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BOOK REVIEW

THE INCOME TAX: HOW PROGRESSIVE SHOULD IT BE. By CHARLES O. GALVIN & BORIS I. BITTKER. Washington, D.C.: American Enterprise Institute for Public Policy Research. 1969. Pp. 184. $5.75.

This is a little book in size but a large volume in provocation of thought. The American Enterprise Institute has introduced a series of rational debate seminars on major public policy questions. In format, divergent points of view are presented in principal by two recognized authorities in the area. Each speaker then presents a rebuttal, and these presentations are followed by a discussion involving the speakers and a panel of knowledgeable persons. The debates and discussion presented in this volume are addressed to tax reform much more fundamental and sweeping than embraced within the 1969 legislation. This presentation propounds questions of the makeup of the base for the income tax and the nature of the tax rate, progressive, proportional, or degressive. The principals in this debate are Dean Charles O. Galvin and Professor Boris I. Bittker. Dean Galvin is Dean of the Southern Methodist University School of Law and is chairman of the American Bar Association Committee on Substantive Tax Reform. In addition, he has served as a member of the Advisory Group to the Commissioner of Internal Revenue and has written widely on matters of tax reform. Professor Bittker is Southmayd Professor of Law at Yale University. He is one of the most able and prolific contemporary writers in tax law. He, too, has served as a member of the Advisory Group to the Commissioner of Internal Revenue.

Dean Galvin appears as the protagonist of a fundamentally new approach to income taxation which involves a redefinition of the tax base to a comprehensive, all inclusive one along the lines of the Haig-Simons definition of income. Briefly, the Haig-Simons definition seeks to equate income in the tax sense to income in the economic sense by including in the definition of income appreciation and depreciation in values of property from year to year, imputed income from property ownership, the value of special services and transfer payments from government and other agencies, and the value of gifts and inheritances received, and by disallowing exclusions and deductions of personal and consumption expenditures.[1] The redefinition would also eliminate certain source-exclusions of income, such as the total exclusion of interest from state and municipal bonds,[2] the partial exclusion of long-term capital gains,[3] and the partial exclusion of intercorporate dividends.[4] As so redefined, the tax base would be increased by amounts in the hundreds of billions of dollars. To this greatly expanded and broadened tax base, Dean Galvin

[1] Haig, *The Concept of Income—Economic and Legal Aspects*, in THE FEDERAL INCOME TAX 7 (R. Haig ed. 1921); H. SIMONS, PERSONAL INCOME TAXATION 61-62, 206 (1938).

[2] INT. REV. CODE of 1954, § 103.

[3] *Id.* § 1202.

[4] *Id.* § 243.

would apply a flat proportional rate subject only to progressivity in the allowance of exemptions.

Drawing upon the preliminary conclusions from the American Bar Association study of substantive tax reform, Dean Galvin concludes that the present revenue yield of the individual and corporate income tax could be produced by a flat proportional rate in the range of thirteen to seventeen per cent. Taking into account both certain modifications of the tax base which might be required for purposes of administrative expediency and generous exemptions approximating subsistence levels of income, the present yield of the income tax, corporate and individual, could be derived with only slightly higher proportional rates.

Dean Galvin argues persuasively that the revised and broadened definition of income will: provide far greater simplicity in legislation and administration; provide a fairer balance of tax responsibility between service income and property income; accord more nearly with the measurement of means in contemporary society; and produce greater neutrality, fairness, and impartiality in the assignment of responsibility for support of the public treasury. His proposal would remove from the income tax structure its present appendages of relief measures and social and economic subsidies and incentive programs, and leave the income tax as a nearly uncluttered revenue measure. By removing preferential classes of income, preferential dispositions of that income, and differential rates, the tax-saving profit motive for much of our present tax manipulations would also be removed. This would eliminate many of the sterile and socially unproductive arrangements, manipulations, and devices which are presently invested in transactions and management of affairs for the sole or predominant purpose of sheltering wealth from taxation. At the same time, the provision of desirable governmental subsidies, incentive payments, and resource allocation programs, now provided (and often deeply buried) in the income tax structure, would be handled by direct and visible appropriation.

Dean Galvin continues and points out that with such an expanded and broadened tax base, the present progressive rate structure, with marginal rates running to seventy per cent, would be neither tolerable nor necessary. The use of a relatively modest proportional rate would produce the needed revenue. It would eliminate the complex, involute, and largely instinctive random judgments about the marginal utility of incremental units of income. By subjecting all income to a uniform rate, sooner rather than later, much of the advantage and incentive derived from deferring income would be removed. Not all, of course, but much.

Professor Bittker, as the antagonist of the Galvin proposal, addresses himself largely to negatives in respect of a broadened tax base, asserting that it would introduce as many complexities and controversies as the current tax structure and would be even more difficult to administer than the present definition of the tax base. With regard to rate structure, Professor Bittker expresses a largely visceral argument in support of steeply progressive taxation bottomed on the diminishing utility of additional increments to income. This description is not to belittle the force and functional weight of Professor Bittker's argument. He has stated the case for his side in the terms that appear actually to motivate the policy and decision makers. As the argument is presented, however, one secures the impression that Professor Bittker is reasonably satisfied with things as they are, or at least, can see no hope for substantial improvement. This is a dismal prospect indeed, and one that can be accepted only with great reluctance.

The discussion in this volume needfully reminds one of the too often overlooked proposition that true progressivity in the income tax is a function of not only the rate, but the definition of the tax base. The sooner that more of us become disciplined to look beyond the rate table in an assessment of the progressivity of the income tax, the sooner more of us will begin to deal realistically with the problem.

In addition, there is also a useful discussion pointing up the often-overlooked existence of substantial differences in our present income tax between marginal progressivity and effective progressivity. Dean Galvin makes clear, and Professor Bittker does not effectively answer, the allegation of nonprogressivity and, indeed, substantial regressivity of our income tax growing out of the severely restricted definition of gross income and the allowance of substantial deductions for essentially personal expenditures. These factors largely cancel out the apparently dramatic progression of our rate structure and cause it to become highly regressive from the middle brackets upward when measured in terms of effective progressivity.

Given the comprehensive tax base which he advocates, Dean Galvin argues that proportionality, or a flat rate, is, in principle, the soundest and most defensible. He declines to accept the "ability to pay," or diminishing-marginal-utility theory of incremental income as a sufficient rationale for a rate structure which would be progressive in effective tax. However, Dean Galvin does give consideration to two probably necessary variations from the strict principle of proportionality. First, the income tax does not exist in isolation and the principle of proportionality must take account of all taxes to which citizens are subject. Since many of the other taxes levied by the federal government, as well as those assessed by state and local governments, tend to be regressive in their initial incidence, Dean Galvin would accept mild progressivity in the effective rates of the income tax, so as to counteract the regressivity of the other taxes and produce an overall tax burden approximating proportionality. Second, there may be some validity to the "ability to pay" notion with respect to income at or below the subsistence level. The use of exemptions, relieving the first increments of income from tax, would introduce some progressivity in the income tax itself, but the progression would be minimal after income had risen to a rather low multiple of the subsistence level.

Dean Galvin stresses that one of the difficulties with the philosophical defense of a progressive rate structure, particularly one which would be progressive in terms of an effective tax rate, is the difficulty of determining the proper yardstick for measuring the diminishing utility of incremental income. The mild progression introduced by the use of subsistence level exemptions does not run afoul of this difficulty. Far easier to make, and subject to far wider agreement, is the determination of a minimum subsistence level of income rather than a determination that the second $25,000 of income is, say, but half as valuable as the first $25,000 of income.

Professor Bittker counters this argument by simply stating that there is diminishing utility to incremental income and that the political processes have worked out a rational accommodation of that utility. In a sense, this is saying nothing more than because it is, it should be.

The marginal utility arguments presented here, as well as those usually advanced, seem to be cast in terms of marginal utility for the purposes of consumption. It is, perhaps, possible to come to some sort of vague and non-quantified recognition of diminishing marginal utility for consumption purposes. That process, however, begs other questions equally as important. Under our economic system private savings of individuals are a necessary and substantial factor in capital formation, and increasing amounts of income have utility for purposes other than consumption. It is only those persons whose income exceeds consumption needs who are able to make a substantial contribution to private capital formation. Therefore, in a broader view of service to the needs of the society, more specific consideration needs to be given to the positive utility of incremental income as a source of private capital. There should be as much governmental concern for this as for maintenance among the citizens of a minimum level of consumption. At a time when capital needs seem to be outstripping capital sources within the United States as well as world wide, it would seem that considerably more attention should be paid to tailoring our tax structure to capital formation. These latter needs have been somewhat uncertainly and vaguely accommodated in roundabout ways by our present definition of the tax base.[5] The accommodation developed, however, has such low visibility and is possibly so erratic that it cannot be regarded as satisfactory or wholesome.

Dean Galvin argues that subsumation of a host of governmental incentive, subsidy, and economic control measures in the income tax structure in the form of exclusions from income, deductions from the tax base, or credits against the tax deals with the problems in a rather heavy-handed and indiscriminate way and, very probably, deals with the problems in such a way that they may miss the mark and outlive their usefulness. This argument cannot easily be rebutted. Rather than attempt to rebut the basic proposition, Professor Bittker counters that our experience with legislative appropriations has not been much better. Be that as it may, one can always hope for an improvement in govern-

[5] *E.g.*, accelerated depreciation [*id.* §§ 167, 179], elective deduction of intangible drilling and development costs [*id.* § 263(c)], exemption of the income of qualified pension and profit-sharing trusts [*id.* §§ 401, 501], and special gain-and-loss treatment of certain business property [*id.* § 1231].

mental processes. It would seem far easier to strive for that improvement in the appropriations process where the act is more visible and identifiable.

Probably the most significant point made by Dean Galvin is the availability of the means to learn a great deal more about the operation and effect of present and proposed tax systems. The American Bar Association Substantive Tax Reform project opened up wide vistas of things that might be done. It is unfortunate that the breakthroughs made in that project could not be fully exploited. While the cost of further work was substantial in terms of the resources of the American Bar Association, it would be miniscule in terms of a federal appropriation. The one clear message which comes from the book, with which it is almost impossible to disagree, is the need for fresh and imaginative thinking based upon considerably more information and data analyses which can presently be made available to us.

One might conclude after reading this book that neither the protagonist nor the antagonist was moved from his position and that the panelists were not moved from theirs, and that the matters discussed are so bound up with prejudice that honest rethinking is unlikely. On the other hand, it is difficult to imagine that one could read the debates and the discussions and remain comfortably tolerant of things as they are. Therefore, if the debates do spark new thinking and further discussions on the fundamental precepts of our national tax struture, it will be a job well done, and none too soon.

Perhaps Edmund Burke was all too right in his 1774 Speech on American Taxation when he said, "To tax and to please, no more than to love and to be wise, is not given to men."[6] But even granting that Burke was right, there is no excuse not to try harder to do better. Dean Galvin speaks for me and should be heeded by all when he says, "let's get about the job."[7]

*Parker C. Fielder**

[6] THE OXFORD DICTIONARY OF QUOTATIONS 100 (2d ed. 1955).

[7] C. GALVIN & B. BITTKER, THE INCOME TAX: HOW PROGRESSIVE SHOULD IT BE? 23 (1969).

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