Book Reviews


The subject matter of this book is intriguing, complex and a mystery to human rights lawyers. One need only undertake a very fast and random search on any of the most popular internet book sellers to realise not only that no other book exists in the field, but also that even the book under review is absent from the list! There are two obvious reasons for this lack of scholarship. The first is that few, if any, human rights scholars possess a good enough understanding of tax and tax law to make the necessary inroads. Secondly, tax lawyers themselves, even if they did possess a good grasp of the ever-expanding field of human rights, would be disinclined or disinterested to apply a rights perspective to a strictly commercial venture that is dictated by numbers and the interests of largely corporate clients. This explains to a large degree the lack of systemic congruence between the two legal disciplines. The divide is clearly an artificial one based on the absence of communication (including mutuality of language) between the two disciplines.

This edited collection certainly succeeds in bringing together a significant number of mainly tax scholars who are keen to explore the effect of tax laws and policies on individual rights. To this end, the book under review makes the most significant contribution to date to marry tax and human rights in a single volume, other than the plethora of academic articles that have been written in the past decade or so, particularly the work of Philip Baker. The spark behind the book was a conference organised in 2009 and its contents largely reflect the papers given at that conference – the contributions of some human rights scholars are oddly missing from the book version, such as that of Martin Scheinin. The book contains thirty chapters, clustered around seven parts, namely: a) the EU and the European Convention on Human Rights; b) European international tax policy in the sphere of human rights; c) human rights, their enforcement, economic policy and international taxation in the era of global law; d) the era of global law and the search for constitutional pluralism; e) the impact of human rights on domestic substantive taxation; f) the impact of human rights on tax procedures and sanctions, and; g) the impact of human rights on tax litigation before the courts.
Although some chapters are far longer and better researched than others the quality throughout is exceptionally high and the editors have certainly done a terrific job of harmonizing and editing very disparate papers. Interested readers will find a wealth of information on the intersection of tax and human rights stemming from judgments of the European Court of Human Rights (ECtHR), the European Court of Justice (ECJ), as well as from a large number of national courts. Equally, the tax policies, agendas and instruments of international organisations (and informal gatherings such as the G-20) involved in tax reform are discussed at length, including the Organisation for Economic Cooperation and Development (OECD), the various institutions of the World Bank Group, the European Union (EU), the United Nations (UN) and others.

Having sung the well-deserved praises of the book, I should point out its limitations. For one thing, it is not “adventurous” enough. The vast majority of authors are tax lawyers and the very few who are not are EU experts, with one general international lawyer (Jan Wouters). This necessarily means that the book was written from the point of view of tax scholars and was addressed to a tax audience, especially since it was published by IBFD (the leading tax publisher), which has not made any effort to make the book known to the human rights community. This is disappointing because the majority of chapters are easily accessible to non-tax experts and human rights lawyers would gain significant insights into: the right to property, the right to fair trial and the right to privacy and family life among others. Of course, the narrow focus of the book may have been intended by the editors, but it goes without saying that a cross-fertilisation of ideas between tax and human rights scholars, where one would identify a problem and the other would seek solutions from a tax perspective (and vice versa) would have made for much more adventurous reading and would have provided an original impetus for successive scholarship.

The second limitation of the book is that it is largely confined to a doctrinal analysis of the direct impact of tax rules on individual human rights. What is missing – which is perhaps the subject matter of another book – is a rigid study of the impact of tax measures imposed by States at their own insistence, or that of international financial institutions such as the International Monetary Fund (IMF) on fundamental human rights, particularly economic and social rights. Given the broad title of the book I would have expected at the very least a chapter dealing with tax incentives on businesses in the developing world and their effect on the revenue-generating capacity of poor governments to meet their people’s fundamental needs and rights. By way of illustration, if poor African nations earn mineral royalties at a maximum rate of 3 per cent and agree to curb all related corporate taxes in order to lure foreign investors, it is unlikely that their tax systems are consistent with the principle of permanent sovereignty over natural resources or their positive obligations under the two 1966 human rights covenants. Readers interested in understanding the