

which would seem in conflict with the point made elsewhere that war and civil disturbance are highly dysgenic. One has, in fact, the sense that Henry Regnery made a vast error, including in this volume a chapter from an entirely different book. We are returned to our senses and to our confidence in modern day book manufacturing when we recall that, on both sides of the fence, scientific evidence respecting race is largely a weapon in a polemical war between the liberal and the racist, and the reader just happens to be in the way when the opposition runs out of arrows and starts flinging mud.

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wise rely. See note 25 *supra* and accompanying text. Dart argues that Australopithecine remains in South Africa are accompanied by evidence of tools made of bone, teeth and horn—a cultural level he describes as “osteodontokeratic,” *id.* at 901—and from this infers that Africa is the cradle of mankind. Coon rejects the evidence of tool-making capacity and says, in any case, that the “step from *Australopithecus* to *Homo* was taken, not on African soil, but in the *Meganthropus-Pithecantropus* sequence” in southeast Asia. COON, *op. cit. supra* note 25, at 656.

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Tax Fraud and Evasion. By HARRY GRAHAM BALTER. New York: Ronald Press, 3rd ed. 1963. Pp. 760. \$25.00.

An eminent person (J. K. Galbraith) has recently written that reviewers should, as Senators should, disclose any conflicts of interest; that he was reviewing a book by a person he knew as a friend; and that it was a worthwhile book. I wish to adopt the same introduction.

Let us get to the main point at once and put aside standard criticisms of small detail (except this reviewer's annoyance at the absence of ordinary page numbers and the use of separate paging for each chapter). Mr. Balter has performed a useful service in taking time from practice to give us a new edition of his well-known work. It is more than the usual new edition. So much has happened in the past ten years that this is substantially a new book.

It is no slur on the author to dispute the publisher's claim that this is a “definitive work”; for this is impossible, absent weekly supplements, in such a changeable field. A striking proof is the Supreme Court decision in *Reisman v. Caplin*,¹ handed down January 20, 1964, which clarified and affirmed on numerous points a taxpayer's procedural rights when claiming any privilege to withhold testimony or records. The case is reminiscent of *Marbury v. Madison*. Technically, the decision was against

¹ 375 U.S. 430 (1964).

petitioner, a taxpayer's lawyer who sought an injunction against the summoning of accountants assisting the lawyer. But the reasons given represent a broad victory for the petitioner and for taxpayers generally: There is an adequate remedy at law under the statutory provisions. Just how and why these provisions are adequate was then explained; enlarging taxpayer rights beyond what some lower courts had said, beyond what many lawyers had dared to hope, and thus beyond what Balter had related.

For those familiar with the field treated by the author nothing more need be said. They know the author; they know the sort of problems he covers; and they know they want the book. For other lawyers also—and perhaps especially—Balter's book would be handy to have against the day when a client finds himself in a tax investigation that is more than a "routine audit." It is to this larger group of nonspecialists that the balance of this review is directed.

Of the hundred billion dollars of federal tax receipts, the great bulk comes from individual and corporate income taxes. These taxes, as we know all too painfully, are assessed in the first instance by taxpayers themselves in their returns. And the system works remarkably well in this country. Something over ninety-five percent of income tax revenues are shown on timely returns. From the standpoint of any Secretary of the Treasury, or Commissioner of Internal Revenue, this behavior pattern is a national asset that one must ever strive to preserve and, if possible, improve.

Of what is this national asset composed? The ingredients are easy to suggest: law-abiding habits, helplessness (where withholding is involved) and fear. What proportion is fear? We can never know precisely. But surely we must assume that the criminal sanctions play a vital role, especially so long as the Internal Revenue Service lacks manpower to audit more than a small fraction of all returns.

The number of individuals actually indicted for income tax offenses is surprisingly small; only recently has it reached as many as one thousand per year. Further, while most of these defendants plead guilty (or *nolo*) or are convicted, no more than half of them are sent to jail. (On this point one finds no ready source of statistics, but the reviewer is confident of the approximation.) Thus the criminal tax sanctions come close to Bentham's ideal of maximum terror and minimum injury.

Balter wastes little time on such speculations and statistics. His main purpose is to aid the lawyer who has a client in pain. What are the types of pain and what can the lawyer do to help? Some of the answers, set down here in primer form, are aimed to tell the nonspecialist what he can find more fully in Balter's book.

Such a primer starts by noting that the criminal sanctions are potentially very severe. The major provision, Internal Revenue Code section 7201, applies to anyone "who willfully attempts in any manner to evade or defeat any tax." This is a felony, punishable by imprisonment up to five years and fines up to ten thousand dollars. These possibilities are commonly multiplied, since each taxable year is a separate offense. (In practice, the total sentence is usually less than four years.) Willful failure to file a return is a misdemeanor, under section 7203, permitting imprisonment up to one year and fines up to ten thousand dollars. There are other criminal provisions to note, such as the general false statement provision found in section 1001 of the Criminal Code.

There may also be fearsome side-effects from a conviction. A license to practice a profession can be lost or suspended. Aliens may be deported, though this possibility has been limited by the 1964 Supreme Court decision in *Costello v. I.N.S.*² Deduction of the legal expenses of an unsuccessful defense is denied. (So say the lower courts to date. *Contra*: all commentators, including this reviewer.)

Further, all defendants, whether successful or not, then join a larger group against whom money penalties as well as tax deficiencies are asserted. The major penalty is the so-called fifty percent fraud penalty under Code section 6653(b). This can be quite capricious. The base for the penalty is not just the amount of a fraudulent understatement: If *any part* of an understatement is found fraudulent, the base is the entire understatement no matter how innocent most of it may be. Among the numerous other penalties, the broadest in application is the twenty-five percent penalty (Code section 6651) for willful failure to file returns. Another important consequence of fraud on the civil side is found in the statute of limitations (Code section 6501). If a year's return is found fraudulent (or no return is filed) there is *no* statute of limitations barring the government from asserting tax deficiencies (and penalties) for such year as far back as 1913. This is curious indeed when one notes that there is a six year statute on tax prosecutions and some limitation on virtually all other legal proceedings except murder.

Balter's book tells us of all these things and many more. It is most notably in the fraud area that one finds extensive use of indirect methods of proof based on net worth and expenditures, bank deposits, price markups, etc. So too as to jeopardy assessments and liens.

The procedural road from investigation to indictment is long and tortuous. It usually takes years; and the nerve strain is often the greatest fraud penalty of all. Balter tells us of the government procedures and

² 376 U.S. 120 (1964).

personnel involved. The investigation of possible prosecution cases is conducted by "Special Agents" in the so-called "Intelligence" arm of the Internal Revenue Service. How to deal with them can present numerous questions of statutory and constitutional law—some special to tax proceedings and some much broader, such as attorney-client privilege and rights under the fourth and fifth amendments. Further, should one assert such rights, as opposed to showing "cooperation"? And when should one make a "voluntary disclosure," despite the fact that the Treasury withdrew its formal voluntary disclosure policy a decade ago?

Finally, one notes the longstanding administrative procedures for review of prosecution recommendations—with conference opportunities for the taxpayer at every step—by the Special Agent's office, by Regional Counsel of the Internal Revenue Service, by the Tax Division of the Department of Justice and often by the U.S. Attorney. This calls for pause. Why should there be such special and elaborate procedures for government deliberation?

An answer comes quickly: There is something special about the crime itself. Surely there is no other crime as to which the Government deliberately leads so many citizens to the brink of temptation, and every year at that. Surely also, there must be a special problem here for the administrators to distinguish tax felons from those who are merely human—from those who are like you, or the administrators or perhaps even the reviewer.

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