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Book Review

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*Reviewed by Frederick E. J. Pizzedaz**

FOUNDATIONS AND GOVERNMENT: STATE AND FEDERAL LAW AND SUPERVISION, by Marion R. Fremont-Smith (Russell Sage Foundation, New York, N. Y., 1965). 564 pp. $8.50.

Americans have heeded the old adage that "it is far better to give than to receive." Baron de Tocqueville commented as early as 1830 on the characteristic American tendency to form and join voluntary non-profit associations.[1] Certainly, this tendency has flowered fully over the decades until, today, a non-joiner is the exception rather than the rule.[2]

We now have a book on *foundations*. This offering, *Foundations and Government,* by Marion R. Fremont-Smith, attempts to delve into the highly complex area of laws as to foundations, including trusts, contracts, agency, administrative law, corporations, taxation, and many more. To the extent that any one book can do so, this one has succeeded in showing not only the complexities of this subject, but by implication, suggests what massive impact non-profit foundations have had on the nation's economy.

The author has divided her analysis into eleven chapters. Beginning with an historical sketch as a backdrop, she then treats charitable dispositions. Foundations are first treated as trusts, then as corporations. The Internal Revenue Code, the role of the attorney-general, selected state supervisory programs, the 1954 Uniform Supervision of Trustees for Charitable Purposes Act, Federal Supervisory agencies, and comparisons with the English Law of foundations are all treated in separate chapters. A prognosis of prospects and recommendations forms the concluding chapter.

The book includes a detailed Appendix, which begins with a state-by-state table of legal requirements for charitable trusts and corporations. This table will prove valuable as a starting point in researching any state's particular laws on the subject. Typical statutory rules and regulations from selected states are included in a second section of the Appendix, which concludes with a series of forms and a list of cited cases. This last list should serve well as a starting point for further research.

The authoress describes the purpose of the book by stating that "It is the purpose of this study to describe the relationship of government, through its legislative, judicial and administra-

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[1] 1 de Tocqueville, Democracy in America, 196 (1945).

[2] Oleck, Non-Profit Corporations, Organizations and Associations, ch. 31 (2d ed., Prentice-Hall, Inc., Englewood Cliffs, N. J., 1965).

tive organization, to this form of philanthropic institution (foundations). In short, this is a study of foundations as legal instruments." [3]

Mrs. Fremont-Smith cites the *Foundation Directory*[4] figure of 15,000 foundations existing in 1964. This figure does not include those foundations with assets of less than $100,000 which did not make grants of at least $10,000 in that year. This second category numbers another 9,000 foundations.[5] An interesting and perhaps illuminating statistic is that close to ninety percent of the foundations listed in the *Directory* were created after 1940. Mrs. Fremont-Smith credits "a major change in the structure of income and corporation taxes" for the extraordinary increase in the number of foundations in the last quarter century.[6]

She also estimates that "slightly over two-thirds of the listed foundations" were subject to "50 percent or more" of "donor-related influence." [7] These figures give one the thought that there may well be merit in the accusation that the donors of many of these foundations are motivated not so much by the charitable impulse but by tax avoidance and the drive to keep intact both personal and family accumulations of wealth.

Government control exerted over foundations is amazingly meager, as the book points out. The responsibility for annual reporting on assets and activity is largely voluntary with the foundations. Mrs. Fremont-Smith states that if the result of the creation of a charitable trust is that private profits will inure to the donor, the trust will fail. But earlier she states that motive of the donor is not usually a factor which the courts will consider in determining validity of a charitable purpose.[8] The book points out that control over these charities, once they are created, lies with the state's attorney-general, in most jurisdictions. How effective this control really is is readily shown in Ohio, where one assistant attorney-general is responsible for supervising 1,777 registered trusts. Can he do more than keep a relatively current list of the names of the trusts? Additionally, from other data, one cannot help but wonder if the number of *un*registered trusts in Ohio far outnumbers the figure given above. Who is supervising those trusts? Ohio is certainly not the exception, but only typical of the lack of supervision existing in the states today. The courts of the various jurisdictions have matched the executive branches snore for snore, as the book points out.[9]

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[3] Foundations and Government, p. 12.

[4] (Edition 2, Foundation Library Center, New York, N. Y., 1964) p. 16.

[5] Foundations and Government, pp. 46, 47.

[6] Ibid.

[7] Id., pp. 371-373, citing, Krasnowiecki & Brodsky, Comment on The Patman Report, 112 Penna. L. R. 190, 192 (1963).

[8] Ibid, p. 59.

[9] Id., pp. 196-7.

Mrs. Fremont-Smith appears to favor separate State Boards of Charity, to supervise foundations, trusts, and other charities, and does cite examples of what could be done.[10]

Mrs. Fremont-Smith's study for the book was underwritten by the Russell Sage Foundation of New York City. The foundation also underwrote the publication of the book, as part of that foundation's interest in studies of philanthropy. May one ask the question whether this is analogous to asking Bertrand Russell to deliver a paper on the benefits of the atomic bomb?

Mrs. Fremont-Smith concludes by stating that foundations and charitable trusts must be viewed in a modern light by the authorities and must not "become vehicles of special privilege or position." [11]

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[10] Id., p. 50. See also, Ch. XI.

[11] Id., p. 460.

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*Reviewed by Lawrence J. Rich**

FROM ESCOBEDO TO MIRANDA: THE ANATOMY OF A SUPREME COURT DECISION, by Richard J. Medalie. Lerner Law Book Co., Inc., Washington, D. C. 339 pp. 1966.

This timely account of the most important recent work of the United States Supreme Court in criminal law is of interest to all the citizens of the United States and should be of special interest to the legal community. Segments of our society, especially the police departments, have severely criticized these decisions. This work by the Institute of Criminal Law and Procedure of Georgetown University Law Center reproduces in full the opinions of the Supreme Court in the celebrated cases of *Escobedo v. Illinois*; *Miranda v. Arizona,* and *Johnson and Cassidy v. New Jersey.* The book does not attempt to editorialize, but presents important portions of the briefs filed in the above cases and the most important and convincing oral arguments before the Supreme Court. This work is valuable to the lawyer because of the important impact that these decisions have had in the area of criminal law.

The *Johnson* case was decided by the Supreme Court on June 20, 1966. *From Escobedo to Miranda* was published in August of 1966. Thus, due to the great speed with which this book was published, it brings to us the very latest information on the right to counsel, and on constitutional safeguards in interrogation.

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