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## Review of “Gift Taxation in the United States,” By C. Harriss

Ralph R. Neuhoff

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as military) by a clear authorization of sequestration, without, however, any abrogation of the old rule against confiscation. He sees the need, too, of further safeguards against abuse and injustice involving the individual whose property has been sequestered.

Professor Edwin Borchard, in his vigorous Introduction to this volume, recommends the revitalizing of the old rule through its embodiment in bilateral treaties. He strongly condemns the World War practice of the United States and sees an urgent necessity, if the world economic order is to continue, that definite assurances be given that private investments and property in an enemy country will be safe from public confiscation, or even sequestration with its manifold possibilities of abuse. He points out that states, without resorting to these extreme measures, have ample authority and means to prevent the use of these private alien properties within their borders in such a way as to aid the enemy. Dr. Borchard does not differ from the author in the objective to be sought but the two are some degrees apart on the question of the best means for achieving it.

The monograph is well planned, well written, well documented, objective, scholarly. It is a very timely study of a theme that is controversial. The thread of controversy runs from cover to cover and the end is not reached.

ARNOLD J. LIEN.†

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GIFT TAXATION IN THE UNITED STATES. By C. Lowell Harriss. Washington: American Council on Public Affairs. Pp. vi, 175. \$3.00 cloth, \$2.50 paper.

This is not a "law-book," but is a book which every lawyer should read now that taxes are omnipresent and inescapable. It is an intensely interesting, hard-bitten and complete analysis and commentary on gift taxation in the United States. The author shows his freedom from conceptualism by his utter disregard of the limits which a typical lawyer would regard as implicit in the title "Gift Taxation." In order to present the complete picture, the author goes into the fields of estate taxation, income tax, economics, politics and history, but with such a deft touch that the legitimacy of each excursion is instantly recognized and approved.

Whether one's approach is from the viewpoint of a citizen, statesman, legislator, taxpayer, or even one of those individuals who seeks (with greater or less success) to counsel taxpayers how they may pay *less* taxes, the book is valuable. The so-called "tax expert" (perish the name) will find in one short chapter, entitled "Minimizing Taxes," an encyclopaedic list of the devices used by taxpayers to control their tax liability, which will be a valuable check list for anyone. As before indicated this chapter is not limited to gift taxes but includes the income tax and the estate tax.

The basic viewpoint of the book is that of the public interest, yet the author has not hesitated to be perfectly explicit in describing exactly the particular devices, the employment of which by taxpayers is causing a large loss of revenue. The text is supplemented by copious citations of

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decisions, state and federal, all of which are apparently well chosen and which make the volume a useful working tool for a lawyer. The author is apparently perfectly candid in his appraisal of the legal feasibility of the various devices and does not let his opinion of their harmfulness from a public standpoint color his frank appraisal of their lawfulness. The book demonstrates that the author is a master of the subject of taxation not only in its theoretical but also in its practical aspects. He is especially fond of paradoxical situations, as for example, his reference to the fact that, after taking taxes into account, it may be in certain instances cheaper to give away property than to sell it.<sup>1</sup> The interrelation of estate, gift and income taxes is constantly borne in mind and especially the time factor.

All situations are realistically appraised and the fact that the evils of tax avoidance will be increased by the spread of information such as is contained in this book seems not to have had any deterring effect, evidently because the institution responsible for this book feels that the only way to cure an evil is to bring it out into the light of day even though the temporary effect is to "put ideas" into the heads of taxpayers, which this book very definitely does.

One theory which recurs throughout the book is that the gift is a much more facile instrument of evasion than the bequest or devise because the time, place, and nature of property given are so entirely in the taxpayer's control in the case of a gift as against a testamentary disposition.<sup>2</sup>

The author cautions explicitly that the present "field day" for trusts as instruments of tax avoidance may soon be over. He pays an indirect but well deserved compliment to the legal profession<sup>3</sup> when he points out that many lawyers and trust officers who are fully conversant with the possibility of tax avoidance by gifts, insurance, trusts, annuities, powers of appointment and other devices, consciously refrain from suggesting them to clients unless the client brings up the subject, whereas, certain uncouth fellows, calling themselves estate consultants, not being restrained by any considerations of public policy, actively solicit wealthy taxpayers to take steps to avoid taxes. (This characterization is the reviewer's and not the author's, the author being a perfect gentleman). In corroboration of this, probably every lawyer with an established clientele has known his clients to be approached by a so-called estate consultant (generally not even a member of the Bar) who manages by his brazen solicitation and suggestions to imply that the client's regular attorney is an ignoramus on tax matters, when in truth and in fact the regular attorney was just as well aware of the possibility of tax avoidance as was the so-called consultant, but deliberately refrained from promoting that kind of business.

Judgment may vary as to the rightness of the conduct of attorneys in cases such as these, but the fact remains that the government owes a debt of gratitude to the rank and file of the members of the Bar of this country for their refusal to rush pell-mell into the business of wholesale scheming

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1. P. 142.

2. P. 65.

3. P. 152.

to avoid taxes, with the net result that others not so inhibited have reaped, and are at this moment reaping, a rich harvest by exploiting tax avoidance schemes, legal and illegal.

The author evidently feels that such a situation is unequal and unsatisfactory, and that the first step toward its correction is spread of information of the present state of the law and its possibilities. The final chapter of the book contains detailed proposals for changes in the laws to remedy the evils so ably pointed out in the preceding portion of the book.

RALPH R. NEUHOFF.†

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MODERN FOREMANSHIP AND SUPERVISION UNDER NEW DEAL LEGISLATION. By Harvey B. Rector and W. A. Rinckhoff. Cincinnati: Law Research Service, 1940. Pp. vii, 156. \$4.00.

UNION POLICIES AND INDUSTRIAL MANAGEMENT. By Sumner H. Slichter. Washington, D. C.: The Brookings Institution, 1941. Pp. xiv, 597. \$3.50.

The authors of *Modern Foremanship and Supervision Under New Deal Legislation* deem three elements necessary to the administration of present day industry—efficiency, harmony and discipline. Moreover, they believe that “before the National Labor Relations Act became a law the proper morale to maintain these essentials had been created.” This proper morale was established through the pre-eminence of good foremen who were experts in giving orders, and

\* \* \* there was a reason why the employees in Mr. Doe’s department carried out his orders so explicitly and were satisfied to abide by his decisions and accept the wage offered without protest. The main reason for this was the fact that Mrs. Doe was the medium through which they could advance or gain increases in pay. Another reason is also very outstanding; if Mr. Doe got sore at one of his employees he had the privilege of firing him without fear of any reaction whatsoever. These two facts served the purpose of keeping workers in line. Oftentimes a mere threat of dismissal was sufficient to achieve the necessary results and the law of self-preservation made it possible for supervisory employees to maintain the proper harmony to carry on their work successfully.

But now, according to Mr. Rector and Mr. Rinckhoff, the National Labor Relations Act has undermined this morale, and a foreman must acquaint himself with what he can and what he cannot do under the act. If he doesn’t know his rights and limitations, he is going to be duped by “radical union officers.” This book purports to tell the foreman exactly what the law requires—no more, no less. For instance: “If you sincerely believe that a certain union official should be horsewhipped do not make the remark or suggest it.” “Detailing so-called loyal employees to spy union workers, or spying on employees in any manner, is a violation of Section 8(1), *if there is any intent of weeding out those employees taking part in unionization.*” (Italics supplied.) For four dollars, one can purchase sixty-one pages of such advice on the National Labor Relations Act, the Fair Labor Stan-

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