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Scientific Tax Reduction (Book Review)

Benjamin Harrow

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the answer will reveal the important discoveries to be made. The motives of the Court are to be found! To the author it is not enough that the doctrine of separation of powers clearly explains the Court's decision; it is not enough that in their nature these political questions must, in their final decision, lie with the electorate; it is not enough that there are no rules conferring jurisdiction upon the Court. These theories are discarded as unrealistic, false, and doctrinaire. The real reasons, argues the author, for the Court's establishing political questions as a category, are expediency, social or economic policy, and in some instances a realization that a decision would not be enforced by the Executive or recognized by the states. In *Luther v. Borden*,³ Dorr, with his rebellion, had caused enough rumpus; and wise discretion required that further disputes should be determined by the legislature rather than the judiciary. In brief, there are times when expediency requires the Court to accept as final the determination of the political departments that black is white. Those who recall the unanimous decision of our Supreme Court in the *Schechter* case,⁴ and who appreciate how easy it might have been on the ground of expediency for the Court to refuse jurisdiction, would hesitate to accept the conclusions of the author.

The "discoveries" made in this study were made about a decade ago by Professor Maurice Finkelstein. His article appeared in the *Harvard Law Review*,⁵ under the title of "Judicial Self-Limitation." A scholarly reply to this article appeared in a later issue of the *Harvard Law Review*,⁶ written by Mr. Melville F. Weston. It is unfortunate that the author, having included in his study a bibliography of about seventy-five writers, has omitted Professor Finkelstein's article, although he has included Mr. Weston's reply thereto.

WILLIAM TAPLEY.*

SCIENTIFIC TAX REDUCTION. By Howe P. Cochran. New York: Funk & Wagnalls Company, 1937, pp. i, 757.

It is not surprising that in the past year an unusual number of able and interesting books have been presented to the public as an aid to an enlightened discussion of specific tax laws or of the general aching problem of taxation. After twenty-four years of experience with the Federal Income Tax law, twenty-one years of administering a Federal Estate Tax law, and seven years of playing hide-and-go-seek with a Federal Gift Tax law, the taxpayer at last is confronted with a book that he can read as he runs. The author of *Scientific Tax Reduction* is a born story teller and the art of telling stories is, like literature, as old as the human race. *Scientific Tax Reduction* reads like a

³ See note 1, *supra*.

⁴ *Schechter Poultry Corp. v. United States*, 295 U. S. 495, 55 Sup. Ct. 837 (1935).

⁵ Finkelstein, *Judicial Self-Limitation* (1924) 37 HARV. L. REV. 338.

⁶ Weston, *Political Question* (1925) 38 HARV. L. REV. 296.

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

novel or a good detective story. In fact the author's own discussion and comment on a practise case in which he carries the income tax return of the taxpayer, Mr. Noname, from the preparation and filing of the return through the examination by the Revenue Agent, the inevitable proposed additional assessment, the quite common allegation of fraud, and the fraud penalty, the subsequent conferences, the petition to the Board of Tax Appeals (special attorneys are I. Noall and A. Watchdog), the compromise of the tax assessment, even the poor tax practitioner who then engages in a bitter dispute with the taxpayer over his fee, all this is like an absorbing detective story. But it is more: it is a practical study of procedure in the administration of the Income Tax Law.

The informality of the presentation, the conversational manner, the humorous and anecdotal style, mark the book throughout as the work of a delightful personality and an able tax practitioner. The author is absolutely at his ease in his command of tax knowledge. An informal approach such as this, to a presentation of tax law and procedure, cannot be free from errors, which, unfortunately, the "eagle" eye of a reviewer must detect. For example, the author says that a corporation by paying a stock dividend, has not affected the earnings available for cash dividends. Perhaps the author had some other point in mind which he does not make clear, but the stock dividend capitalizes the earnings that normally would be available for a cash dividend, and such earnings could not thereafter be available for a cash dividend.¹

In commenting on the case of *Eisner v. Macomber*,² the author states that this case explained the Sixteenth Amendment. The interpretation of the Sixteenth Amendment was before the Court in *Brushaber v. Union Pacific R. R.*,³ and it is this reviewer's opinion that the *Brushaber* case explains the Sixteenth Amendment.

It is difficult to resist the temptation to quote a few of the delightful humorous touches that pervade the book. There is the superb definition of a dividend under the 1936 Act as the means whereby a corporation purges itself of the sin of capitalism.⁴ In discussing capital gains and losses, the author warns the reader that he will not use the technical terms found in the law. He avoids the use of such terms as "substituted basis, adjusted basis, unadjusted basis, and substituted adjusted basis" and adds, "When you hear anyone talking tax law in 'terms' you may be sure he is a newcomer in the field." Accountants will appreciate the author's pointed criticism of the technical verbiage found in the installment provisions of the law, particularly with respect to the repossession of real estate. Says the author, "The above calculation (default and repossession of personalty) not being sufficiently complicated to test the skill of the most astute accountants, a more complicated schedule was devised for repossessed real estate, making it extremely difficult to compute the result of the transaction."⁵ The reviewer might add that the author succeeds most adequately in clarifying these provisions in the law. In fact the chapter on installment sales is one of the best in the book. Not only is a difficult provision

¹ P. 118.

² 252 U. S. 189, 40 Sup. Ct. 189 (1920); found on p. 17.

³ 240 U. S. 1, 36 Sup. Ct. 236 (1915).

⁴ P. 114.

⁵ P. 73.

in the law elucidated, but the author points out the possibility of effecting tax savings through a judicious application of the installment sales provisions.

Considering the simplicity of the presentation throughout the book, it was rather surprising to read the author's labored explanation of the carry over of credit for dividends paid in minimizing the surtax on undistributed income. The principles are analogous to the carry over of net losses in prior revenue acts and could have been presented more simply, unless the author was slyly poking fun at our tax legislators.

In discussing the surtax on undistributed profits⁶ the author "predicts a very short and turbulent life for it." Turbulence there has been aplenty and most likely Congress will make the life of this new tax a short one.

In a book intended to make a popular appeal rather than a scholarly one, it is to be expected that inaccuracies of language, usage of words (such as the use of "several" for "many"),⁷ and English construction ("whom" for "who")⁸ will creep in. With the law constantly being changed by court decisions, it would be more helpful to tax practitioners if citations indicated the year of the decision. But one cannot always be over-sensitive, and these things fade quickly into the background in the light of a splendid popular presentation of the theory, practise and procedure in Federal Income, Gift, and Estate Tax matters. The book contains a general index and a case index, as well as an appendix consisting of 49 pages of problems and answers on income and deductions, basis for computing gain or loss, and estate tax questions.

BENJAMIN HARROW.*

ESSAYS IN POLITICAL SCIENCE. Edited by John Mabry Mathews and James Hart. Baltimore: The Johns Hopkins Press, 1937, pp. viii, 364.

In honor of the many achievements of Professor Westel Woodbury Willoughby in the field of political science, several of his former students, his distinguished brother, William Franklin Willoughby, and a few admirers have written a series of essays which have been published in this volume. The introductory essay by James W. Garner is a brilliant evaluation of the contributions of Professor Willoughby to political science. The author appropriately refers to the groundwork in this science which was done by Woodrow Wilson as Professor of Jurisprudence and Political Economy at Princeton and by Professor Burgess in the "School of Political Science" established in 1880 at Columbia University. But, as is pointed out in the essay, political science, as a study divorced from constitutional law, jurisprudence, and administrative law did not gain a foothold in this country until Westel W. Willoughby, a "reader in political science" at Johns Hopkins University, published in 1896 his treatise on "The Nature of the State". From that time on, he has been recognized as

⁶ P. 187.

⁷ P. 503.

⁸ P. 503.

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