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## Book Review

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# America's experiment in administrative fascism

by Kathy Magraw

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### **A Law Unto Itself: Power, Politics and the IRS**

by David Burnham

Random House, New York, 1989

419 pages, hardbound, \$22.50.

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The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

—*Sixteenth Amendment to the U.S. Constitution*

I confess to having approached *A Law Unto Itself* with certain preconceived notions about the Internal Revenue Service and exposés about it. About the former: It is an agency run amok, abusing its legislated powers, enforcing the law by administrative fiat, and crossing the line of constitutionality—all in an insane effort to close the budget deficit. About the latter: They, more often than not, miss the point; from its inception, the IRS has been an experiment in imposing administrative fascism on the United States.

Mr. Burnham does a good job proving both notions. In this book, there are powerful examples of administrative trampling on law and constitutional rights. But when it comes to condemning the policies and practices of the U.S. government that has spawned this Frankenstein's monster, Mr. Burnham treads ever so lightly. You see, he was an investigative reporter for the *New York Times* whose reportage led to the creation of the Knapp Commission investigation of the New York City Police Department. Like the NYPD, argues Mr. Burnham, the IRS is merely a bureaucracy turned cyni-

cal. And, "as in New York City, the first step must be to focus a hundred powerful spotlights on the IRS," begin the process of reform, and show Congress and the public "that the agency's laws. . . ."

Bunk! Sure, the tax laws are impossible—I would argue that they are part and parcel of years of executive and legislative policymaking that has sent the U.S. economy over the brink of bankruptcy. But, the IRS was designed and equipped to do precisely what it is now doing.

And Mr. Burnham provides the evidence.

Mr. Burnham tantalizes the reader early on with a bold assessment that "with the possible exception of a handful of agencies in the Soviet Union and China, there is little question that the IRS today is the single most powerful bureaucracy in the world. As a corollary to this astonishing ranking in the Olympics of organizational authority, I believe that the IRS has become the single most powerful instrument of social control in the United States."

And the bureaucrats:

"'For me, the genuinely shocking and destructive part of my job is the way we all started to think about the public,' [an IRS agent in the collection division] recalled in an interview. 'This incredible attitude is best caught in the single word we often use when referring to the public. That word is slime.'

"Other agents, in other parts of the country, reported that 'slime' did not have widespread usage. 'I've heard it but I think deadbeat was the usual term for the public during my wanderings,' said an agent who has worked in IRS offices in Illinois, Maryland, and New York."

### **Over the edge of a constitutional precipice**

Put differently, the taxpaying individual or company is presumed by this monolithic agency and its agents to be guilty until proven innocent of trying to cheat the government out of its sorely needed revenues from a shrinking tax base. And the IRS is armed with extraordinary enforcement powers that make it difficult, if not impossible, to prove otherwise.

"The mission of the IRS, of course, is to collect taxes," says Burnham. "Because of the overwhelming importance of this unique task, and because IRS actions almost never deprive an individual of life or liberty, Congress and the courts have granted tax collectors special powers that have been specifically denied the traditional enforcement agencies."

(Without belaboring the point, Mr. Burnham is only half-right here. IRS actions do deprive individuals of their liberties, and the nature of the powers invested in this agency are creeping into the civil and criminal justice systems in such forms as *ex parte* proceedings and so forth.)

For example: "The IRS also has been granted authority to seize summarily the assets of any taxpayer it believes might be contemplating flight. Once again, the law empow-

ers the IRS to make a 'jeopardy assessment' without the prior approval of a judge. Furthermore, another law called the anti-injunction statute makes it extremely difficult for federal judges to enjoin the agency from making such a seizure. No other federal, state, or local agency in the United States has such power."

Thus, are the Fifth Amendment right to due process and the Fourth Amendment right against unreasonable searches and seizures trampled. And what of the Sixth Amendment right of a citizen "to be confronted with the witnesses against him"? Writes Burnham: "IRS audits are also triggered by tips from former spouses, business competitors, other kinds of whistle-blowers, newspaper stories about an opulent lifestyle, and even IRS agents' personal grudges against individual taxpayers."

The liberal spotlight is focused on the Criminal Investigation Division of the IRS. "The decision to direct the IRS to concentrate its criminal enforcement powers on one, sometimes hard-to-define group has had an addictive quality of its own. If it's okay to order the IRS to go after an amorphous group called 'organized crime,' surely other 'undesirable' kinds of people need special attention." Burnham lists as targets: "conservative Protestant ministers, civil rights activists, anti-war activists, and a host of other individuals outside the boundaries of mainstream American thought."

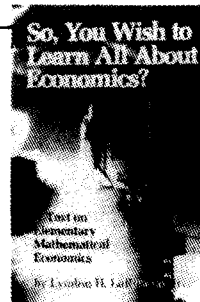
In so using their special investigative powers, the IRS "is walking on the edge, and sometimes over the edge, of a

constitutional precipice." Some parts of the IRS, says Burnham, "have grown comfortable conducting operations that often skirt the law."

Such charges that the author does level are not without their supporting evidence—otherwise known in the genre of IRS exposés as the horror stories. Case studies, court cases, and IRS memoranda fill the pages of this book. Yet, in the same breath that the author uses to exclaim his concern about the appearance of bureaucratic trampling on individual rights, he exhorts the Internal Revenue Service "to investigate the far larger and richer universe of white-collar criminals who infest what is considered legitimate business."

Reminds you of George Bush, does it not, condemning officials of failed S&Ls as "cold-blooded snakes" who "will pay with years of their lives" for their alleged crimes, while defending the honor of his son Neil Bush, a former director of the failed Silverado Savings and Loan? It is what political prisoner Lyndon LaRouche terms à la carte justice in a nation governed less and less by the rule of law.

What is so irksome about this book is that with all the evidence displayed in front of him, Mr. Burnham, like many before him, fails to ask one simple question: If the United States is a constitutional republic, why is an agency like the IRS a part of its government? Who allowed it to exist, and for what purpose, an agency with congressionally vested powers that are in bald violation of the Bill of Rights—whether that agency uses those powers or not?



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