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## Federal Income Gift and Estate Taxation (Book Review)

Benjamin Harrow

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which such judgment will be based are "courtroom facts" and not the paramount realities.

However true it may be that the mere formalities of legal restraints upon government will not thwart a dictatorship, it remains equally obvious that a reliance upon the political integrity and administrative competence of government personnel will not insure the liberties of democracy. Granted that a dependence on the people is a primary control, experience still teaches mankind the necessity of auxiliary precautions against demagoguery. Conceding that a compromise of the extremes is to be sought and maintained, the emphasis of the stricture is still upon the "government of laws". One cannot resist the impression that Judge Frank has misplaced that emphasis. It is to be expected that the disciples of a new order will in their struggles against the restrictions of tradition exaggerate the inefficiencies of the past and minimize the vices of the future. But it is in the very enthusiasm of the creation of a new order that the threat to the virtues of the past and the danger of inefficiencies in the future are born. The demand for a flexible government responsive to the will of the people must never displace the demand for a stable government responsive to the principles of constitutional limitations.

Of course,—“If men were angels . . .”

G. ROBERT ELLEGAARD.\*

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FEDERAL INCOME GIFT AND ESTATE TAXATION. By Rabkin and Johnson. Albany: Matthew Bender & Co., 1942, pp. i-vi, 1-28, 101-4130.

Here is a fresh approach to the study of federal taxation from the point of view of the lawyer. It is comparable to the "Hornbook Series" of texts long available to lawyers and law students in other fields of law. The book invites comparison with the current tax services, Montgomery's Handbooks and Paul and Merten's authoritative treatment of the *Law of Federal Income Taxation* in six volumes and a 1939 voluminous supplement<sup>1</sup> of over 3100 pages. The authors have succeeded amply in satisfying the need for just such a book for lawyers and tax practitioners.

The book reads like a collection of studies on all aspects of the tax law and the material is arranged so that each chapter is given a unified treatment of the particular subject matter instead of the patchwork, all-inclusive material found in the tax services. As a matter of fact the chapter on Partnerships was the basis of a law review article that was published in the April, 1942 issue of the *Harvard Law Review*. Other chapters in the book could quite readily be similarly presented separately as scholarly studies of the particular subject matter involved.

The arrangement of the material is novel yet orderly, and not bizarre. The first group of chapters is concerned with Tax Patterns and the five chapters

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\* Associate Professor of Law, St. John's University School of Law.

<sup>1</sup> A revision of this work by Mertens has been announced for current publication.

comprising this group are devoted to the income tax on individuals and on corporations, and three chapters on the excess profits tax. The second group is entitled Entities. In the five chapters included within this group the authors have tried to fit numerous miscellaneous provisions of the law into an orderly scheme suitable for logical and unified presentation. One of the chapters is devoted to the tax aspects of the husband and wife relationship, another to aliens and foreign income, a third to partnerships.

The group of chapters under the general heading, "Corporations and Corporate Distributions", is devoted to a special group of problems concerned with dividends, liquidations, personal holding companies, etc. A special group of chapters is classified under the heading, "Securities and Indebtedness". Here the authors discuss the capital gain and loss provisions of the tax law, exchanges, reorganizations, interest, worthlessness, etc.

The separate grouping of all problems concerned with real estate and a similar separate treatment of problems of insurance and annuities will prove a boon to lawyers who work actively in those fields.

The novelty of this book is not limited to the classification of problems in groups. Each chapter is preceded by a chart that presents a complete summary of the vital tax problems presented and the relationship of one to the other. The material discussing each problem is conveniently annotated by references to the Code, the regulations and the Board of Tax Appeals and court decisions. All references follow the statements made by the authors and are part of the text, so that there are no footnotes nor references to the end of the chapter to break into the concentration of the reader on what he is reading.

The book is in loose leaf form, although it gives every appearance of being an ordinary bound volume, and the publishers are issuing monthly replacement and supplemental pages to bring the material down to date, as the legislature and the courts modify existing laws. The book contains also a separate index of subject matter treated in the book.

The lawyer or tax practitioner who is confronted with a tax problem in his practice usually has some knowledge of the tax law. The authors, it is believed, make such an assumption, since their treatment of the tax law is not too elementary. It is scholarly and thorough in the sense that all possible situations and problems are suggested, although there is not the detailed treatment and discussion of cases that one finds, for example, in Paul and Mertens. The authors are not interested in the practical preparation of a tax return, and the book contains no reproduction of tax forms. Perhaps the publishers could include such forms at the end of the several chapters where these would be appropriate, since the forms themselves frequently clarify a tax problem. This is particularly true in the case of the excess profits tax return. The forms would have the same effect as the tax charts that the authors sprinkle so effectively throughout the book.

To this reviewer the treatment of consolidated excess profits tax returns seemed inadequate, but perhaps this is too specialized a problem for fuller treatment in this type of book. The chapters on the gift tax and estate tax are too concentrated and might perhaps have been omitted, although the chapters on trusts in this particular grouping are more understandable by reference to the gift and estate pattern.

This book has appeared on the scene without too much fanfare under the sponsorship of publishers who have an established reputation in the law field. There is no doubt that the book will become part of the working library of lawyers and tax practitioners. The fact that the book will be kept up to date makes its publication more noteworthy. For students of the law of federal taxation it is the first practical text book on the subject.

BENJAMIN HARROW.\*

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LABOR CASES AND MATERIALS. By Carl Raushenbush and Emanuel Stein. New York: Crofts & Co., 1941, pp. xvi, 674.

This book contains an enormous amount of skillfully arranged material in which the stress is laid on governmental influence on labor conditions. The authors use the term government as referring principally to legislatures and administrative agencies as the makers and arbiters of rules in a great social struggle. I derived the impression that the authors feel that court decisions which interpret and pass on constitutionality are influences but are not primary. As the work "is addressed to students of society: students of economics, of government, of law"<sup>1</sup> the broad approach of governmental influence on labor conditions as affected by legislation and executive or administrative action apparently is logical. If the struggle is for power as well as economic advantage, then the people's will should be expressed by legislation. But the courts are still a mighty influence and often exert their power over the legislative influence.<sup>2</sup> Indeed the content of many a general statute must await final settlement in the state and federal tribunals.

The material is divided into Part One, by Raushenbush, and Part Two, by Stein. Government's influence through court decisions and legislature on the relative bargaining power of the employer and employee is treated in Part One, followed by seven chapters "dealing with changes in the condition of labor brought about by government in dictating certain minimum terms for the labor contract". These seven chapters cover a number of topics such as Workmen's Compensation and Old Age Assistance and Benefits. That these subjects should be treated in a study of labor conditions, there is no question, but I fail to see the relevancy of old age pensions to the labor contract.

The technique of arrangement invokes the use of law cases surrounded by text notes and references to literature which serve to develop the significance of the title. The law cases have usually been edited, sometimes drastically. Editing saves printing bills but at times procedural data necessary to a complete understanding of the case is omitted. The text notes are uniformly good but contain too much explanation of elementary matter, if the book is to be used by

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\* Professor of Law, St. John's University School of Law.

<sup>1</sup> P. xiii.

<sup>2</sup> See Galenson and Spector, *The New York Labor Injunction Statute and the Courts* (1942) 42 COL. L. REV. 51.