Notre Dame Law Review

Volume 45 | Issue 1 Article 8

6-1-1971

Book Reviews

Thomas R. Swartz

Merle F. Wilberding

BOOK REVIEWS

STATE AND LOCAL TAX PROBLEMS. Edited by Harry L. Johnson. Knoxville: The University of Tennessee Press. 1969. Pp. xiii, 190. $7.50.

Much has been written about the problems of state and local government finance; but, until recently, few persons of influence have taken these problems seriously. Professor Johnson's book adds to the growing arsenal of professional literature which supports fundamental reforms of state and local finance. Practitioners in this field will welcome his contribution.

State and Local Tax Problems is a compilation of eleven essays honoring Professor Charles P. White, who is retiring after a distinguished career at the University of Tennessee. Although the title of the book implies an ambitious undertaking, the contents are actually limited in scope. Eight of the eleven papers examine the interrelated problems of the property tax and the need for tax sharing. The remaining three papers appear as an appendage entitled "Special Financial Problems of State and Local Government." The issues examined in this section are: state debt management, the appraisal of public utility property, and the use of local service charges.

It is evident that Professor Johnson experienced considerable difficulty in imparting continuity to his book. In addition to the diversity of the subjects treated by the various authors, there is a marked variance in the degree of sophistication they exhibit. Several essays, such as Arthur Lynn's "Reform of Property Tax Systems: *Substance or Semantics*" or C. H. Donovan's "Recent Developments in Property Taxation in Florida: A Case Study," provide a rather shallow summary of the current pitfalls of the property tax and propose some possible reforms. On the other hand, James Martin's "New Dimensions of the Capitalization of Earnings in Appraising Public Utility Property" and Milton Kafoglis' "Local Service Charges: *Theory and Practice*" are technical in nature and apply to two specific problems confronting local governments. It is little wonder that Professor Johnson was unable to achieve the desired continuity.

The essence of this book is captured in Dick Netzer's essay entitled: "The Property Tax Case for Federal Tax Sharing." He clearly delineates the principal issues raised by a majority of the other contributors. His conclusion, also shared by the majority, is that "federal tax sharing (general-purpose federal grants) is a sound and necessary innovation in American fiscal federalism. . . . [It] affords one of the few really effective means of de-emphasizing the property tax over the remainder of this century."[1]

In addition to this general recommendation, three innovative property tax reforms are suggested or implied by the authors. The first, proposed by Arthur Becker, would create a property tax withholding system employing the administrative machinery of the internal revenue system. If taxpayer inconvenience is considered a major deficiency of the property tax, there is a more desirable method of collecting tax receipts than the Becker recommendation. Professor Johnson suggests that the existing escrow system provides an automatic with-

1 H. JOHNSON, STATE AND LOCAL TAX PROBLEMS 102 (1969).

holding system for mortgaged property and that withholding for nonmortgaged property could be provided by a prorated charge attached to utility bills. Johnson's proposal would not only be more efficient, but would have the added advantage of making more visible the impact of the property tax on rental property.

A more viable recommendation is offered by John Shannon. He would encourage the use of income tax credits for sales and property taxes paid. The allowance of these credits against state or federal income tax liability would dramatically reduce the regressive nature of the sales and property tax.

Currently four states allow credits for sales taxes paid. In Indiana, for example, each member of the household is allowed an $8 sales tax credit. Given the two percent general sales tax rate in the state, this is equivalent to $400 of tax-free expenditure by each family member. As a result of this tax device, the traditionally regressive general sales tax is converted into a proportional tax levy. If a progressive sales tax were sought, the credit could be designed to decrease as taxable income increases. The credit could be set at $25 per family member where taxable family income is zero or very low, gradually decrease as taxable income increases, and eventually vanish at some cut-off point, perhaps $25,000 of taxable annual income.

One state, Wisconsin, has employed the income tax credit to offset the regressiveness of the property tax. In that state, property tax payments in excess of five percent of taxable income can be credited against state income tax liability. Where there is no income tax liability, the amount of the credit is refunded to the taxpayer. As in the case of the tax credit for general sales taxes paid, this device could be employed to provide a progressive tax burden. That is, an income tax credit schedule, in dollar terms rather than percentage terms, could be established which would decrease as taxable income increases. This would be granted each family unit regardless of whether the family owned property, on the assumption that the burden of the property tax on rental property is passed forward.

One innovative suggestion is an outgrowth of C. H. Donovan's discussion of the property tax reform undertaken in Florida. Professor Donovan notes that "A 1965 law gives the owner of property who feels his assessment is too high the right to demand that the property be put up for sale by the assessor."[2] Donovan notes that few have challenged the assessor's valuation on these grounds. Indeed, the consequences of a possible sale would be unduly harsh to many property owners. But this does introduce the possibility of "self-assessment" of property holdings. Proposals have been made to place all residential property on a self-assessment basis. These assessments would be a matter of public record; and if a prospective buyer felt that a particular parcel were underassessed by the owner, he would be free to purchase it at the assessed value. This plan, like the 1965 Florida law, is too harsh. However, it could be tempered without losing the incentives for accurate assessment. Individual property owners would assess their own property annually—with or without the advice of professional assessors—and this valuation would then become part of the public record. If a prospective buyer wished to purchase such property at the assessed value, the owner could

2 *Id.* at 54.

demand that a professional assessment be made. If the professional assessment were above the self-assessment, the owner would not be forced to sell his property. Instead, he would be both liable for back taxes owed on his property and subject to a heavy fine. For those properties which may not be highly marketable, the county assessor could randomly assess perhaps five percent of the properties annually, much as the Internal Revenue Service annually audits a percentage of all federal income tax returns.

State and Local Tax Problems has distinct value, but its value could have been enhanced by tighter editing. For example, the reader is three-fourths of the way through the book when he is brought up short by Elsie Watters' conclusion that state and local governments will have revenue substantially exceeding their expenses by 1975. The implicit assumption of the preceding articles is that there is fiscal inadequacy in these areas. Attention should have been drawn in her article to the fact that the immense problems of local government are concealed by aggregating state and local finance. Many readers will also be dismayed by the blatant political overtones of Professor Buchanan's introductory essay. They may balk at statements such as: "Questions of constitutionality are hardly worth discussing at any rate, since the current Supreme Court makes few gestures to constitutional legitimacy."[3]

State and Local Tax Problems has the characteristic weaknesses of a *festschrift* (unevenness, lack of continuity), but it does offer insights into problems which demand attention.

*Thomas R. Swartz**

MERGERS, MANAGERS AND THE ECONOMY. By Samuel R. Reid. New York: McGraw-Hill Book Co. 1968. Pp. xix, 302. $8.95.

Not quite as exciting as having lunch at Scarsdale Fats,[1] *Mergers, Managers and the Economy* is nevertheless an interesting and scholarly work containing a survey of the lore of corporate combinations and covering the author's empirical research into the economic consequences of mergers during the past eighty years.

The text is divided into three parts, treating the history, corporate economics, and social impact of mergers.

Part one divides the history of mergers into three cyclical "merger waves"—periods of marked merger activity which wax and wane with time. In order to describe the distinctive characteristics of each wave, Professor Reid begins by classifying mergers (1) according to the form of their consummation—either

3 *Id.* at 15.

* Associate Chairman, Department of Economics, University of Notre Dame; Ph.D., Indiana University, 1965; M.A., Ohio University, 1962; B.A., LaSalle College, 1960.

1 'A. SMITH,' THE MONEY GAME 223 (1967). This humorous episode recounts the experience of 'Adam Smith' taking part in over-the-(lunch)-counter discussions of current Wall Street trading activity.

2 S. REID, MERGERS, MANAGERS AND THE ECONOMY 22 (1968).

3 "A *horizontal merger* is considered one involving firms which are engaged principally in the same industry." *Id.* at 22-23 (footnote omitted).

4 "A *vertical merger* is consummated either to provide facilities to supply goods or services that were formerly purchased . . . or to provide facilities to process or distribute goods at different levels in the distribution process . . . ." *Id.* at 23.

acquisition or consolidation, and (2) according to type[2]—either horizontal,[3] vertical,[4] circular,[5] or conglomerate.[6] The first, or "Turn-of-the-Century" wave, Reid sees as characterized by horizontal consolidations.[7] Mergers during the second, or "Late-1920's" wave, tended to be vertical or circular rather than horizontal and usually took the form of acquisitions rather than consolidations.[8] Though overall merger activity at the crest of this second wave did not rival the intensity of the first, several mergers during this period did result in the formation of that industrial leviathan known as "Number One" on the Fortune 500 chart[9] —General Motors.[10] The third wave, according to Reid, "began in 1955 and has continued on a relatively high plateau since then, and the end is not in sight."[11] Reid characterizes this current frenzy of acquisition-type mergers as more circular and conglomerate oriented than either of the two previous waves,[12] citing as examples those wizards of diversification, Textron, FMC, Litton Industries, Gulf & Western, and W. R. Grace & Co.[13]

The many factors which influence the tempo of merger activity blend into what Reid calls a "Merger Mosaic." This "Merger Mosaic" represents an attempt to measure the composite merger environment, to isolate and then to synthesize the legal, economic, political, and behavioral elements that cause the merger tide to ebb and flow. "Major waves of merger activity," Reid explains,

> develop when the economic, legal, and political environment is conducive to the consummation of mergers. A period of relative prosperity, accompanied by a buoyant securities market, constitutes a favorable economic environment. A favorable legal environment results from vaguely written laws and a confused interpretation and lax enforcement policy of them. The necessary political environment is characterized by a permissive attitude by the administration (the executive branch) and a lack of concern by the legislative branch . . . . When the environmental factors are favorable the promoters of merger activity are better able to achieve their primary goal of personal gain because during such relatively prosperous periods, mergers are comparatively easy to consummate; the fear of "image damage," which could result from legal action, is reduced; . . . and there is a general lack of public concern.[14]

5 "A *circular merger* involves product extension; that is, it provides a firm with non-similar products or services that utilize the same distribution channels." *Id.* (footnote omitted).

6 "A *conglomerate merger* is the fusion of firms with no apparent similarities in producing or marketing activities . . . ." *Id.* In *The Money Game,* Sydney's conglomerate consisted of Space Age Materials (maker of wide-stretch, flexi-boost bras); Population Explosion, Inc. (a diaper service); and Lexington Computer Services (an adding machine reconditioning service that happened to be located on Lexington Avenue).

7 *Id.* at 39.

8 *Id.* at 56-57.

9 FORTUNE, May 15, 1969, at 168.

10 "Firms such as Chevrolet, Fisher Body Corporation, Buick Motor Company, Olds Motor Works, Oakland Motor Car Company, Cadillac Automobile Company, and numerous other car and truck manufacturers and parts suppliers were acquired by General Motors in this period." S. REID, *supra* note 2, at 55.

11 *Id.* at 73.

12 *Id.* at 74.

13 *Id.* at 77. The Federal Trade Commission has started proceedings aimed at forcing Litton, already the owner of Royal Typewriter, to divest itself of its interests in two West German typewriter makers. TIME, April 18, 1969, at 91. Of course, the big target in the government's conglomerate war is Ling-Temco-Vought, which has been challenged to a legal battle by the Justice Department on the question of whether LTV ought to divest itself of its controlling interest in Jones & Laughlin Steel. Wall Street Journal, April 15, 1969, at 16, col. 1.

14 S. REID, *supra* note 2, at 127-28.

Part two of *Mergers, Managers and the Economy* includes extensive empirical data which Professor Reid uses to test his various theories. He explores, for example, the conflict of interests between stockholders, who are concededly concerned with profits and dividends, and corporate managers, who are allegedly interested in power and control.[15] Reid posits, then tests, the hypothesis that "*[t]he more actively that large, publicly-held firms merge, the more they tend to be oriented to furthering managers' interests rather than stockholders' interests.*"[16] This hypothesis is subjected to six equations, three containing variables to represent managerial interest and three containing stockholders' interest variables. The structured data from 478 large industrial firms are then substituted into the equations and the results measured. Professor Reid's results confirmed his hypothesis and suggested that

> the growing transfer of control from stockholders to managers may well be contributing to changing managerial behavior and performance, particularly regarding merging firms. In their quest to gain rapid control over capacity in their basic industry or in other industries, the managers of acquiring firms may well be unduly extravagant in their expenditures for the additional increments of capacity. . . . Since stockholders (in general) are more interested in profits than management groups (in general), it may well be that stockholders would make better investment decisions if given the opportunity. Assuming that decisions leading to a socially suboptimal allocation of resources are not in the best interests of stockholders, mergers which are unprofitable for stockholders will result in a net decrease in overall social welfare. The results of this study indicate that a number of firms have objective functions . . . which result in a socially suboptimal allocation of capital by favoring the acquisition of existing productive capacity, rather than an expansion of the capital base through internal growth.[17] (Footnote omitted.)

Not surprisingly, Professor Reid singles out conglomerates — or "multimarket industries" as they now prefer to be called[18] — for special treatment.[19] Interest in the legal aspects of conglomerates is, of course, neither new[20] nor declining.[21] The economic aspects of conglomeration have also received considerable scholarly attention, yet Reid's contribution to the literature of these special mergers is both fascinating and significant. His data tend to indicate that conglomerates have had little success in achieving economies of scale[22] and that their

15 *Id.* at 147.
16 *Id.* at 154.
17 *Id.* at 168-9.
18 " 'The conglomerate tag is like a kiss of death these days . . . .' " Wall Street Journal, April 10, 1969, at 1, col. 4. Instead, a company prefers to be called " 'a diversified multimarket company.' " *Id.*
19 S. REID, *supra* note 2, at 177-205. Professor Reid has since concentrated on this area in a comprehensive article. Reid, *The Conglomerate Merger: A Special Case,* 2 ANTITRUST L. & ECON. REV. 141 (1968).
20 *See, e.g.,* FTC v. Procter & Gamble Co., 386 U.S. 568 (1967); FTC v. Consolidated Foods, 380 U.S. 592 (1965). The former case actually involved a "product extension," or "circular," merger. Reid, *The Conglomerate Merger: A Special Case,* 2 ANTITRUST L. & ECON. REV. 141, 143 n.8.
21 The present administration has declared an antitrust war on conglomerate mergers. Wall Street Journal, March 28, 1969, at 5, col. 2.
22 S. REID, *supra* note 2, at 179-80. Notwithstanding Professor Reid's findings, Professor Neil H. Jacoby believes that there is no evidence that the current conglomerate trend is an economic or social hazard. Washington Post, April 15, 1969, at C-6, col. 1.

growth patterns show "consistently larger gain in sales and assets than in the market price of [their] common stock . . . ."[23] — strongly suggesting that these mergers too are management oriented rather than stockholder oriented.

Although *Mergers, Managers and the Economy* is scholarly, comprehensive, and heavily footnoted, it does not abandon wit to emphasize a point. For example, conglomerate management's unconcern for the interests of stockholders is artfully underscored by the following colloquy quoted from the transcript of a mythical Senate subcommittee hearing:

> *Committee Chairman:* Our first witness today is Mr. Roger M. Plow, the chairman of RSK Corporation . . . .
>
> . . . .
>
> *Chairman:* Well, Mr. Plow, can you briefly give us your analysis of diversification?
>
> *Mr. Plow:* It's great!
>
> *Chairman:* How do your stockholders feel about diversification and conglomeration?
>
> *Mr. Plow:* Stockholders? Pardon me, Senator, but . . .
>
> *Chairman:* Yes, you know — have all these mergers helped your earnings per share?
>
> *Mr. Plow:* Earnings per share — well, Senator, that's old-fashioned. Nowadays — well, we don't discuss that very much anymore.
>
> *Chairman:* Well just for old times' sake, tell us about your earnings record for the past few years.
>
> *Mr. Plow:* I'm sorry, Senator, I don't remember and I don't have that data.
>
> *Chairman:* What about your annual report?
>
> *Mr. Plow:* Annual report. Oh yes — well, Senator, we used to publish one; however, we decided to send out a catalog instead. It has a lot of good pictures in it, and it gives our stockholders a chance to use their stamps.
>
> *Chairman:* Stamps? I don't understand.
>
> *Mr. Plow:* In order to conserve cash we decided to give the stockholders stamp dividends instead of money. You see, our stamp division . . .
>
> *Chairman:* What do your stockholders think of this?
>
> *Mr. Plow:* Well, if they don't like it, they can sell their stock — actually those people are better off with stamps than money anyway.
>
> *Chairman:* What do you mean?
>
> *Mr. Plow:* We make a lot of products, and they can redeem their stamps for everything we make, like rail cars, clothes, food, drugs, pool tables, furthburners, guns, butter, a college education, or retraining if they wish. Also, our sports division has tickets, and our airlines and vacation divisions are popular also.
>
> *Chairman:* You mean they can get guns *and* butter as well as all those other things?
>
> *Mr. Plow:* Yes, sir, if they have enough stamps.[24]

Part three of the book discusses the public policy implications of the trend toward corporate concentration. In order to preserve a competitive capitalistic system in the face of modern merger mania, the conclusion of *Mergers, Managers and the Economy* recommends:

23 S. Reid, *supra* note 2, at 202.
24 *Id.* at 77-80.

1. Encouraging "Corporate Celibacy" and discouraging acquisitions in order to promote internal growth of industry.[25]

2. Increased entrepreneurship through federal programs designed to aid the young in acquiring and investing capital.[26]

3. Increased corporate disclosure by requiring corporations to file deconsolidated financial statements.[27]

4. Stronger anti-trust laws, which might include anti-reciprocity laws and restrictions on interlocking directorates.[28]

*Merle F. Wilberding**

25 *Id.* at 271-72.
26 *Id.* at 272-73.
27 *Id.* at 276.
28 *Id.* at 277-78. The Congress is currently considering conglomerate-aimed legislation, including a possible "merger tax." Wall Street Journal, April 18, 1969, at 6, col. 1.

* Member of the Iowa Bar; B.A., St. Mary's College (Minn.), 1966; J.D., University of Notre Dame, 1969; Executive Editor, Volume 44 NOTRE DAME LAWYER.

BOOKS RECEIVED

ADJUSTING CASUALTY CLAIMS. By Arthur M. Illenberger. A guidebook on casualty adjusting designed for the everyday use of claims adjusters. West Nyack, New York: Parker. 1969. Pp. xii, 227. $8.95.

THE ADMISSIBILITY OF CRIMINAL EVIDENCE. By Richard J. Pease. A book designed for use by law enforcement officials. Santa Cruz: Davis Publishing Co. 1968. Pp. 82 (paperbound). (Price unreported.)

ALTERNATIVE APPROACHES TO CAPITAL GAINS TAXATION. By Martin David. The author examines preferential tax treatment as well as the various proposals for reform of the present system. Brookings Institution. 1968. Pp. xvi, 280. (Price unreported.)

CASEBOOK OF A CRIME PSYCHIATRIST. By James A. Brussel, M.D. The memoirs of the psychiatrist who helped solve the cases of the Boston Strangler and the Mad Bomber. New York: Grove Press. 1968. Pp. xii, 212. $5.95.

CONSTITUTIONALISM AND POLITICS: CONFLICT AND CONSENSUS. By C. Peter Magrath. A collection of readings and cases which explore various facets of the Constitution. It is an introductory book designed for use in college. Glenview: Scott, Foresman and Co. 1968. Pp. 200. $2.95 (paperbound).

CONSUMER CREDIT PROTECTION, TRUTH-IN-LENDING, UNIFORM CONSUMER CREDIT CODE, LAW, REGULATIONS, EXPLANATIONS. By Commerce Clearing House Staff. Chicago: Commerce Clearing House, Inc. 1969. Pp. 439 (paperbound). $7.00.

THE CRIME LABORATORY CASE STUDIES OF SCIENTIFIC CRIMINAL INVESTIGATION. By James W. Osterburg. A generously illustrated work showing actual scientific methodology in investigating crimes. Bloomington: Indiana University Press. 1968. Pp. xxii, 330. $12.00.

DEMOCRATIC REPRESENTATION REAPPORTIONMENT IN LAW AND POLITICS. By Robert G. Dixon, Professor of Law, George Washington University. The author seeks to lay the foundation for a reasoned dialogue on the principles of fair representation. New York: Oxford University Press. 1968. Pp. xviii, 654. $12.50.

DISOBEDIENCE AND DEMOCRACY, NINE FALLACIES ON LAW AND ORDER. By Howard Zinn. This is an attack on the recent book by Justice Fortas, *Concerning Dissent and Civil Disobedience*. The author claims that there are nine fallacies contained in Fortas's book. New York: Random House. 1968. Pp. 124. (Price unreported.)

THE ECONOMY OF THE CITIES. By Jane Jacobs. The author addresses herself to the question why cities grow and die. New York: Random House. 1969. Pp. 268. $5.95.

THE FBI IN OUR OPEN SOCIETY. By Harry & Bonado Overstreet. The authors explore the history of the FBI, how it operates, and the effect of extensive federal legislation in previously unregulated areas. New York: Norton. 1969. Pp. 400. $6.95.

THE FEDERAL JUDICIAL SYSTEM, READINGS IN PROCESS AND BEHAVIOR. By Thomas P. Jahnige & Sheldon Goldman. A behavioristic approach to the federal judiciary. The book is a series of readings on the federal courts by various authors. New York: Holt, Rinehart and Winston. 1968. Pp. x, 369. $4.95 (paperbound).

INTERNATIONAL LEGAL PROCESS, MATERIALS FOR AN INTRODUCTORY COURSE. By A. Chayers, T. Ehrlich, A. F. Lowenfeld. Boston: Little, Brown & Co. 1969. Pp. 1402 & 635 (two volumes & documents supplement). (Price unreported.)

THE LAW OF THE SEA, PROCEEDINGS OF THE THIRD ANNUAL CONFERENCE OF THE LAW OF THE SEA INSTITUTE. Edited by Lewis M. Alexander. Kingston: University of Rhode Island Press. 1968. Pp. 468 (paperbound). (Price unreported.)

THE LICENSING POWER IN NEW YORK CITY. By Milton M. Carrow. A monograph on the statutory and historical basis of the licensing power in New York. The author also considers the organization and procedures of the various licensing departments of the city. South Hackensack: Fred B. Rothman. 1968. Pp. 223. (Price unreported.)

MAKING MIRANDA WORK FOR YOU. By Robert Lansberry. Designed for use by law enforcement officials in interpreting the *Miranda* decision. Santa Cruz: Davis Publishing Co. 1968. Pp. 139 (paperbound). (Price unreported.)

THE PERSONAL EXEMPTIONS IN THE INCOME TAX. By Lawrence H. Seltzer. An analysis of the impact of personal exemptions on various segments of the taxpaying public. New York: National Bureau of Economic Research, Inc. 1968. Pp. xvi, 222. (Price unreported.)

THE QUALITY OF LIFE. By Charles P. Kindregan. Using brief examples from cases, the author explores five basic areas of legal control over human life. Milwaukee: Bruce Publishing. 1969. Pp. viii, 120. (Price unreported.)

THE TAX CLIMATE FOR PHILANTHROPY. By T. Willard Hunter. The author explores the current controversy concerning deductions for contributions to tax exempt organizations. The book considers possible consequences of removing these organizations from their privileged status. Washington: American College Public Relations Association. 1968. Pp. xxi, 207. (Price unreported.)

TAX FACTORS IN BUSINESS DECISIONS. By Dan Throop Smith. The author provides a full and clear analysis of the various provisions of estate, gift, and income tax laws and their effect on business decisions. Englewood Cliffs: Prentice-Hall, Inc. 1968. Pp. x, 310. $10.50.

TAX PROBLEMS OF NONPROFIT ORGANIZATIONS. Edited by George D. Webster. The book contains fourteen papers based on presentations at the Fourth Annual American University Conference on Federal Tax Problems of Non Profit Organizations. New York: The Journal of Taxation. Pp. vi, 265. (Price unreported.)

THE TEACHER STRIKE: NEW YORK 1968. By Martin Mayer. New York: Harper & Row. 1969. Pp. 124. $.95 (paperbound).

TENSION IN THE CITIES: THREE PROGRAMS FOR SURVIVAL. By James A. Bayton. Philadelphia: Chilton Book Co. 1969. Pp. xii, 267. $5.95.

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