13TH QUEENSLAND TAX RESEARCHER SYMPOSIUM Abstracts

THE UNIVERSITY OF QUEENSLAND AUSTRALIA CREATE CHANGE

Theme 2: People perspectives

Using Legitimacy Theory to Inform Tax Policy: A Case Study of Pacific Australia Labour Mobility (PALM) Workers

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The Pacific Australia Labour Mobility (PALM) scheme allows employers in rural and regional Australia to employ low skilled, semi-skilled and un-skilled labour from 9 Pacific Island countries plus Timor-Leste to address labour shortages. Approximately 27,500 employees were participating in the scheme on 31 August 2021 across all Australian states and territories.

The PALM scheme is arguably of great strategic importance to Australia since it helps to build and maintain positive relationships with participating countries and the Pacific region more broadly due to the enhanced economic prosperity that arises from PALM employees taking skills learnt in Australia back to their communities.

Being employed in Australia entitles PALM employees to superannuation contributions at the appropriate rate of ordinary time earnings. These amounts, ranging from $3,000 up to $16,000, can be claimed upon expiration of the employee's visa once they have returned to their home country, but the process of repatriating these funds is difficult and time consuming due to complex legislative requirements and administrative red tape, lack of professional support, lack of access to computers and the Internet, lack of financial capability and literacy, and cultural and language barriers. Indeed, many PALM employees under the scheme are not aware that the funds can be repatriated leaving millions of dollars unclaimed.

The objective of this research is to recommend legislative and administrative policy reforms to make it easier for PALM employees to claim their superannuation once their visa expires. Due to the strategic importance of Australia's Pacific relationships, the reforms are considered through a legitimacy theory lens to derive a politically appropriate tax policy and administrative solution. There are three types of legitimacy under the theory. Pragmatic Legitimacy is concerned with perceived practical consequences or instrumental value of the tax policy and administrative reform while moral legitimacy is concerned with whether the reform is the right thing to do. Cognitive legitimacy is concerned with whether the reform is the most appropriate, most acceptable, or most natural approach.

By considering the case of a hypothetical, but typical, PALM employee and the objectives, goals, and context of the PALM program through the lens of legitimacy theory, this research reveals that it is unwise to adopt the simplest and most obvious solution of excluding PALM employees from the superannuation system altogether. Instead, more effective policy solutions would entail allowing PALM employees to easily rollover their superannuation from Australia into their own fund or allowing for PALM employees to have their superannuation paid directly into their own fund while working in Australia. Specific reforms to tax legislation and Australia's tax administration that support this policy are discussed.

China's Three Distributions: A Liberal Democratic Reflection
Associate Professor Jonathan Barrett (Te Herenga Waka Victoria University of Wellington)

We live in era of dramatically unequal income and wealth distributions. The People's Republic of China and the United States, two economic superpowers and homes to the greatest number of billionaires, have experienced persistent and widening gaps between rich and poor. While the liberal democratic US lacks political consensus on inequality, the authoritarian PRC government plans to reverse this trend and to attain 'common prosperity', represented by an olive shaped distribution of income and wealth. To achieve this goal, the President Xi-led government intends to optimise 'the three distributions'. This paper considers the three distributions from an outsider perspective. By investigating the PRC's approach to combatting inequality, the paper aims to better understand effective policy responses to poverty and inequality in liberal democracies, including Australia and New Zealand.

The paper first sketches the global context of income and wealth inequality, with a particular emphasis on the PRC and the US as respective exemplars of authoritarian, and liberal democratic social, economic and political systems.

Second, the PRC's response to inequality through the three distributions – market allocations of income and wealth, tempered by labour rights and consumer protections; taxation-welfare; and post-tax philanthropy – is unpacked.

Third, taking into account other countries' experiences, questions are posed about the prospects of success for the three distributions. I am particularly sceptical about the role of philanthropy in delivering economic justice. Per capita, Americans are by far the world's most generous donors, and yet the country's rates of inequality and poverty are significantly higher than other liberal democracies. Charitable donation in the PRC is negligible in comparison to the US. Furthermore, since civil society organisations often present different solutions to social problems from government policy, they are greatly incompatible with authoritarian regimes.

Fourth, the potential relevance of the three distributions in Anglo-liberal democracies is considered. As tax academics, we commonly wield Maslow's hammer; in other words, we tend to principally look for solutions to inequality and other social problems in tax and welfare policies. Following the sociologist Matthew Desmond, we are better served by considering an ecosystem of deprivation in which exploitation in its numerous forms is a dominant force. What is gained, for example, when government increases welfare benefits if landlords raise rents to capture the additional available money?

I do not possess Sinological expertise or knowledge of the Mandarin language, and so, none of the sources of information about the three distributions cited in this paper are primary in nature, and, being derived from translated newspaper reports, many are less direct than usual secondary sources. This admission may suggest an ignorant and cavalier 'Orientalism' on my part but the principal purpose of this paper is to use the high-level PRC policy goals to consider socio-economic issues in liberal democracies, not to provide an insider's informed analysis of the three distributions.

Whether the remarkable lifting of millions of people out of absolute poverty in the PRC during the last few decades is attributable to government policies or to the enterprise and labour of the Chinese people, it is an achievement without parallel, but the possibility of the three distributions strategy attaining its proclaimed goals for economic justice seems unlikely. Nevertheless, it is useful for those of us in liberal democracies, who are interested in combatting poverty and inequality, to pay attention to the PRC's holistic policy responses to these issues.

Self-Regulated v Contact-Based Learning in Undergraduate Tax Courses
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There are three main reasons why tax teachers in Australia favour a self-regulated learning model in undergraduate courses accredited by professional accounting bodies. Firstly, the majority of students are employed for more than 20 hours per week, contributing to low lecture and tutorial attendance due to the inherent inflexibility of these synchronous learning activities. Self-regulated learning has the benefit that students learn when they are able to at their own schedule. Secondly, course accreditation rules require students to master large volumes of 'black letter law' in three core areas – income tax, goods and services tax and fringe benefits tax – to meet course standards so that they are able to solve complex tax problems. During synchronous learning activities, there is insufficient time to cover this large volume of course material. Thirdly, commerce students are tax novices with limited exposure to the law. Tax law is country-specific and very complex in Australia, creating additional challenges for a majority of cohorts and in particular for international students who may lack Australian cultural and legal context. To overcome discipline and country-context barriers, students must invest significant learning time in materials such as induction resources that introduce them to threshold concepts to empower their learning early on.

Adopting a self-regulated learning model challenges tax teachers. They must continuously re-evaluate the range and combination of tools, resources and learning activities students should engage with individually and in a group setting in order to succeed. The purpose of this paper is to present data about student engagement with course resources as an indicator of self-regulated learning success and of student participation in contact-based learning in the form of synchronous tutorials in an undergraduate tax course at The University of Queensland, LAWS3101.

LAWS3101 educators incorporate timetabled tutorials in student self-regulated learning for several reasons. Firstly, when students attend weekly tutorials, they are more likely to keep up to date in this complex, content-heavy course where there are limited opportunities for scaffolding due to the large number of individual topics to be covered. Secondly, tutorial group settings facilitate a two-way feedback dialogue with students. Thirdly, in a tutorial setting, students learn by actively participating in the learning process to make sense of their understanding of tax law in complex calculations and to motivate them to engage with the rules-based nature of tax law. Fourthly, student participation in tutorials provide educators with cues about common student problems that inform course resources content, such as weekly newsletter updates to students.

This paper contrasts different models of tutorial class presentation and tutorial assessment to better understand the relationship between self-regulated learning and contact-based learning, and to investigate the role that incentivisation might play in motivating students to keep up to date as self-regulated learners.

Criminal Prosecutions and Tax Fraud
Professor Lisa Marriott (Te Herenga Waka Victoria University of Wellington)

In February 2021, Tax Watch released a report titled *Equality before the law? HMRC's use of criminal prosecutions for tax fraud and other revenue crimes. A comparison with benefits fraud*. The report found multiple differences in the ways tax and benefit fraud are treated, including significantly more resources invested in ensuring compliance with the benefits system than the tax system, and stricter policy on referring benefit fraud cases for prosecution, leading to a disparity in the numbers of benefit fraud offences prosecuted as a criminal offence when compared to tax offences. This is not the first study to identify the discrepancies in how tax evasion and benefit fraud are treated. For many years scholars have observed differences in investigations, prosecutions and sentences of these two offences. Indeed, Cook identified several of these issues in the UK nearly 40 years ago. However,

despite the well-established problems, there has been little tangible progress in addressing the equality issues relating to the different treatments of tax and benefit fraud.

This study focuses on one component of the larger problem, which is why there appears to be little appetite to tackle tax fraud through the criminal justice system. In doing so, the article examines the approach to criminal prosecutions for tax fraud in four countries: Australia, Canada, Aotearoa New Zealand and the United Kingdom. The study builds on work undertaken to date to further develop an understanding of the extent to which these jurisdictions use civil, instead of criminal, proceedings where serious tax fraud is detected. A comparison is made with benefit fraud for illustrative purposes. The research shows that all jurisdictions use insufficient resourcing to justify the small number of criminal prosecutions for tax fraud. However, greater resources are invested in criminal prosecutions for benefit fraud in all jurisdictions, despite benefit fraud having significantly less financial impact. The study observes how existing practices appear to challenge the directives provided in respective prosecution guidelines in each country. The absence of transparency and fairness in practices is highlighted, together with a proposal for an external agency to be tasked with investigating and decision-making on prosecutions for all crimes where the state is the victim.