

BOOK REVIEW

NOMINALISTIC PRINCIPLE, by E. Hirschberg, M.Phil. Ramat-Gan, Israil, Bar-Ilan Univ. Press, 1971. 138 pp.

This book's main object is to discuss the nominalistic principle and the alternatives to it advanced in the 19th and 20th century. The author has drawn on a wide range of sources and it is clear that a great deal of work has gone into the research of the history and of the development of the legal aspects of monetary theory. The main themes are the discussion of the merits and demerits of the nominalistic and valoristic principles (Chap. one and two) and the analysis of revaluations with special reference to the German experience after the First World War (pp. 101-114). But while the book includes some interesting and well written parts, it suffers from three shortcomings, two of which are of a substantive nature and the remaining one of a structural nature affecting presentation.

The first and, from an analytical point of view, the major shortcoming of the book is that the author discusses "metallism", "nominalism" and "valorism" only from the point of view of the State and its citizens. This limitation emerges in the introduction and is not remedied in the course of the book. While this approach may be suitable as regards the discussion of the suitability of each of the doctrines from the point of view of the individual and of individual states, it seems unrealistic to discuss the prospects of introducing a new monetary principle, or of modifying prevailing principles, without taking into account the international implications of such changes. The only discussion in this direction, which is at pp. 87-88 and in which the author refers to considerations of "currency" in the context of valorism and public interest, does not provide an adequate analysis. It is also disappointing that no consideration is given to the effect that a departure from nominalism may have on the International Monetary Fund agreement. In the context of the twentieth century it seems ineffective to suggest that any one monetary theory may be preferable to another one without investigating the international financial implications.

The second difficulty that one notices throughout the book is that the author is more interested in, and therefore more concerned with, the purely theoretical aspects of the alternative monetary principles than with the practical effects of their application. This is particularly apparent in the discussion of nominalism at pp. 35-41 and again at pp. 44-46, in the analysis of the yardstick to be used as a basis for determining valoristic values (pp. 79-85) and in the author's conclusions. The author's suggestion (pp. 133-134) that legislation for revaluations should be drafted ahead of time and be kept ready for emergencies completely overlooks that the introduction of any monetary reform is a political problem rather than a legal one and that a measure is

unlikely to be effective if it is not geared to the specific problems presenting themselves during an emergency. Another suggestion which is motivated by purely theoretical considerations and of an extremely sweeping nature is that, in common law jurisdictions, the courts should feel free to abrogate the nominalistic principle because it is established by case law and not by Statute (pp. 131-132). A discussion of means and methods used to overcome nominalism and a somewhat more comprehensive treatment of decisions concerning them would have been of considerably greater interest to both practitioners and academic lawyers.

The shortcoming of the book in regard to structure stems from the inclusion of separate chapters on nominalism and valorism and from the discussion in these chapters of some aspects that are well covered in the introduction. This results in repetitions. Thus, the nature of valorism is mentioned for the first time in the introduction, for the second time in the discussion of nominalism and again in the chapter concerning valorism itself. The German revaluation is first discussed at pp. 47-49 and, in a very similar manner, at pp. 98-99. The comparison of valorism with revaluations at pp. 75-76 is repeated at pp. 99-100. Undoubtedly, these redundancies stem from the fact that the arguments in favour of valorism are very often the very arguments raised against nominalism. But one wonders whether some modification in the arrangement of the material could not have overcome this problem.

It would be wrong to pretend that these blemishes are of only a minor nature. But despite them the book provides interesting reading to commercial lawyers. The discussion of the principles invoked by the German courts in order to overcome the injustice resulting from a strict application of the nominalistic principle (pp. 101 et seq.) and the comparison of the German revaluation laws with Acts passed in some of the Southern States after the Civil War raises some interesting points. The author's suggestion that the principle of *Treu und Glauben*, based on paragraph 242 of the German Civil Code and invoked in support of German decisions concerning revaluation, is similar in effect to some doctrines of equity, is thought provoking. However, being duly cautious, the author refrains from suggesting that equity be invoked in a similar manner to justify departures from nominalism in common law jurisdictions.

By and large, the nominalistic principle would appear to be too firmly entrenched in common law jurisdictions to be assailed by the courts. The author shows a realistic attitude by recognising this fact. Whether the Legislatures of industrialised and developed countries will, in the end, abrogate the nominalistic approach remains to be seen. The introduction of life policies and pension schemes providing against the effect of inflation is, undoubtedly, a hint that a change may not be as inconceivable as might be thought at first glance.

E. P. ELLINGER