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BOOK REVIEW

THE NOMINALISTIC PRINCIPLE: A LEGAL APPROACH TO INFLATION, DEFLATION, DEVALUATION, AND REVALUATION. By Eliyahu Hirschberg. Ramat-gan, Israel: Bar-Ilan University (1971). Pp. 138.

In light of the current world-wide inflation and the successive devaluations and revaluations of the currencies of the world, *The Nominalistic Principle* presents a timely theoretical analysis of changes in the value of money and their impact on the private sector. *The Nominalistic Principle* is not a dissertation on international monetary or fiscal policy, nor is it a study of comparative economic systems; rather, Eliyahu Hirschberg presents a legal study of common principles which govern changes in the value of money and how these principles effect private legal rights and obligations.

To achieve perspective for analyzing *The Nominalistic Principle*, the following hypothetical must be posed: If A contracts with B for B to build him a ship for the price of one million dollars and three years later (during which time annual inflation has run at ten percent) the ship is delivered by B to A, what price does A then owe to B? Every first year law student would answer one million dollars, barring any further facts. This is an example of the application of the nominalistic principle, "a principle of the law of obligations which deals with the problem of the extent of a monetary obligation."¹ The principle simply stated is that "a unit of currency is always equal to itself."² Thus, regardless of the passage of time and the risks of economic fluctuation appendant thereto, a monetary price agreed to in a binding contract is the price due upon completion of performance by the other contracting party.

Mr. Hirschberg criticizes the general approval and application which the nominalistic principle has received in the law of contracts primarily on the premise that the law must recognize private rights in money. First it is argued that the application of the nominalist principle during severe inflationary times is certainly not in accord with the intent of the parties to the contract. Mr. Hirschberg assumes that an equality of obligation existed between the contracting parties at the time the contract was made and that it was not the intent of any of the contracting parties at that time to make a gift to the other. Yet, during a period of rapid inflation, the application

¹ E. HIRSCHBERG, *THE NOMINALISTIC PRINCIPLE* 37.

² *Id.*

of the nominalistic principle to a medium or long term contract in effect makes a gift to one of the contracting parties at the expense of the other, since it fails to recognize the inflation and the resultant decline in the purchasing power of the sum of money originally agreed upon. This destroys the equilibrium of value given for value received assumption which was presumptively the original intent of the parties to the contract. Consequently, Mr. Hirschberg argues that this imposition of the nominalistic principle during periods of severe inflation and resultant declines in the purchasing power of units of money causes an unjust enrichment of one party to the contract to the impoverishment of the other party. This concept of unjust enrichment, though only briefly discussed in the text, is the essential justification for the rejection of the nominalistic principle.

Because of the inequitable results of the application of the nominalistic principle, Mr. Hirschberg rejects it and urges the adoption of the principle of valorism during times of rapid and severe inflation. Essentially, valorism emphasizes the concept of the economic value of money rather than the absolute number of the units of money. Thus, in a private contract scenario such as that posed previously, the valoristic principle would dictate that each party should receive the full economic value of that for which he bargained, *i.e.* the ship builder should receive a price from the buyer approximately 30% above that originally contracted for. Thus, the valoristic principle implicitly recognizes private rights in money by its recognition of the decline in purchasing power of money which results from inflation and by its allotting to the parties the value for which they originally bargained, rather than the nominal sum. The valoristic approach is seen as essentially intent fulfilling in contrast to the intent defeating operation of the nominalistic principle.

The espousal of valorism in *The Nominalistic Principle* is not doctrinaire and is tempered with the realization that such a principle may be difficult to implement; some readers may view it as well-nigh impossible. The implementation of the valoristic principle would require adequate standards by which to measure the increase or the decrease in the economic value; it would require the determination of a threshold point at which the valoristic principle would become applicable; and finally it would require a sophisticated judiciary capable of making complex economic judgments. Mr. Hirschberg suggests that such standards and decision points can be obtained through the development of arbitrary indices by indepen-

dent institutions. It would appear to this reader, however, that while precedent for such a method of implementation exists, the degree of economic deprivation required to motivate the adoption of the valoristic principle is so great as to render the adoption and implementation of the valoristic principle only remotely possible at this time.

It would appear that in the context of private obligations which *The Nominalistic Principle* employs, the discussion of the relative merits of nominalism versus valorism is in its essence a discussion of who should bear the burden of the risk of severe inflation. Under a nominalistic approach, the party who provides goods or services bears the burden of the risk; while under the valoristic approach, the party providing the sum of money bears the burden of the risk. The question is finally reduced to this: on which party is it more just to place the burden of the risk of inflation and why? *The Nominalistic Principle* in advocating valorism fails to answer this question adequately; the author simply states that "From the theoretical point of view it is more just that such risk be imposed on the debtor than on the creditor."³

A second problem with Mr. Hirschberg's rejection of nominalism and espousal of valorism is his failure to recognize that in a long term contract, the parties thereto are likely to know the risks involved and assume them or make provision therefore. It is the long term contract which is most adversely affected by the application of the nominalistic principle — but where the parties to such a contract have recognized and provided for the risks involved, how can it be said that it is unjust or intention defeating to apply the nominalistic principle? In today's period of rising inflation, the open price term contract is well known and is not uncommonly employed. The open price term contract by its very nature dictates that the parties thereto have recognized the risks and have in effect provided for their own valoristic principle. With such a valoristic option readily available to contracting parties, can it be said that it is unjust to retain nominalism — it seems not.

The final portion of *The Nominalistic Principle* treats the subject of revaluations, both legislative and judicial. Treating revaluations as essentially a compromise between valorism and nominalism, Mr. Hirschberg presents a concise and valuable analysis of the theoretical and practical problems of revaluation.

While some readers more attuned to the practical rather than

³ *Id.* at 81.

the theoretical may have difficulty following Mr. Hirschberg's analysis, *The Nominalistic Principle* is a scholarly work of significance, especially in light of the times. While valorism, in contrast to nominalism, appears to be the exception rather than the general rule of law, *The Nominalistic Principle* is most certainly of invaluable assistance in recognizing the problems inherent in the nominalistic principle and the alternatives that valorism presents.

LAWRENCE EDWARD GAWELL

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