published in *The Conversation* by New Zealand tax academics on tax justice indicates that articles fall into two broad categories – advocacy and explanation. Advocacy involves identification of a particular area of tax unfairness and proposing a just solution.¹⁵ Explanatory articles allow non-specialists to better understand a tax issue. Explanations may involve an appraisal of opposing arguments,¹⁶ unpacking of a broad policy issue,¹⁷ or explaining a highly technical subject.¹⁸

Advocating progressive tax justice on social media is not for the thin-skinned.¹⁹ But, even for the most resilient female academic, online misogyny aimed at silencing women’s voices, can be threatening and dispiriting.²⁰ No doubt, Indigenous or LGBTIQ+ opinions on tax justice would also be shouted down but unfortunately those voices are rarely heard in the first place. *The Conversation* no longer publishes comments, but authors’ email addresses are generally available.

New Zealand academics owe a statutory duty to perform the role of critic and conscience of society. While this duty may appear idealistic – and, in practice, relatively few academics comply – social justice luminaries, such as Jane Kelsey, have spoken truth to power for decades. In the field of taxation, Lisa Marriott, Max Rashbrooke, Susan St John and others have consistently advocated progressive tax-transfer justice.²¹ An issue of this journal on tax justice in Aotearoa New Zealand would be incomplete without mention of the efforts, not just of individuals, but also of organisations, notably Tax Justice Aotearoa, and the Fabians to achieve a plausibly equitable tax-transfer system.

¹⁵ See eg, Jonathan Barrett, ‘Forget a capital gains tax – what New Zealand needs is a tax on inherited wealth’ *The Conversation* (Web Page, 31 July 2020) <<https://theconversation.com/forget-a-capital-gains-tax-what-new-zealand-needs-is-a-tax-on-inherited-wealth-143604>>; Ranjana Gupta, ‘How ‘tax forgiveness’ could help New Zealand’s many small businesses weather the financial woes brought on by COVID-19’ *The Conversation* (Web Page, 2 September 2021) <<https://theconversation.com/how-tax-forgiveness-could-help-new-zealands-many-small-businesses-weather-the-financial-woes-brought-on-by-covid-19-166955>>; Lisa Marriott, ‘Even if next week’s budget avoids the issue, it’s time New Zealand seriously considered a wealth tax’ *The Conversation* (Web Page, 11 May 2022) <<https://theconversation.com/even-if-next-weeks-budget-avoids-the-issue-its-time-new-zealand-seriously-considered-a-wealth-tax-182505>>.

¹⁶ See eg, Jonathan Barrett, ‘Feeling that fiscal drag? Why you could be worse off even if your pay has gone up’ *The Conversation* (Web Page, 31 August 2022) <<https://theconversation.com/feeling-that-fiscal-drag-why-you-could-be-worse-off-even-if-your-pay-has-gone-up-188287>>; Lisa Marriott, ‘New Zealand’s tax system is under the spotlight (again). What needs to change to make it fair?’ *The Conversation* (Web Page, 30 January 2023) <<https://theconversation.com/new-zealands-tax-system-is-under-the-spotlight-again-what-needs-to-change-to-make-it-fair-198492>>.

¹⁷ See eg, Craig Elliffe, ‘Proving the wealthiest New Zealanders pay low tax rates is a good start – now comes the hard part’ *The Conversation* (Web Page, 27 April 2023) <<https://theconversation.com/proving-the-wealthiest-new-zealanders-pay-low-tax-rates-is-a-good-start-now-comes-the-hard-part-204532>>.

¹⁸ See eg, Alison Pavlovich, ‘Why a proposed capital gains tax could mean tax cuts for most New Zealanders’ *The Conversation* (5 March 2019) <<https://theconversation.com/why-a-proposed-capital-gains-tax-could-mean-tax-cuts-for-most-new-zealanders-112852>>.

¹⁹ The Taxpayers’ Union (sic) issued an ad hominem media release in response to one of my *Conversation* articles. See Louis Houlbrooke, ‘Op-Ed: Why We Won’t Stop Calling It “Taxpayer Money”’ *Taxpayers’ Union* (Web Page, 21 January 2021) <https://www.taxpayers.org.nz/why_we_won_t_stop_calling_it_taxpayer_money>. While I found this response risible, the trolling of female academics, who attract reactionary ire, is no laughing matter.

²⁰ See eg, Heather Savigny, ‘Gender and the “impact” agenda: the costs of public engagement to female academics’ *LSE* (Blog Post, 14 June 2019) <<https://blogs.lse.ac.uk/impactofsocialsciences/2019/06/14/gender-and-the-impact-agenda-the-costs-of-public-engagement-to-female-academics>>.

²¹ I actively sought a free market perspective on tax justice for this edition but the author who agreed to provide an article failed to deliver.

II OVERVIEW OF ARTICLES

I am grateful to the editors of the *Journal of Australian Taxation*, for inviting me to curate a second New Zealand special edition. The first special New Zealand edition was published after the Tax Working Group (2020) (TWG) published its final report.²² This edition has allowed contributors to consider the issues raised in that report in a longer-term perspective. The research that informed the TWG remains pertinent but deserves reflection. The principal majority recommendation of the TWG was a comprehensive capital gains tax (CGT), a recommendation, which is generally supported by academics but has been rejected by two Labour prime ministers.

The populist and policy-diverse New Zealand First party, which propped up the Labour-led government (2017-20), claims to have vetoed the introduction of a comprehensive CGT.²³ Since then, Jacinda Ardern, the country's iconic prime minister, who declared that there would be no CGT on her watch, resigned and presented the opportunity for a Labour-led government, under the helm of the pragmatic Chris Hipkins, to introduce a CGT. Both the Green Party and Te Pāti Māori, the other progressive representatives in Parliament, support a CGT, but, seeking electoral support from the centre, Hipkins followed Ardern's lead and ruled out a CGT and any form of wealth tax.

In the first article, Lisa Marriott and I have sought to map tax justice issues in Aotearoa New Zealand. The political context in which this process took place changed dramatically in the period of writing and in late October 2023 is still in flux. Hipkins inherited an absolute parliamentary majority²⁴ – a once in a generation opportunity to make radical changes to remedy tax-transfer injustice, in particular, the lack of taxation of capital gains, wealth or land (nationally). But, like his predecessor, he took no decisive action as support for Labour plummeted. His principal tax equity proposal, which was roundly criticised by tax commentators across the political spectrum, was to remove GST from fresh fruit and vegetables. Paradoxically, understanding of tax injustice in New Zealand has, perhaps, never been greater. In our article, we aim to unpack that paradox.

New Zealand had the constitutional opportunity to join the Australian Commonwealth but failed to do so, and, despite a cultural closeness among settlers, has chosen in some ways a different path from Australia in settler-Indigenous relations.²⁵ In particular, the Crown in New Zealand owes obligations under the Treaty of Waitangi Te Tiriti O Waitangi 1840 which was concluded with many iwi (First Nations) and is generally considered to be the country's founding document.²⁶ How is this relevant to tax justice? There is an increasing understanding that, despite being cashless societies before European encounter, First Nations,

²² See (2020) 21(1) *Journal of Australian Taxation*.

²³ See eg, Tom Pullar-Strecker, 'Capital gains tax abandoned by Government' *Stuff* (online, 17 April 2019) <<https://www.stuff.co.nz/business/112010254/government-to-make-statement-on-capital-gains-tax>>.

²⁴ The MMP system was designed to prevent single party governments. See generally, Geoffrey Palmer and Matthew Palmer, *Bridled Power: New Zealand's Constitution and Government* (Oxford University Press, 2004).

²⁵ The libertarian ACT party, whose support National will need to form a government after the October election, is demanding a referendum on the Treaty of Waitangi principles which have been developed over the past four decades by all branches of government. Essentially, in ACT's vision, Māori would be treated with formal equality ie, just one ethnic minority among many. See 'ACT proposes referendum on co-governance' *ACT* (Web Page)

<https://www.act.org.nz/act_proposes_referendum_on_co_governance#:~:text=%E2%80%9CACT%20propose%20that%20the%20next,vote%20on%20it%20becoming%20law>.

²⁶ See eg, Claudia Orange, *The Treaty of Waitangi* (Bridget Williams Books, 2nd ed, 2011).

including those in Australia and North America (Turtle Island) engaged in traditional tax-like practices. Once European traders arrived, new forms of Indigenous taxation also developed.

In their article, Matt Scobie, Holly Willson, Rachael Evans and Madi Williams analyse Māori taxes and tax-like arrangements in Aotearoa before and after European encounter. This important investigation makes a significant contribution to an understanding of Māori taxing rights, some of which almost certainly survived the introduction of Crown governorship. This article is a crucial steppingstone to Māori assertions of taxing rights, complementary and coterminous with the powers of the Crown.

Broadly, every decade New Zealand conducts an inquiry into its tax system. These are important investigations but are often constrained by their terms of reference. For example, the most recent Tax Working Group was not permitted to consider land or inheritance taxes. Nevertheless, these inquiries are generally free to frame their own conceptions of the criteria of a good tax system – although they invariably start with Adam Smith’s Four Canons, including equity. In his article, Rob Vosslander analyses conceptions of equity in New Zealand’s tax inquiries. This article will be a useful source for scholars of New Zealand taxation history.

The New Zealand tax community, particularly members of the Australasian Tax Teachers Association, are invariably accountants or lawyers. I sought a different academic voice on land taxes and tax justice, and am pleased to include the preeminent economist, Arthur Grimes’s article on equity and land taxes. Arthur’s work on land taxes is seminal and, having been Chair of the New Zealand Reserve Bank for a decade, he has unrivalled understanding of the country’s economy and how a national land tax could promote tax justice.

This special edition concludes with Alison Pavlovich’s ‘blue sky’ thinking. Moving beyond the OECD’s BEPS Pillars 1 and 2, she asks how data should be taxed. Pavlovich demonstrates that New Zealand is a net exporter of data but gains no direct tax revenue from this transfer of wealth. She argues that data is the most important commodity in our current paradigm. Her article does not make policy prescriptions but leaves us with troubling questions about tax justice and a form of wealth flowing to the richest US-based entrepreneurs without tax benefit to New Zealand.

Academic research and publication are social activities. While the authors of the articles published here are from the University of Canterbury Te Whare Wānanga o Waitahi and Victoria University of Wellington Te Waka Herenga, academics across Australasian universities provided constructive reviews, and of course, the *Journal of Australian Taxation* generously provided a platform for the exchange of trans-Tasman knowledge.

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