

Book Reviews

Australian and New Zealand Politics

John Braithwaite, *Markets in Vice, Markets in Virtue* (Annandale, NSW: The Federation Press, 2005), xvi + 236 pp., \$49.50, ISBN 1862875227

Reducing income tax liability has been a preoccupation of citizens ever since personal income taxes were first introduced. More complex legislation leads to more intricate attempts to circumvent it, which in turn leads lawmakers to make the legislation yet more Byzantine. During the 1980s and 1990s, the Australian Income Tax Assessment Act quadrupled in length.

John Braithwaite's highly readable paperback seeks to cut through the thicket. Based on interviews with tax advisers and government officials, he aims to describe the state of the 'aggressive tax planning' market, and to put forward a series of proposals for law reform.

At the core of the book are interviews in Australia with 78 tax advisers and officials from the Australian Taxation Office (ATO). Braithwaite finds that tax schemes often follow a standard trajectory—originating as a boutique product for a wealthy client, then applied to a few more clients, and finally mass-marketed by financial planners. Eventually, the scheme finds its way to mum and dad investors, described by one of the interviewees as 'bunnies' for their gullibility.

A great strength of the book is that Braithwaite also interviews 26 tax advisers in New York. Comparing the ingenuity of the Australian and American advisers, he concludes: 'Australia has its rocket scientists of tax shelter design, but in comparison to those of New York, they look like Saddam Hussein's scientists in comparison to those of the Pentagon.' Indeed, some tax schemes in the United States are even marketed with insurance—if a piece of advice is overturned by the Internal Revenue Service, the insurer will pay the bill. (This is apparently not yet a feature of the Australian tax advice market.)

Centring the analysis on interviews has its advantages. We learn interesting tidbits about effective enforcement strategies, such as the fact that ATO officials will often arrange to have a cup of coffee with a tax adviser whose schemes appear to be crossing the line. Surprisingly, Braithwaite finds that the tax advisers themselves regard this as an effective early-stage enforcement tool.

At certain points, however, the structure of the book seems to mirror that of an interview—focused around common wisdom rather than hard data. As anyone who has written a public policy book knows, getting the right statistics can be maddeningly difficult. But as the boffins love to point out, data is not the plural of anecdote: statistics tell us whether our intuition accords with reality. In the case of the United States, Braithwaite cites useful statistics on trends in audit probability for major firms, the share of accounting firms' revenue derived from tax advice, and the number of mentions of the word 'accuracy' in reports from corporate tax departments of major manufacturing firms. But he does not give the equivalent numbers for Australia, instead relying on studies based on perceptions or unrepresentative samples.

There are occasions when a more standard economic analysis might have been warranted. For example, Braithwaite asks whether aggressive tax planning is 'supply driven' or 'demand driven'. A textbook treatment of aggressive tax planning would instead see the equilibrium level as a function of the intersection of supply and demand. One might then consider whether an increase in aggressive tax planning was more likely to have been caused by a rightward shift in the supply curve (associated with a price fall) or a rightward shift in the demand curve (associated with a price rise).

At another point, Braithwaite claims that taxation has redistributed wealth from the poor and middle class to the rich. Scant evidence is offered for this, and it is at odds with a 2004 report by the National Centre for Social and Economic Modelling, which found that the poorest fifth of Australian households paid 1.4% of their gross income in income tax, while the richest fifth paid 26%. (It is nonetheless plausible that the extremely rich pay a smaller share.)

Yet for public policy makers, and anyone interested in how Australia might increase tax compliance, this book is a must-read. Braithwaite proposes that the ATO make more use of randomised audits to

determine tax compliance, suggests that ATO officials working on aggressive tax planning advice should be paid salaries commensurate with the private sector, and points out that where the probability of detection is less than 1 in 2, penalties must be over 100% for it to be economically rational to comply with the tax code. Accordingly, current tax penalties of 25–50% should be raised to 200–400%.

Other proposals are more radical still. Braithwaite suggests enacting legislation that puts principles above rules, thereby reducing the scope for tax advisers to find loopholes. He suggests that restorative justice—in which the perpetrator speaks publicly about the offence—might be effective in addressing tax fraud in accounting firms. He proposes issuing corporate certificates of ‘continuous improvement in tax integrity’. Reassuringly to the reader, Braithwaite is well aware of when he is pushing the envelope, and sensibly suggests that some of his own proposals might be tested in randomised trials.

ANDREW LEIGH

Australian National University

David Clune and Gareth Griffith, *Decision and Deliberation: The Parliament of New South Wales, 1856–2003* (Sydney: The Federation Press, 2006), vi + 735 pp., \$59.95, ISBN 186287591X

Doorstop, what doorstop? This handsome book provides more kilos of knowledge than most I have seen recently. Rodney Cavalier’s ‘Foreword’ begins with cricketing metaphors, and it would take a five-day test match for me to report all the contents of this massive history, prepared as part of the State’s sesquicentenary of responsible government in 2006. Cavalier notes the coverage of ‘the shabbiness and courtesies of politics past’, and it is no surprise to find that the authors reveal more of one of these qualities than the other. The authors acknowledge the help of prominent political scientist Ken Turner, himself a major contributor to our knowledge of the parliamentary history of New South Wales. They also acknowledge the work of Geoffrey Hawker, who broke so much new ground in telling the institutional history of Australia’s earliest parliament. But if there is one voice that represents the intellectual spirit of this history it is perhaps the British legal academic Adam Tomkins, well-known to Australians for his vigorous reappraisals of ‘Westminster’ in the modern world, who here gets the almost parliamentary honour of receiving the first and last footnote.

The book has nine historical chapters, arranged around institutional or electoral turning points in New South Wales parliamentary history. To this valuable narrative, Clune and Griffith add two interpretative chapters in the form of an Introduction and a Conclusion. They note that their narrative is held in shape by ‘an intellectual spine’ captured in the two key terms in the title: decision and deliberation. Decision refers to an executive model of parliament organised as an institution established to make or authorise decisions initiated by the political executive. Deliberation in turn refers to a liberal model of parliament organised as a deliberative assembly to structure public debate over government and public affairs and to provide scrutiny of the workings of executive government. The ‘Introduction’ and ‘Conclusion’ deserve to be widely studied by students of parliament in other jurisdictions as well as New South Wales, because Clune and Griffith have written a state-of-the-art account of why parliaments matter, drawing not only on New South Wales evidence but also on relevant political theories of where parliaments sit in contemporary democracy. The tensions between the practices associated with a decisionist institution and those associated with a deliberative institution play out in all Australian jurisdictions and are probably a basic feature of parliamentary politics everywhere.

What makes this book so compelling is the way in which this framework of institutional tensions has been applied to 150 years of parliamentary politics in Australia. The chapters covering the years since federation include many treatments of federal issues that have complicated but also energised and elevated State politics in Australia. Clune and Griffith have written much more than a reference book, valuable as that is. They have written a very lively political history that locates State political leaders in the institutional setting where leaders try to cement their claims to enduring public leadership, and where their opponents, a body of insurgents that includes but is not confined to the members of the Opposition, use ‘every trick in the book’ to replace them. But the parliamentary game is not simply one of the ‘ins’ and ‘outs’: Clune and Griffith are at their best in examining the rise and impact of minor parties and independents in changing the standard operating rules of parliamentary politics, in ways that