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# Security Speculation: Its Economic Effects (Book Review)

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trust, or to exercise some powers over the administration of the trust during his lifetime. This portion of the book portrays in a very interesting form the struggle which has been going on for years between the taxing authorities, on the one hand, and legal and tax advisers to men of wealth, on the other. He points out the differences between the federal and the state rules. The cases show how men of means have desired to have their cake and eat it at the same time, by giving away property and yet continuing to control it, in an effort to avoid taxes and yet enjoy the income and real dominion over their wealth. The book shows the evolution of the present law on the subject, and points out just how the differences in the present law have arisen.

A comparatively trivial, yet at times annoying defect could easily have been corrected. At times the author gives the dates of the decisions of the cases, and at other times he does not. For example, on page 193 he gives three footnotes to three cases decided in the United States Supreme Court, two of which give the dates and one of which does not. While the addition of dates in all cases would add somewhat to the size of the footnotes where a large number of authorities are cited, in perhaps the majority of cases this would not be so, *e.g.*, page 193. In tax books, especially, the dates are important to the reader, who usually knows the dates of the more important statutes, although of course in many cases, the date would not reveal what particular statute was being considered.

The average lawyer who handles tax matters becomes quite familiar in a short time with the leading decisions of his own state, but usually ignores authorities of other jurisdictions. He is generally appalled at the idea of making an exhaustive examination of the law of other jurisdictions, because in many cases the differences in the wordings of the statutes will be sufficiently important to make such authorities of little value. The author, on the other hand, has already done this tedious spade-work in respect of the most important parts of taxation with which the average practitioner is apt to come in contact. The work is especially useful for this reason.

From the standpoint of the general public, a work like this is perhaps more valuable to the law reformer than it is for lawyers, tax officials and trust company men in that it reveals the lack of similarity of inheritance tax laws in the different states, and hence may tend to bring about uniformity of statutes of this kind. Few things would be more desirable, especially when state lines mean so little from the standpoint of the decedent or grantor. Mr. Kidder has made a useful contribution to tax literature.

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SECURITY SPECULATION: ITS ECONOMIC EFFECTS. By John T. Flynn. New York: Harcourt, Brace & Co., 1934, pp. xii, 332.

One of the outstanding landmarks in the recent history of governmental interference in business is the Roosevelt law concerning the regulation of the national securities exchanges. Not only is this measure almost wholly unprecedented; it marks one of the boldest and most direct attacks ever made by the federal government to correct abuses in the financial, as opposed to the industrial, structure of the country. To students of the law who are interested in the economic aspects of legislation and in the evolution of the law, this statute is of marked interest, since it cannot be understood without a fairly complete knowledge of the economic background of the securities exchanges and especially of the place they have occupied in the nation's economic system.

In "Security Speculation," Mr. Flynn undertakes to analyze the whole field of securities exchanges with particular reference to the work of the New York Stock Exchange. The book is divided into a number of sections: one, devoted to a description of the market-place; another, to the economic functions of speculation; and the third, to remedies. It is without doubt the most complete and painstaking study of the stock exchange that has ever been made. Although approaching the subject from the standpoint of the reformer, Mr. Flynn has marshaled the available evidence with considerable skill, and with a fair measure of restraint, and has brought forth a book which should prove of considerable interest to the layman as well as to the students of the problem, to the friends as well as to the enemies of the securities exchanges.

Mr. Flynn defines security speculation as "an operation in which one buys or sells securities with the design to make a profit out of the changes in the market price of such securities,"[1] and he confines his efforts to an economic analysis of this type of speculation as opposed to speculation in commodities, etc. The author does not feel that security speculation is defensible as an economic institution, in part, because nothing is added to the wealth of the nation. He contrasts the economic functions of speculation with those of manufacturers and merchants and comes to the conclusion that the latter are much more important because they add value to the product. In this particular, Mr. Flynn's analysis seems to fall a little short of the complete story. Without question, our whole economic structure would collapse if there were no manufacturing and no distribution of goods and services. Yet, it should be clearly recognized that the work performed by many manufacturers and merchants is as economically indefensible (from a social point of view) as that of the security speculator. It is to be doubted whether the manufacturer who produces a shoddy or worthless article is of more importance to the social system than the stock trader. Superficially, of course, the one is engaged in productive efforts; the other, in a species of gambling. But the producer of quack medicines, or cosmetics, or some similar product whose sales are made possible through extensive and expensive advertising campaigns not only does not plan to benefit the public directly; he may not even benefit it indirectly. In the opinion of the reviewer, the stock speculator is no worse than the manufacturer or the distributor of harmful or ineffective drugs, except possibly that his activities may affect many more people adversely and perhaps ultimately be an important factor in national economic distress. If it is recognized clearly that the stock speculator and the manufacturer have in common a drive for profits, we would arrive at a much more accurate basis of distinction between worthwhile and worthless economic activities; we would divide them, not on the basis of whether they are "productive" or "unproductive," but

[1] P. 4.

rather on the basis of whether what they produce is in the best interests of society.

This, and a number of other distinctly minor things tend to detract slightly from the excellence of the work. In his discussion of the specialist, Mr. Flynn leaves the impression that the specialist is in a position to make tremendous amounts of money. Undoubtedly he would, if he only acted in the way Mr. Flynn says he should act. Unfortunately for the specialists, however, many of them have proved quite as fallible as the customers and, by guessing trends incorrectly, have lost considerable sums. Here and there, Mr. Flynn makes errors in fact which it is impossible to detail in a review of this sort. Thus, at page 63, he lists the taxes which are paid on stock purchases. The taxes are actually higher than those listed. However, the customer does not pay taxes on the purchase of securities if he buys them in round-lots. Moreover, even the man who trades in odd-lots does not pay the tax on purchases in certain few cases. On page 53, Mr. Flynn refers to the transfer taxes "and other expenses which brokers manage to invoke." No clue is given to what these other expenses are, but it may be said that the brokers almost invariably absorb the transfer taxes themselves and that "other expenses" are absent, except if reference is had to the interest charges.

In summary, it might be repeated that Mr. Flynn has done a very meritorious job. He has assembled a good deal of information, especially in the second part of the book, which is not easily available elsewhere. And while all people may not agree with the analysis of the remedies, none will dispute the carefulness or the thoroughness of the study.

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A TREATISE ON MORTGAGES. By William F. Walsh. Chicago: Callaghan and Co., 1934, pp. xlviii, 376.

By a wise and careful use of space, Professor Walsh has succeeded in a thorough restatement of the fundamentals of the modern law of mortgages within the confines of 357 pages. The author starts with the law of the gage of Glanvill and shows how the law of mortgages affected by the law of land both "at law" and "in equity," evolved into the modern "lien" and "title" theories. An examination of the cases cited by the author reveals a progressive attitude in the New York courts due to their refusal to be influenced by the technicalities between law and equity.[1] In fact, in the law of mortgages a real merger in that state was accomplished prior to the code.[2] And a present comparison of the fundamentals of the "lien" theory of New York and the so-called "title" theory of other states further proves that the distinction between the two should be eliminated.

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[1] The influence of Mansfield upon the early New York judiciary may have been a factor. See Lloyed, *Mortgages—The Genesis of the Lien Theory,* 32 YALE L. J. 233.

[2] P. 28 *et seq.*