

10-1-1954

## TAXATION IN THE UNITED STATES. By Randolph E. Paul. Boston: Little, Brown and Company, 1954.

Richard A. Hausler  
*University of Miami School of Law*

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### Recommended Citation

Richard A. Hausler, *TAXATION IN THE UNITED STATES*. By Randolph E. Paul. Boston: Little, Brown and Company, 1954., 9 U. Miami L. Rev. 120 (1954)

Available at: <https://repository.law.miami.edu/umlr/vol9/iss1/17>

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Despite some differences with the philosophical concepts of the author the reviewer must conclude that Professor Commager has given us a very able and most stirring defense of American freedom. There was a time when we laughed at the Russian's discovery of bourgeois traits in music and detective stories, but we in America are developing our own party line. Too often now the educator, the civil servant, the scientist, the minister, the writer and other intellectual leaders are faced with the question of playing it safe or playing it honest. In some cases it has reached a point where such persons have so well suppressed any deviationist thinking that even their consciences have been quieted. The end result will be to leave a clear field to the ruthless and unprincipled demagogues.

Professor Commager's book may be attacked by the cynics as another manifestation of the "bleeding heart" society and by the ultra-realists as another failure to reach the extremists who need conversion most. It is submitted that the intellectuals, yea, even the college professors, are most in need of renewed courage and faith in freedom. In this task, Professor Commager has succeeded.

Edward Sofen

Assistant Professor of Government  
University of Miami

TAXATION IN THE UNITED STATES. By Randolph E. Paul. Boston: Little, Brown and Company, 1954. Pp. xii, 830. \$15.00.

All true civilization is ninety per cent heirlooms and memories — an accumulation of small but precious deposits that have gone before us. Only very proud or very ignorant people imagine that our muddle-headed present can begin everything all over again every day — and invent a new alphabet, a new multiplication table, a new code of laws, and a new religion.<sup>1</sup>

Fog everywhere, insistent fog up the river, incessant fog down the river — gas looming through the dank fog on main street and the side streets.<sup>2</sup> Never can there come fog as deep, thick, and rolling as when some so-called tax experts are murkily engaged in one of the endless stages of a tax case, groping knee-deep in statutory technicalities, tripping one another up by specious arguments on a slippery precedent while vaporizing the precedent itself, and making a flourish-filled pretense of getting somewhere. These same myopic lawyers stress the technical aspects, and, aside from parroting the cliché "taxation is based on revenue needs," overlook the policy, the philosophy, if you please, of the law.

On the other hand, we have competent tax experts who realize that all the problems confronting our contemporary government are not contemporary, and who, in a responsible manner, do not allow the study of taxation and of

1. Rev. Robert I. Gannon, S.J., Former President, Fordham University.

2. With apologie to Charles Dickens.

economics to develop in their own little bailiwicks. Such a man is Randolph Paul. He has been an active practitioner, an author of several books widely regarded as tax classics,<sup>3</sup> and has been a public servant who helped frame the tax structure of which he writes (he was Special Tax Consultant to the President and Treasury Department, General Counsel of the Treasury, etc.).

His most recent book, which carries the sweeping title *Taxation in the United States*, is a history of taxation and fiscal policy in the United States — a history from colonial times to the atomic age. "Exciting" is the word for this history, which is told in terms of the human conflicts, the national crises, and the political expediencies that have molded it. In this absorbing biography of the American tax system, Mr. Paul explains the interdependence of our economic, social political and tax structures. For the hurried reader, the historical account may be summarized as follows: Our federal tax system has been a series of extemporized responses to immediate pressures (such as war and depression); the product of a long series of snap judgments. The product is still far from final; it can never, in the nature of things, be final; to survive, it must adapt itself to new needs and crises. Thus far, the history of the United States' taxation has been a reflection of the evolution and expansion of an economy, through war and peace, from simple agrarian beginnings to complex urban and manufacturing adventures.

This is one history that is not told in abstract, formal terms — it is not a dull affair. It is made all the more readable by Mr. Paul's generous use of memorably pointed quotations (incidentally, most of which are without citation), "word-cracking" asides, and an abundance of staccato sentences. The section headings contain more of his light touch; three examples being: "A Populist Chicken Enters the House",<sup>4</sup> "The Cow Jumped Over the Moon",<sup>5</sup> and "All Is Not Gold That Glitters".<sup>6</sup>

In this volume, Mr. Paul uses in "revised form" some parts of his earlier book, *Taxation for Prosperity*.<sup>7</sup> For example, Section 3 of Chapter VI and Section 2 of Chapter VII of the present volume are more-than-similar (in form as well as substance) to Chapter 12 and Chapter 16 of his previous book. A few other parts of the material in the present volume have appeared in various law reviews<sup>8</sup> — notably the substance of his discussion of the responsibilities of a tax advisor.<sup>9</sup>

Mr. Paul's historical theme is that we have let events shape tax policy; rarely, until recently, have we tried to use taxes to shape events. Having made this point, a battle-cry is sounded "We have put last things first,

3. Among them, *TAXATION FOR PROSPERITY, FEDERAL ESTATE AND GIFT TAXATION STUDIES IN FEDERAL TAXATION*.

4. P. 32.

5. P. 509.

6. P. 144.

7. *Taxation for Prosperity* (1947).

8. Including the *Harvard Law Review*, the *Cornell Law Quarterly*, the *Tax Law Review*, and the *Indiana Law Journal*.

9. See Paul, *Responsibilities of the Tax Advisor*, 63 *HARV. L. REV.* 377-88 (1950).

and first things last. Our taxes have been the product of our times when our times should have been the product of our taxes."<sup>10</sup>

The battle strategy, including some propaganda, occupies the remaining one-fourth of the book. In our fight to conquer tax utopia in a nutshell, our commanding general, Mr. Paul, is a lawyer of the so-called "realistic" school of jurisprudence, and an economist who is essentially Keynesian. He is committed to the idea that "taxation for revenue only" lacks dignity and utility. Taxes and spending should be keyed to the "shifting phases of the economic cycle"; to the economy as a whole, particularly spending power and investment of saving. We should impose taxes carefully designed to bring about the social and economic consequences we desire. He contributes little that is new to the theoretical or philosophical discussion. He simply is not a Professor Simons.

For the most part, the problem is stated, not solved. Mr. Paul does not fully probe the jurisprudential limitations upon the doctrine "tax for social and economic aims over and above the production of revenue." Moreover, and more disturbing, the author does not determine the fundamental jurisprudential principles of justice upon which any tax structure should be based. To speak of justice implies a subordination to a hierarchy of values. A legal order, of which the tax system is a part, that aims to satisfy demands voiced by societal groups but does not suggest the philosophical goals which such groups sought to seek becomes a blind servant of the whims of the group, without discretion or discrimination in its effort to satisfy its master. A major weakness of Mr. Paul's theoretical discussion is his failure to accept a sound philosophy which establishes an objective standard of values wherewith to measure the propriety of suggested social and economic aims.

The theoretical shortcomings of the book are surprising in light of the very purpose of the book. After Mr. Paul states that "according to the sinister calculations of the Kremlin, conquest will need no legions or atomic weapons, but only skillful propaganda and timely, reckless promises to a tired people of an easy state-supported way of life",<sup>11</sup> he declares, "I have written this book because I can see only one effective defense against this insidious type of attack... In the framework of Russian design [our] resistance and defense are largely matters of tax and fiscal policy."<sup>12</sup> Therefore, "I can say that the task fate has imposed... is hopeless unless the American people... acquire a full understanding of the basic issues involved in tax and fiscal policy... I know of no better place to begin than a study of... history."<sup>13</sup>

I recommend the book, not as a totally adequate theoretical discussion of fiscal policy, but as a highly readable account of taxation's exciting

10. P. 686.

11. See Simons, *Personal Income Taxation* (1938).

12. P. 766.

13. *Ibid.*

14. P. 767.

history – related by one whose flexible attitude looks analytically at the past, realistically at the present, and hopefully at the future.

Richard A. Hausler

Associate Professor of Law  
University of Miami