St. John's Law Review

Volume 46, December 1971, Number 2 Article 31

The Nominalistic Principle: A Legal Approach to Inflation, Deflation, Devaluation and Revaluation (Eliyahu Hirschberg)

Mark J. Florsheim

Follow this and additional works at: https://scholarship.law.stjohns.edu/lawreview

Recommended Citation

Florsheim, Mark J. (1971) "The Nominalistic Principle: A Legal Approach to Inflation, Deflation, Devaluation and Revaluation (Eliyahu Hirschberg)," *St. John's Law Review*: Vol. 46 : No. 2 , Article 31.
Available at: https://scholarship.law.stjohns.edu/lawreview/vol46/iss2/31

This Book Review is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact lasalar@stjohns.edu.

REVIEWS

THE NOMINALISTIC PRINCIPLE: A LEGAL APPROACH TO INFLATION, DEFLATION, DEVALUATION AND REVALUATION. By Eliyahu Hirschberg. Ramat-Gan, Israel: Bar-Ilan University. 1971. Pp. 138. $3.00

With the national attention being increasingly directed toward the problem of inflation,[1] a book that discusses the effects of changes in the value of money on legal rights cannot help but be timely and informative. Eliyahu Hirschberg's monograph[2] therefore commands our attention, but at times only with difficulty.

The value of this study is in its historical approach to the treatment of money from both a legal and an economic viewpoint. The emphasis is weighted heavily in favor of a description of past crises arising out of the complete collapse of domestic currencies, such as the German mark in 1922 and the Confederate dollar at the end of the American Civil War, and of their effect on outstanding contractual obligations. While Mr. Hirschberg's discussion of the future is couched more in economic theory than in pragmatic legal counseling, it does stimulate useful thought on the drafting of legal documents, such as wills and contracts, with an eye to protecting them from financial unpredictability. Implicit is Santayana's warning that those who do not learn from history are condemned to relive it.

Undoubtedly the strong point of Mr. Hirschberg's study is his analysis of the three theories of money and their consequences. The metallistic theory equates money to a standard metal. This theory was prevalent in the Middle Ages and continued into the nineteenth century. Under this theory the various national currencies are given a fixed value in gold or some other precious commodity and, in fact, are surrogates for that commodity.[3]

The metallistic theory has given way to the nominalistic approach, which predominates today. Nominalism attributes a legal value to currency, which value is determined by legal fiat rather than through any intrinsic worth of a commodity, such as gold. No matter what happens to the value of gold or to the underlying worth of the legal obligation

---

1 *See, e.g.*, Exec. Order 11,615, 36 Fed. Reg. 15,727 (1971); radio-television address of President Nixon: The Second Phase of Economic Stabilization, October 7, 1971.

2 E. HIRSCHBERG, THE NOMINALISTIC PRINCIPLE: A LEGAL APPROACH TO INFLATION, DEFLATION, DEVALUATION AND REVALUATION (1971) [hereinafter HIRSCHBERG]. The book is a revised version of part of Mr. Hirschberg's M. Phil. (Laws) thesis.

3 *Id.* 13.

for which the money constitutes consideration, we are told that "A dollar is always equal to a dollar."[4]

Finally, we are exposed to the theory of valorism, in which legal obligations are not tied to any specific amount of currency but rather to its purchasing power. The author favors this approach, at least with regard to long-term obligations,[5] though just where we are to draw the line he doesn't say. Nor are we told why the parties to a contract cannot be left to their own devices in considering such elements as the effect of inflation on the terms of their obligations.

Cost of living escalators on wage agreements are an example of just such private law-making. Indeed, such escalator clauses are inherently inflationary, since each increase included in the cost of living statistics automatically activates further increases. This would be tolerable if nations were able to isolate their economies, but even the United States, whose foreign trade accounts for only four percent of its gross national product,[6] has been unable to avoid serious balance of payment problems.[7]

Mr. Hirschberg's description of attempts to cope with the breakdown of nominalism, while spotty in its presentation, is quite fascinating. We are given a detailed theoretical and historical analysis of monetary revaluation — the process in which courts or the legislature decide that nominalism has so completely broken down that there is a need to revalue long-term debts at at least a portion of their originally intended value. The prime example of revaluation occurred in Germany in the 1920's. After the new Reichsmark was made the equivalent of one *billion* former marks, the German judiciary and then the legislature found it necessary to permit certain classes of creditors to recover from 15-25 percent of the prior value of their debt, so as to prevent unjust enrichment. Prior thereto, life insurance policies on which substantial premiums had been paid became worthless in the hands of the beneficiaries.[8] The problem of revaluing debts created during the American

---

[4] *Id.* 37.

[5] *Id.* 132.

[6] In 1969, U.S. exports were valued at $37,988,000,000 at a time when the G.N.P. was estimated to be $932.3 billion. U.S. BUREAU OF CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES 311, 777 (1970).

[7] *See, e.g.*, Presidential Proclamation No. 4074, Aug. 17, 1971, Imposition of Supplemental Duty for Balance of Payment Purposes, 36 Fed. Reg. 15,724 (1971).

[8] HIRSCHBERG 96-97, 111. *See also* 6 A. CORBIN, CONTRACTS § 1360 (1962) and *In re* Lindle's Estate, 250 N.Y. 502, 166 N.E. 182 (1929), in which the court held that a testator intended his specific legacies to be valued in marks as they were worth at the time his will was drawn, rather than in the worthless post-inflationary mark.

Civil War and denominated in the subsequently worthless Confederate currency is also ably — but all too briefly — presented.[9]

This monograph contains abundant evidence both of the scholarship and of the sophomoric nature of graduate school writing. The reader is treated to a work evidencing considerable research and fascination, but to enjoy it he must put up with a plethora of errors[10] and soporific prose.[11] The book is also excessively repetitive and at times lacking in depth. Thus, we are told that when the government injures a private person by depriving him of his livelihood, he is entitled to relief, but when the state takes monetary action to the same effect, he is without legal remedy.[12] Yet, this is the standard distinction between the sovereign and proprietary acts of governments, not unique to economic problems. Nevertheless, the reader would be well advised to avoid becoming discouraged by these flaws.

With inflation, as with so many other facts of modern life, awareness of the problem constitutes a substantial part of its solution. Once parties (or their counsel) realize the dangers of inflation, they can consider them in structuring their transactions. Alerting us to the risks of fluctuations in the value of money is perhaps Hirschberg's greatest contribution.

MARK J. FLORSHEIM*

---

9 HIRSCHBERG 115-19. *See also* Effinger v. Kenney, 115 U.S. 566 (1885); Thorington v. Smith, 75 U.S. (8 Wall.) 1 (1868).

10 *E.g.*, the American Civil War is repeatedly, but not invariably, cited as having occurred between 1860-1865. HIRSCHBERG 19, 42 & 67; *but see id.* 96 & 115 for the correct dates. Perhaps some of the many "typos" can be forgiven when one considers that the book is published in a country where English is at best a second language.

11 Where, but in a master's thesis, could one expect to be told that "Money is of immense importance in the modern economy." *Id.* 11, and "A comparison between the revaluation in the Southern States and German revaluation reveals some similarity and some dissimilarity." *Id.* 118.

12 *Id.* 27.

* Member, New York and District of Columbia Bars. A.B., Columbia College; LL.B., New York University; M.A., George Washington University.