

1947

Book Review (reviewing Randolph E. Paul, Taxation for Prosperity (1947))

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Recommended Citation

Walter J. Blum, Book Review (reviewing Randolph E. Paul, Taxation for Prosperity (1947)), 14 University of Chicago Law Review 730 (1947).

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have all started with the explicit or implicit intention to increase the range of the international judicial function for the purpose of making it a substitute for the diplomatic or military settlement of international disputes. To that end they have made suggestions for the composition of international arbitration courts, the selection of judges, the elimination or modification of restrictive reservations, and the assimilation of the procedure of international tribunals to the one traditional in domestic courts. Professor Carlston, on the other hand, pursues a different approach. He appears mainly in the role of counselor to a party dissatisfied with the award of an arbitration court who wants to know on what grounds he can attack the procedure of the court. It is from this point of view that he deals with the problem of minimum procedural standards, lack and excess of jurisdiction, the doctrine of essential error, the problem of nullity, and the opportunities for rehearing and appeal.

The book deals, therefore, mainly, not with the process of international arbitration in general, but rather with the pathology of that process. If this was its purpose, it has fulfilled it very well. The book shows a high degree of professional competence and wise judgment based in the main upon the decisions of international courts. As a study of the legal remedies against procedurally faulty arbitration awards, this book will certainly take its place beside the most important publications dealing with the different aspects of international arbitration.

HANS J. MORGENTHAU*

Taxation for Prosperity. By Randolph E. Paul. New York: Bobbs-Merrill, 1947. Pp. 448. \$4.00.

Taxation for Prosperity presents Mr. Paul's perspective of federal taxation. The dimensions of the perspective are large. In time the perspective runs from 1893 to an undated future. Its frames of reference include the historical, the economic, and the political. Its focus ranges from details of currently controversial tax matters to general principles of sound taxation. In short, the perspective seems to touch on almost everything in federal taxation which Mr. Paul believes to be important or of wide interest.

The first of the three parts (books) into which the volume is divided is a view of federal taxation in "retrospect." Mr. Paul traces the major developments in federal taxation from the income tax legislation declared unconstitutional in the *Pollock* case¹ through the Revenue Act of 1945. This is done in a lively manner. Tax proposals and legislation are set in their economic and political surroundings. Controversy over issues is pointed up by remarking the positions taken by leading spokesmen and politically influential groups. The over-all effect is a presentation of tax history as a product of personalities, interests, and the times.

The view backwards is faithful to nature in its basic proportions. More distant occurrences are treated in far less detail than nearer ones. This tapering is perhaps warranted by the comparatively indirect bearing which the older events have on our existing tax structure; it is understandable in the light of Mr. Paul's special relationship to the development of that structure. Nevertheless, the great emphasis upon more recent tax history tends to overwhelm some of the earlier phases. But despite such unbalance the review of taxation in retrospect is interesting and refreshing.

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¹ *Pollock v. Farmers' Loan and Trust Co.*, 157 U.S. 429 (1895).

Part II, which occupies only one-eighth of the volume, discusses what Mr. Paul has generically labelled "problems of future tax policy." The central theme is stated unequivocally: "questions of tax policy go deeper than revenue considerations alone."² Since "every tax is, in some measure, regulatory,"³ the "cardinal issue in tax discussions is not whether taxes will have an economic effect, but what the effect will be, and what will its cost be in other values."⁴ It follows that to make intelligent decisions in taxation we "must first determine our social and economic objectives, and then decide which taxes will lead us to our goals."⁵ Mr. Paul immediately qualifies this precept with a reminder that the area of possible determinations is not unlimited. Patently we "are confronted with a set of hard conditions"⁶ upon which future tax policy must be predicated.

The analysis of these hard conditions does not make easy reading. There are separate short discourses on the budget, the national income, controlling our economic future (particularly employment levels), managing the national debt, and the consequences of idle savings. What their relationship is intended to be is not adequately indicated. The first two discourses are clearly marked as dealing with a pair of hard conditions—namely, the foreseeable high level of governmental expenditures in the future and the need for maintaining "a national income consistent with maximum production and maximum employment." The remaining material, on the other hand, may be read either as describing additional hard conditions or as elaborating on aspects of maintaining a high national income. The absence of sharp outlines is especially disconcerting here because the subjects themselves seem in part to overlap and in part to be disjointed.

The discourses deal with some of the most perplexing economic problems facing our society. In rapid order Mr. Paul considers the implications of unbalanced and balanced federal budgets; the measurement of national income; the ability of experts "to make accurate forecasts a year in advance as to how individuals and businesses will spend their money, and how many people will be employed";⁷ the significance and ramifications of the national debt; and the consequences and modes of coping with inadequate spending accompanied by idle savings. The discourses serve to indicate that these important problems might be intimately associated with tax policies. In some respects, however, they seem designed to go beyond this role. To the extent that this is so, they neither enhance the structure of the book nor constitute satisfying digressions. By glossing over controversial issues they tend to give the impression that the solution of our perplexing economic problems might be simple after all.

In dealing with problems of future tax policy Mr. Paul soft-pedals one facet which others have emphasized. He expressly recognizes that taxation can be used to redistribute wealth or income. The redistribution function seemingly concerns him only in connection with mechanisms for reducing the idle savings resulting from "undue" concentration of wealth.⁸ Nowhere does he discuss the basic question whether redistribution through taxation is politically or socially desirable in a democratic, private enterprise society. This omission is rather surprising inasmuch as Mr. Paul very likely would agree that *all* taxes *do* redistribute wealth or income—whether or not we so intend.

² P. 201.

³ P. 215.

⁴ P. 216.

⁵ P. 217.

⁶ P. 220.

⁷ P. 233.

⁸ P. 414.

The third part of the volume is an aggregation of Mr. Paul's own suggestions as to "a federal tax system for the future." There is advance notice of how drastic the changes are to be. At the outset of Part II a battle-cry is sounded: "If our tax system is to serve the needs of a world very different from the one in which it came into being, isolated improvements will not suffice. What we need is a complete and uninhibited modernization done with a spirit that is brave and minds that are bold."⁹ But the rhetoric should not mislead. The battle strategy itself is disclosed a chapter later: "There is a sense in which discussions of our future tax structure will deal more with the shadow than the substance. In this sense there will be a reorganization of the tax structure, but not a tax revolution. . . . It is unlikely that we shall discard any of our existing systems."¹⁰ In brief, Mr. Paul's program is to be pragmatic—one that stands a good chance of being adopted in the near future.

The components of the program are numerous, varied, and familiar. They are presented in inventory fashion and no organizing principle is perceptible. Several premises for sound taxation underlie many of the suggestions. Repeatedly it is asserted, for example, that unwarranted discrimination is highly undesirable in taxation and that tax incentives or concessions might endanger the soundness of the tax structure. It is these canons which Mr. Paul uses to argue against allowing percentage depletion, exemption of state and municipal securities, and favored treatment of community property under the income tax. The arguments ought to be persuasive, though they failed to convince Congress in 1942.

Not all of the stands taken by Mr. Paul on future tax policy are unambiguous or so easily defensible on widely accepted premises. He is highly critical of excise taxes, except as curbs on inflation, largely because of their regressive character. Yet he counsels merely that "in the future excise taxes should be handled with more care than has been given in the past to this type of taxation."¹¹ Concerning the taxation of capital gains, he notes that the preferential rate "seriously interferes with the progressiveness of the income tax."¹² Even so, he carefully avoids advocating any change; we are only cautioned that "the question of risk-taking is relevant."¹³ The corporation income tax is dealt with in greater length and detail than the other topics on the agenda for future tax policy. Mr. Paul believes that it should be retained for corporations which are "economic entities distinct from their stockholders" (and some favorable treatment given distributed income).¹⁴ What tempts comment here is not so much the belief as the ultimate justification assigned for it: "A corporation tax is justified by the economic advantages which these [distinct economic entities] corporations enjoy and by revenue considerations which dictate that no potential source of revenue should be left untapped."¹⁵ This "revenue wanted" argument has a great potential. It could be employed to support almost any kind of tax. In the light of Mr. Paul's creed that "questions of tax policy go deeper than revenue considerations alone,"¹⁶ his use of it in defending the corporation income tax is puzzling. The argument would be in hostile territory elsewhere in the volume. It might even be detracting in some spots, as, for instance, where Mr. Paul vigorously contends that "on grounds of equity and sound economic policy our postwar tax structure should not include a Federal sales tax."¹⁷

Though its perspective is broad, *Taxation for Prosperity* submits our federal tax

⁹ Pp. 199-200.

¹¹ P. 260.

¹³ P. 276.

¹⁵ *Ibid.*

¹⁰ P. 206.

¹² P. 275.

¹⁴ P. 373.

¹⁶ P. 201.

¹⁷ P. 391.

system to nothing more strenuous than a once-over-lightly. The style in which it is written is in keeping with this role. The wide use of staccato sentences, interesting asides, and snappy quotations prevent it from acquiring the ponderousness to which tax talk is susceptible. The book has more of a popular than an academic type of composition. This raises the dilemma which is in the background throughout. A popularized treatment of federal taxation is not likely to satisfy those who have been initiated into the intricacies of the subject. On the other hand, streamlining is probably not enough to make the subject attractive to those not already fairly well acquainted with it.

WALTER J. BLUM*

There Is No Mystery about Patents. By William R. Ballard. New York: J. M. Barrett, 1946. Pp. xv, 120. \$2.00.

This pocket-size treatise on patents owes its existence to a patent lawyer's belief that a concerted effort is being made by protagonists of "un-American theories" to undermine the patent system. Such theories could best be combated, it seemed, by presenting the fundamentals of the patent laws in language understandable to the layman. Hence this volume, which in large part is devoted to an attempt to show that various proposed substantive changes in the patent system are unnecessary and to suggest that the advocates of such changes have ulterior motives. However, Mr. Ballard's six-page postscript, which purports to deal with the administrative and procedural aspects of the patent problem, discusses the faults of the patent system in language not appreciably different from that used by those whom he charges with resorting to any pretext to discredit the patent system.

Mr. Ballard's position with respect to substantive changes in the patent system may be summarized as follows:

1. The patent system has admirably served its purpose of promoting the progress of science and the useful arts.¹ Far from being outmoded, it has stimulated a steady stream of inventions. It is true that a great proportion of inventions in recent years has come from the large research laboratories, but is this cause for concern? We must beware of a "frothy monopolifobia" which might cause us to overlook the benefits of laboratory research.
2. Conflict between the patent laws and the antitrust laws is nonexistent.² The impression of

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¹ An opposite view appears in the testimony of Hon. William C. Clark, United States District Judge for the District of New Jersey, in Hearings on H.R. 4523 before the House Committee on Patents, 74th Cong. 1st Sess., Part I, at 1074-75 (1936). "In my 10 years in the consideration of patent causes, it has been impossible not to become cognizant of the very serious evils of our patent system as it is now operating. . . . By definition almost the patent system is intended to benefit three classes of individuals, the inventor, the producer of the invention, and the consumer or user of the patented article. It is my emphatic opinion that today it operates to the very great injury of all three of the beneficiaries intended by the framers of our Constitution when they included the promotion of science and the useful arts among the Federal functions. In fact, as I view it, the only persons helped by the patent law are the attorneys at present made necessary by those laws. . . . In my own experience I have had only one case where the inventor appeared to have any interest whatever in the outcome of the proceedings."

² But in *United States v. National Lead Co.*, 63 F. Supp. 513, 528 (N.Y., 1945), Judge Rifkind found otherwise. The court found that National Lead had organized a patent cartel in 1920, and in 1933 invited du Pont to join. "The reasons assigned by du Pont for its refusal