Book Review: Tax Stories: An In-Depth Look at Ten Leading Federal Income Tax Cases

Kim Brooks
Imagine this project: pick ten pivotal cases in a substantive area of law, assign one case to each of ten of the best scholars in that area, and charge the scholars with exploring the social, factual and legal background of the cases. Tax Stories: An In-Depth Look at Ten Leading Federal Income Tax Cases, edited by Paul Caron, is the outcome of such a project.

The stories included in this collection of essays were chosen based on three overlapping criteria. First, they had to be included in the major American income tax casebooks. Second, they had to be pivotal in the development of income tax law and still be applicable today. Finally, they had to be interesting stories both factually and historically. The characters in the stories are fabulous--a rich woman investor willing to take on the government in 1920, a Texan plagued by the Depression, a husband who transferred stock to his former wife as part of a divorce granted on the ground of extreme mental cruelty, a businessman who felt that he should repay his debts even after his business had been declared bankrupt, and a couple who operated a dance studio in Omaha. Who said tax wasn't interesting? The ten cases chosen for Tax Stories span the history of the American income tax, with the earliest, *Eisner v. Macomber*, [FN1] decided in 1920 and the most recent, *INDOPCO, Inc. v. Commissioner*, [FN2] decided in 1992.

This collection of essays makes three contributions to the tax literature. First, it will serve as an excellent pedagogical source for instructors of tax law. A commonplace complaint about legal education is that the case method strips real-life disputes of their complexity, excitement, social and economic contexts, and of the many perspectives from which they can be fairly observed. Casebook editors at Queens University Law School, in particular, have attempted to place appellate court opinions in their historical, social and political context; however, in most subjects students are still expected to learn the law by parsing edited snippets of appellate court judgments. American tax law teachers will be able to refer their students to the essays in this book for a fuller exploration of the legal context of the leading tax cases. The briefs and records for the cases have been posted on a web page along with the oral arguments in some cases.

A second contribution of the essays is a scholarly one. In many of these essays, examining the full legal context of the cases adds to our knowledge about the development of legal doctrine. In addition, the essays contribute to the development of tax narratives. Tax scholarship has been condemned as "overwhelmingly normative, when much of the academy is experimenting with empirical and narrative forms." [FN4] Tax Stories attempts to shift, in a modest way, this characterization.

Third, the collection contributes to the American tax canon. Unlike other areas of law with long histories and well-known canonical texts, tax law is a relative newcomer. As Jack Balkin and Sanford Levinson have argued, "there is no better way to understand a discipline--its underlying assumptions, its current concerns and anxieties--than to study what its members think is canonical to that discipline.” [FN5] In Legal Canons, Balkin and Levinson argue that what constitutes a canon is affected by the purpose for which the canon is constructed--for teaching law students, to provide citizens with cultural literacy, or to provide benchmarks for academic theories. The ten cases identified in Tax Stories fall primarily within the first *707
These three contributions of the collection—providing an exciting pedagogical tool, broadening the scope of tax scholarship, and refining the tax canon—relate, in the main, to American tax law. Nevertheless, the collection should also be of interest to Canadian tax teachers, students and scholars. The issues addressed in the ten cases must be confronted by every income tax system:

1. Should windfall gains, such as a punitive damage awards, be included in gross income?
2. Should income have to be realized before being subject to tax?
3. Should borrowers who are able to escape the obligation of repaying their debts, through debt cancellation or otherwise, have to include the amount of the discharge of indebtedness in their income?
4. Should property transfers between spouses in the settlement of marital rights be regarded as a realization of gains accrued on the property?
5. Should a voluntary debt repayment to protect a person's business reputation be a personal or business expense and if it is a business expense should it be a current or capital expense?
6. Should an expense to expand an existing business or to enhance an investment be treated as a current or a capital expenditure?
7. Should debt, recourse or non-recourse, be included in the cost basis of assets for the purposes of amortization?
8. Should tax accounting follow generally accepted accounting principles?
9. Should income be attributed to the person who earns and controls it or to the person who benefits from it?
10. Should a tax arbitrage strategy that turns an uneconomic investment into a positive after-tax rate of return be considered prudent tax planning or unacceptable tax avoidance?

While these questions are discussed in the essays in the context of American case law, the architects of income tax systems in every country must answer them. Indeed, the answers to these questions are so central to the design of an income tax system that they will determine not only the broad outlines of that system, but also a great part of the detail. Consequently, Canadian tax students could profit from reading the collection. Eschewing parochialism altogether, a bold and imaginative Canadian tax teacher could fashion a basic Canadian income tax course around comparing the responses of the United States Supreme Court and the Canadian tax system to these questions.

One of the reasons Tax Stories is such an enjoyable and informative read is that the cases are presented in a way that reveals the logical development of the elements of the income tax. The first four chapters address broadly the question of what constitutes gross income for tax purposes; the next three chapters deal with the expenses that should be deductible in arriving at a measure of the value of goods and services personally consumed by the taxpayer and the change in his or her net wealth; the next chapter deals with timing issues and, in particular, with whether accounting for tax purposes should mirror financial accounting; the next chapter grapples with the difficult question of to whom income should be attributed; and the final essay explores where the line between legitimate tax planning and unacceptable tax avoidance should be drawn.

Each chapter is organized so that the story it tells unfolds in a way that makes it interesting to read and easy to follow. In broad terms, the chapters each follow a similar structure. They begin with the human, social and other background to the case. The authors then *709 discuss the prior proceedings and the proceedings in the Supreme Court, including the parties' briefs and oral arguments and the Court's decision. Each author then discusses the immediate impact of the case and, finally, explores its continuing importance.
In Chapter 1, "The Story of Glenshaw Glass: Towards a Modern Concept of Gross Income," Joseph Dodge tells the story of the 1955 case that has been widely interpreted to stand for the proposition that windfall gains should be included in gross income. The significance of this decision to the development of U.S. income tax law cannot be overstated. In his introduction, Dodge reflects that the "results seem so obvious today that one may wonder why this case had to be decided," but that the case "is considered a watershed case ushering in the modern era in thinking about 'income' issues" (15). For Canadian tax students accustomed to a scheduler, sourced-based approach to the meaning of income the result in this case would not seem obvious at all. Over forty years after Glenshaw Glass, the Supreme Court of Canada has recently confirmed in a number of cases that accretions to wealth such as windfalls that lack a source do not have the character of income for tax purposes. Indeed, the concept of income adopted by the U.S. Supreme Court in Glenshaw Glass explains the different organization of material found in basic Canadian tax texts compared to their American counterparts. In Canada we are familiar with texts and casebooks that divide the discussion of income into the traditional sources of employment, property, business, and capital gains; basic American texts are much more likely to discuss the characteristics of a global concept of gross income and then discuss separately deductions and the recognition of gains and losses.

In addition to his discussion of the progress of Glenshaw Glass through the courts, Dodge reviews a number of significant aspects of the case, including its effect on the approach of the courts to statutory interpretation, what it reveals about the relationship between taxing powers and the U.S. Constitution, and its delineation of the roles of courts, congress and the executive in the tax policy-making process. One of the most interesting parts of Dodge's chapter for a Canadian audience is his discussion of the relationship between the court's analysis in Glenshaw Glass and the definition of income more broadly. In developing this analysis, Dodge describes four competing concepts of income: first, the "res" concept of income, which distinguishes between income and capital; second, the Haig-Simons definition of income, which defines income as the net increase in wealth plus consumption; third, the consumed income tax approach to income, which only taxes investments that are converted into cash; and finally, the national income approach to income, which suggests that a particular taxpayer's income should be his or her share of the national income. Each of these approaches to defining income has been defended by tax scholars, and Dodge provides a useful summary of each possible approach. Dodge argues that Glenshaw Glass reflects most closely (although not perfectly) the Haig-Simons definition of income. Dodge returns to a discussion of what can be extrapolated from Glenshaw Glass about the meaning of income more generally in the last few pages of the chapter. By applying the concept to other types of receipts he shows how Glenshaw Glass modernized the concept of income and provided "an over-arching" concept of income (51).

In some ways Chapter 2, "The Story of Macomber: The Continuing Legacy of Realization," written by Marjorie Kornhauser, takes a step back from Chapter 1. Although Glenshaw Glass is arguably the most fundamental case in American federal taxation, Eisner v. Macomber preceded Glenshaw Glass by 25 years and set the stage for the Glenshaw Glass appeal.

Kornhauser spins a good tale in telling the story of Mrs. Macomber, the owner of shares in the Standard Oil Company of California who received a 50 per cent stock dividend. The Supreme Court held that the stock dividend was not taxable income. One of the most entertaining parts of Kornhauser's story relates to the immediate reception of the decision. At the time, the Supreme Court first delivered its decisions orally, and only after the oral decisions were read in their entirety were the printed versions released. The press, in their enthusiasm to report the outcome of the case, apparently misunderstood or misheard the oral judgment and reported initially that stock dividends were taxable. Heavy stock sales ensued. Despite this fiasco, it was 15 years before the Supreme Court changed its practice and began releasing its oral and written decisions simultaneously.

Much of the Supreme Court's analysis in Macomber is of historical interest only, including its approach to the definition of income and its suggestion that it would be unconstitutional to tax stock dividends. However, Kornhauser's analysis, which...
focuses on the "realization" principle endorsed by the Court in Macomber and its effects, is relevant and timely. The realization principle suggests that although an asset has increased or decreased in value (leaving a taxpayer with an increase or decrease in income from a Haig-Simons perspective), tax consequences are not imposed until the taxpayer enters into a transaction that severs his or her relationship to the asset. Kornhauser does an excellent job of explaining why realization has become such a revered principle of tax law. She examines the conceptual explanations (early tax scholars had difficulties reasoning whether there could be income without a realization), historical explanations (the possible constitutional limits on the meaning of income), and practical explanations (there would be valuation and liquidity problems in taxing income as it accrues). She also explores the effect of the realization principle on the taxation of capital gains and on the separate taxation of corporations. These discussions are opportune, particularly in light of George W. Bush's recent proposal to eliminate the "double taxation" of dividend income. Unlike in the United States, pro rata stock dividend distributions are taxable in Canada to the extent that a corporation increases its paid up capital upon the payment of the dividend. Nevertheless, the concept of realization is as deeply embedded in the Canadian income tax as it is in the American income tax; therefore, Kornhauser's analysis of the effects of Macomber is equally relevant here.

Deborah Schenk, author of Chapter 3, "The Story of Kirby Lumber: The Many Faces of Discharge of Indebtedness Income," describes the effect of United States v. Kirby Lumber Co. in her opening sentence: "Surely United States v. Kirby Lumber Co. is one of the shortest Supreme Court opinions ever to pack such a wallop" (97). The Court's reasoning in the case is two paragraphs long. The Court held that the retirement of an outstanding indebtedness at less than fair market value results in taxable income.

Schenk reviews three possible theories upon which the Supreme Court may have based its conclusion. First, the Supreme Court might have reasoned that additional assets became available to the taxpayer as a result of the debt cancellation. Second, the Supreme Court might have reasoned that, looking at the whole transaction (both the loan and its use), there was a gain and therefore the cancellation of the debt resulted in income. Schenk argues that both of these theories lack a tax rationale and therefore she proposes that the "loan proceeds" theory is the most compelling justification for treating cancellation of indebtedness as income. Under this theory the receipt of a loan is excluded from a taxpayer's income because it is assumed that it must be repaid; however, where the loan is not repaid, the taxpayer will realize an income gain because there is no longer any justification for the exclusion of the loan amount. Having set out these three theories, Schenk then reviews some of the exceptions to the rule in Kirby Lumber and explores which of the theories best justifies the exceptions.

Schenk also discusses how the confusion created by the lack of a clear rationale for the holding in Kirby Lumber "came home to roost" in Zarin v. Commissioner. Zarin was a gambler who was continually loaned money by a casino to place bets. Eventually the casino tired of advancing sums to Zarin and called in its debt, which came to almost $3.5 million. After much legal wrangling, Zarin was required to pay $500,000 and the rest of the loan was forgiven. The I.R.S. assessed Zarin on the discharge of the debt based on the holding in Kirby Lumber, and won. Whether this result--the taxation of the $3 million forgiven by the casino--is correct, remains widely contested.

The final chapter dealing with the gross income side of the tax ledger is Karen Brown's "The Story of Davis: Transfers of Property Pursuant to Divorce." The issue in United States v. Davis is a familiar and tricky one for students and tax scholars: what is the appropriate tax treatment of assets transferred on the dissolution of a relationship? In Davis, Thomas Davis transferred some shares to his ex-wife as part of their divorce agreement. Davis was assessed for income tax on the
assumption that he had disposed of his shares for their fair market value, namely the surrender of his former spouse’s marital property claims. He contested this assessment all the way to the Supreme Court, and lost. Brown critiques this result as creating inequities and administrative difficulties. In the United States, where some states had common law and some states had community property rules, the effect of Davis was that transfers between ex-spouses in common law states would be immediately taxable while divorcing couples in community property states would obtain the advantage of a deferral. In addition, the rule in Davis was easy to evade and even if tax could be eventually collected from the transferee, less tax would be collected because of the step-up in basis of the property on the transfer.

The broader issue in Davis, how spouses or recently separated spouses should be treated, is a perennial tax policy issue. Numerous Canadian articles have addressed whether spouses should be taxed individually (based on their control over income) or jointly (based on the theory that both spouses benefit from the income of the other). Canada has adhered relatively closely to a control theory of income, with the tax unit generally identified as the individual. Since 1948, the United States has, by and large, based its tax system on a family unit. Prior to Davis, where one spouse transferred property to another on divorce, it was assumed that there was no disposition and hence no tax on the transferor's accrued gain. Because Davis led to inconsistent results depending upon the state in which the parties resided, the legislature stepped in and drafted a rule to ensure that a transfer of property on divorce was a non-taxable event. The transferee simply takes the adjusted basis of the transferor. The same rule is available to spouses and former spouses in Canada. There have been numerous critiques of this rule and its effect on low-income spouses (usually women) who are generally the recipients of property transfers. The primary concern is that separated women can be left with property that has a low tax basis but high fair market value and thus significant tax consequences will result on disposition. Although this potential tax liability should be taken into account in the division of family property, the fear is that in many cases it is not. Brown avoids this debate in her story of Thomas Davis and his wife by simply stating, "the consequences of [the legislation] can be critiqued on feminist grounds. But that is another story" (154).

Joel Newman's discussion of Welch v. Helvering in Chapter 5 shifts the focus from income inclusions to deductions. The title of the chapter, "The Story of Welch: The Use (and Misuse) of the 'Ordinary and Necessary' Test for Deducting Business Expenses" gives away the general theme of the chapter, which is the appropriate definition of business expenses. Newman does an admirable job of unfolding the facts and circumstances of Welch. Thomas Welch was in the business of brokering grain. His business declared bankruptcy. Shortly after the bankruptcy he went back into the grain brokerage business. Although he was operating his new business profitably, on the advice of three separate brokers he began to repay the old debts of his former bankrupt company, ostensibly to re-establish his credit. The I.R.S. challenged the deduction of the old debt repayments, claiming they were not expenses that were "ordinary and necessary." Canadian tax students will be familiar with this problem. Most introductory tax courses spend a good deal of time determining the reach of the equivalent Canadian test--to be deductible as a current expense in Canada expenses must be "made or incurred ... for the purpose of gaining or producing income from the business or property," and cannot be a "capital outlay."

The Court in Welch held that the expense of repaying the old debts was non-deductible for three reasons: it was too personal to be a necessary business expense, too bizarre to be an ordinary business expense, and, furthermore, even if it could be characterized as a business expense, it was a capital expenditure (163). Newman's summation of the correctness of the decision provides the flavour of his chapter: "Justice Cardozo was right to whine in his Welch opinion. On the facts, he was wrong on the personal versus business issue, and he was wrong on the ordinary versus bizarre issue. As to ordinary versus capital, he was right, but his opinion gave us very little guidance" (165). Generally in Canada expenses related to enhancing a business or an investment are also treated as capital expenditures.

Welch provides an appropriate introduction to Chapter 6, "The Story of INDOPCO: What Went Wrong in the Capitalization
v. Deduction Debate?" Joseph Bankman's chapter addresses more generally the question of when an expense should be treated as a current expense, and hence be fully deductible in the year it is incurred, and when it should be treated as a capital expense, and therefore be deductible over its useful life. In particular, INDOPCO v. Commissioner, [FN15] and Bankman's chapter, address the issue of how business expenses that do not produce or enhance specific tangible assets ought to be categorized.

In INDOPCO, the taxpayer was a publicly traded company that incurred investment banker's fees and other expenses when it merged *716 with another firm. The company sought to deduct the expenses in the year they were incurred since no separate and identifiable asset had been created to which the expenses could be allocated. The Supreme Court held for the Commissioner on the grounds that although no separate asset had been created, the transaction to which the expenses related, namely the merger, would produce "significant benefits" in future years. Given this holding, the problem for the taxpayer was that the value created by the expenses had no obvious finite useful life and, therefore, the expenses could not be amortized. Instead the taxpayer was required to capitalize the expense, recovering the costs only when the corporation was sold or dissolved.

Bankman attacks the holding in INDOPCO, recognizing that his discussion of the case "portrayed INDOPCO as a failure and Justice Blackmun as somewhat of a bumbler, tax wise" (203). Bankman concludes his critique of INDOPCO by suggesting that the complicated issue of the correct deduction of expenses with a life in excess of a year should be resolved by the adoption of a cash flow tax system. This drastic solution perhaps overstates the intractability of the problem of the appropriate treatment of capital expenses in an income tax, although Canadian courts have had as much difficulty drawing this line as the American courts. In Canada, the courts have developed the concept of a "running expense," which allows business taxpayers to treat many otherwise capital expenditures that do not relate to specific assets or specific future income streams to be deducted as current expenses. Nevertheless, very likely in Canada the expenses incurred in INDOPCO would be treated as eligible capital expenditures and three-quarters of their amount would be amortized at a rate of 7 per cent.

George Yin tackles one of the most difficult conceptual issues confronted by drafters or interpreters in designing a workable income tax, the effect of non-recourse debt on the taxpayer's basis for the purposes of computing depreciation allowances. His essay, "The Story of Crane: How a Widow's Misfortune Led to Tax Shelters," tells the saga of a widow who received assets on the death of her husband, including a building and land that had declined in *717 value during the Depression. [FN16] The property was subject to a non-recourse mortgage. The specific issue before the Court was whether the non-recourse debt should be included in Mrs. Crane's proceeds of disposition on the sale of the property. Although ultimately the Court held in favour of the government, determining that the value of the debt should be included in the proceeds, as Yin states at the outset of his chapter, the victory was one of the government's most pyrrhic tax victories (207).

The rule in Crane has been responsible for providing the incentive for the development of a host of tax shelters in the United States, but as Yin correctly concludes, "although the Crane rule was an integral part of tax shelters, the rule, on its own, was not the cause of shelters" (254). Non-recourse debt represents, in some sense, the cost of property. However, the difficulty with including it in the property's basis is that the purchaser may have a strong incentive (since he or she is not personally liable for the debt) to pay an amount in excess of the fair market value of the property to obtain a high basis from which to compute depreciation allowances. This incentive, along with other tax rules that can be exploited in these circumstances, gave rise to a tax shelter industry in both the United States and Canada that continually has to be curbed with a matrix of detailed, complicated and second-best rules.

Turning to timing issues, in Chapter 8, "The Story of Schlude: The Origins of the Tax/Financial Accounting GA(A)P", Russell Osgood explores whether the rules that apply to financial accounting ought to apply to tax law in the context of
determining a firm's income when the firm receives advance receipts. The Schludes ran a dance studio in Omaha. They entered into contracts with parties who wished to learn to dance. The contracts often lasted for more than a year, although the payment was entirely up-front. Although the Schludes kept track of when the dancers actually took their lessons, and reported the income accordingly, the Court held that the prepayments were to be included in income when received. This treatment deviates from the accounting treatment of prepayments. By contrast, the Canadian tax treatment of prepayments accords with accounting treatment. Generally, under Canadian income tax law prepayments for goods or services have to be included in income, but the recipient is allowed to deduct a reasonable reserve for goods to be delivered or services to be rendered in the future. It is not clear that the Canadian approach should be preferred to the Schlude result. In theory, the taxation of the prepayment should be deferred until the goods are delivered or the services rendered only if the present value of the recipient's expenses incurred in delivering the goods or rendering the services equal or exceed the prepayment. In most cases this would be highly unlikely. Therefore, the second best solution might be to require the prepayment to be included in income in the year of receipt. After reviewing the development and subsequent effect of Schlude, Osgood concludes that the case provides few "articulable standards for when a business using the accrual method of accounting may be obligated to diver from its method ... for tax purposes" (at 269).

Chapter 9, "The Story of Earl: How Echoes (and Metaphors) from the Past Continue to Shape the Assignment of Income Doctrine", written by Patricia Cain, addresses a tax issue that is debated frequently in Canada--the appropriate attribution of income between spouses. One of the most vexing decisions that income tax legislators have to face is the appropriate unit of taxation. As noted above, in Canada the individual is generally considered the appropriate tax unit, while in the United States couples are allowed to file joint returns. Lucas v. Earl [FN17] is generally identified as the case leading to the development of the family tax unit in the United States.

Prior to the adoption of family-unit taxation in the United States, the Supreme Court in Earl essentially held that in common law states a husband and wife could not split their income for tax purposes. The Supreme Court held specifically that a contract designed to assign the income of a wage-earner spouse to a non-wage-earner spouse was not effective for tax purposes. Cain's piece provides an entertaining and thorough discussion of the origins and use of the famous, but often unhelpful, "fruit" and "tree" concepts that are used by analogy to assist in distinguishing between income and capital payments (275-278). Cain's essay provides a rich and detailed description of the lives of the Earls. Mr. Earl "was one of the richest men in California, active in politics, and general counsel to a prominent utility company" (283). By not allowing the Earls to split their income, the Court created an inequity between those couples who lived in communal property states, who could split their incomes, and those who lived in common law states, who could not. This inequity was eventually resolved in 1948, eighteen years after Earl was decided, when the tax legislation was amended to allow for family-unit taxation.

Tax Stories concludes with Daniel Shaviro's chapter, "The Story of Knetsch: Judicial Doctrines Combating Tax Avoidance." In Knetch v. United States, [FN18] the taxpayer borrowed $4 million from a company at a 3.5 per cent rate of interest. He then purchased a deferred annuity bond with a 2.5 per cent rate of return. Although the interest paid by Karl Knetch was actually more than his return on the bond, Knetch had figured out that he was better off after-tax. At the time, although the income on the bond was deferred for tax purposes, Knetch could deduct his interest payments currently. Because Knetsch faced a 92 per cent marginal tax rate (then the highest marginal tax rate), he was able to almost entirely offset his interest expenses against his otherwise taxable income; therefore, if upheld, he had constructed a perfect tax arbitrage vehicle. The Supreme Court denied Knetch this result and held that because Knetch's transaction lacked any non-tax purpose, it should be ignored for tax purposes. Shaviro states that the Court's decision stands for the proposition that "aggressive tax planning may not be respected for tax purposes unless it meets some minimum standard of economic substance" and that although taxpayers can arrange their affairs to minimize their taxes "such arrangements may be ineffective unless they additionally serve non-tax purposes, have non-tax effects ... and, in the business or investment setting, present some prospect of pre-tax
profit” (368). The approach of the Supreme Court of Canada to tax avoidance transactions could not be more different. In a series of recent cases it *720 has affirmed that legal form trumps economic substance no matter how egregious the tax avoidance.

Tax Stories is the first book in a series. The goal is to provide the stories behind the leading cases in several substantive areas of law. Foundation Press promises to release Constitutional Law Stories, Torts Stories and Property Stories later this year as well.

Tax Stories is an important book and a Canadian tax teacher could only wish that a similar project would be undertaken in Canada. Nevertheless, by way of placing the book itself in the context of legal scholarship, it seems worth noting that its aim is a somewhat modest one. In furthering their pedagogical objectives, the stories, by and large, are confined to describing and analyzing the legal context of the cases. Rich detail is provided about the arguments made and strategies adopted at various stages of the legal proceedings. The influence of the case on the development of subsequent tax doctrine is also thoroughly explored, but the context provided for the cases does not often go much beyond that. Of course, cases are embedded in not only a legal context. The full story of any case can only be gained by moving outside of the legal proceedings to an examination of the political, social and economic background of the dispute, the attitudes and personalities of the judges, and the manifold consequences of the case for the parties and society. If a case is appropriately contextualized, all of these aspects constitute “the facts of the case,” not just the expunged version that is deemed relevant in the legal proceedings. The type of legal archaeology required to so contextualize a case is exemplified in the work of Brian Simpson. [FN19] There has been renewed interest in attempting to place cases in context. The impetus for some of this work was undoubtedly provided by feminist and critical race theory approaches to understanding law, with their emphasis on the human context. Obviously students do not have time to study all cases or even more than a couple of cases in the kind of detail presented in these studies, *721 but examining the broad context of even a small number of cases can serve valuable pedagogical purposes. [FN20]

This collection of essays, scholarly though it is, does not push the frontiers of legal thought. For the most part, in telling the stories of these cases, the authors employ the traditional tools of legal analysis. In terms of making an original contribution to our understanding of tax law, the stories might be contrasted with a recent monograph written by a Canadian legal scholar, Rebecca Johnson, that tells a story of a recent Canadian tax case dealing with the deductibility of child care expenses. [FN21] In telling the story of this case, Johnson applies insights of intersectional theory, theories of the public/private divide, discourse analysis, and gendered “micro-politics.” Using these methodological tools, she analyzes the case from every conceivable angle: its theoretical foundations; the broad historical antecedents of the case and the provision of childcare more generally; the mobilization of the language of choice, responsibility and selfishness in disputes over the case; the influence of popular culture on the development of the case; and the legal, political and social aftermath of the case.

These observations are not meant to be a criticism of this collection of essays, particularly since many of the contributors to the collection are not only outstanding doctrinal scholars but also have made influential contributions to the study of tax law using other methodologies and perspectives. It was merely meant to place the collection in context. This collection of stories both articulates the fundamental debates in designing and interpreting an income tax and at the same time is an enjoyable read. A rare compliment for a tax book.

[FN3]. See e.g. Toni Pickard, Phil Goldman and Renate M. Mohr, Dimensions of Criminal Law, 3rd ed. (Toronto: Emond


[FN6]. Ibid. at 15.


[FN9]. 284 U.S. 1 (1931).

[FN10]. 916 F. 2d 110 (3d Cir. 1990).

[FN11]. Schenk argues the result is correct, but provides a list of commentators with alternate views at footnote 100.


[FN14]. 290 U.S. 111 (1933).


