

BOOK REVIEW:

NOMINALISTIC PRINCIPLE

NOMINALISTIC PRINCIPLE. By Eliyahu Hirschberg. Jerusalem, Israel: Bar-Ilan University, 134 pages.

"What is the extent of a monetary obligation?" This, the book "Nominalistic Principle" attempts to answer.

E. Hirschberg may not provide a categorical solution, but he at least has suggestions to make — though one may not agree with his conclusions. The problem he poses is an open question, answerable neither in black nor white, but in shades of gray. To me, then, the book's greater value lies in its power to incite some serious reflection on the problem posed — even if the reader happens to be one with absolutely no background in business or economics and utterly no interest in law.

A layman — and by this I mean a person unfamiliar with such approaches to monetary obligation as nominalism, metallism, and valorism — would not, on finding the "Nominalistic Principle" on his hands, even have the faintest notion that a Gordian knot exists. The book opens his eyes.

Hirschberg begins by explaining the nature and functions of money. Money is "the abstract power of wealth" which entitles its owner to exchange it, at his own discretion, to commodities, services, or rights up to the limit of its value. "The sum total of commodities and services divided by all the means of payment in circulation in a certain country," Hirschberg says, "is the purchasing power of that country's money." Money, then, functions in two ways: as a medium of exchange and a measure of value.

In the field of private law, money's second function — as a measure of value — is of greater importance. Every commodity and service has a value which determines in what relation it stands to other commodities and services which may be substituted or exchanged for it. This value is fixed in terms of a widespread and widely accepted measure; in modern society, this measure of value is money. Thus, money serves as a regulator of economic activities and relationships.

Hirschberg discusses two basic theories in relation to the nature of money — metallism and nominalism. The former maintains that money

is equated with the available amount of a specific precious metal — usually gold — which serves as monetary cover; thus, money has not only a quantitative but also a qualitative dimension. According to the latter, the origin of currency lies “not in its metallic cover or in its purchasing power, but in the provisions of the relevant law.” Being a mere creation of law, money is subject to control and regulation by the State, which is, therefore, authorized to change the value of existing means of payment, replace existing means of payment with new currency of the same value, or create new means of payment with a different value, all with no obligation to private parties in whose hands these means of payment may be found. Thus, while under metallism, government control over currency is much more restricted, under nominalism, private parties are at the mercy of the State.

In earlier times, metallism prevailed in almost every country of the world. In the beginning of the 20th century, F.G. Knapp popularized the State Theory of Money — whereby money, being a creation of the State, is subject to its absolute control — which provided the theoretical basis for the nominalistic principle. In the modern world, Hirschberg suggests, few would support a return to metallism because it would unduly restrict a State's freedom of action, placing it at a disadvantage in relation to other countries which proceed under nominalism. Nevertheless, Hirschberg sees the need to re-examine the nominalistic principle within the context of private law, for he finds that private rights in money “are at the mercy of government policy and no efficient constitutional safeguards have yet been devised to protect them.”

In his 31 pages of Introduction, entitled “The State Theory of Money”, Hirschberg merely touches lightly on the metallistic principle, discussing it only by way of comparison with, or explanation of, the nominalistic principle, which, after all, is what the book is all about. What dampens the reader's enthusiasm is that the Introduction, being merely explanatory, is slow in pointing out the relevance of nominalism and metallism to the problem in private law first posed regarding the extent of a monetary obligation. This, of course, is justified by the fact that a working knowledge of the nature and origin of money is necessary for an appreciation of the subsequent discussions on the theoretical approaches to the problem.

Hirschberg enumerates three theoretical approaches to the problem posed — nominalism, metallism, and valorism. However, he devotes three chapters to separate discussions of nominalism, valorism and re-

valuation, again merely touching on metallism in relation to nominalism and valorism. The reason for this treatment escapes me.

In Chapter One — NOMINALISM, the author makes it clear that metallism and nominalism are both theories on the nature of money as well as approaches to the extent of a monetary obligation in private law. Under nominalism, "a pound is always a pound, and a dollar always a dollar in the eyes of the law, notwithstanding inflation and devaluation." Therefore, if a man owes another 100 dollars payable after 10 years, he would be required to pay the principal amount of 100 dollars when the debt is due, even if the value of the dollar at the time of payment is equivalent to only half of its value at the time the debt was contracted. On the other hand, under metallism, a debtor is required to return the *intrinsic value* of money, i.e. the value that a unit of payment has in relation to a certain quantity of standard metal.

Under nominalism, a legal fiction is adopted with respect to the identity of value of units of currency at different periods. This can be approached in three ways; by fictitiously presuming: that a sum of units of currency has the same value as the same amount of gold coins, that the value of currency does not change, or that the value of money is not taken into consideration when the extent of a monetary obligation is ascertained. The third approach, according to the author, is generally accepted, so that payment in the nominal sum is sufficient to discharge a debt, regardless of the intrinsic value of the means of payment.

Hirschberg then discusses the theoretical foundations and justifications for, and objections to, the nominalistic principle. It is only towards the end of this long chapter that the reader realizes that, as he suspected from the beginning, the author does not believe in nominalism as the correct approach to the problem first posed. Hirschberg criticizes the inequitable effects of strict adherence to the nominalistic principle. He cites, for instance, the situation during the German inflation after World War I, where one *deutschmark* was exchangeable against 1 billion former *marks*. In such a case, extinguishment of a monetary debt by payment of the nominal sum was a mockery of the creditor's right, since he would receive merely one over one-billionth of the original value of his credit. It is here that Hirschberg shows his partiality for valorism in determining the extent of a monetary obligation.

In Chapter Two — VALORISM, the author discusses the nature of valorism in comparison with metallism and nominalism. Theoretically, valorism is similar to metallism in that both disregard the nominal

sum of money; but while metallism emphasizes the metallic cover of currency, valorism stresses its purchasing power.

Valorism differs from nominalism in that the former stresses, while the latter disregards, the value of money in determining the extent of a monetary obligation. Under valorism, one must return the economic value — the purchasing power — of his monetary debt; under nominalism, he is obliged to return only the nominal sum, regardless of the increase or decrease in value of the currency. Thus, under nominalism, a debt of 100 dollars will always be payable in 100 dollars in spite of inflation or deflation. But under valorism, inflation would require the return of a larger sum, and deflation, of a smaller sum, so that the economic value of the original sum of 100 dollars at the time the debt was contracted may at least be approximated.

While partial to valorism, Hirschberg does not forget that it entails a lot of problems much more difficult to solve than those involved in nominalism. For instance, how does one determine the purchasing power of money? Does not valorism interfere with the stability of economic intercourse? Will not valorism impose upon a debtor an obligation more onerous than that which he assumed? Would not valorism lower the prestige of the national currency? Also, Hirschberg points to certain classes of obligations with which valorism is incompatible. For instance, if the valoristic solution were applied, a negotiable instrument, passing from hand to hand, would embody different monetary obligations, each of a different amount.

In spite of the serious problems presented, however, the author would choose valorism over nominalism because the latter "better serves the interests of the government than those of a private party to a contract." Thus, he suggests that valorism should be adopted except in case of certain classes of obligations which must be regarded only as nominal debts.

In this chapter on Valorism, Hirschberg already introduces revaluation. Valorism rejects nominalism and aims to evolve a regular body of laws which applies both during emergency and ordinary circumstances. Revaluation does not reject nominalism and merely provides a practical solution to problems created by the breakdown of nominalism under abnormal conditions.

Chapter Three — REVALUATION is a study of the different monetary crises in which revaluation was extensively carried out, such as the German inflation after World War I, and the monetary crisis in the

Southern States of the U.S.A. after the Civil War. Here, the author discusses the different factors taken into consideration in the revaluation of debts, whether judicially or by express legislative mandate.

Again, Hirschberg compares revaluation and valorism. Revaluation is a practical approach, an emergency solution, and not a theoretical alternative to nominalism. Under extraordinary circumstances when a nominal sum no longer expresses the real value of a monetary obligation, revaluation is resorted to by rejecting the nominalistic principle temporarily in order to adjust private rights in money in the most equitable way. After the crisis, nominalism again prevails. On the other hand, valorism is an alternative to nominalism. It stresses the value inherent in the units of currency — purchasing power. Unlike revaluation, resorted to only during crises, it applies at all times — under ordinary circumstances and during emergencies — thus providing “the right solution beforehand for future problems.”

Hirschberg's objection to revaluation is, as he states in Chapter Four — CONCLUSIONS, that “Revaluation is made *ex post facto*, after the damage is done, and it is more difficult to restore standards which have broken down, than, by a deviation from nominalism, to prevent the occurrence of a catastrophe.”

It is clear that the author is against the unqualified adoption of the nominalistic principle. Under nominalism, the law considers units of money as chattels. Thus, an obligation to deliver 100 pesos for 200 lbs. of sugar is not any different from the obligation to deliver 100 packs of cigarettes for 200 lbs. of sugar. An increase or decrease in the value of sugar or cigarettes will in no way affect the obligation. Thus, an increase or decrease in the value of money — the peso — should not modify the obligation. The author criticizes this approach and maintains that a monetary obligation serves only as a measure of the value of other non-monetary obligations; hence, that the parties are not interested in a sum but intend to receive the value which is included in such sum of money on the making of the contract.

The author suggests, as an alternative to nominalism, qualified valorism. He fails, however, to explain adequately the extent of qualified valorism. In fact, one gets the impression that his version of “qualified valorism” does not reject nominalism, as he earlier maintained valorism does, but is made to apply only in cases of monetary crises. Thus, he says, “The valoristic solution should be applied in practice only when money has lost its relative stability of value.” (p. 132) As thus conceived, this “qualified valorism” seems to be no different from revalua-

tion, the only distinction being that in the former, value standards are prepared before, while in the latter, only after, the crisis occurs. In both approaches, nominalism prevails in ordinary conditions.

Perhaps the author considers such a distinction substantial enough to warrant the difference in terminology. What raises the reader's brows, however, is the earlier discussion on the nature of nominalism, valorism, and revaluation. Under valorism, the value of money is its "purchasing power", while under nominalism, the law intentionally disregards the value of money and considers a monetary debt as an obligation to deliver a certain specified sum of money. If in "qualified valorism", as the author suggests, one applied the valoristic solution only when money has lost its relative stability of value, then it is evident that the value of money is not always its "purchasing power" but, is, *ordinarily*, its nominal value. In such a case, Hirschberg's "qualified valorism" would not "reject nominalism," but will, in fact, adopt it and provide a solution to problems it creates under abnormal conditions. One, therefore, cannot help but ask: Is not the suggested "qualified valorism" in reality a revaluation based on standards already formulated?

The author could have dealt with his proposed solution a little more extensively.

The "Nominalistic Principle" leaves much to be desired in terms of organization and style. While the book is appropriately divided into chapters, and each chapter, into subheadings, discussions are often overlapping and repetitious, giving one the feeling as he reads that he is not getting anywhere. The reader must synthesize for himself, and it is only on closing the book that he realizes he absorbed a lot, after all.

The book could be better edited; typographical errors proliferate. But these do not hamper the reader as much as the difficulty of deciphering sentences which defy conventional rules of construction. With patience, however, the reader will not find these a stumbling block; after all, if he can read between the lines and is willing to skip sentences, paragraphs, or even whole sections which test his endurance, he would still have a lot to gain from the book.

As earlier said, the book's value lies in its power to incite some serious thought on the problem posed. For instance, one is reminded of Article 1250 of the New Civil Code which provides that "In case an extraordinary inflation or deflation of the currency stipulated should supervene, the value of the currency at the time of the establishment

of the obligation shall be the basis of payment, unless there is an agreement to the contrary." Such a provision seems to indicate that in the Philippines, nominalism prevails under ordinary circumstances.

Our monetary experience during the Japanese occupation should be a warning to our legislators to give serious consideration to the problem of the extent of a monetary obligation in private law. How far should nominalism be deviated from? In case of deviation, what standards should be applied? The book, of course, does not answer these questions. A state's monetary policies would depend on the peculiar economic, social and political circumstances obtaining in the country. Hirschberg merely points to some basic considerations.

Other questions are left unanswered in the reader's mind. For instance, is nominalism, as an approach to the extent of a monetary obligation, necessarily incompatible with metallism, as a theory in relation to the nature of money? May a State which specifies the gold value of its currency consistently apply the nominalistic principle in determining the extent of monetary obligation in private law?

As a whole, the book succeeds in whetting one's appetite. It opens up his interest in the legal and economic problems regarding the extent of a monetary obligation. However, it leaves the reader asking for more. Perhaps this was just the author's intention, for within the limits of 134 pages, one does not expect to be filled to satiety.

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