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BOOK REVIEWS

TAX CREDITS AND INTERGOVERNMENTAL FISCAL RELATIONS, by James A. Maxwell, The Brookings Institution, Washington, D.C., 1962, 167 pages. Price: \$3.75.

This study of techniques of federal-state revenue "sharing" provides useful, economic analysis which is not designed, apparently, to be controversial. Indeed, The Brookings Institution, which supported, directed, and published the study, is a private foundation having the purpose of providing studies of the problems of the federal government. Here no particular position is directly advocated—no sides are taken. What is controversial about this study is not what is said, but what is left unsaid.

The problem that ostensibly forms the basis for the study is the demand of state and local governments for additional revenues. Most states now rely upon the sales tax as a major source of revenue because the federal government has fairly well pre-empted the income tax field. After the state government pre-empts the more obvious excise taxes (gasoline, cigarettes, liquor), the local governments are left to their ingenuity.¹ This ingenuity, along with the limited size of the remaining taxable areas, often produces a proliferation of local taxes which produce little revenue, are difficult to administer, and have high compliance costs.

For an answer to this problem, James A. Maxwell, who is Professor of Economics at Clark University, has considered various devices for keeping some of the "federal revenues" at the state and local levels. These devices include tax crediting, tax deducting, conditional grants, unconditional grants, and tax sharing.² Tax crediting, or the reduction of the federal liability by the state tax payment receives primary emphasis.³ Tax deducting, or the reduction of the federal tax base by the state tax payment, as in the income tax, also receives extensive treatment. The prevailing theme of the work, however, is the application of these devices for the accomplishment of con-

1. Anyone familiar with the scope of the so-called "Tax Anything Act," PA. STAT. ANN. tit. 53, § 6851 (Supp. 1962), knows the range over which local tax ingenuity can roam.

2. Tax sharing as a device deserves closer attention, particularly as a means of ending local taxing authority conflicts. One small version of this is already in operation in Pennsylvania in the form of joint tax authorities. The problem is of larger proportions for transient enterprises, such as contracting, than is realized and the joint tax authority is only a partial solution. Tax sharing might well provide an answer and increase local tax revenues.

3. Presumably, this is because the device has historical perspective in the unemployment insurance field.

gressional purposes, an approach which has no direct relationship to existing state and local revenue needs. These purposes can include socioeconomic reform considerations using a coercive tax credit or conditional grants, tax base considerations between industrial and marketing economies, and distribution of wealth considerations involving the formula and technique of distribution as well as the choice of device.

The basic issue of intergovernmental fiscal relations is not whether there should be a division of tax revenues but how the division should be made. The problem of the manner of the division is, of course, closely allied with the problem of the division of labor, namely, governmental services, for that is the purpose of the governmental funds. Professor Maxwell does recognize the basic issue, for in the first chapter he poses the question of the existence of federal fiscal responsibility to state and local governments.⁴ However, Professor Maxwell merely poses the question and promises to examine it in the later chapters, but the later examinations are in the same terms as the final paragraph: congressional purpose in allocating its money. This emphasis upon congressional purpose as the determinative factor for choice of device does not reflect the initial purpose for the study. State and local needs for revenue have increased along with the cost of services, the expanded applicability of existing services, and the variety of new services. It is a great leap, though, from the general revenue needs of state and local governments, outlined in the first chapter, to the congressional choice among differing *federal* policy-effecting devices described in the concluding paragraph:

Philosophers have observed that life is richer than logic, and, by an obvious parallel, the armory of devices examined here defies simple and categorical appraisal. Intergovernmental financial cooperation can be advanced by many devices, and, so long as illogic is avoided in their construction, *the devices should be appraised in the light of the objectives which the Congress has in mind.* Tax credits, for instance, can be utilized to advance tax coordination and to provide financial resources for state governments, and only by misuse might they be framed so as to aggravate tax conflict or so as to be dissipated in tax reduction. But tax credits do not provide for equalization, and they tend to be inflexible. If equalization is to be emphasized, the appropriate device is the unconditional grant; if stimulus to specific governmental functions, the conditional grant. *Since federal objectives in assisting state and local governments are manifold, there is no inconsistency in logical use of several devices.*⁵

This final paragraph of the concluding chapter sums up not only the excellent economic analysis of the study, but its political and legal short-

4. MAXWELL, *TAX CREDITS AND INTERGOVERNMENTAL FISCAL RELATIONS* 4 (1962).
5. *Id.* at 167. (Emphasis added.)

comings as well. The factors causing the state and local revenue squeeze are not examined in detail. Has the need, real or imagined, for governmental services outstripped the available revenue? Is there an overlapping or duplicating of services? Should there be a reallocation of responsibilities? Should there be a reallocation of existing revenues? Professor Maxwell is content to leave these problems to congressional investigation and debate, a procedure of little comfort to state officers. For example, the study carefully describes the use of federal coercion through tax credits in the unemployment insurance field and the estate tax field. In the former the objective was socioeconomic reform and in the latter the neutralization of state action designed to attract the wealthy, who were expected to leave large estates. Also, the implementation of policy is demonstrated by the manner in which Congress has made home ownership desirable by allowing the deduction of property taxes and mortgage interest. The implicit assumption of the study is that Congress should be the final arbiter perhaps because the money or taxing power initially "belongs" to the federal government. In any event, the continuing coercive power of the federal government in the unemployment insurance field, coupled with the renegeing of Congress in the estate tax field, indicates at least some feeling of federal tax superiority. The study's reliance upon the motivation of Congress is disquieting and the inability to choose among devices except on a political basis is disturbing—provided, of course, that the real interest is to supply additional funds to state and local governments for general needs.

Author Maxwell has given us basic information about the economic significance of the available choices, and through economics he derives the uses, advantages, and disadvantages of each choice. Professor Maxwell is quite correct that each device has peculiar advantages and disadvantages, and his discussion of them is excellent. As such a study, the book is an invaluable blueprint once the legal and political assumptions are made. It may be unfair to criticize the book for what it does not say, but what it does not say appears to have been carefully avoided, either to avoid political overtones or to avoid non-economic digressions. It is, however, the political overtones and noneconomic considerations which are of prime importance, since without the perspective which they give to the device chosen, no true measurement of the tax relief to state and local governments can be made. As an economic study of policy-implementing devices, removed from the problem of the relationship of state and local revenues to federal taxation, the work is complete.

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CAPITAL PUNISHMENT: A WORLD VIEW, by James Avery Joyce, Grove Press, Inc., New York, 1962, 288 pages. Price: \$1.95.

James Avery Joyce, a British author, barrister, lecturer, and teacher, has written widely on international law and international organizations. Throughout the life of the League of Nations he was a participant in and an observer of its work. He has been an equally industrious observer, although a less active participant, in the affairs of the United Nations. He is well qualified to take "a world view" of capital punishment.

The book contains concentric circles of logic. The argument is presented that capital punishment should be abolished, within the argument that punishment as a deterrent to crime has failed, within the argument that world peace cannot be won by killing.

The use of the death penalty as a crime deterrent can be traced to the beginning of governmental organization having the strength to carry out its will. The right of the state to take the life of an individual is usually accepted without question, but from time to time and place to place there have been extensive—sometimes careful, sometimes bitter—reconsiderations of the moral and legal correctness of this assumption.

In presenting his considerations Mr. Joyce is untrammelled by the objectivity of the scholar. His writing is that of the advocate and, at times, of the sensationalist. This point of view is perhaps most apparent in the chapter devoted to the Chessman affair. There is an attempt to establish several propositions: that this complex of judicial proceedings and administrative actions demonstrates the savagery and failure of a society which has capital punishment; that the *Chessman* case was replete with judicial errors; that most of the governmental action was motivated by political and diplomatic considerations, rather than by considerations of justice for the accused; and that the news media conditioned the populace to demand vengeance. Whether or not these propositions are supportable, a large part of the material bears little relevancy to a discussion of capital punishment. The objectivity of the opinions expressed becomes suspect when the author devotes but an occasional off-hand phrase and two paragraphs to the statements of those who find that justice was carried out. The tone of advocacy is demonstrated in one dismissing sentence: "The basic nature of the Chessman opposition was not, however, to be found in the law-abidingness of honest men, resolute to see justice done."¹ The scholarliness of the work is somewhat diminished by the rhetoric of this section, for example, the "legal dice were loaded," "legalized burlesque," "political jobbery," "political corruption on every level of government," "red light mentality," "this Greek Tragedy." It is regrettable

1. JOYCE, CAPITAL PUNISHMENT: A WORLD VIEW 45 (1962).

that the writer's reaction to the Chessman affair caused him to lose sight of the purpose which is declared by the title of the book and prevented a deep analysis of that subject. Nonetheless, the author has clearly portrayed the wide and varied implications which can be present when the death penalty is imposed.

The history of capital punishment is developed in breadth but not in detail. The view of the author is that organized society's insistence upon its right to destroy and to threaten with destruction those who are thought to oppose or threaten it comes from the sovereign's fear of a danger to its authority. There is an account of the Hebraic and Biblical records of the use of the death penalty and of the restraints upon its use. The use then was, as it still is, closely bound to religious justification. In the Inquisition there was a recurring although changing relationship between state and church, the total effect of which was to raise little question as to the basic legality and morality of the death penalty. In the eighteenth century there developed an interest in humanizing death. Society could not do without the death penalty, but society could concern itself with making the execution what Lepeletier called "the simple deprivation of life," that is to say, the abolishment of deliberately torturous forms of death. Widespread use of the guillotine was an important result of this search. In the same century several influential writers spoke out for abolition, particularly Beccaria in Italy and Rousseau in France. In the nineteenth century several governments abolished capital punishment with minor exceptions of a political or military nature.

Oscillation has been the mark of governmental action in modern times. Although the trend has been toward abolition, there have been significant refusals to abolish after careful consideration and significant reversals after abolition was a fact. The legislative development in France and Ceylon are analyzed to show how a serious crime wave or a single, particularly horrendous crime can cause violent gyrations in popular and governmental thinking on the subject. Several pages are devoted to an attempt to unravel the complex of positions on this subject which have existed in Russia. In the mid-eighteenth century that nation abolished the death penalty except for political offenses. Since then there have been many times when that early attitude has been reversed, re-enacted, modified, forgotten.

Although the voice of the advocate is still present, there is a well-balanced account of events relating to abolition in Britain with special emphasis on the years since 1928, when the first abolition bill was introduced in the House of Commons. That bill, which had no chance of passage, did result in a governmental report recommending abolition for an experimental period of five years. In 1957 a compromise act was passed which limited the use of the penalty to certain types of murder. The author analyzes the il-

logical results from the attempt to apply the death penalty to some fact situations and not to others.

Like consideration is given to attitudes and actions in the United States. Because so many governments have authority to act independently, the picture is one of conflict. Jurisdictions differ to a considerable extent regarding the death penalty both as to the crimes to which it is applied and as to the manner in which it is carried out. The attempts over the years at abolition (which in the author's vocabulary is synonymous with reform) and an evaluation of the present status of that movement are presented. At the time of publication 7 states had entirely abolished the penalty. 2 others had abolished it except for murder committed by a person already in prison serving a life sentence. In 20 other states the penalty is rarely used, though permitted. 9 states have at one time or another done away with the penalty but have later reinstated it. The author's conclusion is that there is currently a rebirth of interest in abolition.

"Sooner or later capital punishment was bound to become a major issue at the United Nations."² In 1957 a committee of the General Assembly gave consideration to a covenant which would, *inter alia*, limit the right of signatories to impose the penalty. The United States and the United Kingdom summarily indicated their disinterest in such an agreement. Mr. Joyce presents with great care the developing positions that were taken by the other countries represented. It was clear that the majority regarded protection of the right to life as a legal obligation of the state but insisted on the right of the state to take life in clearly defined circumstances. In 1960 the General Assembly launched "a study of the question of capital punishment, of the law and practices relating thereto and of the effects of capital punishment, and the abolition thereof, on the rate of criminality." This material on the United Nations is valuable because this book is the first to present it.

Mr. Joyce discusses with considerable clarity the literature and theories which have concluded that punishment has failed as a deterrent to crime, especially capital punishment for the crime of murder. He demonstrates that of all types of criminals, murderers are among the least likely to repeat their crimes. He considers particular types and terms of imprisonment as alternatives to the death penalty and rehabilitation as an alternative to punishment.

In the concluding chapter the author turns to the development of his earlier announced thesis that "The practice of Capital Punishment within the state cannot be isolated from the practice of violence by the State in its external relations."³

2. *Id.* at 194.

3. *Id.* at 56.

The rejection of violence as a way of life both for the individual and the nation, has thus become the essential condition of our emergent One World civilization. Unless he can collectively repudiate and replace violence as a means of achieving both social and national defense, Man's continued stay on Planet Earth is open to grave doubt. The issue is as simple as that.⁴

But is the issue as simple as that? The author observes that "the professional ethics of violence have become . . . a built-in device of *both* the so-called Free and the Communist societies." He condemns at great length the Western World's (especially the United States') maintenance of a position of military strength for what he rather pityingly calls "the notion of a 'holy' war against Communism, carried out with atomic weapons, [which] can only be justified by warped minds, who have lost touch with reality and not found religion."⁵ Is this author correct when he says we cannot solve our problems with Russia so long as we negotiate from a position of military strength? Is he correct when he argues that this country's international policies are shaped by newspapers which create war panic after war panic? Would it have been morally right to ignore the Communist activities in Korea? Have not the leaders of the Free World striven mightily to create organizations and methods for solving the world tensions by the rule of law and not by killing? Is Churchill to be marked down as morally wrong when he called upon the people of England to fight on the beaches and in the streets when Hitler stood across the Channel? Do not Eisenhower and Kennedy recognize the utter devastation which would come to this country and to the world with atomic war? The advocate fails badly in his concluding chapter.

Mr. Joyce assembles in a provocative way much material on capital punishment, some of which is new. He ignores or dismisses without answer many carefully considered judgments which differ from his own.

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4. *Id.* at 265.

5. *Id.* at 264.

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