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Patrons Despite Themselves: Taxpayers and Arts Policy

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PATRONS DESPITE THEMSELVES: TAXPAYERS AND ARTS POLICY. By *Alan L. Feld, Michael O'Hare,* and *J. Mark Davidson Schuster*. New York and London: New York University Press. 1983. Pp. xx, 263. $22.50.

The authors[1] of *Patrons Despite Themselves* address what they call "an important gap" in the literature on government support of the arts (p. 2).[2] They discuss the support provided indirectly by the tax system and analyze its effects from a policy perspective. The dominant theme is that the wealthy are in control of the arts, and that such a state of affairs is unsatisfactory. The authors attempt to prove this by answering the questions: Who pays for the arts? Who decides how the tax money is spent? Who benefits from those tax expenditures? (p. 232).

The tax system provides indirect aid for the arts in a variety of ways. At the federal and state levels, taxes go uncollected by virtue of charitable deductions (pp. 24-25). Furthermore, under section 170 of the Internal Revenue Code,[3] donors may often claim a deduction for the fair market value of gifts of appreciated property without first suffering capital gains taxation (p. 24). The local real property tax exemption also provides indirect support for the arts (pp. 63-70). In 1973 these indirect tax expenditures "reached nearly $500 million, while direct aid to the arts was approximately $200 million" (p. 24). The authors believe that such large sums deserve careful consideration.

Patrons Despite Themselves provides an excellent picture of the effect of the current system of indirect funding on the art world. The chief contribution of this work is a reexamination of the exhaustive study relating to support for the arts conducted by the National Research Center of the Arts in 1973 (p. 73).[4] "On balance," the authors find that "income to the arts is paid for disproportionately by the very wealthy and is enjoyed more by the moderately wealthy and the well educated" (p. 103). As a result, the present system allocates the decisionmaking power among the public "according to how much people pay to support the public purse in the first place" (p. 128).

This decentralization of decisionmaking authority with respect to aid to the arts is traditionally thought of as a better state of affairs

1. Alan L. Feld is a professor of law at Boston University Law School. Michael O'Hare is a lecturer in public policy at Harvard's John F. Kennedy School of Government. J. Mark Davidson Schuster is a lecturer in urban studies and planning at MIT. P. xiv.

2. For other recent views on arts policy, see Comment, *Mechanisms for Control and Distribution of Public Funds to the Art Community*, 85 DICK. L. REV. 629 (1981); Comment, *Tax Incentives for Support of the Arts: In Defense of the Charitable Deduction*, 85 DICK. L. REV. 663 (1981).

3. I.R.C. § 170 (1976).

4. The only major cross-sectional arts attendance surveys in the United States were conducted in 1973 and 1975 by the National Research Center of the Arts, a subsidiary of Louis Harris Associates. P. 73. The authors' financial estimates are based on information from 1973, which is "unfortunately the last year for which complete data are available." P. 212

than, for example, a federal bureaucratic distribution system. Private control has several justifications.[5] Some argue that in making their donations, individuals are doing socially essential work that otherwise would have to be carried on by governmental agencies with less imagination, diversity, and flexibility. Others assert that the indirect tax-incentive system of private control facilitates independence, a value which should be encouraged.

Most fundamentally, however, the current system prevents the government from making any determination as to the worthiness of potential beneficiaries. However, the choice of how best to administer support for the arts is not necessarily one between private and government control. Rather, it can be viewed as a choice between control by wealthy donors and control by the average taxpayer.

The authors allege that the current system gives the high-income taxpayers "excessive control over charitable tax expenditures" (p. 128). Furthermore, a rich "socioeconomic elite" is in command of the trustees and staffs of the nation's art institutions (pp. 122-23). This influence, they say, compromises the standards of museum professionals (pp. 163-64). "The War between [rich] trustees and professionals [in art purchase decisions] (settled long ago, for example, in favor of the professionals in universities and hospitals) still continues in arts institutions and the trustee side is doing very well" (p. 164). These professionals, the authors say, are "so conditioned to play the roles of courtiers and toadies in their relationships with wealthy donors that they apparently have lost hope for any other possibility" (p. 176).

The authors argue that the indirect aid system exerts pressure (p. 131) upon arts institutes to invest an excessive amount of capital in buildings and stored art. (pp. 133-45). The distorted incentives leave institutions short of cash to cover operating expenses. They are frequently unable to choose freely among various inputs needed to maintain their respective programs (p. 131). The authors feel that the current system encourages art that "pleases rich people" at the expense of all people (p. 156).

The authors urge that the current system be reformed to provide more direct aid to the arts, thereby permitting the arts to compete directly with other public budgetary priorities (p. 231). They attempt to debunk the common perception that the system of indirect aid gives the arts a shield of obscurity that prevents lawmakers from discontinuing aid (pp. 179-80). The authors support this point with descriptions of various pieces of federal, state and local legislation which, in recent years, may have had a tendency to affect adversely the indirect arts subsidies (pp. 180-211).

5. *See* Bittker, *Charitable Contributions: Tax Deductions or Matching Grants?*, 28 TAX L. REV. 37, 39 (1972).

Sadly, however, the book fails to address the argument that indirect aid to the arts should not be reduced because, despite the authors' suggestion to the contrary (pp. xix-xx), Congress would never move to replace the lost funding. This is a key deficiency, for President Reagan has already pushed cutbacks on federal support for the arts.[6] The National Endowment for the Arts now suffers uncertainty over its future allocation of grants because its founding legislation requires Congress to appropriate funds on a yearly basis.[7] Even if adequate funding were available, the authors might find the cure worse than the illness. Substantial decisionmaking would then rest in the hands of a centralized government agency, not the public. The elite groups of experts, isolated in Washington and subject to various kinds of political pressures, could be less responsive to the average citizen than the wealthy private sector.[8]

The authors do, however, offer a set of plausible recommendations to solve the problems inherent in the indirect system. They suggest replacing the property tax exemption with a direct subsidy (pp. 229-31), limiting gifts of appreciated property (p. 221),[9] and changing the charitable deduction into a thirty percent tax credit (p. 220).[10] The authors expect these proposals to draw attention to the indirect subsidy. They expect debate over the exact percentage of the credit and the distribution of any grants; thus, their reforms would lead to explicit congressional consideration of the magnitude of indirect aid (p. 220). At the foundation of this work is "a recognition that indirect and implicit support mechanisms are the result of government policy, and should be examined and evaluated like any other policies . . . ." (p. 231).

In summary, *Patrons Despite Themselves* is a comprehensive exposition touching the significant points behind arts policy, with intelligent arguments that urge a change in the current system. It can only be hoped that such an argument will spur more careful consideration of the obstacles facing future public support for the arts.

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6. *See* Comment, *Mechanisms for Control and Distribution of Public Funds to the Art Community*, 85 DICK. L. REV. 629, 642 n.93 (1981).

7. *Id.* at 642.

8. *See* Comment, *Mechanism for Control and Distribution of Public Funds to Art Community,* 85 DICK. L. REV. 629, 642 (1981) (critics claim the NEA is a select group of experts uninfluenced by the public).

9. They would restrict the deduction on gifts of appreciated property so that donors may only benefit to the extent of basis plus 60% of the appreciation. P. 221.

10. The authors also suggest that the IRS assume responsibility for collecting precise charitable gift information. P. 216. In response to the cries of artists who generate ordinary income on the sale of their work and can only donate it at cost basis, p. 13, the authors would permit (via an election) the "professional-services" part of the artist's work to be treated as ordinary income and the appreciation part to be treated as capital gains. P. 222.