

7-28-2015

# Who Should be Invited to the Tax Dinner?: Another Perspective on the Role of Tax Professionals (a review of Gillian Brock & Hamish Russell, 'Abusive Tax Avoidance and Institutional Corruption: The Responsibilities of Tax Professionals')

Diane M. Ring  
*Boston College Law School, [diane.ring@bc.edu](mailto:diane.ring@bc.edu)*

Follow this and additional works at: <http://lawdigitalcommons.bc.edu/lspf>

 Part of the [Tax Law Commons](#)

---

## Recommended Citation

Diane M. Ring. "Who Should be Invited to the Tax Dinner?: Another Perspective on the Role of Tax Professionals (a review of Gillian Brock & Hamish Russell, 'Abusive Tax Avoidance and Institutional Corruption: The Responsibilities of Tax Professionals')." *JOTWELL* (2015).

This Article is brought to you for free and open access by Digital Commons @ Boston College Law School. It has been accepted for inclusion in Boston College Law School Faculty Papers by an authorized administrator of Digital Commons @ Boston College Law School. For more information, please contact [nick.szydowski@bc.edu](mailto:nick.szydowski@bc.edu).

Go 

Go

## Tax

# JOTWELL

THE JOURNAL OF THINGS WE LIKE (LOTS)



## Jotwell

### Who Should be Invited to the Tax Dinner?: Another Perspective on the Role of Tax Professionals

Gillian Brock & Hamish Russell, *Abusive Tax Avoidance and Institutional Corruption: The Responsibilities of Tax Professionals*, 56 Edmond J. Safra Working Paper, available at SSRN [[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2566281###](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2566281###)].



[<http://www.bc.edu/schools/law/fac-staff/deans-faculty/ringd.html>]

**Diane Ring** [<http://www.bc.edu/schools/law/fac-staff/deans-faculty/ringd.html>]

As I began reading **Gillian Brock** [<http://www.arts.auckland.ac.nz/people/gbro064>] and **Hamish Russell** [<http://www.philosophy.utoronto.ca/directory/hamish-russell/>]’s new article entitled *Abusive Tax Avoidance and Institutional Corruption: The Responsibilities of Tax Professionals*, a colleague shared the following cartoon with me:



[<https://xkcd.com/1499/>]

### Arbitrage by xkcd.com

[<https://xkcd.com/1499/>]

Reprinted under a Creative Commons License.

Not surprisingly, I immediately interpreted the cartoon in light of Brock and Russell's article: the functioning of the tax system depends, in part on our acknowledgement that certain behavior is important to its successful operation, even though that behavior may not have been formalized explicitly into the law. Of course there are differences between absconding with the "free" restaurant chips and facilitating abusive tax avoidance, but the essence of the critique seemed to be the same. Systems and relationships that depend entirely upon clearly articulated rules of engagement without any overlay of moral responsibility face serious challenges. Can we articulate an appropriate moral standard by positing, as Brock and Russell suggest, a world in which our conduct and its implications are widely known? One in which, for example, all diners and restaurants see the abuse of the free chips system.

Unfortunately, while it may be relatively easy to identify and agree upon the moral framework for dining out, it has been more difficult to establish a shared vision of the moral responsibility for curbing abusive tax avoidance. But Brock and Russell seek to ignite this conversation through their fresh perspective.

Ethical discussions are not absent from gatherings of tax professionals. Many annual conferences devote a portion of the program to a presentation on ethics in tax practice (perhaps encouraged by the attendees' need to satisfy state and other licensing requirements). The programs, however, tend to focus on understanding how the ethical rules (e.g., ABA Model Rules, Circular 230, AICPA Code of Professional

Conduct, etc.) would or might apply to various scenarios. To be sure, this analysis includes room for the tax advisor to consider moral or ethical concerns in offering advice, apart from what is actually required by the law. For example, Model Rule 2.1 states in part: “In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client’s situation.” Nevertheless, a broader examination of moral duties, outside the applicable regulations governing advisors, is usually beyond the scope of such panels. This observation is not a critique of the panels (some of which I have had the pleasure to join), but rather an understanding of their role. They predominantly provide guidance for practicing tax advisors who want to understand and comply with current law regulating their conduct. These are essential goals and their regular reinforcement is invaluable. Brock and Russell, however, enter the arena from a different perspective, and take the analysis further.

Prompted by evidence of significant tax evasion and avoidance across the globe, Brock and Russell seek to demonstrate how and why tax professional have a distinct, though not exclusive, responsibility to “help reduce the incidence of abusive tax avoidance and remedy its negative consequences.” In making this argument, Brock and Russell track the IRS and GAO use of the term “abusive tax avoidance”, reaching beyond evasion and into the realm of transactions in which tax advisors have played a central role in recent decades. Such abusive tax avoidance is costly to societies, and it is through a framing of this cost that Brock and Russell specify the source and the nature of tax advisors’ moral responsibility to remedy the problem of abusive tax avoidance.

Rather than enter the conversation through a study of the existing requirements imposed on tax advisors or through exploration of the lawyer-client relationship, Brock and Russell start with an account of institutional corruption and institutional integrity. Brock and Russell argue that institutional corruption exists when four conditions are met: (1) the institution fails to achieve its purpose in a fair and effective manner; (2) certain actors have improper influence over the institution; (3) public confidence in the institution is not warranted; and (4) public confidence in the institution would not survive a careful scrutiny of the institution. In applying this framework to taxation, institutional corruption would exist in a fiscal institution if: (1) it failed to fairly and effectively collect revenue; (2) certain actors had improper influence over tax policy or tax operations; (3) public confidence was unwarranted given the existence of points 1 and 2; and (4) public confidence in the fiscal institution would not survive scrutiny of the institution.

Using this framework of institutional corruption, Brock and Russell consider a number of well-known cases of abusive tax avoidance and evaluate the roles played by tax lawyers, accountants and financial advisors in shaping the law, designing the strategies, implementing the strategies, and in some cases, defending the strategies. Ultimately, Brock and Russell argue that those who have caused, have benefitted from, *and* have the capacity to fix the situation bear a *special duty* to undertake reform efforts. Brock and Russell are cognizant of the likely challenges to their framework (in particular critiques

grounded in the traditionally recognized duties that lawyers owe clients). But their primary mission in this article is to provide an alternative framing of this entire debate – one that begins with notions of integrity and corruption in fiscal institutions, and concludes with a powerful claim that professionals who have contributed to abusive tax avoidance (and thus potential institutional corruption) bear a special duty to “engage in collective action to support necessary changes to practices or norms in their professions.” Brock and Russell’s fresh take on defining the ethical and moral duties of tax professionals provides a valuable contribution to the literature and one that I hope they continue to develop.

Cite as: Diane Ring, *Who Should be Invited to the Tax Dinner?: Another Perspective on the Role of Tax Professionals*, JOTWELL (July 28, 2015) (reviewing Gillian Brock & Hamish Russell, *Abusive Tax Avoidance and Institutional Corruption: The Responsibilities of Tax Professionals*, 56 Edmond J. Safra Working Paper, available at SSRN), <http://tax.jotwell.com/who-should-be-invited-to-the-tax-dinner-another-perspective-on-the-role-of-tax-professionals/> [<http://tax.jotwell.com/who-should-be-invited-to-the-tax-dinner-another-perspective-on-the-role-of-tax-professionals/>].



[<http://tax.jotwell.com/who-should-be-invited-to-the-tax-dinner-another-perspective-on-the-role-of-tax-professionals/pdf/>]

© 2016 Jotwell · Powered by **WordPress** · Book globe image generously provided by **TsaMedien**

**Protected by Akismet** · **Blog with WordPress**